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October 2, 2018

Board of Directors of the San Bernardino
County Fire Protection District
Service Zone FP-5 Expansion Protest
157 W. 5th Street, 2nd Floor
San Bernardino, CA 92415 - 0451

Re: Protest Letter in Regards to Resolution Nos. 2018-99 and 2018-100

Ladies and gentlemen:

This letter is a protest against the County of San Bernardino's Resolution Nos. 2018-99 and 2018-100 and this letter is to be a matter of public record upon receipt.

BACKGROUND

On June 12, 2018, the Board of Directors of the San Bernardino County Fire Protection District (i.e., San Bernardino County Board of Supervisors), hereinafter referred to as "COUNTY", adopted two resolutions. They were:

- Resolution No. 2018-99, "Resolution of the Board of Directors of the San Bernardino County Fire Protection District to Initiate Proceedings to Expand the Boundaries of Service Zone FP-5"

- Resolution No. 2018-100, "Resolution of the Board of Directors of the San Bernardino County Fire Protection District Adopting Protest Procedures for the Formation or Changing of Boundaries for Service Zones Pursuant to California Health and Safety Code Section 13950"

Both resolutions were purportedly adopted under California Health and Safety Code Sections 13950-13951.

In short, Resolution No. 2018-99 proposes the expansion of Service Zone FP-5 and Resolution No. 2018-100 sets out the protest procedures for the change in the boundaries of the service zone.

Service Zone FP-5 was formed as a registered-voter district approved by two-thirds of the voters in June 2006. The ballot measure authorized the County of San Bernardino to:

> . . . levy a special tax of $117 per parcel per year for increased fire and emergency medical services, with a maximum 3% annual cost of living increase, as needed, beginning fiscal year 2006-2007 and continuing each year thereafter."

In 2006, the newly formed SP-5 service zone was for the Helendale/Silver Lakes area which now consists of approximately 5.6 square miles. Resolution No. 2018-99 will expand the original service zone to "12,207,306 acres (19,073 Square Miles) more or less" – an area 3,400 times larger.

In short, Resolution No. 2018-100 will allow the COUNTY to use a modified protest procedure to consider only protests from property owners in the proposed expanded service zone.

GROUNDS, FACTS AND EVIDENCE

I oppose and am protesting the COUNTY'S Resolution Nos. 2018-99 and 2018-100 on the following grounds, facts and evidence:

I. HEALTH AND SAFETY CODE SECTIONS 13950 AND 13951 DO NOT GIVE THE COUNTY THE AUTHORITY TO EXPAND SERVICE AREA FP-5

The COUNTY claims it is acting under the authority of Health and Safety Code Sections 13950 and 13951 to expand Service Zone SP-5.

When Service Zone FP-5 was formed in 2006, the Special Tax Information provided to the voters with the ballots at that time stated in pertinent part:

> *The Board of Supervisors retains the authority otherwise conferred by law to make changes <u>in</u> the boundaries of the proposed Special Tax area, the extent of the services to be provided and the amount of the Special Tax (including the amounts of any individual taxed); provided, however, **the Special Tax area shall not be expanded** nor any tax increased beyond that specified by this notice without additional proceedings in compliance with all laws.* [emphasis added]

The Special Tax Information of Service Zone FP-5 is clear. As a registered-voter district, Service Zone SP-5 cannot be expanded without voter approval.

II. HEALTH AND SAFETY CODE SECTIONS 13950 AND 13951 DO NOT GIVE THE COUNTY THE AUTHORITY TO IMPOSE A "LEVY" IN THE EXPANED AREA

The COUNTY claims it is acting under the authority of Health and Safety Code Sections 13950 and 13951 and thereby has the authority to impose a "levy in the annual amount of $157.26." (See Notice mailed to property owners.)

While Health and Safety Code Sections 13950 and 13951 do allow the COUNTY to "form one or more service zones" and "change the boundaries of a service zone," Health and Safety Code Sections 13950 and 13951 do <u>not</u> give the COUNTY the authority to impose a "levy" without voter approval. The imposing of local tax levies is limited by California Constitution Article XIII C Section 2(d) which states in pertinent part:

> *No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote.*

III. SERVICE ZONE SP-5 IS A "REGISTERED VOTER DISTRICT" AND THE COUNTY MUST CONSIDER REGISTERED VOTER PROTESTS

Service Zone FP-5 was originally formed as, and currently is, a "registered voter district" as it is inhabited territory.

California Code, Government Code – GOV § 56072 states:

> *"Registered-voter district" means a district whose principal act provides that registered voters residing within the district are entitled to vote for the election of district officers, incurring of bonded indebtedness, or* ***any other district matters****.* [emphasis added]

Government Code 57075(a)(2) states that any change of organization or reorganization is:

> *. . . subject to confirmation by the* ***registered voters*** *residing within the affected territory if written protests have been filed and not withdrawn by* ***either*** *of the following:*
>
> *(A) At least 25 percent, but not less than 50 percent, of the* ***registered voters*** *residing in the affected territory.*
>
> *(B) At least 25 percent of the number of owners of land who also own at least 25 percent of the assessed value of land within the affected territory.*
> [emphasis added]

Service Zone FP-5 is an inhabited territory and therefore Section 57078(b) of the Government Code applies. Section 57078(b) of the Government Code states:

> *In the case of any reorganization or change of organization, a majority protest shall be deemed to exist and the proposed change of organization or reorganization shall be terminated if the commission finds that written protests filed and not withdrawn prior to the conclusion of the hearing represent any of the following:*
>
> *(a) In the case of uninhabited territory, landowners owning 50 percent or more of the assessed value of the land within the territory.*
>
> ***(b) In the case of inhabited territory, 50 percent or more of the voters residing in the territory.*** [emphasis added]

California Code, Government Code Section 57075(a)(2) and Section 57078(b) are clear; the COUNTY must consider registered voter protests.

The COUNTY'S protest procedures do not include mailings to registered voters - only landowners many of which do not reside in the County of San Bernardino.

IV. THE COUNTY DOES NOT HAVE THE AUTHORITY TO CONVERT A "REGISTERED-VOTER DISTRICT" INTO A "LANDOWNER-VOTER DISTRICT"

While Health and Safety Code Section does allow the COUNTY to "change the boundaries of a service zone", it does not allow the COUNTY to convert a "registered-voter district" into a "landowner-voter district." The COUNTY therefore cannot expand Service Zone FP-5 without a two-thirds majority vote.

V. THE COUNTY'S PROPOSED EXPANSION OF SERVICE AREA FP-5 WITHOUT THE APPROVAL OF REGISTERED VOTERS WILL ADVERSELY IMPACT THE RIGHTS OF REGISTERED VOTERS RESIDING IN THE AFFECTED TERRITORY

The COUNTY'S proposed Service Area FP-5 expansion without the approval of registered voters will adversely impact the rights of registered voters residing in the affected territory. To the extent the COUNTY is requiring landowners to lodge a formal protest before registered voters can exercise their right; the requirement unlawfully abridges the electorate right to vote on the proposed $157.26 per parcel tax.

The County of San Bernardino Fire Protection Service provides fire and emergency services to all people who reside in Service Area FP-5 as well as visitors to the area. Some registered voters in the area are tenants (and not property owners) and their safety as well as the safety of their families is just as important as that of property owners. They have the right to vote and protest in matters of their safety and they don't give up that right just because they are not property owners. In the <u>original</u> formation of Service Area FP-5, all the registered voters in the affected territory were provided the opportunity to vote. The COUNTY'S current proposed expansion of Service Area FP-5 with its modified protest procedures denies them that right. Moreover, the registered voters for the formation of the original 5.6-square-mile service zone cannot prevent registered voters in the proposed 19,073-square-mile expansion area their right to vote or protest on this or any other tax matter.

VI. COUNTY RESOLUTION NO. 2018-100 MODIFY PROCEDURE IS NOT IN KEEPING WITH STATE STATUTES OR GENERALLY-ACCEPTED PROTEST PROCEDURES

COUNTY Resolution No. 2018-100 is a modified protest procedure that is not in keeping with State statutes or generally-accepted protest procedures.

1. Notices were mailed to property owners and not to registered voters which thereby violates

California Code, Government Code Sections 57075(a) and 57078(b).

2. The COUNTY'S protest procedures are not in keeping with generally-accepted protest procedures. For example, California Constitution Article XIII D Section 4(d) states:

> *Each notice mailed to owners of identified parcels within the district pursuant to subdivision (c) shall contain a **ballot** which includes the agency's address for receipt of the **ballot** once completed by any owner receiving the notice whereby the owner may indicate his or her name, reasonable identification of the parcel, and his or her **support or opposition** to the proposed assessment.*
> [emphasis added]

and California Constitution Article XIII D Section 4(e) states in pertinent part:

> *. . . At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the **ballots**. The agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, **ballots submitted in opposition to the assessment exceed the ballots submitted in favor** of the assessment.* [emphasis added]

The COUNTY'S Written Protest Form for the proposed expansion of Service Zone FP-5 is not a **ballot** and thereby puts an undue, unequal and unfair burden on property owners oppose to the resolution compared to those in support of the resolution. The COUNTY cannot simply assume that the property owners which do not submit a written protest support the expansion or the proposed levy. (See *Citizens Association of Sunset Beach v. Orange County Local Agency Formation Commission*, 209 Cal. App. 4^{th} (2012).) In addition, property owners of highly improved parcels will undoubtedly remain silent and not oppose the levy in fear they might be assessed more for the benefits they receive.

3. The COUNTY'S modified protest procedure is not in keeping with the intent of the COUNTY to get feedback from the "residents" of expanded Service Zone SP-5. (See June 12, 2018 Board Meeting video.) The COUNTY'S modified protest procedure only gets feedback from SP-5's "landowners."

4. The COUNTY'S modified protest procedure is structure to provide a favorable outcome in support of the expansion.

5. The COUNTY'S modified protest procedures do not meet the test of generally-accepted due diligence as the expansion involves 19,073 square miles and an additional $26.9 million in new taxes.

6. The COUNTY'S modified protest procedure is based on the premise that a majority of property owners can prevent registered owners from voting on the expansion. That's tantamount to claiming a majority of multi-unit apartment building owners can silence the registered voter tenants in their buildings on public interest and health and safety issues. Registered voters in

the proposed expansion area have the right to protest and vote on all health and safety issues regardless of the opinions of area property owners.

VII. THE COUNTY'S PROPOSED ANNUAL $157.26 PER PARCEL TAX IS NOT A CONTINUATION OF AN EXISTING TAX BUT THE IMPOSITION OF A NEW TAX

The COUNTY'S proposed annual $157.26 per parcel tax is not a continuation of an existing tax but an imposition of a new special tax. This claim is bases on the following evidence:

A. The original purpose for the formation of Service Zone FP-5 in 2006 was to convert a single fire station "CSA 70 FP-5 Fire station #4 from a paid-call fire station operation to a 24-hour per day full-time firefighter-staffed fire station within the improvement area." The purpose of Resolution No. 2018-99, however, is to maintain fire protection and emergency services" to all territory throughout the County of San Bernardino "not currently included in Service Zone FP-5." The purpose of "levy" under Resolution No. 2018-99 is different than the purpose of the original resolutions (2006-77 and 06-283) and is therefore a new special tax.

B. Pursuant to Resolution No. 2018-99 part of the proposed special taxes for the expanded Service Area SP-5 will "provide for the future capital needs of Service Zone FP-5" which, by extension, would also include the capital needs outside the original Service Zone FP-5. [emphasis added] Special taxes for non-specific "future capital needs" require the special tax to be "submitted to the electorate and approved by a two-thirds vote. (see Article XIII C § 2(d))

C. Service Zone FP-5 was initiated by the residents of the Helendale/Silver Lakes area but Resolution No. 2018-99 was not initiated by residents of the proposed expanded area but was initiated by the San Bernardino County Fire Department and (i) not for the purpose of "public interest" (as required by Section 13950) but (ii) to offset the County Fire Department's $29 million deficit. (See COUNTY Board Meeting video.)

D. The original Service Zone FP-5 tax was a benefit tax as it specifically benefitted the residents of the area, but Fire Chief/Fire Warden Mark A. Hartwig stated during the June 12, 2018, Board of Supervisors Meeting the tax would be a "non-benefit parcel tax." (See Board Meeting video.)

As a new special tax, any COUNTY argument under *Citizens Association of Sunset Beach v. Orange County Local Agency Formation Commission* is not valid. *Citizens Association of Sunset Beach* pertained to existing taxes and not new taxes. That case also involved a large area annexing a small area and not a small area annexing a significantly larger one as put forth by Resolution No. 2018-99.

VIII. THE COUNTY'S PROPOSED NEW $157.26 PER PARCEL TAX IS UNFAIRLY DISPROPORTIONATE TO THE BENEFIT EACH PARCEL WOULD RECEIVE

The COUNTY'S proposed flat $157.26 per parcel tax is unfairly disproportionate to the benefit each parcel would receive. I, for example, own a 2-acre unimproved parcel in Twentynine Palms in Service Zone FP-5. I paid $48.30 in fire supplement tax for the 2015-16 fiscal tax year. My parcel was included in the Service Zone FP-5 in 2016 and the fire district assessment on my parcel increased to $148.53. Today, my 2-acre unimproved parcel is assessed for $6,600 and my Service Zone FP-5 levy is the same $157.56 tax as:

- Holiday Inn Express & Suites, a 73-unit hotel currently assessed for $2,617,200
- Best Western Gardens Inn & Suites, an 83-room motel currently assessed for $4,457,679.

These highly improved commercial properties receive far more fire protection and emergency medical services than my vacant land parcel but we all pay the same tax.

The COUNTY'S proposed flat $157.26 per parcel tax violates California Constitution Article XIII C Section 1 which states in pertinent part:

> *The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover reasonable costs of the governmental activity, and that the manner in which* ***those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.***
> [emphasis added]

IX. THE COUNTY'S PROPOSED NEW $157.26 PER PARCEL TAX WILL HAVE A SUBSTANTIAL ADVERSE EFFECT ON THE OWNERS OF SMALL UNIMPROVED DESERT PARCELS IN THE PROPOSED EXPANSION AREA

The COUNTY'S proposed $157.26 per parcel tax will have substantial adverse effect on the landowners of small unimproved desert parcels and some of these landowners are registered voters.

The COUNTY proposes to expand Service Zone SF-5 to encompass ≈ 19,073 square miles that includes innumerable small-acreage desert parcels many of which are inaccessible and have minimal value. The imposition of a $157.26 per parcel tax will adversely affect the marketability of these parcels and cause many landowners to consider not paying the proposed levy and/or any property taxes at all. This will <u>decrease</u> the number of county property taxpayers and <u>increase</u> the number of parcels going to tax sale.

CONCLUSIONS

Based on the grounds, facts and evidence stated in this letter:

A. The Board of Directors of the San Bernardino County Fire Protection District (i.e., San Bernardino County Board of Supervisors) cannot legally expand Service Zone FP-5 until the expansion and tax "levy" are approved by a two-thirds vote of the registered voters in the affected territory.

B. The COUNTY'S Resolution 2018-100 protest procedure violates pertinent state statutes, the actually intent of the San Bernardino County Board of Supervisors and the California Constitution regarding the protest process.

The COUNTY therefore cannot legally adopt any resolution pertaining to Resolution No. 2018-99 at the end of the public hearing.

Respectively submitted,

Patrick C. Jackson

Patrick C. Jackson
Service Zone FP-5 Landowner

c. Gavin M. Erasmus, Attorney
Fred Stearn, Broker, Silver Valley Realty