

1 STERN, VAN VLECK & McCARRON, LLP
2 Dale A. Stern, State Bar No. 131108
3 John C. McCarron, State Bar No. 225217
4 925 L Street, Suite 850
5 Sacramento, California 95814
6 Telephone: (916) 442-1298
7 Fax No.: (916) 341-0849

8 Attorneys for Plaintiff
9 CITIZEN'S ASSOCIATION OF SUNSET BEACH

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF ORANGE

12 CITIZEN'S ASSOCIATION OF SUNSET)
13 BEACH,)

14 Petitioner/Plaintiff,)

15 vs.)

16 ORANGE COUNTY LOCAL AGENCY)
17 FORMATION COMMISSION, a)
18 governmental entity; the CITY OF)
19 HUNTINGTON BEACH, a municipal)
20 corporation; and DOES 1 through 50,)
21 inclusive,)

22 Respondents/Defendants.)

23 CASE NO. 30-2010-00431832

24 **PETITIONER'S REPLY TO**
25 **RESPONDENT CITY OF HUNTINGTON**
26 **BEACH'S OPPOSITION TO**
27 **APPLICATION FOR PRELIMINARY**
28 **INJUNCTION**

Date: January 19, 2011

Time: 1:30 p.m.

Judge: Frederick P. Horn

Dept.: C31

Action Filed: December 9, 2010

Trial Date: TBD

29 **I. INTRODUCTION**

30 In its Application for a Preliminary Injunction, Citizen's Association of Sunset Beach
31 ("CASB") seeks to enjoin the Orange County Local Agency Formation Commission ("OC
32 LAFCO") from recording a notice of completion of the proposed annexation of Sunset Beach by
33 the City of Huntington Beach ("the City"). The City filed an Opposition on its own behalf; the OC
34 LAFCO did not file an Opposition to CASB's Application. CASB's Application for Preliminary
35 Injunction is therefore unopposed by the party that it seeks to enjoin.

36 The City's Opposition to CASB's Application for Preliminary Injunction fails to address
37 the core issues raised in CASB's Petition and Complaint, and hinges on the false premise that the
38 City's proposed annexation of Sunset Beach is distinct from its imposition of taxes on Sunset

PETITIONER'S REPLY TO OPPOSITION TO
APPLICATION FOR PRELIMINARY
INJUNCTION

1 Beach residents post-annexation. CASB’s Petition and Complaint raises important legal issues of
2 first impression regarding the application of the forced “island” annexation statute (Gov. Code §
3 56375.3) to a fully developed community (Sunset Beach) by a neighboring city (Huntington
4 Beach) that imposes special and general taxes on its residents that exceed the taxes currently being
5 paid by the residents of the community to be annexed. The imposition of Huntington Beach taxes
6 on residents of Sunset Beach arises only as a result of the annexation. The issues of annexation
7 and taxation are thus inextricably linked.

8 Government Code section 57330, which is part of the Knox-Hertzberg Local Government
9 Reorganization Act of 2000 (Gov. Code § 56000, et seq.), requires the City to impose its taxes on
10 the residents of Sunset Beach post-annexation. Surprisingly, in its Opposition, the City completely
11 ignores this statute. The City ignores Government Code section 57330 because the statute
12 establishes the direct connection between the City’s proposed annexation of Sunset Beach and the
13 City’s imposition of its taxes on the residents of Sunset Beach post-annexation. Section 57330
14 imposes a statutory condition on every annexation regarding the application of taxes on the area
15 that is annexed. If the City cannot lawfully impose its taxes on the residents of Sunset Beach post-
16 annexation, the City has not fulfilled all of the statutory requirements for the annexation, and
17 therefore the “island” annexation cannot go forward.

18 The City does not dispute that it imposes taxes on its residents that exceed those currently
19 imposed on residents of Sunset Beach. Nor does the City challenge the statement by the City’s
20 own City Attorney, Jennifer McGrath, in her November 9, 2010 letter, that post-annexation,
21 Huntington Beach will charge the residents of Sunset Beach all current Huntington Beach taxes
22 using the same methodology as is currently in place for the residents of Huntington Beach (see
23 Exhibit H to CASB’s Opening Brief). As demonstrated in CASB’s Opening Brief, Huntington
24 Beach’s imposition of its taxes on the residents of Sunset Beach without first allowing the Sunset
25 Beach residents an opportunity to vote on whether to accept those taxes violates the rights of
26 Sunset Beach residents under articles XIII C and XIII D of the California Constitution (commonly
27 referred to as Proposition 218). In its Opposition, the City does not dispute that the imposition of
28 Huntington Beach taxes on Sunset Beach residents without a prior vote violates Proposition 218.

1 The City's Opposition to CASB's application for Preliminary Injunction completely avoids
2 CASB's primary legal arguments. Instead, the City has come up with a series of red herrings
3 designed to deflect attention from the merits of CASB's case. None of the arguments raised in the
4 City's Opposition apply to the circumstances of this case. The Court should ignore the specious
5 arguments raised by the City and grant CASB's request to enjoin completion of the annexation
6 pending resolution of the legal issues raised in CASB's Petition and Complaint.

7 **II. CASB IS ENTITLED TO A PRELIMINARY INJUNCTION**

8 **A. CASB Has Established A Reasonable Likelihood That It Will Prevail On The Merits.**

9 The City accuses CASB of manufacturing a conflict where none yet exists. [City's
10 Opposition at p. 6:2.] That is not the case. Under the facts of this case, there is an unmistakable
11 conflict between Government Code section 57330 (requiring the imposition of all taxes on any
12 area being annexed), Government Code section 56375.3 (allowing island annexations without any
13 protest or vote), and Proposition 218 (barring any local government from imposing taxes without a
14 vote by the electorate). In cases like this, where the annexing city imposes special and general
15 taxes that exceed the taxes currently being paid by the residents of the area to be annexed, the City
16 cannot annex Sunset Beach under Government Code 56375.3, and simultaneously meet the
17 requirements of Government Code section 57330 and Proposition 218 without first giving the
18 residents of Sunset Beach a vote on whether to accept the new Huntington Beach taxes.

19 The fact that the Huntington Beach City Attorney has expressed the City's intent to
20 comply with Government Code section 57330 by imposing its taxes on Sunset Beach residents
21 without first giving the residents a vote on imposition of those taxes under Proposition 218
22 demonstrates that a conflict does currently exist. Proposition 218 is a constitutional provision, and
23 Government Code section 57330 (which is rooted in constitutional requirements of equal
24 protection) must be given greater weight than the island annexation provisions set forth in
25 Government Code section 56375.3. The City's proposed "island" annexation of Sunset Beach
26 under Government Code section 56375.3 must proceed, if at all, in compliance with Government
27 Code section 57330 and Proposition 218 (meaning that Huntington Beach must first give the

28 ///

1 residents of Sunset Beach a vote on the new taxes) or the “island” annexation cannot proceed to
2 completion.

3 **1. The Doctrine of Separation of Powers Does Not Prevent the Court from**
4 **Granting the Relief CASB Seeks**

5 The City falsely contends that the doctrine of separation of powers prohibits this Court
6 from restraining the OC LAFCO and from granting CASB’s Petition for Writ of Mandate. The
7 City relies upon *City Council of City of Santa Barbara v. Superior Court* (1960) 179 Cal.App.2d
8 389, 397, which discusses limitations on the court’s ability to control legislative discretion. The
9 City contends that this limitation on the court’s authority prevents the court from taking action in
10 this matter. That is not the case.

11 Local Agency Formation Commissions serve a quasi-legislative function. (*San Joaquin*
12 *Local Agency Formation Commission v. Superior Court* (2008) 162 Cal.App.4th 159.) The City
13 contends that the Court cannot require the LAFCO to impose as a condition of the City’s island
14 annexation application that the City first obtain a favorable vote by the residents of Sunset Beach
15 in an election pursuant to Proposition 218, or direct the City to revise its annexation application to
16 seek an annexation that is subject to protest proceedings or to obtain a favorable vote by the
17 residents of Sunset Beach in an election pursuant to Proposition 218. Presumably, the City
18 contends that these are legislative (rather than administrative) acts that the Court cannot force the
19 OC LAFCO and/or the City to perform. Even if the City’s contention has merit, and CASB does
20 not concede that it does, the Court can grant CASB all of the relief it seeks by issuing a permanent
21 injunction enjoining the OC LAFCO from recording its notice of completion of the annexation of
22 Sunset Beach (which is certainly not a legislative act) until the City complies with both
23 Government Code section 57330 and Proposition 218. The Court undeniably has the authority to
24 issue such an injunction.

25 Moreover, the City’s contention ignores the fact that the legislature has provided a
26 standard by which discretionary decisions of a LAFCO may be attacked in court. Government
27 Code section 56107 (c) provides that:

28 In any action or proceeding to attack, review, set aside, void, or annul a
determination by a commission on grounds of noncompliance with this

1 division, any inquiry shall extend only as to whether there was fraud or a
2 prejudicial abuse of discretion. Prejudicial abuse of discretion is
established if the court finds that a determination or decision is not
supported by substantial evidence in light of the whole record.

3 Under the circumstances of this case, it was a clear prejudicial abuse of discretion by the OC
4 LAFCO to refuse to require the City of Huntington Beach to comply with both Government Code
5 section 57330 and Proposition 218 as conditions of the OC LAFCO's approval of the City's
6 "island" annexation application. Prior to making its decision on the City's annexation request, the
7 OC LAFCO was aware that the City was going to follow Section 57330 and impose its taxes on
8 the residents of Sunset Beach post-annexation and that the City was not going to comply with
9 Proposition 218 and first give the residents of Sunset Beach a vote on those taxes. Under the
10 circumstances, it was a prejudicial abuse of discretion for the OC LAFCO not to require the City
11 to comply with Proposition 218 as well as Government Code section 57330.

12 Regardless of whether the Court can force the LAFCO to impose these conditions on the
13 annexation, the Court can permanently enjoin the completion of the annexation until these
14 conditions are met. The City's argument that the Court cannot grant the relief that CASB seeks is
15 without merit.

16 **2. The Annexation May Not Proceed Independent of Taxation**

17 The City argues that the annexation of Sunset Beach may proceed independent of the
18 imposition of Huntington Beach taxes on the residents of Sunset Beach. [City's Opposition at p.
19 6.] The only support that the City offers for this contention is a LAFCO staff report stating that the
20 LAFCO "will not, as a condition of the annexation, extend taxes/fees to Sunset Beach." The City
21 goes so far as to say: "the City certainly could annex Sunset Beach and forego imposition of
22 municipal taxes within the affected area." [City's Opposition at p. 6:8-9.] This statement and the
23 City's argument that the annexation may proceed independent of the taxation issues ignores a
24 controlling statute and is without merit.

25 ///

26 ///

27 ///

28 ///

1 The City does not have the authority to decide whether to impose its taxes on Sunset Beach
2 residents. Government Code section 57330 compels the City to impose its taxes on Sunset Beach
3 residents as a condition of the annexation. The statute provides as follows:

4 Any territory annexed to a city or district shall be subject to a levying or
5 fixing in collection of any previously authorized taxes, benefit
assessments, fees, or charges of the city or district.

6 (Gov. Code § 57330.) This statute clearly and unequivocally compels Huntington Beach to impose
7 its taxes on Sunset Beach residents post-annexation. The fact that the LAFCO did not require the
8 imposition of taxes as a condition on the City's island annexation request is meaningless. Neither
9 the City nor the LAFCO have the authority to ignore the clear statutory mandate of Section 57330.
10 The Huntington Beach City Attorney has stated in writing that the City of Huntington Beach will
11 impose all of its taxes on the residents of Sunset Beach post-annexation with no provision for a
12 Proposition 218 vote.

13 If the OC LAFCO is allowed to record its notice of annexation, the City will begin
14 providing services to the residents of Sunset Beach and will begin imposing its taxes on the
15 residents of Sunset Beach without first allowing them a vote. The City will not have lawfully
16 complied with Government Code section 57330 because it will be collecting those taxes in
17 violation of the rights of Sunset Beach residents under Proposition 218. If the Court ultimately
18 agrees with CASB that the City's decision to impose taxes without a vote violates the Sunset
19 Beach resident's rights under Proposition 218, then the City will have to conduct a Proposition
20 218 vote. If that vote fails, the City will not be able to lawfully comply with Government Code
21 section 57330, which is a statutory condition of annexation. As a result, the annexation will have
22 to be rescinded. This would result in an extraordinary amount of confusion and waste of
23 government resources. The Court should issue a preliminary injunction prohibiting the OC
24 LAFCO from recording a notice of completion and maintain the status quo pending the outcome
25 of this litigation.

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11 **3. CASB Is Not Seeking To Enjoin A Tax.**

The City argues that CASB’s motion is barred by Article XIII, section 32 of the California Constitution which bars legal actions to prevent or enjoin the collection of a tax. The City asserts that even if the City imposed its municipal taxes on residents within the annexed area without an election, CASB would not be entitled to injunctive relief.

This argument ignores the fact that Huntington Beach has not yet annexed Sunset Beach, so it is not yet imposed its taxes on Sunset Beach residents. CASB is not seeking to enjoin the collection of any tax. CASB is seeking to enjoin the OC LAFCO from recording a notice of completion of the annexation. The City’s argument that CASB is somehow seeking to enjoin a tax has no factual support whatsoever and should be disregarded by this Court.

12 **B. The Balance of Hardships Strongly Favors CASB and Issuance of an Injunction.**

The City has not identified a single hardship that the City will suffer if the Court grants CASB’s application for a preliminary injunction. The OC LAFCO has not opposed CASB’s application, so the court must conclude that the OC LAFCO will also not suffer any hardship by the granting of CASB’s injunction application. Issuance of a preliminary injunction stopping the completion of the annexation and maintaining the status quo is the only reasonable and practical way to prevent harm to the residents of Sunset Beach, and in doing so will not cause the City or the OC LAFCO any hardship whatsoever. The balance of hardships tilts sharply in favor of CASB and strongly supports granting the requested injunction.

20 **1. CASB’s Legal Remedies Are Not Adequate**

21 Because the City cannot identify any hardship that it will suffer if the Court grants CASB’s
22 injunction request, the City again relies upon a legal argument that is not supported by the facts of
23 this case. The City again attempts to characterize this case as only being about the collection of
24 taxes and relies on a line of tax cases where the law affords an adequate legal remedy through
25 monetary compensation.

26 This case involves the annexation of the community of Sunset Beach into the City of
27 Huntington Beach, and therefore involves far more than the collection of taxes. The cases relied
28 upon by the City in its Opposition, *Rickley v. County of Los Angeles* (2004) 114 Cal.App.4th 1002

1 and *Crocker v. Scott* (1906) 149 Cal. 575 are not annexation cases. *Rickley* involves a challenge by
2 a property owner to a county that failed to properly account for the payment of property taxes.
3 *Crocker* involves taxes imposed on shares of bank stock. Both *Rickley* and *Crocker* involve only
4 the amount of tax due, and in those cases monetary damages were sufficient to compensate the
5 plaintiffs.

6 In this case, however, monetary damages will not be sufficient to compensate CASB and
7 the residents of Sunset Beach if the Court were to allow the annexation to go forward and not
8 grant CASB's injunction request. If the Court allows the OC LAFCO to record a notice of
9 completion of the annexation, not only will the residents of Sunset Beach be illegally exposed to
10 Huntington Beach taxes, the residents of Sunset Beach will also see dramatic changes in their
11 municipal services such as police, fire, emergency medical services, street and other public works
12 services. If the Court later rules in favor of CASB and orders that the annexation be rescinded, not
13 only will the City of Huntington Beach have to return unlawfully collected tax money, but all
14 municipal services will have to change again back to their original service providers. This
15 disruption of the provision of municipal services puts the residents of Sunset Beach at risk and
16 cannot be compensated monetarily.

17 In addition, if the court fails to enjoin the OC LAFCO from completing the annexation,
18 CASB will be significantly harmed because it will no longer be able to challenge this annexation
19 through a petition for writ of mandate. Once an annexation is completed, the only available
20 methods for challenging that annexation is through an action under the validating statute set forth
21 in Code of Civil Procedure section 860 or a quo warranto action by the Attorney General pursuant
22 to Code of Civil Procedure section 803. (*Hills For Everyone v. Local Agency Formation Comm.*
23 (1980) 105 Cal.App.3d 461, 465.) A validation action pursuant to Code of Civil Procedures
24 section 860 is an in rem proceeding because it involves the transfer of property. The change in the
25 nature of the action required to challenge a completed annexation demonstrates that this case is
26 about far more than taxes, and that monetary damages are insufficient to adequately compensate
27 the residents of Sunset Beach if an injunction is not issued.

28 ///

1 **2. The Purported MOU Between The City And The Sunset Beach**
2 **Community Association Does Not Provide Adequate Protection The**
3 **Residents of Sunset Beach**

4 If the Court fails to grant CASB’s injunction application and allows the annexation to go
5 forward, Sunset Beach will no longer exist as a separate community, and will in fact become part
6 of Huntington Beach. In its Opposition, the City seeks to overcome this loss of the Sunset Beach
7 community by pointing to a purported MOU between the City and a nonprofit citizen group called
8 the Sunset Beach Community Association. This MOU is a thinly veiled attempt by the City to
9 appease the residents of Sunset Beach as the City attempts to annex Sunset Beach without
10 allowing the residents of Sunset Beach to either vote on the annexation or on the imposition of
11 new taxes. The provisions of the MOU, to the extent they are even enforceable, provide only a
12 superficial attempt to maintain the identity of the Sunset Beach community which has been in
13 existence for approximately 106 years. This MOU does not change the fact that if the annexation
14 is allowed to go forward, Sunset Beach will become part of Huntington Beach and will be subject
15 to the control of the Huntington Beach City Council. The MOU does not provide an adequate
16 means of protection for the residents of Sunset Beach.

17 **3. Enjoining The Annexation Will Not Cause Uncertainty For Sunset Beach**
18 **Residents**

19 Finally, the City suggests that enjoining the completion of the annexation will somehow
20 harm the residents of Sunset Beach by prolonging uncertainty as to who will provide the residents
21 of Sunset Beach with municipal services. There is no evidence in the record that the residents of
22 Sunset Beach are at risk of losing their current municipal service providers. Nor is there any
23 evidence in the record that those service providers, including the County of Orange, are unable to
24 continue providing such services. Enjoining the completion of the annexation will not harm the
25 residents of Sunset Beach or cause any uncertainty as to who will provide them with municipal
26 services. If the Court issues an injunction, the residents of Sunset Beach will continue to receive
27 municipal services from the providers they have been using for years until such time as the
28 annexation is completed, if at all.

///

1 **PROOF OF SERVICE**

2 I, Michelle Rodgers, declare:

3 I am a resident of the State of California and over the age of eighteen years, and not a party
4 to the within action; my business address is 925 L Street, Suite 850, Sacramento, California
5 95814-4416. On January 11, 2011, I served the within document(s):

- 6 • **PETITIONER'S REPLY TO RESPONDENT CITY OF HUNTINGTON
7 BEACH'S OPPOSITION TO APPLICATION FOR PRELIMINARY
8 INJUNCTION**

9 by transmitting via facsimile from (916) 341-0849 the above listed document(s)
10 without error to the fax number(s) set forth below on this date before 5:00 p.m.
11 A copy of the transmittal/confirmation sheet is attached.

12 by placing the document(s) listed above in a sealed envelope with postage
13 thereon fully prepaid, in the United States mail at Sacramento, California
14 addressed as set forth below.

15 by causing personal delivery by _____ of the document(s) listed above
16 to the person(s) at the address(es) set forth below.

17 ✓ ✓ ✓ by placing the document(s) listed above in a sealed UPS envelope and affixing a
18 pre-paid air bill, and causing the envelope to be delivered overnight.

19 by personally delivering the document(s) listed above to the person(s) at the
20 address(es) set forth below.

21 by transmitting via e-mail or electronic transmission the document(s) listed
22 above to the person(s) at the e-mail address(es) set forth below.

23 Holly O. Whatley
24 Calantuno & Levin, PC
25 300 S. Grand Avenue, Suite 2700
26 Los Angeles, CA 90071-3137

Counsel for City of Huntington
Beach

27 Scott C. Smith
28 Best Best & Krieger
5 Park Plaza, Suite 1500
Irvine, CA 92614

Counsel for Orange County
LAFCO

I am readily familiar with the firm's practice of collection and processing correspondence
for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is
true and correct.

Executed on January 11, 2011, at Sacramento, California.


Michelle Rodgers, CCLS