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COURT UPHOLDS OPEN SPACE DISTRICT ANNEXATION

by

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Citizens for Responsible Open Space v. San Mateo County LAFCO (Midpeninsula Regional Open Space District), 2008 WL 249775 (1st District Court of Appeal, January 31, 2008) is a recent appellate decision upholding the disputed annexation of coastal San Mateo County to the Midpeninsula Regional Open Space District (MPROSD). The case is good news for Local Agency Formation Commissions (LAFCOs) because it indicates courts review annexation challenges practically, looking for serious errors which prejudice the rights of a challenger and not for technical perfection. The case will be helpful to other legislative decisionmakers, too, by requiring judicial deference to the actions of the elected branches of government.

Under the Cortese-Knox-Hertzberg Local Government Reorganization Act under which LAFCOs operate, an annexation is approved in two steps: first, LAFCO makes a discretionary, legislative decision whether to approve the annexation and on what conditions and then LAFCO gives notice of the proposed annexation to the registered voters of the affected territory or, if there are fewer than 12 voters, to the property owners of record. If more than half of the voters or property owners protest the annexation, it is defeated. If fewer than a quarter protest, it can be approved without an election. If between a quarter and a half of the voters or property owners protest, then an election is required. In this case, just over 23% of the annexation area's registered voters filed valid protests and LAFCO therefore approved it without an election. A grass-roots group filed suit.

The appellate court first found that the exclusion of a statement of reasons from the notice of the opportunity to protest the annexation did not prejudice anyone's rights both because it was plain that there was ample public discussion of the annexation and the reasons for it and because the notice mentioned the LAFCO resolution tentatively approving the annexation, which did include a statement of reasons. The court also concluded that alleged ambiguities in the map

[1] Michael Colantuono and Holly O. Whatley of Colantuono & Levin, P.C. were retained by the Midpeninsula Regional Open Space District to draft an *amicus curiae* ("friend of the court") brief for use by the California Association of LAFCOs (CALAFCO) and the California Special Districts Association (CSDA) in this case.

of the annexation area on the notice were not sufficient to confuse the electorate as to what land was involved. Also rejected was the challengers' claim that the LAFCO could not delegate to the County Elections Division responsibility to compare protest signatures with the voter roll. So long as LAFCO reviews the Elections Division's conclusions before adopting them, it fulfilled its obligation under the statute.

Another issue was the date on which the number of registered voters in the annexation area is determined to measure the number of protests required to defeat a proposal or to require an election. The challengers argued total voters should be determined when LAFCO accepts an annexation proposal for filing; San Mateo LAFCO had used the date of the protest hearing, reasoning that voters who registered after the application was filed could protest and thus should be included in the electorate against which the size of the protest is measured. The Court of Appeal found that LAFCO had not abused its discretion in deciding to use this later date. Although, technically, LAFCOs remain free to determine on what date to measure the size of the electorate for protest purposes, the safest course will be to follow the lead of this case and to use the number registered on the protest hearing date.

Finally, the court concluded LAFCO had properly disqualified protests which listed a post office box rather than a residence address, concluding that the Cortese-Knox-Hertzberg Act, like the Elections Code, requires signatures to be accompanied by a residence address. This issue arose because the challengers circulated protest forms with only one line for the protestor's address, unlike LAFCO's protest form, which provided lines for both mailing and residence addresses, as do most elections forms.

Generally speaking, these lessons can be drawn from this case: Courts will not reverse LAFCO decisions unless a challenger proves an error occurred which "adversely and substantially affects the rights of any person" or that the decision was "not supported by substantial evidence in light of the whole record." Courts do not look for technical perfection but for meaningful compliance with the requirements of the statute so that affected voters and property owners have a practical opportunity to be heard. Courts also defer to reasonable judgments by public agencies in construing ambiguous provisions of the statues those agencies are charged to implement and allow agencies to delegate their responsibilities to other public agencies – like the County Elections Division – which have the expertise to assist them.

This is good news for public agencies of all kinds and should deter legal challenges which turn on picayune errors in complex agency actions.