No. A145575

In the Court of Appeal, State of California

FIRST APPELLATE DISTRICT, DIVISION TWO

BUILDING INDUSTRY ASSOCIATION — BAY AREA,
Plaintiff and Appellant

vs.

CITY OF SAN RAMON, et al.,
Defendants and Respondents.

Appeal from the Superior Court of the State of California
County of Contra Costa, Case No. MSC14–00603
Honorable Jill Fannin, Judge Presiding

APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF AMICUS LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF RESPONDENTS

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

There are no entities or persons that must be listed in this certificate under California Rules of Court, rule 8.208.

DATED: February 8, 2016

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Pursuant to rule 8.200(c) of the California Rules of Court, the League of California Cities ("League") respectfully requests permission to file an amicus curiae brief in support of Respondents City of Santa Ramon, et al. This application is timely made within 14 days after the filing of the reply brief.

The League represents cities with substantial interest here because many impose taxes under the Mello-Roos Community Facilities Act of 1982 (Gov. Code, § 53311, et seq.) and all are authorized to do so. These cities rely on such taxes to fund essential services to their residents, businesses, and property owners.

The trial court's conclusion here reinforces a principle of substantial importance to the League and the public its members serve. Specifically, the judgment finds the City's community facilities district tax complies with the Mello-Roos Community Facilities District Act and article XIII C of our Constitution and that the provisions of San Ramon's enabling ordinance triggered by initiative repeal of the tax do not unconstitutionally retaliate against district voters. A contrary finding would impose substantial new limits on community facilities district tax funding of vital local government services, encourage litigation, and threaten the financial health of cities and counties around our State. The League believes it can aid this Court's review by providing a broader legal framework for this issue than is provided by the parties' briefs.

The League's counsel have examined those briefs and are familiar with the issues and the scope of the presentations. The League respectfully submits that additional briefing would be helpful to clarify that a Mello-Roos special tax like that in issue here is not limited to funding entirely new services, is not an unauthorized general tax, and does not violate due process.

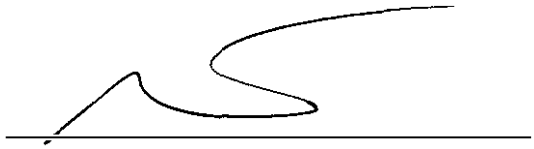
Therefore, and as further amplified in the Interest of Amicus portion of the proposed brief, the League respectfully requests leave to file the brief combined with this application.

IDENTITY OF AMICUS CURIAE AND STATEMENT OF INTEREST

The League of California Cities is an association of 473 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

DATED: February 8, 2016

COLANTUONO, HIGHSMITH & WHATLEY, PC



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INTRODUCTION

The Building Industry Association (BIA) makes here a policy case better made to the Legislature. The BIA's argument would strip local governments of authority to fund public services to support profit-making developments under the Mello-Roos Community Facilities District Act of 1982 ("Mello-Roos Act"). It does not persuade that the Legislature intended that result. The ordinary tools of statutory construction demonstrate that Government Code, section 53313 allows Mello-Roos special taxes to fund augmentation of existing services and does not limit the tool to wholly new services.

The tax challenged here is a "special tax," as Proposition 218's article XIII C[1] defines that term, because the San Ramon City Council must spend it to provide enumerated services to the district in which it is collected. The City Council does not have discretion to spend those tax proceeds for any lawful purpose of the City, anywhere in the City, as is true of general taxes. That diminished discretion brings it squarely within the definition of "special tax" stated in our Constitution.

Nor is due process offended by a legislative determination that, should voters use their power to defund the services to be

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[1] References in this brief to articles and sections of articles are to the California Constitution.

provided by the Special Tax, those services shall cease or be privately funded if and to the extent the benefited property owners choose. Legislation that observes that services cannot be provided without funding is not a violation of due process. It is a mere observation of fact.

For all these reasons, the League respectfully urges this Court to affirm the trial court ruling for the City.

STATEMENT OF FACTS AND THE CASE; STANDARD OF REVIEW

Amicus adopts by reference these portions of the City's Respondents' Brief.

ARGUMENT

I. THE SPECIAL TAX IS AUTHORIZED BY THE MELLO-ROOS ACT

The Mello-Roos Act states at Government Code, section 53313, in part:

> A community facilities district may be established under this chapter to finance any one or more of the following types of services within an area:
>
> (a) Police protection services...
>
> (b) Fire protection and suppression services, and ambulance and paramedic services. ...

(c) Recreation program services, library services, maintenance services for elementary and secondary schoolsites and structures, and the operation and maintenance of museums and cultural facilities. ...

(d) Maintenance and lighting of parks, parkways, streets, roads, and open space. ...

(e) Flood and storm protection services, including, but not limited to, the operation and maintenance of storm drainage systems, plowing and removal of snow, and sandstorm protection systems. ...

(f) Services with respect to removal or remedial action for the cleanup of any hazardous substance released or threatened to be released into the environment. ...

(g) Maintenance and operation of any real property or other tangible property with an estimated useful life of five or more years that is owned by the local agency...

A community facilities district tax approved by vote of the landowners of the district may only finance the services authorized in this section to the extent that they are in addition to those provided in the territory of the district before the district was created. The additional services shall not supplant services already available within that territory when the district was created. (Emphasis added.)

That the Legislature's intent in enacting the Mello-Roos Act was to authorize special taxes such as that here is evident from section 53313. This Court need not reach beyond it. (*Oden v. Board of Administration* (1994) 23 Cal.App.4th 194, 201 ["Statutory interpretation begins with the text and will end there if a plain reading renders a plain meaning: a meaning without ambiguity, uncertainty, contradiction, or absurdity"].)

The language of the second-to-last sentence allowing a tax to finance the services listed in section 53313 only "to the extent they are in addition to" existing services makes clear the City is not limited to services entirely new in character. "Extent" necessarily refers to the level or intensity of service provided. Indeed, BIA seems to admit that an enhanced level of service is sufficient. (AOB at p. 38.)

The phrase "shall not supplant" in the last sentence of section 53313 is a maintenance of effort requirement — a common legislative requirement for new funding sources. (E.g., *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 107 [obligation of county receiving state healthcare funds "to maintain a level of financial support at least equal to its county match"]; *Sturgeon v. County of Los Angeles* (2010) 191 Cal.App.4th 344, 349 [statute allowed counties to reduce "maintenance of effort obligations (to fund trial courts) if counties elected to provide benefits ... for trial court judges"].)

Requiring service augmentation — whether by type or level of service — is not redundant with requiring maintenance of effort as well, as BIA argues. (AOB at p. 39.) These are two, complementary means to the same legislative goal: to ensure new revenues provide new benefit to tax- and fee-payors and do not merely supplant existing funding. That these ideas are related does not make them redundant. (E.g., *Bennett v. Kentucky Dept. of Educ.* (1985) 470 U.S. 656, 661 [statute mandating federal funds be used "to supplement and, to the extent practical, increase [local funds]" and "in no case ... to supplant such funds"]; *State of Wash. v. U.S. Dept. of Educ.* (9th Cir. 1990) 905 F.2d 274 [both supplementation and maintenance of effort requirements in similar federal statute].)

Indeed, to argue the prohibition on supplanting existing services requires a special tax under the Mello-Roos Act to fund services of a wholly new type, BIA adds a word to the statute — at page 39, section I(B), its argument heading refers to "**an** Additional Service." (Emphasis added.) But, Government Code, section 53313 does not place the indefinite article — or any article at all — before "additional" because no article is needed when construing that word to mean "more of the same" — augmentation. (See, e.g., *State v. Superior Court* (1967) 252 Cal.App.2d 637, 640 ["use of the indefinite article 'a' rather than the definite article 'the' suggest[ed] the legislative intent"].)

Context also makes this point clear. Police and school services are available everywhere in California. Sheriffs police unincorporated territory and school services are provided throughout the state. (See, e.g., Pen. Code, § 4536.5 [requiring notification of escape of sexually violent predator to "sheriff of the county if the hospital or facility is located in an unincorporated area"]; Health & Saf. Code, § 11590, subd. (b) [requiring registration by a substance abuse offender with "the sheriff of the county if [the offender] resides in an unincorporated area"]; see also Cal. Const., art. IX, §§ 3 [establishing school system in every county], 5 ["provid[ing] for a system of common schools by which a free school shall be kept up and supported in each district"].) Yet the Mello-Roos Act specifically authorizes funding of police and school services. (Gov. Code, § 53313, subds. (a) & (c).) If BIA's view were correct, and Mello-Roos allows funding only of services of a wholly new type, it would not refer to police and school services. BIA's reading makes Government Code, section 53313 internally inconsistent, thus violating the duty to construe the statute as a whole, to harmonize all its parts, and to avoid absurdity. (*Pineda v. Williams-Sonoma Stores, Inc.* (2011) 51 Cal.4th 524, 529–530 [courts construe statutory language "in light of the statute as a whole and the statute's purpose"].)

Government Code section 53313.5 states the Legislature's intent that the Mello-Roos Act fund additional services to both

developed and undeveloped areas, noting that Mello-Roos "provides an alternative method of financing certain public capital facilities and services, especially in developing areas and areas undergoing rehabilitation." This language, too, supports the view that "to the extent they are in addition to" existing services means augmentation of existing services, as well as provision of wholly new services.

The other statutes BIA cites (AOB at pp. 19, 44–45) have different language requiring different results. First, it is not at all plain that the County Service Area statute and the Mello-Roos Act are in pari materia. (AOB at pp. 44–45.) They are located in different parts of the Code, affect different agencies, and serve different ends. In any event, the statutes use different language to attain different ends. Statute is admirably plain in forbidding a County Service Area to fund services provided earlier. (Gov. Code, § 25213 ["A county service area may provide any governmental services … that the county does not perform to the same extent on a countywide basis… .]") It demonstrates that the Legislature knows how to impose a "new-service-type" requirement when it intends to do so. The absence of that language from the Mello-Roos Act indicates the Legislature did not intend to impose that requirement here. Thus, these analogies undermine rather than support BIA's case.

Moreover, that the Mello-Roos Act includes other provisions to protect residential taxpayers from overpaying or under-benefiting

from services and facilities funded by a Mello-Roos tax (AOB at pp. 42–43) demonstrates the Legislature intended to remedy this perceived ill to the extent it provided a remedy — not further. To read into Government Code, section 53313 a prohibition on funding augmented services the Legislature did not state violates the expressio unius rule. (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 852 ["*Expressio unius est exclusio alterius*. The expression of some things in a statute necessarily means the exclusion of other things not expressed"].) The Legislature provided those protections it intended, demonstrating it intended no more. Thus, this Court should decline to add words to the Mello-Roos Act to attain policy goals of which BIA has yet to persuade the Legislature.

Finally, *City of San Diego v. Shapiro* (2014) 228 Cal.App.4th 756 (*Shapiro*) is distinguishable. The tax there applied citywide to present hotels and — importantly — future hotels. (*Id.* at p. 763.) Thus, it affected not just the owners of existing hotels, but the owners and users of lands which would be developed for hotels in the future. For this reason, it was constitutionally infirm to limit the franchise to the owners of land currently improved with hotels. (*Id.* at p. 792.)

Shapiro specifically refrained from deciding the vitality of landowner approval in uninhabited Community Facilities Districts (i.e., those with fewer than 12 registered voters) under the Mello-Roos Act. (*Id.* at p. 792, fn. 42.) Yet, the district here includes no voters — it involves greenfield development of vacant land. (RB at

p. 8.) In such cases, equal protection permits landowner voting despite the usual rule of one person, one vote. (See *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.* (1973) 410 U.S. 719, 728 [affirming landowner vote for board of agricultural water district].) Moreover, the other revenue measures BIA cites (AOB at p. 49) also involve decision-making processes which empower landowners at the expense of voters. (Cal. Const., art. XIII D, §§ 4, subd. (c) [property owners determine whether to impose assessments via Prop. 218 majority protest], 6, subds. (a) & (c) [landowner control of property-related-fee protests and elections]; see also *Greene v. Marin County Flood Control and Water Conservation Dist.* (2010) 49 Cal.4th 277, 291–292, 295 (*Greene*) [property owner elections on property related fees under Prop. 218 are not subject to Cal. Const., art. II provisions for registered-voter elections].)

Thus, the Mello-Roos Act allows special taxes to fund augmentation of existing services and does not require funding of wholly new services alone. Its doing so does not run afoul of the voting rights aspect of equal protection.

II. SAN RAMON'S TAX IS NOT A GENERAL TAX

Proposition 218 defines "general" and "special" taxes with respect to the discretion remaining to government to spend tax proceeds. (Cal. Const., art. XIII C, § 1, subds. (a) ["'General tax' means any tax imposed for general governmental purposes."] & (d) ["'Special tax' means any tax imposed for specific purposes,

including a tax imposed for specific purposes, which is placed into a general fund."].) Thus, if government may spend revenue on any lawful public purpose of the agency, the tax is general; if it must spend the revenue on specified purposes only, the tax is special. (*Coleman v. Santa Clara County* (1998) 64 Cal.App.4th 662 [general tax accompanied by advisory measure calling for specified expenditures was nevertheless general tax because County retained authority to spend it for any lawful county purpose].)

Special taxes need not be limited to a single service or even to a few. Indeed, the definition of special tax refers to multiple "purposes." (Cal. Const., art. XIII C, § 1, subd. (d).) BIA's own authorities make the point. (AOB at pp. 54–55.) *Neilson v. City of California City* (2005) 133 Cal.App.4th 1296, 1303 involved funding a range of services like that here: fire, police, parks, water, and street improvements. Like the tax here, the *Neilson* tax allowed funding of both facilities and services. (*Ibid.*) Indeed, it is not possible to provide most services without facilities from which to do so. (Cf. *Griffith v. Pajaro Valley Water Management Agency* (2013) 220 Cal.App.4th 586, 597–598 [cost of service to be recovered from property related fee includes facilities and other capital costs]; *Moore v. City of Lemon Grove* (2015) 237 Cal.App.4th 363, 369 [same]; *Great Oaks Water Company v. Santa Clara Valley Water District* (2015) 242 Cal.App.4th 1187, 1251–1253 [same] cross-petns. for review pending.)

BIA turns *Rider v. County of San Diego* (1991) 1 Cal.4th 1 on its head by positing that a special purpose agency may not impose a special tax if that tax can fund multiple purposes. (AOB at pp. 52–53). It argues such taxes are necessarily general. (*Ibid.*) General taxes, of course, can be approved by a simple majority of voters, evading Proposition 13's two-thirds voter approval requirement for special taxes. (Cal. Const., art. XIII A, § 4.) Although an earlier Supreme Court had allowed creation of special-purpose agencies to fund restricted purposes without triggering Proposition 13's two-thirds-voter-approval requirement, *Rider* abandoned that rule. (*Rider, supra,* 1 Cal.4th at pp. 10–11.) BIA would recreate the very problem *Rider* solved by requiring special purpose agencies to impose only general taxes. BIA's reasoning would restore the very jail-funding tax *Rider* invalidated. (*Ibid.*)

Rider has a plainer meaning: the general or special nature of a tax turns on the purposes for which it is imposed, not the nature of the government imposing it. This purpose test has roots in cases construing Proposition 13 (e.g., *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 873), and Proposition 218 codifies it (Cal Const., art. XIII C, §1, subds. (a) and (d) [defining "general" and "special" tax, respectively]).

The tax in issue here cannot fund all San Ramon's services. By statute, it funds only police; parks, recreation and open space; streets and street lighting; landscaping, flood and storm water control.

(Gov. Code, § 53313; see also Respondents' Brief at p. 18.) It does not fund such other common local government services as library, fire, public health and other social services. (*Ibid.*) The San Ramon City Council has substantially less discretion to spend the proceeds of this Special Tax than it does the share of the proceeds of the 1 percent ad valorem property tax permitted by Proposition 13, which it can spend on any lawful purpose of the City. (Cal. Const., art. XIII A, § 1.) That reduced discretion is all that is necessary to support the two legislative determinations here — the Legislature's and the San Ramon City Council's — that this is a special, not a general, tax.

Nor are these legislative constructions of "little weight" as BIA argues. (AOB at p. 59.) First, the purpose test of the legal character of a revenue measure turns on legislative intent, and the words of legislation are the source of that intent in most cases. (*California Taxpayers Ass'n v. Franchise Tax Bd.* (2010) 190 Cal.App.4th 1139, 1147 [label of a revenue measure is beginning of judicial analysis of revenue measure].) Indeed, for this reason, BIA's citation to *Weisblat v. City of San Diego* (2009) 176 Cal.App.4th 1022 is unavailing (Reply Brief at pp. 22–23); especially here, where the intent not of a city — as in *Weisblat* — but of the Legislature itself is in issue.

Second, our Supreme Court has recently and expressly found legislative guidance as to the meaning of Proposition 218 useful. (*Greene, supra*, 49 Cal.4th at p. 286 [Prop. 218 Omnibus

Implementation Act of 1997 good authority to construe articles XIII C and D].) Finally, Proposition 218's own terms make clear that the nature of a tax as general or special turns on the legislative purposes for which it is imposed. (Cal. Const., art. XIII C, § 1, subds. (a) & (d).)

Nor would limiting each special tax to one service be good public policy. It will reduce efficiency by requiring multiple tax proposals to accomplish one program of services, require voters to entrust government with less discretion, and strip government of the ability to react to changing circumstances. Should a flood come to San Ramon, the City can prioritize special taxes for flood control without seeking voter approval to do so, as was necessary in Marin County which sought funding from a single-purpose assessment in *Greene.*

Nor is there much need for a strict test to police the boundary between special taxes and general taxes given that the two-thirds voter approval requirement will discourage special taxes in most instances. Rather, the need is the reverse — to prevent agencies from seeking the general tax majority approval standards to approve special taxes, as in *Rider* and the cases it discusses. (*Rider, supra,* 1 Cal.4th at pp. 10–11.) What ultimately concerns BIA here is not the margin of voter approval, but the decision. The logic of its positions would give the development industry a subsidy at the expense of other taxpayers — the power to intensify the use of land, and

thereby demand more services of government, without paying for those services. Courts can treat voters and property owners without condescension and assume they make intelligent choices when choosing to tax themselves or to buy housing on which Mello-Roos taxes have been imposed by their predecessors in title or by voters.

III. THE DISCLAIMER OF PUBLIC FUNDING UPON REPEAL OF THE TAX DOES NOT VIOLATE DUE PROCESS

Absent statutory or constitutional requirement, there is no duty to provide government services at any particular level. (E.g., *Iraheta v. Superior Court* (1999) 70 Cal.App.4th 1500, 1508 [defendants did not have constitutional right to court-appointed legal counsel]; *Board of Supervisors v. Superior Court* (1989) 207 Cal.App.3d 552, 570 [statute requiring county to provide general health services to its indigent residents did not require provision of mental health services]; *Nunn v. State of California* (1984) 35 Cal.3d 616, 625 [statute requiring State to promulgate firearms regulations did not require it to do so within a certain period of time]; see also Gov. Code, § 815 ["public entity is not liable for an injury," "[e]xcept as otherwise provided by statute"].) The Modoc County Sheriff does not provide the level of service the Los Angeles Police Department does, both because that service is unneeded and because those who would receive it do not want to pay for it. Governments choose the level of

service to fund, in consultation with the voters who control tax levies under article XIII C of our Constitution.

Thus, when a revenue measure expires or is repealed, government often chooses to reduce services. This is elementary economics: government has no power to make bricks without straw and civil servants do not work for free. Stating that repeal of the San Ramon's special tax will require private parties to step into the void is only to state the obvious. San Ramon's ordinance does not require those private parties to provide any particular level of service, but simply allows property owners who no longer pay the special tax to decide whether and how to fill the gap that repeal will occasion.

Due process does not attach to one's continued receipt of general governmental services, even if funded by a special tax to a delimited area — there is no due-process-protected property right in such services under the cases cited above. Thus, because life, liberty and property interests are not implicated, nor is due process. (See, e.g., *Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 853 ["The procedural component of the due process clause ensures a fair adjudicatory process before a person is deprived of life, liberty, or property."], citing *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612.) The BIA's position would be friendly to developers' finances, but impossible for government to fund — no private duty to fill the financing gap between what new development will fund and what it requires, but

a constitutional ratchet that prevents government from reducing service levels even when its revenues are reduced. This is not good public policy.

Instead, decisions on what level of service to fund are legislative decisions as to which due process is in the voting booth — as Oliver Wendell Holmes stated a century ago. (*Bi-Metallic Investment Co. v. State Board of Equalization of Colorado* (1915) 239 U.S. 441, 445 ["General statutes within the state power are passed that affect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule."].) The trial court did not err to reject BIA's due process argument because there is no due-process-protected interest in a particular level of public services.

IV. BIA'S ARGUMENTS MAKE POOR PUBLIC POLICY

A recent study of parcel taxes by the California Taxpayers Association, including those of Mello-Roos districts, estimates that 1,100 such districts existed in cities and counties across the State as of September 2014. (Amicus Motion for Judicial Notice, Exh. A at p. 17.). These districts also fund a wide range of essential government services, including schools [*id.*, at pp. 80, 86, 87], public improvements [*id.*, at pp. 91, 165], water [*id.*, at pp. 16, 51, 158–159],

sewers and drainage [*id.*, at pp. 158–159, 165, 505], flood and storm protection [*id.*, at pp. 16, 158–159], beach erosion control [*id.*, at p. 51], public restrooms [*ibid.*], public art [*ibid.*], street lighting and traffic infrastructure [*id.*, at pp. 16, 158–159, 505], public safety [*id.*, at pp. 158–159, 504], parks [*id.*, at pp. 158–159, 169, 504, 505], fire [*id.*, at pp. 16, 222], and paramedics [*ibid.*, at p. 504]. Thus, BIA's flawed approach would destabilize many existing taxing districts around California. This is especially so given that the Legislature can address BIA's concerns prospectively, but Court decisions as to legislation are generally retroactive. (See *Planning & Conservation League v. Department of Water Resources* (1998) 17 Cal.4th 264, 274 [noting general rule that judicial decisions are retroactive, and applying that rule to a decision construing a statute so as to find appeal untimely].)

BIA would strip greenfield developers of a vital funding source. And it would not necessarily benefit homebuyers — if developers who do not wish to fund the services their developments require turn to assessments on land under article XIII D, section 4 rather than special taxes under the Mello-Roos Act, the burden will still be on the buyer and the decision will still be with the landowner. (Cal. Const., art. XIII D, § 4, subd. (e) [vote on assessment granted to landowner, not resident].)

There is no need to protect future residents of developments from Mello-Roos taxes. Market forces are up to the task. Anyone

who has driven in developing areas has seen the signs boasting that a development has "No Mello-Roos" tax. Land buyers receive mandatory disclosure of such taxes (see Civ. Code, § 1213) and factor such burdens into what they will pay for their houses. Thus, the economic burden here is not on new residents, but on developers, whose units will sell for less due to the need to fund public facilities and services necessary to support development. Adjusting these economic benefits and burdens is a task for the Legislature, not the courts.

BIA suggests it is unfair that residents of new developments whose developers choose to include them in a Mello-Roos district will pay more taxes than those whose developers fund services to satisfy the no-net-subsidy requirement of San Ramon's general plan. This assumes such properties will sell at equal prices. The "No Mello-Roos" marketing suggests this is not true as a matter of econometric fact. Nor is it consonant with the efficient markets theory that underlies modern economics.

Moreover, higher taxation of newcomers as compared to established residents promotes social stability by allowing residents to stay in their homes — an essential goal of Proposition 13. Indeed, the United States Supreme Court has found such "welcome stranger" assessment practices to comport with both due process and equal protection. (*Nordlinger v. Hahn* (1992) 505 U.S. 1, 6.)

In short, BIA urges poor public policy. Moreover, whether that policy be poor or wise is a judgment for the Legislature and not for a court construing legislation which does not reflect the views BIA espouses.

CONCLUSION

San Ramon's special tax here, like countless others imposed by property owners and voters around California, funds augmented municipal services to allow development. It is fully consistent with the policy of the Legislature evidenced in the Mello-Roos Act and, should BIA's policy arguments be persuasive there, that body is free to amend it. This Court need not do so. That San Ramon's tax funds a range of services does not make it a general tax given that the discretion of the City Council to spend its proceeds is limited to stated services in an identified area. There is no due-process-protected interest in any particular level of public services and therefore procedural due process does not attach to legislative decisions to tie service levels to funding levels. Indeed, such decisions seem the essence of fiscally responsible government.

For all these reasons, amicus League of California Cities urges this Court to affirm the trial's court's grant of summary judgment to the City of San Ramon.

DATED: February 8, 2016

COLANTUONO, HIGHSMITH & WHATLEY, PC

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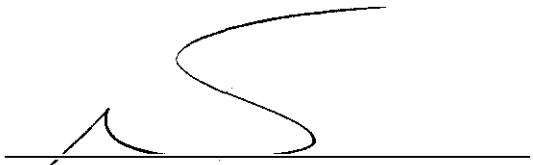
CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c)(1), the foregoing Brief of Amicus Curiae in Support of Respondent contains 4,368 words, including footnotes, but excluding the caption page, tables, Certificate of Interested Entities or Persons, the Application for Leave to File, and this Certificate. This is fewer than the 14,000 word limit set by rule 8.204(c)(1) of the California Rules of Court. In preparing this certificate, I relied on the word count generated by Word version 15, included in Microsoft Office 365 ProPlus 2013.

DATED: February 8, 2016

COLANTUONO, HIGHSMITH & WHATLEY, PC



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PROOF OF SERVICE

Building Industry Assn. – Bay Area v. City of San Ramon, et al.
First Appellate District, Div. 2, Case No. A145575
Contra Costa Superior Court Case No. MSC14-00603

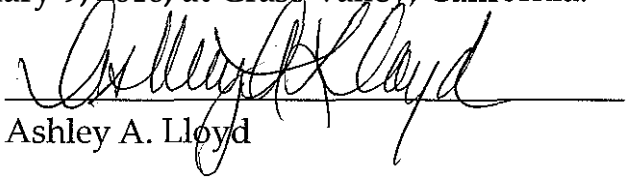
I, Ashley A. Lloyd, declare:

I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My business address is 420 Sierra College Drive, Suite 140, Grass Valley, California 95945-5091. On February 9, 2016, I served the document(s) described as **APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF AMICUS LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF RESPONDENTS** on the interested parties in this action by electronically filing a true copy with the Court through truefiling.com. Notice of this filing will be sent to those below who are registered with the Court's efiling system. Those who are not registered will receive a hard copy via first-class U.S. mail, fully prepaid at Grass Valley, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

SEE ATTACHED SERVICE LIST

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

Executed on February 9, 2016, at Grass Valley, California.



Ashley A. Lloyd

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Building Industry Assn. – Bay Area v. City of San Ramon, et al.
First Appellate District, Div. 2, Case No. A145575
Contra Costa Superior Court Case No. MSC14-00603

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