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OPINION	:	No. 10-902
of	:	June 1, 2012
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THE HONORABLE GLORIA NEGRETE McLEOD, MEMBER OF THE STATE SENATE, has requested an opinion on the following questions:

1. What constitutes an "island" within the meaning of Government Code section 56375.3, pertaining to the annexation of surrounded or substantially surrounded islands of unincorporated territory?

2. Does Government Code section 56375.3 require the annexation of an "entire island" or "entire unincorporated island" as set forth, respectively, in subdivisions (b)(1) and (b)(2) of that statute?

3. May a Local Agency Formation Commission split up an unincorporated island that exceeds 150 acres into smaller parcels in order to utilize the streamlined "island annexation" procedures set forth in Government Code section 56375.3 and thereby avoid the landowner/voter protest proceedings that would otherwise be required?

CONCLUSIONS

1. For purposes of Government Code section 56375.3, an "island" is an area of unincorporated territory that is (1) completely surrounded, or substantially surrounded—that is, surrounded to a large degree, or in the main—either by the city to which annexation is proposed or by the city and a county boundary or the Pacific Ocean, or (2) completely surrounded by the city to which annexation is proposed and adjacent cities. An "island" may not be a part of another island that is surrounded or substantially surrounded in this same manner.

2. Government Code section 56375.3 requires the annexation of an "entire island" or "entire unincorporated island" as set forth, respectively, in subdivisions (b)(1) and (b)(2) of that statute.

3. A Local Agency Formation Commission may not split up an unincorporated island that exceeds 150 acres into smaller segments of 150 acres or less in order to utilize the streamlined "island annexation" procedures set forth in Government Code section 56375.3 and thereby avoid the landowner/voter protest proceedings that would otherwise be required.

ANALYSIS

Under the Cortese-Knox-Hertzberg Local Government Act of 2000 (Act),[1] a Local Agency Formation Commission (LAFCO) exists in each county[2] "to encourage orderly growth and development and the assessment of local community services needs."[3] Among its broad powers, a LAFCO is authorized to "review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for changes of [local agency] organization or reorganization, consistent with [its] written policies, procedures, and guidelines . . . ."[4] Annexation[5] of unincorporated territory to a city is one type of "change of organization."[6]

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[1] Govt. Code §§ 56000-57550. Further references to the Government Code are by section number only.

[2] §§ 56325-56337.

[3] *See Antelope Valley-East Kern Water Agency v. Local Agency Formation Commn.*, 204 Cal. App. 3d 990, 994 (1988); *see also* § 56001.

[4] § 56735(a)(1).

[5] "Annexation" means the annexation, inclusion, attachment, or addition of territory to a city or district. § 56017.

[6] § 56021(c); *Fig Garden Park No. 2 Assn. v. Local Agency Formation Commn.*, 162

A proposal for annexation of unincorporated territory to a city is initiated either by the filing of a petition signed by the requisite number of persons in the affected territory,[7] or by the filing of a resolution by the city council proposing the annexation. The petition or resolution is part of an annexation application filed with the county LAFCO.[8] When it receives an application, the LAFCO conducts an initial public hearing on the matter, after which it may approve or disapprove the proposal, with or without conditions.[9] Generally speaking, if the LAFCO gives its initial approval to a proposed annexation, it then conducts another proceeding to measure any protests from residents or landowners within the affected territory.[10] Ultimately, if the LAFCO approves the proposal, and the proposal is not subsequently defeated either by a sufficient number of written protests or by a majority of votes cast in a confirmation election,[11] the LAFCO will record a certificate of completion that sets forth the effective date of the annexation.[12]

Section 56375.3, which is the focus of our inquiry, contains a limited exception to this general sequence of events. It provides a streamlined procedure whereby a LAFCO may approve a proposed annexation "and waive protest proceedings [] entirely" if the annexation proposal is initiated by a resolution of the annexing city between January 1, 2000, and January 1, 2014,[13] and the LAFCO determines that the area to be annexed is an *island* of territory that meets certain requirements.[14] The legitimacy of some so-called "island annexations" has been questioned on the ground that some LAFCOs are said to have misinterpreted the statutory "island" requirements and, as a result, deprived affected residents and landowners of their legal right to protest and vote upon annexation proposals in situations where the territory in question does not qualify as an "island."

Cal. App. 3d 336, 347 (1984).

[7] "'Affected territory' means any territory for which a change of organization or reorganization is proposed or ordered." § 56015.

[8] §§ 56650-56653, 56700.

[9] §§ 56828, 56880.

[10] §§ 57000, 57002, 57008, 57025, 57050-57052.

[11] §§ 57075, 57078.

[12] §§ 57200-57203.

[13] § 56375.3(a)(1).

[14] § 56375.3(b).

Of specific interest to the requestor of this opinion are the requirements that the territory in question

- "does not exceed 150 acres in area, and that area constitutes the entire island,"[15]

- "constitutes an entire unincorporated island located within the limits of a city,"[16] and

- is either "[s]urrounded, or substantially surrounded, by the city to which annexation is proposed or by the city and a county boundary or the Pacific Ocean," or "[s]urrounded by the city to which annexation is proposed and adjacent cities."[17]

In analyzing the predecessor statute of what is now section 56375.3,[18] the Court of Appeal in *Fig Garden Park No. 2 Association v. LAFCO* recognized that "there is a strong governmental interest in avoiding pockets of unincorporated territory."[19] Nonetheless, the court observed that the "entire island" concept [now set forth in section 56375.3] "was introduced into the statute to prevent piecemeal annexation of large

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[15] § 56375.3(b)(1).

[16] § 56375.3(b)(2). To satisfy this provision, the territory in question may also "constitute [] a reorganization containing a number of individual unincorporated islands." *Id.* Our analysis, however, is limited to the context of a single island of unincorporated territory.

[17] § 56375.3(b)(3)(A), (B). For purposes of our analysis, we assume a case in which there is no dispute over whether a given territory meets the other requirements of section 56375.3(b). *See* § 56375.3(b)(4) (territory must be "substantially developed or developing"), (b)(5) (territory is "not prime agricultural land, . . .") & (b)(6) (territory "will benefit from the change of organization . . . or is receiving benefits from the annexing city"). We further assume there is no claim that a given territory is expressly made ineligible for the protest-waiving procedure. § 56375.3(c); *see* Health & Safety Code § 33492.41(e) (applicable to certain territories in the Inland Valley Redevelopment Project Area).

[18] *See* former § 35150(f).

[19] *Fig Garden Park*, 162 Cal. App. 3d at 342; *see Weber v. City Council*, 9 Cal. 3d 950, 965 (1973

surrounded or substantially surrounded areas, thus prohibiting the circumvention of the 100-acre [currently 150-acre] limitation and/or the annexation of smaller areas within larger substantially surrounded areas."[20]

A few years earlier, we too had concluded that the "entire island" requirement of section 56375.3's predecessor statute demonstrated a legislative intent to preclude "the annexation of a *part of* an island under this statutory provision."[21]

> It would be unreasonable to conclude that the statute's 100-acre [now 150-acre] limitation is without significant meaning. If a proposed area of annexation could constitute a portion of a larger territory, the . . . limitation could be easily circumvented by separate annexation proceedings. We do not believe that the Legislature intended piecemeal annexation as a means to thwart citizen participation in the decision making process.[22]

As the current questions indicate, there continues to be concern that the streamlined island annexation procedures not be used (or misused) in a way that would deprive residents and landowners of their statutory rights[23] to protest and vote upon an annexation proposal. With this background in mind, we turn to the questions posed in this request.

1. Meaning of "island"

The first question is: what does the term "island" mean for purposes of section 56375.3? Although numerous terms are defined in the Act,[24] "island" is not one of them. The most apt dictionary definition[25] is "something resembling an island by its isolated,

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[20] *Fig Garden Park*, 162 Cal. App. 3d at 343.

[21] 63 Ops.Cal.Atty.Gen. 343, 345 (1980) (emphasis in original) (analyzing former § 35150(f)).

[22] *Id.*

[23] Courts have consistently rejected the suggestion that residents and landowners have a *constitutionally*-protected right to protest a proposed annexation. *Weber v. City Council*, 9 Cal. 3d at 958-965; *Fig Garden Park*, 162 Cal. App. 3d at 348; *I.S.L.E. v. Co. of Santa Clara*, 147 Cal. App. 3d 72, 79-80 (1983); *Beck v. Co. of San Mateo*, 154 Cal. App. 3d 374, 378-381 (1984); *Scuri v. Bd. of Supervisors of Ventura Co.*, 134 Cal. App. 3d 400, 404-406 (1982).

[24] *See* §§ 56010-56081.

[25] Where the statutory scheme does not provide a definition, the general rule in

surrounded, or sequestered position."[26] This definition fits well with the statute's requirement that the territory be either "[s]urrounded, or substantially surrounded, by the city to which annexation is proposed or by the city and a county boundary or the Pacific Ocean," or "[s]urrounded by the city to which annexation is proposed and adjacent cities."[27] Unlike other provisions of the statute, which focus on an island's maximum acreage[28] or degree of development,[29] this provision sets forth an implied definition of what features are essential to constitute an island in the first place.

The *Fig Garden Park* court also concluded that these descriptive elements constituted the "determining factor" in "initially determining the existence and parameters of an island."[30] If a territory is found to be "surrounded" or "substantially surrounded" in the manner described, then "that fixes the dimension and existence of the island."[31] One of a LAFCO's responsibilities is to "review the boundaries of the territory involved in any proposal with respect to the definiteness and certainty of those boundaries, the nonconformance of proposed boundaries with lines of assessment or ownership, and other similar matters affecting the proposed boundaries."[32] If the LAFCO determines that an area constitutes an "island," and if that determination results in an order for annexation, neither the initial determination nor the resulting order may be set aside in the absence of fraud or "a prejudicial abuse of discretion"[33] (meaning that the LAFCO's "determination or decision is not supported by substantial evidence in light of the whole record.")[34]

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scrutinizing the words of a statute is to "give them their usual, ordinary meaning, which in turn may be obtained by referring to a dictionary." *Smith v. Selma Community Hosp.*, 188 Cal. App. 4th 1, 30 (2010).

[26] *Webster's New International Unabridged Dictionary* 1198 (3d ed., Merriam-Webster 2002); *see also Schaeffer v. Co. of Santa Clara*, 155 Cal. App. 3d 901, 903 (1984) (referring to dictionary definition of "island").

[27] § 56375.3(b)(3).

[28] § 56375.3(b)(1).

[29] § 56375.3(b)(4).

[30] *Fig Garden Park No. 2 Assn.*, 162 Cal. App. 3d at 343 (analyzing former § 35150(f)).

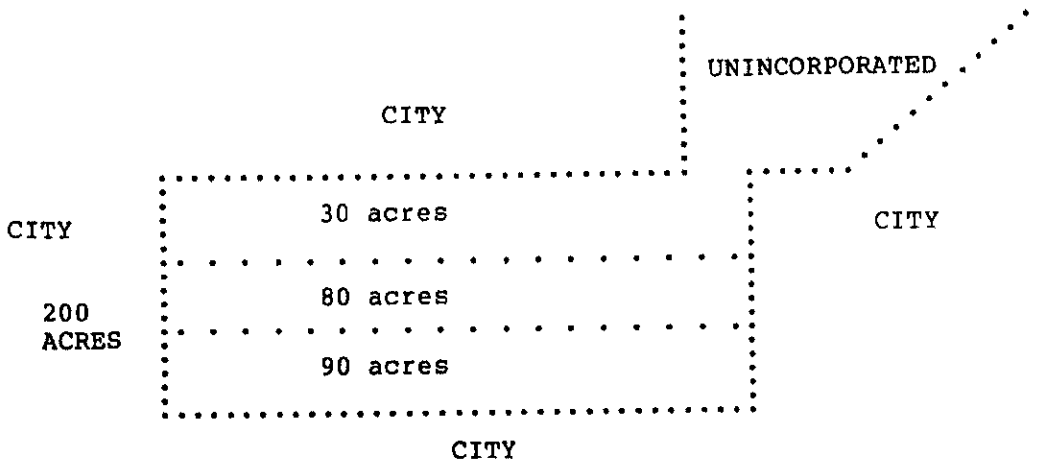
[31] *Id.*

[32] § 56375(l).

[33] § 56107(c); *see Simi Valley Recreation & Park Dist. v. Local Agency Formation Commn. of Ventura Co.*, 51 Cal. App. 3d 648, 685-687 (1975).

[34] § 56107(c).

That said, more guidance may be helpful in describing what qualifies as "surrounded" or substantially "surrounded" territory for purposes of determining the existence of an island. To better understand these terms, we find it helpful to refer to a diagram set out in the *Fig Garden Park* opinion:



With reference to this diagram, the court explained that:

> . . . in the above example, the outer perimeter of the 200-acre unincorporated parcel is substantially surrounded by the city. If the parcel were 100 acres or less, it would be eligible for a [former] section 35150(f) annexation. Since it is not 100 acres or less, it is not eligible. The concept would be violated if the City attempted to break up the 200 acres into smaller parcels 100 acres or less, thus otherwise qualifying the individual parcels for annexation within the 100-acre limitation. Such a procedure would tend to circumvent the 100-acre limitation and the "entire island" concept would prohibit it.[35]

The court performed this analysis with "the purpose of reconciling and harmonizing the two terms 'entire island' and 'substantially surrounded' area in an effort to give effect and meaning to both, consistent with the general legislative purpose."[36] We note, and agree with, the court's implicit determination that a territory may be an "island" even if it is not *completely* surrounded (although a completely surrounded territory would

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[35] *Fig Garden Park*, 162 Cal. App. 3d at 343. Recall under former section 35150(f), the maximum acreage permitted for an "island annexation" was 100 acres. Under section 56375.3(b)(1), it is now 150 acres.

[36] *Id.* at 342-343.

certainly qualify as an island as well). Indeed, we said as much in our 1980 opinion.[37] We believe that any other conclusion would render superfluous the phrase "or substantially surrounded," and we are not free to construe a statute in a way that would render any part of it meaningless.[38]

In turn, the examples contained in published cases provide guidance as to the meaning of "substantially surrounded." In *Fig Garden Park*, the annexing city bordered along 97 percent of the total perimeter of the substantially surrounded island that the court found to exist, with a 230-foot gap leading into "county property extending for miles."[39] In *Scuri v. Board of Supervisors*, upon which the *Fig Garden Court* partially relied, territories surrounded by the annexing city along 79.8 percent, 89.13 percent, and 82.4 percent of their perimeters were each found to be substantially surrounded islands.[40] In *Schaeffer v. County of Santa Clara*,[41] an area surrounded along 68 percent of its perimeter by the annexing city was assumed to be substantially surrounded.[42]

It is not our province to read any mathematically precise percentage requirement into the term "substantially surrounded" where the Legislature has chosen to let the term stand on its own.[43] Rather, we give the word "substantially" its ordinary meaning, which

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[37] 63 Ops.Cal.Atty.Gen. at 345 ("The proposed territory can still be an 'island' although only 'substantially' surrounded by the annexing city and, for example, a county boundary, where another city is adjacent to the territory.")

[38] *See Ste. Marie v. Riverside Co. Regional Park & Open Space Dist.*, 46 Cal. 4th 282, 289 (2009) (construction should "accord meaning to every word and phrase in a statute"). Also, we note that section 56375.3(b)(3), in addition to allowing island annexation if a territory is "[s]urrounded, or substantially surrounded, by the city to which annexation is proposed or by the city and a county boundary or the Pacific Ocean," also permits island annexation for a territory that is "[s]urrounded by the city to which annexation is proposed and adjacent cities." This second circumstance *does not* contain the phrase "or substantially surrounded." From this, we surmise that the Legislature intended that the latter type of island must be *completely* surrounded, while the former may either be completely surrounded or substantially surrounded.

[39] *Fig Garden Park*, 162 Cal. App. 3d at 341.

[40] *Scuri*, 134 Cal. App. 3d at 408-409.

[41] 155 Cal. App. 3d 901.

[42] The *Schaeffer* court concluded that the annexation of this territory, which it assumed to be substantially surrounded, was improper for other reasons.

[43] We note, however, that in 2004 the Legislature considered inserting a requirement into the island annexation provisions that would have specified that "[n]ot less than 51 percent of the exterior boundary of the territory to be annexed is surrounded by the city to

in this case is "in a substantial manner: so as to be substantial,"[44] with "substantial" best defined in this context as "being that specified to a large degree or in the main."[45] Thus, a LAFCO's decision that a given territory is "substantially surrounded" would be evaluated as to whether there is "substantial evidence in light of the whole record"[46] to support a finding that the territory is surrounded, to a large degree or in the main, in the manner prescribed by section 56375.3(b)(3). In any event, we believe that our interpretation of the statutory terminology is understandable and intuitive enough to foreclose the argument, advanced by some, that an "island" may not be contiguous to any other unincorporated territory (which is another way of saying that an island of unincorporated territory must be completely surrounded).[47]

And finally, before leaving this topic altogether, we note that there is an additional limitation on whether a particular territory may be deemed an "island" subject to annexation under section 56375.3. That is, the territory may not be a part of a larger island that is itself surrounded, or substantially surrounded, in the manner described in section 56375.3(b)(3). The *Schaeffer* decision illustrates this principle. The territory at issue in *Schaeffer* was a small (19.73-acre) portion of a 600-acre tract of irregularly-

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which the annexation is proposed, by that city and a county boundary or the Pacific Ocean, or that city and another city." Sen. 1266, 2003-2004 Reg. Sess. (as introduced Feb. 13, 2004; as amend. Apr. 14, 2004). Ultimately, the Legislature settled on the term "substantially surrounded" without further specificity.

[44] *Webster's New International Unabridged Dictionary* 2280.

[45] *Id.*

[46] *See* § 56107(c).

[47] Because this interpretation flows directly from the language of the statute, it is not necessary to resort to legislative history to ascertain the Legislature's intent. Nevertheless, we have examined the history, and we believe that it reinforces our conclusion. Before section 56375.3 was amended in 2004, subdivision (b)(1) of the statute permitted a LAFCO to waive protest hearings if the territory to be annexed "does not exceed 75 acres in area, that area constitutes the entire island, *and that island does not constitute a part of an unincorporated area that is more than 100 acres in area.*" The italicized phrase was added to the statute in 1985 (1985 Stat. ch. 541 § 3) but removed in 2004 (2004 Stat. ch. 96 § 1). It was therefore not at issue in the *Fig Garden Park* case, nor is it at issue here. Nonetheless, the very fact that this phrase has come and gone from the statute confirms our understanding that the current legislation is intended to allow LAFCOs the latitude to approve annexations of substantially surrounded islands even when the final boundary configurations result in some connection between the island and another swath of unincorporated territory. Again, the *Fig Garden Park* diagram provides a helpful illustration of such circumstances.

shaped unincorporated territory. The larger tract was completely surrounded by the annexing city, and thus constituted an island within the city limits.[48] While the court accepted the premise that the smaller portion could be considered "substantially surrounded" based on the fact that it was 68 percent surrounded by the city, the court was not persuaded by the argument that the smaller territory should be treated as "an island within the larger 600-acre island."[49] Focusing on the statute's "entire island" requirement, the court held that such an annexation

> would defeat the statutory purpose that only "entire islands" within a city's confines be annexed. And it would visit violence upon another of the statute's dictates, i.e., that the total area to be annexed "*not exceed 100 acres*." For if *part* of an otherwise forbidden larger island might be so annexed, that proceeding could be followed by other such proceedings, and yet others, until an entire 600 acres . . . be so consumed, contrary to the clear legislative purpose that areas more than 100 acres in size *not* be annexed under section 35150.[50]

In essence, then, the *Schaeffer* court harmonized the statute's "entire island" provision with its "surrounded or substantially surrounded" provision to determine whether the territory under consideration qualified as an island. The *Fig Garden Park* decision took the same approach,[51] as do we in reaching our conclusions here.

We therefore conclude in response to the first question that, for purposes of section 56375.3, an "island" is an area of unincorporated territory that is (1) completely surrounded, or substantially surrounded—that is, to a large degree or in the main surrounded—by the city to which annexation is proposed or by the city and a county boundary or the Pacific Ocean, or (2) completely surrounded by the city to which annexation is proposed and adjacent cities. An island may not be a part of another island that is surrounded or substantially surrounded in this same manner.

2. The "entire" island

While we have already touched on the subject in connection with the definition of an "island," we now directly address the question whether section 56375.3 requires the annexation of an "entire island" or "entire unincorporated island" as set forth,

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[48] *Shaeffer*, 155 Cal. App. 3d at 905.

[49] *Id.*

[50] *Id.* Again, the current maximum area is set at 150 acres. §56375.3(b)(1).

[51] 162 Cal. App. 3d at 342-343.

respectively, in subdivisions (b)(1) and (b)(2) of that statute. A straightforward reading of these provisions compels an affirmative response. Simply put, once the boundaries of an island are fixed, the question under section 56375.3(b)(1) becomes whether the island's territory is 150 acres or less. If so, the territory is subject to annexation under the streamlined procedures of section 56375.3; if not, it is not subject to these procedures.

A LAFCO lacks discretion or authority to use streamlined procedures to annex an island that exceeds 150 acres in area or that does not constitute the entirety of the island in question. Again, because the words used in a statute are to be given their usual, ordinary meaning in the absence of any legislative intent to the contrary,[52] we consult the dictionary for the meaning of the word "entire." We believe that it is most reasonably defined in this context as "with no element or part excepted," "whole," "complete," or "total."[53] Annexing *part* of a given island would run afoul of the command of section 56375.3(b)(1) and (b)(2).[54] Our conclusion is consistent with case law and with our own 1980 opinion on island annexations.[55]

So, in response to the second question, we conclude that Government Code section 56375.3 requires the annexation of an "entire island" or "entire unincorporated island" as set forth, respectively, in subdivisions (b)(1) and (b)(2) of that statute.

3. Dividing an island not allowed

In light of our previous conclusions, we may easily dispose of the third question presented, that is, whether a LAFCO may split up an unincorporated island that exceeds 150 acres into smaller segments of 150 acres or less in order to use the section 56375.3 annexation procedures, and thereby avoid the landowner/voter protest proceedings that would otherwise be required. We conclude that it may not. To split an unincorporated island into smaller pieces for annexation is an action that simply may not be reconciled with the statutory requirement that, to utilize the protest-waiving procedures for island annexation under section 56375.3, a LAFCO must order the annexation of the *entire* island.

A LAFCO has no discretion to disregard this statutory mandate. The requirement is specifically designed to prevent piecemeal annexation as a means of circumventing the

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[52] *Smith v. Selma Community Hosp.*, 188 Cal. App. 4th at 30.

[53] *Webster's New International Unabridged Dictionary* 758.

[54] *See* § 56375.3(b)(1) ("entire island"), (b)(2) ("entire unincorporated island").

[55] *See Fig Garden Park*, 162 Cal. App. 3d at 343-346; *Schaeffer*, 155 Cal. App. 3d at 903-905; *Scuri*, 134 Cal. App. 3d at 407-409; 63 Ops.Cal.Atty.Gen. at 345.

citizen participation in the annexation process. Several appellate court decisions and our own 1980 opinion are in accord.[56] In addition, the prohibition against subdividing territory for island annexation purposes is further reinforced by section 56375.4(a). That section generally prohibits the use of section 56375.3 to annex territory that "became surrounded or substantially surrounded by the city to which annexation is proposed" after January 1, 2000, meaning that a city cannot now annex part of a territory and thereby create a remaining territory (of 150 acres or less) that would later be subject to a subsequent annexation under the streamlined procedure.

Therefore, we conclude in response to the third question that a LAFCO may not split up an unincorporated island that exceeds 150 acres into smaller parcels in order to utilize the streamlined "island annexation" procedures set forth in Government Code section 56375.3 and thereby avoid the landowner/voter protest proceedings that would otherwise be required.

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[56] *See Fig Garden Park*, 162 Cal. App. 3d at 343-346; *Schaeffer*, 155 Cal. App. 3d at 903-905; *Scuri*, 134 Cal. App. 3d at 407-409; 63 Ops.Cal.Atty.Gen. at 345.