STATE OF CALIFORNIA

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October 4, 1996

In Re: **Application of Section 11(a) of Article XIII of the California Constitution to 1991 Land Purchase by Coastal San Luis Resource Conservation District.**

Dear

This is in response to your August 2, 1996 letter to Mr. Larry Augusta, in which you request our opinion concerning assessment under California Constitution Article XIII, Section 11, subdivision (a) of three parcels of real property purchased in 1991 by the Coastal San Luis Resource Conservation District, formerly known as the Arroyo Grande Resource Conservation District, (District) located in San Luis Obispo County but not owned by the County.

The following facts are submitted for purposes of our analysis:

1. Formed in 1953, District covers some 280,000 acres of land in the County, over which it provides water conservation and development, flood control, agricultural conservation, and wildlife preservation. Of this area, 137,000 acres were approved for annexation to the District in 1978, by County of San Luis Obispo Local Agency Formation Commission (LAFCO) Resolution No. 78-11.

2. A Certificate of Completion authorizing this annexation without election, together with the District's Resolution No. 78-5 ordering the annexation, payment of the fees, and filing with the State Board of Equalization, were recorded in the Office of the San Luis Obispo County Recorder on July 26, 1978. However, none of the annexation documents or fees were ever transmitted to the Board of Equalization or the County Auditor as required. On December 18, 1991, when District purchased three parcels (AP No.'s 073-121-026, 073-131-001, 073-131-007)

located within the territory annexed in 1978, the Assessor found through a Tax Rate Areas cross-match, that the parcels were shown to be outside the District's boundaries and were therefore taxable under California Constitution Article XIII Section 11(a). The District's map attached to the LAFCO Resolution establishes that the boundaries of the annexed territory would include the three parcels purchased in 1991.

Your questions are (1) whether the District's boundaries were changed by the 1978 annexation approved by LAFCO even though the statement of the boundary change was never filed with the Secretary of State, Board of Equalization, or the County Auditor, (2) if so, when did the annexation become effective for purposes of determining the District's boundaries under Article XIII, Section 11(a), and (3) whether the three parcels acquired by the District in 1991, are taxable under Section 11(a) as "lands owned by a local government that are outside its boundaries."

For the reasons hereinafter explained, the answer to your first question is "yes," the boundaries of the District were changed since the annexation occurred in July 1978; the answer to your second question is that the annexation became effective on the date of recordation of the Certificate of Completion with the County-Recorder on July 26, 1978; and the answer to your final question is that the parcels acquired by the District in 1991 were within the boundaries of the District and, therefore, exempt from taxation under Article XIII, Section 3(b). We set forth these conclusions and the following discussion, however, with the caveat that we have no authority to pass judgment on the validity of this or any other annexation, as the validity or invalidity of an annexation is a matter for a court to determine under specific statutory parameters. However, this does represent our advice as to the issue of whether the parcels in question are exempt or taxable.

As you are aware, Section 3, subdivision (b) of Article XIII of the California Constitution defines as exempt property, "Property owned by a local government, except as provided in Section 11(a)." Section 11, subdivision (a) states in pertinent part,

> "Lands owned by a local government that are outside its boundaries, including rights to use or divert water from surface or underground sources and any other interests in land are taxable if ...(2) they are located outside Inyo or Mono County and were taxable when acquired by a local government. Improvements owned by a local government that are outside its boundaries are taxable if they were taxable when acquired or were constructed by the local government to replace improvements which were taxable when acquired."

This authorization to tax local government property located outside its boundaries is an exception to the general exemption for property owned by a local government, which is founded on two principal conditions: 1) that the situs of the property acquired is **outside** the boundaries of the local government, in this case the District, and 2) that the property purchased was taxable when acquired. The assessor's determination of the taxability of publicly owned property depends in large part upon knowing the boundaries of local governments and then locating the properties acquired by the local government outside these boundaries.

It is a well known practice that one way for a local government to "beat the Section 11(a) assessment" is to annex the property it intends to acquire so that it is not **outside** of its boundaries. (Taxing California Property, Volume 1, Ehrman & Flavin, §6.11.) The court of appeal recognized this principle in the City of Long Beach v. Bd. of Supervisors, (1958), 50 Cal.2d 674, 678, by stating that

> "When municipally owned properties located outside the city limits are annexed to the city, they are in legal effect discharged from existing tax liens."

Thus, local government property once subject to taxation as being outside the government's boundaries becomes exempt under Art.XIII, Sec.3(b) when annexed by the local government. For this reason, the answer to each of your questions rests on whether and when the annexation to the District was effective.

1. Did the District's boundaries change in the 1978 annexation approved by LAFCO and the District although a statement of boundary change was never filed with the Secretary of State, Board of Equalization, County Auditor, and County Assessor? Yes.

In California, the power of each city, district, water agency, and county water authority to establish or change its boundaries by annexation or reorganization is delegated to each county's local agency formation commission (LAFCO). In 1978, there were three statutes governing the boundaries and organization of cities and special districts in California: 1)the Knox-Nesbit Act of 1963 (former Government Code Sections 54773 *et seq.*), which established all LAFCO's and empowered them with specified regulatory authority over boundary changes in local governments, 2) the District Reorganization Act of 1965 (former Government codes Sections 56000 *et seq.*), which combined various separate laws regarding boundary changes in districts into one statute, and 3) the Municipal Organization Act of 1977 (former Government Code Sections 35000 *et seq.*), which consolidated under one statute all of the requirements on city incorporation and annexation. In 1985, the Legislature adopted the Cortese-Knox Local Government Reorganization Act of 1985, (present Government Code Sections 56000 *et seq.*), which superseded all of these and is not relevant to this case.

Because of the authority vested in each LAFCO, no single public entity had (or has) the independent power to expand or alter its boundaries without complying with the provisions of the statutes and the completion of proceedings, including final approval by the appropriate LAFCO.[1] Since you are questioning whether the District's boundaries were legally changed by the 1978 annexation, it is necessary to briefly examine how the particular statute governing the District's annexation proceedings was constructed at the time.

Pursuant to the requirements of Government Code Sections 56220-56260 in effect in 1977-78, an application for a proposed reorganization or annexation to the appropriate LAFCO

[1] Through the act, the Legislature had occupied the field of annexation of unincorporated areas. Ferrini v. City of San Luis Obispo, (1983) 150 Cal.App.3d 239, 197 Cal.Rptr. 694.

had to be made by the particular district seeking the change in boundaries. After studying the proposal and formulating a recommendation, the LAFCO scheduled a public hearing and adopted a resolution which either approved, conditionally approved, or denied the reorganization or annexation proposal. If approved, the resolution recited among other things, the reason for the reorganization, the legal description and boundaries of the affected territories, any terms or conditions of the reorganization (including an order for the board of directors of the district to confirm LAFCO's determination), and an order directing the LAFCO executive officer to execute and record a Certificate of Completion and to file the Certificate with the Secretary of State and other agencies, such as the Board of Equalization, the County Assessor and County Auditor. (Government Code Sections 56270-56450.)

These statutory provisions indicate that several prescribed steps were required following the hearing proceedings to both complete the annexation and to render it effective for all purposes. Under former Government Code Sections 56450 through 56452, the clerk of the LAFCO or the legislative body approving the final annexation resolution was required to (1) prepare and execute the certificate of completion, (2) file the certificate of completion with the Secretary of State, and (3) upon receipt of the Secretary of State's proof of filing, record the filed certificate of completion with the county recorder. For purposes of determining when the annexation was complete, former Government Code Section 56454 stated:

> "The change of organization or reorganization shall be complete from the date of filing the certificate of completion with the Secretary of State and effective from the dates specified in Section 56455 and 56456."

Former Government Code Section 56455 stated that the effective date of the annexation, if no date was specified in the terms and conditions approving the annexation, was the date of recordation with the county recorder. That section stated as follows:

> "If no effective date shall have been fixed in any of the terms and conditions, the effective date of a change of organization or a reorganization shall be the date of the recordation made with the county recorder and, if filed with the recorder of more than one county, the date of the last such recordation."

Former Government Code Section 56457 further designated that there was also an effective date "for tax purposes." That section stated:

> "The tax or assessment levying authority of a city or district shall also make such filings as may be provided for by Chapter 8 (commencing at Section 54900) of Part 1, Division 2, Title 5, and for such purpose a change of organization or reorganization shall be deemed to be effective from the date of filing of the certificate of completion, with the Secretary of State."

Based on the foregoing provisions, it appears that when a certificate of completion was filed with the Secretary of State, a reorganization or annexation was considered complete for all

purposes. That is, the annexation was valid and binding with respect to its boundaries and its taxing authority as to public agencies and persons affected. The recordation of the filed certificate of completion was to follow the filing with the Secretary of State, thereby providing formal notification to all persons in the county that the annexation was effective. Thus, the effective date of the annexation could be no earlier than the date of recordation with the county recorder, since it was presumably certified as complete with the Secretary of State prior to that time. In the instant case, the LAFCO clerk apparently did not file the Certificate of Completion with the Secretary of State, thereby failing to complete the annexation. However, the Certificate was duly recorded with the county recorder, and thus notified all persons and agencies in the county that the annexation was effective at that point.

Since the District in the instant case has not levied any taxes or assessments upon the properties in the annexed territory, it is not necessary to consider here the completion or effective date of the annexation from the standpoint of tax consequences. Our discussion relates solely to the consequences of the District's failure to complete the annexation (by filing with the Secretary of State) as applied to the boundaries of its jurisdiction. Stated another way, were the District's boundaries actually changed by the annexation at the time of recordation of the Certificate of Completion, given the fact that the clerk skipped the prerequisite step of filing it with the Secretary of State? Based on our understanding of the relevant case law, the answer is yes.

The general rule in deciding on the sufficiency and effective date of a proposal for annexation, is that the legislative body (LAFCO, district, or other public agency) sits in a quasi-judicial capacity. Thus, where its proceedings have afforded the parties fair opportunity to be heard and resulted in a formal statement (ordinance or resolution) describing and approving the annexation, and the affected public agencies and residents acted upon that annexation, a reviewing court will not declare the proceedings or annexation invalid on procedural grounds. (34 Cal.Jur.2d 107-109.) Once an ordinance or resolution approving an annexation becomes effective, the territory is annexed, despite certain ministerial or procedural duties which remain, and courts will not interfere, unless "...some substantial provision of the law has been violated or where fraud has been perpetrated in the matter of the boundaries or the extent of the annexed territory." (City of Anaheim v. City of Fullerton, (1951) 102 Cal.App.2d 395, 402.

Dealing specifically with the effect of the failure to file the annexation with the Secretary of State is Crowl v. Board of Trustees, (1930) 109 Cal.App. 214. The court denied a petition to review the annexation proceedings in which the city had passed an ordinance approving the annexation and had ordered a certified copy to be filed with the Secretary of State, but the city clerk had failed to perform the filing. In discussing the reasons for its denial, the court stated:

> "An examination of the authorities shows that after all the steps for annexation have been taken, even though there may be some irregularity therein, the municipal corporation exercises dominion over the annexed lands in at least a *de facto* capacity. The authorities hold that only before such *de facto* character has attached, that

> certiorari will lie at the instance of a citizen or taxpayer to secure the annulment of irregular proceedings." (p. 215)

The facts of the case established that all of the steps for the annexation had been taken and everyone had presumed that the clerk had filed the proper documents with the Secretary of State, (including the City of Southgate which had assumed its jurisdiction and control over the annexed territory). Holding that no one but the State can question the existence and/or validity of a de facto annexation or incorporation, the court cited earlier authority in Keech v. Joplin, 157 Cal.1, and further explained:

> "...'The evidence abundantly shows that the district has been organized and that it has been acting as a district. In other words, that it is a *de facto* district. It is a public corporation of a similar character to irrigation districts and reclamation districts. The law is well settled that the validity of the organization of such a district cannot be questioned by private individuals, but only in a proceeding in *quo warranto* at the suit of the state." (p. 14)

In a later case, Rafferty v. City of Covina, (1955) 133 Cal.App.2d 745, the city clerk of the annexing city also failed to file the ordinance approving the annexation with the Secretary of State. The relevant code section required such filing and specifically stated that the "annexation is complete" from the date of such filing. (See former Government Code Section 35318.) In refusing to annul the validity of the annexation proceedings on this ground, the court stated:

> "It is obvious that these acts [filing with the Secretary of State] were purely ministerial in character. They were simply routine procedure to give notice to the world that the city council of Covina had approved the annexation of the territory encompassed within WAD 6. These ministerial acts could not invalidate the action which the city council took and had a perfect right to take on September 17th,..." (p.754)

Numerous subsequent cases have held that irregularities and/or omissions on the part of LAFCO or other public officials in the proceedings would not render the reorganization or annexation invalid. (Friends of Mount Diablo v. County of Contra Costa, (1977) 72 Cal.App.3d 1006,1012.) Two cases in particular have expressed the position that where there was "substantial compliance" with the statutes, the annexation/reorganization procedures will not be reviewed even though LAFCO (or those acting on its behalf) disregarded some of the requirements.

In Del Paso Recreation & Park District v. Board of Supervisors, (1973) 33 Cal.App.3d 483, the Sacramento County LAFCO adopted a resolution approving a reorganization involving the detachment of a portion of the Del Paso Recreation and Park District and annexation to the Citrus Heights Recreation and Park District. Although properly filed with the Secretary of State and recorded with the County, the resolution was faulty in three respects: 1) it contained an erroneous and incomplete description of the boundaries of the affected territory, 2) the LAFCO

executive officer did not mail notice of the proposal to each landowner within the affected territory (thereby depriving them of their right to protest per Section 56432), and 3) no consent was ever obtained from Del Paso, the affected territory. The court held that the reorganization was effective anyway, based on LAFCO's "substantial compliance" with the law:

> "...the thrust of plaintiff's attack is that the procedures followed in the questioned reorganization were improper, and, in one instance unconstitutional. In no respect does the second amended complaint satisfactorily raise issues of unconstitutionality or invalidity. In the only instance of irregularity - imperfect description of the detached land - the pleadings filed disclose plaintiff's awareness, at all times, of the precise area proposed for detachment and annexation, and in addition, they must be deemed to have waived their right to complain of any such defect." (p.502.)

In Morrow Hills Community Services District v. Board of Supervisors, (1978) 78 Cal.App.3d 765, the court analyzed the same general statutory provisions effecting district reorganizations as are pertinent to the instant case here. The facts were that San Diego County LAFCO approved a detachment proposal from the Morrow Hills Community Services District by a resolution dated July 3, 1972, which removed certain territory from the District and exempted it from liability for taxes and bonded indebtedness imposed by the District. Since the District refused to schedule any hearings or consider the detachment, the Board of Supervisors held hearings and adopted a resolution approving the detachment, clearly stating that the effective date would be July 1, 1974, (after which the proponent was no longer liable for payment for any bonds or taxes to the District).

The District sued on the grounds that, the Board and LAFCO failed to comply with the clear mandate in Government Code Section 56492 requiring that any "territory detached from a district shall continue to be liable for the payment of principal, interest and any other amounts which shall become due on account on any bonds...". (p.772-773.) The court held that a "reasonable interpretation" of this and all other provisions in the statute was necessary in order to effectuate the Legislature's purpose in allowing LAFCO to accomplish reorganizations. A "reasonable interpretation" allowed LAFCO to "reallocate" the debt, as long as private contractual rights were not impaired, and was a proper exercise of its discretion under the District Reorganization Act, despite the requirements of Section 56492. Thus, strict construction of the Government Code procedural requirements for district reorganizations was held **not** a proper interpretation the statute. As the court stated on p.779,

> "We note particularly section 56006 which provides us with considerable instruction:
>
> 'This division shall be liberally construed to effectuate its purposes. No change of organization or reorganization ordered under this division shall be invalidated by any defect, error, irregularity or omission in any act, determination or procedure which does not adversely and substantially affect the rights of any person, city. county, district, the state or any agency or subdivision of the state. All determinations made by

a commission or by any legislative body under and pursuant to the provisions of this division shall be final and conclusive in the absence of fraud or prejudicial abuse of discretion. In any action or proceeding to review any determination made by a commission or by a legislative body the sole inquiry shall be whether there was fraud or prejudicial abuse of discretion. Prejudicial abuse of discretion shall be established if the court finds that any determination of a commission or a legislative body was not supported by substantial evidence in light of the whole record.'"

The circumstances in the instant case certainly do not involve the laundry list of procedural and statutory violations present in Del Paso Recreation and Park District, *supra*, and Morrow Hills Community Services District, *supra*. Clearly, the rationale of those cases applies *a fortiori* to the situation here present.

The District's proposal to annex 137,000 acres was first initiated in 1977, and a public hearing before LAFCO was held in June 1978. LAFCO approved the proposal by its adoption of Resolution No. 78-11 dated June 15, 1978. One of the conditions of approval as stated in Resolution No. 78-11 was that the District verify its final approval of the annexation by means of a decision of its board of directors. This was subsequently accomplished through the District's adoption of Resolution No. 78-5, dated July 17, 1978. Upon receipt of this resolution, the LAFCO executive officer thereafter executed the Certificate of Completion and recorded it with the County Recorder one day later on July 26, 1978, neglecting to file it first with the Secretary of State.

The only apparent irregularity in these proceedings was the failure to file with the Secretary of Sate. Although we are not in a position to determine the validity or invalidity of the annexation, as previously noted, based upon the analyses and decisions set forth in the foregoing cases, we have no reason to believe that a court now considering this question would render the 1978 annexation incomplete or otherwise invalid because of this single irregularity. Certainly, there is no appearance of fraud or prejudicial abuse of discretion. Nor are there any facts indicating that private contractual rights were violated or that due process was denied, or that any public agency or person affected has challenged the proceedings in all these years. The fact that the annexation was recorded, at least, provided notification to the local affected residents and agencies that the boundaries had changed, and to some extent reduced any harm that could have resulted from failing to file with the Secretary of State. It also is quite clear that the District has treated the 137,000 acre annexation as being within its boundaries since 1978, thereby rendering it a *de facto* annexation (per Crowl, supra). In our view, the holding in Rafferty, supra, is directly on point. The filing with the Secretary of State of the Certificate of Completion which should have occurred in 1978 was ministerial and routine, not a substantive step which goes to the validity of the annexation, and should not affect the validity of the annexation.

Finally, we note that it is the standard practice of the Legislature to adopt "curative acts" known as "validating statutes" designed to cure defects, omissions, or irregularities in prior transactions or proceedings of local governments each year. The Legislature may validate past transactions, if it could have authorized them initially, provided there is no interference with

vested rights. Our research disclosed that the Legislature adopted the Second Validating Act of 1978 (Chpt.666), effective on September 11, 1978 as an urgency measure, and the Third Validating Act of 1978 (Chpt. 667), effective on January 1, 1979, with the express intention of validating "the organization, boundaries, acts, proceedings, and bonds of public bodies...". Included in the definitional list of "public bodies" whose acts, boundaries, and proceedings are validated by these statutes, are "resource conservation districts," like the one in the instant case.

Specifically directed to the matter of boundaries and proceedings are Sections 3 and 4 of Chpt. 666 Stats. of 1978, which state in pertinent part as follows:

> "SEC.3. The boundaries of every public body as heretofore established, defined, or recorded, or as heretofore actually shown on maps or plats used by the assessor, are hereby confirmed, validated and declared legally established."

> "SEC.4. All acts and proceedings heretofore taken by any public body or bodies under any law, or under color of any law, for the annexation or inclusion of territory into any such public body or for the annexation of any such public body to any other such public body...are hereby confirmed validated, and declared legally effective. This shall include all acts and proceedings of the governing board of any such public body and of any person, public officer, board, or agency heretofore done or taken upon the question of the annexation or inclusion ... of such territory...".

Based on the foregoing, it appears that the Legislature intended to "cure" any irregularities or omissions that occurred in the proceedings to complete annexations and reorganizations approved and recorded in 1978. As a direct consequence of the "acts" (resolutions) by LAFCO and the District, the boundary change of the 137,000 acre annexation to the District was recorded with the Certificate of Completion on July 26, 1978, even though the Certificate of Compliance was never filed with the Secretary of State. While the final determination of the validity or invalidity of annexation proceedings remains with the courts, it would seem that the application of the Second or Third Validating Acts (1978) to the District's annexation resolves such an error (omission) and validates the annexation, confirming the boundary change and compliance with the provisions of the Government Code provisions that authorized it in the first place.

2. When did the annexation become effective for purposes of determining the District's boundaries under Article XIII, Section 11(a)? July 26, 1978.

As previously explained, the provisions of former Government Code Section 56455 establish the effective date of any annexation which was not fixed in the terms and conditions of the approval to the date of the recordation made with the county recorder.

Since there seems to be no date fixed in either the LAFCO resolution or in the resolution by the District Board of Directors granting final approval of the annexation, the

effective date for this annexation was the date of the recordation of the Certificate of Completion with the County Recorder on July 26, 1978.

3. Are the three parcels acquired by the District in 1991 taxable under Article XIII, Section 11 (a) as "lands owned by a local government that are outside its boundaries."

No.

Based upon the foregoing, the boundaries of the District are the territorial limits of its duly recorded area, including any completed annexations,(not the boundaries of the state as the District seemed to suggest). Since the District purchased in 1991 the three parcels of real property within the boundaries of the 137,000 acre annexation effective in 1978, these parcels are exempt from property tax pursuant to Article XIII, Section 3(b).

The views expressed in this letter are, of course, advisory only and are not binding upon your office or the assessor of any county. Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this objective are appreciated.

Sincerely,

Kristine Cazadd

Kristine Cazadd
Senior Tax Counsel

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