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The Board of Directors
Audubon Hills Community Services District
P.O. Box 745
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Re: Nature of Roadway Easement Rights of District

Dear Members of the Board of Directors:

You have asked that I prepare a letter for distribution to residents of your community services district detailing the nature of the roadway easement rights of the District, as well as the relative rights of the property owners within the District with respect to the existing roadway easements within the District.

In that regard, I have reviewed your District's organizational documents as well as the recent Municipal Service Review conducted by El Dorado County LAFCO, the assessors' parcel map for the properties comprising the District, and several forms of grant deeds with respect to property within the District which contain legal descriptions of the roadway easement typical of other properties within the District. It is important to note that the District's power to provide road maintenance, snow removal and ancillary services to the roadways within the District has been confirmed by the recent LAFCO action approving its Municipal Service Review ("MSR") with respect to your District.

Nature of District's Easement Rights.

I assume that the legal descriptions of real property and easements with respect to the several parcels within the District which I have reviewed are typical of all of the parcels within the District. After review of those documents and the applicable parcel maps it appears to me that each property owner within the District has been granted as an appurtenance to their title to real property certain rights-of-way and easements and obligations for roadway purposes. The vast majority of these easements for roadway

purposes describe a strip of land 60 feet in width, 30 feet of which is located on each property owner's side of the property line, which constitutes the center line of the roadway, and 30 feet of which is located on that property adjacent to such property which shares as a property line the center line of the road.

Each deed describes the following: (1) a grant by each property owner to other property owners and to potential public users a right-of-way for road purposes over a 30 foot strip of land located on that property owner's property; and (2) a receipt by each such property owner of the right to use 30 feet of land on adjacent property as a right-of-way for roadway purposes.

In certain specific areas of your District the roadway easements are handled somewhat differently. In those areas the 60 foot wide roadway easement is located entirely upon the property of a single property owner. In those cases each such easement consists of a grant by the property owner upon whose property the easement is located of a right-of-way for roadway purposes over a 60 foot strip of land located on that property owner's property; and an entitlement to each adjacent property owner as well as other property owners within the District and the public of a right to use that 60 foot strip of land as a right-of-way for such roadway purposes.

In both cases, the roads within your District are private roads because they are located on privately owned property. However, the roads constitute valid easements for right-of-way and roadway purposes which a property owner within the District has granted to other property owners and all other potential users.

Therefore, the District is not the formal owner of the easements as specified by any title document that I have had an opportunity to review. The grant deeds that I have reviewed do not name the District as the grantee of any easement rights. Rather, those easement rights are granted without specifying any particular grantees, which will likely be construed to mean that such easements are granted to other property owners within the District and the public in general for right-of-way and roadway purposes. The District's status is as a designee or delegate of the property owners within the District to exercise the road maintenance and improvement powers which each property owner possesses by virtue of such easements. The property owners have delegated such rights to the District by virtue of the election among property owners to form the District for road maintenance and incidental purposes. Therefore, the District is the agent for all of the private property owners within the District charged with the duty of providing maintenance of the right-of-way and roadway easements on record which are located within the jurisdictional boundaries of the District.

Extent of District Rights over Designated Roadways within the District.

The District was formed in 1972 as a community services district under the former District Organization Act, which has now been supplanted by the Cortese-Knox-Hertzberg Act (hereinafter the "CKH Act"). The District was formed by an election by petition of landowners within the District pursuant to provisions of law which have now been superseded by the CKH Act and the new community services district law (Gov. Code § 61000 et seq.) (hereinafter the "CSD Law") which became effective January 1, 2005.

The District was originally formed for the express purpose of roadway maintenance and all incidental services including snow removal, roadway drainage, resurfacing, extending, widening, etc. The CSD Law at Government Code Section 61100(l) provides that a district with road maintenance powers may acquire, construct, improve, and maintain streets, roads, rights-of-way, bridges, culverts, drains, curbs, gutters, sidewalks, and any incidental works. However, your District may not maintain any public work owned by another public entity without the written consent of that entity. In addition, Section 61102 provides your District all the powers, duties and authority over its roads as a county has with respect to its roads. Finally, the CSD Law provides that community services districts which were formed under prior provisions of law, such as your District, shall be deemed to have been formed under the provisions of the new CSD Law, and therefore acquire all of those powers incidental to road maintenance purposes which are enumerated in the CSD Law as specified above.

Restrictions Imposed upon Property Owners by Roadway Easements.

As mentioned above, each owner of property within the District has conveyed a portion of their property in the form of a nonexclusive easement to other property owners and potential users of the roadways to use that portion of each owner's property for roadway purposes. The property owner still owns fee title to the property even though a right-of-way is established across it. Each property owner can continue to make any use of the easement strip on their property that is not inconsistent with the full roadway easement rights of other property owners and users, and which are not inconsistent with the District's road maintenance duties. Each person entitled to use the easement does not own any part of the land itself and has no right to exclude the property owner from any use of the easement strip, except insofar as that use interferes with use of the easement strip for roadway purposes or for roadway maintenance purposes. Therefore, an owner of real property upon which an easement is located would not have any right to construct a gate, fence, or any other obstruction across the roadway easement impairing flow of traffic, nor would a property owner have the right to construct any obstructions of any type within the easement area.

The easement area is broader than the area currently used for roadway purposes. The deeds I have reviewed describe roadway easements as 60 feet in width, generally consisting of 30 feet on each side of the center line of each existing road. In some cases, the entire 60 feet of easement is located entirely on one parcel. A property owner would retain the right to landscape property within the easement not currently used for road purposes, since that landscaping does not interfere with the current use or maintenance of the roads. However, any such landscaping or other improvements installed within the easement area are subject to removal if they interfere with future road maintenance or improvement activities by the District within the area of the described easements.

Finally, the extent of the easement grant for road purposes consists of a general right-of-way capable of use in connection with the properties which the easement was intended to benefit. Those properties consist of single family residential properties. Therefore, the use of the roadway easements for roadway purposes must be consistent with the use of the adjoining property for single family residential purposes. The District as the delegate of the property owners for maintaining the easement does not have the right to increase the burden of the easement on adjoining property owners by changing the nature of the use of the roadways. An example would be turning a roadway into a four-lane thoroughfare. This would increase the burden on adjoining properties beyond that contemplated at the time the original roadway easements were granted, and would be an unreasonable and unwarranted expansion of the District's power to utilize and maintain the easements. The case law indicates that conveyance of a roadway easement consists of a grant of unlimited reasonable use of the easement area for roadway purposes to all other property owners within the District and the general public, together with all incidental purposes.

Rights of Property Owners and the Public to Utilize Roadway Easements.

California Civil Code Section 845 provides that both the owner of the property upon which the roadway easement is located, and the owners of adjacent properties who have been granted the right to utilize the easement for roadway purposes on another's property have a duty to maintain and repair the road. If more than one person is entitled to the benefit of using the easement for roadway purposes, or if the easement is attached to parcels of land under different ownership, the cost of repairing the entire roadway easement is to be shared by each property owner who has been granted the benefit of utilizing the roadway easement, and each property upon whose property such easements are located, pursuant to the terms of any agreement entered into by the property owners for that purpose. In the absence of such an agreement between property owners, the law requires the cost to be shared proportionately for the use made of the easement by each property owner. In the absence of an agreement amongst property owners, any property owner who has been granted the benefit of utilizing the roadway easement, as well as any owner of land upon which the easement is located may initiate a court action in Superior Court for the appointment of an arbitrator to apportion the cost of repair and maintenance among the benefiting property owners.

Finally, in those limited situations in which the entire 60 foot roadway easement is located on a single property with a grant to other landowners to utilize that property for roadway purposes, the duty to keep that roadway easement in repair rests on the property owner who has been granted the benefit of utilizing the roadway easement, and not the property owner of the property upon which the easement is located.

Therefore, with respect to a majority of the roadway easements within the District which are comprised of a 30 foot strip of land located on each property owner's property and an additional 30 foot strip of land located on adjacent property, Section 845 requires that the cost of maintaining the easement shall be shared by each property owner pursuant to the terms of any agreement they may have entered into for that purpose. Arguably, the delegation by the property owners of road maintenance responsibilities to the District, and the proceedings providing for a roadway assessment to finance those maintenance activities constitutes such an agreement. In the absence of such an agreement, Civil Code Section 845 provides that the court can order that the road maintenance costs be shared by each property owner proportionate to their respective use made of the roadway easement.

In those cases in which the entire 60 foot easement is located on a single parcel, the law provides that the owner of the property granted the right to use that roadway easement over another property owner's property is the party responsible for maintaining the easement, as opposed to the property owner of the property upon which the easement is located. In both situations, the law provides that those property owners who have been granted the benefit of roadway easement rights over another person's property have both the right and the obligation to maintain the entire roadway easement, including those portions located on real property owned by an adjacent landowner. That is the case with respect to both those easements which are located on two adjacent parcels, as well as those easements that are located on a single parcel. The rights of property owners who have been granted easement rights for roadway purposes over adjacent property owned by others remains the same whether the District has accepted those particular sections of roadway for maintenance purposes, or not.

Prescriptive Easements.

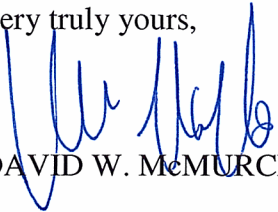
Private persons are capable of obtaining an easement by prescription, which means that an individual can obtain a prescriptive right to a roadway easement by consistently using such an easement for roadway purposes for an extended period of time without interference by the owner of the property. You have asked whether individuals can obtain prescriptive rights against the District to construct and maintain obstructions within the easement area. The answer to that question is no. The law is clear that private individuals are not permitted to acquire prescriptive rights to use public property against a local governmental body, such as the District. These rules are applicable not only where your District holds title to the property but also where your District exercises easement rights

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with respect to property. Members of the public cannot claim a prescriptive easement right against the District with respect to District-owned property or an easement that the District maintains. Therefore, property owners cannot claim rights to parts of an easement where they have placed improvements within the easement area. Property owners retain the right to use their property for reasonable purposes that do not interfere with roadway and roadway maintenance purposes for which the easements were created.

Please let me know if you have any additional questions or comments.

Very truly yours,



DAVID W. McMURCHIE

DWM:sjm