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MEMORANDUM

DATE: February 27, 2013
TO: Bev Shane, LAFCo Executive Director
FROM: Carlyn M. Drivdahl, Deputy County Counsel *CD*

SUBJECT: Proposed Community Services District for Odd Fellows Sierra Park Subdivision

This memorandum addresses the issues raised by the proposed Sierra Park Community Services District ("SPCSD") for the Odd Fellows Sierra Park subdivision.

CSD as a Landowner-Voter District

The SPCSD proponents desire that the district be set up as a landowner-voter district. The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Government Code section 56000 et seq.,¹ defines a "landowner-voter district" as "a district whose principal act provides that owners of land within the district are entitled to vote upon the election of district officers, the incurring of bonded indebtedness, or any other district matter." (Section 56050.) As explained in further detail below, the Community Services District Law, Government Code section 61000 et seq. ("CSD Law") does not provide for landowner voting.

Landowner-voter districts face constitutional challenges on the grounds that they violate Article I, Section 22, of the California Constitution ["The right to vote or hold office may not be conditioned by a property qualification."] and the equal protection clause of both the United States Constitution and the California Constitution. (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7.) The "one person, one vote" principle is founded upon the fundamental tenet that legislators of governmental entities of general purpose and powers represent people, not trees or acres. (*Bjornestad v. Hulse*, 229 Cal.App.3d 1568, 1582 (1991).) The U.S. Supreme Court has held that landowner-voter districts are only appropriate where the district is "of special limited purpose and [has a] disproportionate effect of its activities on landowners as a group." (*Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719, 728 (1973).)

¹ All Section references are to the Government Code, unless otherwise indicated.

The right to vote in a district election held in a place other than a person's legal residence must be found in specific statutory authority. (39 Ops.Cal.Atty.Gen. 211, 213 (1962).) The principal acts for special districts that allow for landowner voting are very clear in their terms. For example:

- Water storage districts – “Only the holders of title to land are entitled to vote at a general election.” (Wat. Code § 41000.)
- California water districts – ““Voter” means a person who is a holder of title.” – (Wat. Code § 34027.)
- Reclamation districts – ““Voter” means a landowner or the legal representative of a landowner...” (Wat. Code § 50016.)
- Camp Far West Irrigation District – ““elector” and “voter” shall mean a person, corporation, or other entity owning land within the district.” (Wat. Code § 20527.6.)
- Montague Water Conservation District – “every owner of real property within the district, but no others, may vote at elections for directors or otherwise. Such owners need not be residents of the district in order to qualify as voters.” (Wat. Code § 20527.7.)

The CSD Law defines “voter” as “a voter as defined by Section 359 of the Elections Code.” (Section 61002(l).) Elections Code section 359 defines “voter” as “any elector who is registered under [the Elections Code].” Elections Code section 321 defines “elector” as “any person who is a United States citizen 18 years of age or older and [...] is a resident of an election precinct at least 15 days prior to an election.” [*emphasis added.*] The CSD Law is clear in its intention that CSD voters are residents of the district.

Even if there were ambiguity as to who could be voters under the CSD Law, community services districts are not districts “of special limited purpose” with a “disproportionate effect of its activities on landowners as a group.” Community services districts are intended to have “broad statutory authority [...] to provide a wide variety of public facilities and services.” (Section 61001(c)(1).) Community services districts are authorized, upon LAFCo approval, to provide the following services:

- Supply water for any beneficial uses;
- Collect, treat, or dispose of sewage, wastewater, recycled water, and storm water;

- Collect, transfer, and dispose of solid waste, and provide solid waste handling services, including, but not limited to, source reduction, recycling, and composting activities;
- Provide fire protection services, rescue services, hazardous material emergency response services, and ambulance services;
- Acquire, construct, improve, maintain, and operate recreation facilities, including, but not limited to, parks and open space;
- Organize, promote, conduct, and advertise programs of community recreation;
- Acquire, construct, improve, maintain, and operate street lighting and landscaping on public property, public rights-of-way, and public easements;
- Provide for the surveillance, prevention, abatement, and control of vectors and vectorborne diseases;
- Provide police protection and law enforcement services by establishing and operating a police department that employs peace officers;
- Provide security services, including, but not limited to, burglar and fire alarm services, to protect lives and property;
- Provide library services;
- Acquire, construct, improve, and maintain streets, roads, rights-of-way, bridges, culverts, drains, curbs, gutters, sidewalks, and any incidental works;
- Convert existing overhead electric and communications facilities, with the consent of the public agency or public utility that owns the facilities, to underground locations;
- Provide emergency medical services;
- Provide and maintain public airports and landing places for aerial traffic;
- Provide transportation services;
- Abate graffiti;
- Plan, design, construct, improve, maintain, and operate flood protection facilities;
- Acquire, construct, improve, maintain, and operate community facilities, including, but not limited to, community centers, libraries, theaters, museums, cultural facilities, and child care facilities;
- Abate weeds and rubbish;
- Acquire, construct, improve, maintain, and operate hydroelectric power generating facilities and transmission lines;
- Acquire, construct, improve, maintain, and operate television translator facilities;
- Remove snow from public streets, roads, easements, and rights-of-way;
- Provide animal control services;
- Control, abate, and eradicate pests;

- Construct, maintain, and operate mailboxes on a district's property or rights-of-way;
- Provide mail delivery service under contract to the United States Postal Service;
- Own, operate, improve, and maintain cemeteries and provide interment services;
- Finance the operations of area planning commissions;
- Finance the operations of municipal advisory councils;
- Acquire, own, improve, maintain, and operate land within or without the district for habitat mitigation or other environmental protection purposes to mitigate the effects of projects undertaken by the district;
- Construct, own, improve, maintain, and operate broadband facilities and provide broadband services.

(Section 61100.) The Legislature found that, for many communities, CSDs provide a "permanent form of governance that can provide locally adequate levels of public facilities and services," a "form of governance that can serve as an alternative to the incorporation of a new city," and a "transitional form of governance as the community approaches cityhood." (Section 61001(b).)

Appointment of Initial Board of Directors

The SPCSD proponents have suggested that the current members of the Recreation Association Board would serve as the initial SPCSD Board of Directors. That would not be possible under the CSD Law without an election. As part of the petition to form a community services district, the proponents must specify the method of selecting the initial board of directors as provided by Sections 61020 -61022.

(Section 61011(a)(4).) Section 61021 provides that the initial board of directors shall be elected by one of the following methods: at large, by divisions, or from divisions. As explained above, this election would be with resident voters.

Alternatively, in the case of a proposed district which contains only unincorporated territory in a single county and less than 100 voters such as SPCSD, LAFCo may provide, as a term and condition of approving the formation of the district, that the county board of supervisors shall be the initial board of directors until conversion to an elected board of directors. (Section 61022(a).) If the County Board of Supervisors were to serve as the initial SPCSD Board, it would place the question of having an elected board of directors on the ballot when any of the following occurs:

- When the registrar of voters certifies in writing that the number of voters in the district has reached or exceeded 500 or a lower number specified by LAFCo as a term and condition of approving the formation of the district.

- Ten years, or a shorter term as required by LAFCo, after the effective date of the district's formation.

(Section 61022(b).)

Transfer of Roads/Gate Issue

The SPCSD proponents have proposed that the Recreation Association will transfer its real property, including the subdivision's streets and roads and water system to SPCSD. Currently, this property is private and the roads are private and gated. SPCSD will be a public entity and transferring this property will convert it to public property and public roads. Also, please note that the California Fire Code prohibits gates across public roads. (2010 Cal. Fire Code §§ 503.4 and 503.5.)

Additional Legal Requirements

Please be aware that community services districts are subject to a wide variety of public laws, many referenced by the CSD Law, that will direct procedures, public input and, in some instances, may increase costs. These laws include, but are not limited to:

- The Brown Act, Government Code section 54950 et seq. [open meeting law]
- Prevailing wages, Labor Code section 1720 et seq.
- Proposition 218, Cal. Const., art. XIII D [property-related assessments, fees and charges]²
- Public Records Act, Government Code section 6250 et seq.
- Political Reform Act, Government Code section 87100 et seq.
- Uniform District Election Law, Elections Code section 10500 et seq.
- Public bidding and contracting requirements, Public Contract Code section 20680 et seq.
- California Environmental Quality Act, Public Resources Code section 21000 et seq.

If you have any questions, please advise.

File: lafcogen

² Please be aware that, while property-related assessments, fees and charges would be subject to approval by SPCSD property owners, proposed general and special taxes would be submitted to the resident voters.