



STERN, VAN VLECK & MCCARRON LLP

ATTORNEYS AT LAW

925 L Street, Suite 850
Sacramento, CA 95814

916-442-1298 (Office)
916-341-0849 (Fax)

LAWPOLICY.COM

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Via E-mail: jcrosthwaite@oclafco.org

Joyce Crosthwaite, Executive Director
Orange County LAFCO
12 Civic Center Plaza, Rm. 235
Santa Ana, CA 92701

RE: Proposed Annexation of Sunset Beach by Huntington Beach

Dear Ms. Crosthwaite:

As you know, this firm represents the Citizen's Association of Sunset Beach (CASB), a non-profit citizen group that is opposed to the forced "island" annexation of Sunset Beach by Huntington Beach. I am writing to follow-up on my letter to you of July 15, 2010, regarding CASB's concerns about the terms that the LAFCO may place on this annexation.

Since my last letter, the Huntington Beach City Council has voted to move forward with the annexation. It is my understanding that on October 18, 2010, the annexation issue will again come before the Huntington Beach City Council, at which time the Council is likely to vote to complete their application for the annexation and to send it to the LAFCO. Because this is an "island" annexation, the LAFCO will have to approve it. However, the LAFCO can impose certain terms and conditions on the annexation. A few weeks ago, the LAFCO circulated a draft of the terms and conditions that it intends to impose on the annexation. We believe that those terms and conditions are inadequate to protect the residents of Sunset Beach and to assure a smooth transition. We urge you to include additional terms and conditions on this annexation.

CASB is particularly concerned about whether Sunset Beach residents will be required to pay the Huntington Beach utility tax without having a right to vote on that tax. As you know, Government Code section 57330 expressly requires Huntington Beach to impose the utility tax on the residents of Sunset Beach. The Huntington Beach City Council has indicated that it may not require Sunset Beach residents to pay the utility tax. My client has learned that if the Council does so, there is a group of Huntington Beach residents who will sue Huntington Beach and the LAFCO to either invalidate the annexation or to force the LAFCO to make it a condition of the annexation that Sunset Beach residents be subject to all Huntington Beach taxes, including the utility tax. As noted in my prior letter, and as I believe LAFCO's counsel would agree, Sunset Beach residents have the right under Proposition 218 to vote on whether to accept new special taxes like the Huntington Beach utility tax. If necessary, my client will take legal action to make sure that Sunset Beach residents are afforded their right to vote under Proposition 218.

Knowing that this dispute over imposition of the Huntington Beach utility tax will arise as part of the annexation, it is inappropriate for the LAFCO to ignore this dispute in its terms and

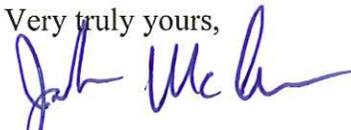
conditions of annexation. Doing so would invite litigation and put the status of the annexation in doubt until that litigation is resolved.

There are apparent conflicts between the "island" annexation statutes, Government Code section 57330, and Proposition 218 as those provisions apply to this particular annexation. However, the law can be harmonized in a way that is fair to all parties and that is consistent with the intent of the legislature. The LAFCO can and should require as a condition of annexation that Huntington Beach obtain a favorable Proposition 218 vote by Sunset Beach residents regarding the imposition of the Huntington Beach utility tax. This condition harmonizes the competing statutory and constitutional requirements and is fair to the residents of both Sunset Beach and Huntington Beach. While the citizens of Sunset Beach may not be entitled to a vote on whether to accept this "island annexation" they are entitled to a vote on whether to accept a special tax like the Huntington Beach utility tax.

As I'm sure you are aware, the Fresno County LAFCO recently imposed a very similar condition on a proposed island annexation by the city of Fresno. Although the city of Fresno sued to Fresno County LAFCO and successfully convinced a Superior Court judge to require that LAFCO to remove the condition regarding obtaining a favorable Proposition 218 vote by the residents who were to be annexed, the reasoning of that Superior Court decision is decidedly unconvincing. I'm not aware of whether the Fresno County LAFCO intends to appeal that ruling, but I believe that if they did so they would prevail. Obviously, the Orange County LAFCO does not fully accept the reasoning of the Superior Court judge in the Fresno case because the Orange County LAFCO is imposing some terms and conditions on Huntington Beach's proposed island annexation of Sunset Beach. The Orange County LAFCO should add to its list of conditions for the Huntington Beach island annexation that Huntington Beach first obtain a favorable Proposition 218 vote by the citizens of Sunset Beach or discontinue in its entirety the utility tax (and other similar special taxes) so as to eliminate any potential violation of the Proposition 218 rights of the residents of Sunset Beach. If necessary, my client is prepared to initiate litigation to require the LAFCO to impose this condition. Although my client would prefer to avoid the cost of such litigation, unless an alternative resolution can be reached, this issue is going to be the subject of litigation.

My client has been very up front about the fact that it represents individuals who are opposed to the annexation. However, if the residents of Sunset Beach vote to accept the Huntington Beach utility tax (along with the purported benefits of the annexation), than at least my client and its members will have been afforded the full measure of their rights under Proposition 218. Again, my client would prefer to resolve this issue prior to the filing of any litigation, and we would be happy to meet with representatives from the LAFCO to discuss this issue.

Very truly yours,



John C. McCarron

JCM/mr

cc: Clark Alsop
Jennifer McGrath, City Attorney
Client