No. S151370

First Appellate District Court of Appeal, Div. 3, Case No. A112539

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JIMMIE D. BONANDER et al.,
Plaintiffs and Appellants

vs.

TOWN OF TIBURON et al.,
Defendants and Respondents

On Appeal from the Superior Court of Marin County
Superior Court Case No. CV 052703
Honorable James R. Ritchie

APPELLANTS' REPLY BRIEF ON THE MERITS

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INTRODUCTION

According to the Town, a property owner must bring a complex, expensive and all encompassing *in rem* validation action in order to contest her individual assessment under Proposition 218 (Cal. Const. Art. XIIID §§ 4(a) and (f)). (AB 20-30.)[1] According to the First District, the *in rem* nature of this proceeding limits a property owner's Proposition 218 special assessment challenge to the procedures leading to the assessment's adoption, rather than the application of special benefits to the challenger's own property. (Opinion, 25). The Town's response is to pretend the First District didn't say this, conduct an excessively narrow and misleading interpretation of Proposition 218, and proclaim that an *in rem* validation action, limited to the record, is the sole remedy afforded a property owner to contest her assessment. (AB 2, 20-30).

This issue is in fact more complex than the Town attempts to mislead this Court to believe, and does have a great deal to do with Proposition 218. Proposition 218 is much more than a directive to towns to follow certain procedures and a reminder to not levy special assessments in excess of special benefits. Rather, the strict individual parcel-by-parcel proportionate special/general benefit analysis contained within the text of

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[1] Appellants' Opening Brief on the Merits will be cited as AOB, Respondents' Answer Brief as AB. This case specifically deals with article XIIID §§ 4(a) and (f) of the California Constitution, which will be referred to by roman numeral where appropriate. All further statutory references are to the Streets & Highways Code unless otherwise specified.

XIIID §§ 4(a) and (f), as expressed to the voters by the Attorney General, the Legislative Analyst and the proponents of the measure is being overshadowed by an *in rem* procedural statutory legislative scheme that obstructs its purpose and does not apply. Appellants have an individual right to contest their assessment and the Validation Statutes are not necessary to state a cause of action.

The only way to uphold Proposition 218's strong mandates against a Town's levy of a special assessment in excess of special benefits as related to specific properties is to allow property owners the right to pursue individual *in personam* actions to contest the application of special benefits to their respective properties under XIIID §§ 4(a) and (f).

Contrary to the Town's assertions, Appellants' Statement of Facts is directly relevant to the central issue before this Court – whether the Validation Statutes are the exclusive remedy for a property owner to challenge her assessment under XIIID §§ 4(a) and (f). (AOB 7-14).[2] Also, the facts within the Administrative Record provide a relevant illustration of a futile administrative remedy that allowed the Town to blatantly and willfully abuse its assessment powers in violation of

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[2] For example, if Appellants are limited to challenging the assessment formula rather than its application to specific properties in an *in rem* validation action, then Appellants Bonander who have a utility pole on their property and are paying the highest assessment amount in the district cannot ever prevail.

Appellants' federal constitutional rights.[3] A holding by this Court that the Validation Statutes are the exclusive judicial remedy available for a property owner to challenge her individual assessment under Proposition 218 would only further allow local agencies unfettered power to assess and tax property, while significantly weakening the substantive provisions the voters intended by enacting Proposition 218.

DISCUSSION

I. THE VALIDATION PROCEDURE IS IRRELEVANT TO APPELLANTS' INDIVIDUAL PROPOSITION 218 CLAIMS

The fundamental issue before this Court is whether the Validation Statutes apply, and further, whether they improperly infringe upon Appellants' individual Proposition 218 claims. Notwithstanding the fact that the Validation Statutes do not statutorily apply (to be discussed infra), the Town, which heavily relies upon the alleged policies behind the Validation Statutes, fails to establish why they are mandatory to Appellants' claims. Moreover, the Town's conclusions improperly rely

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[3] This Court should grant Appellants' Request For Judicial Notice in its entirety, including Exhibits L, M and N. These facts are relevant to the issues before this Court and were included on that basis. See, Cal. Rules of Court, R. 8.516(b)(2); See also, *People v. Braxton* (2004) 34 Cal. 4th 798, 809.
The Town's published undergrounding policy (JN Ex. M) is referenced by the Town in its 6/3/03 Staff Report as the basis for its Resolution of Intention (2 JA 303; 1 JA 28:1-4).

upon its incorrect and entirely self-serving interpretation of Proposition 218.

A. The Essence of Proposition 218 Is Centered Upon An Individualized Analysis Of Special and General Benefits

According to the Town, Proposition 218 was intended to give the electorate as a whole a greater voice in determining how and when local governments raise revenue (AB 25); and Proposition 218 "slightly modified" the standard of review in a legal challenge, by placing the burden of proof on the government. *Id.* The Town's position is that government agencies continue to maintain the unfettered right to apportion and measure special benefits as necessary to satisfy their overall project budgets and ensure voter approval, regardless of whether assessments on specific properties exceed special benefits or pay for general benefits conferred upon other properties.

Citizens who voted in favor of the constitutional initiative would probably disagree. According to Art. XIIID §§ 4(a) and (f), under no circumstances may a government agency levy a special assessment in excess of actual special benefits received. Every sentence of § 4(a) demands a parcel-by-parcel analysis of special benefit. Section 2(i) defines "special benefit" as a "particular and distinct" benefit to parcels. Section 2(i) not only prohibits general benefits to the "public at large" but also forbids general benefits on real property located within the district. *Pajaro*

Valley Water Management Agency v. Amrhein (2007) 150 Cal.App.4th 1364, 1378. An assessment is forbidden if its amount exceeds the reasonable cost of the proportionate special benefit as to that specific parcel. Section 4(f) requires that the agency bear the legal burden to prove that the specific property receives a "particular and distinct" special benefit and is not paying for any general benefits. The only way to properly construe these constitutional provisions is by allowing *in personam* property owner challenges to the agency's application of special and general benefits to individual properties.

The Town never squarely addresses this issue, but rather, focuses on generalized argument that validation is mandatory because reduction or elimination of Appellants' assessments will affect all other district parcels, by way of district reconfiguration or exclusion of parcels. (AB 25, 26).

However, whether a Town subsequently decides to exclude Appellants or others from the District and reconfigure a new district under the procedural and substantive mandates of Proposition 218, or reimburse Appellants in the amount over and above their actual special benefits received, or general benefits conferred, cannot supersede Proposition 218's substantive constitutional mandates. These effects are consistent with the Legislative Analyst's analysis of Proposition 218 in creating a mechanism to protect property owners from the illegal exaction of a tax, which the

Town fails to dispute. See, (JN, Ex. B, pg.12; see also, JN, Ex. A, pg. 3; AOB 50-51).

B. Allowing For Individual *In Personam* Property Owner Special Benefit Challenges Will Not Lead to "Inconsistent Results"

The Town asserts that a property owner must bring an all encompassing *in rem* validation action in order to contest an individual special assessment under Proposition 218, otherwise there would be different procedures to be followed depending on who filed the action, and the differences in procedures may lead to inconsistent results. (AB 18-19, 27; Opinion 26). However, for the following reasons, this argument fails.

Given the strict 30-day statute of limitations under § 10400 related to the filing of any and all claims challenging assessments, the Validation Statutes are entirely unnecessary and irrelevant. An agency's actions will effectively become valid and immune from attack after 30-days from the date the assessments are levied, and not 60-days, as proscribed by Code of Civil Procedure 863.[4] Thus, § 10400 turns out to be controlling, and will help to insure the marketability of bonds to finance the project.

If, on the other hand, an individual property owner brings an *in personam* special assessment challenge as related to her property, under Proposition 218, within 30-days from the levy of assessment, failure to

[4] An agency may validate its action by doing nothing. *City of Ontario v. Superior Court of San Bernadino County* (1970) 2 Cal. 3d 335, 341-342.

validate should not preclude the action. Inconsistent results do not occur, in that, each property owner is entitled to an individual special benefits determination and review of the specific evidence establishing the application of the alleged benefits to that owner's property. The Validation Statutes should not prevent property owners from contesting the assessment amounts on their own properties.

Next, the Town asserts that the notice provisions set forth by Code of Civil Procedure §§ 860 and 861.1 are essential if other interested property owners would like to participate in the lawsuit to ensure that their concerns or interests are represented. (AB 25). However, this argument fails as well. Given that an individual challenge is specifically related to the application of special benefits as to that property owner's property, providing notice to other property owners of that lawsuit to "ensure that their concerns or interests are represented" is irrelevant. Cf. *Pajaro Valley Water Management Agency* 150 Cal.App.4th at 1377 ("A validation proceeding is 'in rem' (Code Civ. Proc., § 860), and yields a judgment that is 'forever binding and conclusive...against the agency and against all other persons'"..... "A declaratory judgment, on the other hand, is in personam, [citation] and generally has preclusive effect only on those who were joined or represented in the action.") Even the Town admits that § 10400 is an *in personam* action. (AB 27-28). Here, Appellants also seek declaratory relief. Furthermore, the fundamental concept behind an assessment is that

it represents a charge on a specific property, which is secured by a lien that is recorded on that specific property. XIII D § 2(b); Gov. Code § 53931; *Pajaro* 150 Cal.App.4th at 1382. This is vastly different from a situation whereby an individual has no beneficial interest in a matter but is permitted to bring an action as an "interested person" or interested taxpayer to challenge a public expenditure. See *Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835.

II. AN ANALYSIS OF SECTION 10601 AND ITS LEGISLATIVE HISTORY EXCLUDE AN INDIVIDUAL PROPERTY OWNER FROM HAVING TO COMPLY WITH THE VALIDATION STATUTES

In sum, the Town skips over the plain, unambiguous limiting language of § 10601, disregards this Court's prior relevant method of statutory analysis in the area of validation, as demonstrated in *City of Ontario*, and heavily relies upon the policies behind the validation procedure to argue in favor of their universal applicability. However, not only is the legislative intent of § 10601 and this Court's prior method of statutory analysis directly relevant, but an analysis of the policies behind the Validation Statutes in light of Proposition 218 and their intended effects further demonstrates why they are inapplicable.

A. The Language of Section 10601 Is Clear

This court has stated, in statutory interpretation, "[i]f 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 legislature to interpret the statute." *Lungren v. Deukmejan* (1988) 45 Cal. 3d 727, 735. Here, the language of § 10601 is not ambiguous and does not require further analysis. "Well established cannons of statutory construction preclude a construction [that] renders a part of a statute meaningless or inoperative." *Manufacturers Life Ins. v. Superior Court* (1995) 10 Cal. 4th 257, 274. Thus, the interpretation of § 10601 urged by the Town would render the mandatory limiting language meaningless. "Courts may not excise words from statutes...[E]ach term has meaning and appears for a reason." *Kulshrestha v. First Union Commercial Corp.* (2004) 33 Cal. 4th 601, 611.

B. This Court's Prior Method of Statutory Analysis Related To the Applicability Of the Validation Statutes Is Directly Relevant

The Town has failed to dispute the direct relevance of this Court's prior method of statutory analysis related to the applicability of the Validation Statutes, as demonstrated in *City of Ontario, supra* 2 Cal. 3d 335. As previously discussed, this Court, in *City of Ontario* engaged in a comprehensive legislative analysis in determining whether an individual challenging a public contract under Government Code § 53511 had to comply with the Validation Statutes. *City of Ontario at* 343-344; see also, AOB 33-35.

The Town's attempt to discredit this Court's entire prior method of statutory analysis by asserting that *City of Ontario's* precise analysis of §

53511 is irrelevant to this issue which involves a different statute, § 10601, misses the mark. Nor is the Town's subsequent analysis of *Planning and Conservation League v. Dept. of Water Resources* (1998) 17 Cal. 4th 264 persuasive. (AB 17-18). In *Planning,* it was undisputed that compliance with the Validation Statutes was necessary in order to bring the action. In this case, the parties dispute the Validation Statutes overall applicability.

C. No Court Has Held the Validation Statutes Applicable To a Property Owner's Proposition 218 Claims

The Town's reliance upon *Not About Water Committee v. Solano County* (2002) 95 Cal.App.4th 982 to assert that the Validation Statutes are applicable to Appellants' claims, is misplaced. (AB 21-22). The *Not About Water* court's sole reference to the Validation Statutes is dicta, and it never addressed whether validation applied to any of the plaintiffs' individual Proposition 218 claims.[5] *Id.* at 992-993

Nor is the Town's analysis of *Millbrae School Dist. v. Superior Court* (1989) 209 Cal.App.3d 1494, 1496 relevant to the specific issues before this Court. (AB 21). *Millbrae* involved a challenge to a redevelopment district under Health & Safety Code § 33501 which expressly authorized validation.

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[5] *Not About Water* has recently been criticized on the issue of standard of review. *Dahms v. Downtown Pomona Property and Business* (2006) 138 Cal.App.4th 115, 119 superseded by grant of review 7/12/06, S143165.

D. Appellants Do Not Need The Validation Statutes To State a Cause of Action

The Town, for the first time, contends that under a "reasonable interpretation," the validation procedure set forth by § 10601 must apply to Appellants' individual Proposition 218 claims, otherwise they would be precluded from bringing any claim, and thus, would fail to state a cause of action. (AB 12-15). However, this argument is flawed for the following reasons.

The *in rem* validation procedure set forth by § 10601 is not the sole and exclusive remedy available for property owners in challenging their own assessments under Proposition 218. Validation is not even the sole remedy afforded a Town in this respect. Code Civ. Proc. § 869 expressly states, "...[T]he availability to any public agency ...of the remedy provided by this chapter, shall not be construed to preclude the use by such public agency...of mandamus or any other remedy to determine the validity of any thing or matter." See also *Pajaro Valley Management Agency* 150 Cal. App.4th at 1377.

Appellants brought this action pursuant to a writ of administrative mandamus or mandate under Code Civ. Proc. §§ 1094.5 or 1085. This Court has proclaimed that, "since the enactment of section 1094.5 of the Code of Civil Procedure, it is no longer open to question that in this state the writ of mandamus is appropriate for the purpose of inquiring into the

validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal...." *Boren v. State Personnel Board* (1951) 37 Cal. 2d 634, 637.

The Town has never disputed the universal applicability of the mandamus remedy set forth in Code Civ. Proc. §§ 1094.5 or 1085. However, now, the Town seems to imply that the *in rem* validation procedure of § 10601 somehow preempts the *in personam* writ remedy set forth by Code Civ. Proc. § 1094.5, and that § 10601 must be read to apply to an individual property owner, otherwise they would not be permitted to assert any claims against the Town. Under the Town's logic, an individual property owner has no right to bring a "Writ of Mandamus," even when challenging an assessment lien on her own property under a Proposition 218 special benefits determination test. Rather, the property owner is limited to the same remedy afforded a town for the purpose of ensuring the marketability of its assessment bonds, an *in rem* action entitled "Validation Complaint."

The Town's argument seems to be that Appellants have no remedy under § 10601 because it doesn't apply to them, thus, the only remedy is under the Validation Statutes. The Town's analysis is contrary to *Kaatz v. City of Seaside* (2006) 143 Cal. App. 4th 13, 31 (AOB 28), in that, there is

no provision in §10601 triggering Code Civ. Proc. §§ 860 or 863 for property owners.

III. THE ABSENCE OF ANY TOWN ADMINISTRATIVE REMEDY TO CONTEST ASSESSMENTS VIOLATED APPELLANTS' FEDERAL DUE PROCESS RIGHTS

The Town asserts that this Court should not consider the argument related to Appellants' federal due process rights because they did not raise this issue in their Petition for Review. (AB 30). To the contrary, (i) the administrative record evidences Appellants' requests for a hearing on the merits (AOB 12); and (ii) Appellants' Writ of Mandamus contains numerous allegations related to the Town's unlawful acts constituting a wrongful taking of Appellants' properties without due process of law (see eg, 1 JA 26-27, 30, 45; ¶30, ¶38, ¶57). Further, the central issue in Appellants' Petition for Review hinges on the concept that an assessment in excess of special benefits is a taking of property as argued in both the trial court and First District. See *Knox v. City of Orland* (1992) 4 Cal. 4th 132, 144. Injunctive relief was granted by the trial court based upon the allegations of a wrongful taking of property. Irrespective of the Town's baseless argument, with respect to Cal. Rules of Court, Rule 8.500(c)(1), this Court has previously stated, "...[t]he rule prohibiting parties from raising new issues in this court is not absolute." *People v. Braxton* (2004) 34 Cal. 4th 798, 809. "[Former] rule 29(b) [renumbered as 8.516(b)] recognizes that this court may decide any issue that is neither raised nor

fairly included in the petition or answer if the case presents the issue and the court has given the parties reasonable notice and opportunity to brief and argue it." *Id.* This Court further reasoned that consideration of the issue was necessary given this Court's unanimous decision to grant review, the issue was of statewide importance so as to warrant an opinion, and the defendant had a full opportunity to respond to the issues. *Id.* In this case, review was granted by all seven justices, and the Town has fully briefed this issue.

The Town's position is essentially that, even if Appellants' assessments exceed their special benefits and thus violate the Fifth Amendment of the US Constitution, Appellants are not constitutionally entitled to a meaningful substantive administrative hearing or appeal to contest their assessment, other than the hearing procedures related to voting. (AB 32-34; see also, *Knox* 4 Cal. 4th at 144; AOB 51-52).

The Town further asserts that property owners received an assessment appeals hearing consistent with their due process rights despite the fact that: 1) Appellants three-minute public comment on the record was directed to the Town Council, the entity levying the assessments, who favors undergrounding, and was biased towards Appellants (JN, Ex. M, pg. 3; 1 JA 258, 4 JA 915); 2) The Council's reliance upon Bond Counsel, who had an actual conflict of interest, was responsible for offering legal advice to both the Town and property owners, and is only paid if bonds are sold

(JN, Ex. M pg. 7) [6]; and 3) The Town has no administrative appeals process to contest an assessment (1 JA 76), and refused to provide Appellants a hearing on the merits to contest their assessment amounts (AOB 12). See also, Gov C. § 11425.10.

Contrary to the Town's position, a 3 minute public comment is not an assessment appeals hearing to contest one's own assessment amount, but merely an opportunity to voice an opinion on the proposed improvement prior to tabulation of the vote.

Appellants do not contend that their administrative hearing is governed by the Board of Equalization. Appellants simply offer a comparison to the administrative remedies afforded property owners to contest their real property tax assessments wherein this court has found the denial of due process by way of the refusal to permit a reasonable opportunity to cross-examine witnesses, the refusal to permit reasonable argument, and ex parte communications concerning an appeal with any member of the appeals board. See *Universal Construction Oil Co. v. Byram* (1944) 25 Cal. 2d 353, 361.

Absent a meaningful, substantive administrative hearing for a special benefits determination satisfying constitutional due process rights, Appellants are without any remedy to prevent a wrongful taking from

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[6] Bond Counsel, with the Town's knowledge, informed Appellants during the district formation process that §10400 was only legal procedure to contest an assessment. (AOB 15).

occurring. Unless an unbiased hearing on the merits contesting an assessment or tax is provided at the administrative level, it is likely that an agency will always sustain its burden of proof under XIII D § 4(f), especially under an abuse of discretion judicial standard whereby the Validation Statutes, if applicable, infringe upon a property owner's substantive Proposition 218 rights. (See AOB 21-23, 37-39.) See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal. 4th 559, 576 [judicial review of legislative actions must be based upon evidence during legislative hearing]; and *Not About Water* 95 Cal. App. 4th at 995 [burden of proving existence of special benefit limited to legislative hearing record]. Without the Town providing a hearing on the merits at the legislative level for an owner to contest their assessment, the Town has ensured that a court will have nothing to review from the contesting property owner.

In addition, the Town's analysis of *Allis-Chalmers v. City of Oxnard* (1980) 105 Cal.App.3d 876 is misguided. (AB 33-34). *Allis-Chalmers* held that a party must comply with the 30-day statute of limitations under § 10400 in order to assert claims of federal constitutional deprivations. *Id.* at 883. The Town's citation of *Allis-Chalmers* to support its arguments that, allegations of lack of benefit do not raise any questions of deprivations of fundamental constitutional rights is not only dicta but appears to be in direct conflict with this Court's prior findings in *Knox* that a special

assessment in excess of a special benefit to the assessed property violates the Fifth Amendment and Proposition 13. *Knox* 4 Cal. 4th at 144.

IV. THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO FIND "GOOD CAUSE" UNDER CODE CIV. PROC. SECTION 863

Contrary to the Town's position, Appellants' attempted acts of compliance are not admissions that the Validation Statutes universally apply. (AB 37).

The Town asserts that the application of the Validation Statutes to an individual property owner's Proposition 218 claims is not "complex and debatable" under *City of Ontario* 2 Cal. 3d 355. The Town further asserts that Appellants were on notice that the Validation Statutes applied based on *Not About Water and Millbrae School District.* See, *Not About Water Committee* 95 Cal. App. 4th 982; see also, *Millbrae School Dist* 209 Cal.App.3d 1494.

Yet, the Town admits in its letter of 2/8/07 to the First District, requesting publication of the opinion, that this is a new rule as applied to Proposition 218 and that it is of significant interest both to public agencies and those individuals benefited and burdened by the adoption of a district. (Ex. C, Petition For Review).

Whether Appellants were aware of § 10601 is irrelevant to the larger complex issue of whether the Validation Statutes apply to individual

property owner claims made under Proposition 218.[7] The complex nature of § 10601 further contributes to the complexities of the larger issue.

A. Appellants Made a Good Faith Effort To Comply With the Validation Statutes

The Town cannot dispute Appellants' act of mailing a Summons and Notice of Lawsuit to all district property owners within the proscribed statutory time period pursuant to the Validation Statutes. The Town cannot dispute that Appellants complied with the intent of the Validation Statutes which is to provide all interested persons with notice of a pending action. *Planning and Conservation League v. Dept. of Water Resources* (2000) 83 Cal.App.4th 892, 922. Nor did the Town suffer any prejudice.

CONCLUSION

For the above reasons, Appellants respectfully request that this Court reverse the Appellate Court's opinion and ruling.

Dated: 10/25/07

Brett Mulberg

Frank I. Mulberg,
Brett D. Mulberg
Attorneys for Appellants

[7] The more interesting question is why the Town never cited § 10601 when it admitted to the First District in its oral argument that it was aware of its existence when filing the dismissal motion in the Superior Court.

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.520 (c))

The text of this brief consists 4182 words (including footnotes) as counted by the Microsoft Word version 2003 word-processing program used to generate this brief. The entire brief is double spaced. The font is 13 point Times New Roman.

DATED: 10/25/07

Brett D. Mulberg, *Attorney for Appellants and Petitioners*

DECLARATION OF SERVICE

Re: ***JIMMIE D. BONANDER ET AL. v. TOWN OF TIBURON ET AL.***
California Supreme Court, Case No. S151370
CA Court of Appeal, First Appellate District, Div. 3, Case No. A112539
Marin County Superior Court, Case No. CV 052703

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States employed in the County of Marin. I am over the age of 18 and not a party to the within case. My business address is 655 Redwood Highway, Suite 300, Mill Valley, CA 94941. I am readily familiar with my employer's practices for collection and processing of correspondence for mailing with the United States Postal Service and for pickup by Federal Express.

On October 26, 2007, I served a true copy of the foregoing **REPLY BRIEF ON THE MERITS** on the following parties in said action, by serving:

Clerk of the Court California Court of Appeal First Appellate District – Div. 3 350 McAllister Street San Francisco, CA 94102 1 Copy by Hand Delivery	The Honorable James R. Ritchie Marin Co. Superior Court – Dept E 3501 Civic Center Drive San Rafael, CA 94903 1 Copy by U.S. Mail
Thomas R. Curry, Esq. McDonough Holland & Allen PC 1901 Harrison St. 9th Floor Oakland, CA 94612 Attorneys for Respondents 1 Copy by U.S. Mail	Ann R. Danforth, Esq. Town Attorney TOWN OF TIBURON 1505 Tiburon Boulevard Tiburon, CA 94920 1 Copy by U.S. Mail

AND by hand delivering a true copy to the California Court of Appeal – First Appellate District – Div. 3; and all other parties named above, in this action, by placing a true copy thereof in a sealed envelope, with postage fully prepaid, in the United States mail at Mill Valley, California.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on October 26, 2007, at Mill Valley, California.

Marsha Graham