



December 1, 2022

TO: LOCSD Board of Directors

FROM: Ron Munds, General Manager
Julian Metcalf, former Administrative Services Manager

SUBJECT: Agenda Item 2C – 12/01/2022 Board Meeting
General Discussion on Los Osos Incorporating to be a City

STAFF RECOMMENDATION

President
Matthew D. Fourcroy

Vice President
Charles L. Cesena

Directors
Troy C. Gatchell
Marshall E. Ochylski
Christine M. Womack

General Manager
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Motion:

- 1. Receive and file report; and**
- 2. Provide direction to staff**

DISCUSSION

Background

A community group known as the Committee to Incorporate Los Osos asked the Los Osos Community Services District Board of Directors to adopt a resolution to apply for municipal incorporation of the community. Prior to evaluating this request, the Board may wish to first consider the requirements, process, costs, and potential risks related to the request.

LAFCO Staff Recommendations

The San Luis Obispo Local Agency Formation Commission (LAFCO) is a key stakeholder in the review and approval of an application for incorporation. LAFCO staff recommended that the District answer the following questions before making a formal proposal.

- “• What is the problem, if any, driving the desire for change in the existing governmental structure? Can the problem be addressed by other means?
- What is the role of the County government in the community? Is the County willing or able to address the identified problems?
- What is the community’s relationship to other adjacent communities?
- What would the proposed boundaries look like and how would that affect other agencies and communities?
- What is the past history of local efforts to incorporate?
- How is the community changing?
- What is the community’s capacity for self-governance?
- How are services currently provided and how would they change? Does the area have the ability to provide municipal level services if incorporated?
- Who is likely to benefit from a change and who is likely to lose?”

If the District is serious about exploring incorporation, then answering these questions would require an outreach effort to better understand what the community wants out of its local government and what they want the community to be in the long-term. Knowing this first would better guide the discussion of what structure of government could best serve the community and bring to light any alternative solutions.

Revenue Limitations

There are no legal barriers to municipal incorporation, but there are some practical revenue limitations to consider. In particular, one requirement in state code is “the proposed city is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following incorporation.” Legislative changes in 2011 reduced revenue from Vehicle License Fees (VLF) for newly incorporated cities, which limits the fiscal feasibility of any proposed city. The VLF revenue changes were so severe that no new incorporations have been approved since 2011. Overcoming this would require the community to raise additional tax revenue to meet the requirements. Based on average VLF revenue from already established cities, Los Osos would need to generate an estimated \$1.7 million per year, or \$118.04 per resident in new taxes to make up for the unavailable revenue.

Level of Service and Its Costs

Prior to making an application, the District could work with the County of San Luis Obispo (County) to better understand the current level of service the County is providing to the community and the cost of those services. This could help establish a baseline of what costs a newly incorporated City would need to bear and more accurately estimate revenues. Partnering with the County to estimate this information promotes cooperation and reduces the risk of polarization or antagonism. Depending on what the District learns, the process could identify alternatives to incorporation.

Cost To Prepare for and Apply for Incorporation

There is a range of expected costs if the District pursues incorporation. It would be reasonable to budget at least \$200,000 in costs and staff time to prepare and apply for incorporation. The cost of the required comprehensive fiscal analysis is estimated at between \$50,000 to \$100,000 by LAFCO staff. Other costs would include legal counsel, consultant and staff time, public outreach and contingencies for unexpected expenses. Other studies could also be required by LAFCO such as sphere of influence and municipal services review which would add additional costs. At this time, the District may not have sufficient staff time or funding budgeted to apply for incorporation with LAFCO or conduct initial surveys and outreach.

District Versus Citizen Group Led Application

As discussed above, the District may not have sufficient staffing or funding resources to pursue incorporation at this time. A community group may have more resources available through fundraising and, as discussed previously, they may have access to more advantageous funding from the state than the District does. This is because an incorporation application if made by a citizen group (with 25% of registered voters who sign a petition to initiate) and they have insufficient funds, they may request a loan from the state’s General Fund to pay for expenses related to the proposal. If the state makes the loan and the proposal fails, then the state can absorb the cost. If the proposal passes and the community is incorporated, the citizen group will need to repay the loan within two years.

Request for Board Direction

At this time, Staff requests Direction from the Board

Additional Information

Further details on the process, outstanding questions, and considerations related to incorporation are included Attachment B: Considerations for Los Osos Community Services District Regarding Municipal Incorporation.

FINANCIAL IMPACT

There are no direct financial impacts associated with the recommended action.

Attachments

Attachment A: Letter from Committee to Incorporate Los Osos

Attachment B: Memorandum on Considerations for Los Osos Community Services District Regarding Municipal Incorporation.



September 8, 2022

Dear President Fourcroy:

We believe Los Osos deserves more.

We suffer from a democracy deficit, most recently displayed by mapmakers at the County using us as a trading chit to form new districts. This deficit exists not only in elections for representatives at the county level, but in the government agencies that make important decisions—such as the San Luis Obispo Council of Governments, the Regional Transit Authority, or the Integrated Waste Management Authority—where we are only indirectly represented.

We are all familiar with the consequences of this democracy deficit.

You, the LOCSD board of directors, have the power to remedy all of this. As an “affected agency,” Government Code, section 56654 gives the CSD the power to petition the Local Agency Formation Commission (“LAFCO”)—another agency we are under-represented in—to study incorporation as a town.¹ If LAFCO determines that a future Town of Los Osos is viable, the voters then have the final say.² We believe that LAFCO will determine that the future town is viable. We cannot know until LAFCO studies the matter.

We are asking you to enact a resolution that will cause LAFCO to do just that, which will enable Los Osos to stop wondering and find out definitively if this is a viable option for our community, or, in the worst case, will give us a clear road map on what would need to change for it to be viable.

¹ Under California law, there is no legal distinction between a “city” and a “town,” but the different labels matter to the communities that choose them in terms of community identity and sense of place.

² Government Code, § 57077

If LAFCO concludes we are not ready, we will work to bring about the changes needed to get there. But if they conclude, as we believe, that we are, then the next step is in your hands.

In 2014, then-director Jon-Erik Storm, researched this topic. Using the then-current financials, he concluded that a town would be viable. Most of the changes in revenues and expenditures since then have been favorable for the future town; however, given variables introduced by Covid funding, it is difficult for an outside individual to do a persuasive study without inside access to County data. In any event, it would only ever be an outside study. You, as the CSD, can ask LAFCO to do the definitive study, the one that has the only legal effect.

We are aware that there has not been a successful incorporation in 20 years. However, there are some unique features of the fiscal landscape of Los Osos that we believe will bring about success. The oft-repeated mantra for why Los Osos cannot incorporate is the lack of a tax base. However, since that mantra lost its connection with reality, Los Osos has enacted a special fire tax. This, among other things, is counted as our “tax base” for purposes of the LAFCO calculations.³ Coupled with the fact that the County apparently loses money on Los Osos, we believe that even given the very difficult process that Los Osos can be successful. With your help, we can find out.

A new town would face many challenges, but it would also create many opportunities - most importantly, it would give us a powerful voice in critical questions about our home, over questions of land use and development, the environment, and law enforcement, and strengthen our voice in the vital matter of our water supply.

What better way to remedy the democracy deficit than to use the money allocated in this year’s budget for democracy?⁴ That is, for the election, which is now uncontested. The initial cost is the same \$15,000 you set aside.⁵

³ OPR Guidelines, p. 32

⁴ Los Osos CSD 2022-23 Budget, p. 2.

⁵ SLO LAFCO Fee Schedule, July 2022.

Accordingly, we respectfully request that the Los Osos Community Services District board of directors take the following actions:

- (1) Place on the agenda a business item to discuss a resolution requesting the San Luis Obispo County Local Agency Formation Commission ("LAFCO") to study the incorporation of the Town of Los Osos at the next regularly scheduled general board meeting; and,
- (2) Approve this resolution

For your ready reference, a draft resolution is enclosed with this letter. In the alternative, we would respectfully request that you vote to declare that such a study be in the public interest.

We stand ready to answer any questions you may have.

Very truly yours,

THE COMMITTEE TO INCORPORATE LOS OSOS



Jon-Erik G. Storm,
former LOCSD director



Kristin T. Horowitz, LOCAC

RESOLUTION NO. 2022 -

DATE:

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE LOS OSOS
COMMUNITY SERVICES DISTRICT REQUESTING THE LOCAL AGENCY
FORMATION COMMISSION TO INITIATE A PROCEEDING FOR THE
INCORPORATION OF THE TOWN OF LOS OSOS INCLUDING THE
REORGANIZATION OF THE LOS OSOS COMMUNITY SERVICES DISTRICT INTO
THE NEW TOWN**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LOS OSOS
COMMUNITY SERVICES DISTRICT (“THE DISTRICT”) AS FOLLOWS:

SECTION 1. FINDINGS.

The Board of Directors of the District hereby finds, determines and declares that:

1. The District desires to initiate proceedings pursuant to the Cortese-Knox-Herzberg Local Government Reorganization Act of 2000 (the “Act”), commencing with Section 2000 of the California Government Code, for incorporation of the Town of Los Osos and the reorganization of the District into the new town; and,
2. Notice of Intent to adopt this resolution of application has been given; and,
3. The principal reasons for these proposed changes are into increase local control over government for the people of Los Osos; and,
4. The following agency or agencies would be affected by the proposed jurisdictional changes:

<u>Agency</u>	<u>Nature of Change</u>
County of San Luis Obispo	Incorporation of unincorporated territory
Los Osos CSD	Reorganization into the new town

5. The description of the proposed incorporation is attached hereto as Exhibit A and incorporated herein by reference. The proposed service transfers are attached hereto as Exhibit B and are incorporated herein by reference. The territory proposed to be incorporated is identical to the metes and bounds of the District, which are attached hereto as Exhibit C and incorporated by reference herein, and a map thereof which is attached hereto as Exhibit D and incorporated by reference herein; and,

6. The proposal is not subject to any terms or conditions; and,
7. This proposal does not affect territory within the sphere of influence of any other agency, and is not adjacent to any other agency; and,
8. The District desires that the Local Agency Formation Commission assume Lead Agency status responsible for compliance with the California Environmental Quality Act;

SECTION 2.

Be it further resolved that the Board of Directors of the Los Osos Community Services District hereby adopts and approves this Resolution of Application, and hereby requests the Local Agency Formation Commission of San Luis Obispo to take proceedings for the incorporation of the new town and reorganization of the District as authorized in the Act.

Section 3. EFFECTIVE DATE.

This resolution shall become effective immediately upon adoption.

EXHIBIT A

Exhibit A: Description

Issues

There is simply no other way to have local control of land use and planning without incorporation under California law. Proponents are aware of the numerous services that community services districts may provide and have thoroughly considered whether activating latent powers would solve their concern. It cannot.

No particular land use decision by the County spurred this proposal on. It is simply a combination of uncertainty regarding the Board of Supervisors and the inability to vote for more than one of the five. No matter what temporary bargains may be struck, there is no guarantee over any control over future decisions without an incorporated town.

Proponents believe that enhancing local control over land use, service levels, and allocation of revenues not to serve any particular end or plan, but simply for the right to self-govern more directly.

Previous Attempts

According to the 1998 LAFCO Staff Report regarding the formation of the CSD, 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, that we lack the tax base to incorporate. Numerous changes to the tax base, including those initiated by voters, have occurred since then.

Given the rapidly changing universe that is California municipal finance, no assumptions from very far in the past can remain unchecked

Population

The population of Los Osos is mostly stable, in the low- to mid-14,000 range.

Environmental Impact

Changes in the organization of local agencies are categorically exempt from CEQA under 14 Cal. Code Regs. §§15320, 15378. There is no change in the areas where any powers are exercised, nor is there any change in which services are provided. As the Monterey Superior Court ruled in *Carmel Valley Forum v. Local Agency Formation Commission of Monterey County*, No. M83394 (May 2, 2008), town incorporations work no direct physical change in the environment and commit the future town to no action or “project” CEQA does not apply and a negative declaration must issue. The Court specifically cited 14 Cal. Code Regs. §15378 that

exempts organizational activities of government that will not result in direct or indirect physical changes to the environment.

Proponents do not doubt that some potential opponent to incorporation will raise the need for an EIR as a filibustering tactic against incorporation. In doing so, they would not have the law on their side.

Other factors considered by LAFCO pursuant to its Policies and Procedures for town incorporation:

The Town is not adjacent to another incorporated city. The Town is approximately two miles south of Morro Bay and ten miles west of San Luis Obispo. The Town Boundaries are identical to the existing CSD boundaries and are well defined.

Los Osos is “compact,” well-defined community with a strong sense of identity that is well known throughout the County. The proposed Town includes a variety of land uses, including open space, two business districts, numerous multi-family zones, school facilities, state and local park space, ecological preserves, agriculture, recreation facilities, a waterfront, and, of course, large areas of single-family homes. These areas already have well-established municipal services. Los Osos is already a town in every sense of the word except under the Act.

Growth or non-growth is not a factor in this Proposal. This is a choice left to the future Town and its voters. The County already develops a separate “Los Osos Community Plan” that must be consistent with its broader General Plan. Proponents believe this would be the logical starting point for the first Town General Plan.

Boundaries

Government Code, section 56652(c) requires a map and description of the boundaries and territory subject to the Proposal.¹ The boundaries of the Town of Los Osos as proposed (hereinafter “Town Boundary”) are equal and coextensive with the existing boundaries of the CSD. The metes and bounds of the CSD are set forth in Exhibit C.

¹ See also SLO LAFCO Policy 3.1-1(b)(1); OPR Incorporation Guidelines, p. 18.

EXHIBIT B

Public Service	Current Provider	Anticipated Provider	Level of Service	Funding Source
General Government	County	Town - Staff & Contract Services	Enhanced	General Fund
Land Use/Planning	County	Town - Staff & Contract Services	Enhanced	General Fund/Fees
Law Enforcement	San Luis Obispo County Sheriff	Town – Contract with San Luis Obispo County Sheriff	No change	General Fund
Animal Control	County	Town - Contract with County	No change	General Fund/Fees
Road/Traffic	County	Town - Contract with County	No change	Road Fund/General Fund
Fire/EMS	Los Osos CSD – Contract with Cal Fire	Town – Contract with Cal Fire	No change	General Fund/Special Fire Tax
Traffic Control & Accident Investigation	San Luis Obispo County Sheriff	Town – Contract with San Luis Obispo County Sheriff	No change	General Fund
Building & Safety	County	Town - Contract Services	No change	General Fund/Fees
Code Enforcement	County	Town – Contract Services	No change	General Fund/Fees
Engineering	County	Town - Contract Services	No change	General Fund/Fees
Parks & Recreation	County	County	No change	As currently funded
Street Lighting	Los Osos CSD/SLO County	Town/SLO County	No change	As currently funded
Street Sweeping	County	County	No charge	As currently funded
Storm Water Runoff	Los Osos CSD	Town	No change	As currently funded

Electricity	PG&E	PG&E	No change	As currently funded
Natural Gas	SoCal Gas	SoCal Gas	No change	As currently funded
Domestic Water	S&T Mutual, Los Osos CSD, Golden State Water	S&T Mutual, Town, Golden State Water	No change	As currently funded
Cable TV/Broadband	Charter	Spectrum	No change	As currently funded
Solid Waste	County Franchise – Contract with Mission Country	Town Franchise – Contract with Mission Country	No change	Franchise Fee
Public Education (K-12)	San Luis Coastal Unified School District	San Luis Coastal Unified School District	No change	As currently funded
Public Education (13-14)	San Luis Obispo Community College District	San Luis Obispo Community College District	No change	As currently funded
Library	County	County	No change	As currently funded
Cemetery	N/A	N/A	N/A	N/A
Public Transit	SLO Council of Governments	SLO Council of Governments	No change	As currently funded
Flood Control	County	County	No change	As currently funded
Solid Waste Landfill	County	County	No change	As currently funded
Wastewater	County	Town	No change	As currently funded
Mosquito Abatement	N/A	N/A	N/A	N/A

EXHIBIT C

Exhibit C: Metes & Bounds

All of that real property within the metes and bounds of the Los Osos Community Services District Boundary Description, County of San Luis Obispo, State of California, as recorded in document 1998-078881 in the Office of the Recorder of the County of San Luis Obispo, which is described as follows:

All of that real property within Lots 31, 32, 77 and 79 of the Subdivision of the Ranchos Cañada De Los Osos and La Laguna and Sections 13, 23 and 24 in Township 30 South, Range 10 East, Mount Diablo Base and Meridian, County of San Luis Obispo, State of California, the boundary of which is described as follows:

Beginning at the intersection of the mean high tide line of Morro Bay with the westerly line of Section 13, Township 30 South, Range 10 East, Mount Diablo Base and Meridian, as shown on the official plat of the survey of said land approved by the Surveyor General on March 16, 1871;

1) thence, in a general northeasterly direction 16,000 feet, more or less, along said mean high tide line to its intersection with the westerly prolongation of the southerly line of Los Osos Avenue as shown on the map of the Town of El Moro recorded in Book A, page 81, of Maps in the Office of the Recorder of the County of San Luis Obispo;

2) thence, East 2,300 feet, more or less, along said westerly prolongation and said southerly line of Los Osos Avenue to the northerly terminus of a line which is 45 feet at right angles easterly of and parallel with the easterly line of 18th Street, as said street is shown on said map of the Town of El Moro, said parallel line also being the easterly line of South Bay Boulevard, formerly 18th Street and Los Osos - Morro Bay Road as shown on the plan and profile maps for said road sheets 3 and 4 of 43, dated Aug., 1965, Doc. #3131 and 3132 on file in the Office of the County Surveyor of said County; thence, southerly along the easterly line of said South Bay Boulevard, as shown on said plan and profile map and described in the condemnation action for public use to said County recorded June 8, 1996, in Volume 1399, page 159, Official Records of said County, over the following courses numbered 3 through 5:

3) S 1°53'49" W, 319.26 feet;

4) S 3°48'50" E, 150.75 feet;

5) S 7°36'28" W, 170.85 feet, more or less, to the southerly line of Lot C as said lot is shown on said map of the Town of El Moro; thence, easterly along the southerly lines of Lots C and D of said Town of El Moro and the easterly prolongation of the southerly line of Lot D to the centerline of the Boulevard, said boulevard being shown unnamed and without dimension on said map of the Town of El Moro, and southeasterly along the centerline of the boulevard to its intersection with the southeasterly line of the Town of El Moro as said line is shown on said map, the aforementioned courses being the southerly and southwesterly boundaries of that property conveyed to the State of California under Final Order of Condemnation recorded March 16, 1978, in Volume 2055, page 256, Official Records of said County, and more particularly described in the following courses numbered 6 through 9, the data being that shown on a Record of Survey of said property on file in the Office of the County Recorder of said County in Book 43, at Page 74;

6) Leaving the easterly line of said South Bay Boulevard, the last mentioned course being shown as S 7°36'28" W on said plan and profile maps, S 87°S3'22" E 860.62 feet along said southerly lines of Lots C and D and said easterly prolongation to its intersection with said centerline of the Boulevard and the beginning of a curve, a radial of said curve to said intersection bears N59°31'17" E;

7) Southerly along said centerline through a curve concave southwesterly with radius of 1,999.00 feet central angle of 17°06'02", an arc length of 596.62 feet to the beginning of a reverse curve;

8) Southeasterly along said centerline through a curve concave northeasterly with radius of 1,369.50 feet, central angle of 69°43'54", an arc length of 1,666.75 feet to the beginning of a reverse curve;

9) Easterly along said centerline through a curve concave southerly with a radius of 1,097.00 feet, central angle of 13°53'27", an arc length of 265.96 feet to its intersection with said southeasterly line of the Town of El Moro, said intersection being S 39°28'24" W 165.06 feet along said southeasterly line from the northerly terminus of said line as shown on said Record of Survey, said northerly terminus being points M.C. 53 and A.S. 1 as shown on Woods' Revised Map of El Moro recorded in Book A, page 80, of Maps in the Office of said County Recorder;

10) thence, S 38° W 3,384 feet, more or less, along said southeasterly line, as shown on said Woods' Revised Map of El Moro, to a point 400.00 feet northeasterly along said line from Post A.S. 2, said southeasterly line also being the northwesterly line of that property conveyed to N. H. Powell by deed recorded September 4, 1957, in Volume 906, page 147, Official Records of said County, and shown on CO 70-4 in Book 4 of Parcel Maps at Page 84, with said Post A.S. 2 being at the most westerly corner of said property;

11) thence, S 59°17' E 450.00 feet along a line parallel with the Southwesterly line of said Powell property to a point, said southwesterly line also being the northeasterly line of Tract No. 90, Vista Del Morro No. 4, the map for said tract being recorded in Book 5, page 95, of Maps in the Office of said County Recorder;

12) thence, S 38°19' W 40.50 feet along a line parallel with the aforementioned northwesterly line of said property, the bearing of said northwesterly line per said last mentioned deed being S 38°19' W, to a point on the northwesterly prolongation of the northeasterly line of that property conveyed to Williams K. Glikbarg by deed recorded May 31, 1979, in Volume 2158, page 241, Official Records of said County;

13) thence, S 59°17' E 681.27 feet along the northwesterly prolongation of said northeasterly line and said northeasterly line to the southeasterly line of said Glikbarg property, said southeasterly line also being a common line with the northwesterly line of that property conveyed to Los Osos Farm Products Company by deed recorded August 27, 1920, in Volume 140, page 258, of Deeds in the Office of said County Recorder;

14) thence, S 56°06'30" W 394.44 feet along said common line to said northeasterly line of Tract No. 90 and the most southerly and westerly corners of the Glikbarg and Los Osos Farm Products Company properties, respectively;

15) thence, S 59°22' E 3,322 feet, more or less, along the southwestery line of said Los Osos Farm Products Company property to point S24 on the centerline of the Los Osos Creek as shown 011 the Map of Subdivision of the Ranchos Cañada De Los Osos and La Laguna recorded in Book A, pages 83 and 84, of Maps in the Office of said County Recorder;

16) thence, in a general southwestery direction along the centerline of said creek, said centerline being the dividing line between Lots 30 and 79 and Lots 32 and 33 on the east and Lot 79 on the west as shown on said map of the Ranchos, to the northerly line of Lot 77 as shown on said map;

17) thence, N 75°15' W 4,000 feet, more or less, along the northerly line of Lot 77 to the most easterly corner of that property conveyed to Karen L. Fitch by deed recorded December 26, 1978, in Volume 2122, page 777, Official Records of said County, said easterly corner being S 75°15' E 2099.49 feet along said northerly line from the northwest corner of said lot, the bearing of said northerly line being S 73 °45'20" E as described in said deed;

18) thence, S 74°45'20" W 1278.24 feet as described in said deed;

19) thence, S 47°19'49" W 1115.95 feet as described in said deed to a point on the westerly line of Lot 77, said point being S 1018'00" W 1680.19 feet along said westerly line from said northwest corner as described in said deed, said westerly line also being the easterly line of Section 21, Township 30 South, Range 10 East, Mount Diablo Base and Meridian as shown on the aforementioned official plat;

20) thence, S 1018'00" W 102 feet, more or less, along the easterly line of said Section 24 to the southeast corner of the north 1/2 of the south 1/2 of said Section 24;

21) thence, N 89°31'56" W, 4477 feet, more or less, along the southerly line of the north 1/2 of the south 1/2 of said Section 24 to the most easterly corner of that property conveyed to the State of California as Parcel I365 under Final Order of Condemnation recorded December 3, 1975, in Volume 1866, page 470, Official Records of said County, said corner being S 89°31'56" E 803.22 feet along said southerly line from the westerly line of said Section 24;

22) thence, N 43 °00'00" W 873.19 feet as described in said deed;

23) thence, N 60°35'34" W 210.61 feet as described in said deed to a point on the westerly line of said Section 24, said point being N 1°53'09" E 735.85 feet along the westerly line of said Section 24 from the southwest corner of the north 1/2 of the south 1/2 of said Section 24 as described in said deed, said point also being the southwest corner of that property conveyed to M.S. Martin by deed recorded April 2, 1951, in Volume 604, page 59, Official Records of said County;

24) thence, North 600 feet, the bearing and distance described in said last mentioned deed, along the westerly line of said Section 24 to the northwest corner of the southwest 1/4 of said Section 24, said corner being the common 1/4 section corner for Sections 24 and 23;

25) thence, West 148.50 feet along the southerly line of the northeast 1/4 of Section 23 to a line which is 148.50 feet at right angles to, westerly of and parallel with the easterly line of said Section 23;

26) thence, northerly along the westerly line of the easterly 148.50 feet of said Section 23 to a 2" I.P. with Tag LS 5144 1112.86 feet north of Pecho Valley Road as shown on 50 LS 5;

27) thence, N 88°22'04" W 1822.20 feet;

28) thence, N 01028'56" E 1452.00 feet to the north line of said Section 23;

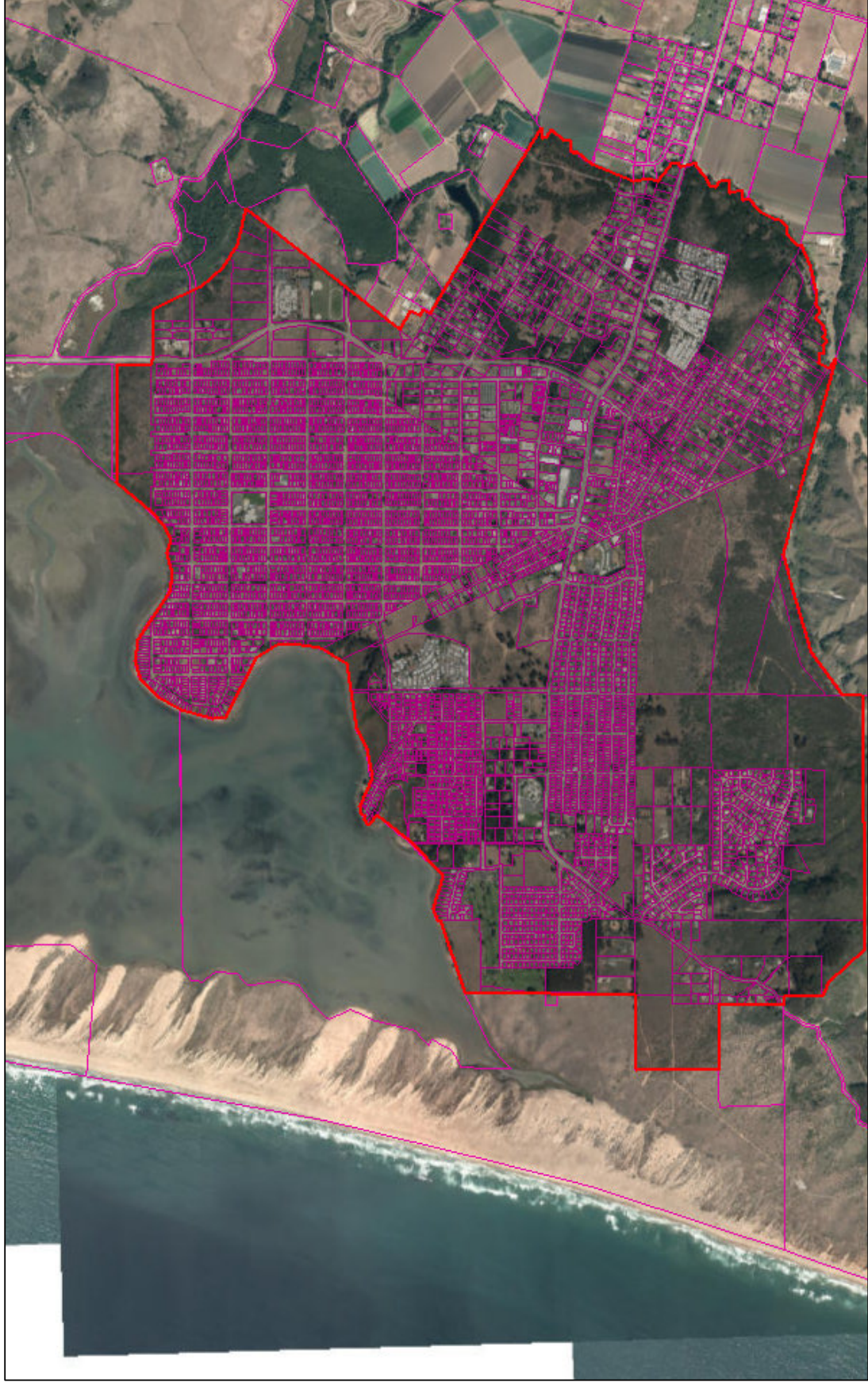
29) thence, easterly along the north line of Section 23 to the northeast corner of said Section, said corner being a common corner with the southwest corner of Section 13;

30) thence, northerly along the westerly line of said Section 13, as shown on the map recorded in Book 10, page 104, Records of Surveys in the Office of said County Recorder, to the aforementioned mean high tide line and the point of beginning.

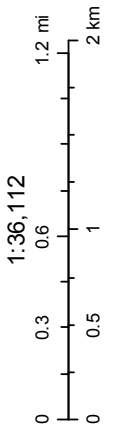
Area within boundary is 3,443 acres, more or less.

EXHIBIT D

Town of Los Osos



May 12, 2014



San Luis Obispo County, Parcel Quest, FEIWA, USGS, State of California

Considerations for Los Osos Community Services District Regarding Municipal Incorporation

November 8, 2022

Background

A community group known as the Committee to Incorporate Los Osos asked the Los Osos Community Services District Board of Directors to adopt a resolution to apply for municipal incorporation of the community. This memo highlights some known information, outstanding questions, and considerations for the Board of Directors prior to pursuing incorporation.

Executive Summary

If the District is serious about exploring incorporation the following considerations may help inform the process.

Are there legal barriers to incorporation? The short answer is no, municipal incorporation is legal, but there are some practical limitations to consider. In particular, one requirement in state code is “the proposed city is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following incorporation.” Legislative changes in 2011 reduced revenue for newly incorporated cities, which limits the fiscal feasibility of any proposed city. These revenue changes were so severe that no new incorporations have been approved since 2011. Overcoming this would likely require the community to raise additional tax revenue to meet the requirements. Based on average revenue from already established cities, Los Osos would need to generate an estimated \$1.7 million per year, or \$118.04 per resident in new taxes to make up for the unavailable revenue.

If the District is serious about exploring incorporation, the District should consider an outreach effort to better understand what the community wants out of its local government and what they want the community to be in the long-term. Knowing this first would better guide the discussion of what structure of government could best serve the community and bring to light any alternative solutions.

At the same time, the District should engage with the San Luis Obispo Local Agency Formation Commission (LAFCO) to ensure it is best prepared for an application. The District should also engage with the County of San Luis Obispo (County) to estimate the current services and spending it delivers to residents in Los Osos, and the revenues generated within the service area. By partnering with the County, the District can then seek mutually beneficial solutions through cooperation that could lead to pursuing incorporation, or other alternatives depending on what the District learns.

We estimate that the total cost of an application by the District could exceed \$200,000 for studies and staff time. This does not include the subsequent costs of establishing an incorporated City. The District does not currently have the resources to fund this effort. If instead the effort were led by a citizen group, and the group first secures a petition of 25 percent of the community's registered voters, then the state could grant a loan from the state's General Fund to the group to pay for these costs.

Are there legal barriers to incorporation?

The short answer is no, municipal incorporation is legal, but there are some practical caveats to consider. The process of incorporation is outlined in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (the Act) and subsequent legislative updates.^{1 2}

While state code still allows for incorporating a city, Senate Bill 89 in 2011 (SB 89)³ enacted changes with the state's budget act that makes it likely infeasible to meet the requirements. SB 89 reduced the vehicle license fees (VLF) and equivalent revenue for all cities and eliminated them for cities incorporated after 2004. This created a challenge for four recently incorporated cities at the time. The state adopted Senate Bill 130⁴ in 2017, which made these four cities' VLF revenue comparable to other pre-2004 cities' revenue but did not restore the revenue for future communities that seek incorporation.

These revenue reductions were so severe that no new incorporations have been approved since 2011. Without access to VLF revenue or alternatives, it is generally believed that proposed cities could not meet the revenue requirements for an incorporation. Government code section 56720 (e) requires the following.

“The proposed city is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following incorporation.”

To answer this question, the District would need to estimate the revenue it would generate if incorporated, the services it would provide and at what levels as discussed further below.

¹ California Government Code - GOV § 56000 is the section created by the Act, and section 56720-56724 addresses the incorporation of cities specifically. An outline of the act, with annual updates noting amendments and changes is maintained by the California Association of Local Agency Formation Commissions (CALAFCO) on their website, as of October 2022, the most recent guide is from December 2021: <https://calafco.org/resources/cortese-knox-hertzberg-act/ckh-reorganization-act-guide>.

² CALAFCO also maintains a guide to the process of incorporation, although it hasn't been updated since 2003 and subsequent legislation would have to be reviewed to confirm that the process is effectively unchanged. The guide is located here: <https://calafco.org/resources/incorporation-city-or-town/guide-lafco-process-incorporation>

³ Senate Bill 89 (2011): http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0051-0100/sb_89_bill_20110628_enrolled.html
Explanation of fiscal changes: <http://www.californiacityfinance.com/VLFCOPS110705.pdf>

⁴ Senate Bill 130 (2017): https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB130

How much new revenue might be needed?

With the revenue limitations in mind, meeting the fiscal requirements for a proposed incorporation would likely require the community to raise additional tax revenue. In fiscal year 2020-21, California cities on average generated \$118.04 per resident of revenue from Property Tax In-Lieu of Vehicle License Fees.⁵ Based on Los Osos's 2020 population of 14,465⁶, the community would need to raise an estimated \$1.7 million per year in additional taxes to make up for the VLF equivalent revenue that newly incorporated cities cannot legally access. This estimate serves as a rough magnitude. The amount of revenue needed to meet the community's needs and expectations for different levels of service could vary and is discussed later in the report.

Could the state change state law?

Yes, but significant changes in favor of more local government revenue are unlikely. As noted above, SB 130 (2017) provided revenues to support the four cities incorporated between 2004 and 2011. However, the state has a long history of legislative changes to local government revenue that are adopted to balance the state's budget or cash flow challenges at the expense of local governments. For example, in 1992, the state enacted property tax shifts away from cities and to K-14 school districts. In the late 1990s, during a strong economic period, the state reduced the VLF fees motorists pay, which reduced revenue to cities, but at the time backfilled with money from the state's General Fund. Then, in 2004, the state enacted the VLF Swap, which moved VLF revenues away from cities and swapped it using a formula for additional property tax revenues available to local governments. This was followed in 2006 with changes known as the "Triple Flip" that used a similar process to replace sales and use taxes. These legislative changes, plus other voter-approved changes over the years, have eroded the revenues, cash flow, and revenue raising abilities of cities and other local governments. Based on the state's history, and the possibility as of November 2022, that the state may be in or headed toward a recession of an unknown magnitude, make it less likely that the state would enact legislation that returned revenue to local governments.

What Are the Other Key Requirements and Process For Incorporation?

According to California Government Code Section **56720** LAFCO must find the following true:

“(a) The proposed incorporation is consistent with the intent of this division, including, but not limited to, the policies of Sections 56001, 56300, 56301, and 56377.⁷

(b) It has reviewed the spheres of influence of the affected local agencies and the incorporation is consistent with those spheres of influence.

⁵ Calculation based on self-reported data from all cities to the California State Controller's Office. Cities Raw Data for Fiscal Years 2020-21. <https://bythenumbers.sco.ca.gov/Raw-Data/Cities-Raw-Data-for-Fiscal-Years-2020-21/kyrq-f99p>

⁶ US Census Bureau, April 2020: <https://www.census.gov/quickfacts/losososcdpcalifornia>

⁷ Sections 56001, 56300, 56301, and 56377 mostly focuses on land use, such as preserving prime agricultural land and discouraging urban sprawl, and services for urbanized communities.

(c) It has reviewed the comprehensive fiscal analysis prepared pursuant to Section 56800 and the Controller's report prepared pursuant to Section 56801.

(d) It has reviewed the executive officer's report and recommendation prepared pursuant to Section 56665, and the testimony presented at its public hearing.

(e) The proposed city is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following incorporation.”

The process for incorporating a new city can be initiated⁸, or started, in three ways. They are:

1. **Registered Voters:** A petition signed by at least 25% of the registered voters residing in the proposed incorporation area is submitted to LAFCO. The Registrar of Voters must verify the number of valid signatures on petitions of registered voters.
2. **Landowners:** A petition signed by at least 25% of the landowners owning at least 25% of the assessed value of land within the proposed incorporation area. The County Assessor's Office must verify the petitions of landowners.
3. **Legislative Body:** The legislative body of an affected agency⁹ can adopt a resolution of application. An affected agency is any city, special district or county which contains territory, including a sphere of influence, within the proposed incorporation boundaries. If the territory identified in the resolution is within the boundaries of a city the “incorporation” process would follow under the procedures for a special reorganization rather than the change of organization process.

If the petitions are approved by LAFCO through various certification requirements, then the proponent can prepare and submit an application. LAFCO staff may take up to a year to review the application. During this time and pending the guidance from LAFCO, the proponent would likely prepare and fund various required studies after the application is submitted. These include a Comprehensive Fiscal Analysis, or CFA, developing a service plan, a map and legal description of boundaries, a sphere of influence and municipal service review, and possibly other information and necessary legal counsel.

LAFCO's Executive Officer reviews the application and prepares a final report with a recommendation to approve or disapprove the incorporation. LAFCO distributes the report and makes required notification. Any interested parties may request that the State Controller review the CFA for the accuracy and reliability of the information. The requesting party must pay for the review by the State Controller.

If LAFCO's Executive Officer determines the application complete, they will issue a Certificate of Filing, and schedule and notice and public hearing. Following the hearing, LAFCO may approve, approve with conditions or disapprove of the plan for incorporation. If approved, an election for

⁸ California Government Code Section 56047

⁹ California Government Code Section 56014

incorporation could be placed on the ballot of the next general election. If approved by voters, then subsequent steps and costs are necessary to prepare and establish the newly incorporated City.

A comprehensive explanation and guide to these steps is available in the Governor's Office of Planning and Research "[A Guide to the LAFCO Process for Incorporations](#)" from October 2003.

What are best practice recommendations?

Since there have been so few incorporations in recent decades, there are limited current resources on the topic. One resource was recommended by staff from LAFCO is "Choices for the Unincorporated Community: A Guide to Local Government Alternatives in California" a book published in 1981 by the Institute of Governmental Affairs, University of California. The following are excerpts from the book that LAFCO staff recommended considering before making a formal proposal.

- “• What is the problem, if any, driving the desire for change in the existing governmental structure? Can the problem be addressed by other means?
- What is the role of the County government in the community? Is the County willing or able to address the identified problems?
- What is the community's relationship to other adjacent communities?
- What would the proposed boundaries look like and how would that affect other agencies and communities?
- What is the past history of local efforts to incorporate?
- How is the community changing?
- What is the community's capacity for self-governance?
- How are services currently provided and how would they change? Does the area have the ability to provide municipal level services if incorporated?
- Who is likely to benefit from a change and who is likely to lose?”

What services and what level of services would the community want from a municipality?

With the possibility that limited revenue would be available to Los Osos if it sought incorporation, it is important to determine what services and level of services the community would expect a municipal government to provide. Knowing this could help determine the amount of revenue needed, and how much supplemental revenue a city would need to provide those services.

The community might want a similar level of services that the County of San Luis Obispo (County) already provides, or they might want an increased level of service, such as increased level of law enforcement personnel, more frequent road repair, or improved pedestrian safety infrastructure.

The District or interested community members could engage in both informal and formal outreach such as tabling at events, community forums, or structured surveys to first better understand the community's interest.

What level of service is the County currently providing and how much does the County spend?

This leads to the question of determining the level of services the County is already providing and how much it spends. It would be possible to estimate this based on some County budget information, but only the County could provide some of the internal information. The District could first partner with the County to understand the services the County is providing and estimate the costs. The outcome could be an amount that is higher or lower than some parties' assumptions, and knowing this information could also inform alternatives to incorporation.

Could a city be more efficient than the County?

Depending on what information can be learned from the County, there are two frameworks to answer this question. First, is the idea of economies of scale, where the County provides a greater volume of services and therefore more efficiently keeps more staff expertise, software, and other processes that can more efficiently and effectively deliver services. In contrast, the County's size and overhead could also weigh on it and add additional costs when delivering services without improving the efficiency or effectiveness of the services. Better understanding the County's current services and developing a cost accounting estimate of the services that are delivered to and benefiting Los Osos could help answer this question.

As a municipality, what minimum services would the City need to provide?

Some services, such as law enforcement could be contracted back to the County to provide through their existing Sheriff's personnel, but at a cost to the incorporated city. Other services such as public works, planning, building and code enforcement, may be appropriate to run directly from an incorporated city, especially if the community desired increased local control in these areas. Finally, some administrative functions, such as finance and human resources could be managed within the city, contracted with the County, or contracted externally as some other small jurisdictions do.

Is Los Osos under-funded by the County compared to other unincorporated communities?

This is difficult to answer beyond speculation without detailed information and insight from the County.

How much revenue could the community generate as a municipality based on current laws and the current tax base?

The District could initially estimate revenue independently of the County, but a more precise estimate could be developed with their help. For example, the District could estimate property tax revenue based on the known total assessed value of the property within the community of Los Osos, and the amount of property tax revenue that an incorporated city might receive in lieu

of the County.¹⁰ Similarly, Sales and Use Tax, Transient Occupancy Tax, Business License Tax, Utility User Tax, service charges and fees, and fines, forfeitures and penalties could be estimated independently of the County based on broad assumptions and known data from comparable communities. However, a more accurate estimate could be developed with the cooperation of the County.

In addition, an incorporation might include the assumption of the County's wastewater treatment operations. The cost of the wastewater treatment is currently paid by residents on their property tax bill, based on their water use during winter months. If Los Osos took responsibility for this service, the same revenue would be available to fund the enterprise operation.

As discussed below, additional revenue beyond the current amounts could be generated, but most methods would require voter-approval of taxes or an economic development strategy to expand the tax base.

Would incorporation increase opportunities for additional grants and federal funding?

Yes, it is possible that Los Osos could be able to receive additional funding opportunities from external sources. For example, the City of San Luis Obispo reported it received \$13.5 million in money from the American Rescue Plan Act, or ARPA, funds for their FY 2022-23 budget. The City of Grover Beach reported it would receive \$3.2 million in ARPA funds across two fiscal years. Notably, the County reported it received \$55.0 million in ARPA funds. The residents and community of Los Osos certainly benefited from the use of these funds, albeit with less direct local control over the use of the funds compared to an incorporated city.

ARPA funds are onetime funding sources (paid in two disbursements), and an extraordinary example of the federal government aid to local governments during the COVID-19 pandemic. It is unlikely that similar funds will be available from the federal government to local governments in the near or even medium term. However, other funding from federal or state sources could become available in the future, such as resources for affordable housing, crime prevention, or homelessness for example.

What additional revenues would the community want to raise to support a city government?

If state law cannot be changed, and the VLF and equivalent revenue afforded by other cities is not available, then Los Osos would have to show it can raise additional revenues to supplement this amount. As mentioned previously, the community would need to raise an estimated \$1.7 million per year in additional taxes to make up for the VLF equivalent revenue that newly incorporated cities cannot legally access.

¹⁰ The share of property tax revenues a newly incorporated city would receive are determined by the service responsibilities of a new city and the historic (1978) tax rates of the County in relation to other local taxing entities such as schools and special districts. For example, within Los Osos, the District already provides fire protection for the community and receives property tax revenue to fund it. Assuming the District were dissolved after incorporation, this service would already be accounted for in its property tax revenue share and would not represent new revenue that the County would have otherwise received.

It could raise this revenue with measures such as voter-approved parcel tax (a per-parcel non-value-based tax on property), increased sales and use taxes, other dedicated service charges such, or even revenue-generating leases or concession fees. In addition, the community may desire a level of service from a city that exceeds the current revenues available.

There is a risk with pursuing new revenues that it becomes a circular need to pursue economic development to increase the tax base. Economic development could include things like improvements to streets and sidewalks, tax or other incentives to attract employers, promotional efforts, or significant infrastructure investments. This creates a circular need, where to generate more revenue for a municipal government, a city would first need to spend more to pursue economic development. Economic development also suggests price and cost-of-living increases in the community, which could displace some residents. Not all economic development activities are bad, but doing them for the sake of building a tax base alone could be problematic. Instead, if the District could start by gaining an understanding of what the community wants and developing a strategy to pursue it. This reduces the circular risks mentioned above and helps ensure any efforts related to incorporation are aligned with the community's interests.

How much would it cost to pursue incorporation?

There is a range of likely costs if the District pursues incorporation. In total, it would be reasonable to budget at least \$200,000 in costs and staff time, as detailed below. The District may not have sufficient staff time or funding available for any of these activities.¹¹

Prior to proposing incorporation, community outreach and meetings with the County and LAFCO would need to occur. Some of this could be accomplished with staff time, but formal surveys or studies would likely require an outside service provider or significant staff time. If incorporation were pursued further, the District would not need to seek a petition. Instead, as an affected agency in the proposed area of incorporation it could pass a resolution of its intent.¹² The District would then need to prepare and file an application to LAFCO. The cost of the application would largely be staff time and legal counsel. Best practices recommend conducting many of the required studies after the application is submitted and in accordance with any guidance from LAFCO. When the application is submitted, LAFCO requires a \$15,000 deposit with the application to cover estimated minimal initial costs.¹³

Next, a key requirement for a proposal is known as a Comprehensive Fiscal Analysis, or CFA. Staff from LAFCO estimate that this typically costs between \$50,000 to \$100,000 to perform. These costs are typically the responsibility of the proponent, such as the District or citizen group. They also note that even if the proponents have already prepared an incorporation

¹¹ If a citizen group were the proponent of the proposal, the District should still participate as a stakeholder in discussion with the group, even at the cost of staff time given the possible significant impact the proposal and possible incorporation would have on the District and community.

¹² In contrast, a citizen group would need a petition of at least 25 of affected registered voters or 25 percent of land owners owning at least 25 percent of the land.

¹³ <https://slo.lafco.ca.gov/applications-and-fees>

application, LAFCO may need to contract for an independent consultant to verify information and review the conclusions presented in the application. These costs would also be the responsibility of the proponents.

Staff from LAFCO mentioned that several years ago Nipomo Community Services District initiated an effort and funded a preliminary fiscal analysis to see if incorporation was an option. They estimate that the cost of the analysis was in between \$15,000 to \$25,000.

There are other costs related to developing a service plan, a map and legal description of boundaries, a sphere of influence and municipal service review, legal counsel for the proponents, and the cost of LAFCO staff time related to the application. The cost of these could vary widely, but our conservative guess is that they would total at least \$100,000 of direct costs and staff time in addition to the CFA costs mentioned above.

Are There State Funds Available to Help Pay For An Incorporation Proposal?

No, not if the District leads the incorporation effort as the proponent. However, if the effort is led by a citizen group (with 25% of registered voters who sign a petition to initiate) and they have insufficient funds, they may request a loan from the state's General Fund to pay for expenses related to the proposal. If the state makes the loan and the proposal fails, then the state will absorb the cost. If the proposal passes and the community is incorporated, the citizen group will need to repay the loan within two years.¹⁴

Are there alternatives to incorporation?

Yes, the easiest solution to start would be understanding the current amount of County spending that benefits the community. Depending on this amount, the District or community could advocate for more spending.

Another option is to pursue transferring current County services to the District. This could be similar to the District's recent re-assumption of solid waste services from the County. This would increase local control over the services, but funding would have to be matched in all cases.

The District could lobby the state to permit special districts greater control over land-use planning authority, which state code currently limits to cities and counties.¹⁵ Any advocacy efforts at the state level might benefit from partnership and participation with the California Special District Association (CSDA), which the District is a member. The CSDA has advocacy resources and extensive experience with these issues at the state-level.

¹⁴ California Government Code Section 56383 (g)

¹⁵ California Government Code section 65100. "There is in each city and county a planning agency with the powers necessary to carry out the purposes of this title. The legislative body of each city and county shall by ordinance assign the functions of the planning agency to a planning department, one or more planning commissions, administrative bodies or hearing officers, the legislative body itself, or any combination thereof, as it deems appropriate and necessary. In the absence of an assignment, the legislative body shall carry out all the functions of the planning agency."

Finally, the community might seek a greater partnership with a neighboring city, such as Morro Bay, to form a joint powers authority, to provide an increased level of service that the community wants and might benefit from the economies of scale of their combined operation.

Considerations

As discussed above, the District may not have sufficient staffing or funding resources to pursue incorporation at this time. A community group may have more resources available through fundraising and, as discussed previously, they may have access to more advantageous funding from the state than the District does. If the District is serious about exploring incorporation, the following considerations may help inform the process.

1. Before considering the feasibility of different government structures, the District could first understand what the community wants from its local governments, and what they would like to see the community look like in the near and long terms. Once this is known, it would be far easier to determine what organization(s) can and should deliver it, address funding and revenue needs, and pursue these goals with the support of the community.
2. Second, the question of incorporation raises fair questions about the County's level of funding and support for the Los Osos community. Without more information, it is not clear if current spending levels exceed, meet, or are below the amount of tax revenue generated by the community. The District could partner with the County to answer these questions, and then seek mutually beneficial solutions together. This doesn't rule out incorporation, but leaves open more opportunities, such as some alternatives discussed previously.

Partnering with the County would improve cooperation and goodwill, keep options open for the future and reduce the risk of antagonism and polarization. It is possible that the County may not want to participate in a review and dialogue, and if that occurs, then the District could still gather much of the information necessary through public records requests and its own analysis and estimates.

3. The District could engage with LAFCO informally to ensure it is pursuing the process correctly. If prior steps suggest incorporation should be explored, then the District could engage with LAFCO formally. Any work that LAFCO would do on these matters once a proposal is made would require various studies, and funding them would be paid by the District. It would be prudent to wait until more is known before incurring these expenses. Given the cost to pursue incorporation, the District should first understand what the community wants and explore alternatives to incorporation first.

Additional Resources

- San Luis Obispo Local Agency Formation Commission (LAFCO), <https://slo.lafco.ca.gov/>
- “[A Guide to the LAFCO Process for Incorporations](#)”, Governor’s Office of Planning and Research, October 2003
- California Association of Local Agency Formation Commissions (CALAFCO), <https://calafco.org/>, a 501(c)3 non-profit organization that “serves as an organization dedicated to assisting member LAFCOs with educational, technical and legislative resources that otherwise would not be available”
- “Choices for the Unincorporated Community: A Guide to Local Government Alternatives in California”, Institute of Governmental Affairs, University of California, 1981, out of print but LAFCO staff may have excerpts or related materials available