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8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

9 MENLO PARK ANNEXATION COMMITTEE,)
an unincorporated association,) No. 261398
10 ARN CENEDELLA, HOWARD VAN JEPMOND)
and SANDRA ROCKHILL,) INTERVENER'S POINTS
11) AND AUTHORITIES IN
Petitioners,) OPPOSITION TO PETITION
12) FOR WRIT OF MANDATE
v.)
13) Date: April 5, 1982
LOCAL AGENCY FORMATION COMMISSION) Time: 9:00 a.m.
14 OF SAN MATEO COUNTY and THE BOARD) Est. Time: 20 minutes
OF SUPERVISORS OF SAN MATEO COUNTY,) Dept: Judge Cohn
15)
Respondents,)
16)
and)
17)
EAST PALO ALTO CITIZENS' COMMITTEE)
18 ON INCORPORATION,)
19 Intervener.)
20)

21 INTRODUCTION

22 The San Mateo County Local Agency Formation Commission
23 (LAFCO) and the San Mateo County Board of Supervisors have
24 approved an election to determine whether East Palo Alto should
25 be incorporated as a city. The election is scheduled for
26 April 13, 1982.

27 These decisions have been challenged by the Menlo Park
28 Annexation Committee (MPAC), which claims that LAFCO did not

1 prepare an EIR for one stage of its proceedings and that LAFCO's
2 approval of incorporation was not supported by substantial
3 evidence. The East Palo Alto Citizens' Committee on Incorpora-
4 tion (EPACCI), an association of residents in East Palo Alto, has
5 intervened to support the decisions approving incorporation.

6 EPACCI will show that MPAC is relying on fiscal data which
7 was later conceded to be wrong by its author, Angus McDonald;
8 that LAFCO's decision was supported by substantial evidence; and
9 that LAFCO did prepare an EIR. Therefore, MPAC's petition should
10 be denied.

11 MPAC has set this matter for a hearing without providing
12 the court with a complete record of the proceedings below.
13 EPACCI has made efforts to complete the record, but has been
14 unable to do so, and objects to proceeding without the complete
15 record.

16 Missing from the record is Resolution No. 639, whereby
17 LAFCO made the decision challenged by MPAC. That resolution
18 contains the findings in support of LAFCO's decision to assign a
19 sphere of influence to a proposed new city of East Palo Alto.
20 EPACCI has made arrangements for LAFCO to supply the court with
21 that resolution, to be numbered pages 1933-1946. A copy is
22 attached hereto.

23 Also missing are the minutes of the Board of Supervisors'
24 hearings on December 9 and 21, 1981, at which the Board approved
25 an incorporation election. Those minutes show that LAFCO's
26 consultant, Angus McDonald, admitted that the financial informa-
27 tion he supplied earlier was incorrect and that the correct
28 information supported the arguments of the proponents of

1 incorporation. MPAC has based its whole case on McDonald's
2 earlier incorrect data. The Board's minutes support EPACCI's
3 position that there was substantial evidence, believed by LAFCO,
4 that incorporation could succeed financially. Therefore, EPACCI
5 requests that those minutes be provided before a hearing on
6 MPAC's petition.

7
8 PROCEDURAL REVIEW OF THE ACTIONS OF LAFCO
9 AND SAN MATEO COUNTY

10 The actions of LAFCO and the Board of Supervisors on
11 incorporation were taken in separate proceedings which are
12 governed by distinct standards. It is useful to clarify the
13 legislative actions taken at these separate proceedings.

14 Although incorporation of East Palo Alto has been an issue
15 for some time, the first proceeding which is germane to this
16 litigation is LAFCO's determination of a "sphere of influence"
17 for East Palo Alto. In making this determination, LAFCO is
18 acting pursuant to its authority under the Knox-Nisbet Act
19 (Government Code §54773, et seq.) The standards which must guide
20 LAFCO in the assignment of spheres of influence are set forth in
21 Government Code §54774. A sphere of influence determination is a
22 plan for the "probable ultimate physical boundaries and service
23 area of a local governmental community" (Government Code §54774).
24 In the case of East Palo Alto, this assignment of a sphere of
25 influence is a determination of whether the probable ultimate
26 city boundaries of Menlo Park or Palo Alto would include the
27 presently unincorporated area of East Palo Alto or whether a new
28 city should be planned for the area. The determination of sphere
of influence is important because it is a factor which LAFCO must

1 consider when it exercises its authority to approve annexation or
2 incorporation (Government Code §54796).

3 In this case, LAFCO determined after an initial study
4 (R. 7) that an environmental impact report (EIR) must be pre-
5 pared. The hearings on the sphere of influence EIR and on the
6 sphere of influence determination itself were conducted by LAFCO
7 on the same dates. LAFCO opened these hearings on August 5,
8 1981, and held hearings August 9, 1981, September 16 and 21,
9 1981, and October 15, 1981. On September 16, 1981, LAFCO certi-
10 fied the EIR as final and complete and prepared in accordance
11 with CEQA. On October 21, 1981, LAFCO adopted Resolution No. 639
12 (CR 1933, et seq.) assigning a sphere of influence for most of
13 East Palo Alto to a newly formed city. A small corner of East
14 Palo Alto, which directly abuts Menlo Park, was assigned to the
15 sphere of influence of Menlo Park. This area is north of Euclid
16 and west of the Bayshore Freeway. The map on the following page
17 shows the areas and their sphere of influence determination.

18 This decision by LAFCO did not actually approve either
19 incorporation or annexation. Such approvals could only occur in
20 subsequent proceedings. In fact, sphere of influence assignments
21 often precede annexations by several years and LAFCO's own
22 guidelines establish that sphere assignments are generally for a
23 twenty year time frame (R. 342).

24 In this case, however, separate proceedings to consider
25 incorporation of East Palo Alto were instituted almost immedi-
26 ately. EPACCI had filed a petition seeking incorporation of East
27 Palo Alto pursuant to the provisions of the District Reorganiza-
28 tion Act of 1956 (Government Code §56000, et seq., hereafter

1 referred to as the DRA, R. 613). Pursuant to the DRA, incor-
2 poration must first be approved by LAFCO, Government Code §56250,
3 et seq. If LAFCO adopts a resolution making determinations to
4 approve incorporation, then the proposed incorporation (which in
5 this case included the reorganization of several special dis-
6 tricts) must be considered by the Board of Supervisors, Govern-
7 ment Code §56430, et seq.

8 In this case, LAFCO conducted a hearing to consider the
9 proposed reorganization and incorporation on November 16, 1981.
10 At the conclusion of those hearings, LAFCO adopted Resolution
11 No. 640, making various determinations and approving incorpora-
12 tion exactly in accordance with the boundaries established by the
13 sphere of influence decision (R. 1778).

14 Subsequently, the Board of Supervisors conducted hearings
15 under the DRA on December 9, 1981, and December 21, 1981. The
16 Board unanimously adopted a resolution approving the incorpora-
17 tion and ordered an election (R. 1925, et seq.) Presently, the
18 question of incorporation will be considered by the voters of the
19 area at an election on April 13, 1982.

20 Thus, there were three distinct, though interrelated,
21 hearings leading to approval of incorporation: the sphere of
22 influence hearings before LAFCO; the DRA hearings before LAFCO,
23 and the DRA hearings before the Board of Supervisors.

24 Apparently the legal attack mounted by MPAC is focused as
25 follows: First, MPAC claims that the sphere of influence deter-
26 mination by LAFCO is not supported by substantial evidence of
27 fiscal feasibility; second, MPAC claims that the LAFCO approval
28 of incorporation at the DRA hearing is invalidated by failure to

1 consider an EIR.

2 STANDARD OF REVIEW

3 LAFCO Has Broad Discretionary Powers

4 The legislature's purpose in adopting the Knox-Nisbet Act
5 was to vest LAFCOs with substantial authority and discretion in
6 reviewing proposals. The legislature provided LAFCOs with broad
7 objectives and detailed guidelines to be considered in the
8 exercise of their discretion, Tillie Lewis Foods Co. v. City of
9 Pittsburg, 52 Cal.App. 3d 983, 124 Cal.Rptr. 698 (1975).

10 In making a sphere of influence decision, LAFCO is
11 required to consider the factors set forth in Government Code
12 §54774, and, under that section, may consider other factors.
13 However, having considered those factors, LAFCO is not required
14 to make a particular decision. It is entitled to exercise its
15 discretion.

16 In the case at bar, LAFCO did consider all of the factors
17 under §54774, as well as the fiscal issue raised by MPAC. MPAC
18 does not claim that LAFCO failed to consider those factors.
19 Instead, MPAC argues that LAFCO should have made another
20 decision. However, LAFCO was entitled to make a decision in the
21 exercise of its discretion, and was not compelled to make the
22 decision MPAC would have preferred.

23 The plaintiffs in Bozung v. LAFCO, 13 Cal. 3d 263, 118
24 Cal.Rptr 249 (1975), tried to make the argument which MPAC is
25 making here. In Bozung, the plaintiffs challenged a LAFCO sphere
26 of influence decision, claiming it created "urban sprawl" in
27 violation of Government Code §54774, which provides, "Among the
28 purposes of a local agency formation commission [is] the

1 discouragement of urban sprawl..." The California Supreme Court
2 stated,

3 Again plaintiffs misunderstand the thrust of Knox-
4 Nisbet. One of the purposes of a LAFCO is "the dis-
5 couragement of urban sprawl." (Gov. Code §54774).
6 However, nothing in Knox-Nisbet orders LAFCO to prohibit
7 it at all costs. LAFCO is an agency with large dis-
8 cretionary powers. The mere fact that a particular LAFCO
9 decision, legally arrived at, permits or results in
10 further urban sprawl, does not give the courts the right
11 to assume the obligations which the Legislature has
12 entrusted to LAFCO. (13 Cal. 3d at 288, 118 Cal.Rptr. at
13 266.)

14 The plaintiffs in Bozung also challenged the sphere
15 decision because it created "wall-to-wall cities". The
16 California Supreme Court held,

17 The point has no merit. There is simply nothing in
18 Knox-Nisbet which positively enjoins wall-to-wall cities
19 in a county if development is in accordance with the
20 safeguards built into Knox-Nisbet and CEQA leads to such a
21 result. What the legislation does seek to accomplish is
22 that at every step along the way the public agencies to
23 whom it is addressed keep the enumerated considerations in
24 mind. (13 Cal. 3d at 288, 118 Cal.Rptr. at 266.)

25 In the case at bar, the evidence is overwhelming that
26 LAFCO considered all of the factors enumerated in §54774.
27 Additionally, LAFCO spent a great deal of time considering the
28 fiscal issue complained of by MPAC. Even a cursory review of the
minutes of the sphere hearings and of the evidence presented to
LAFCO reveals that LAFCO complied with the Act by considering
both the factors listed in the statute and the additional finan-
cial issue. Since LAFCO did keep the enumerated considerations
in mind, it cannot be compelled to arrive at a particular
decision.

29 ///

30 ///

1 The Substantial Evidence Test Applies

2 MPAC can only succeed in its attempt to void these
3 thorough and comprehensive proceedings if it can meet two tests.
4 It must show first that LAFCO prejudicially abused its discre-
5 tion, and second, that any "defect, error, irregularity or
6 omission in any act, determination or procedure" of LAFCO
7 "adversely and substantially" affected someone's rights, Govern-
8 ment Code §54775.2.

9 In order to meet the first part of the test, MPAC must
10 show a prejudicial abuse of discretion, defined in the Act as a
11 decision "not supported by substantial evidence in light of the
12 whole record", Government Code §54775.2. The substantial
13 evidence test was applied in both Meyers v. LAFCO, 34 Cal.App. 3d
14 955, 110 Cal.Rptr. 422 (1973), and in City of Santa Cruz v.
15 LAFCO, 76 Cal.App. 3d 381, 142 Cal.Rptr. 873 (1978).

16 In Meyers, the plaintiffs claimed that LAFCO's annexation
17 decisions were not supported by substantial evidence. Although
18 the Meyers court proceeded under CCP §1094.5, while the case at
19 bar is proceeding under CCP §1085, the substantial evidence test
20 applies to both. In Meyers, the court said, "In reviewing the
21 decision of LAFCO...the trial court and this court are bound by
22 the substantial evidence rule", 34 Cal.App. 3d at 961, 110
23 Cal.Rptr at 426. The court further held,

24 While there is some conflict in the evidence on some of
25 the issues before LAFCO, there is substantial evidence to
26 support its conclusions on the issues it was authorized to
27 consider. This court's power begins and ends with that
28 determination. We have no authority to reweigh the
evidence. (Meyers, Id.)

In City of Santa Cruz, supra, the court was less clear

1 about the standard it employed. However, the court appears to
2 have applied the substantial evidence test. The court stated,

3 From the whole record we conclude that [LAFCO's] deter-
4 minations were neither "arbitrary" nor "capricious"....
5 Applying the substantial evidence rule (see Green Trees
6 Enterprises, Inc. v. Palm Springs Alpine Estates, Inc., 66
7 Cal. 2d 782, 784-785, 59 Cal.Rptr. 141, 427 P.2d 805), we
8 find abundant evidence, presumably believed by the
9 superior court, which adequately supported LAFCO's deter-
10 minations. It is of no consequence that LAFCO, believing
11 other evidence and drawing different inferences, might
12 have come to other conclusions. (76 Cal.App. 3d at 393,
13 142 Cal.Rptr. at 880.)

14 Thus, in reviewing the record before LAFCO on the sphere
15 decision, the court must determine whether there is substantial
16 evidence to support LAFCO's assignment of East Palo Alto to an
17 incorporated city of East Palo Alto. The fact that there may be
18 some contradictory evidence in the record is irrelevant, as long
19 as there is substantial evidence to support LAFCO's decision.

20 It should be noted that the record is not required to
21 contain substantial evidence on the fiscal issue (although the
22 record does contain such evidence) -- the test is whether there
23 is substantial evidence in the record as a whole, considering all
24 of the factors involved.

25 MPAC Must Show Adverse And Substantial Effects On Its Rights

26 MPAC has ignored the provisions of Government Code
27 §54775.2, which provide that no decision of LAFCO shall be
28 invalidated unless someone's rights are substantially and
adversely affected. MPAC has made no argument on this point at
all.

MPAC claims that there was not substantial evidence to
show that a city of East Palo Alto would succeed financially. It
relies on data from the McDonald Study to support its claim.

1 However, that data was conceded by Mr. McDonald himself to be
2 incorrect (R. 1838). The correct figures support the claims of
3 the proponents of incorporation that an incorporated city could
4 be a financial success (see discussion infra).

5 MPAC impliedly concedes that the correct data, in combina-
6 tion with the other fiscal data, provide substantial evidence of
7 fiscal success. This implicit concession is found in MPAC's
8 failure to challenge the decision of the Board of Supervisors
9 approving incorporation. That decision considered the correc-
10 tions to the McDonald data.

11 Thus, MPAC's failure to persuade LAFCO of the value of the
12 McDonald data has not substantially or adversely affected any-
13 one's rights. That data was incorrect. MPAC therefore cannot
14 meet the second part of the standard of review set forth in
15 Government Code §54775.2.

16 SUBSTANTIAL EVIDENCE SUPPORTS LAFCO'S SPHERE DECISION

17 The problem presented by the proposed incorporation of
18 East Palo Alto is subtle and complex. It is a community with a
19 long history of problems, many of them serious problems. Simul-
20 taneously, it possesses enormous potential because of its large
21 areas of underdeveloped land in the heart of the San Francisco
22 Peninsula. Despite substantial efforts made over the last 20-30
23 years by the County government, the community has been notably
24 unable to achieve the successful suburban development character-
25 ized by its neighboring cities. In the hearing before LAFCO and
26 the Board of Supervisors, it was obvious that the policy makers
27 wanted to take some action which could reasonably break the
28 history of failure.

1 As is so often the case on difficult policy problems, each
2 of the apparent alternatives has significant drawbacks. A
3 complete examination of the record shows how carefully LAFCO and
4 the Board of Supervisors weighed the realistic options and made
5 their choice for a partial incorporation. Although fiscal
6 viability is obviously a key issue, several other crucial con-
7 siderations were also balanced in the policy equation. These
8 included the feasibility of implementing various alternatives,
9 the impact of direct local control on policy success and fiscal
10 feasibility. MPAC has focused its argument on one important but
11 narrow question -- fiscal feasibility. Although an examination
12 of the record shows that the approved incorporation is fiscally
13 feasible, it will also show that the policy makers approached the
14 problem broadly and considered the full array of interdependent
15 social, economic and governmental issues as required by the
16 Knox-Nisbet Act.

17 The basic study for LAFCO was prepared by Angus McDonald
18 and Associates and is entitled "Sphere of Influence for East Palo
19 Alto". (R. 1129, et seq., hereafter referred to as the McDonald
20 Study.) The McDonald Study analyzes the main alternatives
21 available for East Palo Alto. One alternative, assigning a
22 sphere of influence to the city of Palo Alto was considered but
23 quickly rejected as infeasible. Annexation to Palo Alto was not
24 realistic because of the enormous complexity of changing County
25 boundaries (R. 1140, 1164-1165) and because annexation would be
26 fiscally negative for Palo Alto (R. 1140, 1162-1164, 1238-1251).

27 Assignment of a sphere of influence to Menlo Park was an
28 intensely debated alternative. The McDonald Study found that

1 annexation was fiscally feasible (R. 1158-1161, 1211-1134). The
2 LAFCO staff believed that Menlo Park had a capable, experienced
3 city government and the staff recommended annexation to Menlo
4 Park (R. 1418-1432). However, it quickly became apparent that
5 annexation to Menlo Park was not implementable in the reasonably
6 near future. Annexation to Menlo Park would have to be approved
7 by the voters of both Menlo Park and East Palo Alto because the
8 proposed annexed area contains more than 50% of the population of
9 the proposed annexing area (R. 279, Government Code §35231(b)).
10 There was strong opposition to annexation of East Palo Alto by
11 neighborhood groups in Menlo Park R. 364, 1354, 1456). The Menlo
12 Park City Council presented LAFCO with a resolution supporting
13 incorporation of East Palo Alto (R. 1452). Three members of the
14 Menlo Park City Council presented LAFCO with identically worded
15 letters opposing annexation of "all or any part" of East Palo
16 Alto to Menlo Park (R. 1473-1475).

17 The opposition to annexation reflected not just temporary
18 political expressions, but underlying problems and differences
19 between the communities. The Mayor of Menlo Park and other
20 citizens were concerned that budget reductions were already
21 forcing service reductions within the existing city of Menlo Park
22 (R. 1452, 1354). Annexation might force further service reduc-
23 tions in Menlo Park (R. 1354). A study by S.R.I. International
24 found that Menlo Park would probably have to reduce service
25 levels if East Palo Alto were annexed to Menlo Park (R. 1495).

26 Additionally, there was testimony to the Commission that
27 the two communities had separate and distinct interests. Menlo
28 Park was an affluent, largely developed community whose major

1 goals are the maintenance of existing quality and improvement of
2 its downtown commercial area (R. 1434). In contrast, East Palo
3 Alto has an unusually high incidence of poverty; it is sparsely
4 developed and its major goals are the attraction and management
5 of large new developments (R. 1434). Menlo Park had omitted the
6 East Palo Alto area from its general plan in 1974 (R. 1423).

7 Thus, despite the many reasons for considering annexation
8 to Menlo Park, it was an infeasible alternative in the reasonably
9 near term. The Commission specifically found that: "...annexa-
10 tion to Menlo Park or Palo Alto was not politically feasible
11 either in the short run or for the foreseeable future" (R. 1934).
12 MPAC has not challenged this determination; and in any event, it
13 is supported by substantial evidence.

14 Another alternative considered was continuation of the
15 status quo. LAFCO could have maintained its sphere of influence
16 designation for East Palo Alto as "lands under study".

17 The major problem with the status quo alternative is that
18 it is the only alternative which has demonstrably failed. The
19 McDonald Study noted the failure of County government, despite
20 its numerous efforts, to achieve successful economic development
21 (R. 1150-1152). In fact, the McDonald Study states: "In the
22 opinion of the consultants, the status quo is a significant
23 impediment to achieving the development potential of East Palo
24 Alto." (R. 1151) The Assistant County Manager acknowledged in
25 his testimony that the County "has not done that good of a job of
26 managing in East Palo Alto" (R. 1616). The LAFCO Executive
27 Director observed, under County administration, in the last ten
28 years a shopping center has closed, a bank has closed and the

1 sales tax revenue per capita has declined and the crime rate has
2 increased (R. 1607).

3 In addition, the future administration of the area under
4 the County did not look bright. The County currently subsidizes
5 East Palo Alto by about \$500,000.00 from general fund revenues
6 (R. 1551). A memorandum to LAFCO from the County Manager's
7 Office pointed out increasing pressure from state and federal
8 budget reductions will make it "increasingly difficult" to
9 maintain this discretionary subsidy. More of the County's
10 general funds would probably need to be shifted to the County's
11 mandated health, welfare and justice functions (R. 1551).

12 Testimony presented by EPACCI pointed to a fundamental
13 problem with County administration: the structure of decision
14 making. County Supervisors must address a great many issues
15 county-wide. Their elections do not turn on the success or
16 failure of their policies in East Palo Alto. Under County
17 administration, it is probably impossible to deny election to a
18 Supervisor solely because of the failure of policy decisions in
19 East Palo Alto. The lack of direct accountability, in addition
20 to the fact that the Supervisors must spend a great deal of time
21 and attention on issues entirely unrelated to East Palo Alto,
22 makes it more difficult to find successful solutions to complex
23 problems and to break the cycle of failure (R. 1436). A similar
24 observation was made in the McDonald Study. Noting the decline
25 in federal funds to local governments, the McDonald Study
26 observes that local governments need to succeed by increasing
27 reliance on a "public-private partnership". A one-stop decision
28 making structure where the private sector can determine what the

1 rules are, is essential to successful economic development
2 (R. 1142-1143).

3 The resolution adopting the sphere of influence made
4 specific findings about the status quo alternative,

5 ...Despite significant good faith efforts, San Mateo
6 County has been unable to generate the economic develop-
7 ment needed by the community.... Given the lack of
8 success by San Mateo County and given the lack of feasi-
9 bility of annexation to Menlo Park, the best possibility
10 for economic development and alleviating isolation is
11 through incorporation of East Palo Alto. (R. 1934.)

12 The primary mission of San Mateo County, by law, is the
13 delivery of health, welfare and justice functions.
14 Protection of housing stock and generating economic
15 development are appropriately urban functions. Remaining
16 unincorporated will not generate the needed protection for
17 housing stock or the needed generation of commercial/
18 industrial development. (R. 1935.)

19 The Commission finds that the provision of police
20 services through San Mateo County has not successfully
21 reduced the high crime rate, however, with incorporation
22 the local police force will be directly responsible to the
23 community. Local control over police service may well
24 result in more successful efforts to reduce crime.
25 (R. 1936.)

26 Another alternative briefly considered by the Commission
27 was separating the east and west sides of the freeway, assigning
28 the West of Bayshore area to Menlo Park, and leaving the east
side "under study" or in a "holding sphere".

The rejection of that alternative was supported by clear
and substantial evidence and the findings on this subject have
not been challenged by MPAC. While annexation of the west side
to Menlo Park was fiscally feasible (R. 1392), incorporation of
the east side alone clearly was not feasible (R. 1392). With
incorporation not feasible, the east side would have faced
greater difficulties as an unincorporated area. The County would
lose the revenues available from the west side, but the costs of

1 administering the area would not proportionately decline
2 (R. 1554). Thus, the net County subsidy to East Palo Alto would
3 have to increase or there would have to be service reductions
4 (R. 1554). In addition, annexation of the east side alone to
5 Menlo Park would have been even more difficult because of nega-
6 tive fiscal impacts (R. 1141). Division of the east and west
7 also would have created an unincorporated area with a greater
8 proportion of racial minorities. EPACCI argued that division of
9 the east and west would simultaneously increase the net County
10 cost of providing the same level of service and increase the de
11 facto racial isolation of the east side (R. 1608).

12 The case for incorporation of all of East Palo Alto had a
13 great deal of attraction. If approved at election, it would be
14 implemented. The division of governmental responsibility in East
15 Palo Alto into several special purpose districts would end. The
16 Ravenswood Park and Recreation District, the East Palo Alto
17 Sanitary District, the East Palo Alto County Waterworks District,
18 the East Palo Alto Lighting District and County Service Area
19 No. 5, would all be merged into a single general purpose municipi-
20 pal government.

21 By far the most significant issue surrounding incorpora-
22 tion was the need to generate successful economic development in
23 the Community. Incorporation would create locally elected
24 officials who could be returned to office or not because of the
25 success or failure of their policies in East Palo Alto. The
26 McDonald Study noted the inability of private sector developers
27 to deal with the current two layers of government: the East Palo
28 Alto Municipal Council and the Board of Supervisors.

1 Consolidation of authority into a city council would give private
2 developers the ability to work with a single level of government
3 that had the authority to say yes or no (R. 1143). Additionally,
4 a city council would be more visible to the community than the
5 officers of the special purpose districts and, thus, the city
6 council members would presumably be more accountable (R. 1935).

7 The McDonald Study specifically found that incorporation
8 of all of East Palo Alto was fiscally feasible (R. 1157) so long
9 as the County agreed to perform certain services (R. 1179). The
10 County agreed to these points (R. 1472).

11 However, the Knox-Nisbet Act required LAFCO also to
12 consider community of interest (Government Code §54774(g)). A
13 number of the residents of the West of Bayshore area argued that
14 they possessed a greater community of interest with Menlo Park.
15 This claim was especially urged by residents of the area North of
16 Euclid, which immediately bordered Menlo Park (Map, p. 853,
17 supra). Several of the residents of this area testified to LAFCO
18 that they lived right across the street from residences which
19 were in Menlo Park (R. 1357, 1358).

20 Selection of a precise boundary between two cities always
21 creates troublesome problems. As LAFCO examined this issue,
22 Commissioner Ward, in particular, observed that the commercial
23 corridor around University Avenue made a more natural division.
24 The university area businesses were a commercial center for both
25 the east and west side of the freeway (R. 1625-1626). The
26 residences south of that commercial center were not adjacent to
27 Menlo Park and seemed to have no special community of interest
28 with Menlo Park. In addition, many of the residences in the

1 North of Euclid area were single-family dwelling units, in
2 contrast to greater residential density in the area south of the
3 university (R. 1625-1626). EPACCI argued and continues to
4 believe that the North of Euclid area has a community of interest
5 with East Palo Alto. Nevertheless, the Commission ultimately
6 determined that the North of Euclid area had a greater community
7 of interest with Menlo Park:

8 ...[T]he Commission finds that the area of East Palo Alto
9 west of Bayshore, north of Euclid Avenue, because of the
10 lack of commercial development and the lesser density of
11 population and because of the general orientation of the
12 residents of Menlo Park and because of the feasibility of
extending the services of Menlo Park, to this area, there
is a general community of interest between the area west
of Bayshore, north of Euclid Avenue and the City of Menlo
Park. (R. 1939.)

13 The Commission also found a community of interest joining
14 the remaining area:

15 ...[T]he Commission finds that there is a general commun-
16 ity of interest between the West of Bayshore Area south of
Euclid Avenue and that part of East Palo Alto which is
17 east of Bayshore. The University/Manhattan shopping area
is a commercial hub providing services for the entire area
and linking it together. (R. 1939.)

18
19 These community of interest findings required reexamina-
20 tion of the fiscal feasibility of the area left for incorpora-
21 tion. The consultant, Angus McDonald, reanalyzed his figures and
22 concluded that incorporation of the remaining area was not
23 fiscally feasible (R. 1566). This conclusion by McDonald is the
24 mainstay of MPAC's case. Although MPAC refers to a staff recom-
25 mendation on this point, the staff materials are clearly relying
26 on McDonald's analysis (R. 1556).

27 As will be seen, there was substantial evidence demon-
28 strating the fiscal feasibility of incorporating the remaining

1 area. It is, however, noteworthy that MPAC has pinned its case
2 on a conclusion which McDonald has acknowledged as erroneous.

3 The figures relied on by McDonald were budgeted estimates
4 of property tax receipts, not actual tax receipts. When the
5 actual numbers became available in hearings before the Board of
6 Supervisors, McDonald changed his recommendation:

7 Use of the actual 1980/81 experience caused a material
8 improvement in the property of a new city. The property
9 tax revenues were estimated to increase by approximately
10 \$158,000 in 1983/84 -- the first full year of city opera-
11 tion -- and to improve slightly more than this in each
12 subsequent year. As indicated in the following exhibit,
13 the city is in an approximately break even situation. The
14 annual General Fund deficit would be controllable by
15 various managerial actions under the assumptions used
16 throughout the series of analysis. (R. 1838.)

17 In any event, there was substantial evidence to support
18 LAFCO's determination of fiscal viability for incorporating all
19 of East Palo Alto except the North of Euclid area. As can be
20 seen by an examination of Table 4 of McDonald's analysis
21 (R. 1574), the general fund of the city would show a \$26,000.00
22 deficit at the end of the second year (after all interfund
23 transfers), and a \$591,000.00 cumulative deficit at the end of
24 the fourth year.

25 Of course, these estimates were based on certain assump-
26 tions. Other estimates were presented to LAFCO relying on
27 different assumptions. As can be seen, LAFCO accepted the view
28 that opportunities were available to the community to be fiscally
successful.

In order to fully understand the data, it is necessary to
review some of the premises in the preparation of the original
McDonald Study. McDonald went to each affected public agency and

1 discussed with local officials how they would provide service to
2 East Palo Alto. McDonald then based his fiscal cost estimates on
3 those discussions. Thus, when considering the Menlo Park annexa-
4 tion alternative, McDonald based his estimates for the cost of
5 police services on the fact that existing Menlo Park policy is to
6 have one police officer per car (R. 1161). In contrast, the
7 sheriff has a policy of using two officers per car (R. 1212-1217).
8 Of course, the policy alternative of a new city council could not
9 be known, so McDonald based his estimates for the incorporation
10 alternative on the assumption that two officers per car would be
11 used (R. 1174). In contrast, if the assumption is merely changed
12 to reflect the existing Menlo Park policy, the new city could
13 save \$198,000.00 per year (R. 1195, 1217, 1740). In other words,
14 the savings from this policy alternative could save over the
15 second, third and fourth years of incorporation almost enough to
16 eliminate the deficit by itself. (The County would continue to
17 provide police services for the first year of incorporation.)

18 This analysis was presented to the Commission by EPACCI
19 (R. 1359). It is severely criticized by MPAC in its brief as
20 cutting "police services in this most crime plagued area in the
21 County" (MPAC Br., p. 25).

22 However, this money saving option would result in the same
23 level of police service the community would receive if it were
24 annexed to Menlo Park -- exactly the alternative advocated by
25 MPAC. Additionally, MPAC presented no evidence whatsoever to the
26 Commission at any time about the insufficiency or disadvantages
27 one person police cars. In contrast, EPACCI presented, during
28 the Reorganization Act hearing, the Chief of Police of Menlo

1 Park, Gerald McNamara, who in his previous job as a deputy
2 sheriff, had been Station Commander in East Palo Alto (R. 1714).
3 Chief McNamara testified, according to the minutes:

4 In an area like East Palo Alto, we have 2.5 square
5 miles and generally four to five patrol cars on duty at
6 any one time. That is not a reduction of the safety level
7 of the officers. The ability to respond for cover in a
8 short time is certainly adequate. It is his opinion that
9 there are no significant differences on the level of
10 service in an area like East Palo Alto by having one
11 person per patrol car rather than two. (R. 1714.)

12 In addition, however, there were other significant options
13 available to East Palo Alto. The County had undertaken a lengthy
14 study on the fiscal impacts of new housing and other development
15 in East Palo Alto. That study by Recht Hausrath and Associates
16 was presented to LAFCO and is part of the record before the court
17 (R. 622, et seq.; hereafter referred to as the Recht Study). The
18 Recht Study performed an area-by-area analysis of public revenues
19 from property taxes, sales taxes, etc., as well as an analysis of
20 the costs (see e.g., R. 637-638, 772, et seq.) EPACCI summarized
21 the fiscal results of economic development in a chart which was
22 presented to LAFCO on August 19, 1981 (R. 1350; the chart itself
23 appears at R. 1741).

24 As the chart demonstrates, the net revenue available to
25 the city from development could range from \$1.4 million per year
26 to \$2.4 million per year, depending on the type and density of
27 development. Even if only one-tenth of this revenue, \$140,000.00,
28 were available beginning in the third year, it would make a
substantial difference in the projected deficit. MPAC criticizes
this analysis as "speculation that East Palo Alto might grow
(R. 1708), although no analysis is made of the additional costs

1 to a city if it does grow" (MPAC Br., p. 25). This criticism is
2 simply erroneous. As an examination of the chart at R. 1741
3 demonstrates, the costs of increased public services from new
4 development have been subtracted from gross revenues so that a
5 net increased revenue figure could be determined.

6 Additionally, LAFCO discussed the details of the property
7 tax transfer from the North of Euclid. If evidence could be pre-
8 sented demonstrating that those property tax revenues were in
9 excess of what was needed for the cost of services, the excess
10 amount could, by action of LAFCO, be transferred to East Palo
11 Alto (R. 1627). That amount could add \$130,000.00 to the new
12 city revenues over four years. The Commission explicitly con-
13 sidered this policy (R. 1627) and during the Reorganization Act
14 proceedings, LAFCO did in fact approve such a transfer
15 (R. 1729-1730).

16 Additionally, the McDonald Study itself noted that effec-
17 tive management of the city could result in expenditure reduc-
18 tions from his estimates of \$65,000.00 per year (R. 1154-1155).
19 Such policies could, over the four year period, save the city
20 \$195,000.00.

21 Finally, there is the peculiar fact that state subventions
22 to cities incorporated after the decennial census are based not
23 on actual population, but on the number of registered votes
24 (R. 1153). According to the McDonald Study, the subventions in
25 the case of East Palo Alto would amount to \$90.00 per registered
26 vote (R. 1153). Thus, a voter registration drive to increase the
27 number of registered voters from the current 52% of eligible
28 voters to the statewide average of 71% would increase annual

1 revenue to East Palo Alto by \$228,000.00 (R. 1359 and 1740).
2 This single source of revenue could more than eliminate the
3 projected deficit.

4 To summarize, the testimony before the Commission demon-
5 strated that there were several available avenues to eliminate
6 the projected deficit:

7	Projected Deficit	\$ 591,000.00
8	Possible Revenue Source	
	Police expenditure reductions	\$ 534,000.00
9	New development (two years)	280,000.00
	Property tax transfer	130,000.00
10	General expenditure reduction	195,000.00
	Voter registration subvention	702,000.00
11		<u>\$1,841,000.00</u>

12 Thus, it can be seen that LAFCO had a reasonable basis for
13 believing that the projected deficit could be managed. In fact,
14 the Commission specifically found:

15 However, the Commission reviewed substantial testimony
16 that was presented on the various ways that revenue could
17 be available to the community and finds that incorporation
18 of East Palo Alto with annexation of the West of Bayshore,
19 North of Euclid Avenue to Menlo Park is a fiscally viable
20 alternative. The testimony before the Commission estab-
21 lished that there are adequate sources of revenue so that
22 effective management could maintain viability of the City
23 of East Palo Alto. (R. 1938.)

24 The Commission, however, was seeking fiscal viability in a
25 long-term fundamental sense. Anyone who sees East Palo Alto with
26 its large areas of undeveloped land surrounded by the successful
27 cities of Palo Alto, Menlo Park, Atherton and Mountain View
28 cannot help but be impressed by the potential wealth of the area.
As was repeatedly emphasized in the McDonald Study, the success
of East Palo Alto in a fiscal sense depends of implementing a
successful policy of economic development (R. 1141-1142). When
LAFCO approved a partial incorporation, it not only believed the

1 city could manage its fiscal needs adequately in the short run,
2 it also believed that the long-run economic health of the entire
3 community depended on incorporation. The Commission set forth
4 its belief in the following finding:

5 Additionally, the Commission finds that the long term goal
6 of fiscal strength for the community of East Palo Alto
7 depends on the success of economic development. Based on
8 the Commission's previous finding that economic develop-
9 ment can best be achieved by the incorporation alterna-
10 tive, the Commission also finds that the goal of long term
11 fiscal strength and eliminations of revenue subsidies can
12 best be achieved by the incorporation alternative.
13 (R. 1938.)

14 As previous discussion demonstrates, improvement of the
15 community generally was the Commission's fundamental goal. It
16 reviewed options in terms of the effectiveness of the decision
17 making structure, fiscal feasibility and the general implement-
18 ability of alternatives. The Commission decision is most funda-
19 mentally judgmental in nature. There was discussion among the
20 Commission of the human energy in the community. Commissioner
21 Ward expressed his belief that "human energy channeled to the
22 right ends can make things happen." (R. 1625) Commissioner
23 Gregorio observed, "The history of people interacting must be
24 considered, not just cold numbers.... [T]he words of the statute
25 give an opportunity to make a judgment about what people are
26 capable of doing." (R. 1624)

27 In its decision, LAFCO expressly confronted the funda-
28 mental issue of its decision: the success or failure of a
community was at stake. Some alternatives for the community were
infeasible. The status quo had demonstrated its lack of success.
Yet, the potential of the community, even with its deep problems,
was apparent. The Commission was not found that incorporation

1 was fiscally feasible, it found that incorporation was the
2 community's best hope for long-term economic success.

3 No one was deceived into believing that success for East
4 Palo Alto would be easy to achieve. No one believes that any
5 public entity, the State of California or the County of San Mateo
6 will have an easy time meeting its fiscal needs for the near
7 future. However, the Commission believed, on substantial evi-
8 dence, that the cycle of failure could be broken and that success
9 could be achieved if East Palo Alto could rely on its own
10 resources and its own decision making capability.

11 Thus, it can be seen that LAFCO's decision reflects its
12 legislative duties and the broad discretion conferred upon it by
13 the Knox-Nisbet Act. However, a decision to incorporate cannot
14 be approved by LAFCO alone. The Board of Supervisors must also
15 approve it and call for an election. The fundamental question of
16 whether the community should take the risks and benefits of
17 self-government will be decided by the voters. In the election
18 campaign, the opponents may make every argument that the risks of
19 incorporation are too great. Their remedy is at the ballot box.
20 The court should not interfere in the carefully considered
21 decisions of LAFCO and the Board of Supervisors to approve the
22 incorporation election.

23 LAFCO COMPLIED WITH THE CALIFORNIA
24 ENVIRONMENTAL QUALITY ACT

25 LAFCO Considered An EIR

26 MPAC claims that LAFCO did not prepare an EIR on the
27 decision under the District Reorganization Act to approve an
28 incorporation election. However, a full EIR was prepared and

1 certified by LAFCO for the sphere of influence determination.
2 The EIR is set forth in the record (R. 141, et seq.) and the
3 minutes show that it was certified by LAFCO as "complete, final
4 and in compliance with CEQA" (R. 1448). The vice that MPAC
5 identifies is the failure to prepare a new EIR for the DRA
6 proceeding discussing the Euclid Avenue boundary configuration.

7 However, under CEQA, a new EIR was not needed by LAFCO at
8 the time of the incorporation proposal unless there were sub-
9 stantial changes in the project or there was new information that
10 could not have been previously known (Pub. Res. Code §21166, 14
11 Cal.Admin. Code §15067). The boundary configuration which uses
12 Euclid Avenue as the dividing line was selected by LAFCO at the
13 sphere of influence hearing after consideration of a full EIR.
14 There was absolutely no change whatsoever in the boundary con-
15 figuration at the time of the DRA hearing. Exactly the same
16 boundary was approved by LAFCO as had been established in the
17 sphere of influence decision.

18 MPAC does not contend that there was new information
19 available at the DRA hearing. In fact, MPAC relies on the fiscal
20 report submitted by McDonald during the sphere of influence
21 consideration (R. 1566). Since there was no change at all in the
22 project and no new information, LAFCO was entitled to rely on the
23 full EIR which had been previously considered.

24 The CEQA guidelines provide that:

25 The Lead Agency may employ a single EIR to describe
26 more than one project, if such projects are essentially
27 the same in terms of environmental impact. Further, the
28 Lead Agency may use an earlier EIR prepared in connection
with an earlier project to apply to a later project, if

1 the circumstances of the projects are essentially the
2 same. (14 Cal.Admin. Code §15068)

3 In its Resolution Making Determinations, LAFCO stated that it
4 considered the prior EIR (R. 1778) and the prior EIR discussed
5 the environmental effects of incorporation of a new city of East
6 Palo Alto (R. 144-566, esp. p. 154, 209-213, 233-278, 318,
7 320-321).

8 As the court in Simi Valley Recreation and Park District
9 v. LAFCO, 51 Cal.App. 3d 648, 124 Cal.Rptr. 635 (1975), noted,
10 not every decision of a public agency is a separate project under
11 CEQA. In this case, that is especially true since there was no
12 change in the project from the sphere of influence decision to
13 the approval of an incorporation election.

14 The Statute of Limitations To Challenge The EIR Has Expired

15 If MPAC believed that the EIR in fact prepared and in fact
16 considered by LAFCO was inadequate for failure to consider the
17 precise boundary line selected, then MPAC was obligated to
18 institute a legal challenge within 30 days of the filing of the
19 Notice of Determination (Pub. Res. Code §21167(c)). The Notice
20 of Determination was filed on November 17, 1981 (R. 1777). MPAC
21 was present at all the hearings and should have been alert to its
22 rights.

23 Even if MPAC believes that there was a substantial change
24 in the project at the time of the DRA hearings or that there was
25 sufficient new information to require a subsequent or supple-
26 mental EIR, the statute of limitations to challenge that determin-
27 ation expired 30 days after November 17, 1981 (Pub. Res. Code
28 §21167(e)).

1 Instead, MPAC tries to claim that the 180 day statute
2 applies because no environmental determination at all was made on
3 the particular boundary configuration selected (Br. 42-49).

4 It would be difficult to argue that the EIR in the record
5 was inadequate for failure to consider the specific boundaries,
6 or that a subsequent EIR should have been prepared. It is
7 impossible to argue that no environmental determination at all
8 was made or considered, in light of the lengthy document in the
9 record, LAFCO's careful identification of environmental impacts
10 and possible mitigation measures and LAFCO's repeated recitals
11 that the EIR was considered.

12 MPAC has made a strained argument about the Notice of
13 Determination. MPAC claims that (1) the Notice of Determination
14 is not a negative declaration, and (2) if it were a negative
15 declaration, it would be improper (MPAC Br., p. 36-38; 43-49).
16 This whole discussion is completely irrelevant. The Notice of
17 Determination is obviously not a negative declaration, and no one
18 has ever claimed that it is.

19 The Petitioners Are Not Entitled To Relief

20 Petitioner MPAC has not only failed to comply with the
21 statute of limitations in CEQA, but has also apparently failed to
22 comply with Public Resources Code §21167.7. That section
23 requires compliance with CCP §389.6, which requires that a copy
24 of the petition be furnished to the Attorney General within ten
25 days of the filing of the petition. PRC §21167.7 also provides,
26 "No relief, temporary or permanent, shall be granted until a copy
27 of the pleading has been furnished to the Attorney General in
28 accordance with [CCP §389.6]." No relief can be granted in this

1 case until CCP §389.6 is complied with.


2 Since LAFCO properly used the sphere EIR in the incorpora-
3 tion decision, and since MPAC has not met the filing deadline,
4 its CEQA claims must fail.

5 CONCLUSION

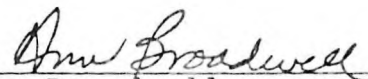
6 In conclusion, LAFCO is an agency with broad discretionary
7 powers. Its determination on the sphere of influence was
8 supported by substantial evidence, especially in view of
9 McDonald's concession that his early fiscal data was not correct.
10 LAFCO gave thorough consideration to the proposal to incorporate,
11 taking into account many factors, and its decision should stand.
12 LAFCO properly prepared and relied on one EIR for both its sphere
13 and incorporation decisions. Therefore, EPACCI respectfully
14 requests that MPAC's petition be denied.

15 Dated: April 1, 1982

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Thomas R. Adams



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