LAW OFFICES OF E. PATRICK MORRIS

ATTORNEYS AND COUNSELORS AT LAW

1/10/2024

VIA Email Only

Commissioner Bob Nelson (Alt.)
Members of the Commission
Santa Barbara Local Agency Formation Commission
Santa Barbara, California

Re: Business Item #6, Santa Barbara Local Agency Formation Commission January 11, 2024 Agenda; Santa Rita Hills Community Service District Sphere of Influence Expansion

Dear Commissioner Nelson:

First of all, personally and on behalf of those I represent, we appreciate your attention, and that of the other Commissioners, to all of the matters that come before you, mundane and controversial. The issues I raise herein are of tremendous importance to the rights of landowners, the orderly process of government, and due process.

I address this communication in particular to you, as well as the Commission, based upon your "on the record" comments of November 2, 2023 following my limited 3-minute, public comment on the proposed Community Services District Municipal Services ("MSR")/Sphere of Influence ("SOI") report to the Commission and its recommendations, now pending before the Commission tomorrow as Business Item 6, then pending as Business Item 1. After my address. You indicated that you understood from my time-limited comments that the affected landowners I represent were "not supportive of the MOA".

If I gave you that impression, it was the wrong impression, for which I apologize. My clients, for more than 23 years, have wanted and waited to implement the MOA, and remain adamant that the MOA be implemented, but only in full.

137 EAST ANAPAMU STREET • SANTA BARBARA, CALIFORNIA • 93101
PHONE: 805.560.9833 EPMLAWSB@GMAIL.COM

THE CARGASACCHI LANDOWNERS

By way of introduction, and to clear up any confusion about why I was speaking on November 2, 2023, and for whom I was authorized to speak, this office is retained to protect and advance the interests of the Trustee of the Cargasacchi Family Trust; as well as John, Laura, Peter and Mark Cargasacchi, individually. Collectively, these persons are the owners of record of the land referred to as Cargasacchi Ranch, which is located at the end of County owned and operated Sweeney Road, and which separates Sweeney Road from the western boundary of the now defunct Santa Rita Hill Community Services District (hereinafter "SRHCSD"), which is also the boundary of a subdivision consisting of 38, 40-acre +/- parcels of land created with limited government oversight by the filing of a subdivision map in 1968. That subdivision is known as "Lakeview Estates." Lakeview Estates is designated as a "Special Problems area by the Santa Barbara County Board of Supervisors.

For the purposes of this letter, the persons in the paragraph above will be referred to as the "Cargasacchi Ranch Owners."

This office also is retained to protect and advance the interests of John Cargasacchi, the Laura Cargasacchi Belluz Trust, and Peter and Mark Cargasacchi as owners of lots 2 and 10 of the "Lakeview Estates" subdivision found within the current boundaries assigned to SRHCSD; John and Paula Cargasacchi, owners collectively and individually of lots 25, 26 and 27 of Lakeview Estates; and Peter Cargasacchi, individually owner of lots 30, 31 and 36 of Lakeview Estates. Collectively, I will refer to these persons as the "Lakeview Cargasacchis." Combined, the Lakeview Cargasacchis own 20% of the total parcels in Lakeview Estates/SRHCSD.

All of these landowners have asked me to represent them before the Commission as if they were present themselves. I am honored to do so.

I want to be clear: All of these persons, who are landowners directly impacted by the outcome of Business Item 6 tomorrow, oppose SBLAFCO adopting any "expansion" of the boundaries of the defunct, non-operational SRHCSD. Doing so is not "opposing the MOA." Each and all of the Cargasacchi Ranch owners and the Lakeview Cargasacchis (my clients) do not oppose, and always have supported, the implementation in full of the "MOA."

Implementing the MOA is NOT what the SOI expansion proposal is about.[1] The SRHCSD SOI expansion plan is about designating a non-specific, computer drawn image of an ill-defined, unspecific portion within my clients' private land (there is no legal metes and bounds description of what land is to be taken contained in the business item) for some undefined "study," by a defunct governmental entity which is expressly prohibited by its formation documents, which never have been amended or expanded, from having any legal right to deal with the access from Sweeney Road, allegedly to be "studied" as part of "…a

[1] **A separate communication with the whole Commission will detail why this is so.**

plan for the probable physical boundary and service area of a local agency or municipality…" (***See*** Government Code 56425, defining "Sphere of Influence," and "Attachment A" to this letter, the formation documents for SRHCSD, particularly LAFCO Resolution 03-13 at section 5.)

Doing so accomplishes nothing to help anyone, but will unfairly and substantially reduce the value of Cargasacchi Ranch by creating a cloud of unfettered government control on the title to the entire Cargasacchi Ranch.

To understand my clients' position, it is critically important for you and every other Commissioner to understand the "MOA", particularly as there is widespread confusion about what "MOA" means.

THE MOA CONTRACT

The "MOA" is not an "alignment" for an access road. The MOA is not an easement for an access road. It certainly is not the drawing on the map attached to Business Item 6, Attachment E, Exhibit D. It is much, much more.

The "MOA" is a 33 year old, binding agreement to build and operate a privately controlled access road from the end of Sweeney Road, across a specific, metes and bounds, legally described portion of Cargasacchi Ranch, to the boundary of what is known as "Lakeview Estates" (for all intents and purposes, the area of Lakeview Estates and the existing SRHCSD boundaries are the same).

In simple terms, in the late 1980s a dispute arose between the Lakeview Estates parcel owners and the Cargasacchi Ranch owners about how access to Lakeview would be accomplished from the end of Sweeney Road to Lakeview Estates, over Cargasacchi Ranch.

That dispute became a lawsuit filed by the Lakeview property owners (there were no Cargasacchi Lakeview Owners at the time of the lawsuit) against the Cargasacchi Ranch land owners.

In 1989, with input and advice from officials with the County of Santa Barbara, that lawsuit was settled by mutual agreement. The Cargasacchi Ranch owners and all of the Lakeview owners made a deal to build and operate a safe, year-round, surfaced and agriculturally sensitive access road.[2] That deal was written down, and everyone signed it. The document containing that deal was titled "Memorandum of Agreement and Easement Location Document." It is a legally binding contract. The name of that contract is often shortened to "MOA."

When I refer to "MOA," I refer to the ***whole*** agreement, not just any road "alignment" or easement location contained in that contract. The "MOA" is a whole

[2] **The Santa Barbara County Agricultural Advisory Committee has endorsed implementation of the MOA.**

contract, and a whole solution: settlement of the lawsuit, location of an easement to build a private road, the private road design, how this private road would be paid for and maintained, and who has what rights to use the private road, including how often and for what purposes.

I can prove you with a copy of the MOA contract if you request, but I am sure SBLAFCO staff and Mr. Dillon can provide it to you easily, as I have forwarded it to the late Mr. Hood and Dillon more than once, I am sure.

The MOA contract was recorded in the title of both Cargasacchi Ranch, and every Lakeview parcel, so no one living in Lakeview Estates or the SRHCSD boundaries today can honestly claim they were not aware of it, and what it requires of them. The MOA contract was and remains a legally binding contract for every property owner within the boundaries originally designated for the SRHCSD, which was not created until 10 years later.

The Cargasacchi Ranch owners, who own the land not within the former SRHCSD[3], and over which this "Sphere of Influence" is proposed to extend for the benefit of the defunct SRHCSD (the proposed MSR/SOI being considered as Business Item 6 acknowledges that SRHCSD is not and has not functioned for years), fully support implementation of the MOA contract they reached in 1989 with every landowner within the former SRHCSD. They do not support the undefined "expansion" of any authority by the defunct SRHCSD over their private property. Giving SRHCSD concurrent authority over the MOA road location will seriously undermine the MOA's terms.

What the MOA contract remains, after two unsuccessful court challenges, is a comprehensive, legally binding contract to locate, build, operate and maintain a private road from the end of County Road Sweeney to the boundary defined for the SRHCSD when it was formed. This contract was made ten years before any SRHCSD was created by SBLAFCO.

THE SANTA BARBARA SUPERIOR COURTS HAVE ESTABLISHED THE RIGHT TO A PRIVATE ROAD ACCORDING TO THE MOA CONTRACT FOR ACCESS TO THE LAKEVIEW ESTATES PROPERTIES

As set out in Attachment B to this letter (highlighted or underlined as to pertinent portions detailing the enforceability of the entire MOA contract), two times within the last 13 years the Santa Barbara Superior Court has been called upon, in lawsuits filed against all or some of my clients, to determine whether the MOA contract is the binding agreement for access to the Lakeview Estates "development" from Sweeney Road.

Both times, after full and fair trial on the merits, the Santa Barbara Superior Court has confirmed that every parcel in Lakeview Estates, thus every parcel within the boundary of the former SRHCSD, is obligated, as a matter of agreement and law, to seek access only

[3] **SRHCSD has not legally operated, if ever it did, since at least the end of 2013.**

by building that MOA road, and only by operating it under the terms of the MOA. The most recent of these lawsuits was filed by Hank Blanco, seeking to undermine the MIOA and claim $1,000,000 from my clients. He lost, and my clients' rights to enforce the MOA were upheld by the Honorable Timothy Staffel in the attached Judgment.

The MOA does not contemplate any governmental entity, such as a CSD, assuming those contract obligations, nor could one. The single reference in the MOA to an "assessment district" (but one of several options in the MOA for financing and operating the MOA road), does not include control by a government agency such as a CSD, rather by a group consisting of affected landowners. (***See*** California Streets and Highways Code – DIVISION 10 and 12.)

Santa Barbara County has several of these local, landowner operated road associations which are not formed or operated under the Cortese-Knox-Hertzberg Act (one example is the Rancho Ladera Subdivision road association in Goleta). SBLAFCO does not need to be involved in this matter, certainly not on behalf of a non-functional CSD which has been illegally operated and illegally spent taxpayer dollars.

My clients, who are quite clearly constituents of the Commission, are properly highly protective of their property rights. The report of the EO and staff paints, not a picture in favor of adopting the ill conceived, vague extension of government power over private land where private agreements already solve the problems, and the courts have already confirmed the validity and applicability of that private agreement, but rather exposes the lack of public transparency and control of the phantom SRHCSD that should make any public servant such as yourself repel from any possible involvement in advancing an ill-conceived proposal that impairs free transferability of extremely valuable private land in favor of expanding the influence of a non-functioning government entity, with no prospect of revival, that should be finally be dissolved.

As recognized by now two courts, what will solve any access problems to Lakeview Estates is prompt implementation of the existing and long agreed to MOA contract. There is no need for government intervention or mandate/control.

SUMMARY OF REPRESENTED LANDOWNER POSITIONS

The Cargasacchi Ranch owners, along with the Lakeview Cargasacchis, make the following Recommendations to the Commission:

(1) To prevent an unfair taking of landowner rights, the Commission should not approve subpart (8) of the "Resolution Of The Santa Barbara Local Agency Formation Commission Making Determinations And Approving The 2023 Countywide Municipal Service Review And Spheres Of Influence For Transportation, Parking, Street Sweeping & Beautification, Lighting, Transit, And Aiport [*sic*] Services Agencies", to the degree it proposes to expand the Sphere of Influence of the defunct Santa Rita Hills Community Services District, as pictured without specificity in Exhibit D to the Resolution.

(2) The Commission should direct Staff to eliminate from the proposed Resolution, at Subpart (8), any reference to the Santa Rita Hills Community Services District, and delete Exhibit D thereto.

(3) The Commission should direct the Executive Officer, Staff and Counsel to prepare a thorough report on all activities of the Santa Rita Hills Community Services District since January 1, 2014, and provide recommendations and guidance to the Commission about whether those activities were legal and/or appropriate under the Cortese-Knox-Hertzberg Act and/or the Ralph M. Brown Act, and whether the Santa Rita Hills Community Services District has any possibility of acting with less than the 5 member board of directors required by LAFCO Resolution 03-13.[4]

(4) The Commission should consider all steps appropriate to declare a "zero" SOI for SRHCSD as it did in its 2011 MSR/SOI for SRHCSD, and direct the EO to notify the Controller of the State of California that SRHCSD is inactive.

Thank you for your attention to, and consideration of, these important issues of freedom and justice, and thank you again for your work on behalf of our community at large. If you have any questions, or need additional information, please do not hesitate to contact me by email.

By this communication, no client of this office makes any admission in whole or in part, nor waives, in whole or in part, any right, claim, remedy, and or defense, each and all of which are expressly reserved hereby.

Very truly yours,

LAW OFFICES OF E. PATRICK MORRIS

E. Patrick Morris

E. Patrick Morris
Cc: Clients

E:\EXT\DZ\230110 SBLAFCO Nelson.doc

[4] **As set forth in other correspondence to be sent to the Commission, SRHCSD cannot legally operate with only 3 board members.**

2009-0032628

Recorded
Official Records
County of
Santa Barbara
Joseph E. Holland

REC FEE 0.00
CONFORMED COPY 0.00
CD
10:46AM 05-Jun-2009 Page 1 of 12

Recording Requested By:

LAFCO
Santa Barbara Local Agency Formation Commission

Return to:

LAFCO
105 East Anapamu Street
Santa Barbara CA 93101
805/568-3391 FAX 805/647-7647

12

No Fee Per Government Code § 6103

CERTIFICATE OF COMPLETION

As Executive Officer of the Santa Barbara Local Agency Formation Commission, I hereby certify that the attached documents are complete and in accordance with the boundaries, modifications and conditions specified by the Commission in its Resolution No. 03-13 approving this action.

1. The short-form designation of the proceeding is:

   LAFCO 03-13 – Formation of the Santa Rita Hills Community Services District

2. The affected territory is located entirely in Santa Barbara County.

3. The Local Agency Formation Commission's resolution of approval, adopted November 6, 2008, is made a part of this certificate by reference and sets forth the description of the boundaries of the proposal and any terms and conditions that apply.

4. The Executive Officer Determination as the conducting authority, executed on October 13, 2008 ordering the Formation of the Santa Rita Hills Community Services District subject to a confirmation election is made part of this certificate by reference.

5. The County of Santa Barbara Clerk has verified that the confirmation election conducted on May 5, 2009 was successful and in excess of two-thirds of the votes cast were in favor of the formation as approved by the Commission.

6. The Local Agency Formation Commission on June 4, 2009 ordered the execution of this Certificate of Completion.

BOB BRAITMAN
Executive Officer

Bob Braitman

Date: 6-4-09

EXHIBIT A

EXECUTIVE OFFICER DETERMINATION AND ORDER NO. 03-13

DETERMINATION OF THE EXECUTIVE OFFICER OF THE SANTA BARBARA LOCAL AGENCY FORMATION COMMISSION ORDERING THE FORMATION OF THE SANTA RITA HILLS COMMUNITY SERVICES DISTRICT

1. This action is taken pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act (Government Code Section 56000 et seq.) and policies of the Santa Barbara Local Agency Formation Commission (hereafter Commission) , and

2. The Formation of the Santa Rita Hills Community Services District was initiated by a petition of registered voters that was certified as being sufficient on September 10, 2007.

3. On July 3, 2008 the Local Agency Formation Commission following a properly noticed public hearing adopted Resolution No. 03-13, making determinations and approving the proposal subject to conditions.

4. Acting on authority delegated by the Commission, I conducted on October 13, 2008 a properly noticed public hearing to receive protests against the proposed formation and, following conclusion of the hearing, I made the following determinations:

   a. There are 11 registered voters residing within the proposal area;

   b. Protests were submitted by two registered voters,

   c. There are 29 landowners within the proposal area, and

   d. Protests were submitted by four owners,

5. Based on the determinations above, I find that protests against the formation represent less than a majority of the registered voters residing within the proposal area and less than a majority of the landowners owning land within the proposal area.

6. Therefore, finding there are insufficient protests to terminate the proceedings, the formation should proceed subject to a confirmation election and the terms and conditions in the Commission's resolution of approval.

This order is made on and is effective from October 13, 2008.

Bob Braitman, Executive Officer,
Santa Barbara Local Agency Formation Commission

LAFCO 03-13

(As amended November 6, 2008)

RESOLUTION OF THE SANTA BARBARA LOCAL AGENCY FORMATION COMMISSION MAKING DETERMINATIONS AND APPROVING THE FORMATION OF THE SANTA RITA HILLS COMMUNITY SERVICES DISTRICT

WHEREAS, the above-referenced proposal has been filed with the Executive Officer of the Santa Barbara Local Agency Formation Commission pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act (Section 56000 et seq. of the Government Code) and the Community Services District Law (Section 61000 et seq. of the Government Code); and

WHEREAS, at the times and in the manner required by law the Executive Officer has given notice of the Commission's consideration of the proposal; and

WHEREAS, the Commission heard, discussed and considered all oral and written testimony related to the proposal including, but not limited to, the Executive Officer's report and recommendation, the environmental document or determination, Spheres of Influence and applicable General and Specific Plans; and

WHEREAS, territory within the proposal is designated Agriculture on the County General Plan and zoned 100-acre minimum lot size; other than one parcel that is less than one acre in size all of the existing parcels are approximately 40 acres in size and cannot be further subdivided absent a General Plan Amendment and rezoning; and

WHEREAS, one road is planned to provide access to the Lakeview Estates parcels from the end of Sweeney Road to the tract; and

WHEREAS, the Santa Barbara County Fire Department has informed the Commission that this single access road to the Lakeview Estates subdivision will satisfy County requirements provided the subdivision maintains the original configuration as recorded.

NOW, THEREFORE, BE IT RESOLVED DETERMINED AND ORDERED by the Local Agency Formation Commission of Santa Barbara County as follows:

(1) The Commission finds the proposal is not a "project" under the California Environmental Quality Act ("CEQA") because it is limited to the creation a government funding mechanism that does not involve the commitment to any specific project. Pursuant to CEQA Guidelines section 15378(b)(4), a "project" under CEQA does not include the "creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.."

(2) The subject proposal is assigned the distinctive short-form designation:

Formation of the Santa Rita Hills Community Services District

(3) The boundaries of the affected territory are found to be definite and certain as approved and set forth in Exhibit A, attached hereto and made a part hereof.

(4) The Commission finds the proposal to be in the best interests of the affected area and the total organization of local governmental agencies within Santa Barbara County.

(5) The proposal is approved subject to the following terms and conditions:

A. In accordance with the Community Services District Law the District shall be governed by a five-member Board of Directors elected at large, each of whom shall be a voter residing within the District. Terms of office of District directors shall be four years. Of the first elected board, the terms of the three members with the largest popular votes shall be four years. Of the first elected board, the term of the two members with the smallest popular vote shall be two years. In the case of a tie, the election will be decided by lot.

B. The District shall within its boundaries have powers and responsibilities as set forth in the enabling act to acquire, construct, improve, and maintain streets, roads, rights-of-way, bridges, culverts, drains, curbs, gutters, sidewalks and any incidental works, to convert overhead electric and communications facilities to underground locations, and to install underground electric and communications facilities, with the consent of the public agency or public utility that owns the facilities pursuant to Streets and Highways Code.

C. The District shall not have the power to provide other services including water supply or distribution nor are there plans for the District to acquire water rights or supply water within or outside of its boundaries.

D. 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.

E. Any capital improvements or infrastructure constructed by the District must relate to the specific authorized services and any significant costs for construction will be financed by benefit assessments approved by landowners within the District.

F. A special tax shall be approved as part of the formation as follows:

(1) The maximum annual special tax authorized for the District shall be Three Million Dollars ($3,000,000) for the fiscal year 2008-2009 and shall increase automatically each fiscal year thereafter by the percentage change in the Consumer Price Index (CPI) for the Los Angeles/Long Beach area for the prior 12 months.

(2) The actual tax to be levied for any fiscal year shall be determined by a majority vote of the District board of directors on the basis of the actual revenues estimated to be required by the District to pay its reasonable and necessary expenses for such year.

(3) The special tax shall be applied equally to each legal lot within the District; the amount of the tax levied shall be the same for each lot.

G. An appropriations limit shall be approved as part of the formation of Three Million Dollars ($3,000,000) for the fiscal year 2008-2009 and shall increase automatically each fiscal year thereafter by the percentage change in the Consumer Price Index (CPI) for the Los Angeles/Long Beach area for the prior 12 months.

H. The effective date shall be the date that the formation is recorded.

(6) All subsequent proceedings in connection with this formation shall be conducted only in compliance with the approved boundaries set forth in the attachments and any terms and conditions specified in this resolution.

This resolution is adopted on November 6, 2008 in Santa Barbara California.

AYES: Centeno, Mariscal, Orach, Schlottmann, Wilson, Wolf

NOES: DeWees

ABSTAINS: None

Dated: 11-6-08 Cathy Schlottmann

Chair
Santa Barbara Local Agency Formation Commission

ATTEST

Mary Everett

Mary Everett, Clerk
Santa Barbara Local Agency Formation Commission

Exhibit "A"
Formation of the Santa Rita Hills Community Services District
LAFCO No. 03-13

Legal Description

All that certain land situated in the Rancho Santa Rosa, County of Santa Barbara, State of California, being all of Lots 1 through 38, inclusive, as shown on a Record of Survey filed November 21, 1968 in Book 84, Pages 31 through 33, inclusive, of Records of Survey in the Office of the County Recorder of said County, together with that certain parcel of land described in the Quitclaim Deed recorded December 22, 2008 as Instrument No. 2008-0070443 of Official Records in the Office of the County Recorder of said County, described as follows:

Commencing at the northeast corner of the Federal Corrections Institute Annexation No. 38 to the City of Lompoc as adopted by the Board of Supervisors of the County of Santa Barbara, State of California on December 22, 1969 as Resolution No. 69-691;

Thence, S 61°42'20" E a distance of 37,316.17 feet to the northwesterly corner of Lot 1 as shown on said Record of Survey and being the True Point of Beginning.

Thence 1st, along the northerly line of said Record of Survey, S 89°26'20" E a distance of 5,172.9 feet to an angle point therein;

Thence 2nd, continuing along said northerly line, N 89°48'10" E a distance of 2,650.4 feet to the northeasterly corner of Lot 6 as shown of said Record of Survey;

Thence 3rd, along the easterly line of said Record of Survey, S 1°23'50" W a distance of 2,662.5 feet to the southeasterly corner of said Lot 6;

Thence continuing along said easterly line the following courses and distances;

4th, N 88°58'30" W a distance of 347.5 feet to the southerly corner of said Lot 6;

5th, S 53°58'00" W a distance of 1,617.2 feet to the southeasterly corner of Lot 16 as shown on said Record of Survey;

6th, N 89°48'50" W a distance of 1305.6 feet to the northeasterly corner of Lot 17 as shown on said Record of Survey;

7th, S 0°22'30" W a distance of 1333.4 feet to the southeasterly corner of said Lot 17;

8th, S 89°48'50" E a distance of 1305.6 feet to the northeasterly corner of Lot 25 as shown on said Record of Survey;

9th, S 00°22'30" W a distance of 2573.1 feet to the southeasterly corner of Lot 26 as shown on said Record of Survey;

10th, N 85°46'20" W a distance of 2,999.5 feet to the northeasterly corner of Lot 33 as shown on said Record of Survey;

11th, S 13°21'50" W a distance of 1,226.5 feet to an angle point therein;

12th, S 27°32'10" W a distance of 3,151.1 feet to the southeasterly corner of Lot 38 as shown on said Record of Survey;

Thence 13th, along the southerly line of said Record of Survey N 62°42'50" W a distance of 1,076.2 feet to an angle point therein;

Thence 14th continuing along said southerly line, S 85°54'10" W a distance of 2,484.7 feet to the southwesterly corner of Lot 37 as shown on said Record of Survey said point being distant S 69°29'11" E, 24,708.78 feet from the southeasterly corner of the City of Lompoc;

Thence 15th, along the westerly line of said Record of Survey, and said Quitclaim Deed, N 08°42'40" E a distance of 4055.3 feet to an angle point therein;

Thence continuing along said westerly line the following course and distance;

16th, N 11°54'15" E a distance of 7,150.3 feet to the northeasterly corner of said Lot 1 and the True Point of Beginning.

Containing 1,589.93 acres, more or less.

Prepared by:

Kenneth J. Wilson
PLS7911
License expiration
12/31/09

PROFESSIONAL LAND SURVEYOR
KENNETH J. WILSON
Exp. 12/31/09
No. 7911
STATE of CALIFORNIA

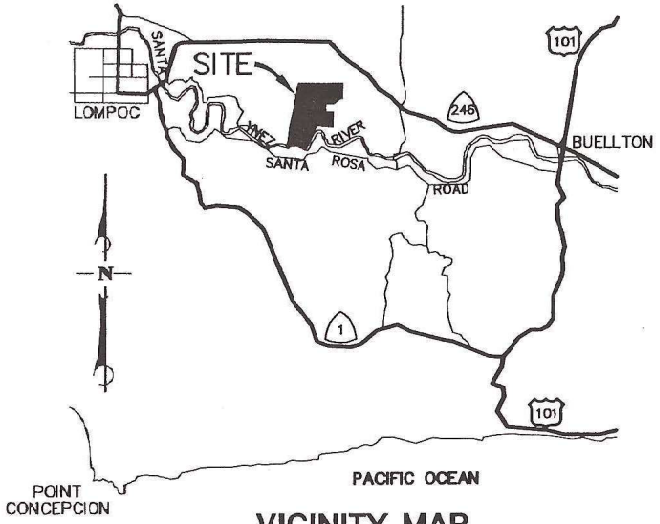
5-1-09

APPROVED AS TO FORM
AND SURVEY CONTENT

MICHAEL B. EMMONS, PLS 5899
COUNTY SURVEYOR
LICENSE EXP. 12/31/10

LICENSED LAND SURVEYOR
MICHAEL B. EMMONS
L.S. 5899
EXP. 12/31/10
STATE OF CALIFORNIA

FINAL MAP/LEGAL DESCRIPTION
APPROVED BY LAFCO
By _____ Date 5-11-09



VICINITY MAP
NOT TO SCALE

EXHIBIT "B"

SHEET 1 OF 4

MAY 1, 2009

APPROVED AS TO FORM
AND SURVEYING CONTENT

MICHAEL B. EMMONS PLS 5899
SANTA BARBARA COUNTY SURVEYOR
LICENSE EXPIRATION 12/31/2010

LICENSED LAND SURVEYOR
MICHAEL B. EMMONS
L.S. 5899
EXP 12/31/10
STATE OF CALIFORNIA

FINAL MAP/LEGAL DESCRIPTION
APPROVED BY LAFCO
By M Emmons Date 5-11-09

PREPARED BY:

KENNETH J. WILSON
PLS 7911
LICENSE EXPIRATION
DATE: 12/31/09

5-1-09

PROFESSIONAL LAND SURVEYOR
KENNETH J. WILSON
NO 7911
EXPIRES 12-31-09
STATE OF CALIFORNIA

Penfield & Smith
Engineering · Surveying · Planning
· Construction Management ·

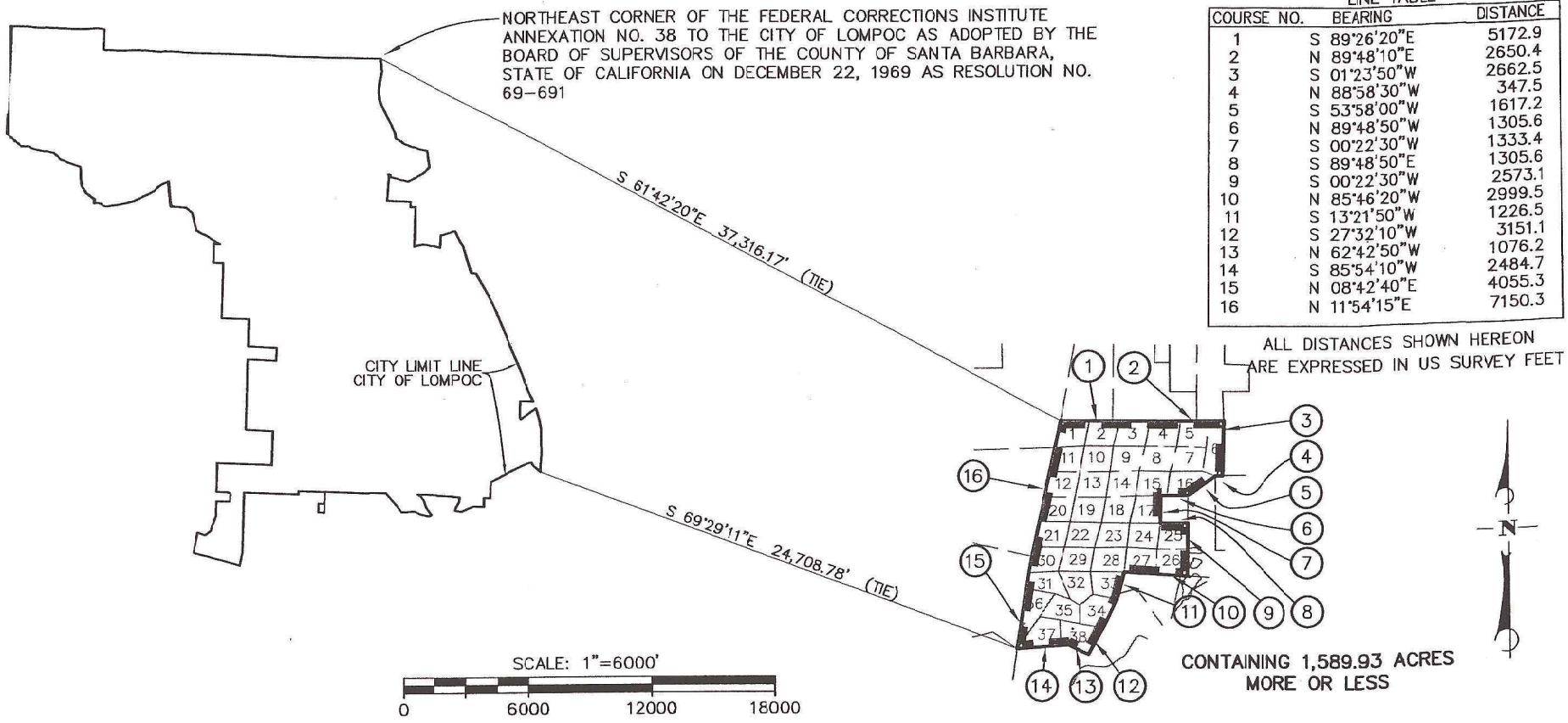
111 East Victoria Street, Santa Barbara, CA 93101
Phone: (805) 963-9532 Fax: (805) 966-9801

W.O. 14659.04 14659\EXHIBITS\14659-EXH_B

SANTA RITA HILLS
COMMUNITY SERVICE DISTRICT
LAFCO PROJECT 03-13

ALL THAT CERTAIN LAND SITUATED IN THE RANCHO SANTA ROSA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, BEING ALL OF LOTS 1 THROUGH 38, INCLUSIVE, AS SHOWN ON A RECORD OF SURVEY FILED NOVEMBER 21, 1968 IN BOOK 84, PAGES 31 THROUGH 33, INCLUSIVE, OF RECORDS OF SURVEY IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, TOGETHER WITH THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE QUITCLAIM DEED RECORDED DECEMBER 22, 2008 AS INSTRUMENT NO. 2008-0070443 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY

COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA



LINE TABLE

COURSE NO.	BEARING	DISTANCE
1	S 89°26'20"E	5172.9
2	N 89°48'10"E	2650.4
3	S 01°23'50"W	2662.5
4	N 88°58'30"W	347.5
5	S 53°58'00"W	1617.2
6	N 89°48'50"W	1305.6
7	S 00°22'30"W	1333.4
8	S 89°48'50"E	1305.6
9	S 00°22'30"W	2573.1
10	N 85°46'20"W	2999.5
11	S 13°21'50"W	1226.5
12	S 27°32'10"W	3151.1
13	N 62°42'50"W	1076.2
14	S 85°54'10"W	2484.7
15	N 08°42'40"E	4055.3
16	N 11°54'15"E	7150.3

ALL DISTANCES SHOWN HEREON ARE EXPRESSED IN US SURVEY FEET

CONTAINING 1,589.93 ACRES MORE OR LESS

LEGEND

= PROPOSED SANTA RITA HILLS COMMUNITY SERVICE DISTRICT BOUNDARY

(1) = COURSE NUMBER IN LEGAL DESCRIPTION

Penfield & Smith
Engineering · Surveying · Planning · Construction Management ·

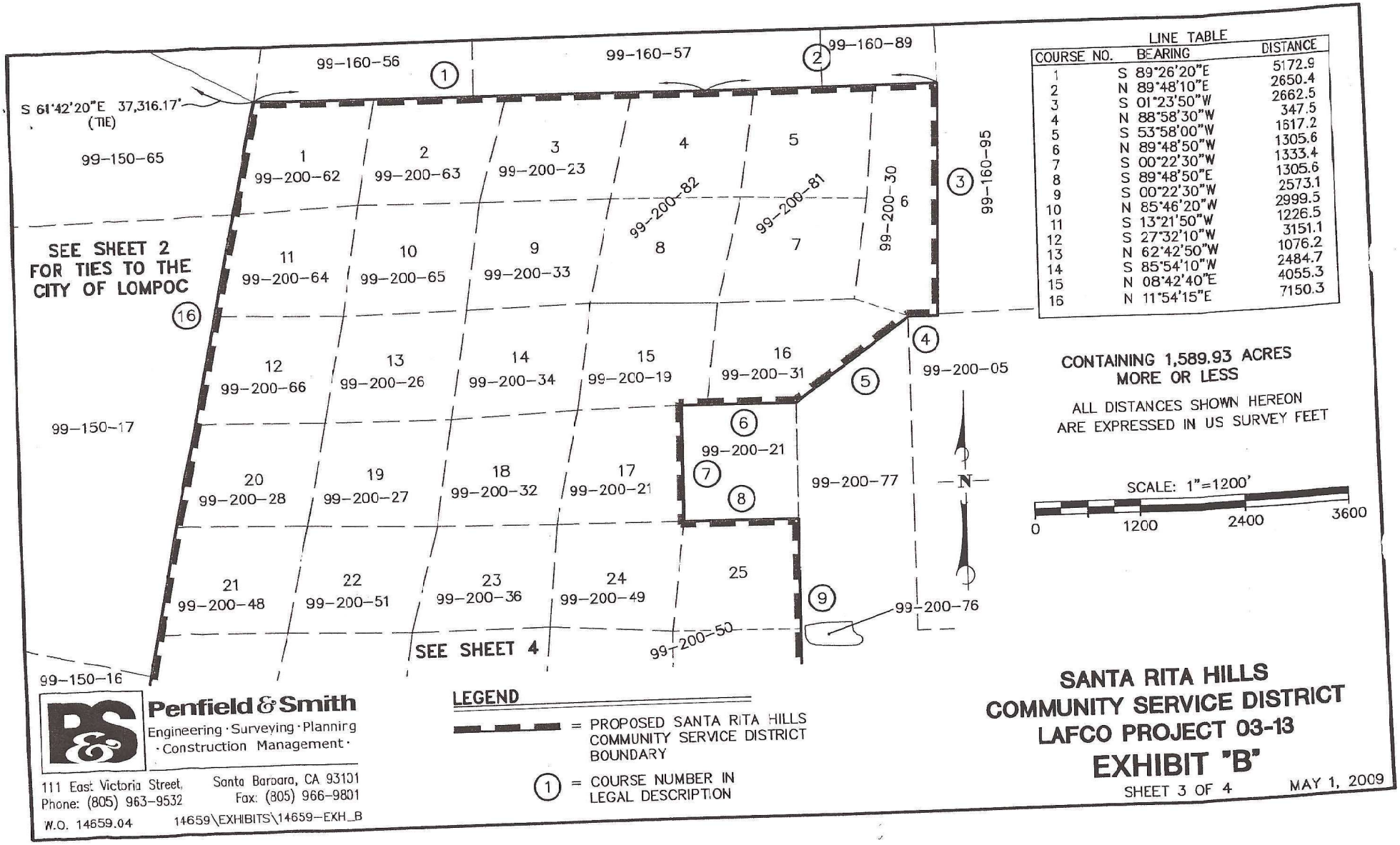
111 East Victoria Street, Santa Barbara, CA 93101
Phone: (805) 963-9532 Fax: (805) 966-9801

W.O. 14659.04 14659\EXHIBITS\14659-EXH_B

SANTA RITA HILLS COMMUNITY SERVICE DISTRICT LAFCO PROJECT 03-13

EXHIBIT "B"

SHEET 2 OF 4 MAY 1, 2009



LINE TABLE

COURSE NO.	BEARING	DISTANCE
1	S 89°26'20"E	5172.9
2	N 89°48'10"E	2650.4
3	S 01°23'50"W	2662.5
4	N 88°58'30"W	347.5
5	S 53°58'00"W	1617.2
6	N 89°48'50"W	1305.6
7	S 00°22'30"W	1333.4
8	S 89°48'50"E	1305.6
9	S 00°22'30"W	2573.1
10	N 85°46'20"W	2999.5
11	S 13°21'50"W	1226.5
12	S 27°32'10"W	3151.1
13	N 62°42'50"W	1076.2
14	S 85°54'10"W	2484.7
15	N 08°42'40"E	4055.3
16	N 11°54'15"E	7150.3

CONTAINING 1,589.93 ACRES
MORE OR LESS

ALL DISTANCES SHOWN HEREON
ARE EXPRESSED IN US SURVEY FEET

SCALE: 1"=1200'

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LEGEND

= PROPOSED SANTA RITA HILLS COMMUNITY SERVICE DISTRICT BOUNDARY

(1) = COURSE NUMBER IN LEGAL DESCRIPTION

Penfield & Smith
Engineering · Surveying · Planning
· Construction Management ·

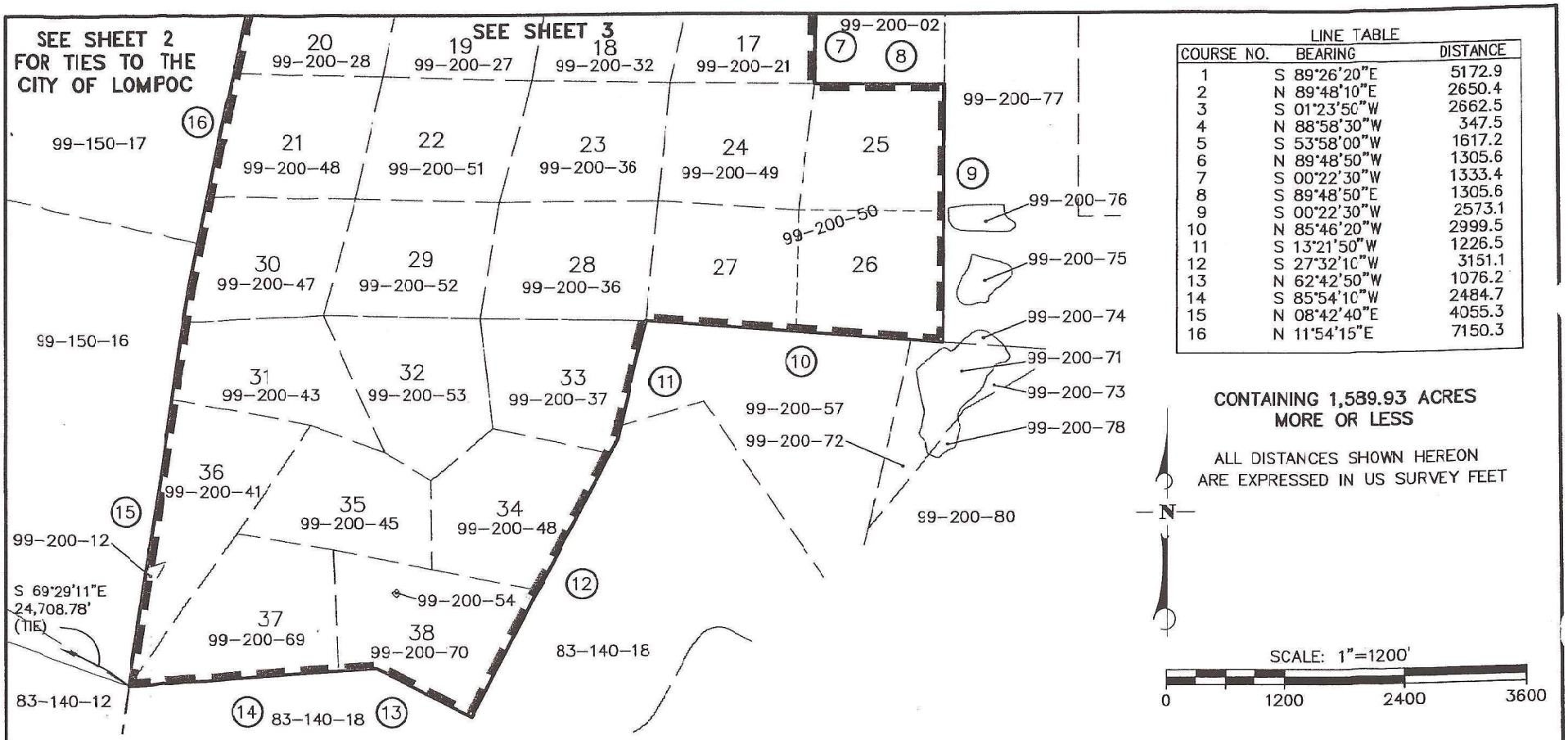
111 East Victoria Street, Santa Barbara, CA 93101
Phone: (805) 963-9532 Fax: (805) 966-9801

W.O. 14659.04 14659\EXHIBITS\14659-EXH_B

SANTA RITA HILLS COMMUNITY SERVICE DISTRICT LAFCO PROJECT 03-13

EXHIBIT "B"

SHEET 3 OF 4 MAY 1, 2009



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SANTA RITA HILLS COMMUNITY SERVICE DISTRICT LAFCO PROJECT 03-13

EXHIBIT "B"

SHEET 4 OF 4 MAY 1, 2009

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

COOK DIVISION

PETER AND JOHN CARGASACCHI, Plaintiffs v. ARIEL LAVIE, IRTI M. LAVIE, ANGELA HOBBS; and ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN, OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFF'S TITLE, OR ANY CLOUD ON PLAINTIFF'S TITLE THERETO AND DOES 1 THROUGH 15, INCLUSIVE, Defendants	Case No. 1270024 Assigned to the Hon. Arthur A. Garcia ~~[proposed]~~ JUDGMENT AFTER TRIAL

Caption Continued on Next Page

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MARK CARGASACCHI, LAURA CARGASACCHI,
GIOVANNI CARGASACCHI and CLEMENTINA
CARGASACCHI

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

COOK DIVISION

PETER AND JOHN CARGASACCHI, Plaintiffs v. ARIEL LAVIE, IRTI M. LAVIE, ANGELA HOBBS; and ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN, OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFF'S TITLE, OR ANY CLOUD ON PLAINTIFF'S TITLE THERETO AND DOES 1 THROUGH 15, INCLUSIVE, Defendants	Case No. 1270024 Assigned to the Hon. Arthur A. Garcia ~~[proposed]~~ JUDGMENT AFTER TRIAL

Caption Continued on Next Page

Ariel Lavie, Angela Hobbs, Irit M. Lavie

Cross-Complainants,

vs.

Peter Cargasacchi, John Cargasacchi, Laura Cargasacchi, Mark Cargasacchi, and All Persons Unknown Claiming Any Legal or Equitable Right, Title, Estate, Lien or Interest In The Property Described In The Complaint Adverse To Cross-Complainants' Title, Or Any Cloud On Cross-Complainants' Title Thereto; And DOES 26 Through 50, Inclusive.

THE COURT ENTERS JUDGMENT IN THIS ACTION AS FOLLOWS:

John and Peter Casgasacchis' Second Amended Complaint

Judgment is entered for Plaintiffs, Peter and John Cargasacchi, against defendants Ariel Lavie, Irit M. Lavie and Angels Hobbs (collectively "Lavie") on the First and Second Causes of Action of Plaintiffs' Second Amended Complaint.

On Plaintiffs' First Cause of Action for Declaratory Relief/Quiet Title, it is the Judgment of this Court that the Plaintiffs' rights pursuant to the easement documents of record to the parcels owned by them are as set forth in the deeds to their properties, effective with the recording of the deeds and as of the filing of this action on June 4, 2008.

It is further adjudged that the defendants Ariel Lavie, Irit M. Lavie and Angels Hobbs and their agents, guests and invitees may not interfere with the Plaintiffs non-exclusive use of the easements for road and/or utility purposes, and in particular may not gate, lock or block any easement benefiting the Plaintiffs' parcels so as to interfere with Plaintiffs' use of same.

It is the Judgment of the Court that Plaintiffs have a nonexclusive right to pass through certain portions of the Lavie property for road and utility purposes as provided in the Plaintiffs' deeds of record and the subdivision map recorded at on pages 31, 32 and 33 of Page 84 of the Record of Surveys of Santa Barbara County.

Lavie shall either provide keys or combinations to any lock on any gate impeding such use, or Plaintiffs will be able to remove any ~~gate~~ LOCK as reasonably necessary to cross over the Lavie property as necessary to use the easements for road and/or utility purposes.

Further, it is the Judgment of this Court that the Lavie defendants, and each of them including their agents, guests and invitees must comply with each and all ~~of~~ the terms of the Memorandum of Agreement ("MOA") recorded March 16, 1990 as Instrument number 90-017789 in favor of Cargasacchi Ranch.

It is more specifically the Judgment of the Court that the requirement in the MOA that any gates on Cargasacchi Ranch be kept closed has not been extinguished or modified, and that the Lavie defendants and their agents, guests and invitees must comply with the requirement to close the gates. There is no Judgment of damages in favor of the Plaintiffs.

On Plaintiffs' Second Cause of Action for Injunctive Relief it is the Judgment of this Court that the Lavie defendants shall now and in the future either provide keys or combinations to any lock installed on any gate over any easement of record in favor of Plaintiffs, or Plaintiffs are allowed to remove such ~~gate.~~ lock

On the Plaintiffs' Second Cause of Action the Court grants a Permanent Injunction in favor of Plaintiffs, enjoining the Defendants and each of them including their agents, guests and invitees from failing to comply with the terms of the MOA, in particular by not closing any gates on Cargasacchi Ranch associated with the road described in the MOA, and that the Lavie defendants and their agents, guests and invitees are further enjoined from interfering in the Plaintiffs' use of their non-exclusive easements of record for road and/or utility purposes.

Lavie's Second Amended Cross-Complaint

The Court finds for Cross-Defendants Peter Cargasacchi, John Cargasacchi, Laura Cargasacchi, Mark Cargasacchi, Clementina Cargasacchi and Giovanni Cargasacchi and against Cross-Plaintiffs Ariel Lavie, Irit M. Lavie and Angela Hobbs on the Lavies' First and Second Cause of Action of Cross-Complainants Second Amended Cross-Complaint; and for Cross-Defendant Peter Cargasacchi as to the Lavies' Third and Fourth Causes of Action of the Second Amended Cross-Complaint.

On Cross-Complainants' First Cause of Action for Declaratory Relief against all cross-defendants, the Court grants Judgment that there has been no modification of easements of record granted to, or recorded in favor of the cross-defendants.

As stipulated by cross-defendants, the Lavie parcel may maintain a fence that does not impair cross-defendants' access to their easements of record, may lock any gate on the Lavie parcel so long as Plaintiffs are provided keys or combinations thereto; and Lavie may post signs indicating that there is "No Trespassing" on the Lavie parcel.

On Cross-Complainants Second Cause of Action for Quiet Title against all cross-defendants, the Court finds that the nonexclusive easements over certain portions of the Lavie property for roadway and utility purposes have not been modified or extinguished.

On Cross-Complainants' Third Cause of Action for Trespass and Injunctive Relief against Cross-Defendant Peter Cargasacchi, it is the Judgment of the Court that there has been no trespass by cross-defendant Peter Cargasacchi and as such, declines to impose any injunction against him. Judgment is in favor of Peter Cargasacchi.

On Cross-Complainants' Fourth Cause of Action for Trespass to Chattel against Cross-Defendant Peter Cargasacchi, it is the Judgment of the Court that there was no trespass to chattel and Cross-complainants shall take nothing. Judgment is in favor of Peter Cargasacchi.

On all causes of action, Plaintiffs and Cross-defendants are the prevailing parties entitled to costs of suit from Defendants and Cross-complainants

4-11-11
Re-Entered to Show Costs Only in a Amount of $3,499.65

IT IS SO ORDERED, ADJUDGED AND DECREED.

GARY M. BLAIR, Executive Officer
By S. Leyden Deputy Clerk
S. LEYDEN

Dated: DEC 0 1 2010

S. LEYDEN

ARTHUR A. GARCIA
Judge of the Superior Court

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MM

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Attorneys for Defendants
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

COOK DIVISION

HENRY BLANCO, Plaintiff v. GIOVANNI CARGASACCHI; INDIVIDUALLY AND AS TRUSTEE OF THE CARGASACCHI FAMILY TRUST; JPMORGAN CHASE BANK, N.A.; PETER A. CARGASACCHI; JOHN M. CARGASACCHI; LAURA TERESA CARGASACCHI BELLUZ, TRUSTEE OF THE LAURA TERESA CARGASACCHI BELLUZ SEPARATE PROPERTY TRUST DATED NOVEMBER 18, 2015; MARK J. CARGASACCHI; AND ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN, OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFF'S TITLE, OR ANY CLOUD ON PLAINTIFF'S TITLE THERETO; AND DOES 1 THROUGH 50, INCLUSIVE, Defendants	Case No. 17CV04672 Hon. Timothy Staffel SM 3 Trial Date: December 15 -16, 2021 ~~[proposed]~~ JUDGMENT AFTER COURT TRIAL

THIS MATTER CAME BEFORE THE COURT for trial to the Court on December 15 and 16, 2021. The Court rendered its Statement of Decision on July 6, 2022.

JUDGMENT IS ENTERED for Defendants and each of them, and as against Plaintiff Henry Blanco, as set forth in the Court's Statement of Decision rendered on July 6, 2022, attached hereto and included as the Judgment of the Court this date.

IT IS SO ORDERED, ADJUDGED AND DECREED; this

27th Day of September, 2022.

Judge of the Superior Court
Timothy J. Staffel

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

Henry Blanco,

Plaintiff,

v.

Giovanni Cargasacchi, et al.

Defendants.

Case No.: 17CV04672

STATEMENT OF DECISION

INTRODUTION

Plaintiff Henry Blanco (hereafter plaintiff), the dominant tenement holder of the easement at issue, contends he should be able to improve the existing access way easement, established for "road purposes" in 1968, and presently in use, in order to implement County of Santa Barbara's (County's) road improvement requirements before securing grading and building permits for residential construction. Defendants Giovanni Cargasacchi individually and as Trustee of the Cargasacchi Family Trust, Peter Cargasacchi, Laura Teresa Cargasacchi Belluz, as Trustee of the Laura Theresa Cargasacchi Belluz Separate Property Trust Dated November 18, 2015, and Mark Cargasacchi, as owners of the Cargasacchi Ranch, (hereafter, collectively as

defendants), who are the servient tenement holders of the easement in question, disagree. Defendants argue that before proceeding with residential construction (and thus securing permits from the County for that purpose), plaintiff must comply with the requirements of a 1990 document that modified the nature of the easement and not the original 1968 easement grant. The court, after examining the arguments, evidence, and documents submitted at the bench trial, and after exploring the questions *exclusively* through the prism of quiet title and declaratory relief as presented, concludes defendants have the better argument. The 1990 document, given its logical import and the current present realities, governs how plaintiff must proceed before securing building permits from the County. Accordingly, the court denies relief as requested by plaintiff, for reasons discussed in greater depth below.

FACTUAL AND PROCEDURAL BACKGOUND

Plaintiff owns the residence, located at 4375, Sweeney Road, Lompoc, which is 7,476 square feet, along with a 13-acre vineyard. This is one of 38 parcels associated with the Lakeview Estate, located in the Santa Ynez Valley. The parcel and residence were previously owned by Christopher and Kristi Marks (hereafter, the Marks), who finished 90% of the residential construction, but stopped after suffering financial difficulties. Plaintiff purchased the property from the Marks in 2012, and presently wishes to complete the remaining construction as needed. He has attempted to secure a building and grading permit with County authorities; however, the County has designated Lakeview Estates as a "Special Problems Area" given width and road access problems to the Lakeview Estates. The County, looking to the "old easement road" created in 1968, required significant upgrades before it would issue the grading and building permit.[1] The County indicated that plaintiff had not yet provided the metes and bounds of the 1968 road, and most significantly, had failed to show that he had the authority to alter and improve the land without the consent of the defendants, the servient tenement holders of the easement at issue. Plaintiff initiated two separate but related lawsuits as a result. The first was a

[1] Plaintiff, for example, had to secure an engineering and geological report on the condition of the original easement road established in 1968, although it ultimately found the road was in good condition, was sufficiently wide for passenger vehicles, and could support emergency vehicles. County demanded additional improvements as well.

petition for writ of mandate against County, attempting to compel the County to issue the necessary permits for constructions and grading, which is not at issue in this matter.[2]

The second is the present lawsuit filed against defendants, culminating in the third amended complaint as the operative pleading. The lawsuit has changed over the course of the litigation, however. Originally, in the third amended pleading, plaintiff advanced six (6) causes of actions against the defendants, including quiet title, interference with easement, breach of contract, breach of the implied covenant of good faith and fair dealing, declaratory relief, and "preliminary injunction." As injunctive relief is not a cause of action but a remedy (*Guessous v. Chrome Hearts, LLC* (2009) 179 Cal.App.4th 1177, 1187), injunctive relief will be applied only if plaintiff advances a successful interpretation of the grant easement documents at issue. Plaintiff has since dismissed the second cause of action (interference with easement) and the fourth cause of action (breach of the convenient of good faith and fair dealing). Further, after the initial rounds of trial briefs were submitted, plaintiff expressly withdrew the breach of contract claim (the third cause of action),[3] further eschewing any "reliance on the 2004 [agreement] between" between defendants and plaintiff's predecessor in interest. Counsel for plaintiff made this crystal clear at the May 18, 2022, hearing.[4] Following the dismissal of the second, third, and fourth causes of action, as well as counsel's comments concerning the 2004 agreement, there

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[2] This case was titled *Blanco v. County of Santa Barbara et al.*, Case No. 17CV04565. This court ultimately granted County's motion for judgment on the pleadings, without leave to amend, as plaintiff had failed to exhaust administrative remedies. Court of Appeal, Second Appellate District Six affirmed in a nonpublished opinion. (*Blanco v. County of Santa Barbara*, B308340, opn. filed on Oct. 18, 2021.) The remittitur was issued on December 21, 2021. The court takes judicial notice of the trial court case file in Case No. 17CV04565, which includes the Court of Appeal opinion, as the facts in that case help frame the issues raised in the present matter.

[3] The third cause of action advanced a breach of the 2004 agreement between plaintiff's predecessor in interest and the defendants, discussed in greater depth in this decision. Plaintiff claimed as to this cause of action that the defendants breached the agreement, which allowed the Marks to utilize the 1968 easement road to finish construction of the residence.

[4] Plaintiff's counsel explained what he meant by this withdrawal: "Well, the [2004 Document] is in evidence.[4] We didn't use it in court case, but if the Court feels it's something it can take judicial notice of, I believe the Court has authority to look at anything that's outside the record if it's subject to judicial notice., even if we didn't use it as an exhibit."

are only two remaining causes of action remaining before the court – quiet title (the first) and declaratory relief (the fifth).[5]

Plaintiff filed his first trial brief on November 21, 2021, and defendants filed their trial brief on December 13, 2021. The parties filed a joint list of stipulated facts on October 21, 2021, after a two-day bench trial, concluding on December 15, 2021. The court went on a site visit on February 25, 2022. Plaintiff filed his closing argument brief on April 4, 2022, and the defendants filed their closing trial brief on April 6, 2022. On May 18, 2022, the court heard closing arguments, and indicated that this statement of decision would be submitted to the parties by July 6, 2022.

CRICTIAL DOCUMENTS

There are four sets of documents that frame how the court will proceed in assessing the two remaining causes of action, for both parties in the end ask the court to interpret their meaning and determine their impact in resolving the present dispute. Each of the four documents will be discussed below.

In 1968, Bartolo Cargasacchi granted to Wallace and Mary Dyer (plaintiff's predecessor in interest) an "easement ***and right of way, for use in common with others, for road purposes,*** on and over and across a strip of land from the west boundary of the land described in Schedule A attached hereto, abutting the end of the existing County Road know as Sweeney Road, over and across said land described in Schedule A, to the west boundary of the land described in Schedule B, attached hereto. [¶] Subject to the right of the grantor to maintain gates and cattle guards across said right-of-way and said gates shall be kept closed." (Emphasis added.) This document well be termed the "1968 Grant Easement."

In 1987, in a recorded documented entitled "Clarification to and Expansion of Grant of Easement," (hereafter, the 1987 Clarification) Giovanni and Clementia Cargasacchi, successors to Bartolo Gargasacchi, agreed to "resolve . . . disputes about" 1) the width of the easement created in the 1968 Grant Easement, and 1) whether the original grant of easement "created an

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[5] These dismissals, along with counsel's concession, has altered the nature of the court's analysis. The 2004 agreement, with its potential contractual basis for relief, has been removed from the calculus. The court will summarize this document (called the 2004 Document) in the body of this decision with these limitations in mind.

easement that was appurtenant to each of the thirty-eight (38) separate parcels of the subdivision of the Dominant tenement . . . ." This document goes on to clarify as follows: An "easement and right of way, for use in common with others, for road purposes, on and over and across a strip of land, 30 feet in width, from the west boundary of the land described in Exhibit B attached hereto, abutting the end of the existing County Road known as Sweeny Road, over and across said Land Described in Exhibit B, to the west Boundary of the Land Described in Exhibit C attached hereto. Subject to the right of the Grantor to maintain gates and cattle guards across said right of way and said gates shall be kept closed." Further, the "easement rights created by the Original Grant of Easement [from 1968] . . . are appurtenant to Parcels 1 to 38, inclusive, as shown on the Record of Survey described in Recital D." The documents conclude: "This Clarification to and Expansion of Grant of Easement does not constitute an easement in addition to the Original Grant of Easement but is a clarification and expansion thereof. Except as expressly clarified and expanded herein, all terms, conditions, and stipulations of the Original Grant of Easement shall remain in full force and effect and herby confirmed as such."

On September 1, 1989, a "Memorandum of Understanding and Easement Location Document" was consummated between Giovanni and Clementia Cargasacchi, successors in interest to Bartolo Cargasacchi (the servient tenement holder), and all then existing owners of the Lakeview Estates (38 estates, known as the dominant tenement holders). This document expressly references the 1968 Grant Easement and the 1987 Clarification; and reiterates that use of the easement in question was conditioned on the servient tenement holders maintaining gates and cattle guards across the easement. A certain number of statements were made about the nature of the easement in question (as relevant for our purposes). This document was recorded in 1990 and will be termed the 1990 Memorandum.

The 1990 Memorandum provided a number of importation qualifications to the easement. First, the parties acknowledged that the 1968 Grant Easement Document and the 1987 Clarification failed to specifically identify the location of the easement; they wished to remedy that, and did so as follows: "Servient Tenement Owners hereby grant the location and Dominant Tenement Owners hereby accept the location of the above-described easement and right of way shown on the photograph is attached hereto and incorporated herein by reference as Exhibit C. It

will begin at the western entrance to entrance to the Servient Tenement and extend in a straight line directly east until intersects the existing road at the base of the foothill. From this point of intersection, it will generally follow the existing road, as hereinafter described through the foothills to the eastern gate where it leaves the Servient Tenement and enter the Dominant Tenements. The Original Grant of Easement as clarified and expanded by the Clarification Document shall be appurtenant to each of the Dominant Tenements described in Exhibit "A" hereto, and the easement right of way is located for each of them as set forth above." All 38 Lakeview Estates parcels would have access. The location of the new road easement would be expressly decided by a survey of the 30-foot easement, and the description of the survey would become Exhibit D of the 1990 Memorandum. (Paragraph 1.) It specifically defines the contours of the road to be surveyed. (Paragraph 3.) There is an Exhibit D attached to the 1990 Memorandum, which is recorded.

Second, it noted that "Dominant Tenement Owners shall not materially increase the burden or impose new or additional burdens upon the easement Servient Tenement Owners. The right to grant permission for future requests to increase the use and/or burden of the easement and to grant additional easements is hereby reserved to the Servient Tenement Owners. Dominant Tenement Owners hereby release all other easements or other rights that lie outside ethe easement location described herein, and hereby release and quitclaim all other rights and claims across the servient tenement, whether acquired by prescription, grant or otherwise." (Paragraph 5.)

Third, it provided "Dominant Tenement Owners shall be responsible for all of the costs of design, construction, and maintenance of the road..." (Paragraph 8.)

Fourth, the 1990 Memorandum indicated that "it is understood and intended by all parties that this Memorandum of Agreement and Easement Location Document results in the relocation of original easement and that the terms and conditions Memorandum of Agreement and Easement Location Document shall apply to all who were a party or who derived benefit from the Original Grand of Easement or Clarification Document. This Memorandum of Agreement and Easement Location does not constitute an agreement in addition to the Original Grant of Easement, but only a clarification and explanation thereof. Except as expressly clarified and

expanded hearing, all terms, conditions and stipulations of the of the Original Grant of Easement and Clarification Document shall remain in full force and effect and are hereby confirmed as such." (Paragraph 11.)

Finally, in the last relevant document, on October 24, 2004, Giovanni and Clementia Gargasacchi and Christopher and Kristi Marks consummated an agreement entitled "Agreement to Permit a Limited Increase in Use of Easement" (this will be called the 2004 Document[6]). The Marks, predecessors in interest to plaintiff, was in the process of building a single-family residence; based on Paragraph 5 of the 1990 Memorandum, outlined above, the Cargassacchis agreed "an increase in use of the original right contained in the [1990 Memorandum], but limited to only the finishing construction of a single-family residence not partly constructed. . ." "This limited increase in the existing right to use the easement is given within and intended to be in full compliance with the terms and conditions of the [1990 Memorandum] and is subject to all the conditions and terms of the [1990 Memorandum], in the same manner as the original right to use the easement prior to this agreement." "This agreement is not intended to give assurance or imply in any way that the old, farm dirt road currently being used will provide a safe year-round access road to the Lakeview subdivision. The present road is not to be changed or altered by permittee. Permittee assumes all risk and liability for themselves, guests and invitees in using the roadway. . ." (Paragraphs C, (2), (7).[7]

NATURE OF DISPUTE AS FRAMED BY PARTIES

Plaintiff, one of the unquestioned dominant tenement holders of the easement in question, begins with a simple exhortation: he needs to use the access road to complete the construction of his residence, which is approximately 90 percent completed. He acknowledges that the "new road" contemplated by the 1990 Memorandum, noted above, has never been built. But that is of little moment, for what exists today is the ***original*** easement road, created in 1968 as a general access easement and as clarified in 1987 Clarification and recognized in the 1990 Memorandum (and presumably used by the Marks most recently in 2004 until his financial troubles). It is this

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6 The parties agreed on this description at the May 18, 2022, hearing.

7 The court again emphasizes that plaintiff has withdrawn all causes of action based on the 2004 Document, as well as any other basis for relief. The court includes a description here because the document was admitted at trial.

original road easement he claims he should be able to use to finish the construction of his residence, and it is this original road that he should be allowed to improve as mandated by the County (i.e., to be made compliant with the County's road improvement requirements as a condition to issuing all necessary permits). He contends that as to the original easement road, the law allows him to make normal future improvements, and there is no evidence that this will create an abnormal burden on defendants as the servient tenement holder. Plaintiff insists in his closing trial brief that there is no evidence in the record to show that improving this original easement road will impact defendants' crops, increase road or pedestrian traffic, or otherwise pose any inconvenience. These improvements, he claims, will only be a benefit to all.

Plaintiff also emphasizes that defendants, who became owners of the Cargasacchi Ranch in 1985, knew and must have reasonably anticipated that the increase in traffic on the original easement road was likely, as evidenced by the 1987 Clarification in which they agreed that the old easement road would be appurtenant to all 38 estates of the Lakeview Estates. Specifically, plaintiff observes that the 1987 Clarification established a 30-foot-wide easement, which is more than enough to accommodate the County's road requirements. Plaintiff claims that the 1990 Memorandum expressly acknowledges the "30 foot" easement was in full force and effect, and specifically states "the old road [i.e., the current road] may be used until the new road [contemplated by the 1990 Memorandum] is completed." He emphasizes that nothing in the 1990 Memorandum precludes the improvements he contemplates. He asks, therefore, that court quiet title and declare relief in his favor, allowing him to improve the existing old road easement (at his expense), in compliance with County's regulations.

Defendants reject plaintiff's interpretation of these documents. They acknowledge the current easement road in use is the one that was created by the 1968 Grant Easement and further clarified by the 1987 Clarification. But they insist that it can no longer be used as the road subject to County improvements. They claim that plaintiff has no right to the continuation and improvement of the "old easement" road given the clear language in the 1990 Memorandum that established of a "new easement" road, with a different location and different measurements.

Essentially, they claim that if the County requires road improvements to secure building permits, the new easement road, as contemplated by the 1990 Memorandum, must be used, and not the existing "old road" easement in current use. There is, in their view, a natural but anticipated sunset on the viability and continuation of the old easement road; plaintiff's efforts will essentially give the "old road" new and continuing life through modern improvements at the expense of the express language in the 1990 Memorandum, rendering the latter document for all intents and purposes obsolete and irrelevant. While it is true, they acknowledge, that the 1990 Memorandum has language that reads, "The old road may be used until the new road is completed," they opine this "hardly creates any 'easement' right to use the 'old road.'" Defendants emphasize that the court has no authority to rewrite the 1990 Memorandum, which is what would it is essentially doing should plaintiff prevail.

LEGAL BACKGROUND

It is plaintiff's burden, in a quiet title cause of action pursuant to Code of Civil Procedures section 760.010, et seq., to show in this context, as the dominant tenement holder, that its interpretation of the grant easement documents is the appropriate one. The same would be true for the declaratory relief cause pursuant to Code of Civil Procedure 1060, et seq., as the conflict involves a future controversy about real property. (See, e.g., *Entin v. Superior Court* (2012) 208 Cal.App.4th 770, 783; *Caira v. Offner* (2005) 126 Cal.App.4th 12, 24-25 ["An action to quiet title is akin to an action for declaratory relief in that the plaintiff seeks a judgment declaring his rights in relation to a piece of property].) The court is essentially asked to examine the nature and scope of the title, scope, and nature of the easement, as reflected in the easement documents submitted and discussed above, and to declare the rights and obligations of each party. (*Caria, supra*, at p. 26.)

Further, both causes of action at issue, as framed, require the court to construe the easement language in three of the critical documents detailed above and without resort to the 2004 Document, in light of plaintiff's concession. " " 'An easement is a restricted right to

specific, limited, definable use or activity upon another's property, which right must be *less* than the right of ownership.' " " (*Zissler v. Saville* (2018) 29 Cal.App.5th 630, 638.) The easement, which attaches to the dominant tenement holder and burdens the servient tenement, does not own the property, but simply possesses a right to use another's property for a specific purpose. (*Blackmore v. Powell* (2007) 150 Cal.App.4th 1593, 1599.) "In construing an instrument conveying an easement, the rules applicable to the construction of deeds generally apply. If the language is clear and explicit in the conveyance, there is no occasion for the use of parole evidence to show the nature and extent of the rights acquired. [Citations.] If the language is ambiguous, extrinsic evidence may be used as an aid to interpretation unless such evidence imparts a meaning to which the instrument creating the easement is not reasonably susceptible." (*Scruby v. Vintage Grapevine, Inc.* (1995) 37 Cal.App.4th 697, 702.) Whether an ambiguity exists is a question of law, subject to independent review on appeal. (*Wolf v. Superior Court* (2004) 114 Cal.App.4th 1343, 1351.) When there is no material conflict in the extrinsic evidence, the court interprets the contract as a matter of law. (*City of Hope National Medical Center v. Genentech, Inc.* (2008) 43 Cal.4th 375, 395; *Gilkyson v. Disney Enterprises, Inc.* (2021) 66 Cal.App.5th 900, 915; *Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1126.) If, however, there is a conflict in the extrinsic evidence, the conflict must be resolved by the fact finder, and we review those findings for substantial evidence. (*Wolf*, at p. 1127; *Winet v. Price* (1992) 4 Cal.App.4th 1159, 1166.)

Relevant to this discussion is *Zissler, supra*, 29 Cal.App.5th 630, a case referenced throughout this litigation following its filing. In *Zissler*, an unpaved dirt road easement was created by a grant recorded in 1994. The language of the grant indicated that "George and Annette Corbett conveyed to Peter and Kristi Lupoli an easement '[p]roviding Grantee access, ingress and egress to vehicles and pedestrians over Grantors' real property from Green Meadows Road to Grantees' real property." The easement "runs across 'the most easterly portion of Grantors' real property [,]" and was 10 feet wide and 90.46 feet long. Saville was the successor to the Corbetts, making him the servient tenement holder, while Zissler was the successor of the Lupolis, making him the dominant tenement holder, and the parties disagreed as to the meaning

of the easement language. Zissler wanted to use the easement for a construction project on his property, a project that would take 18 to 24 months, and involve approximately 14,000 trips. Saville filed a complaint for declaratory and injunctive relief, asking the court to limit the use of the easement to its historic use, not exceeding twelve (12) vehicle trips per year, and forbidding use of the easement for construction activity. Respondent specifically argued the easement was limited to landscaping use, presenting evidence from Peter Lupoli, who drafted the written easement, as well as Lupolis' gardener. Zissler filed a cross-complaint, also asking for declaratory relief.

The trial court denied Zissler's request to exclude extrinsic evidence in interpreting the instrument, rejecting a plain reading of the easement language. The trial court found the grant easement language ambiguous; looked to extrinsic evidence for its meaning; and ultimately considered the easement to be a "general easement" for pedestrian and vehicular use, limited to its historic use. The trial court ultimately determined that the easement could not be used for any construction activity, and that the road would remain unpaved. Zissler appealed.

The *Zissler* court reversed. First, the appellate court concluded that the trial court erred in treating the easement as a "general easement" with restricted historical use limitations. The easement at issue was not a general easement as contemplated by *Winslow v. City of Vallejo* (1906) 148 Cal. 723, a case relied upon by the trial court:[8] the easement language at issue in *Zissler*, unlike in *Winslow*, specified the easement's precise location, width, and length. Additionally, the current language specified its purpose – "grantee access, ingress and egress to vehicles and pedestrians over Grantor's real property from Green Meadows Road to Grantee's real property." The appellate court emphasized that (contrary to the trial court's interpretation)

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[8] The *Zissler* court noted that in *Winslow*, the grant easement involved an easement over the grantor's land for "the purpose of installing and maintaining water pipes. Our Supreme Court determined that the 'conveyance is general in its terms and affords no basis for determining the number of pipes, their size, or their exact location.' [Citation.] . . . The Supreme Court concluded that the city was 'bound' by its 'election' to lay the inch pipe and therefore could not lay an additional pipe." Winslow relied on well-settled rule that "where a grant of an easement is general as to the extent of the burden to be imposed on the servient tenement, an exercise of the right, with acquiescence and consent of both parties, in a particular course or manner fixes the right and limits it to particular course or manner in which it has been enjoyed.'" The *Winslow* court found nothing in the grant easement language was intended to give the [city] the right to increase from time to time the number pipes laid.' [Citation omitted.]" (*Zissler, supra*, at p. 597-598.)

there was nothing objectively ambiguous about this language. Indeed, "an ambiguity is not apparent from the 'failure' to specify how frequently the road can be used. It would be unusual for a residential ingress-egress easement to quantify the number of trips allowed per day, week, or month. Similarly, it would be unusual for such a residential easement to specify the type of vehicle allowed on the road. As to the allegedly unspecified purpose of the easement, the purpose is clear: to permit pedestrians and vehicles to go from point A to point B by traversing the servient estate." (*Id.* at p. 640.) The language utilized is not doubtful, susceptible to double or different meanings, indistinct, uncertain, unclear, or indefinite. (*Ibid.*)

The *Zissler* court then looked to a number of cases that contained similar unambiguous language in support. In *Laux v. Freed* (1960) 53 Cal.2d 512, plaintiff deeded to defendant "'[a] right of way over a road as presently constituted along the East Branch of Sand Creek . . . '" The California Supreme Court found "nothing unclear, uncertain, or ambiguous" in this language, citing *Laux* at page 523. The *Zissler* court further noted that the *Laux* court itself noted that a grant in general terms of an easement of way "will ordinarily be construed as creating a general right of way capable of use in connection with the dominant tenement for all reasonable purposes.'" (*Zissler, supra*, at p. 640.)

The *Zissler* court also cited to *Wall v. Rudolph* (1961) 198 Cal.App.2d 684 to reinforce this proposition. In *Wall*, the court construed a grant "'in broad terms' of an easement "for road purposes"" as creating '" a general right of way . . . for all reasonable purposes.'' [Citation.]" The *Wall* court went on to observe that such a right of use "[is] limited only by the requirement that it be reasonably necessary and consistent with the purposes for which the easement was granted.'" (*Zissler, supra,* at p. 641, citing *Wall, supra*, at p. 684.) As noted by *Zissler*, the *Wall* court observed that "the reasonable contemplation [of the parties to an express right-of-way easement] presumptively includes normal future development within the scope of the basic purpose.'" (*Zissler, supra*, at p. 641, citing *Wall, supra*, at p. 692.) The *Zissler* court then went on to observe that since the parties "to an express right of way easement presumptively contemplate 'normal future development,' such an easement will generally not be restricted to its historic use.' [Citations omitted.]." (*Zissler, supra,* at p. 641.) It ultimately concluded that the

"language of the easement [like the language above in the cases cited above] is not reasonably susceptible to a meaning of 'use of landscaping purposes only.' . . . The trial court was not permitted to rely on extrinsic evidence to 'add to, detract from, or vary the terms of an [unambiguous easement]." (*Id.* at p. 644.)

The *Zissler* court distinguished cases, such as *Rye v. Tahoe Truckee Sierra Disposal Company, Inc.* (2013) 222 Cal.App.4th 84, which did not "discuss the ingress-egress aspects of the easement." In *Rye,* "the dispute was between the parties concerning the portion of the area subject to the easement that could be used for parking and storage. Unlike *Rye*, here there is no dispute as to the usable portion of the easement. The entire 10' x 90' strip of land subject to the easement may be used for ingress and egress. 'The size [and location] of the right of way was fixed and defined by precise description.'"[9] (*Zissler, supra*, at p.642.)

In the end, the *Zissler* court ordered as follows: "The judgment is reversed, and the matter is remanded to the trial court with directions to prepare a new judgment consistent with the views expressed in this opinion. The trial court is not required to incorporate in the judgment the exact language set forth below. It may vary the language so long as its essence is preserved. The new judgment should include a provision that the easement may be used to the extent that the use is reasonably necessary for the convenient enjoyment of the easement and is consistent with the purpose for which the easement was granted, i.e., access, ingress and egress to vehicles and pedestrians over Grantors' real property from Green Meadows Road to Grantees' real property, provided that the use does not unreasonably interfere with the enjoyment of, unreasonably damage, or materially increase the burden on the servient estate." (*Id.* at pp. 645-646.)

DISCUSSION

Initially, the court sustains defendants' objections to the contents of footnotes 2 and 3 of plaintiff's April 4, 2022, closing brief. The evidence mentioned therein was not admitted at trial and cannot be referenced or relied upon in the closing brief.

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[9] The court will not explore those aspects of *Zissler* discussing the existence of a bona fide purchaser, as they are not relevant to this matter. (*Zissler, supra*, at pp. 642- 644.)

On the merits, it seems evident to the court that the 1968 Grant Easement created a "right of way, for use in common with others, for road purposes.," over a specific location (i.e., strip of land from the west boundary of the land described in Schedule A," abutting the end of the existing Sweeny Road). This easement was intended for purposes of "ingress and egress," indicative of a specific purpose. (See *Zissler*, at pp. 639–640.) The term "for road purposes," while not utilized in the easement at issue in *Zissler*, was used in the easement at issue in *Laux v. Freed, supra*, 52 Cal.2d 512, 5216, to the effect that it was a "right of way over a road as presently constructed along the East Branch Sand Creek, in the [legal description]." (*Id.* at p. 516.) *Laux* interpreted that language broadly. As the language in *Laux* is similar to the language in the 1968 Grant Easement and the 1987 Clarification, it necessitates an equally broad reading. (*Id.* at p. 523; see also *Franceschi v. Kuntz* (1967) 253 Cal.App.2d 1041, 1045 ["a right of way for road purposes granted in broad terms means a general right of way capable of use in connection with the dominant tenement for all reasonable purposes," particularly when ingress and egress are at issue].)

Further, the court agrees with plaintiff that a broad interpretation of this language is limited only "by the requirement that it be reasonably necessary and consistent with the purposes for which the easement was granted." (*Wall, supra*, at p. 692, citing *Pasadena* v. *California Michigan, Etc. Co.* (1941) 17 Cal.2d 577, 579 [a right for road purposes is limited only by the requirement that it be reasonably necessary and consistent with the purposes for which the easement was granted].) And certainly a "right of way is a privilege of passage over the land of another, 'with the implied right . . . to make such changes in the surface of the land as are necessary to make it available for travel in a convenient manner." (*White v. Walsh* (1951) 105 Cal.App.2d 828, 832, quoting *Ballard v. Titus* (1910) 157 Cal. 673, 681.)

The court also agrees with plaintiff that this original easement language is unambiguously and sufficiently commodious, as required under existing law, to accommodate *normal future development*, limited to its original purpose – ingress and egress. This is the clear import of *Zissler*. To reinforce the point, as observed in *People ex rel. Dept. of Transportation v. Southern Pac. Transportation Co.* (1978) 84 Cal.App.3d 315, 322, "As civilization advances and new and

improved methods of transportation are developed, any use of the right-of-way which is in aid of and within the right-of-way's general purposes may be permitted, and does not entitle the owner of the subservient estate to be compensated anew for every improvement or compensated for every change of the use of the land made imperative by advances of technology and transportation improvements."

Finally, the court agrees with plaintiff that the 1990 Memorandum did not change the purpose of the grant easement at issue – a "right of way easement for road purposes" – as originally established, amounting to a continuation of the language utilized in the 1968 Grant Easement and the 1987 Clarification. Paragraph 1 of the 1990 Memorandum provides that as except as "expressly clarified and expanded herein, ***all terms, conditions and stipulations of the [1968 Grant Easement and 1987 Clarification] shall remain in full force and effect and are hereby confirmed as such***." (Emphasis added.) This means that all interpretative tools detailed above apply equally well in explaining the language in the 1990 Memorandum. Notably, while the 1990 Memorandum expressly provides that the use of the road easement should not "overburden" the servient tenement; and further, that any "material" "new or additional burden" upon the servient tenement holder requires the latter's permission; these limitations were already contemplated (albeit impliedly) by the language of the 1968 Grant Easement and the 1987 Clarification, as interpreted under existing case law. Paragraph 5 of the 1990 Memorandum seems simply to expressly states what the law clearly implies.

All of these principles help frame the inquiry and would likely require the court to grant relief as requested by plaintiff, but for one important and critical condition -- the old easement road contemplated by both the 1968 Grant Easement and 1987 Clarification is the one that should be improved. That foundational condition does not appear to be the case, however, after a review of the governing documents and in light of the existing conditions. No doubt plaintiff's predecessor was able to use the old easement road (following the 1968 Grant Easement and 1987 Clarification) as the road access for construction purposes, without conditions imposed by the County for construction, as reflected in the 2004 Document. But times have changed since

2004.[10] The County now indisputably requires substantial improvements to an access road – easement or otherwise – before it will issue building and grading permits for residential construction. This is a significant and critical difference between past and present construction efforts. And surely plaintiff must concede that the 1990 Memorandum language must itself be read to incorporate, accommodate, and take into consideration conditions involving normal future development (a principal plaintiff fully and ubiquitously advances), which by logic must include new governmental regulatory changes or construction requirements. And while the 1990 Memorandum may be ambiguous as to the specific details, including the date and timing of any transition period between the discontinuation of the old road easement and the creation of the new road easement, one was obviously anticipated. That is the only logical reading of the language in the 1990 Memorandum, based on its totality, as it expressly rejects the old road easement, substitutes it for the new road, and identifies a new location (Exhibit D), with specific requirements and dimensions. Critically, this interpretation conditions any reading of the language in Paragraph 8 of the 1990 Memorandum, relied upon by plaintiff, which as noted provides that the new "road shall be constructed between crop seasons, and completed before the March 30th of the year in which construction occurs, including the removal of gravel of the old roadway between the building and the hillside." Significantly, it provides "the old road may be used until the new road is completed."

In line with this concept of "normal future development," predicated in part on changing governmental requirements, the only reasonable resolution of the current dispute is this -- the new road as contemplated by the 1990 Memorandum, *at this time, under existing conditions* – must be the starting point for any future development, not a continuation of the old easement dating from 1968. Thirty-two (32) years have passed since the 1990 Memorandum was recorded, a significant period of time. If plaintiff is permitted to go forward with the improvements of the old road as he requests, the old easement would no longer be "old" -- it becomes essentially the new easement road, semi-permanent and fully operational, with no

[10] The court again notes that plaintiff has rejected or withdrawn any reliance on the 2004 Document as the basis for relief. Again, the court takes plaintiff at his word and accepts this concession and/or withdrawal.

future transition realistically possible. The 1990 Memorandum's requirements become ephemeral, with the old road improvements newly etched into the landscape, giving continued life to a road that clearly was intended to have limited duration. And while there can be little doubt that the improvements contemplated by plaintiff will be beneficial to all, that is not the dispositive inquiry, (and specifically so since the Third Cause of Action for breach of contract relating to the terms of the 2004 Agreement has been withdrawn by plaintiff). Such an endeavor would significantly undermine and manifestly hinder any and all future road developments as contemplated and authorized by the 1990 Memorandum. A continuation of the old at the expense of the new cannot be sanctioned under any reasonable reading of the 1990 Memorandum, following the inexorable march of time and given the present requirements mandated by the County for road access-way improvements. As difficult as this may be, the time has come to phase out the old easement road in lieu of the new road, given the nature of the existing easement documents and viewed through the prism of quiet title/declaratory relief.

The court is not unsympathetic to plaintiff's predicament. Following the terms of the 1990 Memorandum will likely make it more difficult – and likely more costly -- for him to finish construction of his residence. But the County's new requirements for improvement must be factored into the equation for future development of the Lakeview Estates. Any other interpretation renders the 1990 Memorandum a nullity for all intents and purposes, something the law simply does not sanction. The causes of action now before the court, framed in terms of quiet title and declaratory relief, require this court to interpret the easement documents in their totality and in a reasonable fashion. The terms of the 1990 Memorandum, under the existing requirements and current situation, governs the outcome moving forward. The time has come to move forward with 1990 Memorandum as the future guide.

Accordingly, the court denies the relief requested by plaintiff. For plaintiff to proceed, he must comply with the requirements of a new road easement, and its attendant construction requirements, as detailed and outlined in the 1990 Memorandum; that is the road that must comply with the County's existing improvement requirements, not the old easement road contemplated by and in existence since 1968. The old road easement (as contemplated by the

1968 Grant Easement and the 1987 Clarification), while relevant from this time forward for limited ingress and egress purposes, must be phased out and not given continuing (and in fact expanded) life. The court therefore denies plaintiff's request for injunctive relief. If plaintiff pays for the new road easement as contemplated and detailed in the 1990 Memorandum, an assessment district need not be established as a precursor or as condition for construction and thus as basis to secure his permit, although to recoup any money (and require the other dominant tenement holders to pay their pro rata share ultimately) that may be required. That issue is not before the court, and the court makes no determination on the issue.

IT IS SO ORDERED.

DATED: **07/06/2022**

Timothy Staffel
Judge of the Superior Court