

RECEIVED  
BOARD OF SUPERVISORS  
EL DORADO COUNTY

2010 JAN -6 AM 10:36

SERRANO

January 4, 2010

Ron Briggs, Chairman  
and Honorable Members in Session  
El Dorado County Board of Supervisors  
El Dorado County Government Center  
330 Fair Lane  
Placerville, CA. 95667

**VIA ELECTRONIC MAIL AND U.S. MAIL**

**Re: Hearing – Refund of Tax Overpayment**

Dear Chairman Briggs:

Please accept this letter as our formal request to have the above item heard by your Board on January 26, 2010.

Attached is a letter from Mike Cook to Patricia Beck. It has never been our intention to view this matter as adversarial, and we will continue to strive for a collaborative approach.

We look forward to discussing this matter with you on January 26, 2010.

Best Regards,

*Kirk Bone*  
Kirk Bone *lts*

KB:lts  
Attachment

COPY SENT TO BOARD MEMBERS  
FOR THEIR INFORMATION

DATE 1/6/10

cc: Trish Beck,  
cc

SERRANO ASSOCIATES, LLC  
4525 SERRANO PARKWAY EL DORADO HILLS, CALIFORNIA 95762  
916-939-4060 FAX 916-939-3567

10-0060 E.1



LAW OFFICES  
ESTABLISHED 1896

2150 RIVER PLAZA DRIVE  
SUITE 450  
SACRAMENTO, CA  
95833-4136  
TEL: (916) 925-6620  
FAX: (916) 925-1127

MICHAEL J. COOK  
EMAIL: MCOOK@HSMILAW.COM

**Via Electronic Mail**  
**patricia.beck@edcgov.us**

Patricia E. Beck, Esq.  
Principal Assistant County Counsel  
County of El Dorado  
330 Fair Lane  
Placerville, CA 95667

**RE: Serrano Mello-Roos Refund; Public Records Act Request**

Dear Trish:

We received your letter of December 16, 2009 and the materials provided therewith. This letter is intended to respond and to request certain additional material necessary to our analysis. We remain convinced that Serrano has been overtaxed as a result of error in implementing the Rate and Method of Apportionment, by a failure to account for ultimate collection of delinquencies, by a failure to properly credit interest earnings against Annual Costs, and by a failure to cover annual administrative costs with available funds. Quantifying that overpayment will require access to your records, which we request below.

First, I'd like to respond briefly to the assertion that we've been timely provided all we've asked for. We disagree. I have concluded that this disagreement stems from our desire to work collaboratively with you and the auditor-controllers office to ferret out the information necessary to reach resolution of our claim for refund and your collective determination that this is an adversarial matter (stated at our November 9th meeting) where such collaboration is not possible. Consistent with an adversarial posture, your responses have been slow, minimalist, and raise more questions than answers.

We continue to believe that an aggrieved taxpayer asserting error need not (should not) be viewed as adversarial and we will continue to share with you everything we have learned, whether or not you wish to reciprocate. Given our different approaches to this point, frustration on our part should not be surprising. We did not have the information necessary to go to hearing on December 15th, despite asking for it on November 9th. Upon review of the materials you sent over on the 16th, we question whether 37 days were necessary to compile the "screen shots" and reserve requirement calculations provided. Most importantly, the materials were only arguably and/or minimally responsive to our request, which was to provide us transactional detail on the amount of interest earned on the reserve account from 2004-2009, where those interest

Patricia E. Beck, Esq.  
Principal Assistant County Counsel  
County of El Dorado  
December 31, 2009  
Page 2

earnings went, and why was there no reduction to the ensuing years Annual Cost Calculation as a result of those interest earnings. We were able to piece some of this material together, but there are still unanswered questions relating to the interest earnings on the Reserve Account.

We wish to share with you our conclusions, raise additional questions, and request access to additional information from your Auditors office and/or Treasurer's office. To avoid delay or further misunderstanding, this request for additional information is to be considered a request for documents under the Public Records Act. We will be happy to coordinate with you the easiest and fastest way to access this information.

1. Public Records Request. We request access to review the following:

A. Bank Statements from the Fiscal Agent showing activities in February, March, April, August and September of each year from 2000-present for Series 1999 and Series 2004 bonds.

B. Quarterly summary activity reports (however entitled) for the Special Tax Fund from 2000-present and a report (however entitled) detailing transactions in the Special Tax Fund from June 1, 2009 through November 30, 2009.

C. A detailed activity report (however entitled) pertaining to the following accounts from 2000 to the present:

44-672-001 through 44-672-003  
44-672-005 through 44-672-010  
44-674-001 through 44-674-010

This request includes any previous or related accounts pertaining to CFD 1992-1 (e.g. Account 41-514 - all subaccounts which appears to be a predecessor to 44-672 - all subaccounts).

We hope that the aforementioned reports will provide the information we are looking for. Members of our project team are prepared to come up at the earliest opportunity to review these documents. We want to proceed as quickly as possible, given the time that has already passed. We propose the week of January 11, 2009. Please advise what works that week.

Patricia E. Beck, Esq.  
Principal Assistant County Counsel  
County of El Dorado  
December 31, 2009  
Page 3

2. Questions presented by materials previously provided.

A. What does the County believe to be the correct Reserve Account Balance requirement? Our analysis is that the Reserve Requirement is \$4,633,954 (see attached). The information you provided on December 16 and the 2007 Continuing Disclosure Annual Report indicate that you may think it is \$4,906,656. In all other Continuing Disclosure Annual Reports since 2004, the County indicates the Reserve Requirement is approximately \$4,633,000. Under the terms of the Indenture at Section 3.6 and the First Supplemental Indenture, this issue should be resolved as the Maximum Annual Debt Service for the Bonds collectively, namely \$4,633,000. The 2004 Bond Sale added \$1,328,724 to the Reserve Account and represented, as stated in the First Supplemental Indenture, "the increase in the Reserve Requirement as a result of the issuance of the Series 2004 Bonds." The balance in the Reserve Account prior to the 2004 Bond Sale was approximately \$3,300,000.

B. Your provided chart indicates that the Reserve Account was increased sometime in 08-09 by approximately \$217,000. What was the source of the funding?

C. Can we verify the amount of interest earned on the Reserve Account from 2000-present (a question previously asked)? By compiling the information provided on the numerous "screen shots", we calculate that there was \$1,081,977 earned. Our analysis is attached. Correct? Can we agree that there was \$564,511 in interest earnings credited against the Annual Costs in years 2000-2004? If so, that leaves \$517,466 of interest earnings that were not credited. Why not? Your memo of November 6th indicates all interest earnings on the Reserve Account were transferred to the Special Tax Fund. If so, they should have been a credit against the Annual Cost in each year. We'd like to track the interest earnings from each year subsequent to 04-05. That was our primary request at our meeting on November 9, and, despite your assertions to the contrary, we have not been given that information. Can we have the information necessary to trace the flow of interest earnings as we previously requested?

D. Was any portion of the \$517,466 referred to in 2B above utilized to fund the increase in the Reserve Account? If so, there would still be at least \$268,633 we cannot account for. (See Analysis of Excess Funds, attached).

We continue to believe that a collaborative approach would be most productive and we remain open to meet with you at any time. We have seen nothing to date which indicates that our overall analysis that we have been erroneously overtaxed is incorrect.

Patricia E. Beck, Esq.  
Principal Assistant County Counsel  
County of El Dorado  
December 31, 2009  
Page 4

We look forward to reviewing the requested material.

Very truly yours,

HEFNER, STARK & MAROIS, LLP

By:

  
Michael J. Cook

MJC:js

cc: Kirk E. Bone  
Clark Winn  
Patty Peck  
Tim Youmans  
Russ Powell

K:\Serrano Associates LLC\General Land Use (5830-0001)\ltr beck 7 doc

**Community Facilities District No. 1992 - 1**  
**Calculation of Reserve Requirement for 2009/2010**  
**Based on Indenture Section 3.6 - Use the Lessor of Three Calculation Methods**

Original Principal of Bonds <sup>(1)</sup>		
Series 99	Series 04	Total
43,650,000	17,490,000	61,140,000
10%		
6,114,000 = 10% of Original Bond Principal		

Annual Debt Service <sup>(2)</sup>			
Sept 1st	Series 99	Series 04	Total
2010	3,281,113	1,346,285	4,627,398
2011	3,288,431	1,345,348	4,633,779
2012	3,291,156	1,342,798	4,633,954
2013	3,289,288	1,339,168	4,628,456
2014	3,282,825	1,339,218	4,622,043
2015	3,286,769	1,337,768	4,624,537
2016	3,290,200	1,339,538	4,629,738
2017	3,277,813	1,339,681	4,617,494
2018	3,283,125	1,337,906	4,621,031
2019	3,276,563	1,336,475	4,613,038
2020	3,273,438	1,338,281	4,611,719
2021	3,278,125	1,338,031	4,616,156
2022	3,284,688	1,340,725	4,625,413
2023	3,277,500	1,336,069	4,613,569
2024	3,281,875	1,339,356	4,621,231
2025	2,131,563	1,615,000	3,746,563
2026	2,128,125	1,615,500	3,743,625
2027	2,128,750	1,612,100	3,740,850
2028	2,127,813	1,609,800	3,737,613
2029	2,125,000	1,608,300	3,733,300
2030	-	1,612,300	1,612,300
2031	-	1,611,200	1,611,200

<b>4,906,156</b>	<b>Maximum Annual Debt Service <sup>(3)</sup></b>
Sum of Maximum Annual Debt Service for each Bond individually <sup>(4)</sup>	
4,148,409 Average Debt Service	
125%	
<b>5,185,512 = 125% of Avg Debt Service</b>	

**Footnotes:**

- (1) Per Official Statements for Series 1999 and Series 2004 Bonds
- (2) Info provided in Patricia Beck, County Counsel, letter to Michael Cook, Hefner et al, dated 12/16/09 as attachment titled "Serrano 99 Reserve Requirement 2010" and "Serrano 04 Reserve Requirement 2010" which is the Debt Service Schedule Dated 9/2/09 for each Bond Series
- (3) Per Indenture Section 3.6, the lessor of the three calculation methods; per First Supplemental Indenture, Series 1999 Bonds and Series 2004 Bonds are referred to collectively as "Bonds"
- (4) Appears to be the method used by County to calculate Reserve Requirement which is erroneous; per the First Supplemental Indenture, Series 1999 Bonds and Series 2004 Bonds are referred to collectively as "Bonds"

**CFD 1992-1 Reserve Account  
Analysis of Excess Funds**

Reserve Account Fundings from Bond Proceeds:		
Series 1999 Bond Issue (8/13/99)	\$ 3,339,409	[a]
Series 2004 Bond Issue (5/12/04)	1,328,725	[b]
Total Reserve Account Fundings from Bond Proceeds	4,668,134	
Total Reserve Fund Interest Earnings	1,073,804	[c]
Total Additions to Reserve Account - Aug 99 thru Dec 09	5,741,938	
Reserve Account Balance at Dec.2009 should be	4,659,961	[d]
Excess Reserve Fund Additions available for Annual Cost reductions	1,081,977	
Actual reductions from Annual Cost calculations	(564,511)	[e]
Remaining Excess Reserve Account Funds	\$ 517,466	

**Issues:** \$248,833 of these excess funds still resides in the Reserve Account at December 2009, in that the actual reserve account balance is \$4,908,794. The whereabouts of the remaining \$268,633 excess funds is not known to Serrano Associates, LLC. The full \$517,466 excess should have been used to reduce the periodic levies per the calculated Annual Costs.

**CFD 1992-1 Reserve Account  
Analysis of Excess Funds**

**NOTES:**

- [a] - Per Official Statement dated 8/13/99 for CFD No. 1992-1 Series 1999 Special Tax Bonds, page 6 - Estimated Sources and Uses of Funds - Uses - Reserve Account
- [b] - Per Official Statement dated 5/12/04 for CFD No. 1992-1 Series 2004 Special Tax Bonds, page 4 - Estimated Sources and Uses of Funds - Uses - Reserve Account
- [c] - Interest Earnings:
- |                                |                     |     |
|--------------------------------|---------------------|-----|
| Aug 1999 thru Dec 2000         | \$ 137,513          | [v] |
| Jan 2001 thru Dec 2009         | 936,291             | [w] |
| <b>Total Interest Earnings</b> | <b>\$ 1,073,804</b> |     |
- [d]- Reserve Requirement Calculation for 2009/2010  
100% of maximum annual debt service on the Bonds  
Interest Earnings on Reserve Account for 2009
- |  |                     |     |
|--|---------------------|-----|
|  | \$ 4,633,954        | [x] |
|  | 26,007              | [y] |
| <b>Target Reserve Account Balance Dec 09</b> | <b>\$ 4,659,961</b> |     |
- [e] - Sum of Exhibit B - Aggregate Levy - Interest Credit from Reserve Fund as provided by NBS Government Finance Group. See table at [z] below.
- [v] - Assumed interest earnings for period was the difference between the screen shot as attached to December 16, 2009 letter from County Counsel to Hefner, Stark for 12/2000 Fund 514 S Acct 105 balance of \$3,476,922 and funding from [a] above of \$3,339,410
- [w] - Sum of the Actual Revenue amounts from the screen shots as attached to December 16, 2009 letter from County Counsel to Hefner, Stark for the periods 12/2001 through 12/2009 for S Acct 411 balances from Funds 514, 180, 672, & 674. See table at [z] below.
- [x] - See Calculation of Reserve Requirement for 2009/2010 prepared by SA per Section 3.6 of Indenture; requirement is 100% of maximum annual remaining debt service
- [y] - Actual Revenues from screen shots as attached to 12/16/09 letter from County Counsel to HSM for 12/2009 S Acct 411 balances from Funds 672 \$18k & 674 \$8k.
- [z] - Summary of interest earnings and Annual Cost interest credits by year:

Fiscal Year Ended	Interest Earned	Int. Credit to Annual Cost
2001	\$ 187,086	\$ 152,394
2002	80,828	325,562
2003	33,660	41,869
2004	15,732	44,686
2005	64,449	-
2006	159,671	-
2007	221,111	-
2008	147,747	-
2009	26,007	-
<b>Total</b>	<b>\$ 936,291</b>	<b>\$ 564,511</b>





# SERRANO

December 9, 2009

Ron Briggs, Chairman  
Board of Supervisors  
El Dorado County Government Center  
330 Fair Lane  
Placerville, CA. 95667

2009 DEC 11 AM 11:22

RECEIVED  
BOARD OF SUPERVISORS  
EL DORADO COUNTY

**VIA ELECTRONIC MAIL AND U.S. MAIL**

**Re: Serrano Claim for CFD Tax Refund**

Dear Chairman Briggs and Honorable Members:

We request that the above-referenced item be continued to January 26, 2010, for the following reasons:

1. We have not received any of the information we had requested in Mike Cook's letter dated September 30, 2009, and his email of November 4, 2009. In addition, we have this week reviewed the El Dorado County Treasurer's Cash Balance Report dated June 30, 2009. Our review of that document has prompted us to request some information on specific accounts, which we believe relate to the above matter. That request has been transmitted to Patricia Beck by Mike Cook. We believe that without this information it will be difficult, if not impossible, for us to discuss this matter with your Board.
2. Tim Youmans, Managing Principal of EPS, and the author of the tax formula for the Community Facilities District, will be unavailable on December 15<sup>th</sup>, and out of the country through January 22, 2010. I have enclosed a letter prepared by Mr. Youmans, for your review.

We would respectfully request that the Motion to Continue the Matter until January 26<sup>th</sup> include direction to County staff and employees to provide us with the information we have requested, not later than January 8, 2010.

Best Regards,

  
Kirk Bone

KB:lts  
Attachments

COPY SENT TO BOARD MEMBERS  
FOR THEIR INFORMATION

DATE 12/14/09



LAW OFFICES  
ESTABLISHED 1896

MICHAEL J. COOK  
EMAIL: MCOOK@HSMILAW.COM

2150 RIVER PLAZA DRIVE  
SUITE 450  
SACRAMENTO, CA  
95833-4136  
TEL: (916) 925-6620  
FAX: (916) 925-1127

September 30, 2009

Via Electronic and First Class Mail  
patricia.beck@edcgov.us

Patricia E. Beck, Esq.  
Principal Assistant County Counsel  
County of El Dorado  
330 Fair Lane  
Placerville, CA 95667

**RE: Serrano Associates; Request for Refund of Mello Roos Overpayment**

Dear Trish:

I am writing to request a meeting between the Serrano Associates project team and members of the County Counsel's office and Auditor-Controller's office in connection with the above-referenced refund request. Having concluded a significant amount of research into this issue, we believe it would be most productive to share with you the results of our research, and to pose certain questions which have arisen in connection therewith, prior to proceeding to the Board of Supervisors. Serrano Associates has concurrently herewith submitted a letter to the Board of Supervisors requesting a continuance of the October 6 hearing to allow for such a meeting.

We think a meeting would be beneficial. At minimum, we may be able to distill what is a relatively complex set of issues to something more manageable in the context of the public hearing. In anticipation of your agreement to meet, we wish to share with you conclusions which we have reached, and questions which have presented themselves.

The Serrano project team, comprised of individuals including, but not limited to, Kirk Bone and myself, Clark Winn and Patty Peck (both certified public accountants employed by Serrano Associates) and Tim Youmans and Russ Powell of Economic and Planning Systems has reviewed the Official Statement (OS), Rate and Method of Apportionment (RMA), the Indenture, the Annual Reports issued by NBS, and other materials. We collectively conclude that Serrano Associates has in fact been overtaxed in each of the subject years. This erroneous overtaxation (and consequent overpayment) results from at least one and potentially as many as three errors encountered in administering the district.

Patricia E. Beck, Esq.  
Principal Assistant County Counsel  
County of El Dorado  
October 1, 2009  
Page 2

1. First, the County has in each year included amounts in the Annual Cost calculation to cover anticipated delinquencies. However, the County fails to account for the ultimate collection of delinquent taxes in calculating the annual cost for subsequent years. This failure to recognize the interim and/or ultimate collection of delinquent taxes has resulted in a repeated overstatement of Annual Costs, overpayment by Serrano, and an escalating balance in the CFD Fund. The entirety of these overpayments and the escalating balance in the CFD Fund can be traced to Serrano Associates' overpayments.

2. The over calculation of Annual Costs is further exacerbated by the fact that, under the terms of the Indenture, the County is obligated to "disperse monies in the CFD Fund, as received and as needed, as follows:

First, to the Expense Account to the extent necessary to replenish the Expense Account to the amount budgeted for annual expenses for the new fiscal year".

The County appears to have failed to transfer monies from the CFD Fund to cover the ensuing years' expenses in every year. Had the County transferred the necessary funds, the Annual Cost calculation would have been reduced by a corresponding amount, resulting in a reduction of the special taxes paid by Serrano Associates on undeveloped land, also in a corresponding amount.

3. Since 2004 - 2005, it appears that a third error in the calculation of Annual Costs may have occurred. In the years prior to 2004 - 2005, the annual reports reflect interest income on the Reserve Account. Years 2004 - 2005 and subsequent reflect no interest earnings on the Reserve Account. Under the term of the Indenture, "amounts in the Reserve Account, if any, that exceed the Reserve Requirement, will be deposited into the Special Tax Fund." Since 2004 - 2005, we cannot, based upon our review of the Annual Reports, determine what interest was earned on the Reserve Account. We can determine that interest earnings, if any, were not included in the calculation of Annual Costs, as required by the Rate and Method of Apportionment. To the extent that interest earnings on the Reserve Account existed in excess of the reserve requirement, the County's failure to transfer those interest earnings to the Special Tax Fund would have been further error in calculating the Annual Costs. That erroneous calculation would, in turn, result in over-taxation of the Serrano parcels.

Patricia E. Beck, Esq.  
Principal Assistant County Counsel  
County of El Dorado  
October 1, 2009  
Page 3

In summary, it is clear to us that the Serrano parcels were overtaxed as a result of one or more of the above-referenced errors. Attachment A includes summary and detail analysis supporting this contention which should provide a starting point for our discussion. Two important questions for discussion are (1) whether and how interest earnings on The Reserve Account are accounted for and (2) how are the interest and penalties on delinquent collections treated upon receipt?

We have engaged Economic and Planning Systems to review all of the reports and other materials provided by the County and NBS. Economic and Planning Systems wrote the Rate and Method of Apportionment for this District as they have for numerous other districts within the region. We have reviewed the functioning of a number of similarly aged districts in the region with similar Rate and Method of Apportionment protocols developed by EPS. (Sacramento County and City of Roseville CFDs; relevant portions of Annual Reports are included as Attachment B) In each of those districts, the ultimate collection of delinquent taxes is in one way or another recognized and factored into the calculation of the subsequent years' Annual Costs and apportionment of special tax. In each of those districts, excess monies are transferred to the Special Tax Fund to cover the ensuing year's expenses. Finally, in each of those districts, where the Reserve Account earns interest, that interest is transferred to the Special Tax Account and factored into the calculation of Annual Costs. Attachment C includes a flow chart prepared by EPS illustrating the necessary steps in the calculation of Annual Costs. The custom and practice of the other reviewed CFDs is consistent with the methodology. It is clear that the County's calculation of Annual Cost under the RMA failed to include all necessary calculations and resulted in an erroneous overstatement of Annual Cost. We have also included a copy of a report from San Jacinto, prepared by NBS, which similarly accounts for collection of delinquent taxes (Attachment D).

Finally, we want to address the issue of remedy preclusion. Based upon previous discussions, Kirk and I recall that while the County may agree that Serrano has been overtaxed, the County was concerned that it was precluded from refunding these overpayments. We have had discussions with two attorneys who serve as bond counsel to various agencies. They have each indicated that were they forced to defend status quo, they would, in fact, point to the Indenture and state that there appears to be no mechanism for refund. However, they both also indicated that if the jurisdiction was acknowledging over-taxation and conceding that an error was made in implementing the Rate and Method of Apportionment protocols, they would advise the agency that Section 5096 of the Revenue and Taxation Code does provide the agency with the ability to provide refund. Neither thought the Indenture provisions barred refund under the circumstances. We agree.

Patricia E. Beck, Esq.  
Principal Assistant County Counsel  
County of El Dorado  
October 1, 2009  
Page 4

The bondholders had no expectation that the County would overtax property owners and no claim to the proceeds of overtaxation. The Indenture, at its core, obligates the County to collect special taxes sufficient to cover annual principal and interest payments. That obligation can be met without overtaxation. Utilizing the proceeds of overtaxation to cause the early redemption of bonds is not beneficial to bondholders, as they have invested in an instrument, secured almost entirely by land, which returns a fixed amount of interest over time. Bondholders have no expectation of, nor desire for, early redemption. In fact, early redemption penalties exist to protect the investor from early redemptions. Bondholders do have certain expectations, including an expectation that a special tax on undeveloped parcels would not be necessary (Page 34 of the OS), and that annual interest earnings on the Reserve Account would be utilized to fund Annual Costs (page 34 of the OS). These expectations would be met through the correct implementation of the RMA.

One recent example of the ability to refund erroneously overpaid special taxes is the situation encountered by the Waugh School District in Petaluma, California. A copy of the District's notice to taxpayers is enclosed as Attachment E. In that instance, the Orrick firm found Section 5096 applied and advised the School District that it was obligated to refund, with interest, overpayments of special taxes erroneously calculated under the applicable RMA and paid back as far as six to eight years. Interestingly, in that instance, it was concluded that a four-year statute of limitations does not begin to run unless and until the agency provides the taxpayer a notice of overpayment.

It is our hope that by meeting to discuss all of the above, we can reach agreement, or at least minimize those points upon which we disagree. To us, this is a relatively simple matter. It is clear that Serrano Associates has overpaid special taxes and is entitled to refund. Revenue and Taxation Code Section 5096 provides the mechanism. The more research we do into this matter, the more firm that conclusion becomes. If there is something that we and our consultants are missing, we would appreciate the opportunity to hear that from you.


We would like to schedule a meeting with you as quickly as possible. Serrano attendees would be Kirk Bone, Clark Winn, Patty Peck, Tim Youmans and Russ Powell of Economic and Planning Systems and me. It is our hope that key members of both the County Counsel's office

Patricia E. Beck, Esq.  
Principal Assistant County Counsel  
County of El Dorado  
October 1, 2009  
Page 5

and the Auditor-Controller's office, as well as your outside consultants, would attend. We would very much appreciate your accommodating this request. Please call if you have any questions.

Very truly yours,

HEFNER, STARK & MAROIS, LLP

By   
Michael J. Cook

MJC:et

cc: Kirk E. Bone  
Clark Winn  
Patty Peck  
Tim Youmans  
Russ Powell

December 9, 2009

Mr. Ron Briggs, Chairman  
Board of Supervisors  
County of El Dorado  
Address  
Placerville, CA 95667

Subject: Overpayment of CFD No. 1992-1 Special Taxes; EPS #18527

Dear: Mr. Briggs

Economic & Planning Systems, Inc. (EPS) has been retained by Serrano Associates to review the special tax levy on Serrano Associates-owned parcels for Fiscal Years 2000-01 through 2009-10 for the County of El Dorado (County) Community Facilities District No. 1992-1 (El Dorado Hills Development) (CFD). Serrano Associates believes that their undeveloped parcels have been over-taxed for the CFD in some or all of these fiscal years. Serrano Associates has requested County records that would assist in determining whether or not over-taxation has occurred, but has not received the requested records to date.

EPS served as special tax consultant for the CFD and prepared the Rate and Method of Apportionment (RMA). The RMA provides the instructions for the apportionment of the special taxes annually.

Pending further review of requested public records, it is our professional opinion that parcels are classified under the RMA as Tentative Map Parcels and Large Lot/Planned Parcels have been over-taxed. Parcels in these categories of land uses are owned by Serrano Associates.

The over-taxation of the Tentative Map Parcels and Large Lot/Planned Parcels is as a result of the following actions of the County.

- o It does not appear that the County applied interest earnings on the bond reserve fund to offset Annual Costs as specified in the RMA
- o We have not been able to track where the County applied the payment of delinquent special taxes as revenues available to offset current or future fiscal year Annual Costs. Any revenues of the past due special taxes should be placed in the Special Tax Fund and therefore made available to pay Annual Costs..



Ron Briggs  
December 9, 2009  
Page 2

- o The Bond Indenture instructs the County to transfer excess CFD Fund revenues to the Expense Account to offset Annual Costs in the current or future fiscal years, before it is transferred to the Facilities Account. We have not been able to track where this has occurred.
- o There is a Redemption Fund Credit for the Fiscal Year 2009-10 that is used to offset Annual Costs. This item does not appear in any other year and it is uncertain if Annual Costs should have been offset by such credits in previous fiscal years.

EPS has submitted to the County in separate documents a more detailed discussion of how these four actions have caused over-taxation of Serrano Associates-owned parcels. The table on Page 34 of the Official Statement for the Series 2004 CFD Bonds shows interest earnings on the bond reserve fund being used to offset Annual Costs. The table also demonstrated to potential bond investors that given a normal collection cycle for the annual special taxes there should not be a special tax levy on Tentative Map Parcels and Large Lot/Planned Parcels. As there have not been long-term special tax delinquencies, Annual Costs should be funded primarily (if not exclusively) by Developed Parcels.

If the four items shown above had been applied to offset the levy of the special tax each fiscal year there would have been little or no special tax levy from Fiscal Year 2004-2005 to 2009-10 on Serrano Associates-owned parcels.

We recommend a review of the calculation of the Annual Costs in these fiscal years by the County and a subsequent reapportionment of the special taxes for those years to determine any corrections to the annual special tax levy and reimbursement of the overpaid special taxes for any affected parties.

The County has stated that special tax revenues cannot be removed from the Facilities Account once placed into this fund (and not used to pay Annual Costs are required of the Bond Indenture). We disagree. If the funds were incorrectly transferred from the Expense Account to the Facilities Account, these transfers should be reversed to comply with the provisions of the Bond Indenture.

Sincerely,

ECONOMIC & PLANNING SYSTEMS, INC.



Tim Youmans  
Managing Principal



**HEFNER, STARK & MAROIS, LLP**  
 2150 River Plaza Drive, Suite 450  
 Sacramento, CA 95833-3883  
 Telephone: (916) 925-6620  
 Fax No.: (916) 925-1127

**M E M O R A N D U M**

**TO:** Patricia E. Beck, Office of the County Counsel  
 County of El Dorado

**FROM:** Michael J. Cook

**DATE:** November 4, 2009

**RE:** CFD 1992-1; Serrano Request for Refund

Trish,

We are looking forward to meeting with you, Mike and Joe. We have spent a lot of time on this matter, and have involved people with differing expertise. To make sure we can comprehensively discuss our position, Tim Youmans and Russ Powell of EPS, Clark Winn, Patty Peck and Kirk Bone of Serrano Associates and I will attend.

Our intention in sending our letter of October 1 and in requesting this meeting was to lay on the table all of our concerns, analysis and questions. Our hope is that you have had an opportunity to review our materials and that we can have an open dialogue. There are some areas where we still have questions.

Some of the more technical questions which remain are:

- subsequent to 2004-2005, we do not see interest earnings on the Reserve Fund. Is there an explanation for that? In reviewing our files, we see this issue raised in memos to and from NBS (copies attached). The memos from Josh Bero of NBS contain some confusing statements. We'd like to clarify these in the context of the greater discussion about Reserve Account Interest earnings.
- in every year in question, we do not see excess funds within the CFD utilized to cover ensuing year expenses. Is that observation correct?
- on the 09-10 CFD Aggregate Levy Summary (attached), we see a Redemption Account Credit that does not appear in previous years. Is that a transfer to cover ensuing year administrative expenses? If not, what is it?
- When delinquent Special Taxes are ultimately collected, do the penalties and interest accrued thereon get deposited in the CFD funds or are they otherwise handled?

If you can answer these questions in the early part of the the meeting, we may save some time by working from a common understanding.

As set forth in our letter, our overall argument is that for a variety of reasons, Serrano has been overpaying Special Taxes erroneously assessed and, unless corrected, Serrano will continue to be overtaxed. For example, Serrano's 09-10 Tax bill on undeveloped properties is \$437,000, almost \$410,000 of which is attributable to projected delinquencies, the entirety of which experience tells you will be collected (see charts included with 10-1-09 letter). Under your current methodologies and position, we know that will ultimately lead to \$410,000 of excess monies which we will be able to trace to Serrano, but you will claim cannot be refunded. The real world experience of the past number of years needs to be factored into the calculations. Our client cannot be forced to pay sums we all know by experience are not required to meet CFD obligations.

We know enough to know that we don't know everything. We are open to listening to opposing views and to learning facts that we are not aware of. We have enjoyed a good working relationship with everyone involved in this CFD. We do not seek to lay blame. We simply conclude that the processes employed to this point have resulted in erroneous over taxation upon Serrano and we want to work with you to correct the past and avoid repeating the same mistake.

We look forward to Monday.