

Agenda Item 12A

**REPORT OF THE
AD HOC COMMITTEE
ON GOVERNMENT SERVICES
TO THE
LOS OSOS COMMUNITY
SERVICES DISTRICT
BOARD OF DIRECTORS**

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Ad Hoc Committee Scope:

CHANGE IS COMING TO LOS OSOS. HOW CAN THE LOS OSOS COMMUNITY SERVICES DISTRICT SERVE LOS OSOS BETTER GIVEN THOSE CHANGES?

1. Introduction

A. Local Governments And Their Powers & Services

First, we give an overview of what different kinds of local governments and cannot do.

Local government agencies in California can be best classified by (1) what powers they exercise and (2) what municipal services they provide. The California Constitution and Government Code, as detailed by court decisions, set forth these parameters.

The major classes of powers are: (a) “police,”¹ (b) taxing,² (c) eminent domain,³ (d) public works,⁴ and (e) “corporate.”⁵ The taxing power is self-explanatory, but strictly curtailed in California by Proposition 13 and its progeny, codified in Article XIII *et seq.* of the California Constitution. The eminent domain power is the ability of a local government to takeover private property. The U.S. and California Constitutions curtail this power. The public works power is the ability of an entity to build things, such as streets and dams. The “corporate” power is the ability to have virtual or “legal” personhood. This gives the ability to sue and be sued, enter into contracts, hire employees, and own property.

Counties and cities possess all of these powers. Most special districts, such as the Los Osos CSD (the “District”), do not have the general police power and only may make such regulations as relate directly to the services they provide, may or may not have taxing power, usually have the eminent domain power, but do have the corporate power.

¹ Cal. Const. art XI, §7. “Police” in this sense means “city” or “municipal” rather than law enforcement officers, deriving from the Greek work *polis* as in *metropolis*.

² Govt. Code §37100.5 [general law cities].

³ Cal. Const. art I, § 19.

⁴ Cal. Const. art. XI, § 9.

⁵ *Irwin v. City of Manhattan Beach* (1966) 65 Cal.2d 13, 20.

The contrast between counties and cities lies in their relation to the state from the top down and the people from the bottom up. Counties are agents of and subdivisions of the state and only act as local government in unincorporated territory.⁶ Cities, by contrast, are purely instruments of local government and are not subdivisions of the state but do exercise the police power within their boundaries.

Special districts, by way of contrast, are also purely instruments of local government, like cities, but lack the general police power and, as opposed to providing whatever services they choose, may only provide those services specifically activated by a Local Agency Formation Commission (“LAFCO”). Special districts have special police powers related to the services they provide. Special districts may be “independent” or “dependent” depending on whether or not they are subdivisions of other government agencies.

Our District is a special district organized under the Community Services Act, Govt. Code, section 61100 *et seq.*, which has been given authority over wastewater, fire and emergency services, and parks and recreation within its full boundaries, domestic water, drainage, street lighting, and septic services in specific sub-areas. Its wastewater power was limited by AB 2701 so long as the San Luis Obispo County (the “County”) exercises the power.

TABLE 1 - MUNICIPAL SERVICES IN LOS OSOS

PUBLIC SERVICE	CURRENT PROVIDER
GENERAL GOVERNMENT	COUNTY
LAND USE/PLANNING	COUNTY
LAW ENFORCEMENT	COUNTY-SAN LUIS OBISPO COUNTY SHERIFF
ANIMAL CONTROL	COUNTY
ROAD/TRAFFIC	COUNTY
FIRE/EMS	LOS OSOS CSD-CONTRACT WITH CAL FIRE
TRAFFIC CONTROL & ACCIDENT INVESTIGATION	CHP/COUNTY-SAN LUIS OBISPO COUNTY SHERIFF
BUILDING & SAFETY	COUNTY
CODE ENFORCEMENT	COUNTY
ENGINEERING	COUNTY

⁶ *Abbott v. Los Angeles* (1958) 50 Cal.2d 438, 467

PUBLIC SERVICE	CURRENT PROVIDER
PARKS & RECREATION	COUNTY/LOS OSOS CSD
STREET LIGHTING	COUNTY/LOS OSOS CSD
STREET SWEEPING	COUNTY
STORM WATER RUNOFF	COUNTY/LOS OSOS CSD
ELECTRICITY	PG&E
NATURAL GAS	SOCAL GAS
DOMESTIC WATER	GOLDEN STATE WATER/LOS OSOS CSD/S&T MUTUAL
CABLE TV/BROADBAND	CHARTER
SOLID WASTE	COUNTY (ON LOAN FROM LOS OSOS CSD)/ CONTRACT WITH MISSION COUNTRY
PUBLIC EDUCATION (K-12)	SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT
PUBLIC EDUCATION (13-14)	SAN LUIS OBISPO COMMUNITY COLLEGE DISTRICT
LIBRARY	COUNTY
CEMETERY	PRIVATE
PUBLIC TRANSIT	SLO COUNCIL OF GOVERNMENTS
FLOOD CONTROL	COUNTY
SOLID WASTE LANDFILL	COUNTY
WASTEWATER	COUNTY
MOSQUITO ABATEMENT	N/A

B. The Status Quo & The Future

Within the scope of the services the District is currently empowered to provide, there is citizen demand for increased parks and recreation services and the return of the solid waste franchise to the district.⁷ We find that only one of the potential services that a CSD may provide is both in demand and fiscally feasible: serving as an area planning commission pursuant to the latent power enumerated in Government Code, section 61100(ac). Others are in demand, such as improved roads, but we do not find that to be fiscally feasible because the primary funding source

⁷ There is a high demand for increased patrolling from the Sheriff. However, the Sheriff's office has indicated that it will be increasing service here. This is welcome, because it would not be fiscally feasible for the District to take over law enforcement services.

for local governments to provide road services, the “road tax,” is not shared with CSDs. Citizens have expressed the desire for enhanced local control in recent election cycles by electing candidates who have campaigned on the issue. Land use questions are the #1 subject of local control concerns. Both in campaign canvasses and in responding to general inquiries from the public as LOCAC and CSD directors, we find that there is widespread insufficient understanding of why Los Osos has only limited input with no real binding effect on its local land use questions.

This is obviously due in large part to the fact that unlike almost every other community in California, Los Osos has been under various moratoria for three decades. In addition to restrictions imposed by the RWQCB while the sewer plant has been pending, the construction and operation (including new connections) of the sewer plant itself is subject to numerous conditions imposed by the Coastal Commission, including, but not limited to, a sustainable water supply program, an updated local plan, and a habitat conservation plan for the resident endangered species. The District itself is currently not processing new water connections due to drought conditions. All of this has frozen most land use questions in Los Osos for decades.

But with the implementation of the Basin Plan and the construction of the sewer facility, these conditions may soon no longer exist. The required amendment to the local plan is pending, as is an area-wide habitat conservation plan. Increased rain may soon eliminate the District’s own drought ordinance from having any effect. Accordingly, Los Osos will soon enter “normal” land use, zoning, and planning conditions after decades of abnormality. At that point, all decisions about those matters will be taken by a planning commission whose members are appointed by each of the County Supervisors, with only one representing our supervisorial district, and subject to appeal to the full Board of Supervisors, again with only one supervisor representing our supervisorial district. In such conditions, Los Osos has no democratic check on the majority of decision-makers at either of these levels.

It is important to note that the period immediately following the lifting of the above-referenced restrictions will be decisive in the future character of Los Osos for a very long time. Therefore, the need for an orderly and democratic process is of the highest importance.

Given that the current status quo is ending imminently, and given citizens' demands, what are the options available to the CSD? Simply put, the CSD can get out of the way or lead.

2. Options

A. Dissolution: Getting Out of The Way

Some residents see the District only as a vehicle to build a sewer treatment plant, and, when that purpose failed with the passage of AB 2701, one group sought the dissolution of the District. LAFCO rejected that dissolution request and the District continues today. Many years later, various members of the public have urged the same action based on dissatisfaction of the District's performance. While one's level of satisfaction is a subjective issue, we explore the fiscal and governance consequences of dissolution in order to more fully explore this possibility.

Sections 56650 *et seq.* and 56824.10 *et seq.* detail the procedure for reorganizations of this kind. The District must hold a public hearing and submit an application to LAFCO. A public petition may also initiate the process. However, if a petition initiates the process and the District objects, there must be an election. If the District initiates the dissolution, a 25% protest by registered voters may still force the election.⁸

LAFCO must determine which entity will succeed the District and how its debts will be paid. The assumption must be that the County would take over all of the services, but there would be no guarantee that current service levels would continue or that lower taxes and fees would result and any democratic means to change this would be lost. Indeed, it is entirely possible that *higher fees and taxes* could result. Other than the protections of Propositions 13 and 218, there is no way for Los Osos residents to check the County from raising taxes, given that Los Osos only votes in one supervisorial district. (Unlike, for example, the City of San Luis Obispo which votes for three). One possible outcome from dissolution of the District could be the privatization of the District's water utility and the County's sewer utility, with rate-setting decisions overseen from Sacramento—even further away.

While this change—in theory—could shift some of the liability for some government services to the County taxpayer at large, bonds and special taxes specific to Los Osos fund the

⁸ Govt. Code, § 57077.1.

vast majority of indebtedness for municipal services provided to Los Osos. The remainder stems from taxes assessed by a fixed formula based on property value.

In addition, the issue of dissolution was an issue in a recent election that did not win majority support. Indications from LAFCO and County officials have also been negative. Without the County willing to serve as a successor agency, LAFCO will not approve the plan.

The Committee does not recommend pursuing this option.

B. Latent Powers: Leading With Evolutionary Steps

1. Overview of Process

Under existing California law, only cities and counties, who have the general police power, are considered “legislative bodies” for purposes of zoning and planning.⁹ Therefore, the final authority must rest with a “legislative body” as defined by the Government Code. However, with respect to planning commissions themselves, both county service areas and CSDs may function as a planning commission. Indeed, there is even a special carveout in the Government Code declaring that sitting as a planning commissioner is not an “incompatible office” with a CSD director.¹⁰ That provision combined with section 61100(ac), enable this option.

As previously mentioned, CSDs may only exercise those powers granted by LAFCO. Other powers that CSDs may exercise are commonly referred to as “latent” powers. To activate latent powers, the CSD must make a resolution and submit a statement describing how the services will be provided.¹¹ LAFCO then holds hearings and makes a determination as to the whether the power shall be activated. As in dissolution, a protest by the majority of voters would cancel the change, and a protest by 25% of the voters would initiate an election.¹²

The only latent power the Committee recommends considering for activation is “finance the operations of area planning commissions formed pursuant to section 65101” as set forth in

⁹ Exceptions have been made by special legislation. *See, e.g.*, Govt. Code, §§ 65101.1.

¹⁰ Govt. Code, § 61040(d).

¹¹ Govt. Code, §§ 56650-56653 and 56824.10 *et seq.*

¹² Govt. Code, § 57075.

Government Code, section 61100(ac). As explained above, the CSD does not have the general police power, therefore it is not a “legislative body” within the meaning of the zoning and planning law in Government Code, section 65101. That body in the case of Los Osos is the County. Therefore, the County must authorize the formation of an area planning commission in addition to that latent power being authorized by LAFCO. The County Board of Supervisors as “legislative body” would also be final administrative appeal.¹³

If both LAFCO and the County authorize these steps, the Los Osos CSD Board of Directors would serve as the planning commission for the territory within the boundaries of the District, providing for a democratic check on the wave of local land use decisions we face as the decades of moratoria fade away.

2. Fiscal Analysis

This would not require Los Osos to fund or operate its own planning department, code enforcement department, or building inspection department. Only the function of a planning commission proper would fall on the CSD. Accordingly, the expense is a minimum marginal cost attributable to potentially longer board meetings and other incidental administrative overhead. The minimal additional administrative overhead would come from the District’s 1% property tax revenues.

The Committee recommends pursuing this option.

C. Incorporation: A Revolutionary Step

Government Code sections 56000 *et seq.*, and applicable regulations,¹⁴ set out the conditions under which towns may incorporate. First and foremost, a proposed town must demonstrate that it will be “financially fiscally feasible,” as defined by the Act, for the first three years of its existence.¹⁵ LAFCO regulations in some counties require a showing of viability for

¹³ Of course, the entirety of Los Osos is within the Coastal Zone, so matters touching on that have an administrative appeal to the Coastal Commission.

¹⁴ See, e.g., “San Luis Obispo LAFCO Policies & Procedures” (Feb. 2014) *authorized by* Govt. Code § 56300(a); *A Guide To The LAFCO Process For Incorporation*, Office of Planning and Research (2001) *authorized by* Govt. Code § 56815.2.

¹⁵ Govt. Code, § 56720(e).

longer periods. The OPR Guidelines suggest a longer analysis in Comprehensive Fiscal Analyses due to the decreasing amount of Vehicle License Fees after several years.¹⁶

Cities do exercise the police power and may carry out virtually any municipal service. Many cities contract their services out to other agencies or choose not to exercise them at all. However, cities are *required* to provide for police.¹⁷ Cities have the option of contracting for this service, but the large financial responsibility must rest with the city. Cities are also responsible for zoning and planning in their territory as “legislative bodies” as explained above. Zoning and planning is the only municipal service a city can directly provide as a “legislative body” that a CSD cannot. Cities also participate in certain joint agencies and certain funding mechanisms unavailable to CSDs.

A very close second in importance to the fiscal feasibility question is another legally imposed test called “revenue neutrality.” Under Government Code, section 56815, the incorporation must result in a “similar exchange” of revenue and services between the new town and affected agencies.¹⁸ In this case, the “affected agencies” are the County and the District. As an affected agency, the District could initiate the process of incorporation.¹⁹

According to the 1998 LAFCO Staff Report regarding the formation of the District, incorporation has been explored but was not pursued due to an “acknowledged lack of tax base.” Numerous community leaders respond with the same statement today, *viz.* that we lack the tax base to incorporate. This was prior to changes in state funding more or less eliminating vehicle license fee revenue for newly incorporating cities, in the middle 2000s. This would seem to make “fiscal feasibility” dependent on updated and detailed studies that would be acceptable to LAFCO and cooperation from the County with respect to revenue neutrality. A private study reviewed by the Committee indicates that revenue neutrality may actually aid incorporation in this case due to unique revenues enjoyed by the District and the size of the County’s outlays here. However, this study is now a few years out of date and would require updating to be relied upon.

¹⁶ OPR Guidelines, p.31. These pre-date the near elimination of VLF funding to newly incorporated cities.

¹⁷ Govt. Code, § 36505.

¹⁸ Govt. Code, § 56815(a).

¹⁹ Govt. Code, § 56654.

If these analyses came out favorably, the result would be an election for the voters to approve the incorporation.²⁰

At this point, the complicated and expensive process involved in exploring incorporation is not yet justified because other options provide more precise solutions to the needed local control over zoning and planning authority we recommend. If that solution fails to materialize, this solution should be reconsidered at that time.

The Committee does not recommend pursuing incorporation at this time because simpler alternatives to achieving citizen's goals remain open.

²⁰ Govt. Code, § 57077.