CASE NO. A116825

In The Court of Appeal, State of California
FIRST APPELLATE DISTRICT
DIVISION THREE

CITIZENS FOR RESPONSIBLE OPEN SPACE, et al.,
Petitioners, Appellants, and Cross-Respondents

vs.

SAN MATEO COUNTY LOCAL AGENCY FORMATION COMMISION, et al.,
Respondents and Cross-Appellant.

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT,
Real Party in Interest and Cross-Appellant.

Appeal From the Superior Court of the State of California
for the County of San Mateo – Case No. CIV 442954
Honorable Beth Labson Freeman, Judge Presiding

APPLICATION TO FILE *AMICI CURIAE* BRIEF AND BRIEF OF *AMICI CURIAE* CALIFORNIA ASSOCIATION OF LOCAL AGENCY FORMATION COMMISSIONS AND CALIFORNIA SPECIAL DISTRICTS ASSOCIATION IN SUPPORT OF RESPONDENT AND CROSS-APPELLANT SAN MATEO COUNTY LOCAL AGENCY FORMATION COMMISSION AND CROSS-APPELLANT AND REAL PARTY IN INTEREST MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

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APPLICATION FOR PERMISSION TO FILE *AMICI CURIAE* BRIEF

TO THE HONORABLE PRESIDING JUSTICE McGUINESS:

Pursuant to Rule 8.200(c) of the California Rules of Court, the California Association of Local Agency Formation Commissions ("CALAFCO") and the California Special Districts Association ("CSDA") respectfully request permission to file the *amici curiae* brief combined with this application.

CALAFCO is an organization that represents Local Agency Formation Commissions throughout the State. All but one of the 58 LAFCOs within California are CALAFCO members. CALAFCO coordinates LAFCO activities statewide and serves as a resource for the Legislature on matters relevant to the work of LAFCOs.

CSDA is a non-profit association formed in 1969 to support the activities of local, independent special districts. Over 1,000 organizations throughout the State are CSDA members. It is the only statewide association representing all types of independent special districts including, for example, irrigation, water, park and recreation, cemetery, fire, police protection, library, utility, harbor, healthcare and community services districts.

The members of CALAFCO and CSDA have a substantial interest in this case because the Court's opinion has the potential to alter how annexation proceedings are conducted, including annexations to special districts. First, the decision may radically alter the stated legislative presumption that annexations are valid unless a challenger establishes an alleged error adversely and substantially affected a person or entity's rights,

significantly increasing the cost to LAFCOs and special districts in terms of staff, legal counsel, consultants, and other resources to guard against inadvertent imperfections in the annexation process, no matter how small in the context of a particular annexation. Second, the decision has the potential to mandate a detailed, uniform, and expensive mapping requirement for LAFCO actions, which the Legislature itself has declined to impose. Third, the decision has the potential to seriously restrict LAFCO's ability to delegate ministerial duties to county agencies with relevant expertise in the given area, an essential power given the limited resources available to most LAFCOs and many special districts. Fourth, the decision has the potential to alter the number of protest signatures necessary to trigger an election on an annexation decision, again increasing the cost of the annexation process. Finally, the decision has the potential to eviscerate the requirement stated in the Cortese-Knox-Hertzberg Act that only registered voters residing within a proposed annexation area and landowners within that area may submit protests to the annexation.

The applicants have a unity of interest with the respondents and cross-appellants San Mateo LAFCO and Real Party in Interest Midpeninsula Regional Open Space District and seek to submit the attached brief as *amici curiae* in the Court of Appeal in this matter.[1]

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[1] Counsel for San Mateo LAFCO requested by letter that CALAFCO consider providing *amicus* participation on issues of interest to CALAFCO. CALAFCO reviewed the request and agreed to provide *amicus* support in this case, specifying the issues of concern to CALAFCO. CALAFCO, as is its practice and in reflection of its limited legal services budget, asked the Midpeninsula Regional Open Space District to prepare a draft of this brief addressing the issues which the CALAFCO Board had authorized to be discussed. CALAFCO's general counsel and CDSA's general counsel reviewed and each exercised their independent judgment on behalf of their respective clients as to the final content and filing of this brief.

The applicants' attorneys have examined the briefs on file in this case and are familiar with the issues involved and the scope of the presentations. The applicants respectfully submit a need exists for additional briefing regarding the potential impact of a decision by this Court on LAFCOs and special districts throughout California regarding the conduct of annexation proceedings. Applicants respectfully submit the following issues, addressed in the proposed brief combined with this application from the perspective of LAFCOs and special districts throughout California, are important to the Court's determination of this matter:

1. When a challenger establishes no adverse and substantial effect on a person or entity's rights resulting from an annexation, can a court nevertheless invalidate the annexation?

2. May courts impose a specific level of mapping detail for a 144,000 acre annexation proposal the Cortese-Knox-Hertzberg Act itself does not require?

3. May LAFCOs utilize a county elections official's expertise to compare submitted protest signatures and registered voter addresses to the registered voter rolls or must LAFCO's own, limited staff perform these tasks despite the general absence of election expertise among LAFCO staffmembers?

4. Does a LAFCO err by determining the number of registered voters for protest purposes as of the time the protests are submitted at the protest hearing instead of determining the number when LAFCO issues a certificate of filing, which is typically well before the protest hearing?

5. Must a LAFCO count protests that fail to provide a residence address when applicable law permits protests only by registered voters who reside within the proposed annexation area and given that voter rolls are organized according to residence address?

Therefore, and as further amplified in the Introduction and Interest of Amici portions of the proposed brief, the applicants respectfully request leave to file the *amici curiae* brief combined with this application.

DATED: October 8, 2007

BEST BEST & KRIEGER LLP

By: _____
Clark H. Alsop
Attorneys for Amicus Curiae
California Association of Local Agency
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DATED: October 8, 2007

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I. INTRODUCTION

The Cortese-Knox-Hertzberg Act ("CKH") provides no decision of a Local Agency Formation Commission ("LAFCO") may be overturned absent proof of: 1) Fraud or prejudicial abuse of discretion; and, 2) resulting adverse and substantial effects upon a person's rights. Cal. Gov. Code § 56107. This case presents multiple questions arising from disgruntled opponents of a controversial annexation who seek to invalidate San Mateo LAFCO's legislative decision to approve a 144,000 acre annexation to the Midpeninsula Regional Open Space District.

First, should the Court disregard the comprehensive standard of review for LAFCO decisions set forth in CKH? The only possible answer, as the trial court properly recognized, is "No." CKH declares LAFCO decisions to be valid absent proof of fraud or abuse of discretion resulting in adverse and substantial effects on a person's rights.

Second, is a notice of a protest hearing so defective as to overturn an annexation if any alleged errors it contained caused no prejudice to any person? The Trial Court properly determined the notice to be sufficient.

Third, in the absence of specific mapping standards in the statute, may an alleged error in a map of just over one tenth of one percent of the 144,000 acres at issue invalidate an annexation? Again, the Trial Court correctly found that any mapping errors were harmless.

Fourth, may a LAFCO utilize county elections officials' expertise to compare the signatures and registered voter addresses on protests to the annexation to the signatures on the registered voter rolls? The law is unambiguous that LAFCO may do so and, indeed, the policies inherent in the CKH statute are advanced by so doing.

Fifth, in the absence of any statutory guidance, does LAFCO have discretion to determine the number of registered voters for protest purposes as of the protest hearing or, alternatively, must LAFCO make that determination months before the protests are due? The trial court found San Mateo LAFCO abused no discretion in setting that number at the same time as the protests were due and *amici* urge this Court to affirm that finding.

Finally, is a LAFCO legally obliged to count protests where the protestors failed to provide their residence address when residency within the affected area is a prerequisite to submitting a protest? The answer must be "no," otherwise the integrity of the protest system would be compromised. Therefore, the trial court erred in requiring LAFCO to count protests that contained no residence address.

II. INTERESTS OF *AMICI*

Amicus curiae briefs assist courts by providing a broader perspective on the issues raised than can the parties. Such briefs facilitate informed judicial consideration of a wide variety of information and viewpoints that bear on important legal questions. CALAFO and CSDA are well situated to provide the points of view the agencies involved in the parties' dispute.

A. CALAFCO Background and Interest

The Legislature enacted CKH to facilitate and encourage orderly growth and development "essential to the social, fiscal, and economic well-being of the State." Cal. Gov. Code § 56001. The Legislature delegated authority to implement CKH and thereby advance the statute's purpose to LAFCOs, one in each county in California. CALAFCO represents

LAFCOs throughout the State. All but one of California's 58 LAFCOs are CALAFCO members. CALAFCO is intimately familiar with LAFCO's statutory obligations and the challenges, both financial and administrative, they face to meet those obligations and is a frequent drafter and regular commenter on proposed amendments to the CKH statute.

Among the many statutory duties of LAFCOs is the evaluation, approval or disapproval of annexations to and detachments (de-annexations) from cities and special districts. *E.g.,* Cal. Gov. Code § 56375. LAFCOs are also tasked to conduct periodic municipal service reviews and sphere of influence studies for each city and district within the county the LAFCO serves. *Id.* Given the wide variation among California's 58 counties in population and development, the Legislature has comprised LAFCOs of local elected officials (city councilmembers, members of county boards of supervisors and special district elected boardmembers) and invested them with substantial discretion to accomplish the purposes of CKH in ways that reflect their varied resources and circumstances.

For example, CKH allows each LAFCO to adopt its own procedures to meet the Act's mandates. *E.g.*, Cal. Gov. Code § 56300 (requiring each LAFCO to develop procedures.) Consider the disparity between the resources and development challenges of Modoc County and Los Angeles County: Modoc County has a population of 9,910 and an area of 2,524,220 acres; Los Angeles, by contrast, has some 10,292,723 people in 2,598,980 acres – roughly the same area but worlds apart in resources, challenges, and culture.[2] Moreover, the various reorganization proposals submitted to

[2] These figures are as of July 1, 2006, the most recent data available from the California Department of Finance, County Profiles at

LAFCOs may involve land areas that range from a few acres, to the 144,000 acres in this case, to even larger areas as some annexations can involve the entire area of a county. For example, the current spread of West Nile virus has resulted in very large annexations to mosquito abatement districts in order to respond to this threat on a county-wide basis.

CALAFCO's biennial survey, to which 42 LAFCOs responded earlier this year, further illustrates the differences in the circumstances faced by various LAFCOs. For example, the municipal service reviews – extensive reviews of the performance of local governments and their service areas – completed for the survey period ranged from a minimum of two (El Dorado and Marin Counties) to a maximum of 169 (Los Angeles County). Additionally, of the responding LAFCO's, the 2006-2007 adopted budgets ranged from a low of $23,700 (Tuolumne County) to a high of $1,346,700 (Riverside County). The LAFCO staffing among the counties is equally varied. For example, several LAFCO's have only one part-time staff member to support the Commission, while at least three LAFCO's have five or more staff to support the Commission's work.[3] The Legislature intended CKH to work equally well for the large, complex and well-funded Los Angeles LAFCO and for the small, virtually un-staffed Modoc LAFCO. This Court ought to construe CKH in light of this legislative intent.

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www.doj.ca.gov/HTML/FS_DATA/profiles/pf_home.php. The Court may properly take judicial notice of population data from governmental sources, including such sources on the Web. See Cal. Evid. Code §§ 452(b), (c) and (h); *Sanchez v. City of Modesto* (2007) 145 Cal.App.4th 660, 666, n. 1; *People v. Alexander* (1985) 163 Cal.App.3d 1189, 1201.

[3] Riverside, Los Angeles and San Diego Counties.

CALAFCO's interests are aligned with Respondent San Mateo LAFCO, to ensure the CKH is construed and applied in a manner consistent with the Legislature's intent to support the efficient and orderly growth within the State, while permitting local decision-making at the LAFCO level to meet those goals.

B. CSDA Background and Interest

Similarly aligned are the CSDA's interests. Special districts are limited-purpose local governments, distinct from cities and counties. They provide the public essential services such as fire protection, sewers, water supply, vector and mosquito abatement, sanitation and libraries, to name but a few. Special district service areas range from just a few acres to thousands of square miles crossing city and county lines. The Metropolitan Water District of Southern California, for example, serves over 16 million people in more than 5,200 square miles in six counties. In contrast, the Arden Manor Recreation and Park District in Sacramento County serves only 21 acres. Special districts can provide many services or only one. Some are large and well funded; others have very limited funds and provide one essential service (perhaps water, sewer or roads) to a small number of homeowners.

Limited tax bases and competing demands for existing taxes make it impossible for local government to provide all the services their residents and property owners desire. Thus, residents or property owners may form a special district to pay for new services or increased levels of existing services. Special districts localize the costs and benefits of such public services. In effect, special districts allow local citizens to obtain the services they want at a price they are willing to pay. The merger and

dissolution of special districts as well as annexations to or de-annexation from special district territory must be approved by LAFCO. Accordingly, the CSDA has a keen interest to ensure the procedures required by law for, and the standard of review applied to, LAFCO decisions are consistent with the CKH's plain language and the Legislature's intent so these procedures can be practical, affordable and effective even for LAFCOs and districts with far fewer resources than the Midpeninsula Regional Open Space District (MROSD) and San Mateo LAFCO, which has just one employee, its Executive Officer.

III. ISSUES PRESENTED – FACTS AND PROCEDURAL HISTORY

Amici adopt the Statement of the Case set forth by San Mateo Local Agency Formation Commission and Midpeninsula Regional Open Space District in their Respondents' and Cross-Appellants' Brief.

IV. LAFCO ANNEXATION DECISIONS CANNOT BE INVALIDATED ABSENT FRAUD OR PREJUDICIAL ABUSE OF DISCRETION.

Appellants urge this Court to disregard the plain language of the Cortese-Knox-Hertzberg Act ("CKH") and to invalidate San Mateo LAFCO's approval of the MROSD's annexation of coastal San Mateo County despite the absence from this record of evidence of fraud or prejudicial abuse of discretion. The Act states:

> In any action or proceeding to attack, review, set aside, void, or annul a determination by a [LAFCO] commission on grounds of noncompliance with this division, any inquiry shall extend only to whether there was fraud or a prejudicial

> abuse of discretion. Prejudicial abuse of discretion is established if the court finds that the determination or decision is not supported by substantial evidence in light of the whole record. Cal. Gov. Code § 56107(c).

CKH further unambiguously declares

> All determinations made by a [LAFCO] commission under, and pursuant to, this division shall be final and conclusive in the absence of fraud or prejudicial abuse of discretion. Cal. Gov. Code § 56107(b).

Despite this unambiguous standard of review, Appellants ask this Court to do what the trial court properly declined to do: Ignore the statute's plain language and apply a heightened standard of review not provided by the Legislature, but gleaned from constitutional cases involving the right to vote – a standard of review among the most exacting known to our legal system and designed to protect fundamental voting rights that are not implicated by annexations to and from local governments. For the reasons set forth below, this Court should decline Appellant's invitation to disregard the standard of review the Legislature specified.

A. LAFCO Reorganization Decisions Are Valid Absent Proof the Decision Both Adversely and Substantially Affected a Person's Rights or that a Decision Is Unsupported by Substantial Evidence.

Over thirty years ago, the California Supreme Court recognized "LAFCO is an agency with large discretionary powers." *Bozung v. Local Agency Formation Commission* (1975) 13 Cal. 3d 263, 288. In delegating to LAFCOs the power to approve or disapprove municipal and special

district boundaries, the Legislature explicitly entitled LAFCO decisions to great deference:

> No change of organization or reorganization ordered under this division and no resolution adopted by the [LAFCO] commission making determinations upon a proposal shall be invalidated because of any defect, error, irregularity, or omission in any act, determination, or procedure which does not adversely and substantially affect the rights of any person, city, county, district, the state, or any agency or subdivision of the state. Cal. Gov. Code § 56107(a).

Thus, LAFCO decisions are valid unless a challenger proves both that a decision is unsupported by substantial evidence, and therefore an abuse of discretion, and that the unsupported decision adversely and substantially affected a person's rights. In short, the law declares LAFCO decisions presumptively valid, unless the challenger meets this heightened, harmless error burden.

Decisions spanning decades construing CKH and its predecessor statutes have consistently implemented this standard of review, routinely giving LAFCO decisions the deference mandated by the Legislature in the teeth of challenges by litigants seeking to impose a higher standard of review. *E.g., City of Agoura Hills v. LAFCO of Los Angeles County* (1988) 198 Cal.App.3d 480, 491 ("[S]ubstantial evidence existed to support the sphere of influence decision of LAFCO."); *Simi Valley Recreation & Park Dist. v. Local Agency Formation Com.* (1975) 51 Cal.App.3d 648, 689 (LAFCO decision to detach property from a special park district upheld under substantial evidence standard**);** *Oxnard Harbor Dist., et al. v. Ventura County LAFCO* (1992) 16 Cal.App.4th 259, 271 (substantial evidence supported LAFCO deannexation decision).

Strong policy reasons support this statutorily mandated deference to LAFCO decisions. In setting boundaries for municipalities and special districts, a LAFCO acts in a legislative capacity:

> It is settled by a long, unbroken line of case authority that the matter of forming and adding new territory to municipal corporations, like cities and towns, and the extent and character of the territory to be included, are legislative matters which the Legislature has delegated to local municipalities to be performed in accordance with the appropriate legislative acts … [and] the nature of the power exercised is legislative and political rather than judicial. *Bookout v. Local Agency Formation Com.* (1975) 49 Cal.App.3d 383, 386.

The Legislature, fully cognizant of the legislative nature of LAFCOs' duties mandated each commission's makeup include generally five members, two from the county's elected board of supervisors, two elected mayors or council members from cities with the county, and one member of the general public appointed by the other commission members.[4] In counties where special districts request membership, the LAFCO includes two members from the legislative bodies of independent special districts within the county. Cal. Gov. Code § 56325.

Appellants, however, would discard both the harmless error standard and the substantial evidence standard. If courts were required to review LAFCO's legislative actions de novo, they would necessarily become embroiled in countless suits filed by passionate, disgruntled citizens to nitpick the legislative process. This de novo review would force courts to

[4] CKH provides variants of the general standard to guarantee representation on certain LAFCOs for the state's largest cities, such as Los Angeles, San Jose and San Diego. Cal. Gov. Code §§56326-56328. However, all Commissions are made up of elected legislators, save the one public member appointed by the other Commissioners.

replicate LAFCO's function and thereby risk intrusion into the legislative functions for which courts are not well equipped. The Legislature, mindful of this possible conflict, proscribed a deferential standard of review for LAFCO decisions, which the trial court applied properly here. CALAFCO and CSDA urge this court to respect this division of responsibility between the legislative and judicial branches as legislative resolution is generally far faster and less expensive than litigation and therefore preferable from their perspectives and, apparently, from the vantage point of the Legislature.

B. The Substantial Compliance Doctrine Applies to LAFCO Acts and Procedures.

The Court of Appeal should decline Appellants' invitation to ignore the well-established, substantial compliance doctrine. Contrary to Appellants' claims, the substantial compliance doctrine is consistent with the harmless error standard mandated by Section 56107(a). As quoted above, that subsection declares no LAFCO decision can be invalidated based on any defect, error, irregularity, or omission in any act, determination, or procedure that does not substantially and adversely affect one's rights. This section would be meaningless if the Court adopted Appellants' argument that a minor irregularity in a protest hearing notice was sufficient to invalidate LAFCO's actions following such notice.

Moreover, the standard of review stated in Section 56107(a) and the substantial compliance doctrine standard that flows from it are vital to efficient LAFCO operation. The Legislature enacted CKH specifically to advance orderly and efficient growth and development within the State. See Cal. Gov. Code § 56001. The Legislature further provided that CKH was to be construed liberally to effectuate its purpose. Cal. Gov. Code §

56107(a). LAFCOs are the agencies tasked to advance the legislative goals of CKH. To hold LAFCOs to a standard of perfection, as opposed to a standard demanding only substantial compliance with the law's demands, would expose LAFCOs to a multiplicity of suits, obligate them to spend scarce resources on additional staff, consultants, legal advice, and other tools to limit the possibility of human error, and thereby significantly hinder their ability to meet their obligations under CKH.

The notice requirements for annexation protest hearings are solely creatures of statute. Cal. Gov. Code § 57025. This is so because annexations are legislative and implicate no constitutional due process rights. *Bookout v. LAFCO of Tulare County* (1975) 49 Cal. App. 3d 383, 388. The very same statutory scheme that created these notice requirements, the CKH, also declared error in such notice cannot invalidate an annexation unless the error adversely and substantially affected one's rights. Cal. Gov. Code § 56107(a). Ironically, Appellants seek to strictly apply the CKH notice requirements, while disregarding the provision of the same statute declaring harmless errors in LAFCO acts and procedures insufficient to overturn a LAFCO decision. Ignoring CKH's plain allowance for harmless error, as Appellants ask the Court to do, would undermine LAFCOs' ability (especially the ability of the smallest and least well-funded LAFCOs) to fulfill their statutory mission.

In recognition of this, the courts have applied the substantial compliance standard to LAFCO notice issues. For example, in *Mitchell v. City of Indio* (1987) 196 Cal.App.3d 881, 888-89 the court upheld an annexation decision notwithstanding a one-day error in the provision of notice, concluding that the notice actually provided allowed sufficient opportunity for the public to mount a protest and the defendant city had

therefore satisfied the purpose of the notice provisions and, thus, substantially complied with them. *Id.* at 888. *Mitchell* thus reflects the long-established policy to give significant judicial deference to a legislative agency's actions, a policy that, given CKH's plain requirement, is especially appropriate for LAFCO actions. The standard applies here to sustain the trial court's finding that San Mateo LAFCO's notice of the MROSD annexation was sufficient.

Appellants cite *Smith v. Board of Supervisors* (1989) 216 Cal.App.3d 862. *Smith*, however, is inapplicable. In *Smith*, the First District Court of Appeal found inadequate a city's notice of a potential reduction in medical and health services. The Health and Safety Code required such notices to include a *detailed* description of the proposed reductions. The notice instead included only a general description of the major areas of reduction. In challenging the notice, the plaintiffs submitted multiple declarations directly addressing the impact of the lack of detail on the declarants' ability to participate in the hearing for which notice was given. *Id.* at 867. The Court of Appeal determined that the statutory purpose had not been met and that the city, therefore, had not substantially complied.

In the present case, Appellants have not evidenced actual prejudice. Indeed, they participated actively in a decision-making process that reflected literally dozens of hearings over many years and in many fora. They do not claim, nor could they, that the errors they allege in the notice of the protest hearing impaired their ability to mount a protest to the proposed annexation. They mounted a meaningful, although ultimately insufficient, protest.

Further, the notice contested in *Smith* provided the only information regarding the proposed reductions available before the hearing. In the present case, numerous earlier community meetings on the issue, an earlier advisory election at the polls, a citizens' advisory committee composed of representatives of local governments and organizations in the annexation area, the challenged notice, the hearing itself (which was heavily attended by supporters and opponents and continued three times to receive additional public input), and the publicly available resolution before the protest hearing all provided sources of information which informed an effort to mount an effective protest. Thus, the trial court properly determined the statutory purposes had been satisfied. The notice in *Smith* did not result in an informed public and did not meet the purposes of the very different statute there in issue. *Id.* at 875. Finally, *Smith* did not involve a statutory scheme whereby the Legislature declared invalidation of an agency's action proper only when the challenger establishes adverse and substantial effects on a person's rights.

Equally misplaced is Appellants' reliance on the hoary decision of *The O.T. Johnson Corp. v. City of Los Angeles* (1926) 198 Cal. 308. In that case, the Supreme Court determined Los Angeles had not substantially complied with the Street Opening Act of 1903. The City provided notice of its intent to open, widen and extend a certain street, implying that the street already existed. In fact, the City actually sought to open "an entirely new and unnamed street." *Id.* at 318-19., The City subsequently adopted a final ordinance to open the street and to assess the benefited property owners the cost to do so. *Id.* at 313. Affected landowners sued to invalidate the ordinance based on the alleged insufficiency of the notice.

The Supreme Court agreed with the landowners; the notice was insufficient under the standards of the 1903 Act, and the City had not substantially complied with those standards. The notice in that case, unlike the notice in the present case, entirely failed to describe the project sought to be completed. *O.T. Johnson* would only be analogous here if San Mateo LAFCO's actual annexation determination involved an entirely different proposal than the one discussed in the challenged notice. Such is not the case here, where there was no substantial question about the substance and purposes of the annexation proposal.

In an effort to avoid CKH's plain requirement of proof of adverse and substantial effects, Appellants ask the Court to find the notice of hearing did not substantially comply with the notice required of CKH because it allegedly excluded a statement of the reasons for the annexation. The Trial Court properly declined to do so, and the Court of Appeal ought to do the same. Applying the substantial compliance doctrine ensures a LAFCO satisfies CKH's statutory purpose without setting hurdles too high to be overcome by the smaller and less well-funded LAFCOs in our state.

San Mateo LAFCO timely provided residents and landowners all the information specified in the notice provisions of CKH. Appellants' belated claim that the notice should have included a more detailed discussion of the reasons for the annexation seeks to invalidate a decision with which Appellants disagree, but it does not show a failure to substantially comply with the statutory mandate to meaningfully inform the public. This post-hoc nit-picking is the very tactic the Legislature has declared insufficient to overturn the agency's decision. Cal. Gov. Code § 56107(a). In the absence of substantial prejudice, no one's rights are vindicated by holding LAFCO to a standard of perfection that is articulated for the first time in Appellants'

petition to the trial court which glosses, rather than quotes, the CKH notice requirement.

The trial court properly gave weight to evidence of substantial, actual notice provided to the residents and property owners of coastal San Mateo County: widespread publicity, years-long public debate over the annexation, and an advisory election nowhere required by law and determined no one suffered prejudice here, much less substantial prejudice.[5] The ruling is well-reasoned, supported by the record and should be affirmed.

V. THE LEGISLATURE SET NO MAPPING STANDARD FOR ANNEXATION PROCEEDINGS. THEREFORE, LAFCOS RETAIN BROAD DISCRETION TO SET REASONABLE LEVELS OF MAPPING DETAIL CONSISTENT WITH THE CORTESE-KNOX-HERTZBERG ACT.

Much to Appellants' dismay, CKH provides no mapping standard for the "map" that must be included in an annexation application by Government Code section 56652(c) and requires no map at all in a notice of a LAFCO hearing on an annexation proposal. Maps range from informal sketches drawn by hand to digitized maps prepared by licensed surveyors in a form tied to the coordinate system used for global positioning satellites. The cost of the latter, obviously, greatly exceeds the cost of the former. Thus, the word "map," has no single meaning and this Court must look to

[5] *See, e.g., Bioethics Council v. California Institute of Regenerative Medicine* (2007) 147 Cal. App. 4th 1319 (extensive publicity and informational activity related to stem cell research initiative relevant to whether ballot materials enabled voters to make informed choices).

the usual tools for statutory construction to determine what is required by a given statute.

CKH requires no map in a notice of hearing, and expressly authorizes a LAFCO Executive Officer to determine the level of mapping needed for an annexation application. Thus, there is simply no legal support for the standard Appellants would have this court make of whole cloth requiring parcel-level maps to be used in both notices and applications.

As with most provisions of CKH, the Legislature gave each LAFCO broad discretion to set its own standards. Speaking to applications for annexations and other changes of organization subject to LAFCO review, Government Code section 56652 specifically provides:

> Each application shall be in the form *as the commission may prescribe* and shall contain all of the following information:
> ….
> (c) A map and description, *acceptable to the executive officer*, of the boundaries of the subject territory for each proposed change of organization or reorganization. (Emphasis added.)

This statute tells us twice that there is no uniformly required mapping standard applicable in Modoc and Los Angeles Counties alike. First, the introductory phrase of section states the general rule that information shall be "in the form as the commission may prescribe." Second, subdivision (c) states that the map and description of a reorganization proposal need only be "acceptable to the executive officer." The statute requires significant deference to LAFCO's chosen standards and the trial court found as a matter of fact that the affected residents and

property owners had ample actual notice of what MROSD proposed. In this light, it is apparent that Appellants' claim that the annexation should be undone because of alleged mapping inaccuracies or lack of detail approaches the frivolous.

Appellant's only specific complaint is the alleged exclusion of 160 acres from the 144,000 acre annexation proposal in some, but not all, LAFCO maps. However, an alleged error in the map boundary of just over one tenth of one percent of the land area at issue can hardly substantially and adversely affect the rights of Appellants or anyone else. The Trial Court determined that the various maps at issue---those included with the application, and the map used as a description in the notice, and the other maps distributed for the public's information---fairly informed the public of the area involved in this annexation and complied with CKH.

The Legislature was consciously silent as to mapping standards, and entrusted this to LAFCO Executive Officers. This deference is appropriate as the cost of digital maps may be warranted for an urban annexation affecting the duties of the State Board of Equalization to apportion sales taxes and County Assessors to distribute property taxes, but the cost of such maps is not warranted for an annexation – like that in issue here – which does not affect tax distribution and where only an informed public is required. And in the event that annexation does result in reapportionment of property tax or sales tax, the State Board of Equalization does not require a map until the time of recordation of the annexation, after the protest hearing. In short, Appellants offer no reason to upset LAFCO's discretionary decision concerning the proper level of mapping detail that this annexation required.

Appellants' claims regarding the adequacy of the map included in LAFCO's hearing notice fare even worse, although that seems hardly possible. Section 57026(c) governs the required notice of LAFCO hearings and, as to the required depiction of the territory affected by a proposal states:

> The notice required to be given … shall contain all of the following information:
> ….
> (c) A *description* of the exterior boundaries of the subject territory. (Emphasis added.)

Comparing section 56652(c)'s requirement for a "map and description" and section 57026(c)'s requirement for a "description" makes it obvious that *no* map need be included in a hearing notice. But, in light of the adage noted by the trial court that "a picture is worth a thousand words," San Mateo LAFCO elected to use a map to describe the coastal area of San Mateo County that was the subject of the annexation in issue here. The trial court found that this description, and the other information available to residents and property owners, accomplished actual notice of the land in issue. Appellants claim that a more perfect map was needed in a less-than-a-page newspaper advertisement was statutorily required is quite obviously without basis. *Amici* respectfully assert that the trial court did not err in holding LAFCO's maps sufficient to describe the area subject to the protest hearing.

Notably, as community debate unfolds on a contentious annexation proposal of this size, a LAFCO will necessarily receive multifarious input from all sides of the controversy. That some persons may become

confused, or claim to be confused, when sifting through conflicting information from many sources cannot be wholly avoided in a robust and broad public participation process such as occurred here. The CKH standard for applications and for notice cannot require applicants and LAFCOs to ensure that no members of the public can claim to be confused. Such a standard would place an impossible burden on LAFCO's quasi-legislative actions and be contrary to the Legislature's express delegation of authority to LAFCOs on these issues. The question must be whether the application and the notice satisfied their statutory purposes, and the trial court did not err in finding these purposes satisfied.

VI. LAFCOS MAY PROPERLY DELEGATE TO ELECTION OFFICIALS THE VERIFICATION OF PROTEST SIGNATURES AND VOTER ADDRESSES, PROVIDED THE LAFCO ITSELF CERTIFIES THE EXISTENCE OR NOT OF A SUFFICIENT PROTEST UNDER THE STANDARDS OF THE CORTESE-KNOX-HERTZBERG ACT.

Appellants' argument that a LAFCO cannot delegate to a county elections official the task of comparing protest signatures and registered voter addresses to voter records is contrary to the plain language of CKH and is contrary to public policy as well. The trial court properly determined that San Mateo LAFCO validly sought the expert assistance of the county elections official in examining signatures and registered voter addresses, while making the ultimate determination as to the sufficiency of the protest itself.

A. CKH Permits LAFCO to Delegate the Tasks of Comparing Signatures and Verifying Registered Address.

The standards for evaluating signatures of voters on a protest petition are the same as those established by CKH for signatures on a petition by which voters initiate a reorganization. Government Code section 57052. Section 56707 provides:

> [T]he executive officer *shall cause* the names of the signers on the petition to be compared with the voters' register *in the office of the county clerk or registrar of voters* and ascertain . . . The number of qualified signers appearing upon the petition … . Cal. Gov. Code § 56707 (Emphasis added.)

The statute obviously permits a LAFCO to "cause" someone else to perform the signature and address comparison and for an obvious reason – legislation rarely dictates how the day-to-day work of an agency is to be performed, as it makes no sense for the State Legislature to attempt to manage the work of such disparate agencies as the State's 58 LAFCO's. If a LAFCO could delegate this work to its own clerical staff, why not the expert staff of the County's elections office? Given that LAFCO is obligated to use the county election official's voters register, why may it not rely on the staff of the office that maintains that register? Appellants' have no reply to these plain readings of the statute because their goal is one the law does not permit – to overturn a proper legislative decision of the local elected officials charged with the task of making it.

Of course, a LAFCO must itself make the ultimate findings of fact to determine the value of the written protests.[6] However, a LAFCO may

[6] Government Code § 57052 states: "Upon conclusion of the protest hearing, the [LAFCO] commission shall determine the value if written protests filed and not withdrawn."

properly base such findings on substantial evidence in its record, including certificates of the elections official. *Cf. Vita-Pharmacals v. Board of Pharmacy* (1952) 110 Cal.App.2d 826, 830-31 (no improper delegation to subcommittee when entire Board discussed and adopted evidence compiled by subcommittee before making its decision.) This is no different than the well-recognized power of LAFCOs, as legislative agencies, to hold hearings "to uncover, at least in part, the facts necessary to arrive at a sound and fair legislative decision." *City of Santa Cruz v. LAFCO of Santa Cruz* (1978) 76 Cal.App.3d 381, 388 (quoting *Wilson v Hidden Valley Mun. Water Dist*. (1976) 256 Cal.App.2d 271, 279). No legitimate reason exists to prevent a LAFCO from relying on trustworthy sources to assist in fact-finding to support a LAFCO decision, and as explained below, sound policy reasons supports San Mateo LAFCO's reliance on the county elections officer here.

B. LAFCOS Can Properly Rely On Elections Officials And Have No Statutory Obligation To Replicate The Expertise Of Those Officials.

Nothing in CKH obligates a LAFCO to duplicate the expertise of county elections officials and no rational public policy would be served by such a requirement – it would simply make the work of LAFCO less efficient, more costly, and more prone to error. Such irrationality cannot lightly be ascribed to the Legislature, especially given the complete absence of any textual support for such a construction.

Election officials, not LAFCO staff, are experts in comparing signatures and addresses to voter rolls; they are statutorily charged with

maintaining the voter rolls included registered voters' addresses and they have the staff, the resources and the experience to do the job efficiently and reliably. Were LAFCO's limited staff required to personally complete the signature comparison, and determine the correct registered voter address, reorganization decisions would be significantly more costly and greatly slowed, delaying protested decisions and the completion of LAFCO's core duties, thereby slowing all LAFCO decisions. Can Appellants really mean that San Mateo County LAFCO Executive Officer Martha Poyatos – the sole employee of this LAFCO- was personally obliged to examine 5,340 thousand signatures and registered voter addresses? That the elected members of the LAFCO bore this duty? Surely not. If delegation is permitted, who is better suited for the task than the elections office? Appellants' arguments to the contrary simply cannot be credited. The plain meaning of Government Code section 56707, logic, and the basic public policy favoring efficiency and competence compelled the trial court's decision to uphold San Mateo LAFCO's reliance on the county elections official to verify the protest signatures and registered voter addresses. This Court ought to affirm this conclusion.

VII. DETERMINING THE NUMBER OF REGISTERED VOTERS AT THE TIME THE PROTESTS ARE SUBMITTED COMPLIES WITH THE GOALS OF THE CORTESE-KNOX-HERTZBERG ACT.

The number of registered voters in a given community is dynamic – rising in the run-up to presidential elections, falling in the lull between election seasons. Thus, applying a statutory standard that an electoral protest must reflect a certain percentage of registered voters requires a

determination of a date on which to measure the size of the electorate. In the context of initiatives, referenda and recall, the Legislature has expressly chosen that date. *E.g.*, Elections Code § 9214 (if [a municipal] initiative petition is signed by not less than 15 percent of the voters of the city according to the last report of registration by the county elections official to the Secretary of State pursuant to section 2187, effective at the time the notice [of intent to circulate an initiative petition] … was published …"); Elections Code § 11220(b) (same); Elections Code § 9236 (municipal referendum petition's sufficiency measured by number of votes cast in last gubernatorial election).

However, the Legislature provided no standard in CKH for determining when to measure the size of the electorate with respect to registered voter protests of annexations, leaving this issue to the considered discretion of LAFCO. Government Code sections 57075 and 57078 require LAFCO to:

- terminate a proceeding if a "written protests filed and not withdrawn prior to the conclusion of the hearing represent … 50 percent or more of the voters residing in the territory" (§§ 57075(a)(1); 57078(b));
- order an election on the annexation proposal "if written protests have been filed and not withdrawn by … at least 25 percent, but less than 50 percent, of the registered voters residing in the affected territory" (§ 57075 (a)(2)(A)); or
- "order the change of organization or reorganization with an election if written protests have been filed and not withdrawn by less than 25 percent of the registered voters … within the affected territory." (§ 57075(A)(3).

In each case, the statute refers only to "the registered voters "within" or "residing in the affected territory." It is silent as to when the number of voters is to be determined.

By contrast, CKH does specify when to determine the number of registered voters applicable to the evaluation of the sufficiency of an application to incorporate a city or form a new special district. Cal. Gov. Code § 56375(f) (using a standard identical to the municipal initiative standard cited above). Similarly, CKH specifies when to determine the number of registered voters to establish whether a territory is inhabited or uninhabited to determine whether landowners or registered voters or both are entitled to protest. Cal. Gov. Code § 56046. This section defines "inhabited territory" as territory where 12 or more registered voters reside.

> The date on which the number of registered voters is determined is the date of the adoption of a resolution of application by the legislative body pursuant to Section 56654, if the legislative body has complied with subdivision (b) of that section, or the date a petition or other resolution of application is accepted for filing and a certificate of filing is issued by the executive officer. All other territory shall be deemed 'uninhabited. Cal. Gov. Code § 56046.

If territory is inhabited, then both registered voters and landowners may protest; if territory is uninhabited, only landowners are eligible to protest. Cal. Gov. Code § 57075. For obvious reasons, a LAFCO needs to know which procedures to follow at the beginning of the annexation process and thus the determination of whether territory is inhabited or not must be determined early in this process.

However, CKH does not specify when a LAFCO ought to determine the number of registered voters for a protest evaluation. This omission is

critical. It is a fundamental rule of statutory construction that when the Legislature uses a critical word, definition or phrase in one statute, the omission of that word, definition or phrase in another statute addressing a similar general subject matter shows a different legislative intent. E.g., *Collins v. State Dept. of Transp.* (2003) 114 Cal.App.4th 859, 870. Having specifically set the date to fix the number of registered voters in initiative and recall petitions, fixing the date for purposes of determining the number for an incorporation petition, and fixing the date to determine a territory inhabited or uninhabited, the failure to do the same for protests in CKH must be presumed intentional.

To the extent CKH sheds any light on this question, inferences may be drawn from two provisions. First, the provision governing the evaluation of registered voter protests, Government Code section 56707, states:

> "If a petition is signed by registered voters, the executive officer shall cause the names of the signers on the petition to be compared with the voters' register in the office of the county clerk or registrar of voters and ascertain both of the following:
>
> (a) The number of registered voters in the affected territory.
>
> (b) The number of qualified signers appearing upon the petition."

This section states that "if a petition is signed by registered voters," the LAFCO executive officer must then determine the number of registered voters in the affected territory. The grammatical construction of this section implies that the determination of the size of the electorate is not to

be determined until after a petition is signed by registered voters – as the duty to make the determination does not arise until the petition is signed.

In addition, there is another, clearer construction. The Legislature recognized that the text of CKH was not alone sufficient to govern all of the administrative details of the myriad proposals that might come before a LAFCO, ranging from the incorporation of cities, to the merger of special districts, to dissolution of an agency, and to annexations. It also recognized that the needs and resources of the 58 LAFCOs and the communities they serve vary greatly and one size will not fit all in this setting. Thus, the Legislature directed each LAFCO to adopt rules to govern these matters:

> It is the intent of the Legislature that each commission, not later than January 1, 2002, shall establish written policies and procedures and exercise its powers pursuant to this part in a manner consistent with those policies and procedures and that encourages and provides planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space and agricultural lands within those patterns. Cal. Gov. Code § 56300(a).

Thus, the Legislature entrusted each LAFCO with discretion to develop its own procedures to implement the CKH Act and to exercise the authority delegated to LAFCOs. Therefore, San Mateo LAFCO reasonably determined to measure the electorate as of the date the petitions were submitted, and not at some earlier time which the Legislature might have, but did not specify.

Accordingly, a LAFCO may properly resolve CKH's silence on this issue, provided the resolution is consistent with the purpose of the statute and not arbitrary, capricious, or entirely lacking in evidentiary support. *See*, *City of Agoura Hills v. Local Agency Formation Com.* (1988) 198

Cal.App.3d 480, 490 (*quoting City of Livermore v. Local Agency Formation Com*. (1986) 184 Cal.App.3d 531, 543). San Mateo LAFCO's construction more than meets this standard. It is reasonable to determine the number of registered voters as of the protest hearing date. In territories that suffer declines in voter rolls during the protest period, using the hearing date prevents placing a heightened burden on protestors to meet a disproportionately higher threshold. In areas in which voter rolls are growing-a more typical scenario- the standard will increase to reflect the larger political community. Where, as may be common and as occurred here, protestors register voters while collecting signatures, these new voters count in both the numerator and the denominator of the statutory fraction of the electorate to be applied, thus enfranchising the greatest number of voters in the annexation area. In addition, supporters of a LAFCO action may not only discourage the public from signing protests, but may register voters as well. Giving them an incentive to do so builds our democracy and encourages more voices to be heard. Thus, San Mateo LAFCO's determination to measure the electorate as of the date of the hearing on the protests – the last date on which protests could be filed-- has a persuasive rationale and goal of enfranchisement and is neither arbitrary nor capricious.

Moreover, had San Mateo LAFCO done as Appellants' asked and measured the electorate at some earlier, unspecified time in order to favor Appellants' challenge, it could easily expect a challenge by supporters of this annexation, who would argue an unfairly low standard was set. The line needs to be drawn somewhere and, as the Legislature chose not to draw it, judicial review of agency action after the fact must defer to reasonable exercises of agency discretion.

San Mateo LAFCO's decision to construe the statute to maximize community input throughout the protest process was reasonable, consistent with CKH and far from arbitrary and capricious. As a result, the trial court properly deferred to the agency's interpretation of its governing statutes.

VIII. REQUIRING A PROTESTER'S RESIDENCE ADDRESS IS THE ONLY PRACTICAL METHOD TO DETERMINE IF THE PROTESTER IS QUALIFIED TO PROTEST A LAFCO ANNEXATION.

The CKH Act recognizes a proposed annexation may affect those who live or own land within the territory affected by the proposal. Accordingly, the Act provides landowners and voters an additional means to participate in the political process to influence an annexation decision. Specifically, registered voters who reside within the proposed annexation territory and landowners within the territory may submit written protests to the annexation. Cal. Gov. Code § 57051. Within the prescribed time "any owner of land or any registered voter within inhabited territory that is the subject of a proposed change of organization" may file a written protest. *Id.* For registered voters who are not land owners, therefore, the right to protest depends on the protestor's residence within the affected territory. If the protestor cannot establish residency, then LAFCO must disregard his or her protest.

Appellants present no rationale why courts should treat registered voter protests in the LAFCO context differently than registered voter signatures on, for example, an initiative petition within a certain jurisdiction. Given the mandate in the text of CKH to use the registered voters roll in the office of the county elections official, Government Code

section 56707, there would seem to be no basis to distinguish between names on that roll for electoral purposes and names on that roll for purposes of LAFCO protests. Indeed, the Elections Code requires as much:

> *Notwithstanding any other provision of law*, whenever any initiative, referendum, recall, nominating petition or paper, *or any other petition or paper*, is required to be signed by voters of any county, city, school district, or special district subject to petitioning, only a person who is an eligible registered voter at the time of signing the petition or paper is entitled to sign it. Each signer shall at the time of signing the petition or paper personally affix his or her signature, printed name, and *place of residence*, giving street and number, and if no street or number exists, then a designation of the place of residence which will enable the location to be readily ascertained. … Cal. Elec. Code § 100 (emphasis added.)

Thus, the Legislature has specified that when any petition or other paper must be signed by registered voters, the signors must "personally affix his or her signature, printed name and place of residence." San Mateo LAFCO's refusal to accept signatures which bore no residence address, but listed only a post office box, was not merely a reasonable exercise of its discretion; it was a mandatory requirement of law.

The requirement for a voter to provide his or her residence address serves obvious statutory purposes. How can it be determined that a voter resides "within the affected territory" as Government Code sections 57075 and 57078 require, if a voter does not specify where he or she lives? CKH recognizes the need to verify a protesting voter's residency within the affected area in Government Code 56707, which requires LAFCO to determine the number of "qualified signers" protests. Only a voter living within the affected area may be a "qualified signer" of a protest. San Mateo

LAFCO thus acted well within its authority, as delegated from the Legislature, when it insisted that all protests include proof of the signer's residence within the affected area.

Moreover, the election rolls are organized by residence address and many voters have common names that can be distinguished only by residence address. Thus two similar signatures from Bill Smith can be an invalid duplicate signature or valid protests from two Messrs. Smith; the only means to determine the matter is to require that voters state their residence address.

Further, residence is an essential qualification to make a protest. This requirement ensures the election official can determine the number of qualified voter signatures. A voter residing in Belmont, for example, is not authorized to sign an initiative petition to amend an ordinance of the City of San Jose. Similarly, a voter who does not reside, or own real property, within the portions of coastal San Mateo County which comprised the proposed annexation territory in issue here, had no right to protest the annexation even if he or she receives mail at a post office box located in that area. Requiring each registered voter to "personally affix" a residence address is not only required by Elections Code section 100, and Government Code Section 56704, but is the only practical way for LAFCO to determine the validity of his or her protest.

Simply put, Appellants argue for a rule mandating LAFCO count protests the Legislature has declared are invalid and which would significantly undermine the integrity of protest efforts. San Mateo LAFCO did not err when it counted only those registered voter protests it could

determine were submitted by resident registered voters and the trial court's conclusion on this point was error.

IX. CONCLUSION.

Amici Curiae League CALAFCO and CSDA respectfully request this Court affirm the Superior Court's judgment, except for its ruling that LAFCO was obliged to accept as valid protests that do not contain residence addresses. As to that ruling, *Amici Curiae* respectfully request this Court reverse.

DATED: October 8, 2007

BEST BEST & KRIEGER LLP

By: _____
Clark H. Alsop
Attorneys for Amicus Curiae
California Association of Local Agency Formation Commissions

DATED: October 8, 2007

MCMURCHIE LAW

By: _____
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CERTIFICATION OF COMPLIANCE WITH CAL. R. CT. 8.204(c)(1)

Pursuant to California Rules of Court 8.204(c)(1), the foregoing *Amicus Curiae* Brief of the California Association of Local Agency Formation Commissions and California Special Districts Association contains 9,356 words (including footnotes, but excluding tables and this Certificate). In preparing this certificate, I relied on the word count generated by MS Word 2003.

Executed on October 8, 2007, at Los Angeles, California.

BEST BEST & KRIEGER LLP

By: _____
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Formation Commissions

DECLARATION OF SERVICE

Citizens for Responsible Open Space District, et al. v. San Mateo County LAFCO, et al., Real Party In Interest Midpeninsula Regional Open Space District

Case No. A116825

I, Sandra K. Sandoval, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 555 West 5th Street, 31st Floor, Los Angeles, California 90013.

On January 7, 2008, I served the document(s) described as **APPLICATION TO FILE AMICI CURIAE BRIEF AND BRIEF OF AMICI CURIAE CALIFORNIA ASSOCIATION OF LOCAL AGENCY FORMATION COMMISSIONS AND CALIFORNIA SPECIAL DISTRICTS ASSOCIATION IN SUPPORT OF RESPONDENT AND CROSS-APPELLANT SAN MATEO COUNTY LOCAL AGENCY FORMATION COMMISSION AND CROSS-APPELLANT AND REAL PARTY IN INTEREST MIDPENINSULA REGIONAL OPEN SPACE DISTRICT** on the interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 7, 2008, at Los Angeles, California.

Sandra K. Sandoval

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