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August 19, 2010

Honorable Board of Supervisors
County of El Dorado
330 Fair Lane
Placerville, California 95667-4103

*Re: Community Facilities District No. 1992-1 (El Dorado Hills Development)
Agenda Date: August 24, 2010, Continued from August 10, 2010 as Agenda Item #14*

Dear Supervisors:

Serrano Associates LLC ("Serrano") has requested that we review and respond to Jonathan Cristy's August 5, 2010 Memo to you (the "Memo") concerning Serrano's claim for refund of some of the special taxes levied on its property in Community Facilities District No. 1992-1 (El Dorado Hills Development) (the "CFD"). As discussed in greater detail below, there is very little in the Memo with which we can agree. It misstates facts and misconstrues arguments to such an extent that it seems to reflect a desire on the part of its author not to provide you with objective, dispassionate legal advice about how the matter before you might best be considered but rather to reach for any argument that might be supportive of the actions previously taken in connection with the administration of the CFD and the interpretation of CFD's rate and method of apportionment of special tax (the "RMA").

Ironically, the Memo's key conclusions are based on Mr. Cristy's interpretations of the RMA; but Mr. Cristy asserts that the Board cannot interpret the RMA because the RMA is not vague or ambiguous. Such an assertion in this context attempts to usurp a function that is without question exclusively yours.

Mr. Cristy's interpretations of the RMA are the same ones that have resulted in the on-going excessive annual special tax levies which have produced a surplus of approximately \$2,000,000 that was never intended by the persons involved in the formulation and approval of the RMA. It may be harsh, but we do not believe it is unfair, to characterize those interpretations as mindlessly literal. In contrast, we have offered interpretations of the RMA that are not only legally sound but that would have in the past provided, and (if you adopt them) will in the future provide for the full and timely payment of debt service on the CFD's bonds and its administrative expenses, all the while providing an on-going annual surplus reasonably related to the CFD's delinquency experience. Our suggested interpretations are consistent with the spirit and intent of the RMA, they reflect a common sense approach to the issues, and they produce a rational, prudent and equitable result. We again urge you

to exercise the authority that is exclusively yours and to adopt interpretations that make sense and, having done so, to consider Serrano's claim in light thereof.

Before addressing each of the five major topics considered in the Memo, we would like to first address the Board's power to interpret the RMA and to make refunds of taxes. The Memo suggests that the Board lacks the power to do either in this case. We disagree completely.

Interpret RMA. There is no dispute that, pursuant to Section 8 of the RMA, the Board has the exclusive power to make interpretations "for purposes of clarifying any vagueness or ambiguity as it relates to the Special Tax rate, the method of apportionment, the classification of properties or any definition applicable to the CFD." Mr. Cristy says that the Board cannot adopt the interpretations of the RMA that we presented in our July 15, 2010 letter to you because the provisions of the RMA in question are not vague or ambiguous. With all due respect, it should be obvious by now that the RMA is in fact vague and ambiguous in several critical respects. This lack of specificity is at least in part intentional. As Tim Youmans of Economic & Planning Systems, Inc., the author of the RMA, pointed out in his July 20, 2010 Memorandum to you the RMA was designed to provide "flexibility in the administration of the CFD as situations sometimes arise within the life of the CFD that may not have been anticipated at the initial drafting of the Special Tax Formula."

Perhaps the most important example of vagueness or ambiguity in the RMA is the phrase "less any credit from earnings on the bond reserve fund, less credit for applicable development fees, less any reimbursements . . ." which appears in the definition of "Annual Costs." Just focus on the term "reimbursements" for a moment. We have suggested that, in this context, it should be read broadly to include the money that the County receives from the payment of delinquent special taxes and the penalties and interest associated therewith. After all, such money is ultimately reimbursing the County or the CFD for the other funds that had to be accessed to make up for the failure of property owners to have timely paid their special taxes; and such a reading is consistent with a common dictionary definition of reimbursement: "compensation paid (to someone) for damages or losses or money already spent, etc." However, Mr. Cristy says that this is not what the term "reimbursements" means at all. To the contrary, at page 8 of the Memo he asserts that "reimbursements" are not even a credit at all, they are "offset[s] to any credit given for applicable development fees." Apparently he believes that this is crystal clear and that there is no uncertainty of any kind in this regard. Otherwise the Board would have the power to interpret the term, and he says that you lack such power. To us, the very existence of these two opinions suggests that, at the very least, the meaning of the term is uncertain and in need of interpretation and that the question to be addressed is which one is the correct interpretation.

In light of this difference of opinion it is both informative and important to examine the key document that was presented to the Board and the property owner at the hearing at which the Board considered forming the CFD and approving the RMA. That document is the "El Dorado Hills CFD No. 1992-1 Financing Plan" that constituted the hearing report prepared by Economic & Planning Systems, Inc (the "Hearing Report"). Attached hereto as Exhibit 1 is a copy of page 19 of that report. As you will note, under the heading "Annual Cost Definition" the report explains that, "The Annual Costs funded by the levy of the special tax will be determined by *subtracting other available*

revenues, such as reimbursement payments, fees, or prepaid special taxes, from the Annual Costs.” [Emphasis supplied.] So, based on the author of the RMA’s contemporaneous interpretation thereof in an official document presented to and relied upon by the parties who voted to approve the RMA, reimbursements are *not* “offsets to credits for applicable development fees” as argued by Mr. Cristy. Instead they are themselves credits to be applied along with “other available revenues” to reduce Annual Costs, as we have suggested. The only thing that is clear and unambiguous about Mr. Cristy’s position on the need for interpretation of the RMA and the Board’s authority to provide it along the lines that we have suggested is that he is clearly and unambiguously wrong. In the case of the term “reimbursements,” the term is vague and ambiguous, it is therefore in need of interpretation, the power to make that interpretation is exclusively yours, and you should exercise it as we have suggested to correct this and the other misinterpretations of the RMA that have resulted in excessive tax levies.

The analysis set forth above is equally applicable to the broader interpretative question presented on our previous letter and Mr. Cristy’s response to it – what funds held by the County can and should be applied as credits to reduce Annual Costs each year. Mr. Cristy suggests that only the “mandatory” credit for earnings on the Reserve Account can be so applied. We disagree. We have pointed out that both earnings on the Redemption Account and the surplus funds received by the County each year as a result of the overlevy of special taxes can and should be applied as credits. Once again, the very fact of this difference of opinion suggests that the RMA may be less than perfectly clear and unambiguous and that interpretation thereof is both necessary and appropriate.

In making interpretations of the RMA, the Board is functioning in a role similar to that of a court construing a statute or other written instrument. The general and paramount rule in such situations is to ascertain the intent of the legislative body (or the people, in the case of a measure upon which they have voted, or the parties to an agreement, where an agreement is the instrument to be construed) so as to effectuate their purpose. *Phelps v. Stostad* (1997) 16 Cal.4th 23. An excellent discussion of this point is set forth in *People v. Superior Court (Turner)* (2002) 97 Cal.App.4th 1222:

Words used in a statute . . . should be given the meaning they bear in ordinary use. [Citations.] If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the . . . voters [Citations.] [¶] But the “plain meaning” rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute. The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. [Citation.] *Literal construction should not prevail if it is contrary to the legislative intent apparent in the statute. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.* [Citations.] [Emphasis supplied.] 97 Cal.App.4th 1222, 1227.

Tim Youmans and Bill Parker were both participants in the process leading to the original approval of the RMA, Tim as its author and Bill as a principal in the entity that then owned all of the land in the CFD and that was the sole qualified elector voting to approve the RMA. Their testimony that you heard at your meeting of July 20, 2010 made it clear that they never intended that the “credit” portions of the definition of Annual Costs be read as narrowly as possible to produce the highest special tax possible. Each of them testified that a rational common sense reading of those provisions was expected, a reading that would provide for the payment of debt service and administrative expenses and provide as well for a coverage factor to protect against delinquencies in an amount reasonably related to those delinquencies. Their testimony is corroborated by the Hearing Report, which indicated that Annual Costs would be reduced by “subtracting other available revenues.” No evidence of any kind whatsoever has been presented to you that would indicate that a mindlessly literal interpretation of the RMA was intended. We respectfully urge that you follow the guidelines set forth by the court in *People v. Superior Court (Turner)* quoted above and exercise your interpretative power with respect to the RMA to effectuate that which was intended.

At page 10 of the Memo Mr. Cristy urges that you should not give “retrospective application” to any exercise of your power to interpret the RMA, and he cites *Estate of Skinker* (1956) 47 Cal.2d 290 to suggest that doing so would constitute a gift of public funds. However, the holding in *Estate of Skinker* is simply that when an otherwise correctly and lawfully levied tax has become due, subsequent legislation retroactively amending the applicable law to reduce the tax would be a gift of public funds in violation of the California Constitution. Serrano has never requested that you amend the RMA, much less that you do so retroactively. What Serrano has done is to point out that taxes which it has paid were erroneously and illegally levied and to file a claim that that they be refunded. In order to decide whether or not Serrano’s claim should be granted, which decision is your statutory duty to make, you must necessarily decide what certain provisions of the RMA mean. Frankly, you would have to decide the meaning of those terms whether or not Section 8 gave you the interpretative power that it does. We have emphasized that interpretive power to make it clear that it is not the County Auditor-Controller or the Principal Assistant County Counsel or Mr. Cristy who is empowered to give meaning to the RMA, it is only the Board of Supervisors. In that light, Serrano has merely requested that you exercise the authority which was built into the RMA for the very purpose of addressing the sort of situation confronted here, that you instruct all concerned with the administration of the RMA as to what the otherwise vague and ambiguous provisions thereof mean. Whatever those words mean today is what they meant last year and the year before that and the year before that, etc. and what, in the absence of an amendment of the RMA, they will continue to mean next year and the year after that and the year after that, etc. In other words, in the context of the RMA, “reimbursements” means something; and, whatever that something is, it is what “reimbursements” has always meant in that context and what it will continue to mean in that context unless and until the RMA is changed. Determining what that something constitutes is not retroactive legislation; and, if what that something constitutes means that Serrano is entitled to a refund, such a refund will not be a “refund based on a retroactive revision of the RMA,” to use Mr. Cristy’s words; and it will definitely not be a gift of public funds.

Refund Taxes. At pages 9 and 10 of the Memo, Mr. Cristy asserts that the Board lacks power to refund the special taxes that Serrano has requested because (with two exceptions that he says have

already been corrected) “the County has correctly calculated the Annual Costs and has legally and correctly levied the special tax.” Of course, *the basic question before the Board is whether or not his statement is true*. For the reasons set forth in our earlier letter and the additional reasons discussed below, we believe that it is emphatically not true. Your task is to decide this basic question. If you find that our case is without merit, we would agree that you can’t grant the requested refund. On the other hand, if you believe that our position is correct in whole or in part then, to the extent we are correct, you *must* make the refund. There is a third alternative available to you. Mr. Cristy describes it on page 11 of the Memo: if you believe that there is “some validity” to our request you can enter into a settlement agreement with Serrano to resolve what, under those conditions, would be classified as a “good faith dispute.” Apparently Mr. Cristy believes that there isn’t any validity at all to our request and that therefore you can’t join in a settlement with Serrano. However, the decision as to whether our position is wrong entirely, or completely correct, or correct in part, or at least has “some validity” is not Mr. Cristy’s to make. It is yours.

We will now address the five major points discussed in the Memo. We believe that on each of them we are completely correct and that you should concur and order the refund to be made. Even if you disagree with our position on one or more of the points discussed, we believe that you can’t help but find that there is at least “some validity” to our analysis and that, under those circumstances, you should direct that we attempt to negotiate a settlement of the dispute.

1. ***Reserve Account Earnings.*** On page two of the Memo, Mr. Cristy states, “The failure to credit Reserve Account earnings was an error and has been corrected.” We are very pleased that there is no dispute of any kind whatsoever that the County erred in this regard, but it is simply not true to assert that the error has been corrected. There are at least two respects in which the error has yet to be addressed. First, no refund has yet been made for the failure to have credited earnings from fiscal year 2004/05 to reduce Annual Costs for fiscal year 2005/06; and, even using Mr. Cristy’s four year time limit for refunds, there is no excuse for not refunding the excess special taxes that were levied and paid in fiscal year 2005/06 as a result of this acknowledged error. In addition, the earnings that have been thus far refunded to Serrano and the others who were overtaxed are *not all of the Reserve Account earnings*. The refunds that have been paid thus far represent the gross Reserve Account earnings *minus* the fees and expenses incurred in investing the money in the Reserve Account. However, under the terms of the Indenture, such fees and expenses must be paid from the Expense Account, not from the Reserve Account. Thus, those fees and expenses should not have been deducted from the Reserve Account earnings, and they should be added to the amount to be refunded in order to correct the aforesaid error. Each of these two concepts will now be discussed in greater detail.

Fiscal Year 2005/06 Special Taxes. On page 4 of the Memo, Mr. Cristy notes that the refunds which have been paid thus far to correct the admitted error in question represent “earnings going back to Fiscal Year 2005-06,” and he notes that the additional amount which Serrano seeks “represents earnings from Fiscal Year 2004-05.” After referring to the four-year period that is mentioned in California Revenue and Taxation Code Section 5097, Mr. Cristy points out that, since Serrano’s claim was filed in August, 2009, Serrano can only recover excess taxes levied and paid in and after fiscal year 2005/06. We don’t agree that the Serrano refund claim is subject to the four year

limit upon which Mr. Cristy relies¹; but, even accepting such a limit *arguendo*, by his own statements Mr. Cristy has proven that Serrano is entitled to a refund for part of the special taxes that it paid in fiscal year 2005/06. In computing the Annual Costs that would be the basis for the fiscal year 2005/06 tax levy, one must necessarily apply as the credit for Reserve Account earnings the amount of such earnings that were realized in the preceding fiscal year (2004/05) since the earnings that might be realized in fiscal year 2005/06 would not yet be known. In his eagerness to find any basis on which to deny a fair, just and lawful request for a refund, Mr. Cristy has apparently confused the subject matter of the four year limit. Unfortunately for his argument, *it applies to tax years, not investment years*. Once that is understood, it is clear from the rest of Mr. Cristy's analysis that Serrano is entitled to a refund of the excess special taxes that it paid in fiscal year 2005/06 as a result of the prior failure of the County to credit fiscal year 2004/05 Reserve Account earnings against 2005/06's Annual Costs. That refund has not yet been paid. The error has not yet been corrected.

Attached hereto as Exhibit 2 is a schedule showing a summary of investment income credited to, and fees and expenses paid from, the Reserve Account each fiscal year from 2004/05 through 2008/09. The schedule was prepared by Ueltzen & Company, LLP from data contained in the CFD's Fiscal Agent's bank statements. As shown in the schedule, the gross amount of fiscal year 2004/05 Reserve Account earnings was \$81,621.25. As we will discuss in the next subsection it is the gross amount of the Reserve Account earnings that should be credited against Annual Costs, and therefore this is the additional amount that should be refunded. If for some reason you find that only the net amount of such earnings (that is, the gross amount of such earnings reduced by the fees and expenses paid in connection with making the applicable investments) should be refunded, that amount as shown in Exhibit 2 is \$64,448.82. Serrano recognizes that the accuracy of the subject data needs to be verified before the precise amount of the additional refunds can be paid.

This topic does not require an interpretation of any document to show that an additional refund is owed. All that is required is a verification of the accuracy of the data and calculations set forth herein. In brief, there can be no doubt that the County's admitted error has not been corrected, the only question is how much more must be paid in order to do so.

Reserve Account Investment Fees and Expenses. Exhibit 2 shows that the total amount of the gross earnings actually derived from the investment of the Reserve Account in fiscal years 2004/05 through 2008/09 exceeded the net amount apparently previously used in calculating special tax refunds by some \$76,726.26. That amount apparently represents the fees and expenses incurred in making the investments. Serrano is not questioning the appropriateness of these fees and expenses or the need to pay them. However, it does question the source of funds used to make that payment.

¹ The analysis with respect to the inapplicability of the four year limitation is a highly technical one that focuses on the statutory duty of public officials to give notice to taxpayers of known errors in the levy of taxes. Rather than force the Board to deal with such a question, which is admittedly outside the scope of the RMA, Serrano is willing to accept a Board decision limiting its refund to the four years in question. However, if the Board does not order a refund based on at least that four-year period, Serrano reserves the right to argue that the four year limit is not applicable and to seek a refund for taxes paid prior to said period.

The fees and expensed incurred in investing the funds of the CFD are no different from any of the other costs of the County and/or the CFD in connection with the administration of the CFD; they are all lumped together under the heading of "Administrative Expenses" (the term used in the RMA) or just "expenses" (the term used in the Indenture). The Indenture contemplates that administrative fees and expenses are generally to be paid from the Expense Account, which is held by the County in the CFD Fund and which is governed by Section 3.8.1 of the Indenture. The Reserve Account is governed by Section 3.6 of the Indenture, and the provisions of that section contain absolutely no authority whatsoever permitting money (whether in the form of the corpus of that account or earnings derived from the investment thereof) to be withdrawn from the Reserve Account and applied to the payment of any administrative expenses, even those administrative expenses that relate directly to the Reserve Account. Thus, the amount of Reserve Account earnings which should have been applied as a credit to reduce Annual Costs each year should have been the gross amount thereof, not the gross amount minus the fees and expenses in question; and the amount of those fees and expenses should now be added to the amount to be refunded.

We must acknowledge that, if the requirements of the Indenture had been observed each year, the fees and expenses associated with the investment of the Reserve Account could have been taken into account in the computation of each year's Annual Costs. However, as will be discussed in Section 3 below, that does not mean that the total amount of Annual Costs would have been increased. In any case, the requirements of the Indenture were not observed, and the taxpayers should not be burdened with the County's failure in this regard. Again, assuming the accuracy of the data shown in Exhibit 2, additional refunds of \$76,726.26 appear to be owed for the period discussed above. (As discussed in Footnote (1), Serrano is prepared to accept a Board-ordered refund limited to that period, but it reserves the right to argue that it can seek refunds for prior years if the Board chooses to deny the refund for such period.)

2. **Reserve Requirement.** At page 5 of the Memo, Mr. Cristy takes four paragraphs before simply acknowledging that we were correct in our July 15, 2010 letter to you when we pointed out that the Reserve Account is overfunded by more than \$272,000. We are grateful for this admission even if it was a long time coming. However, we are mystified by the story he tells back on page 3 (in the context of his discussion of Reserve Account earnings) as to how the overfunding occurred. After mentioning that the County Auditor had erroneously concluded as of June 30, 2004 that the Reserve Account faced a deficit of about \$277,000, in the last paragraph on page 3 Mr. Cristy asserts that, "[T]he County gradually increased the balance in the Reserve Account by accumulating in the Reserve Account the investment earnings on that account."

There is nothing mysterious about *why* Mr. Cristy would want that to be the explanation for the excess amount in the Reserve Account – he wants to say, as he does in the first full paragraph on page 6 of the Memo, that at least part of the excess amount in the Reserve Account came from Reserve Account earnings and that Serrano has received a refund to compensate it for those earnings and therefore has nothing about which to complain. The mystery is the explanation itself. If it were true, it would be inconsistent with each of the annual financial and operating data reports filed on behalf of the County prior to fiscal year 2008/09 in order to comply with the SEC's Rule 15c2-12, none of which reported a Reserve Account deficit and none of which indicated a gradual build-up the

balance therein. But for the explanation to be true, for the County to “gradually [increase] the balance in the Reserve Account by accumulating in the Reserve Account the investment earnings on that account,” the County would have to hold the Reserve Account itself. But the County doesn’t hold the Reserve Account itself; the Reserve Account is held by the Fiscal Agent.

A different and more accurate explanation of what happened seems to be presented in the excerpt from the Fiscal Agent’s bank statements General Ledger which is attached hereto as Exhibit 3. It shows that a one time transfer of \$283,643.25 was made to the Reserve Account “to replenish the Reserve Account to the Reserve Requirement” on or about March 4, 2009, after Serrano’s representatives had approached the County’s representatives about the excessive tax levies that Serrano was experiencing. This was money that could and should have been applied as a credit to reduce the tax levy for fiscal year 2009/10.

3. ***Administrative Expenses***, The topic of the proper way to pay the costs of administering the CFD was raised and discussed in Mike Cook’s letter to you of September 30, 2009, and there did not appear to be any need to further elaborate on that point in our letter of July 15, 2010. However, after reviewing the Memo and examining the applicable facts, we believe that a very brief additional discussion of this point is in order². Here again, the basic point is that the County has held each year a significant sum of money in the CFD Fund. Money in that fund is available to pay, and apparently has been applied to pay, the administrative costs associated with the CFD. Accordingly, it would make perfect sense to recognize that money as a credit to be applied to reduce Annual Costs.

4. ***Redemption Account Earnings***. As you may remember, the first item to be included in the computation of Annual Costs is “Debt Service.” The term “Debt Service” is defined in the RMA as follows, “‘Debt Service’ means, for each Fiscal Year or Bond Year, the total amount of principal and interest for any bonds, notes or certificates of participation of the CFD during that Fiscal Year, less *any applicable credits that may be available from any other sources available to the County to pay principal and interest* for the previous or current Fiscal Year or Bond Year.” [Emphasis supplied.]

Section 3.5 of the Indenture provides, “Earnings on investments in the Redemption Account shall be deposited into the Special Tax Fund.” Pursuant to Section 3.4 of the Indenture, the highest

² It is interesting to note that administrative expenses are generally supposed to be paid from the Expense Account, which is held by the County in the CFD Fund. The rules applicable to this account require that the Board adopt a budget each year setting forth the estimated administrative expenses for the following fiscal year. Pursuant to Section 3.8 of the Indenture, funds may be transferred to the Expense Account only “to the extent necessary to replenish the Expense Account to the amount budgeted, under Section 3.8.1, for annual expenses for the new fiscal year.” Serrano has been unable to find any indication that the Board has adopted the budget required by Section 3.8.1 of the Indenture. If the Board has in fact failed to do so, there would be no basis for depositing special tax proceeds in the Expense Account and no reason to include an Administrative Expenses component in the calculation of Annual Costs or in the special tax levy. But Serrano’s real concern with respect to administrative expenses is not the possibility that under a mindlessly literal reading of the documents a technical error has been made. Its real concern is with the substance of the approach to calculating Annual Costs.

priority use of money on deposit in the Special Tax Fund is to be disbursed to the Redemption Account in said fund "to the extent necessary to fully fund all scheduled payments of interest and principal . . . coming due on the Bonds through the next succeeding September 1 . . ." Thus, Redemption Account earnings are clearly a revenue available to pay Debt Service.

At page 4 of the Memo, Mr. Cristy says that, "The phrase "applicable credits must be given some meaning in interpreting the definition of Debt Service in the RMA." This from the same person who asserts that the RMA is not vague or ambiguous and that the Board therefore can't interpret it! We think an interpretation is necessary and appropriate. Keeping in mind that the better interpretation is the one that effectuates the indentation of the parties, it is appropriate to refer again to the language in the portion of the Hearing Report attached as Exhibit 1 that states, "The Annual Costs funded by the levy of the special tax will be determined by subtracting other available revenues, such as reimbursement payments, fees, or prepaid special taxes, from the Annual Costs." Note that the subtraction includes "other available revenues *such as*" [emphasis supplied] those that are specifically listed. The listed remedies are by no means intended to be the only ones that are to be credited against Annual Costs. The earnings on the Redemption Account, which are required to be held in the Special Tax Fund, are clearly available to pay debt service and therefore should be applied as a credit. This is the interpretation that makes sense, that reflects the intentions of the parties and that you should adopt.

To the best of our ability to determine the facts, the conduct of the Fiscal Agent with respect to Redemption Account earnings confirms our position. Ueltzen & Company, LLP's examination of the various transfers to and from the Fiscal Agent indicates that the Fiscal Agent simply retained the earnings on the Redemption Account in that account and billed the County for the additional amount necessary to pay debt service. This would indicate very clearly that not only were these earnings available to pay debt service, they were actually applied for that very purpose. Thus, it is clear that they should have been recognized as a credit in the calculation of Annual Costs. However, they were not so recognized.

Exhibit 4 to this letter is a schedule showing the Redemption Account earnings on a gross and net basis. The schedule was prepared by Ueltzen & Company, LLP from data contained in the CFD's Fiscal Agent's bank statements. Assuming the accuracy of the data included in that schedule, at the very least, the amount of the earnings realized in fiscal years 2004/5 and following should be refunded. (In this instance also, Serrano is prepared to accept a Board-ordered refund limited to that period, but it reserves the right to argue that it can seek refunds for prior years if the Board chooses to deny the refund for such period.)

5. ***Later-Collected Delinquent Taxes.*** In general, no credit has been given in computing Annual Costs for the reimbursements received by the County as a result of recoveries of prior years' delinquencies and the penalties and interest associated therewith. Because these reimbursements include penalties equal to 10% of the delinquent amounts and interest on the delinquent amounts, and because the County's recovery rate has been very strong, the reimbursements generally equal or exceed the total amount of the delinquencies in the second fiscal year preceding the year for which Annual Costs are being calculated. Thus, ignoring these

reimbursements results in a significantly higher special tax levy than is actually required by the legal documents.³

Mr. Cristy's objections to interpreting the term "reimbursements" to include these payments to the County were dealt with in Section 1 above. Even if his objections had merit, and we believe that the discussion in Section 1 shows that they do not, there is another basis upon which the Board can and should determine that such payments are to be recognized as credits against Annual Costs. As discussed under Section 4 above, the defined term "Debt Service" refers to gross debt service less credits that "may be available from any other sources available to the County." Section 3.8 of the Indenture provides that the "reinstatement of delinquent special taxes, including the late charges and monthly penalties" shall be deposited in the CFD Fund. The first priority use for money so deposited into the CFD Fund is to enable the payment of debt service. Such money represents "other revenues" that are available to pay Debt Service, and it should be applied as a credit against Debt Service.

Mr. Cristy asserts on page 11 of the Memo that we have made an appeal based on equity, but that equity is not a valid basis for making a refund of taxes, and such a refund would constitute a gift of public funds. His assertion with respect to the nature of Serrano's appeal is not true. Serrano's claim for a refund is based on the fact that Serrano has been erroneously and illegally taxed. What is true is that you have been presented with two general approaches to the administration of the RMA. One of those approaches takes an extremely literal approach to interpreting the RMA, is inconsistent with the expectations of people who participated in the approval of the RMA and with the record of the proceedings leading to that approval, and has produced a result that is obviously irrational and inequitable. The second approach is not literal, but it still respects the word of the RMA and interprets them so as to effectuate the originally intended result, which is rational and equitable. Equity is not the basis for the requested refund, but it is one of several reasons for the Board to take the second of the two approaches.

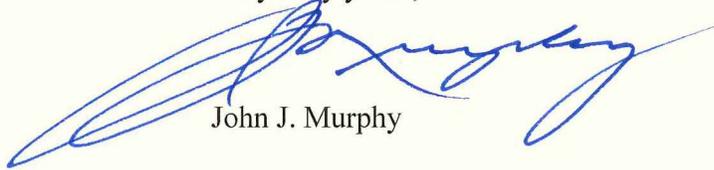
In conclusion, if you find that none of our points has any merit at all, you should deny the refund. We agree that if our position is absolutely devoid of legal merit the refund cannot and should not be granted. Under those conditions, *and only under those conditions*, granting the refund would be a gift of public funds. However, remembering that California Revenue and Taxation Code Section 5096 provides that taxes that were "illegally assessed or levied" or "erroneously or illegally collected" "*shall be refunded*" [emphasis supplied], you must make a refund if and to the extent that you find our position on any of the five points discussed herein to be correct. Finally, if you are not persuaded that we are correct on some or all of those points but you find that our position has, in Mr. Cristy's words, "some validity," then you can direct the negotiation of a settlement agreement with Serrano.

³ To give a sense of the magnitude of these numbers, the total amount of special taxes levied in the CFD prior to fiscal year 2009/10 is about \$37,126,000. Of that amount, only approximately \$55,000 was delinquent as of June 30, 2010. This amount was more than offset by the approximately \$322,000 in penalties and interest that the County has received in connection with its reimbursements of prior delinquencies. Despite this, approximately \$1,828,000 has been levied for "reserves for delinquencies" and has not yet been refunded.

El Dorado County Board of Supervisors
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Thank you for your consideration.

Very truly yours,

A handwritten signature in blue ink, appearing to read "John J. Murphy", is written over the typed name. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John J. Murphy

cc: Jonathan Cristy
Kirk Bone
Michael J. Cook

IV. DESCRIPTION OF CFD

The Specific Plan Development Agreement and Public Improvements Financing Plan require El Dorado County to initiate proceedings to establish a Mello-Roos CFD to fund major improvements needed to serve the El Dorado Hills Specific Plan Area. The El Dorado Hills Community Facilities District No. 1992-1 (CFD No. 1992-1) is being formed pursuant to the requirements of the Development Agreement.

Exhibit A lists the eligible facilities for CFD No. 1992-1. Exhibit B lists the Incidental Expenses and Bond Issuance Costs. Parcels within CFD No. 1992-1 will pay an annual special tax based upon the rate and method of apportionment described in Exhibit C. The boundary map for CFD No. 1992-1 is found in Exhibit D.

BOND AUTHORIZATION

The bond authorization for CFD No. 1992-1 is \$60,000,000. This amount represents the maximum amount of bonds that can be issued by the CFD.

ANNUAL COST DEFINITION

Each fiscal year, the County will approve the annual costs for CFD No. 1992-1. The annual costs will include the following items:

- Debt Service on Special Tax Bonds
- Replenishment of the Bond Reserve Fund
- Anticipated Tax Delinquencies
- Administration of the Community Facilities District
- Eligible Pay-As-You-Go Expenditures

The Annual Costs funded by the levy of the special tax will be determined by subtracting other available revenues, such as reimbursement payments, fees, or prepaid special taxes, from the Annual Costs. The County will then apply the special tax formula described in Exhibit C of this report to determine the special tax levy for each parcel.

DETERMINATION OF PARCELS SUBJECT TO TAX

The County shall prepare a list of the Parcels subject to the Special Tax using the records of the County Assessor as of March 1 of each year. The County shall identify the Taxable Parcels from a list of all Parcels within the CFD using the procedure described below.

- 1) Exclude all Tax-Exempt Parcels.

Taxable Parcels that are acquired by a public agency after the CFD is formed or Final Subdivision Maps are recorded will remain subject to the applicable Special Tax unless the Special Tax obligation is satisfied pursuant to Section 53317.5 of the Government Code by the procedure described in Section 7. An exception to this may be made if Public Parcels, such as a school site, are relocated and the

Community Facilities District No. 1992-1
 Summary of Dividend Income and Investment Expenses
 Bank of New York
 Reserve Accounts

For Fiscal Years Ending June 30, 2005 - 2009

Bank Account Number	Account Description	2005	2006	2007	2008	2009	Total
405129	County of El Dorado 1999 Reserve Account						
	Account Balance	<u>3,322,331.21</u>	<u>3,374,520.82</u>	<u>3,365,598.71</u>	<u>3,356,443.53</u>	<u>3,292,166.79</u>	
	Dividend Income	58,202.23	126,208.40	170,601.20	118,286.41	24,394.23	497,692.47
	Investment Maintenance Fees	<u>(12,248.11)</u>	<u>(11,949.99)</u>	<u>(12,488.79)</u>	<u>(12,519.33)</u>	<u>(5,360.53)</u>	<u>(54,566.75)</u>
		<u>45,954.12</u>	<u>114,258.41</u>	<u>158,112.41</u>	<u>105,767.08</u>	<u>19,033.70</u>	<u>443,125.72</u>
405104	County of El Dorado 2004 Reserve Account						
	Account Balance	<u>1,337,884.42</u>	<u>1,346,542.58</u>	<u>1,349,473.98</u>	<u>1,335,484.88</u>	<u>1,616,626.76</u>	
	Dividend Income	23,419.02	50,358.76	67,974.03	46,946.92	9,862.11	198,560.84
	Investment Maintenance Fees	<u>(4,924.32)</u>	<u>(4,945.55)</u>	<u>(4,974.63)</u>	<u>(4,966.84)</u>	<u>(2,348.17)</u>	<u>(22,159.51)</u>
		<u>18,494.70</u>	<u>45,413.21</u>	<u>62,999.40</u>	<u>41,980.08</u>	<u>7,513.94</u>	<u>176,401.33</u>
Total	County of El Dorado 1999 and 2004 Reserve Accounts						
	Total Account Balances	<u>4,660,215.63</u>	<u>4,721,063.40</u>	<u>4,715,072.69</u>	<u>4,691,928.41</u>	<u>4,908,793.55</u>	
	Total Dividend Income	81,621.25	176,567.16	238,575.23	165,233.33	34,256.34	696,253.31
	Total Investment Maintenance Fees	<u>(17,172.43)</u>	<u>(16,895.54)</u>	<u>(17,463.42)</u>	<u>(17,486.17)</u>	<u>(7,708.70)</u>	<u>(76,726.26)</u>
		<u>64,448.82</u>	<u>159,671.62</u>	<u>221,111.81</u>	<u>147,747.16</u>	<u>26,547.64</u>	<u>619,527.05</u>

Source: Bank of New York Bank Statements

Exhibit 2

EXHIBIT 2

EXHIBIT 3



THE BANK OF NEW YORK MELLON
Bank of New York Mellon Trust Company, N.A.

COUNTY OF EL DORADO
MELANIE DRAPER/CONTROLLER'S OFFICE
360 FAIR LN
PLACERVILLE CA 95667-4103

44-672-004

Account Statement

Statement Period 03/01/2009 Through 03/31/2009

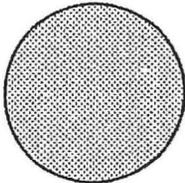
Account 405132
CO. OF EL DORADO 99 SPECIAL TAX FD

RELATIONSHIP MANAGER: CALVIN WOO
CORPORATE TRUST - 550 KEARNY ST. SUITE 600
SAN FRANCISCO, CA 94108
415-263-2426
CALVIN.WOO@BNYMELLON.COM

If you are interested in accessing your Account Statement on-line,
please contact your Relationship Manager about our web-based INFORM
product.

Visit us at www.bnymellon.com

Account Overview



Percent of all Investments	Asset Classification	Market Value
100% ⊖	CASH AND SHORT TERM	714,784.04
100%	TOTAL OF ALL INVESTMENTS	714,784.04

Summary of Assets Held

Asset Classification	Market Value	Cost	Accrued Income	Est Annual Income	Market Yield
CASH AND SHORT TERM	714,784.04	714,784.04	0.00	1,358.09	0.19%
ACCOUNT TOTALS	714,784.04	714,784.04	0.00	1,358.09	0.19%

Summary of Cash Transactions

Transaction Category	Current Period			Year-to-Date	
	Income	Principal	Realized Gains/Losses	Income	Principal
OPENING BALANCE	0.00	0.00		0.00	2,550,000.00
DIVIDENDS	308.99	0.00	0.00	766.08	0.00
SALES AND REDEMPTIONS	0.00	283,643.25	0.00	0.00	1,835,278.71
PAYMENTS AND WITHDRAWALS	0.00	283,643.25	0.00	0.00	1,835,278.71
FEES AND EXPENSES	308.99	0.00	0.00	766.08	0.00
PURCHASES	0.00	0.00	0.00	0.00	2,550,000.00
CLOSING BALANCE	0.00	0.00	0.00	0.00	0.00

The above cash transactions summary is provided for information purposes only and may not reflect actual taxable income or deductible expenses as reportable under the Internal Revenue Code.

014600 XBNEF404 016662

9 5693 E 1 PDS 5 92499

Statement of Assets Held

Shares / Par Value	Asset Description	Market Price Average Cost	Market Value Cost	Accrued Income Est Annual Income	Market Yield
CASH AND SHORT TERM					
714,784.040	JP MORGAN US TRSRY PLUS INSTL #3918	1.00000	714,784.04	0.00	0.19%
	CUSIP: S99995310	1.00000	714,784.04	1,358.09	
Total CASH AND SHORT TERM			714,784.04	0.00	0.19%
			714,784.04	1,358.09	
ACCOUNT TOTALS			714,784.04	0.00	0.19%
Total Market Value Plus Total Accrued Income 714,784.04			714,784.04	1,358.09	

Statement of Transactions

Transaction Date	Transaction Description	Income	Principal	Cost	Realized Gains/Losses
03/01/09	OPENING BALANCE	0.00	0.00	998,427.29	
03/03/09	Dividend JP MORGAN US TRSRY PLUS INSTL #3918 DIVIDEND	308.99	0.00	0.00	0.00
03/03/09	Cash Debit JP MORGAN US TRSRY PLUS INSTL #3918 INVESTMENT MAINTENANCE.FEE	308.99 -	0.00	0.00	0.00
03/03/09	DAILY ENDING BALANCE	0.00	0.00	998,427.29	0.00
03/04/09	Sale JP MORGAN US TRSRY PLUS INSTL #3918 283,643.25 SHARES	0.00	283,643.25	283,643.25 -	0.00
03/04/09	Cash Debit TRSF FR 405132 TO 405104 TO REPLENISH THE RESERVE ACCOUNT TO THE RESERVE REQUIREMENT PER INDENTURE SEC. 3A	0.00	283,643.25 -	0.00	
03/04/09	DAILY ENDING BALANCE	0.00	0.00	714,784.04	0.00
03/31/09	CLOSING BALANCE	0.00	0.00	714,784.04	0.00

Cumulative realized capital gain and loss position from 12/31/2008 for securities held in principal of account:

Short Term: 0.00 * Long Term: 0.00 *

* The above gain and loss position does not include transactions where tax cost information is incomplete or unavailable.

Cash and securities set forth on this Account Statement are held by The Bank of New York Mellon, an affiliate of The Bank of New York Mellon Trust Company, N.A. In addition, The Bank of New York Mellon Trust Company, N.A. may utilize subsidiaries and affiliates to provide services and certain products to the Account. Subsidiaries and affiliates may be compensated for their services and products.

The value of securities set forth on this Account Statement are obtained by The Bank of New York Mellon Trust Company, N.A., from its affiliate, The Bank of New York Mellon which determines such values for Global Corporate Trust on the basis of market prices and information obtained by The Bank of New York Mellon from unaffiliated third parties (including independent pricing vendors) ("third party pricing services"). The Bank of New York Mellon has not verified such market values or information and makes no assurances as to the accuracy or correctness of such market values or information or that the market values set forth on this Account Statement reflect the value of the securities that can be realized upon the sale of such securities. In addition, the market values for the securities set forth in this Account Statement may differ from the market prices and information for the same securities used by other business units of The Bank of New York Mellon Trust Company, N.A., The Bank of New York Mellon or their respective subsidiaries or affiliates based upon market prices and information received from other third party pricing services utilized by such other business units. Global Corporate Trust does not compare its market values with those used by, or reconcile different market values used by, other business units of The Bank of New York Mellon Trust Company, N.A., The Bank of New York Mellon or their respective subsidiaries or affiliates. Neither The Bank of New York Mellon Trust Company, N.A. nor The Bank of New York Mellon shall be liable for any loss, damage or expense incurred as a result of or arising from or related to the market values or information provided by third party pricing services or the differences in market prices or information provided by other third party pricing services.

Community Facilities District No. 1992-1
 Summary of Dividend Income and Investment Expenses
 Bank of New York

Redemption Accounts

For Fiscal Years Ending June 30, 2005 - 2009

Bank Account Number	Account Description	2005	2006	2007	2008	2009	Total
405126	County of El Dorado 1999 Redemption Account						
	Account Balance	1.29	-	293.86	239.65	187.38	
	Dividend Income	1,131.64	224.11	2,221.83	3,145.79	1,360.24	8,083.61
	Investment Maintenance Fees	(335.11)	(24.78)	(162.66)	(308.08)	(239.98)	(1,070.61)
		<u>796.53</u>	<u>199.33</u>	<u>2,059.17</u>	<u>2,837.71</u>	<u>1,120.26</u>	<u>7,013.00</u>
405143	County of El Dorado 2004 Redemption Account						
	Account Balance	-	-	-	-	-	
	Dividend Income	-	-	-	-	-	-
	Investment Maintenance Fees	-	-	-	-	-	-
		<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total	County of El Dorado 1999 and 2004 Redemption Accounts						
	Account Balance	1.29	-	293.86	239.65	187.38	
	Dividend Income	1,131.64	224.11	2,221.83	3,145.79	1,360.24	8,083.61
	Investment Maintenance Fees	(335.11)	(24.78)	(162.66)	(308.08)	(239.98)	(1,070.61)
		<u>796.53</u>	<u>199.33</u>	<u>2,059.17</u>	<u>2,837.71</u>	<u>1,120.26</u>	<u>7,013.00</u>

Source: Bank of New York Bank Statements