

**SPECIAL REORGANIZATION OF THE SAN FERNANDO VALLEY  
EXECUTIVE OFFICER'S REPORT ON REQUESTS FOR RECONSIDERATION**

TO THE

LOCAL AGENCY FORMATION COMMISSION  
FOR LOS ANGELES COUNTY

July 3, 2002

Larry J. Calemine  
Executive Officer  
Local Agency Formation Commission  
For Los Angeles County  
700 North Central Avenue, Suite 350  
Glendale, California 91203  
(818) 254-2454

## TABLE OF CONTENTS

EXECUTIVE OFFICER’S RECOMMENDATION .....	1
Recommendation:.....	1
INTRODUCTION .....	2
REQUESTS RELATED TO APPROVAL OF THE SPECIAL REORGANIZATION.....	4
First Request: Finding on Fiscal Viability .....	4
Second Request: Fiscal Impact on the City of Los Angeles.....	9
Third Request: Approval of the Valley Special Reorganization.....	18
REQUESTS SEEKING MODIFICATIONS TO THE RESOLUTION.....	20
Fourth Request: Continuation of Charges, Fees, Assessments, and Taxes .....	20
Fifth Request: Allocation of the Tobacco Settlement.....	23
Sixth Request: Regulation of Utility Service Rates.....	24
Seventh Request: Severability of the Utility Rate Setting Condition.....	25
Ninth Request: Proposition K.....	26
Tenth Request: Severability .....	27

## ***EXECUTIVE OFFICER'S RECOMMENDATION***

The City of Los Angeles has requested that the Commission disapprove the Valley Special Reorganization and has proposed ten specific modifications to the Resolution.

Each of the City's proposed changes is discussed in this report. Based on the reasons stated in this report, it is the Executive Officer's recommendation that the Commission reject, in its entirety, the City's Request for Reconsideration.

### **Recommendation:**

The Commission:

- 1) disapprove, for the reasons stated in the Report and based on the testimony and information provided to the Commission during these hearings, the Request by the City of Los Angeles for Reconsideration of and Amendments to the Resolution Making Determinations for Approval of the San Fernando Valley Special Reorganization; and
- 2) direct the Executive Officer to notify the Board of Supervisors of the County of Los Angeles of the Commission's action.

## ***INTRODUCTION***

### **Purpose**

Pursuant to the Cortese-Knox Local Government Reorganization Act of 1985 (the “Cortese-Knox Act”)<sup>1</sup> a local agency formation commission is required to consider written requests for reconsideration of a resolution making determinations that set forth the specific modification to the resolution being requested and are filed within thirty (30) days of the adoption of the resolution.<sup>2</sup> The Local Agency Formation Commission for Los Angeles County (the “Commission”) has received a timely written request from the City of Los Angeles for reconsideration of the Resolution Making Determinations for Approval of the San Fernando Valley Special Reorganization (the “Resolution”).<sup>3</sup> The Commission has not received any other requests complying with Government Code section 56857 or the Guidelines adopted by the Commission for the filing of requests for reconsideration. The objective of this report is to provide the Commission with its Executive Officer’s analysis and recommendations regarding the written requests by the City of Los Angeles for reconsideration of the Resolution.

### **Context**

The Executive Officer released his report making recommendations on the San Fernando Valley Special Reorganization (the “Valley Special Reorganization”) on April 24, 2002. On May 15, 2002, the City of Los Angeles and the Applicant responded to the Executive Officer’s Report.<sup>4</sup> On May 20, 2002, the Executive Officer released his supplemental report. The Commission adopted the Resolution on May 22, 2002, approving the Valley Special Reorganization.

On June 20, 2002, the City of Los Angeles filed a request for reconsideration with the Commission, requesting that the Commission modify its findings regarding the fiscal viability of the proposed new city, the impact of the special reorganization on the City of Los Angeles, and the adequacy of the mitigation payment. The City contends that the Commission should have disapproved the Valley Special Reorganization because it would have a \$288 million negative fiscal effect on the City of Los Angeles and would not be fiscally viable. In the alternative, the City requested modifications to certain terms and conditions in the Resolution, should the Commission not disapprove the special reorganization.

---

<sup>1</sup> Former California Government Code section 56000, *et seq.* The Cortese-Knox Act was amended by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (the “Hertzberg Act”), which became effective January 1, 2001. The proposal for special reorganization of the San Fernando Valley area of the City of Los Angeles was accepted for filing prior to the Hertzberg Act’s effective date, and therefore, pursuant to the provisions of the Hertzberg Act it is being processed under the prior law, and all references herein are to the former Government Code sections of the Cortese-Knox Act unless otherwise indicated.

<sup>2</sup> Government Code section 56857.

<sup>3</sup> Frederick N. Merkin, City of Los Angeles Office of the City Attorney, *Request for Reconsideration of and Amendments to the Resolution Making Determinations for the Proposed Secession of the San Fernando Valley*, dated June 20, 2002, submitted with the required fee of \$4,000.

<sup>4</sup> City of Los Angeles. *Attachment: Fiscal Comments and Questions on the Valley Secession Draft Resolution of Determination and the LAFCO Executive Director’s [sic] Report on Valley Secession Dated April 19, 2002*, May 15, 2002. Hamilton, Rabinovitz & Alschuler, Inc. *The Division of Service Cost Burdens Following Separation of the San Fernando Valley from the City of Los Angeles: An Independent Appraisal*. A report commissioned by the City of Los Angeles. May 13, 2002.

**Caveats**

This Report provides analysis and recommendations on the items that the City of Los Angeles has requested that the Commission reconsider with respect to the Valley Special Reorganization. The decision whether or not to modify the Resolution rests entirely with the Commission. This Report is not a substitute for those discretionary decisions yet to be made by the Commission.

This Report and the recommendations herein are subject to revision and reconsideration as may be directed by the Commission during the course of its deliberations.

## ***REQUESTS RELATED TO APPROVAL OF THE SPECIAL REORGANIZATION***

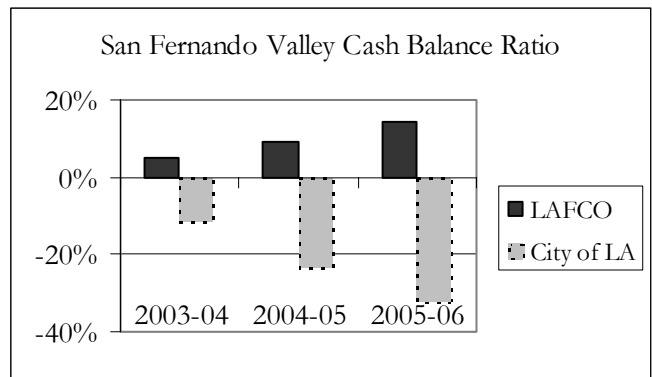
### **FIRST REQUEST: FINDING ON FISCAL VIABILITY**

The City of Los Angeles has requested that the Commission reconsider its finding that the proposed new city is expected to generate sufficient revenue to provide public services, facilities and a reasonable reserve during the three fiscal years following incorporation.<sup>5</sup> The City has raised three factual bases for reconsideration: (1) utilizing the City's estimate of the fiscal mitigation payment would render the proposed city financially insolvent, (2) the City had previously expressed concerns about the adequacy of LAFCO's fiscal analysis, and (3) the City lacked backup data on LAFCO's fiscal allocations.

### **Fiscal Mitigation**

Since the Commission adopted its Resolution, the City of Los Angeles has released a report finding that the Valley Special Reorganization would have a \$288 million negative fiscal effect on the City of Los Angeles.<sup>6</sup> If the new city were required to make the fiscal mitigation payment proposed by the City of Los Angeles, the new city would have a \$313 million budget deficit at the end of its third year. Such a deficit would constitute 32 percent of the proposed city's general fund revenues.

By comparison, the Executive Officer found that the special reorganization would have a \$128 million negative fiscal effect on the City of Los Angeles. After making an appropriate fiscal mitigation payment to the City of Los Angeles, the new city would have a budget surplus of \$49 million. By the end of its third fiscal year, the new city's cash balance would be fourteen percent of general fund revenues.



If the Commission were to adopt the City's proposed fiscal mitigation payment, the proposed city would not be financially self-sufficient as defined in the Government Code. As discussed in the next section of this Report on the fiscal mitigation payment, the Executive Officer recommends that the Commission deny the City's request to increase the fiscal mitigation payment from \$128 million to \$288 million. Thus, the fiscal mitigation payment would remain the same as contemplated in the Resolution adopted by the Commission, and there would be no effect on the expected financial viability of the proposed city.

### **Adequacy of Fiscal Analysis**

Another factual foundation raised by the City for reconsideration of the fiscal viability finding references a series of documents submitted by the City prior to adoption of the Resolution. Most of those documents had been submitted by the City of Los Angeles in advance of the completion of the Executive Officer's fiscal analysis and adoption of the Resolution. The only document included

<sup>5</sup> Finding B(2) of the Resolution.

<sup>6</sup> Hamilton, Rabinovitz & Alschuler, Inc., *The Division of Service Cost Burdens Following Separation of the San Fernando Valley from the City of Los Angeles: An Independent Appraisal*, Report to the City of Los Angeles, June 18, 2002.

in this list which was submitted after the Executive Officer released his supplemental report with final fiscal allocations<sup>7</sup> was a letter from the City Attorney dated May 21, 2002.<sup>8</sup>

The May 21, 2002 letter from the City Attorney raised two issues potentially affecting the fiscal viability of the proposed city: the allocation of reserves and the adequacy of the fiscal mitigation payment.

The City objected to the transfer of a portion of the City's reserve fund, and proposed that any transferred balance be net of reversions, reappropriations, outstanding loans and encumbrances. The Resolution adopted by the Commission transferred a share of the reserve fund to the new city, denying the City of Los Angeles request not to transfer reserve fund balances. As the City had already verbally apprised the Commission staff of the proposed modification to the resolution term relating to the reserve fund transfer, the resolution adopted by the Commission included the portion of the proposed modifications deemed reasonable by the Executive Officer.<sup>9</sup> The Executive Officer's final fiscal allocations assumed conservatively that a pro rata share of the City's \$60 million emergency reserve fund would transfer to the new city, and did not allocate the City's contingency reserve fund. The letter from the City Attorney did not propose any specific modifications to the fiscal allocations of the reserve fund or any modification to the fiscal viability finding on the basis of reserve fund allocations.

The objection raised by the City in the May 21, 2002 City Attorney letter regarding the fiscal mitigation payment restates the City's previously asserted allegation that the methodology used to estimate the fiscal mitigation payment is erroneous. The City has repeatedly proposed that the mitigation payment should be based on the amount the City will save in expenditures after the special reorganization rather than on the statutory basis of comparing current expenditures that would transfer to the new city with current revenues that would transfer.<sup>10</sup> This issue is discussed in greater depth in the section on the fiscal mitigation payment.

### **Procedural Complaints**

As part of its request for reconsideration of the fiscal viability finding, the City has complained that LAFCO has denied "backup data" to the City preventing the City from verifying the Executive Officer's fiscal allocations. More specifically, the City complains that the Executive Officer switched the financial basis of the fiscal allocations from the projected fiscal year 2000-01 budget to the actual financial data for that fiscal year in a report released two days prior to adoption of the Resolution. Additionally, the City complains that the Commission's adoption of the City of Los Angeles proposal to limit the transition period to twelve months constitutes abandonment of the conceptual model used in the CFA, and that there was no State Controller review of the Executive Officer's final fiscal allocations.

---

<sup>7</sup> Larry J. Calemine, Executive Officer, *Special Reorganization of the San Fernando Valley Executive Officer's Supplemental Report*, May 20, 2002.

<sup>8</sup> Letter from Frederick N. Merkin, City of Los Angeles Office of City Attorney, to the Los Angeles County Local Agency Formation Commissioners, *The Proposal for the Secession of the San Fernando Valley: Legal Issues Raised by the Draft Resolution Making Determinations*, dated May 21, 2002.

<sup>9</sup> Condition 19(a) of the Resolution transfers to the new city "the General Fund Proportionate Share of the contingency and emergency reserve funds and any other general fund balance net of outstanding loans, encumbrances and reappropriations required for capital improvements."

<sup>10</sup> Government Code section 56845(b).

### *City Requests for Backup Data*

The City has repeatedly complained that its requests for “backup data” have been denied. Staff is aware of only two City requests for backup data. The first request did not relate to the Executive Officer’s allocations. The second request was made after adoption of the Resolution, and LAFCO has responded to that request.

Shortly after the release of the Comprehensive Fiscal Analysis for the Valley Special Reorganization (“CFA”), Mayor Hahn’s Chief of Staff requested supporting data for the cost allocations in the CFA.<sup>11</sup> The cost allocation information requested by the City was included in the CFA in the form of detailed tables enumerating the cost allocations for each of the City’s departments and budget categories, text describing the methodology used to allocate direct and indirect costs, as well as text and appendix tables providing the detailed cost allocations for special purpose funds and the Capital Finance Administration Fund at a similar level of detail as is listed in the City’s budget. LAFCO’s consultant provided the City with electronic copies of the cost allocation tables in the CFA. Further, the State Controller reviewed the CFA on behalf of the City, and had access to all CFA work product germane to the review.<sup>12</sup> The City did not provide any additional specificity on the nature of the backup data requested or any explanation as to why the CFA tables were inadequate for the City’s review of the CFA.

Three weeks after the Commission adopted the Resolution, the City of Los Angeles Assistant City Administrative Officer, Ellen Sandt, requested the CFA and Executive Officer’s employee and debt allocation tables for both the Valley and Hollywood Special Reorganizations.<sup>13</sup> The Executive Officer’s supplemental report had included detailed cost allocation tables with all allocations relating to City debt.<sup>14</sup> On June 26, 2002, the Executive Officer provided employee allocation tables to the City of Los Angeles for each division in each department at the same level of detail as had been presented in the CFA, and consolidated the information previously presented on debt allocation into a single table for the City. Public Financial Management is preparing tables in response to the City’s request for employee allocations at the civil service job title level of detail, and anticipates completing that response by July 5, 2002.

The Executive Officer notes that the original Executive Officer’s Report on the Valley Special Reorganization was released on April 24, 2002, one month prior to the Commission’s adoption of the Resolution. During that one-month period, the City did not inform LAFCO as to the specific nature of additional detail that the City desired in the Executive Officer’s fiscal allocation tables. The City had verbally requested backup data in a generic fashion without any specificity, and the Executive Officer responded to this generic request by including more detailed cost allocation tables in the supplemental report than had been presented in the original report.

The Executive Officer concludes that the City had access to all backup data for the CFA through the State Controller’s review of the CFA, and that the City failed to specify the nature of backup data for the Executive Officer’s fiscal allocations prior to adoption of the Resolution. The City has not challenged any of the Executive Officer’s fiscal allocations.

---

<sup>11</sup> Letter from Timothy B. McOsker to LAFCO Executive Officer Larry Calemine, dated January 16, 2002.

<sup>12</sup> California State Controller, *California State Controller’s Review of the Proposed San Fernando Valley Special Reorganization Comprehensive Fiscal Analysis*, April 2002.

<sup>13</sup> E-mail correspondence from Ellen Sandt to LAFCO Special Reorganization Project Coordinator Beverly Burr, entitled “Request for Backup Information on Secession,” June 14, 2002.

<sup>14</sup> Larry J. Calemine, *Special Reorganization of the San Fernando Valley Executive Officer’s Supplemental Report*, May 20, 2002. See in particular tables entitled “San Fernando Valley Special Reorganization Area Expenditure Allocations” and “San Fernando Valley Special Reorganization Area Detailed Expenditure Allocations.”

### *Financial Basis of Executive Officer's Allocations*

The City has raised complaints about the financial basis change from budget projections to actual data in the Executive Officer's final fiscal allocations. The City of Los Angeles released the actual financial data for the base year in the Mayor's proposed budget for fiscal year 2002-03. The Mayor's budget was released in summary form the day prior to release of the Executive Officer's Report. LAFCO had requested that the City release the detailed actual financial data for the base year prior to finalization of the Executive Officer's Report; both the City of Los Angeles Mayor's office and the City Administrative Officer were aware of this request by no later than April 16, 2002. The City had difficulty fulfilling that request as the Mayor's not-yet-released proposal for the upcoming fiscal year was included on the same pages as the actual data for the base year.

The Executive Officer released his original report on April 24, 2002 with the fiscal allocations based on the budget data for the base year, because the actual financial data were not yet available and the Executive Officer's Report needed to be released at that time in order to keep all three proposed special reorganization proposals on schedule. In that report, the Executive Officer wrote:

If the numeric basis of the fiscal estimates were adjusted to conform with the actual use of reserves and fund balances in the special reorganization base year, the allocations would likely change significantly. The Executive Officer found that the data needed to adjust the numeric basis will not be available until the Los Angeles Mayor releases his proposed budget later this month, as the proposed budget contains the City's actual revenues and expenditures in the special reorganization financial base year.<sup>15</sup>

Subsequent to the release of the Executive Officer's Report, the City provided LAFCO with the Mayor's budget containing the actual financial data for the base year. Further, LAFCO remained in contact with the City requesting clarification and revision of several actual financial items. The City was clearly aware of LAFCO's intention to switch the financial basis from budget projections to more reliable actual data five weeks prior to adoption of the Resolution. Furthermore, the City of Los Angeles had access to the same financial data as LAFCO, and had access to that data at an earlier point in time than did LAFCO.

The substance of the CFA and the Executive Officer's financial allocations were the percentage allocations of each revenue and cost item to the Special Reorganization Area. In the CFA and Executive Officer's Report, these percentage allocation factors were multiplied by the projected budget dollar figures for fiscal year 2000-01 because the actual dollar figures had not yet been released by the City. The percentage allocation factors were presented in both the CFA and the Executive Officer's Report. By way of example, the hotel tax revenue attributable to the Special Reorganization Area was 15.68 percent. Simple multiplication of this factor by the budget (actual) projections of hotel tax revenue in the base year yields the new city's allocation in the CFA (Executive Officer's Report).

The Executive Officer concludes that the switch from budget projections to actual financial data as the financial basis for the new city's financial allocations was known by the City at least five weeks prior to the Commission's adoption of the Resolution, and that the City had access to the same financial data. Further, in the month subsequent to adoption of the Resolution, the City has not raised any specific challenges to the Executive Officer's final fiscal allocations or to the underlying actual financial data. This factual foundation is not associated with any specific proposal or critique

---

<sup>15</sup> Larry J. Calemine, *Special Reorganization of the San Fernando Valley Executive Officer's Report*, April 24, 2002, page 14.

of the Executive Officer's financial calculations affecting the finding of the proposed city's fiscal viability.

#### *Controller Review*

The City has complained that the Executive Officer's Report and its fiscal allocations should have been subject to State Controller review. The City alleges that the Executive Officer's allocations are based on a governmental model entirely different from that used in the CFA due to the adoption of the City's proposal to shorten the transition period from three years to twelve months. Second, the City asserts that the switch from budgetary to actual data warrants an independent review.

The Executive Officer's fiscal allocations do not constitute abandonment of the conceptual model in the CFA. The CFA assumed that the proposed city would rely on the City of Los Angeles for services on a contractual basis throughout the three-year planning horizon. The Executive Officer's allocations are predicated on the same assumption. Although the Applicant had proposed a three-year transition period during which the City of Los Angeles would be obligated to provide all services to the new city, the City of Los Angeles proposed that the transition period be limited to a twelve-month period. The Executive Officer, the Subcommittee, and the Commission accepted the City's proposal to limit the transition period, based on the City's argument that the transition period would be fraught with conflict due to the lack of a contract between the parties at that time for service. Both the City and the Applicant expressed concerns in the negotiation sessions as to whether the parties would have adequate time to negotiate service contracts during the transition period to cover the years following the transition period. Clearly both parties expect that the City would provide services to the proposed city after the transition period under service contracts. While the City may not be required by the Resolution to provide all services to the proposed city after the transition period, it is reasonable to assume that the new city and the City of Los Angeles will enter into negotiated agreements for the continued provision of most if not all municipal services for the foreseeable future. Thus, both the CFA and the Executive Officer based the financial calculations on the assumption that the City would be providing services to the new city during the three-year planning horizon.

The switch from budgetary to actual data as the financial basis for the financial calculations does not constitute a substantive change in the financial allocation methodology. The change in the financial basis simply involved data entry of the City's actual financial data for the base year, and simple multiplication of the revenue and cost allocation percentage factors by the appropriate financial data. The accuracy of the underlying data was repeatedly checked by LAFCO's consultants against the data published by the City of Los Angeles. In fact, LAFCO's consultants identified several errors in the City's own data as a result of its own thorough review of the actual financial data, called these errors to the attention of the City, and made appropriate revisions to the actual financial data. LAFCO's consultants remained in contact with the State Controller throughout the process of revising the financial basis of the calculations. Furthermore, LAFCO retained a municipal audit and accounting firm to review the financial allocations in all reports released by the Executive Officer. LAFCO has a high degree of confidence in the accuracy of the change in the financial basis. This change constitutes a data change, rather than a methodological change, and is not sufficiently substantive to warrant reissuance of the CFA.

#### **Conclusion**

The Executive Officer concludes that the only factual basis for reconsideration of the fiscal viability finding relates to the fiscal mitigation payment. If the Commission decides to amend the Resolution to increase the fiscal mitigation payment as proposed by the City of Los Angeles, the Commission

must also amend its finding on fiscal viability. If the Commission does not amend the Resolution to increase the fiscal mitigation payment, there is no reason to amend the Commission's finding of fiscal viability.

### **Executive Officer's Recommendation**

The Executive Officer recommends in the next section that the Commission deny the City's request for reconsideration of the fiscal mitigation payment. If so, based on the above, the Executive Officer recommends that the Commission deny the City's first request for reconsideration related to the fiscal viability finding.

### **SECOND REQUEST: FISCAL IMPACT ON THE CITY OF LOS ANGELES**

The City of Los Angeles requests that the Commission reconsider its finding that the \$128 million fiscal mitigation payment to be made by the proposed city to the City of Los Angeles adequately mitigates the negative fiscal effect of special reorganization on the City of Los Angeles. Specifically the City of Los Angeles proposes that the Commission find that the negative fiscal effect on the City of Los Angeles be \$288 million. Based upon the City's calculation of the negative fiscal effect, the City proposes that the Commission find that the proposed city would not be financially viable and that the Commission reject the special reorganization proposal.

The City also proposes that the fiscal mitigation payment be made over a twenty-five year term rather than a twenty-year term, and that the resolution language phasing out the fiscal mitigation payment at a five percent annual rate be removed.

The City presented new information related to this request in the form of two reports produced by the City's fiscal consultant Hamilton, Rabinovitz and Alschuler, Inc. ("HR&A"). The first report updates the report previously released by HR&A on May 13, 2002, by extending the firm's job position-level review of the job positions allegedly required by the City of Los Angeles after special reorganization in order to maintain current service levels in the remaining area of the City of Los Angeles.<sup>16</sup> The second report is a critique of a statement made in the Executive Officer's original report<sup>17</sup> that "both the City of Los Angeles and the proposed Valley city would be more likely to deliver services more cheaply than to lose economies of scale by being separated into smaller cities."<sup>18</sup>

### **Background**

In assessing the fiscal impact on the remaining City of Los Angeles, Government Code section 56845 requires the comparison of current revenues that would accrue to the new city and current expenditures for services that the new city would assume. The Code grants the Commission the discretion to determine the fiscal mitigation payment amount that would adequately mitigate the negative fiscal effect on the City of Los Angeles. Although the Commission has the discretion to determine a mitigation payment that adequately mitigates the negative fiscal impact on the City of Los Angeles, the Commission is neither required nor directed by the Government Code to include "stranded costs" in the mitigation payment.

---

<sup>16</sup> Hamilton, Rabinovitz & Alschuler, Inc., *The Division of Service Cost Burdens Following Separation of the San Fernando Valley from the City of Los Angeles: Final Report of an Independent Appraisal*, Report to the City of Los Angeles, June 18, 2002.

<sup>17</sup> Larry J. Calemine, *Special Reorganization of the San Fernando Valley Executive Officer's Report*, April 24, 2002, p. 23.

<sup>18</sup> Hamilton, Rabinovitz & Alschuler, Inc., *Assessment of the 'Diseconomy of Scale' Argument Advanced by the Executive Officer of the Local Agency Formation Commission*, Report to the City of Los Angeles City Attorney, June 20, 2002.

The Government Code Section 56845(b) defines the expenditure component of the revenue neutrality calculation as “expenditures currently made by the local agency transferring the affected territory for those services which will be assumed by the local agency receiving the affected territory.”

In calculating the fiscal mitigation payment, the Executive Officer has followed Government Code section 56845, which focuses on the current expenditures for services that will be assumed by the transferring territory rather than the budget cutbacks that the City of Los Angeles anticipates making after special reorganization. On this issue, the Executive Officer concurs with the State Controller, who found that the City of Los Angeles’ “stranded costs” are not relevant to the calculation of the fiscal mitigation payment. The Executive Officer found that current revenues that would accrue to the new city exceed current expenditures that would be assumed by the new city by approximately \$98 million. The Executive Officer recommended that the fiscal mitigation payment include an additional \$30 million to compensate the City of Los Angeles for its loss of documentary transfer tax revenues generated in the Special Reorganization Area. In accordance with this recommendation, the Commission adopted a \$128 million fiscal mitigation payment in the Resolution.

By comparison, the City of Los Angeles has argued that the expenditure component of the fiscal mitigation payment should be based on the savings that the City of Los Angeles would realize if: (a) the San Fernando Valley were no longer part of the City, and (b) the San Fernando Valley was not relying on the City of Los Angeles for contract service. The City of Los Angeles estimates that the fiscal mitigation payment should be \$288 million.

### **Fiscal Mitigation**

After reviewing nearly all of the City’s budgetary departments, HR&A estimated that the City of Los Angeles could reduce its expenditures by \$521 million after the San Fernando Valley detaches and no longer relies on the City for contract services.<sup>19</sup> The HR&A analysis is premised on the City remaining organizationally identical to its configuration in the base year, and does not contemplate reorganization of the City in accordance with its reduced size.

Given that the fiscal mitigation payment is based on actuals rather than budgetary figures, the Executive Officer converted the HR&A calculations to an actual financial basis. In addition to correcting the financial basis, the Executive Officer also corrected \$30 million in HR&A data entry errors made in the calculation of the fiscal mitigation payment. These data entry errors include a \$26 million HR&A data entry error in which the Recreation & Parks department cost savings were mistakenly entered as \$2.855 million in the fiscal mitigation calculations rather than the \$28.555 million itemized in the HR&A detailed appendix, and a similar \$4 million HR&A data entry error for the Housing department.<sup>20</sup> Based on these corrections, a fiscal mitigation payment consistent with the HR&A analysis would be \$138.5 million higher than the fiscal mitigation payment adopted by the Commission.

---

<sup>19</sup> The HR&A analysis does not assess the pension departments, Zoo, El Pueblo monument and Convention Center. The HR&A analysis of the Public Works department is based on the budgetary categories for this department effective in fiscal year 2001-02, with the implementation of the Public Works Director’s office and reorganization of the Accounting and Management and Employee Services bureaus.

<sup>20</sup> Hamilton, Rabinovitz & Alschuler, Inc., *The Division of Service Cost Burdens Following Separation of the San Fernando Valley from the City of Los Angeles: Final Report of an Independent Appraisal Appendix Volumes I and II*, Report to the City of Los Angeles, June 18, 2002.

The HR&A preliminary analysis which generally follows the same methodology as the HR&A final analysis, with the exception that the preliminary analysis focuses on the largest City departments whereas the final analysis focuses on nearly all the City departments. The more comprehensive assessment found that 19.6 percent of the costs allocated by the CFA to the Special Reorganization Area could not be translated into cost savings for the remaining City of Los Angeles without reducing service levels.

HR&A found that the remaining City of Los Angeles could save more than had been projected in the CFA for the Library, Recreation & Parks, Bureau of Sanitation, and Aging departments. In the remaining City departments, HR&A found that the remaining City of Los Angeles could not reduce staffing and associated costs by the degree that had been estimated in the CFA (and, by extension, the Executive Officer's reports).

In addition to presenting final estimates of stranded costs, the HR&A report also provided additional discussion regarding the allocations made in the CFA and Executive Officer's reports. Specifically, HR&A criticized LAFCO for allocating central service workers at the branch/unit level as opposed to allocating workers at the detailed position level.

HR&A used the crime lab example presented in the Executive Officer's Report to illustrate the differences between the LAFCO and HR&A cost allocation methodologies. As this is one of only two instances in the HR&A report where any workload data underlying the allocations are cited, the example is instructive. HR&A found that 27 percent of all requests for crime lab photographer services came from the Valley. But only two of the crime lab's 38 photographers handled virtually all of the Valley

<b>Stranded Cost Estimates by City Department</b>		
<b>Department</b>	<b>Stranded Costs (1)</b>	<b>% Stranded (2)</b>
All Departments	\$ 138,512,585	20%
Police	\$ 41,375,380	18%
General Services	\$ 18,282,218	36%
Bureau of Street Services	\$ 10,878,902	21%
Information Technology Agency	\$ 9,394,439	40%
Building & Safety	\$ 7,688,219	37%
Personnel	\$ 7,685,137	67%
Fire	\$ 6,778,373	6%
City Attorney	\$ 6,029,962	29%
Community Development	\$ 4,383,987	58%
Bureau of Engineering	\$ 3,992,099	30%
City Clerk	\$ 3,834,117	66%
Los Angeles Housing Department	\$ 2,885,354	40%
Bureau of Contract Administration	\$ 2,540,853	45%
Mayor	\$ 2,282,762	65%
Controller	\$ 2,212,024	73%
Transportation	\$ 2,137,698	9%
Finance	\$ 1,880,298	35%
City Administrative Office	\$ 1,792,766	67%
Planning	\$ 1,514,139	25%
Council	\$ 1,314,879	19%
Bureau of Street Lighting	\$ 948,610	26%
Animal Services	\$ 691,939	16%
Cultural Affairs	\$ 483,345	23%
Library	\$ (65,421)	0%
Aging	\$ (213,800)	-106%
Bureau of Sanitation	\$ (1,584,784)	-5%
Recreation & Parks	\$ (3,693,415)	-14%
Notes:		
(1) Stranded costs are the difference between the cost savings that HR&A estimates the City of Los Angeles would experience and the cost allocations made in the Executive Officer's supplemental report. Stranded costs have been converted to an actual financial basis, and reconciled with the HR&A detailed estimates to remove data entry errors.		
(2) The percent of costs stranded are the stranded costs divided by the costs allocated to the San Fernando Valley by the Executive Officer.		

photography requests. HR&A reports that the Police Department contends that it could only spare the two photographers stationed in the Valley.

HR&A points out that the workload data do not reflect the “time consuming” work done by the in-house photographers physically stationed in the crime lab. By implication, the Police Department believes that all photographers physically stationed in the crime lab are conducting work associated with crimes committed outside the Valley or are conducting work that bears no relationship to where crimes are committed. HR&A proceeded to identify three of the centrally located junior photographers as expendable after special reorganization. Overall, HR&A indicated that the remaining city would require all five of the crime lab’s senior photographers, and 20 of 23 Photographers III (presumably the centrally located staff photographers). In sum, HR&A categorized only 13 percent of photographers as expendable following Valley Special Reorganization, whereas the Police Department viewed only 5 percent of the photographers as expendable. HR&A then indicates that “there is no real world basis whatever for further increasing the estimate by another five—to a total of 10 photographer positions eliminated—as the LAFCO contractor has done.”<sup>21</sup> What HR&A fails to describe is the nature of the work conducted by the photographers located centrally, and the basis for determining that the work of these individuals had such a disproportionately low relationship with police service in the Special Reorganization Area. The reader is left with the impression that crime lab management mistakenly confuse the location of workers with the geographic area being served by workers, and have difficulty identifying the factors driving the workloads of centrally located staff. As HR&A revealed no workload data for the centrally located staff, the reader is left with the impression that the mistaken perceptions of the crime lab management are determining the allocations of such centrally located staff.

HR&A assures its readers in the 29-page summary of its research that:

[R]eams of workload data had been collected by HR&A with respect to many agencies, units and functions, and that all of this could and would be shared with LAFCO representative if they were only willing to take the time to review it. It was obviously impractical within the time provided for the HR&A review to print all the underlying workload data and/or summaries of the many hours of detailed discussions held with senior representatives of City agencies. LAFCO staff were [sic] well aware of this, and of the standing invitation to them to review and discuss the underlying data in any level of detail.<sup>22</sup>

The HR&A detailed position allocation tables in Appendix Volumes I and II constituted 429 pages. Similar to the HR&A preliminary report, the HR&A final report does not reveal workload data, departmental interview content or HR&A rationales used as a basis for the position allocations for City departments. The voluminous appendix tables listing the position allocations do not include any text explaining the reason for the particular allocation at the position level or the level of the organizational unit. Without any documentation, the voluminous material does not constitute professional research that can be assessed by independent experts. The Executive Officer had indicated that the lack of documentation, workload information or some rationale for each

---

<sup>21</sup> Hamilton, June 18, 2002, page 29.

<sup>22</sup> Hamilton, June 18, 2002, page 24.

allocation prevented the Executive Officer from viewing the research as anything more than the consultant's opinions.

In addition to suffering from a lack of documentation, the HR&A research is marred by \$30 million in data entry errors described above. The presence of such errors calls into question the accuracy of the consultant's remaining work, as it does not appear that the consultant invested much time in checking its own calculations.

As previously stated in the Executive Officer's supplemental report, the HR&A approach differs substantially from the approach outlined in the Government Code and followed in the CFA and the Executive Officer's Report.

### *Conclusion*

The HR&A report is premised entirely on the City's perception of its ability to cut costs after special reorganization and after the proposed city no longer relies on the City for services. This notion runs counter to the Government Code, which directs that the cost allocations associated with revenue neutrality be based on current expenditures associated with serving the geographic area. Further, the City's theories about stranded costs are illogical as has previously been explained in the Executive Officer's supplemental report.

Without objective workload data connecting the activities of central service workers with output, the CFA approach was the most reasonable and objective approach to allocating central service workers on the basis of the location of field workers directly serving the public. The State Controller provided an independent review of the CFA, and concluded that the CFA cost allocations were reasonable and accurate. The lack of documentation and the crime lab photographer example in the HR&A report do not contradict and arguably validate PFM's conclusion from its interviews of City departmental representatives that there is a dearth of workload data associated with City of Los Angeles central service workers and that City representatives had difficulty identifying the factors driving the workloads of such workers.

Given both the lack of documentation and the \$30 million data entry errors in the HR&A calculation of the fiscal mitigation payment, the Executive Officer views the HR&A report as an unverifiable and likely inaccurate piece of research.

### **Diseconomies of Scale**

The City commissioned HR&A to produce a second report that purports to refute "a theory advanced relatively recently by the Executive Officer that the City of Los Angeles would benefit financially from downsizing (claimed economies of smaller scale)."<sup>23</sup> The report was accompanied by evidence of economies of scale experienced in the City's purchasing of supplies such as uniforms.

### *Background*

The Executive Officer's Report explained the connection between economies of scale and stranded costs as follows:

A critical question in evaluating the City's claim regarding stranded costs is whether or not there are economies of scale in local government. By economies of scale, we mean greater cost efficiencies due to large size. That is, as a city grows, these fixed costs can be shared by a larger and larger population base, which results in a lower

---

<sup>23</sup> Frederick N. Merkin, City of Los Angeles Office of the City Attorney, *Request for Reconsideration of and Amendments to the Resolution Making Determinations for the Proposed Secession of the San Fernando Valley*, dated June 20, 2002, , p. 8.

per capita cost. Or, as Los Angeles alleges, if the city shrinks these same costs must be borne by a smaller population base and the cost per capita rises. If local government costs tend to be relatively lower at large cities than at smaller cities, that would support the City's stranded cost argument by indicating that large cities are able to provide services more cheaply because their fixed costs are spread among a larger revenue base. If municipal costs tend to be proportional to the size of a city, that would mean that the costs tend to vary with the size of the city and that the City of Los Angeles should be able to adjust to its smaller size by reducing costs. If municipal costs tend to be relatively higher at large cities than at smaller cities, that would indicate that the City should be able to reduce its expenditures on more than a proportionate basis if the size of the City is reduced.<sup>24</sup>

The Executive Officer's Report presented evidence from the academic literature and from a Government Finance Officers Association database on 1,500 American cities that larger cities tend to have higher per capita costs for public safety and general administration than do smaller cities. Further, the Executive Officer found evidence that larger cities tend to have proportionately lower costs for street services, municipal water and sewage services than do smaller cities providing these services. Based on the budgets of San Diego and San Jose, the Executive Officer found that the budgets for City Attorney and City Clerk departments tend to be proportional to population.

The Executive Officer's Reports rejected the City's stranded cost argument for several reasons. First, the Government Code neither requires nor directs the Commission to consider the effects of foregone economies or diseconomies of scale in calculating the fiscal mitigation amount needed to mitigate the negative fiscal effect of a special reorganization. Second, the City's argument for large stranded costs in central services was logically inconsistent in that it alleged that there was no connection between the activities of stranded central service workers and the size of the city, but that there is a connection between the activities of stranded central service workers and service levels affecting the public.<sup>25</sup> Third, the City's argument for large stranded costs in central services defies common sense in that it is premised on the notion that the City of Los Angeles would not reorganize after losing the 36 percent share of population currently located in the Special Reorganization Area, and would remain organizationally identical to its current structure. Fourth, LAFCO's consultant concluded from its interviews of City department representatives that the City lacks workload indicators useful for tracing the connection between the activities of central service workers and service levels. Fifth, the City consultant's study lacked documentation of workload data or interviews that would allow the work to be viewed as more than the consultant's opinions. Sixth, the data and research on economies of scale indicate that diseconomies of scale are more prevalent in local government than are economies of scale, as public safety constitutes the majority of city government costs and costs proportionately more in larger cities.

#### *City Report Analysis*

The HR&A report focuses on one of many reasons why the Executive Officer rejected the City's stranded cost argument. The new information raised by the HR&A diseconomies report include some additional information on the academic literature cited in the Executive Officer's Report, as well as data on four cities that experienced significant population declines along with increased costs during the 1960s and 1970s. Additionally, the HR&A report contends that only studies of scale

---

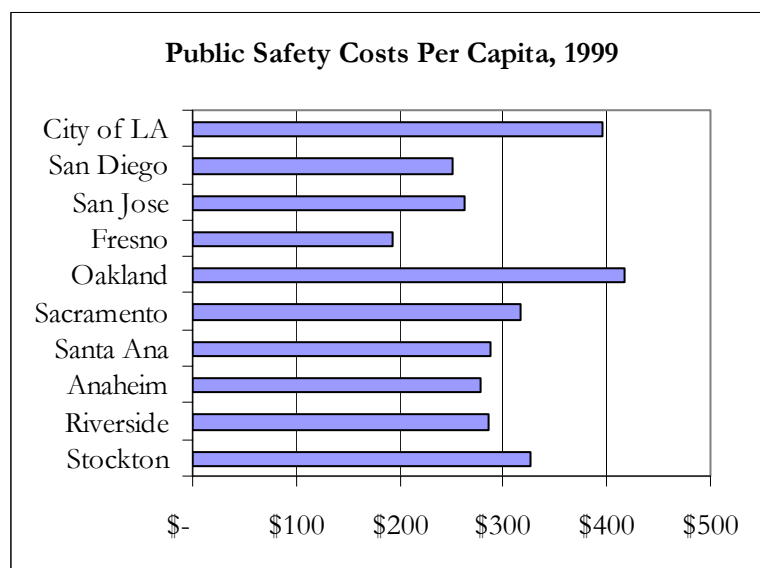
<sup>24</sup> Larry J. Calemine, *Special Reorganization of the San Fernando Valley Executive Officer's Report*, April 24, 2002, p. 22.

<sup>25</sup> Larry J. Calemine, *Special Reorganization of the San Fernando Valley Executive Officer's Supplemental Report*, May 20, 2002, pp. 5-6.

economies in Los Angeles city government would be acceptable evidence that Los Angeles currently experiences greater diseconomies of scale than it does economies of scale.

The HR&A report correctly points out that most of the academic research on economies of scale in local government is focused on police department costs. This is hardly surprising, given that policing costs are the single largest cost category faced by urban governments, with fire safety and street maintenance being the second and third most important local costs. The HR&A report rejects academic literature that is not focused solely on the case of Los Angeles, and cites an academic study that was not found in the Executive Officer's search of the academic literature: a 1975 article that found evidence of economies of scale in the Los Angeles Police Department in the 1956-1970 period.

Given the HR&A emphasis on Los Angeles data, the Executive Officer compared public safety costs of large California cities in the Government Finance Officers Association database to determine whether Los Angeles experiences lower costs than other large California cities. Los Angeles is second only to Oakland in its per capita public safety costs, and otherwise has higher per capita costs than other large California cities. In order to control for cost of living differences within California, the Executive Officer found that Los Angeles public safety costs as a percent of assessed property value in the city ranks fourth among these ten cities. There is not a clear relationship between public safety costs and city size among large California cities, but there is certainly no clear evidence that Los Angeles manages to economize compared with other large California cities.



In addition to this evidence, HR&A presented data on four American cities—Detroit, Philadelphia, Cleveland and Pittsburgh—that had suffered large population declines during the 1960 to 1990 period, and found that these cities had experienced increased per capita government costs rather than reductions over that 30-year period. HR&A acknowledged that the four cities had faced significant demographic changes along with these population declines, with increased concentrations of disadvantaged populations. The Executive Officer notes that these population declines were not accompanied by reductions in the geographic area served by city government, as the city limits in these cities did not change significantly over the period observed.

Given the relatively small number of cities presented by HR&A and the observation that the cities actually increased their per capita expenditures, the Executive Officer researched the city government cost changes at a sample of 30 large cities during the 1970s, 1980s and 1990s using city government financial data standardized by the Census Bureau.<sup>26</sup> The data indicate generally that

<sup>26</sup> U.S. Census Bureau, Annual Survey of State and Local Government Finances and Census of Governments (1967-1999).

cities suffering rapid population losses in the 1970s did experience above average per capita cost increases.<sup>27</sup> Detailed examination of these cities indicates that reliance on municipal income tax revenues in Philadelphia, Pittsburgh, Detroit and Cleveland helped finance the per capita expenditure increases that occurred at that time. St. Louis—the city with the most dramatic population losses—actually managed to reduce per capita costs in the 1980s and 1990s while experiencing population losses. However, the St. Louis cost-reducing experience appears to be an exception. Detroit, Pittsburgh and Cleveland managed to make marginal cost reductions during the 1980s, but these reductions did little to turn around the large cost increases that occurred in these cities in the 1970s. Even among the cities experiencing rapid population growth, there are only a few examples of cities reducing per capita costs during their high-growth years. Rapid growth in real per capita costs is not confined to cities experiencing population losses. In fact, Indianapolis experienced the highest growth in costs over the 1967-99 period even though its population grew over that period.

While these data are interesting, they do not yield much insight on the issue of the likely cost impact of special reorganization on the City of Los Angeles for three reasons.

- 1) The population losses in the 1970s in northeastern and mid-western cities were not accompanied by similar changes in the geographic area that must be patrolled by police officers and repaved by street maintenance personnel. By comparison, the Valley Special Reorganization would reduce the geographic size of the City of Los Angeles and would actually increase the population density in the remaining City of Los Angeles.
- 2) Another significant difference is the element of surprise and unpredictability. The cities experiencing rapid population decline were not necessarily aware of the rapid population exodus, nor were they able to predict easily how long the population would continue to leave their cities. By comparison, if the electorate approves special reorganization the remaining City of Los Angeles would be relatively certain of the impact on the size of the city and would be better situated to plan an effective response.
- 3) The cities experiencing rapid population losses rely heavily on municipal income tax revenues from individuals who work but do not necessarily live in the city limits. The cities cited in the HR&A report may have increased per capita costs during the 1970s simply because they did not need to reduce overall expenditures so long as income tax revenues were growing. To the extent that the urban tax base was fed largely by the business community in these cities, the cities may have felt little financial pressure to downsize.

While the large city data do not provide any clear indication about economies of scale or diseconomies of scale in local government, they do indicate that it is rare for local government to reduce per capita costs.

### *Conclusion*

It is unclear why this report has any bearing on the fiscal mitigation payment adopted by the Commission, as that payment was calculated on the statutory basis of current expenditures in the Special Reorganization Area. The HR&A report is focused on one of many reasons why the Executive Officer rejected the City's stranded cost argument as has already been explained.

---

<sup>27</sup> The data for thirty large cities including growing and declining cities are presented in an Appendix table entitled "Population and General Government Per Capita Cost Growth, Selected Large Cities, 1967-99." Per capita general government costs exclude utilities, airports, ports, insurance systems and other city government commercial activities. All expenditures have been corrected for inflation using the U.S. CPI-U all items.

Although the HR&A report does cite some academic evidence that indicates that an academic study has found local government economies of scale, the HR&A report does not produce any evidence that negates the majority of academic studies which have found diseconomies of scale in local government public safety. Further, the HR&A study does not provide empirical evidence that the City of Los Angeles experiences greater economies of scale than it does diseconomies of scale. The HR&A report focuses on criticizing the notion that diseconomies of scale are more prevalent in municipal government than are economies of scale, but does not convince the reader that the opposite is the case, i.e. that economies of scale are more prevalent. Given the significantly higher costs empirically documented in larger cities and the higher costs of City of Los Angeles services compared with other California cities, it is difficult to make a convincing case that the City would on net lose economies of scale due to special reorganization.

The HR&A report does not produce strong evidence of the predominance of economies of scale at the City of Los Angeles. Given that HR&A's June 18 report indicates that one-fifth of the costs allocated to the Special Reorganization Area are stranded costs, the HR&A report would have needed to produce very strong evidence of large economies of scale at the City in order to justify the fiscal mitigation payment proposed by the City.

As has been pointed out previously, if the City is correct in that it experiences economies of scale that other large cities do not appear to experience, then the new city will have financial incentives to contract with the City of Los Angeles for service. As the City has pointed out, financial incentives may not necessarily motivate the new city to contract for service with the City of Los Angeles if other more political factors outweigh these financial incentives.

### **Modifications to Mitigation Payment Structure**

The City proposes that the term of the mitigation payment be 25 years, rather than the 20 years provided in the Resolution. In addition, the City proposes that the five percent annual phase-out of the mitigation payment be removed, as that phase-out "inflicts fiscal harm on the remaining City, increasing as each year goes by."<sup>28</sup>

As the Executive Officer pointed out in his original report on this matter, the fiscal mitigation payment term has been set at a 10-year to 25-year length in other California incorporations.<sup>29</sup> Orange County has established a 14-year mitigation payment term in three incorporations, Sacramento County has established a 25-year term in two incorporations. The Goleta incorporation included a ten-year component to the fiscal mitigation payment, as well as a component that will exist in perpetuity. The City's proposal for a 25-year term with no phase-out would be more generous than the Sacramento County LAFCO has been towards its two most recent incorporations.

The Executive Officer recommended a 20-year term with a 5 percent annual phase-out rate. That approach appears reasonable compared with the approach used in other California incorporations. Further, the five percent annual phase-out rate is less than the City's 7 percent employee attrition rate, implying that the City could manage its own reorganization without laying off City workers. The City has not advanced any rationale as to why the City would require 25 years to adjust to the

---

<sup>28</sup> Frederick N. Merkin, City of Los Angeles Office of the City Attorney, *Request for Reconsideration of and Amendments to the Resolution Making Determinations for the Proposed Secession of the San Fernando Valley*, dated June 20, 2002, , p. 10.

<sup>29</sup> Larry J. Calemine, *Special Reorganization of the San Fernando Valley Executive Officer's Report*, April 24, 2002, p. 46.

departure of the San Fernando Valley, and how the City would make that adjustment if the mitigation payment is not phased out over time.

### **Executive Officer's Recommendation**

Based on the above, the Commission should reject the City's second request for reconsideration.

### **THIRD REQUEST: APPROVAL OF THE VALLEY SPECIAL REORGANIZATION**

The City of Los Angeles requests that the Commission modify Recital H of its Resolution, which approved the Valley Special Reorganization, subject to the conditions set forth thereafter. The City's requested modification is to have the Commission *disapprove* the Valley Special Reorganization.

The City's request notes that on May 14, 2002, the City Council adopted a resolution that called on the Commission to disapprove the resolution on the Valley Special Reorganization. Thus, the City had already made its position on the special reorganization known to the Commission prior to the Commission's adoption of its Resolution approving the special reorganization. With the exception of the new reports which accompany the City's request for reconsideration, and which have already been addressed, the City's third request is not based upon any new or different information or law.

As in its past submittals, the City makes much of the Executive Officer's use of the term "compelling evidence" in previous reports by the Executive Officer to this Commission discussing the issue of stranded costs. The City seems to assert that the Executive Officer has injected an evidentiary standard into the proceedings that has no basis in the Cortese-Knox Act. The City's assertion is misplaced.

Government Code section 56833 provides that: "The executive officer shall review each application which is filed with the executive officer and shall prepare a report, including his or her recommendations, on the application." In making his recommendations to the Commission regarding the stranded costs issue raised by the City, the Executive Officer reviewed all reports provided up to that time by the City, and reviewed all research and analysis prepared by staff, and based thereon found that the evidence submitted by the City was not compelling and recommended that it be disregarded. The terms "persuasive" or "convincing" could have readily been substituted for "compelling." Rather than setting up a new legal standard, the Executive Officer was giving his opinion regarding the quality of the evidence submitted by the City to support its contention that stranded costs would exist after special reorganization and the City should be compensated for those costs.

The City also contends that a greater demand has been placed upon it than the Applicant in this regard. It should be noted, however, that the issue of stranded costs was raised by the City, and is a part of the City's argument for a legal interpretation of the revenue neutrality statute that is contrary to the interpretation provided by Legal Counsel and confirmed by the State Controller.<sup>30</sup> As such, the burden should be upon the City to provide persuasive evidence to the Commission. The City also has the information most readily available to it to support its position. With regard to the Applicant, numerous positions supported by the Applicant, including the treatment of employees and the division of regional assets, were not recommended by the Executive Officer because the Applicant's arguments and evidence were also not considered "compelling" by the Executive

---

<sup>30</sup> Government Code section 56845; County of Los Angeles, Office of the County Counsel, *Revenue Neutrality*, July 19, 2000; California State Controller, *California State Controller's review of the Proposed San Fernando Valley Special Reorganization Comprehensive Fiscal Analysis*, April, 2002, p. 26.

Officer, although that term may not have been used. Thus, it cannot be said that the Executive Officer did not treat the parties and their concerns equitably in his recommendations.

The Commission had both the recommendations of the Executive Officer and the reports and positions of the parties before it when it made its determinations. Government Code section 56107 provides that:

All determinations made by a commission under, and pursuant to, this division shall be final and conclusive in the absence of fraud or prejudicial abuse of discretion. Prejudicial abuse of discretion is established if the court finds that any determination of a commission of a legislative body was not supported by substantial evidence in light of the whole record.

The whole record includes evidence that both supports and opposes many of the determinations made by the Commission. The Commission is charged with making its determinations based upon the evidence before it. The Executive Officer contends that the determinations made by the Commission and reflected in the Resolution are supported by substantial evidence.

#### **Executive Officer's Recommendation**

Based on the above, the Commission should reject the City's third request for reconsideration.

## ***REQUESTS SEEKING MODIFICATIONS TO THE RESOLUTION***

### **FOURTH REQUEST: CONTINUATION OF CHARGES, FEES, ASSESSMENTS, AND TAXES**

The City's fourth request for reconsideration does not propose a modification to the Resolution. The City of Los Angeles requests that the Commission assure itself that condition 12(a), which provides for the continuation of previously authorized and collected charges, fees and assessments and general or special taxes by the new city, is not prohibited by law. The City raises two possible legal constraints in this regard—Proposition 218 (Right to Vote on Taxes Act)<sup>31</sup> and the statutory scheme known as “AB 8” which sets forth how the counties distribute property taxes.<sup>32</sup>

As noted by the City, it has previously raised the issue of Proposition 218 compliance. The Executive Officer has also discussed this issue in his Executive Officer's Report,<sup>33</sup> and will reiterate his recommended position, which is based upon the advice of Legal Counsel. The issue of AB 8 was not raised by the City prior to the Commission's adoption of the Resolution, but was raised prior to the approval of the Hollywood Special Reorganization.<sup>34</sup> The impact of AB 8 will be discussed below.

#### **Proposition 218**

It is standard practice in California incorporations for the resolution making determinations to authorize the new city to continue levying the same taxes and fees. Government Code section 56844(t) authorizes the Commission to impose a term and condition that provides for:

The extension or continuation of any previously authorized charge, fee, assessment, or tax by the local agency or a successor local agency in the affected territory.

This authority, however, pre-dates Proposition 218.

In 1996, California voters approved Proposition 218, which requires local governments to obtain voter approval before imposing, extending or increasing general and special taxes. In addition, Proposition 218 places stricter requirements on the approval and use of assessments and fees.

Proposition 218 requires majority voter approval for the imposition, extension or increase of general taxes and a two-thirds voter approval for the imposition, extension or increase of special taxes.<sup>35</sup> To impose a benefit assessment, a public agency must prepare an engineer's report that demonstrates the special benefits derived by the properties proposed to be assessed and conduct a protest hearing in which the votes of property owners are weighted in accordance with the proportional financial obligation of the affected properties.<sup>36</sup> Most fees and charges must also survive a protest hearing and be approved by either a majority of the property owners affected or a two-thirds vote of the electorate.<sup>37</sup>

The Legislative Counsel has issued two opinions that conclude that the provisions of Proposition 218 would prevail over the provisions of the Cortese-Knox Act with regard to the proposed *extension*

---

<sup>31</sup> Cal. Const., Art. XIII C & D.

<sup>32</sup> 1979 Cal. Stats., ch.282; Revenue. & Taxation Code section 95, *et seq.*

<sup>33</sup> Larry J. Calemine, *Special Reorganization of the San Fernando Valley Executive Officer's Report*, April 24, 2002, pp. 83-84.

<sup>34</sup> Letter from Frederick N. Merkin, City of Los Angeles City Attorney's Office, to the Local Agency Formation

Commission, entitled: “The Proposal for the Secession of Hollywood: Legal Issues Raised by the Draft Resolution Making Determinations,” dated June 4, 2002.

<sup>35</sup> Cal. Const., Art. XIII C.

<sup>36</sup> Cal. Const., Art. XIII D, § 4.

<sup>37</sup> Cal. Const., Art. XIII D § 6.

of a tax, assessment or fee as a condition of annexation. In the opinion of the Legislative Counsel, the extension of a city's local taxes, assessments, fees, and charges to a territory approved for annexation must first be approved by a vote of those in the annexed territory because the tax, assessment or fee had not been previously imposed in that territory.<sup>38</sup>

Subsequently, the Attorney General released an opinion which concluded that in the context on annexations, Proposition 218 and the Cortese-Knox Act could be harmonized. The Attorney General found that the voter approval requirements of the Cortese-Knox Act provided taxpayers the opportunity to reject the imposition or extension of previously approved taxes, assessments, fees and charges by rejecting the annexation proposal. He found that as a practical matter it would be virtually impossible to comply with the varying and complex requirements of both the Cortese-Knox Act and Proposition 218 and did not find anything in the ballot materials to suggest that the voter approval requirements of Proposition 218 were to be added to the voter approval requirements of the Cortese-Knox Act.<sup>39</sup>

All of the California incorporations that have been processed since the passage of Proposition 218 have conditioned approval on the *continuation* of previously established and collected taxes, fees and assessments without requiring further compliance with Proposition 218. None has been challenged for violation of Proposition 218. These incorporations have included the continuation of general and special taxes, and assessments.

Rather than choosing between the divergent opinions of the Legislative Counsel and Attorney General, the annexations discussed in those opinions should be distinguished from incorporations, and in this case, special reorganizations. Annexations necessarily involve the *extension* of taxes, fees and assessments to territory where they were not previously imposed and the property owners and/or voters in that territory had not previously approved their imposition. In the case of incorporations or special reorganizations, the taxes, fees and assessments have already been approved by and imposed upon the subject territory. Thus, they should not be treated as new taxes, fees or assessments, or taxes, fees and assessments that are being extended to a territory previously not subject to their imposition. The mere *continuation* of previously authorized taxes, fees and assessments in the same territory should not require additional Proposition 218 compliance. Proposition 218 compliance would only be necessary if the new city seeks to increase any of the previously authorized taxes, fees or assessments.

## **AB 8**

The City of Los Angeles raises the issue of how AB 8 might impact the allocation of property taxes, but does not seem to take a position on the issue. Legal Counsel has reviewed the City's concerns and has not found any impact to the new city receiving the City's full property tax allocation for the Special Reorganization Area as of the Effective Date.

As noted by the City, AB 8 was enacted in the aftermath of Proposition 13's adoption in 1978. Proposition 13 amended the California Constitution to provide in part that:

The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax shall

---

<sup>38</sup> Legislative Counsel Opinion Nos. 11267 (May 15, 1997) and 25418 (March 17, 1998).

<sup>39</sup> 82 Ops. Cal. Atty. Gen 180.

be collected by the counties and apportioned according to law in the districts within the counties.<sup>40</sup>

AB 8 was enacted to implement Proposition 13, and directed how the counties were to apportion the one percent property tax. There are numerous complexities to the calculations set forth in the Revenue and Taxation Code which were contained in and evolved from AB 8; however, in its simplest form, the initial statutory scheme generally based the allocation on the amount of property tax levied by a local jurisdiction in the prior year--the 1977-78 fiscal year.<sup>41</sup> This meant that cities that had a higher property tax rate upon the adoption of Proposition 13 received a larger share of the one percent property tax allocation afterwards. Cities that had no or low property taxes received a lesser share or no share at all. For cities that incorporated prior to 1987, the Legislature later enacted additional legislation that provided that cities which had no property tax or low property tax before Proposition 13 would receive seven percent of the counties' share of property tax revenues, phased in at one percent per year over seven years.<sup>42</sup> The reason for the initial scheme was to mitigate the effect of Proposition 13 on local jurisdictions that relied principally on property tax revenue prior to Proposition 13's passage. The reason for the latter scheme was to address some of the inequities faced by low or no property tax cities.

Although the above explains why the City of Los Angeles enjoys its current property tax allocation, it does not in any way *prohibit* the new city from receiving the same allocation as the successor agency to the City of Los Angeles in the Special Reorganization Area. AB 8 separately addressed how the counties would incorporate jurisdictional changes into their property tax allocations. Revenue and Taxation Code section 99 currently provides that:

In the case of a city incorporation, the auditor shall assign the allocation of property tax revenues determined pursuant to Section 56810 of the Government Code<sup>43</sup> and the adjustments in tax revenues that may occur pursuant to Section 56815<sup>44</sup> of the Government Code to the newly formed city or district and shall make the adjustment as determined by Section 56810 in the allocation of property tax revenue determined pursuant to Section 96 or 96.1 for each local agency whose service area or service responsibilities would be altered by the incorporation.

Government Code section 56842 provides two different allocation methodologies for proposals that include incorporations. The first is used when the proposal would not transfer all of an affected agency's service responsibilities to the proposed city, and provides a formula for apportioning the property tax revenue between the two agencies. This methodology is used most frequently in standard incorporations where the county continues to provide certain countywide services. The second methodology is used when all of an affected agency's service responsibilities are transferred to the proposed city, and provides that all of the property tax generated for the affected service provider by tax rate area transfers. This is the methodology appropriate for the special reorganization since the new city will replace the City of Los Angeles as the principal service provider in the Special Reorganization Area. Based upon section 56842, the new city would receive the same property tax revenues after the Effective Date that the City of Los Angeles would have received in the tax rate areas in the Special Reorganization Area. Because the Effective Date is the start of the fiscal year, there is no need for a mid-year tax exchange between the cities. As of the

---

<sup>40</sup> Cal. Const., Art. XIII A, § 1(a).

<sup>41</sup> 1979 Cal. Stats., ch.282

<sup>42</sup> Revenue & Taxation Code section 98.

<sup>43</sup> Former Government Code section 56842 under the Cortese-Knox Act.

<sup>44</sup> Former Government Code section 56845 under the Cortese-Knox Act.

Effective Date, the Auditor-Controller will redirect the City's share of property taxes from the Special Reorganization Area to the new city. Delinquent taxes from prior years will continue to accrue to the City of Los Angeles.

Revenue and Taxation Code sections 96 and 96.1 provide for the allocation of property tax revenue by tax rate area and the annual tax increment, respectively, and require the inclusion of any adjustments pursuant to section 99. For the special reorganization, a straight substitution of the new city for the City of Los Angeles in those tax rate areas located within the Special Reorganization Area would constitute the necessary adjustment. No other local agencies would be affected.

The portion of property tax received by the new city would be net of the same Educational Revenue Augmentation Fund obligations the City of Los Angeles would have for the Special Reorganization Area.

The treatment of the State Motor Vehicle License Fees and Gas Taxes in the CFA and Executive Officer's Report is consistent with State law. Those monies are allocated by statutory formula, which provides a separate formula for newly incorporated cities for the first ten years of incorporation.<sup>45</sup> Nothing in these statutes would require different treatment for the special reorganizations. Similarly, the property tax revenue has been allocated in the manner set forth in State law.

#### **Executive Officer's Recommendation**

No modification has been requested. Based on the above, the Commission should not modify condition 12(a).

#### **FIFTH REQUEST: ALLOCATION OF THE TOBACCO SETTLEMENT**

The City's fifth request for reconsideration seeks deletion of condition 19(d), which transfers on an annual basis a portion of the City's tobacco settlement proceeds to the new city. As noted by the City, it has previously opposed the allocation of these monies. The tobacco settlement proceeds were allocated because they are an unrestricted general fund revenue source. Allocation of the tobacco settlement funds is consistent with the Commission's treatment of other assets.

The tobacco settlement funds were not originally allocated in the CFA because of concerns about the nature of the settlement and the possibility that the use of the funds might be restricted. Further research into the nature of the settlement and the memorandum of understanding ("MOU") which allocates the funds between the State, the counties and the four participating cities has not uncovered any compelling reason to treat these funds any differently from any other general fund revenue source.

The MOU does state that: "distribution of funds pursuant to this MOU is not subject to alteration by legislative, judicial or executive action at any level." However, there is no attempt through the Resolution to alter the allocation between the State, the counties and the four participating cities. That provision most likely guards against a reapportionment by the State, not a subsequent distribution between successors-in-interest to the City of Los Angeles.

Pursuant to the MOU, the City of Los Angeles will continue to receive its allocation and the other parties will receive no greater or lesser allocation. If special reorganization occurs, the City's allocation will be apportioned amongst the City and those former portions of the City that become new cities. The MOU does not restrict how the City of Los Angeles spends its tobacco settlement

---

<sup>45</sup> Revenue & Taxation Code section 11005.3; Streets & Highways Code sections 2105, 2106, and 2107.

allocation, and therefore, apportionment of the settlement allocation amongst the City and the new cities does not violate any other provision of the MOU.

The City of Los Angeles also raises a concern about its potential liability arising from a lawsuit for attorneys' fees related to the tobacco litigation. Condition 22 of the Resolution addresses the new city's share of potential liability for such matters.

### **Executive Officer's Recommendation**

Based on the above, the Commission should reject the City's fifth request for reconsideration.

### **SIXTH REQUEST: REGULATION OF UTILITY SERVICE RATES**

The City of Los Angeles requests the deletion of condition 20(d) of the Resolution, which requires rate parity amongst customers of the same class in the City of Los Angeles and the new city. The City requests replacement of that condition with a condition previously submitted which subjects the City to the common law reasonableness standard for setting utility rates, which would permit the City to differentiate between customers of the same class in the City of Los Angeles and the new city.

The City has consistently voiced its objections to the concept of rate parity, and provides no new or different information or law in its request. This issue has previously been addressed in the City report and letter cited in the City's request and in the Executive Officer's Report and an opinion of Legal Counsel.<sup>46</sup>

First and foremost, it should be noted that the intention and effect of condition 20(d) is not to set rates. The condition does not set rates, it merely provides for rate parity between customers of the same class in the City of Los Angeles and the new city.

It should also be noted that the Commission's alternative courses of action with respect to the utilities were to: (1) divide the assets or (2) provide the new city with an undivided ownership interest. In lieu of these more drastic measures the Commission's actions permit the City of Los Angeles to retain full ownership rights in the utilities, protect the City's customer base, secure the City's outstanding financial obligations, and preserve the City's ongoing revenue transfers from the Department of Water and Power to the City's general fund.<sup>47</sup> In return, condition 20(d) provides the captive customers of the new city with the modest protection of rate parity.

Condition 20(d) must be considered in conjunction with the obligations placed upon the new city with respect to utility services. Pursuant to conditions 20(a) and (b), the new city is required to enter into franchise or service agreements with the City of Los Angeles for utility services at least until the latest maturity date of the bonded indebtedness for the respective utility. It is because of the fact that the new city is required to remain tied in this manner to the City of Los Angeles for an extended period of time, that condition 20(d) has been imposed.

The protection provided to the customers of the new city pursuant to condition 20(d) is incidental to the continuation of utility services as set forth in condition 20. Although there has been no case

---

<sup>46</sup> Larry J. Calemine, *Special Reorganization of the San Fernando Valley Executive Officer's Report*, April 24, 2002, pp. 64-66; County of Los Angeles, Office of the County Counsel, *Commission Authority to Set Terms and Conditions Regarding Public Utilities*, February 7, 2002.

<sup>47</sup> The City of Los Angeles requires the Department of Water and Power to transfer seven percent of its water revenue and seven percent of its power revenue to the City's general fund. The customers in the new city will continue to contribute to the City of Los Angeles general fund in this manner, even though they will no longer be residents of the City.

law interpreting the relevant provisions of the Cortese-Knox Act, Legal Counsel has advised that the provisions of condition 20 are within the Commission's authority as set forth in Government Code section 56844(r), (t), and (v).<sup>48</sup>

#### **Executive Officer's Recommendation**

Based on the above, the Commission should deny the City's sixth request for reconsideration.

#### **SEVENTH REQUEST: SEVERABILITY OF THE UTILITY RATE SETTING CONDITION**

The City of Los Angeles requests the deletion of condition 20(e), which provides that if condition 20(d), discussed above, is found unlawful, the other terms and conditions of the Resolution shall remain in full force and effect, and the special reorganization shall remain in effect and not be void or invalidated. Severability clauses permit the courts to consider the issue of severability. They do not foreclose a court from finding that a provision is not severable. Please see discussion regarding severability under the City's ninth request for reconsideration.

#### **Executive Officer's Recommendation**

Based on the above, the Commission should deny the City's seventh request for reconsideration.

#### **EIGHTH REQUEST: CANCELLATION OF FRANCHISE OR SERVICE AGREEMENTS**

The City of Los Angeles requests the deletion of condition 20(e)(i), which provides that if condition 20(d) is found unlawful, the new city shall no longer be obligated to enter into franchise or service agreements with the City of Los Angeles for utility services and may cancel any agreements already entered into. As discussed above, condition 20(d) provides the customers of the new city with rate parity with customers of the same class in the City of Los Angeles.

The City contends that this condition attempts to exact an "unconscionable price" from the City should it prevail in having condition 20(d) invalidated, and constitutes a taking in violation of the California Constitution.

As discussed in conjunction with the City's sixth request for reconsideration, the Executive Officer recommended condition 20 and all of its parts, as an integrated plan for accommodating the various needs of the parties with respect to the provision of utility services and the ownership and control of the utilities. The intended effect of condition 20 was to maintain the status quo, by permitting the City of Los Angeles to retain full ownership rights in the utilities, protecting the City's customer base, securing the City's outstanding financial obligations, preserving the City's ongoing revenue transfers from the Department of Water and Power to the City's general fund, and providing the captive customers of the new city with the modest protection of rate parity.

The City's ongoing and strenuous objections to this plan forced the consideration of alternatives in the event that the City of Los Angeles challenges the condition. Once again, the Commission rejected more drastic measures, such as transferring to the new city an undivided ownership interest in the utilities, in favor of an alternative that is intended merely to level the playing field to allow the new city and the City of Los Angeles to negotiate a resolution to their long-term utilities relationship.

The effect of condition 20(e)(i) is to release the new city from the obligation of being a captive customer of the City of Los Angeles if the City of Los Angeles is released from providing rate parity.

---

<sup>48</sup>County of Los Angeles, Office of the County Counsel, *Commission Authority to Set Terms and Conditions Regarding Public Utilities*, February 7, 2002.

The reality of this situation is that the new city needs utility services and the City of Los Angeles needs to retain its customer base to facilitate payment of its outstanding debt obligations. The parties will need to work together to find an acceptable resolution to this situation if the courts find the Commission's conditions unacceptable. Requiring the new city to remain a captive customer without rate parity, however, leaves the new city in an untenable negotiating position. Condition 20(e)(i) rectifies that situation.

### **Executive Officer's Recommendation**

Based on the above, the Commission should deny the City's eighth request for reconsideration.

### **NINTH REQUEST: PROPOSITION K**

The City of Los Angeles requests the deletion of condition 29, which provides for the detachment of the Special Reorganization Area from Landscape and Lighting District No. 96-1 (Proposition K) (the "District") and the formation of a new district in the Special Reorganization Area, consistent with Proposition K. The City requests the modification of condition 30 to serve in place of condition 29. Condition 30 provides an alternative to condition 29 if condition 29 were found unlawful. Condition 30 would keep the District intact.

Condition 29 is based upon the proposed term and condition for addressing Proposition K the City submitted in April, 2002.<sup>49</sup> The applicant and the City at that time appeared to be in agreement on the treatment of the District. The City's proposal contemplated the detachment of the Special Reorganization Area from the District and the formation of a new district consistent with Proposition K. The only substantive difference between condition 29 and the condition proposed by the City in April is that the City's proposed condition required the insertion of specific monetary allocations in the condition. This version of condition 29 (with blanks where the allocations were to be inserted) is reflected in the draft resolution provided with the Executive Officer's Report.<sup>50</sup> Staff ultimately revised this condition to allocate Proposition K resources and obligations based upon the share of assessments paid in fiscal year 2000-01, because the City did not provide the specific monetary allocations.<sup>51</sup>

On May 20, 2002, two days before the scheduled Commission hearing on the Resolution, the City provided an alternative to its earlier proposed condition. The alternative keeps the District intact, but permits the new city some discretion in the use of local Proposition K funds.<sup>52</sup> The proposed condition was contrary to the earlier consensus of the parties, however, it was incorporated as condition 30, the alternative condition.

The City does not put forth any legal argument as to why condition 30 should be preferred over condition 29. Legal Counsel has reservations regarding the legality of keeping the District intact for the following reasons: (1) the terms of Proposition K require its boundaries to be coterminous with the boundaries of the City of Los Angeles;<sup>53</sup> and (2) the Landscape and Lighting Act of 1972 appears

---

<sup>49</sup> City of Los Angeles, *Special Reorganization of the San Fernando Valley, Harbor, and Hollywood—Objections to Recommendations of the LAFCO Subcommittee on Terms and Conditions*, April 2, 2002.

<sup>50</sup> Larry J. Calemine, *Special Reorganization of the San Fernando Valley Executive Officer's Report*, April 24, 2002.

<sup>51</sup> The City provided the data presumably necessary to formulate such allocations on May 20, 2002, two days before the Commission hearing, along with a new proposed condition that kept the District intact. See fn. 39.

<sup>52</sup> Letter from James K. Hahn, Mayor, to the Executive Officer of LAFCO, dated May 20, 2002.

<sup>53</sup> Referendum Ordinance K, approved by the voters of the City of Los Angeles, November, 1996, section 4.

to require the exclusion of territory from an assessment district when that territory is included within a city by incorporation.<sup>54</sup>

On the other hand, Government Code section 56844(u) clearly provides the Commission with the discretion to transfer authority and responsibility among any cities, counties, or districts for the administration of improvement districts, section 56844(e) provides the Commission with discretion to form new improvement districts, and section 56844(t) provides the authority for the extension or continuation of any previously authorized tax or assessment. Government Code section 56125 provides that the Commission need not comply with the principal act when formation of a new improvement district is pursuant to a reorganization. Based thereon, the detachment and formation of a new district in the Special Reorganization Area is the more legally defensible condition.

The City also objects to the use of assessment ratios from fiscal year 2000-01 in condition 30, claiming potential unfairness in predicating the allocations based on a single year. The City's modifications would remove any benchmark for the pro rata allocations between the cities, and would leave these decisions to the discretion of the City of Los Angeles City Council. The treatment of the Proposition K allocations is consistent with the other allocations contained in the Resolution. All allocations are based upon proportionate shares derived from a single fiscal year, typically 2000-01, unless otherwise indicated.

#### **Executive Officer's Recommendation**

Based on the above, the Commission should deny the City's ninth request for reconsideration.

#### **TENTH REQUEST: SEVERABILITY**

The City of Los Angeles requests the deletion of conditions 20(e), 29(c), and 36, which provide that the terms and conditions of the Resolution are severable from the remainder of the Resolution. Conditions 20(e) and 29(c) relate to the utility rate parity and Proposition K conditions, respectively. Condition 36 relates to all of the terms and conditions of the Resolution.

The City asserts that severability clauses "are unlawful and patently unfair to voters." The case law cited by the City contradicts that assertion. Not one of the cases cited by the City finds a severability clause unlawful. The three post-election cases cited by the City utilize severability clauses to preserve the valid portions of the legislative act or initiative at issue.<sup>55</sup> The three pre-election cases cited by the City found that the severability clauses were of no consequence because the measures were unconstitutional or beyond the power of the voters to enact.<sup>56</sup>

The cases are all consistent on one point—the courts determine severability.

In the case of post-election review, the inclusion of a severability clause in a measure or statute does not mean that any provision can be automatically severed. As set forth in *Calfarm Insurance*:

---

<sup>54</sup> Streets and Highways Code section 22613 provides that:

(a) Whenever any territory of an assessment district is included within a city by annexation or incorporation . . . that territory is thereby excluded from the assessment district.

<sup>55</sup> *Calfarm Insurance Co., v. Deukmejian*, 48 Cal.3d 805, 258 Cal.Rptr. 161 (1989); *Gerken v. Fair Political Practices Com.*, 6 Cal.4th 707, 25 Cal.Rptr.2d 449 (1993); and *People's Advocate, Inc. v. Superior Court*, 181 Cal.App.3d 316, 226 Cal.Rptr. 640 (1986).

<sup>56</sup> *City and County of San Francisco v. Patterson*, 202 Cal.App.3d 95, 248 Cal.Rptr. 290 (1988); *Citizens for Responsible Behavior v. Superior Court*, 1 Cal.App.4th 1013, 2 Cal.Rptr.2d 648 (1991); and *City of San Diego v. Dunkel*, 86 Cal.App.4th 384, 103 Cal. Rptr.2d 269 (2001).

‘Although not conclusive, a severability clause normally calls for sustaining the valid part of the enactment, especially when the invalid part is mechanically severable. . . . Such a clause plus the ability to mechanically sever the invalid part while normally allowing severability, does not conclusively dictate it. The final determination depends on whether the remainder . . . is complete in itself and would have been adopted by the legislative body had the latter foreseen the partial invalidity of the statute . . . or constitutes a completely operative expression of the legislative intent . . . [and is not] so connected with the rest of the statute as to be inseparable.’<sup>57</sup>

The courts determine whether or not a provision is severable based upon three criteria: the invalid provision must be grammatically, functionally and volitionally separable.<sup>58</sup> Accordingly, if any condition of the Resolution is invalidated after approval by the voters, the courts will determine whether or not the condition is severable. The effect of conditions 20(e), 29(c), and 36 is merely to place the issue of severability before the courts.

In cases of pre-election review, the courts will only take action on a matter when it is substantively unconstitutional or beyond the power of the voters to enact, and under those circumstances the courts generally ignore severability clauses:

‘In a pre-election opinion . . . it would constitute a deception on the voters for a court to permit a measure to remain on the ballot knowing that most if its provisions, including those provisions which are most likely to excite the interest and attention of the voters, are invalid.’<sup>59</sup>

Therefore, the three pre-election cases do not support the City’s request to delete the severability clauses. Those cases demonstrate that a severability clause will have no effect if a court determines that a measure cannot be placed on the ballot if it is unconstitutional or beyond the power of the voters to enact.

The Executive Officer recommends preserving the severability clauses because in the case of a pre-election challenge to the Resolution they would be of no consequence, and in a post-election challenge they would permit the court to address the issue.

### **Executive Officer’s Recommendation**

Based on the above, the Commission should deny the City’s tenth request for reconsideration.

---

<sup>57</sup> *Calfarm*, 48 Cal.3d at 821 (quoting *Santa Barbara Sch. Dist. v. Superior Court*, 13 Cal.3d 315, 331 (1975)).

<sup>58</sup> *Id.*

<sup>59</sup> *Patterson*, 202 Cal.App.3d at 106 (quoting *American Federation of Labor v. Eu*, 36 Cal.3d 687,716 (1984)).