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OPINION	:	No. 80-610
of	:	October 1, 1980
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SUBJECT: "SPHERES OF INFLUENCE"—The provisions of the California Environmental Quality Act require an environmental impact report or a negative declaration prior to the amendment of "spheres of influence" by a local agency formation commission, if such action could possibly have a significant effect on the environment.

The Honorable Milton Goldinger, County Counsel of Solano County, has requested an opinion on the following question:

Do the provisions of the California Environmental Quality Act require the preparation of an environmental impact report or a negative declaration prior to the amendment of "spheres of influence" by a local agency formation commission?

CONCLUSION

The provisions of the California Environmental Quality Act require an environmental impact report or a negative declaration prior to the amendment of "spheres of influence" by a local agency formation commission, if such action could possibly have a significant effect on the environment.

ANALYSIS

Under the Knox-Nisbet Act (Gov. Code §§ 54773–54973), a local agency formation commission (hereafter "LAFCO") is established in each county for, among other purposes, "the discouragement of urban sprawl," the facilitation of "planned, well-ordered, efficient urban development patterns," and "the encouragement of the orderly formation and development of local governmental agencies." (Gov. Code §§ 54774, 54774.5.)

LAFCO is authorized to "make studies of existing governmental agencies" and "shape the development" of such agencies by approving or disapproving the incorporation or disincorporation of cities, the formation of special districts, the annexation or detachment of territory by local agencies, and the consolidation of cities. (Gov. Code § 54790.)

Although LAFCO does not directly exercise land use or zoning powers, these functions are subject to LAFCO's influence and decision-making authority. For example, by approving the annexation of particular territory by one of two cities, LAFCO will determine which of two general land use plans will apply. (See *People ex rel. Younger v. Local Agency Formation Com*. (1978) 81 Cal. App. 3d 464, 473.)

In *Bozung v. Local Agency Formation Com.* (1975) 13 Cal. 3d 263, 273–274, the Supreme Court recognized two functions of LAFCO that are of major significance: approving the annexation of territory to local agencies and establishing "spheres of influence" for the local agencies in the county. The decisions in the first category are dependent upon those in the second category. (See *Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal. App. 3d 873, 883.) The present inquiry concerns LAFCO's determination of spheres of influence within the county.

The statutory basis for establishing spheres of influence is found in Government Code sections 54774–54774.2 as follows:

> "In order to carry out its purposes and responsibilities for planning and shaping the logical and orderly development and coordination of local governmental agencies so as to advantageously provide for the present and future needs of the county and its communities, the local agency formation commission shall develop and determine the *sphere of influence of each local governmental agency within the county. As used in this section, "sphere of influence" means a plan for the probable ultimate physical boundaries and service area of a local governmental agency.* Among the factors considered in determining the sphere of influence of each local governmental agency, the commission shall consider, and prepare a written statement of its findings

with respect to, each of the following:

"(a) The maximum possible service area of the agency based upon present and possible service capabilities of the agency.

"(b) The range of services the agency is providing or could provide.

"(c) The projected future population growth of the area.

"(d) The type of development occurring or planned for the area, including, but not limited to, residential, commercial, and industrial development.

"(e) The present and probable future service needs of the area.

"(f) Local governmental agencies presently providing services to such area and the present level, range, and adequacy of services provided by such existing local governmental agencies.

"(g) The existence of social and economic interdependence and interaction between the area within the boundaries of a local governmental agency and the area which surrounds it and which could be considered within the agency's sphere of influence.

"(h) The existence of agricultural preserves in the urea which could be considered within an agency's sphere of influence and the effect on maintaining the physical and economic integrity of such preserves in the event that such preserves are within a sphere of influence of a local governmental agency.

"Upon determination of a sphere of influence, the commission shall adopt such sphere, and shall periodically review and update the adopted sphere.

"The spheres of influence, after adoption, shall be used by the commission as a factor in making regular decisions on proposals over which it has jurisdiction. The commission may recommend governmental reorganizations to particular agencies in the county, using the spheres of influence as the basis for such recommendations. Such recommendations shall be made available upon request, to other governmental agencies or to the public." (Gov. Code § 54774; emphasis added.)

"The commission shall adopt, amend or revise spheres of influence after a public hearing called and held for that purpose. At least 11 days prior to the date of any such hearing, the executive officer shall give mailed notice of the hearing to each affected local agency or county, and to any interested party who has filed a written request for such notice with the executive officer. In addition, at least 15 days prior to the date of any such hearing, the executive officer, shall cause notice of the hearing to be published in accordance with Section 6061 in a newspaper of general circulation which is circulated within the territory affected by the sphere of influence proposed to be adopted. The commission may continue from time to time any hearing called pursuant to this section." (Gov. Code § 54774.1.)

"If any local agency or county desires amendment or revisions of an adopted sphere of influence, the local agency or county, by resolution of its legislative body, may file a request therefor with the executive officer who shall present the same to the commission at its next regular meeting. The commission upon receipt of such a resolution shall set a time and date for hearing of the request and shall direct the executive officer to give notice of the hearing at the times and in the manner prescribed in Section 54774.1. At the hearing, the commission shall hear any interested persons and consider the requests for the amendment or revision of the sphere of influence. The commission may continue the hearing from time to time not to exceed 70 days from the date specified in the notice of hearing. At the conclusion of the hearing the commission shall deny or approve, in whole or in part, the request." (Gov. Code § 54774.2.)

The question presented for analysis is whether in considering The amendment of established spheres of influence, LAFCO must prepare an environmental impact report (hereinafter "EIR") or a negative declaration under the provisions of the California Environmental Quality Act (Public Resources Code §§ 21000–21176)[1] (hereafter "CEQA"). We conclude that an EIR or a negative declaration may be required, depending upon all the particular circumstances.

Section 21151 provides that "all local agencies shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they intend to carry out or approve which may have a significant effect on the environment." An EIR is a detailed statement generally covering:

[1] All unidentified section references hereafter are to the Public Resources Code.

"(a) The significant environmental effects of the proposed project.

"(b) Any significant environmental effects which cannot be avoided if the project is implemented.

"(c) Mitigation measures proposed to minimize the significant environmental effects including, but not limited to, measures to reduce wasteful, inefficient and unnecessary consumption of energy.

"(d) Alternatives to the proposed project.

"(e) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

"(f) Any significant irreversible environmental changes which would be involved in the proposed project should it be implemented.

"(g) The growth-inducing impact of the proposed project.

"The report shall also contain a statement briefly indicating the reasons for determining that various effects of a project are not significant and consequently have not been discussed in detail in the environmental impact report." (§ 21100; see §§ 21061, 21100.1.)

A negative declaration may be substituted for an EIR if after an initial study, the agency determines that a proposed project which could possibly have a significant effect on the environment will, in fact, not have a significant effect. (§§ 21080 subd. (c); 21080.1; Cal. Admin. Code, tit. 14, § 15083;[2] *Bozung v. Local Agency Formation Com., supra*, 13 Cal. 3d 263, 279–280; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 74; *Pacific Water Conditioning Assn., Inc. v. City Council* (1977) 73 Cal. App. 3d 546, 557–558; *Running Fence Corp. v. Superior Court* (1975) 51 Cal. App. 3d 400, 413.) A negative declaration is "a written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not require the preparation of an environmental impact report." (§ 21064.)

In interpreting these statutes, particularly section 21151, with regard to LAFCO's amending a duly adopted sphere of influence, we note that the cardinal rule of construction

[2] All section references hereafter to CEQA regulations (termed "guidelines") contained in the California Administrative Code will be to title 14 thereof and will be designated "CAC."

is to "ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Select Base Materials v. Board of Equal.* (1959) 51 Cal. 2d 640, 645; *see California Mfgrs. Assn. v. Public Utilities Com*. (1979) 24 Cal. 3d 836, 844.)

The Legislature has been explicit in declaring the goals of CEQA and the purposes of an EIR. Section 21002 states in part:

> "The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects."

Section 21002.1 provides in part:

> "(a) The purpose of an environmental impact report is to identify the significant effects of a project on the environment, to identify alternatives to the project, and to indicate the manner in which such significant effects can be mitigated or avoided.
>
> "(b) Each public agency shall mitigate or avoid the significant effects on the environment or projects it approves or carries out whenever it is feasible to do so.

Essentially, then, an EIR under CEQA is a tool used to ensure that environmental information is considered by an agency in its decision-making process. (*Bozung v. Local Agency Formation Com*, *supra*, 13 Cal. 3d 763, 785; *Environmental Defense Fund, Inc. v. Coastside County Water Dist.* (1972) 27 Cal. App. 3d 695, 704–705; *Comment, Environmental Decision Making Under CEQA* (§1977) 24 UCLA L.Rev. 838, 846-847.)

The Supreme Court has held that CEQA is "to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal. 3d 247, 259; accord, *Wildlife Alive v. Chickering* (1976) 18 Cal. 3d 190, 198; *Bozung v. Local Agency Foundation Com., supra,* 13 Cal. 3d 263, 274.)

The preparation of an EIR, however, can be an expensive, time-consuming and burdensome process, one which is not intended to apply to "every activity of a public

agency" with "'a potential for significant environmental effect.'" (*Simi Valley Recreation & Park Dist. v. Local Agency Formation Com*. (1975) 51 Cal. App. 3d 648, 663.)

Looking to the words used in the governing provisions of section 211 51, we note that an HR is required of "local agencies" for a "project" that "may" have a "significant effect" upon the "environment." The courts have examined each of these statutory terms in detail.

Although subject to differing views at one time, it is now clear that LAFCOs are "local agencies" for purposes of CEQA. The cases have so held (see *Bozung v. Local Agency Formation Com.*, *supra*, 13 Cal. 3d 263, 276–277; *People ex rel. Younger v. Local Agency Formation Com., supra*, 81 Cal. App. 3d 464, 477), and the statutory scheme (§ 21062) and the regulations (CAC § 15031) now specifically so provide.

Two basic issues, however, remain: whether the amendment of a sphere of influence is a "project" under CEQA and whether it "may have a significant effect on the environment."

A "project" is defined broadly in the legislation to include "Activities directly undertaken by any public agency." (§ 21065 subd. (a).) Not all projects, however, are subject to CEQA's requirements, and most are excluded on the basis that they do not have a significant effect on the environment. Section 21080 states:

> "(a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps (except where such a project is exempt from the preparation of an environmental impact report pursuant to Section 21166).
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> "(b) This division shall not apply to the following:
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> "(1) Ministerial projects proposed to be carried out or approved by public agencies.
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> ". . . . . .
>
> "(10) All classes of projects designated pursuant to Section 21084.
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> ". . . . . .

Hence, although section 21080 further defines "project" to include certain activities, among which is the "amendment of zoning ordinances," it also excludes various projects from the EIR or negative declaration procedures. Two of these exclusions require further discussion.

First, it may be argued that the amendment of zones of influence by LAFCO is a "ministerial" rather than a "discretionary" act and thus outside the scope of CEQA. Government Code section 54774 requires LAFCO to "periodically review and update the adopted sphere" according to certain prescribed criteria. The fact that an agency must take some statutorily guided action, however, does not mean that discretion is not involved in the choice of the action undertaken. The regulations define "discretionary" as requiring "the exercise of judgment, deliberation, or decision . . . as distinguished from . . . whether there has been conformity with applicable statutes, ordinances, or regulations" by a given set of facts. (CAC § 15024.) A decision involving both ministerial and discretionary characteristics is treated as discretionary for purposes of CEQA. (CAC § 15073 subd. (d); *Day v. City of Glendale* (1975) 51 Cal. App. 3d 817, 823–824; *People v. Department of Housing &. Community Dev.* (1975) 45 Cal. App. 3d 185, 194; 60 Ops. Cal. Atty. Gen. 325, 346 (1977).). Manifestly, amendments of spheres of influence by LAFCO involve elements of discretion in determining the significance of the prescribed criteria in each proposal submitted for determination. Consequently, the application of CEQA is not precluded on the basis of the "discretionary" requirement.

The other exclusion contained in section 21080 that may be applicable here is found in subdivision (b) (10). Under its provisions, projects designated pursuant to section 21084 need not comply with CEQA. Section 21084, subdivision (a), authorizes the Secretary of the Resources Agency to adopt regulations, exempting "projects which have been determined not to have a significant effect on the environment." Among the exclusions applicable to LAFCO's decisions generally are: "Annexations to a city or special district of areas containing existing public or private structures developed to the density allowed by the current zoning or pre-zoning of either the gaining or losing governmental agency whichever is more restrictive, provided, however, that the extension of utility services to the existing facilities would have a capacity to serve only the existing facilities" (CAC §15119, subd. (a)) and "changes in the organization or reorganization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised. . . ." (CAC § 15120.) While these specific exclusions do not cover the establishment or amendment of spheres of influence, they indicate that not all LAFCO decisions require an EIR or negative declaration.

The Secretary of the Resources Agency has also adopted regulations under his general authority to "implement" CEQA (§ 21083) which bear upon the issue of whether the amendment of a sphere of influence is a "project." Specifically, these additional

regulations exclude from the definition of project "continuing administrative or maintenance activities, such as purchases for supplies, personnel related actions, emergency repairs to public service facilities, general policy and procedure making (except as they are applied to specific instances covered above), feasibility or planning studies." (CAC § 15037, subd. (b) (3).)

It appears that the amendment of a sphere of influence for a governmental agency by LAFCO is more than a "general policy making" activity. It involves specific findings and requires consideration in LAFCO's regulatory functions. (Gov. Code § 54774.) It can be likened to the amendment of a zoning ordinance or general plan which is subject to CEQA (§ 21080, subd. (a); CAC § 15037, subd. (a) (1); *City of Santa Ana v. City of Garden Grove* (1979) 100 Cal. App. 3d 521, 534), although we note that the "consideration" requirement is not as strong as the "consistency" requirements for zoning ordinances and general plans. (See Gov. Code §§ 65860, 66473.5; see also *City of Santa Ana v. City of Garden Grove*, *supra*, 100 Cal. App. 3d 521, 532.) On balance, we believe that the amendment of a sphere of influence may ultimately affect a physical change in the environment to the extent required for inclusion within CEQA. (See CAC § 15037, subd. (a) (1); *Bozung v. Local Agency Formation Com., supra*, 13 Cal. 3d 263, 279; *Friends of Mammoth v. Board of Supervisors*, *supra*, 8 Cal. 3d 247, 265; *City of Santa Ana*, *supra*, 100 Cal. App. 3d 521, 531; *Edna Valley Assn. v. San Louis Obispo County Etc., Coordinating Council* (1977) 67 Cal. App. 3d 444, 448.)

Similarly, the amendment of a sphere of influence may be distinguished from a "feasibility or planning study," defined as a study "for possible future actions which the agency, board, or commission has not approved, adopted, or funded." (CAC § 15027.) Amending a sphere of influence requires approval and adoption (Gov. Code §§ 54774–54774.2), thus excluding it from the definition of a feasibility or planning study. (See *Edna Valley, Assn. v. San Louis Obispo County Etc., Coordinating Council, supra*, 67 Cal. App. 3d 444, 448.) More importantly, it cannot be considered as an optional or vague exploration of the future physical world but is rather a mandatory and detailed designation of "probable ultimate physical boundaries and service areas" that must be considered by LAFCO in making its determinations. (Gov. Code § 54774.)

We recognize that the amendment of a sphere of influence is more tentative and subject to further review than a LAFCO decision concerning an annexation or detachment proposal. The latter decisions are irrevocable steps insofar as LAFCO's involvement in development is concerned. (See *Bozung v. Local Agency Formation Com*., *supra*, 13 Cal. 3d 263, 282; *City of Santa Ana v. City of Garden Grove*, *supra*, 100 Cal. App. 3d 521, 533; *People ex rel. Younger v. Local Agency Formation Com*., *supra*, 81 Cal. App. 3d 464, 481.)

Typically, a change in the physical environment caused by the development of property is several steps removed from the amendment of a sphere of influence by LAFCO. The stages may include: (1) designation by LAFCO of unincorporated territory within a particular city's sphere of influence, (2) prezoning the area by the city, (3) approval by LAFCO of the city's annexation proposal, and (4) approval of specific plans for development by the city.

The fact that spheres of influence are not "final," however, does not exclude their establishment or amendment from the provisions of CEQA in light of its applicability to the establishment and amendment of general plans and zoning ordinances equally not "final." (See § 21080, subd. (a); CAC § 15037, subd. (a) (1).)

Additionally, although an EIR may be required at a number of stages leading to development, its usefulness increases where it is furnished and considered at the earliest possible time. (CAC § 15013; *Bozung v. Local Agency Formation, Com., supra*, 13 Cal. 3d 263, 282; *City of Santa Ana, v. City of Garden Grove, supra*, 100 Cal. App. 3d 521, 533; *Edna Valley Assn. v. San Luiz Obispo County Etc., Coordinating Council*, *supra*, 67 Cal. App. 3d 444, 448–449.) An initial EIR may be suitably supplemented and be used as the foundation document for subsequently required EIRs. (CAC § 15067; *Bozung v. Local Agency Formation Com., supra*, 13 Cal. 3d 263, 286; *City of Santa Ana v. City of Garden Grove, supra*, 100 Cal. App. 3d 521, 533.)

Moreover, it is now well settled that as long as the project may "culminate" in physical changes in the environment, such as in the amendment of a general plan, it need not itself directly effect a physical change. (*City of Santa Ana v. City of Garden Grove*, *supra*, 100 Cal. App. 3d 521, 531.)

As previously mentioned because "project" is so broadly defined under CEQA, the regulations and cases have focused on the requirement that a particular project "have a significant effect on the environment." If a preliminary study indicates with certainty that the project has no potential for causing such an effect, the project is exempt from further CEQA requirements. (CAC § 15060; *Myers v. Board of Supervisors* (1976) 58 Cal. App. 3d 413, 425.) A more detailed examination is required leading to the filing of an EIR or negative declaration where the preliminary study indicates a "potential" for causing a significant effect. (*Bozung v. Local Agency Formation Com., supra*, 13 Cal. 3d 263, 279–280.)

The Legislature has defined "significant effect as a substantial, or potentially substantial, adverse change." (§ 21068.) Projects with a beneficial effect, should be noted, are outside the ambit of CEQA. (CAC § 15081, sub. (a).) The regulations indicate the impossibility of applying a precise definition of "significant effect" to all situations:

> "The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An iron clad definition of significant effect is not possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area. There may be a difference of opinion on whether a particular effect should be considered adverse or beneficial, bus where there is, or anticipated to be, a substantial body of opinion that considers or will consider the effect to be adverse, the lead agency should prepare an EIR to explore the environmental effects involved." (CAC § 15081, subd. (a).)

The issue of whether specific development must be under consideration for a project to have a possible "significant effect" was discussed in *Simi Valley Recreation &. Park Dist. v. Local Agency Formation Com., supra*, 51 Cal. App. 3d 648. The Court of Appeal declared that a "public works type" activity carried out by private parties requiring either a governmental agency's issuance of a permit or the making or change of a regulation would be subject to CEQA if physical change to the environment were involved. (*Id.*, at 666.) The court found no such activity presented to it by the parties and thus distinguished its factual setting from that of *Bozung v. Local Agency Formation Com., supra*, 15 Cal. 3d 263. In commenting upon the 677 acres of agricultural land planned for development in *Bozung*, the court stated:

> "The decision, therefore, does not make every LAFCO approval a project subject to CEQA*; nor does it make every LAFCO approval of local agency boundary changes, the timing of which may coincide with intended development, such a project.* It dealt only with the situation where LAFCO approval was a necessary step in the development and in effect constituted an entitlement for use for such development.
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> "The detachment proceedings in this case constituted activities of both LAFCO and of respondent Board. However, *no facts alleged or otherwise shown suggest that the availability of the property in the detached area for development in any respect depends upon the detachment.* Petitioners have merely claimed that the action was taken 'just as development is starting to take place or can be expected to take place in the area proposed for detachment.' This allegation, however, is far from an allegation that the proposed development was dependent upon the detachment; it is clear that the contrary was true. Unlike the situation in *Bozung* (where the annexation removed the property from the zoning authority of the county which blocked development into the City of Camarillo which had prezoned it so as to permit

the development, *detachment in this case did not make any change whatever in the uses to which the land might be put.* The property was within the zoning jurisdiction of the county, both before and after the detachment, and the land use therein permitted by the county was 'open space or agriculture.' Moreover, petitioner District had no authority over the use of the land in the detached area by virtue of its inclusion in such district, its powers being limited to those enumerated in Public Resources Code section 5782.2.

"The evaluation process contemplated by CEQA relates to the effect of proposed changes in the physical world which a public agency is about to either make, authorize or fund, not to every change of organization or personnel which may affect future determinations relating to the environment. The determinations of respondent LAFCO and of respondent Board were in the latter category and were not projects' which they proposed to carry out. There was, therefore, no need for a negative declaration or an EIR since neither requirement is applicable if there is no project subject to CEQA." (*Id.*, at pp. 665–666; emphasis added.)

The conclusion reached by the court in Simi Valley is consistent with case law indicating that an EIR or negative declaration is not required where a preliminary study establishes with certainty that the project has no potential for causing a significant effect on the environment. (See *People ex rel. Younger v. Local Agency Formation Com*., *supra*, 81 Cal. App. 3d 464, 477; *Myers v. Board of Supervisors, supra*, 58 Cal. App. 3d 413, 425.)

In summary, the amendment of a sphere of influence by LAFCO may require the filing of an EIR or negative declaration in compliance with CEQA. The key determination is whether such action in a particular case could possibly have a significant effect on the environment. For example, if a specific development of property is dependent upon the annexation of the property by a city which in turn is dependent upon the amendment of spheres of influence by LAFCO, the provisions of CEQA would be applicable. On the other hand, if no development is being contemplated and the land use regulations for the area would not be expected to change upon future annexation, neither an EIR nor a negative declaration would be required.

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