

# Court decision deals hard blow to Tony Franich

By STEVE SHENDER

Just when Watsonville attorney Tony Franich thought it was safe to bulldoze his 72-acre apple orchard on East Lake Avenue, the State Court of Appeal has handed down a ruling that says it's not.

Ruling in a case involving the city of Scotts Valley, the State Court of Appeal decreed Monday that cities may not annex property unless the property to be annexed is within a sphere of influence approved by a Local Agency Formation Commission (LAFCO).

Scotts Valley does not have an approved sphere of influence. Neither does Watsonville. In Scotts Valley's case, the impact of the appellate decision is academic, as the annexation which led to the ruling has already taken place and the property, an industrial park adjacent to Highway 17, has been developed.

For the city of Watsonville and Franich, however, the court's action appears anything but moot. And it now appears that the Franich annexation has become ensnared in a legal tangle that threatens to postpone development of the property indefinitely.

Santa Cruz County LAFCO and the city approved the Franich annexation last fall and it was later certified by the Secretary of State's office. But the annexation has been challenged by the Resource Defense Fund — a coalition of county environmental groups which filed the Scotts Valley suit.

The Defense Fund filed suit over the annexation in November, under a special "validation" proceeding provided for by state law, contending that it was illegal because LAFCO had not approved a sphere of influence for the city.

Defense Fund attorney Tom Brown asserted this morning that the Court of Appeals decision would bind any county Superior Court judge who hears the Franich case to rule the annexation illegal.

"As far as I'm concerned," Brown said, "it means that

annexation is illegal, and that's it. The trial court here is going to take one look at this decision and say the Franich annexation must be set aside.

"Luckily for everybody, this Court of Appeal decision came down before the trial court here considers it (the Franich case) and makes (a) mistake that gets us all into more appeals," Brown said.

News of the appellate decision came with LAFCO poised to act on Watsonville's sphere of influence. LAFCO commissioners, who delayed action on the city's sphere of influence two days after the Defense Fund's annexation suit was filed, are scheduled to act on the matter Wednesday.

Brown said this morning that if LAFCO approves a sphere of influence for the city Wednesday, his group will challenge that action as well. He said the legal challenge would most likely be mounted over the commission's failure to do an environmental impact report on the proposed sphere of influence.

LAFCO Executive Director Pat McCormick has prepared findings that adoption of a sphere of influence for the city would have no significant harmful effects on the environment. Brown, who called such findings "absurd," warned today that if LAFCO does approve a sphere of influence for Watsonville Wednesday, "They're going to be inviting further litigation from my clients."

Reaction to the Court of Appeal decision was predictable today, depending on which side of the city-county political fence the speaker was on.

City Attorney Don Haile called the decision "disastrous," not only for Watsonville, but for "every city in the state." He said that only a small percentage of California cities actually had approved spheres of influence.

Midcounty Supervisor Robley Levy, who fences regularly with city officials over land use issues, this morning called the court's decision "appropriate," and said she was pleased by it.

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