

Haven T. Bays
2160 Campton Circle
Gold River, CA 95670

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OCT 31 2011

EL DORADO LAFCO

October 26, 2011

El Dorado LAFCO
550 Main St., Suite E
Placerville CA 95667

Board of Supervisors
Placerville Office
330 Fair Lane
Placerville, CA 95667

El Dorado County Counsel
330 Fair Lane
Placerville, CA 95667

Subject: Grassy Run Community Services District Dissolution: Project No. 2011-04

I am writing this letter requesting that El Dorado County LAFCO, County Board of Supervisors, and County Counsel resolve whether the Grassy Run Community Service District (GRCS D) roads are private or public roads. I believe that El Dorado County has a fiduciary and State Constitutional responsibility to protect publicly owned property.

Grassy Run Community Services District (GRCS D) is located halfway between the communities of Shingle Springs and Diamond Springs, north of Highway 50. In late 1982 or early 1983, the Grassy Run Homeowner's Association elected to create a special district with the sole purpose of repair, maintenance, and improvement of the Grassy Run roads, however, District maintenance and improvement functions have been suspended since 1997 because of a legal dispute with the Shingle Springs Band of Miwok Indians, whose tribal land is adjacent and to the west of the GRCS D. Litigation between the District and the tribe is over. I realize that the District is considering dissolution at this time. However, the District is still a viable El Dorado County Public entity. I own one of the land-locked parcels and we were voted out of the Grassy Run Homeowners Association. The land-locked parcels receive no road service from the Grassy Run Homeowners Association. We have requested that the more than \$78,000 in public resource be spent to maintain our roads. The GRCS D's sole purpose is to maintain the roads. We are concerned because the district has refused to perform this El Dorado County governmental required purpose. The GRCS D was formed to achieve local governance, provide needed public facility and to supply a public service. How is it possible that they have refused to provide repair, maintenance, and improvement of the roads?

Per the Grassy Run Homeowners Association's meeting presentations, some members of the community implied they were planning for the County to gift these public funds to the Homeowner's Association so they can expend these County funds to maintain their roads and put in gates within the boundaries of the Grassy Run Homeowners Association community. I believe the return of funds (collected by the County, via property taxes) to the Homeowners Association constitutes a gift of public funds. The State Constitution does not allow the expenditure of public funds for private purposes. These resources became public when they were collected by the County.

I believe, numerous legal issues exist with GRCS D's "state of suspension" and potential return by the County of the roads to the Grassy Run Homeowners Association.

1. The first relates to the collection of property tax funds and the spending of these funds for the roads from 1982 to 1997. According to the State Constitution, these monies are public funds to be utilized for public purposes. **These expenditures clearly created a public equity in the roads.**
2. The second issue is that Senate Bill 135 (Kehoe, 2005), codified which roads would be considered private roads maintained by a public entity and GRCS D's roads were not part of that bill.
3. The third issue is that even though Federal Judge David Levi determined that Grassy Run roads are private, the County needs to provide clarification whether the roads were ever dedicated to a public entity. As you may know, Judge Levi's ruling led to the GRCS D's Board decision to suspend

maintenance of the roads. They were concerned that expenditure of the public funds would constitute questions about whether the roads were public versus private. Obviously, the expenditures of these County funds from 1982 to 1997 raise the same concerns. If the roads were dedicated and are public not private, Judge Levi's ruling does not stand. I believe the Grassy Run Roads are clearly dedicated by the El Dorado County actions and are public not private. .

4. The fourth issue is a variety of examples of how the Roads have become public by the action of El Dorado County:

How do you explain away the creation of a public entity, the Grassy Run Community Service District, to maintain the roads via a County approved election?

How do you explain that a property tax collected by the County on County property tax bills for the roads is private funds?

How do you explain the appointments of Board Members to the Community Service District Board by the Eldorado County Board of Supervisors?

How do you explain the expenditure of public funds for the roads from 1982 through 1997? This expenditure included both the funds collected from property owners and other County funds. The funds expended from other County resources make it exceedingly difficult for one to reason that these were just funds collected from the homeowners.

How do you explain that the GRCSO is clearly a public entity because it follows Government Code; and since 1997, expenditures of these funds have continued to pay for the GRCSO insurance and Board costs? Additionally, the inclusion of these funds is reported in the El Dorado County annual budgets, financial reports, and audited by the County, just like other county public entities.

I believe if these issues were brought before a California Superior Court, the Court would rule the roads are now public. This is because, prior expenditures of public funds created a public equity; and even though the District's road maintenance functions have been suspended since 1997, the GRCSO continued to hold meetings and expense funds for the Grassy Run roads according to the County Auditor's Office. Additionally, the County continued to collect taxes for the GRCSO through 2007. SB135 mandated the designation of a community service districts powers as active or latent by January 1, 2006. I believe the record will show that the GRCSO is clearly active. The El Dorado Board of Supervisors appointed members to the Governing Board of the GRCSO. The District continues to have meetings and expense funds for the GRCSO and the County continues to provide funds. Additionally, the Grassy Run landowners via an election offered the roads for public use by creating the GRCSO on behalf of the County of El Dorado. This constituted an offer to dedicate which was accepted by the El Dorado County and the local GRCSO which becomes a public dedication. At the very least a common-law dedication occurred (implied-in-fact dedication).

Based on recent El Dorado County Board meeting minutes, it appears that the Grassy Run Homeowners Association and current President of the GRCSO are working with the County and LAFCO to dissolve the Community Service District claiming that the roads are private based on the federal court ruling. As you may not know the Grassy Run Homeowners Association does not represent all the owners of the property in the GRCSO. As an owner of a parcel in this service district, I expect the El Dorado County to follow the California Government Code for returning public roads to private status. Since the roads are public, if the County wants to return the roads to private ownership, the County needs to follow the California Government Codes Sections procedures for the purpose of returning these roads to their pre-1982 private status. Certainly, given the fact that the Community Service District was created by an election it concerns me that it would be dissolved without a public hearing and proper vetting in the community by both the GRCSO and the County. **As a property owner I was not made aware of the County Supervisor's decisions or discussions of this**

issue. I received nothing from the GRCSO or El Dorado County concerning dissolution of the GRCSO or the return of the public roads to a private entity.

I do not believe El Dorado County is following Government Code concerning the dissolution of the GRCSO. It is my understanding that Government Code 61107 requires: (a) *If a board of directors desires to divest itself of a power that is authorized pursuant to this chapter and if the termination of that power would require another public agency to provide a new or higher level of services or facilities, the district shall first receive the approval of the local agency formation commission. To the extent feasible, the local agency formation commission shall proceed pursuant to Article 1.5 (commencing with Section 56824.10) of Chapter 5 of Part 3 of Division 3. After receiving the approval of the local agency formation commission, the board of directors may, by ordinance, divest itself of that power. Notwithstanding subdivision (b) of Section 56824.14, the local agency formation commission shall not, after a public hearing called and held for that purpose pursuant to subdivisions (b) and (c) of Section 56824.14, approve a district's proposal to exercise a latent power if the local agency formation commission determines that another local agency already provides substantially similar services or facilities to the territory where the district proposes to exercise that latent power.* If the local argument is the Grassy Run Homeowners Association will maintain the roads in the future, the County needs to explain who will maintain the Roads for the landlocked homeowners. **If the GRCSO no longer exists to provide this public service and the Road service and maintenance is to be assumed by the Grassy Run Homeowners Association, of which the landlocked owners are not members, there will be no public service and maintenance of the landlocked roads.**

Your legal review will help lay this issue to rest. If the County Legal Department decides not to address my concerns, I will work with others to attain legal counsel to take this issue to a California Superior Court. This is a State of California issue not a federal court issue. As a citizen of El Dorado County and a property owner who has paid substantial road improvement fees for the right to build a new home in the County, it concerns me that public roads would be returned to their previous private status, especially since this issue will leave the Grassy Run land-locked homeowners with no road maintenance and service of our roads.

Your timely response to this letter would be greatly appreciated.

Sincerely,



Haven T. Bays

(916) 826-5375

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