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Bozung v. LAFCO: Municipal Boundary Changes and the California Environmental Quality Act

Henry Michael Domzalski II

BOZUNG V. LAFCO: MUNICIPAL BOUNDARY CHANGES AND THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

With its decision in *Bozung v. Local Agency Formation Commission of Ventura County*,[1] the California Supreme Court has once again affirmed its commitment to a progressive interpretation[2] of the California Environmental Quality Act (CEQA).[3] *Bozung* dealt with the applicability of CEQA to local agency formation commissions (LAFCOs),[4] and specifically whether such a commission is required to prepare an Environmental Impact Report (EIR). The court's decision mandates the preparation of an EIR whenever an annexation approval by a local agency formation commission will result in commercial, residential, and recreational development. In order to fully understand this decision, we must look to the development and purposes of a local agency formation commission, the California Environmental Quality Act, and the interrelationship between LAFCOs and CEQA.

I. THE NATURE OF LOCAL AGENCY FORMATION COMMISSIONS

Prior to the creation of LAFCOs, local governmental bodies had complete control over the decision to incorporate as a new city or to annex territory to an existing city. This localization of control led to the flourishing of two competing forms of provincialism.[5] One form, the form which eventually dominated, was regionalism.[6] The regionalists reflected a defensive mentality in their desire to remain distinct from nearby expanding cities. Rather than allowing their property to be annexed to a nearby

1. 13 Cal. 3d 263, 529 P.2d 1017, 118 Cal. Rptr. 249 (1975).

2. The California Supreme Court expanded the influence of the California Environmental Quality Act in Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972).

3. Ch. 1433, § 1, [1970] Cal. Stat. 2780, *codified at* CAL. PUB. RES. CODE §§ 21000 *et seq.* (West Supp. 1975).

4. LAFCOs were authorized by the Knox-Nisbet Act. Ch. 1808, §§ 1-3, [1963] Cal. Stat. 3664, *partially repealed and amended*, ch. 587, § 10, [1965] Cal. Stat. 1916. *Codified at* CAL. GOV'T. CODE §§ 54774 *et seq.* (West Supp. 1975).

5. J. GOLDBACH, BOUNDARY CHANGE IN CALIFORNIA: THE LOCAL AGENCY FORMATION COMMISSION 9-10 (1970) [hereinafter cited as BOUNDARY CHANGE].

6. *Id.*

city, they preferred to create new cities by incorporation.[7]

Localism arose in opposition to regionalism.[8] Some of the localists wished to expand their presently existing cities in order to provide a greater tax base; others merely responded to the "bigger is better" mentality of a growth oriented populace. The inherent conflict between these two groups led to unplanned growth and a rapid decrease in open space.[9] This often produced the undesirable result of old cities sprouting tendrils of land which left corridors or islands of unincorporated territory. Both factions ignored the environmental implications of their actions for nearby communities which were not directly involved in either aggressive annexation or defensive incorporation.

This increasingly frequent and haphazard urbanization led, in 1960, to the formation of a Governor's Commission on Metropolitan Area Problems.[10] This Commission asserted that "appropriate action" was necessary to: (1) improve annexation, incorporation, and special district laws; (2) enact legislation enabling the formation of metropolitan area multi-purpose districts with planning functions; and (3) establish a State Metropolitan Area Commission with "[q]uasi-judicial powers in the review and approval of proposals for incorporations."[11] In direct response to these Commission proposals, two bills were introduced in the California Legislature. Assembly Bill 1662,[12] sponsored by Assemblyman John Knox, called for the creation of a State Formation Commission to deal with incorporation proposals; and Senate Bill 861,[13] introduced by Senator Eugene Nisbet, proposed the creation of a Local Agency Commission with the power to approve, amend or reject any annexation proposals. These

7. A factor leading to regionalist domination was that incorporation is easier than annexation because incorporation as a city requires 500 inhabitants, with the exception of Los Angeles under CAL. GOV'T. CODE § 34304 (West 1968), whereas annexation to a city requires 500 voters. R. LEGATES, CALIFORNIA LOCAL AGENCY FORMATION COMMISSIONS 2-3 (1970).

8. BOUNDARY CHANGE, *supra* note 5, at 9-10.

9. The frequency of incorporations in California rose from 290 cities in the 45 years prior to World War II to 106 in the 15 years after World War II, an increase from approximately three to seven new cities per year. *Id.*

10. The Governor's Commission on Metropolitan Area Problems was a group of 20 business, labor and professional leaders with particular expertise in urban problems. REPORT OF THE GOVERNOR'S COMMISSION ON METROPOLITAN AREA PROBLEMS 1 (1960).

11. BOUNDARY CHANGE, *supra* note 5, at 15.

12. Ch. 1808, §§ 1-3, [1963] Cal. Stat. 3657.

13. Ch. 1810, §§ 1-3, [1963] Cal. Stat. 3664.

"inter-locking bills,"[14] now known as the Knox-Nisbet Act,[15] established countywide local agency formation commissions.

LAFCOs, the product of the Knox-Nisbet Act, were a new approach to disorderly and uncontrolled urbanization, a problem nearly as old as cities themselves. They represent the first "joint city-county venture and partnership" in a single agency, and they are "charged with the duty of studying community problems in depth and developing an effective governmental structure for the area." LAFCOs also represent "the first time in any state that institutions have been established to monitor areal changes . . . with discretionary powers [to] set standards above the local level."[16]

Each LAFCO is composed of five members; two from city governments in each county, two from the county board of supervisors, and one "lay" member.[17] This diversity of composition is intended to foster greater objectivity in the analysis of proposals for urbanization. In the past, only local interest groups and the voters or inhabitants of a single area determined whether or not an annexation or incorporation would take place in that area. The countervailing interests of nearby cities and even of the county in general were unrepresented in those decisions. The members of a LAFCO are presumed to have broader interests in mind when considering annexation or incorporation proposals. LAFCO negotiations, "formal or informal, are a step in the direction of metropolitan cooperation"[18] and can be presumed to facilitate a greater harmony for all of the nearby non-metropolitan residents as well.

LAFCOs' specific purposes are to discourage unplanned urban growth and its consequent urban sprawl, and to encourage the orderly formation of local governmental agencies based upon

14. BOUNDARY CHANGE, *supra* note 5, at 16. For a discussion of these two bills see Note, *New Control Over Municipal Formation and Annexation*, 4 SANTA CLARA LAW. 125 (1963).

15. CAL. GOV'T. CODE §§ 54773 *et seq.* (West 1966 & Supp. 1975).

16. Goldbach, *Local Formation Commissions: California's Struggle Over Municipal Incorporation*, 25 PUB. AD. REV. 213, 218-19 (1965), *quoting* a speech by George W. Wakefield entitled "Local Agency Formation Commission Operation, Procedure and Problems," Monterey City Attorney's Spring Conference, 1964.

17. CAL. GOV'T CODE § 54781 (West Supp. 1975) provides for composition in a county without a city and CAL. GOV'T CODE § 54782 (West Supp. 1975) provides for LAFCO composition in a county with only one city. *See* R. Legates, *supra* note 7, at 31-32.

18. BOUNDARY CHANGE, *supra* note 5, at 89.

local conditions. This is accomplished in two ways, both of which involve a LAFCO's authority over the geographical limits of a city's jurisdiction. The first function of a LAFCO is to establish the "probable ultimate physical boundaries" of a district or city by adopting plans of "spheres of influence."[19] These "spheres of

19. CAL. GOV'T CODE § 54774 (West Supp. 1975). Regarding spheres of influence, section 54774 states:

> 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 "spheres 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:
>
> (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 area 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.
>
> The commission shall periodically review and update the spheres of influence developed and determined by them.
>
> 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

influence" plans grant to a city or other agency the authority to develop the land within the sphere as its sees fit. A sphere of influence line is a political boundary line, an entitlement beyond which the responsible agency or city has no jurisdiction. The second function of a LAFCO is to amend or revise the spheres of influence lines. A LAFCO is empowered to amend or revise spheres of influence lines whenever one of the following proposals is presented to it for consideration: (1) a city wishes to be incorporated or disincorporated; (2) a special district is to be formed; (3) a territory is to be annexed or excluded from a city; or (4) a consolidation of two or more cities is desired.[20] Whenever revisions are approved and implemented by a LAFCO, notice to the public is required.[21]

A LAFCO does not, in theory, merely "rubber-stamp" proposals for adoption or revision of spheres of influence plans. Although LAFCOs are, in fact, prohibited from directly regulating land use,[22] they are statutorily commanded to consider specific criteria in deciding upon proposals for adoption or revision of spheres of influence plans. These criteria include population density, natural boundaries, the likelihood of growth during the next ten years, the need for organized community services, the effect on adjacent areas, the conformity of the proposal with general policies and the effect on agricultural and open-space areas.[23] In summary, the spheres of influence lines, though initially established with a view to present and future local conditions, are capable of revision subject to LAFCO approval.

The fact that certain territory lies within a city's sphere of influence does not mean that the city must or even will proceed to annex it. However, the city does have legitimate control over the territory. At this point it may be instructive to distinguish a "sphere of influence" plan from "prezoning." Prezoning is often utilized by a potential annexing city to inform a city's inhabitants of and prepare them for the intended nature and use of the addition to the city, if and when it is ever granted jurisdiction over the territory. Prezoning, then, is a city's plan for future growth with-

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> for such recommendations. Such recommendations shall be made available, upon request, to other governmental agencies or to the public.

20. *Id.* § 54790.
21. *Id.* § 54793.
22. *Id.* § 54790(a)(3).
23. *Id.* § 54796.

out actual authority over the land, whereas LAFCOs' spheres of influence plans are grants of that authority. Prezoning of the territory is not a prerequisite to a LAFCO approval of an annexation proposal. However, a LAFCO can require that a city prezone the land prior to its approval.

On the surface, it might appear that LAFCOs merely apportion political power through the adoption and revision of "spheres of influence" plans and that their decisions do not affect the environment. However, the effect of this inherent LAFCO power to apportion political authority between different local agencies and over geographical areas "may be sufficient to produce a possible significant effect on the *environment* of the particular county over which the LAFCO exercises jurisdiction."[24] This is true even though, as mentioned earlier, a LAFCO is statutorily prohibited from regulating land use. This effect on the environment is accomplished in a general way when a LAFCO revises a spheres of influence line in response to a proposal for annexation or incorporation, thereby allowing a city to enlarge or come into existence. LAFCOs often know of possible alterations to the environment,[25] such as when the property to be annexed is prezoned prior to the LAFCO approval or when the proposal itself details the reasons for requesting the shift in the spheres of influence line. Thus, in certain instances, it is impossible to assert that a LAFCO grant of authority will not affect the environment.

II. THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

In 1969 Congress enacted the National Environmental Policy Act (NEPA),[26] and not long thereafter one of its progeny,[27] the California Environmental Quality Act,[28] followed. CEQA is embodied in Public Resources Code sections 21000 to 21174, and Title 14 of the California Administrative Code, sections 15000 to 15180, contains the Guidelines for Implementation (State

24. Seneker, *The Legislative Response to Friends of Mammoth: Developers Chase the Will-O'-The-Wisp*, 48 CAL. ST. B.J. 127, 172-73 (1973) (emphasis added).

25. COUNCIL ON INTERGOVERNMENTAL RELATIONS, STATEWIDE SURVEY—LOCAL AGENCY FORMATION COMMISSIONS 1 (1970).

26. 42 U.S.C. §§ 4321 *et seq.* (1971).

27. For a compilation of state legislation patterned after NEPA see Note, *Environmental Law–The Requirement for an Impact Statement: A Suggested Framework for Analysis*, 49 WASH. L. REV. 939 n.3 (1974). Also see Yost, *NEPA's Progeny: State Environmental Policy Acts*, 3 ENVIRONMENTAL L. REP. 50,090 (1973).

28. CAL. PUB. RES. CODE §§ 21000 *et seq.* (West Supp. 1975). For an analysis and comparison of CEQA and NEPA see Comment, *Environmental Land Use Control: Common Law and Statutory Approaches*, 28 U. MIAMI L. REV. 135, 188-95 (1973).

Guidelines). The most conspicuous of CEQA's mandates is that an EIR[29] be filed by all public agencies, boards and commissions which propose to carry out or approve any project which may have a significant effect on the environment.[30] CEQA, when viewed in light of its broadly articulated legislative intent,[31] has a

29. EIRs are defined in CAL. PUB. RES. CODE § 21061 (West Supp. 1975). Section 21061 states:

> "Environmental impact report" means a detailed statement setting forth the matters specified in [California Public Resources Code] Section 21100. It includes any comments on an environmental impact report which are obtained pursuant to Section 21104 or 21153, or which are required to be obtained pursuant to this division.
>
> An environmental impact report is an informational document which, when its preparation is required by this division, shall be considered by every public agency prior to its approval or disapproval of a project. The purpose of an environmental impact report is to provide public agencies with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which any adverse effects of such a project might be minimized; and to suggest alternatives to such a project.

30. *Id.* § 21151. Section 21151 states:

> 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 . . . . When a report is required by Section 65402 of the Government Code, the environmental impact report may be submitted as a part of that report.

31. *Id.* §§ 21000-01; 14 CAL. ADMIN. CODE § 15010 (1975). Section 21000 states:

> The Legislature finds and declares as follows:
>
> (a) The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.
>
> (b) It is necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man.
>
> (c) There is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the state, including their enjoyment of the natural resources of the state.
>
> (d) The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.
>
> (e) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.
>
> (f) The interrelationship of policies and practices in the

pervasive and, as at least one case has noted, almost heroic nature.[32] The Legislature has made it clear that "major consideration"[33] must be given to preventing environmental damage, and that "all action necessary"[34] must be taken to pro-

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management of natural resources and waste disposal requires systematic and concerted efforts by public and private interests to enhance environmental quality and to control environmental pollution.

(g) It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage.

Section 21001 states:

The Legislature further finds and declares that it is the policy of the state to:

(a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.

(b) Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.

(c) Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.

(d) Ensure that the long-term protection of the environment shall be the guiding criterion in public decisions.

(e) Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations.

(f) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality.

(g) Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.

32. Environmental Defense Fund, Inc. v. Coastside County Water Dist., 27 Cal. App. 3d 695, 701, 104 Cal. Rptr. 197, 200 (1972), *supplemental opinion filed*, 28 Cal. App. 3d 512, 104 Cal. Rptr. 714 (1972).

33. CAL. PUB. RES. CODE § 21000(g) (West Supp. 1975).

34. *Id.* § 21001(b).

vide and maintain a clean, aesthetic and scenic environment. These standards were established in response to the glimpses of Hades that unrestricted growth had given the Legislature. They were based on an increased awareness of the importance and necessary priority of our environmental needs, and the consequences of our activities and abuses in that area.[35]

In *Friends of Mammoth v. Board of Supervisors*,[36] the supreme court applied the articulated legislative intent of CEQA "in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."[37] *Mammoth* expanded the mandate of CEQA by applying the requirement of filing an EIR to private activities for which a government permit or entitlement was necessary.[38] This unwavering interpretation of CEQA by the supreme court was affirmed by the Legislature when it made additions and amendments to CEQA which codified the court's interpretation in *Mammoth*.[39] Consequently, when the supreme court decided *Bozung* three years later, it was stepping sure-footedly on planks partially of its own making.[40]

CEQA's principles and purposes are implemented by the filing of an EIR. An EIR is primarily meant to serve as a document bringing to the surface, and therefore to the public, the nature and consequences of, as well as alternatives to, a proposed project. As an informational document, an EIR enables public agencies to make sound evaluations of their positions with knowledge of the relevant facts. Also, the public in general is provided with enough data to enable informed responses to projects approved or carried out by agencies.[41]

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35. For a discussion which also reflects such awareness see P. EHRLICH, THE END OF AFFLUENCE (1974).

36. 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972).

37. *Id.* at 259, 502 P.2d at 1056, 104 Cal. Rptr. at 768.

38. For a discussion of *Mammoth* see Kane, *Friends of Mammoth: The Expanding Scope of Environmental Law in California*, 48 L.A. B. BULL. 81 (1973).

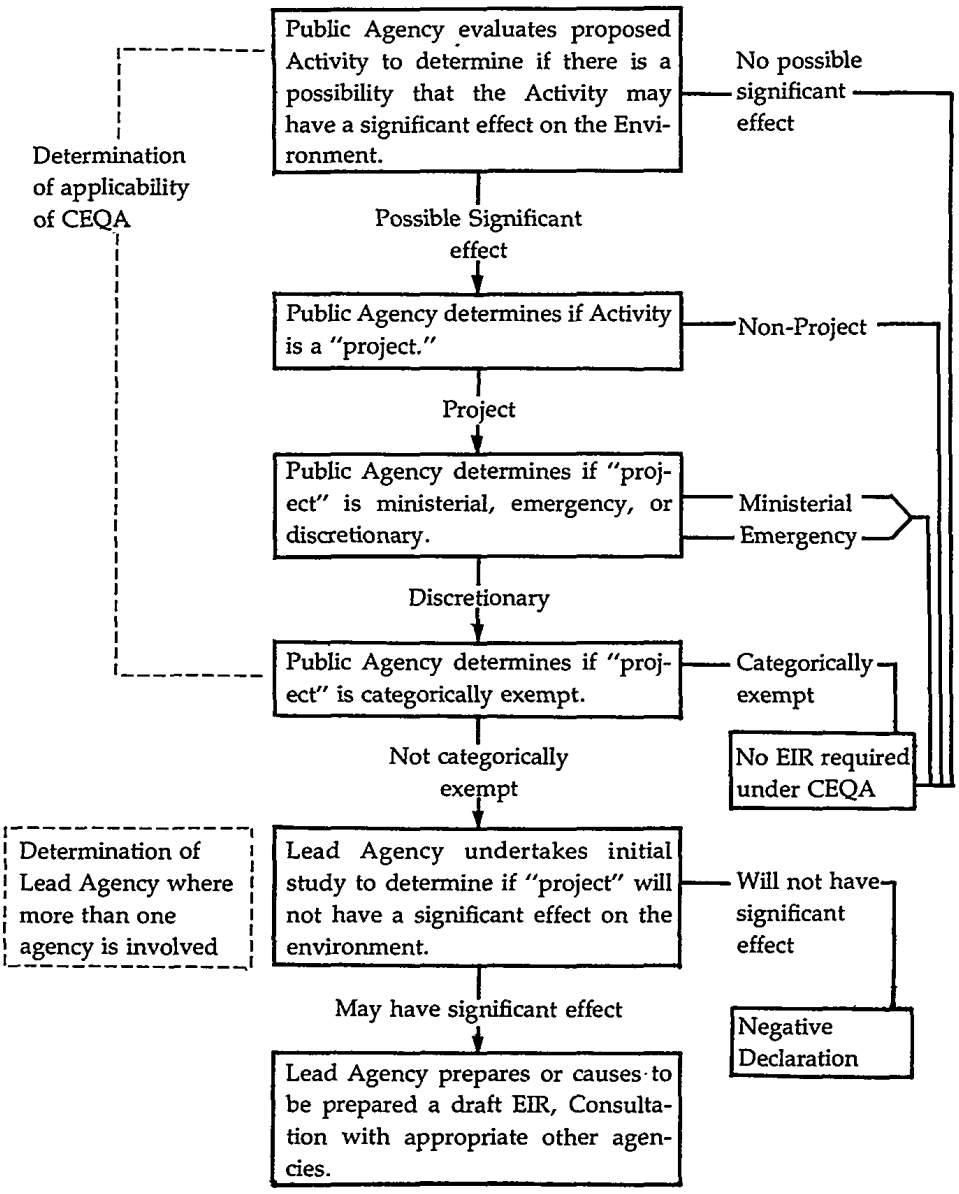
39. Ch. 1154, § 1, [1972] Cal. Stat. 2271; ch. 1154, § 11, [1972] Cal. Stat. 2276, *codified at* CAL. PUB. RES. CODE §§ 21065(c), 21151 (West Supp. 1975). For the legislative history of the amendments to CEQA subsequent to *Mammoth* see Seneker, *supra* note 24, at 128-30; Note, *Environmental Law*, 8 LAND & WATER L. REV. 565 (1973).

40. Subsequent to *Bozung*, ch. 222, §§ 1-5, [1975] Cal. Stat.———, was filed. This law continues the trend of legislative codification of judicial interpretations of CEQA. LAFCOs are now included in CAL. PUB. RES. CODE § 21062 (West Supp. 1975), which enumerates the local agencies encompassed by CEQA.

41. *See* 14 CAL. ADMIN. CODE §§ 15164-66 (1975).

The articulated intent of CEQA provides the guiding force for the EIR filing process. The duty of considering an EIR is not confined to any single governmental unit, but is imposed upon "every public agency prior to its approval or disapproval of a project."[42] All agencies are therefore subject to the threshold statutory requirements shown on the following flow chart:[43]

CEQA'S EIR FILING PROCESS



42. CAL. PUB. RES. CODE § 21061 (West Supp. 1975).
43. 14 CAL. ADMIN. CODE, at 319 (1973) (Appendix A) (flow chart).

This chart shows the effects of each determination prior to the ultimate conclusion that either: (1) there is no EIR required by CEQA; or (2) an EIR or, in the alternative, a statement of non-impact (a negative declaration) is required.[44]

The controversy and major issue in *Bozung* involved conflicting interpretations of certain statutory threshold requirements in CEQA's EIR filing process and, specifically, whether a LAFCO annexation approval is circumscribed by these requirements. The statutes governing whether an EIR must be filed are definitional. If the agency and activity in question come within the definitional scope of these statutes, then that agency bears the responsibility of filing an EIR.

As the flow chart indicates, under CEQA the first determination that should be made is whether a "public agency"[45] is involved.[46] This issue is rarely the center of dispute, as most agencies involved are public agencies. A more difficult problem arises when the "possibility of a significant effect on the environment" is in question. The State Guidelines do provide some criteria by which to judge whether or not there will be a "significant effect." However, these Guidelines also explicitly recognize that an "iron clad"[47] definition is not possible. As a result of this definitional difficulty, it has become the responsibility of the judiciary to determine whether or not such significant effect is present. Because of the broadness of the term "possible," and the judicial mandate of the "fullest possible protection" of the environment,[48] in only the most clear-cut cases will a public agency be able to sustain a claim that its activity does not have a "possible significant effect on the environment."

The next determination which should be made is whether the

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44. The statutory provisions dealing with when an EIR is required are contained in CAL. PUB. RES. CODE § 21151 (West Supp. 1975). Also see 14 CAL. ADMIN. CODE § 15061 (1975). Under certain circumstances, a negative declaration, rather than an EIR is required. *Id.* §§ 15033, 15083.

45. CAL. PUB. RES. CODE §§ 21062-63 (West Supp. 1975); 14 CAL. ADMIN. CODE §§ 15031, 15038 (1975). Both local and state agencies are public agencies.

46. CAL. PUB. RES. CODE § 21061 (West Supp. 1975) reveals that CEQA's provisions apply only to public agencies. Therefore, by definition, the initial inquiry must be whether or not a public agency is involved. The *Bozung* court recognized this by stating that the "first question . . . is whether LAFCO is a governmental agency to which CEQA addresses itself." 13 Cal. 3d at 276, 529 P.2d at 1025, 118 Cal. Rptr. at 257.

47. 14 CAL. ADMIN. CODE § 15081 (1975).

48. Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972).

activity of the public agency involved is a "project."[49] Public Resources Code section 21065 provides some direction;[50] projects are defined, in part, as "[a]ctivities directly undertaken by any public agency" or "[a]ctivities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." Reading the statute literally, it seems quite clear that a LAFCO adoption or revision of a spheres of influence plan entitles a "person"[51] to use the land and is, therefore, an "entitlement for use."[52]

Not all activities which qualify as projects are required to file an EIR. It must be determined whether the project is "ministerial" or "discretionary" in nature.[53] Ministerial projects are those projects which are done in a prescribed manner as required by applicable legal authority,[54] and they are exempt from the requirement of preparing an EIR.[55] Requiring more than just the perfunctory, discretionary projects are those which call upon the judgmental capacities of the responsible agency.[56] If an agency determines that a project is ministerial in nature it should file a notice,[57] thus making that determination and the consequent exemption from the EIR filing process a matter of public record. An emergency situation, such as a disaster relief project, is also exempt from the EIR filing process.[58] Certain discretionary projects "which have been determined not to have a significant effect on the environment"[59] have been given "categorical exemptions."[60]

49. *See* CAL. PUB. RES. CODE § 21151 (West Supp. 1975).

50. For additional guidance see 14 CAL. ADMIN. CODE § 15037 (1975).

51. A city is included within the definitional scope of a "person." CAL. PUB. RES. CODE § 21066 (West Supp. 1975).

52. *Id.* § 21065(c).

53. This must be determined because CEQA does not apply to ministerial projects. *Id.* § 21080(b). The phrase "ministerial project" is defined at 14 CAL. ADMIN. CODE § 15032 (1975).

54. 14 CAL. ADMIN. CODE §§ 15032, 15073 (1975).

55. CAL. PUB. RES. CODE § 21080(b) (West Supp. 1975).

56. *Id.* § 21080(a). The phrase "discretionary project" is defined at 14 CAL. ADMIN. CODE § 15024 (1975).

57. The relevant code sections state that a notice "may" be filed. CAL. PUB. RES. CODE §§ 21108, 21152 (West Supp. 1975); 14 CAL. ADMIN. CODE §§ 15035.5, 15074 (1975). However, given the fact that the Legislature expressly intended that CEQA involve the public in the efforts to preserve California's environment, CAL. PUB. RES. CODE § 21000(e) (West Supp. 1975), a notice *should* be filed. *See* 14 CAL. ADMIN. CODE §§ 15164-65 (1975).

58. CAL. PUB. RES. CODE §§ 21085, 21172 (West Supp. 1975). The term "emergency" is defined at 14 CAL. ADMIN. CODE § 15025 (1975). The phrase "emergency projects" is defined at *id.* § 15071.

59. CAL. PUB. RES. CODE § 21084 (West Supp. 1975).

60. *See* 14 CAL. ADMIN. CODE §§ 15023, 15100-15 (1975).

Both categorically exempt projects and emergency projects should file a notice.[61]

An important part of the litigation concerning CEQA has involved the definition of a "project"[62] and, specifically, how a project must relate to the proposed land use in order for it to come within the scope of the CEQA mandate. *Mammoth* is the landmark decision in this area. In holding that a governmental agency's issuance of a building permit for a private activity was a project within the terms of CEQA, the California Supreme Court concluded that governmental projects "must have some minimal link with the activity, either by direct proprietary interest or by permitting, regulating, or funding private activity" before the involved agency will be required to prepare an EIR.[63] Throughout *Mammoth* the probability of an effect on the environment was not denied. The issue was the allocation of the responsibility of analyzing that effect. By having a "minimal link" with the prospective land use, the issuance of a building permit entailed the responsibility of preparing an EIR. Thus, the filing of an EIR is even required when a project has a "minimal link" with any activity which may possibly have a significant fect on the environment.

As the flow chart indicates, where more than one agency is involved in the project, the "lead agency" must be determined.[64] The lead agency is the one upon which the initial duty of filing an EIR devolves. The "lead agency" concept was developed to maximize attention to environmental considerations at the earliest possible stages of a "project." When a conflict arises as to which agency is the lead agency, the factors to be considered are: (1) which agency proposed the project? (2) which agency has the greatest responsibility for approving the project as a whole? and (3) which agency acted first on the project in question?[65] If none of these criteria resolve the conflict, the conflicting agencies may either mutually agree on a lead agency[66] or have the Office of

61. CAL. PUB. RES. CODE §§ 21108, 21152 (West Supp. 1975); 14 CAL. ADMIN. CODE §§ 15035.5, 15074 (1975). For a coordinated reading of the statutes and their implementing guidelines see Seneker, *supra* note 24, at 164-65.

62. The term "project" is defined at CAL. PUB. RES. CODE § 21065 (West Supp. 1975).

63. 18 Cal. 3d at 262-63, 502 P.2d at 1059, 104 Cal. Rptr. at 771.

64. The responsibilities of lead agencies are explained in CAL. PUB. RES. CODE § 21165 (West Supp. 1975), and 14 CAL. ADMIN. CODE § 15064 (1975). The term "lead agency" is defined at CAL. PUB. RES. CODE § 21067 (West Supp. 1975).

65. 14 CAL. ADMIN. CODE §§ 15065(a)-(c) (1975).

66. *Id.* § 15065(d).

Planning and Research designate the lead agency.[67] Throughout all of these deliberations, the Legislature's intent to maximize environmental protection must be given great weight.

III. BOZUNG V. LAFCO: KNOX-NISBET AND CEQA DOVETAIL

A. Facts of the Case

In *Bozung*,[68] the real party in interest, Kaiser-Aetna, made two proposals to the Ventura County LAFCO.[69] Both of these proposals involved shifting a spheres of influence line. This spheres of influence line, which was straddled by the 677 acre Bell Ranch, had been drawn between the existing City of Camarillo and the proposed City of Los Posas. Kaiser-Aetna, as the owner and intended developer of the Bell Ranch, requested that the Ventura County LAFCO shift this spheres of influence line so as to place the Bell Ranch acreage entirely within the sphere of the proposed City of Los Posas. This request was granted by the Ventura County LAFCO. Kaiser-Aetna then requested that the county rezone part of the Bell Ranch, but the Ventura County Board of Supervisors, which then had jurisdiction over the de-

67. Cal. Pub. Res. Code § 21165 (West Supp. 1975); 14 Cal. Admin. Code § 15065.5 (1975).

68. *Bozung* came before the supreme court on appeal from the Court of Appeal for the Second Appellate District, Division Five, which had reversed a judgment for defendant LAFCO after their demurrers to plaintiffs' complaint for mandate and declaratory relief were sustained without leave to amend. Interestingly, in reversing the trial court, the supreme court published a virtual verbatim adoption of the court of appeal opinion prepared by Presiding Justice Kaus. 13 Cal. 3d at 267, 529 P.2d at 1019-20, 118 Cal. Rptr. at 251-52.

69. Ventura County's situation is unique:

> The Ventura County LAFCO has gone further than any other county in California in setting out city spheres of influence. The city sphere study in fact represents a general plan for the county which is similar to city general plans. The Ventura LAFCO has created city spheres that cover all the present and potential urban areas of the counties, looking ahead to the year 2000. The study also outlines the boundaries of four new cities that should be incorporated in the county, but are not now in existence. One point of particular controversy in the plan was the incorporation of the new city of Los Posas in the Los Posas Valley between the large, aggressively annexing cities of Oxnard and Camarillo. Both of these cities had designs on the Los Posas Valley area. The LAFCO has since backed down and agreed that the area will be split between the two cities.

R. Legates, *supra* note 7, at 89-90.

velopment of the proposed city of Los Posas, rejected Kaiser-Aetna's proposal.[70] This effectively foreclosed Kaiser-Aetna's opportunity to develop within the Los Posas sphere of influence. Once again at Kaiser-Aetna's behest, the Ventura County LAFCO shifted the spheres of influence line; this time the Bell Ranch was included within the City of Camarillo's sphere of influence. Because the Bell Ranch was now located within Camarillo's sphere of influence, it had legitimate political authority over the land. Thus, Camarillo could proceed to annex the land and rezone it for intended development.

Suit was brought by Richard Bozung, a Ventura County resident and taxpayer; Roger Boedecker, a Ventura County resident and taxpayer who lived near the annexed property, on behalf of himself and all others similarly situated; and the Ventura County Environmental Coalition, composed of Ventura County residents and taxpayers, many of whom lived in Camarillo or in the area of the annexation. The plaintiffs brought suit on a number of grounds.[71] The most significant contention was that the Ventura County LAFCO did not comply with CEQA prior to shifting the spheres of influence line. In fact, the Ventura County LAFCO proceeded as though CEQA did not even exist.[72] The plaintiffs insisted that the Ventura County LAFCO's approval of Kaiser-Aetna's proposed shift in the spheres of influence line would result in significant physical changes to the environment. This is so because all of the parties involved knew that Kaiser-Aetna's request was a prelude to residential, commercial and recreational development that was certain to take place. Thus, the plaintiffs concluded that, knowing of this intended de-

70. 13 Cal. 3d at 269, 529 P.2d at 1021, 118 Cal. Rptr. at 253.

71. The court stated that *Bozung* raised the following issues:

> (1) Whether the annexation may be challenged by mandate, which in turn depended upon the question when the annexation was legally complete;
> (2) whether any one of the three plaintiffs had standing to sue;
> (3) whether a class action was proper;
> (4) whether CEQA applies to a LAFCO approval of annexations;
> (5) what constitutes compliance with the requirement that a LAFCO establish a "spheres of influence" plan; and
> (6) what factors must be considered before a LAFCO can approve an annexation.

Id. at 271, 529 P.2d at 1022, 118 Cal. Rptr. at 254.

72. *Id.* at 273, 529 P.2d at 1023, 118 Cal. Rptr. at 255.

velopment, the LAFCO was statutorily compelled to file an EIR. This major issue was not affected by the disposition of the other issues.[73]

B. KNOX-NISBET IN LIGHT OF CEQA

In *Bozung* the defendant LAFCO's uniqueness among the various governmental institutions of the United States led to its complete disregard of CEQA. The supreme court concluded that the facts of the case should have precipitated LAFCO compliance with CEQA's EIR filing process. In reaching its decision, the court carefully considered the activity involved—the Ventura County LAFCO's approval of the shift in the spheres of influence line in response to Camarillo's annexation proposal—and whether this particular annexation approval came within the definitional scope of CEQA.

The court first considered whether a LAFCO is a "public agency" as defined by CEQA. The defendants made no contention on this point, and the court readily concluded that under Public Resources Code sections 21062 and 21063 a LAFCO is a public agency.[74]

Are LAFCO Boundary Change Approvals "Projects"?

The major dispute between the parties centered on the applicability of Public Resources Code section 21151 which requires

73. Concerning the secondary issues the court ruled that (1) mandamus was the proper remedy by which to attack the proceeding because the annexation was not legally complete due to suit having been brought before Camarillo's annexation ordinance was filed with the Secretary of State. *Id.* at 271-72, 529 P.2d at 1022, 118 Cal. Rptr. at 254. (2) The plaintiffs had standing to sue on the basis of their allegations of an "injury in fact" to their "protected interests" if the proposed annexation were allowed. The California Supreme Court fully supported the United States Supreme Court's interpretation of the very similar National Environmental Policy Act in United States v. SCRAP, 412 U.S. 669, 683-90 (1973), and spoke forcefully when it said "effects of environmental abuse are not contained by political lines; strict rules of standing that might be appropriate in other contexts have no application where broad and long-term effects are involved." 13 Cal. 3d at 272, 529 P.2d at 1022-23, 118 Cal. Rptr. at 254-55. (3) A class action was improper because the purpose of a class action would not have been furthered in the instant case, as all others similarly situated would have automatically been benefited by a single plaintiff's efforts. *Id.* at 272-73, 529 P.2d at 1023, 118 Cal. Rptr. at 255. (4) The considerations required to be taken pursuant to Government Code section 54796 of the Knox-Nisbet Act, such as population growth, service needs, and the physical and economic ramifications of granting a proposed annexation were superceded and mooted by the court's holding regarding the applicability of CEQA to a LAFCO. *Id.* at 287-88, 529 P.2d at 1033-34, 118 Cal. Rptr. at 265-66.

74. The Legislature's codification of the supreme court's inclusion of LAFCOs as public agencies is discussed briefly at note 40 *supra*.

"all local agencies" to prepare and certify an EIR "on any project they intend to carry out which may have a significant effect on the environment." The defendants initially contended that a LAFCO annexation approval does not meet the criteria of a project as defined by Public Resources Code section 21065.[75] In support of this contention, the defendants advanced the argument that a LAFCO annexation approval is more akin to a "feasibility or planning study" than the adoption of a "local general plan."[76] Feasibility or planning studies are specifically exempt from the EIR filing requirement,[77] while the act of adopting a local general plan is not.[78] Local general plans are more certain and less subject to change than feasibility or planning studies, which are tentative acts. The defendants reasoned that because a LAFCO merely apportions political authority and is prohibited from imposing conditions which would directly regulate land use,[79] an annexation approval must be a tentative act similar to a feasibility or planning study. A LAFCO annexation approval would therefore fall outside the definitional scope of a project. The supreme court concluded that just the opposite was true, because LAFCO annexation approval in *Bozung* was even more certain than a general plan. While general plans are still "tentative and subject to change," an annexation approval is "irrevocable" with regard to the LAFCO.[80] Thus, the LAFCO annexation approval was a project as defined by subdivisions *a* and *c* of Public Resources Code section 21065 because it was an activity directly undertaken by a

75. CAL. PUB. RES. CODE § 21065 (West Supp. 1975). Section 21065 states:

> "Project" means the following:
> (a) Activities directly undertaken by any public agency.
> (b) Activities undertaken by a person which are supported in whole or in part through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
> (c) Activities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

76. 13 Cal. 3d at 278, 529 P.2d at 1026-27, 118 Cal. Rptr. at 258-59.

77. PUB. RES. CODE § 21102 (West Supp. 1975); 14 CAL. ADMIN. CODE § 15037(b)(3) (1975).

78. 14 CAL. ADMIN. CODE § 15037(a)(1) (1975). Local general plans are projects because California Public Resources Code section 21080 defines zoning ordinances as projects, and, pursuant to California Government Code section 65860, zoning ordinances must be consistent with general plans.

79. CAL. GOV'T CODE § 54790(a)(3) (West Supp. 1975).

80. 13 Cal. 3d at 278, 529 P.2d at 1027, 118 Cal. Rptr. at 259, *quoting* Selby Realty Co. v. City of San Buenaventura, 10 Cal. 3d 110, 118, 514 P.2d 111, 115-16, 109 Cal. Rptr. 799, 803-04 (1973).

public agency and it involved the issuance to a city of an entitlement for use. The court recognized that though "in theory, the city eventually may not use the entitlement by not annexing, [this fact] does not retroactively turn a project into a nonproject."[81]

Can LAFCO Boundary Change Approvals have a "Significant Effect on the Environment"?

The defendants next contended that the Ventura County LAFCO should not be required to prepare an EIR because its annexation approval was not a project which may have a "significant effect on the environment." In answering this contention, the court cited *Mammoth* for the proposition that the project need not directly effect the environment. The court noted that the State Guidelines refer to a "physical impact on the environment, directly or *ultimately*."[82] A de facto link was held to exist between the annexation approval and the prospective land use though the *Mammoth* "minimal link" language was not used. The defendants argued that because of the lack of a "minimal link" between the annexation approval and the physical change ultimately anticipated, the preparation of an EIR was more appropriate at the stage when the City of Camarillo would rezone the newly annexed territory prior to development. In support of this argument, the defendants reasoned that since LAFCOs are statutorily prohibited from regulating land use, their activities cannot possibly effect the environment. Further, the defendants asserted that there could not be an effect on the environment because a LAFCO annexation approval is a tentative act similar to a feasibility or planning study. The supreme court vigorously rejected these assertions:

> [T]his case does not involve—as the tone of some of defendants' arguments suggest—the question whether any LAFCO approval of any annexation to any city may have a significant effect on the environment. This is not the case of a rancher who feels that his cattle would chew their cuds more contentedly in an incorporated pasture. No one makes any bones about the fact that the impetus for the Bell Ranch annexation is Kaiser's desire to sub-

81. 13 Cal. 3d at 279, 529 P.2d at 1027, 118 Cal. Rptr. at 259 (footnote omitted).

82. *Id.* at 279, 529 P.2d at 1028, 118 Cal. Rptr. at 260, *citing* 14 CAL. ADMIN. CODE § 15037 (1975) (emphasis added by the court).

> divide 677 acres of agricultural land, a project apparently destined to go nowhere in the near future as long as the ranch remains under county jurisdiction. The city's and Kaiser's application to LAFCO shows that this agricultural land is proposed to be used for "residential, commercial and recreational" purposes. Planning was completed, preliminary conferences with city agencies had progressed "sufficiently" and development in the near future was anticipated. In answer to the question whether the proposed annexation would result in urban growth, the city answered: "Urban growth will take place in designated areas and only within the annexation."
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> It therefore seems idle to argue that the particular project here involved may not culminate in physical change to the environment.[83]

The defendants overemphasized a LAFCO's lack of "control over and . . . [guarantees concerning] what land use will be ultimately placed on the annexed property,"[84] while disregarding the fact that in certain factual settings, as in *Bozung*, once an annexation is approved by shifting a spheres of influence line, development will surely take place despite the lack of LAFCO control over its ultimate nature.

This case, unlike the myriad of other proposals that LAFCOs consider every year, was different because, once the Kaiser-Bell Ranch was within Camarillo's jurisdiction, "residential, commercial and recreational" development was going to take place in a way known to the Ventura County LAFCO.[85] Clearly, this particular LAFCO activity was more than just a planning study, it

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83. 13 Cal. 3d at 281, 529 P.2d at 1029, 118 Cal. Rptr. at 261 (footnotes omitted).

84. Brief for Defendants at 29, Bozung v. Local Agency Formation Comm'n, Civ. No. 41948 (Ct. App., 2d Dist., filed July 25, 1973).

85. The court was aware of this impending development because

> [t]he application contained Camarillo's and Kaiser's answers to a standard questionnaire. Certain significant questions and answers were as follows: "[Q.] What is the present use of the land? [A.] Land is in agricultural use and is also the site of two churches and the City of Camarillo water storage facility.
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> "[Q.] How will the land be used after annexation? Please be specific. [A.] Proposed for residential, commercial and recreational uses.
>
> " . . .

was a necessary prerequisite to the future action which would change the pastureland of the Bell Ranch into a residential and commercial neighborhood. The ultimate nature of the development was out of the LAFCO's control, but with the knowledge that development was certain, there remained the option to approve or disapprove the annexation. This factual setting made this LAFCO decision a project with a significant effect on the environment.

Was the LAFCO in Bozung *the "Lead Agency"?*

The defendants' final contention was that the lead agency concept applied to the City of Camarillo, rather than the Ventura County LAFCO.[86] As mentioned earlier, the lead agency is "the agency which is to act first on the project."[87] The foundation of the defendants' argument was that the preparation of an EIR at the annexation stage of the development process would be "premature and wasteful" since Camarillo would be required to prepare another EIR in order to rezone the annexed property.[88] The defendants felt that such a report would have little value because "[d]etailed information on the scope and extent of the proposed development is usually not available at the LAFCO stage, or, if it is, it is subject to considerable modification as plans develop . . . ."[89]

The supreme court found no merit in the defendants' contention. In answering the defendants' argument, the court reiterated

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> "[Q.] Why is the annexation being proposed at this time, rather than earlier to at some time in the future? [A.] Planning is completed and preliminary conferences with city agencies have progressed sufficiently.
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> "[Q.] Has any proponent included only a portion of the land under his ownership? *yes* If 'Yes' please explain. [A.] Proponent has included those properties anticipated to be developed in the near future.
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> " . . .
>
> "[Q.] Will the proposed annexation result in urban growth in the area to be annexed or in areas adjacent to the proposed annexation? [Please be specific.] [A.] Urban growth will take place in designated areas and only within the annexation.

13 Cal. 3d at 270 n.4, 529 P.2d at 1021 n.4, 118 Cal. Rptr. at 253 n.4.

86. *Id.* at 285, 529 P.2d at 1032, 118 Cal. Rptr. at 264.

87. 14 CAL. ADMIN. CODE § 15065(c) (1975).

88. 13 Cal. 3d at 282, 529 P.2d at 1030, 118 Cal. Rptr. at 262.

89. Petitioner's Brief for hearing at 14, Bozung v. Local Agency Formation Comm'n, 13 Cal. 3d 263, 529 P.2d 1017, 118 Cal. Rptr. 249 (1975).

that "the agency which is to act first on the project" is the lead agency and must, therefore, prepare an EIR. The Legislature has expressed the intention that "EIRs should be prepared as early in the planning process as possible to enable environmental considerations to influence project, program or design."[90] The court found several weaknesses in the defendants' argument that an EIR prepared by the Ventura County LAFCO would be premature and wasteful. Because the annexation approval itself was a project with a relatively detailed plan and within the terms of CEQA, the LAFCO, which was responsible for the approval, was the lead agency.[91] As between the Ventura County LAFCO and the City of Camarillo, the LAFCO was acting first on the project and the court noted that it was not the intent of CEQA that disputes concerning the identity of lead agencies are to be resolved by one agency "looking the other way."[92] The strongest arguments for choosing the Ventura County LAFCO as the lead agency rather than Camarillo can be found in the State Guidelines. The court observed that the early preparation of an EIR, rather than being a meaningless or premature exercise, can become a basis for later modifications and subsequent EIRs. The State Guidelines encourage this "energy-saving procedure."[93] Obviously, an EIR is not meant to be a final blueprint for land development. Instead, its purpose is to provide a publicly accessible document which can be used to sound out an eventually suitable program or alternative to that program. The early preparation of an EIR minimizes the potential for environmental damage, thereby effectuating the intent of CEQA[94] and giving credence to the ancient maxim that "an ounce of prevention is worth a pound of cure."

Finally, the supreme court put emphasis on the fact that a LAFCO EIR would give a regional as opposed to local perspective to the project. The State Guidelines prefer EIRs based upon the broadest view possible.[95] The court noted that:

> The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental conse-

90. 13 Cal. 3d at 282, 529 P.2d at 1030, 118 Cal. Rptr. at 262, *citing* 14 CAL. ADMIN. CODE § 15013 (1975).

91. 13 Cal. 3d at 285, 529 P.2d at 1032-33, 118 Cal. Rptr. at 264-65.

92. *Id.* at 286, 529 P.2d at 1033, 118 Cal. Rptr. at 265.

93. *Id., citing* 14 CAL. ADMIN. CODE § 15067 (1975).

94. *See* note 31 *supra*.

95. 14 CAL. ADMIN. CODE § 15142 (1975).

> quences in mind. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations. At the very least, however, the People have a right to expect that those who must decide will approach their task neutrally, with no parochial interest at stake. . . . Speaking generally, therefore, it seems clear that the officials of a municipality, which has cooperated with a developer to the extent that it requests an annexation of that developer's property for the express purpose of converting it from agricultural land into an urban subdivision, may find it difficult, if not impossible, to put regional environmental considerations above the narrow selfish interests of their city.[96]

LAFCO approvals are often equated with "seal[s] of approval [which] can help reassure residents in the annexation area that the proposal is sound, having been reviewed and perhaps modified by a neutral professional body."[97]

C. A Dissenting View

In a lengthy dissent, Justice Clark called on the *Bozung* majority to limit the application of CEQA. Justice Clark felt that the majority's interpretation would make CEQA applicable to the simple hiring of an employee by a governmental agency because "[a] decision to hire additional government employees may ultimately affect the use of land because the employees will need a place to work."[98] Justice Clark relied heavily on the *Mammoth* language[99] and the fact that a LAFCO is statutorily prohibited from regulating land use.[100] His thesis was that since LAFCO decisions cannot directly regulate land use, they cannot possibly have a "minimal link" with the prospective land use. Justice Clark cited the factors that an EIR must consider "including adverse environmental effect, mitigation measures and alternatives to the proposed action."[101] He concluded that "[c]learly those factors

96. 13 Cal. 3d at 283, 529 P.2d at 1030, 118, Cal. Rptr. at 262 (footnote omitted).
97. Boundary Change, *supra* note 5, at 47.
98. 13 Cal. 3d at 292, 529 P.2d at 1037, 118 Cal. Rptr. at 269.
99. *See* note 57 *supra* and accompanying text.
100. *See* note 22 *supra* and accompanying text.
101. 13 Cal. 3d at 292, 529 P.2d at 1049, 118 Cal. Rptr. at 268 (quotations omitted).

are meaningful only in the context of a particular contemplated land use."[102]

Justice Clark's logic seems to miss the thrust of the majority's decision. This LAFCO approval *did* involve a particular land use. In *Bozung* there was de facto regulation in that the LAFCO approval would have led to development, whereas the withholding of it would have foreclosed development. The approval was not the "[imposition of] any conditions which would directly regulate land use,"[103] but a state of conditions by which regulation could not have been avoided. Though most LAFCO decisions do not regulate land use and therefore do not require EIRs, in this case the de facto regulation should have triggered the filing of an EIR.

CONCLUSION

Vital to the disposition of this case was the fact that the LAFCO annexation approval was not made on a completely open or blank proposal by a municipality in order to obtain unincorporated territory. It was for the specific and known purpose of development for "residential, commercial, and recreational purposes" in "designated areas . . . within the annexation."[104] The development was not an indefinite possibility, but rather something "anticipated in the near future"[105] with near certainty. A blank proposal can be distinguished by its lack of any foreseeable and certain environmental consequences, which therefore would not have the sort of anticipated effects on the environment that a proposal made with the specific intent of furthering urban growth has.[106] The importance of the distinction between "any" LAFCO approval and the instant one was achieved by a coordinated reading of CEQA, the Knox-Nisbet Act, and the State Administrative Guidelines, which all lay emphasis on responsible control and concern by all involved parties whenever they make decisions affecting land development. Here the control, the decision to approve or disapprove the annexation, belonged to the Ventura County LAFCO and the effect on the environment was imminent.

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102. *Id.*.

103. CAL. GOV'T CODE § 54790(a)(3) (West Supp. 1975).

104. *See* note 85 *supra*.

105. *Id.*

106. Recently, the California Court of Appeal for the Second Appellate District held that a detachment of 10,000 acres of undeveloped land, which was approved by the Ventura County LAFCO, was not a project because there was no basis for believing that the detachment in this case would involve any change whatsoever in the uses to

A more expansive reading of *Bozung* makes it clear that in the future LAFCOs must give consideration to CEQA in their decision-making process.

> We stated at the outset that LAFCO proceeded as if CEQA did not exist. The entire thrust of our discussion is that LAFCO must recognize that Knox-Nisbet dovetails with CEQA. This does not mean that after consideration of an adequate EIR, LAFCO must withhold its approval of the annexation. Any such conclusion would be wildly outside of the scope of the issues tendered in this litigation. We merely enforce the legislative mandate that before acting, LAFCO was bound to address itself to environmental considerations in accordance with the procedures set forth in CEQA.[107]

One problem with the new approach mandated by the supreme court is that of the degree of proof necessary to make a finding that there is sufficient knowledge of imminent development to require the filing of an EIR. Here the application to the Ventura County LAFCO contained answers to inquiries about the reasons for the annexation proposal. Those answers were specific enough for the court to conclude that significant environmental effects were imminent. In future LAFCO deliberations over incorporation or annexation proposals similar inquiries could be made, but variations in the answers could well vary the LAFCO's perception of its duty to comply with CEQA.

The court interpolated an operative element of "scienter" or foreseeability into CEQA. Once definite knowledge of environmental impact arises, so does the duty to comply with the EIR filing process. In *Bozung* the California Supreme Court showed a willingness to perceive CEQA as the most pervasive environmental legislation in the state. Its hand in hand role with the Legislature in the development of the law in this area has given its decisions a firm and relatively clear edge. The court has not retreated from the standard of giving the "fullest possible

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which the land would someday be put. Simi Valley Recreation & Park Dist. v. Local Agency Formation Comm'n, 51 Cal. App. 3d 648, 124 Cal. Rptr. 635 (1975).

107. 13 Cal. 3d at 281-82, 529 P.2d at 1029-30, 118 Cal. Rptr. at 261-62.

108. Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d at 259, 502 P.2d at 1056, 104 Cal. Rptr. at 768.

protection"[108] to the environment by requiring agencies to comply with CEQA.

Bozung's effect on environmental law in California, specifically with regard to the enforcement of CEQA, will require all local agency formation commissions to make a preliminary determination before approving proposals. That determination must ascertain whether a specific proposal or development is about to be implemented once the approval is given. If development is imminent the LAFCO will have to file an EIR with all of its concomitant considerations, and not merely "rubber stamp" the proposal.

All agencies in California will have to look at their decision-making processes to see if they are complying with the letter and spirit of CEQA. If specific and certain land uses are to be effectuated, it can be expected that the California Supreme Court will again affirm the role of the California Environmental Quality Act as the protector of the environment.

Henry Michael Domzalski II