

Santa Rita Hills Community Services District
c/o Mission Hills CSD
1550 Burton Mesa Blvd
Lompoc, CA 93436

August 23, 2013

Santa Barbara LAFCO Commissioners
105 East Anapamu Street
Santa Barbara, CA 93101

SENT BY EMAIL

Subject: Santa Rita Hills CSD – Application for Modification of LAFCO Resolution 03-13 and Application to Amend District Sphere of Influence (SOI)

Dear Honorable Members of the Santa Barbara LAFCO Commission:

On June 6, 2013, your Commission considered the Santa Rita Hills Community Services District's request and application for:

- Modification of the formation documents originally approved by LAFCO in July of 2009 to allow for construction of road improvements outside the District boundaries,
- In order to provide for this construction, expanding the District's Sphere of Influence over the proposed roadway construction, and;
- Granting a limited power of eminent domain to the extent necessary to secure a valid easement for said road improvements and to provide for future operation and maintenance of those improvements.

As you know, the Commission continued this item to September 5th meeting in order for your staff to investigate and to report back on the facts surrounding a previous agreement with the property owners of Lakeview Estates and to provide further information on the merits of the application.

District Recommendations:

1. The Commission approve the District's request for an expanded Sphere of Influence to allow for construction of an access road along the alignment of the roadway envisioned in the 1989 Memorandum of Agreement (MOA) between the Cargasacchi Family and the property owners of the Lakeview tract at that time.
2. The Commission remove the restriction imposed in the resolution of formation adopted in 2009 so that the District will be allowed to construct an access road outside its boundaries.
3. Grant the limited right to use eminent domain if necessary to acquire a viable easement for the District's construction of the access road, and to provide for the necessary future operation and maintenance of the road

EXHIBIT D

4. If the limited right to use eminent domain cannot be decided upon at this time, approve recommendations Nos. one and two above and continue the request for limited eminent domain to a future meeting in order to provide additional time for negotiations with the Cargasacchi Family for entering into an equitable agreement for a District easement over the MOA alignment.

It is our hope that the District will be able to resolve this matter with the Cargasacchi Family to avoid the need to return to the Commission at a future time.

Discussion:

Outreach/activities since June 6, 2013:

We have provided your staff with various documents showing the District's offer to work with the Cargasacchi Family to build a roadway meeting District needs and to meet construction standards required by Santa Barbara County. The following is a summary of those attempts. We have also attended several meetings of the Santa Barbara County Agriculture Advisory Committee (AAC) to address concerns of the agricultural interests in the area.

Letters from the District

1. The District had hoped to bring a compromise solution to you for consideration at this continued hearing. Attached are several letters:

The first is dated June 20, 2013 and was sent shortly after the LAFCO hearing on June 6th to reach out to the Cargasacchi Family via their representative to determine under what conditions would they be willing to grant an easement for the "access road" (connecting Sweeney Rd. to the District boundary), what compensation would be required and which alignment was preferred.

The second letter dated July 26, 2013 proposes terms for the District to construct the access road, and

The third letter dated August 15, 2013 proposes a compromise to achieve a joint settlement that could be brought to LAFCO on September 5th for a resolution of this matter.

Unfortunately, these attempts to settle the matter have either been summarily rejected or no response provided.

Agriculture Advisory Committee recommendations

2. At the AAC 's last meeting on July 31, the Committee voted to support the District's request for the expansion of the SOI and to allow for construction of the road by the District. With respect to the Committee's concern, we have agreed to postpone the eminent domain request providing there are serious discussions between the District and the Cargasacchi Family to resolve our issues.

Landowner petition

3. The Lakeview property owners have considered their options for constructing an access road to the District boundary and are submitting a "petition" requesting LAFCO to approve the District's requests. Of primary concern is the need for a public agency to provide the necessary funding mechanism, operation and maintenance and essential liability insurance for the access road. The landowners' original intent in forming the District was to create a mechanism/organization that could fund and build a road system that would access each parcel and allow each owner to utilize their properties in accordance with Santa Barbara County zoning and land use ordinances. These goals were

emphasized in the staff reports presented to the Commission and discussed during formation hearings.

District has made substantial progress

4. The District has made significant progress on the design and financing of an internal roadway system. A complete access road plan has been developed and vetted with the owners and public, steps to forming an assessment district have been initiated and agreements executed with bond counsel and finance consultants. However, without authority for, and construction of an approved legal access road leading into the District, internal road construction is problematic and permits for individual properties cannot be issued. County Fire has previously indicated that due to health & safety reasons, they will not approve building permits until the connecting access road is secured.

Need for adequate right of way

5. We understand that the request for potential use of eminent domain may pose a concern for your Commission and possibly some of the landowners within the District. We want to be clear that that the District has no intention of using this power for anything other than securing and constructing the "connecting" access road for the residents within the District. Without this authorization, this issue may continue into the unforeseen future without resolution.

Conclusion

There are families in this District that have seen generations pass without resolution to this access road issue. Many years have been invested to facilitate a solution for an issue that continues to go unresolved. There has been significant County interaction on these issues and the County has attempted to "broker" a resolution several times in the past. There has also been litigation without final resolution of the access road issue.

The District has always been, and continues to be, open to negotiations with the adjoining property owner for a final alignment and construction of the "connecting" access road. By formation of the Community Services District, the funding mechanism envisioned in the MOA has been put into place to insure that the intervening property owner is appropriately compensated.

Frankly, The District firmly believes that it is time to put these issues at rest and move forward in such way that all parties are fairly treated. To that end we need LAFCO's help and concurrence with our requests.

We hope you will support our efforts to resolve and finalize this long process.

Thank you again for your consideration and time. Should you have any questions, please do not hesitate to contact our Staff at (805) 544-4011.

Sincerely,



Thomas Freeman, President

Santa Rita Hills CSD

Other facts/background supporting the District's requests:

- **Original Approval**--The tract was created in 1968 without any specific funding mechanism put in place for the construction and maintenance of any improvements.
- **Legal Non-conforming Lots**--These parcels were created as legal lots but cannot be split because of their size (40 ac) compared to zoning of A-100. Therefore the district will remain as 39 parcels. The MOA brokered by the County in 1989 recognized this fact and specifically provided for no additional parcels (paragraph 5).
- **Special Problems Area restricts building permits**--In 1986, the area was designated as a "Special Problems Area", by the County which requires access before the issuance of any building permits within Lakeview.
- **MOA**--A MOA was entered into between the Cargasacchis and the property owners on September 1, 1989. Paragraph 5 relates to "No Overburdening by Additional Parcels". On July 24, 2013, at the AAC meeting, the Cargasacchi's attorney stated that any uses of property that were not in existence on September 1, 1989 (effective date of the MOA) require the approval of the Cargasacchis for any construction in the District (including residences). In effect the Cargasacchis have interpreted this section of the MOA to mean they have total land use control of properties within the District. This is incorrect, especially in light of the County's interpretation that this paragraph was meant to restrict future parcelization. It is noted that no further parcelization can occur in any event because of the A-100 zoning on all properties within the District.
- **District Formation**--The District was formed June 5, 2009 specifically as the vehicle to fund and construct infrastructure and access to and for the parcels within the Lakeview tract (see Lafco staff report). It was recognized by Lafco as the vehicle to fund/construct improvements for access.
- **LAFCO restrictions**--At the time of formation, LAFCO restricted the powers of the District, primarily because of the objections of adjacent agricultural land owners who feared that the District would try to build a secondary access road to Hwy 246 (across the Campbell Ranch—see Lafco staff report).
- **Ag Advisory Committee's Objections**--Also, at that time, the Ag Advisory Committee voted to oppose the formation of the District "unless the Commission put a mechanism in place to eliminate the possibility of using eminent domain on parcels outside the proposed district boundaries" for fear the District would use that power to create a second access if required by the Fire Department. The Fire Department has concurred that only one access road into the district is sufficient and therefore a second access is not required.
- **LAFCO Restrictions, condition no. 5D**--Therefore LAFCO included condition 5D in the formation resolution;
"The District shall not have the authority to provide services outside of its boundaries, including the construction of an access road, either with or without the use of eminent domain". In researching previous LAFCO approvals for formation of other districts and city annexations, we find no other example where this restriction was imposed

- **Access Problem Not Solvable**--In restricting the District's ability to construct anything outside its boundaries, with or without the use of eminent domain, LAFCO inadvertently created an access problem that cannot be solved by the District itself, i.e. construction of an access road from Sweeney Rd to the District boundary is prohibited. Even if the Cargasacchis were agreeable to access road construction by the District, LAFCO condition No.5D, prohibits the District from any construction outside its boundaries.
- **CEQA**--With respect to CEQA determination: because NO physical changes are proposed and only the future ability to construct and provide a funding mechanism is being proposed, LAFCO approval of a SOI amendment and lifting the construction restriction of condition no. 5D is categorically exempt per Section 15378(b)(4) of the CEQA guidelines. The formation of the District was found to be categorically exempt for the same reason in 2008.
- **County Right of Way for Sweeney Rd**--The County apparently still has a right of way for Sweeney Road across the Cargasacchi property. The County Surveyor's recent letter of June 4th, 2013 refers to and agrees with an opinion letter from County Counsel dated April 17, 2001.
"... according to our research, all of the County records we could find support the memo from County Counsel dated April 13, 2001 stating that the County has interest in the original track of Sweeney Road as accepted by the Board of Supervisors resolution in 1914. County Counsel has determined that the April 17th 2001 memo is valid and controls in this matter"
- **Public vs. Private Rd**--One of the objections raised is that the access road will be public. Existing legislation, SB 263, adopted/chaptered on July 2, 2009 provided for the SRHCSD to limit access as a private road(s).
- **Dust/Agriculture**--Another objection is that the road will create dust which will affect adjacent agricultural crops. The standards set by the County for the access road (and the standard set forth in the old MOA) require an improved surface (chip seal or paving), which will generate very little dust compared to the unpaved existing road now being used.
- **District Outreach**--The District has reached out to the Cargasacchis on many occasions. Internal road alignments were modified per their suggestions. Several letters to clarify and determine the conditions required/compensation needed to allow for District access have not been answered or rejected. The District's letter from President Tom Freeman on June 20, 2013 asked the Cargasacchis to answer three questions:
 - Under what conditions would they allow for access road construction
 - What compensation would be required
 - Which road alignment would they preferThe Cargasacchi response was to decline to answer these questions as they believed the CSD had no legal right to ask.
- **Offer for Resolution**--Again on July 26, 2013 a letter (attached) from District Counsel Seitz to E Patrick Morris proposing terms for resolution of the access road matter---as of August 23, 2013, there has been no response from the Cargasacchis.

- **Current Attempt For Compromise**--Another letter was sent on August 15 that offers to temporarily suspend the Lafco request for eminent domain authority provided that the Cargasacchis agree to allow the CSD to build the road on the MOA alignment and not oppose the District's request to expand the SOI over this alignment. A response rejecting that request was received on August 22nd (attached).
- **Property Owners' Petition**--A petition is being submitted by most of the property owners supporting the District's request to Lafco for approval to expand the SOI and to construct the road.
- **District Is Best For Financing, Construction, Maintenance and Liability Protection**--It is very clear that the District is the best vehicle to fund, construct, maintain and provide liability insurance for the access road. Individual property owners will not be able to organize a private group for assessment financing for construction, pay for construction and maintenance in an equitable manner and maintain liability insurance in perpetuity...only a public agency can do so.

SANTA RITA HILLS COMMUNITY SERVICES DISTRICT

c/o Mission Hills CSD, Attn: Casey Fowler
1550 Burton Mesa Blvd
Lompoc, CA 93436
(805) 544 - 4011

June 20, 2013

Cargasacchi Family
c/o E. Patrick Morris
Attorney at Law
137 E. Anapamu St.
Santa Barbara, CA 93101

Subject: District Road Construction of the Access from Sweeney Road to the District Boundary

Dear Cargasacchi Family:

Over the many years prior to the formation of the District, there were many discussions between the Cargasacchi family and with other parcel owners within the Lakeview and the Rancho Dos Mundos property regarding the construction of an access road between Sweeney Road and the boundary of those subdivisions. As you know, those discussions were unsuccessful in achieving a mechanism by which such a road could be constructed.

The Community Services District ("District") was formed by the property owners in order to organize all parcel owners in a way which could achieve the construction of the internal roads and to make those roads useful, construct the access road between Sweeney Road and the District boundary. The most recent action on the District's part to resolve this issue was to present our Application to LAFCO. The purpose of presenting that Application was to resolve all of these matters to provide a safe, reliable, and hopefully agreeable, solution for access to the CSD's road system. We believe that the Cargasacchi Family, by virtue of their ownership of properties within the District, has a vested interest in seeing that access road come to fruition.

The CSD was formed as it is the only vehicle that can provide for the financing, ongoing operation and maintenance of the internal roads and the access road, and to some degree, provide liability protection for the owners of the property within the District, as well as the Cargasacchi Family.

In order to determine whether or not an agreement is possible, we ask that you respond to the following questions:

1. Under what conditions will the Cargasacchi Family allow the CSD to acquire a right of way for the construction of the access road? (Road to be constructed in accordance with County and District road standards.)

Cargasacchi Family
c/o E. Patrick Morris
Attorney at Law
Page Two
June 20, 2013

2. What compensation do you demand for the purchase of this right of way?
3. If you are in agreement that the District may acquire the right of way and construct the road, which road alignment would you prefer?

We would appreciate your response within the next two (2) weeks. We are most willing to meet with you and your representative to discuss this information.

Thank you for your consideration and we look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Tom Freeman". The signature is written in a cursive, flowing style with a long, sweeping underline that extends to the right.

Tom Freeman, President
Santa Rita Hills Community Services District.

MICHAEL W SEITZ

JON S. SEITZ
(1947-2013)

SHIPSEY & SEITZ, INC.

A LAW CORPORATION
1066 PALM STREET
POST OFFICE BOX 953
SAN LUIS OBISPO, CALIFORNIA 93406
(805) 543-7272 FAX (805) 543-7281
mike@shipseyandseitz.com

JOHN L. SEITZ
(1924-1986)

GERALD W SHIPSEY
(1924-2013)

July 26, 2013

Via e-mail ONLY epmlaw@yahoo.com

E. Patrick Morris
LAW OFFICES OF E. PATRICK MORRIS
137 E. Anapamu St.
Santa Barbara, CA 93101

Re: Santa Rita Hills Community Services District/Access Roads

Dear Mr. Morris:

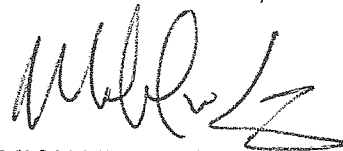
In order to reach an equitable resolution in regards to the construction of the access road from the terminus of the Sweeney Road to the District boundary, the District proposes the following terms attached on the term sheet. I ask that you discuss this with your clients and give a response as soon as possible so that a formal agreement can be drafted in regards to these terms.

As you know, the vast majority of District residents view the District as being the only financing authority available for the construction of the roadway. The District Board has sought the ability to build the road from LAFCO, and those applications relating to that are pending. The term sheets provide a proposed resolution that would avoid any further LAFCO proceedings, other than confirmation of the items that are within the term sheets.

My client looks forward to your client's early response.

Sincerely,

SHIPSEY & SEITZ, INC.



MICHAEL W. SEITZ, District
Legal Counsel

MWS/val

cc: John Wallace, SRHCSD

PROPOSED TERMS

SRHCSD proposes the following terms for an agreement for the District to construct an access road using the MOA alignment:

- 1)
 - a. SRHCSD will withdraw its application for eminent domain powers before LAFCO and will build an access road on the MOA alignment in accordance with county standards
 - b. SRHCSD will agree to maintain the road and to provide for insurance to cover all liabilities related to the road and will name Cargasacchi and Lakeview Estates property owners as additional insureds
 - c. Cargasacchi will withdraw their objections to the SRHCSD application for a change in its Sphere of Influence and for the power to construct the road
 - d. Cargasacchi will deed to SRHCSD either a fee interest or an unrestricted easement over the roadway path wide enough for construction and maintenance purposes
 - e. SRHCSD will limit access to the District by way of a private road with a locked gate but District residents and their guests will have an unfettered right to take access over the road for all lawful purposes and uses allowed for their properties
 - f. Cargasacchi may make suggestions for road design changes. Modifications will be incorporated in the design if agreed to by the District
 - g. Cargasacchi will modify any farm or other agricultural lease for the 2014-15 term, or other appropriate term for construction, that encompasses the roadway so that no damages would flow from SRHCSD to either the Cargasacchi's or any tenant as a result of the placement of the road.
- 2) A formal agreement with the above terms must be reached before 8/1/13
- 3) SRHCSD obligations under this agreement are subject to a successful Proposition 218 vote approving funding for the construction of District Roads

MICHAEL W. SEITZ

JON S. SEITZ
(1947-2013)

SHIPSEY & SEITZ, INC.

A LAW CORPORATION
1066 PALM STREET
POST OFFICE BOX 953
SAN LUIS OBISPO, CALIFORNIA 93406
(805) 543-7272 FAX (805) 543-7281
mike@shipseyandseitz.com

JOHN L. SEITZ
(1924-1986)

GERALD W. SHIPSEY
(1924-2013)

August 15, 2013

Via e-mail epmlaw@yahoo.com and U.S. Mail

E. Patrick Morris
LAW OFFICES OF E. PATRICK MORRIS
137 E. Anapamu St.
Santa Barbara, CA 93101

RE: SRHCSD - LAFCO Action Scheduled for September 5, 2013

Dear Mr. Morris:

As you know, the District has an application pending before the SB County LAFCO to amend the District's Sphere of Influence, remove restrictions on construction outside the District boundaries and to grant the power of eminent domain, if necessary for acquisition of rights of way. While there has been considerable activity since our initial hearing on June 6, 2013, including meetings with the SB County Ag Advisory Committee, issues separating the District and Cargasacchi positions still remain. It is our continued hope that the Cargasacchis and the District can come to some agreeable arrangements to allow for the construction of an access road from Sweeney Road to the District boundary.

In an attempt to continue resolution of these issues, we propose the following compromise in order to facilitate the LAFCO hearing scheduled for September 5, 2013:

The District is willing to accept the recommendations of the Santa Barbara County Ag. Advisory Committee that the District's Application for a change in its Sphere of Influence and the right to construct the road be granted. The District is willing to continue any discussion regarding the request for eminent domain power until the Nov 7th meeting of LAFCO to allow for negotiations to take place. The District is willing to limit its requests to the easement described in the MOA.

If your clients are agreeable with this, then we would anticipate that LAFCO will approve the two (2) actions described above on Sept. 5th. This would greatly reduce both the District's and the Cargasacchi's costs.

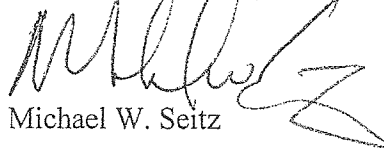
E. Patrick Morris
LAW OFFICES OF E. PATRICK MORRIS
August 15, 2013
Page Two

To facilitate our discussions, I sent you a letter dated July 26, 2013 (attached), proposing terms under which the District can move ahead with improvements to provide access to its property owners (including your clients which hold eight (8) of the thirty-nine (39) parcels within the District. As of this date, we have not received a response to my letter.

Because the date for the LAFCO hearing is near, we will need your response by 5:00 p.m. on Tuesday, August 20, 2013, in order to provide the necessary information to LAFCO for their staff report. If this is not possible, then the District will need to request a further continuance of this matter to the November LAFCO meeting.

Sincerely,

SHIPSEY & SEITZ, INC.



Michael W. Seitz

cc: Paul Hood

Encl.: Letter re Settlement Dated July 26, 2013



COUNTY OF SANTA BARBARA AGRICULTURAL ADVISORY COMMITTEE

August 15, 2013

Paul Hood
Executive Officer
SBLAFCO
105 East Anapamu Street
Santa Barbara CA 93101

Re: Santa Rita Hills Community Services District (SRHCSD) – Request for Sphere Expansion and Authorization to Construct Access Road Outside of District

Dear Mr. Hood:

The Agricultural Advisory Committee (AAC) on July 31, 2013, reviewed the *Santa Rita Hills CSD-Request for Sphere of Expansion and Authorization to Construct an Access Road Outside of the District*. This item was included in the LAFCO June 6, 2013 LAFCO agenda. The Agricultural Advisory Committee (AAC) is concerned about the impacts to the agricultural resources involved with the SRHCSD request. The AAC serves as an advisory group by reviewing matters that have agricultural resource issues, such as, land use, economics, pesticides, legislation, water, regulatory issues, property rights and agricultural practices.

In July, the AAC formed a subcommittee to thoroughly review the SRHCSD annexation request and to meet with the different stakeholders involved with this proposal. The subcommittee presented the results of their review process to the AAC during the July 31st 2013 meeting.

The AAC have the following recommendations regarding the SRHCSD annexation request:

- Limit the Sphere of Influence Expansion exclusively to the “Access roadway per the Memorandum of Agreement (MOA).”
- Unless objections are raised by the access road landowner(s), authorize the District to provide services outside of its boundaries exclusively to construct and maintain an access road between Sweeny Road and the District Boundaries via the “MOA” alignment.
- Do not authorize the District to exercise the power of eminent domain.

Furthermore, the AAC encourages the different stakeholders involved with the SRHCSD request to memorialize the current intent of conversations regarding the public or private nature of the access road and future land use intensity on the parcels through a more permanent mechanism, such as an easement. Additionally, the AAC recommends LAFCO to include the MOA documentation as an exhibit in the next LAFCO staff report.

Sincerely,



Paul Van Leer, Chair
Agricultural Advisory Committee

Committee Members

Bradley Miles
Ron Caird
Sharyn Merrit
Mike Ruffoni
Ruth Jensen
Kari Campbell-Bohard,
Claire Wineman
Paul Van Leer-Chair
June Van Wingerden
Lisa Bodrogi
Willy Chamberlin
Daren Gee

Representing

1st District Supervisor, Salud Carbajal
2nd District Supervisor, Janet Wolf
3rd District Supervisor, Doreen Farr
4th District Supervisor, Peter Adam
5th District Supervisor, Steve Lavignino
California Women for Agriculture
Grower-Shipper Vegetable Association
Santa Barbara County Farm Bureau
Santa Barbara Flower & Nursery Growers' Association
Central Coast Wine Growers Assn
Santa Barbara County Cattlemen's Assn.
Strawberry Commission

Dear Lakeview Property owner,

As neighbors and concerned owners, we are sending you this urgent communique and attached Synopsis and Petition to ask for your signature vote in sending simple message to LAFCO to please expand the CSD's sphere of influence and build an access road from the terminus of Sweeney Rd., to the boundary of Lakeview over an easement that you own. The Cargasachi Family, around 1989 has already received \$140,000.00 for this easement.

This is a critical time for us to unite and send LAFCO Officials a vote to help us all resolve a 30+ year old problem. You have been paying taxes all along but not enjoying the benefits of your valuable land. Please act now and become part of the only solution to move this forward.

Please read the short Petition (attached), print, sign/date and fax to: 805.544.4294.

Time is of the essence and never before have we had the opportunity to build an access road so that other road improvements within Lakeview can get underway. **This is clearly the best possible solution** for your lot and bring increased valuation to our properties. This will enable the construction of improvements including houses and barns as allowed by the County zoning and land use ordinances.

Over the years, we thank the many neighbors who have worked very hard to try and resolve this simple access road problem but we have now reached the most logical solution to resolve this. Let's make sure your voice is heard clearly. Additionally please email me back any letter(s) addressed to: LAFCO in support of the CSD building an access road through expanded CSD's sphere of influence and we will make sure it's also presented to LAFCO along with the signatures from this petition.

In closing, there are some who have used unfounded scare tactics that the use of Eminent Domain is a governmental forceful taking. This is a complete exaggeration and a self-serving mischaracterization of what is at times a very fair, preferred and beneficial way of building a road for the common good of all. We have here a perfect example of how eminent domain will resolve a long standing

problem in the most fair manner. Your vote is critically important in favor of the CSD's enhanced capabilities to fund, build, maintain and provide, liability insurance to all Lakeview property owners. **What we are simply asking for is the ability to build an access road over the long ago contemplated path over the Cargasacci land on the easement we collectively own. This in no way anticipates any other expansion into anyones land: Just the access road.**

Thank you in advance for your prompt response in faxing back your signature today. Due to the post-holiday scheduling of this LAFCO meeting (Thursday September 5, 2013/Santa Barbara County Supervisors Chambers), we don't expect many will be able to attend in person, although we would **greatly encourage** you to do so. Property owners attendance and votes have a significant impact on LAFCO.

We are available to discuss and answer any questions you may have.

Very Truly Yours,

Hank Blanco
Ettinger
805.878.2222
hblanco@abns.com

Angelo Salvucci
805.320.0474
salvucci@silcom.com

Brett & Pamela
805.448.0275
brett@fe-arch.com

LAW OFFICES OF E. PATRICK MORRIS
A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW

8/22/2013

VIA FACSIMILE & email
805.543.7281

Michael W. Seitz, Esq.
Shipsey & Seitz
P.O. Box 953
San Luis Obispo, CA 93406

Re: Santa Rita Hills Community Service District

Dear Mr. Seitz:

In response to your most recent two emails, and your earlier email whereby you sent what you describe as a "term sheets [*sic*]", my clients respond as follows:

1.) It has been and remains my clients' position that SRHCSD presently has no legal right to negotiate with anyone anything related to an access road, and will not have that right until such time as the condition imposed by SBLAFCO in 2009 prohibiting it from doing same is removed and/or modified: **"The District shall not have the authority to provide services outside its boundaries, including the construction of an access road, either with or without the use of eminent domain."** (See LAFCO Resolution 03-13 Section 5D.)

There is but one pending application in that regard (removing the restriction/condition), which application to our knowledge has not been modified by the SRHCSD Board to un-couple it from the right to condemn my clients' land and build a road to which my clients do not agree. Certainly SRHCSD has not done so after the public meeting and vote which such a modification necessarily would require.

The joint applications (SOI modification and removal of condition) as they are presently pending, continue to seek the right for SRHCSD to condemn up to 33 acres of my clients' prime agricultural land to build an access road to public road standards instead of those negotiated standards explicitly prescribed in the MOA that binds all the parcels

within the SRHCSD boundaries and existing Sphere of Influence.

2.) We have seen no Board resolution, or public vote, authorizing you as legal counsel to negotiate anything on the Board's behalf. None is on any agenda noticed for the only meeting before the SBLAFCO hearing scheduled for September 5.

Thus, your communications recently sent, and that of late July, either are not authorized by the Board, or if they are, it was by a decision making process that clearly did not comply with the Brown Act (even in the multiple, mysterious "closed sessions" that have taken place resulted in "no reportable action," according to you.)

Either way, your efforts to negotiate issues the SRHCSD is legally not allowed to deal with, without proper legal authority to do so, leave my clients not willing to negotiate with someone whose power to negotiate, if any you have, was obtained through what we understand is a violation of law. We certainly would not want to have anyone claim that in negotiating with you or the SRHCSD about matters it is illegal for SRHCSD to engage in we have ratified the wrongful conduct.

3.) Our position vis-à-vis the SRHCSD's desire to build an access road, or anyone else's desire to do so over our clients' land is simple, and constant: We support the building of the MOA road, under the terms of the MOA, as already agreed. At this time, nothing else is acceptable to my clients.

4.) To the degree the SRHCSD can follow the law, and at the same time formulate a plan to build the MOA road under the terms of the MOA, my clients would welcome the opportunity to review such a plan, and likely will not oppose such a plan. We have invited SRHCSD to do so, first by obtaining the legal right to do so, then by actually doing so. Such a plan is almost certain to be the "agreeable arrangement" you seek in your most recent communication.

However, to our knowledge that is not presently the SRHCSD plan, nor do your recent (or any past) communications present such a plan on behalf of SRHCSD. Certainly, as you admit, this is not the "plan" being promoted in the pending applications.

5.) What is clear is that for more than a year, the "Board" of SRHCSD has, without legal right to do so, secretly spent public funds on the endeavor of building an access road that it is expressly prohibited from being involved in building, on behalf of the private financial interests of private landowners (including all but one of the Board of Directors,) for the express purpose of these landowners avoiding their own, private, written, contractual obligations under the MOA, as well as to advance the private financial interests of other private persons who comprise less than a unanimous group and who likewise seek to breach their existing, private contract obligations owed to my clients.

6.) Thus, even if the SRHCSD was legally authorized to engage in discussions about building an access road (which presently it is not), and even if you were properly authorized to negotiate such a plan on its behalf (which, to our knowledge, you are not), any plan by the SRHCSD other than to build the road pursuant to the MOA and under its terms and conditions likely would not be acceptable to my clients, although we reserve the right to agree to modify our position regarding the MOA upon being presented with a suitable alternate plan that contains the same level of protection for the rights of Cargasacchi Ranch found in the long ago negotiated and agreed to MOA.

If the Board, once authorized to do so, can formulate such a plan, it should do so pursuant to the Brown Act and then present it to us. Please be aware that no matter what SRHCSD might decide to do in building the MOA road, any modification of the MOA will require the unanimous, written consent of all the affected landowners; your unsubstantiated claim to represent the interests of an un-named "vast majority" of those landowners will not be enough.

Finally, your August 15 letter recited that the Agricultural Advisory Commission has made a "recommendation" that the SRHCSD applications to expand its Sphere of Influence and to grant it permission to build an access road "be granted." I have reviewed the letter, and it says nothing of the sort.

The Agricultural Advisory Committee recommends limiting the SOI expansion "exclusively" to the "Access roadway per the Memorandum of Agreement."

As to the other pending application, to build the road pursuant to eminent domain rights, the Committee did not recommend granting SRHCSD the right to build the road as you state, but to authorize SRHCSD to provide services outside its boundaries exclusively to construct and maintain an Access road between Sweeney road and the District Boundaries via the MOA alignment," but on the approval of the Cargasacchi Ranch owners "Unless objections are raised by the [Cargasacchi Ranch] owners."

As you well know, the Cargasacchi Ranch owners care much less about the "alignment," and much more about the conditions of construction, operation, and maintenance. Unless and until SRHCSD can and agrees to build, operate, and maintain a road according to the MOA, the Cargasacchi Ranch owners object.

Finally, that letter recommends "Do not authorize the District to exercise the power of eminent domain" which, of course, your letter seeks to keep as part of the pending applications. Thus, on nearly all points, your letter of last week mis-represents the Agricultural Advisory Committee recommendations.

This erroneous claim by you about what the advisory Committee recommended is another in the long list of reasons why we cannot effectively deal with you. You simply read plain English differently than do we, from SBLAFCO 03-13 5D; to the Brown Act

requirements, especially for closed sessions; to the Agricultural Advisory Committee letter, among other instances.

I hope this clarifies our clients' position(s), although frankly I think we have been abundantly clear on these points for years now.

My clients, as constituents of SRHCSD who object to its misappropriation of tax money taken from them in this ill advised endeavor, remain ready, willing, and able to build the MOA road under the terms of the MOA, and invite all other SRHCSD constituents to join them in that effort.

By this communication, no client of this office waives any right, claim, remedy and/or defense, all of which are expressly reserved hereby.

Very truly yours,

LAW OFFICES OF E. PATRICK MORRIS, PC



E. Patrick Morris, Esq.

Cc: Clients; SRHCSD; SBLAFCO; W. Dillon, County Counsel; Damien Meiter, PhD