

11-24-1987

New Cities and Land Use

Senate Committee on Local Government

Senate Committee on Housing and Urban Affairs

Follow this and additional works at: http://digitalcommons.law.ggu.edu/caldocs_senate



Part of the [Land Use Law Commons](#), and the [Legislation Commons](#)

Recommended Citation

Senate Committee on Local Government and Senate Committee on Housing and Urban Affairs, "New Cities and Land Use" (1987).
California Senate. Paper 149.

http://digitalcommons.law.ggu.edu/caldocs_senate/149

This Hearing is brought to you for free and open access by the California Documents at GGU Law Digital Commons. It has been accepted for inclusion in California Senate by an authorized administrator of GGU Law Digital Commons. For more information, please contact jfischer@ggu.edu.

CALIFORNIA LEGISLATURE
SENATE COMMITTEE ON LOCAL GOVERNMENT
Marian Bergeson, Chairman
SENATE COMMITTEE ON HOUSING
AND URBAN AFFAIRS
Leroy F. Greene, Chairman

DEPOSITORY

FEB 3 1988

RECEIVED



Report From the
Joint Hearing on

NEW CITIES AND LAND USE

November 24, 1987
State Building Auditorium
Van Nuys, California

KFC
22
L500
L62
1987
no. 4

298-S

MEMBERS

ROSE ANN VUICH
VICE CHAIR
RUBEN S. AYALA
WILLIAM A. CRAVEN
QUENTIN KOPP
CECIL GREEN
NEWTON R. RUSSELL

1700
32
1700
1700
1700
1700
1700
1700

California Legislature

**Senate Committee
on
Local Government**

MARIAN BERGESON
CHAIRMAN

**LAW LIBRARY
GOLDEN GATE UNIVERSITY**

CONSULTANTS

PETER M. DETWILER
LESLIE A. MCFADDEN
COMMITTEE SECRETARY
KAYE PACKARD

ROOM 2085
STATE CAPITOL
SACRAMENTO 95814
(916) 445-9748

NEW CITIES AND LAND USE

Summary Report From The Joint Interim Hearing
of the
Senate Local Government Committee
and the
Senate Housing and Urban Affairs Committee

November 24, 1987
State Building Auditorium
Van Nuys, California

NEW CITIES AND LAND USE

On Tuesday, November 24, 1987, the Senate Local Government Committee and the Senate Housing and Urban Affairs Committee held a joint interim hearing to explore the question: "Must a newly incorporated city honor a county's previous land use decisions?"

Earlier in the year, the Housing Committee had sent Senate Bill 186 (Montoya, 1987) to interim study at the author's request. The Local Government Committee had carried over SB 305 (Campbell, 1987) and SB 899 (Campbell, 1987) as two-year bills. In addition, Senator Davis had asked the Local Government Committee to look into his constituents' concerns regarding local agency formation commissions (LAFCOs).

Senator Marian Bergeson, Chairman of the Local Government Committee, presided over the day-long hearing which was also attended by Senator Newton R. Russell, a Committee member. Although not members of either Senate Committees, Senator Ed Davis and Senator Joseph Montoya also participated in the joint interim hearing. The session began at 10:05 a.m. and continued until 4:00 p.m.

This staff summary reports who spoke and summarizes their views. The report also reprints the staff's background paper and the prepared statements from 12 of the 20 witnesses.

WITNESSES

Louise Rice-Lawson *
Vice-President and Director of Forward Planning
Glendale Federal Savings and Loan

DeVere H. Anderson *
Past-President, Governmental Affairs Council
Building Industry Association of Southern California

Harry Zavos *
Legal Counsel, Government Affairs Council
Building Industry Association of Southern California

Richard R. Wirth
Executive Director, Government Affairs Council
Building Industry Association of Southern California

Niall Fritz *
Director of Planning and Community Development
City of Santee

Wayne P. Rasmussen*
Deputy City Manager and Planning Director
City of Orinda

David F. Dixon
City Manager
City of Moreno Valley

Mark Winogron*
Director of Community Development
City of West Hollywood

Art Donnelly*
Chairman
City of Santa Clarita Formation Committee

Connie Worden*
Vice-Chairman
City of Santa Clarita Formation Committee

Bob Hill
President
Calabasas Cityhood Committee

Jerry Gladden*
General Manager
Rancho Simi Recreation and Park District

Gina Manchester*
General Manager
Camrosa Water District

Robert L. Braitman
Executive Officer
Ventura Local Agency Formation Commission

Honorable Barbara Cameron
Member, Board of Directors
Point Dume Community Services District

Honorable Berniece E. Bennett*
Mayor Pro-Tem
City of Westlake Village

Honorable Jim Meredith
Member, Board of Directors
Rancho Simi Recreation and Park District

Honorable John Gordon
City Councilmember

City of Glendora

James M. Roddy
Executive Officer
San Bernardino Local Agency Formation Commission

Ruth Benell
Executive Officer
Los Angeles Local Agency Formation Commission

[* - See written material reprinted in this report.]

In addition, the Committees also received written comments submitted by:

Honorable John Heilman
City Councilmember
City of West Hollywood

Wayne K. Lemieux
Attorney-at-law
Helm & Lemieux

Steve Buscaino
Planner
Encino

Don V. Collin
Senior Staff Vice-President and General Counsel
California Building Industry Association

INTRODUCTORY COMMENTS

Because freeway traffic had delayed **Senator Bergeson**, the Local Government Committee's Chairman, **Senator Russell** opened the joint hearing by describing the Legislature's interest in the issue of new cities and land use. He specifically noted that the purpose of the hearing was to prepare legislators for bills they expect to see in 1988.

He explained that 31 new cities have incorporated since the voters passed Proposition 13 in 1978. This "incorporation explosion" has set off a debate over new cities' land use powers. He pointed out that the background paper explains that:

- New cities have complete control over general plan and zoning decisions made by county officials before incorporation.

- State law requires new cities to honor development agreements and building permits issued by the county, if they meet certain conditions.

- The statutes are silent on the question of what happens to subdivision approvals granted by the county.

Senator Russell also announced that the question of LAFCOs' relationship to city incorporation proponents would be discussed in the afternoon portion of the hearing.

SUMMARY OF LAND USE TESTIMONY AND RECOMMENDATIONS

Eight witnesses, split evenly between the private and public sectors, talked to the legislators about their experiences with land use issues after incorporations. This section combines their comments under common headings. To see their exact recommendations, please refer to the written material reprinted in this report.

Land use motivates incorporation. None of the witnesses disagreed that land use control is the principal force behind recent incorporations. Moreno Valley City Manager **David Dixon** recounted his new city's experience with Riverside County's rapid approval of many small-lot subdivisions with literally thousands of parcels. "We have to live with the consequences of the actions of others," Dixon said, pointing to the city's population increase from 47,000 in 1984 to over 100,000 expected by 1990. Land use was the motivator even in smaller cities like Danville and Orinda, according to **Wayne Rasmussen** who was the first planning director in each town. But, as a result, "builders are afraid of the people," said **Niall Fritz** who has worked for the new cities of Moorpark and Santee. Drawing from personal experience, planner **Steve Buscaino** claimed that "shoddy planning practices" by Los Angeles County "has been a major reason for various communities desiring to incorporate."

When private sector representative **Louise Rice-Lawson** said that county planning is proceeding well, **Senator Davis** disagreed. He cited Los Angeles County's decisions in the Santa Clarita Valley, calling them "bizarre." **Richard Wirth** worried that having each small community plan its own land uses without regard for their overall regional effects might become like "14th Century Europe --- a kind of new feudalism." This later prompted agreement from **Senator Bergeson** who said, "We can't Balkanize our state" into small planning jurisdictions if we ever hope to accommodate the five to six million more residents who are expected to arrive.

"While the motivation is understandable," **Louise Rice-Lawson** explained, "Adhering to previous land use decisions may not result in bad planning." **Senator Montoya** suggested that state law should require incorporation proponents to disclose that cityhood might not affect certain development projects. Perhaps only whimsically, CBIA's **Don Collin** later wrote to the legislators that "a perfect system cannot exist unless all parts of the state were put into a city...it would solve all the incorporation and annexation problems."

Lack of certainty. Underlying the issue of new cities and land use approvals are the broader questions of how much certainty a builder obtains through the permit process and how much discretion local officials retain over development. Industry representatives were unanimous in their concern over this issue: **Rice-Lawson, Anderson, Zavos, Wirth, and Collin.** The new cities question is but one manifestation of the builders' larger search for more certainty. As legal counsel to builders, **Harry Zavos** called the current definition of vested rights "outmoded," an opinion echoed by **Don Collin** of the statewide association. Collin recommended that property owners be allowed to build when their projects are consistent with local general plans.

But West Hollywood planner **Mark Winogron**d took the opposite view. He called it "ironic if new cities were forced to recognize and uphold decisions more strictly than established cities are required to do." One solution to resolve the confusion over which land uses have vested rights with new cities and which don't was proposed by Orinda planner **Wayne Rasmussen.** He recommended that the Legislature direct the Governor's Office of Planning and Research (OPR) "to prepare an educational program for officials of new cities" to clarify these issues.

On a related question, **DeVere Anderson,** representing the Southern California BIA's Government Affairs Council, pointed to development moratoria and local growth control initiatives as complications. He recommended five legislative changes:

- Prohibit popular titles for initiatives.
- Prohibit paid solicitors from obtaining signatures.
- Require a staff report on a measure's general plan effects.
- Require environmental review of initiatives.
- Require initiatives to be consistent with general plans.

Senator Montoya disagreed with Anderson's first two recommendations but endorsed the idea that initiatives' fiscal and environmental effects need more exposure. We need to look at the "social expenses" of shifting poor and elderly residents to other towns, he said.

General plans. None of the development industry's witnesses raised any problems with new cities' use of counties' existing general plans. Two city planning directors, however, disagreed over the statutory deadline for cities to adopt their own plans. Based on his experiences in two new cities, **Wayne Rasmussen** recommended that the deadline be extended from 30 months to 36 months. He noted that city officials and citizen advisors often hit a psychological "wall" after 2½ years of debate, similar to that encountered by marathon runners. Although **Mark Winogron**d agreed that new cities have this problem, he disagreed with extending the deadline. It would only extend the inevitable, he said. **Winogron**d did recommend that the Legislature allow OPR to grant an extension for the housing element of new cities.

Subdivisions. Speaking for builders, **Louise Rice-Lawson** maintained that local officials, including those in newly incorporated cities, should honor all tentative subdivision maps once they are approved. In fact, the Legislature should codify the Attorney General's 1980 opinion which reaches the same conclusion, according to **Harry Zavos**, the builders' attorney. Zavos specifically endorsed Senate Bill 186 (Montoya, 1987). **Niall Fritz**, the Santee planner, agreed that new cities should honor tentative maps approved by counties.

But other city planners did not completely support this concept. Orinda's **Wayne Rasmussen** said that a city "should not be required to honor county approved tentative maps which are clearly inconsistent" with the new general plan. This approach would allow a new city to deny what Rasmussen called "bad projects" by protecting "community values." And West Hollywood's **Mark Winogron**d suggested that new cities not be required to honor condominium conversion subdivisions where building permits had not yet been issued.

Another planner, **Steve Buscaino**, took a much harder stand on subdivisions which counties had approved before incorporation. He recommended that new cities be able to deny earlier tentative maps when they could show that illegal subdivisions had been occurring. Buscaino also recommended that the Legislature specify that "liability for the failure of the county to enforce the California Subdivision Map Act not be transferred to the [new] city and any damages resulting from failure to enforce remain collectable from the county."

On a related issue, the builders' **Richard Wirth** charged that the City of Los Angeles has failed to adopt an ordinance implementing Senator Montoya's successful 1984 bill on vesting tentative maps.

Development agreements. Recommendations were scattered on whether the Legislature should amend its 1986 law which spells

out which development agreements a new city must honor. Even the builders' representatives were split, with **Louise Rice-Lawson** recommending that the Legislature move the qualifying deadline all the way up to the effective date of cityhood. **Harry Zavos**, legal counsel to the builders' group, instead suggested moving the date up to LAFCO's filing of the incorporation petition. Zavos specifically endorsed Senate Bill 899 (Campbell, 1987).

Santee planner **Niall Fritz** told the legislators that these recommendations were "dangerous" and "detrimental." Current law was "fair," he said, in setting the first deadline as the date that the first signature goes on an incorporation petition. Developers "shouldn't have a problem if the development is acceptable to the community."

But planner **Steve Buscaino** went even further, suggesting an amendment to current law that would make any development agreement "null and void" unless the project was "80% physically complete." This would allow a city to "make further demands" on the developer if the project were less complete.

Building permits. Despite the 1984 law requiring new cities to honor county building permits under certain conditions, the builders' attorney **Harry Zavos** recommended additional legislation which prohibits the revocation of any building permits "due to or made subject to subsequent changes in law." Orinda's planner, **Wayne Rasmussen**, disagreed completely. According to Rasmussen, "based on experience since 1984, the legislation regarding honoring building permits should not be changed."

A "land rush"? All three city planning directors believe that developers rush to file projects with county officials when faced with the prospect of incorporation. This "land rush" leads to hasty commitments which new cities, not the approving county officials, have to cope with later. **Berniece E. Bennett**, Mayor Pro Tem of Westlake Village, told the legislators that "two major residential developments were expedited through the county land use process" while her community was attempting incorporation. "One of these projects received its final approval on the day that the City was officially incorporated," she reported.

All three planners called for a statutory moratorium on county land use approvals. **Niall Fritz** said that a county should not approve any general plan or zoning amendments in a community once LAFCO approves of an incorporation proposal. And if the voters subsequently approve a new city, the county should also withhold any more use permits or subdivision approvals; building permits could continue. This new law would give a new city some "breathing room." **Wayne Rasmussen** concurred. Ventura LAFCO's **Bob Braitman** suggested that the latest cut-off date for county land use approvals should be the election date.

Mark Winogrond said that in West Hollywood, "We did have the land rush." His new city inherited many different types of county land use projects at all stages of development. He went further than **Fritz**, calling for a blanket moratorium on land use decisions once an incorporation is initiated and lasting until the new city had actually adopted its new zoning ordinance. Although not a city planner, **Steve Buscaino** concurred.

The city planners also agreed that following incorporation, cities need time to organize themselves, both politically and administratively. They need "a little breathing room," according to **Niall Fritz** who called on legislators to enact a statute specifically authorizing new cities to declare a one-year moratorium on development decisions. While **Wayne Rasmussen** concurred with the idea, he said that the period ought to be "for a minimum" of two years. Building permits and lot splits could continue but large projects should wait until the new city's land use policies become clearer.

Senator Davis disagreed with these recommendations, specifically with Rasmussen's call for an additional moratorium.

A role for LAFCO? City planners **Mark Winogron**d and **Wayne Rasmussen** recommended that the Legislature should not change its current policy and should not give LAFCOs the power to determine which land use projects a new city must honor. Rasmussen concluded that "LAFCOs are typically the least knowledgeable about the political and practical planning necessities of new communities." Winogron recommended, instead, that it is "more appropriate to place the legislative standards directly into the Government Code."

But another planner, **Steve Buscaino**, took the opposite view, arguing that the Legislature should let LAFCO "determine which county land use decisions a new city must honor when not directed by state law."

Santee's **Niall Fritz** used to work for the Ventura LAFCO, so his perspective was unique. Fritz recommended three reforms:

- Require LAFCOs to set spheres of influence for future new cities.
- Require counties to form an Area Planning Commission (APC) for each possible future new city.
- Allow counties to finance their APCs directly.

Fritz suggests that these changes would: (1) identify "the turf of a new city," (2) encourage more participation in land use decisions, and (3) benefit developers by easing the transition to incorporated status.

SUMMARY OF LAFCO TESTIMONY AND RECOMMENDATIONS

A dozen witnesses discussed their views of LAFCOs with the legislators during the afternoon session. Although several speakers made specific recommendations, all of them touched on a recurring theme: fairness. How fair is LAFCO? The answer may be relative, depending on the results of one's experience with a particular LAFCO.

Fairness. Santa Clarita cityhood proponents **Art Donnelly** and **Connie Worden** and Calabasas proponent **Bob Hill** believe that the Los Angeles LAFCO favors county government. A key concern is LAFCO's apparent lack of consistency when setting boundaries for new cities; some landowners are allowed out, others must remain in. Water district manager **Gina Manchester** and park district manager **Jerry Gladden** believe that the Ventura LAFCO is dominated by county influences. Park district board member **Jim Meredith** added that "people are afraid of LAFCO" in Ventura County because of its great power.

Senator Davis later echoed this concern of county domination. In his view, there is no accountability for LAFCO. Davis said that LAFCO should be impartial; not an advocate of county government. We need to change state law, he said, "To give it at least the appearance of impartiality." But as **Senator Bergeson** noted, this is a political problem. "It's part of the beast."

Westlake Village mayor pro tem **Berniece Bennett**, herself an incorporation leader, said that the Los Angeles LAFCO was "of immense assistance" to her effort. This view was repeated by park district board member **Barbara Cameron** who found the Los Angeles LAFCO to be "supportive and helpful." Calling Glendora one of Los Angeles LAFCO's best customers, councilmember **John Gordon** said that we was "very much in support of the LAFCO staff and commission." Similar sentiments came in letters to the Committees from West Hollywood councilmember **John Heilman** and from **Wayne Lemieux**, an attorney who advises several Southern California cities.

In other parts of the state, county officials complain that LAFCO does not favor them enough, reported **Jim Roddy**, San Bernardino LAFCO executive officer. It seems that LAFCO "equally disappoints, equally pleases" people, Roddy said. "When people don't get what they want, they're disappointed," claimed **Ruth Benell**, executive officer of the Los Angeles LAFCO.

Policies. One possible reason for the criticism over LAFCOs' apparent inconsistency and lack of fairness is that state law gives LAFCOs only broad general policies to follow. Cityhood proponents **Connie Worden** and **Bob Hill** agreed with each other that LAFCOs show a lack of consistency.

When **Senator Bergeson** asked Hill if "more explicit statutory criteria" could solve this problem, he concurred. They both wanted to avoid the danger of legislation that would be too detailed. But more legislative direction "would take a lot of heat out of the debate," Hill contended. Ventura LAFCO's **Bob Braitman** added that "additional direction from the state on the role of cities would help."

This absence of clear policy direction from Sacramento may have prompted water district manager **Gina Manchester** to decry the lack of an appeals process from LAFCO decisions. There is "no redress," she said. "LAFCO appears to have no regulatory restrictions as the law now stands."

Process and procedures. Regardless of their views of particular LAFCOs, the witnesses agreed that the current procedures are complicated and should be improved. Westlake Village's **Berniece Bennett** called them "cumbersome." But no consensus emerged over key changes. Instead, witnesses offered a series of possible reforms:

- LAFCOs should hold "scoping meetings" with incorporation proponents to identify key issues for more study. (Worden)
- LAFCOs should adopt formal rules of procedure to "clarify expected actions" by the proponents. (Worden)
- Proponents need an opportunity to negotiate boundary changes and proposed city budgets. (Worden and Hill).
- Require LAFCOs to adopt findings of fact. (Worden)
- Set a specific time for judicial review. [NOTE: The Cortese-Knox Act already contains these deadlines.] (Worden)
- Require LAFCO to have an independent fiscal audit of incorporation feasibility studies. (Worden and Davis).
- Do not permit voters outside the boundaries of the proposed new city vote on incorporation. (Worden)
- The state government should finance LAFCOs. (Gladden)

Membership. Because who makes decisions influences how decisions are made, several witnesses also focussed their attention on LAFCOs' membership. Again, no consensus was established as the speakers suggested a wide variety of changes:

- Elect LAFCO commissioners directly. (Gladden)

- Create a new type of independent commission to hear incorporation proposals. The Governor would appoint the commissioners. Keep LAFCO for more routine boundary changes. (Worden)

- Make LAFCOs independent, with no county supervisors or city councilmembers serving. (Buscaino)

- A state-level commission would be too remote and could side-step the Brown Act. (Gordon)

Four witnesses touched on the issue of special district representation on LAFCOs. **Jim Meredith** and **Gina Manchester** who work with special districts in Ventura County contended that districts should not have to surrender their "latent powers" to get seats on LAFCO. "The price is too high," said Manchester. But Ventura LAFCO's **Bob Braitman** reported that districts in his county have not applied for representation on LAFCO in the last 10 years. **Jim Roddy** who staffs the San Bernardino LAFCO which has special district representation told legislators that the current law "works well."

CONCLUDING REMARKS

Following the final witness, **Senator Bergeson** summarized the day's testimony with six observations:

1. Witnesses representing the building industry strongly favored greater certainty in the development process. They noted that incorporations and annexations sometimes inject an element of uncertainty into developers' plans.

2. Developers' representatives endorsed two specific bills which would improve their sense of certainty: Senate Bill 186 (Montoya, 1987) and Senate Bill 899 (Campbell, 1987).

3. Legislators should expect to see Senator Montoya's bill come before the Senate Housing and Urban Affairs Committee and Senator Campbell's measure back in front of the Senate Local Government Committee in January 1988.

4. City planners told the Committee members that the Legislature should prevent a "land rush" by precluding county officials from approving certain types of land uses after LAFCO approves an incorporation proposal.

5. Those involved in LAFCO decisions recommended many changes to state law. Their proposals result from their own specific problems. If these suggestions appear as bills in 1988, the Legislature will have to examine them closely for their statewide effects.

6. One possible way to identify common problems and to begin to find consensus for reform measures would be the formation of a task force "to hammer things out." The many offers of assistance from public agencies and private citizens would be accepted.

OPENING STATEMENT BY SENATOR NEWTON R. RUSSELL
ON BEHALF OF COMMITTEE CHAIRMAN SENATOR MARIAN BERGESON
JOINT INTERIM HEARING ON "NEW CITIES AND LAND USE"
TUESDAY, NOVEMBER 24, 1987 --- VAN NUYS

GOOD MORNING AND WELCOME TO THE HEARING ON "NEW CITIES AND LAND USE." THIS HEARING IS JOINTLY SPONSORED BY THE SENATE COMMITTEE ON HOUSING AND URBAN AFFAIRS AND THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

THE INCORPORATION EXPLOSION HAS SET OFF A DEBATE OVER THE LAND USE POWERS OF NEW CITIES. WE ARE HERE TODAY TO EXPLORE THE QUESTION OF "WHICH COUNTY LAND USE DECISIONS MUST A NEW CITY HONOR?" BECAUSE INTEREST IN CITY INCORPORATION REMAINS HIGH, I EXPECT TO SEE LEGISLATION ON THIS ISSUE IN 1988. TO PREPARE OURSELVES FOR NEXT YEAR, SENATOR LEROY GREENE AND SENATOR MARIAN BERGESON CALLED THIS SPECIAL HEARING.

AS THE BACKGROUND PAPER FOR TODAY'S HEARING REPORTS, 31 NEW CITIES HAVE INCORPORATED SINCE PROPOSITION 13. IN SENATOR BERGESON'S OWN DISTRICT, THE VOTERS APPROVED THE NEW CITY OF MISSION VIEJO JUST EARLIER THIS MONTH AND 2 OTHER NEW CITIES ARE LIKELY TO BE ON NEXT SPRING'S BALLOT. THE CONNECTION BETWEEN THESE NEW GOVERNMENTS AND LAND USE ISSUES WAS INEVITABLE. MANY ARE NOW ASKING: "MUST A NEW CITY HONOR A COUNTY'S PREVIOUS LAND USE DECISIONS?"

THE BACKGROUND PAPER DISSECTS THAT QUESTION FOR US. WE LEARN, FOR EXAMPLE, THAT THE NEW CITY HAS COMPLETE CONTROL OVER EARLIER GENERAL PLAN AND ZONING DECISIONS. WE ALSO LEARN THAT STATE LAW REQUIRES NEW CITIES TO HONOR DEVELOPMENT AGREEMENTS AND BUILDING PERMITS ISSUED BY THE COUNTY, IF THEY MEET CERTAIN CONDITIONS. BUT I WAS DISMAYED TO FIND THAT OUR STATUTES ARE COMPLETELY SILENT ON THE QUESTION OF WHAT HAPPENS TO SUBDIVISIONS APPROVED BY THE COUNTY.

FROM THE BACKGROUND PAPER, I ALSO LEARNED ABOUT THE PRACTICAL EXPERIENCES OF NEW CITIES. BUT LOCAL NEGOTIATIONS AND COMPROMISES HAVE SETTLED MOST PROBLEMS. WE WILL LEARN MORE ABOUT THAT WHEN WE HEAR FROM CITY OFFICIALS IN A MOMENT.

THE SENATORS MAY WISH TO LOOK AT THE QUESTIONS POSED ON PAGES 16, 17, AND 18 IN OUR STAFF PAPER. YOU MAY WANT TO ASK THE WITNESSES TO ADDRESS SOME OF THOSE SPECIFIC POINTS.

LET ME ALSO NOTE THAT I REALIZE THAT SOME CITYHOOD PROPONENTS AND OTHER LOCAL OFFICIALS HAVE DIFFICULTLY DEALING WITH THE LOCAL AGENCY FORMATION COMMISSION OR "LAFCO." AT SENATOR DAVIS'S REQUEST, WE WILL SPEND TIME THIS AFTERNOON HEARING FROM 2 INCORPORATION PROPONENTS, 2 SPECIAL DISTRICT MANAGERS, AND 2 "LAFCO" EXECUTIVE OFFICERS.

- 14 -

WHILE WE DIDN'T COME HERE TO ENGAGE IN "LAFCO-BASHING," I THINK IT'S IMPORTANT TO SEE IF STATUTORY IMPROVEMENTS WOULD BE USEFUL.

-0-

MEMBERS
ROSE ANN VUICH
VICE CHAIR
RUBEN S. AYALA
WILLIAM A. CRAVEN
QUENTIN KOPP
CECIL GREEN
NEWTON R. RUSSELL

California Legislature
- 15 -
Senate Committee
on
Local Government

MARIAN BERGESON
CHAIRMAN

CONSULTANTS
PETER M. DETWILER
LESLIE A. MCFADDEN
COMMITTEE SECRETARY
KAYE PACKARD
ROOM 2085
STATE CAPITOL
SACRAMENTO 95814
(916) 445-9748

NEW CITIES AND LAND USE

A Background Staff Report for the Joint Hearing
of the
Senate Local Government Committee
and the
Senate Housing and Urban Affairs Committee
[revised]

November 24, 1987
State Building
Van Nuys, California



TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION.....	17
Overlapping interests.....	17
Five recent bills	17
RENEWED INTEREST IN INCORPORATION.....	18
The motives behind cityhood.....	19
How a community becomes a city.....	20
Annexation as a parallel issue.....	21
WHICH COUNTY LAND USE DECISIONS MUST A CITY HONOR?.....	21
General plans.....	22
Specific plans.....	22
Zoning.....	23
Tentative maps.....	24
Vesting tentative maps.....	25
Development agreements.....	26
Building permits.....	27
NEW CITIES' EXPERIENCES.....	28
Land use problems.....	28
Litigation.....	30
Other issues.....	31
POLICY ISSUES BEFORE THE LEGISLATURE.....	32
SOURCES & CREDITS.....	36



NEW CITIES AND LAND USE

As more new cities incorporate, mainly in reaction to counties' development decisions, the question was inevitable: **Must a new city honor a county's previous land use decisions?**

On November 24, 1987, the Senate Local Government Committee and the Senate Housing and Urban Affairs Committee will hold a joint hearing to explore this question. The hearing, to be held at the State Building in Van Nuys, will review the current laws on this topic, examine the experience of new cities and developers, and consider suggestions for statutory changes.

Overlapping interests. Both Senate Committees have overlapping interests in this issue. The Senate Housing and Urban Affairs Committee is responsible for reviewing bills affecting the Subdivision Map Act and the issuance of building permits. The Senate Local Government Committee hears legislation dealing with general and specific plans, zoning decisions, and development agreements. Because of their shared responsibilities, the chairmen of the two Committees agreed to hold a joint hearing.

Five recent bills. During 1987, legislators introduced five bills affecting new cities' land use powers. Although none of the five passed, their authors may resurrect some of these measures when the Legislature reconvenes in January 1988.

Assembly Bill 154 (Stirling) would have permitted a city to enforce private land use controls contained in landowners' covenants, conditions, and restrictions ("CC&Rs"). Prompted by the proposed incorporation of Rancho Santa Fe in San Diego County, the bill died after the voters rejected cityhood. **Assembly Bill 1927 (Bader)** would have changed the statutory rules which determine how new cities honor county building permits. The Assembly Local Government Committee held AB 1927 for interim study.

Senate Bill 186 (Montoya) would have required a newly incorporated city to honor all tentative maps and vesting tentative maps approved by the county. SB 186 also provided that its provisions were declaratory of existing law. At Senator Montoya's request, the Senate Housing and Urban Affairs Committee held SB 186 for this interim hearing. **Senate Bill 305 (Campbell)** and **Senate Bill 899 (Campbell)** would have changed the conditions under which new cities must honor county development agreements. These bills came to the Senate Local Government Committee and now are two-year bills.

RENEWED INTEREST IN INCORPORATION

Local voters have approved 31 new cities since the passage of Proposition 13 in 1978, including four successful elections earlier this month. On November 3, voters agreed to incorporate the communities of Highland (San Bernardino County), Mission Viejo (Orange County), Santa Clarita (Los Angeles County), and Twentynine Palms (San Bernardino County). **TABLE I** reports the full list of new cities.

TABLE I: NEW CITIES SINCE 1978

<u>CITY</u>	<u>COUNTY</u>	<u>YEAR</u> [*]
Grand Terrace	San Bernardino	1978
La Habra Heights	Los Angeles	1978
Atascadero	San Luis Obispo	1979
Avenal	Kings	1979
Paradise	Butte	1979
Big Bear Lake	San Bernardino	1980
Clearlake	Lake	1980
Poway	San Diego	1980
Santee	San Diego	1980
Cathedral City	Riverside	1981
Westlake Village	Los Angeles	1981
Agoura Hills	Los Angeles	1982
Danville	Contra Costa	1982
Dublin	Alameda	1982
La Quinta	Riverside	1982
East Palo Alto	San Mateo	1983
Moorpark	Ventura	1983
San Ramon	Contra Costa	1983
Loomis	Placer	1984
Mammoth Lakes	Mono	1984
Moreno Valley	Riverside	1984
West Hollywood	Los Angeles	1984
Orinda	Contra Costa	1985
Solvang	Santa Barbara	1985
Encinitas	San Diego	1986
Solana Beach	San Diego	1986
West Sacramento	Yolo	1987
Highland	San Bernardino	1987
Santa Clarita	Los Angeles	1987
Twentynine Palms	San Bernardino	1987
Mission Viejo	Orange	1988

[* - incorporation year may be later than election year]

And the interest in incorporation does not stop with these recent successes. Six other formal incorporation proposals are pending: Calabasas (Los Angeles County), Citrus Heights (Sacramento County), Dana Point (Orange County), Fallbrook (San Diego County), Hesperia (San Bernardino County), and Laguna Niguel (Orange County). Nearly 20 other communities are discussing cityhood and may soon file formal applications with their local agency formation commissions.

The motives behind cityhood. The principal driving force behind most of the 31 successful incorporations is local reaction to county officials' development decisions. Although not the sole factor and not even the primary motive in every case, unhappiness with the pace, scale, and location of new development has galvanized community support for cityhood. Research conducted for a doctoral dissertation at the University of California, Davis strongly supports this conclusion.

In some communities, there is even evidence of a "land rush" phenomenon. Concerned that a proposed new city might clamp down on development, builders may hurry up their applications for land use approvals. Moreno Valley officials believe that their community's already booming development industry accelerated even further once incorporation seemed likely. Developers with pending applications sometimes push county officials for approvals in an attempt to avoid city review. Westlake Village's planning director believes that he inherited one such subdivision.

But there are other motives for incorporation besides reactions to land use policies. Before the voters passed Proposition 13 in 1978, new cities typically financed their operations by levying additional property taxes. Article XIII A of the California Constitution now limits ad valorem property taxes to just 1% of the property's value. The only exception is for general obligation bonds passed with 2/3 voter approval. Property taxes no longer go up when a new city is formed, thus making incorporation fiscally more attractive in many communities. In effect, Proposition 13 removed the "tax penalty" which many voters had associated with incorporation.

The desire for better local services and facilities also contributes to support for cityhood. Additional police protection, more neighborhood parks, and better street lighting are examples of physical changes that residents often want.

Some communities view themselves as "tax exporters," shipping away locally generated revenues to pay for county programs which do not directly benefit their source. Suburban residential communities can produce tax revenues that counties need to support health and welfare programs in older, poorer parts of the county.

The desire to keep local money within the community to pay for increased services can be a rallying point for cityhood proponents.

Finally, the desire for community identity is often cited by incorporation activists. These intangible benefits include a "sense of place," more direct access to elected officials, and even the desire for political participation by ambitious individuals and interest groups. As one observer noted, having a pot-hole that belongs to the city instead of the county is somehow more meaningful.

How a community becomes a city. The California Constitution requires the Legislature to "prescribe uniform procedure for city formation" (Article XI, §2 [a]). In response, the Legislature has laid out the formal procedures for incorporation in the Cortese-Knox Local Government Reorganization Act of 1985 (Government Code §56000, et seq.). Using the Cortese-Knox Act, cityhood proponents must follow four key steps on the path to incorporation.

Nearly all incorporation attempts take at least a year and sometimes even two years to complete. Many do not succeed on their first try, requiring more persistence and committed political leadership. Proponents have to lay the groundwork even before filing the first formal documents. A fiscal feasibility study, consideration of the proposed incorporation's effects on other local agencies, and political homework are essential.

The first step of **initiation** involves the filing of a formal application with the local agency formation commission (LAFCO). The application to LAFCO can be filed either by petition or by a resolution adopted by another local agency. If filed by petition, the document must be signed by at least 25% of the community's registered voters or by 25% of the landowners who also own at least 25% of the area's land value. If filed by resolution, any other local agency (including the county board of supervisors) can adopt a formal resolution asking LAFCO to begin proceedings. The Cortese-Knox Act spells out the specific contents of these documents and details local officials' particular procedures.

The second step involves **LAFCO review and action**. Relying on broad state policies, LAFCO's staff conducts fiscal and environmental reviews as it prepares a formal report and recommendation to the commission. The staff presents this information at a noticed public hearing where LAFCO receives the comments of interested individuals, groups, and other governments. LAFCO's choice is to approve or disapprove the incorporation proposal. If LAFCO denies the application, the proponents must wait a year

before submitting another proposal. If LAFCO approves of the incorporation, it also adopts specific "terms and conditions" that flesh-out the proposal. These conditions often become critical to the success of the new city.

LAFCO forwards its approval to the county board of supervisors where the third step occurs. The **county supervisors' hearing** measures local voters' protests to the new city. But in the absence of protests by a majority of the area's registered voters, the supervisors must call an incorporation election. They have no other choice under the Cortese-Knox Act.

The final step is the **election** itself. The community's voters either approve or reject the new city. A vote in favor of incorporation is also a vote for the conditions imposed by LAFCO. In addition, voters select their first councilmembers and vote on the secondary ballot items that influence the running of the new city. The new city becomes a governmental reality on its official "effective date" which is set by LAFCO as a condition of incorporation.

Annexation as a parallel issue. Besides incorporation, annexation is the other way to transfer jurisdiction from county control to municipal status. Also governed by the Cortese-Knox Act, city annexations follow procedures which are similar to the four steps for incorporation. Initiation can occur by either petition or resolution. LAFCO must review and approve of the proposal. If LAFCO approves, the annexing city holds the protest hearing. If there is no majority protest, the city must annex the property. In certain cases, the annexation may require the approval of the area's registered voters.

WHICH COUNTY LAND USE DECISIONS MUST A CITY HONOR?

California's cities and counties have mutually exclusive land use jurisdictions. Property in an unincorporated area is regulated by the county. Once incorporated or annexed into a city, the property comes under municipal land use control (Government Code §57325 and §57375).

But a new city's land use control is not absolute. In some cases, the property owner may have a **vested right** to complete a project. The doctrine of vested rights comes from the common law, not from legislative statutes. According to a 1976 California Supreme Court decision, property owners secure vested rights if they have "performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government" (AVCO Community Developers, Inc. v. South Coast Regional Commission, 17 Cal. 3d 785, 791).

In most situations, however, a county's previous planning, zoning, and subdivision decisions are not the kind of "permits" that lead to vested rights. In these situations, a property owner does not acquire a vested right and must look to the new city for further permission to develop. The Legislature has not provided developers and local officials with uniform rules for deciding which county land use decisions a city must honor. In some cases, the Legislature has not provided any rules at all.

To explore this question in depth, this section of the report examines common types of land use decisions. Although the focus is mainly on what happens after incorporation, the discussion also touches on the parallel situation which occurs with city annexations.

General plans. Since 1955, the Legislature has required every county and city to adopt a comprehensive general plan which contains specified elements (Government Code §65300). Key land use decisions must be consistent with the local general plan, including subdivisions, zoning, and public works projects.

But new cities have a special, temporary exemption from these requirements. A new city has 30 months in which to prepare and adopt its general plan (Government Code §65360). During that period, a new city is also exempt from the requirements that its land use decisions must be consistent with its general plan. Instead, the city must make specific findings that these projects will not conflict with its future general plan.

In practice, some new cities rely on the county's general plan for general guidance while preparing their first city general plan. La Quinta merely accepted Riverside County's plan for the area. Until its own general plan was ready, Poway relied on the formal community plan which San Diego County had adopted before incorporation.

With annexation, the shift in jurisdiction is more immediate. The territory is automatically subject to the city's general plan on the effective date of the annexation (Government Code §57325).

Specific plans. Counties and cities may adopt specific plans "for the specific implementation" of their general plans (Government Code §65450). Local officials use specific plans to focus attention on a particular communities or neighborhoods, or to concentrate on special problems. Specific plans must be consistent with the underlying general plans. Further, key land use decisions must be consistent with both the general plan and the specific plans.

Just as with general plans, the applicability of specific plans is mutually exclusive between counties and cities. When a new city incorporates or when an existing city annexes territory, the county's specific plan ceases to apply unless the city formally decides to adopt the county's plan as its own (Government Code §56325 and §56375). For example, San Luis Obispo County had adopted a specific plan for the community of Atascadero which the new City of Atascadero adopted as its own general plan upon incorporation.

Zoning. The Cortese-Knox Act requires that the first official act of a new city council is to adopt a municipal ordinance which keeps all county ordinances "in full force and effect as city ordinances for a period of 120 days" or until the council passes "ordinances superseding the county ordinances, whichever occurs first" (Government Code §57376). Because zoning is accomplished by ordinance (Government Code §65850), state law effectively requires the new city to honor the county's existing zoning for 120 days or until it is changed.

But after "grandfathering" the county ordinances, some new cities act promptly to freeze county zoning decisions (Government Code §65858). Solana Beach immediately adopted a zoning moratorium which effectively stopped a locally controversial hotel development which had been permitted under San Diego County's zoning ordinances. Through lawsuits and negotiations, city officials wrung concessions from the developer before allowing the moratorium to thaw.

But the planning director in Agoura Hills fears that cities may have lost this ability because of the United States Supreme Court's decision this summer in First English Evangelical Church of Glendale v. County of Los Angeles (107 Sup. Ct. Rptr. 2378). The Court held that a government must compensate a property owner if a land use regulation results in a temporary taking of property rights. The planning director is concerned that a new city's zoning moratorium may result in a temporary taking for which the city would have to pay damages to property owners. However, other legal observers note that the Court did not change the definition of what constitutes a "taking." In the past, zoning actions have not required compensation.

For annexations, the Legislature has provided an opportunity to smooth the transition between county and city zoning. Termed "prezoning," this practice allows municipal officials to determine what city zoning will apply to an area before it is actually annexed to the city (Government Code §65859). The city follows all the usual procedures for public notice and hearing when it prezones property, but the zoning does not take effect until the annexation is completed. Many observers endorse prezoning as an

excellent way to inform landowners and local officials about which land uses will be allowed after annexation.

The Legislature promotes this practice by allowing LAFCOs to require rezoning as a condition of approving a city annexation (Government Code §56375 [a]). However, state law specifically precludes LAFCO from influencing the zoning itself:

A commission shall not impose any conditions which would directly regulate land use density or intensity, property development, or subdivision requirements.

Because this statutory is often confusing when first read, an example may clarify it. When a city applies to LAFCO for the annexation of agricultural land, LAFCO can require the city to zone the property before it is annexed. But the commission cannot tell the city to prezone for area for agricultural (or any other) use. Of course, if the city prezones the property for high density apartments and LAFCO thinks that the land ought to remain in agricultural use, the commission can always deny the annexation. This action leaves the property subject to the county's existing agricultural zoning.

Tentative maps. The Subdivision Map Act requires a subdivider of five or more parcels to file a tentative map with local officials showing the design and improvement of the proposed subdivision. Approval of the tentative map, subject to certain conditions, is basically an approval for the purpose of determining the map's consistency with

- The requirements of the Subdivision Map Act.
- The local subdivision ordinance applicable at that time.
- The existing general plan.

A local agency is prohibited from denying approval of a final map if it is in substantial compliance with the previously approved tentative map (Government Code §66474.1).

Existing law is silent on how final maps should be treated by new cities, when the tentative maps were approved by the counties prior to incorporation. However, in 1980, the California Attorney General opined that where a county, prior to incorporation of a city, conditionally approved a tentative map for land located within the boundaries of the city, all of which conditions had been satisfied, and a final map had not been recorded, the city may not withhold final approval or amend the map's conditions (63 Ops. Cal. Atty. Gen. 844). The Attorney General cited two California Supreme Court cases to support this conclusion, Great Western Savings and Loan Assn v. City of Los Angeles (31 Cal.

App. 3d 403) and Youngblood v. Board of Supervisors (22 Cal. 3d 644). In both cases the Court recognized the substantial money, time, and effort the developer must often expend to meet the conditions of a tentative map which were in effect at the time the tentative map was approved. The Court concluded that the subdivider is entitled to approval of the final map without the imposition of new or altered conditions and without undue delay.

With respect to annexations, when a tentative map has been filed, but a final map has not been approved, the final map must comply with the requirements of any applicable ordinance of the annexing city (Government Code §66413).

In 1987, Senator Montoya introduced Senate Bill 186 to clarify state law regarding the effect of incorporations on subdivision maps. This measure would have required the newly formed city to approve a final map if it substantially conforms with the tentative map approved by the county and meets the requirements and conditions for the subdivision which would have been applicable, but for the incorporation. At the request of the author, the Senate Committee on Housing and Urban Affairs sent this measure to interim study.

Vesting tentative maps. Legislation passed in 1984 (SB 1660, Montoya) provided an alternative to filing a conventional tentative map, by authorizing a "vesting tentative map." Effective January 1, 1986, this measure gives the subdivider the right to proceed with the proposed development (including obtaining building permits) for a substantial period of time under the ordinances, policies, and standards in effect at the time the local agency determines that the application is complete (Government Code §66498.1 [b] and §66474.2).

Existing law is silent on the effect of incorporation on approval of a vesting tentative map and its ensuing final map, just as it is for a conventional tentative map. In 1985, however, Legislative Counsel issued an opinion concluding that a new city may not withhold final approval or amend the conditions for a vesting tentative map approval prior to incorporation, except as necessary to avoid a condition dangerous to the health and safety of the community, to comply with state or federal law, or unless the vesting tentative map has expired (Opinion No. 15919, July 15, 1985). The arguments cited include reliance upon common law vested right doctrine set forth in the 1976 AVCO case.

Annexation has the same effect on vesting tentative maps as it does on tentative maps and approval of final maps discussed in the prior section. That is, the annexing city's ordinances apply in approving a final map (Government Code §66413).

Senator Montoya's SB 186 would also have required a new city to approve a final map if it substantially conforms with the vesting tentative map that had been approved by the county prior to incorporation, and meets the requirements and conditions for the subdivision which would have been applicable, but for the incorporation.

Development agreements. In 1979, concerned over the lack of certainty in the development process, the Legislature authorized development agreements. Developers and local officials can sign binding development agreements spelling out their mutual responsibilities (Government Code §65864, et seq.). Even though new individuals are elected to office or the developer sells out to another firm, their successors are bound to follow these agreements (Government Code §65868.5). But it was not clear that a new city or an annexing city would also be considered to be a "successor in interest" to a county's development agreement. To clarify this question, the Legislature passed Senate Bill 1781 (Campbell, 1986).

State law now provides that a development agreement for land in a newly incorporated city remains valid for eight years, or possibly even for up to 15 years, if the agreement meets two tests:

- (1) The application was filed with the county before the date of the first signature on the incorporation petitions (or the date of the resolution of application).
- (2) The county entered the development agreement before the incorporation election.

The new city may still impose conditions on, or deny projects covered by, the development agreement in response to health or safety concerns. This law applies to cities which incorporated after January 1, 1987 (Government Code §65865.3).

In early 1987, Senator Campbell introduced two bills which would have modified his 1986 legislation. Senate Bill 305, as amended March 19, 1987, would have required new cities to honor all development agreements which were submitted to counties before January 1, 1987. Although set for hearing by the Senate Local Government Committee, Senator Campbell asked the Committee to postpone any action. Senate Bill 899 would have removed the time limits on development agreements which were submitted to counties before January 1, 1987. The Committee never considered this second measure. Both bills are two-year bills which must pass the Senate by the end of January 1988 if they are to remain active.

Regarding annexations, the Legislature expressly permitted an annexing city to sign a development agreement that does not take effect until the annexation is complete (Government Code §65865 [b]). SB 1781 (Campbell, 1986) modeled this procedure after rezoning. This is the exclusive method for guaranteeing that a development agreement applies after city annexation. If a developer does not sign a pre-annexation development agreement with the annexing city, an earlier development agreement with the county is not enforceable against the city.

Building permits. In 1984, the Legislature passed Assembly Bill 1772 (Papan) which addressed the validity of building permits issued prior to incorporation and annexation (Health and Safety Code §19829). If an application for a building permit is filed with a county before the incorporation election, and the permit is issued before the incorporation's effective date, the permit remains valid for 180 days from the date of issuance, unless a county ordinance passed prior to the incorporation provides for a different period. If the effective date of the incorporation is more than 90 days after the incorporation vote, the county may receive applications for the issuance of building permits for property located within the new city's limits. Unless otherwise provided by a city's ordinance, a building permit issued by a county for property subsequently annexed to a city remains valid for the life of the building permit. The statute applies to incorporations and annexations after January 1, 1987.

Since building permits generally must be issued in accordance with the city's current laws, a final subdivision map approved by a newly incorporated city might not guarantee a developer the right to proceed with the development upon applying for a building permit unless the developer has chosen to operate under the vesting tentative map statute.

When Moorpark incorporated in 1983, it adopted an emergency ordinance which required that all previously issued County "residential planned development permits," a type of zoning permit, be subject to review and affirmation by the City before building permits could be issued. Any additional design or development requirements were imposed on a case-by-case basis. The County had already approved subdivision maps for 2,700 units. The vast majority --- 2,300 units --- had not yet obtained building permits. Moorpark believed that its action to review these discretionary zoning permits was justified because the unbuilt houses represented over half of the City's future growth. All permits were reviewed and approved within six months of incorporation. For projects where a substantial number of homes were already built or building permits had been issued, the zoning permits were reapproved without change. Although Moorpark's experience

led to the introduction of Assemblyman Papan's 1984 bill, it would never have affected Moorpark because the bill dealt with building permits, not discretionary zoning permits.

NEW CITIES' EXPERIENCES

To better understand the land use problems triggered by incorporations and city annexations, Senator Marian Bergeson, Chairman of the Senate Local Government Committee, surveyed the planning directors of the 27 cities which have incorporated since Proposition 13. In her letter to the planning directors, Senator Bergeson asked them to complete a two-page questionnaire regarding their experiences. With few exceptions, their cooperation was swift and generous. Only Grand Terrace and Moorpark were unable to respond.

Land use problems. Nearly every newly incorporated city has had problems deciding which county land use decisions to honor. Only five of the the 25 planning directors who responded avoided these difficulties: Big Bear Lake, Danville, East Palo Alto, La Quinta, and Loomis. But all other new cities reported at least some problems.

Problems with **zoning** are most numerous, with 18 new cities reporting that they faced "a few" problems or faced them "often." Only seven cities said they had no zoning problems. This showing is not surprising because landowners and residents traditionally focus on zoning as the main land use decision. Confusion resulting from uncertainty over land use policies seemed to be the major cause of these problems. In Atascadero, for instance, San Luis Obispo County revised its general plan just before incorporation. But the County had not brought its old zoning into line with the new plan. The political burden of making zoning consistent with planning fell to the new city. The problems in Westlake Village stemmed from the differences in format and standards between county zoning and the new city's ordinance.

Subdivision approvals caused the second most numerous type of problem. Only ten cities said they had no problems, with 15 new cities reporting "a few" problems or that subdivisions were "often" a problem. City officials specifically pointed to errors made by their counties as the cause of their troubles. Cathedral City's planning director criticized Riverside County's past practice of approving subdivisions with jumbled land uses. The City now has to work around poorly situated lots and inadequate facilities.

Prior to Dublin's incorporation, Alameda County approved a subdivision and required a scenic easement to protect open space. But the County failed to provide any enforcement mechanism, a problem which the City's staff has inherited. Los Angeles County officials approved the "Three Springs Ranch" development in Westlake Village just before incorporation. The only access to this 481-unit project comes from a single street. The resulting poor traffic circulation restricts the development of other adjacent properties. The city planning director believes that the County's failure to insist on better road access has preempted his community's ability to promote well-planned growth.

When faced with the question of how to treat final maps for which the tentative maps had been previously approved by their respective counties, the new cities of Solana Beach and La Habra Heights modeled their decisions after existing law that applies to annexations. These cities applied their local ordinances, policies, and standards to the final maps.

The most dramatic situation occurred when Moreno Valley incorporated on top of scores of subdivisions approved by Riverside County officials. The city planning director estimates that there were approximately 20,000 parcels which were in existence but unbuilt when the City incorporated. With a population of about 47,000 at the time of incorporation in December 1984, less than three years later there are now 85,000 residents in Moreno Valley. Development continues at a rapid pace, even though the City has approved few subdivisions on its own. Developers continue to build new homes in subdivisions approved by Riverside County officials before incorporation.

Implementation problems also plagued **building permits** in 10 new cities. City inspectors were more stringent than their county's staff had been, Atascadero and Cathedral City reported, causing builders to adjust to higher enforcement standards even though the codes had not changed. More than three years after incorporation, Mammoth Lakes reported that it still has three unfinished projects under building permits originally issued by Mono County officials. More typical, however, were the responses from Big Bear Lake, Danville, Dublin, Encinitas, and Poway where the new cities specifically honored their counties' building permits.

Called constitutions for local development, **general plans** express their communities' goals for the nature, pace, and location of new growth. When communities incorporate in reaction to counties' land use decisions, then it is not surprising that conflicts arise over city and county general plans. After all, as San Ramon's planning director pointed out, the differences are why people incorporate in the first place. Ten cities reported

problems with general plans, including those where there were fundamental differences in land use policy: Encinitas and West Hollywood are examples.

The Planning and Zoning Law gives new cities 30 months in which to adopt their own general plans. But some cities find that 2½ years still is not enough time. At least one-third of the new cities have needed more time to adopt their first plans. Any city may apply to the Governor's Office of Planning and Research (OPR) and receive an automatic one-year extension of the deadline to adopt a general plan (Government Code §65361). An OPR extension has three benefits. First, it suspends a city's legal obligation to have a completed general plan. Second, it allows a city to approve developments without having a general plan. Third, it grants a city immunity from lawsuits challenging developments which are approved without the benefit of a general plan. As **TABLE II** reports, OPR has issued extensions for nine new cities.

TABLE II: NEW CITIES' WITH GENERAL PLAN EXTENSIONS

Clearlake	Moreno Valley	Santee
Dublin	Poway	Solvang
Moorpark	San Ramon	West Hollywood

But state law prevents OPR from issuing extensions for housing elements (Government Code §65857 [a]). This limitation means that an OPR extension for six of the seven required elements does not fully protect a new city from lawsuits. The legal immunity provided new cities by OPR's partial extension is more illusory than real.

Perhaps because **development agreements** and **vesting tentative maps** come from relatively new statutes and are not yet widespread, they created few problems for new cities. Only Mammoth Lakes and San Ramon reported any experience with development agreements approved by county officials before their incorporations. In Mammoth Lakes' case, Mono County approved a major residential development which is to be built over a 20-year period. Although the project predates SB 1781 (Campbell, 1986), Town officials are honoring the agreement anyway. No one reported any experience with vesting tentative maps.

Litigation. The survey uncovered surprisingly few lawsuits and those which appeared were concentrated in just a few cities. Incorporated just last year, Encinitas expects to be sued over its decision to stop honoring conditional use permits for commercial development issued by San Diego County. Mammoth Lakes inherited a development agreement case in which the builder sued

Mono County over a 2,000-unit project which is now in the new city. Orinda also inherited a lawsuit regarding the private redevelopment of the local theater building. Orinda's case is pending before the California Supreme Court.

Poway faced three suits after incorporating in 1980. The first involved the redesign of a proposed mobilehome park in a drainage area. A negotiated settlement ended the case. In the second case, the issue was a difference between the San Diego County's zoning ordinance which permitted apartments in a commercial zone and the new municipal ordinance which did not. The case is pending in the District Court of Appeals. The final case raised the issue of differences in public works standards required for rural subdivisions. The landowner won the case, but the City will eventually require paved roads when future subdivisions take place.

Santee was involved in a lawsuit regarding a county approved tentative map which the City accepted as a final map. When the developer applied for building permits, the City then imposed its newly adopted development review ordinance. The developer sued and the case is still pending. Solana Beach and a hotel developer were able to settle their lawsuit after intense negotiations which involved gains and concessions for both parties.

A negotiated settlement likewise ended a builder's suit against Solvang over a subdivision. Santa Barbara County approved a 118-unit subdivision before incorporation which the City finally allowed to go forward after reducing its size to 97 units, including 17 for affordable housing. West Hollywood is facing several suits involving the conversion of rental properties into condominium ownerships.

Other issues. In addition to asking specific questions of the planning directors, Senator Bergeson also invited them to comment on other issues related to land use and new cities. The planning director of West Sacramento called on the state government to **provide education** to new local officials on land use issues. Newly elected city councilmembers and newly appointed planning commissioners need to be educated on the importance of having a general plan and following it. They need to be taught the importance of consistent long-range planning and to avoid ad hoc land use decisions.

Inheriting **Williamson Act contracted lands** caused planning problems for Avenal. With 19½ square miles, the new city includes lands which Kings County reserved for agricultural use. When an existing city annexes similar lands, it may decline to succeed to the county's contract if the city had protested the contract at the time it was signed. But the new city was not in

existence at the time that Kings County entered into the Williamson Act contract. The planning director believes that the new state prison and other growth pressures in his community justify ending Williamson Act contracts. He contends that the Act's "nonrenewal" procedures take too long and that the City cannot make the findings required for immediate cancellation. As an alternative, he suggested that the Legislature allow a new city to protest existing Williamson Act contracts when it adopts its first general plan.

The **incorporation process** itself needs reforming, according to Agoura Hills' planning director. Because growth pressures prompt incorporations, he observed, the LAFCO process should be more in tune with these needs. First, the state should analyze counties' general plans to determine "regional growth areas." Second, the Legislature should make LAFCOs directly elected bodies. Third, the state should limit the county supervisors' role merely to funding LAFCOs. Fourth, 10-year spheres of influence around cities should be matched with new service districts paid from counties' tax revenues. These procedures would ease the transition from unincorporated to municipal status.

POLICY ISSUES BEFORE THE LEGISLATURE

At the November 24 joint hearing, legislators may wish to raise specific questions with the witnesses. For background on these questions, readers should refer to this report's earlier discussions. The appropriate page numbers are indicated below.

General issues. Except for the common law doctrine of vested rights and some statutory procedures, there is no uniform way to determine which county land use decisions a new city must honor. LAFCO's terms and conditions spell out the details of incorporations, but the Cortese-Knox Act precludes the commissions from influencing land uses directly.

SHOULD ALL TYPES OF LAND USE DECISIONS BE TREATED THE SAME WHEN UNINCORPORATED TERRITORY COMES UNDER MUNICIPAL CONTROL?

SHOULD ANNEXATIONS BE TREATED THE SAME AS INCORPORATIONS?

SHOULD THE LEGISLATURE CHANGE ITS CURRENT POLICY AND GIVE LAFCOs THE POWER TO DETERMINE WHICH COUNTY LAND USE DECISIONS A NEW CITY MUST HONOR?

IS THERE EVIDENCE OF A "LAND RUSH" PHENOMENON?

IF SO, SHOULD THERE BE A MORATORIUM ON COUNTY LAND USE APPROVALS DURING THE INCORPORATION PROCESS?

IF SO, AFTER WHICH STEPS IN THE PROCESS? PETITIONS? LAFCO'S APPROVAL? SUPERVISORS' ACTION? THE ELECTION?

* * * * *

General plan issues. The discussions on pages 6, 13, and 14 describe the requirements on new cities to adopt general plans.

IS 30 MONTHS LONG ENOUGH TO ADOPT A CITY'S FIRST GENERAL PLAN?

SHOULD THE LEGISLATURE REQUIRE A NEW CITY TO ADHERE TO THE COUNTY'S PLAN FOR THE AREA WHILE THE CITY PREPARES ITS OWN PLAN?

IS LEGISLATION NEEDED TO REQUIRE O.P.R. TO GRANT EXTENSIONS FOR HOUSING ELEMENTS IN ADDITION TO THE OTHER SIX ELEMENTS?

* * * * *

Zoning. A new city must follow county zoning for 120 days or until it adopts its own ordinance (pages 7,8, and 12).

DOES THE FIRST LUTHERAN CHURCH DECISION PREVENT NEW CITIES FROM IMPOSING ZONING MORATORIUMS WHILE THEY SORT OUT THEIR LAND USE POLICIES?

IF SO, CAN THE LEGISLATURE PROVIDE NEW CITIES WITH STATUTORY AUTHORITY TO INVOKE THESE MORATORIUMS? IF IT CAN, SHOULD IT?

* * * * *

Building permits. In 1984, the Legislature laid out the guidelines for determining which county building permits a new city must follow (pages 11 and 13).

BASED ON EXPERIENCE SINCE 1984, SHOULD THE LEGISLATURE CHANGE ITS RULES ON HONORING BUILDING PERMITS?

WHEN A TENTATIVE MAP HAS BEEN APPROVED BY A COUNTY AND THE FINAL MAP APPROVED BY THE NEW CITY, IS THERE AN IMPLICIT ASSUMPTION THAT THE DEVELOPER NOW HAS A "VESTED RIGHT" TO BUILDING PERMITS?

IF SO, SHOULD THIS RELATIONSHIP BE SPELLED OUT IN THE STATUTE?

* * * * *

Development agreements. The 1986 standards that determine which development agreements a new city must follow may seem too restrictive for some builders. Amendments proposed by two bills in 1987 would have "grandfathered" some development agreements (pages 10, 11, and 14).

SHOULD THE LEGISLATURE CHANGE THE DEADLINES BY WHICH A DEVELOPMENT AGREEMENT IS JUDGED?

WOULD ANY OF THE FOUR NEWEST CITIES BE AFFECTED BY THESE CHANGES?

ARE THERE ANY PARALLEL CHANGES NEEDED TO THE LAW ON ANNEXATIONS AND DEVELOPMENT AGREEMENTS?

* * * * *

Tentative and vesting tentative maps. Most new cities honor the subdivisions approved by county officials before incorporation. But the Subdivision Map Act is silent on this issue (pages 8-10 and 14).

IS THERE A NEED FOR THE LEGISLATURE TO SPELL-OUT WHICH SUBDIVISIONS A NEW CITY MUST HONOR?

SHOULD THIS BE PARALLEL TO THEIR TREATMENT UNDER ANNEXATION?

SHOULD A NEW CITY BE REQUIRED TO HONOR ALL COUNTY SUBDIVISIONS?

SHOULD CONDOMINIUM CONVERSIONS BE TREATED DIFFERENTLY THAN TRADITIONAL SUBDIVISIONS?

SHOULD THE LEGISLATURE DISTINGUISH BETWEEN SUBDIVISIONS FOR WHICH APPLICATIONS WERE SUBMITTED BEFORE INCORPORATION AND THOSE WHICH CAME IN LATER?

* * * * *

Other issues. Do the three other issues raised by planning directors require legislative responses (pages 15 and 16)?

SHOULD THE LEGISLATURE DIRECT O.P.R. TO PREPARE AN EDUCATIONAL PROGRAM FOR OFFICIALS OF NEW CITIES?

SHOULD THE LEGISLATURE ALLOW NEWLY INCORPORATED CITIES TO PROTEST WILLIAMSON ACT CONTRACTS WHEN THE CITIES ARE FIRST FORMED?

**ARE CHANGES NEEDED TO THE LAFCO PROCESS TO IMPROVE THE TRANSITION
BETWEEN UNINCORPORATED STATUS AND MUNICIPAL CONTROL?**



SOURCES

The following materials contributed to the preparation of this background staff report:

Curtin, Daniel J.. Jr. "Effects Of Incorporation On Development And Land Use." Presentation to the CALAFCO Metropolitan Counties Workshop. Walnut Creek: McCutchen, Doyle, Brown & Enerson. May 21, 1987.

Feinbaum, Robert. "Climate right for creating new cities." California Journal. October 1987.

Martin, Linda Margaret. "The Politics and Economics of Local Self-Government: New Cities in California After Proposition 13." Ph.D. diss., University of California, Davis, 1984.

Sokolow, Alvin D., et al. Choices For The Unincorporated Community: A Guide to Local Government Activities in California. Second Edition. Davis: Institute of Governmental Affairs. September 1981.

Sokolow, Alvin D. and Linda Martin. "The rush to incorporate: why it's happening, what it means." California Journal. May 1983.

Weintraub, Daniel M. "Bill Could Prevent Altering of Development Plan by Future City." Los Angeles Times. March 26, 1987.

Weir, Jeff. "Campbell bill would help county developers." Orange County Register. March 25, 1987.

CREDITS

This background staff report was prepared by Peter Detwiler, consultant to the Senate Local Government Committee, and Teri Bressler, consultant to the Senate Housing and Urban Affairs Committee. Kaye Packard, Senate Local Government Committee secretary, and Senate Reprographics produced the report.

The authors are especially grateful to the planning directors of the newly incorporated cities who generously responded to the questionnaire. Their contributions of specific information greatly improved the discussions of current law.



WRITTEN STATEMENTS OF LOUISE RICE-LAWSON, VICE PRESIDENT AND
DIRECTOR OF FORWARD PLANNING, GLENDALE FEDERAL SAVINGS AND LOAN

JOINT COMMITTEE HEARING ON "NEW CITIES AND LAND USE"
SENATE COMMITTEES ON LOCAL GOVERNMENT AND URBAN AFFAIRS

TUESDAY, NOVEMBER 24, 1987

STATE OFFICE BUILDING AUDITORIUM

VAN NUYS, CALIFORNIA

Prior to accepting a position in the private sector, I worked for eight years as a public sector planner. I have a degree in Urban Planning with a minor in Urban Geography.

Planning in recent history has experienced a marked progression from loosely knit decisions by ad hoc committees to the professional planning processes within which we operate today. The process has been heightened greatly within the past 20 years due to the action of the legislation. The historic experience of unplanned growth occurring haphazardly driven simply by proximity to transportation corridors, or in the case of Southern California by proximity to the red car line, has changed and laws have been adopted which both define as well as require strict adherence to an identified planning process. Those changes occurred first with the requirements for general planning strengthened further by the fact that zoning was to be consistent

with the general plan and expanded into environmental regulations following the Friends of Mammoth decision. Our regulations require first that general planning take place in order to set the conceptual framework, as well as identification of the physical constraints, which will dictate the nature of the development that can occur. Zoning is required to be consistent with the general plan since it implements the plan and all general planning and zoning efforts are subject to CEQA review. That's the top layer, from there we go to the subdivision map act, the regulations regarding special use permits, conditional use permits, and planned unit developments. All steps of the planning process dictate that the public be involved either on citizen's committees or through public hearings. The work is done by professional planners together with input from the public.

Local governments (counties and cities) have spent considerable time and effort setting up planning procedures.

We're here today to discuss with you the impact of incorporations and annexations on the building industry. The fact is, even in the presence of a systematic method surrounding planning decisions, a land owner can proceed in good faith through the systems in place in the county only to have all of the rules changed in the event of incorporation. It is specifically the lack of certainty that is a concern of the building industry. In

working with newly incorporated cities we find that there is the implied belief that the granting of certainty will in fact result in bad planning. Clearly, that belief was present in the background analysis that was presented to us for today's hearing. Generally, if the residents of an area, say an urbanizing pocket within an unincorporated area, are happy there will be no move to incorporate. It is most often the result of dissatisfaction that cause incorporations to happen, and, following along that line, in that mood the newly incorporated residents don't want to be held to the decisions previously made by the county. They want to control all aspects of their new city themselves.

While the motivation is understandable, adhering to previous land use decisions may not result in bad planning. Considerable resources have been expended at a county level to establish professional planning departments. The County of Ventura for example, has established citizen commissions in communities within the unincorporated areas who review development proposals at regularly scheduled meetings, make recommendations for changes and recommend approval or denial to the Planning Commission. Those efforts within the system can disappear following incorporation.

It was our experience in the city of Moorpark, that immediately upon incorporation the city adopted an urgency ordinance which inflicted a building permit moratorium. The purpose of the

moratorium was to enable the city to review development proposals previously approved by the county in order to guarantee that good planning practices would be followed; and that development within their city would in fact meet good planning standards. The result of a nine or ten month's delay was that new conditions were attached to the approved developments which required additional landscaping, changes to exterior treatment of units, or set minimum square footages for the homes. None of the additional conditions dealt with health, safety or welfare. They were a collection of aesthetics which were subjective at best. The property owners experienced unnecessary and costly delays. Delays which increase housing costs and do not guarantee planning where none existed.

From the Moorpark experience the Pappan bill was adopted which protected building permits. We wholeheartedly support the bill and feel it must be retained. However, certainty needs to occur earlier in the process. Considerable sums of money and time are spent taking a development proposal through record map to building permit. An EIR, for example, can cost between \$25,000 and \$40,000 alone.

The building industry understands the desire for local control. It is imperative, however, that within the changeover from unincorporated to incorporated that the landowner who has been proceeding in good faith with the county be given an opportunity

to proceed with their projects with predictability and certainty.

The staff report before you sites problems resulting from the "land rush" phenomena that can occur when an area incorporates. Let's consider that if a land owner is guaranteed that previously approved projects will be honored by the new city, then the land rush phenomenon becomes unnecessary. If the phenomenon exists, it is there for a reason. It is there because property owners fully recognize that previously approved developments can be changed substantially; the project made too costly to construct, or the land use changed and the project eliminated entirely.

For that reason we support honoring approvals at the tentative map or use permit.

Our experience with annexations differs. Generally, when annexation is anticipated the development proposal is reviewed by the city, rezoned and conditioned to annex as a part of the approval.

The staff report asks several questions, starting on page 16. Two I've responded to. First, approvals should be valid at tentative map and use permit. And second, if done, the land rush will go away.

If they happen, moratoriums should not occur sooner than the

certification of the incorporation election. Until that time there is no guarantee incorporation will happen.

And, every effort should be made to work with the applicants who are in the review process to ease the transition and control costs.

We need to recognize that uncertainty, additional layers of regulation and delay always result in increased home prices. Uncertainty further results in opportunities lost as legitimate developers avoid the area all together.

The planning process is alive and well at the county level and landowners who proceed through the system should not be penalized nor should subsequent homebuyers.

SENATE JOINT HEARING ON NEW CITIES AND LAND USE

SENATE COMMITTEE ON LOCAL GOVERNMENT
AND
SENATE HOUSING AND URBAN AFFAIRS COMMITTEE

NOVEMBER 24th

TESTIMONY GIVEN BY DEVERE H. ANDERSON
BIA GOVERNMENTAL AFFAIRS COUNCIL

Honorable Members:

STATEMENT OF PROBLEM

I appreciate your interest and concern regarding this most vital and important subject. There seems to be an attitude in our citizens that you must incorporate into a small city to stop growth or file an initiative to limit growth. Our citizens fail to recognize that limiting building permits does not stop growth. It only exacerbates the problems. There are three (3) elements that require the need for housing within our state:

1. The immigration of people from other states.
2. Normal population increase by existing residents.
3. Normal deterioration of housing stock.

The mere fact of restricting the number of building permits issued will not deter growth. People have moved and will continue to move to California as long as certain factors exist, such as good climate, good job potential, a strong economy and the potential to better themselves. That is their Constitutional right. Babies will continue to be born because that is the

natural desire of human beings. The housing industry is often maligned as causing growth when in fact it is only serving to meet the need.

I would like to address the issue of initiatives that are spawning all over the state in an attempt to restrict permits.

In the California Constitution, there is fortunately a provision which allows voters to effect change through the initiative process. The framers of our Constitution wisely incorporated this provision to allow the public a remedy in the event the legislators were not responding to the will of the majority. There was great wisdom in that provision. However, in recent years small groups of "no growth-ers" have used the initiative process to stop or control growth. It has become a very convenient tool for them, in that initiatives can easily be qualified for the ballot, without the necessity of providing a full explanation to the voter. Therefore, in most cases, those who vote do not fully understand the impact of the initiative.

Let's review the impacts of some recently adopted initiatives and some proposed initiatives:

CITY OF MOORPARK

The City of Moorpark incorporated in 1983. The following illustrates the annual housing production within the City. (units in building permits).

<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>
480	701	403	2,356	-0-

When the City incorporated they required all previously

approved (Ventura County) projects to reapply to the City. This process totalled nearly 10 months in duration and provided a host of new conditions.

The SCAG regional housing allocation model suggests that Ventura County had a five year "need" during the period of 1981-1986 for 41,046 units or an annual need of 8,209. Data available for that period indicates an average annual housing production of 4,071 units satisfying less than 50% of the "need".

In spite of not meeting the regional housing needs, local citizens within the City of Moorpark, concerned about traffic and other issues, proposed in 1986 a growth control initiative called "Measure F". The proponents handily gathered the necessary signatures to place the measure on the November, 1986 ballot. Measure F restricted the number of building permits issued to 250 units per year. The measure was passed by 29% of the registered voters and now dramatically impacts the economic viability of the entire community.

With the City of Moorpark and the City of Simi Valley imposing building permit restrictions, there has been dramatic impact upon Ventura County as a whole. In the first 8 months of this year building permits are down 33% from 1986. As of this date, there have been no building permits issued in the City of Moorpark during the year of 1987. Ventura County is not meeting its housing needs and is certainly not providing its share of the regional needs. In addition, this kind of action greatly increases the cost of housing. Continental Land and Title

Company just released its quarter report on housing. This report indicates that the average prices of all housing types increased 12% from the previous quarter to \$227,346. 12% in one quarter! That's an annual increase in the price of housing of 48% per year. Pre-selling inventory suggests a bleak 4 weeks of total inventory within the entire County.

CITY OF L.A. - PROPOSITION U

Last November the voters in the City of Los Angeles passed Proposition U. This initiative reduced the density of all commercial property in L.A. City and Height District No. 1 by 50%. In spite of the fact that the City Council had been methodically down zoning the entire city to comply with the General Plan requirements, by a single initiative vote of the electorate the density of commercial property in Los Angeles was slashed in half. This process provides no evaluation of the financial impact upon the City. It dramatically affects the General Plan for the City and, of course, the Economic element of that Plan.

CITY OF SAN DIEGO INITIATIVE

The citizens for limited growth have released a draft initiative intended to qualify for the June, 1988 City of San Diego ballot. The measure, if enacted, would severely limit residential, commercial and industrial development. The initiative provides that there will be an annual quota for new homes. For the fiscal year 88-89, 6,000 units; fiscal year 89-90, 5,000 units; fiscal year 1990 through 2,010, 4,000 units.

In 1980, the State Legislature passed a statute which declared that "an adequate supply of housing is necessary for the health, safety and public welfare of all Californians," and that growth-limiting ordinances "may exacerbate the housing market conditions in surrounding jurisdictions and may limit access to affordable housing." The California Supreme Court has said that each community has a responsibility of supplying its proportionate share of the housing needs for the general welfare of all Californians. In BIA of Southern California vs. City of Camarillo, Justice Stanley Mosk questioned whether city growth restrictions should be permitted at all. He said, "An impermissible elitist concept is invoked when a community constructs a legal moat around its perimeter to exclude all or most outsiders."

COUNTY OF RIVERSIDE INITIATIVE

There is a proposed initiative circulating in Riverside County which would require the County Board of Supervisors to adopt a growth management element to the General Plan. This growth management element would provide:

1. A limitation on growth so that the growth in the County could not exceed the annual growth rate of the state as a whole. A limitation on building permits would be provided to ensure compliance with that growth rate.
2. The level of service for travel during peak hours on all freeways, arterials and collector streets in the County must be "C" or better. If, in any given year,

the goal is not met, the number of building permits issued for residential development in the following year shall be reduced by a minimum of 10% to ensure compliance with the current year's goal.

3. If the jobs to housing ratio of 8/10ths is not met, then the number of building permits issued the following year for residential development shall be reduced by a minimum of 10% to ensure compliance with the current year's goal.
4. An "urban and rural area plan" shall be adopted by the Board of Supervisors. This plan could not be amended, except once every 10 years.

There are several other restrictions contained within the initiative which makes this the most detrimental initiative, in my opinion, of all that I have seen.

INITIATIVE PROCESS

I don't disagree with the right of the people to use the initiative process; however, land use initiatives are placed on the ballot without any evaluation of the economic, social and environmental impacts upon the community or on a city's achievement of its goals under the General Plan. Initiatives are now being used to control the number of permits to be issued in a city, to impose taxes upon undeveloped property, to impose additional fees upon development, or even to rezone property. When a landowner desires to change the land use of his property, he is subject to the California Environmental Quality Act and

goes through a rigorous evaluation of the impacts resulting from the change in land use. An initiative, however, even though it might be changing the land use, and even though it dramatically affects the Economic element of the city or county's general plan, receives no such evaluation. It is my belief there is a need for the electorate to be better informed concerning the impacts of a proposed initiative. Under current law there is no independent evaluation of an initiative. There is no requirement for any relationship to exist between the title on the initiative and what the initiative actually does, and there certainly is not an evaluation of the economic impacts upon a community. There is a tremendous need for the electorate to receive as much factual information as possible prior to voting. It is not desirable for the voter to experience detrimental impacts years later.

SUGGESTED LEGISLATIVE REFORM

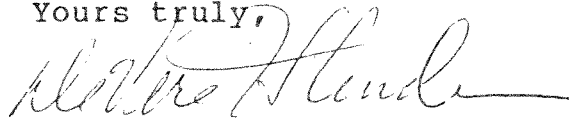
I would recommend the following to be included in future legislation for the purpose of providing a better informed voter:

1. That there should not be any titles used for an initiative. They should be referred to as Proposition _____.
2. That the use of paid solicitors to collect signatures on an initiative should be outlawed.
3. That there should be an independent evaluation made by county or city staff indicating the proposed impacts upon the general plan and all elements of the general plan.

4. All land use initiatives should be subject to the California Environmental Quality Act and should go through the same process that any land use change goes through. This would provide an opportunity for complete evaluation of the initiative's impact.

I thank you for your attention and for this opportunity to discuss with you an item which is of great concern to me.

Yours truly,

A handwritten signature in cursive script, appearing to read "DeVere H. Anderson", written in dark ink.

DeVere H. Anderson

**TESTIMONY OF HARRY ZAVOS
FOR JOINT HEARING ON NEW CITIES AND LAND USE**

**HELD BY THE SENATE LOCAL
GOVERNMENT COMMITTEE
AND THE SENATE HOUSING IN URBAN
AFFAIRS COMMITTEE**

**NOVEMBER 24, 1987
IN THE STATE BUILDING IN
VAN NUYS, CALIFORNIA**

Distinguish members of this Joint Committee you have heard and will hear of dislocations and uncertainties regarding development projects and planning decisions created by incorporation of new cities. Such problems currently occupied greater attention in view of the accelerated rate of incorporation documented on pages 2 to 4 of your staff report prepared for this hearing. Some of these uncertainties and dislocations and the problems associated with them are due to the fact that the county's rules and decisions governing given projects and land use decisions do not necessarily apply in the new cities. Individuals engaged in providing the public with housing who were proceeding under one set of rules--the county's rules-- find those rules no longer necessarily apply upon incorporation. Indeed as your staff report indicates in some instances the motivation behind the move for incorporation is precisely to suspend the old set of rules and I would add in some instances to stop or frustrate a given project, unpopular with those in the area, which is sanctioned by the county ordinances and decisions.

This, however, is not a new phenomena nor is it confine to incorporation and annexations. Both cities and counties are constantly changing, revising, and upgrading their

ordinances, including general plans as well as zoning requirements. In the past it was always possible for an individual to begin work on a housing project consistent with the then existing requirements of a city or county, to receive several permits and to do work pursuant to those permits only to find before completion of the project there is a change in local law which either dramatically changes the nature of the project or completely frustrates it. In the interest of fairness, continuity, efficiency and predictability there should come a time when the rules of the game should not be changed in mid-stream. There must come a time when a housing project or development achieves immunity from subsequent changes in law.

At a time when the development process was much simpler, faster, required a minimal amount of front in cost, was subject to little governmental processing and numbers of statutory and regulatory requirements were small in number the courts formulated a rule of immunity which went under the rubric "vested right." According to this rule a project gained immunity from subsequent changes in law - received a vested right - when there was substantial work done or liabilities incurred in good faith reliance on a building permit (AVCO Community Developers, Inc. v. Southcoast Regional Commissions Com. 17 CAL 3rd 785, 791 (1976)). This early rule may have been adequate at the time when the development of real property was simpler and front end costs were minimal. However, the complexity of current development requirements which had been recognized by the courts (Morgan v. County of San Diego 19 CAL 3rd 636 (1971)); Realy v. California Tahoe Regional Planning Agency 68 CAL 3rd 965 ,985-86 (1967)); Leroy Land Development v. Tahoe Regional Planning 543 F.SUPP 277, 281 (1982)) renders that test outmoded and inadequate. Indeed the California Supreme Court in Russian Hill Improvement Asso. v.

Board of Permit Appeal 66 CAL 2nd 34, 39 (1967) recognized the inadequacies of that test when it stated:

“A permittee who delay construction in the face of and a pending amendment to the zoning laws might find that he had not progress far enough in time to qualify for an immunity; one who proceeded with unseemly haste ran a risk that his conduct might bear the stigma of bad faith. No facile formula inform the permittee how to strike the delicate balance which would afford the desire immunity.”

The court concluded with two observations: (1) that uncertainty and waste were inherent in the common law rules of vesting and (2) such waste and uncertainty could be eliminated by predicating immunity from changes of law on some clearly defined action of the municipality. In effect the Supreme Court indicated that a statutory vested right was preferable to that of the judicial formulation.

To the court's observations I would add that the judicial test postpones vesting to the latest possible moment --to the obtaining of a building permit and actual substantial construction pursuant thereto. This means that literally hundreds of thousands of dollars can be expended on a given housing project for land acquisition, planning, governmental processing, preliminary permits, work done pursuant to those permits without any assurances that the project will become immune from subsequent changes in local law or actions which could frustrate completion of the project. This is not only unfair to the builder who proceeded in good faith in reliance on and in compliance with local requirements but it is unfair to the home buying public who must ultimately pay the costs of money expended without it being translated into housing. We do not have an abundance of

housing and the housing we have is not financially within the reach of many of our people. Under such circumstance our rules should not be structured so that hundreds of thousands of dollars may be spent in front end costs on a housing project only to have no housing produced because of an eleventh hour change in law. That waste must be borne by those projects completed and be reflected in the price the homebuyer pays. California deserves better. It deserves a rule which assures that front end costs will not go into a dry well; but rather, assures that the expenditure of those resources will translate into houses.

The legislature of which you are members saw the wisdom of a statutory test which early on fixed immunity and avoided the uncertainty and waste to which the Russian Hills case alluded. It took up the invitation extended implicitly in the Russian Hills case by passing two major pieces of legislation. The first was the development agreement legislation and the second the vesting tentative map legislation. With this general background I would like to address each one of these legislative schemes as they relate to the problem of incorporation and annexation and finally at the end briefly comment on those kinds of projects which may receive no protection either under development agreements or vesting tentative maps.

As your staff report indicates the development agreement legislation occurred in 1979. It was a means whereby a property owner could achieve immunity from changes in law on the part of the city or county by an agreement modelled after a contract. Within the agreement the property owner or developer and the municipality can bargain for and agree to the use and the physical character of the proposed project in detail as well as bargain with regard to the conditions, restrictions and requirements that can be made with regard to subsequent discretionary action required by the project (Government Code Section 65865.2). Thus, once such an agreement is approved by the parties according to the

procedures set out in the Government Code the developer has a right to complete the project as spelled out in the agreement, immune from subsequent governmental actions. This legislation gives a provider of housing some security that a housing project once begun in a particular municipality could be completed in accordance with the terms of the agreement (free from additional requirements and immune from subsequent changes in law). The difficulty was that the assurances of the development agreement were not clearly there when the agreement was with a county and the subject property was incorporated into a new city. Thus, the very effect and uncertainty that the development agreement eliminated for a housing project could resurface upon incorporation; for it was not clear that the new city was legally bound to honor the agreement entered into by the county. With that in mind this legislature amended the development agreement legislation to make it clear that a newly incorporated cities would be bound by the development agreements entered into by the County. The difficulty with this legislation, however, is the triggering date which determines which development agreement are so protected. According to that legislation any development agreement for which application is made to the county after the first signature on the incorporation petition is not protected and does not have to be honored by the newly incorporate city. This triggering date is simply unrealistic, much too early and not in keeping the procedures in the Government Code for governing incorporation. As you probably know incorporation may be begun by the publication of a notice of intent and only after that publication can a petition for incorporation be circulated (Government Code Section 5700.5). The proponent of incorporation has a certain time in which to get the requisite signatures on the petition and to file. Proceeding by the Local Agency Formation Commission are deemed initiated only after all the requisite signatures have been obtained and the petition is certified:

Commission proceeding shall be deemed initiated on the date of a petition or resolution of application is accepted for filing and a certificate of filing is issued by the officer of the commission . . . [Government Code Section 56651]

Subsequently, there are several steps before incorporation becomes a reality. The Commission must approve the incorporation, there must not be a majority protest in opposition (Government Code Section 57077) and there must be a favorable vote in the incorporation election. Under the current legislation none of these crucial steps are used to cut off the protection of an application for a development agreement. Rather one signature on the petition is used. The time selected to withdraw protection is prior to the initiation of commission proceeding and long before there is any demonstration of wide spread support for incorporation.

Under this arrangement, there is nothing to prevent a very small dedicated group from disrupting the processing of development agreements indefinitely within a county even though there is not sufficient demonstrated interest in an incorporation to justify such disruption. Your staff report at page 4 indicates that many incorporation attempts did not succeed the first time. Thus, with one signature on a petition the development agreement process would be deprived of any protection. If within the required time it is apparent that the requisite signatures can not be obtained a second petition can be circulated and the first signature on it would continue to effectively suspend the statutory protect to county development agreements. Fairness and logic dictates that at a minimum, only applications for development agreements filed after Commission proceedings are deemed initiated should deprived of protection from incorporation. Indeed one could make an argument

that the County should be allowed to take application for protected development agreements up to final disposition by the Commission; for, its only upon final disposition by the commission that there is any kind of certainty that incorporation may take place (even if the Commission conditionally approves, incorporation still might not take place if more than 50 % of the voters or landowners within the proposed incorporated district object or if in an election incorporation does not receive a majority vote). Again, there is a need to strike a balance between development agreements preempting the planning process of a newly incorporated cities on the one hand and with the possibility of incorporation preventing orderly development within the county on the other hand. It would appear that earliest fair point to strike that balance is when Commission proceeding for incorporation are initiated; for that is the point at which sufficient enough interest in incorporation is demonstrated so as to warrant initiating Commission proceeding. That is precisely what Senate Bill 899 authored by Senator Campbell seeks to do and I would emphasize to this committee that it attempts to strike a fair balance between the concerns of providers of housing and continued orderly development prior to incorporation on the other hand and a concern of those individuals who will be residents of the possible newly incorporated city if incorporation takes place on the other hand. I said that it strikes a fair balance particularly from the point of view of the possible new city because the Campbell bill could have, if it were looking out for other point of view, drawn a line at the time that the commission approves or conditional approves the incorporation or when the county determines whether there is not a sufficient protest to deny the incorporation or when the final result for incorporation takes place (the point at which there is certainty insuring the fact that there will be a new city), all points which are defensible and occurred subsequent to certification of the petition.

A second major piece of legislation addressing certainty in the development process is the vesting tentative map legislation. This legislation does not, like the development agreement legislation, follow a contractual model. Nor, does this legislation provide for an agreement with regard to details of the proposed project nor does it limit the conditions, terms, restrictions and requirements for subsequent discretionary acts entailed in the development. Vesting tentative maps, sometimes called the small developers' development agreement, merely fix the ordinances and laws applicable to a proposed project as of the date that there was a complete application for the tentative map. This seems appropriate because a tentative map shows the layout and design of the subdivision. The current zoning ordinances will indicate the development envelope of the proposed project (maximum intensity of used, maximum height, minimum set backs, etc.). Thus the map along with the zoning ordinance provides the general parameters of a housing project. An approved vesting tentative map does not guarantee the project will be completed nor does it limit conditions which can be imposed in connection with other approvals inherent in the project. All that it does is fixed the ordinances which will apply to the project. A developer who has a vesting tentative map must apply and receive the subsequent permits entailed in his project and must comply with any requirements that are made pursuant to those ordinances. Another way of describing the effect of a vesting tentative map is to say that if Mr. O has an ordinary tentative map and Ms. V a vesting tentative map on adjoining property; and if subsequent to the approval of those maps there is no change in the city's or county's ordinances there is no legal difference between the vesting and an ordinary tentative map. Under those circumstances Mr. O has no greater right than does Ms. V. The only instance where there is a legal difference is when after the maps are approved there

is a change in law, let's say a zone change. Under such circumstance Ms. V's project would only be subject to the old zoning ordinance but Mr. O's would be subject to the new. While the vesting tentative map does not insure that the given project will be completed it does assure the provider of housing that the rules of the game will not change on him in mid-stream. If the project is not completed it is because the builder is unable to comply with those rules or the conditions imposed pursuant to those rules and not because the rules themselves have changed.

While a vesting tentative map provides some certainty as to the ordinances under which a development project will be judged that certainty disappears if after the county approves a vesting tentative map the territory is either incorporated or annexed. Under those circumstances the developer finds himself in the same position he was within a county with an ordinary rather than a vesting tentative map. As your staff report makes clear, there is an Attorney General Opinion that indicates that if there is an approved ordinary tentative map in the county the newly incorporated city must honor it for the purposes of final map and that there is a Legislative Counsel Opinion to the effect that a vesting tentative map approved by the county must be honored by the newly incorporated city with regard to protection against changes in law. However, as this Committee knows, those opinions have no legally binding force on newly incorporated cities until there is a definite statement as the effect of such maps by the Supreme Court of this state or by this legislature. Presently, newly incorporated cities are free, unconstrained by binding legal authority, to ignore ordinary or vesting tentative maps. Senator Montoya's Senate Bill 186 provides such a definite statement. For those who like the Attorney General feel that the current law affords such protection they should be in agreement with Senator Montoya's

bill which states that it is declarative of present law; they should not object to legislation which puts to rest any doubts as to the current state of the law.

On the substantive issue of whether new cities should honor such maps I would point out that the same policy considerations which dictated the vesting tentative map procedure in the first place dictate they should be honored in the newly incorporated city. Furthermore, it makes no sense to afford protection to development agreement when there is incorporation (as this legislature has done) and not do the same with vesting tentative map.

Just as it is unfair and wasteful of resources (resource which should be translated into housing) to allow a developer to proceed in good faith and reliance on a given set of rules and regulations and to allow them to change downstream in the absence of incorporation, it is equally unsound to allow that to happen as a result of incorporation.

While there are some arguments that could be made distinguish between incorporation and annexation I find them unpersuasive. It would appear to me that the arguments in favor of fairness and certainty apply equally to both situations and that ordinary tentative and vesting tentative maps should be protected when there is an incorporation or an annexation.

There is one remaining area of uncertainty regardless of incorporation or annexation, which is not addressed by development agreements or vesting tentative maps. There are projects which are not extensive enough or not spread over a sufficient length of time that they justify the negotiation of a development agreement. Furthermore, these projects may not require a tentative subdivision map; for example, a small four unit apartment project. This kind of project can only achieve certainty and immunity from

changes in law by the issuance of a building permit and substantial work or liabilities incurred in good faith reliance on the building permit. It is possible under current law for a building permit to issue and for some work to proceed only to have a zoning ordinance change which makes the completion of the project impossible. It seems unfair not to afford the same kind of protections to such a project as are now afforded to projects which require subdivision maps and for which the owner can get a vesting tentative map. With that in mind it would seem that there should be appropriate legislation which provides that the laws and regulations which will apply to a project shall be those in existence of the time of the application of the building permit and no building permit shall be revoked due to or made subject to subsequent changes in law. Of course such legislation should have the same kind of protections afforded in the vesting tentative map for changes in law motivated by concerned for health, safety or intervening state or federal legislation.

I personally wish to thank the committee for its patience in taking testimony in this area and to indicate that the interest of fairness, and the interest of preserving resources in a tight housing market (one where cost places housing beyond the means of many individuals) require legislation which prevents resources being expended without being translated into housing. One way, in part, to do so, is to provide an appropriate point in time where the project can obtain immunity from changes in law early in the development process so that money expended can be expended with the assurance it will not be prevented from being translated into houses due to changes in law -- will merely be spend only on processing, in planning and in preliminary work on the ground, such as demolition and grading.



TESTIMONY BY NIALL FRITZ, DIRECTOR OF PLANNING & COMMUNITY DEVELOPMENT
CITY OF SANTEE, CALIFORNIA
TO THE
STATE SENATE LOCAL GOVERNMENT AND HOUSING AND URBAN AFFAIRS COMMITTEES
ON NEW CITIES AND LAND USE
NOVEMBER 24, 1987

CITY OF MOORPARK

To begin, I would like to correct some information in the Committee's staff report.

I was the first employee and the Director of Community Development for the City of Moorpark. The staff report indicates that when Moorpark incorporated in 1983, an urgency ordinance affecting all residential building permits was adopted and that this ordinance imposed additional site design criteria. This was not the case.

Upon incorporation, the City Council adopted an urgency ordinance which required that all previously issued County "residential planned development permits" would be subject to review and reaffirmation by the City before building permits could be issued. These residential planned development permits were zoning permits. Any additional design or development requirements were imposed on a case by case basis. At the time of incorporation, Moorpark was estimated to have approximately 10,000 residents. The County had already approved subdivision maps for 2,700 homes. The vast majority--2,300 homes--had not yet obtained building permits. Although the County of Ventura assisted several subdividers in rushing the recording of final subdivision maps between the incorporation election and the effective date of cityhood, the City did honor all previously approved or recorded County subdivisions.

Moorpark's action to review the County issued, discretionary zoning permits was logical since the unbuilt homes represented over half the future growth of the City. All of these homes were reviewed and reapproved by the City in less than six months. For projects where a substantial number of homes were already built or building permits issued, the zoning permits were reapproved without changes. In other cases, major changes and upgrading of the permits were required. All issues were resolved without litigation. Assemblyman Pappen's 1984 Bill, AB772, would have had no effect upon the situation in the City of Moorpark.

LAND USE ROOT ISSUES

The most basic cause of land use controversy is change. Growth causes changes within a community. Whether it is a new city or an older established city, substantial growth results in changes to politics, ideas, and philosophies as new people move in. If there is too much growth too quickly, there will typically be a revolt by the people. The revolt may take the shape of an incorporation or of a growth control measure. More than once, developers have killed the goose laying the golden egg.

Community Participation

Often, an Incorporation is seen as a divorce between a community and its county. But it is not. The relationship is not a partnership of spouses. It is a parent-child relationship. Incorporation represents the maturing of the child with the adolescent leaving the home. Counties must prepare communities for this logical step. After all, a county's principle role is one of regional, not local government.

As a division of the State, a county mainly provides State services at the local level. Members of Boards of Supervisors simply do not have the time or the knowledge of each unincorporated community to effectively deal with all the land use issues which will arise. The system of district elections for Board members works well with county-wide issues since each Board member and district is affected. However, when issues are localized to within one portion of one supervisorial district, the community is basically disfranchised from a say in who is making the decisions which most directly affect the community and the people's lives.

County-wide Planning Commissions are a little better equipped to deal with localized land issues. But still, only one out of five Commissioners may be from the community. While many counties also have community planning groups, these generally have no decision-making authority, no staffing, and no training in land use matters or government.

A solution must, therefore, increase the participation of the community in the land use decision making process. State legislation to require the following would be a step in this direction:

- Local Agency Formation Commissions should be required to establish spheres of influence or "areas of interest" for future cities. A future city can be determined by reviewing a county's land use plans. Any area in which substantial urban development is allowed is a potential future city.
- Counties should be required to establish an Area Planning Commission for each possible new city. Area Planning Commissions are presently authorized by State Government Code Section 65101 and are established at the option of a county. Area Planning Commissions would have review and approval authority over projects within their boundaries. In cases where there may be one logical planning area and more than one unincorporated community, they can be combined with one Area Planning Commission since the land use issues should be very similar.
- Counties should be expressly authorized to cover any additional costs resulting from having Area Planning Commissions. These costs can be recovered through additional planning and/or building permit fees from projects within the jurisdiction of an Area Planning Commission.

This proposal would accomplish several things toward dealing with some of the root issues. First, the turf of a new city would be staked out. Secondly and perhaps most importantly, much greater community input into the county land use process would result. Education and training for potential future city decision makers would also result. Finally, there would be a major benefit to

the development community. Anything which would ease the transition from county to city control would be in a builder's interest. If a builder has a good project which benefits and is supported by the community, the builder should not experience difficulties after cityhood.

ADDITIONAL LEGISLATION

There presently are several legislative proposals to restrict a new city's land use decision making authority. These proposals do not deal with the root issues discussed previously. Rather, in some cases by further limiting a community's input into land use decisions, they will exacerbate conflicts experienced by builders after incorporation.

Development Agreements

Perhaps the most dangerous item being discussed is regarding development agreements. State law presently provides that after incorporation a development agreement remains in effect for up to eight years. However, attempts to lengthen this period or to increase a builder's and a county's ability to enter into an agreement when incorporation is an active proposal would be very detrimental. The reason for this is quite simple. Development agreements are often sought for very large projects which may include several thousand homes and have far-reaching consequences for the community.

As with zoning, development agreements are subject to referendum. County development agreements must be placed on county-wide ballots. The result is that localized land use issues must be dealt with and judged by voters who are not directly affected. The approval of a development agreement shortly before an incorporation must be seen as an attempt to frustrate the State's desires to allow a community access to the referendum process. Development agreements under these circumstances can only be viewed as "end runs" and of course, the proposal and the motivations of the builder will be viewed very skeptically by the new city. Present law regarding development agreements should be left in place.

Land Use Plans and Permits

For the short period of time between the approval of an incorporation issue by LAFCO and actual cityhood, it would be beneficial to both the county and the community to require that general plan and zoning amendments be prohibited. Further, if an incorporation is approved by the voters, then the county should be required by law to place a moratorium on the granting of any further planning or subdivision approvals. Generally, new cities become effective within three months of an election; therefore, this would not be a significant delay to any developer. Building permits should continue to be issued by the county. Legislation to clearly spell out the "rules of the road" would be helpful to everyone.

Breathing Room

A new city should be authorized to establish a planning and/or a building moratorium for up to one year after incorporation. Such a moratorium could be tailored to the particular needs of each community. For instance, there may be no issues regarding commercial or industrial development, but very

significant issues regarding residential projects. Basically, a new city needs some time to organize. When a community incorporates, a government does not instantly exist. Any government or organization has to be built. This takes time. The time can be shortened if there are community leaders with an understanding of land use matters and how a city operates. If a given development proposal is good today, it will still be good--or better--in a couple of months. A number of the legislative proposals being discussed are quite simply attempts to tie the hands of a new community and to limit its actions on the very reasons why most communities incorporate. These proposals are in the long-term detrimental to the people of California.

SUMMARY

To reduce the turmoil and conflicts which arise around land use matters after a community incorporates, several things are needed. These include better training by the county for future community decision makers; more voice in land use matters for unincorporated areas; better land use decisions to be made by counties. These will create more certainty for everyone including the development industry. Finally, a new city needs a little breathing room--a little time to organize and establish itself before being expected to fully undertake all the tasks which lie before it.



26 orinda way • orinda • california 94563 • 415.254-3900

November 23, 1987

Senator Marian Bergeson, Chairman
Senate Committee on Local Government
Room 2085
State Capitol
Sacramento, CA 95814

Dear Senator Bergeson:

I would like to thank you for the opportunity to testify at the November 24, 1987 joint hearing on "New Cities and Land Use". Upon your request, I am providing a written statement on my experiences and suggestions regarding state legislation and its impact on the planning of newly incorporated cities.

My experience in this area comes from having served as Senior Planner and temporarily as Interim Planning Director for the City of Danville from October 1983 to December 1985. Danville incorporated on July 1, 1982, and initiated the planning function on June 1, 1983. In addition, I have served as Planning Director for the City of Orinda since the Planning Department opened in December of 1985, and also act as Deputy City Manager. Both Danville and Orinda are located in Contra Costa County.

First, I would like to compliment you, your consultants and staff on the topic background paper entitled "New Cities and Land Use". The report accurately characterizes the primary issues faced by newly incorporated cities.

My comments are summarized below in the following three categories:

1. Specific Experiences;
2. Adequacy of Current State Law; and
3. Suggestions for Legislative Changes.

1. Specific Experiences:

Reasons for Incorporation - The primary reason cited by the communities of Danville and Orinda for incorporation was the perception of unacceptable county planning actions. Also, the desire for enhanced police and public works service, improved street maintenance, tighter local control, greater response to complaints and individual identity increased the motivation to incorporate.

Senator Marian Bergeson, Chairman
November 23, 1987

General Plan Issues - Upon incorporation, Danville adopted portions of the county general plan which applied to the greater San Ramon Valley (surrounding) area. This document served the city well and bought added time for development of the current updated plan. No major problems associated with the general plan occurred. A total of about 5 1/2 years was needed to prepare the current plan.

The City of Orinda did not adopt the county general plan. It operated (with the assistance of a development moratorium) for two years before its first plan was adopted. The moratorium was the key ingredient. It provided the community with adequate time to gather its thoughts and develop a plan with significant public input (25 full public hearings). Without the moratorium, the major attention of the staff, Planning Commission and City Council would not have been possible and the quality of the plan would have been reduced. In addition, without the moratorium, major development would likely have occurred in areas which were being debated in the general plan hearings.

Specific Plan Issues - Upon incorporation, Danville inherited the Sycamore Valley Specific Plan which provides for the ultimate development of 1,450 residential units, schools, churches, post office, parks and open space. The plan was honored by the city and is in the construction phase. Although the decision to honor the plan was not controversial at the time, it now is becoming so because the development standards applied by the county were lower than those currently employed by the city. Housing density, design and traffic are now being cited by the community as areas of concern.

Orinda also inherited one specific plan, the North Orinda Specific Plan. The plan covers approximately 15 percent of the city and pertains mostly to existing developed areas. The purpose of the plan is to provide density and design standards for a large neighborhood. Since the plan was drafted with major input from neighborhood representatives prior to incorporation, it is well received and referenced in the new general plan.

Zoning Issues - County zoning maps adopted by Danville and Orinda served both cities well during the initial years following incorporation. The zoning ordinance however did not. Both cities expressed concerns about the ordinance which was developed to rural county standards and not

Senator Marian Bergeson, Chairman
November 23, 1987

urban standards. The resulting problems were numerous. In addition, given the time and work load constraints coupled with limited staffing, it has not yet been possible to complete the desired comprehensive updates.

Tentative Subdivision Map Issues - Both Danville and Orinda honored approved tentative maps. In cases where problems arose both cities worked with the developers to make changes to plans and conditions of approval. The extent of cooperation was good and neither city experienced major problems in this regard.

The Orinda City Council acted to deny a tentative map extension of a previously controversial subdivision which appeared to be at least temporarily abandoned by the developer.

Vesting Tentative Subdivision Map Issues - Neither city had to consider approval of a final map for a county approved vesting tentative map.

Development Plan/Variance Issues - Danville experienced only minor problems in deciding to honor county approved commercial development plans and variances. Several buildings were constructed which would otherwise probably not have been approved in their final form by the city.

Orinda on the other hand faced a monumental problem with one county approved development plan. This was the Orinda Theatre/Crossroads project. It consisted of a 108,000 square foot, 4-story retail/office complex which required demolition of an historic art-deco theatre. After review by the State Supreme Court and a second review by the Appellate Court, the project was declared invalid due to improper height variance findings made by the county. This action required that the developer undertake a redesign which was ultimately approved by the city without appeal. Project plans call for the preservation of the theatre and an adjacent historic bank building, and the construction of a 2 and 3 story 70,000 square foot retail/office center.

Building Permit Issues - Both cities faced problems with building permits approved by the county for large visible homes on sensitive ridge lots. However, both cities honored all county building permits.

Senator Marian Bergeson, Chairman
November 23, 1987

2. Adequacy of Current State Law:

Current state legislation pertaining to newly incorporated cities is helpful. However, more guidance is needed to provide legal protection and eliminate legal guesswork for all parties, protect developer rights where substantial investment has occurred and to protect communities from projects which might otherwise violate basic community values.

Incorporation Climate - The typical community and developer perspectives and situations following incorporation should be heavily weighed in preparing legislation. Developers are commonly unclear of their status under a new city's authority and as a result can find themselves in a very defensive position. Staff is new, unfamiliar with the city politics and ordinances, few in number and faced with an overwhelming workload. Elected and appointed officials are often new to their complicated positions and require education and experience before feeling completely comfortable with their responsibilities. Having recently won their independence the community is excited about their new city and anxious to see results. The underlying problem is that there is not adequate time, start-up money for land use planning, or staff to accomplish everything at once. It takes at least 2 years for a new city staff to be formed and begin to function smoothly and at least 5 years for the basic plans, ordinances and procedures to be developed. Within this environment, a great deal of stress is created and unsatisfactory decisions may result if not dealt with through state legislation and proper city direction.

General Plans - Current state legislation provides that new cities without general plans must make specific findings that projects will not conflict with the future general plan. This gives cities enough flexibility to properly plan and at the same time ensures that unfair decisions will not be made.

Building Permits - Based upon experience since 1984, the legislation regarding honoring building permits should not be changed.

Tentative Subdivision Maps - There is a need for the legislature to spell out which subdivisions a new city must honor. Cities should not be required to honor county approved tentative maps which are clearly inconsistent with their general plan.

Senator Marian Bergeson, Chairman
November 23, 1987

3. Suggestions for Legislative Changes:

"Land Rush" Moratorium - Probably all counties experience the "land rush" phenomenon prior to incorporation of a new city. It would therefore be helpful to establish a moratorium on county land use approvals during the incorporation process beginning with a LAFCO vote to place the incorporation issue on the ballot.

City Moratoriums - In order to provide new cities with adequate time to establish their staff, general plan, necessary ordinances, review processes, etc., it is important that the legislature provide the statutory authority to invoke moratoriums for a minimum of 2 years after incorporation. Moratoriums should be applicable to the processing of at least rezonings, major subdivisions, and commercial development plans.

LAFCO - The legislature should not change its current policy and give LAFCO the power to determine which county land use divisions a new city must honor. LAFCOs are typically the least knowledgeable about the political and practical planning necessities of new communities.

General Plans - Thirty months is commonly not long enough to adopt a city's first general plan. Three and one-half years is suggested. New cities should not be required to adhere to the county's general plan for the area while preparing their own plans. This would create a major conflict with community values and goals.

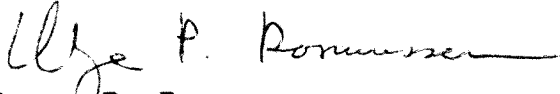
Other Land Use Entitlements - There is a need for the legislature to spell out which development plans for commercial and multi-family housing projects, land use permits, variances, planned unit developments, and environmental determinations must be honored by new cities.

Educational Assistance - It would be extremely helpful for the legislature to direct O.P.R. to prepare an educational program for officials of new cities. The program could consist of relevant state legislation with editorial comments, relevant departments and agencies, experiences of previous incorporation, problems and issues which can be expected, etc.

Senator Marian Bergeson, Chairman
November 23, 1987

Thank you once again for providing me with the opportunity to testify at the hearing. If I can be of any further assistance, please call.

Sincerely,

A handwritten signature in cursive script that reads "Wayne P. Rasmussen". The signature is written in dark ink and is positioned above the typed name.

Wayne P. Rasmussen
Deputy City Manager/Planning Director

WPR:nh

cc: Peter Detwiler

City of West Hollywood



November 23, 1987

Marian Bergeson, Chair
Senate Committee on Local Government
2085 State Capital
Sacramento, CA 95814

City Hall
8611 Santa Monica Boulevard
West Hollywood, CA 90069-4109
213 854-7475

Dear Senator Bergeson:

Thank you for allowing me the opportunity to testify on Tuesday, November 24, 1987, at your joint hearing on "New Cities and Land Use". As background, I am the Director of Community Development of the City of West Hollywood, which incorporated in November 1984. The City has a population of more than 37,000 residents, and we believe it to be the most densely populated city in California. Despite some publicity to the contrary, the incorporation focused primarily on land use issues, particularly protection of housing rights for senior citizens (which turned into a tough rent control ordinance after incorporation), and concern with the out-of-scale development which the County allowed in the early 1980s.

Department of
Community Development

We believe our experience to be somewhat unique, as we are one of the few cities to incorporate without vast areas of undeveloped land; in fact, exactly the opposite is true in this already completely and densely developed city.

From our perspective, there are two general areas in which the incorporation had serious land use approval implications. The first was general: a substantial number of projects were approved by the County in the final years before incorporation. All of those projects were of a scale and a density which the residents of the community, in general, opposed. Because of Los Angeles County's complex approval process, the City of West Hollywood inherited projects at all stages of review: in the middle of negotiations, or with discretionary approvals by the Planning Commission with no building permit, or with building permits and no construction, or in construction. In addition, there were projects with approved tentative tract maps but with no additional discretionary approvals or building permits; however, I will discuss these in more detail later.

MW161.MG

(112387A)

Each of the other kinds of cases mentioned presented dilemmas for the City Council, partly because there were no clear guidelines or legislative mandates from the State. On the one hand, the City wanted to take a tough stand regarding planning issues; after all, it incorporated because of land use issues. On the other hand, it wanted to be fair to developers who had clearly vested rights. It therefore allowed projects which had obtained building permits but had not begun construction to proceed; however, West Hollywood did not allow projects which had discretionary approvals from the County but which had not received the building permit to proceed without meeting the new standards of its interim zoning ordinance.

A moratorium was necessary immediately after incorporation, partly to sort out the kinds of issues and projects that I have been describing. However, from the joint perspective of State and municipal governments, we think it would have been a fair and more clear if the County had been required to impose a moratorium sometime after the incorporation process began. This is our strong belief for a number of reasons: first, the pressures on the County staff were inappropriate in the last months before the cityhood vote as developers pressured to get their projects through quickly. In addition, because the land use issue of appropriate development is the principal modern reason for incorporation, it seems inappropriate to allow what is commonly acknowledged to be larger development to proceed even though the odds are quite good (given the history of recent incorporation votes) that local voters will adopt their cityhood proposal and establish tougher controls.

In the end, this particular issue focuses on the role of the State and County governments in the development process shortly before incorporation. Should they assist the developers in ensuring that projects in the proverbial "pipeline" may proceed without interruption regardless of the results of the incorporation vote? Or should they act to protect the residents during the interim period before the vote and immediately after the vote. Or should they take a completely neutral stand?

From our perspective, presently State law takes a neutral stand on this issue. We would suggest quite strongly that it would be more appropriate during the period between the initiation of the incorporation and the establishment of local zoning controls in a city (or the failure of the incorporation effort) that the State adopt legislation limiting development during that period.

We obviously do not believe that the recent Supreme Court decisions limit or eliminate the State's or city's ability to impose the limitations or moratoria that I am suggesting. It seems to be clearly within the police power of local government. However, in a state in which local control over zoning matters is

fundamental to local municipalities, we find it somewhat ironic that there are no State controls which protect the orderly planning process during the transition period between the consideration and incorporation itself.

The second general issue for West Hollywood, and one potentially unique to West Hollywood, involved filing tentative tract maps to process condominium conversions. West Hollywood is a densely populated city with many older apartment buildings. Partly because of the condominium conversion "movement" in the late 1970s and early 1980s, and partly to avoid a feared rent control ordinance, many condominium conversions were processed through the County Subdivision Committee and through the County Regional Planning Commission. Sadly, these conversions resulted in a loss of the significant portion of West Hollywood's rental stock. The protection and potential increase of such rental stock has been a statewide housing goal for many years; again, it was also a principal reason for the incorporation of the city.

The City of West Hollywood has not recognized approved tentative tract maps without building permits. For example, if the developer had an approved tract for a new construction project of ten units, but had not received a building permit from the County, we would not allow construction to proceed until a conditional use permit were processed under a West Hollywood Interim Zoning Ordinance. In most cases, that additional discretionary review would result in fewer units than the tract map would have allowed and in a larger number of parking spaces. However, because the County standards were allowing development which was substantially out of scale with the already built-out city, and because parking is usually considered the greatest non-social problem of West Hollywood, we feel our actions are appropriate and again think there are strong reasons for State legislation which would limit development actions which could be taken during the incorporation process.

Regarding the General Plan, we are one of those cities who have had to request an extension of our 30-month period to prepare the first General Plan. However, it is precisely because the planning process is taken so seriously here. There is a 31-member General Plan Advisory Committee, a consultant being paid large amounts of money, hundreds of community meetings, and tremendous concern and input from other agencies and our two neighboring cities (Beverly Hills and Los Angeles).

We are going far beyond what the State requires in the development of the General Plan: ours include elements on urban design, economic development, human services, education and cultural resources. I'm not sure that we would recommend extending the 30-month period; the single extension of one year provides sufficient time to force even the most involved cities such as ours to complete all their work in a timely manner.

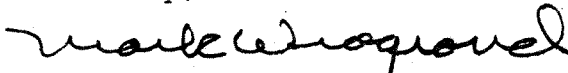
However, we do strongly recommend that the prohibition on granting extension to the housing element be clarified to explain that this does not pertain to new cities. For all of us who were involved in housing elements at the time of the State legislation, the reason for that language made perfect sense. Many cities were opposed to the State requiring housing elements, and especially requiring that they be redone on a regular basis; therefore, legislation prohibiting cities from having excuses for not preparing those elements seem quite rational. However, applying that legislative intent to the issue of new cities developing their first General Plan, and preparing them so seriously that they need even more time than the State was proposing in order to do an even better job that the State had envisioned, does not seem correct.

As an aside, we would not recommend that any of the decision-making regarding land use be placed on the shoulders of the LAFCO's. They differ from County to County; land use issues differ from County to County. It seems more appropriate to place the legislative standards directly into the Government Code.

In summary, we believe that present State law and State-wide practices result in some confusion and a number of difficult decisions for a new city in the area of land use approvals. We believe that there is a need for State legislation which protects a potential new city during the incorporation process. We do not think it is the responsibility of the State or the County or the potential new city to uphold decisions which have not yet gained vested rights. As with changes in zoning in an existing city, the risk of zoning or subdivision revision is one of the risks of development industry. It would certainly be ironic if new cities were forced to recognize and uphold decisions more strictly than established cities are required to do.

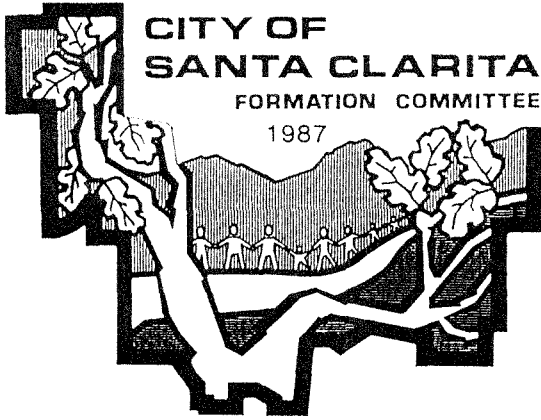
Thank you for your thoughtful consideration of our ideas and opinions. If we may be of further assistance, please contact me at your convenience.

Sincerely,



Mark Winogrand, Director
Department of Community Development

MW/mfg



November 24, 1987

THE HONORABLE MARIAN BERGESON
CHAIRMAN, SENATE COMMITTEE ON
LOCAL GOVERNMENT
CALIFORNIA STATE SENATE
CAPITOL BUILDING
SACRAMENTO, CA 95814

Dear Senator Bergeson,

We are Art Donnelly and Connie Worden, Chairman and Vice-Chairman of the City of Santa Clarita Formation Committee. We are here today as invited witnesses to address issues of Cityhood and the Local Agency Formation Commission process.

On November 3, 1987, the registered voters of the Santa Clarita Valley voted by a 67% plurality to create the city of Santa Clarita. A municipality with 40 square miles and more than 100,000 persons was incorporated. Presently recordation and the swearing-in ceremony for the City Council are scheduled for December. Already the council-elect has acknowledged a major priority will be annexation of outlying areas to regain as quickly as possible territory considered integral to Santa Clarita.

Our testimony today includes some recommendations for changes in the process of incorporation which would, in our estimation, make a more equitable and expeditious system than presently

November 24, 1987

exists.

In no way do we wish this testimony to reflect negatively on the LAFCO staff, particularly Ruth Benell, whose relationship with this committee has been highly professional and that of a dedicated public servant working in a highly politicized office. She carries out her duties in an exemplar fashion.

This testimony is limited to requested modification of the process of incorporation and regulations concerning cityhood.

November 24, 1987

The Cityhood effort began with agreements from the Santa Clarita Valley and Canyon Country Chambers of Commerce in early 1985 to initiate a feasibility study of Cityhood for the area. By mid-year, 1985, a delegation visited the LAFCO office to discuss the concept and the proposed boundaries. While the committee was informally advised that the boundaries were "too large", no specific recommendations were given, nor suggestions of accepted modifications, nor rationale for opposition to the proposed boundaries beyond the general caution about expenses.

Submitted today will be a timeline of the 2½ year struggle which culminated in the successful election November 3. LAFCO reduced the boundaries from our submitted 95 square miles to just under 40 square miles, and required the fledgling city to repay the County for any expenses during the transition (although State Law does not require this until future incorporations). The City of Santa Clarita finally received the election date approval from the Board of Supervisors on August 6, allowing just 36 hours for candidates to file for Council positions.

The City Formation Committee recognized that the creation of such a significant entity was complex and its birth would be somewhat painful; we were not prepared for the lengthy 2½ year gestation period.

November 24, 1987

Today, all of this is past history, but the experience has taught us that a number of changes are needed:

A. SCOPING MEETING:

An early scoping meeting, when the request to begin/^{the} incorporation process is received by LAFCO, should occur. Participants should be LAFCO staff and major interested parties; i.e., homeowners, commercial and industrial representatives, builders, county agencies, others. All parties should work out an understanding of the overall proposal and a draft map.

There is no language in the law as to "appropriate size" for a city, therefore, it becomes a guessing game, with those requesting exclusion the major game players. Santa Clarita proponents believe a larger city would better preserve the integrity of the valley.

B. RULES OF PROCEDURE, NEGOTIATION AND JUDICIAL REVIEW:

Rules of procedure for the proponents which clarify expected actions should be adopted.

Proponents need an opportunity to negotiate with those who request exclusion and those who prepare budgets during the review process.

Findings of fact must be published in a timely manner and made available to the public for review. A specific time for judicial review should become a part of the procedure.

November 24, 1987

C. LAFCO COMMISSION

In the opinion of the Chairman and Vice Chairman, a standing LAFCO Commission is essential for annexations and districting issues. However, the creation of a city (in the absence of a state-wide uniform policy toward incorporation) requires an objective, outside overview agency. Perceived and/or real conflicts of interest in the membership of LAFCO can best be resolved by having an independent commission appointed by the Governor of the State. LAFCO is a state entity, but is currently dominated by County representatives.

D. OUTSIDE AUDIT REVIEW

Access to budget figures (expenses and revenues) during the review process of a proposed city must be provided to the proponents on a regular basis along with the methodology used for their development.

The retention of an independent audit or accounting firm to develop these figures would be a viable solution. Having this information available to the public is essential.

Additionally, the Formation Committee is opposed to legislation requiring the balance of any county to vote on whether or not to allow incorporation in the future. This would essentially close-out the formation of cities and would be a denial of a fundamental tenet of good government in the United States.

November 24, 1987


In conclusion,


At the very foundation of today's hearing about new cities and land use is a fundamental absence of understanding concerning the roles of counties and cities.. Missing are :1) a definition of the functions each entity can and should perform, and 2) a resolution of the over lapping interests and jurisdictions.

A critical dialogue is needed to "spell out" these roles in our rapidly changing society. The approach used by some counties who urge urbanizing areas to incorporate and to develop methods for delivering municipal services, while counties concentrate on developing the mechanisms for delivering regional needs, appears to be a course worthy of investigation by the state. This method generates fewer problems and avoids some friction of duplication between counties and cities.

The concept of a "City" is as old as civilization. The belief that government "closest to the people is best" is still a tested, truism. What needs to be resolved is a new recognition that some regional services can be best performed by counties.

Sincerely,


Arthur Donnelly
Chairman


Connie Worden
Vice Chairman

Attachment: Time-Line

A BRIEF HISTORY OF EFFORTS FOR SELF-GOVERNMENT IN
THE SANTA CLARITA VALLEY - "TIME LINE"

- 1950 - "Newhall Committee for Incorporation" lost its Battle for Cityhood when the major landowners refused to let the issue go to a vote
- 1971 - "CIVIC" fails to get the issue of cityhood to ballot
- 1973 - "CIVIC" fails a second time to get to ballot
- 1976 - First Canyon County attempt wins the ballot in the Santa Clarita Valley but fails in the rest of the county
- 1978 - Second Canyon County attempt wins in Santa Clarita Valley and fails countywide
- 1980 - Fourth Cityhood attempt fails to get to ballot due to wildland fire protection costs
- 1985 - January - City Feasibility Study initiated by the Economic Development Committee of the joint Chambers of Commerce. Feasibility confirmed and proposal of Cityhood recommended.
- 1985 - July - Task force writes 95 square mile proposal for city boundaries
- 1986 - Cityhood petition drive commences
- 1986 - Petition drive finally successful and our proposal is sent to LAFCO for study
- 1987 - February 25th - First LAFCO hearing
- 1987 - April 22nd - Second LAFCO hearing sends proposal to the Board of Supervisors
- 1987 - June 9th - First supervisors hearing - proposal sent back to LAFCO for reconsideration
- 1987 - June 24th - Third LAFCO hearing - final approval sent to the Board of Supervisors
- 1987 - July 9th - Second Board of Supervisors hearing continued
- 1987 - July 14th - Third Supervisors hearing continued to
- 1987 - July 21st - continued to
- 1987 - August 4th



Camrosa County Water District

P.O. BOX 7000-1
CAMARILLO, CA 93011-7000
TELEPHONE: (805) 482-4677

November 24, 1987
gm-87-365

Honorable Members of the
Senate Local Government Committee, and
Senate Housing and Urban Affairs Committee

My name is Gina Manchester, I am the General Manager of the Camrosa County Water District. This district provides water service, sewer collection and treatment, and hydroelectric generation services to over 16,000 people who live in the Cities of Camarillo, Moorpark, Thousand Oaks and a large portion of unincorporated land.

My testimony today is concerned with Independent Special Districts, and their relationship with LAFCO in Ventura County. There are two main issues I wish to communicate today:

1. THERE IS NO APPEAL PROCESS, NO REDRESS ON DECISIONS MADE BY LAFCO. LAFCO APPEARS TO HAVE NO REGULATORY RESTRICTIONS AS THE LAW NOW STANDS. AN EXAMPLE OF THE PROBLEM IS THAT LAFCO HAS USED THE GUISE OF "REORGANIZATION" TO CIRCUMVENT THE DETACHMENT AND/OR ANNEXATION PROCESS IF THERE IS POTENTIAL CONTROVERSY REGARDING A BOUNDARY CHANGE. THIS HAS ALSO HELPED TO DILUTE AND NEGATE ANY OBJECTION A SPECIAL DISTRICT MIGHT HAVE REGARDING THE ACTION.

REFERENCE IS MADE TO OPINION NO. CV 78-102-NOVEMBER 17, 1978 - ATTORNEY GENERAL'S OPINION, BY EVELLE YOUNGER REGARDING THE ANNEXATION OF CITY LAND FROM COUNTY WATER DISTRICT. THIS OPINION IS ATTACHED.

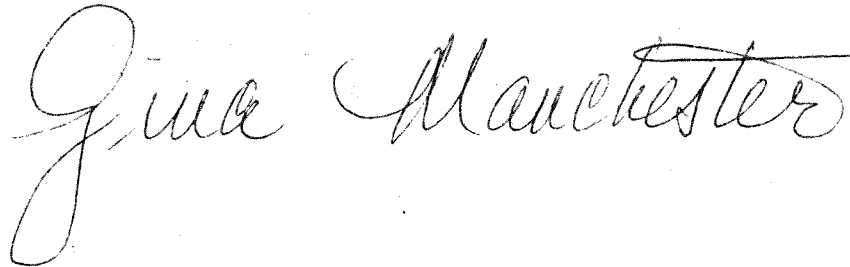
2. THE SECOND OBJECTION TO LAFCO IS THAT THE LAFCO COMMISSION APPOINTMENT PROCESS IS DETRIMENTAL TO INDEPENDENT SPECIAL DISTRICTS. SPECIAL DISTRICT MEMBERSHIP ON LAFCO IS DISCOURAGED BECAUSE THE PRICE IS TOO HIGH. CITY AND COUNTY REPRESENTATIVES CAN VOTE ON MATTERS PERTAINING TO CITIES AND COUNTIES, HOWEVER, SPECIAL DISTRICTS CANNOT VOTE ON MATTERS PERTAINING TO SPECIAL DISTRICTS. IN ADDITION, SPECIAL DISTRICTS MUST FORFEIT THEIR LATENT POWERS AMONG OTHER UNSATISFACTORY CONDITIONS.

CAMROSA COUNTY WATER DISTRICT

November 24, 1987
gm-87-365

This appears to be motivated by the fact that most Special Districts are enterprise districts which operate on fees. Although Special Districts, in most instances, serve the people much more effectively than big bureaucratic organizations do, LAFCO is intent on swallowing up the FAYERING districts in their maneuvers which lean heavily toward the County.

Thank you.



Attachment

ADDED COMMENTS:

LAFCO IN VENTURA COUNTY HAS TRADITIONALLY SOWN
TO WEAKEN AND DISSOLVE INDEPENDENT SPECIAL DISTRICTS.
LAFCO'S PURPOSE IS SUPPOSED TO BE TO SET ORDERLY
BOUNDARIES, AND TO PREVENT URBAN SPRAWL.
LAFCO IS USING ITS EMPOWERMENT POWERS TO
MANIPULATE BOUNDARIES AND TAX DOLLARS TO
SERVE SPECIAL INTERESTS. THIS IS WRONG!
(COUNTY)

Given the broad definition of "similar dwellings" above, it would appear that so long as *all* similar residential dwellings in the zone are subject to the same requirements, the City of Modesto's program for installation of curbs, gutters and sidewalks could be consistent with section 5116.

It should be noted that section 19956.5 already requires that *all* curbs and sidewalks conform to specified standards for access thereto by handicapped persons. Since its effective date, the Department of Rehabilitation has construed section 19965.5 to apply to all curbs and sidewalks constructed in the state for public use, whether constructed with public or private funds and without regard to the public or private nature of adjacent buildings. (See 57 Ops. Cal. Atty. Gen. 186 (1974).)

In this light it appears that the city's general program for installation of curbs, gutters, and sidewalks must meet the same standards as those that would be required specifically of special care homes. Assuming that the same conditions are being imposed everywhere alike, it follows that the City of Modesto's program of requiring the installation of curbs, gutters, and sidewalks throughout a residential area should satisfy the requirement of "conditions imposed on other similar dwellings in the same zone." However, it is stated in addition that the city has been implementing a program requiring the installation of curb, gutter, and sidewalk improvements by way of assessment in those areas throughout the City of Modesto where they currently do not exist. We do not have sufficient facts before us to determine whether the effect of this policy, through a system of conditional use permits, would be to discriminate against a use of existing residences as family care homes in areas where there presently exists no curbs, gutters, or sidewalks, so as to violate section 5116.

Opinion No. CV 78-102—November 17, 1978

SUBJECT: ANNEXATION OF CITY LAND FROM COUNTY WATER DISTRICT—Because no express provisions of law require detachment and no detachment would ensue by operation of law, a city annexing land which is part of a county water district does not need to detach that land from the district.

Requested by: COUNTY COUNSEL, MENDOCINO COUNTY

Opinion by: EVELLE J. YOUNGER, Attorney General

Clayton P. Roche, Deputy

The Honorable John A. Drummond, County Counsel, Mendocino County, has requested an opinion on the following questions:

1. If a city annexes land which presently constitutes a portion of a county water district, is it mandatory that such portion be detached from the district?

2. Is the issue of detachment affected by the fact that the county water district has a bonded indebtedness?

3. If the land to be annexed to the city need not be detached from the city as a matter of law, may LAFCO require the city to "take over" the county water district within the annexed territory. If so, may LAFCO impose conditions and guidelines with respect to such "takeover" by the city?

The conclusions are:

1. If a city annexes land which presently constitutes a portion of a county water district, such land need not be detached from the district. No express provision of law requires a detachment and no detachment would ensue by operation of law.

2. Question number two presupposes that a detachment is mandatory. Therefore, the answer to question one renders this question moot.

3. LAFCO may require as a condition to the annexation of the territory to the city that the subject land be detached from the county water district. If it does, the law contains numerous provisions with respect to the adjustment of matters between the city and the district, including a number of conditions LAFCO may impose in the case of a detachment of territory from the district.

ANALYSIS

A city intends to submit a proposal to the Local Agency Formation Commission (LAFCO) pursuant to the Municipal Organization Act of 1977 (hereinafter "MORGA," Gov. Code § 35000 *et seq.*) for the annexation of certain inhabited territory to the city.¹ The territory the city desires to annex constitutes part of an existing county water district.

The requester has raised a number of questions relating to the continued existence or not of the county water district within the territory to be annexed, and the adjustment of the affairs of the district within the territory. These questions require an examination of MORGA and the interrelationship of the District Reorganization Act of 1965 (§ 56000 *et seq.*) and the Knox-Nisbet Act (§ 54773 *et seq.*) to annexation proposals submitted pursuant to MORGA. These questions also require an examination into the doctrine of total or partial "merger" when a city annexes territory of a special district such as a county water district.

1. Is Detachment of the Annexed Land Mandatory?

Except as to a possible proceeding under the District Reorganization Act of 1965, (hereinafter, "DRA"), MORGA provides the exclusive method for annexation of territory to a city as a "change of organization" thereof. (§§ 35002, 35027.)²

¹ All section references are to the Government Code unless otherwise indicated. MORGA constitutes a comprehensive revision of the law with respect to incorporation and disincorporation of cities, consolidations of cities, and the annexation to and detachment of territory from cities. It also provides for "reorganizations" of cities, as therein defined. (§ 35042).

² It is to be noted that a single annexation of territory to a city with nothing more cannot be accomplished pursuant to the DRA. If, however, an annexation to a city constitutes one

Under MORGA, the legislative body of a city may by resolution propose an annexation of territory to the city. (§§ 35100, subd.(b), 35140). The proposal is filed with the executive officer of LAFCO. (§ 35141.) If LAFCO, after conducting preliminary proceedings (§§ 35150-35163), approves the annexation proposal (§ 35161), the city then conducts the actual annexation proceedings. (§§ 35031, subd.(a), 35200 *et seq.*).

The territory proposed to be annexed under consideration consists of part of a county water district. The first question presented is whether detachment of the territory from the water district is mandatory if the annexation proceedings are successful. It is the opinion of this office that no such detachment is mandatory.

We have examined in detail both MORGA and the County Water District Law (Wat. Code, § 30000 *et seq.*). Neither law contains a provision which would mandate the detachment of territory from a county water district upon its partial annexation to a city. Nor are we aware of any other statutory provision which would mandate such detachment. Therefore, unless a detachment is brought about by operation of law, a detachment would not be required.

The only potentially relevant doctrine of which we are aware is that of so-called "automatic merger." The doctrine of automatic merger basically dictates that where a city or other public corporation or district subsequently encompasses the territory of another public corporation or district of more limited jurisdiction, the latter merges with the former by operation of law. Prior to the enactment of the DRA in 1965, numerous examples of automatic *total* merger can be found in the case law. This occurred when a city initially incorporated, or annexed territory, so as to completely encompass a prior district established in unincorporated territory. (See, e.g., *Petition East Fruitvale Sanitary Dist.* (1910) 158 Cal. 453; *People Ex Rel. City of Downey v. Downey County Water Dist.* (1962) 202 Cal. App. 2d 786; *City of Escalon v. Escalon Sanitary Dist.* (1960) 179 Cal. App. 2d 475; *Dickson v. City of Carlsbad* (1953) 119 Cal. App. 2d 809). It also occurred when a district of more limited powers was annexed to another district. (See, e.g., *Galt County Water Dist. v. Evans* (1935) 10 Cal. App. 2d 116, county water district annexed by municipal water district.) The basis for this automatic merger was that to have "two distinct local governmental bodies claiming to exercise the same authority, powers and franchises simultaneously over the same territory would 'produce intolerable confusion, if not constant conflict.'" (*People Ex Rel. City of Downey v. Downey County Water Dist.*, *supra*, 202 Cal. App. 2d at 792.) This, of course, presupposed that nothing in the act creating the district dictated a different result. (Ibid.)

The question then arises, was or is the doctrine of merger by operation of law applicable also to a partial absorption of a district by a city, such as is under consideration in this opinion? Although a reading of both early and later case law

of a number of "changes of organization" to "districts" (a "reorganization" under the DRA), the annexation may proceed as part of the "district reorganization." See, generally, 57 Ops. Cal. Atty. Gen. 599, 600-601 (1974). This exception is not applicable to the facts presented herein.

appears to recognize such possibility (see, e.g., *Pixley v. Saunders* (1914) 168 Cal. 152 and *City of Sacramento v. Southgate Recreation & Park Dist.* (1964) 230 Cal. App. 2d 916), the possibility seems to have been more theoretical than real, since no case has been found in California where an automatic partial merger has actually occurred. (See also, e.g. *Allied Amusement Co. v. Bryam* (1927) 201 Cal. 316; *Henshaw v. Foster* (1917) 176 Cal. 507; *La Mesa Homes Co. v. La Mesa Etc. Irr. Dist.* (1916) 173 Cal. 121; *City of San Diego v. Otay Municipal Water Dist.* (1962) 200 Cal. App. 2d 672; *City of El Cajon v. Heath* (1948) 86 Cal. App. 2d 530.)

The decisions which have resulted in an apparent complete absence of automatic partial merger have been based upon a presumed legislative intent that no partial merger should occur. The basic theory or approach has been that the particular district involved performed a function of a regional nature—such as sanitation—or a function which was of more than municipal concern when it transcended municipal boundaries—such as parks and recreation, which militated against partial merger. Interestingly, this dearth of authority led this office in 1960 to observe and summarize the law on automatic merger as follows:

"The general rule expressed in the *Fruitvale* case has led to the settlement of at least one principle, that where all of the territory of a district, such as the sanitation district there involved, is annexed to or is entirely embraced within the boundaries of an incorporated city having all of the powers of the district and more, the district is dissolved and merged with the city by operation of law

"It would appear to have been equally well-settled that where a special district comprises territory partly within and partly without the boundaries of a city no dissolution or merger results. In *Pixley v. Saunders*, 168 Cal. 152, the court states at 160:

"For the reasons above stated, it is the conclusion of the court that in enacting the Sanitary District Acts, the legislature had in mind the sanitation of any territory which might conveniently be served by a single system, whether wholly unincorporated or not, and that a sanitary district formed under said act preserves its identity and retains its powers over the whole territory, *except in the event of its complete absorption by a municipality.*" (Italics added.)" (36 Ops. Cal. Atty. Gen. 297, 299 (1960).)

Thus, in reality, there appears to have been no doctrine of partial automatic merger in California where a city (or other public corporation of a higher order) annexed a portion of a district having overlapping powers. This is significant when one considers the DRA, and the sections therein with respect to mergers.

The District Organization Act of 1965 was enacted basically to provide uniform procedures for annexations to, detachments from, consolidations of and dissolutions of special districts against a backdrop of existing varied, confusing and conflicting

statutory provisions applicable to special districts. See *Del Paso Recreation & Park Dist. v. Board of Supervisors* (1973) 33 Cal. App. 3d 483, 490-491.

Chapter 6 of the DRA, sections 56400 *et seq.*, provides for "Mergers And Establishment of Subsidiary Districts."³ "Merger" is defined for purposes of the act as "the extinguishment, termination and cessation of the existence of a district of limited powers by the merger of such district with a city as a result of proceedings taken pursuant to" the DRA. As pertinent to our inquiry, section 56400 provides:

"The Legislature hereby declares that the doctrine of automatic merger of a district with a city or the merger by operation of law of a district with a city shall have and be given no further force or effect. The existence of a district shall not be extinguished or terminated as a result of the entire territory of such district being heretofore or hereafter included within a city unless such district be merged with such city as a result of proceedings taken pursuant to this division. . . ."

Both the definition of "merger" contained in section 56054, and the abolition of the doctrine of automatic merger in section 56400, appear to contemplate only the situation of a complete or total merger of a district with a city. What then of the possibility of a partial merger of part of a district upon annexation by a city of such part? Did the Legislature intend that there should be partial mergers despite its abolition of complete merger? We think not. In our opinion, the DRA provisions are merely a legislative recognition of the case law, discussed above, that in reality no doctrine of partial merger has existed in California.

Returning to the facts under consideration in this opinion, that is, the annexation of territory to a city which also consists of part of a county water district, it is our view that section 56400 of the DRA does not *specifically* provide the answer to the question of possible partial merger of the district with the city. However, it is our further view that section 56400 does so inferentially by essentially returning us to prior case law on partial merger. There, as discussed at length above, partial merger never occurred. A contrary legislative intent was always found to exist to prevent that result. Such contrary legislative intent would also apply to a county water district such as involved herein on the authority of *Pixly v. Saunders, supra*, 168 Cal. 152. There the court predicated its decision on the premise that the Legislature intended that the sanitary district be free to function in territory which might be conveniently served by a single system, whether wholly incorporated, wholly unincorporated, or an admixture thereof. Likewise, the Legislature intends that a county water district may operate in any convenient territory, which may consist of one or more counties, and incorporated and unincorporated territory. (Wat. Code, § 30200).

Accordingly, whether based upon (1) the concept that no doctrine of partial automatic merger exists or (2) a legislative intent that no partial merger should

³ Establishment of a subsidiary district means the establishment of a district where the city council will act, *ex officio*, as the district board. (§ 56073) A subsidiary district may include all, or not less than 70 percent of the assessable land and registered voters of the district, and is a usual mandatory alternative to a proposed merger. (§§ 56401-56405).

occur, it is concluded that the annexation of territory by the city involved herein of territory consisting of part of a county water district will not automatically cause a partial merger of the district with or to the city.

In summary, neither the statutes nor other governing legal principles mandate that upon annexation of a portion of a county water district to a city, that portion must be detached from the district.⁴

2. Does The Existence of Bonded Indebtedness
Affect The Issue of Detachment?

It is our understanding that the second question, whether the existence of bonded indebtedness on the part of the district would affect the issue of detachment, was predicated upon a conclusion that the law would mandate a detachment in some manner. This issue is therefore moot on the basis of the answer to the first question.

3. May LAFCO Require The City To "Takeover"
The Portion of The District Annexed?

The third question presented is whether LAFCO may require the city to "takeover" the portion of the county water district in the annexed territory. A subsidiary question assumes LAFCO may do so, and asks whether LAFCO may impose conditions and guidelines with respect to a "takeover" by the city.

Our conclusion is that LAFCO may require, as a condition to the annexation itself, that the portion of the territory annexed by the city be detached from the county water district. In that event, the statutes provide many conditions or "guidelines" which LAFCO may impose with respect to the detachment itself.

As noted at the outset of this opinion, the proposal to annex territory to the city under consideration herein is to be brought under MORGA at the instance of the city itself.⁵ The power of LAFCO to require detachment of territory from the county water district, and to impose detailed conditions or "guidelines" with respect to the adjustment of matters between the city and the district, is found by several incorporations by reference from MORGA ultimately to the DRA.

Section 35150 of MORGA sets forth the powers of LAFCO with respect to proposals brought pursuant to that act. Section 35150 states in part:

"The commission shall have the powers and duties set forth in Chapter 6.6 (commencing with Section 54773) of Part 1, Division 2,

⁴ See also *Morro Hills Community Services Dist. v. Board of Supervisors* (1978) 78 Cal. App. 3d 765, which involved an annexation of a portion of a community services district to a city, and a subsequent detachment proceeding of that portion from the district under the DRA. Interestingly, there was no suggestion in the case that the annexation might have caused an automatic partial merger of the district with the city.

⁵ See note 2, *supra*, wherein it was pointed out that a proposed annexation of territory to a city may be brought under the DRA as part of a "district reorganization" proceeding. Thus the city annexation and the detachment of territory from the district could be accomplished under a single proceeding under the DRA. See particularly, sections 56068, subd. (b) (1) and 56430 *et seq.*

Title 5, and such additional powers and duties as are specified in this part, including the following:

"(a) To review and approve or disapprove with or without amendment, wholly, partially, or conditionally proposals for the incorporation of cities, for changes of organization of cities, and municipal reorganizations. . . ."

An annexation of territory to a city is a "change in organization." (§ 35027.) The reference in section 35150 to sections 54773 *et seq.* is to the Knox-Nisbet Act, the basic legislation with respect to LAFCOs.

Section 54790.1 of the Knox-Nisbet Act provides in part with respect to the powers and duties of LAFCO:

"In any commission order giving approval to any of the matters provided for by subdivision (a) of Section 54790 [which includes city annexations], the commission may make such approval conditional upon:

"(a) Any of the conditions set forth in section 56470.

"(b) The initiation, conduct or completion of proceedings for a change of organization or a reorganization under and pursuant to the District Reorganization Act of 1965. . . ."

Thus, under subdivision (b) of section 56470.1, as incorporated by reference into MORGA, LAFCO has the power to condition a city annexation upon a "change of organization" of a district such as the county water district involved herein. A detachment of territory from that district would constitute a "change of organization." (See §§ 56028, 56310 *et seq.*)*

Accordingly, LAFCO in essence could mandate that the city "takeover" the county water district within the boundaries of the territory to be annexed by conditioning the city annexation upon the successful completion of detachment proceeding under the DRA, as described above. The detachment proceedings would then place the territory within the city's exclusive jurisdiction *vis a vis* the district. (See, generally, *Pixley v. Saunders, supra*, 168 Cal. 152, 158-159; *City of El Cajon v. Heath, supra*, 86 Cal. App. 2d 530, 534.)

We now turn to the subsidiary question as to whether LAFCO may impose conditions and "guidelines" to the detachment proceedings. It is our understanding that the requester is particularly interested in the adjustment of financial and property matters between the city and the district with respect to the territory the city would take over from the district.

* We note parenthetically that the preliminary proceedings for detachment may be initiated by the city itself. (§§ 56021, 56130). Also, detachment proceedings under the DRA may be conducted without the consent of the district. (*Morro Hills Community Services Dist. v. Board of Supervisors, supra*, 78 Cal. App. 3d 765; *Simi Valley Recreation & Park Dist. v. Local Agency Formation Com.* (1975) 51 Cal. App. 3d 648, 681-683.) The *Morrow Hills* case also sets forth a summary of the procedure for detachment proceedings.

We note initially that MORGA contains provisions in section 35400 with respect to protecting the rights of bond holders and creditors upon annexations of land to a city. Similarly, the DRA contains provisions in sections 56010, 56010.1 and 56492 in the same vein with respect to proceedings thereunder, and as to detachments specifically. Finally, we note the provisions of section 56470, which is applicable to any change of organization under the DRA, and also applicable under MORGA itself by virtue of incorporation by reference therein to the Knox-Nisbet Act. (See §§ 35150 and 54790.1, subd. (a), *supra*.) Section 56470 states nineteen conditions which may be imposed by LAFCO on a change of organization or reorganization. It states:

"Any change of organization or reorganization may provide for or be made subject to one or more of the following terms and conditions:

"(a) The payment of a fixed or determinable amount of money, either as a lump sum or in installments, for the acquisition, transfer, use or right of use of all or any part of the existing property, real or personal, of any city, county or district.

"(b) The levying or fixing and the collection of (i) special, extraordinary or additional taxes or assessments, or (ii) special, extraordinary or additional service charges, rentals or rates, or (iii) both, for the purpose of providing for any payment required pursuant to subdivision (a) of this section.

"(c) The imposition, exemption, transfer, division or apportionment, as among any affected cities, counties, districts and territory of liability for payment of all or any part of principal, interest and any other amounts which shall become due on account of all or any part of any outstanding or then authorized but thereafter issued bonds, including revenue bonds, or other contracts or obligations of any city, county, district or any improvement district therein and the levying or fixing and the collection of any (i) taxes or assessments, or (ii) service charges, rentals or rates or, (iii) both in the same manner as provided in the original authorization of the bonds and in the amount necessary to provide for such payment.

"(d) If, as a result of any term or condition made pursuant to subdivision (c), the liability of any affected city, county or district for payment of the principal of any bonded indebtedness shall be increased or decreased, said term and condition may specify the amount, if any, of such increase or decrease which shall be included in or excluded from the outstanding bonded indebtedness of any such agency for the purpose of the application of any statute or charter provision imposing a limitation upon the principal amount of outstanding bonded indebtedness of such agency.

"(e) The formation of a new improvement district or districts

or the annexation or detachment of territory to or from any existing improvement district or districts.

"(f) The incurring of new indebtedness or liability by or on behalf of all or any part of any district, including territory being annexed to any district, or of any existing or proposed new improvement district therein. The new indebtedness may be the obligation solely of territory to be annexed provided the district has the authority to establish zones for incurring indebtedness. The indebtedness or liability shall be incurred substantially in accordance with the laws otherwise applicable to the district.

"(g) The issuance and sale of any bonds, including authorized but unissued bonds of a subject district, either by such district or by a district designated as the successor to any district which shall be extinguished as a result of any change of organization or reorganization.

"(h) The acquisition, improvement, disposition, sale, transfer or division of any property, real or personal.

"(i) The disposition, transfer or division of any moneys or funds (including cash on hand and moneys due but uncollected) and any other obligations.

"(j) The fixing and establishment of priorities of use or right of use of water, or capacity rights in any public improvements or facilities or of any other property, real or personal.

"(k) The establishment, continuation or termination of any office, department or board, or the transfer, combining, consolidation, or separation of any offices, departments or boards, or any of the functions thereof, if, and to the extent that, any such matters shall be authorized by the principal act.

"(l) The employment, transfer or discharge of employees, the continuation, modification or termination of existing employment contracts, civil service rights, seniority rights, retirement rights and other employee benefits and rights.

"(m) The designation of a city, county or district, as the successor to any district which shall be extinguished as a result of any change of organization or reorganization, for the purpose of succeeding to all of the rights, duties and obligations of the extinguished district with respect to enforcement, performance or payment of any outstanding bonds, including revenue bonds, or other contracts and obligations of said extinguished district.

"(n) The designation (i) of the method for the selection of members of the legislative body of a district or (ii) the number of such members, (iii) or both, where the proceedings are for a consolidation, or a reorgani-

zation providing for a consolidation or formation of a new district and the principal act provides for alternative methods of such selection or for varying numbers of such members, or both.

"(o) The initiation, conduct or completion of proceedings on a proposal made under and pursuant to the Knox-Nisbet Act, Chapter 6.6 (commencing with Section 54773) of Division 2, Title 5.

"(p) The fixing of the effective date of any change of organization, subject to the limitations of Section 56456.

"(q) Any terms and conditions authorized or required by the principal act with respect to any change of organization.

"(r) The continuation or provision of any service currently provided or previously authorized by official act of the district to be provided.

"(s) Any other matters necessary or incidental to any of the foregoing."

It is to be noted that subdivisions (a), (b), (c), (d), (f), (g), (h), (i), (j), (n) and (s) are particularly pertinent with respect to adjusting financial matters and property matters between entities upon a reorganization of their respective territories.

Since the request sets forth no particular questions as to specific matters which LAFCO might wish to impose, section 56470 is noted for its guidance in response to the subsidiary issue presented as part of question three.⁷

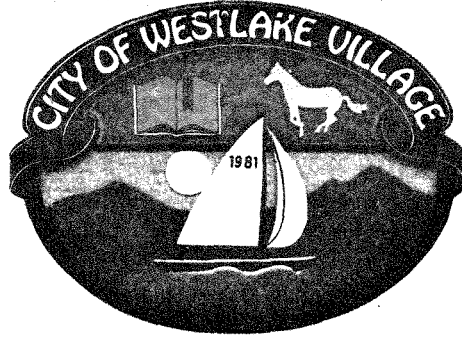
Opinion No. CR 78-26—November 21, 1978

SUBJECT: APPOINTMENT OF DEPARTMENT OF JUSTICE CRIMINALIST TO TESTIFY—A private litigant or criminal defendant may require a Department of Justice criminalist to testify as an expert witness only where the criminalist has performed an examination of evidence as part of his assigned work. If he has no connection with the specific case about which he is asked to testify, the criminalist cannot be compelled to perform tests or give testimony. Moreover, a judge cannot appoint a Department of Justice criminalist as an expert witness over agency objection.

Requested by: DIRECTOR, DIVISION OF LAW ENFORCEMENT, DEPARTMENT OF JUSTICE

Opinion by: EVELLE J. YOUNGER, Attorney General
Charles R.B. Kirk, Deputy

⁷ For an excellent example of the application of section 56470, see *Morro Hills Community Services Dist. v. Board of Supervisors*, *supra*, 78 Cal. App. 3d 765. The application thereof must be "fair and equitable," and, of course, not unconstitutionally impair existing contracts. It would also have to conform to the requirements of Article 13A of the California Constitution and its implementing legislation (Proposition 13) with respect to any new taxes.



JOHN McDONOUGH • BERNIECE E. BENNETT • BONNIE KLOVE • FRANKLIN D. PELLETIER • IRWIN A. SHANE
Mayor Mayor Pro Tempore Councilwoman Councilman Councilman

November 24, 1987

Senator Marian Bergeson
Chairwoman, Local Government Committee
State Capitol Building
Sacramento, CA 95814

Dear Senator Bergeson & Committeemembers:

On December 11, 1981 Westlake Village incorporated as the 82nd city in Los Angeles County. This culminated one of the most expeditious incorporation processes in the history of the County. From our official filing with LAFCO to our election victory, the elapsed time to complete the process was a remarkably short period of 1 year and 8 days. During this process, I served as Chairman of the Westlake Village Cityhood Committee along with Vice-Chairman John McDonough, who is currently the City's Mayor.

As we progressed through the rigors of incorporation, we found the process as administered by LAFCO to be technically cumbersome; however, we realized that the many technical requirements were mandated by state law and practical necessity in order that LAFCO would have the necessary information to make a reasoned determination of our cityhood application. Throughout the process we found the LAFCO staff, particularly Ruth Benell and Michi Takahashi, to be of immense assistance to our Committee. We were extended every courtesy by Mrs. Benell and we realized that we often burdened her time with may "lay person" requests for information and assistance. LAFCO was consistently supportive and helpful throughout the entire process.

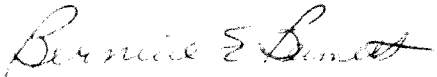
Senator Marian Bergeson
November 24, 1987

As our application progressed through LAFCO, two major residential developments were expedited through the county land use process which created a degree of consternation within our community. One of these projects received its final approval on the day that the City was officially incorporated. These developments were subsequently ratified by the new City Council after a period of study during which both developers cooperated with us fully. Neither project was prepared for construction during the period of the City's study, so it is doubtful that our review process added any time to the construction of these projects. Under current law, developers can now obtain a "Vesting Tract Map" which would resolve the problem of potential construction delays resulting from City incorporations.

Since our incorporation, we have maintained a good working relationship with the County of Los Angeles and particularly LAFCO. Ruth Benell has always been very supportive of our City, its Council and staff, and has always been willing to assist with all of our requests.

Thank you for the opportunity to provide input into your hearings. If you require any additional information, please feel free to contact us.

Sincerely,



Berniece E. Bennett
Mayor Pro Tem

PRESENTATION TO
JOINT INTERIM HEARING OF
SENATE LOCAL GOVERNMENT COMMITTEE AND
SENATE HOUSING AND URBAN AFFAIRS COMMITTEE
STATE OFFICE BUILDING
6250 VAN NUYS BOULEVARD
VAN NUYS, CALIFORNIA
TUESDAY, NOVEMBER 24, 1987

GOOD AFTERNOON:

MY REMARKS THIS AFTERNOON ARE BEING MADE ON BEHALF OF THE RANCHO SIMI RECREATION AND PARK DISTRICT. BY WAY OF GENERAL BACKGROUND, HOWEVER, I HAVE BEEN INVOLVED WITH THE VENTURA COUNTY SPECIAL DISTRICTS ASSOCIATION (VCSDA) AND THE CALIFORNIA ASSOCIATION OF RECREATION AND PARK DISTRICTS (CARPD) FOR MANY YEARS. I AM AWARE OF THE FRUSTRATIONS AND PROBLEMS THAT MEMBERS OF THOSE ASSOCIATIONS HAVE EXPERIENCED IN THEIR DEALINGS WITH THE VENTURA COUNTY LAFCO AND LAFCOS IN OTHER COUNTIES.

I WANT TO FURTHER PREFACE MY REMARKS WITH THE RECOGNITION OF THE FACT THAT:

-LAFCO WAS ESTABLISHED WITH THE INTENT THAT IT BE AN OBJECTIVE THIRD-PARTY BODY.

-TO REVIEW THE ADJUSTMENT OF BOUNDARIES OF CITIES AND DISTRICTS.

-TO REVIEW THE FORMATION OF NEW CITIES AND DISTRICTS.

-TO REVIEW OTHER REORGANIZATIONS, MERGERS, CONSOLIDATIONS,
AND DISSOLUTIONS OF CITIES AND DISTRICTS.

-LAFCO WAS CREATED AS AN "AUTONOMOUS AGENCY TO DEAL WITH
JURISDICTIONAL AND BOUNDARY QUESTIONS", (ACCORDING TO
INFORMATION DISTRIBUTED BY VENTURA COUNTY'S LAFCO) AND

-LAFCO IS PROBABLY HERE TO STAY.

AT THE TIME THE LEGISLATION WAS ENACTED, MOST "RATIONAL"
AND "REASONABLE" MINDS WOULD HAVE AGREED WITH THE LEGISLATIVE
INTENT IN THE FORMATION OF LAFCO. IN RECENT YEARS, HOWEVER,
I'VE HEARD A NUMBER OF PEOPLE, WHO ARE GENERALLY CONSIDERED
TO BE "RATIONAL" AND "REASONABLE", SAY THAT "LAFCO SHOULD
BE ABOLISHED".

FIRST, I WANT TO ADDRESS AND QUESTION THE COMPOSITION OF
LAFCO. FOR MOST COUNTIES, THE STATUTES PROVIDE FOR THE APPOINTMENT
OF TWO (2) SUPERVISORS AND ONE (1) ALTERNATE BY THE COUNTY
BOARD OF SUPERVISORS, THE APPOINTMENT OF TWO (2) CITY REPRESENTATIVES
AND ONE (1) ALTERNATE SELECTED BY A COMMITTEE OF CITY REPRESENTATIVES,
ONE (1) PUBLIC MEMBER AND ONE (1) ALTERNATE TO BE APPOINTED
BY THE OTHER FOUR (4) MEMBERS. THEN, FOR MOST COUNTIES,
THERE IS THE OPTIONAL PROVISION FOR THE SEATING OF TWO (2)
SPECIAL DISTRICT REPRESENTATIVES UNDER PRESCRIBED CIRCUMSTANCES
WHICH INCLUDE:

-THE ADOPTION OF A RESOLUTION BY A MAJORITY OF THE INDEPENDENT
SPECIAL DISTRICTS REQUESTING REPRESENTATION, AND

-THE ADOPTION OF REGULATIONS AFFECTING THE FUNCTIONS AND
SERVICES OF SPECIAL DISTRICTS IN THE COUNTY. (THE REGULATIONS
NORMALLY INCLUDE THE SURRENDERING OF SPECIAL DISTRICT
LATENT POWERS.)

COUNTIES AND CITIES INCURRED NO SUCH RED TAPE OR LOSS OF CONTROL AS THE PRICE OF REPRESENTATION ON LAFCO.

A NUMBER OF QUESTIONS HAVE BEEN RAISED OVER THE YEARS RELATIVE TO THE COMPOSITION OF LAFCO, WHICH INCLUDE:

1. WHY AN ALTERNATE MEMBER FOR EACH OF THE DIFFERENT CLASSES OF REPRESENTATIVES?

JURYS HAVE ALTERNATES FOR SOUND REASONS. BUT WHAT OTHER TYPE OF GOVERNMENTAL BODY HAS PROVISIONS FOR ALTERNATES? MOST BOARDS OF SUPERVISORS CONSIST OF FIVE (5) MEMBERS. WHEN SUCH A BOARD APPOINTS TWO (2) OF ITS MEMBERS AND ONE (1) ALTERNATE TO A LAFCO COMMISSION AND ALL THREE ATTEND, A QUORUM OF THE BOARD IS PRESENT. ALTHOUGH ONLY TWO (2) CAN VOTE ON A GIVEN ISSUE, YOU WILL EXPERIENCE THE INFLUENCE OF THREE (3) MEMBERS. THIS SITUATION CAN BE PARTICULARLY IMPORTANT WHEN AN ISSUE, SUCH AS A PROPOSED DETACHMENT FROM A SPECIAL DISTRICT, INITIATED BY THE BOARD OF SUPERVISORS IS BEING CONSIDERED BY LAFCO.

2. WHY DID LEGISLATION MAKE IT SO DIFFICULT FOR SPECIAL DISTRICTS TO BE REPRESENTED ON LAFCO?

A MAJORITY OF THE DISTRICTS MUST, BY RESOLUTION, PETITION LAFCO REQUESTING REPRESENTATION, AND AGREE TO SURRENDER THEIR LATENT POWERS AND STILL LAFCO HAS TOTAL DISCRETION AS TO WHETHER OR NOT TO APPROVE THE REQUEST. OUT OF THE FIFTY-EIGHT (58) COUNTIES IN CALIFORNIA, I UNDERSTAND THAT EIGHT (8) HAVE SPECIAL DISTRICT REPRESENTATIVES ON LAFCO AND THAT IN ANOTHER THREE (3) COUNTIES, REQUESTS FOR SPECIAL DISTRICT REPRESENTATION HAVE BEEN REJECTED BY LAFCO. MY EXPERIENCE IS IN ONE OF THE THREE (3)

COUNTIES WHERE LAFCO HAS REJECTED SPECIAL DISTRICT REPRESENTATION -- VENTURA COUNTY. OUR REQUEST, BY A MAJORITY OF THE INDEPENDENT SPECIAL DISTRICTS, WAS MADE AND REJECTED, IN THE MID '70s. SINCE THAT TIME, EFFORTS TO ENCOURAGE SPECIAL DISTRICTS TO AGAIN REQUEST REPRESENTATION HAVE FAILED BECAUSE THE DISTRICTS BELIEVE THE PRICE OF SURRENDERING THEIR "LATENT POWERS" IS TOO COSTLY. THE IMPORTANCE OF REPRESENTATION, OR LACK OF IT, IS ENHANCED WHEN YOU CONSIDER THAT DURING 1986, ACCORDING TO THE VENTURA COUNTY LAFCO ANNUAL REPORT, LAFCO ACTED ON THIRTY-SEVEN (37) SEPARATE BOUNDARY CHANGES OF WHICH TWENTY-TWO (22), OR FIFTY-NINE PERCENT (59%) EFFECTED SPECIAL DISTRICTS -- SPECIAL DISTRICTS WITHOUT DIRECT REPRESENTATION.

OUR CONCERN WITH THE COMPOSITION OF LAFCO IS MAGNIFIED WHEN COUPLED WITH THE LEGISLATIVE PROVISION THAT THE COUNTY "FURNISH QUARTERS, EQUIPMENT AND SUPPLIES, AND THE USUAL AND NECESSARY OPERATING EXPENSES INCURRED BY THE COMMISSION". THIS PROVISION ALSO INCLUDES FUNDS FOR STAFF SALARIES AND FRINGE BENEFITS AND OFTEN ACTUALLY MEANS THE SHARING OF STAFF. IN FACT, THE LAW GOES ON TO PROVIDE THAT, "IF THE COMMISSION DOES NOT APPOINT AN EXECUTIVE OFFICER, THE COUNTY ADMINISTRATOR, OR IF THERE IS NONE, THE COUNTY CLERK SHALL ACT AS EXECUTIVE OFFICER FOR THE COMMISSION."

POSSIBLY, JUST POSSIBLY, THIS TYPE OF SITUATION CAN WORK SUCCESSFULLY IN LESS POPULATED RURAL COUNTIES; HOWEVER, IN A COUNTY SUCH AS VENTURA, WITH MORE THAN A HALF-MILLION PEOPLE, WITH AN EXECUTIVE OFFICER THAT MOST PEOPLE BELIEVE TO BE FULL-TIME, WITH A FULL-TIME STAFF ASSISTANT, THERE DOESN'T APPEAR TO BE ANY ACCEPTABLE REASON FOR THE LAFCO EXECUTIVE OFFICER TO ALSO SERVE AS A SENIOR ANALYST TO THE COUNTY ADMINISTRATIVE OFFICER.

THE QUESTION IS, HOW CAN LAFCO TRULY SERVE AS AN INDEPENDENT, OBJECTIVE THIRD-PARTY REVIEWER ON LOCAL AGENCY FORMATIONS, REORGANIZATIONS, BOUNDARY ADJUSTMENTS, MERGERS AND DISSOLUTIONS WITH ALL THESE BUILT-IN BIASES AND POTENTIAL CONFLICTS OF INTEREST?

I'VE ALWAYS BELIEVED THAT, "HE WHO CONTROLS THE PURSE STRINGS -- CONTROLS!" SOME SAY THAT STATEMENT IS A TRUISM.

IN TODAY'S CLIMATE OF LIMITED FINANCIAL RESOURCES FOR ALL LEVELS OF GOVERNMENT, THE BIAS APPEARS TO BE STRONGER THAN EVER.

STATUTES RELATIVE TO REVENUE DISTRIBUTION PROVIDE OTHER OPPORTUNITIES FOR THE COUNTIES AND CITIES TO REALIZE ADDITIONAL REVENUE FROM THE TAX DOLLARS THROUGH THE DETACHMENT, MERGER, REORGANIZATION AND DISSOLUTION OF SPECIAL DISTRICTS. ALL TOO FREQUENTLY THIS ADDITIONAL REVENUE APPEARS TO BE THE MOTIVATOR FOR THE PROCEEDINGS WITHOUT A GREAT DEAL OF REGARD TO CHANGES IN THE LEVEL OR QUALITY OF SERVICES PROVIDED TO THE CITIZENS AFFECTED.

I'LL GIVE YOU AN EXAMPLE. IN VENTURA COUNTY DURING THE LAST YEAR OR SO, TWO (2) CITIES HAVE DETACHED FROM THE REGIONAL SANITATION DISTRICT. THE BASIS FOR THE DETACHMENTS WAS STATED TO BE THAT THEY WERE NOT RECEIVING ADEQUATE SERVICES FROM THE TAX REVENUES RECEIVED BY THE REGIONAL SANITATION DISTRICT FROM THE PROPERTY WITHIN THE CITY BOUNDARIES. A DEBATABLE CLAIM. AT ANY RATE, THE DETACHMENTS WERE APPROVED BY LAFCO AND THE CITIES AND THE COUNTY DIVIDED THE TAX REVENUES BETWEEN THEMSELVES.

APPARENTLY THE COUNTY REALLY LIKED THE IDEA, AND NOW IT HAS PROPOSED THE DETACHMENT OF ALL THE UNINCORPORATED AREA OF THE COUNTY FROM THE REGIONAL SANITATION DISTRICT. AGAIN, MONEY APPEARS TO BE THE MOTIVATOR. ALTHOUGH THE COUNTY IS DOING SOMETHING A LITTLE DIFFERENT, IN THE FIRST INSTANCE THE CITIES ACCEPTED THE DOLLARS WITHOUT PROVIDING ANY ADDITIONAL SERVICE WHILE THE COUNTY HAS ESTABLISHED A DEPARTMENT TO STUDY LAND FILLS FOR SOLID WASTE DISPOSAL; HOWEVER, THAT IS ONLY A SMALL PART OF THE TOTAL SERVICES OFFERED BY THE REGIONAL SANITATION DISTRICT WHICH IS BEING CRIPPLED BY THE DETACHMENTS.

THE VAST POWER THAT IS PLACED IN LAFCO BECOMES EXTREMELY IMPORTANT WHEN YOU HAVE A BODY THAT HAS THAT MUCH POWER. IT IS EXTREMELY FRIGHTENING TO PEOPLE WHEN A BODY HAS "LIFE-AND-DEATH" CONTROL OVER OTHER AGENCIES. IT IS ESPECIALLY BAD WHEN THAT AGENCY IS SET UP IN A WAY THAT DOESN'T ENSURE OBJECTIVITY AND IMPARTIALITY.

DURING RECENT YEARS, NOT ONLY HAS THE AVERAGE CITIZEN LOST CONFIDENCE IN ALL LEVELS OF GOVERNMENT; BUT BECAUSE OF SITUATIONS SUCH AS THE ONE JUST CITED, THE CONFIDENCE AND TRUST OF ONE ENTITY OF GOVERNMENT IN OTHER ENTITIES OF GOVERNMENT HAS ALSO DRASTICALLY DECLINED.

IN SUMMARY, I BELIEVE THERE IS ONE OVERRIDING CONCERN WITH LAFCO. THAT THERE IS A STRONG LAFCO BIAS IN FAVOR OF COUNTY GOVERNMENT. REAL AND POTENTIAL "CONFLICTS-OF-INTEREST" ARE THE RESULT ON THE PART OF BOTH THE COMMISSION AND STAFF. CHANGE IS NEEDED IN TWO MAJOR AREAS -- THE SOURCE OF LAFCO FUNDING AND THE COMPOSITION AND SELECTION OF THE COMMISSION.

BECAUSE THE STATE CREATED LAFCO TO BE AN OBJECTIVE THIRD PARTY TO REVIEW ORGANIZATIONAL AND JURISDICTIONAL ISSUES OF LOCAL GOVERNMENT, IT IS RECOMMENDED THAT THE STATE CONSIDER FUNDING LAFCO. WITH REGARD TO THE SELECTION OF LAFCO COMMISSIONERS, THE BEST AND FAIREST METHOD OF SELECTION WOULD BE THROUGH THE GENERAL ELECTION PROCESS.

YOUR CONSIDERATION OF THESE ISSUES IS RESPECTFULLY REQUESTED.

THANK YOU.

JERRY GLADDEN
GENERAL MANAGER
RANCHO SIMI RECREATION AND PARK DISTRICT

104

City of West Hollywood



November 24, 1987

City Council

Alan Viterbi
Mayor
Helen Albert
Mayor Pro Tempore
John Heilman
Abbe Land
Stephen Schulte

Dear Senator Bergeson:

I understand that you are holding hearings on Local Agency Formation Commissions (LAFCOs) and their relationship to newly incorporated cities. I want to share with you both my personal experience and the experience of our newly incorporated city.

Our city incorporated in November 1984 amid a great deal of media attention and publicity. Throughout the process leading up to incorporation, the staff of the Los Angeles LAFCO was extremely helpful and professional. In particular, Mrs. Ruth Bennell spent countless hours with members of the incorporation committee answering questions and providing information. She was always willing to listen as the committee provided additional facts for her to consider when making her recommendation to the LAFCO board. Even when she disagreed with the incorporation committee, her comments were always professional and instructive.

After the incorporation proposal was approved by the voters, Mrs. Bennell and her staff continued to provide assistance to the new city and new city council. Her assistance was invaluable in ensuring the smoothest possible transition from county government to cityhood. Shortly after we were elected as the first city council, Mrs. Bennell arranged a meeting for us with all of the key county staff people. She provided us with names of several retired city managers who might be willing to serve as an interim city manager while we recruited a permanent staff. She put us in touch with some of the key law firms that represent cities so that we could be prepared with a city attorney when we were sworn in to office. In short, Mrs. Bennell and her staff played an integral role in our first steps as a fledgling city.

I hope these remarks will be helpful to you in your deliberations. Thank you for your consideration.

Very truly yours,

John Heilman
Councilmember

JH:rt

Law Offices of

HELM & LEMIEUX
A PROFESSIONAL CORPORATION

WAYNE K. LEMIEUX

OF COUNSEL
RICHARD HAMLISH

141 DUESENBERG DRIVE, UNIT 5
WESTLAKE VILLAGE, CALIFORNIA 91362-3416
(805) 495-4770
(818) 448-8128

November 24, 1987

The Honorable Marian Bergeson
Chairwoman
Senate Local Government Committee
140 Newport Center Dr. #120
Newport Beach, CA 92660

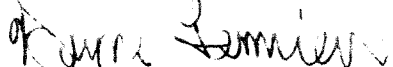
Because our firm represents 17 local public agencies, we are particularly interested in your inquiry into the workings of the Local Agency Formation Commissions. The geographic spread of our clients allows us to deal with LAFCO in Kern, Ventura and Los Angeles Counties. We have represented the proponents of the formation of special districts and the incorporation of cities. Most of our LAFCO work involves annexations and detachments. I also have an academic interest in the workings of LAFCO. The subject of governmental organization and reorganization is a prominent part of the curriculum in my class in land use and development, taught at the Pepperdine University School of Law.

Most of my experience in governmental organization and reorganization involves dealings with the Los Angeles County LAFCO over the past fourteen years. During that time, I have found the commission and staff to be consistent, competent, courteous and helpful. Although we have not always agreed, our disagreements have always been on points over which reasonable persons may differ.

From time to time, laws relating to governmental organization and reorganization will require amendment. For example, provisions of the Revenue and Taxation Code calling for negotiated reallocation of property tax upon governmental reorganization do not operate efficiently or fairly. However, any wholesale amendment to the Cortese-Knox Act, particularly as administered in Los Angeles, Kern and Ventura Counties, would not improve governmental organization and reorganization processes and would hold every prospect of damaging a well-working system.

Thank you for the opportunity to address you in this matter.

HELM & LEMIEUX


Wayne K. Lemieux

WKL/mo

SENATOR M. BERGESON, CHAIRMAN
SENATE COMMITTEE ON LOCAL GOVERNMENT
ROOM 2085-STATE CAPITOL
SACRAMENTO, CA, 95814

12-04-87

SUBJECT; Testimony on new cities and land use

As a regional planner for the Los Angeles County Department Of Regional Planning for more than 15 years, I have acquired some insight into some of the problems facing many of the new cities and their relationship with county government.

My suggestions for statutory changes are as follows:

01) INDEPENDENT LAFCOs-The state is to establish independent LAFCOs. Continue to require all counties to fund but eliminate County Board Of Supervisors and City Councilmen from holding positions on LAFCOs.

02) MORATORIUM-In land use situations involving incorporations and annexations, A moratorium for zoning and subdivision where vested rights have not occurred, shall be enacted. Vesting to mean, prior to incorporation and after an approved conditional tentative map has been complied. No general plan amendments are to be initiated during the moratorium period.

03) HALTING A PROJECT-An inadequate EIR and/or inadequate subdivision improvements is/are to be a basis for halting a project. Also when a series of parcel maps have been approved by the County and where prima facie evidence indicates that a full subdivision tract map and its subdivision improvements are needed. (Illegal subdivision using parcel maps as a form dividing land and bypassing the expense of full subdivision improvements.

04) NO LIABILITY TRANSFER-Any liability for the failure of the county to enforce the California Subdivision Map Act not be transferred to the city and any damages resulting from failure to enforce remain collectable from the county.

05) Any county-developer Development agreement be null and void unless such agreement has project completion 80% physically complete. In the event a lesser percentage occurs, the city can make further demands, if incorporation has occurred.

POLICY ISSUE recommendations

I recommend the following:

01) I recommend the legislature change its current policy and give an independent LAFCOs the power to determine which county land use decision a new city must honor when not directed by state law.

02) There should be a moratorium on county land use approvals (zoning and subdivision) during the incorporation process.

03)The moratorium should commence on the petition step of the incorporation process.

PERSONAL EXPERIENCE

My personal experience has revealed shoddy planning practices with Los Angeles County which has been a major reason for various communities desiring to incorporate. Also the influence of the County Board Of Supervisors and tax revenue relationshi constitute a conflict of interest and should be eliminated.

Thank You for the opportunity to present this information to you,

Steve Buscaino
Steve Buscaino
16666 Addison St.
Encino, Ca, 91436



California Building Industry Association

1107 - 9th STREET, SUITE 1060 • SACRAMENTO, CA 95814 • Phone (916) 443-7933

December 10, 1987

Senator Marian Bergeson,
Chairman of the Senate
Local Government Committee
and members of the Committee

Senator Leroy Greene,
Chairman of the Senate Housing and
Urban Development Committee and
members of the Committee

Upon behalf of the California Building Industry Association, I request these remarks be made part of the proceedings of the hearing on "New Cities and Land Use."

A Better Vesting Concept Would Minimize The Problems

The California Law on vested rights described in the Staff Background Report is accurate. The court's narrow view of a "permit" is the heart of the problem. It will be the infrequent case where the issue will be the amount of the work or the commitment of financial resources.

The permit problem is the series of governmental approvals required to have a successful development under the state's comprehensive planning laws. The developer/builder can not proceed to the next approval until the preceding approval is obtained. To do that requires expenditure of substantial sums and substantial work which is rarely on the site. This work is the plans and drawings of engineers and architects to show the public agency the nature and scope of the proposed development so as obtain that agency's approval. When that is done the development team moves to the next public agency and repeats the process again. The land use development process has evolved into a highly regulated regimen. The era is long gone when land development and a building permit are synonymous.

What is needed is a more realistic vesting concept to be in accord with the process this state has created to regulate and control land development. That more realistic concept would recognize an approval as the equivalent of a "permit". However, this concept would limit the vesting to that which would be involved in the approval. For example, if the property is zoned for single family homes on 6,000 square foot lots (that is seven units to the acre), a tentative map has been approved for 70 lots on a 10 acre site, and there is an approved improvement plan showing the public facilities (roads, utilities etc.) and the detail of 70 lots, then enough has been done to vest the right to build 70 single family homes. Other approvals may be needed before construction starts, but it is known at this time the ten acre site will be a 70-unit residential subdivision and that decision is not to be revisited. It is clear from these facts what kind of development has been approved, substantial work has been done in reliance of the approval and substantial financial resources committed to the approval. Yet, under the current California law

December 10, 1987
Senate Local Government and
Housing and Urban Development Committees

there would be no vested right except as to just those 70 houses which were under construction after obtaining building permits. This is a totally unrealistic understanding of the real world of land development under existing state law.

A vesting concept recognizing the impact of a highly controlled and regulated land use planning process would resolve many of the issues which plague the incorporation of new cities and the annexation of new areas to existing cities.

Everyone will recognize that the antidotal experiences related in the Staff Report by planning directors of a few new cities means a perfect system can not exist unless all parts of the state were put in to a city. CBIA does not advocate that solution but it would solve all the incorporation and annexation problems.

Create A "Constitution" With Rights

The staff report makes reference to the court's oft repeated statement the general plan is the constitution for local development. (See Staff Report page 13, paragraph 4) From the development industry's perspective, it is very difficult to understand what kind of constitution is created by the general plan. It does not create the kind of certainty of approval that meeting the requirements of the law assures the developer. Before any precise development can occur the zoning must be consistent with the general plan in all jurisdictions except charter cities other than Los Angeles and a subdivision map must be consistent with the general plan. If all that consistency is in order, that is no assurance a project will be approved at the allowed density under the general plan. Indeed, experience shows this "constitution" produces the opposite effect.

In fact, the ad hoc nature of the land approval process is illustrated by the Staff Report description of the negotiations between Solana Beach and the hotel developer and Solvang and a home builder which reduced a 118-unit subdivision to 97 and decided to control the selling prices of 17 of the 97 units.

The general plan is a strange "constitution." It ought to impart certainty to those who rely on it as it is the creation of the government. In practice, its use is to say "No" to projects which do not follow the general plan and to invalidate a "Yes" (project approval) if the "constitution" is not followed by the approving agency. Those uses of the "constitution" are understandable. Yet, to conform to the general plan and the applicable law does not give the property owner a right to a "Yes."

Don V. Collin, Senior Staff Vice-President and General Counsel