

# Memorandum

**TO:** Ralph Morrow, General Manager  
Tenaja Community Services District

**FROM:** James S. Okazaki

**Date:** April 16, 2001

**Subject:** Tenaja Community Services District-Powers

BASIC POWERS OF THE DISTRICT. The Tenaja Community Services District was formed on July 30, 1985 pursuant to Resolution No. 85-409 of the Riverside County Board of Supervisors which states that "...District is organized for the purposes of providing within said District:

- "(a) Collection, treatment or disposal of storm water;*
- (a) Collection or disposal of garbage or refuse matter;*
- (b) Protection against fire;*
- (c) Public recreation by means of parks, including, but not limited to, playgrounds, golf courses, swimming pools, or recreation buildings;*
- (d) Equipment and maintenance of a police department or other police protection to protect and safeguard life and property;*
- (e) The opening, widening, extending, straightening, surfacing and maintenance, in whole or in part, of any street in such district subject to the consent of the governing body of the county or city in which said improvement is to be made.*
- (f) The construction and improvement of bridges, culverts, curbs, gutters, drains, and works incidental to the purposes specified in (f), subject to the consent of the governing body of the county or city in which said improvement is made;*
- (a) The conversion of existing overhead electric and communication facilities to underground locations in accordance with Public Contracts Code Subdivision (1);"*

**B. Administration of Covenants, Conditions & Restrictions.**

**FACTS:** Developers commonly impose Covenants, Conditions, & Restrictions [CC&Rs] when a larger parcel of land is subdivided to assure that the improvement of each of the parcels within the boundaries of the tract will conform to a uniform standard. Such *CC&Rs* are typically administered by an Architectural Control Committee [ACC] comprised of and selected from among the owners within the tract. The powers of the *ACC* are derived from the provisions of the particular *CC&Rs*, and its jurisdiction is limited to the boundaries of the subdivision. A number of years ago Community Services Districts, particularly in the more sparsely populated areas of California discovered that developers of many of the subdivisions within their jurisdiction had adopted and recorded *CC&Rs*, but the owners had not created an *ACC* to administer them. Such Districts, therefore, prevailed upon the legislature to pass a law identical to Section 61601.16 of the Government Code which empowers the Board of Directors of the Tenaja Community Services to **enforce the covenants, conditions and restrictions adopted for each tract within the boundaries of the District, and to assume the duties of the Architectural Control Committee for each tract within the boundaries, for the purpose of maintaining uniform standards of development.**

QUESTION 1: State the specific law which forbids the District's utilizing public funds for the administration of the *CC&Rs*.

ANSWER 1:

To the best of our knowledge and belief, there are no statutes which specifically state that **Community Services District shall not expend its public funds for the administration of private *CC&Rs*** for the simple reason that the legislature would, in our opinion, have no reason to pass a law which states the obvious: [\*The researching of relevant court decisions is far beyond the scope of this memorandum. If the Board of Directors desires a legal opinion with recitations of judicial decisions, we will provide such services by separate arrangement.] The basis of our opinion rests upon the following:

- (a) The Tenaja Community Services District is a local governmental agency possessing only such powers as are enumerated above [BASIC POWERS OF DISTRICT].
- (a) *CC&Rs* constitute **private** contracts among the owners of a particular subdivision.
- (b) Section 61601.16 essentially states that the five members of the Board of Directors of the Community Services District may take the place of the Architectural Control Committee to enforce the covenants, conditions and restrictions adopted for each tract within the boundaries of the District.
- (d) The Architectural Control Committee for each of the five (5) Subdivisions within the District can, therefore, administer only the *CC&Rs* for that tract. There are no carry-overs of *CC&Rs* from one tract to another, and certainly no granting of governmental powers to a private function simply

because the members of the Architectural Control Committee also happen to possess governmental powers in another role.

(e) The five members of Tenaja's Architectural Control Committee do not sit as a single body for all of the five subdivisions; rather, they act as a separate ACC for each of them, just as the Architectural Control Committee for Meadow Oaks administers only its CC&Rs.

(f) Any suggestion that "*CC&Rs are a general benefit to the District*" is not at all relevant, and in our opinion patently facetious! *QUERY: How does the administration of CC&Rs which affect only subdivision A beneficially affect subdivisions B, C, D, E and the areas with no CC&Rs?*

QUESTION 2: May funds collected for the administration of CC&Rs be utilized only for enforcement and not for *normal administration by district staff*?

ANSWER 2: No. All expenses related to the performance of the non-governmental function of administering the CC&Rs must be funded by the owners within the boundary of particular subdivision.

QUESTION 3: Must each CC&R be amended to provide for collection of funds?

ANSWER 3 : CC&Rs which do not provide for the collection of funds, must be appropriately amended. The amended CC&Rs must indicate the method of collection and the handling of delinquencies. Since the CC&R's are a private contract, the collection of funds for the administration and enforcement cannot be placed on the tax rolls.

QUESTION 4: How would the fees be collected ?

ANSWER 4: Unless the CC&R's specify the manner of collection, the Board may establish its own collection procedures. The CC&R's must first be amended to provide for the collection of funds.

QUESTION 5: Would these collections be subject to the provisions of Proposition 218?

ANSWER 5: To reiterate: Administration of the CC&Rs is a **non-governmental function**. Proposition 218 is, therefore, not applicable for the collection of funds for the administration and enforcement of the CC&R's.