



February 25, 2022

VIA E-MAIL

Honorable Chair and Commissioners
Ventura Local Agency Formation Commission
801 S. Victoria Avenue, Ste. 301
Ventura, CA 93003

Kai Luoma, Executive Officer
**Ventura Local Agency Formation
Commission**
801 S. Victoria Avenue, Ste. 301
Ventura, CA 93003

Re: Bell Canyon CSD Sphere of Influence (LAFCo 20-09S)

Dear Honorable Chair, Commissioners, and Mr. Luoma:

Thank you for the series of meetings that LAFCo, acting through Mr. Luoma and legal counsel Mr. Alberto Boada, had with District Board President Dennis Roy and me regarding the draft Municipal Services Review (“MSR”) and the Sphere of Influence (“SOI”) for the District. The meetings were in held in furtherance of the LAFCo Commission’s direction for the parties to discuss the issues raised in the draft MSR and at the SOI hearing on September 15, 2021. Pursuant to the parties’ agreement, this letter summarizes our understanding of the discussions at the meetings, as well as the proposed actions to be taken on issues related to the MSR and SOI.

As a result above meetings, LAFCo staff provided the District representatives with an enhanced understanding of their good faith concerns with certain past actions and operating procedures of the District. We hope that LAFCo staff also concluded that the actions and procedures of the District, while having room for improvement, have also been undertaken in good faith and with a proper intent. Given the good faith basis motivating both parties, the District has determined that, rather than continuing to focus on differences in understanding or interpretation of past actions, the most productive path forward is for the District to supersede and replace its prior letter objecting to the draft MSR/SOI with this letter setting forth a shared understanding with LAFCo concerning the modifications to District procedures designed to address LAFCo's concerns and, and establish a confirmed basis for improved District operations in the future. It is the District’s hope that many, if not all, of the outstanding issues are clarified through this letter and will be resolved to LAFCo's satisfaction in the manner set forth herein.

Based on the discussions between LAFCo staff and the District representatives, this letter shall act to supersede the District’s position as previously stated in its prior letter dated November 4, 2021 to the LAFCo Commission.

A. The District’s Relationship with the Bell Canyon HOA and District "Grants" to the HOA

1. District expenditures on Recreational Events and Front Gate Security Improvements

We discussed the LAFCo assertion that the District made “grants” amounting to “hundreds of thousands of dollars of taxpayer funds” to the HOA over the course of several years (2015-2020) with respect to services provided by the HOA in connection with certain District sponsored recreational events and in connection with a \$50K payment by the District to the HOA in reimbursement of certain security and traffic control software and hardware installed at the front gate to the community. LAFCo’s concern was that the District was circumventing its public agency obligations and giving public funds to a private entity without public accountability, transparency, or control as to how such funds were expended.

In a previous letter to the Commission dated November 4, 2021, the District provided copies of account ledgers, check requests, and actual checks issued for various recreational event and activity expenditures between 2015 and 2020 showing that most of the recreational event expenditures were provided directly by the District to third party service providers and vendors in arms-length transactions . Only minor payments were made to the HOA for reimbursements for the cost of clean-up, security, and other ancillary activities performed by the HOA staff related to the events and activities.

With respect to the front gate reimbursement for security improvements, LAFCo staff stated that, by reimbursing the HOA for security equipment that the District does not directly operate and control, the District is delegating its power to provide traffic patrol and security services to the HOA to perform, which is not permitted under the law, as such services must be performed by the District or delegated to another qualifying public agency. LAFCo staff also pointed out that traffic patrol services is not one of the enumerated latent powers of a community services district listed under Government Code Section 61100, and was only granted to the District circa 2005 by LAFCo as a special service with the specific limitation of being provided through the CHP.

Proposed Actions: The District has agreed that, going forward, it will not utilize HOA staff or services to provide services or put on events and activities, and will not make any future reimbursements to the HOA for contribution toward improvements owned and operated by the HOA, such as the front gate reimbursement for enhanced security improvements. This should eliminate any further concern with “grants” being provided by the District to the HOA. To the extent any staff is necessary for the District to provide services or put on events or activities, the District will use either its own staff or a specialized outside provider in compliance with all of its legal requirements and statutory obligations. Furthermore, the District is looking to enhance its staffing to provide it the ability to independently perform certain day-to-day tasks and operations in furtherance of its authorized services under the sole direction and control of the District General Manager and District Board of Directors.

LAFCo has agreed to review the draft MSR and consider revision of the language, where applicable, to remove reference to “hundreds of thousands of dollars” of improper expenditures

and to acknowledge the expenditures that were made were in furtherance of a good faith effort to advance the purposes of the District, although they may have, in their implementation, exceeded the proper limits on the manner of achieving those objectives.

2. Fund Expenditures for Parks, Trails and Restrooms

The draft MSR also references approximately \$110,000 in payments from the District to the HOA between the fiscal years of 2014/2015 and 2019/2020 for parks, trails, and restrooms. As a District that is authorized to provide community recreation programs, it is the District's position that it also has the inherent authority under Government Code Section 61060(d) to acquire real and personal property by contract or otherwise and to manage, occupy, and dispose of such property for the benefit of the District.

During the meetings, LAFCo did not dispute the District's power to acquire fee or leasehold interests in property in the name of the District, or the right of the District to manage, occupy, and dispose of such property for the benefit of the District. However, LAFCo pointed out that to the extent the District intended to improve any District property with any physical improvements or recreational facilities, then such actions fall under Government Code Section 61100, paragraph (e) as a latent power to acquire, improve, maintain, and operate recreation facilities, pursuant to the Recreation and Park District Law (as distinct from the District's existing power to coordinate and deliver recreational programming and events). That latent power to construct additional recreational improvements and engage in other capital expenditures intended to provide or enhance recreational facilities under Government Code Section 61100(e) is not currently authorized by LAFCo, and LAFCo's position is that the District would need to apply for and be granted such additional powers before any improvement of any property owned or leased by the District for that purpose may proceed.

The District pointed out that there are two distinct issues: (i) the District's acquisition of an interest in property for the benefit of the District under Government Code Section 61060(d), and (ii) the District's acquisition, improvement, maintenance, and operation of recreational facilities (such as parks and open space) under Government Code Section 61100(e). Under the first issue, the District may lease, license, or acquire any interest in property to exercise an already authorized power without further authorization or approval from LAFCo. However, since the power to acquire as well as improve parkland is set forth as a latent power under Section 61100(e), the District will follow LAFCo's recommendation that the District first obtain from LAFCo authorization to activate the District's latent powers under 61100(e) to improve or construct recreational facilities, including parks and trails improvements, before proceeding with the proposed Community Park Lease or expending District funds to improve that land or install or operate any enhanced park or trail improvements.

Proposed Actions: The clarification and distinction drawn by LAFCo staff is constructive and helpful in the District's understanding on this point. In furtherance of that spirit of cooperation, the District will apply to LAFCo for activation of its latent power under Government Code Section

61100(e) before proceeding with any park or trail improvements contemplated by the District. Until such application for the latent power is approved by LAFCo, the District will not provide any further funding of recreational facilities or trail improvements beyond its existing authorized power for hosting recreational events.

B. The Brown Act

The draft MSR mentions that the District Board meetings and public records must be accessible and available to all members of the public, not just those residing within the Bell Canyon community. As previously explained at the September 15 public hearing and during the meetings, the District does provide all members of the public with unrestricted access to its Board meetings. That is, any member of the public outside of the Bell Canyon community simply informs the front gate that they are there to attend the District Board meeting that day and access is provided; no pre-registration is required and no limitations are imposed on access. HOA employees at the front gate have been instructed that on the dates of the District Board meetings, they are required to let all members of the public in who are present to attend the meeting. Furthermore, the District will continue to allow public attendance and comment via teleconference (e.g. Zoom), in addition to having in-person Board meetings, so the public may attend the meetings remotely if that is their preference.

As for publicly available Board meeting agendas and notices, the District has been timely posting its agendas and notices on its website at www.bellcanyoncsd.specialdistrict.org for some time. The District has also begun physically posting its agendas/notices on a weatherproof bulletin board in a publicly accessible location outside of the gated community and just inside the Ventura County border with Los Angeles County. The area where this posting occurs is open to the public 24/7 and does not require that the public approach or enter the Bell Canyon community in order to access this notice information.

Regarding public records under the Public Records Act, the District has posted relevant public records, such as the District's annual budget, audits, and various policies, on its website. Any other public record not exempt from disclosure can be requested by contacting District staff and filling out a form.

Proposed Actions: The District is committed to complying with the Brown Act and making its actions and public records open and transparent to all members of the public. The District has already made and will continue to make its Board meetings accessible for all members of the public, not just Bell Canyon residents, to attend in-person as well as via teleconference. All notices and agendas will continue to be posted on the District's website and physically at its office, as well as beyond the community gate at the newly installed public bulletin board near the County line. The District will also add signage to the new posting location outside the gated community that alerts the public to the location of this new CSD community bulletin board. Each District agenda posted in the future will include notice of the availability and procedures for public access to any BCCSD meeting conducted inside the boundaries of the HOA gated community.

C. Conflicts of Interest

The draft MSR suggests that it is a potential or apparent conflict of interest for a District Board member to also serve as a concurrent HOA board member. However, the District Attorney (DA) investigation referred to in the draft MSR clearly states that as a matter of law there is *no actual conflict of interest* in simply holding membership on both boards. While it is generally true that a public official cannot hold two public offices that are incompatible at the same time unless an exception applies,¹ serving as a member of the HOA Board of Directors is not a public office, and there is no legal prohibition on simultaneously serving on both boards at the same time.

Additionally, the FPPC, the State body responsible for enforcing the Political Reform Act (“PRA”), which regulates campaign financing, conflicts of interest, lobbying, and governmental ethics, has previously concluded, in the same manner as the District Attorney, that the PRA “does not prohibit an individual from serving as a member of the board of directors of a community services district and as a director of a homeowner’s association.” Rather, the only applicable limitation is that “if a homeowner’s association is a source of income or other economic interest to the individual, he or she may not participate in any district decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the homeowner’s association.”²

Proposed Action: In order to provide further assurance against potential conflicts of interest in the future arising in connection with an individual District decision having a direct impact upon the HOA, the District will be taking the following actions: (i) adopting a Conflicts of Interest Code applicable to all District Board members intended to identify and provide for recusal from decisions where a conflict of interest might arise, (ii) adopting a policy requiring the recusal of District Board members who are also serving on the HOA Board of Directors from actions involving contracts with or payments to the HOA, and (iii) requesting that the HOA adopt a policy limiting the number of District Board members who may serve on the HOA Board at the same time to not more than two (2) individuals.

Furthermore, as the District has already stated in Section A.1 above, the District will not delegate performance of any of its services to the HOA, and will eliminate any reimbursement to the HOA for capital improvements owned and controlled by the HOA. This will greatly reduce the potential for conflicts of interest for members serving concurrently on both the District Board and HOA board.

Moreover, to provide more transparency and accountability, the District is in the process of updating its by-laws and developing a set of rules and regulations for its Board and the District to follow that will enhance transparency and accountability. Such by-laws, rules, and regulations are being reviewed and finalized by the District’s legal counsel, and will be presented before the Board

¹ Gov. Code §§ 1099; 1126.

² *Gale Guthrie* (September 16, 1998) Cal.Fair.Pol.Prac.Com.Adv. I-98-209, 1998 WL 671300.

at a public meeting in the near future for review, comment, and approval.

D. Traffic Patrol and Decoy Vehicle

As stated previously in Section A.2 of this letter, the District is authorized to provide traffic patrol services under the provisions of a contract with the CHP, and the District has the inherent power under Government Code Section 61070 to decide whether to provide the service itself or contract with another public agency for the provision of such service. The District acknowledges that the power to provide traffic patrol is not an express latent power under Government Code Section 61100 and was specifically requested by the District and approved by LAFCo within its granting authority. Thus, according to LAFCo, any traffic patrol service must be (i) through a contract with CHP, (ii) through a contract with another qualifying public agency, or (iii) provided by the District itself through the employment of peace officers.

Proposed Actions: Going forward, the District will not engage in traffic patrol services unless it either (i) activates its latent power with LAFCo to employ its own peace officers, pursuant to Penal Code Section 830 *et seq* or (ii) contracts for such service with the CHP or another qualifying public entity. Should the District decide at some point to again contract with the CHP or another qualifying public agency, the District will inform LAFCo prior to entering such contract.

With respect to the HOA, the District has already terminated any authorization for the HOA and its security personnel to operate the decoy vehicle at any time or for any purpose, and has terminated any further HOA access to the decoy vehicle. Any future traffic enforcement activities of the HOA will be kept entirely separate from any actions of the District with respect to its traffic patrol efforts.

In addition, questions were raised with respect to the decoy vehicle's decals and potential confusion surrounding the "State of California" wording on the door of the decoy vehicle. Please note that the vehicle does not use the State's seal or any other emblem to represent that the vehicle belongs to the State. Nonetheless, to avoid any further confusion, the District has removed any reference to "State of California" and any "seal" or "insignia" on the vehicle body. Given the issues that have arisen from the decoy vehicle, the District has further instructed the District's general manager to proceed with disposition of the patrol vehicle as the District does not have any further foreseeable use for the patrol vehicle at this time.

E. Limitation of Delivery of Emergency-Related Services; No Stand-Alone Emergency Response Training

The District is authorized to provide emergency medical (advance life support) services under the provisions of a contract with the Los Angeles Fire Department ("LAFD"). At this time the District is not contracting with the LAFD for this service because emergency medical services are currently being provided to the District by LAFD under the terms of a contract directly between LAFD and Ventura County Fire Protection District ("VCFPD") that does not require any District

involvement. While, as with other services granted by LAFCo, the District has the inherent power under Government Code Section 61070 to decide whether to provide the service itself or contract with another public agency for the provision of such service, LAFCo pointed out that, in accordance with Government Code Section 61100, paragraph (n), the power to provide emergency medical services granted by LAFCo must be in accordance with the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act under the Health and Safety Code. Thus, to the extent the District desires to perform emergency medical services itself, rather than through LAFD/VCFPD or another qualified public agency, LAFCo asserts that the District would be required to fully comply with the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act in hiring and retaining employees (e.g. EMS technicians) to act as emergency personnel. Under this standard, allowing the District provide stand-alone emergency training classes such as CPR to residents, and use of the District's emergency vehicle to respond to individual emergencies, would not qualify as an authorized service under Government Code Section 61100(n).

Proposed Actions: The District acknowledges that Government Code Section 61100(n) only allows emergency medical services to be provided in accordance with the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act under the Health and Safety Code. Accordingly, to the extent the District desires to perform emergency medical services itself, it will do so in accordance with the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act under the Health and Safety Code, and will first seek approval from LAFCo to conduct such services. Otherwise, the District will continue to perform such services through LAFD/VCFPD. To the extent the District desires to provide CPR classes, it will do so through LAFD/VCFPD.

F. Security Services/Graffiti Abatement

The District is authorized to provide security services, including but not limited to burglar and fire alarm services, to protect lives and property, and to perform graffiti abatement services. Again, as with other services granted by LAFCo, the District has the inherent power under Government Code Section 61070 to decide whether to provide those services itself or contract with another public agency for the provision of such services. The draft MSR suggests that the security services and graffiti abatement services have not been exercised.

During the meetings, the parties discussed the District's desire to retain authority to provide security and graffiti abatement services, and LAFCo reiterated that the District would be able to do so on its own or contract with another public agency for such services but could not use the HOA for the provision of these services or reimburse the HOA for costs incurred in connection therewith.

Proposed Actions: Since the District desires to preserve its ability to provide security and graffiti abatement services on its own, the District will adopt ordinances outlining the details under which such services will be provided to the residents of the Bell Canyon community, including the type

and manner in which security services, including burglar and fire alarm services, and graffiti abatement will be provided. As previously stated, the District intends on employing its own staff to provide those services. Specific details on the ordinances and the services will be provided to LAFCo prior to adoption and implementation of any action by the District on this item.

G. Park Property and Recreational Facilities

As briefly mentioned in Section A.3 above, it is acknowledged that the District has the existing authority to provide community recreational programs, and may acquire a fee or leasehold interest in real property for the benefit of the District in furtherance of such purpose. The District does not, however, have authority to improve or construct recreation facilities unless and until the latent power to do so under Government Code Section 61100(e) has been activated through LAFCo.

1. Park/Recreational Facilities

Other than the small multi-use parcel owned by the District, all of the common area locations within the District's boundaries, including the community park ("Park"), community center, and trails, are owned by the HOA. As a result, if the District puts on a recreation event or program, as it is authorized to do, the District is required to secure access to these areas for this purpose. There is no other physical location for such events and programs to occur.

Nonetheless, as previously stated in Section A.3 above, the District understands that there is a difference between (i) the District's acquisition of an interest in property for the benefit of the District under Government Code Section 61060(d), and (ii) the District's acquisition, improvement, maintenance, and operation of recreational facilities (such as parks and open space) under Government Code Section 61100(e). Thus, the expenditure of District funds on acquiring, improving or maintaining the Park or trails pursuant to the Community Park Lease with the HOA, which constitutes acquisition, improvement, maintenance, and operation of recreational facilities (such as parks and open space) under Government Code Section 61100(e), will be deferred until the District has secured LAFCo approval of the activation of its latent powers under Government Code Section 61100(e).

Proposed Actions: Because it is the District's desire to fund certain improvements to the Park and related facilities, the District will apply for the latent power under Government Code Section 61100(e) with LAFCo for the acquisition, construction, improvement, maintenance, or operation of recreational facilities, in the same manner as a recreation and park district under Recreation and Park District law.

2. Triunfo Property

The District has long leased a parcel of property adjacent to the Park ("Triunfo parcel") for the purpose of gaining access to the Park without objection or issue. The Triunfo parcel is a surplus land parcel that Triunfo has determined it does not need and would be willing to permanently

dispose of. Triunfo and the District have been discussing the District's acquisition of the parcel because such access is the only access to the Park, and, without control over access to the Park, the District recreational activities and programs would be jeopardized.

Proposed Actions: Because the District's needs to secure permanent access to the Park and related facilities as a part of its core purpose, the District will proceed with acquiring the Triunfo parcel as soon as possible. However, no improvement will be made to the access parcel of the Park until the District has secured authority to active its powers under Government Code Section 61100(e). Promptly following confirmation of the understandings set forth in this letter, the District will, with LAFCo support and guidance, move forward with an application for activation of its latent powers under Government Code Section 61100(e) with LAFCo for the acquisition, construction, improvement, maintenance, or operation of recreational facilities, in the same manner as a recreation and park district under Recreation and Park District law.

3. Multi-Use Parcel

The draft MSR states that the District has no authority to own, manage, operate, or maintain a bus stop. However, the parcel of property ("Multi-Use parcel") currently being used as a bus stop for children to be picked up by a school bus was a grant of land from the County of Ventura back in 2008 (and prior to that before 2005 was a lease from the County to the District). The improvement of the land for the bus stop itself was through a grant from the Boeing company. Currently, maintenance of the Multi-Use parcel is provided by the HOA, which also maintains the bus stop. The District does not use the property as a bus stop, but rather uses the land for the public purpose of providing open space for the community's use and as a location for community events, recycling collection area during clean up events, recreational activities and other permitted District functions. Such use of the Multi-Use parcel for putting on community recreation programs is a permissible use of the property authorized by LAFCo.

Proposed Actions: Because the District does not wish to directly use and does not itself utilize the Multi-Use parcel for a bus stop or transportation services, the District will enter into a ground lease with the HOA for the latter's use of a portion of the Multi-Use parcel as a bus stop. The District has not provided funding for and will not provide any funding for the bus stop operation or maintenance, and that will be the sole responsibility of the HOA. The District will continue to use the remainder of the Multi-Use parcel for hosting community recreation programs and trash and recycling events, and no further approval from LAFCo is required with respect to such already authorized activities. If in the future the District intends to improve the Multi-Use parcel with any park or recreational facilities, it will seek activation of its powers under Government Code Section 61100(e) before undertaking such improvements.

H. Fire-Safe Council Grant

Government Code Section 61116 specifically authorizes community services districts to receive grant funds from any public or private agency in furtherance of the district's purposes. In reliance

upon that authorization in December 2020, the District applied for and received a fire safety grant from the State of California's CalFire, which intended to be used purely as a pass-through grant from the District to the Fire Safe Council, a separate 501(c)(3) entity. which would actually administer the grant. The District so far has only received and passed through a portion of the grant award.

At the time of its application for the grant, the District believed in good faith that its ability to receive the aforementioned grant as a pass-through was part of its emergency and security services related to the protection of lives and property.

During the meetings, however, LAFCo pointed out that the purpose of the fire grant actually serves as fire protection services, which is not a latent power (Gov. Code § 61100(d)) that has been granted to the District by LAFCo. The District acknowledges that it does not have the authority to provide fire protection services, and as a result, agreed that it would not pursue any further such grants.

Proposed Action: The District has agreed to not further pursue any grants of this nature in the future. As to the disbursement of the balance of the existing grant, LAFCo has informed the District that it is up to the District to determine how to deal with the existing grant. The District will deal directly with CalFire on disbursement of remaining grant funds, and, following close out of the existing grant, will cease any further activity with respect to this CalFire program.

I. Conclusion

Based on the foregoing, the District believes the outstanding issues, as they were presented in the draft MSR and initially objected to by the District, have either been resolved or the process for their resolution has been set out in detail. We reiterate that, with respect to those outstanding issues, this letter shall act to supersede the District's position as previously stated in its prior letter dated November 4, 2021 to the LAFCo Commission. The District thanks LAFCo again for its time, cooperation, and consideration in this matter, and for the professionalism and expertise of its staff shown at our recent in person meetings. If you have any further questions, please contact me at the email or phone number above. If you are in agreement with all of the proposed actions and remedial measures set forth in this letter, the District requests your confirmation of that understanding.

Sincerely,

ALESHIRE & WYNDER, LLP



Pam K. Lee

PKL:PKL

Honorable Chair and Commissioners of LAFCo
February 25, 2022
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