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Gov't Code § 6103

Attorneys for Respondent / Defendant  
ORANGE COUNTY LOCAL AGENCY  
FORMATION COMMISSION

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE

CITIZEN'S ASSOCIATION OF SUNSET  
BEACH,

Petitioner / Plaintiff,

v.

ORANGE COUNTY LOCAL AGENCY  
FORMATION COMMISSION, a  
governmental entity;  
THE CITY OF HUNTINGTON BEACH, a  
municipal corporation; and  
DOES 1 through 50, inclusive,

Respondents / Defendants.

Case No. 30-2010-00431832  
Judge: Hon. Frederick Horn

ORANGE COUNTY LOCAL AGENCY  
FORMATION COMMISSION'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO  
PETITION FOR WRIT OF MANDATE

Date: August 11, 2011  
Time: 1:30 p.m.  
Dept.: C31

1 **I. INTRODUCTION**

2 Respondent Orange County Local Agency Formation Commission (“LAFCO”) joins in  
3 the arguments raised by the City of Huntington Beach in its Memorandum of Points and  
4 Authorities in Opposition to Petition for Writ of Mandate. LAFCO offers this brief opposition of  
5 its own to emphasize one critical point – there is no ground to issue mandamus against LAFCO  
6 because under the applicable law, LAFCO had no alternative but to approve the City’s  
7 application. That approval is the only action LAFCO took related to this case, and there is no real  
8 dispute as to the propriety of that action. Rather, this is a dispute between Petitioner and the City  
9 over taxes. LAFCO has no role in that dispute. As such there is no grounds to issue a writ  
10 against LAFCO.

11  
12 **II. PETITIONER HAS NO GROUNDS FOR A WRIT AGAINST LAFCO**

13 It is apparent from reviewing Petitioner’s Memorandum of Points and Authorities that  
14 Petitioner is disgruntled not with the annexation of the unincorporated community of Sunset  
15 Beach into the City of Huntington Beach, but instead with the potential of being subjected to the  
16 City’s taxes following that annexation. Petitioner offers no legal reason as to why LAFCO  
17 should not have approved the annexation. But approving the annexation is all LAFCO did here.  
18 LAFCO is not a taxing authority and did not impose any taxes, as Petitioners admit in their  
19 opening brief. See Pet’n. Mem. P. & A. at 9:8-9. Thus, while Petitioners seek “prohibitory  
20 mandate” to “restrain the unlawful performance of a ministerial act,” id. at 8:14-15, they offer no  
21 ministerial act which LAFCO performed unlawfully.

22 In fact, LAFCO’s action in approving the annexation was not only lawful, it was  
23 compelled under the governing law. Government Code section 56375.3 provides that LAFCO  
24 “shall” approve an annexation application (without the protest proceedings specified under Part 4  
25 of the Cortese-Knox-Hertzberg Act (“CKH”)) if all of the following conditions are met:

- 26  The application was initiated between January 1, 2000 and January 1, 2014;  
27  The annexation is proposed by resolution of the affected city;

- 1           □ The territory to be annexed is less than 150 acres, and is an island surrounded as
- 2           provided under that statute;
- 3           □ The territory is substantially developed, or developing;
- 4           □ The territory is not prime agricultural land; and
- 5           □ The territory “will benefit from the change of organization or reorganization or is
- 6           receiving benefits from the annexing city.”

7           See Gov’t Code § 56375.3(a)(1), (b).

8           All of these conditions were met here. In the Resolution approving the City’s annexation

9           application, LAFCO found that the requirements of Section 56375.3 were met. See Adm. Record

10          (“AR”) Vol. 5, Tab 47, p. 1173. The record supports that finding.

- 11           ✓ The City’s application to annex Sunset Beach was received on May 19, 2010. See
- 12           AR Vol. 3, Tab 13, p. 578;
- 13           ✓ The annexation was proposed by resolution of the affected City (Huntington
- 14           Beach). See AR Vol. 13, Tab 94;
- 15           ✓ Sunset Beach is approximately 134 acres and is substantially surrounded by the
- 16           City of Huntington Beach to the north, east, and south, and the Pacific Ocean to
- 17           the west. See AR Vol. 4, Tab 45, p. 882;
- 18           ✓ Sunset Beach is substantially developed; in fact it is “built-out.” See AR Vol. 4,
- 19           Tab 45, p. 896;
- 20           ✓ No agricultural land is contained within or adjacent to the proposed project
- 21           territory. See AR Vol. 4, Tab 45, p. 894; and
- 22           ✓ Sunset Beach will benefit from, and is receiving benefits from the annexing city.
- 23           See AR Vol. 4, Tab 45, p. 886 (chart showing pre-annexation and post-annexation
- 24           benefits Sunset Beach receives and will receive from the City of Huntington
- 25           Beach).

26          Petitioners do not dispute any of these factors. Therefore, LAFCO was required by law to

27          approve the annexation.

28

1 The only fault Petitioner appears to assign to LAFCO is in not conditioning its approval of  
2 the annexation on a successful tax election. Not only was LAFCO not required to impose that  
3 condition, however, such a condition would either be pointless, or it would be prohibited as  
4 conflicting with LAFCO's statutory duty to approve the annexation under Section 56375.3.

5 If the annexation had been conditioned on a tax election as Petitioner desires, the residents  
6 would either have approved the taxes or rejected them. If they approved those taxes, the entire  
7 exercise would have been pointless and circular because the annexation would remain approved –  
8 exactly as it was before the election. If the electorate rejected the taxes, however, then the  
9 condition would have failed, and with it the annexation. The tax election would have become a  
10 de facto election on the annexation. The law does not allow such elections, however, where as  
11 here the requirements of Section 56375.3 are met. See Gov't Code § 56375.3(a)(1). By  
12 conditioning approval of the annexation on approval of taxes in an election, if the taxes were then  
13 not approved in the election, LAFCO would have denied an application that the law required it to  
14 grant.

15 The propriety of the annexation is a separate issue from the propriety of the taxes.  
16 LAFCO has no role in assessing the City's taxes. Under Section 56375.3, LAFCO's role is to  
17 determine if all of the conditions under that section are met, and if they are, it "shall" approve the  
18 annexation. Section 56367.3 does not authorize LAFCO to deny an annexation application that  
19 meets all of that section's requirements simply because the application does not also include a tax  
20 election. LAFCO did what it was required to do under the undisputed facts it was presented and  
21 approved the annexation. There are no grounds to issue any order prohibiting LAFCO from  
22 taking an act that its governing statute (the CKH Act) requires it to take. The Petition, as it  
23 applies to LAFCO, should be denied.

24  
25 **III. CONCLUSION**

26 Petitioner has not raised any issue with the validity of the annexation, which is all LAFCO  
27 processed. Petitioner's concern is with the validity of the taxes, which are beyond LAFCO's  
28 control. The tax issue is a matter to be resolved between Petitioner and the City of Huntington

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Beach. Accordingly, LAFCO respectfully requests the Court deny the Petition and enter judgment in favor of LAFCO.

Dated: July 1, 2011

Respectfully submitted,  
BEST BEST & KRIEGER LLP

By:   
\_\_\_\_\_  
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**PROOF OF SERVICE BY OVERNIGHT DELIVERY**

I am a citizen of the United States and employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 5 Park Plaza, Suite 1500, Irvine, California 92614. On July 1, 2011, I deposited with UPS, a true and correct copy of the within documents:

ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION'S  
MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITION  
FOR WRIT OF MANDATE

in a sealed envelope, addressed as follows:

Attorneys for Plaintiff  
CITIZEN'S ASSOCIATION  
OF SUNSET BEACH

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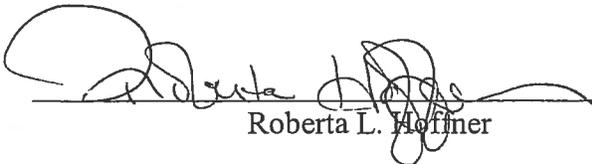
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Following ordinary business practices, the envelope was sealed and placed for collection by Federal Express on this date, and would, in the ordinary course of business, be retrieved by Federal Express for overnight delivery on this date.

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

Executed on July 1, 2011, at Irvine, California.

  
Roberta L. Hoffner