

Technical Advisory



STATE OF CALIFORNIA
Jerry Brown,
Governor

OFFICE OF PLANNING AND RESEARCH
Ken Alex,
Director

Senate Bill 244: land Use, General Plans, and Disadvantaged Communities

Author: Nelia Sperka

introduction

This technical advisory is one in a series of advisories provided by the Governor's Office of Planning and Research (OPR) as a service to professional planners, land use officials, and [California Environmental Quality Act \(CEQA\)](#) practitioners. OPR issues technical guidance from time to time on issues that broadly affect the practice of CEQA and land use planning. This document provides guidance on implementing [Senate Bill 244](#) (Wolk, 2011) (SB 244), a new law addressing disadvantaged unincorporated communities.

Background/Purpose of SB 244

According to legislative findings in SB 244, hundreds of unincorporated communities in California lack access to basic community infrastructure like sidewalks, safe drinking water, and adequate waste processing. These communities range from remote settlements throughout the state to neighborhoods that have been surrounded by, but are not part of, California's fast-growing cities. This lack of investment threatens residents' health and safety and fosters economic, social, and education inequality. Moreover, when this lack of attention and resources becomes standard practice, it can create a matrix of barriers that is difficult to overcome.

The purpose of SB 244 is to begin to address the complex legal, financial, and political barriers that contribute to regional inequity and infrastructure deficits within disadvantaged unincorporated communities. Including these communities in the long range planning of a city or county, as required by SB 244, will result in a more efficient delivery system of services and infrastructure including but not limited to sewer, water, and structural fire protection. In turn, investment in these services and infrastructure will result in the enhancement and protection of public health and safety for these communities.

Requirements of SB 244

Under SB 244, there are procedural requirements for both local governments and local agency formation commissions (LAFCos). These requirements are summarized and the relevant terms are defined below.

1400 10th Street
Sacramento, CA 95814

(916) 322-2318

www.opr.ca.gov

Requirements for local agency Formation Commissions (laFCos)

SB 244 requires LAFcos to make determinations regarding “disadvantaged unincorporated communities.” A “disadvantaged community” is defined as a community with an annual median household income that is less than 80 percent of the statewide annual median household income (Water Code Section 79505.5). Disadvantaged unincorporated communities (DUCs) are defined as “a territory that constitutes all or a portion of a “disadvantaged community” including 12 or more registered voters or some other standard as determined by the commission.

The bill affects LAFco’s operations in three areas:

1. Municipal Service Reviews (MSR) Determinations
2. Sphere of Influence (SOI) updates on or after July 1, 2012
3. Annexation approval restrictions of territory adjacent to DUCs

Municipal Service Reviews

The [Cortese-Knox-Hertzberg Act of 2000](#) requires a local agency formation commission to develop and determine the sphere of influence of each local governmental agency in the county or other area designated by the commission. It also requires the LAFcos to prepare a municipal service review (MSR), which is a written statement of the commission’s determinations with respect to the growth and population projections for the affected area and the present and planned capacity of public facilities and adequacy of public services, financial ability to provide services, opportunities for shared facilities, and accountability for community service needs.

Government Code (GC) Section 56430, as amended by SB 244, now requires LAFcos to include in the MSR a description of the “location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence.” (Gov. Code, § 56430(a)(2).) The MSR must also contain specific written determinations on infrastructure needs or deficiencies related to public facilities and services, including but not limited to sewer, water, and fire protection services in any disadvantaged unincorporated communities within or contiguous to the sphere of influence of a city or special district that provides those services.

Sphere of Influence Updates

In addition to the new requirements for MSRs, GC Section 56425 also requires commissions on or after July 1, 2012, to adopt additional determinations for an update of a sphere of influence (SOI) of a city or special district that provides public facilities and services related to sewer, water, and fire protection. The commission must make determinations regarding the present and probable need for those public facilities and services in any DUCs within the existing sphere of influence.

CEQA Compliance for LAFcos

In order for CEQA requirements to apply to an activity, that activity must be considered a “project” under CEQA. (State CEQA Guidelines § 15378.) The main question that the

LAFCo must consider is whether its action may have a potential to cause significant environmental impacts, either directly or indirectly. Adoption of MSRs may meet this test if the action could influence future growth patterns or otherwise affect land use in a way that impacts the environment. This action may include the proposed construction of new or upgraded infrastructure for disadvantaged communities.

MSRs are intended to support SOI updates, which may include expansions or reductions in SOI boundaries, the creation of new SOIs, or SOIs amendments that trigger a need to update the pertinent SOI. In some cases, an MSR, and its required determinations including those required by SB 244, will provide policy guidance for future LAFCo decisions that may direct or affect the location and pattern of growth. Because of the nature of the analysis required, MSRs may be perceived or interpreted by some as the first step in creating, updating or amending SOIs or initiating other government organizations or reorganizations. In other cases, MSRs may actually be an integral part of a larger project. MSRs may frequently be triggered by pending applications to LAFCo for SOI amendments, or for annexations that cannot proceed without an SOI update.

To ensure compliance with CEQA, and avoid unnecessary legal challenges, OPR recommends that LAFCos consider MSRs as projects subject to CEQA where such reviews provide policy guidance regarding the location and pattern of future growth. In such cases, LAFCo would be the “lead agency” responsible for complying with CEQA because it is the entity with the principal responsibility for approving or carrying out the MSR (i.e., the project) (Public Resources Code §21067). If an MSR is prepared in conjunction with a local agency’s application for an SOI update, the local agency would be the “lead agency” responsible for complying with CEQA while the LAFCo would be the “responsible agency.” The lead agency, whether it is the local agency or the LAFCo, must ensure that all required elements of the CEQA review process are conducted consistent with the requirements of CEQA and their own adopted CEQA procedures.

Annexation Approval Restrictions

GC Section 56375 also imposes new restrictions on approval of city annexations greater than 10 acres, or as determined by commission policy, where there is a DUC contiguous to the area of the proposed annexation. The commission is prohibited from approving such an annexation unless an application to annex the DUC has also been filed. However, there are two exceptions to the requirement to file an application to annex a contiguous DUC:

1. An application to annex the DUC has been filed in the past five years
2. The commission finds, based upon *written evidence*, that a majority of registered voters within the affected territory are opposed to annexation.

The statute does not define the phrase “written evidence.” A number of LAFCos throughout the state have established policy that defines “written evidence.” For example, both Sonoma and Tulare Counties have determined that “written evidence” may be in the form of annexation survey results.

Results from annexation surveys can vary depending on the format, content and methodology used to conduct the survey. For example, Riverside LAFCo has determined that “written evidence” can be either a petition signed by a majority of registered voters residing within the disadvantaged unincorporated community, or a scientific survey conducted by an academic institution or professional polling company. A petition or scientific survey, if not available to residents in their native language, may produce results that do not reflect true community sentiment. To effectuate the purpose of the statute, OPR recommends that LAFCos conduct the survey in both English and the language spoken by a substantial number of non-

English speakers.¹ Furthermore, commissions should ensure that questions focus on the annexation in question.

When drafting cover letters, surveys or any additional documents pertaining to the annexation, OPR encourages commissions to use unbiased language to convey information about the proposed annexation and its potential impact on the affected community. In addition, documents used to obtain written evidence and that are distributed to the public should remain fact based, neutral and written in an accessible format that can be understood by an educationally and culturally diverse audience.

Residents and Registered Voters

SB 244 states that a required annexation can be exempted if the commission “finds, based upon written evidence, that a majority of the residents within the affected territory are opposed to annexation” (GC Section 56375(a)(8)(B)(ii)). While the statute references “residents,” other relevant California Government Code sections refer to “registered voters who reside within the area” or “property owners” rather than “residents” for purposes of approving or protesting an annexation (GC Sections 57075-57090). Some local commissions have proposed policies to establish consistency between these Government Code Sections. Tulare LAFCo, for example, proposed a policy that would use “residents, registered voters, and property owners.” Other commissions have also indicated using “registered voters” for purposes of written evidence, including Riverside LAFCo. In order to be consistent with current statutory protest policies, OPR recommends that commissions gather written evidence from residents, registered voters and property owners.

Residents and Registered Voters

SB 244 states that a required annexation can be exempted if the commission “finds, based upon written evidence, that a majority of the residents within the affected territory are opposed to annexation” (GC Section 56375(a)(8)(B)(ii)). While the statute references “residents”, other relevant California Government Code sections refer to “registered voters who reside within the area” or “property owners” rather than “residents” for purposes of approving or protesting an annexation (GC Sections 57075-57090). Some local commissions have proposed policies to establish consistency between these Government Code Sections. Tulare LAFCO, for example, proposed a policy that would use “residents, registered voters, and property owners.” Other commissions have also indicated using “registered voters” for purposes of written evidence, including Riverside LAFCO. In order to be consistent with current statutory protest policies, OPR recommends that commissions gather written evidence from residents, registered voters and property owners.

¹ In some contexts involving state agencies, state law defines “substantial number” to mean over 5 percent of the service population. (See, e.g., Gov. Code § 7296.2.) For additional information about federal and state requirements governing language access, see “Language Access Laws and Legal Issues: A Local Official’s Guide,” Institute for Local Government, 2011, available online at: http://www.ca-ilg.org/sites/main/files/file-attachments/resources_Language_Access_Guide_formatted_9-27-11_0.pdf.

Requirements for Local Governments

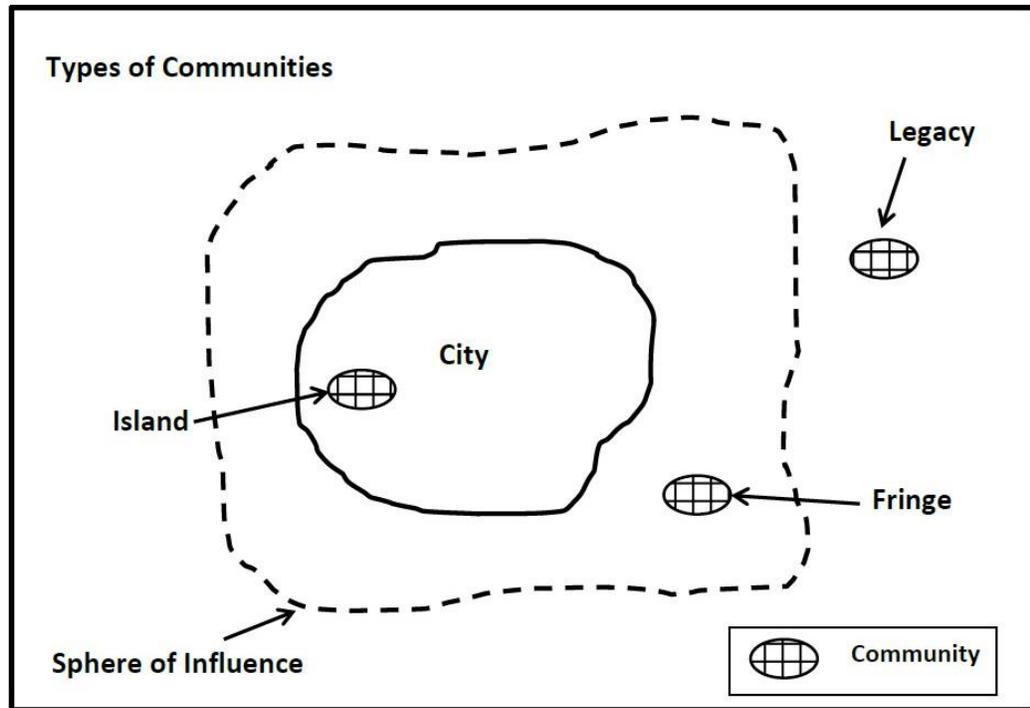
SB 244 also includes requirements for cities and counties. On or before the next adoption of its housing element, GC Section 65302.10.(a) requires that each city and county review and update the land use element of its general plan, based on available data, including, but not limited to, the data and analysis developed pursuant to Section 56430, of unincorporated island, fringe, or legacy communities inside or near its boundaries. The updated land use element shall include the following criteria. Please note that these requirements and definitions are independent of the new requirements and definitions related to the Cortese-Knox-Hertzberg Act of 2000 described above.

- Cities must identify and describe each “island community” or “fringe community,” as defined, that exist within that city’s sphere of influence that is a disadvantaged unincorporated community. (GC Section 65302.10.(a))
- Counties must identify and describe each legacy community, as defined, within the boundaries of a county that is a disadvantaged unincorporated community, but not including any area within the sphere of influence of a city. (GC Section 65302.10.(a))
- Cities and counties must include an analysis of water, wastewater, stormwater drainage, and structural fire protection needs or deficiencies for each of the identified communities in the land use element. (GC Section 65302.10.(a))
- Cities and counties must include an analysis in the land use element of potential funding mechanisms that could make the extension of services and facilities to identified communities financially feasible. (GC Section 65302.10.(a))

Cities and counties are not required to analyze or update their Land Use and Housing Elements as provided in SB 244 if: 1) the aforementioned communities are not present; or 2) if present, the communities are not defined as disadvantaged communities based on the analysis of the data available through the U.S. Census Bureau, Department of Finance, California Franchise Tax Board, or determined by LAFCo.

The following terms have the following meanings as they relate to the long range planning requirements of cities and counties under GC Section 65302.10 (a):

- “Community” means an inhabited area within a city or county that is comprised of no less than 10 dwellings adjacent or in close proximity to one another.
- “Disadvantaged unincorporated community” means a fringe, island, or legacy community in which the median household income is 80 percent or less than the statewide median household income.
- “Island community” means any inhabited and unincorporated territory that is surrounded or substantially surrounded by one or more cities or by one or more cities and a county boundary or the Pacific Ocean.
- “Fringe community” means any inhabited and unincorporated territory that is within a city’s sphere of influence.
- “Legacy community” means a geographically isolated community that is inhabited and has existed for at least 50 years.



local Discretion and Spirit and intent of SB 244

While SB 244 allows some discretion for commissions to draft alternative policies such policies must be consistent with the spirit and intent of SB 244. For example, SB 244 defines “inhabited area” as an area where 12 or more registered voters reside (Government Code Section 56046). However, LAFCOs may also redefine “inhabited area” as determined by local commission policy. LAFCo policies that increase the residency threshold have the potential to eliminate many mobile home communities that are both within and beyond spheres of influence of cities and, thus, perpetuate their exclusion from planning processes and basic municipal services. For this term and other terms lacking statutory guidance, OPR recommends that any alternative definition and/or policy conform to the intent of SB244 to remedy the exclusion of communities from planning processes and critical municipal services.

Identifying Communities and Disadvantaged Unincorporated Communities

The first task in the implementation of SB 244 is the identification of communities and disadvantaged unincorporated communities. As noted above, the statute specifically refers to income, population size and special relationship to other communities in the definition of disadvantaged unincorporated communities. To fully effectuate the purpose of SB 244, however, OPR encourages local governments to review a broader range of data sources. Potential data sources are described below.

One source of data about unincorporated communities is the US Census Bureau, which calls unincorporated communities “Census Designated Places” (CDP). The US Census Bureau defines Census Designated Places as:

“the statistical counterparts of incorporated places, and are delineated to provide data for settled concentrations of population that are identifiable by name but are not legally incorporated under the laws of the state in which they are located.

While the 2000 Census identified 3.6 million people in 598 CDPs, in that same year, nearly 2.8 million people lived in unincorporated areas that were not defined as CDPs but that arguably should be defined as disadvantaged unincorporated communities.² Therefore, while CDP data is one useful source of data, OPR suggests that local governments treat it as only one of a combination of data sources to identify and characterize disadvantaged unincorporated communities in a given area.

In addition to CDPs, OPR recommends that local government review income data generated by the [Department of Finance](#) and [California Franchise Tax Board](#). To the extent that they have been conducted, OPR also encourages cities and counties to review income surveys developed by academic research institutions, local government agencies such as local public health departments, or community-serving not-for-profit organizations.

Along with these data sources, OPR recommends that cities and counties do additional analyses to identify specific communities within large geographic areas. Because economic data, outside of more densely populated areas, is aggregated over large geographies, it fails to pick up specific communities within the boundaries of, for example, a census tract or ZIP code. PolicyLink, in collaboration with California Rural Legal Assistance, Inc. and California Rural Legal Assistance Foundation, has developed a methodology that employs a parcel density analysis, in combination with economic data to identify specific communities that would otherwise be masked by the data. A description of the methodology is provided in the insert on this page.

Finally, OPR recommends that local government consult with community-serving government and non-government organizations that may have knowledge about the existence of disadvantaged unincorporated communities. These organizations include: local departments of public health and health services agencies, legal service organizations, local community service providers, churches, community clinics, local research institutions, and other nonprofit organizations serving low-income communities.

Fringe, Island, and Legacy Communities

GC Section 65302.10 provides definitions of fringe, island, and legacy communities. However, certain terms within those definitions can be interpreted differently based on local context. For example, terms such as “substantially surrounded” or “close proximity” can differ greatly between rural and urban communities. Therefore, OPR recommends that, prior to identifying these communities in the land use element, cities and counties consult local LAFCo policies, if adopted, that may provide further definition.

2 Through extensive efforts to identify and map disadvantaged communities in the San Joaquin Valley Region and in Riverside County, the [Community Equity Initiative](#) found that limiting data to CDPs fails to capture many, if not most, of these communities SB 244 seeks to identify and bring into the processes. (PolicyLink and California Rural Legal Assistance (2011). *Community Equity Initiative: A Collaborative for Change*.)
http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/CEI_FINAL.PDF

