

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF JUNE 25, 2014

REGULAR MEETING

TO: Ken Humphreys, Chair, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer

AGENDA ITEM #8: CONSIDER A DRAFT POLICY ON IMPLEMENTING SB 244

RECOMMENDATION

Staff recommends that the Commission receive the enclosed information regarding Senate Bill 244 (2011 Wolk), consider the outlined options for a potential policy and provide direction to staff on its preferences.

REASON FOR RECOMMENDED ACTION AND BACKGROUND

A full text of SB 244 and the State Senate "floor analysis" are attached to this report as Attachments A and B, respectively, for your convenience. In summary, Senate Bill 244 amended the Cortese-Knox-Hertzberg Act to require various actions by LAFCO.

- With few exceptions, the Commission cannot approve a proposal for annexation *to a city* of territory greater than 10 acres (or as determined by Commission policy) if a disadvantaged unincorporated community is contiguous to the area proposed for annexation unless an application for annexation of the disadvantaged unincorporated community (DUC) has been filed with the executive officer.
- In updating an agency's sphere of influence after July 1, 2012, the Commission must consider and prepare, as part of a written statement of determinations for a city or special district that provides public facilities or services that relate to sewers, municipal and industrial water, or structural fire protection, the present and probable need for those facilities and services of any disadvantaged unincorporated communities within the agency's existing sphere of influence.
- In conducting a Municipal Service Review, the Commission must prepare a statement of determinations, which includes the location and characteristics of any disadvantaged unincorporated community within or contiguous to an agency's sphere of influence and the present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to an agency's sphere of influence.

Challenges with Applying SB 244 to El Dorado County

Staff believes that the purpose of the Wolk bill is to address the complex legal, financial, and political barriers that contribute to regional inequity and infrastructure deficits within disadvantaged unincorporated communities (DUC). The bill defines a DUC as an area with more than 12 registered voters and having a median household income that is less than 80% of the statewide median household income. These are the only two defining criteria in the bill; consequently, SB 244 has the potential to cast a wide net. In addition, SB 244 presents many challenges to El Dorado LAFCO when it comes to implementing its provisions. Several unique factors are present here that this Commission will have to take into account as it tries to comply with SB 244.

Demography and Geography

In determining what constitutes a “community” so as to then identify a “disadvantaged unincorporated community,” the Commission has two options. The first option is to consider the county as a whole as a single community and not define any sub-areas of the county as communities. On its face this is not a valid proposition, since there are affluent areas in the County that are clearly not disadvantaged.

The second option is to consider the numerous neighborhoods and communities that exist throughout the county and identify them by policy. Some LAFCOs have taken this approach under the concern that any area with rural agricultural homes spread far apart with no chance of a public system would be considered a DUC simply because by their relative proximity to each other if they meet the two defining criteria above. The logic behind this approach is that “places X and Y” are considered “communities” for the purposes of applying SB 244. The SB 244 requirements would not apply to an annexation involving “place Z” because it is not named in the policy. It has to be said that although small neighborhoods may have more than 10 dwelling units in close proximity and are unincorporated, they typically are not considered a “community.”

Specific to this county, there is even a problem with defining the boundaries of established communities, such as Shingle Springs or Kelsey. A good number of historic communities started as compact towns. Over time, development in these areas became very diffused to the point that now only a few communities are still compact or definable. Where does Shingle Springs or Georgetown begin and end? What should the boundaries of Garden Valley or Latrobe be? Should communities such as Nashville, Frenchtown or Omo Ranch, places with historic meaning and lore but not a modern “town” per se like Rescue or Coloma, be included as communities?

In some counties, the LAFCOs use “Census designated places” to define their communities. The challenge here is that the rural population is so sparse that the CDP becomes a large geographic area, in some cases dwarfing the historical footprint of a town or even a city like Placerville. Further adding to the challenge is that the United States Census does not release demographic data by CDP, at least staff has been unable to find a source of credible data at that granular level. Instead, the Census provides demographic data at the Block Group level. Unfortunately, data at this level covers such a large geographic area that it becomes nearly impossible to identify with any degree of confidence the exact location of a DUC (refer to Attachment C).

LAFCO could use the County General Plan’s “Community Region” and “Rural Center” designations to define the boundaries of a community; however, it will encounter the same issue of finding solid demographic data as these other options.

As Nevada LAFCO put it more succinctly: “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.”

Bias Towards Cities Being the Sole Solution

The proponents behind SB 244 pushed for this bill because many communities throughout the state lacked basic necessities and/or access to those services. However, the proponents believed that annexation to cities was the only way to address this problem. This county only has two cities, neither one of which has the finances to extend services to all disadvantaged areas in the county, assuming that identifying them is possible. Added to that, in the same year as SB 244, the Legislature took away all financial incentives for cities to annex inhabited areas by taking away the vehicle license fee “bump.”

Finally, SB 244 did not contemplate the scenario where cities are not the primary providers of municipal services. The City of South Lake Tahoe is the only city with a fire department. The City of Placerville is the only city that can provide water and wastewater, but only in a core region within its city limits. For the most part, water, wastewater, fire and emergency medical services are provided by special districts in El Dorado County, regardless of whether they live in the unincorporated area of the county or in a city. As a result, the level of service a resident of a DUC receives from a special district does not vary significantly from the level of service to affluent areas. In other words, residents of a DUC are subject to the same staffing, resource, infrastructure and financing limitations as anyone else within the district's service boundaries. Cameron Park CSD will provide the same level of service to the DUC areas within its service boundaries as it does to the more affluent areas; Pioneer FPD will provide the same level of service to its DUCs as it does to its more affluent areas.

Miscellaneous

If SB 244 is designed to promote infrastructure improvement investments in DUCs, it anticipated somewhat of a robust level of annexation activity in the cities. But the two cities in El Dorado County have had few annexations in the past eight years: Two small annexations for Placerville and none for South Lake Tahoe. In various discussions with Placerville staff, the only large annexation the city may contemplate in the future is the annexation of the Smith Flat area. No large annexation is currently being considered for South Lake Tahoe. Those two trends point to a low probability that SB 244 would be triggered in this county. If SB 244's carrot-and-stick approach was to tie annexations of “less desirable” DUCs with the annexations of “desirable” land, then such a strategy will not work here.

Akin to the difficulty of using Census demographic data to pinpoint the location of DUCs, there is no university center or “rural poverty” non-profit that compiles this information.

The presence of these organizations has been helpful to some LAFCOs. For example, Tulare LAFCO used a non-profit to corroborate the presence of DUCs after that LAFCO's staff used Census data to identify potential candidate communities. The University of Irvine helped Orange LAFCO identify its DUCs.

Lastly, tangentially related to this discussion is the experience Placerville went through in the past two years. In 2012-2013 Placerville considered annexing the areas

substantially surrounded by the city limits, including the area known as “Motor City,” arguably a potential DUC. That effort was abandoned when a good number of residents in those neighborhoods voiced their opposition to the proposal. While not all residents in the adjacent neighborhoods objected, there is the question of the level of opposition there would be if Placerville attempts to annex Smith Flat and SB 244 would trigger the need to annex an adjacent DUC.

Policy Options

With the existence of these policy challenges and the low probability that SB 244 will be triggered, the Commission needs to consider its options:

1. It could choose not to have its own SB 244 policy and use the statutory language as “default”;
2. It could adopt its own criteria further defining “disadvantaged community,” as allowed by SB 244, including parcel size and density, land use and development patterns, and the availability of the subject services
3. It could define the specific communities subject to the SB 244 provisions;
4. It could have in its policy that any DUC recognized as such by a city or the County would qualify under the policy;
5. It could expand on SB 244 by determining it would identify all disadvantaged communities in the applicable MSRs, regardless of whether the community is incorporated or unincorporated;
6. Any combination of items 2-5 above.

What Other LAFCOs Have Done

The policies of Nevada, San Joaquin, Sonoma and Stanislaus LAFCOs were reviewed to prepare this report. No other LAFCO in a county with similar characteristics as El Dorado had adopted policies to-date. Of the policies reviewed, San Joaquin, Sonoma and Stanislaus LAFCOs have policies of a few paragraphs reiterating the requirements of SB 244 (refer to Attachment D). Nevada LAFCO’s policies were more comprehensive, akin to a combination of items 2 and 4 above (refer to Attachment E).

Discussion

The Commission always has the discretion to implement SB 244 “by default,” meaning it does not have to adopt a specific policy on DUCs. Instead, it could rely on the statutory provisions as they become applicable. But because of the challenges discussed above, there may be sufficiently unique aspects to this county to warrant a local policy. Such a policy ensures that the definition of “disadvantaged unincorporated communities” is more reflective of local conditions. For example, as explained earlier, SB 244 defines a DUC as a community of 12 registered voters with an annual median household income of less than 80% of statewide average annual median household income. The Commission could decide that a DUC should have additional criteria for consideration such as:

- 1) The area is contiguous to an urbanized area;
- 2) The area completely lacks or has substandard infrastructure; and/or

- 3) The area is a social or economic community of interest as defined by the Commission.

With these additional criteria, the Commission is saying that if the infrastructure for services for the residents in the unincorporated area is no less or no worse than those of residents in the incorporated area, then the provisions of SB 244 are not triggered. There is no need for the annexing city and the people in this community into a forced marriage.

SB 244 provided an “out” to cities by stating that a city annexation of an area greater than 10 acres would not require the annexation of a DUC if written documentation has been submitted to LAFCO that at least 50% of the registered voters in the DUC are opposed to city annexation. Any local policy should also include this “out.”

Other criteria to consider:

- 4) The area’s density;
- 5) The area’s land use designation;
- 6) The availability and capacity to extend service to the area, including topographical factors that could assist or hinder such an effort;
- 7) Whether the annexation of a disadvantaged community will impose a severe strain on city finances or services; and/or
- 8) Whether the Commission determines that that the disadvantaged community would not benefit from being annexed into the city.

Another criterion to add, which some LAFCOs with their own SB 244 policy have, is to defer to cities and counties to classify DUCs in case they have more tools at their disposal to identify disadvantaged communities.

Similarly, SB 244 requires that in its MSRs, a LAFCO prepare a written statement of its determinations with respect to “The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence.” The Commission may want to expand that definition to include the identification of disadvantaged communities in both the unincorporated area and a city. First, doing it in this manner may be useful to various parties, including the public. The second reason is that given the limitation of demographic data collection and the inability to determine the exact location of DUCs, the Commission may be unable to differentiate between incorporated and unincorporated communities.

Attachments

- Attachment A: Senate Bill 244 (Wolk, 2011)
- Attachment B: Senate Floor Analysis of SB 244
- Attachment C: Disadvantaged Community Map Generated by EDC Surveyor’s Office
- Attachment D: SB 244 Local Policies by San Joaquin, Sonoma and Stanislaus LAFCOs
- Attachment E: Nevada LAFCO SB 244 Local Policy (relevant sections only)