

Citizen's Association of Sunset Beach
www.SaveSunsetBeach.org

September 14, 2010

Sunset Beach Community Association
Transition Committee Members

We attended the meeting held at the Community Lot in Sunset Beach, yesterday, September 13, 2010. We have reviewed the four very limited terms and conditions that the LAFCO currently intends to impose on the Huntington Beach annexation of Sunset Beach. We believe that those conditions are wholly inadequate, and have requested that the LAFCO revisit this issue. We also wish for the Sunset Beach Community Association Transition Committee to consider their role in representing the community of Sunset Beach, and advocate more strongly on their behalf.

The Sunset Beach Community Association proposed 20 issues that should be included as part of the annexation agreement. Those 20 issues are important to the residents of Sunset Beach and include such issues as continuance of the encroachment program for beach and waterways. LAFCO has taken the position that due to LAFCO's inability to regulate land use and other restrictions, their draft terms and conditions only address a few items. In fact, Government Code section 56375(a)(6) provides that the LAFCO "shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements." This does not restrict their authority in all matters of land use. Some of the issues that the Sunset Beach Community Association asked to be a part of the annexation agreement, such as continuance of Orange County encroachment programs for beaches and waterways, are vital to our community, and we ask that you not agree to allow the LAFCO to leave such important issues unresolved in the annexation process.

The LAFCO says they will require the City of Huntington Beach to continue the use of the Greenbelt area as public park. The Draft Negative Declaration says that Huntington Beach will provide beach maintenance and maintain the Greenbelt area. However, there is not a specific level of service that is indicated. There is no correlation between the commitment and the City of Huntington Beach current budget. Also, you will not find a line item in the budget for Sunset Beach, beach maintenance. It will simply be done? Please make a formal protest? This lack of accounting cannot be acceptable. It will result in dis-service to Sunset Beach residents.

There is another concern which to our knowledge has not been addressed before. County of Orange has allowed a number of new beach cities (such as Dana Point) to incorporate and not require them to take over beach ownership or maintenance. At present, the county pays for seven public beaches including the

CITIZEN'S ASSOCIATION OF SUNSET BEACH
15931 CHEMICAL LANE #A, HUNTINGTON BEACH, CALIFORNIA 92649

Laguna Cove Beach, Capistrano Beach, etc. Is the beach in Sunset Beach going to be dedicated to the City of Huntington Beach if annexation occurs? Is it not a County beach, maintained and operated by the County for all county residents? What about the permitted encroachments on the beach? Can the County legally require Huntington Beach to maintain pre-existing permits? If not, this issue should be resolved before annexation can be approved.

Is the issue of who owns the beach ever really been resolved? Investigation reveals that in 1975 a Grand Jury recommended that the County take action to resolve the increasing problem of private encroachments on County-owned property. A copy of a letter is attached, dated January 31, 1978. You will see from the letter, it is questioned whether the County has obtained the beach legally. The County Board of Supervisors did not accept the dedication of easement for more than 39 years. The letter clarifies that this was a violation of law, under the California Code of Civil procedure, at the time of the taking. In response to the Grand Jury's recommendation, encroachment permits were issued, at no charge. This appears to have eliminated the pressing issue of ownership then. Is the issue resolved now?

The Citizen's Association also notes that the LAFCO does not include a term and condition related to imposition of special Huntington Beach taxes, such as the Huntington Beach utility tax. Government Code section 57330 provides that "as an effect of annexation, any territory being annexed to a city or a district shall be subject to levying or fixing in collection of any previously authorized taxes of the city or the district. Huntington Beach must therefore impose all of its taxes on Sunset Beach. But, Proposition 218 requires that Huntington Beach first allow the residents of Sunset Beach to vote on whether to accept such taxes before imposing them. The small island annexation provisions of the Cortese-Knox-Hertzberg legislation does not alter either of these legal provisions. The LAFCO should address this issue in its terms and conditions of annexation and not force the burden of resolving this issue on the residents of Huntington Beach and Sunset Beach.

Huntington Beach has indicated that they may not impose the utility tax on Sunset Beach residents. While this may sound good to some Sunset Beach residents, we know that this exemption would violate Government Code section 57330, and that it would likely be the subject of a lawsuit by Huntington Beach residents. We have learned that there is a group of Huntington Beach residents who will in fact file such a lawsuit, if necessary. Sunset Beach residents will then have to defend their rights under Proposition 218. We have raised this issue with the LAFCO, but apparently it is their intention to duck the issue entirely and let others litigate the issue after the LAFCO has approved the annexation. The Citizen's Association strongly believes that it is the LAFCO's obligation to impose as a term and condition of annexation that Huntington Beach first obtain a favorable Proposition 218 vote by the residents of Sunset Beach to accept the existing Huntington Beach special taxes.

Why is LAFCO moving forward to approve annexation to a city that is already extending limited services to its own residents, in Huntington Beach? Huntington Beach

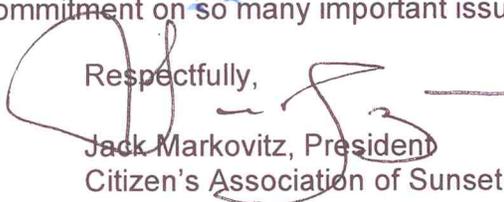
CITIZEN'S ASSOCIATION OF SUNSET BEACH
15931 CHEMICAL LANE #A, HUNTINGTON BEACH, CALIFORNIA 92649

is facing a \$3,000,000.00 budget shortfall. This is the third consecutive year where services to its residents have been cut to make up for the shortfalls. According to the newspaper reports, police officer positions will be cut and lifeguard service for certain beaches will be further reduced. Requests by the city's police, fire, and marine safety chiefs, to replace equipment which is becoming obsolete or is beyond the manufacturer's projected service life, will add another \$3,000,000.00 - 5,000,000.00 in budget cutbacks. Services provided to Sunset Beach will be at the expense of Huntington Beach residents, or to the detriment of both community groups. Is this consistent with LAFCO's mission? Is this really what the City Council of Huntington Beach proposed? We need accountability to be required by LAFCO to the level of service that will be afforded the residents of Sunset Beach. If the LAFCO cannot provide this, you should require Huntington Beach to. Their budget should make provision and their Draft Negative Declaration should be amended to correlate to the budget changes.

The Draft Negative Declaration circulated by Huntington Beach does not use the actual policing activity of the Sheriff's Department which currently services Sunset Beach. Instead, data is inserted that was used in the Seal Beach City Council annexation report in 2009. This may be the data that was originally provided by the LAFCO for the sphere of influence report. The data does not account for the hours spent in the field doing preventative police work and dealing with lesser crimes. Keep in mind; Sunset Beach is not a community of 1200 people requiring police services. It is a beach community with over 200,000 visitors a year. The population swells over the weekends, holidays and summer months, the same as it does in Huntington Beach. Huntington Beach city services cannot simply be re-positioned to service Sunset Beach during peak demands. There is no expense identified in the city's current budget documents for Sunset Beach services. What level of service is the LAFCO requiring Huntington Beach to provide? If LAFCO cannot require Huntington Beach to guarantee a level of service, perhaps Huntington Beach can provide assurance and budget for the services and amend their Draft Negative Declaration. If not, the annexation should be protested.

The annexation of Sunset Beach will have a very negative impact on its residents if Huntington Beach and the LAFCO fail to address the important issues noted above as part of the terms and conditions of annexation. We strongly urge the SBCA Transition Committee to get more aggressively involved in this annexation process and represent the interests of Sunset Beach residents. By imposing only four minor terms and conditions on annexation, the LAFCO ignores the rights and needs of the Sunset Beach residents in this process. The small island annexation process already deprives Sunset Beach residents of a vote on annexation; the situation will be worse by leaving Sunset Beach residents with no specific commitment on so many important issues.

Respectfully,


Jack Markovitz, President
Citizen's Association of Sunset Beach

CITIZEN'S ASSOCIATION OF SUNSET BEACH
15931 CHEMICAL LANE #A, HUNTINGTON BEACH, CALIFORNIA 92649

#11

(2)

MUSICK, PEELER & GARRETT

ATTORNEYS AT LAW

ONE WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90017
TELEPHONE (213) 629-7600

ELVON MUSICK
1990-1988

LEROY A. GARRETT
1908-1983

CABLE "PEELOAR"
TELEX 67 7461
TELECOPIER
624-1370

OF COUNSEL
JOHN M. ROBINSON
FRANCIS F. GUFFNER
HELVEN D. WILSON

JOSEPH D. PEELER	JAMES B. BERTERO
DAVID P. EVANS	ROBERT D. GIBARD
JAMES E. LUDLAM	FREDERICK F. DUCHENBERGER
GERALD S. KELLY	JAMES I. SEAL
JESSE B. O'WALLEY	WILLIAM HED MILLER III
BRUCE E. CLARA	JAMES T. DUFF
BRUCE F. BEVAN, JR.	DARY F. OVERSTREET
CHARLES F. FORNER	J. ROBERT LIBET
THOMAS W. COLLINS	LAWRENCE D. LEWIS
DONALD J. DREW	JAMES H. HASSAN
RICHARD D. DEAR	STUART W. RUDDNER
LEONARD C. CASTRO	HARRY F. BEAUDRY
J. PATRICK WHALLEY	KENNETH K. HOLLAND
MICHAEL M. MURPHY	WILLIAM L. NEAL
EDWARD A. LANDRY	LUCY F. EISENBERG
JOHN R. BROWNING	WAYNE A. LITTLEFIELD
JOSEPH H. SAUNDERS	MICHAEL W. HORN
RONALD G. TRAINER	ROBERT M. STONE
HARRY B. STANG	ROBERT W. ZELLER
ROGER B. BAYHILLER	STEVEN D. WEINSTEIN
THOMAS J. KELLEY, JR.	ORRIS A. WINSTON
JAMES D. DENNE	THOMAS B. CURTIS
LARRY A. CURTIS	RICHARD J. SIMMONS
FRANK W. SMITH, JR.	JAMES C. STERAN
LAWRENCE E. STICHNET	SHELLEY B. THOMPSON
BURKE W. WILLBEY	RICHARD H. GOULDER

January 31, 1978

WRITER'S DIRECT DIAL NUMBER

213/629-7665

Mr. H. G. Osborne, Director
Environmental Management Agency
County of Orange
811 North Broadway
Santa Ana, California

Dear Mr. Osborne:

I have reviewed your communication dated December 15, 1977, subject: "Private Encroachments Onto County Beach." I have also reviewed the July 26, 1977 Orange County Board of Supervisors purported action which you enclosed. I have reviewed the map which you describe as "The enclosed map shows these encroachments as they relate to your property." I have also reviewed the enclosed revocable encroachment Permit to cover my bulkhead and retaining wall. I have reviewed your threat, ". . .if you fail to return the signed permit within 90 days, this matter will be brought before the board for referral to County Counsel." I have reviewed your declaration that the Board has determined that ". . .the rear twenty feet (20') of public beach is not currently needed for public use" and that I have been given an opportunity to apply for a revocable encroachment Permit.

I now invite you to review the following:

1. My bulkhead and retaining wall does not extend beyond your twenty-foot reference.

Mr. H. G. Osborne, Director
January 31, 1978
Page Two

2. If you wish to issue an unconditional permit to me I have no objections.

3. I will not sign the form of Permit sent to me because it is totally illegal and asks me to agree, by contract in the terms of the Permit, that the County has certain property interests which it obviously does not have.

4. The original Subdivision Map of Sunset Beach, dated September 6, 1904 contained an offer of dedication of Ocean Avenue which lies within the area of the twenty feet to which you refer. (Copy of Subdivision Map enclosed for your convenience.)

5. The Board of Supervisors of Orange County purported to accept this offer of dedication on December 29, 1943, or some 39 years, 3 months and 3 days after the original offer. (Please see copy attached.)

6. This was in clear violation of California Code of Civil Procedure, Section 748.5 which provides a conclusive presumption against acceptance of dedication by the public agency if the offer of dedication was not accepted for 25 years. To quote the section in part:

" . . .there is a conclusive presumption that the proposed dedication was not accepted. . ."

7. In 26 Cal Jur, 3d Edition, §38, it is stated:

"Acceptance of an offer of common-law dedication must be within a reasonable time."

8. In the case of City of Santa Clara v. Ivancovich, 47 Cal. App. 2d 502, the Court declared at 511:

"Assuming that the actions of respondents and their predecessors in interest may have given some color to the claim of ratification, the formal acceptance by the Board. . . made respectively forty-seven, twenty-four, thirty-eight and forty years after the filing of the map, cannot be said to have taken place within a reasonable time after the filing of such map. . .There was never an acceptance of the disputed strip. . . ."

Mr. H. G. Osborne, Director
January 31, 1978
Page Three

9. The construction of my bulkhead and retaining wall to protect my property from high tides (which, by the way, was used again very recently) occurred more than 25 years ago, and I have fully ripened right of prescription against the original dedication to continue to maintain my bulkhead and retaining wall.

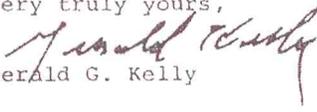
10. The property in question does not, as the title of your letter so declares, constitute "County Beach." Therefore, I have no construction on County Beach, and I will not agree to sign any Permit which declares that I am encroaching on County Beach.

To reiterate, if you wish to issue me an unconditional permit, I will not quarrel about the matter further. If, however, you approach my bulkhead and retaining wall and in any way seek to modify or remove it or touch it, I shall sue you personally for treble damages, and I will include as a defendant in such action such other county officials as is necessary.

By this letter I am requesting if you contemplate any recommendation to the Board of Supervisors to in any way touch my bulkhead and retaining wall that you advise them of my request that I want a two weeks' notice in order to get my suit filed in advance.

Mr. Osborne, I want you to know there is considerable irony in this whole subject. You, of course, are a new comer to the scene and have no knowledge of past events. Before the bulkhead was constructed, my house was taking a terrific pounding. I pleaded with the then Supervisor Warner, with the Board of Supervisors and with the County Road Department for help and assistance. The most I was given at any time was sand bags that I could personally fill myself, and I was told at that time that the County had no property interest of its own to protect and therefore they could do nothing to alleviate the storm damage. So on one side of the picture is when the storms are coming and the sand is being washed away and the real threat of the destruction caused by wave activity is imperative, the County does nothing. The individual property owner then builds a bulkhead to defend his property, and then a subsequent bureaucrat (H. G. Osborne) says in effect -- sign a contract with us that will permit us to take your bulkhead down in the future.

Very truly yours,


Gerald G. Kelly

GGK/sb

cc: Mr. Laurence J. Schmit, Supervisor 2nd District
Mr. Adrian Kuyper, County Counsel
Mr. M. Storm, Assistant Director, EMA Regulation