

May 3, 2001 (Agenda)

Local Agency Formation Commission
105 East Anapamu Street
Santa Barbara CA 93101

LAFCO 99-20 - INCORPORATION OF THE CITY OF GOLETA
Supplemental Staff Report – Responses to Comments

Dear Members of the Commission:

RECOMMENDATION

It is recommended the Commission receive this supplemental staff report. We have not changed the recommendations for Commission action in our April 26 staff report.

DISCUSSION

The purpose of this supplemental staff report is to provide information requested by members of the Commission and to respond to comments from members of the public. The report represents the combined efforts of the Executive Officer, Legal Counsel and EPS.

Due process with respect to the LAFCO hearing

Comment/Question – Interested citizen Ken Taylor found fault that the agenda for the April 26, 2001 hearing identified Options 1 and 2 as separate items under the heading “Proposed Incorporation of the City of Goleta (LAFCO 99-20).” Mr. Taylor stated that by considering agenda items 4 and 5 together, LAFCO violated the Brown Act and deprived him of due process.

Response - The Brown Act requires that the agenda contain a brief general description of each item of business to be transacted or discussed at the meeting. The April 26 notice of hearing meets this requirement. The fact agenda items 4 and 5 were heard together allowed LAFCO to consider both options concurrently and does not violate procedural due process rights.

Government Code Section 56107 makes it clear that LAFCO decisions on a proposal shall not be invalidated because of a defect, error or irregularity in any act, determination or procedure that does not adversely and substantially affect the rights of any person.

In light of the prior hearings before LAFCO on the CEQA document, proposed incorporation boundaries and fiscal analysis, requiring members of the public to address Options 1 and 2 in their testimony to the Commission is neither a procedural violation of the Brown Act or the LAFCO statute.

Legal defensibility of both Incorporation Options

Comment/Question - Members of the public suggested that Incorporation Options 1 and 2 are both subject to legal challenge.

Attorney Craig Price testified that the Committee for Greater Goleta has authorized him to file a lawsuit challenging the approval of Option 2. Mr. Price, as well as others, stated that adding Isla Vista and UCSB would fundamentally change the proposal advanced by *GoletaNow!*

Mr. Price asserted two competing proposals are before LAFCO, in violation of law. Contrary to his claim, there are not two proposals pending before the Commission within the meaning of Government Code Section 56827. A "proposal" is made by a petition or a resolution of application proposing a change of organization or reorganization. After the City of Santa Barbara withdrew its annexation proposal, the only proposal pending is that of *GoletaNow!* Because LAFCO has the authority to amend - wholly, partially, or conditionally - proposals for change of organization or reorganization, LAFCO identified an alternative Option 2 for its consideration.

Response - We do not agree with these allegations. Legal Counsel prepared a memorandum on December 30, 2000, regarding LAFCO's authority to amend the proposed incorporation boundaries, a copy of which is enclosed.

In conclusion, LAFCO is empowered "to review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for changes of organization or reorganization ..." (Emphasis added; Section 56375(a).)

In *Fallbrook Sanitary Dist. v. San Diego LAFCO* (1989) 208 Cal.App.3d 756, 760, the court clarified "the words chosen by the legislature - 'without or without amendment' - encompass both additions and deletions so long as the general nature of the subject matter is not changed." Boundary adjustments that include or exclude territory to or from the *GoletaNow!* proposal do not

change the general purpose and effect of the incorporation proposal and, thus, do not change the general nature of the proposal.

Moreover, the three study modules identified by LAFCO within the urban Goleta Valley are consistent with LAFCO's discretion as reflected in the findings required by Section 56375.1(a) relating to, among other things, the encouragement of planned, well-ordered efficient urban development patterns.

Comment/Question - Members of the public intimated in their testimony that voting rights or other constitutional rights would be violated if Isla Vista were not included in the proposed city. However, there is no infringement of the right to vote implicated by the choice before your Commission between Option 1 and Option 2.

Response - In *Board of Supervisors v. Local Agency Formation Commission* (1992) 3 Cal.4th 903, the California Supreme Court found that the state's plenary power to oversee and regulate the formation of political and municipal subdivisions entitles it to identify those who may vote for changes of incorporation and those who may not. The court held that no voting rights or equal protection violation was present in the LAFCO process.

Similarly here, there is no protected property interest on the part of property owners or residents to be included in a new city. In the absence of a protected fundamental right or property interest, there is no 14th Amendment violation present here. In addition, the 14th Amendment requires only a rational basis upon which to distinguish between different city boundaries, where the distinction and treatment does not touch upon a suspect classification.

LAFCO's legislative determinations for "The existence of any social or economic communities of interest in the area if the commission determines that they are relevant to the agency." as described in Government Code Section 56841, do not implicate suspect classifications or fundamental rights.

Isla Vista and UCSB will become an "island" unless included

Comment/Question – Option 1 is prohibited because it creates an unincorporated "island".

Response – As noted in our November 2, 2000 staff report, Government Code Section 56109 states, "... territory shall not be incorporated into ... a city ... if, as a result of that incorporation ... unincorporated territory is completely surrounded by that city or territory of that city on one or more sides and the Pacific Ocean the remaining side."

Land situated between two cities or between two cities and the ocean is, legally speaking, not an “island.” Isla Vista and UCSB will not be an “island” if excluded from the incorporation.

Nevertheless, the Commission can create islands pursuant to Government Code Section 56375(o), which allows LAFCO to “. . .waive the restrictions of §56109 if it finds that application of the restriction would be detrimental to the orderly development of the community and that the area that would be enclosed by the annexation or incorporation is so located that it cannot be reasonably annexed to another city or incorporated as a new city.

Regulation of Venoco Ellwood onshore processing facility

Comment/Question – Is the City obligated to regulate Venoco, including Measure A.

Response - The Venoco Ellwood facility is a legal, nonconforming use subject to the County’s consolidation policies. It is also subject to Measure A, a countywide ordinance that was enacted by Santa Barbara County voters in 1996.

Although the new city may, after the initial adoption of County ordinances supercede those ordinances pursuant to Government Code Section 57376(a), any new local coastal plan policy or implementing ordinance can go into effect only after certification by the California Coastal Commission. Coastal Commission certification insures a regional and state perspective.

The Westfield Property should be included

Comment/Question – The Westfield Property (APN 77-530-19) should be included entirely within the city because otherwise it will be split by the city boundary.

Response – This is a policy matter to be decided by the Commission. The facts are thus:

- Parcel 77-530-19 consists of approximately 14 acres. The southerly 1-½ acres has a road easement for Cathedral Oaks Road. The rest of the parcel is vacant except for a single-family home and two barns or accessory buildings.
- The entire parcel is within the boundaries of the Goleta Water District and the Goleta West Sanitary District, and utility lines serve the existing structures on the parcel.

- The urban/rural boundary of the Goleta Community Plan bisects the parcel. The southerly .6 acres (not counting the road easement) is in the urban development boundary; the remaining 12 or so acres are outside the urban growth boundary.
- That portion of the parcel north of the urban/rural boundary is planned for Agriculture, and the County zoning designation is "Agriculture." for the entire parcel.
- In reviewing proposals a "factor" listed in Government Code Section 56841 that LAFCO must consider is "the nonconformance of proposed boundaries with lines or assessment or ownership." There is no obligation for the Commission to act in any particular way, only that it consider this information.

If a parcel is split by a governmental boundary the Assessor will create separate Assessor Parcels for each portion of the lot and provide individual tax bills to the owner.

- The Westfield Property can be included within the City based on the existing Negative Declaration. The city council must adopt all existing County ordinances including the general plan and zoning designations for this parcel. Any changes in designations in the future will be subject to compliance with CEQA procedures at that time.

If an application were filed to annex this parcel to an existing city with the current agricultural designations the staff would recommend denial until such time as the city modified the land use designations. For the same reason we do not see a sufficient justification to recommend including this land in the city since it is presently used for agriculture and is outside of the urban limit line of the Goleta Community Plan.

We do not think having the parcel split by the city boundary should be a major consideration. Besides, other than the land within the Cathedral Oaks Road easement only .6 acres of the 14-acre parcel is within the urban growth line. Most of the parcel is outside.

The appropriate course of action for the landowner would be to request the City of Goleta for a general plan amendment and annexation. LAFCO would consider the annexation and a sphere of influence amendment based on land use designations applied by the city council.

Relevant documents are enclosed, including correspondence from John Patton, Director of the County Planning & Development Department (3/23/01); Mark Manion and Chip Wullbrandt, attorneys representing the landowner (4/26/01, 12/6/00 and 1/3/01) and Clynne Couvillion, MD, owner (1/16/01). A map of the parcel is provided with the December 6 letter.

Annexation of UCSB/Isla Vista to the City of Santa Barbara is prohibited

Comment/Question – Harry Nelson stated that annexing Isla Vista to the City of Santa Barbara would be illegal due to terms and conditions of the grant of tidelands and submerged lands from the State of California to the City of Santa Barbara that was accomplished by Chapter 193 of Statutes of 1975.

Response – We do not agree. The referenced sections make it clear that limitations on the use of properties described in and conveyed by the statute apply to "the city and its successors." Thus, the statute does not prevent successor forms of government from taking ownership of the land conveyed.

More to the point of annexation, the boundaries of the City of Santa Barbara that include the Santa Barbara Airport are valid. The land was annexed legally and there have been validating acts adopted by the legislature that would have cured any procedure defects. The Assessor, Surveyor and State Board of Equalization recognize and utilize this boundary for assessment and tax rate area purposes.

As a result of the City annexing the Airport property, UCSB, and by extension Isla Vista, are contiguous and can therefore be annexed to the City of Santa Barbara.

Environmental compliance does not require an EIR.

Comment/Question - An EIR is needed to explain how the Goleta Growth Management Ordinance would be applied in the proposed city

Response - CEQA Guidelines Section 15144 makes clear that LAFCO cannot be expected to and is not required to predict the future course of government regulation. Therefore, an EIR is not required to predict exactly how a new city might apply the GGMO.

The Goleta Growth Management Ordinance (GGMO) provides specific direction on how to apply the growth management rate of 200 residential units (plus specifically exempted affordable housing projects) and 105,000 square feet of commercial/industrial development within the Goleta planning area. First, in the years between 1999 and 2008, the GGMO limits allocations to 2,000 new non-exempt residential units, to be allocated at a rate of 200 units per year in addition to those contained in the existing residential rollover pool established under the prior ordinance. These allotments can be prorated between the new city and the unincorporated Goleta Planning Area based on the amount of residentially zoned land within each jurisdiction.

Similarly, annual commercial/industrial allocations not exclusively available to the Goleta Old Town key site (10,000 square feet per year) may be divided between the new city and unincorporated county based on the amount of square footage of commercial/industrial zoned land exists within each jurisdiction.

Therefore, the GGMO is capable of being construed reasonably in such a fashion so as not to change the annual allocations within the Goleta Valley. It is, however, speculation to forecast how either the county or the new city might modify or apply the GGMO after incorporation. Any allocation scheme would be purely hypothetical pending the seating of the city council.

Fiscal Issues

Comment/Question: Implications for Fiscal Feasibility After Ten years.

Jack Hawxhurst submitted a narrative entitled “A Tale of Two Cities” that implied Incorporation Option 1 would be more fiscally feasible than Option 2 after the 10 year period in the CFA. Commissioner Rose requested an explanation of his statement.

Response: Mr. Hawxhurst has prepared the enclosed response that includes financial tables projecting after the 10 years covered by the CFA. EPS reviewed the analysis and offered some additions but no significant modifications.

Comment/Question: Ken Taylor asked if costs related to street trees are included in the analysis.

Response: The costs for street tree maintenance are included in the costs provided by the County Public Works Department. A detailed breakdown for the Treekeeper Program/Street Trees is given below:

Item	Option 1	Add'l for Option 2	Total for Option 2
Labor Hours	300	71	371
Labor Cost	\$14,074	\$1,857	\$15,931
Indirect Cost	<u>6,896</u>	<u>910</u>	<u>7,806</u>
Subtotal Cost	\$20,970	\$2,767	\$23,737

Vehicle Hours	360	53	413
Vehicle Cost	\$673	\$87	\$760
Outside Rate	<u>168</u>	<u>22</u>	<u>190</u>
Subtotal Cost	\$841	\$109	\$950
Contracted Cost	\$73,148	NA	\$73,148
TOTAL COST	\$94,959	\$2,876	\$97,835

Comment/Question: A representative of the Isla Vista Recreation & Parks District asked if parks costs were "slashed" to \$500,000 in the eighth year.

Response: The sharp reduction in parks costs is due to the debt for Santa Barbara Shores being paid off in that year. The remaining parks maintenance costs are based on CSA #3 expenditures for CSA #3 parks. Existing maintenance costs for IVRPD parks are assumed to be covered by existing IVRPD revenues; neither the IVRPD costs nor revenues are included in the CFA budget forecast, as they are assumed to be offsetting.

Comment/Question: Does the CFA include the costs for annual audits?

Response: Yes. Based on information provided by the County and a private CPA experienced with public agency audits, the audit cost is estimated to range from \$10,000 to \$20,000 annually depending on whether a private firm is engaged or the city contracts with the County Auditor-Controller.

The costs could increase about 50 percent over time as the new city implements new requirements of the Government Accounting Standards Board, and as the new city utilizes federal grants that require additional audit information. The CFA includes costs for this purpose within a finance department budget item for "other costs" (see Table C-3 in the Technical Appendix).

Comment/Question: The CFA should include detail on parks and park maintenance costs.

Response: The CFA includes details on the total costs for park maintenance, costs for the Goleta Valley Community Center and for the debt service for the Santa Barbara Shores property (see note 15, Table C-1 in the Technical Appendix) as provided by the County. Also attached to this

response is a table detailing the individual parks, their location and acreages transferred as a part of CSA #3's prior responsibilities. (Exhibit A)

Comment/Question: Why does the CFA show a surplus in the Road Fund, compared to the Preliminary CFA that showed a deficit?

Response: The Preliminary CFA erroneously omitted grant funding received by the County. The CFA assumes that comparable grants would continue to be available for the maintenance of the roads.

Comment/Question: Does the CFA budget forecast assume new hotel rooms?

Response: The CFA includes a moderate level of future growth based upon development projects in the pipeline, including a 250-room hotel. The actual timing and amount of new development cannot be precisely predicted, and is shown for the purpose of illustrating a reasonable scenario.

To the extent that development is less than shown and revenues are lower, the city will need to adjust its budget, which can be achieved in several ways, e.g., 1) reduce planning and other staff based on a changed workload; 2) utilize contingencies and reserve budgets otherwise shown to accrue over time; 3) reduce and phase other expenditures over time, such as office space; 4) utilize contracts with the County to a greater degree to minimize overhead staff and reduce costs. Other measures can be determined by the future city council depending on total available revenues from other sources.

Comment/Question: Does all of the property tax from Storke Ranch go to the Isla Vista Redevelopment Area?

Response: No. Increases in assessed value from the Storke Ranch development generate tax increment within the redevelopment area. Twenty percent of the increment is required to be set-aside for affordable housing purposes, which can occur inside or outside of the redevelopment project area. In addition, approximately 40% (according to 1998-99 audited financial statements) of the tax increment is distributed, per negotiated pass-through agreements, to other government agencies. The remaining 40% is available to the redevelopment agency for expenditures within the redevelopment area.

Comment/Question: Does the CFA assume that the voters will reauthorize Measure D when it expires in 2006-07?

Response: Yes. The CFA (page 37) indicates that the forecast assumes Measure D will be reauthorized. If it is not reauthorized, it is likely that the level of maintenance will decline unless replacement funding sources are found. This impact would occur whether the area becomes a city, or remains unincorporated and the responsibility of the County.

Comment/Question: Recently incorporated cities have not fared well compared to their CFAs.

Response: Two specific cities were mentioned by members of the Commission or the public as having fiscal difficulties compared to CFA projections were the Cities of Rancho Santa Margarita in Orange County and Oakley in Contra Costa County.

An April 16 memorandum from Jim McClure in the County Administrative Office to County Counsel states, "... I compared EPS CFA to the actual budget of Santa Margarita and the good news is revenues were higher, expenditures were lower and surplus was greater."

Mike Oliver, City Manager of Oakley, reports that projected CFA revenues have proven to be accurate while actual expenditures are higher than projected, primarily due to higher salaries. This condition should not be a factor for the Goleta incorporation since Santa Barbara area salary schedules rather than statewide averages were used in the revised analyses. Nevertheless, the City of Oakley has accumulated a \$5 million reserve fund.

As noted by Walter Kieser at the April 26 hearing new cities are able to make adjustments to alter expenditures and programs based on actual budgetary experience.

The Goleta Sanitary District contracted with the Rosenow Spevacek Group to review some of the documents prepared for the Incorporation of Goleta, including the CFA prepared by EPS, Revenue Neutrality Agreement and Negative Declaration. In addition, the report provides a fiscal assessment of recently approved incorporations in California including the new Cities of Aliso Viejo, Citrus Heights, Oakley and Santa Margarita.

The evaluation by Rosenow Spevacek states, "The CFA's conclusion regarding the fiscal viability of the proposed City of Goleta is supportable and is based on reasonable assumptions and conservative findings."

If you have any questions please contact the LAFCO office.

Sincerely,

BOB BRAITMAN
Executive Officer

Exhibits

- A. Memo from Alan Seltzer (12/30/00)
- B. Letter from John Patton, (3/23/01)
- C. Letter from Mark Minion (4/26/01),
- D. Letters from Chip Wullbrant (1/3/01)
- E. Letters from Chip Wullbrant (12/6/00)
- F. Letter from Clynne Couvillion, MD (1/16/01)
- G. Letter from Jack Hawxhurst (4/28/01)
- H. Table 1 (Park Acreage Assumptions) provide by EPS
- I. Assessment Report – Proposed Incorporation of Goleta (5/1/01)
- J. Goleta Growth Management Ordinance