

Santa Barbara Local Agency Formation Commission
Bob Braitman
Executive Officer
105 East Anapamu Street
Santa Barbara, CA 93101

December 4, 2007

Dear Mr. Braitman,

I jointly own lots 2 and 10 with my sister and brothers in the Lakeview subdivisions. We have no desire to form a Community Service District because we purchased the property with the understanding that they were prime agricultural land and non-buildable due to county restrictions. We purchased these lots with the intention of raising cattle and wine grapes, like many of the other Lakeview owners. The proposed tax would create a financial burden on me and likely many of the other Lakeview owners. The first year's proposed tax alone is considerably greater than what we and other owners paid for each lot. Does that seem fair? If the CSD is formed, many of the owners will be forced to sell their properties just to pay the proposed taxes. Not all of us can build 14,000 square foot mansions such as the building currently under construction in Lakeview.

I am very concerned that by allowing a CSD to form, urban pressure will begin to encroach on the surrounding prime agricultural and wildlife community. The proposed CSD encompasses a part of the Santa Ynez River that is rural and pristine with ponds and wetlands. Will there be measures taken to protect the Steelhead and other animals which use its resources? Development will surely impact the river and riparian habitat in a negative way. A full Environmental Impact Report should be required.

What about the fire dangers that a development poses? Within the last ten years, a major fire burned through the Lakeview subdivision, charring over 600 acres destroying Barns and other out buildings. With the building of almost 40 additional homes within the boundaries of the subdivision and having only one long and windy fire exit out seems like a tragedy waiting to happen.

Flooding also poses a great risk for the Proposed CSD. Have you ever taken a drive on Sweeney Road in the winter time? Giant rockslides occur after every rain event. Almost every year, Sweeney Road is closed for up to several days or more. Until very recently, there was a section that was one lane FOR YEARS due to the road sliding into the river. Not even a fire truck could get by. Instead of fixing the problem, the county put stop signs on either end and drivers had to go around the slide. This was not the first time this section of road slid into the river. It seems to happen every few years. Does the

county have the money to adequately fix this problem or will we wait till someone is killed to do something about it.

Are we the next Mission Hills or Vandenberg Village? This is just a small list of issues that greatly concern me and many of my neighbors. This is prime agricultural land, lets keep it that way. I strongly urge you to oppose the formation of the Santa Rita Hills Community Service District.

Sincerely,



Mark Cargasacchi
(805)588-9768

June 27, 2007

RRR

John Cargasacchi
P.O. Box 188
Lompoc, CA 93438

Re: No Situs Address, APN 099-200-050, 05ZEV-00000-00089
Unpermitted Structure

Dear Mr. Cargasacchi:

This letter is a follow-up to our phone conversation this morning. I reviewed the case file and found an August 12, 2005 County Counsel e-mail that states that because this is a Board of Supervisors' declared Special Problems Area based on access problems. No permit issuance that requires access can be issued without consideration by Special Problems Area Committee which would need to see the access proposal to determine if it solves the access (or lack thereof) problem.

The original letter to your son was drafted shortly after the site inspection in 2005 and before I received the County Counsel e-mail. When I was recently given approval to mail the draft letters, I failed to refer back to the correspondence received since the draft was typed. Therefore, my May 29, 2007 letter contains incorrect information regarding the option for legalization of the water tank if it was not on the property prior to September 29, 1958. That is corrected in this letter.

County Counsel determined that all Lakeview owners have an enforceable agreement with you that they will not use the existing road for any use not already in existence and they will build the new road per the agreement. Unless a Lakeview owner gets your permission, they cannot obtain a permit in Lakeview. Also, no permit issuance that requires access can be issued without consideration of the Special Problems Area Committee.

Regarding the water tower, if you can provide proof that the structure was on the property prior to September 29, 1958, the date that zoning went into effect in this area, the structure would be classified as nonconforming (legal). The Assessor's Office may have a record of the date the structure was placed on the property and its use at that time. Another acceptable proof is an aerial photograph with the agency providing the photograph and the date of the photograph officially noted. However, this photograph will not be able to verify the use of the structure at that time. Another acceptable proof is a notarized affidavit from a long term resident(s) of the area. The resident(s) must briefly state their length of time in the area and why they are familiar with the

John Cargasacchi
No Situs Address, APN 099-200-050, 05ZEV-00000-00089
June 27, 2007
Page 2 of 2

property. Most importantly, they must unequivocally state what the use of the structure was when it was placed on the property prior to September 29, 1958.

The structure may not be used as a dwelling because that use has been discontinued for at least one year. The enclosed Land Use Development Code (LUDC) Section 35.42.020.B.7.a. requires that an agricultural accessory structure must be a primary place of employment or be used by the public in order to contain bathing facilities. If you have employees working on-site there is a chance that the bathing facilities may be permitted. If you do not have employees working on-site, you may not keep the bathing facilities.

As we discussed, John Baker, P&D Director, has directed staff to place this and all other open Lakeview violation cases "on hold" while a determination is being made on the creation of a community services district for the area. Therefore, you should do nothing at this point in regard to the structure and the ground-mounted solar panels. When the determination is made, staff will send a letter with permitting information.

Thank you for your patience during this process. Please do not hesitate to call me at 934-6252 if you have questions about any of this information.

Sincerely,

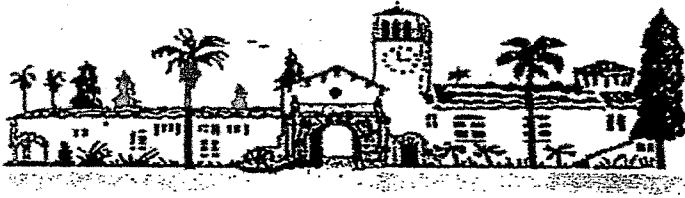


BARBARA WALSHON, Planner/Code Enforcement
North County Division

xc: John & Paula Cargasacchi, 6622 Polo Circle, Huntington Beach, CA 92648
05ZEV-00000-00089 Case File

Enclosures: LUDC Section 35.42.020.B.7.a.

G:\GROUP\PUB_SVCS\WPNC_ZONIN\05Cases\05ZEV 00000 00089\Ltr1 Revised.doc



County of Santa Barbara
Planning and Development
John Baker, Director
Dianne Meester Black, Assistant Director

December 20, 2006

Christopher & Kristi Marks
P.O. Box 1313
Buellton, CA 93427

RE: Land Use Permit Status: Rancho Santa Rita Access Association, Inc. Grading and Road Construction; 00LUP-00002-06435 (00-LUN-604); APN: 099-150-016

Dear Mr. and Mrs. Marks:

The purpose of this letter is to acknowledge that there has been no formal activity in 2006 regarding the satisfaction of Conditions of Approval necessary for issuance of your Land Use Permit (LUP) to construct the road across the Cargasacchi Ranch.

The comments below remain unchanged from the 08/31/05 status letter and are based on Development Review and Building & Safety Division review of your Rancho Santa Rita Access Road plans (6 sheets), dated 12/01/04, and submitted to P&D on 03/01/05. Upon issuance of the LUP, the final step in the permitting process will be approval and issuance of the Building & Safety Grading Plan. Please note that my comments are made in *italics* following each condition printed below.

CONDITIONS OF APPROVAL: 00LUP-00002-06435

1. Prior to Land Use Permit Issuance, the applicant shall demonstrate that an acceptable funding mechanism (e.g., binding maintenance agreement and construction and maintenance bond procured by one or more owners or a Home Owner's Association, or an Assessment District is formed to provide ongoing maintenance) is in place to pay for the costs of access road construction and maintenance, consistent with the provisions of the MOA. This funding mechanism shall also provide insurance to protect the Servient Tenement owners according the terms of the MOA.

Comment: Not Satisfied. The Rancho Santa Rita Access Association, Inc. was formed to "take all reasonable steps to cause to have built and maintained the road intended by the Memorandum of Agreement referred to in the Articles of Incorporation of the Association." Staff understands that the ultimate goal is to form a Community Services District through the LAFCO process. Either of these entities could be used to meet the requirements of the subject condition.

2. Placement of any excess fill material outside of the project right-of-way shall be subject to a separate P&D determination, with separate LUP review and approval, if required.

Comment: Satisfied. No fill material is indicated for placement outside of the project right-of-way. While a proposed cut is indicated outside of the project right-of-way on Sheet __, it is our understanding that all excess fill is expected to be proposed for placement on adjacent agricultural fields under an agricultural exemption pursuant to the provisions of the Grading Ordinance.

3. The centerline of the constructed road shall follow the centerline of the existing road along the vineyard. The plans shall be revised to include a note stating that SERVIENT TENEMENT OWNERS have the ability to stake the subject portion of the road in order to ensure that it will be re-located to his satisfaction and re-surveyed on an "as built" basis as provided by the MOA.

Comment: Not Satisfied. Note 4 on Sheet 4 of the subject plans describes this requirement. Based on review of the subject plans, Mr. Cargasacchi, the SERVIENT TENEMENT OWNER, has indicated that the current proposal differs more greatly from the existing easement than the previously submitted plans (dated 07/16/03), approved by P&D on 11/26/03, and considered by the Board of Supervisors on 11/09/04. As a result, Mr. Cargasacchi has expressed opposition to the current proposal on the grounds that it does not follow the centerline of the existing road. Please ensure, through certification of the Engineer of Record, that the currently submitted plans comply with the provisions of this condition.

4. Note that the recorded "Exhibit D" contains a map that is correct and a metes and bounds description that contains a single scrivener's error. The problem will be remedied by re-surveying the realigned constructed road as provided by the MOA.

Comment: Not Satisfied. The satisfaction of this condition will be ensured as a follow-up to satisfaction of Condition 3 above.

5. There are to be three (3) crossings for steel track tractors: one (1) immediately at the entrance, one (1) just below the farm buildings (for the road to the farm buildings), and one (1) just before the end (east) of the vineyard. On the western edge of each tractor crossing, there is to be an eighteen (18) inch diameter culvert placed under the road with its top only one (1) to two (2) inches below the field ground level. A similar culvert should be placed under the road where an existing water line now crosses the road easement directly to the south of the old irrigation well. The culverts are to be capped at each end, and must be perpendicular across the road (See paragraph 7 of the MOA). All of the above crossings and culverts are not to be designed or used for surface water flow.

Comment: Satisfied. Three tractor crossings are depicted on Sheets 3 and 4 of the subject plans. Note 6 on Sheets 3 and 4, as well as Detail F on Sheet 6, also address these crossings.

6. At the lowest ground level point east of the entrance gate, at or near the 3+00 point on the road plans, a water crossing twenty (20) feet wide at ground level is to be located to allow local surface water across the road.

Comment: *Satisfied. The required water crossing is depicted on Sheet 3 of the subject plans. Note 16 and Detail E on Sheet 6 also addresses this crossing.*

7. From the point where the road leaves the western boundary of Lakeview Subdivision to the tractor crossing just below the farm buildings the road shall slope inward toward the hill and all of the water is to be taken west by use of a culvert under the road. From this western point, the water is to be taken by culvert to the river. Such culvert may be the existing culvert at the river bank, a new culvert, or an attachment to the erosion control pipeline designed and built to the specifications of the USDA Natural Resources Conservation Service. All culverts crossing agricultural land must have their top a minimum of sixty (60) inches below the surface. (see paragraph 6 of the MOA.)

Comment: *Not Satisfied- Road profiles on Sheets 4 and 5, as well as Detail D on Sheet 6, depict these requirements. The USDA Natural Resource Conservation Service is currently reviewing this requirement, and their ability to participate in design.*

8. From the point at which the new road intercepts the old road eastward, which up to this point is paved to a width of twenty (20) feet, up to the western boundary of the Lakeview subdivision, the road shall be paved only to sixteen (16) wide with no shoulders in order to: (1) minimize cut and fill operations, (2) minimize alteration of the natural terrain, and (3) minimize erosion potential. (See paragraph 3 of the MOA.)

Comment: *Satisfied / Not Satisfied? Road Improvement 5 on Sheet 1 specifies Class 2 aggregate, and Cement-treated, base, as well as asphalt concrete for the road structural sections. Typical Sections A-C on Sheet 6 depict the paving types.*

9. Gates shall be installed at any location where the constructed roadway traverses an existing fence. Any existing intersecting roads shall be graded to meet the constructed road elevation. The plans shall be revised to include a note indicating this requirement. All existing passages or gates to the roadway are to be kept and maintained, and all gates are to be approved by Servient Tenement. (See paragraph 4 of MOA.)

Comment: *Not Satisfied. While Note 8 on Sheets 3, 4, and 5 indicate this requirement, Mr. Cargasacchi, the SERVIENT TENEMENT OWNER, has not indicated approval.*

10. All road base material from the existing roadway shall be removed from the existing roadbed when the new road is constructed and the removed base materials shall be utilized in construction of the new road or removed from the project site. The plans shall be revised to include a note indicating this requirement.

Comment: *Satisfied. Note 9 on Sheets 3 and 4, as well as Road Improvement 7 on Sheet 1, indicate this requirement.*

11. If any diatomaceous earth or shale is exposed during the hillside cuts, that area shall be covered with topsoil to a minimum thickness of one (1) foot. All disturbed areas shall be

properly reseeded with a mixture of vetch, clover, rye grass, and barley. (See paragraph 3 of the MOA.)

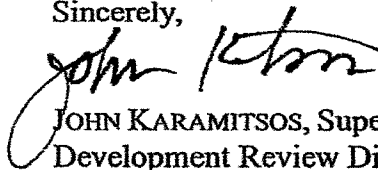
Comment: Satisfied. Grading Specification on Sheet 1 indicates this requirement.

12. Proper signs shall be posted and maintained by Dominant Tenement Owner at both east and west entrances to the road indicating that the road is private, there is no trespassing, animals and farm equipment are on the road, to travel slowly, and to be aware that there are water crossings on the road. (See paragraphs 9 and 17 of the MOA.)

Comment: Satisfied. General Note 11 on Sheet 1 indicates this requirement.

Please don't hesitate to contact me at (805) 934-6255 if you have any questions or comments regarding this letter. I continue to look forward to working with you on the satisfactory completion of this project of great importance to you and your family, as well as the Cargasacchi and other Lakeview Estates property owner's families. I wish all the best to you and yours for a pleasant holiday season. This greeting is also extended to each person listed below. As always, thank you for your patience and consideration in this matter.

Sincerely,



JOHN KARAMITSOS, Supervising Planner
Development Review Division – North

- C: John Cargasacchi, P.O. Box 188, Lompoc, CA 93438
Susan Warnstrom, Executive Staff Assistant, Fourth Supervisorial District
Kevin Ready, Senior Deputy County Counsel
Jennifer Christensen, Project Manager, CEO's Office

Via email:

- Zoraida Abresch, Deputy Director, Development Review Division – North
Mike Zimmer, Deputy Director, Building & Safety Division
Mark Matson, Supervising Inspector, B&S
Jeff Thomas, Supervising Inspector, B&S



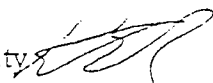
MEMORANDUM

Office of County Counsel

COUNTY OF SANTA BARBARA

November 4, 1993

TO: Board of Supervisors

FROM: Kevin Ready, Senior Deputy 

RE: Formation of Lakeview Assessment District

The purpose of this Memorandum is to briefly discuss the course of action necessary to decide whether to create an assessment district to deal with the road access problems for Lakeview Subdivision. This is supplementary to the staff report of the Public Works Department.

Your Board is already in receipt of a petition by landowners for creation of the district under provisions of the Majority Protest Act of 1931. Streets and Highways Code § 2804(a) (3) requires 60% or more of the owners to have signed such petition and §2804.5 lists the requirements of the petition. Our review of this petition indicates that the petition is legally sufficient. This Act contemplates the creation of a special assessment district for improvements, in this case roads, which are usually accomplished through formation of improvement districts under the 1911 or 1913 Acts (Streets and Highways Codes §§5000 *et seq* and §§10000 *et seq*). In this case we will proceed under the 1913 Act.

Should your Board wish to proceed with consideration of the formation of the district, it would be necessary to direct the Public Works Dept. to prepare a report on

the project as specified in the 1913 Act and to prepare the appropriate CEQA study. Preliminary review of the CEQA issue by staff indicates a likelihood that a full Environmental Impact Report would be necessary prior to formation of the district. This CEQA process could be rather involved, in that it would involve, at a minimum, the potential development of forty residential units, effect on adjoining property, effect on nearby streambed and possible wetlands areas, creation of the new district and condemnation of land for the connecting road to the west. There has been indications that the CEQA process would be closely followed by neighbors and concerned groups and that any approval of this project might be litigated. The contents of the report required from Public Works are spelled out in § 10204. — *Does Public works 1925*
Security

It should be noted that this entire process is discretionary in your Board. You can refuse to direct the initial study for the District and you can abandon it at any time up until final approval. If you abandon the process all costs must be paid by the County.

The costs of the staff report, the environmental document and assistance by bonding experts would have to be funded out of County funds (probably Road Fund). The County could be repaid out of the bond proceeds, if the district is formed. If the district is not formed, for whatever reason, the County would bear the costs. If the Board decides to proceed with the studies leading to the report and CEQA document, it would do so through a resolution defining the project under §10200 at a subsequent meeting.

The Public Works Department would have up to one year or whatever shorter time your Board designated to prepare the report and environmental study. If your Board accepted and approved the report and study and wished to proceed, a resolution of intent to form the District would be issued which would be followed by notice and hearing. The district would be formed by resolution of your Board after appropriate hearing. Also, in your discretion the matter could be put to a mail-in vote of the owners

of the effected parcels.

Assuming final approval of the District, the bonding process would commence and the contracting for the improvements would be let. Attached is an article by our bond counsel outlining the assessment district process in more detail.

There are several problems which must be addressed in these considerations.

1. The existing access to the Lakeview Subdivision is by means of a private right of way. A bond issue for an improvement district would require a public road and the public easement would have to be condemned. It is the legal position of the subservient tenement holder, Mr. Cargasacchi, that the existing agreement between him and the Lakeview owners prohibits a public road, even though it specifically contemplates the creation of an assessment district. While we disagree that the private contract can have any effect on the ability of a public entity to condemn land for public use, it is clear that there would be additional expense in achieving the condemnation, especially since it would appear that a negotiated settlement would not be possible and judicial condemnation would be required. Also, we understand that it is Mr. Cargasacchi's contention that development of the Lakeview area, especially by means of a public road, could adversely affect his future use of his adjoining property and this would likely enter into the condemnation proceedings.

2. The adjoining property immediately to the east of Lakeview is owned by a religious order which is concerned that development of

8
2ND LINE
9
SECOND PART

the Lakeview area and a public road would adversely affect their use of their property.

3. The southern edge of the Lakeview property adjoins the Santa Ynez River and there are concerns that development of the Lakeview parcels could adversely affect the watershed and possible wetlands in the river valley.

4. A parcel which serves as a keystone in the proposed road net through the subdivision has been given by its former owners to an environmental preservation organization. There is potential for complications with this parcel, which is near the water, being so key to the development of the roads. This might require reworking of the proposed road plans and easements. We have not had the opportunity to determine if the ownership of this parcel can affect the access easements to uphill properties.

5. There is a long history of lack of cooperation between the owners of the parcels in Lakeview. While there seems to be sufficient support, as indicated by the petition, to proceed at this time, the possibility exists for the support to break down, especially when the proposed assessment costs, as increased by condemnation and complicated environmental studies, are fully recognized. While the petition process with its waiver provision is meant to protect from this possibility, there are several possibilities for this process to break down and, if so, the County would be stuck paying the costs to date.

6. There are numerous CEQA issues which could complicate this

process, many of which are discussed above.

4/3
7. Mr. Cargasacchi is concerned that the public road would restrict his right under the existing contract to limit further subdivision of Lakeview. He is concerned that if a public road were put in, that there would be a natural impetus to further divide the existing forty acre parcels. It is our opinion that the covenants which currently exist in recorded documents which restrict future development as against private owners would still control after a public road easement was condemned. We also believe that this concern could be addressed by even more stringent private covenants or easements against development. However, due to the history of this matter, it does not appear likely that agreement on this issue is forthcoming.

I OFFERED TO SIT
DOWN & NEGOTIATE

8. Any public road right of way would be accomplished by easement rather than fee title transfer, so concerns about whether the public road would constitute a further subdivision of the parcels are unfounded. However, the existing road plan would require lot line adjustments in several cases in order to result in fully usable lots for those parcels which are bisected, or sometimes trisected, by the road, as proposed.

Alexander F. Simas
James P. O'Neill
Joni L. Gray
James F. Rigali
Ellen S. Pitrowski
Denise Motter
Philip A. Simon
Laura Hoffman King

KIRK & SIMAS
A Professional Law Corporation

Daniel J. Kirk
Retired
George L. Wittenburg
Of Counsel
Dawn Jimenez
Office Administrator

E-Mail: Info@KirkSimas.com

November 27, 2002

Mark Cargasacchi, Laura Cargasacchi,
Peter Cargasacchi and John Cargasacchi
P.O. Box 1436
Lompoc, CA 93438

Please take note that the undersigned has incorporated a nonprofit mutual benefit corporation to proceed with the establishment of a property owners association for the Lakeview Estates Subdivision, within which you own one or more parcels. This association is being formed to comply with the Memorandum of Agreement and Easement Location Document (#90-017789), recorded on March 16, 1990 (MOA). A copy of that document is enclosed herein for your ready reference. You or the prior owner of your property within the subdivision signed this agreement, creating an obligation to relocate and build a permanent access road under the terms and conditions of the document.

Plans to build the road have been submitted to Santa Barbara County Planning & Development, and have been approved by Grading, Public Works, Flood Control and the Fire Department. A Land Use Permit will be issued, pending action by the Board of Supervisors. Requests for bids have been submitted to several construction companies, with the intent to begin construction on January 6, 2003.

Item 8 of the MOA requires the formation of a mechanism "to insure that funds will be available to pay the costs of construction and maintenance of the road." On behalf of the property owners, my firm has filed Articles of Incorporation for the Rancho Santa Rita Access Association (RSRAA), a non-profit, mutual benefit corporation. This association will fund, build, and maintain a private access road from the end of Sweeney Road up to the western boundary of the Lakeview Estates subdivision.

The first meeting of the RSRAA will take place at 7:00 PM on Thursday, December 12, 2002, at 401 E. Cypress Avenue, Lompoc. This meeting will be conducted to elect a board of directors and officers, review and accept a construction bid, authorize the commitment of funds, obtain insurance, and any other matters relevant to the project.

Pursuant to the by-laws of the corporation and the common sense interpretation of the MOA, each parcel within the subdivision will have one vote, provided the owners have paid into escrow their estimated, proportionate share of the estimated construction costs, as determined by the cost estimate provided by Penfield & Smith dated March 28, 2002. That estimate is \$9,003.62 per parcel (\$351,141 divided by 39 parcels). Please remit funds to the escrow account at Stewart Title, as follows:

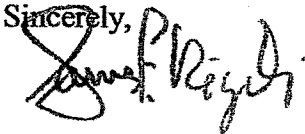
Stewart Title of California
210 East Enos Drive, Suite E
Santa Maria, CA 93454
Escrow #02075437

A private lender has agreed to loan funds to those parcel owners who find it necessary to borrow their portion of the road costs. Information on this lending arrangement will come to you under separate cover. This law firm has no involvement with the private lender and is passing this information on as a courtesy. Interest rates are good now and from that point of view it is the logical time to build this road.

Please be advised that Kirk & Simas has opined that the MOA is a binding document and our firm will initiate legal proceedings against any property owners, if any, who fail to comply with the terms of the MOA.

I look forward to meeting you at this initial meeting of the RSRAA.

Sincerely,

A handwritten signature in black ink, appearing to read "James F. Rigali". The signature is written in a cursive style with a large initial "J" and "R".

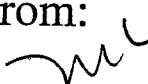
James F. Rigali



COUNTY COUNSEL MEMORANDUM

To: Joni Gray,
Susan Warnstrom
Fourth Supervisorial District

Date: 10/25/01

From:  Michael R. Ledbetter,
Deputy County Counsel

Re: Lakeview Estates

This will memorialize the current issues in this matter, which has been going on for some time. Lakeview Estates was subdivided without the creation of an access road serving each parcel. Owners are finding that they cannot develop until the road is put in, but cannot agree on who should fund the construction and maintenance.

Property owner Marks is applying for permits to develop his property, which will apparently not be granted unless fire access is provided. He is now leading an effort to get other property owners to subscribe to the installation and maintenance of at least a partial road which would go up to his property. Mr. Marks has significant financial incentives to arrange for construction of the road.

Bob Braitman recently proposed the creation of a County Service Area. However, creation would have to be contingent on dedication of the private road to the public. In the event 100% of the property owners did not agree to dedicate the required portion of their parcel, eminent domain would be required to acquire the necessary right-of-way.

Other factors which make CSA formation problematical, besides the 100% participation of property owners:

1. Cost of an engineer's report. Public Works indicates \$25,000+.
2. Application of bidding and prevailing wage laws (add 20-30%).
3. County auditor collection and administrator pro-rata costs.
4. Risk Management/Liability costs.
5. Costs of complying with Prop. 218 (2/3 vote at election called on issue of special road tax, possible future elections).

The amount of an assessment calculated to construct, maintain and reconstruct the road at the end of its useful life can only be estimated at the present time, however, the amount is thought to be extremely high as the construction must take place in a remote

Shane Stark
10/25/01
Re: Lakeview Estates
Page 2

mountainous area and there are less than 70 parcels.¹ Public Works also has concerns about whether the road can be built according to the present plan, which utilizes the flat (i.e., buildable) portion of each lot for road construction. Scott McGolpin thinks the plans may be unacceptable to some owners when they take a closer look.

None of these enumerated costs would be necessary if the property owners can agree on their own on a way to get the road built. The simplest option is a recorded road maintenance agreement which would allow for the collection of attorneys' fees by the prevailing party in an action for refusal to make a maintenance contribution. Any contributing party could seek payment in civil court, small claims if under \$5,000. Another option is the formation of an HOA.

The property owners are closer than they have ever been to solving the road problem on their own. I believe their next step should be the hiring of an attorney experienced in drawing up real property covenants or Homeowner Association agreements.

I hope this information is useful. Please let me know if you desire further.

cc: Shane Stark
Alan Seltzer
Kevin Ready

G:\cc\winword\mrl\shane19.doc

¹ The calculation is made in the engineer's report, and is arrived at by adding together the cost of engineering, constructing and maintaining the road during its useful life, and replacing it at the end thereof. This amount is added to the cost of issuing bonds or otherwise financing the improvement. To arrive at the annual assessment, the total is divided by the number of years of useful life, and divided again by the number of parcels.

For example, if the cost of district formation, engineering, constructing and maintaining the road for twenty years and replacing it at the end were \$1.2 Million (very conservative estimate) and the interest rate was 7%, the total cost of the project including financing would be \$ 2,082,000. Divided by twenty years and 70 households, the annual assessment would be \$1497.14.