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August 13, 2008 (Agenda)

Contra Costa Local Agency Formation Commission
651 Pine Street, Sixth Floor
Martinez, CA 94553

**Request by Diablo Community Services District to Activate Latent Powers
to Finance the Operations of a Municipal Advisory Council**

Dear Commissioners:

BACKGROUND

Community Service Districts

Community Service Districts (CSDs) are formed and governed pursuant to Community Services District Law, Government Code §61000 et seq. CSDs are independent special districts governed by Boards of Directors. CSDs can provide a range of municipal services pursuant to the principal act.

Any service or function that is authorized by the principal act but is not listed as one of a CSD's functions when the CSD was formed or subsequently approved by LAFCO is considered a "latent power." A CSD wishing to exercise a latent power must first receive LAFCO approval before providing the service. The revised CSD law provides that LAFCO approval is the final action for activating a latent power; a vote of the district's residents is no longer needed to activate a power.

Diablo Community Services District

The Diablo Community Services District (DCSD) was formed in 1969 to provide streetlighting, police/security and road maintenance services to the unincorporated community of Diablo, which is generally located northeast of the Town of Danville.

In 1999, LAFCO authorized the CSD to activate the latent power to provide parks and recreation services including, but not limited to, equestrian trails, parks and recreational buildings.

DISCUSSION

In November 2006, DCSD submitted an application to activate its power to finance the operations of a Municipal Advisory Council (MAC). As MACs are governed by the County Board of Supervisors (BOS), it was first necessary for BOS to take action (Government Code §31010).

In April 2007, the Contra Costa County BOS approved Resolution No. 2007/166 which, among other things, modified the MAC membership to allow the MAC and CSD to have the same member composition (Attachment 1).

The requirements for exercising a new or different service by special districts, and for the LAFCO proceedings are included in the Government Code (§§56824.10 – 56824.14). In accordance with these provisions, DCSD submitted a plan for services that describes how the services will be provided, provides estimated costs and sources of revenues to provide the new service, and identifies existing service providers and alternatives for providing the new service.

DCSD proposes to assume the duties of the Diablo MAC, which include advising the BOS on land use planning matters and, as requested, on local government services affecting the DCSD area. The costs associated with assuming the MAC functions are expected to be minimal and primarily administrative. The DCSD proposes to fund any costs associated with this function using District reserves. A review of the District budget indicates that it has adequate reserves to assume this function.

In accordance with State law, a latent power cannot be approved if it is determined that another local agency already provides substantially similar services in the area proposed to be served. In 1996, the BOS created the Diablo MAC to advise the Board on specified matters relating to the community. In December 2006, the BOS amended the method of selection, powers and authority of the MACs. Consequently, DCSD expressed an interest in having the elected District Board members perform the MAC functions.

In April 2007, the BOS authorized the Diablo MAC and the DCSD to have the same membership composition. The DDS indicates that following LAFCO's activation of the latent power, subsequent action to appoint the DCSD Board Members to the MAC will occur, thus merging the two agencies.

CEQA Compliance

LAFCO is the Lead Agency under the California Environmental Quality Act (CEQA) for this latent powers authorization. It has been determined that the proposal is categorically exempt from the CEQA pursuant to State CEQA Guidelines §15320, because the proposal involves a change in organization of a local agency where the change does not affect the geographical area in which previously existing powers are exercised.

ALTERNATIVES FOR COMMISSION ACTION:

After consideration of this report and any testimony or additional materials that are submitted the Commission should consider taking one of the following options:

Option 1

- A. Find the proposal to be exempt from CEQA pursuant to Government Code §15320.
- B. Approve the activation of latent powers to authorize the Diablo Community Services District to finance the operations of a municipal advisory council, subject to the following terms and conditions:
 - 1. Prior to LAFCO issuing a Certificate of Completion, the applicant shall deliver an executed indemnification agreement between the applicant and Contra Costa LAFCO providing for the applicant to indemnify LAFCO against any expenses arising from any legal actions challenging the activation of the latent power.
- C. There are no protest proceedings in conjunction with the establishment of a new or different function of service; direct the staff to complete the proceeding.

Option 2 Adopt this report and DENY the proposal.

Option 3 If the Commission needs more information, CONTINUE this matter to a future meeting.

RECOMMENDED ACTION:

Approve Option 1.

LOU ANN TEXEIRA
EXECUTIVE OFFICER
LOCAL AGENCY FORMATION COMMISSION

c: Distribution

Attachment – Contra Costa County Board of Supervisors Resolution No. 2007/166

RESOLUTION NO. 06-21

**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
MAKING DETERMINATIONS AND APPROVING THE
ACTIVATION OF LATENT POWERS OF THE DIABLO COMMUNITY SERVICES
DISTRICT (FINANCE THE OPERATIONS OF A MUNICIPAL ADVISORY COUNCIL)**

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

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

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 environmental document or determination, and Spheres of Influence; and

WHEREAS, a request was filed by the District with the Executive Officer to exercise its powers to finance the operations of a municipal advisory council; and

WHEREAS, the Local Agency Formation Commission determines the proposal to be in the best interests of the affected area and the organization of local governmental agencies within Contra Costa County;

NOW, THEREFORE, the Contra Costa Local Agency Formation Commission DOES HEREBY RESOLVE, DETERMINE AND ORDER as follows:

1. The Commission determines that the project is exempt from CEQA pursuant to State CEQA Guidelines §15320.
2. The District's request to exercise its powers to finance the operations of a municipal advisory council within the District is hereby approved.
3. In as much as there are no protest proceedings in conjunction with the establishment of a new or different function of service, direct the staff to complete the proceeding.
4. Prior to LAFCO issuing the Certificate of Completion, the applicant shall deliver an executed indemnification agreement between the applicant and Contra Costa LAFCO providing for the applicant to indemnify LAFCO against any expenses arising from any legal actions challenging the activation of latent powers.

* * * * *

Contra Costa LAFCO
Resolution No. 06-21

PASSED AND ADOPTED THIS 13th day of August 2008, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ROB SCHRODER, CHAIR, CONTRA COSTA LAFCO

I hereby certify that this is a correct copy of a resolution passed and adopted by this Commission on the date stated.

Dated: August 13, 2008

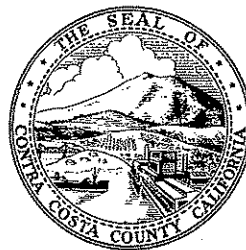
Lou Ann Texeira, Executive Officer

TO: BOARD OF SUPERVISORS

FROM: JOHN CULLEN,
County Administrator

DATE: April 3, 2007

SUBJECT: Amending the Diablo Municipal Advisory Council Establishing Resolution



Contra
Costa
County

C. 133

SPECIFIC REQUEST(S) OR RECOMMENDATION(S) & BACKGROUND AND JUSTIFICATION

RECOMMENDATION:

ADOPT Resolution No. 2007/166 modifying the Territorial Area, Membership, Term of Office, and provisions governing Removal from Office, and Quorum and Vote Necessary for Action for the Diablo Municipal Advisory Council, as recommended by Supervisor Piepho.

FISCAL IMPACT:

None.

BACKGROUND:

The California Government Code (§31010) provides that the Board of Supervisors may, by resolution, establish a municipal advisory council (MAC) for any unincorporated area in the County to advise the Board on such matters that 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 not limited to advice on matters of public health, safety, welfare, public works, and planning. Section 31010 further provides that the Board of Supervisors may determine the method by which a MAC's members shall be selected and may specify such other rules, regulations and procedures as may be necessary for the operation of a MAC.

The Diablo Municipal Advisory Council, a County advisory body, and the Diablo Community Services District (DCSD), an independent special district, have expressed interest in merging into a single entity. The Board of Supervisors does not have the authority to merge the MAC and Diablo CSD, an entity separate and independent from the County, into a single public entity. However, the MAC and CSD may have the same membership composition if designated by the Board.

Effective January 1, 2006, the Community Services District law expressly contemplates that members of a CSD board of directors may serve on a municipal advisory council and that the offices of Director and Council member are not incompatible. (Gov. Code § 61040 (d).) Therefore, if the Board of Supervisors desires that the members of the Diablo MAC be the elected members of the Diablo CSD, this can be accomplished by amending the resolution establishing the MAC.

CONTINUED ON ATTACHMENT: YES

SIGNATURE:

RECOMMENDATION OF COUNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

APPROVE OTHER

SIGNATURE(S):

ACTION OF BOARD ON

04/03/07

APPROVED AS RECOMMENDED

OTHER

VOTE OF SUPERVISORS

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON MINUTES OF THE BOARD OF SUPERVISORS ON THE DATE SHOWN.

UNANIMOUS (ABSENT DISTRICT II)
AYES: _____ NOES: _____
ABSENT: II ABSTAIN: _____

Contact:

L. DeLaney, CAO's 5-1097

Cc:

Diablo MAC
Diablo Community Services District
Supervisor Piepho
County Administrator
County Counsel—M. Mason

ATTESTED

04/03/07
JOHN CULLEN, CLERK OF THE BOARD OF SUPERVISORS

BY:

DEPUTY

Therefore, Resolution 2007/166 would make the following changes for the Diablo MAC:

- The “Membership” provision would be amended to specify that the Council shall consist of five members who shall be current elected members of the Diablo CSD, appointed by the Board of Supervisors, upon nomination by the District III Supervisor.
- The “Term of Office” provision would be amended to specify that a MAC member’s term shall be the same as his or her term of office on the CSD Board of Directors. Also, vacancies shall not be filled by Board of Supervisors appointment.
- The former “Removal from Office” provision would be deleted, as it would not be consistent with representation by elected CSD Board members.
- The former “Quorum and Vote Necessary for Action” provision would be deleted, as it is more efficient for the new Diablo MAC members to operate pursuant to the quorum and vote requirements of the Diablo CSD.
- The MAC’s “Territorial Area” is modified to be coterminous with the boundaries of the Diablo CSD.

Notwithstanding the above amendments, the Diablo MAC would continue to operate as a County advisory body, subject to the County’s policies for advisory bodies and to the Better Government Ordinance.

THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA

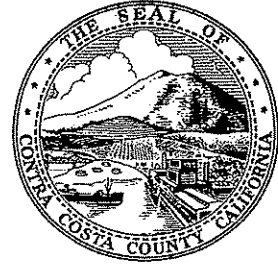
Adopted this Resolution on April 3, 2007 by the following vote:

AYES: GIOIA, BONILLA, GLOVER, PIEPHO

NOES:

ABSENT: WILKEMA

ABSTAIN:



Resolution No. 2007/166

SUBJECT: In the matter of modifying the Territorial Area, Membership, Term of Office, Removal from Office, and Quorum and Vote Necessary for Action of the Diablo Municipal Advisory Council

WHEREAS, Pursuant to Resolution No. 96/314, the Diablo Municipal Advisory Council was created to advise the Board of Supervisors on specified matters relating to the community of Diablo; and

WHEREAS, the Board of Supervisors in Resolution 2006/395 did amend the method of selection of members of the Municipal Advisory Councils (MACs) to determine that members shall be selected and appointed by the Board of Supervisors; and

WHEREAS, the Board of Supervisors on June 27, 2006 directed the County Administrator to prepare new resolutions for each MAC, amending the MAC membership selection and powers of authority to reflect changes approved in Resolution 2006/395; and

WHEREAS, the Board of Supervisors on December 19, 2006 adopted Resolution No. 2006/791 amending the method of selection, powers, and authority of the Diablo Municipal Advisory Council; and

WHEREAS, the Diablo Municipal Advisory Council and the Diablo Community Services District Board of Directors have expressed interest in having the elected Diablo CSD Directors perform the Diablo MAC functions; and

WHEREAS, for ease of administration, it is preferable to have a single resolution governing the establishment and operation of the MAC;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS, in its capacity as governing Board of the County of Contra Costa, that:

1. **Establishment of Diablo Municipal Advisory Council**

Pursuant to the authority granted by Section 31010 of the California Government Code, the Diablo Municipal Advisory Council ("Council") is established.

2. **Territorial Area**

The area for which the Council will serve and discharge the following duties and powers is that territory contained within the boundaries of the Diablo Community Services District; all of which territory is more particularly described on the attached map marked as Exhibit A, dated December 19, 2006 (hereafter referred to as "Diablo").

3. **Membership**

The Council shall consist of five (5) members, each of whom shall be a current elected member of the Diablo Community Services District Board of Directors, and who shall be appointed by the Board of Supervisors, upon nomination by the District III Supervisor.

4. **Term of Office**

A Municipal Advisory Council member's term shall be the same as his/her term of office on the Diablo Community Services District Board of Directors.

5. **Council Duties and Powers**

The Council shall advise the Board of Supervisors on discretionary land use planning matters affecting the Diablo community, such as land use designations, General Plan amendments, environmental impact reports, negative declarations, zoning-variance applications, and building permit applications for additions or remodeling projects which would affect the exterior dimensions of the residence and for which noticed public hearings are or could be required by the County's Planning Agency. The Council shall also represent the community before the County Planning Commissions, the Zoning Administrator and the County Board of Supervisors on such land use, planning and zoning matters. The Council will advise in accordance with the policies of the General Plan.

In addition, the Council may: advise the Board of Supervisors on local government services as requested by the Board; provide input and reports to the Board, County staff or any other County hearing body on issues of concern to the community; and serve as liaison between the community and the County Supervisor representing Diablo.

It is understood that the Board of Supervisors is the final decision making authority with respect to issues concerning the Diablo community and that the Council shall serve solely in an advisory capacity. Except as specified above, the Council may not represent the Diablo community to any state, county, city, special district or school district, agency or commission, or any other organization on any matter concerning the community. In addition, the Council may not, as a body, take positions on candidates for any public office.

6. **Compensation**

The Council members shall serve without compensation of any kind and the Board shall not provide funds for the payment of Council meeting stipends or reimbursement of Council members' expenses.

7. **Staff and Financial Support**

- a. The Board shall provide no ongoing professional or clerical staff support to the Council or funds to pay for any of the Council's operating costs.
- b. County staff will provide the Council in a timely manner with information and reports on planning matters (referenced in paragraph 6 above) that are to be located in or within 300 feet of the Diablo community area. County staff will also provide notices of decisions on all such matters to the Council.
- c. County staff will provide Diablo community area planning entitlement applicants with the time and place of Council meetings and the names and any non-restricted phone numbers of Council members so that timely discussion of pending applications may be conducted between them, (the Council and applicants), before County Planning Agency hearings and decisions.

8. **Council Funds**

Any funds transferred to or received by the County for the Council shall be accepted pursuant to Resolution No. 2005/628 and only used for the benefit of the Council and its area.

9. **Council Establishment Not Subject to Vote**

The issue of establishment of the Council shall not be an election item submitted to the voters of the Diablo community.

10. **Council Operation and Procedural Rules**

Within the parameters of this Resolution, the Council may organize itself and operate as it determines but shall hold regular meetings at least monthly at an established time and place. The Council may develop bylaws for the operation of the Council, but such bylaws must be approved by the Board of Supervisors to be effective. The Council meetings shall be conducted in accordance with the provisions of the "Brown Act" (Government Code sections 54950 ff.) including the pre-meeting posting of meeting calendar notices, and the "Better Government Ordinance" (County Ordinance Code, Division 25). In addition, the Council shall fully comply with the Board of Supervisors' policy concerning conflict of interest and open meetings (Resolution No. 2002/376), the Board's policy governing appointments to boards, committees, and commissions (Resolution No. 2002/277), and the Political Reform Act (Government Code sections 81000 ff.) as applicable.

11. **Dissolution of Council**


The provisions of this resolution shall be of no further force and effect after December 31, 2009, and the Council will be dissolved on that date unless the Board of Supervisors has taken action to extend the Council's existence.

12. This Resolution supersedes and replaces Resolution Nos. 96/314 and 2006/791.

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown

ATTESTED: April 3, 2007

John Cullen, Clerk of the Board of Supervisors
and County Administrator

By  Deputy

cc: Supervisor Federal Glover
Supervisor Mary N. Piepho