



August 22, 2018

DEREK J. MCGREGOR
Representative of
General Public

Alexander Schwada, Attorney at Law
11835 W. Olympic Blvd., Suite 835 E
Los Angeles, CA 90064

CHERYL BROTHERS
Councilmember
City of Fountain Valley

**RE: Public Inquiry - Capistrano Bay Community Services
District's Latent Powers**

CHARLEY WILSON
Director
Santa Margarita Water District

Dear Mr. Schwada:

LISA BARTLETT
Supervisor
5th District

This correspondence is in response to your inquiry regarding Capistrano Bay Community Services District's latent powers and the undergrounding of utilities. As mentioned in your initial e-mail, if a Community Services District (CSD) decides to exercise "latent powers" it must first receive the approval of the LAFCO in question, and then, by ordinance, order the exercise of those additional powers (Cal Gov. Code Section 61106).

DR. ALLAN BERNSTEIN
Councilmember
City of Tustin

DOUGLASS DAVERT
Director
East Orange County Water District

The following provides the responses to your questions:

TODD SPITZER
Supervisor
3rd District

1. *Would the process of moving above-ground utility lines below ground be a "latent power" because the MSR does not state that the Capistrano Bay District performs any utility services?*

WENDY BUCKNUM
Councilmember
City of Mission Viejo

As noted in your inquiry, Capistrano Bay CSD has the authority to provide street lighting services. Therefore, LAFCO would consider the undergrounding of utilities related to street lighting as ancillary to the District's authority.

JAMES FISLER
Director
Mesa Water District

LOU PENROSE
Representative of
General Public

2. *My client is concerned that the capital expenditures being proposed by Capistrano Bay District are latent powers. While it is clear from the California Government Code that the CSD must first receive the prior written approval of the LAFCO in question, we are concerned that the Capistrano Bay CSD has not, and will not, ask the OC LAFCO for prior approval of the exercise of latent powers. As such, how can we bring this to the OC LAFCO's attention, and what actions can OC LAFCO take to ensure that the Capistrano Bay District does not exercise any latent powers without first obtaining the OC LAFCO's prior approval?*

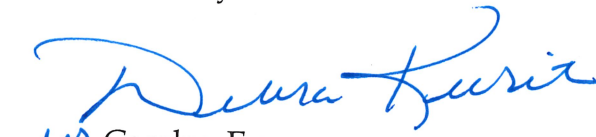
MICHELLE STEEL
Supervisor
2nd District

CAROLYN EMERY
Executive Officer

Upon an inquiry from OC LAFCO, Capistrano Bay CSD's General Manager informed the agency that there is no current project to underground utilities. The District has been informed that any undergrounding involving utilities, other than those directly related to streetlights, will require OC LAFCO's review and approval of an application to activate a latent power.

If you have additional questions on this matter, feel free to contact me directly or Policy Analyst, Gavin Centeno at (714) 640-5100.

Sincerely,


for Carolyn Emery
Executive Officer

cc: Mr. Russell, General Manager, Capistrano Bay CSD