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M E M O R A N D U M

TO: Ron Lebs, Assistant Superintendent, Business Services
Capistrano Unified School District

FROM: Bowie, Arneson, Wiles & Giannone; Alexander Bowie

DATE: December 9, 2010

RE: Capistrano Unified School District – Expenditure of Special Taxes from
Community Facilities District No. 87-1 and Improvement Area No. 1 of CFD
No. 87-1 (Aliso Viejo/Mission Viejo)

SUMMARY

As requested by the Capistrano Unified School District (“School District”), our Firm is providing this Memorandum after a thorough analysis of the permitted uses for the available “Pay-As-You-Go Special Taxes”¹ (“Special Taxes”) for Community Facilities District No. 87-1 of the District (“CFD No. 87-1”) and Improvement Area No. 1 of CFD No. 87-1 (“Improvement Area”). We have reviewed transcripts for CFD No. 87-1 and the Improvement Area (“Transcript Documents”),² and our conclusion, which is based on the Transcript Documents, is that the School District may spend the Special Taxes proportionally on the following “School Facilities” (defined below) that serve the students generated as a result of the development within CFD No. 87-1 (“Project Students”). The Improvement Area Transcript Documents are not discussed in detail because Improvement Area does not generate Project Students, the Improvement Area Special Taxes were only intended to be levied on undeveloped property, and the School District, in the future, does not plan to levy the Improvement Areas Special Taxes.

¹ “Pay-As-You-Go Special Taxes,” as the term is used herein, means those funds available to the School District, subject to the terms of the applicable Bond Indenture, Rate and Method, and other agreements, remaining from the Special Taxes after the debt service on the Bonds and any administrative expenses have been paid for the applicable “Bond Year.”

² The Transcript Documents include, but are not limited to, Bond Indentures, Mitigation Agreements, Amendments to Mitigation Agreements, other agreements, all formation resolutions including the Notices of Special Tax Lien, CFD Reports, and Rates and Method of Apportionment (“RMA”).

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Memorandum to Ron Lebs - Capistrano Unified School District
Community Facilities District No. 87-1 and Improvement Area No. 1
of CFD No. 87-1 (Aliso Viejo/Mission Viejo)
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CFD No. 87-1 School Facilities:

- construction, acquisition, modification or rehabilitation of certain real or other tangible property with an estimated useful life of five years or longer, including certain school and related facilities
- purchase of land
- design and planning work related to such facilities to serve the area within CFD No. 87-1
- acquiring necessary rights-of-way, equipment and property (and fulfilling contractual commitments)
- classrooms, multi-purpose, and administration space at identified schools or portions of identified schools in the CFD Report
- central support and administrative facilities, interim housing, transportation, special education facilities proportionately related to Project Students as reasonably determined by the School District
- lease payments for financings, if for authorized School Facilities, proportional to Project Students as reasonably determined by School District.

CFD NO. 87-1 ANALYSIS

Based on our review of the Transcript Documents, we conclude that the School District may spend the Special Taxes proportionally on the School Facilities that serve the Project Students. Our conclusion is based on the following:

Mitigation Agreement:

The “Mitigation Agreement”³ provides that “[d]evelopment within [CFD No. 87-1] will require the provision of additional School Facilities necessary for the student population to be generated as a result of such development.” As a result, the parties have prepared a facilities plan for CFD No. 87-1 (“Plan”). The purpose of the Mitigation Agreement is:

³ The Mitigation Agreement is entitled the Agreement between the School District and Mission Viejo Company (“Company”) dated March 2, 1987.

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to create an alternative method of financing the School Facilities necessary to serve the [Project Students] to be utilized only in the event that and to the extent that state or other funding is not provided in adequate amounts or in a timely manner to finance the [School Facilities] in accordance with the Plan.

CFD No. 87-1 is formed in order to provide “financing for the constructing, modifying, purchasing, acquiring or leasing of CFD No. 87-1 School Facilities and sites therefor for [School District] as authorized by the [Mello-Roos] Act.” The School District may “authorize and issue Bonds to provide funds to construct CFD No. 87-1 School Facilities in accordance with the Plan to the extent that funds for the School Facilities are neither timely nor adequately provided by the State of California or from other sources.” The Mitigation Agreement provides specific language regarding when bonds may be issued and circumstances when bonds may need to be called.⁴ Also, “[t]he Special Tax shall be levied to pay debt service for the Bonds issued by CFD No. 87-1 for providing the CFD No. 87-1 School Facilities, furniture, equipment, and required sites therefor, in accordance with the Plan.”

Significantly, the Plan states that the “facilities discussed in this plan and financed . . . are specifically intended to meet the needs of [Project Students]. Any facilities needs generated by residential development in neighboring communities would require financing from other sources and are not within the scope of this . . . Plan.”

The “Amendment to Agreement”⁵ amends the original Mitigation Agreement to limit the levy of Special Taxes on undeveloped property in the Improvement Area. A further amendment to the Mitigation Agreement⁶ “amends[s] the Mitigation Agreement to . . . conform [S]pecial [T]ax amounts to actual and projected construction needs.”

⁴ The Mitigation Agreement provides that:

Bonds for a particular school facility as depicted on the Plan shall not, without the consent of Company, be issued for the construction of that school facility until the number of students residing in CFD No. 87-1 who will attend that school facility exceeds 50% of the capacity of that proposed school facility.

Additionally, “[i]f CFD No. 87-1 Bonds have been issued and [School District] is reimbursed by the State of California or other sources for the facility constructed with said bonds, the CFD No. 87-1 shall use that money to call the bonds to the extent permitted by the Act.”

⁵ The Amendment to Agreement was entered into on July 2, 1990 between the School District, CFD No. 87-1 and the Company.

⁶ “Amendment No. 2 to the Mitigation Agreement” dated October 2, 1995, between the School District, CFD No. 87-1 and the Company.

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Formation Documents:

The Resolution of Intention for Formation (Resolution No. 87-31) describes that CFD No. 87-1 will “finance the construction, acquisition, modification or rehabilitation of certain real or other tangible property with an estimated useful life of five years or longer, including certain school and related facilities (including the purchase of land and any design and planning work related to such facilities) . . . to serve the [CFD No. 87-1].”⁷

The Resolution of Intention for Bonded Indebtedness (Resolution No. 87-32) provides that the Special Taxes will “serve the area within proposed [CFD] No. 87-1”⁸ and also may be used for “the costs of designing, planning, constructing and acquiring the [School] Facilities, acquiring necessary rights-of-way, equipment and property therefor, and fulfilling contractual commitments and carryout the powers and purposes of [CFD No. 87-1].”

The Board of Trustees of the School District (“Board”) made a finding in the Resolution of Formation (Resolution No. 87-38) that “the proposed [School] Facilities are necessary to meet the increased demand put upon the [School District] as a result of the new development projected within [CFD No. 87-1].”

The official ballot for CFD No. 87-1 relates back to the facilities description provided in Resolution No. 87-31 which is further confirmation that the Special Taxes should only benefit the Project Students.

The CFD Report for CFD No. 87-1 states that “[t]he following described facilities are all . . . required to adequately meet the needs of [CFD No. 87-1.]” Specifically, the Special Taxes would fund the following School Facilities:

- ✓ Complete facilities for elementary portion of K-8 in Mission Viejo
- ✓ 59% of intermediate portion of K-8 in Mission Viejo
- ✓ Complete facilities for two elementary schools and one K-8 school in Aliso Viejo
- ✓ 82% of Phase One of high school in Aliso Viejo⁹

The CFD Report lists the needed classrooms and administrative facilities at some of these schools. Also, we believe central support and administration, interim housing, transportation, special education facilities and lease payments for financings (if for authorized School Facilities) proportional to Project Students may be funded from Special Taxes and proceeds of bonds. It is

⁷ “Project Area” is defined in Resolution No. 87-31 as the land depicted in the attached boundary map and the land described in the attached legal description.

⁸ The Resolution Determining Necessity to Incur Bonded Indebtedness (Resolution No. 87-39) has similar language.

⁹ All facilities include on-site administration offices.

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reasonable that as part of the construction of any school or portion of a school due to the influx of additional students, that there would also be an impact on these other services (central support and administration, interim housing, transportation, special education) and these services would also need to be proportionally improved or funded to accommodate the Project Students. We believe the School District and/or CFD No. 87-1 may finance the construction of School Facilities with lease financing and the payment of those lease payments if it produces cost savings. We believe that these items may be only proportionally funded in relation to the needs of Project Students.

Pursuant to the CFD Report, CFD No. 87-1 “would have the option of selling Mello-Roos bonds to finance the schools, or of using [Special Tax] revenues directly to pay for construction.” Ultimately, CFD No. 87-1 issued Mello-Roos bonds.

Bond Documents:

The Supplement to Resolution 89-56 (Authorizing the Issuance of its Series 1989 Special Tax Bonds) defines “Project” as “those public facilities described in the Resolution of Formation which are to be acquired or constructed within and outside of [CFD No. 87-1], including all engineering, planning and design services and other incidental expenses related to such facilities and other facilities, if any, authorized by the qualified electors within [CFD No. 87-1] from time to time.”¹⁰

It is consistent with the rest of the Transcript Documents that School Facilities might need to be constructed outside of the CFD No. 87-1 boundaries in order to serve Project Students. For example, if a school was only partially funded with CFD No. 87-1 Special Taxes, it would be reasonable for the School District to build the school outside the boundaries of CFD No. 87-1.

We note that the Official Statements¹¹ and closing documents for the Series 1989 Special Tax Bonds¹², Series 1990 Tax Bonds¹³ and Series 2006 Special Tax Refunding Bonds¹⁴ provide

¹⁰ The Supplement to Resolution 90-103 (Authorizing the Issuance of its Series 1990 Special Tax Bonds) similarly defines “Project,” but also includes the word “rehabilitated” in the definition. The Bond Indenture for the Series 2006 Special Tax Refunding Bonds uses a similar definition.

¹¹ The CFD Report did not explicitly contemplate construction work at an existing high school; however, the CFD Report also provides that “[t]he descriptions of the public school facilities, as set forth herein, are general in their nature” and the CFD Report provides for substitutions.

¹² The Official Statement for the Series 1989 Special Tax Bonds provides that the “proceeds of the Bonds will be used to finance the acquisition of sites for and payment of certain planning and architectural costs in connection with construction of an elementary school and a high school within the School District, development of an extended parking facility at an existing high school and the purchase of relocatable classrooms.”

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs - Capistrano Unified School District
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descriptions of the various facilities projects. We have not reviewed what projects were funded with the Special Taxes and/or bond proceeds described in this Memorandum.

IMPROVEMENT AREA ANALYSIS

In the Official Statement for the \$71,810,000 Community Facilities District No. 87-1 of the Capistrano Unified School District Series 2006 Special Tax Refunding Bonds, the following statement is made regarding the Improvement Area Special Taxes:

The Improvement Area Special Taxes may be levied only upon undeveloped property. As the property within the Improvement Area becomes developed it is annexed into [CFD No. 87-1], and the Improvement Area Special Taxes are no longer levied on such property. [CFD No. 87-1] has not levied Improvement Area Special Taxes since Fiscal Year 1999-00 and does not, in the future, expect to levy Improvement Area Special Taxes.

As Special Taxes have not been levied within the boundaries of the Improvement Area for approximately ten years, are not currently being levied, and do not expect to be levied in the future, they are not relevant to this discussion.

CONCLUSION

Based on our review of the Transcript Documents, we conclude that CFD No. 87-1 may use its Special Taxes proportionally on the School Facilities, including modernization and rehabilitation, that serve the Project Students, including the described facilities and central support and administrative facilities, interim housing, transportation, special education facilities and lease payments for financings (if for authorized School Facilities).

Please do not hesitate to contact us if you have any questions.

¹³ The Official Statement for the Series 1990 Special Tax Bonds explains that “[a] portion of the proceeds of the 1990 Bonds will be used to finance the acquisition of sites for and the payment of construction, expansion and/or rehabilitation of an elementary school and a high school with [CFD No. 87-1], including planning, engineering and architectural costs incurred in connection with the development of sites and/or structures, landscaping, parking, multi-media facilities and the cost of furniture and related equipment.”

¹⁴ The Tax Certificate for the Series 2006 Special Tax Refunding Bonds states that the new money portion of the obligations will be spent on “K-12 public school site acquisition and school building construction, including classroom, transportation and administration facilities.” Specific projects listed on the Tax Certificate include Aliso Niguel High School, Newhart Middle School, Capistrano Valley High School, and Hankey Elementary School.

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M E M O R A N D U M

TO: Ron Lebs, Assistant Superintendent, Business Services
Capistrano Unified School District

FROM: Bowie, Arneson, Wiles & Giannone; Alexander Bowie

DATE: December 9, 2010

RE: Capistrano Unified School District – Expenditure of Special Taxes from
Community Facilities District No. 88-1 (Rancho Santa Margarita)

SUMMARY

As requested by the Capistrano Unified School District (“School District”), our Firm is providing this Memorandum after a thorough analysis of the permitted uses for the available “Pay-As-You-Go Special Taxes”¹ (“Special Taxes”) for Community Facilities District No. 88-1 of the School District (“CFD No. 88-1”). We have reviewed transcripts for CFD No. 88-1 (“Transcript Documents”),² and our conclusion, which is based on the Transcript Documents, is that the School District may spend the Special Taxes proportionally on the following “School Facilities” (defined below) that serve the students generated as a result of the development within CFD No. 88-1 (“Project Students”).

CFD No. 88-1 School Facilities:

- planning, designing, constructing, acquiring, modifying, improving or rehabilitating certain real and other tangible property with an estimated useful life of five years or longer, consisting of facilities necessary to house the Project Students

¹ “Pay-As-You-Go Special Taxes,” as the term is used herein, means those funds available to the School District, subject to the terms of the applicable Bond Indenture, Rate and Method, and other agreements, remaining from the Special Taxes after the debt service on the Bonds and any administrative expenses have been paid for the applicable “Bond Year”.

² The Transcript Documents include, but are not limited to, Bond Indentures, Mitigation Agreements, all formation resolutions including the Notices of Special Tax Lien, CFD Reports, and Rates and Method of Apportionment (“RMA”).

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Memorandum to Ron Lebs, Capistrano Unified School District
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- schools, school sites, classrooms, multi-purpose, and administration space at identified schools or portions of identified schools in the CFD Report
- landscaping, parking, administrative areas, multimedia facilities, furniture and related equipment
- engineering, planning and designing the School Facilities
- acquiring necessary equipment and property, and fulfilling contractual commitments
- purchase of land
- central support and administrative facilities, interim housing, transportation, special education facilities proportionately related to Project Students as reasonably determined by the School District
- lease payments for financings, if for authorized School Facilities, as reasonably determined by School District

CFD NO. 88-1 ANALYSIS

The intent of the Transcript Documents is for the School District to spend the Special Taxes proportionally on the School Facilities that serve the Project Students. Our conclusion is based on the following:

Mitigation Agreement:

The “Mitigation Agreement”³ provides that “[d]evelopment within [CFD No. 88-1] will require the provision of additional [School Facilities] necessary for the [Project Students].” As a result, the parties have prepared a facilities plan for CFD No. 88-1 (“Plan”).

The purpose of the Mitigation Agreement is:

to create an alternative method of financing the School Facilities necessary to serve the [Project Students] to be utilized only in the event that . . . state or other funding is not provided in adequate amounts or in a timely manner to finance the [School Facilities] in accordance with the Plan.

³ The Mitigation Agreement is entitled the Agreement between the School District and Rancho Santa Margarita Joint Venture (“Company”) dated August 4, 1988.

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Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 88-1 (Rancho Santa Margarita)
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CFD No. 88-1 is formed in order to provide “financing for the constructing, modifying, purchasing, acquiring or leasing of . . . School Facilities and sites therefor for [the School District] as authorized by the [Mello-Roos] Act.” The Mitigation Agreement provides specific language regarding when bonds may be issued and circumstances when bonds may need to be called.⁴ Also, “[t]he Special Tax shall be levied to pay debt service for the Bonds issued by CFD No. 88-1 for providing the School Facilities, furniture, equipment, and required sites therefor, in accordance with the Plan.”

Significantly, the Plan states that the “facilities discussed in this Plan and financed . . . are specifically intended to meet all the needs of [Project Students]. Any facilities needs generated by residential development in neighboring communities would require financing from other sources and are not within the scope of this . . . Plan.”

Formation Documents:

The Petition to the Board of Trustees of the School District (“Board”) states that CFD No. 88-1 should finance:

the costs of planning, designing, constructing, acquiring, modifying, improving or rehabilitating certain real and other tangible property with an estimated useful life of five years or longer, consisting of facilities necessary to house elementary, junior high and high school students generated in the [School District], including landscaping, parking, classrooms, administrative areas, multimedia facilities, furniture and related equipment [and] the costs of engineering, planning and designing the [School] Facilities.

We note that the Petition says “students generated in the School District” rather than CFD No. 88-1. However, the remaining Transcript Documents demonstrate that the intent is for the School District to spend the Special Taxes proportionally on the School Facilities that serve the Project Students rather than the entire School District population.

The CFD Report for CFD No. 88-1 states that “[t]he following described facilities are required to adequately meet the needs of [CFD No. 88-1.] . . . [and] to satisfy the school

⁴ The Mitigation Agreement provides that “Bonds for a particular school facility as depicted on the Plan shall not, without the consent of Company, be issued for the construction of that school facility until the number of students residing in [CFD No. 88-1] who will attend that school facility exceeds 25% of the capacity of that proposed school facility.” Additionally, “[i]f the Bonds have been issued and [the School District] is reimbursed by the State of California or other sources for the facility constructed with said Bonds, the CFD No. 88-1 shall use that money to call the Bonds to the extent permitted by the Act.”

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Community Facilities District No. 88-1 (Rancho Santa Margarita)
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facilities needs generated by residential development within CFD No. 88-1.” The CFD Report provides for the following facilities:

- ✓ One K-6 school site and one-half of one K-6 school facility
- ✓ 10.50% of an intermediate school
- ✓ 9.42% of a high school⁵

The CFD Report lists the needed classrooms and administrative facilities at some of these schools. Also, we believe proportional to Project Students, central support and administration, interim housing, transportation, special education facilities and lease payments for financings (if for authorized School Facilities) proportional to Project Students may be funded by Special taxes and proceeds of bonds. It is reasonable that as part of the construction of any school or portion of a school due to the influx of additional students, that there would also be an impact on these other services (central support and administration, interim housing, transportation, special education) and these services would also need to be proportionally improved or funded to accommodate the Project Students. We believe the School District and/or CFD No. 88-1 may finance the construction of authorized school facilities with lease financing and the payment of those lease payments if it produces cost savings. We believe that these items may be only proportionally funded in relation to the needs of Project Students.

The CFD Report further describes that CFD No. 88-1 “would have the option of selling Mello-Roos bonds to finance the schools, or of using [Special Tax] revenues directly to pay for construction.” Ultimately, CFD No. 88-1 sold Mello-Roos bonds.

The Resolution of Intention for Bonded Indebtedness (Resolution No. 88-23) provides that the School Facilities will “serve the area within proposed [CFD No. 88-1]” and also may be used for “the costs of designing, planning, constructing and acquiring the [School] Facilities, acquiring necessary equipment and property therefor, and fulfilling contractual commitments and carryout the purposes of [CFD No. 88-1].”

The Resolution of Formation (Resolution No. 88-29) explains that CFD No. 88-1 shall finance:

[t]he costs of planning, designing, constructing, acquiring, modifying, improving or rehabilitating certain real and other tangible property with an estimated useful life of five years or longer, consisting of facilities necessary to house . . . [Project Students], including landscaping, parking, classrooms, administrative areas, multimedia facilities, furniture and related equipment.

⁵ All facilities include on-site administration offices.

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Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 88-1 (Rancho Santa Margarita)
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Further, the Board made a finding that “the proposed [School] Facilities are necessary to meet the increased demand put upon the [School District] as a result of the new development projected within [CFD No. 88-1].”

The official ballot for CFD No. 88-1 relates back to the School Facilities description provided in Resolution No. 88-22 which is further confirmation that the Special Taxes should be expended only on School Facilities reasonably related to the Project Students.

The RMA for CFD No. 88-1 provides “that once an Assessor’s Parcel has been classified as Developed Property [the Maximum Special Taxes] shall be increased on each subsequent July 1 by an amount equal to 4.0% of the amount applicable to such Assessor’s Parcel as of the previous July 1.”

Bond Documents:

The Nonarbitrage Certificate for the Series 1989 Special Tax Bonds states that “[t]he Bonds are being issued for the purpose of financing the cost of acquiring and constructing certain public improvements . . . such facilities to be located within [CFD No. 88-1].”

The Supplement to Resolution 89-48 (Authorizing the Issuance of its Series 1989 Special Tax Bonds) defines “Project” as “those public facilities described in the Resolution of Formation which are to be acquired or constructed within and outside of the [CFD No. 88-1], including all engineering, planning and design services and other incidental expenses related to such facilities and other facilities, if any, authorized by the qualified electors within the [CFD No. 88-1] from time to time.”⁶

It would be consistent with the rest of the Transcript Documents that School Facilities might need to be constructed outside of the CFD No. 88-1 boundaries in order to serve the Project Students. For example, if a school was only partially funded with CFD No. 88-1 Special Taxes, it would be reasonable for the School District to build the school outside the boundaries of CFD No. 88-1.

The Official Statement for the Series 1996 Special Tax Refunding Bonds provides that “the proceeds of the Bonds and certain amounts relating to the Prior Bonds will be . . . used by the [CFD No. 88-1] for the construction of certain public school improvements, including,

⁶ The Official Statement for this issuance states that it financed “certain school facilities, including an elementary school and intermediate student housing” and the bonds proceeds will “be used to finance the acquisition and construction of various school facilities within or serving [CFD No. 88-1].” The Official Statement also explains that the Bonds will “finance half of an elementary school to be located on approximately 8.3 acres within [CFD No. 88-1]. The elementary school will house an estimated 350 students. Intermediate student housing costs of \$3,100,000 will be required for the anticipated 105 intermediate students and 200 high school students in [CFD No. 88-1].”

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Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 88-1 (Rancho Santa Margarita)
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primarily, the Las Flores School, a school for grades kindergarten through eight which will serve [CFD No. 88-1].”

We have not reviewed what projects were funded with the Special Taxes and/or bond proceeds described in this Memorandum.

CONCLUSION

Based on our review of the Transcript Documents, we conclude that CFD No. 88-1 may spend the Special Taxes proportionally on the School Facilities, including modernization and rehabilitation thereof, that serve the Project Students, including the described facilities and central support and administrative facilities, interim housing, transportation, special education facilities and lease payments for financings (if for authorized School Facilities).

Please do not hesitate to contact us if you have any questions.

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M E M O R A N D U M

TO: Ron Lebs, Assistant Superintendent, Business Services
Capistrano Unified School District

FROM: Bowie, Arneson, Wiles & Giannone; Alexander Bowie

DATE: December 9, 2010

RE: Capistrano Unified School District – Expenditure of Special Taxes from
Community Facilities District No. 90-1 (Coto de Caza)

SUMMARY

As requested by the Capistrano Unified School District (“School District”), our Firm is providing this Memorandum after a thorough analysis of the permitted uses for the available “Pay-As-You-Go Special Taxes”¹ (“Special Taxes”) for Community Facilities District No. 90-1 of the School District (Coto de Caza) (“CFD No. 90-1”). We have reviewed transcripts for CFD No. 90-1 (“Transcript Documents”),² and our conclusion, which is based on the Transcript Documents, is that CFD No. 90-1 may use its Special Taxes to make debt service payments on the \$7,200,000 CFD No. 90-1 Special Tax Bond (“Special Tax Bond”) and after full repayment of the Special Tax Bond, pay all Special Taxes over to the School District to be used as hereinafter described. The language in the Transcript Documents authorizing the “School Facilities” (defined below) and the subsequent use of Special Taxes is provided below.

¹ “Pay-As-You-Go Special Taxes,” as the term is used herein, those funds available to the School District, subject to the terms of the applicable Bond Indenture, Rate and Method, and other agreements, remaining from the Special Taxes after the debt service on the Bonds, including the Special Tax Bond, and any administrative expenses have been paid for the applicable “Bond Year.”

² The Transcript Documents include, but are not limited to, Bond Indentures, all formation resolutions including the Notices of Special Tax Lien, CFD Reports, and Rates and Method of Apportionment.

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Memorandum to Ron Lebs, Capistrano Unified School District
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CFD No. 90-1 School Facilities:

- planning, designing, constructing, acquiring, modifying, improving or rehabilitating certain real and other tangible property with an estimated useful life of five years or longer
- facilities necessary to house elementary, junior high and high school students generated as a result of development within CFD No. 90-1 ("Project Students")
- landscaping, parking, classrooms, administrative areas, multimedia facilities, furniture and related equipment
- payment of the principal of and interest on such bonds
- central support and administrative facilities, interim housing, transportation, special education facilities proportionately related to Project Students as reasonably determined by School District
- lease payments for financings, if for authorized School Facilities, as reasonably determined by School District

CFD NO. 90-1 ANALYSIS

We conclude that CFD No. 90-1 may use its Special Taxes to make debt service payments on the Special Tax Bond and after full repayment of the Special Tax Bond, pay all Special Taxes over to the School District for School Facilities as hereinafter described. Therefore, School Facilities acquired and/or modernized with proceeds of the Special Tax Bond should serve the Project Students, and the School District should spend the Special Taxes, if received in the future, on School Facilities excluding facilities needs existing prior to the formation of CFD No. 90-1.

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Mitigation Agreement:

The Mitigation Agreement³ allows the School District “to collect a [Special Tax] that will generate approximately \$25,000,000 in funds to build school facilities.”⁴ The Amendment to the Mitigation Agreement⁵ was entered into to clarify the Company (defined below) and School District’s obligations regarding the site where Wagon Wheel Elementary School was to be constructed.

Formation Documents:

The Petition to the Board of Trustees of the School District (“Board”) requests that CFD No. 90-1 “finance the construction, purchase, modification, expansion, improvement or rehabilitation of certain school and related facilities (including elementary, intermediate and high school sites and/or structures and related support facilities) . . . and to finance the . . . cost of engineering, planning and designing the [School] Facilities.”

The Resolution of Intention for Formation (Resolution No. 90-02) provides that CFD No. 90-1 may “[f]inance . . . the construction, purchase, modification, expansion, improvement or rehabilitation of certain school and related facilities (including elementary, intermediate, high school sites and structures and related support facilities)”⁶ Resolution No. 90-02 also discusses that CFD No. 90-1 will “serve [CFD No.] 90-1 pursuant to the [developer’s Petition discussed above.]” The Board made a finding “that the proposed [School] Facilities and Services are necessary to meet the increased demand placed upon the School District and the existing infrastructure in the School District as a result of the development of [CFD No.] 90-1.”⁷

The Resolution of Intention for Bonded Indebtedness (Resolution No. 90-03) provides that CFD No. 90-1 will finance the costs of “designing, constructing, acquiring and inspecting the [School] Facilities, acquiring necessary land and rights-of-way, equipment and property therefor, and fulfilling contractual commitments and carrying out the powers and purpose of [CFD No. 90-1]”

³ The Mitigation Agreement is entitled the “Agreement between the School District and Coto De Caza (“Company”)” dated April 16, 1990.

⁴ This language is contained in an agenda item for the April 16, 1990, Board meeting.

⁵ The Amendment to the Mitigation Agreement is entitled the “First Amendment to Agreement Between the School District and Company” dated October 11, 1995.

⁶ The Resolution of Intention for Bonded Indebtedness (Resolution No. 90-03) has similar language. This resolution also states “[i]t is necessary to incur bonded indebtedness within the boundaries of proposed [CFD No. 90-1] in the amount of \$7,200,000 to finance a portion of the costs of the [School] Facilities. . . .”

⁷ The Resolution of Formation (Resolution No. 90-12) made this similar finding: “The Board . . . finds that the proposed [School] Facilities are necessary to meet the increased demand put upon the . . . School District as a result of the new development projected within [CFD No.] 90-1.”

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As explained in the CFD Report, CFD No. 90-1 “[had] the option of selling Mello-Roos bonds to finance the schools, or of using [Special Taxes] directly to pay for the construction. . . . However, current projections do not anticipate the issuance of bonds.” Moreover, “all of the property located within CFD No. 90-1, unless exempted by law, shall be taxed for the purpose of providing school facilities to serve, in part, the territory within CFD No. 90-1.”

The CFD Report states that CFD No. 90-1 intends to “satisfy the school facilities needs generated by residential development within CFD No. 90-1.” The School Facilities include: one K-6 school site and one K-6 school facility, 22% of an intermediate school, and 14% of a high school.

The CFD Report lists the needed classrooms and administrative facilities at some of these schools. Also, we believe proportional to Project Students, central support and administration, interim housing, transportation, special education facilities and lease payments for financings (if for authorized School Facilities) proportional to Project Students may be funded by Special Taxes and proceeds of bonds. It is reasonable that as part of the construction of any school or portion of a school due to the influx of additional students, that there would also be an impact on these other services (central support and administration, interim housing, transportation, special education) and these services would also need to be proportionally improved or funded to accommodate the Project Students. We believe the School District and/or CFD No. 90-1 may finance the construction of authorized School Facilities with lease financing and the payment of those lease payments if it produces cost savings. We believe that these items may be only proportionally funded in relation to the needs of Project Students.

The Resolution of Formation (Resolution No. 90-12) contains the following language:

The [School] Facilities authorized to be provided for [CFD No. 90-1] are to finance the costs of planning, designing, constructing, acquiring, modifying, improving, or rehabilitating certain real and other tangible property with an estimated useful life of five years or longer, consisting of facilities necessary to house . . . [Project Students], including landscaping, parking, classrooms, administrative areas, multimedia facilities, furniture and related equipment . . . the issuance of bonds for the [School] Facilities . . .

The official ballot for CFD No. 90-1 states:

[T]o finance the costs of planning, designing, constructing, acquiring, modifying, improving or rehabilitating certain real and other tangible property with an estimated useful life of five years or longer, consisting of facilities necessary to house . . . [Project Students], including landscaping, parking, classrooms,

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administrative areas, multimedia facilities, furniture and related equipment . . .
and for the payment of the principal of and interest on such bonds[.]

The Ordinance clearly states that CFD No. 90-1 allows for “the purchase of land.”

The RMA for CFD No. 90-1 provides

[o]n January 1, 1991, and on each January 1 thereafter, the Maximum Special Tax for each class set forth in Table I shall be increased by an amount equal to the annual percentage change in the Consumer Price Index as of each January 1 or 5.0%, whichever is greater, of the amount in effect for the previous Calendar Year.

Special Tax Pledge:

The Acquisition Agreement⁸ can be reasonably construed to provide that the School District will execute and deliver Certificates of Participation in order to construct a high school:

[d]ue to an immediate need for a high school facility to serve the School District, including the territory located within the boundaries of [CFD No. 90-1], it is necessary and desirable to execute, sell and deliver not to exceed \$11,500,000 of [Certificates] for the purpose of providing such high school facility, which is one of the authorized facilities of [CFD No. 90-1], thereby assisting the [CFD No. 90-1] in the provision of [School] Facilities currently required to house [the Project Students]. . .

The Acquisition Agreement also provides that CFD No. 90-1 will pledge its Special Taxes to the repayment of the Special Tax Bond:⁹

⁸ The Acquisition Agreement is entitled the “Acquisition Agreement by and among CFD No. 90-1, the School District and First Trust of California, National Association” dated November 20, 1997.

⁹ The Resolution Authorizing the Transfer and Assignment of Special Tax Revenues (Resolution No. 9798-28) [CFD No. 90-1] has determined that it is not commercially practicable to issue bonds to finance the [School] Facilities, and has determined that, due to the urgent need for facilities to house student of [CFD No. 90-1], it is of public benefit, and necessary and desirable in furtherance of the purposes of [CFD No. 90-1] at this time to agree to acquire from special tax revenues on a pay-as-you-go basis, as such revenues are received by [CFD No. 90-1], the [School] Facilities which the School District has determined to finance in part by the sale of the Certificates, and in part, over time, from other available funds of the School District; and

. . . in consideration of the agreement of [CFD No. 90-1] to pay special tax revenues to the School District, if and when received, as described above, the [School District] has determined that it is necessary and desirable to execute and deliver the Certificates for the purpose of financing certain

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[CFD No. 90-1] has determined that it is of benefit to the residents of [CFD No. 90-1] . . . to expend its Special Taxes, as such Special Taxes are received by [CFD No. 90-1], for the acquisition from the School District of an undivided interest in the proposed high school facility and all other [School] Facilities which the School District has provided or will provide on behalf of [CFD No. 90-1] and in connection therewith to pledge such Special Taxes to the repayment of \$7,200,000 aggregate principal amount of bonded indebtedness of the [CFD No. 90-1], together with interest thereon . . .

The Acquisition Agreement appears to provide that once the debt service payments are complete for the Special Tax Bond, then CFD No. 90-1 is to turn the Special Taxes over to the School District.

In consideration of the receipt by the [CFD No. 90-1] of the sum of \$7,200,000 from the Trustee held under the Trust Agreement, which amount the [CFD No. 90-1] hereby directs the Trustee to retain in the Project Fund held by it pursuant to the Trust Agreement, [CFD No. 90-1] hereby issues and delivers to the Trustee the CFD Bond . . . which CFD Bond . . . shall constitute . . . a limited obligation of [CFD No. 90-1] payable only from Special Taxes. . . . [CFD No. 90-1] hereby covenants to levy and collect the Special Taxes pursuant to the Ordinance and pledges and agrees to pay to the Trustee, as holder of the CFD Bond, all Special Taxes collected by [CFD No. 90-1] after the date hereof, . . . until such time as the principal amount of the CFD Bond, together with interest thereon . . . is paid in full. . . . After repayment in full of . . . the CFD Bond, [CFD No. 90-1] hereby agrees to pay to the School District all Special Taxes collected by it. . . [CFD No. 90-1] hereby covenants to apply, or to cause the application of, the \$7,200,000 CFD Bond proceeds received by it . . . to the construction of the Chiquita Canyon area high school and related costs . . . In consideration of the agreement of [CFD No. 90-1] hereunder to issue the CFD Bond and to provide payment of Special Taxes to the School District, the School District hereby covenants and agrees to construct or install all of the [School] Facilities which have not been constructed as of the date of this Agreement . . . Upon payment in full, or provision in full, of the Certificates pursuant to the Trust Agreement, . . . the School District hereby

of the [School] Facilities and to assist [CFD No. 90-1] by providing the remaining [School] Facilities to serve [CFD No. 90-1] as and when reasonably practicable.

Thus, from the language above, it appears that CFD No. 90-1 would be transferring the Special Taxes to the repayment of the Certificates.

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covenants and agrees to deliver to [CFD No. 90-1] a quitclaim deed which transfers to the [CFD No. 90-1] an undivided interest in the Project¹⁰”

We have not reviewed what projects were funded with the Special Taxes and/or bond proceeds described in this Memorandum.

CONCLUSION

Based on our review of the Transcript Documents, we conclude that CFD No. 90-1 may use its Special Taxes to make debt service payments on the Special Tax Bond and after full repayment of the Special Tax Bond, pay all Special Taxes over to the School District for School Facilities. School Facilities acquired and/or modernized with proceeds of the Special Tax Bond should serve the Project Students, and the School District may spend the Special Taxes, if received in the future, on School Facilities including modernization and rehabilitation thereof. However, we believe this would exclude school facility needs existing prior to the formation of CFD No. 90-1. These School Facilities may include the described facilities and central support and administrative facilities, interim housing, transportation, special education facilities and lease payments for financings (if for authorized School Facilities).

Please do not hesitate to contact us if you have any questions.

¹⁰ Project is defined in the Acquisition Agreement as “improvements comprising the Chiquita Canyon Area High School.”

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M E M O R A N D U M

TO: Ron Lebs, Assistant Superintendent, Business Services

FROM: Bowie, Arneson, Wiles & Giannone; Alexander Bowie

DATE: December 9, 2010

RE: Capistrano Unified School District – Expenditure of Special Taxes from Community Facilities District No. 90-2 and Improvement Area No. 2002-1 of CFD No. 90-2 (Talega)

SUMMARY

As requested by the Capistrano Unified School District (“School District”), our Firm is providing this Memorandum after a thorough analysis of the permitted uses for the available “Pay-As-You-Go Special Taxes”(“Special Taxes”)¹ for Community Facilities District No. 90-2 of the School District (“CFD No. 90-2”) and Improvement Area No. 2002-1 of CFD 90-2 (“Improvement Area”). We have reviewed transcripts for CFD No. 90-2 and the Improvement Area (“Transcript Documents”),² and our conclusion, which is based on the Transcript Documents, is that the School District may spend the Special Taxes proportionally on the following “School Facilities” (defined below) that serve the students generated as a result of the development within CFD No. 90-2 and/or the Improvement Area (“Project Students”).

While the Transcript Documents describe the School Facilities slightly differently for CFD No. 90-2 and the Improvement Area, the School Facilities include the following described facilities as to which the Special Taxes may be spent to serve the Project Students:

- Acquisition, purchase, modification, improvement, rehabilitation, construction and/or financing of facilities to serve K-12 students

¹ “Pay-As-You-Go Special Taxes,” as the term is used herein, means those funds available to the School District, subject to the terms of the applicable Bond Indenture, Rate and Method, and other agreements, remaining from the Special Taxes after the debt service has been on the Bonds and any administrative expenses have been paid for the applicable “Bond Year.”

² The Transcript Documents include, but are not limited to, Bond Indentures, Mitigation Agreements, Amendments to Mitigation Agreements, all formation resolutions including the Notices of Special Tax Lien, CFD Reports, and Rates and Method of Apportionment (“RMA”).

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs – Capistrano Unified School District
Community Facilities District No. 90-2 and Improvement Area No. 2002-1
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- classrooms, multi-purpose, administration and auxiliary space at schools
- central support and administrative facilities
- interim housing, transportation, and special education facilities
- furniture, equipment and technology (multimedia facilities)
- land
- landscaping, parking
- attributable costs of engineering, design, planning, materials testing, etc.
- lease payments for financings, if for authorized School Facilities, proportional to Project Students as reasonably determined by School District
- any reference to “Facilities” means the School Facilities and the City of San Clemente (“City”) facilities included within the JCFA³

CFD NO. 90-2 ANALYSIS

Based on our review of the Transcript Documents, we conclude that the School District may spend the Special Taxes proportionally on the School Facilities that serve the Project Students. Our conclusion is based on the following:

Mitigation Agreement:

The purpose of the Original Mitigation Agreement⁴ was “to create an alternative method of financing the School Facilities necessary to serve the [Project Students]” and “to mitigate the anticipated need for school facilities to house [Project Students] by establishing CFD No. 90-2 to

³ Joint Community Facilities Agreement (“JCFA”) by and among the School District, City and Developer, dated June 19, 2002.

⁴ The Original Mitigation Agreement is entitled the “Agreement between the School District and Arvida/JMB Partners, L.P.-II” dated April 16, 1991, and was later amended when Talega Associates, LLP (“Developer”) bought Arvida/JMP Partners, L.P.’s interest in the property.

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provide the financing for the School Facilities” The Amended Mitigation Agreement⁵ explains that “[t]he Special Tax shall be levied to be debt service for the Bonds, if any, issued by CFD No. 90-2 and, if no Bonds are issued, for providing the CFD No. 90-2 School Facilities, furniture, equipment, and required sites therefor, . . . and for paying CFD No. 90-2 Administrative Expenses.”

Formation Documents:

The Resolution of Intention to Establish CFD No. 90-2 (Resolution No. 90-32) explains that CFD No. 90-2 will “finance the construction or acquisition of [School] Facilities for the [CFD No.] 90-2.” Moreover, “[t]he [S]pecial [T]ax is based on the expected demand that each parcel of real property within [CFD No. 90-2] will place on the [School] Facilities and on the benefit that each parcel derives from the right to access the [School] Facilities.” Additionally, the Board of Trustees of the School District (“Board”) made a finding “that the proposed [School] Facilities . . . are necessary to meet the increased demand placed upon the [School District] and the existing infrastructure in the [School District] as a result of the development of [CFD No.] 90-2.”

The Resolution Establishing CFD No. 90-2 (Resolution No. 90-50) provides that CFD No. 90-2 will:

finance the costs of planning, designing, constructing, acquiring, modifying, improving or rehabilitating, certain real and other tangible property with an estimated useful life of five years or longer, consisting of facilities necessary to house elementary, junior high and high school students generated in [CFD No. 90-2], including landscaping, parking, classrooms, administrative areas, multimedia facilities, furniture and related equipment . . . , all as described in Resolution No. 90-02 and the [CFD] Report.

The Amended CFD Report provides that “[t]he actual facilities described herein are those currently expected to be required to adequately meet, in part, the needs of CFD No. 90-2.” The Amended CFD Report further explains that “CFD No. 90-2 Special Taxes may be used to construct or acquire transportation, central support, administration, interim housing and special education facilities, together with furniture, equipment and technology.”

⁵ The Amended Mitigation Agreement is entitled “Amendment No. 1 between School District and Arvida/JMB Partners, L.P.-II and by and among Community Facilities District No. 90-2 of the School District and Talega Associates, LLC” dated March 29, 1999. We note that the Amended Mitigation Agreement deleted a requirement in the Original Mitigation Agreement that the School District would have to call any bonds if it received State funding.

BOWIE, ARNESON, WILES & GIANNONE

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Community Facilities District No. 90-2 and Improvement Area No. 2002-1
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The Amendment No. 1 to Notice of Special Tax Lien to CFD No. 90-2 states that the authorized School Facilities include:

all needed school facilities to serve [CFD No. 90-2] and mitigate the development thereof, including but not limited to, K-12 school sites and construction, transportation, central support, administration, interim housing and special education facilities, together with furniture, equipment and technology, all land or interests in land required to be provided by the [School District] as mitigation of environmental impacts associated with the development of such [School Facilities], all costs to [the School District] related to negotiation and execution of the amended mitigation agreement, the attributable costs of engineering, design, planning, materials testing, coordination, construction staking and construction ...

Bond Documents:

The Bond Indenture for the Series 2001 Special Tax Bonds explains that:

At the maturity of all of the Bond and Parity Bonds and, after all principal and interest then due on the Bonds and Parity Bonds then Outstanding has been paid or provided for and any amounts owed to the Fiscal Agent have been paid in full, moneys in the Special Tax Fund and any accounts therein may be used by the [CFD No. 90-2] for any lawful purpose.

IMPROVEMENT AREA ANALYSIS

Funding Agreement:

The parties entered into the Funding Agreement⁶ “in order to adequately house [Project Students] and provide essential educational improvements therefore . . . [and] for the additional purpose of financing School Facilities.” Although some discretionary language appears in the Funding Agreement,⁷ the clear intent of the Transcript Documents is for the School District to spend the Special Taxes on the School Facilities that serve the Project Students.

⁶ The Improvement Area Funding Agreement was entered into between the School District, CFD No. 90-2 acting on behalf of the Improvement Area and the Developer (“Funding Agreement”).

⁷ The Parties agreed that: “notwithstanding anything to the contrary contained herein, (i) Surplus Special Taxes may be expended by [the School District] for any legal purpose determined by [the School District] in its sole discretion.” Although the Funding Agreement directed that all Net Bond Proceeds deposited in the School Facilities Account be used for Vista del Mar Elementary School, Vista del Mar Middle School, and San Clemente High School, the Funding Agreement appears to give discretion to the School District regarding the use of Surplus Special Taxes. We do not agree such discretion legally exists.

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs – Capistrano Unified School District
Community Facilities District No. 90-2 and Improvement Area No. 2002-1
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JCFA:

The JCFA provides that “[t]he sole source of funds for payment of the acquisition price or funding with respect to the approved City Improvement or Discrete Component thereof shall be the bond proceeds made available by the CFD for City Improvements.”

Formation Documents:

The Resolution of Formation (Resolution No. 0102-102) explains that: “[t]he Board finds that proposed School Facilities are necessary to meet the increased demand that will be placed upon the schools within the [School District] as a result of new development within the Improvement Area.”

The CFD Report for the Improvement Area states that:

In addition to the bond financed facilities, certain school facilities may be financed through the levy of Special Taxes. Such facilities include, without limitation, classrooms, multi-purpose, administration and auxiliary space at a school, and interim housing, together with furniture, equipment and technology, land, central support and administrative facilities, and transportation and special education facilities, including any incidental school administrative and transportation center improvements.

The Notice of Special Tax Lien for the Improvement Area provides that “[t]he [S]pecial [T]ax [is] secured by this lien . . . in order to mitigate the impact on school facilities of the [Project Students]”

CONCLUSION

Based on the Transcript Documents, we conclude that the School District may spend the Special Taxes proportionately on the School Facilities, including modifications, improvements and rehabilitation thereof that serve the Project Students, including lease payments for financings.

Please do not hesitate to contact us if you have any questions.

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M E M O R A N D U M

TO: Ron Lebs, Assistant Superintendent, Business Services
Capistrano Unified School District

FROM: Bowie, Arneson, Wiles & Giannone; Alexander Bowie

DATE: December 9, 2010

RE: Capistrano Unified School District – Expenditure of Special Taxes from
Community Facilities District No. 92-1 (Las Flores)

SUMMARY

As requested by the Capistrano Unified School District (“School District”), our Firm is providing this Memorandum after a thorough analysis of the permitted uses for the available “Pay-As-You-Go Special Taxes”¹ (“Special Taxes”) for Community Facilities District No. 92-1 of the School District (“CFD No. 92-1”). We have reviewed transcripts for CFD No. 92-1 (Las Flores) (“Transcript Documents”),² and our conclusion, which is based on the Transcript Documents, is that the School District may spend the Special Taxes proportionally on the “School Facilities” (defined below) that serve the students generated as a result of the development within CFD No. 92-1 (“Project Students”), but also retains the discretion to levy a separate Special Tax for the “Rehabilitation Portion of Special Tax Requirement” (defined below).

¹ “Pay-As-You-Go Special Taxes,” as the term is used herein those funds available to the School District, subject to the terms of the applicable Bond Indenture, Rate and Method, and other agreements, remaining from the Special Taxes after the debt service on the Bonds and any administrative expenses have been paid for the applicable “Bond Year.”

² The Transcript Documents include, but are not limited to, Bond Indentures, Mitigation Agreements, Community Facilities Agreement, all formation resolutions including the Notices of Special Tax Lien, CFD Reports, and Rates and Method of Apportionment.

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Community Facilities District No. 92-1 (Las Flores)
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CFD No. 92-1 School Facilities:

- planning, designing, constructing, acquiring, modifying, expanding, improving, furnishing, equipping or rehabilitating certain real and other tangible property with an estimated useful life of five years or longer
- any and all school sites and school facilities necessary to house students in grades kindergarten through 12
- any types of support facilities and sites, including, but not limited to, central administration, food services, maintenance/operations, transportation and related auxiliary functions and certain roadway improvements
- inspecting the Facilities, acquiring necessary equipment therefor, and fulfilling contractual commitments
- equipment and fulfilling contractual commitments
- lease payments for financings, if for authorized School Facilities, as reasonably determined by School District
- any reference to “Facilities” means the School Facilities and the roadway facilities included within the JCFA³

CFD NO. 92-1 ANALYSIS

The intent of the Transcript Documents is for the School District to spend the Special Taxes proportionally on the School Facilities that serve the Project Students, but the School District also retains the discretion to levy a separate Special Tax for the Rehabilitation Portion of Special Tax Requirement. Our conclusion is based on the following:

Mitigation Agreement and JCFA:

The Mitigation Agreement⁴ explains that CFD No. 92-1:

³ The Joint Community Facilities Agreement (“JCFA”) for the Las Flores Planned Community is entered into effective as of December 21, 1992, by and among the County of Orange (“County”), Foothill/Eastern Transportation Corridor Agency (“Transportation Agency”) and the School District. The JCFA relates to the County’s Foothill Circulation Phasing Plan (“FCPP”).

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will finance certain construction and rehabilitation needs by, and issue bonds secured by, the levy and collection of annual [Special Taxes] within [CFD No. 92-1] for the purpose of financing the planning, purchase, construction, expansion, improvement, rehabilitation, relocation, leasing and equipping of the School Facilities⁵ and all incidental expense related thereto as authorized by the [Mello-Roos] Act.

Pursuant to the term of the Mitigation Agreement, mitigation of the School Facilities:

is anticipated to have occurred upon (i) the sale by [CFD No. 92-1] of bonds in the amount of \$30,000,000 and (ii) the collection of Special Taxes for purposes of paying principal and interest on such bonds . . . [,] related incidental expenses and providing funds for acquiring, constructing, equipping and rehabilitating certain school facilities in an amount sufficient to provide, in the aggregate, \$2,000,000 toward such costs

The Mitigation Agreement contains a CFD attendance policy so that the Project Students “shall, wherever possible, be given priority and opportunity to attend the School Facilities closest to [CFD No. 92-1]. [School District], however, reserves the right to establish attendance areas for all School Facilities.”

The JCFA provides that CFD No. 92-1 shall transfer up to \$6,800,000 in CFD No. 92-1 Bond proceeds to the County to assist with the County’s requirements under the FCPP.

Formation Documents:

In the Petition to the Board of Trustees of the School District (“Board”), the Owners⁶ request that CFD No. 92-1:

finance the construction, acquisition, modification, expansion or rehabilitation of certain school and roadway improvements, both onsite and offsite, and all

⁴ The Mitigation Agreement is entitled the Mitigation Agreement among the School District, and Richard J. O’Neill Trust, Alice O’Neill Avery Trust, Las Flores Real Estate Group Ltd., and Santa Margarita Company (collectively, “Owners”) dated September 1, 1993.

⁵ The Mitigation Agreement defines School Facilities as:

any existing or proposed elementary, middle or high school to be attended by students at least some of which reside in the [CFD No. 92-1] and related sites and facilities thereto, including, but not limited to, athletic and recreation facilities, child care facilities, administrative facilities and permanent or relocatable classrooms and furniture, fixtures, equipment and other tangible property with an estimate useful life of five (5) years or longer.

⁶ The Santa Margarita Company along with Richard J. O’Neill Trust, Alice O’Neill Avery Trust, Las Flores Real Estate Group Ltd. will collectively be referred to as the “Owners” as they are parties to the Mitigation Agreement.

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Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 92-1 (Las Flores)
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appurtenances and appurtenant work in connection with the foregoing, all required to be constructed to facilitate development within [CFD No. 92-1] . . . and [t]he cost of engineering, planning, designing and rehabilitating the Facilities.

In the Resolution of Intention to Establish CFD No. 92-1 (Resolution No. 92-113), the Board explained that CFD No. 92-1:

will finance . . . the construction, purchase, modification, expansion, improvement or rehabilitation of school facilities . . . certain roadway improvements, both onsite and offsite, and all appurtenances and appurtenant work in connection with the foregoing school and roadway facilities, all required to be constructed to facilitate development within the [CFD No. 92-1] ...”⁷

The Resolution of Intention to Incur Bonded Indebtedness (Resolution No. 92-112) explains that the indebtedness will also finance “the costs of designing, constructing, acquiring and inspecting the Facilities, acquiring necessary equipment therefor, and fulfilling contractual commitments and carrying out the powers and purposes of [CFD No. 92-1]”

The Board made a finding in the Resolution of Formation (Resolution No. 92-141) that “the proposed Facilities are necessary to meet the increased demand that will be placed upon the [School District] as a result of new development projected within [CFD No. 92-1].”⁸

The Resolution Determining Necessity to Incur Bonded Indebtedness (Resolution No. 92-142) allows for CFD No. 92-1 to finance:

the construction, purchase, modification, expansion, improvement, furnishing, equipping or rehabilitation of certain real and other tangible property with an estimated useful life of five years or longer, including certain school sites and related facilities and certain roadway improvements, all as more fully described in Resolution No. 92-113 to serve the area within [CFD No. 92-1].

The official ballot for CFD No. 92-1 provides that the proceeds may be used to finance:

the costs of planning, designing, constructing, acquiring, modifying, expanding, improving, furnishing, equipping or rehabilitating certain real and other tangible property with an estimated useful life of five years or longer, consisting of any and all school sites and [School Facilities] necessary to house students in grades kindergarten through 12, including any types of support facilities and sites,

⁷ The Resolution of Intention to Incur Bonded Indebtedness (Resolution No. 92-112) has a similar definition for the Facilities.

⁸ The Resolution of Intention to Establish CFD No. 92-1 (Resolution No. 92-113) has similar language.

BOWIE, ARNESON, WILES & GIANNONE

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including, but not limited to, central administration, food services, maintenance/operations, transportation and related auxiliary functions and certain roadway improvements

The Impartial Analysis, drafted by the School District's counsel at the time, specifically states that, beyond what is provided in the official ballot, "[n]o other facilities or services are authorized to be provided by [CFD No. 92-1.]" We believe this language to reasonably mean those Facilities provided for throughout the CFD No. 92-1 formation process and reasonably needed to serve the Project Students.

The CFD Report for CFD No. 92-1 states that "[t]he actual facilities described [in the CFD Report] are those currently expected to meet the needs of CFD No. 92-1." Below is a description of the School Facilities from the CFD Report:

School [Facilities] which may be financed include the acquisition, construction and rehabilitation of certain school sites and facilities and certain road improvements. School sites which may be financed include a portion of a middle school site and a 9-12 high school site which are needed in order to serve, in part, the [Project Students].⁹ . . .

CFD No. 92-1 may also provide for the rehabilitation of a portion of the [School Facilities] proposed to be financed, over their useful life of five years or longer, including, but not limited to, the replacement of floor covering, interior and exterior painting, electrical and communication systems, lighting, roofing, plumbing, heating systems, wall systems and paving.

Also, we believe lease payments for financings (if for authorized School Facilities) proportional to Project Students may be funded by Special Taxes and proceeds of bonds if to do so would produce cost savings. We believe that lease payments may be only proportionally funded in relation to the needs of the Project Students.

In addition to the Special Tax being levied to pay for debt service on the bonds, create a reserve fund, and pay administrative expenses and incidental expenses, [School District] may, at its discretion, levy Special Taxes in an aggregate amount of \$2 million to pay the costs of

⁹ Per the CFD Report,

[s]chool facilities construction which may be financed may include, but are not limited to, a portion of the construction of a middle school and a high school. The proposed middle school site would consist of approximately 25 acres and the high school site would consist of approximately 40 acres. The middle school is projected to have a student capacity of 1,400, while the high school is projected to house 2,000 students. . . .

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“acquiring, constructing, equipping and rehabilitating certain [School Facilities]” (“Rehabilitation Portion of Special Tax Requirement”).

Additionally, the School District is required to “use its best efforts to attain the highest priority for funding of the School Facilities from the State” under several State funding programs. If the School District receives “Matching Funds,” then the Mitigation Agreement sets forth how the School District shall determine if there are “Excess Matching Funds” and the School District may be required to defease outstanding bonds of CFD No. 92-1 or reduce the Special Tax levy.

We note that a document produced for environmental purposes, rather than for CFD formation purposes and/or bond sale purposes, has conflicting language regarding the need for a high school within the boundaries of CFD No. 92-1.¹⁰ The whole of the Transcript Documents suggests otherwise, and therefore, it seems reasonable that the Special Taxes be expended on a high school if such facility is proportionally funded in relation to the Project Students.

The Amendment No. 1 to the Notice of Special Tax Lien coordinates the [Special Tax] levy for CFD No. 92-1 with that of Community Facilities District No. 95-1 of the School District (“CFD No. 95-1”). There are three separate levies using Special Taxes for CFD No. 92-1: (1) for the CFD No. 92-1 Series 1993 Special Tax Bonds; (2) Additional Bonds also using the Special Taxes available from CFD No. 95-1, and (3) for the Rehabilitation Portion of Special Tax Requirement. As explained in the Resolution of Consideration to change the RMA for CFD No. 92-1 (Resolution No. 9596-24), the amendment to the RMA would:

alter the method of levy of [Special Taxes] to be levied on undeveloped property within [CFD No. 92-1] from the currently authorized method in order to coordinate the levy of [Special Taxes] of CFD No. 95-1 with the levy of [Special Taxes] of [CFD No. 92-1] and to clarify the treatment of open space property under the current [RMA]. The Board hereby finds and determines that the Amendments will not interfere with the timely retirement of the Bonds.

¹⁰ The Expanded Initial Study for CFD No. 92-1 discusses how:

[f]unds derived from CFD bond sales will be utilized for site acquisition and construction of a K-8 school, as well as satisfaction of fee obligations for [the FCPP]. The school bond revenues will be applied toward a portion of the school site acquisition, a portion of the construction costs, as well as modification, expansion, purchase of improvements and rehabilitations. . . . The ultimate development of [CFD No. 92-1] will generate approximately 600 students for all grade levels. Student capacity is available at the high school in the area. However, the elementary and middle schools in the area are nearing capacity and will not be able to accommodate the students generated as a result of development of this community. Thus, formation of CFD [No.] 92-1 is necessary to insure that these students will be accommodated.

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The RMA provides “[o]n each July 1, commencing July 1, 1994, the Assigned Special Tax for each Land Use Class and the Backup Special Tax shall be increased by two percent (2.00%) of the amount in effect in the previous Fiscal Year.”

Bond Documents:

The Supplement to Resolution No. 93-76 for the Series 1993 Special Tax Bonds defines “Project” as “those public facilities described in the Resolution of Formation which are to be acquired or constructed within and outside of the [CFD No. 92-1], including all engineering, planning and design services and other incidental expenses related to such facilities and other facilities”

It would be consistent with the rest of the Transcript Documents that School Facilities might need to be constructed outside of the CFD No. 92-1 boundaries in order to serve Project Students. For example, if a school was only partially funded with CFD No. 92-1 Special Taxes, it would be reasonable for the School District to build the school outside the boundaries of CFD No. 92-1.

The Official Statement for the Series 1993 Special Tax Bonds shows that the bonds will “finance a portion of the [School Facilities] to be located within [CFD No. 92-1] and portions of roadways contained in the FCPP . . . and related improvements.”¹¹

The Tax Certificate for the Series 1997 Special Tax Bonds shows that the construction proceeds would be spent on “[c]apital costs of the construction of an elementary school for grades kindergarten through eighth grade for approximately 1,200 students and a portion of costs associated with a future high school.”¹² The Official Statement for the Series 1997 Bonds explains that:

[t]he principal of and interest on the Bonds are also secured by a lien and charge on the revenues of Special Taxes levied on taxable property in CFD No. 95-1. . . . Special Taxes will be levied on property within CFD No. 95-1 only if and to the extent that available revenues from the Special Taxes levied on property within CFD No. 92-1 are insufficient to pay the full amount of the principal of, and interest on, the Bonds.

¹¹ The Tax Certificate also explains that: “[a]pproximately \$1,500,000 in Bond proceeds will be available to finance the school facilities \$5,000,000 in Bond proceeds will be available to finance [the FCPP] roadways. . . . [CFD No. 92-1] currently plans to issue two series of Additional Bonds in the future to finance additional school facilities improvements in connection with the School Project and additional roadway improvements.”

¹² The Official Statement has similar language.

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The Tax Certificate for the Special Tax Bonds, Series 1998 provides that these Bonds will advance refund the 1993 Special Tax Bonds and 1997 Special Tax Bonds,¹³ as well as fund additional School Facilities. We have not reviewed what projects were funded with the Special Taxes and/or bond proceeds described in this Memorandum.

CONCLUSION

Based on our review of the Transcript Documents, we conclude that CFD No. 92-1 may use its Special Taxes proportionally on the School Facilities that serve the Project Students, including the described facilities and central support and administrative facilities, as well as lease payments for financings (if for authorized School Facilities). The School District also retains the discretion to levy a separate Special Tax for the Rehabilitation Portion of Special Tax Requirement.

Please do not hesitate to contact us if you have any questions.

¹³ The Tax Certificate for the Special Tax Bonds, Series 1998 explained that the 1993 Special Tax Bonds and 1997 Special Tax Bonds funded public K-12 school facilities including Las Flores Middle School and Chiquita canyon Area High School and roadway facilities for the FCPP roads). The new school facilities for the Special Tax Bonds, Series 1998 includes Chiquita Canyon Area High School.

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M E M O R A N D U M

TO: Ron Lebs, Assistant Superintendent, Business Services
Capistrano Unified School District

FROM: Bowie, Arneson, Wiles & Giannone; Alexander Bowie

DATE: December 9, 2010

RE: Capistrano Unified School District – Expenditure of Special Taxes from
Community Facilities District No. 94-1 (Rancho Santa Margarita)

SUMMARY

As requested by the Capistrano Unified School District (“School District”), our Firm is providing this Memorandum after a thorough analysis of the permitted uses for the available “Pay-As-You-Go Special Taxes”¹ (“Special Taxes”) for Community Facilities District No. 94-1 of the School District (Rancho Santa Margarita) (“CFD No. 94-1”). We have reviewed transcripts for CFD No. 94-1 (“Transcript Documents”),² and our conclusion, which is based on the Transcript Documents, is that the School District may spend the Special Taxes proportionally on the “School Facilities” (defined below) that serve the students generated as a result of the development within CFD No. 94-1 (“Project Students”).

CFD No. 94-1 School Facilities:

- planning, designing, constructing, acquiring, modifying, expanding, improving, furnishing, equipping or rehabilitating certain real and other tangible property with an estimated useful life of five years or longer

¹ “Pay-As-You-Go Special Taxes” as the term is used herein means those funds available to the School District, subject to the terms of the applicable Bond Indenture, Rate and Method, and other agreements, remaining from the Special Taxes after the debt service on the Bonds and any administrative expenses have been paid for the applicable Bond Year.

² The Transcript Documents include, but are not limited to, Bond Indentures, Mitigation Agreements, Joint Community Facilities Agreement, all formation resolutions including the Notices of Special Tax Lien, CFD Reports, and Rates and Method of Apportionment.

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs, Capistrano Unified School District
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- any and all school sites and school facilities necessary to house students in grades kindergarten through 12
- any types of support facilities and sites, including, but not limited to, central administration, food services, maintenance/operations, transportation and related auxiliary functions
- any bonds and/or certificates of participation proposed to be issued to finance the School Facilities, including those of CFD No. 88-1

CFD NO. 94-1 ANALYSIS

The intent of the Transcript Documents is for the School District to spend the Special Taxes proportionally on the School Facilities that serve the Project Students. Our conclusion is based on the following:

Formation Documents:

The Petition to the Board of Trustees of the School District (“Board”) requests that CFD No. 94-1:

finance the construction, acquisition, modification, expansion or rehabilitation of certain school improvements, both onsite and offsite, and all appurtenances and appurtenant work in connection with the foregoing, all required to be constructed to facilitate development within [CFD No. 94-1] . . . cost of engineering, planning, designing and rehabilitating the [School] Facilities . . . the issuance of bonds of Community Facilities District No. 88-1 of the School District (“CFD [No.] 88-1”) [including the] . . . [p]ayment of principal and interest on bonds of CFD [No.] 88-1.

The Petition also requests that the Board:

annually levy [Special Taxes] on the property within [CFD No. 94-1] for the construction, acquisition and rehabilitation of certain of the [School] Facilities and for the payment of the aggregate amount of principal of and interest owing on bonds of the CFD [No.] 88-1 in each fiscal year, including the maintenance of reserves therefor.

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The Resolution of Intention for Formation (Resolution No. 94-56) explains that CFD No. 94-1 should:

finance, either directly or through a lease or lease-purchase financing arrangement, . . . the construction, purchase, modification, expansion, improvement or rehabilitation of elementary, middle and high school facilities, both onsite and offsite, which are expected to be attended by students residing within [CFD No. 94-1] and all appurtenances and appurtenant work in connection with the foregoing [School Facilities], all required to be constructed to facilitate development with [CFD No. 94-1]. . .

The Board stated that they intended “to levy annually . . . a [Special Tax] . . . sufficient to pay for: (i) the [School] Facilities, (ii) the principal and interest and other periodic costs with respect to the bonds, and/or certificates of participation, proposed to be issued to finance the [School] Facilities”

Moreover, “[t]he earlier of Fiscal Year 2030-31 and the last year [Special Taxes] are levied for Community Facilities District No. 88-1 of the School District [“CFD No. 88-1”] is the last fiscal year in which the [Special Tax] for [CFD No. 94-1] may be levied.”

The Board “hereby finds that the proposed [School] Facilities are necessary to meet the increased demand placed upon the School District and the existing infrastructure in the School District as a result of the development of [CFD No.] 94-1.”

We note that CFD No. 94-1 has no authorized bonded indebtedness.³

The CFD Report provides that⁴:

³ Per a Board agenda item dated August 15, 1994:

“CFD [No.] 94-1 will provide the [School] District with up to \$6 million in funding to support future school facilities. CFD [No.] 94-1 will not issue bonds, but special taxes of CFD [No.] 94-1 may be used to pay debt service on bonds of CFD [No.] 88-1 or other indebtedness incurred to finance facilities serving CFD [No.] 94-1.

⁴ Per the CFD Report: Given the present zoning for the property, the special taxes estimated to be generated over the life of the program is \$1,138,378. Approximately \$6,090,000 would be generated if the 722 homes . . . were developed. The estimated cost of the school and ancillary and support facilities described above including the cost of land, is as follows:

- Arroyo Vista Elementary School=\$13,320,858
- Las Flores Middle School=\$24,424,130
- Chiquita Canyon High School=\$52,844,586
- Ancillary and Support Facilities=\$1,032,000

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Memorandum to Ron Lebs, Capistrano Unified School District
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School [Facilities] which may be financed include the acquisition, construction and rehabilitation of certain school sites and facilities and ancillary and/or support facilities which are needed, in part, to serve the [Project Students]. School sites and/or facilities which may be, in part, financed include, but are not limited to a portion of Arroyo Vista Elementary School, Las Flores Middle School and/or Chiquita Canyon High School.

CFD No. 94-1 may also provide for the rehabilitation of a portion of the [School Facilities] proposed to be financed, over their useful life of five years or longer, including, but not limited to, the replacement of floor covering, interior and exterior painting, electrical and communication systems, lighting, roofing, plumbing, heating systems, wall systems and paving.

The Board made a finding in the Resolution of Formation (Resolution No. 94-64) that “the proposed [School] Facilities are necessary to meet the need within the School District for high school facilities.” We note that this finding is narrower than what was contained within Resolution No. 94-56.

Additionally, Resolution No. 94-64 establishes that CFD No. 94-1 may provide for the:

planning, designing, constructing, acquiring, modifying, expanding, improving, furnishing, equipping or rehabilitating certain real and other tangible property with an estimated useful life of five years or longer, consisting of any and all school sites and [School Facilities] necessary to house students in grades kindergarten through 12, including any types of support facilities and sites, including, but not limited to, central administration, food services, maintenance/operations, transportation and related auxiliary functions⁵

Resolution No. 94-64 also allows for the repayment of funds advanced by the School District from its Developer Fee Account for costs of forming CFD No. 94-1, but without interest, from the [Special Tax] collections of CFD No. 94-1.

Regarding the levy of Special Taxes, the Board stated that they intended:

to levy the . . . [Special Tax] . . . sufficient to pay for: (i) the [School] Facilities, (ii) the principal and interest and other periodic costs on the bonds of [CFD No. 88-1] and any bonds and/or certificates of participation proposed to be issued to finance the [School] Facilities; (iii) repayment, without interest, to the School District’s Developer Fee Account . . . The earlier of Fiscal Year 2030-31

⁵ The Official Ballot contains nearly an identical description, but clearly provides for the issuance of certificates of participation to finance the facilities in the same sentence.

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Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 94-1 (Rancho Santa Margarita)
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or the date that all bonds of CFD [No.] 88-1 are retired is the last Fiscal Year in which the [Special Tax] may be levied.

The RMA provides “[c]ommencing with July 1, 1995 and each July 1 thereafter, the Maximum Special Tax . . . shall be increased by an amount equal to 2.0% of the amount in effect for the previous Fiscal Year.”

We have not reviewed what projects were funded with the Special Taxes described in this Memorandum.

CONCLUSION

Based on our review of the Transcript Documents, we conclude that CFD No. 94-1 may spend the Special Taxes proportionally on the School Facilities, including modernization and rehabilitation thereof that serve the Project Students.

Please do not hesitate to contact us if you have any questions.

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M E M O R A N D U M

TO: Ron Lebs, Assistant Superintendent, Business Services
Capistrano Unified School District

FROM: Bowie, Arneson, Wiles & Giannone; Alexander Bowie

DATE: December 9, 2010

RE: Capistrano Unified School District – Expenditure of Special Taxes from
Community Facilities District No. 95-1 (Horno/Ladera)

SUMMARY

As requested by the Capistrano Unified School District (“School District”), our Firm is providing this Memorandum after a thorough analysis of the permitted uses for the available “Pay-As-You-Go Special Taxes”¹ (“Special Taxes”) for Community Facilities District No. 95-1 of the School District (Horno/Ladera) (“CFD No. 95-1”). We have reviewed transcripts for CFD No. 95-1 (“Transcript Documents”),² and our conclusion, which is based on the Transcript Documents, show CFD No. 95-1 has pledged its Special Taxes³ toward the payment of debt service (excluding the 1993 Special Tax Bonds) for Community Facilities District No. 92-1 of the School District (“CFD No. 92-1 Bonds”). The language in the Transcript Documents authorizing the “School Facilities” (defined below) and the subsequent pledge of Special Taxes is provided below.

¹ “Pay-As-You-Go Special taxes” as the term is used herein means those funds available to the School District, subject to the terms of the applicable Bond Indenture, Rate and Method, and other agreements, remaining from the Special Taxes after the debt service on the Bonds, including the CFD No. 92-1 Bonds, and any administrative expenses have been paid for the applicable “Bond Year.”

² The Transcript Documents include, but are not limited to, Bond Indentures, all formation resolutions including the Notices of Special Tax Lien, CFD Reports, and Rates and Method of Apportionment.

³ We understand that no Special Taxes have been levied to date for CFD No. 95-1.

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Community Facilities District No. 95-1 (Horno/Ladera)
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CFD No. 95-1 School Facilities:

- planning, designing, constructing, acquiring, modifying, expanding, improving, furnishing, equipping or rehabilitating certain real and other tangible property with an estimated useful life of five years or longer
- any and all school sites and school facilities necessary to house students in grades kindergarten through 12
- any types of support facilities and sites, including, but not limited to, central administration, food services, maintenance/operations, transportation and related auxiliary functions
- bonds or certificates of participation issued to finance the School Facilities

CFD NO. 95-1 ANALYSIS

CFD No. 95-1 pledged its Special Taxes toward the payment of debt service on the CFD No. 92-1 Bonds, and therefore, the School Facilities for CFD No. 92-1 should also serve the students generated as a result of the development within CFD No. 95-1 (“Project Students”).⁴

Formation Documents:

The Resolution of Intention for Formation (Resolution No. 9596-23) provides that CFD No. 95-1 may:

[f]inance, either directly or through a lease or lease-purchase financing arrangement, . . . the construction, acquisition, modification, expansion or rehabilitation of certain school improvements including all or portion of an elementary school, a middle school and a high school . . . which are expected to be attended by students residing within [CFD No. 95-1] . . .

[CFD No. 95-1 will] pay for . . . costs associated with the creation of [CFD No. 95-1] and the issuance of bonds, certificates of participation and other indebtedness by [“CFD No. 92-1”] . . .

⁴ Agenda documents for the October 23, 1995 Board meeting indicate that CFD No. 95-1 special taxes were intended, at that time, to be collected along with those from CFD No. 92-1 in order to support a future bond issue that will provide construction funds to partially build Las Flores K-8 School. The Tax Certificate for the CFD No. 92-1 Special Tax Bonds, Series 1998 indicates that facilities at Las Flores Middle School were indeed funding using the 1993 Special Tax Bonds and 1997 Special Tax Bonds.

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 95-1 (Horno/Ladera)
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The Board of Trustees of the School District (“Board”) made a finding “that the proposed [School] Facilities are necessary to meet the increased demand placed upon the School District and the existing infrastructure in the School District as a result of the development of [CFD No.] 95-1.”⁵

The CFD Report states that “[t]he actual facilities’ described [within the CFD Report] are those currently expected to be required to adequately meet, in part, the needs of CFD No. 95-1.” The School Facilities for CFD No. 95-1 include:

[t]he acquisition and construction of certain school sites and facilities. School sites which may be financed include a portion of a middle school site and a 9-12 high school site which are needed in order to serve, in part, the student population to be generated as a result of the expected development within CFD No. 95-1. School [Facilities] construction which may be financed may include, but are not limited to, a portion of the construction of a middle school and a high school.⁶

The CFD Report further explains that “[n]o bonded indebtedness for CFD No. 95-1 is authorized. Rather, [Special Taxes] levied within CFD No. 95-1 will secure, in part, certain bonds issued by [CFD No. 92-1.]”

The Resolution of Formation (Resolution No. 9596-59) contains the following language:

The [School Facilities] authorized to be provided for [CFD No. 95-1] are those described in Resolution No. 9596-23, the [CFD] Report and shall include, without limitation, planning, designing, constructing, acquiring, modifying, expanding, improving, furnishing, equipping or rehabilitating certain real and other tangible property with an estimated useful life of five years or longer, consisting of any and all school sites and [School Facilities] necessary to house students in grades kindergarten through 12, including any types of support facilities and sites, including, but not limited to, central administration, food services, maintenance/operations, transportation, and related auxiliary functions

It is the intention of the Board . . . to levy the proposed [Special Tax] . . . annually on all non-exempt property within [CFD No. 95-1] sufficient to pay for (i) the

⁵ The Resolution of Formation (Resolution No. 9596-59) made this similar finding: “The Board finds that the proposed Facilities are necessary to meet the need within the School District for elementary, middle and high school facilities.”

⁶ The CFD Report also includes the following description: The proposed middle school site would consist of approximately 25 acres and the high school site would consist of approximately 40 acres. The middle school is projected to have a student capacity of 1,400, while the high school is projected to house 2,000 students.

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Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 95-1 (Horno/Ladera)
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[School] Facilities, (ii) the principal and interest and other periodic costs on certain bonds of [CFD No. 92-1], and any bonds and/or certificates of participation proposed to be issued to finance the [School] FacilitiesThe [School] Facilities may be financed on a direct payment basis or through a lease, lease-purchase, installment purchase or the issuance of bonds. . . . The earlier of Fiscal Year 2035-36 or the date that all bonds of CFD [No.] 92-1 are retired is the last Fiscal Year in which the [Special Tax] may be levied.

The Special Tax for CFD No. 92-1 and CFD No. 95-1 are levied, pursuant to the Rate and Method of Formation for CFD No. 95-1 (“RMA”), “until the aggregate amount of the levy equals items one through five of the Special Tax Requirement relative to the Additional Bonds.”⁷ To summarize, the CFD No. 92-1 Special Tax is levied first on CFD No. 92-1 Developed Property; then, if necessary, CFD No. 95-1 Special Tax is levied on CFD No. 95-1 Developed Property; followed by the CFD No. 92-1 Special Tax is levied on Undeveloped Property; and then the CFD No. 95-1 Special Tax is levied on Undeveloped Property, and further steps are provided in the RMA if monies are still needed in order to satisfy the Special Tax Requirement.

The official ballot for CFD No. 95-1 states:

Shall [CFD No. 95-1] levy a [Special Tax] . . . on the real property located within . . . [CFD No. 95-1], which [Special Taxes] will be used to finance the costs of planning, designing, constructing, acquiring, modifying, expanding, improving, furnishing, equipping or rehabilitating certain real and other tangible property with an estimated useful life of five years or longer, consisting of any and all school sites and [School Facilities] necessary to house students in grades kindergarten through 12, including any types of support facilities and sites, including, but not limited to, central administration, food services, maintenance/operations, transportation and related auxiliary functions all as described in Resolution No. 9596-59 . . . and for the payment of the principal of and interest on bonds or certificates of participation issued to finance the [School] Facilities?

Special Taxes Pledge:

The Resolution Authorizing the Pledge of its Special Taxes (Resolution No. 9697-54) recognized:

⁷ Additional Bonds are defined in the RMA as “the additional bonds or indebtedness of CFD No. 92-1 (i.e., exclusive of the 1993 Bonds) up to an amount equal to \$21,485,000 pursuant to the current authorization, or in such greater amount as may be subsequently authorized by the qualified electors of CFD No. 92-1.”

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 95-1 (Horno/Ladera)
December 9, 2010
Page 5

that the qualified electors of [CFD No. 95-1] approved the pledge of [Special Taxes] of [CFD No. 95-1] to Bonds of [CFD No. 92-1], and, accordingly, the legislative body of [CFD No. 95-1] is presently authorized to pledge such taxes from time to time as determined by the legislative body for the benefit of [CFD No. 95-1] for the purposes set forth in the proposition so approved

In this Resolution, [CFD No. 95-1] pledged its Special Taxes toward CFD No. 92-1's issuance of its Series 1996 Special Tax Bonds. The Official Statement for the CFD No. 92-1 Series 1997 Bonds explains:

[t]he principal of and interest on the Bonds are also secured by a lien and charge on the revenues of Special Taxes levied on taxable property in CFD No. 95-1. . . . Special Taxes will be levied on property within CFD No. 95-1 only if and to the extent that available revenues from the Special Taxes levied on property within CFD No. 92-1 are insufficient to pay the full amount of the principal of, and interest on, the Bonds.

We have not reviewed the pledge of the CFD No. 95-1 Special Taxes as to the payment of debt service on CFD No. 92-1 Bonds nor have we reviewed what projects were funded with any of the expenditures for the CFD No. 92-1 issuances.

The RMA for CFD No. 95-1 provides "[o]n July 1, commencing July 1, 1996, the Assigned Special Tax for each Land Use Class shall be increased by two percent (2.00%) of the amount in effect in the previous Fiscal Year."

CONCLUSION

Based on our review of the Transcript Documents, we conclude that CFD No. 95-1 pledged its Special Taxes toward the payment of debt service on the CFD No. 92-1 Bonds, and therefore, the School Facilities for CFD No. 92-1 should also proportionately serve the Project Students.

Please do not hesitate to contact us if you have any questions.

BOWIE, ARNESON, WILES & GIANNONE

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M E M O R A N D U M

TO: Ron Lebs, Assistant Superintendent, Business Services
Capistrano Unified School District

FROM: Bowie, Arneson, Wiles & Giannone; Alexander Bowie

DATE: December 9, 2010

RE: Capistrano Unified School District – Expenditure of Special Taxes from
Community Facilities District No. 95-1 (Horno/Ladera)

SUMMARY

As requested by the Capistrano Unified School District (“School District”), our Firm is providing this Memorandum after a thorough analysis of the permitted uses for the available “Pay-As-You-Go Special Taxes”¹ (“Special Taxes”) for Community Facilities District No. 95-1 of the School District (Horno/Ladera) (“CFD No. 95-1”). We have reviewed transcripts for CFD No. 95-1 (“Transcript Documents”),² and our conclusion, which is based on the Transcript Documents, show CFD No. 95-1 has pledged its Special Taxes³ toward the payment of debt service (excluding the 1993 Special Tax Bonds) for Community Facilities District No. 92-1 of the School District (“CFD No. 92-1 Bonds”). The language in the Transcript Documents authorizing the “School Facilities” (defined below) and the subsequent pledge of Special Taxes is provided below.

¹ “Pay-As-You-Go Special taxes” as the term is used herein means those funds available to the School District, subject to the terms of the applicable Bond Indenture, Rate and Method, and other agreements, remaining from the Special Taxes after the debt service on the Bonds, including the CFD No. 92-1 Bonds, and any administrative expenses have been paid for the applicable “Bond Year.”

² The Transcript Documents include, but are not limited to, Bond Indentures, all formation resolutions including the Notices of Special Tax Lien, CFD Reports, and Rates and Method of Apportionment.

³ We understand that no Special Taxes have been levied to date for CFD No. 95-1.

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 95-1 (Horno/Ladera)
December 9, 2010
Page 2

CFD No. 95-1 School Facilities:

- planning, designing, constructing, acquiring, modifying, expanding, improving, furnishing, equipping or rehabilitating certain real and other tangible property with an estimated useful life of five years or longer
- any and all school sites and school facilities necessary to house students in grades kindergarten through 12
- any types of support facilities and sites, including, but not limited to, central administration, food services, maintenance/operations, transportation and related auxiliary functions
- bonds or certificates of participation issued to finance the School Facilities

CFD NO. 95-1 ANALYSIS

CFD No. 95-1 pledged its Special Taxes toward the payment of debt service on the CFD No. 92-1 Bonds, and therefore, the School Facilities for CFD No. 92-1 should also serve the students generated as a result of the development within CFD No. 95-1 (“Project Students”).⁴

Formation Documents:

The Resolution of Intention for Formation (Resolution No. 9596-23) provides that CFD No. 95-1 may:

[f]inance, either directly or through a lease or lease-purchase financing arrangement, . . . the construction, acquisition, modification, expansion or rehabilitation of certain school improvements including all or portion of an elementary school, a middle school and a high school . . . which are expected to be attended by students residing within [CFD No. 95-1] . . .

[CFD No. 95-1 will] pay for . . . costs associated with the creation of [CFD No. 95-1] and the issuance of bonds, certificates of participation and other indebtedness by [“CFD No. 92-1”] . . .

⁴ Agenda documents for the October 23, 1995 Board meeting indicate that CFD No. 95-1 special taxes were intended, at that time, to be collected along with those from CFD No. 92-1 in order to support a future bond issue that will provide construction funds to partially build Las Flores K-8 School. The Tax Certificate for the CFD No. 92-1 Special Tax Bonds, Series 1998 indicates that facilities at Las Flores Middle School were indeed funding using the 1993 Special Tax Bonds and 1997 Special Tax Bonds.

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 95-1 (Horno/Ladera)
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The Board of Trustees of the School District ("Board") made a finding "that the proposed [School] Facilities are necessary to meet the increased demand placed upon the School District and the existing infrastructure in the School District as a result of the development of [CFD No.] 95-1."⁵

The CFD Report states that "[t]he actual facilities' described [within the CFD Report] are those currently expected to be required to adequately meet, in part, the needs of CFD No. 95-1." The School Facilities for CFD No. 95-1 include:

[t]he acquisition and construction of certain school sites and facilities. School sites which may be financed include a portion of a middle school site and a 9-12 high school site which are needed in order to serve, in part, the student population to be generated as a result of the expected development within CFD No. 95-1. School [Facilities] construction which may be financed may include, but are not limited to, a portion of the construction of a middle school and a high school.⁶

The CFD Report further explains that "[n]o bonded indebtedness for CFD No. 95-1 is authorized. Rather, [Special Taxes] levied within CFD No. 95-1 will secure, in part, certain bonds issued by [CFD No. 92-1]."

The Resolution of Formation (Resolution No. 9596-59) contains the following language:

The [School Facilities] authorized to be provided for [CFD No. 95-1] are those described in Resolution No. 9596-23, the [CFD] Report and shall include, without limitation, planning, designing, constructing, acquiring, modifying, expanding, improving, furnishing, equipping or rehabilitating certain real and other tangible property with an estimated useful life of five years or longer, consisting of any and all school sites and [School Facilities] necessary to house students in grades kindergarten through 12, including any types of support facilities and sites, including, but not limited to, central administration, food services, maintenance/operations, transportation, and related auxiliary functions

It is the intention of the Board . . . to levy the proposed [Special Tax] . . . annually on all non-exempt property within [CFD No. 95-1] sufficient to pay for (i) the

⁵ The Resolution of Formation (Resolution No. 9596-59) made this similar finding: "The Board finds that the proposed Facilities are necessary to meet the need within the School District for elementary, middle and high school facilities."

⁶ The CFD Report also includes the following description: The proposed middle school site would consist of approximately 25 acres and the high school site would consist of approximately 40 acres. The middle school is projected to have a student capacity of 1,400, while the high school is projected to house 2,000 students.

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Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 95-1 (Horno/Ladera)
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[School] Facilities, (ii) the principal and interest and other periodic costs on certain bonds of [CFD No. 92-1], and any bonds and/or certificates of participation proposed to be issued to finance the [School] FacilitiesThe [School] Facilities may be financed on a direct payment basis or through a lease, lease-purchase, installment purchase or the issuance of bonds. . . . The earlier of Fiscal Year 2035-36 or the date that all bonds of CFD [No.] 92-1 are retired is the last Fiscal Year in which the [Special Tax] may be levied.

The Special Tax for CFD No. 92-1 and CFD No. 95-1 are levied, pursuant to the Rate and Method of Formation for CFD No. 95-1 (“RMA”), “until the aggregate amount of the levy equals items one through five of the Special Tax Requirement relative to the Additional Bonds.”⁷ To summarize, the CFD No. 92-1 Special Tax is levied first on CFD No. 92-1 Developed Property; then, if necessary, CFD No. 95-1 Special Tax is levied on CFD No. 95-1 Developed Property; followed by the CFD No. 92-1 Special Tax is levied on Undeveloped Property; and then the CFD No. 95-1 Special Tax is levied on Undeveloped Property, and further steps are provided in the RMA if monies are still needed in order to satisfy the Special Tax Requirement.

The official ballot for CFD No. 95-1 states:

Shall [CFD No. 95-1] levy a [Special Tax] . . . on the real property located within . . . [CFD No. 95-1], which [Special Taxes] will be used to finance the costs of planning, designing, constructing, acquiring, modifying, expanding, improving, furnishing, equipping or rehabilitating certain real and other tangible property with an estimated useful life of five years or longer, consisting of any and all school sites and [School Facilities] necessary to house students in grades kindergarten through 12, including any types of support facilities and sites, including, but not limited to, central administration, food services, maintenance/operations, transportation and related auxiliary functions all as described in Resolution No. 9596-59 . . . and for the payment of the principal of and interest on bonds or certificates of participation issued to finance the [School] Facilities?

Special Taxes Pledge:

The Resolution Authorizing the Pledge of its Special Taxes (Resolution No. 9697-54) recognized:

⁷ Additional Bonds are defined in the RMA as “the additional bonds or indebtedness of CFD No. 92-1 (i.e., exclusive of the 1993 Bonds) up to an amount equal to \$21,485,000 pursuant to the current authorization, or in such greater amount as may be subsequently authorized by the qualified electors of CFD No. 92-1.”

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 95-1 (Horno/Ladera)
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that the qualified electors of [CFD No. 95-1] approved the pledge of [Special Taxes] of [CFD No. 95-1] to Bonds of [CFD No. 92-1], and, accordingly, the legislative body of [CFD No. 95-1] is presently authorized to pledge such taxes from time to time as determined by the legislative body for the benefit of [CFD No. 95-1] for the purposes set forth in the proposition so approved

In this Resolution, [CFD No. 95-1] pledged its Special Taxes toward CFD No. 92-1's issuance of its Series 1996 Special Tax Bonds. The Official Statement for the CFD No. 92-1 Series 1997 Bonds explains:

[t]he principal of and interest on the Bonds are also secured by a lien and charge on the revenues of Special Taxes levied on taxable property in CFD No. 95-1. . . . Special Taxes will be levied on property within CFD No. 95-1 only if and to the extent that available revenues from the Special Taxes levied on property within CFD No. 92-1 are insufficient to pay the full amount of the principal of, and interest on, the Bonds.

We have not reviewed the pledge of the CFD No. 95-1 Special Taxes as to the payment of debt service on CFD No. 92-1 Bonds nor have we reviewed what projects were funded with any of the expenditures for the CFD No. 92-1 issuances.

The RMA for CFD No. 95-1 provides "[o]n July 1, commencing July 1, 1996, the Assigned Special Tax for each Land Use Class shall be increased by two percent (2.00%) of the amount in effect in the previous Fiscal Year."

CONCLUSION

Based on our review of the Transcript Documents, we conclude that CFD No. 95-1 pledged its Special Taxes toward the payment of debt service on the CFD No. 92-1 Bonds, and therefore, the School Facilities for CFD No. 92-1 should also proportionately serve the Project Students.

Please do not hesitate to contact us if you have any questions.

BOWIE, ARNESON, WILES & GIANNONE

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M E M O R A N D U M

TO: Ron Lebs, Assistant Superintendent, Business Services
Capistrano Unified School District

FROM: Bowie, Arneson, Wiles & Giannone; Alexander Bowie

DATE: December 9, 2010

RE: Capistrano Unified School District – Expenditure of Special Taxes from
Community Facilities District No. 98-1A (Pacifica San Juan)

SUMMARY

As requested by the Capistrano Unified School District (“School District”), our Firm is providing this Memorandum after a thorough analysis of the permitted uses for the available “Pay-As-You-Go Special Taxes”¹ (“Special Taxes”) for Community Facilities District No. 98-1 of the School District (Pacifica San Juan) (“CFD No. 98-1”). CFD No. 98-1 was later amended and became known as “CFD No. 98-1A.” When describing our review of CFD No. 98-1/CFD No. 98-1A, we will refer to CFD No. 98-1 when describing the initial formation and CFD No. 98-1A when describing the amendment process and such community facilities district as it is currently described.

We have reviewed transcripts for CFD No. 98-1A (“Transcript Documents”),² and our conclusion, which is based on the Transcript Documents, is that the School District may spend the Special Taxes proportionally on the “School Facilities” that serve the students generated as a result of the development within CFD No. 98-1A (“Project Students”).

¹ “Pay-As-You-Go Special Taxes” as the term is used herein means those funds available to the School District, subject to the terms of the applicable Bond Indenture, Rate and Method, and other agreements, remaining from the Special Taxes after the debt service on the Bonds and any administrative expenses have been paid for the applicable “Bond Year.”

² The Transcript Documents include, but are not limited to, Bond Indentures, Mitigation Agreements, Joint Community Facilities Agreement, all formation resolutions including the Notices of Special Tax Lien, CFD Reports, and Rates and Method of Apportionment.

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 98-1A (Pacifica San Juan)
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CFD No. 98-1A School Facilities:

- construction, purchase, modification, expansion, improvement or rehabilitation of school, both onsite and offsite, and all appurtenances and appurtenant work, all needed School Facilities to serve CFD No. 98-1A and mitigate development thereof, including but not limited to K-12 school sites
- furniture, equipment and technology all land or interests in land
- transportation, central support, administration, interim housing and special education facilities, engineering, planning and designing the School Facilities
- lease payments or debt service for “Bonds” as defined in the Amended Mitigation Agreement³ (if the corresponding project list contains authorized Facilities), and also expenses related to the issuance and sale of any “debt” as defined in Section 53317(d) of the Mello-Roos Act
- any reference to “Facilities” means collectively, the School Facilities, the City of San Juan Capistrano (“City”) facilities and the Capistrano Valley Water District (“Water District”) facilities included within the JCFA’s, including the Amended JCFA⁴
 - ✓ Facilities also include: governmental facilities as well as storm drain, sewer, landscaping, curb and gutter, park, water, roadway, highway and bridge, traffic signals and safety lighting, flood control, libraries, police, fire and recreation facilities and open space acquisition and improvements

CFD NO. 98-1A ANALYSIS

The intent of the Transcript Documents is for the School District to spend the Special Taxes proportionally on the School Facilities that serve the Project Students. Our conclusion is based on the following:

³ The Amended Mitigation Agreement is dated June 14, 2004 and entitled “Impact Mitigation Agreement Related to CFD No. 98-1A” by and between the School District, and Company. This agreement provides that it “supersedes and cancels any and all other agreements, oral and written, between the parties with respect to the subject matter herein.”

⁴ The JCFA, dated September 13, 1999, is entered into by and among the Water District, the School District, and SJD Partners, LTD (“Company”). The JCFA dated September 13, 1999, is entered by and among the City, the School District and Company. The Amended JCFA is entitled the “Amended and Restated Joint Community Facilities Agreement among the School District, the City, and Company dated June 14, 2004.”

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 98-1A (Pacifica San Juan)
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CFD No. 98-1 Formation Documents:

The Petition to the Board of Trustees of the School District ("Board") states that CFD No. 98-1 should finance:

the construction, acquisition, modification, expansion, maintenance or rehabilitation of certain school, roadway, storm drain, sanitary sewer, landscape and water improvements . . . [and] other appropriate public facilities, both onsite and offsite, and all appurtenances and appurtenant work in connection with the foregoing, all required to be constructed to facilitate development within [CFD No. 98-1] and to finance the . . . cost of engineering, planning, designing and rehabilitating the Facilities.

The CFD Report states:

School [Facilities] which may be financed include (i) construction of the Kinoshita School, and (ii) acquisition and design of the Las Ramblas school site. These facilities are needed in order to serve, in part, the [Project Students]. In addition to the bond financed facilities, additional facilities may be financed through the levy of Special Taxes. Such facilities include central support and administrative facilities, transportation and special education facilities, including any incidental school administrative and transportation center improvements.

The Resolution of Intention for Formation (Resolution No. 9900-03 explains that CFD No. 98-1 should "finance . . . the purchase, construction, expansion, improvement or rehabilitation of certain real or other tangible property described in Attachment "B" . . . , including all furnishings, equipment and supplies . . . , which Facilities have a useful life of five years or longer...." Moreover, there is some indication that the Board contemplated lease financings with: "[a]ny portion of the Facilities may be financed through a lease or lease-purchase arrangement if [CFD No. 98-1] hereafter determines that such arrangement is of benefit to [CFD No. 98-1]."

Attachment "B" to Resolution No. 9900-03 lists the proposed Facilities as:

The construction, purchase, modification, expansion, improvement or rehabilitation of school, storm drain, water and roadway facilities, both onsite and offsite, . . . classrooms, multi-purpose, administration and auxiliary space at a school, and interim housing, together with furniture, equipment and technology, needed by [CFD No. 98-1] in order to mitigate the impact on school facilities of the [Project Students], together with all land or interests in land . . . , central

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Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 98-1A (Pacifica San Juan)
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support and administrative facilities, transportation and special education facilities, including any incidental school administration and transportation center improvements

The Resolution of Intention for Bonded Indebtedness (Resolution No. 9900-04) provides that CFD No. 98-1 will finance, pursuant to the Resolution of Formation, the “purchase, construction, expansion, improvement or rehabilitation of public facilities indentified in Attachment “A” . . . including all furnishings, equipment and supplies related thereto” Attachment “A” describes facilities similar to Resolution No. 9900-03.

In the Resolution of Formation (Resolution No. 9900-33), the Board “finds that the proposed Facilities are necessary to meet the increased demand that will be placed upon public infrastructure as a result of new development within the School District.”⁵ This Resolution also describes facilities similar in nature to Resolution Nos. 9900-03 and 9900-04.

The official ballot states:

Shall [CFD No. 98-1] be authorized to incur an indebtedness and issue bonds in the maximum aggregate principal amount of \$20,000,000, . . . which will be used to finance the construction, purchase, modification, expansion, improvement or rehabilitation of school, storm drain, water and roadway facilities, both onsite and offsite, and all appurtenances and appurtenant work in connection with the foregoing . . . to finance all incidental expenses related thereto, which include the cost of engineering, planning and designing the facilities, the cost of forming [CFD No. 98-1], issuing bonds and levying and collecting a [Special Tax] within [CFD No. 98-1] . . .

The Reimbursement Agreement⁶ provides that Company “has agreed to advance funds to allow the School District to pay certain preliminary costs and expenses related to proceedings heretofore and hereafter conducted to form CFD No. 98-1, such advances being subject to reimbursement or credit upon a successful completion of the proceedings and sale of bonds.”

98-1A Mitigation Agreement and JCFA:

The Amended Mitigation Agreement⁷ for CFD No. 98-1A provides that:

[a]mendment of [CFD No. 98-1] shall be deemed to have occurred only upon the occurrence of all of the following: (i) the adoption of a resolution calling an

⁵ The Resolution of Intention to Establish (Resolution No. 9900-03) has similar language.

⁶ The Reimbursement Agreement is dated December 14, 1998 and by and between the School District and San Juan Meadows, L.P,

⁷

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 98-1A (Pacifica San Juan)
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election to alter the [Special Taxes], facilities and boundaries and authorizing additional bonded indebtedness of [CFD No. 98-1A] by the [Board]; (ii) the approval by the qualified electors of [CFD No. 98-1A] of the amendment of the Special Taxes, facilities and boundaries of [CFD No. 98-1A] and the issuance of Bonds in the amount not to exceed \$45,000,000; and (iii) and the expiration of all statute of limitations . . .

[Company] acknowledges that School District may hereafter determine, in its sole discretion, that it is necessary and desirable to house elementary school students residing within [CFD No. 98-1A] at a location outside of the [CFD No. 98-1A] boundaries and, in such event, [Company] agrees that School District may sell or transfer ownership of the school site as the School District determines is appropriate in its sole discretion.

The Amended Mitigation Agreement also defines the authorized facilities as the following:

[City] governmental facilities as well as storm drain, sewer, landscaping, curb and gutter, park, water, roadway, highway and bridge, traffic signals and safety lighting, flood control, libraries, police, fire and recreation facilities and open space acquisition and improvements . . ., together with all needed school facilities to serve [CFD No. 98-1] and mitigate development thereof, including but not limited to, K-12 school sites and construction, transportation, central support, administration, interim housing and special education facilities, together with furniture, equipment and technology, all land or interests in land required to be provided by the [School District] as mitigation of environmental impacts associated with the development of such school facilities, all costs to the [School District] related to the negotiated and executed of the Amended Mitigation Agreement . . ., the attributable costs of engineering, design, planning, materials testing, coordination, construction staking and construction, together with the expenses related to the issuance and sale of any “debt” as defined in Section 53317(d) of the [Mello-Roos] Act . . .

The Amended Mitigation Agreement also defines “Bonds” as “any obligation to repay a sum of money, including obligations in the form of bonds, notes, certificates of participation, or any refunding thereof incurred by [CFD No. 98-1A] and/or School District and the City Facilities and repayable out of Special Taxes of [CFD No. 98-1A].” Additionally, the Company

acknowledges that School District intends to and agrees that School District is permitted by law to levy Special Taxes on Developed Property (as defined in the RMA) at the maximum rate and apply in each year any proceeds of such levy not

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Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 98-1A (Pacifica San Juan)
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required to pay debt service on the Bonds and administrative expenses, in each case for such year, to acquire and construct School Facilities.

We note that any project lists for the Bonds, as defined above, should serve the Project Students; if so, then CFD No. 98-1A would be able to likely use Special Taxes to make proportional debt service or lease payments, as applicable, on the Bonds.

The Amended JCFA provides that the parties previously entered into two JCFA's for the City facilities and Water District facilities. However, "[i]n 2002, the [Water District] became a subsidiary of the City. This Agreement supersedes the [two original] JCFA[s]." Moreover, "[t]he Parties intend that [CFD No. 98-1A], as amended, will assist in financing the City Facilities by disbursing [CFD No. 98-1A] bond construction proceeds pursuant to this Agreement in an amount which is estimated at, and shall not exceed \$13,800,000"

98-1A Amendment Documents:

The Petition to the Board states that CFD No. 98-1A should:

[f]inance the originally approved facilities, including the construction, acquisition, modification, expansion, maintenance or rehabilitation of certain school, roadway, storm drain, sanitary sewer, landscape and water improvements . . . , other appropriate public facilities both onsite and offsite . . . all required to be constructed to facilitate development within [CFD No. 98-1A] and to finance . . . the cost of engineering, planning, designing and rehabilitating of the Facilities . . .

The [Company] further request[s] that the [Board] amend the [CFD No. 98-1] bond authorization to authorize the issuance of bonds of [CFD No. 98-1A] in an amount not to exceed \$40,000,000 to finance certain of the Facilities and costs . . .

Amendment No. 1 to Notice of Special Tax Lien for CFD No. 98-1A provides that CFD No. 98-1A will:

(i) provide for the levy of annual [Special Taxes] pursuant to the [amended] rate and method of apportionment . . . , (ii) expand the types of authorized public facilities to include all needed school facilities to serve [CFD No. 98-1A] and mitigate the development thereof, including but not limited to, K-12 school sites and construction, transportation, central support, administration, interim housing and special education facilities, together with furniture, equipment and technology, all land or interests in land required to be provided by the [School District] as mitigation of environmental impacts associated with the development of such [School Facilities], all costs to [the School District] related to negotiation and execution of the [Amended Mitigation Agreement], the attributable costs of

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 98-1A (Pacifica San Juan)
December 9, 2010
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engineering, design, planning, material testing, coordination, construction staking and construction, together the expenses related to the issuance and sale of any “debt” as defined in Section 53317(d) of the [Mello-Roos] Act . . . , (iii) change the [CFD No. 98-1A] boundaries . . . and (iv) increase the authorized bonded indebtedness of [CFD No. 98-1A] to an aggregate principal amount not to exceed \$50,000,000 for the purpose of financing the Facilities . . .

As part of the amendment proceedings, the Board altered:

the method of levy of [Special Taxes] to be levied on all taxable property located within the boundaries of [CFD No. 98-1A], to expand the authorized facilities list to include the City . . . governmental facilities as well as storm drain, sewer, landscaping, curb and gutter, park, water, roadway, highway and bridge, traffic signals and safety lighting, flood control, libraries, police, fire and recreation facilities and open space acquisition and improvements, together with all needed [School Facilities] to serve [CFD No. 98-1A] and mitigate development thereof, including but not limited to K-12 school sites and construction, transportation, central support, administration, interim housing and special education facilities, together with furniture, equipment and technology, and to remove certain commercial property from the boundaries of [CFD No. 98-1A], as well as increase the authorized bonded indebtedness of [CFD No. 98-1A] from \$20,000,000 to \$45,000,000 . . .

The RMA for CFD No. 98-1A provides “[o]n each July 1, commencing on July 1, 2005, the Assigned Special Tax shall be increased by an amount equal to two percent (2%) of the Assigned Special Tax for the previous Fiscal Year.”

We note that the School District, on behalf of CFD No. 98-1A, has been levying the Special Taxes, at its discretion, at less than the Assigned Special Tax for the last two years. We believe that it may be possible for the School District to do so as such Special Taxes inure to the benefit of the School District for School Facilities prior to the sale of bonds..

We have not reviewed what projects were funded with the Special Taxes described in this Memorandum.

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 98-1A (Pacifica San Juan)
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CONCLUSION

Based on our review of the Transcript Documents, we conclude that CFD No. 98-1A may spend the Special Taxes proportionally on the described School Facilities, including modernization and rehabilitation thereof, that serve the Project Students, including those facilities explicitly provided for and debt service or lease payments for Bonds.

Please do not hesitate to contact us if you have any questions.

BOWIE, ARNESON, WILES & GIANNONE

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M E M O R A N D U M

TO: Ron Lebs, Assistant Superintendent, Business Services
Capistrano Unified School District

FROM: Bowie, Arneson, Wiles & Giannone; Alexander Bowie

DATE: December 9, 2010

RE: Capistrano Unified School District – Expenditure of Special Taxes from
Community Facilities District No. 98-2 (Ladera)

SUMMARY

As requested by the Capistrano Unified School District (“School District”), our Firm is providing this Memorandum after a thorough analysis of the permitted uses for the available “Pay-As-You-Go Special Taxes”¹ (“Special Taxes”) for Community Facilities District No. 98-2 of the School District (Ladera) (“CFD No. 98-2”). We have reviewed transcripts for CFD No. 98-2 (“Transcript Documents”),² and our conclusion, which is based on the Transcript Documents, is that the School District may spend the Special Taxes proportionally on the “School Facilities” (defined below) that serve the students generated as a result of the development within CFD No. 98-2 (“Project Students”).

CFD No. 98-2 School Facilities:

- constructing, purchasing, modifying, expanding, improving, or rehabilitating school facilities, both onsite and offsite, and all appurtenances and appurtenant work in connection with the foregoing

¹ “Pay-As-You-Go Special Taxes,” as the term is used herein, means those funds available to the School District, subject to the terms of the applicable Bond Indenture, Rate and Method, and other agreements, remaining from the Special Taxes after the debt service on the Bonds and any administrative expenses have been paid for the applicable Bond Year.

² The Transcript Documents include, but are not limited to, Bond Indentures, Mitigation Agreements, Joint Community Facilities Agreement, all formation resolutions including the Notices of Special Tax Lien, CFD Reports, and Rates and Method of Apportionment.

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs – Capistrano Unified School District
Community Facilities District No. 98-2 (Ladera)
December 9, 2010
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- classrooms, multi-purpose, administration and auxiliary space at a school
- interim housing
- furniture, equipment and technology, which have a useful life of five years or longer
- all land or interest in land required for the construction of such facilities or to mitigate the environmental impacts associated with the development of the School Facilities
- following the completion of the foregoing school improvements, central support and administrative facilities, transportation and special education facilities, including any incidental school administration and transportation center improvements
- engineering, planning and designing of above-described facilities
- the official ballot dated February 8, 1999 (“Official Ballot”) provides for the execution and delivery of certificates of participation
- any reference to “Facilities” means the Santa Margarita Water District (“Water District”) facilities included within the JCFA³
 - ✓ Facilities also include: wastewater facilities (sewage lift stations, force mains, trunk sewers, wastewater treatment plant capacity) and water facilities (reservoirs, waste pumping stations, water distribution mains)

CFD NO. 98-2 ANALYSIS

The intent of the Transcript Documents is for the School District to spend the Special Taxes proportionally on the School Facilities that serve the Project Students. Our conclusion is based on the following:

³ The JCFA, dated November 2, 1998, is entered into by and among the Water District, the School District, and DMB Ladera, L.L.C. (“Company”).

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs – Capistrano Unified School District
Community Facilities District No. 98-2 (Ladera)
December 9, 2010
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Mitigation Agreement and JCFA:

The Mitigation Agreement⁴ for CFD No. 98-2 provides that:

[The School District] and the [Company] acknowledge and agree that development of [CFD No. 98-2] will require the provision of school facilities necessary to mitigate the effects of [Project Students]. . . . [The School District and Company] have agreed upon the School Facilities Description and Cost Summary (the “Plan”), . . . which sets forth the portion of the School Facilities . . . that will be needed to mitigate the effects of the [Project Students]. . . .

The Mitigation Agreement also defines the School Facilities as the following:

The acquisition, construction and/or financing of those school facilities having a useful life of five years or longer generally identified in Exhibit “B” hereto, including classrooms, multi-purpose, technology, administration and auxiliary space at a school, interim housing, and special education facilities, and provided it will not adversely affect special tax rates projected to be levied on undeveloped land owned by the [Company] or its affiliate, and assuming historically average special tax delinquency rates in [CFD No. 98-2], based upon projections at the time of the first levy for such purpose (but only to the extent of the levy for each year then being contemplated), central support, transportation and administrative facilities, together with furniture and equipment need by [CFD No. 98-2] in order to serve the [Project Students], together with all land or interests in land required to be provided for the construction of such facilities and all land or interests in land required to be provided by [the School District] as mitigation of environmental impacts associated with the development of such School Facilities as well as costs to [the School District] related to negotiation and execution of this Agreement . . . , the attributable costs of engineering, design, planning, materials testing, coordination, construction staking and construction, together with the expenses related to the issuance and sale of any “debt” as defined in Section 53317(d) of the [Mello-Roos] Act . . .

The Mitigation Agreement also defines “Bonds” as “any obligation to repay a sum of money, including obligations in the form of bonds, notes, certificates of participation, long-term leases, loans from government agencies, or loans from banks, other financial institutions, private

⁴ The Mitigation Agreement, dated December 15, 1998, is entered into between the School District and the Company.

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs – Capistrano Unified School District
Community Facilities District No. 98-2 (Ladera)
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businesses, or individuals, or long-term contracts, or any refunding thereof, which obligation may be incurred by [CFD No. 98-2] or [the School District].”

Additionally, the Mitigation Agreement states that “[t]he Special Tax is to be levied and collected to construct and acquire the School Facilities and/or to pay debt service on the Bonds or any other obligation of [CFD No. 98-2].” We note that any project lists for the Bonds, as defined above, should serve the Project Students; if so, then CFD No. 98-2 would be able to use Special Taxes to make proportional debt service or lease payments, as applicable, on the Bonds.

The Mitigation Agreement also provides that:

[The School District] covenants that, in order to adequately serve [CFD No. 98-2], and except as otherwise agreed by the parties hereto, [the School District] shall commence construction on each of the School Facilities identified in Exhibit “B” no later than one year following receipt of Available Funds⁵ and/or State matching funds designated for such School Facility in an amount sufficient to fully construct and equip such School Facility. If additional monies are needed to complete any of the K-5 or 6-8 School Facilities identified in Exhibit “B” to then-applicable State standards, the [Company] will provide all additional monies needed to complete and equip such school facilities.

Section 7.1 of the Mitigation Agreement sets forth the order of priority for how certain State funding shall be applied to the School Facilities.

The JCFA provides that “[t]he Parties intend to have [CFD No. 98-2] assist in financing the Water Facilities by disbursing [CFD No. 98-2] bond construction proceeds in an amount which is estimated at \$35,000,000”

Formation Documents:

The Petition to the Board of Trustees of the School District (“Board”) requests that CFD No. 98-2:

⁵ Available Funds is defined in the Mitigation Agreement as:

(i) Construction proceeds of issued Bonds which have been released by the trustee or fiscal agent for the Bonds to [the School District], (ii) State funding with respect to the School Facilities, or (iii) cash paid to [the School District] by the [Company], in each case, free and clear of any lien, encumbrance or limitation on expenditure, and immediately available for expenditure, by [the School District] for authorized School Facilities. In the event funds of the type identified in (iii) above are provided, such funds shall not be deemed Available Funds for any purpose under this Agreement until ninety (90) days after receipt of such funds by [the School District].

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs – Capistrano Unified School District
Community Facilities District No. 98-2 (Ladera)
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finance the construction, acquisition, modification, expansion or rehabilitation of certain school and water facilities, and related infrastructure improvements, both onsite and offsite, and all appurtenances and appurtenant work in connection with the foregoing, all required to be constructed to facilitate development within [CFD No. 98-2] . . . cost of engineering, planning, designing and rehabilitating the Facilities . . . the issuance of bonds, the determination of the amount of [S]pecial [T]axes to be levied and costs otherwise incurred in order to carry out the authorized purposes of [CFD No. 98-2].

The Petition also requests that the Board:

annually levy [Special Taxes] on the property within [CFD No. 98-2] for the construction, acquisition and rehabilitation of certain of the Facilities and for the payment of the aggregate amount of principal of and interest owing on bonds in each fiscal year, including the maintenance of reserves therefor.

The Resolution of Intention for Formation (Resolution No. 9899-28) explains that CFD No. 98-2 should:

finance . . . the purchase, construction, expansion, improvement or rehabilitation of certain real or other tangible property described in Attachment “B” . . . including all furnishings, equipment and supplies, which Facilities have a useful life of five years or longer]. . .

Attachment “B” to Resolution No. 9899-28 states that the Facilities include⁶:

the construction, purchase, modification, expansion, improvement or rehabilitation of school and water facilities, both onsite and offsite, and all appurtenances and appurtenant work in connection with the foregoing, including in such facilities, without limitation, classrooms, multi-purpose, administration and auxiliary space at a school, and interim housing, together with furniture, equipment and technology, needed by [CFD No. 98-2] in order to mitigate the impact on school facilities of the [Project Students], together with all land or interests in land required for the construction of such facilities and all land or interests in land required to be provided by [CFD No. 98-2] as mitigation of environmental impacts associated with the development of such [School Facilities], and, following the completion of the foregoing improvements, central support and administrative facilities, transportation and special education

⁶ The Resolution of Intention for Bonded Indebtedness (Resolution No. 9899-29) and Resolution Establishing CFD No. 98-2 (Resolution No. 9899-76) have similar language; however, Resolution No. 9899-76 provides for “school and water and sewer facilities.”

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs – Capistrano Unified School District
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facilities, including any incidental school administration and transportation center improvements . . . cost of engineering, planning and designing the Facilities; . . . all costs associated with the creation of [CFD No. 98-2], the issuance of the bonds, the determination of the amount of [Special Taxes] to be levied . . .

The Board stated that they intended “to levy annually . . . a [Special Tax] . . . sufficient to pay for: (i) the Facilities and Incidental Expenses,⁷ (ii) the principal and interest and other periodic costs with respect to the bonds or other indebtedness issued to finance the Facilities and Incidental Expenses”

The Board “hereby finds that the proposed Facilities are necessary to meet the increased demand placed upon the School District and the existing infrastructure in the School District as a result of the development of [CFD No.] 98-2.” Similarly, in the Resolution Establishing CFD No. 98-2 (Resolution No. 9899-76), the Board provides that “[t]he School District is authorized by the Act and by that certain [JCFA] to contribute revenue to, or to construct or acquire the Facilities, all in accordance with the Act.”

The CFD Report provides that:

School [Facilities], which may be financed, include the acquisition and construction of certain school sites. The land and facilities which are expected to be financed include two elementary schools, a combined elementary and middle school, and a portion of a high school. These facilities are needed in order to serve, in part, the [Project Students]. . . . Following the completion of bond financed school facilities, additional facilities may be financed through the levy of Special Taxes. Such facilities include central support and administrative facilities, transportation and special education facilities, including any incidental school administrative and transportation center improvements.

Water and sewer improvements to be financed by CFD No. 98-2 may include the construction of all or a portion of certain water and sewer related facilities identified in the [JCFA].

The proposition in the Official Ballot asked whether CFD No. 98-2 may “incur an indebtedness and issue bonds or certificates of participation in the maximum aggregate principal amount of \$115,000,000 . . . ?”

Resolution No. 9899-135 called an election regarding a proposition to amend the Rate and Method of Apportionment (“RMA”) and reduce the Special Taxes.

⁷ Defined in Resolution No. 9899-28 as “the incidental expenses to be incurred in connection with financing the Facilities and forming and administering [CFD No. 98-2].”

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs – Capistrano Unified School District
Community Facilities District No. 98-2 (Ladera)
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The Amended RMA⁸ provides “[a]fter the first Fiscal Year in which any Assessor’s Parcel is designated as Developed Property, the Assigned Special Tax for such Assessor’s Parcel shall be increased every July 1 by two percent (2%) per year.”

Bond Documents:

Resolution No. 9899-91 (Series 1999 Special Tax Bonds) authorized the issuance of said bonds. The Official Statement for the 1999 Special Tax Bonds explains that:

The Bonds are being issued in part to finance a portion of the costs for the construction, purchase, modification, expansion, improvement or rehabilitation of school and water and sewer facilities (the “Project”) to meet the needs of [CFD No. 98-2]. Currently, it is anticipated that the Project will include (i) the land acquisition for certain school sites and construction of school facilities and (ii) the acquisition and construction of certain and sewer related facilities pursuant to the terms of the [JCFA].

The Bond Indenture for the 1999 Special Tax Bonds defines “Project” as “those public facilities described in the Resolution of Formation which are to be acquired or constructed within and outside of the [CFD No. 98-2], including all engineering, planning and design services” It would be consistent with the rest of the Transcript Documents that School Facilities might need to be constructed outside of the CFD No. 98-2 boundaries in order to serve the Project Students. For example, if a school was only partially funded with CFD No. 98-2 Special Taxes, it would be reasonable for the School District to build the school outside the boundaries of CFD No. 98-2.

Resolution No. 0405-66 (Series 2005 Special Tax Refunding Bonds) authorized the issuance of bonds for new capital projects as well as to refund all or part of the Series 1999 Special Tax Bonds (“Prior Bonds”). The Official Statement for the Series 2005 Special Tax Refunding Bonds were issued to “(i) refund the Prior Bonds currently outstanding in the aggregate principal amount of \$105,080,000, (ii) finance the costs of certain school facilities for the School District, (iii) fund the portion of the Reserve Requirement not funded with the Reserve Policy, and (iv) pay costs of issuance.”

We have not reviewed what projects were funded with the Special Taxes and/or bond proceeds described in this Memorandum.

⁸ The Amended RMA is dated May 6, 1999.

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs – Capistrano Unified School District
Community Facilities District No. 98-2 (Ladera)
December 9, 2010
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CONCLUSION

Based on our review of the Transcript Documents, we conclude that CFD No. 98-2 may spend the Special Taxes proportionally on the School Facilities, including modernization and rehabilitation thereof, that serve the Project Students including lease payments for financing.

Please do not hesitate to contact us if you have any questions.

BOWIE, ARNESON, WILES & GIANNONE

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M E M O R A N D U M

TO: Ron Lebs, Assistant Superintendent, Business Services
Capistrano Unified School district

FROM: Bowie, Arneson, Wiles & Giannone; Alexander Bowie

DATE: December 9, 2010

RE: Capistrano Unified School District – Expenditure of Special Taxes from
Community Facilities District No. 2004-1 (Rancho Madrina)

SUMMARY

As requested by the Capistrano Unified School District (“School District”), our Firm is providing this Memorandum after a thorough analysis of the permitted uses for the available “Pay-As-You-Go Special Taxes”¹ (“Special Taxes”) for Community Facilities District No. 2004-1 of the School District (Rancho Madrina) (“CFD No. 2004-1”). We have reviewed transcripts for CFD No. 2004-1 (“Transcript Documents”),² and our conclusion, which is based on the Transcript Documents, is that the School District may spend the Special Taxes proportionally on the “School Facilities” (defined below) that serve the students generated as a result of the development within CFD No. 2004-1 (“Project Students”).

CFD No. 2004-1 School Facilities:

- construction, purchase, modification, expansion, improvement or rehabilitation of school facilities and ancillary support facilities of the School District
- classrooms, multi-purpose, administration and auxiliary space at a school, and interim housing

¹ “Pay-As-You-Go Special Taxes” as the term is used herein means those funds available to the School District, subject to the terms of the applicable Bond Indenture, Rate and Method, and other agreements, remaining from the Special Taxes after the debt service on the Bonds and any administrative expenses have been paid for the applicable “Bond Year.”

² The Transcript Documents include, but are not limited to, Bond Indentures, Mitigation Agreements, Joint Community Facilities Agreement, all formation resolutions including the Notices of Special Tax Lien, CFD Reports, and Rates and Method of Apportionment.

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 2004-1 (Rancho Madrina)
December 9, 2010
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- furniture, equipment and technology
- all land or interests in land
- central support and administrative facilities, transportation (including without limitation buses and vans) and special education facilities, including any incidental school administration and transportation center improvements
- engineering, planning and designing the School Facilities
- lease payments for financings, if for authorized School Facilities, proportional to Project Students as reasonably determined by School District.
- any reference to “Facilities” means the School Facilities and the City of San Juan Capistrano (“City”) facilities included within the JCFA³

CFD NO. 2004-1 ANALYSIS

The intent of the Transcript Documents is for the School District to spend the Special Taxes proportionally on the School Facilities that serve the Project Students. Our conclusion is based on the following:

Mitigation Agreement and JCFA:

The School District and Landowner agreed in the Mitigation Agreement⁴ “that the development of the [area within CFD No. 2004-1] will generate additional students in grades kindergarten through twelfth . . . who cannot be housed in the existing school facilities of the School District [and] additional [School Facilities] for grades kindergarten through twelfth . . . will be needed to adequately house [these s]tudents.” The Mitigation Agreement describes the following needed School Facilities:

³ The JCFA, dated September 1, 2004, is entered into by and among the School District, the City, and William Lyon Homes, Inc. (“Company”).

⁴ The Mitigation Agreement is entitled the “Impact Mitigation Agreement Related to Proposed Community Facilities District No. 2004-1” dated as October 18, 2004, by and between the School District and Company.

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 2004-1 (Rancho Madrina)
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K-12 School Facilities

K-12 school sites and facilities with a useful life of at least five (5) years, including classrooms, ancillary facilities, and on-site office space at such K-12 [School Facilities]; additionally, furniture, equipment and technology with a useful life of at least five (5) years at such K-12 School Facilities.

Other School Facilities

Central support and administrative facilities, interim housing and transportation facilities with a useful life of at least five (5) years; additionally, furniture, equipment and technology with a useful life of at least five (5) years.

The JCFA provides that⁵ “[t]he parties hereto intend to have [CFD No. 2004-1] assist in financing the City Facilities by disbursing [CFD No. 2004-1] bond construction proceeds in an amount which is estimated at, and shall not exceed, \$3,947,000”

Formation Documents:

The Petition to the Board of Trustees of the School District (“Board”) states that CFD No. 2004-1 should finance:

the construction, acquisition, modification, expansion or rehabilitation of certain school, roadway, sidewalk, curb, gutter, landscaping, storm drain, park, sewer and water facilities, and related infrastructure improvements . . . all required to be constructed to facilitate development within CFD No. 2004-1 . . . and to finance the . . . cost of engineering, planning, designing and rehabilitating the Facilities.

The CFD Report states that the:

[b]ond proceeds will be used to finance construction, reconstruction, and/or modernization of various [School Facilities], including K-12 school facilities, central support and administrative facilities, transportation and special education facilities, including any incidental school administrative and transportation center

⁵ The JCFA states that “[i]t is expected that the cost of the School Facilities will exceed the cost of the City Facilities, therefore the School District is permitted to have primary responsibility for the formation and administration of [CFD No. 2004-1]. However, the Official Statement for the 2005 Special Tax Bonds shows that the estimated costs for the School Facilities and City Facilities is \$1,965,264 and \$3,947,000, respectively. We note that an agenda item for August 19, 2004 says that CFD No. 2004-1 will receive approximately \$5 million, of which approximately \$2 million is anticipated from bond proceeds.

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 2004-1 (Rancho Madrina)
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improvements, and district vehicles. These [School Facilities] may also be financed through the levy of Special Taxes.

Although lease payments for financings (if for authorized School Facilities) were not explicitly contemplated nor prohibited as part of the CFD Report, the School District and/or CFD No. 2004-1 should not be prohibited from financing the construction of School Facilities with lease financing and the payment of those lease payments if it produces cost savings. We believe that lease payments may be only proportionally funded in relation to the needs of the Project Students.

The Resolution of Intention for Formation (Resolution No. 0304-78) explains that CFD No. 2004-1 should “finance . . . the purchase, construction, expansion, improvement or rehabilitation of certain real or other tangible property described in Attachment “B” . . . , including all furnishings, equipment and supplies . . . , which Facilities have a useful life of five years or longer....”

Attachment “B” to the Resolution of Intention for Formation lists the proposed public facilities as:

The construction, purchase, modification, expansion, improvement or rehabilitation of [School Facilities]. . . and City [Facilities] as well as storm drain, sewer, landscaping, curb and gutter, park, water, roadway, highway and bridge, traffic signals and safety lighting, flood control, libraries, police, fire and recreation facilities and open space acquisition and improvements . . . , including in School Facilities, without limitation, classrooms, multi-purpose, administration and auxiliary space at a school, and interim housing, together with furniture, equipment and technology, needed by [CFD No. 2004-1] in order to mitigate the impact on school facilities of the [Project Students], together with all land or interests in land . . . , central support and administrative facilities, transportation (including without limitation buses and vans) and special education facilities, including any incidental school administration and transportation center improvements

The Resolution of Intention for Bonded Indebtedness (Resolution No. 0304-79) provides that CFD No. 2004-1 will finance, pursuant to the Resolution of Formation, the “purchase, construction, expansion, improvement or rehabilitation of public facilities indentified in Attachment “A” . . . including all furnishings, equipment and supplies related thereto” Attachment “A” describes:

The construction, purchase, modification, expansion, improvement or rehabilitation of [School Facilities]. . . and City [Facilities such as] storm drain,

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs, Capistrano Unified School District
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sewer, landscaping, curb and gutter, park, water, roadway, highway and bridge, traffic signals and safety lighting, flood control, libraries, police, fire and recreation facilities and open space acquisition and improvements . . . including in School Facilities, without limitation, classrooms, multi-purpose, administration and auxiliary space at a school, and interim housing, together with furniture, equipment and technology, needed by [CFD No. 2004-1] in order to mitigate the impact on school facilities of the [Project Students] , together with all land or interests in land required for the construction of such facilities . . . , central support and administrative facilities, transportation (including without limitation buses and vans) and special education facilities, including any incidental school administration and transportation center improvements.

The Board made a finding in the Resolution of Formation (Resolution No. 0405-42)⁶ that “the proposed School Facilities are necessary to meet the increased demand that will be placed upon the schools within the School District as a result of the new development within [CFD No. 2004-1].”⁷

The RMA provides “[o]n each July 1, commencing on July 1, 2005, the Assigned Special Tax shall be increased by an amount equal to two percent (2%) of the Assigned Special Tax for the previous Fiscal Year.”

Bond Documents:

The Bond Indenture for the 2005 Special Tax Bonds defines “Project” as “those public facilities described in the Resolution of Formation which are to be acquired or constructed within and outside of the [CFD No. 2004-1], including all engineering, planning and design services” It would be consistent with the rest of the Transcript Documents that School Facilities might need to be constructed outside of the CFD No. 2004-1 boundaries in order to serve the Project Students. For example, if a school was only partially funded with CFD No. 2004-1 Special Taxes, it would be reasonable for the School District to build the school outside the boundaries of CFD No. 2004-1.

⁶The Official Ballot links back to the facilities and expenses provided for in the Resolution of Formation (Resolution No. 0405-42).

⁷ The Resolution of Intention to Establish (Resolution No. 0304-78) and Resolution Determining to Proceed Regarding CFD No. 2004-1 and Approving the JCFA/Mitigation Agreement (Resolution No. 0405-34) has similar language.

BOWIE, ARNESON, WILES & GIANNONE

Memorandum to Ron Lebs, Capistrano Unified School District
Community Facilities District No. 2004-1 (Rancho Madrina)
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We have not reviewed what projects were funded with the Special Taxes described in this Memorandum.

CONCLUSION

Based on the Transcript Documents, we conclude that CFD No. 2004-1 may spend the Special Taxes proportionally on the School Facilities, including modernization and rehabilitation thereof that serve the Project Students, including lease payments for financings.

Please do not hesitate to contact us if you have any questions.