

Nevada Local Agency Formation Commission

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Date: September 11, 2013
To: LAFCo Commissioners
From: LAFCo Policy Committee
Subject: Recommendation for Policy Amendment to Implement Senate Bill 244
(Disadvantaged Unincorporated Communities) Provisions

The Policy Committee (Commissioners Beason (Chair), Bender, Bergman, and Susman) has prepared the attached Policy Amendments (*Attachment I*) to implement the requirements of Senate Bill 244 on Disadvantaged Unincorporated Communities for the Commission's consideration. The Commission is asked to review the proposed amendments and this report and to then provide direction to staff.

SB 244 pertains to Disadvantaged Unincorporated Communities (DUCs) and is designed to promote infrastructure improvement investments in these areas. The legislation defines a DUC as *inhabited territory, as defined by § 56046, or as determined by commission policy, that constitutes all or a portion of a "disadvantaged community" as defined by § 79505.5 of the Water Code*. The cited section of the Water Code defines "disadvantaged community" as one in which the median annual household income is less than 80% of the statewide average. In 2010, the statewide annual MHI was \$60,883; 80% of that is \$48,706).

SB 244 effects LAFCOs in two ways:

- Municipal Service Reviews and Spheres of Influence: LAFCo must identify and consider Disadvantaged Unincorporated Communities when preparing MSRs and Sphere updates for cities and special districts that provide sewer, water, or structural fire protection services.
- City Annexations: LAFCo is prohibited from approving an annexation to a city of territory greater than ten acres that is contiguous to a disadvantaged unincorporated community, unless application to annex the DUC has been filed with LAFCo.

The Policy Committee's approach to implementing the legislation has been to develop:

- Criteria to identify Disadvantaged Unincorporated Communities
- Requirements that MSRs and Sphere Updates to consider Disadvantaged Unincorporated Communities
- Provisions for city annexations adjacent to Disadvantaged Unincorporated Communities

The resulting recommended Policy amendments are incorporated into the attached set of Commission Policies at the following sections:

1. Section II P (Disadvantaged Unincorporated Communities) – Senate Bill 244 created a very broad set of defining criteria for DUCs (an area with at least 12 registered voters that has an annual median household income of less than 80% of the statewide average); however, it also allows the Commission some discretion to develop refining criteria. The recommended Policy amendments establish additional defining criteria for DUCs, including parcel size and density, land use and development patterns, and the availability of the subject services (water, wastewater and fire protection). In addition, any DUC recognized as such by a city or the County would

qualify under the policy. Finally, the Committee recommendation includes a process for a group of residents to request LAFCo determine whether their community meets the criteria.

2. Section III C (Municipal Service Reviews) – This section includes the new SB 244 requirements for MSRs (which state that water, wastewater, and fire MSRs will consider the needs of any DUCs located within or contiguous to spheres of influence of applicable service providers).
3. Section IV C (City Annexations) – This section provides for City and LAFCo staff to confer prior to the City’s submittal of an annexation proposal to determine whether any areas adjacent to or in the vicinity of the proposed annexation qualify as a DUC and should be included in the annexation application. The proposed policy also provides for use of a survey of the residents to determine whether the residents support or are opposed to annexation, and whether the area’s Median Household Income level meets the 80% standard. Finally, the recommended policy language provides that the Commission will normally approve DUC annexations (with certain caveats), but also sets out the circumstances under which a city would not be required to initiate annexation.

The proposed amendments (especially the defining criteria and procedures for city annexations) have been discussed informally with City and County planning staff. As described more fully below in the section on Policy Amendments, the Commission’s procedures for amending its policies provide for cities, the County and the districts to review the proposed amendments prior to the Commission taking final action.

SB 244 and City and County General Plans

SB 244 also impacts cities and counties. Before the next Housing Element Update, each city must identify and describe DUCs that exist within its sphere of influence. Each county must identify and describe the DUCs that have existed for more than 50 years. The Committee’s proposed Policy amendments state that any DUC identified by a city or the County meets the proposed definition of a DUC (Section II P). In Nevada County, the Housing Elements of the county and three incorporated cities are scheduled to be completed by June 30, 2014. A letter from the County Planning Department detailing plans for complying with the legislation has been included herein as *Attachment 2*.

Policy Amendment Process

LAFCo policy amendments are made by a three-step process: the Commission considers the proposed amendment at a regular meeting (as it is doing now); it is then circulated to the cities, districts, and the County; finally, the Commission considers any comments received at a second regular meeting, at which time it may adopt the new policy (including any modifications it may then wish to make). Accordingly, if the Commission wishes to proceed with the Committee’s recommendations, it should direct staff to proceed with circulating the recommended policy amendments and scheduling the item for consideration at a future meeting.

Background and Methodology

The challenge of complying with SB 244 requirements is that reliable data to confirm or refute whether any particular area meets the core criteria (annual median household income) is not available from the State or from the US Census at a scale appropriate to the legislation’s requirements.

The US Census provides Median Household Income information at the census tract level; however, census tracts are much larger geographically than the individual unincorporated communities contemplated by the legislation. For example, in Nevada County there are 20 census tracts, five of which show annual median household incomes of less than \$48,706 (which is 80% of the statewide median household income of \$60,883). Three of these five areas are within Grass Valley, one is located south of Grass Valley along Highway 49, and the fifth covers a large area that includes most of the unincorporated portions of eastern and northern Nevada County.

The US Census also provides Median Household Income data for “Census Designated Places,” which are populated areas that lack separate municipal government. Ten areas in Nevada County are considered CDPs: Soda Springs, Kingvale, Floriston, Washington, Graniteville, North San Juan, Alta Sierra, Lake of the Pines, Rough and Ready, and Penn Valley. Of these ten areas, only five appear to contain the minimum number of voters and to meet the Median Household Income requirements for Disadvantaged Communities (Soda Springs, Washington, North San Juan, Rough and Ready and Penn Valley).

The State Department of Water Resources (DWR) has identified “Disadvantaged Communities” which are geographic areas with a median household income of less than 80% of the statewide median household income. These areas are often eligible for Integrated Regional Water Management grants from DWR. The DWR has identified the following eight areas in Nevada County as Disadvantaged Communities: Grass Valley, Penn Valley, Rough & Ready, North San Juan, Washington, Soda Springs, Graniteville, and Floriston. Note that LAFCo staff’s research indicates that Graniteville does not have the required minimum number of voters (twelve) to qualify as an “inhabited area” per Government Code § 56046. Floriston does not appear to meet the required median household income requirements to qualify as “disadvantaged,” per data from the US Census Bureau’s American Factfinder Survey. The remaining five unincorporated communities identified by DWR (Penn Valley, Rough & Ready, North San Juan, Washington and Soda Springs) are considered by County Planning staff to be consistent with the definition of a “Legacy Disadvantaged Community,” as discussed in Attachment 2.

LAFCo staff has utilized the defining criteria recommended by the Policy Committee to identify areas that might meet the proposed definition by virtue of density, land use, and service availability (note that as discussed above, data regarding annual median household income is unavailable for these areas at this time). Under the recommended Policy amendments, these would be included in the upcoming water and wastewater Municipal Service Reviews; should a city annexation proposal be initiated on adjacent territory, LAFCo staff and City staff would confer to determine whether there is a basis for including the area in the City’s annexation proposal. Note that the recommended Policy amendments also include provisions to survey the residents to determine support for annexation; the results of any survey would be discussed with the City and the Commission to determine how to proceed.

1 Commission Policies, with recommended amendments

2 Letter from Nevada County Planning Department

**LOCAL AGENCY
FORMATION COMMISSION
OF NEVADA COUNTY
(LAFCo)**

POLICIES

**Adopted April 28, 1994
Amended August 28, 2008**

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3. Finding with Respect to Alternative Sites. The Commission will not make the affirmative finding that insufficient vacant non-prime or open space land exists within the sphere of influence unless the appropriate jurisdiction has:
 - a) Identified within its sphere of influence all "prime agricultural land" and "open space land."
 - b) Enacted measures to preserve prime ag/open space land identified within its sphere of influence for agricultural or open space use.
 - c) Adopted as part of its General Plan specific measures to facilitate and encourage in-fill development as an alternative to the development of prime ag/open space lands.
4. Determining Impact on Adjacent Ag/Open Space Lands. In making the determination whether conversion will adversely impact adjoining prime agricultural or open space lands, LAFCo will consider the following factors:
 - a) The prime ag/open space significance of the subject and adjacent areas relative to other ag/open space lands in the region.
 - b) The use of the subject and the adjacent areas.
 - c) Whether public facilities related to the proposal would be sized or situated so as to facilitate the conversion of adjacent or nearby prime ag/open space land or will be extended through or adjacent to any other prime ag/open space lands which lie between the project site and existing facilities.
 - d) Whether natural or man-made barriers serve to buffer adjacent or nearby prime ag/open space land from the effects of the proposed development.
 - e) Applicable provisions of the General Plan open space and land use elements, applicable growth-management policies, or other statutory provisions designed to protect agriculture or open space.
5. Comments on Prime Ag/Open Space Projects. Whenever feasible, LAFCo will comment upon Notices of Preparation for Environmental Impact Reports or projects which involve the development of large tracts of open space or agricultural land.

O. NEED FOR SERVICES

A need for the services that will be made available must be established. LAFCo will normally determine that a need for service exists if any of the following situations is present:

1. Public Health and Safety Threat. If the lack of the service creates a demonstrated threat to the public health and safety.
2. Community Needs. If a proposal includes the extension or provision of community services that are not considered growth-inducing, such as fire protection, recreation, road maintenance, etc., and the residents of the area have indicated a desire for the service. A positive indication from the residents may be established by a city or district being requested by residents to initiate annexation on their behalf.

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3. Five-Year Urbanization. If a proposal will result in the extension of services that may reasonably be expected to result in urbanization of the subject territory, area growth patterns must indicate that the subject area is likely to be developed for urban use within five years, if permitted, and local planning regulations provide:
 - a) It is designated for urban uses in the appropriate land use authority's General Plan;
 - b) If the proposal includes annexation to a city, the subject territory has been rezoned for urban uses; and
 - c) Development at the site is consistent with the policies of the relevant General Plan and the policies of Cortese-Knox-Hertzberg.

P. DISADVANTAGED UNINCORPORATED COMMUNITIES

The Commission will identify Disadvantaged Unincorporated Communities, as defined below, for the purpose of:

1. Municipal Service Reviews. *Water, Wastewater, and Fire Protection Municipal Service Reviews will discuss and identify opportunities for the provision of those services to Disadvantaged Unincorporated Communities.*
2. City and Town Annexations. *Disadvantaged Unincorporated Communities that are located adjacent to areas proposed for annexation to a city or town shall normally be included in the annexation or reorganization proposal or be separately proposed for annexation, unless the Commission has determined that the disadvantaged community would not be benefited by annexation, or if at least 50% the registered voters have indicated opposition to annexation.*
3. Definition of Disadvantaged Unincorporated Community. *A Disadvantaged Unincorporated Community is defined as a developed area that has been identified as such by LAFCo, the County or applicable city, or one that meets all the following standards:*
 - a) *Substantially developed with primarily residential uses*
 - b) *Contains at least 25 parcels in close proximity to each other that do not exceed 1.5 acres in size*
 - c) *Does not have reliable public water, sewer or structural fire protection service available*
 - d) *Contains at least 12 registered voters*
 - e) *Has a median household income level of less than 80% of the statewide median household income*
4. Request for Determination. *In addition to those Disadvantaged Unincorporated Communities identified by LAFCo or other agencies, residents or property owners may request that LAFCo determine whether a specific area meets the criteria listed in Item 3, to be treated as a Disadvantaged Unincorporated Community. Such request must be submitted by at least twelve registered voters of the area. The review shall be conducted by*

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LAFCo staff and shall, if appropriate, be submitted for consideration and approval by the Commission.

Q. EXCEPTIONS

LAFCo may make exceptions to any of the standards in this Chapter if it determines that such exceptions can be justified upon one or more of the following grounds:

1. Uniqueness. The project has a unique physical constraint which is so unusual and inconsistent with other similar locations that granting an exception would not be a grant of a special privilege.
2. Conflicting Standards. Exceptions are required to resolve conflicts between standards of these policies.
3. Quality/Cost. The project will result in significantly improved quality or substantially lower cost of service available.
4. No Alternative. No feasible or logical alternative exists.

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- a) Multi-service Districts. LAFCo shall adopt a sphere of influence plan for each distinct function or class of service provided by a district. These sphere plans may or may not be coterminous. Each sphere shall establish the nature, location, and extent of the functions or classes of services provided by the district.
- b) Spheres for New Districts. LAFCo will adopt a Sphere of Influence Plan for a newly formed district within two years of the completion of formation proceedings.

C. MUNICIPAL SERVICE REVIEWS

In order to establish an appropriate sphere for an agency, LAFCo must have adequate information on present and future service needs in the area and the capabilities of the agency to meet those needs. To this purpose, the Cortese-Knox-Hertzberg Act requires LAFCo to conduct service reviews prior to establishing or updating spheres of influence. A service review is a comprehensive review of provision of specified services within a designated geographic area. Its purpose is to evaluate the provision of services on a regional basis and to recommend actions, when necessary, to promote the efficient provision of those services. The service reviews are intended to help LAFCo, the public and other agencies better understand the public service structure and evaluate options for the provision of efficient and effective public services. LAFCo uses the information and analysis provided by the Municipal Service Review (MSR) to ascertain whether an agency can provide adequate and efficient services to the areas in the agency's sphere within the applicable time frame.

LAFCo will prepare or update the appropriate Municipal Service Reviews prior to or in conjunction with the adoption or update of an agency's sphere of influence plan. In general, LAFCo will conduct such reviews on a service-by-service basis for designated geographic areas. The Commission will periodically develop and implement a multi-year coordinated schedule for preparing MSRs and updating spheres of influence, in accordance with the legislature's direction to review each agency's sphere of influence every five years and update as necessary.

- 1. General Standards. LAFCo shall prepare Municipal Service Reviews in conformance with the provisions of Government Code §56430. A Municipal Service Review must provide information specific to each agency to support the Commission's written determinations with respect to the following:
 - a) Growth and population projections for the affected area.
 - b) *The location and characteristics of any disadvantaged unincorporated communities, as set forth in Section II P. above, within or contiguous to the sphere of influence.*
 - c) Present and planned capacity of public facilities, and adequacy of public services, and including infrastructure needs or deficiencies *including needs or deficiencies related to sewers, municipal and industrial water, and*

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structural fire protection in any disadvantaged unincorporated communities within or contiguous to the sphere of influence.

- d) Financial ability of agencies to provide service.
 - e) Status of, and opportunities for, shared facilities.
 - f) Accountability for community service needs, including governmental structure and operational efficiencies.
 - g) Any other matter related to effective or efficient service delivery.
2. Municipal Service Reviews Must Support Spheres of Influence. In addition to the requirements discussed above, Municipal Service Reviews shall contain information on which the Commission can base its determination of the appropriate sphere of influence for an agency, including:
- a) Identification of existing land uses and a reasonable projection of land uses which would occur if services were provided consistent with each agency's sphere of influence plan. This analysis should include maps and explanatory text detailing the following:
 - i) Present designated and actual land uses in the area, improved and unimproved properties, and agricultural and open space lands, as defined by G.C. Sections 56064 and 56059.
 - ii) Proposed future land uses in the area.
 - b) Discussion of present and probable future needs for public facilities and services in the sphere area. The discussion should include consideration of the need for all types of major facilities, not just those provided by the agency.
 - c) A determination of the present and future capacity of facilities and adequacy of services the agency provides or has plans to provide. The review must include specific information and analysis of how the agency will meet anticipated growth in demand within its current boundaries and within the area included in its sphere. This information will guide the Commission's designation of appropriate sphere horizons in the Sphere of Influence Plan. The required information should include the following:
 - i) Maps and explanatory text that indicate the location and capacity of existing and proposed facilities, including a plan for timing and location of new or expanded facilities.
 - ii) An estimate of projected revenue and expense over the sphere horizons, specifically identifying the cost of planned new facilities or services and projected source(s) of revenue to fund those new facilities or services.
 - iii) Actual and projected costs of services to consumers in current dollars. A statement of actual and projected allocations of the cost of services between existing and new residents shall be included.
 - d) Identification of any relevant social or economic communities of interest in the area. For example, an area which is completely within one subdivision governed by a single homeowner's association should be

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C. CITY ANNEXATIONS

1. Annexations of Streets. Annexations shall reflect logical allocation of streets and rights-of-way. Specifically:
 - a) LAFCo may require inclusion of additional territory within an annexation in order to assure that the city reasonably assumes the burden of providing adequate roads to the property to be annexed. LAFCo will require cities to annex streets where adjacent lands in the city will generate additional traffic or where the annexation will isolate sections of county road, but will not require annexation of roads that will create isolated sections of city maintained road.
 - b) LAFCo will favorably consider annexations with boundary lines located so that all streets and rights-of-way will be placed within the same jurisdiction as the properties which either abut thereon or use the streets and rights-of-way for access. Except in extraordinary circumstances, cities shall annex an entire roadway portion when 50% or more of the frontage on both sides of the street will be within the city after completion of the annexation.
2. Urban Boundaries. LAFCo will normally adjust annexation boundaries to include adjacent urbanized areas in order to maximize the amount of developed urban land inside a city and to minimize piecemeal annexation. As used herein, "urbanized areas" are areas that are developed for industrial use, commercial use, or residential use with a density of at least one unit per 1.5 acres and receive either public water or sewer service.
3. Rezoning Required. The Cortese-Knox-Hertzberg Act requires a city to prezone territory to be annexed and prohibits subsequent changes to its General Plan or rezoning designations for a period of two years after completion of the annexation, unless the council makes a finding at a public hearing consistent with the provisions of Government Code Section 56375(e). The city's rezoning must take into account the likely intended development of the specific property.

In instances where LAFCo amends a proposal to include additional territory, the Commission's approval of the annexation will be conditioned upon completion of rezoning of the additional territory.

4. Disadvantaged Unincorporated Communities. *Prior to submittal of a proposal for annexation of an area that includes ten or more acres, City staff and LAFCo staff will confer and review maps and development patterns of areas adjacent to the subject territory to determine whether any area contiguous to the proposed annexation meets the Commission's definition of a Disadvantaged Unincorporated Community, as set forth in Section II P. above. Review may include use of a survey to determine whether the area meets the median household income criteria, and whether the registered voters of the area would support its annexation to the city. Areas that meet the listed criteria and that would benefit from annexation shall normally be included in the subject proposal, or proposed for annexation by separate application within a year.*

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- a) *The Commission will normally approve a proposal that includes annexation of a Disadvantaged Unincorporated Community to a city, unless the city has established that annexation of the area would impose a severe strain on city finances or services or that annexation would not benefit the Disadvantaged Unincorporated Community.*
- b) *If an application for annexation of the Disadvantaged Unincorporated Community has been filed within the previous five years, or if written documentation has been submitted to LAFCo indicating that at least 50% of the registered voters of the Disadvantaged Unincorporated Community are opposed to the annexation, the city will not be required to initiate annexation of the Disadvantaged Unincorporated Community.*

D. DETACHMENTS FROM CITIES AND DISTRICTS

1. General Requirements. LAFCo shall normally disfavor the detachment of territory from a high-quality service provider unless the following can be demonstrated:
 - a) The detachment is necessary to ensure delivery of services essential to the public health and safety; or
 - b) The successor provider will be the most efficient services provider to the area as determined pursuant to Section IV-B above and the detachment will not significantly reduce the efficiency of service delivery to the remaining inhabitants of the current service provider's territory.
2. Service Plan Considerations. The service plans of special districts which lie within a city's sphere of influence should provide for orderly detachment of territory from the district or merger of the district as district territory is annexed to the city. However, LAFCo may determine during the updating of the spheres of the two agencies that the district should continue to provide service within certain areas even after their annexation to the city.
3. Bonded Indebtedness. Detachment from a city or special district shall not relieve the landowners within the detaching territory from existing obligations for bonded indebtedness or other indebtedness incurred previously by the city or district to provide service to the detaching property unless the following apply:
 - a) The relief from indebtedness is part of a revenue exchange agreement applying to the detachment.
 - b) The detaching agency is legally authorized to and agrees to assume the cost and spread it over the remaining property within the agency.

E. EXTENSION OF SERVICES BY CONTRACT

This section applies only to contracts to extend services beyond a local agency's jurisdictional boundaries as provided by Section 56133 of the Government Code.