

# DRAFT Bell Canyon CSD MSR Response

**Presented by:** Michael Robkin, President, BC CSD

**Location:** Bell Canyon Virtual Town Hall

**Date:** January 25<sup>th</sup>, 2023

**THIS WEBINAR WILL BE RECORDED**

**Prepared by:**

Greg McHugh, Interim General Manager

Michael Robkin, President Bell Canyon CSD

Peter Machuga, Vice-President Bell Canyon CSD

Enid Turner, Community Volunteer

# Gratitude

Thank you to the LAFCo Commission and LAFCo executives and staff for conducting the MSR and delivering a detailed report

The BC CSD will resolve all the valid issues from the MSR

# Background

- BC CSD created an MSR Subcommittee to lead response
  - Two new Board members - both pre-date the events of the MSR
    - Michael Robkin, President
    - Peter Machuga, Vice-President
  - New Interim General Manager
    - Greg McHugh
  - Volunteer
    - Enid Turner (ran for CSD in the November election)

# Background

- Appreciate the cooperation of those who provided all requested documents and communication concerning this and older MSRs
  - Eric Wolf
  - Richard Levy
  - LAFCo
  - Dennis Roy
  - Dennis Zine
  - Legal Counsel

# Transparency

- Prepared by the MSR Sub-committee and counsel
- DRAFT
  - Not yet collected or analyzed all available information.
    - “Perfect is the enemy of good enough”
- Multiple aligned goals of this presentation
  - MSR Subcommittee report to CSD Board
  - Detailed MSR response for Ventura County
  - Transparency for the residents of Bell Canyon

# Transparency

What you will hear:

- Stuff Ventura LAFCo said we did wrong and we are fixing
- Stuff we don't think we did wrong, but are fixing anyway
- Stuff we didn't do wrong, so don't need to fix
- Stuff Ventura LAFCo did wrong, that we hope they fix
- Corrections to rumors in the community

# Short Version

# Short Version – No Missing Money

- The MSR does NOT conclude that there is:
  - Missing Money
    - *“the MSR does not conclude that funds are missing”* - LAFCo Exec Director, by email 5/23/2023
    - A recent government required audits passed with highest rating of “no qualifications”
      - FY 21-22 (after MSR period) not yet completed
  - Waste – Money spent only on things needed for BC
  - Fraud – No deception resulting in unauthorized benefit to individuals
  - Abuse – Money spent only for Board-approved purposes, and in approved amounts



# Short Version – No COI

- No Conflicts Of Interest
  - DA letter is clear
    - But LAFCo's characterization is misleading
  - Fair Political Practices Committee (FPPC) letter is clear
    - Does not appear to have been distributed by LAFCo to LAFCo Commission

# Short Version – Good Faith Decisions

- All CSD decisions were approved by attorneys before they were passed by the CSD Board
- Now we have new legal counsel, two new Board members, and constructive feedback from LAFCo
- Numerous fixes and improvement in place or almost completed

# Details

Every Issue Raised in the MSR

# Why This Detailed Presentation?

- Some in the community have drawn misunderstandings from the MSR and social media.
  - Harsh words like used repeatedly:
    - “no legal authority”
    - “improper....”
    - “violates...”
    - “does not provide services...”
- Our objective is to discuss each item the MSR in detail
  - The good, the bad and the ugly
  - Describe corrections and improvements
- There is a lot of work to do, and we appreciate the community’s support

# What's At Stake

- Possible threat to disband the CSD or restrict its powers and services
  - Which could mean:
    - Loss of \$1,900,000 of your taxpayer money in the CSD bank account allocated for Bell Canyon services
    - Paying for our own trash services
    - Loss of Public Safety Powers
      - Traffic Control
      - CERT
    - Loss of future ability to maintain our Park
    - Loss of CSD Community Events

# The View from 30,000'

1. LAFCo found no missing money (5/23)
2. CSD made errors
3. LAFCo made errors
4. LAFCo gave contradictory advice
5. CSD and LAFCo had differing interpretations of the law
6. MSR identified topics for CSD to improve.
  1. We are fixing all of these
7. We believe CSD, Ventura County, and LAFCo have common goals for Bell Canyon:
  1. Public Safety,
  2. Transparency, and
  3. Cost-Effective Services<sup>33</sup>

# Background 1/3

Community Services District (CSD): A geographic area with municipal services and tax revenue. Less than a city, but more than an unincorporated area

Local Agency Formation Commission (LAFCo): is a subcommittee of the CA Legislature. Its primary purpose is to manage the growth in unincorporated areas by adding Powers and expanding/merging Districts

LAFCo Commission is a committee of Ventura County officials

CA Municipal regulations: Apply across California, with some differences for CSDs

CSD Laws: CA laws that apply only to CSDs

LAFCo Laws: CA laws that apply only to LAFCo

# Background 2/3

General Powers are typical powers of government that all municipalities have, such as protecting health and safety, or acquiring property

MSR is a Municipal Services Review. A kind of audit that checks whether we are using our powers properly

Sphere of Influence Review is a meeting where LAFCo Commission votes to add or subtract powers, and can also expand or merge geographic boundaries



# Background 3/3

Latent Powers are CSD Powers that are not being used. TWO DIFFERENT DEFINITIONS:

## LAFCo Law

- 56050.5 “Latent service or power” means services, facilities, functions, or powers authorized by the principal act under which the district is formed, but that are not being exercised, as determined by the commission pursuant to subdivision (i) of Section 56425.
- 56425 (i) When adopting, amending, or updating a sphere of influence for a special district, the commission shall establish the nature, location, and extent of any functions or classes of service provided by existing districts.

## CSD Law

- 61002(h) “Latent Power” means those services and facilities authorized by Part 3 (commencing with section 61100) that the local agency formation commission has determined, pursuant to subdivision (h) of Section 54625, that a district did not provide prior to January 1, 2006.
- 54625(h) In determining a sphere of influence, the commission may assess the feasibility of governmental reorganization of particular agencies and recommend reorganization of those agencies when reorganization is found to be feasible and if reorganization will further the goals of orderly development and efficient and affordable service delivery. The commission shall make all reasonable efforts to ensure wide public dissemination of the recommendations.

# Timeline 1/2

## History

- 2005 MSR: Encouraged closer cooperation between HOA and CSD for efficiency
- 2008 New LAFCo Law passed
- 2010 *MSR had no significant issues*
- 2015 *MSR had no significant issues*
- 2021 MSR: Completed
  - LAFCo raised issues
  - LAFCo did not provide proper opportunity for dialogue with BC CSD before or during the MSR
- CSD published responses to LAFCo and the community

# Timeline 2/2

## Current

- This Townhall
- BC CSD responses and corrective action

## Next Steps with LAFCo

- Late January Meeting with LAFCo staff
- 2/15 Preliminary presentation to LAFCo Commission
- 3/15 Official Sphere of Influence Review

# MSR ISSUES

# MSR Issue Discussion Format

- For each issue raised by LAFCo we will present:
  - CSD Purpose - what was the benefit to BC
  - CSD Intent - how that benefit was to be provided
  - Points of Contention between CSD and LAFCo
  - Problems Identified
  - Corrective Actions completed or planned

# Traffic Control

- Purpose
  - Reduce dangerous driving and violations of traffic laws within Bell Canyon
- CSD Intent
  - CA Gov't code 61070: "A district may contract with any local agency, state department or agency, federal department or agency, or any tribal government for the provision by or to the district of any facilities, services, or programs authorized by this division, within or without the district, subject to compliance with Section 56133."
- Points of Contention
  - LAFCo- "The BCCSD is authorized to provide enhanced traffic patrol under the provisions of a contract with the California Highway Patrol. Outside of a contract with the California Highway Patrol (CHP), the BCCSD has no power or authority to provide traffic patrol or enforcement services."
- Problems Identified
  - Previous interpretation of our powers was corrected by LAFCo.
  - We can only contract externally with CHP for traffic control services
- Fixes
  - Discussions with CHP underway

# Traffic Enforcement

- Purpose
  - To provide some security service and traffic safety services
- CSD Intent
  - To improve traffic safety with periodic visibility of “decoy” car consistent with expansive Security Services power description to protect lives and property.
- Points of Contention
  - MSR – The BCCSD is authorized to provide “Security services, including but not limited to, burglar and fire alarm services to protect lives and property”.
  - However no monies were allocated specifically for security services. The car was sometimes driven by HOA personnel.
- Fixes
  - Sold the car
  - Security policies will be adopted by the board
  - CHP will be contracted separately

# CHP

- Purpose
  - Traffic safety
- CSD Intent
  - To contract with CHP again in 2023
- Points of Contention
  - LAFCo contends that because we have not contracted with the CHP since 2015 that power has been abandoned and it is now a “latent power”
  - Not clear how powers not used are automatically “abandoned”
  - Powers can be added or removed at a Sphere of Influence Review
- Problems Identified
  - We can ONLY contract with CHP, but CHP does not have to contract with us
- Fixes
  - We are in discussions with CHP

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# Emergency Medical Services

- Purpose
  - To offer CPR training to Bell Canyon Residents to improve Public Safety in case of medical emergencies or natural disasters
- CSD Intent
  - Assumed offering training on CPR, etc. to the community was a basic ability of any government under General Powers or Emergency Medical Services power. Course was provided by qualified members of either LAFD or members of LA County Sheriffs.
- Points of Contention
  - MSR – The BCCSD is authorized to provide “Emergency medical (advanced life support) services under the provisions of a contract with the City of Los Angeles Fire Department.” Outside of a contract with the City of Los Angeles Fire Department (LAFD), the BCCSD has no power or authority to provide or expend funds on emergency medical services.”
  - CPR is intended to be provided by non-professional residents BEFORE professional emergency services arrive
- Problems Identified
  - LAFCo states a CPR course to the public is an Emergency Medical Service, and can ONLY be offered by LAFD
- Fixes

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○ We will explore if we can offer CPR training, AED training, and first aid training as a *community or recreational* activity, and not as an Emergency Medical Service. Medical Science is an appropriate topic for a recreational activity.

# Fire/Emergency Services

- Purpose
  - Sponsor the Fire Safe council grant application
- CSD Intent
  - To support the Fire Safe Council which at that time did not have 501c3 status.
  - The CSD sponsored the application, per grant rules, so the Fire Safe council could receive \$37,000
- Points of Contention
  - LAFCO says that because the CSD is not engaged in fire suppression, can't get grants for a fire prevention.
  - CAL-Fire, who gave the grant, stated we did not have to have fire suppression power to receive the grant
  - Other CSDs have sponsored and received similar grants
    - Ventura County Resource Conservation District received \$2.9M grant from the same program.
    - They do not have a fire suppression capability. LAFCo did not object
- Problems Identified
  - Differing opinions on the law and precedent
- Fixes
  - The BC Fire Safe council is now a 501c3 and applies for their own grants without involving the CSD

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# Community Emergency Response Team (CERT)

- Purpose
  - To support and train local CERT team
- CSD Intent
  - To support CERT so the community can respond to disasters before Emergency Services arrive
- Points of Contention
  - LAFCO says primary role of CERT is to support for emergency services.
    - We disagree, the primary point CERT is to save lives when Emergency Services are NOT available
  - LAFCO says we need a full service Fire Department to provide CERT training
    - We disagree. Other Ventura County CSDs such as Channel Islands have a CERT training program without a Fire Department
- Problems Identified
  - \$60,000 “budgeted” for CERT Training
  - \$7,000 spend on CERT Training
  - Remaining funds were spent on authorized CSD programs and services
  - But CSD budget line items were not updated when money was not allocated or spent
- Fixes
  - We will precisely match expenditures to budget, and reallocate budgets as necessary
  - CERT is now sponsored by the HOA

# Community Events

- Purpose
  - To provide community events
- Intent
  - To work efficiently and cost-effectively with the HOA per 2005 MSR recommendations
- Points of Contention
  - MSR - Based on BCCSD documents, it appears that the BCCSD does not plan, organize, host, or staff recreation programs or events. Community recreational programs are promoted, organized, staffed, and hosted by the HOA and held on and in HOA-owned facilities. The HOA then passes the costs to the BCCSD. LAFCo law defines "Service" to mean "a specific governmental activity established within, and as a part of, a function of a local agency." (Govt. Code section 56074).
- Problem Identified
  - CSD representative or employee did not DIRECTLY supervise vendor selection and event.
- Fixes
  - CSD employee will directly supervise vendor selection and event as directed by the CSD Board
- Formal Event Process in development
- Financial report of recent events will be made available to the community

# Graffiti Abatement

- Purpose
  - Prevent and fix graffiti
- Intent
  - To have capability to remove graffiti
- Points of Contention
  - MSR – The BCCSD has no graffiti policy, and no funds expended on graffiti
- Fixes
  - Graffiti ordinance adopted
  - BC CSD can only repair graffiti on CSD owned or operated property (Bus Stop and Parking Lot)

# Public Access to CSD Meetings 1/2

- Purpose
  - The CSD is a Municipal government subject to the Brown Act
- CSD Intent
  - To allow anyone to attend the physical or virtual CSD meetings and address the Board per the Brown Act
- Points of Contention
  - LAFCo contended that the HOA gate made Brown Act compliance impossible
  - CSD points out that there are special exemptions in CA Law – specifically mentioning Bell Canyon – that recognize we have the right to keep non-residents off of private property
- Problems Identified
  - The public must be notified of CSD meetings and permitted to attend CSD meetings and address the Board
- Fixes
  - We publish CSD notices outside of HOA property on BCR
  - We publish CSD notices on our website
  - Gate has been instructed to allow entry for the purpose of attending CSD meeting

# Public Access to CSD Meetings 2/2

- Purpose
  - CSD meetings must be announced and properly noticed.
- CSD Intent
  - To comply with the Brown Act
- Points of Contention
  - The Bulletin board outside of BC on Bell Canyon Road has inadequate lighting and parking
- Problems Identified
  - Bulletin board needs better parking and lighting
  - We don't own the property where parking and lighting would go
- Fixes
  - Acquire rights or permission to upgrade the land where the CSD sign is, or move it somewhere else
  - Ask for more powers
    - ROADS 61100L

# Park and Rec Facilities

- Purpose
  - To acquire and then upgrade the BC park to support community events
- CSD Intent
  - To lease the park from the HOA in support of community recreational activities and events
- Points of Contention
  - Previous CSD lawyer said we could acquire property through eminent domain, lease, purchase, etc... (under our General Powers)
  - We have power to buy or lease real estate, and to improve or maintain such real estate.
  - We do not have the latent power to acquire or operate a Park
- Problems Identified
  - Powers to acquire or operate a Park requires special Park and Recreation Powers
- Fixes
  - DRAFT SUBJECT TO REVISION Apply to LAFCO for power 61000e to acquire and operate a park



# School Bus Stop

- Purpose
  - We want a safe place for kids to wait for the bus
- CSD Intent
  - Property was donated by Ventura County to CSD for the express purpose of operating a bus stop
  - HOA paying for the maintenance of the bus stop portion of the property
  - CSD to pay only for the port-a-potty
- Points of Contention
  - HOA maintains bus stop, not us.
  - We do trash cleanup event at bus stop
  - LAFCo maintains we need transportation power to operate a bus stop
- Problems Identified
  - We don't actually maintain the bus stop itself, we only pay for the port-a-potties which are co-located at the bus stop
- Fixes
  - HOA can lease the fraction of the property that is used for the bus stop shelter itself, or
  - CSD can apply for Transportation Power

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# BCCSD “Grants” to the HOA

- Purpose
  - Coordinate with HOA in creating community events
- CSD Intent
  - To reimburse HOA for expenses taken on behalf of CSD Powers Although incorrectly labeled, these were not “grants”
- Points of Contention
  - \$52,000 2018/19 – reimbursement of Event Expenses
  - \$49,000 2019/20 – reimbursement of Event Expenses
  - \$50,000 in security equipment purchased by CSD under Security Power and given to HOA to install and operate
- Problems Identified
  - There were no grants.
  - No contract in place between HOA and CSD
  - Reimbursed HOA for expenditures taken at the request of the CSD
  - Most of the money was paid to vendors, not to the HOA
  - CSD must operate or properly subcontract operation of, security equipment
- Fixes
  - We won't call reimbursement grants
  - Will properly contract with HOA for Events
  - In the future, Security Services will be operated by CSD employee

# Conflict Of Interest (COI)

# Summary: Conflicts of Interest

- Purpose
  - All Board members serve in compliance with CA Law
- CSD Intent
  - To serve in compliance with CA Law
- Points of Contention
  - No COI when a BCA Board Member also serves as a CSD Board Member
  - LAFCo mischaracterizes the Ventura County District Attorney Regarding COI
  - There was no 3<sup>rd</sup> HOA Board member on the CSD (but would not be a COI anyway)
  - Does not appear to have distributed letter from Fair Political Practices Commission (FPPC) stating there is no COI for being on HOA and CSD Board
  - Request HOA prevent CSD board members from being elected, which would violate election law and is outside of LAFCo power
- Problems Identified
  - No COI exists
  - We need a clearer COI policy
- Fixes
  - We will update our COI policy to clarify any points of confusion with CSD powers and LAFCo law

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# COI Detail: What is a conflict of interest?

- Fair Political Practices Committee (FPPC) defines a COI:
  - A public official making, participating in, or otherwise using their official position to influence a governmental decision in which the public official has a financial interest distinguishable from the effect on the public generally.
  - “The Act does not prohibit an individual from serving as a member of the board of directors of a community services district and on the board of a homeowners association.”
- *Examples*
  - *NOT a COI to approve graffiti abatement on all streets in Bell Canyon.*
  - *IS a COI to approve graffiti abatement only on my street in a narrow range that includes my home*
  - *Not a COI to contract for services with another organization that has a Director on it’s staff or board, so long as that Director is not paid or compensated*

# COI Detail: DA Letter

“Although we are aware of no facts that would constitute an unlawful conflict of interest for the individuals serving as members of both the CSD and the BCA Board of Directors, public confidence would be enhanced by eliminating the appearance of impropriety created by their dual directorship.

\*\* No Conflict Of Interest \*\*

\*\* Not A Recommendation \*\*

“From the facts presented, the individuals serving as members of both the CSD and BCA Board of Directors do not have an economic interest in the BCA because the BCA is a non-profit corporation, not qualifying as a business entity, and because BC directors do not receive income from the BCA.”

\*\* No Conflict Of Interest \*\*

# “Third” HOA Board member on the CSD

- 12/5/2021 Geoff Abadee off the HOA Board with the election
- 1/24/2022 Geoff Abadee sworn in on CSD Board
- Therefore NO third HOA member on CSD board in February
  - Which would not have been a COI anyway

Local Agency Formation Commission Meeting - March 16, 2022

## Relationship Between the BCCSD and the HOA

### Conflicts of Interest

- Two BCCSD Board members are also HOA Board members
- In 2013 District Attorney advised that the “appearance of impropriety created by their dual directorship” should be eliminated
- No action taken by the BCCSD
- BCCSD to adopt a conflict of interest code, a policy requiring recusal on any financial matters with the HOA (though such matters are to be eliminated), and recommend that the HOA adopt polices limiting the number of HOA board members who serve on CSD board to two.

(Unclear why in February 2022, BCCSD board appointed a third HOA board member to fill a vacancy on the BCCSD board.)

45:43 / 1:51:10



# LAFCo Over-Reach

- LAFCo does not dictate the minutia of our COI policies. We will adopt the current best practice COI policy
- BC CSD can contract with HOA for various matters, if done in compliance with our powers and CA law. So the statement that “all financials matters to be eliminated” is incorrect
- NOT a LAFCo power to tell the HOA – a private organization – who can or cannot run for office or be elected to their board. Would in fact be illegal to do so

# What happened

These errors have caused unnecessary confusion and disorientation in our community, and damaged the reputation of Bell Canyon CSD, Bell Canyon HOA, and the entire Bell Canyon community in Ventura County and beyond

# Working With LAFCo

# Issues Surrounding LAFCo MSR Process

1. Failed to allow us time to speak as required by their policies and manual
2. Failed to conduct open process as required by their policies and manual
3. Refused to meet with CSD directors in violation of their policies
4. Claimed we violated the law but don't quote any law and we can find no applicable code section
5. Shared letters from the public that were labeled CONFIDENTIAL and were irrelevant to the proceedings
6. Continued to do so at last LAFCo meeting

# Fixes Completed or In Progress

- Internal Operations
  - Update chart of accounts to include reference to latent or general power
  - Improve budgeting process
  - Improve compliance process
  - Update website
  - Seek advice from Attorney General on some points of LAFCo and CSD law

# Fixes Completed or In Progress

- Other Operations
  - Events Process
  - Develop a venue rental contract with HOA
  - Consider leasing bus stop to HOA until we obtain Transportation Services power

# Fixes Completed or In Progress

- New Policies
  - Security policy
  - Graffiti ordinance
  - Brown Act policy
  - Communication policy

# Fixes Completed or In Progress

- Latent powers we will apply for
  - Acquire and Operate a Park (61100e)
  - Construct and Maintain streets (61100l)
    - For CSD Meeting sign
  - Construct and Maintain street lighting (61100g)
    - For CSD Meeting sign
  - Provide Transportation services (61100p)
    - For bus stop



# Thank You

Thank you to the LAFCo Commission and LAFCo executives and staff for conducting the MSR and delivering a detailed report

Thank you to the people of Bell Canyon for their patience and support