

April 15, 2019

To: Contra Costa Local Agency Formation Commission (LAFCO)
C/O: Kate Sibley

RE: Diablo Community Services District (DCSD)

Dear LAFCO Staff and Commissioners,

Thank you for your excellent and sustained work on behalf of county residents and CSDs.

I am writing to inform you about a unique road situation and to ask for your support in resolving it.

I am one of nine property owners on the upper portion of Mt. Diablo Scenic Boulevard. This road, or "Scenic" as we refer to it locally, is approximately one mile long. It is also the southern entrance road to Mt. Diablo State Park; at the point where the road enters the park, it changes names to "Southgate Road."

Unfortunately, Scenic is in a complicated and one-of-a-kind (according to county staffers) ownership and maintenance conundrum. Due to an historical twist of fate, the road is private but is also the access road to a state park: Mt. Diablo State Park ("the Park") holds an easement to pass over Scenic. In California, an easement to pass legally obliges the easement holder to a shared responsibility for road maintenance (*CA Civil Code 845: (a) The owner of any easement in the nature of a private right-of-way, or of any land to which any such easement is attached, shall maintain it in repair*). Unfortunately, since 1931 when the easement was granted, the Park has refused to participate in this shared responsibility. Further, the Park has refused direct requests to work out a road maintenance plan and has successfully fended off legal actions to attempt to secure their participation. (To be most precise, some park superintendents have provided occasional urgent and necessary road repair services, i.e. to clear a flooded stretch, to allow their staff and visitors to reach the Park.) As a consequence of this legal conundrum and the Park's chosen strategy, a very small number of property owners are left trying to maintain a road traversed by thousands of park visitors each year. This represents a financial burden but, far more importantly, the oftentimes poor condition of Scenic constitutes a safety hazard to drivers, motorcyclists, bicyclists, walkers and wildlife.

The Park likely has many reasons for avoiding this responsibility but one that they mentioned specifically over the years was that there were too many individual parties involved to be able to craft a road maintenance agreement. The parties they are referring to are:

1. The Diablo Community Services District (DCSD)
2. The Athenian School
3. The Diablo Ranch Estates (a small subdivision on Scenic)
4. The 8 properties at the upper and east side of Scenic that had never been formally added to Diablo.

As part of a very long range strategy to try to address their stated concern and create a more workable number of parties, in 2011 those "upper Scenic" property owners, of which I am one, initiated and were granted an annexation into DCSD. Building on that promising first step, and with clear support from

Senator DeSaulnier and Representative Buchanan (see LAFCO Executive Officer's Report of 7/13/2011), a plan was devised to evaluate the entire complicated situation and see if and what could be done to resolve the issue of and need for road maintenance services. This plan involved players from the County, the Park, and the DCSD.

Unfortunately, since then two things have transpired (more accurately, have NOT transpired):

1. There has been NO forward progress on the evaluation plan. To the best of our knowledge, other than a traffic study (which was not shared with Scenic residents), there has been no action taken.
2. There has been NO provision of ANY road maintenance services by DCSD for Scenic, even on a temporary basis.

In light of all of this, I have two requests:

1. Please help us re-start the plan to evaluate the road maintenance situation on Scenic AND help us stay on track to a conclusion, whatever it may be.
2. Please update the MSR report to more accurately reflect the services that are and are not provided by DCSD to the Diablo property owners on Scenic. (See details in Appendix A below; 8 items total.)

Thank you for your time and consideration.

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Appendix A

Please revise the following 8 items in the MSR regarding the Diablo CSD for accuracy and clarity:

Item #1:

22.2 Overview

The Diablo CSD primarily provides police/security; road, bridge, and culvert maintenance...within its service area...

DCSD does not provide these services to any residents on Mt. Diablo Scenic, whether they have been in Diablo for decades (residents on the west side, 20+ owners) or were part of the recent 2011 annexation (8 owners). They may or may not have adequate reasons for not doing so but, in either case, it's highly inaccurate to report that they do.

(Note: Some properties only "back up" onto Scenic; they reach their homes via other roads in Diablo. I mention this because one might make a disingenuous case that DCSD DOES provide road services to Scenic owners – but in practical reality this is not the case.)

Item #2:

22.2.4 Law Enforcement

The Diablo CSD provides police/security services to the residents of Diablo...

Last time I sought assistance, through DCSD, with speeding violators on Scenic the message from the Deputy came back: "...get car descriptions/license numbers/photos which we can then use to pursue speeders after the fact". Perhaps I'm unusual but I don't think this constitutes the provision of police services. This may be a budget and/or staffing issue but the fact remains, we can't count on police services through DCSD.

Item #3:

22.2.10 Streets/Roads

According to its formation document, the Diablo CSD maintains "certain roads . . . which are subject to right-of-way by the public but have not been accepted into the county road system," as well as the bridges and culverts in Diablo.

At some point after the formation document, the DCSD created a "Road Inventory" which is used to exclude difficult roads from DCSD responsibility, including Scenic. The criteria to be on or off this "Road Inventory" is not public. It took 7+ years of going to DCSD meetings to discover the criteria; I finally was provided an explanation in 2018. In addition, it appears to be entirely non-negotiable. I don't know if LAFCO has an opinion on this but, regardless, the report should be clear and transparent.

Item #4:

There has been recent controversy and litigation relating to public use of the roads in Diablo. While the litigation and controversy are not a LAFCO issue, the issue of road maintenance and funding by the Diablo CSD are of interest to LAFCO.

No correction requested: We are very glad to hear that road maintenance and funding are of interest to LAFCO. Each year every property owner (25+ parties) on Scenic pays several hundred dollars to DCSD for road maintenance but does not receive any road maintenance services.

Item #5:

22.4.2 BOUNDARIES, ISLANDS, AND DISADVANTAGED COMMUNITIES

The CSD does not request any changes to its SOI and indicates that it does not provide services to any areas outside its service area boundary or SOI.

If DCSD will not soon and quickly begin to operate in good faith and actively partner to explore options, it will make more practical and fiscal sense for all of the Scenic owners to detach from DCSD and instead apply their time and willingness to coming up with a plan with the other parties. This potential change to the SOI should be included somewhere in this MSR.

Item #6:

22.4.3 CSD SERVICES MSR DETERMINATIONS

PRESENT AND PLANNED CAPACITY OF FACILITIES, ADEQUACY OF PUBLIC SERVICE, INFRASTRUCTURE NEEDS OR DEFICIENCIES

The Diablo CSD appears to adequately serve all areas within its service area and SOI and is likely to continue to do so in the foreseeable future based on available information.

The Diablo CSD does not adequately serve property owners or the public who traverse Scenic. Please consider my letter and these suggestions as available information for this report.

Item #7:

22.5 SPHERE OF INFLUENCE REVIEW AND DETERMINATIONS

22.5.1 SPHERE OF INFLUENCE RECOMMENDATION

This report recommends that Contra Costa LAFCO maintain and reaffirm the existing SOI for the Diablo CSD.

Recommend revision to read: "...for the time being. Consideration should be given to a change of SOI if the process to evaluate and devise a long-term solution for Scenic does not move measurably and robustly forward in the next 12 months."

Item #8:

There are no anticipated changes in the type of public services and facilities required within the SOI for the Diablo CSD. The level of demand for these services and facilities, however, will increase commensurate with anticipated population growth over the next five years.

This may be inadvertently but nonetheless misleading. Whether due to an emergency (i.e. culvert collapse) or simple wear and tear, eventually road work will need to be done on Scenic and it is, at present, unknown whether DCSD will, voluntarily or otherwise, be a fiscal party to this work.