

Staff Responses to Commissioner Questions at the June 6, 2013 SBLAFCO on the Santa Rita Hills CSD's Application

1. Do we have sufficient Notice to Continue this Matter to the Next Meeting?

Government Code Section 56427 provides that for sphere of influence adoptions, amendments, or revisions, a 21-day notice is required. Following the notice "The Commission may continue from time to time any hearing called pursuant to this section.

2. Can Outstanding Issues be Worked out by the next meeting?

Staff has been working with all affected parties in an attempt to resolve outstanding issues. We have met with varying levels of success in resolving outstanding issues. Unfortunately, the Commission will need to make some difficult decision to resolve outstanding issues at the September 5, 2013 meeting.

3. What was the Morris lawsuit?

Mr. E. Patrick Morris is the attorney for Peter and John Cargasacchi, who own or are beneficiaries of the Trust that owns the property where the access road is proposed. A dispute arose regarding use of easement access to certain properties within the CSD, including issues regarding locking of fences. We understand a counterclaim was filed seeking validation of the MOA. The lawsuit was filed in Santa Barbara County Superior Court, *Peter and John Cargasacchi v. Ariel Larvie*, et al, Case No. 1270024. Mr. Morris provided a copy of the judgment entered in that case, which is dated December 1, 2010. Among the holdings made by Superior Court Judge Garcia was that "it is the judgment of this Court that the Lavie defendants, 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." Mr. Morris has pointed to the Judgment as a judicial determination that the MOA is still in full force and effect between the owners located in the CSD and the owners of the Cargasacchi Ranch.

4. Documentation from the County regarding the MOA.

The County has at times attempted to facilitate a settlement between the Cargasacchi's and the CSD landowners and has also processed one application for a permit for the access road. The County Planning and Development file is quite extensive and Staff seeks input from the Commission on any particular documentation the Commission would like to receive. According to County staff, County records exist for the following:

1968	Lakeview Estates Tract Map approved by County.
February 18, 1986	Board of Supervisors' Resolution designating the Santa Rita Mountains area between Sweeney Road and Mail Road as a "Special Problems Area."
December 12, 1990	County prepared CEQA initial study for preparation of an EIR for formation of Assessment district to construct a road, condemnation of a road, and LAFCO approval of a CSD.
November 9, 1994	Report to Board of Supervisors Agenda Item A-11 on formation of Assessment District for construction of a roadway system on Lakeview properties.
November 22, 2000	County Planning & Development letter stating access road required a permit from the County.
November 28, 2000	Chris Marks application for land use permit submitted to County for road across Cargasacchi property. Does not meet requirements of MOA.
December 15, 2000	P&D letter stating application for road is incomplete pending resolution of legal issues associated with MOA.
September 3, 2003	Letter from two landowners to P&D stating the Cargasacchi concerns have been addresses.
November 26, 2003	County issued land use permit for grading and development of access road.
December 8, 2003	John and Peter Cargasacchi appeal land use permit.
November 9, 2004	Board of Supervisors approve revised Land Use Permit for access road.
August 31, 2005	P&D letter to permittee (Marks) stating several conditions on the LUP remain unsatisfied.
August 23, 2013	P&D verbal communication stating that the LUP for the access road has expired. A new application to the County is necessary to pursue the access road.

5. Has the permit from the applicant to construct the road expired? If yes, why?

As indicated in the Chronology, above, County P&D Staff have advised that the land use permit for the road has expired. These permits are typically valid for one year and may be extended.

6. Is the Santa Rita Hills CSD a successor group to the MOA?

Since LAFCO is not a party to the MOA, this question has been provided to the District for a response. As of this date, LAFCO understands the parties to the MOA disagree as to whether the CSD is a successor to the MOA.

7. Public Use of Eminent Domain, public or private road.

Pursuant to Gov. Code § 61060(e), a community services district has the authority “to acquire by eminent domain any real or personal property within or outside the district.” Under California law, the taking of property must be for a “public use.” (Code of Civ. Pro. § 1240.010.) While the taking of property must be for a public use, this does not mean the property may be used by any member of the public.

In certain instances, the Legislature has declared certain uses of property to be for a public use even though the use is not available to all members of the public. In particular, in 2009, the Legislature approved SB 263 that authorized certain community service districts to own roads that are not formally dedicated to or kept open for use by the public. Government Code § 6110(f) provides that several CSD’s including the Santa Rita Hills District “may, for roads owned by the district and that are not formally dedicated to or kept open for use by the public, . . . by ordinance, limit access to and the use of roads to the landowners and residents of that district.” Therefore, the District has the authority to exercise eminent domain to build an access road and to restrict use of that road to landowners and residents of the district.

8. Why weren’t the issues that were identified during the SRHCSD formation process resolved?

It is unclear why the issues of road access identified during the formation process have not been resolved. The Commission had clear expectations in 2008 that there was sufficient direction using the MOA alignment to construct the access road. This had not been the case to date and the access issue is still unresolved.

9. What needs to be done to resolve these issues?

The SRHCSD believes that by approving the application the issues will be resolved. There are a number of options contained in the September 5, 2013 Staff Report that can lead to a solution. It is unclear if LAFCO is really the agency that is charged with resolving the access issues. It is incumbent on the affected property owners and the SRHCSD to reach a solution to outstanding issues.

10. More Information is Needed on How to Resolve Outstanding Issues.

Since the June 6, 2013 Commission meeting, staff has been working with all affected parties to understanding the outstanding issues and encourage solutions. There are a number of

exhibits and attachment contained in the September 5, 2013 Staff Report that provide information on resolving outstanding issues.

11. What is eminent domain?

Witkin defines eminent domain as follows:

“Sovereign Power. Eminent domain is the right of the people or government to take private property for public use. (See C.C.P. 1240.010, infra, §1175.) It is a sovereign power that cannot be contracted away. (Contributors to Pennsylvania Hosp. v. Philadelphia (1917) 245 U.S. 20, 38 S.Ct. 35, 62 L.Ed. 124.)” Witkin, Constitutional Law, § 1112.)

In California, eminent domain may only be used where authorized by statute. There are, however, many statutes that authorize municipalities the right to exercise this power, including for example Government Code section 37350.5 for cities and section 61060(e) for community service districts.

As stated above, eminent domain may only be used to take property for a public use. Public use is broadly defined such that a road may be acquired and its use limited to a particular group of persons, such as members or landowners in a community services district. (SB 263 (2009) Gov. Code § 6110(f).)

12. It would be helpful if County Public Works is present at the next LAFCO Meeting.

Staff will request that a representative of County Public Works who is knowledgeable of the issues surrounding this situation be present at the LAFCO Meeting.

13. Why weren't the issues regarding the access road identified when the SRHCSD was formed in 2008?

The issues of access to the Lakeview Tract were identified in the 2008. Again, the Commission had clear expectations in 2008 that there was sufficient direction using the MOA alignment to construct the access road.