
Santa Barbara Local Agency Formation Commission

105 East Anapamu Street ♦ Santa Barbara CA 93101

805/568-3391 ♦ FAX 805/568-2249

www.sblafco.org ♦ lafco@sblafco.org

November 5, 2020 (Agenda)

Title**Municipal Service Review of the Isla Vista Community Services District
Regarding Latent Powers****Recommendation.**

Consider directing Staff to defer requiring Municipal Service Review for the Isla Vista Community Services District until June 6, 2023, with District's statement and analysis of active powers to be submitted to the Executive Officer on or before March 1, 2023.

Discussion.

On January 14, 2020, LAFCO Executive Officer sent a letter to Jonaathan Abboud, General Manager for the District, stating LAFCO would proceed with scheduling a municipal service for the District. (**Attachment A.**) This review is required by Condition 11 in Resolution of Formation No. 16-10. (**Attachment B.**) The purpose of the service review was for the Commission to determine which statutory authorized powers were not being exercised by the District and, if so, should be determined to be "latent powers" as defined in Government Code section 56050.5. Pursuant to Condition 11, the municipal service review was to be performed "one year after voter approval of the utility user tax." The tax was approved by the votes in June 2018; hence, the service review was due in June 2019.

On January 22, 2020, the District sent a letter to LAFCO that identified the District's active powers and objected to this service review as in excess of LAFCO authority. (See **Attachment C**)

Subsequently, the District and LAFCO met on February 26. The previous Executive Officer proposed the service review be scheduled for a date 5 years since adoption of the District's utility user tax. This proposal which would be consistent the statutory deadline of Government Code section 56425, which requires a sphere of influence update that includes a municipal service review every 5 years. Providing the District additional time will allow it to determine which powers it would exercise given its priorities and funding resources. To move the process forward, a District board member requested that LAFCO's Legal Counsel analysis be made available to the District Board so they may better understand LAFCO's position. On August 6, 2020, the Commission authorized release of LAFCO Legal Counsel's confidential memorandum, dated July 13, 2020. (**Attachment D.**) That memorandum was provided to the District on August 7, 2020.

The District Board considered this matter at its regular hearing on September 22, 2020 as Agenda. The District Staff Report was prepared by District Legal Counsel G. Ross Trindle. (**Attachment E.**) The Staff Report incorrectly stated to the District Board that a final deal had been made by LAFCO staff and District staff to extend the municipal service review due date. LAFCO Staff submitted a comment letter to the District Executive Officer stating any extension of the municipal service review due date had to be approved by the Commission. (**Attachment F.**)

The reasons for this deferral are:

- The Commission's intent in imposing the municipal service review condition for a determination of latent powers was to give the District time to prioritize determine available funding and identify which services could feasibly be provided to the community.
- The Resolution of Formation one-year deadline from the date of the passage of the tax appears to have been too soon to expect the District to fully investigate its options and make final determinations regarding its active powers.
- Indeed, the District's September 22, 2020 Staff Report to the District Board shows that the District's efforts in this area are still a work in progress.

Staff recommends the Commission defer requiring a municipal service review until the Commission's regular meeting on June 6, 2023. In order to provide an orderly process for the review, it is recommended the District's statement and analysis of its active services to be submitted to the Executive Officer on or before March 1, 2023.

The Commission has options. Including the Staff recommendation, the Commission's options are as follows:

1. APPROVE the Staff recommendation to defer requiring the municipal service review for a period of 5 years from the date the tax was passed, which would mean holding the review on June 6, 2023.
2. DEFER requiring the municipal service review for a period of time less than 5 years after passage of the tax; or

3. DENY the Staff recommendation or any other proposal to extend the time and direct Staff to proceed with the municipal service review in compliance with the Condition 11 of the Resolution of Formation.

Please contact the LAFCO office if you have any questions.



William M Dillon
Interim Executive Officer

Attachment A:	LAFCO letter to District re MSR, Dated Jan. 14, 2020
Attachment B:	District letter to LAFCO, undated.
Attachment C	LAFCO Resolution No. 16-10.
Attachment D	LAFCO Legal Counsel memorandum, July 13, 2020
Attachment E	District Counsel Staff Report to District Board, Sept. 22, 2020

LAFCO

Santa Barbara Local Agency Formation Commission

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January 14, 2020

Jonathan Abboud, General Manager
Isla Vista Community Services District
970 Embarcadero Del Mar, Suite 101
Isla Vista, CA 93117

Municipal Service Review to Determine Active Powers of the IVCSD

Dear Jonathan:

As we discussed yesterday on the phone, the Commission is required to determine the active powers of the Isla Vista Community Services District (IVCSD). This requirement is contained in LAFCO Resolution 15-07, attached as **Exhibit A**.

The powers of the district shall only be funded by the initial utility user tax that was approved by the voters on June 5, 2018. The authorized powers are set forth in Government Codes Section 61250 (d)(1) A-H, as follows:

- (A) Finance the operations of municipal advisory councils formed pursuant to Section 31010.
- (B) Create a tenant mediation program.
- (C) Finance the operations of area planning commissions formed pursuant to Section 65101.
- (D) Exercise the powers of a parking district, in the same manner as a parking district formed pursuant to the Parking District Law of 1951 (Part 4 (commencing with Section 35100) of Division 18 of the Streets and Highways Code).
- (E) Contract with the County of Santa Barbara or the Regents of the University of California, or both, for additional police protection services to supplement the level of police protection services already provided by either the County of Santa Barbara or the Regents of the University of California within the area of the district.
- (F) Acquire, construct, improve, maintain, and operate community facilities, including, but not limited to, community centers, libraries, theaters, museums, cultural facilities, and child care facilities.
- (G) Acquire, construct, improve, and maintain sidewalks, lighting, gutters, and trees to supplement the level of service already provided by either the County of Santa Barbara or County Service Area No. 31. The district shall not acquire, construct, improve, or maintain any work owned by another public agency unless that other public agency gives its written consent.
- (H) Abate graffiti.

Commissioners, Craig Geyer, Chair ♦ Roger Aceves ♦ Cynthia Allen ♦ Jay Freeman ♦ Joan Hartmann ♦ : Steve Lavagnino
Holly Sierra ♦ Shane Stark ♦ Etta Waterfield Vice-Chair ♦ Roger Welt ♦ Das Williams ♦ Executive Officer: Paul Hood

Local Agency Formation Commission
January 14, 2020
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The purpose of the Municipal Service Review is set forth in LAFCO Resolution 15-07, Section (11) as follows:

“If the voters approve formation of the District and the levy of the utility user tax, the Commission will schedule a municipal service review for the District to be heard in March 2017 or one year after voter approval of the utility user tax, whichever date is later. At that hearing, the District shall report to the Commission what powers are being exercised by the District and which powers are not being exercised. Any powers not exercised by the District as determined by the Commission shall become latent powers.”

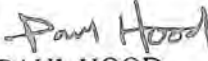
Please respond to this request for information at your earliest convenience. I have scheduled this matter for consideration by the Commission at the February 6, 2020 meeting. Therefore, I would appreciate a response no later than Monday, January 27, 2020.

Exhibit

Exhibit A LAFCO Resolution 15-07

Please let me know if you have any questions.

Sincerely,


PAUL HOOD
Executive Officer

Cc - Commission Members



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To: Paul Hood, Executive Officer, SB Local Agency Formation Commission
From: Jonathan Abboud, General Manager, Isla Vista Community Services District
RE: IVCSA Municipal Services Review

Dear Mr. Hood:

I am writing in response to your January 14, 2020 letter requesting information about the Isla Vista Community Services District ("District") active powers and services delivery. Below is a list of the current and planned future activities of the District and their alignment to active powers as set forth in Government Code 61250. Additionally, I have included information that responds to LAFCO's asserted purpose of the Municipal Services Review ("MSR") as a means by which to determine the District's active powers, for possible unilateral deactivation.

1. Finance the operations of municipal advisory councils formed pursuant to Section 31010.
 - a. The District is designing the Isla Vista Municipal Advisory Council's charge, scope, and/or jurisdiction, as well as the best potential composition before making a final request of the Board of Supervisors to form one.
2. Create a tenant mediation program.
 - a. The District operates the "Rental Housing Mediation Program." The District is collecting data on the current program implementation to measure effectiveness for possible future expansion.
3. Finance the operations of area planning commissions formed pursuant to Section 65101.
 - a. The District is working with Supervisor Joan Hartmann regarding the best date to form the Isla Vista Area Planning Commission to coincide with the creation of a community plan, in line with the recently approved Board goals.



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4. Exercise the powers of a parking district, in the same manner as a parking district formed pursuant to the Parking District Law of 1951 (Part 4 (commencing with Section 35100) of Division 18 of the Streets and Highways Code).
 - a. The District oversees operations of the 970 Embarcadero Del Mar parking lot and is in negotiations regarding the 976 Embarcadero Del Mar parking lot. Additionally, the District has engaged the County in discussions about a transfer of control of the solar parking lot at 881 Embarcadero Del Mar. Further, the District has started conceptual planning of a broader approach to addressing parking issues in Isla Vista.
5. Contract with the County of Santa Barbara or the Regents of the University of California, or both, for additional police protection services to supplement the level of police protection services already provided by either the County of Santa Barbara or the Regents of the University of California within the area of the district.
 - a. The District contracts with the University of California to operate the Isla Vista Safety Stations and hire the Isla Vista Interpersonal Violence Investigator.
6. Acquire, construct, improve, maintain, and operate community facilities, including, but not limited to, community centers, libraries, theaters, museums, cultural facilities, and child care facilities.
 - a. The District operates the Isla Vista Community Center and Isla Vista Community Resource Building on behalf of the County of Santa Barbara. The District also supports a community garden at 892 Camino Del Sur, through a grant program.
7. Acquire, construct, improve, and maintain sidewalks, lighting, gutters, and trees to supplement the level of service already provided by either the County of Santa Barbara or County Service Area No. 31. The district shall not acquire, construct, improve, or maintain any work owned by another public agency unless that other public agency gives its written consent.



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- a. The District operates the Isla Vista Beautiful program that maintains the weeds in the sidewalks and build up of trash in the gutters. The District has completed multiple street light surveys and is working with the County to address County-controlled street lights that provide inadequate or inappropriate lighting, and has plans to address inadequate lighting due to absence of lights, or due to control of street lighting by SCE. Also, the District has plans to integrate sidewalk considerations in conjunction with planned implementation of a local area planning commission.

8. Abate graffiti.

- a. The District operates the Isla Vista Beautiful program that identifies and abates graffiti in the community. Phase I is a voluntary program. Phase II involves administrative citations.

Hopefully it should be clear that the District has many exciting current and future programs related to each activated power set forth in Government Code section 61250.

However, I must express the concern of the Board of Directors about the indicated purpose of the MSR as indicated in your January 14, 2020 letter. Our legal counsel has reviewed your correspondence and has raised a number of legal issues that strongly suggests that it is improper for LAFCO to use an MSR for the purpose of deactivating the District's powers as set forth in Government Code section 61250. From what I understand, LAFCO does not have the authority to deactivate a special district's power unilaterally, as a result of any review process.

First, LAFCO's purported authority to deactivate the District's powers comes from the unsigned, uncertified, unnumbered "resolution" attached to your correspondence. After reviewing LAFCO documents, it is clear that the "resolution" attached to your correspondence is not a resolution that was approved by LAFCO. Therefore, that "resolution" cannot provide LAFCO the authority purportedly exercised--or about to be exercised--per your correspondence.



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Second, our legal counsel identified Resolution 16-10, which is the only resolution considered and approved by LAFCO that contains language similar to that referenced in the draft resolution cited in your correspondence. Resolution 16-10 appears to be the resolution that LAFCO was required to pass in order to comply with Government Code section 61250. Nothing in Government Code section 61250 authorizes LAFCO to insert language into the required resolution relating to using the MSR process for possible deactivation of the District's powers. Notably, no mention is made in the accompanying staff report for Resolution 16-10 as to any source of LAFCO's authority in this regard. Moreover, our legal counsel was not able to find any other example of LAFCO using the deactivation language, or using the MSR process at all to make a determination to deactivate any special district's powers. The inclusion of this deactivation language in the Resolution does not appear to have any legal authority in support.

Third, our legal counsel reviewed the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, collected as Government Code sections 56000-57550, to find statutory support for LAFCO's indicated use of the MSR process to eventually deactivate the District's powers. Our legal counsel did not find any statutory support. While there is clear authority for LAFCO to request information, and a clear obligation for special districts to respond, for information like the information sought in your correspondence, it is also clear that the purpose of an MSR is to enable LAFCO to prepare and update a Sphere of Influence ("SOI") for an identified geographic area. An MSR is supposed to cover seven areas of information relevant to the SOI, and not just the subject of how activated powers are being used. We have not received any requests from LAFCO covering any of the other areas of information required in the MSR process. Further, the SOI process requires LAFCO to produce a report with respect to five areas, focusing on both current *and future* needs; your letter focuses only on current programs and services. Finally, any creation or revision to an SOI considered by LAFCO requires compliance with statutory notice requirements; so far, LAFCO has not provided any notice of an active SOI process for the geographic area that includes IVCSD. State law does not support the idea that an MSR can end with LAFCO deactivating this District's statutorily authorized powers, especially not when basic due process and notice have not been provided.



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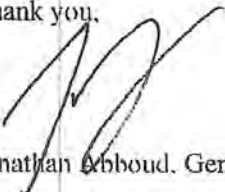
George Thurlow
DIRECTOR

Fourth, our legal counsel searched for other statutory authorizations for LAFCO to deactivate the District's powers. While various methods and processes exist for new or existing special districts to apply for new powers, shift to different powers, or divest from an activated power altogether, our legal counsel did not find any other legal authority to allow for deactivation as described in your correspondence.

In conclusion, it does not appear that LAFCO has the authority to unilaterally deactivate any current District powers, as suggested in your correspondence. If you are aware of any other authority that supports the intent of LAFCO to deactivate any of the District's powers, please provide it to me and our legal counsel (copied on this letter) for consideration.

I hope that the information we have provided allows LAFCO to carry out its lawful functions, and provides clarity on the District's position with respect to any attempts by LAFCO to deactivate its statutorily activated powers, as set forth in Government Code section 61250.

Thank you.


Jonathan Abboud, General Manager

LAFCO RESOLUTION NO. 16-10

RESOLUTION OF THE SANTA BARBARA LOCAL AGENCY FORMATION
COMMISSION MAKING DETERMINATIONS ORDERING THE FORMATION OF THE
ISLA VISTA COMMUNITY SERVICES DISTRICT, ESTABLISHING
A SPHERE OF INFLUENCE, SETTING AN APPROPRIATIONS LIMIT, AND
ESTABLISHING THAT A UTILITY USER TAX MAY BE LEVIED

WHEREAS, the above-referenced proposal has been filed with the Executive Officer of the Santa Barbara Local Agency Formation Commission pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act (Section 56000 et seq. of the Government Code) and the Community Services District Law (Section 61000 et seq. of the Government Code);

WHEREAS, at the times and in the manner required by law the Executive Officer has given notice of the Commission's consideration of the proposal;

WHEREAS, the Commission heard, discussed and considered all oral and written testimony related to the proposal including, but not limited to, the Executive Officer's report and recommendation, the proposed California Environmental Quality Act ("CEQA") determination, Spheres of Influence and applicable General and Specific Plans;

WHEREAS, at the meeting, the Commission considered the Formation of the Isla Vista Community Services District and Associated Sphere of Influence;

WHEREAS, pursuant to Government Code section 61250(c), the Santa Barbara County Local Agency Formation Commission "shall order the formation of the district subject" to a vote of registered voters residing within the proposed boundaries of the district;

WHEREAS, pursuant to Government Code section 61205(b)(3), the formation of the district shall not be subject to a protest proceeding; and

WHEREAS, pursuant to Government Code section 61250(f), the proposed Community Services District boundaries shall be contiguous with the area known as County Service Area No. 31, within the County of Santa Barbara and shall exclude any property owned by the Regents of the University of California within those boundaries, and which area is known as the community of Isla Vista, and is adjacent to the cities of Goleta and Santa Barbara and the University of California and encompass approximately ½ square mile, 320 acres.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED by the Local Agency Formation Commission of Santa Barbara County as follows:

- 1) The Commission finds the proposal is not a “project” under the CEQA because the project is limited to the creation a government funding mechanism that does not involve the commitment to any specific project. Pursuant to CEQA Guidelines section 15378(b)(4), a “project” under CEQA does not include the “creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.”
- 2) The subject proposal is assigned the distinctive short-form designation:

“Formation of the Isla Vista Community Services District”
- 3) Pursuant to Government Code section 61250(f), the boundaries of the district shall be contiguous with the area known as County Service Area No. 31 within the County of Santa Barbara and shall exclude any property owned by the Regents of the University of California within those boundaries and said boundaries are found to be definite and certain as approved and set forth in Exhibit A,

- 4) Pursuant to Government Code section 61250(b)(3), the Commission orders that the proposed formation of the district not be subject to a protest proceeding.
- 5) Pursuant to Government Code section 61250(c), the Commission hereby orders the formation of the district subject to the following terms and conditions:
 - a) The formation of the district shall be subject to a majority vote of the registered voters residing within the boundaries of the proposed district.
 - b) The district' shall have a sphere of influence that is coterminous with its existing boundaries.
 - c) The District shall levy a utility user tax proposed by resolution of the board of directors of the district and pursuant to approval by a two-thirds vote in accordance with Section 2 of Article XIII C of the California Constitution on the utilities of gas, water, electricity, sewer, or garbage disposal services. A utility user tax imposed by the district shall not apply to any utility provided by a telecommunications service provider.
- 6) The Isla Vista Community Services District board of directors shall be composed as follows:
 - a) Five members elected at large from within the district as follows:
 - i) Four members shall be elected for terms of four years. For the first election of the board of directors of the district, two members shall be elected for a term of two years and two members shall be elected for a term of four years; and
 - ii) One member shall be elected for a term of two years.
 - b) One member appointed by the Board of Supervisors of the County of Santa Barbara for a term of two years for the first appointment following the creation of the district, and for a term of four years thereafter.

- c) One member appointed by the Chancellor of the University of California, Santa Barbara for a term of four years.
- 7) The appropriate rate of taxation for a utility user tax shall be 8 percent of the total cost of an individual's service charge for the utility being taxed and shall only be applied to electricity, garbage disposal, gas, sewage, or water services.
- 8) If the voters of the district do not vote to impose a utility user tax within the district on or before January 1, 2023, regardless of whether the establishment of the district is approved by the voters of the district, the district shall be dissolved as of that date.
- 9) Pursuant to Government Code Section 61250(g) the District may within its boundaries have powers and responsibilities as follows:
 - a) Finance the operations of municipal advisory councils formed pursuant to Section 31010;
 - b) Create a tenant mediation program;
 - c) Finance the operations of area planning commissions formed pursuant to Section 65101;
 - d) Exercise the powers of a parking district, in the same manner as a parking district formed pursuant to the Parking District Law of 1951 (Part 4 (commencing with Section 35100) of Division 18 of the Streets and Highways Code);
 - e) Contract with the County of Santa Barbara or the Regents of the University of California, or both, for additional police protection services to supplement the level of police protection services already provided by either the County of Santa Barbara or the Regents of the University of California within the area of the district;

- f) Acquire, construct, improve, maintain, and operate community facilities, including, but not limited to, community centers, libraries, theaters, museums, cultural facilities, and child care facilities;
 - g) Acquire, construct, improve, and maintain sidewalks, lighting, gutters, and trees to supplement the level of service already provided by either the County of Santa Barbara or County Service Area 31. The district shall not acquire, construct, improve, or maintain any work owned by another public agency unless that other public agency gives its written consent;
 - h) Abate graffiti;
 - i) Levy a utility user tax.
- 10) An provisional appropriations limit shall be approved as part of the formation of Six Hundred and Forty Thousand Dollars (\$640,000) for the fiscal year 2017-2018 The permanent appropriations limit of the district shall be set at the first district election that is held following the first full fiscal year of operation and shall not be considered to be a change in the appropriations limit of the district pursuant to Section 4 of Article XIII B of the California Constitution.
- 11) If the voters approve formation of the District and the levy of the utility user tax, the Commission will schedule a municipal service review for the District to be heard in March 2018 or one year after voter approval of the utility user tax, whichever date is later. At that hearing, the District shall report to the Commission what powers are being exercised by the District and which powers are not being exercised. Any powers not exercised by the District as determined by the Commission shall become latent powers.

- 12) The effective date of formation shall be March 1, 2018.
- 13) The Commission hereby directs the Board of Supervisors to direct County election officials to conduct the necessary confirmation elections on behalf of the proposed district subject to the terms and conditions proscribed by this Resolution.
- 14) All subsequent proceedings in connection with this formation shall be conducted only in compliance with the approved boundaries set forth in the attachments and any terms and conditions specified in this resolution.


This resolution is adopted on April 7, 2016 in Santa Barbara California.

AYES: Aceves, Farr, Ishkania, Richardson, Welt and Wolf

NOES: Moorhouse

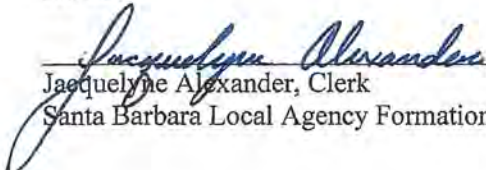
ABSTAINS:

Dated: 04-07-16



Chair
Santa Barbara Local Agency Formation Commission

ATTEST




Jacquelyne Alexander, Clerk
Santa Barbara Local Agency Formation Commission

COMMISSION LEGAL OPINION

**CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION
NOT TO BE RELEASED WITHOUT AUTHORIZATION**

WILLIAM M DILLON
Law Office of William Dillon
LAFCO COUNSEL
805 563-2831

DATE: July 13, 2020
TO: Each Board Member of Local Agency Formation Commission
FROM: William M. Dillon, LAFCO Legal Counsel 
RE Isla Vista CSD; Municipal LAFCO Service Review & Latent Powers Determination

Issue. May LAFCO require a **municipal service review** for the Isla Vista Community Services District (“District”) in order to determine if any of its powers authorized by LAFCO are “**latent services or powers?**”

Conclusion. LAFCO’s municipal service review of the District to determine latent services or powers (“latent powers”) is **required pursuant a condition of Resolution of Formation 16-10** and, as such, is:

- **judicially enforceable;**
- insulated from legal challenge by the **60-day statute of limitations;** and
- **consistent with LAFCO municipal service review statutory powers** under the Cortese Knox Hertzberg Act.

Background - AB 3. The District was formed pursuant to AB 3 (2015 Williams), which added Part 4 (Gov. Code sec. 62150),¹ to the Community Services District Law (Sec.61100 et. seq.) AB 3 superseded any conflicting law and required an expedited process for district formation. The County was required to file a formation application with LAFCO by January 5, 2016 and LAFCO was to take action within 150 days of receipt. LAFCO was required to order the formation, approve a utility user tax rate between 5 and 8 percent, and determine “which services the district will be initially authorized to provide.” (Sec. 62150(c)(2)(A).) Formation was not subject to a protest hearing but did need voter approval for formation and the tax.

Condition 11. The formation application sought eight of the powers authorized by the CSD Law.² A plan for services was submitted but was nonspecific on certain services and the amount of funding from a new tax was uncertain. Hence, the concern was the District might not be able to provide every service listed. The Commission authorized the District to exercise the eight powers, but imposed Condition 11 that required a municipal service review one year after passage of the tax in order to determine “what powers are being exercised by the District and what powers are not exercised. **Any powers not being exercised by the District as determined by the Commission shall become latent powers.**” Under the Act, a district may not activate a latent power without further LAFCO approval. (*South San Joaquin Irrigation District v. Superior Court, RPI San Joaquin LAFCO* (2008).---citation-----)
The Condition 11 municipal service review was required one year after the District levied a utility user tax. Voters approved formation in November 2016 and the tax in June 2018. In a letter dated January 14, 2020, LAFCO ask the District to identify its active powers. On January 24, 2020, the District responded

¹ All section references are to the Government Code.

² Of the 8 powers sought, petitioners requested all 6 non-taxing powers listed in AB 3 (Sec. 61250(g)), plus 2 powers authorized for all CSD’s in Section 61100 that pursuant to AB 3 are eligible for utility user tax funding per Sec. 61250(d)(1), which are graffiti abatement (Sec. 61100(q)) and community facilities (Sec. 61100(s)).

Date: July 13, 2020

Re: Isla Vista CSD municipal service review; latent power determination

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with a letter by identifying its active powers and also objecting to the review. The District stated “it is improper for LAFCO to use an MSR for the purpose of **deactivating** the District’s powers as set forth in Government Code section 61250.” (Emphasis added.)

LAFCO Authority to Condition Formation. LAFCO has “ample authority” to impose a wide range of conditions on formation of a district. (*Fallbrook San. Dist. v. San Diego LAFCO* (1989) 208 Cal.App. 3rd 753; 57 Ops. Cal. Atty. Gen. 599, 607 (1974).) Section 56375(a)(1), authorizes the Commission to impose conditions on the approval of the formation of any district. Such actions are **quasi-legislative determinations** and, as such, “**a public agency charged with . . . complying with conditions of approval has no discretion to disregard them.**” (*Ibid.*, at p. 116.) Condition 11 was adopted as part of Resolution 16-10 on April 7, 2016 as a quasi-legislative action and, under the law, the District has no authority to disregard that condition.

Enforceability. Courts have held that **conditions on formation are enforceable.** (*Fallbrook, supra*, at p. 753; *Embarcadero Municipal Improvement Dist. v. County of Santa Barbara* (2nd District Div. 6 2001). “These conditions are enforceable against any public agency designated in the condition.” (*Voices of Rural Living, supra* at 1116, “[district] was obliged to comply with the condition as it would a statutory enactment;” and see Gov. Code sec. 56122.)

Statute of Limitations. Pursuant to Code of Civil Procedure sections 860 and 863, any legal challenge to a commission’s formation approval is subject to a **60-day statute of limitations.** (*Embarcadero Municipal Improvement District, supra*; *Voices of Rural Living v. Eldorado Irrigation Dist, supra* (“any legal action by [the district] challenging the condition was time-barred by a 60-day statute of limitations for reverse validation actions.”); and see *California Environmental Law*, Peter Detwiler, “Annexation and Boundary Issues,” Sec. 73:16; *Cal. Land Use & Planning Law*, Curtin 2010, at p. 482.) The certificate of completion for this process was filed on January 5, 2017. The statute of limitations **has expired.**

Corteze Knox Hertzberg Act and “Latent Service or Power.” LAFCO relies on Condition 11 to require a municipal service review for the District. Exercise of this type of review, however, is not inconsistent with LAFCO’s authority under the Act. Section 56050.5 provides: “**‘Latent service or power’ means those services, facilities, functions, or powers authorized by the principal act under which the district is formed, but that are not being exercised, as determined by the commission** pursuant to subdivision (i) of Section 56425.” (emphasis added.) Further, Section 56425(i) provides: “When adopting, amending, or updating a sphere of influence for a special district, the **commission shall establish the nature, location, and extent of any functions or classes of services provided by existing districts.**” Finally, sphere updates are tied to service reviews as Section 56430 states that “[i]n order to prepare and to update spheres of influence in accordance with Section 56425, **the commission shall conduct a service review of the municipal services . . .**” Once a sphere is established, every 5 years thereafter, “the commission shall, as necessary, review and update each sphere of influence.” (Sec. 56425(g).)

AB 3 made clear that the provisions of the Act apply to the District once it is formed. Section 61250(l) provides “the act shall apply to other change of organization or reorganization defined in that act, following the establishment of the district . . .” It should also be stressed that while the service review is mandated, the Commission will have considerable discretion in conducting that review.



TO: Isla Vista Community Services District Board of Directors

CC: Jonathan Abboud, General Manager; Debra Anderson, Assistant General Manager

FROM: G. Ross Trindle, III, District Counsel

DATE: September 22, 2020 Regular Meeting

RE: Update on LAFCO Municipal Services Review Process

I. BACKGROUND

In February 2020, the Santa Barbara County Local Agency Formation Commission (“LAFCO”) contacted District staff regarding LAFCO’s intention to carry out a Municipal Services Review (“MSR”) of District-provided services as provided for in Government Code section 61250. Of concern was LAFCO’s stated purpose that the MSR process was being carried out with an intention of deactivating District powers that LAFCO determined—with no explanation of metrics, process, or standards of analysis—were not in use.

After presentation to the Board of Directors, District Counsel was provided with direction to draft and transmit a letter objecting to the stated purpose of the MSR process, and setting forth legal arguments against such a process, without adequate due process. Working with District staff, District Counsel did so, and monitored LAFCO agendas for possible action in furtherance of the indicated MSR review.

In March, the COVID-19 pandemic hit and executive orders issued by the Office of the Governor essentially halted all activity in the State for several months. During that same timeframe, and in response to the District’s letter to LAFCO objecting to the purpose of the MSR process, an agreement was reached with the Executive Director of LAFCO, Paul Hood, whereby LAFCO would continue the MSR process to a future date, approximately five (5) years out, to allow the District additional time to enact programs and services for each power authorized under Government Code section 61250. The compromise would avoid any legal dispute in the meantime, and it would allow LAFCO and the District to cooperate in the process, rather than taking positions as adversaries, to the detriment of both sides and the public.

Unfortunately, Executive Director Hood passed away before formal action by LAFCO, which left LAFCO’s General Counsel, Bill Dillon, as Interim Executive Director. Mr. Dillon was the primary author of LAFCO’s response to the District’s letter objecting to the MSR process. Fortunately, further discussions between staff and Mr. Dillon resulted in a decision to abide by the prior agreement with Executive Director Hood to continue the District’s MSR into the future.

In August of 2020, the LAFCO Commission approved the measure; accordingly, the District's MSR process will take place in **2024**.

Additionally, discussions with Mr. Dillon revealed that the primary metric for LAFCO's determination of whether to deactivate "unused" or "underused" powers are financial:

1. Whether the District has funding programmed for services under each power, and
2. Whether a sufficient revenue stream exists to support those programs as a going concern.

II. DISCUSSION

Setting aside any legal disagreement with LAFCO's analysis regarding its stated purpose of the MSR as a means of categorically deactivating the District's powers, the District has a meaningful amount to ensure that the MSR process does not end with such a result. LAFCO's Acting Executive Director provided an explanation of the metrics to be used in carrying out the MSR and the Commission has provided five (5) years for the District to meet those metrics.

In order for the Board of Directors to consider what policies to implement under each activated power, staff has asked District Counsel to provide an overview of powers available under Government Code section 61250, and an abbreviated discussion of what exercise of those powers might look like moving forward. Obviously the District has already exercised certain activated powers and has been carrying out programming and services for some time; thus, discussion will focus more on less used powers.

a. Activated Powers

Between the powers listed in Government Code section 61250, subsections (d) and (g), the District has the following activated powers:

- Finance the operations of municipal advisory councils ("MAC") formed pursuant to Section 31010 [Subsection (d)(1)(A)]
- Create a tenant mediation program [Subsections (d)(1)(B), (g)(1)]
- Finance the operations of area planning commissions formed pursuant to Section 65101 [Subsection (d)(1)(C)]
- Exercise the powers of a parking district, in the same manner as a parking district former pursuant to the Parking District Law of 1951 (Streets and Highways Code section 35100, et seq.) [Subsections (d)(1)(D), (g)(2)]

- Contract with the County of Santa Barbara, UCSB, or both, for additional police protection services to supplement the level of police protection services already provided by either the County or UCSB, within the area of the district [*Subdivisions (d)(1)(E), (g)(3)*]
- Acquire, construct, improve, maintain, and operate community facilities, including, but not limited to, community centers, libraries, theaters, museums, cultural facilities, and child care facilities [*Subdivision (d)(1)(F)*]
- Acquire, construct, improve, and maintain sidewalks, lighting, gutters, and trees to supplement the level of service already provided by either the County of Santa Barbara or County Service Area No. 31. The District cannot acquire, construct, improve, or maintain any work owned by another public agency without written consent. [*Subdivisions (d)(1)(G), (g)(4)*]
- Abate graffiti [*Subdivision (d)(1)(H)*]
- Levy a utility user tax for voter approval on the utilities of gas, water, electricity, sewer, or garbage disposal services, but not on telecommunications services. [*Subdivision (g)(5)*]
- Contract with the County of Santa Barbara/Department of Planning and Development Code Enforcement Program, or both, to provide code enforcement services to supplement the level of service provided, which includes dedicated Zoning Enforcement services, and Building Enforcement services, under Chapters 35, and 10 and 14 respectively of the County Code. [*Subdivision (g)(6)*]

The District also has the ability to petition LAFCO for the activation of additional powers (“latent” powers) set forth in the Community Services District Law (Government Code section 61100, et seq.) (See Gov. Code § 61250(h).)

b. Limitations on Powers

Importantly, the District also has two (2), **explicitly stated limitations** on its powers as set forth in Section 61250, and which necessarily limits what additional powers it might seek to activate in the future. Those limitations are:

- The services of the district shall not supplant the level of services provided by the County of Santa Barbara, the Isla Vista Recreation and Park District, UCSB, or any other service provider. [*Subsection (i)*]

- The district does not have the power of eminent domain [*Subsection (j)*]

Regarding eminent domain, the limitation is straightforward: the District does not have the power, and since there is a specific provision against exercise of this power, the only way for the District to obtain the power would be via legislation to amend Section 61250 to delete the limitation.

Regarding not “supplanting” services provided by other agencies or entities, the term “supplanting” is not defined. Under typical rules of statutory construction, a term is to be given its plain meaning in context and should not be interpreted in such a way as to create an absurdity, or to render other language as surplusage. Statutory language should be harmonized, and courts cannot “read into” language not supported by the text or the intent of the legislature. Ordinary meaning is typically determined by reference to widely used dictionaries.

Applying these principles, “supplanting” likely means: “to supersede; to take the place of and serve as a substitute for” (Merriam-Webster, <https://www.merriam-webster.com/dictionary/supplant>); “to take the place of (another) . . .; to replace (one thing) by something else (Dictionary.com, <https://www.dictionary.com/browse/supplant?s=t>); “to replace” (Cambridge English Dictionary). Thus, for the services listed as having the caveat of not “supplanting” another entity or agency, as long as the District does not “replace” the service or the level of service provided, consistency with Section 61250 should be assured.

c. Activated Powers in Use

In consultation with staff, District Counsel believe that the District can, consistent with the metrics provided by LAFCO, demonstrate adequate “use” of the following activated powers, for the reasons indicated:

- **Tenant Mediation Program**
 - The District has funded and maintains sufficient funding to continue provision of mediation services under contract
 - The District has had and currently has a contract for mediation services
 - The District advertises the existence of the program to encourage use
 - The District has procedures for referring potential program users to the contract program provider
 - The Board reviews program performance on a regular basis
- **Supplemental Police Protection Services**

- The District has funded and maintains sufficient funding to continue providing for an Interpersonal Violence Investigator,
- Same for a supplemental Safety Station Program for CSO escorts, safe spaces to congregate, and related protective services for District residents
- The District advertises the existence of the program to encourage use
- The District has procedures for referring potential program users to the contract program provider
- The Board reviews program performance on a regular basis

- **Community Facilities**
 - The District has agreements with the County to lease the community resource building/clinic at 970 Embarcadero Del Mar, and the IV Community Center (IVCC) at 976 Embarcadero Del Mar
 - The District has funded and maintains sufficient funding to continue providing services at both locations, including:
 - Recreation classes
 - After school programs for District youth
 - A District composting program headquartered at the Community Center building
 - Temporary houseless support services at the IVCC (COVID-19)
 - Intergovernmental support and outreach program related to COVID-19
 - Drive-through COVID-19 Testing at IVCC parking lot
 - Access to District staff/office hours/counter support

- **Sidewalks, Lighting, Gutters, and Trees**
 - *Sidewalks/Gutters:* The District has an agreement for beautification/upkeep via contract with IV Beautiful/United Way; the District has funded and maintains sufficient funding to continue providing the services
 - *Lighting:* Lighting study and public survey; follow up with County/Edison for replacement or upgrades; the District has funded and maintains sufficient funding to continue providing some services

- **Graffiti Abatement**

- The District has contracted for limited graffiti abatement services with IV Beautiful/United Way
 - District has approved and implemented Phase 1 of a multi-phase Graffiti Abatement Program, focusing first on voluntarily compliance on *private property*
 - The District has funded and maintains sufficient funding to continue providing services; the District currently has funding to increase services
- **Utility User Tax (“UUT”)**
 - The District approved a UUT initiative, which was enacted via approval of Measure R.

d. Activated Powers NOT in Use

The following activated powers under Section 61250 are not “in use” but may have funding allocated for future use:

- Finance Operation of MAC
- Finance Operations of Area Planning Commission
- Parking District Powers
- District Trees (*Subdivisions (d)(1)(G), (g)(4)*)
- Zoning Code/Building Code Enforcement

e. Placing Activated Power “In Use”

Within the time provided by LAFCO before the MSR process begins in 2024, the Board can consider making policy decisions and taking steps to place the remaining activated powers “in use” to avoid potential adverse deactivation consequences by LAFCO. In order to do so, the following legal requirements exist as prerequisites.

i. Finance Operation of MAC

Government Code section 31010 permits the County Board of Supervisors “by resolution establish and provide funds for the operation of a municipal advisory council for any unincorporated area in the county to advise the board on such matters which relate to that area as

may be designated by the board concerning services which are or may be provided to the area by the county or other local governmental agencies, including, but limited to matters of public health, safety, welfare, public works, and planning.” Section 31010 states that the resolution creating a MAC shall provide for the name of the MAC; the qualifications, number, and method of selection of members (election or appointment); designated powers and duties; identify the unincorporated area; whether establishment should be submitted to the voters; and such other rules, regulations, and procedures as may be necessary in connection therewith

Accordingly, the District will need to work with the County Board of Supervisors in preparing and drafting the resolution for consideration to establish a MAC. Thereafter, the District has the power to provide funding for the MAC’s operations, as set forth in Section 31010.

ii. Finance Operations of Area Planning Commission

Section 65101 authorizes the “legislative body” (Board of Supervisors) to “create one or more planning commissions each of which shall report directly to the legislative body.” Currently, the only local area planning commission in existence covers the unincorporated community of Montecito. Accordingly, the Board of Supervisors will have to specify the membership of a local area commission for the District’s geo, and “prescribe the issues [and] responsibilities” for it. The local area commission must have at least five members, “all of whom shall act in the public interest.”

iii. Parking District Powers

The District can designate all or any portion of its geographic area to comprise a parking district or any number of parking districts, as long as they do not overlap. (Sts. & Hy Code §§ 35107, 35108(a), 3511.) Powers include:

- “The acquisition of land, property, and rights of way necessary or convenient for use as public parking places for the parking of motor vehicles and for the opening, widening, straightening, or extending of streets, alleys, lanes, or walks necessary or convenient for ingress to or egress from any parking place.” [Section 35108(b)]
- “The improvement of any acquired land by the construction thereon of garages or other buildings or improvements of any kind or nature necessary or convenient for parking purposes.” [Section 35108(c)]
- “The improvement by grading, paving, draining, lighting, or otherwise of any parking place and any streets, alleys, lanes, or walks necessary or convenient for ingress to and egress from parking places.” [Section 35108(d)]

- “The issuance, sale, and payment of bonds for any or all of the foregoing purposes, and the levy and collection of *ad valorem* assessments upon real property within the district for the payment of all or a portion of the principal and interest of the bonds.” [Section 35108(e)]
- “The administration, maintenance, and operation of parking places acquired under this part.” [Section 35108(f)]
- “The fixing and collection of rentals, fees, and charges for the use of parking places and the use of moneys derived from the rentals, fees, and charges.” [Section 35108(g)]
- The “acquisition and improvement of the public parking places and public ways for ingress to and egress therefrom; the allocation and pledge of any revenues . . . derived from parking meters on public ways within the district to any of the purposes specified in [the Parking District Law], and the making of covenants and agreements with the bondholders to install and maintain such meters.” [Section 35108(h)]
- The acquisition of property “by gift [or] purchase, ~~or eminent domain.~~” [Section 35108(j)] **NOTE:** The District is prohibited from exercise the power of eminent domain under Government Code section 61250(j).
- “The doing of all acts and things necessary or convenient for the accomplishment of the purposes of this part.” [Section 35108(k)]

The District will be required to establish a Parking Place Commission (“Commission”) once an acquisition of parking spaces has occurred; it can appoint a Commission prior to that, in its discretion, (Sts. & Hy Code § 35550.) The Commission is comprised of three (3) members who must be “a resident and qualified elector” of the District. (Sts. & Hy Code § 35551.) Members are appointed by the General Manager, and confirmed by the Board of Directors. (Sts. & Hy Code § 35553.) Commissioners have three-year terms of office; after establishment of the initial Commission, the Commissioners must categorize themselves by lot to establish staggered terms. (Sts. & Hy Code § 35554.) Commissioners “shall be persons of business experience and ability, to the end that the affairs of the district shall be administered in the interests of the district.” (Sts. & Hy Code § 35556.) Commissioners can be removed by a majority of property owners in the district, with no discretion on the part of the Board of Directors, but the Board of Directors appoint the replacement; the removed Commissioner is disqualified for one (1) year thereafter. (Sts. & Hy Code § 35557.) The Commission has jurisdiction and control over the parking places acquired by the district, with the power to “operate, manage, and control the parking places and make and enforce all necessary rules for their use.” ((Sts. & Hy Code §§ 35558, 35559.) The Commission may “fix, regulate, and collect rentals, fees, and other charges for the use of parking places under its control,” including different rates for difference classes of customers, but must

proceed as a public hearing. (Sts. & Hy Code § 35560.) Property owners may receive “preferential rates, charges, or rentals for themselves, their tenants, and the classes of persons who call upon or do business with them—if the money used to fund the district is secured by or assessed against their property. (Sts. & Hy Code § 35561.)

All employees required “for the proper operation, management, and control” of the parking district must be District employees, with salaries and benefits determined by the Board of Directors, but at a minimum at prevailing wages for the same class of service. (Sts. & Hy Code § 35564.)

The Commission may contract out the operations of any/all parking places. (Sts. & Hy Code § 35568.) Maximum fees by a contractor must be set via public hearing, and must be included in the contract; increases cannot be adopted unless also submitted to a public hearing. (Sts. & Hy Code § 35569.)

After establishment of the parking district, but before creation of the Commission, the Board of Directors can lease out public parking places to private property owners, in order to produce revenue in the intervening time. (Sts. & Hy Code § 35572.)

iv. District Trees (*Subdivisions (d)(1)(G), (g)(4)*)

The District simply needs to create a program and establish a funding source regarding tree acquisition, planting, and/or upkeep, being mindful of trees owned by other public agencies or entities, or private parties.

v. Zoning Code/Building Code Enforcement

The District would need to negotiate and enter in a contract with the County to provide Zoning and Building Code enforcement to “supplement”—but *not* “supplant”—the level of service provided by the County. The District would need to establish and maintain a funding source for enforcement services.

Importantly, “supplement” is not defined in the Section 61250. Again, turning to dictionaries for guidance as to the ordinary meaning of the term provides the following definitions: “to add” (Merriam-Webster, <https://www.merriam-webster.com/dictionary/supplement>); “to complete, to add to, or extend by a supplement” (Dictionary.com, <https://www.dictionary.com/browse/supplement?s=t>); “to add something to something to make it larger or better” (Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/supplement>). Thus, the likely meaning of “supplement” will be “to add to” or “to extend.” The definition harmonizes with prohibitions on “supplanting” services or levels of services provided by other local governments, agencies, or entities.

Contracting for Zoning Code/Building Code Enforcement likely is tied to the creation of a local area planning commission, as the majority of the functions, responsibilities, and powers set forth in County Code Chapters 10, 14, and 35 are already administered and enforced by the County, or are within the County's power to administer and enforce. In short, the District would not have any enforcement services to "supplement," but rather, in the absence of actual County enforcement despite the power and authority to do so, the District would in effect "supplant" the County's services/level of services, which is prohibited by Government Code section 61250.

By contrast, with the creation and operation of a local area planning commission, different zoning and building code enforcement issues may arise, which would require an increase in—or "supplemental"—enforcement to the County's services/level of services, and predicated on the specific actions taken by the local area planning commission.

Given how the powers are connected to one another, negotiations with the County concerning local area planning commissions likely should include discussions on supplemental zoning and building enforcement; and vice versa.

f. Activating New Powers or Changing Existing Powers Via LAFCO

The District can petition LAFCO to activate latent powers or to change existing powers. (Gov. Code § 61250(h).) The specific provisions for special districts to petition for such changes is set forth in Government Code sections 56824.10 – 56824.14.

First, the Board of Directors must draft, consider, and adopt a resolution of application to activate latent powers or to change existing powers. (Gov. Code § 56654(a).) The resolution of application must include the following, as required by Government Code section 56700:

- A statement that the proposal is made pursuant to this Government Code section 56700
- State the nature of the proposal and list all proposed changes of the District
- Set forth a description of the boundaries of affected territory accompanied by a map showing the boundaries
- Set forth any proposed terms and conditions
- State the reason or reasons for the proposal
- Designate up to three persons as chief petitioners, setting forth their names and mailing addresses

- Request that proceedings be taken for the proposal pursuant to Section 56700
- State whether the proposal is consistent with the sphere of influence of any affected local government

The resolution of application must include a plan for services, prepared pursuant to Government Code section 56653, and also include the following, as required by Government Code section 56824.12:

- The total estimated cost to provide the new or different function or class of services within the District's boundaries
- The estimated cost of the new or different function or class of services to customers within the District's boundaries
- An identification of existing providers, if any, of the new or different function or class of services proposed to be provided and the potential fiscal impact to the customers of those existing providers
- A written summary of whether the new or different function or class of services will involve the activation or divestiture of some other power
- A plan for financing the establishment of the new or different function or class of services within the District's boundaries
- Alternatives for the establishment of the new or different functions or class of services within the District's boundaries

The resolution of application requires 21-days of notice prior to a public hearing, via mail, to "each interested agency and each subject agency." The notice must "generally describe the proposal and the affected territory. (Gov. Code § 56654(c).) Notice of the public hearing must be published in accordance with Government Code sections 56153 (one or more newspapers of general circulation) and 56154 (published with at least 21-days of notice). Allowing for public testimony is required. (Gov. Code § 56824.12(c)(2).)

Thereafter, the District must petition LAFCO for the drafting, consideration, and adoption of a LAFCO resolution approving of the District's application. (Gov. Code § 56824.12.) Thereafter, LAFCO must process the application as provided in Government Code section 56824.14.

III. CONCLUSION

LAFCO has agreed to postpone the District's MSR until 2024. During that time, and to avoid a possible legal dispute on LAFCO's power and authority to use the MSR process to deactivate

any of the District's powers for "lack of use" or "inadequate use," the Board of Directors can consider policies that ensure (1) provision of services or programs for all enumerated powers in Government Code section 61250, (2) provision of funding for all services/programs under each enumerated power, and (3) demonstration of funding sources to ensure continued funding of all services/programs under each enumerated power.

Further, the Board of Directors can consider whether to petition LAFCO for the activation of latent powers set forth in Section 61100 (as limited by Government Code section 61250), or for a change in existing powers.

[END MEMORANDUM]