

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF JANUARY 24, 2007

REGULAR MEETING

TO: Ted Long, Chairman, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer and
Tom Gibson, LAFCO Counsel

AGENDA ITEM #6: DISCUSSION ON THE DESIGNATION OF CSD LATENT
POWERS

RECOMMENDATION

Staff recommends that the Commission receive the following information regarding the designation of a CSD's power as "latent."

REASON FOR RECOMMENDED ACTION

Senate Bill 135 (Kehoe, 2005), among other things, mandated the designation of a community services district's powers as active or latent by January 1, 2006. Specifically, the bill defined and clarified "latent powers" as any service that an existing CSD is currently authorized to perform but LAFCO has determined, through its municipal services review process, is not being performed prior to January 1, 2006.

BACKGROUND

Senate Bill 135 defined "latent powers" as (all sections of the law are from the Government Code unless noted otherwise):

61002(h) "Latent power" means those services and facilities authorized by Part 3 (commencing with Section 61100) that the local agency formation commission has determined, pursuant to subdivision (h) of Section 56425, that a district did not provide prior to January 1, 2006.

CSD Law allows the districts to provide approximately twenty different public services and allows specific CSDs to provide another dozen or so services. In reality, throughout the state and in the county, most CSDs deliver only one or two of these authorized services and a few offer a half-dozen services. However, most CSDs are authorized to provide more services than they are currently, or capable of, delivering. This led to

SB135's requirement of designating these authorized but unused services "latent powers." One of the primary reasons for the desire of this designation is to avoid a redundancy in services. For example, State Law allows any CSD to provide fire protection services. To avoid a conflict where a CSD might try to start a fire department within the boundaries of an existing fire protection district, the new law relies on LAFCOs and their existing procedures in the Cortese-Knox-Hertzberg Act to control a CSD's latent power of fire service.

The first is the reauthorization of the latent powers. After January 1, 2006 a community services district (CSD) would have to petition LAFCO to activate a latent power:

61106(a) If a board of directors desires to exercise a latent power, the district shall first receive the approval of the local agency formation commission, pursuant to Article 1.5 (commencing with Section 56824.10) of Chapter 5 of Part 3 of Division 3.

The second is the prohibition of a redundancy in services within a designated geographic area:

61107(b) Notwithstanding subdivision (a) of Section 56824.14, the local agency formation commission shall not, after a public hearing called and held for that purpose pursuant to subdivisions (b) and (c) of Section 56824.14, approve a district's proposal to exercise a latent power if the local agency formation commission determines that another local agency already provides substantially similar services or facilities to the territory where the district proposes to exercise that latent power.

At the Commission's January 26, 2006 meeting, LAFCO staff noted that because not all municipal services reviews were completed, a thorough analysis of all CSDs had not been conducted by January 1, 2006. Consequently, the risk then was that it was not possible to document accurately all powers currently exercised by the El Dorado CSDs: LAFCO may designate a power as "latent" when the district could be providing that service or LAFCO may designate a latent power as "active" unaware of service limitations, shortage of staff or other deficits in a CSD's infrastructure.

In order to comply with SB135, staff recommended that the Commission accept the "Inventory of Local Agencies" (Inventory) as an interim solution. Currently, the Inventory is the only comprehensive listing of powers exercised by each CSD; however, the document may not be entirely accurate because it is based on information provided by the CSDs to LAFCO staff. The Commission's acceptance of the Inventory carried the caveat that the Inventory will be periodically updated with more accurate information as each CSD's MSR is adopted by the Commission.

At the Commission's December 6, 2006 meeting, Commissioners Sweeney and Hagen were concerned about the process by which LAFCO would make the "latent powers" designation. A related concern was that agencies would challenge LAFCO if it stripped them of their authorized powers. Staff replied that it would research the question further by polling other LAFCOs and reviewing the legal requirements in SB135.

Process Used By Other LAFCOs

When polled, while the process varied somewhat, the respondent LAFCOs notified their CSDs prior to LAFCO action. No public hearings were held but the item appeared on their regular agenda for discussion. For those without completed MSR, the CSDs were contacted beforehand to establish an inventory. Those CSDs were then notified in writing of the LAFCO's determination of their active versus latent powers prior to the public meeting. For those CSDs whose MSR were complete, in lieu of an inventory, some LAFCOs also included determinations on latent powers on their CSDs' MSR.

Staff Remarks

The general process used by other LAFCOs mirrored ED LAFCO staff's recommended process when it considered this matter. At the end of the MSR process, the CSDs would be notified in writing of staff's recommendations on their authorized powers' designations. The CSD would be encouraged to respond or meet with LAFCO staff to discuss or challenge the recommendations. Should these discussions still result in a recommendation that is disagreeable to the CSD, the designation of latent powers would be an item on a future Commission agenda for discussion and approval. Consequently, the CSDs would be given sufficient advance notice and various opportunities to present their case before the Commission acts.