

ALBION LITTLE RIVER FIRE PROTECTION DISTRICT

Closed Session

June 17, 2015 7:00 PM

Albion School, 30400 Albion Ridge Rd., Albion Ca

The meeting is called as a Special Session by the Board of Directors of the Albion Little River Fire Protection District as a closed session pursuant to 54956.9-anticipated litigation. No other business shall be considered at this special meeting. People attending the meeting: The Board, Fire Chief Ted Williams, and district clerk.

- 1. Call to order & determination of a quorum.**
- 2. Item for consideration: Review & Discuss hand delivered letter to district. Re: Application of Measure M to commercial timberland.**
- 3. Adjournment**

Any individual who requires disability-related accommodations or modifications, including auxiliary aids and services, in order to participate in the Board Meeting, should email or call Board President, Chris Skyhawk at 937-4295. skyhawk@mcn.org

Rosal

Cota Cole LLP

ATTORNEYS

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Derek P. Cole
Scott E. Huber
Daniel S. Roberts
Carolyn J. Frank
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Elizabeth L. Martyn
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REPLY TO:
 ROSEVILLE MONTEREY
 ONTARIO

June 10, 2015

[HAND DELIVERED]

President and Board Members
Albion Little River Fire Protection District
P. O. Box 634
Albion, CA 95410

Re: Application of Measure M to Commercial Timberland

Dear President and Board Members:

This letter challenges the application of Measure M to commercial timberland owned by Karen Calvert and her son (the "Calverts"). The APN's for the property are listed on the attached Exhibit "A." (The District has a letter on file from Mrs. Calvert's son authorizing me to represent him in these matters). The majority of the property is used as commercial timberland. Residential structures occupy only two parcels of the property, which is a very small portion of the total acreage. This letter contains our initial comments. We reserve the right to make additional comments.

At present, Mrs. Calvert pays the District a special tax for the protection of the two residential structures. In April, 2014, the District adopted a replacement special tax at an increased amount. The voters approved a ballot measure in November 2014, intended to approve the District's ordinance. The difference between the prior tax and November 2014 tax (the "new tax") is not only amount, but the addition to its coverage of commercial timberland: "Timber Production, Forest Land, Range Land 30 Acres per Unit; the "units" per parcel are based upon fire risk."

We question the application of the tax to their property for a variety of reasons.

{ELM/00037476.}

2261 LAVA RIDGE COURT
ROSEVILLE, CA 95661
TEL 916-780-9009
FAX 916-780-9050

3401 CENTRELAKE DRIVE, SUITE 670
ONTARIO, CA 91761
TEL 909-230-4209
FAX 909-937-2034

19 UPPER RAGSDALE DRIVE, SUITE 200
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FAX 916-780-9050

1. The District is not authorized to and does not provide fire protection to timberland and therefore cannot tax for it.

The District is organized and operated under the Fire Protection District Law, Health & Safety Code Section 13800 et seq. Health & Safety Code Section 13811 specifically provides that commercial timberland is within the state responsibility area served by CalFire that limits the service jurisdiction of a fire protection district:

13811. Territory which has been classified as a state responsibility area may be included in a district, except for commercial forest lands which are timbered lands declared to be in a state responsibility area. The executive officer of the local agency formation commission shall give mailed notice of the commission's hearing on any proposal to include a state responsibility area in a district, whether by annexation or formation, to the Director of Forestry and Fire Protection. The commission may approve the proposal. Upon inclusion of a state responsibility area in a district, whether by formation or annexation, the state shall retain its responsibility for fire suppression and prevention on timbered, brush, and grass-covered lands. The district shall be responsible for fire suppression and prevention for structures in the area and may provide the same services in the state responsibility area as it provides in other areas of the district.

CalFire representatives as well as the fire map prepared pursuant to Public Resources Code Section 4102 confirm that their timberland is within the CalFire service area only. When she placed a call to 911 regarding a grass fire, both entities responded; District volunteers protected only the structure while CalFire extinguished the grass fire.

Although Fire District representatives may indicate they are "first responders" in some cases, under their enabling statute, they are not responsible for fire protection on such property, and therefore cannot charge for a service they do not provide. A special tax is authorized for service provided pursuant to their enabling act. (Govt. Code Section 53978). The District's service chart on its website does not reflect service to SRA areas. The Long Range Plan for services does not anticipate wild land fire protection, but protection of structures and rescue. And the initial special tax did not include it. We are not aware of any change in the law as to the District's jurisdiction since the adoption of the first special tax.

2. There is no rational basis to tax timberland or tax it at the proposed rate.

Even assuming for the sake of argument that the District had the responsibility to service timberland, simply adding "timberland" to Exhibit 1 to Ordinance 4-19-2014 is not sufficient to apply the tax to timberland. The units allegedly are based upon "use." However, there is no explanation of the basis or correlation for the assignment of 30 acres per unit of timberland. For example, the property is deemed to be exempt under a benefit assessment as explained below.

Health & Safety Code Section 50078.2(b) provides:

(b) The benefit assessment levies on land devoted primarily to agricultural, timber, or livestock uses, and being used for the commercial production of agricultural, timber, or livestock products, shall be related to the relative risk to the land and its products. The amount of the assessment shall recognize normal husbandry practices that serve to mitigate risk, onsite or proximate water availability, response time, capability of the fire suppression service, and any other factors which reflect the benefit to the land resulting from the fire suppression service provided. A benefit assessment shall not be levied for wildland or watershed fire suppression on land located in a state responsibility area.

Although a special tax does not have to be based completely upon benefit, the distinction among uses must have a rational basis. (See, for example, the discussion in *Borikas v. Alameda Unified School District* (2013) 214 Cal. App. 4th 135, decided under a different statute, determining that the “commercial” rate was inappropriately identified) The attribution of fire risk to timberlands here is inconsistent with the protection of such lands in perpetuity and is punitive toward such resource lands. There must be some facts supporting the application of the tax at this level; none is in the record and none exists. This treatment of timberland is inconsistent with that in any other fire district within the County.

The application of the added “30 acres per unit” tax itself is confusing and ambiguous as applied to the property. If the tax is computed by taking all acreage owned, divided by 30 and multiplied by \$75, it will be one amount. If each assessor's parcel is considered separately, the acreage is rounded up or down to determine units, and the \$75 is applied, it is a completely different amount. Some parcels are less than an acre; others are over 100 acres. When a parcel is over 30 acres, the application of the tax is unclear and could exceed the maximum amount.

In fact, the District actually has based its tax upon parcels, rather than use, which violates the provisions of Propositions 13 and 218. The tax is not an excise tax, but a parcel tax, which violates the provisions of Propositions 13 and 218 as it is applied to a “parcel” without definition. (See *Oakland v. Digre* (1988) 205 Cal. App. 3d 99)

Although there is an appeal form that is posted for the former tax, it is unclear if such a form applies here. The ordinance provides no reference to an appeal process nor has the District adopted procedures or time frames for such appeal. Before the levy is fixed (i.e. before the District determines how to apply the confusing and ambiguous 30 acres per unit “standard”, a taxpayer still must be given notice and the right to contest the validity or amount of the tax. *People v. Sonleitner* (1960) 185 Cal. App. 2d 350.

3. The adoption of Measure M is procedurally fatally flawed.

The proposed tax was not properly presented to the voters: The process set out in Govt. Code Section 53978 is that the District Board proposes an ordinance for adoption by the voters. Instead, the ordinance was adopted by the Board on April 19, 2014, and submitted to the voters

in November. The ballot measure indicates that the District Board has adopted a special tax by ordinance, with no reference to the ordinance number or title in the ballot measure. The District Board instead should have adopted a resolution presenting a ballot measure providing "Should Ordinance No. 04-19-14 of the District be adopted for those purposes stated."

Although Exhibit 1 to the ordinance was included in the ballot pamphlet, it was not included on the ballot itself. The ballot measure and the services set out in the ordinance are not consistent and are not consistent with the coverage in Exhibit 1 of the ordinance. The ballot measure does not indicate that the tax purportedly now applies to timberland. A voter cannot determine from the ballot measure the amount of the tax or how it will be applied. In the case of timberland property, a voter cannot determine from the ballot measure reference to the "ordinance" the nature of the tax or how it will be applied, i.e. they cannot find their way to Exhibit 1. A voter could not calculate his or her tax from the language in the ballot measure and therefore the tax may exceed the \$75.

A. It legally is not clear that the tax can be levied for emergency medical services.

Government Code Section 53971.4 provides as follows:

(a) As used in this article, "fire protection services" includes, but is not limited to, emergency medical services where provided by a local agency directly or by contract.

(b) "Emergency medical services" includes equipment, apparatus, and salaries and benefits for personnel as described in Article 5 (commencing with Section 1797.160) of Chapter 3 of Part 1 of Division 2.5 of the Health and Safety Code, the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act, where these services are provided by a local agency which also provides police or fire protection. This section applies only to San Bernardino County. (Emphasis added)

As set out in the District's long-range plan, the services called "rescue" actually are EMS services; the footnotes reference the EMS manuals and certifications that are applicable.

B. The ordinance does not meet the requirements of Govt. Code Section 50075 et seq.

The ordinance states it is adopted under the provisions of Govt. Code Section 53978, but it must also meet the requirements of Govt. Code Section 50075 et seq for accountability: The measure does not state the same specific purposes as the ordinance; the proceeds must be used only for those purposes, which – as explained below – are not performed by the District; there is no creation of an account and no annual report of the use of the funds.

50075.1. On or after January 1, 2001, any local special tax measure that is subject to voter approval that would provide for the imposition of a special tax by a local agency shall provide accountability measures that include, but are not limited to, all of the following:

- (a) A statement indicating the specific purposes of the special tax.*
- (b) A requirement that the proceeds be applied only to the specific purposes identified pursuant to subdivision (a).*
- (c) The creation of an account into which the proceeds shall be deposited.*
- (d) An annual report pursuant to Section 50075.3.*

50075.3. The chief fiscal officer of the levying local agency shall file a report with its governing body no later than January 1, 2002, and at least once a year thereafter. The annual report shall contain both of the following:

- (a) The amount of funds collected and expended.*
- (b) The status of any project required or authorized to be funded as identified in subdivision (a) of Section 50075.1.*

Based upon these initial observations, we respectfully request that the application of the new tax to the Calverts' land is inapplicable. Were the timberland provisions to be severable (see *Borikas, supra*), Mrs. Calvert has indicated that she would be prepared to pay the \$75 per structure as an increase to the present \$40 tax in support of the District.

Sincerely,

Elizabeth L. Martyn

Elizabeth L. Martyn
COTA COLE LLP

Exhibit A

Karen & James Calvert AP #'s

125-490-190

125-490-090

125-010-170

125-310-070

125-490-080

125-490-040

125-490-100

125-490-060

125-490-070

123-220-080

123-390-030

125-230-280

125-490-210

125-310-030

125-320-040

125-330-060

125-320-230

125-320-240

125-490-270

125-490-150

125-320-180

125-490-120

125-490-250

125-490-280

125-490-260

125-230-350

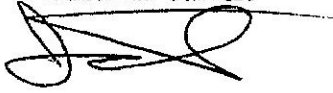
125-230-340

125-230-320

6/7/2015

Please consider this letter to be my authorization for Elizabeth L. Martyn to act on my behalf in regards to all matters relating to Measure M.

Sincerely,
James H. Calvert

A handwritten signature in black ink, appearing to be 'J. Calvert', written over a horizontal line.