

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1405 (Ochoa Bogh)
Version: April 18, 2022
Hearing Date: May 3, 2022
Fiscal: No
Urgency: No
TSG

SUBJECT

Community service districts: Lake Arrowhead Community Service District: covenants, conditions, and restrictions: enforcement

DIGEST

This bill would provide the requisite legislative authorization for a local public community service district to enforce private covenants, conditions, and restrictions between property owners in the community surrounding Lake Arrowhead in the San Bernardino Mountains.

EXECUTIVE SUMMARY

Lake Arrowhead is a picturesque alpine body of water in the mountains above San Bernardino. It is surrounded by a community composed of permanent and vacation homeowners. Many of the properties in the community are bound by private covenants between the landowners. Those covenants govern how buildings can look and how trees must be treated, among other things. Enforcement of these covenants is, according to the author and sponsors, important to maintaining the community's unique character. Currently, responsibility for that enforcement is left to the Arrowhead Woods Architectural Committee (AWAC), a non-profit organization established for that purpose. AWAC struggles to enforce the private covenants because the courts are its only mechanism for doing so and because AWAC lacks a consistent source of funding sufficient to pay for its enforcement role. This bill would, with AWAC's approval, transfer the authority to enforce these private covenants to the main public services agency in the area, the Lake Arrowhead Community Services District (LACSD). With steady funding sources and a greater presence in the community, LACSD would have greater capacity to enforce the private covenants between property owners.

The bill is sponsored by the Arrowhead Woods Architectural Committee and the Lake Arrowhead Community Services District. There is no other support or opposition on file. The bill passed out of the Senate Governance and Finance Committee by a vote of 5-0. If the bill passes out of this Committee, it will next be heard on the Senate Floor.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Sets forth all of the actions that a community service district is authorized to take within its boundaries. (Gov. Code § 61100.)
- 2) Finds that unique circumstances in certain communities justify the enactment of special statutes for specific community service districts and declares the intent of the Legislature to provide specific community service districts with special statutory powers to provide special services and facilities that are not available to other districts. (Gov. Code § 61105(a).)
- 3) Provides that every covenant contained in a grant of an estate in real property, which is made for the direct benefit of the property, or some part of it then in existence, runs with the land. (Civ. Code § 1462.)
- 4) Grants special authority to eight specified community services districts to continue to enforce private covenants, conditions, and restrictions between property owners in those districts. (Gov. Code § 61105(e).)
- 5) Authorizes the Bel Marin Keys Community Services District to enforce all or part of the covenants, conditions, and restrictions for properties within the district, and to assume the duties of the architectural control committee, subject to specified requirements. (Gov. Code § 61105(f).)

This bill:

- 1) Grants special authority to the LACSD to enforce all or part of the private covenants, conditions, and restrictions for any property, and assume the duties of AWAC, to the extent that property's covenants, conditions, and restrictions are legally enforceable by the AWAC.
- 2) Specifies that before LACSD can enforce private covenants, conditions, and restrictions, and assume the duties of AWAC for a property, the board of directors shall do all of the following:
 - a) receive a written request from the board of directors of AWAC, with a petition signed by not less than a majority of the property owners of the parcels within the tracts covered by AWAC, requesting the district to enforce the covenants, conditions, and restrictions for those tracts and assume the duties of AWAC for those tracts;
 - b) conduct a public hearing on the question, after giving mailed notice to each affected property owner of the date, time, and location of the meeting;

- c) submit an application to the local agency formation commission in accordance with specified procedures, specifying the exact nature and scope of the intended services to be provided by the district;
 - d) receive the approval of the local agency formation commission, in accordance with specified provisions, which may include completion terms deemed appropriate by the commission, to enforce covenants, conditions, and restrictions for a tract, and to assume the duties of AWAC for those tracts; and
 - e) adopt an ordinance assuming the power to enforce covenants, conditions, and restrictions for a tract, and to assume the duties of AWAC for those tracts.
- 3) Specifies that the ordinance referenced in 2(e), above, must require that:
- a) the property owners within the tracts shall finance the enforcement of the covenants, conditions, and restrictions through fees, regular or special assessments that may be enforced either pursuant to the authority of AWAC under its founding documents or applicable law, or pursuant to the authority of the LACSD; and
 - b) AWAC shall indemnify the district for the costs of any litigation, settlements, injuries, damages, or judgments arising from enforcement of the covenants, conditions, and restrictions, imposition of any fees, assessments, or other financing mechanism authorized in 3(a), above, as well as the LACSD's duties on behalf of AWAC.
- 4) Authorizes LACSD to enforce any fee, charge, or assessment authorized pursuant to 3(a), above, using the AWAC's authority under its founding documents or applicable law, or pursuant to LACSD's authority, using specified procedures.
- 5) Allows LACSD, by ordinance, to divest itself of the power to enforce covenants, conditions, and restrictions on behalf of AWAC.
- 6) Prohibits LACSD from enforcing any covenants, conditions, or restrictions or assuming the duties of AWAC until all unlawful, racially restrictive covenants are removed from the covenants, conditions, and restrictions of the properties.

COMMENTS

1. Lake Arrowhead and its surrounding community

Lake Arrowhead is a picturesque resort, conference, and tourist destination located in the mountains about 80 miles northeast of downtown Los Angeles. The lake sits at about 5,000 feet of elevation in an unincorporated part of San Bernardino County. The lake itself is surrounded by a population of around 12,500 people and approximately 10,000 parcels of property known collectively as Arrowhead Woods.

2. Covenants, conditions, and restrictions applicable to properties in Arrowhead Woods

According to the author and sponsors of this bill, since its development about a century ago, the properties that make up Arrowhead Woods have been subject to a set of covenants, conditions, and restrictions.

Covenants, conditions, and restrictions are private agreements between property owners that attach to the property itself and therefore “run with the land.” This means that the covenants, conditions, and restrictions continue to apply to the property even when ownership changes hands. Covenants, conditions, and restrictions are most commonly associated with homeowners’ associations (where they are often referred to by the acronym “CC&Rs”), but covenants, conditions, and restrictions can and do exist outside of the homeowner association context. In the absence of a homeowner’s association, however, enforcement of any covenant, condition, or restriction is usually left up to the property owners themselves. According to the author and sponsors of this bill, in the case of Arrowhead Woods, the terms of the covenants, conditions, and restrictions delegate enforcement power to a separate entity, the Arrowhead Woods Architectural Committee (AWAC).

The purpose behind covenants, conditions, and restrictions is to provide people purchasing property in a community with some assurance of how the surrounding parcels will or will not be used. Thus, for instance, a person buying a parcel as a residence can be reasonably certain that a hog farm or an auto mechanic will not pop up next door. Although this purpose is quite similar to public land use regulation, the key distinction is that covenants, conditions, and restrictions are not government regulations; they arise from private agreements between property owners.

Courts will enforce any covenant, condition, or restriction on the use of land so long as it is not unreasonable and does not violate public policy. (*Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361.) Covenants, conditions, and restrictions commonly cover things like exterior paint color, street parking, pets, and landscaping. In the case of Arrowhead Woods, the author describes the applicable covenants, conditions, and restrictions as empowering AWAC to “preserve Arrowhead Woods’ unique character” by maintaining “the quality of design, minimum living space requirements, attractiveness and individuality” of buildings to “ensure harmony with the surrounding area.” According to the author, the covenants, conditions, and restrictions also provide AWAC with the authority and responsibility to maintain and manage the trees in Arrowhead Woods “in a manner that is consistent with aesthetics, a healthy forest, and the requirements of fuel hazard reduction.”

3. The problem this bill is intended to address

As discussed in Comment 2, above, the private covenants, conditions, and restrictions applicable to Arrowhead Woods grant AWAC enforcement authority. However, those covenants, conditions, and restrictions do not provide any consistent source of funding for this enforcement, nor do they provide for any enforcement mechanism beyond the courts, which can be a slow and expensive process. As a result, AWAC struggles to achieve compliance with the covenants, conditions, and restrictions governing Arrowhead Woods. The author and sponsors worry that, in the absence of a robust enforcement regime, lack of compliance with covenants, conditions, and restrictions threatens to undermine the unique appeal of the community around Lake Arrowhead.

4. The solution proposed by this bill

The properties in Arrowhead Woods receive their water from the Lake Arrowhead Community Services District (LACSD), which was founded in 1978 for that purpose. LACSD subsequently took over responsibility for wastewater services within Arrowhead Woods as well. The author and sponsors report that LACSD has a steady budget from the fees paid by local property owners for the services LACSD provides. They also note that LACSD employees and agents are regularly present out in the Lake Arrowhead community, so those employees and agents could easily monitor for violations of the covenants, conditions, and restrictions even as they carry out their present duties.

With these factors in mind, AWAC proposes to transfer its authority to enforce the covenants, conditions, and restrictions at Arrowhead Woods to LACSD. LACSD is open to taking on this authority, as confirmed by its co-sponsorship of this legislation. In order to take on this additional authority, however, LACSD needs specific legislative approval. This bill would provide the requisite approval.

5. Legislature has limited enforcement of private covenants, conditions, and restrictions by public entities in the past

Implicit in this bill is the assumption that enforcement of the private covenants, conditions, and restrictions between property owners around Lake Arrowhead serves the broader public interest. There is no opposition on file with the Committee to suggest otherwise and the bill offers a simple and ready solution for how these private covenants, conditions, and restrictions could be enforced going forward.

With that said, the Committee may wish to inquire further into whether enabling a public entity to enforce private covenants, conditions, and restrictions is appropriate. In the past, some public community service districts had the authority to enforce private covenants, conditions, and restrictions in California, but only eight of them exercised it.

(Sen. Com. on Local Governance Analysis of Sen. Bill No. 135 (2021-2022 Reg. Sess.) as amended Mar. 29, 2005, at p. 7.)

In 2005, California enacted legislation which mostly prohibited the practice. (SB 135, Kehoe, Ch. 249, Stats. 2005.) Only those public entities that were already exercising their authority to enforce private covenants, conditions, and restrictions were allowed to keep doing so. Commenting on the content of that 2005 legislation and debate within the working group that helped draft the legislation, the Senate Local Government Committee wrote the following:

The strange case of CC&Rs. Covenants, conditions, and restrictions (CC&Rs) are private deed restrictions which impose mutual contractual duties on property owners. CC&Rs are private arrangements, outside the government's land use regulations that come from the police power. Although CC&Rs have the same purpose and often the same effect as zoning ordinances, they are not government regulations; they are private contracts. Since 1979, legislators have authorized 18 CSDs to enforce private CC&Rs. Although a 1989 Legislative Counsel's opinion found that these statutes were not unconstitutional, several members of the Working Group were intensely skeptical of that legal analysis. Even if the current CSD Law is constitutional, they and others questioned the wisdom of allowing special districts to enforce private contractual duties. The Working Group learned that only 8 of the 18 CSDs actually use the current Law to enforce CC&Rs. After considerable debate, the Working Group recommended allowing the 8 CSDs to continue enforcing private CC&Rs, but repealing the practice for everyone else (61105 [e]). (Sen. Com. on Local Governance Analysis of Sen. Bill No. 135 (2021-2022 Reg. Sess.) as amended Mar. 29, 2005, at p. 7.)

Unfortunately, neither the analysis above nor a subsequent report about the drafting of SB 135 elaborates on content of the referenced Legislative Counsel opinion or the nature of the working group's concerns.¹

If a community service district were to charge every parcel in the district an amount and use the proceeds to pay for enforcement of private covenants pertaining to only some of the parcels, such an arrangement might be considered a tax, rather than a fee, raising some concerns about the requisite vote threshold that would be needed for approval. (Cal. Const., art. IIID.) Amendments to this bill taken in the Senate

¹ *Community Needs, Community Services: A Legislative History of SB 135 (Kehoe) and the "Community Services District Law"* (March 2006) Sen. Com. on Local Government
<https://sgf.senate.ca.gov/sites/sgf.senate.ca.gov/files/CNCSReport.pdf> (as of Apr. 27, 2022) at p. 89.

Governance and Finance Committee appear to have eliminated this concern by confining LACSD expenditures on enforcement of the Arrowhead Woods covenants, conditions, and restrictions to revenue generated from the parcels that are covered by those covenants, conditions, and restrictions. No general LACSD funds may be used.

More generally, the Working Group's hesitancy to allow community service districts to enforce covenants, conditions, and restrictions may have had to do with the "strange case" of having a government entity in the role of enforcing private agreements between private parties. Ultimately, the Working Group appears to have concluded that this dynamic can be justified only where unique conditions support that approach. (Gov. Code § 61105(a).) In the case of this bill, the author and sponsors assert that the history and circumstances at Arrowhead Lake provide adequate justification for empowering LACSD to enforce the covenants, conditions, and restrictions at Arrowhead Woods. If the bill is enacted, it is possible that other private property owners in the state may also express interest in having their local public agencies take over enforcement of the covenants, conditions, and restrictions which apply to their properties.

6. Arguments in support of the bill

According to the author:

In recognition of the unique circumstances in the Lake Arrowhead community, SB 1405 adds the Lake Arrowhead Community Services District to the list of Community Service Districts in Government Code Section 61105 that are authorized to enforce CC&Rs. AWAC has asked for this change, and the Lake Arrowhead Community Services District is willing to take it on. This bill will ensure that this transition can occur and the CC&Rs put in place by the residents of Arrowhead woods can continue to be enforced efficiently.

As sponsor of the bill, Lake Arrowhead Community Services District writes:

The Lake Arrowhead area is an unincorporated, rural community that is rich in history and beauty. The CCRs have protected the tree canopy and maintained the character of our neighborhoods for 100 years. The Arrowhead Architectural Committee (AWAC) which currently enforces the CCRs, has requested a partner to ensure that the CCRs remain in place. As a Community Services District, LACSD is prepared to serve the community where it can.

SUPPORT

Arrowhead Woods Architectural Committee (sponsor)
Lake Arrowhead Community Services District (sponsor)
California Special Districts Association

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 1995 (Levine, Ch. 289, Stats. 2014) authorized the Bel Marin Keys Community Services District to enforce the covenants, conditions, and restrictions for a tract within that district, and to assume the duties of an architectural control committee with regard to that property.

SB 135 (Kehoe, Ch. 249, Stats. 2005) authorized eight specified community services districts to continue enforcing private covenants, conditions, and restrictions, and repealed that authorization for all other community services districts as part of the rewrite of the Community Services District Law.

PRIOR VOTES:

Senate Governance and Finance Committee (Ayes 5, Noes 0)
