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Case No. S194861

SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA REDEVELOPMENT ASSOCIATION, LEAGUE OF CALIFORNIA CITIES, CITY OF UNION CITY, CITY OF SAN JOSE, and JOHN F. SHIREY,

Petitioners,

v.

ANA MATOSANTOS, in her official capacity as Director of Finance, JOHN CHIANG, in his official capacity as the Controller of the State of California, PATRICK O'CONNELL, in his official capacity as the Auditor-Controller of the County of Alameda and as a representative of the class of county auditor-controllers,

Respondents.

AMICUS CURIAE BRIEF OF THE CITY OF IRVINE, CALIFORNIA IN SUPPORT OF THE PETITION FOR WRIT OF MANDATE OF THE CALIFORNIA REDEVELOPMENT ASSOCIATION, LEAGUE OF CALIFORNIA CITIES, CITY OF UNION CITY, CITY OF SAN JOSE, AND JOHN F. SHIREY

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I. INTRODUCTION.

The City of Irvine, California ("Irvine") hereby submits this amicus curiae brief in Support of the Petition for Writ of Mandate (the "Petition") of California Redevelopment Association, League of California Cities, City of Union City, City of San Jose, and John F. Shirey (collectively, the "Petitioners") seeking constitutional invalidation of AB 1x 26 and AB 1x 27 as violative of certain provisions of the California Constitution. Irvine contends, and hereinafter demonstrates, that it has a unique status as a municipality — which in partnership with multiple levels of government as well as numerous private parties — undertook the redevelopment and reuse of an environmentally contaminated and structurally underutilized military base in anticipation and reliance upon the continued existence of redevelopment. Irvine herein provides a focused perspective as to the proper legal standard for interpretation of a constitutional initiative that was created to ensure that entities such as Irvine are free and safe to undertake significant financial and land-use obligations in anticipation of continued redevelopment.

II. HISTORY OF THE REUSE OF MARINE CORPS AIR STATION, EL TORO.

Marine Corps Air Station, El Toro (the "Base") opened in 1942 and served as a West Coast base for Pacific operations during World War II, the Korean War, and the Vietnam War. As part of the nation's ongoing military restructuring effort, the Base was closed in July, 1999 and Marine

Corps operations were transferred to Miramar Air Station near San Diego. The closure and realignment of the Base was part and parcel of a comprehensive process used by the Department of Defense ("DOD") and Congress to close surplus military installations, increase military operational efficiency, save precious federal dollars, and, of equal importance, prevent devastating economic losses to host communities.

Under the Defense Base Closure and Realignment Act of 1990 (hereafter the "DBCRA") (Pub. L. No. 101-510 (Nov. 5, 1990) 104 Stat. 1485; *see also* 10 U.S.C. § 2687 note), the Base was fully closed on July 2, 1999. The DBCRA established procedures to minimize the economic hardship on local communities adversely affected by base closures and to facilitate the economic recovery of such communities. (DBCRA § 2905(a)(1)(A)-(E), 104 Stat. 1485, 1813.) To maximize the local benefit from the reutilization and redevelopment of military installations, including the Base, the Secretary of Defense is required under the DBCRA to consider local economic needs and priorities in the base disposal process. (*See ibid.*)

In order to facilitate military base reuses, in 1993, the California Legislature adopted Senate Bill 915 (Sen. Bill No. 915 (1993 Reg. Sess.) § 4) to add section 33492 et seq., to the California Community Redevelopment Law (Health & Safety Code § 33000 et seq.) (hereafter the "CRL"), and therein expressed: "it is the intent of Legislature to

provide a means of mitigating the economic and social degradation that is faced by communities the jurisdictions of which include military bases that have been ordered closed by the federal Base Closure Commission." (Health & Saf. Code § 33492, now § 33492, subd. (a).) In Senate Bill 915, the California Legislature also found and declared that "extraordinary measures must be taken to mitigate the effects of the federal government's effort to reduce the number of military bases throughout the country," thus recognizing that the use of redevelopment under the CRL is critical for a community's effort to effect reuse of closed military bases for civilian use. (Sen. Bill No. 915 (1993 Reg. Sess.) § 4, codified at Health & Saf. Code § 33492.1.) These expressions of Legislative intent were amplified in 1996 when the Legislature adopted Assembly Bill 2736 (Assem. Bill No. 2736 (1996 Reg. Sess.) § 1) to amend Health and Safety Code section 33492 to express that an additional purpose of Section 33492 *et seq*. was to "enable redevelopment agencies to place in a project area portions of a military base that were previously developed, but that cannot be utilized in their present condition because of, in whole or in part, substandard infrastructure and buildings that do not meet state building standards." (Health & Saf. Code §33492, subd. (b).)

In 1994, Congress adopted the National Defense Authorization Act for Fiscal 1994 (hereafter the "NDAAF/94") (Pub. L. No. 103-160 (Nov. 30, 1993) 107 Stat. 1547), under which the federal government was

directed to (i) facilitate the economic recovery of communities that experience adverse economic circumstances as a result of base closure or realignment, and (ii) work with such communities to identify and implement means of redeveloping and revitalizing closed military installations in a beneficial manner to accelerate the environmental cleanup and reuse of closed military installations. It also adopted the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (hereafter "BCCRHAA") (Pub. L. 103-421 (Oct. 25, 1994) 108 Stat. 4346), which mandated efforts to support local communities affected by base closures and created a locally controlled reuse process for development of closing bases.

Finally, to solidify the State's role in base reuses, on February 24, 1994, the Governor of the State of California issued Executive Order W-81-04, under which the Governor found (i) "base closures have deepened the effects of the current recession in California and have caused severe economic dislocations in communities that are located adjacent to closing bases," and (ii) "[i]t is the policy of the State of California that the successful economic conversion of military bases shall be priority consideration in the implementation of State programs, regulatory pursuits, and allocation of resources for State-funded capital outlay projects [, and] [s]tate agencies, departments, boards, and commissions . . . shall regard base conversion as a priority matter and shall assist and

cooperate with local base reuse entities to the maximum extent possible within their statutory mandates." (Governor's Exec. Order No. W-81-04 (Feb. 24, 1994).)

The merger of federal military policy and the local desire to create an expansive recreational and cultural facility that would serve the intellectual, athletic, and ethnic needs of Orange County was given birth through the County of Orange voters' passage of Measure W on March 5, 2002. Measure W, in substance, designated the Base as a largely open-space oriented recreational project that would be ultimately implemented through the construction and operation of the Orange County Great Park (the "Great Park"). Immediately following the passage of Measure W, the Department of the Navy ("DON") announced its intention to sell the Base by public auction.

On April 23, 2002, the DON released a Record of Decision, under the authority of the DBCRA, in which the DON found that a mixed land use plan involving the construction of the Great Park on the Base would "meet the goals of local economic redevelopment and job creation set out in the DBCRA." On April 25, 2002, the DON, together with the United States General Services Administration ("GSA"), initiated discussions with Irvine with the goal of coordinating the DON and GSA's plans for proceeding through the disposal process for the Base in a manner consistent with Irvine's plans to annex that property and entitle it

consistent with the spirit of Measure W. On July 8, 2002, the DON indicated that its plan for the disposition of the Base, combined with Irvine's land use plan for that property, would best meet the interests of the Nation's taxpayers while simultaneously keeping faith with Measure W.

The inclusion of the Base within a redevelopment project area as authorized by Health and Safety Code Section 33492 *et seq.*, and the utilization of tax increment funds available under the CRL, were integral and essential to the City, the DON and the GSA's decision to proceed with the disposition of that property in the manner selected. The City, the DON, and the GSA each relied on the CRL and the availability of the powers of redevelopment in California in discharging their duties under DBCRA, the NDAAF/94, and the BCCRHAA to ensure orderly and successful redevelopment of former military installations in California.

The reuse of any military base, and certainly one as sizeable and urban-located as the Base, requires extensive cooperation and interrelation among the federal government, state government, local government, and private parties. The reuse of the Base was certainly no exception. Three years after the voter passage of Measure W, on February 16, 2005, the Base was auctioned by the DON to Lennar Corporation in the most financially successful base auction to date. The sale immediately created a public/private partnership among the federal government, Irvine, and Lennar Corporation. The partnership -- of which redevelopment was an

essential ingredient -- secured the land use and financing mechanisms now being utilized to create the Great Park. As part of the overall transactional structure, the DON agreed to clean up the environmental pollution left by its operations.

III. THE BIRTH OF THE GREAT PARK.

Upon completion, the Great Park will be an urban oasis: a place of inspiration, learning, activity, and reflection. It will connect local history and current needs, knitting together the communities of Southern California while restoring the region's natural heritage. It will be a laboratory where new ideas for social and environmental sustainability will be investigated, tested, and implemented. The Great Park Reserve, stretching from the Pacific Ocean to the Santa Ana Mountains and all the way to the Mexican border, will link together critical ecological systems and water reserves. It will also bring together riding, hiking, and multi-use trails, while completing an existing bicycle network and linking neighborhoods to the Great Park and communities beyond. Culturally, the Great Park will celebrate our history and diverse ethnic heritage, providing a space for gathering and celebrations for people of all backgrounds. The creation of the Great Park will prove to be a national treasure on a level of magnitude equal or exceeding New York's Central Park and San Diego's Balboa Park. Ultimately, it will be redevelopment at its very best providing the driving engine for a world class public asset.

Creation of the Great Park required the adoption of numerous contractual arrangements between and among various tiers of government and private parties. Lennar Corporation, the original purchaser of the Base, has likely invested to date well over One Billion Dollars ($1,000,000,000) in the acquisition of the land, the payment of certain development agreement obligations, land use planning and design, and holding costs. Irvine, directly and through the Irvine Redevelopment Agency (the "Agency"), has expended approximately $141,400,000 to date upon various activities directly associated with the planning and construction of the Great Park.[1]

Since the adoption of Measure W in 2002, the combination of federal, local, and private stakeholders involved in the development of the Great Park, and the related associated commercial projects, have expended significant resources, undertaken massive obligations, and produced numerous amenities of immense value to all residents of Southern California. The design process for global design of the Great Park, which involved a world-wide search for the most inspirational and creative urban architects of our time, was completed by 2006 with the Great Park Master Plan approved in the Summer of 2007. In October, 2009, a $65.5 million development plan was approved that transitioned the Great Park from

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[1] No General Funds of Irvine have been, or can be, committed to the project. Monies generated from the Base, such as redevelopment funds, are the only source of funding.

design and planning to actual hard construction. Over the last several years, numerous public events of significant community benefit have been undertaken at the Great Park including historic commemorations, concerts, cultural performances, urban farming, and sporting activities. By the end of 2010, events at the Great Park were attracting over 400,000 visitors annually.

IV. ESSENTIAL STAKEHOLDERS IN THE BASE REUSE AND CREATION OF THE GREAT PARK.

A. City of Irvine.

Irvine serves as the lead governmental agency for the construction of the Great Park and maintains regulatory supervision over the associated multi-use commercial development. Elected representatives of Irvine made significant land use and other regulatory decisions which proved instrumental, if not essential, to the creation of the Great Park. For example, and without limitation, at the request of Irvine, the Orange County Local Agency Formation Commission ("LAFCO") approved Irvine's application to annex most of the Base to Irvine in 2003. The decision on the part of Irvine to annex a contaminated and underdeveloped parcel of significant size, with little if any existing usable infrastructure, zoned for recreational, open space, or other non-intensive land uses, was not one taken lightly by Irvine's City Council. Ultimately, if the reuse stalled or proved unsuccessful, Irvine could — and may still depending upon the outcome of this case — find itself in the position of owning or

regulating property of little or no economic value. However, notwithstanding these risks, and based upon its expectation of a continuing partnership with the federal government, the State of California, private organizations which will be described below, and the Lennar Corporation, a national-scale developer, Irvine chose to move forward with the development of what would hopefully become a great public asset.

B. Irvine Redevelopment Agency.

In early 1999, the City Council expressed its intent to promote the development of non-aviation uses at the Base through the establishment of the Irvine Redevelopment Agency ("Agency"). On April 27, 1999, the City Council adopted Ordinance No. 99-09 which formally activated the Agency. On July 27, 1999, the Agency appointed a Board of Directors and approved the necessary implementing and organizational resolutions and ordinances to allow the Agency to initiate its business activities and associated work program in a manner consistent with State law. The redevelopment project area consists exclusively of land located within the Base.

C. Orange County Great Park Corporation.

The Orange County Great Park Corporation (the "Corporation") is a non-profit public benefit corporation formed specifically to oversee the design and construction of the Great Park. The Corporation was

established on June 24, 2003 and was specifically charged with the design, construction, and maintenance of the Great Park. The mission of the Corporation is to "develop and operate, preserve and protect, the Great Park for the benefit and enjoyment of all of its visitors, those of today and those in the future." (Orange County Great Park Mission Statement). The Corporation is governed by a nine-member Board of Directors consisting of all five council members from Irvine and four at-large independent public directors, thus insuring that all of Orange County is represented.

D. Foundation for the Great Park.

The Foundation for the Great Park (the "Foundation") is also a 501(c)(3) non-profit, non-partisan, private organization dedicated to generating and maintaining public and private support throughout Orange County and beyond for the development and operation of the Great Park. It was formed in 2000 to support the creation of the Great Park and works collaboratively with the Corporation and Irvine to achieve the common goal of creating a truly wonderful park for the entire Orange County community.

E. Legacy Project.

Founded in April, 2002, the Legacy Project is a non-profit private group dedicated to capturing and producing comprehensive documentation of the shuttered Base's transformation into the Great Park through the mediums of film and photography.

F. **Great Park Neighborhoods.**

Previously known as "Heritage Fields," Great Park Neighborhoods is the multi-purpose land-use plan allowing the careful development of the non-public properties within the confines of the Base. Great Park Neighborhoods is also the name for the communities that are planned to be built around the edge of the approximate 1300-acre Great Park. The Great Park will be the centerpiece of these new communities.

On January 10, 2011, Five Point Communities, LLC, the development manager of Great Park Neighborhoods, announced that the master-planned community had reached a milestone with the submittal of detailed first-phase plans to Irvine. The project is expected to provide tens of millions of dollars of infrastructure for the development of the Great Park, thousands of construction jobs, and millions of dollars for the benefit of the Irvine Unified School District. It is the economic locomotive that will drive the redevelopment tax increment necessary to ultimately build the bulk of the park facilities. Since the DON sold the Base in 2005, Great Park Neighborhoods and Irvine have established a strong public-private partnership. Five Point Communities is responsible for developing Great Park Neighborhoods and Irvine, in conjunction with

the Corporation, is responsible for the design and construction of the 1300-plus acre Great Park.[2]

V. THE ESSENTIALITY OF REDEVELOPMENT IN THE REUSE OF THE BASE AND THE DEVELOPMENT OF THE GREAT PARK.

Simply stated, and without understatement, redevelopment was the essential ingredient in the reuse of the Base and the development of the Great Park. Without anticipated redevelopment, the reuse and park development would not have occurred. The Agency was specifically formed for the sole purpose of financing the construction of the Great Park. The boundaries of the project area were limited to the boundaries of the Base. The Redevelopment Plan for the Irvine Redevelopment Agency, dated March 8, 2005, specifically articulates the following goals and objectives for the Agency:

> ". . . 3. To convert the former Marine Corps Air Station ("MCAS") El Toro to a Great Park with regional open space, cultural, educational, and recreational facilities.
>
> 4. To construct needed public improvements to facilitate the redevelopment and reuse of the former MCAS El Toro.
>
> 5. To encourage investment by the private sector and the development and redevelopment of the Project Area by

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[2] Great Park Neighborhoods is a venture consisting of national home builder Lennar Corp., investment firm Rockpoint Group, LLC, MSD Capital, LP, and LNR Properties LLC, which will be working closely with Five Point Communities on the commercial component of the project.

> eliminating impediments to such development and redevelopment.
>
> 6. To assure reuse of the site of the former Marine Corps Air MCAS Station El Toro in accord with the Orange County Great Park Plan.
>
> 7. To provide for development of a regional park, recreation and other public uses
>
> . . . .
>
> 14. To encourage the timely recovery of military lands."

Closure of military bases can impose significant financial and employment hardships upon host communities. Through the Base Realignment and Closure ("BRAC") process, Irvine worked diligently with the DON to ensure that the reuse of the Base produced a positive community benefit as opposed to a devastating economic hardship, which had often been the case with other military base closures. Because military bases bring millions of dollars in federal money to the surrounding communities, finding successful models for future non-military development is vitally important. Military base closures represent an important federal interest. (*See e.g.*, 10 U.S.C. § 2687; DBCRA § 2901 *et seq.*, 104 Stat. 1485; 32 C.F.R. § 176.1 *et seq.*) Likewise, the minimization of local economic harm from base closures as well as the development of regional public assets, such as the Great Park, also represent important local and State interests. Redevelopment,

particularly in Irvine, is the thread, and the only thread, which weaves all of these interests into a cohesive patchwork.

VI. PROVISIONS OF THE CALIFORNIA CONSTITUTION WHICH PROTECT REDEVELOPMENT SHOULD BE CONSTRUED BROADLY IN ORDER TO PROMOTE VITAL FEDERAL INTERESTS.

Article XVI, Section 16 of the California Constitution provides constitutional dimension to redevelopment and the tax increment revenue streams generated from the formation of a redevelopment project area and the implementation of a redevelopment plan. In addition, Article XIII, Section 25.5(a)(7), of the California Constitution provides an unequivocal voter mandate that redevelopment tax increment, authorized and created pursuant to Article XIII, Section 16, must be used exclusively for local and traditional redevelopment purposes.

These provisions, individually and collectively, should be construed broadly to fulfill and promote the strong federal interest in military base reuse consistent with minimum deleterious effects upon the local economy historically reliant upon military bases subject to closure. BRAC constitutes an express Congressional statement of paramount federal interests in maximizing military efficiency and minimizing federal expenditures, while at the same time maintaining the highest degree of operational readiness and efficiency, in such a manner as to minimally impact local communities which have become economically reliant upon military bases. (*See* DBCRA §§ 2901, subd. (b), 2903, subds. (a), (c)(3);

104 Stat. 1485, 1751, 1755-1756.). Structural programs at the state and local level which provide economic incentives and subsidies for military bases' reuse are essential to the overall federal program of base closure and reuse. (*See* Health & Saf. Code § 33492.1 ["The Legislature finds and declares that extraordinary measures must be taken to mitigate the effects of the federal government's efforts to reduce the number of military bases throughout the country."].) Without these programs, it will be far more difficult for Congress, or its delegated bodies, to mandate future base closures since consideration of local impacts constitutes a mandatory consideration in the base closure process. (*See* DBCRA § 2905, subds. (a)(1)(A)-(E), 104 Stat. 1485, 1813-1814.).

A broad and deferential interpretation Article XVI, Section 16, and Article XIII, Section 25.5(a)(7) of the California Constitution, promotes those important federal interests in military efficiency with minimal local impact through long term protection of those economic development and redevelopment programs which are considered and relied upon by the federal government in selecting military bases for closure and setting forth the terms and conditions of those closures. If the military, and those public and private parties partnering with the military in relation to base closures and reuses, cannot rely upon existing economic development and redevelopment programs in designing their closure and reuse strategies, military efficiency will be impeded and those responsible for honing the

efficiency of our armed forces will face an even more daunting challenge in harmonizing the maximization of military efficiency and minimization of local impact.

VII. STATUTES THAT PREVENT IMPAIRMENT, OR A SIGNIFICANT POTENTIAL OF IMPAIRMENT, OF LEGALLY PROTECTABLE EXPECTATIONS AND CONTRACTS SHOULD BE BROADLY INTERPRETED.

The California Constitution contains several provisions that furnish certainty and predictability to redevelopment agencies and those private parties that do business with redevelopment agencies.[3] On the other hand, AB 1x 26 may well impair the interests of bondholders and other owners of redevelopment agency debt.[4] However, not all protected obligations

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[3] For example, Article XVI, Section 16(c) of the California Constitution authorizes the Legislature to provide the tax increment "may be irrevocably pledged for the payment of the principal of and interest on those loans, advances, or indebtedness." (Emphasis added). Although the Legislature may or may not have been required to authorize redevelopment agencies to make irrevocable pledges of tax increment, it affirmatively did so in Health & Safety Code Section 33671 and further provided that "that pledge heretofore or hereafter made shall have priority over any other claim to those taxes not secured by a prior express pledge of those taxes." (Health & Saf. Code § 33671.5). The term "irrevocable" means "cannot be revoked." The drafters of the California Constitution, as well as the Legislature, recognized that parties with protectable interests must possess certainty regarding the enforceability of the commitments made by redevelopment agencies as a condition of fundamental fairness, due process, as well as being essential to the encouragement of economic development in the State. Likewise, Article XIII, Section 25.5 of the California Constitution protects contractual expectations.

[4] On August 31, 2011, Moody's Investor Service ("Moody's") announced that it had placed on review for possible downgrade all of its rated California tax allocation bonds based upon the "substantial uncertainty over the future of redevelopment agencies in California and

and expectations need be created by specific contract or other written agreement. Rather, constitutional and statutory expectations can likewise be protected. (*Russell v. Sebastian* (1914) 233 U.S. 195, 210 [statutory franchise granted to public utility company protected from impairment by subsequent legislation]; *County of Los Angeles v. Rockhold* (1935) 3 Cal.2d 192, 201, 202 [". . . when the special assessment proceedings are completed a contractual relation arises as between the bondholder and the property owner to such an extent that the substantial rights of either may not be impaired by subsequent legislation."].) Whether or not redevelopment agencies possess standing to challenge the actions of the Legislature in adopting AB 1x 26, another issue reserved for another day,

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the tax allocation bonds that they issue. . ." created by Assembly Bills x1 26 and 27. The words of Moody's, a non-stakeholder with no dog in this fight, are illuminating regarding the impairments, and potential financial consequences, which could result from Assembly Bills x1 26 and 27. Moody's writes: "If left unchanged, this law [ABx1 26] would be significantly negative for bondholder credit. More specifically, . . . Assembly Bill 1x 26 does not require segregation and tracking of revenues pledged to individual tax allocation bonds. It also changes the flow of funds that are allocated to bond debt service. These developments would severely diminish the bonds' credit quality. If implemented as currently written, this legislation could result in multi-notch downgrades on bonds of the dissolved redevelopment agencies. . . ."

Whether or not AB1x 26 constitutes a prohibited impairment of contract based upon the specific agreements of specific redevelopment agencies, and the bonds they have issued, can, and likely will, be tested on another day and in another court in one or more "as applied" challenges. However, the published action of Moody's demonstrates the significant risk of impairment of "enforceable obligations" which AB1x 26 purports to protect. (*See* provisions of AB1x 26, *e.g.*, Health & Saf. Code §§ 34167, subd. (f); 34178, subd. (b)(1).)

there is no doubt that the private parties which entered into courses of conduct and agreements with a redevelopment agency do possess standing to challenge those enactments based upon theories of federal and state impairment of contract protection. (*Williams v. Eggleston* (1898) 170 U.S. 304 [parties to contract have standing to invoke protection of contracts clause]; *Hagar v. Reclamation Dist. No. 108* (1884) 111 U.S. 701, 712-713 [same].)

The situation in Irvine presents a <u>compelling</u> example of courses of conduct undertaken by private parties which merit constitutional protection against government impairment. Base reuse, at least in California, cannot go forward, and would not be economically viable, without the prospect of redevelopment. In Irvine, Great Park Neighborhoods, along with its investment partners, expended massive amounts of money to acquire property for the purpose of development based upon the expectation of redevelopment. Likewise, the Corporation and the Foundation, also private parties with impairable interests, entered into numerous agreements with public and private parties based upon the expectation of continued redevelopment. Although the same may be true in the case of many other redevelopment agencies, it is far easier to isolate the nexus between redevelopment and economic development in the case of a base reuse since redevelopment is not only generically essential in

military reuses but was expressly part and parcel of the development plan linking the DON, Irvine and Great Parks Neighborhoods from the outset.

While the public and private parties adversely affected through the adoption of AB1x 26 may well possess individual and collective "as applied" challenges to the impairment of their protectable interests, the gross level of impairment of cognizable interests should be taken into account by this Supreme Court in determining the appropriate levels of judicial scrutiny and deference to Article XIII, Section 25.5(a)(7) and Article XVI, Section 16 of the California Constitution. While it is generally true that all presumptions favor the validity of a statute, it is also axiomatic that it is not the presumption which determines the constitutionality of the statute, but the fact of its operation and effect in a given case. (*Lanam v. Civil Service Commission* (1978) 80 Cal.App.3d 315, 319.) In matters of statutory interpretation, statutes must be construed in such a way as to avoid impairment or infringement of obligations of contract and vested rights. (*Krause v. Rarity* (1930) 210 Cal. 644, 655; *see also Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1206-1209; *Whitmire v. HK Ferguson Co.* (1968) 261 Cal.App.2d 594, 602-603; *Tevis v. City and County of San Francisco* (1954) 43 Cal.2d 190, 195.) The potential of an impairment of contract or disturbance of vested rights mandates interpretation in such a manner as to avoid

impairment. (*Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 506-507.)

The judicial concern that the protection of impairable interests should override presumptive broad statutory construction should be applicable to a situation where a statute, or a series of statutes, possess a significant potential of unlawful impairment. The impairments in AB 1x 26 are not speculative or illusory, as clearly demonstrated by the recent action of Moody's. On the other hand, the protections afforded by Article XIII, Section 25.5(a)(7) and Article XVI, Section 16 of the California Constitution, are clear. To force future litigants to bring a multiplicity of as-applied challenges based upon impairment due, in whole or in part, to a deferential reading of a statute is not only fundamentally unfair but discourages private investment in what otherwise could be successful examples of public-private cooperation and entrepreneurship.[5] Private parties, especially those which have made significant investments and changed positions to their detriment based upon the expectation of those income streams, should likewise be protected in the analysis of validity.

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[5] Although redevelopment agencies are obviously key protectees and beneficiaries of Article XIII, Section 25.5(a)(7) of the California Constitution, so are private parties and co-governmental parties which participate in the revenue stream admittedly protected by Article XIII, § 25.5(a)(7). (Return to Petition for Writ of Mandate; Supporting Memorandum (the "Return"), p. 2 ["Cal. Const., Article XIII, § 25.5, the initiative the underlies most of Petitioners' claims, only limits legislative tampering with the stream of income flowing into and out of RDAs . . ."].)

Private parties should not be forced to "invest at their peril" in a government sanctioned or assisted project.

VIII. AB 1x 26 SHOULD BE INVALIDATED UNDER ARTICLE XIII, SECTION 25.5 OF THE CALIFORNIA CONSTITUTION.

California Constitution, Article XIII, Section 25.5(a)(7), was intended and designed to achieve two important objectives. First, as set forth in the express language of Article XIII, Section 25.5(a)(7), the California voters unambiguously intended to mandate and protect that redevelopment tax increment be exclusively devoted and utilized for traditional local redevelopment purposes. (Cal. Const. Art. XIII, § 25.5(a)(7).) Respondents acknowledge this principle. (Return, p. 14.) Second, and of equal importance, the voters recognized that the Legislature possessed a prior history of circumventing constitutional and statutory provisions providing protection to redevelopment revenues and stated their collective intent that legislative circumvention will no longer be tolerated. (Ballot Pamp., Gen. Elec. (Nov. 2, 2010), text of proposed laws, p. 105 [hereafter "Pamphlet"] ["The Legislature has been illegally circumventing Section 16 of Article XVI in recent years by requiring redevelopment agencies to transfer a portion of those taxes for purposes other than the financing of redevelopment projects. A purpose of the amendments made by this measure is to prohibit the Legislature from requiring, after the taxes have been allocated to a redevelopment agency,

the redevelopment agency to transfer some or all of those taxes to the State, an agency of the State, or a jurisdiction; or to use some or all of those taxes for the benefit of the State, an agency of the State, or a jurisdiction."].) Given the voters' express reference to "legislative circumvention" (Pamphlet, *supra*, text of proposed laws, p. 105), the choice of the phrase "directly or indirectly" in relation to the definition of the protected income stream is of controlling importance. (*Id.*, at p. 101.)

Respondents' argument regarding the appropriate interpretation of California Constitution Article XIII, § 25.5(a)(7) is alarmingly simple. "When considering acts of the Legislature, courts must presume that a statute is valid unless its unconstitutionality clearly, positively, and unmistakenly appears." (Return, p. 9.) Any "restrictions and limitations [imposed by the Constitution] are to be strictly construed, and are not to be extended to include matters not covered by the language used." (*Ibid.*) "[I]f there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action." (*Ibid.*) Applying these maxims of statutory analysis to AB 1x 26, Respondents argue, in essence, that since Constitution Article XIII, § 25.5(a)(7), does not expressly prohibit legislative abolishment of redevelopment agencies, it must be construed to permit abolishment. (*Id.* at 15.)

Although presented with appropriate legalese and respect, Respondents really argue that the drafters of Proposition 22 "got it wrong" and failed to reconcile statutory language with statements of legislative intent. (*Id.* at 12.) As a result, Respondents assert the Legislature should be free to abolish redevelopment agencies and the associated tax increment mandated to redevelopment agencies by Article XVI, Section 16(c) of the California Constitution and ultimately divert the exact same income stream, which Respondents admit is to be protected by Article XIII, Section 25.5(a)(7), to persons and entities which, under the clear terms of Article XIII, Section 25.5(a)(7), are precluded from enjoying its benefits.

With all due respect, and at the risk of over-bluntness, Respondents have engaged in a game of "legislative gotcha." Reliance upon maxims of statutory analysis and construction as opposed to attempting to decipher the real intent of the voters, as demonstrated by the actual language in context as well as the initiative history, produces a patently absurd result. The clear language of Article XIII, Section 25.5(a)(7) of the California Constitution, demonstrates that voters were attempting to protect redevelopment, and the revenues associated with it, for local redevelopment purposes.[6]

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[6] Respondents assert that "the text of Proposition 22, as well as the ballot arguments, <u>reliably</u> show that the voters intended <u>only</u> to prevent legislative raids on RDA funds." (Return, p. 16 [emphasis added].)

The voters were also clearly concerned about legislative circumvention. (*See* Pamphlet, *supra*, argument in favor of Prop. 22, p. 36 ["For too long, Sacramento politicians have used loopholes in the law to take billions in taxpayer funds dedicated by the voters to local government and transportation services . . . YES on 22 will STOP STATE RAIDS of LOCAL GOVERNMENT and TRANSPORTATION FUNDS."]; *id.*, rebuttal to argument against Prop. 22, p. 37 ["Year after year, State Politicians abuse loopholes in the law to take away local taxpayer dollars" and "redirect that local money to the State General Fund, where they spend it as they please."].) Had the drafters of Article XIII, Section 25.5(a)(7) seriously believed that the Legislature would once again attempt to circumvent the stated will of the electorate (to protect redevelopment revenues for redevelopment purposes) through the creative efforts of legislative lawyers in concluding that there is a "loophole" in the Constitutional provision, the drafters would have simply drafted an additional provision prohibiting redevelopment agency abolition. One cannot seriously believe that a "loophole," if felt legitimate, would not have been closed by the drafters so that voter intent would be

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Really? It is difficult to understand how voters could have been concerned about preventing elaborate and complicated fund transfers, but at the same time were entirely ambivalent, to the point of affirmatively disavowing concern, about the ultimate and most blatant theft of redevelopment funds possible. Perhaps voters just assumed that "B came after A" and did not feel the need to say it or prove it.

implemented. (*See id.*, rebuttal to argument in favor of Prop. 22, p. 36 ["Prop. 22 locks in protections for redevelopment agencies . . ."]; *id.*, argument against Prop. 22, p. 37 [Prop. 22 "locks protections for redevelopment agencies into the State Constitution forever"].) Likewise, can one seriously question, given the other language that the voters approved in Article XIII, Section 25.5 relating to legislative circumventions (Pamphlet, *supra*, text of proposed laws, p. 105), that the voters likewise would not have approved a prohibition of redevelopment agency abolition if it had been presented to them as a necessity to prevent future legislative circumvention. This is a situation where tortured arguments of legalese and statutory maxims must be set aside in favor of a commonsense interpretation of what the voters did or did not intend.

At the end of the day, the decision in this case should not turn upon whether the drafters of AB 1x 26 and 27, individually and collectively, were more creative than the drafters of Article XIII, Section 25.5(a)(7) were omniscient. The danger in deciding any case of constitutional or statutory validity or interpretation upon presumptions of validity, or the lack thereof, or maxims of statutory construction, is that good lawyers can almost always justify any predetermined agenda and result based upon some presumption of validity or deference or some maxim of statutory interpretation. This case is no exception. Rather than deciding this case based upon presumptions of validity and maxims of strict construction,

Irvine respectfully suggests that this Supreme Court should put itself in the shoes of the average non-lawyer voter who presumptively read, understood, and resoundingly approved Article XIII, Section 25.5(a)(7). The hallmark of judicial scrutiny, grounded in the very nature of separation of powers, mandates that a reviewing court ultimately decide a case not by presumptions or maxims but rather by determining intent in the case of a statute or an initiative. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 562 ["The rules governing statutory construction are well settled. We begin with the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent."]; *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798 ["In the case of a constitutional provision enacted by the voters, their intent governs."]; *Kaiser v. Hopkins* (1936) 6 Cal.2d 537, 538 ["It is a general rule of statutory construction that the courts will interpret a measure adopted by vote of the people in such manner as to give effect to the intent of the voters adopting it."].) Assuming ambiguity, upon a determination of intent, the reviewing court should then, but only then, determine whether legislative or voter intent can be squared with the actual language of the statute or initiative. (*Snowden*, *supra*, 2 Cal.4th at p. 562 ["Where the words of the statute are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history."]; *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 ["Literal construction

should not prevail if it is contrary to the legislative intent apparent in the statute. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act."].)

Put in the context of the case at bar, this Supreme Court should determine whether the voters of the State of California would have viewed the abolition of redevelopment agencies, and the elimination of redevelopment property tax increment, irrespective of the perceived public policy benefits or detriments thereof, as a "circumvention" of their stated mandate that traditional tax increment redevelopment revenues be utilized exclusively for traditional local redevelopment purposes. If this Court answers this question in the affirmative, which Irvine believes is the only way that question can be answered, then this Supreme Court should determine whether Article XIII, Section 25.5(a)(7) of the California Constitution can be construed consistent with such a determination of voter intent. (*Delaney*, *supra*, 50 Cal.3d at p. 798; *Lungren*, *supra*, 45 Cal.3d at p. 735.) Once again, the initiative's use of the phrase "directly and indirectly" demonstrates clear voter recognition of past circumvention and intent to prohibit future circumvention through whatever creative means crafted by a Legislature historically hostile to the commitment of local redevelopment revenues for local redevelopment purposes.[7]

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[7] Respondents argue that consideration of legislative policy is irrelevant to this court's decision making process. (Return, pp. 15-16.) Irvine acknowledges that it is not the role of a reviewing court to scrutinize

Put bluntly, Respondents are really arguing that Article XIII, Section 25.5(a)(7) of the California Constitution is meaningless and provides no protection of any kind to redevelopment agencies or the revenues which they have historically enjoyed. Just as legislative statutes are not interpreted as meaningless, irrelevant, or duplicative (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230 ["If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose."]), but rather to be meaningful and proactive in their application and result, voter initiatives, acts of the people themselves, must be afforded no less interpretive deference. (*Delaney*, *supra*, 50 Cal.3d at p. 798 [same rules of construction apply to both statutes and initiatives]; *see also Greene, supra,* 49 Cal.4th at pp. 289-290 ["The principles of constitutional interpretation are similar to those governing statutory construction. In interpreting a constitution's provision, our paramount task is to ascertain the intent of those who enacted it."].)

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legislative decisions based upon considerations of abstract correctness. A court can only determine if the Legislature "got it legal" and not whether or not it "got it right." However, the same principles apply in relation to the court's scrutiny of a voter initiative. (*Delaney*, *supra*, 50 Cal.3d at p. 798 [same rules of construction apply to both statutes and initiatives]; *see also Greene v. Marin County Flood Control & Water Conservation Dist.*, (2010) 49 Cal.4th 277, 289-290.) If, and to the extent, the voters intended, on a permanent and irrevocable basis, to handcuff the Legislature's ability to directly or indirectly divert redevelopment tax increment to other purposes, by whatever means, judicial deference must likewise be afforded to that decision of the electorate.

If Article XIII, Section 25.5(a)(7) of the California Constitution was not intended to prevent the Legislature from destroying the tax increment revenue stream (which is mandated to be devoted to local redevelopment purposes) through abolition of redevelopment agencies and tax increment, what could that initiative possibly mean and what possible interests could it protect? The voters who approved Article XIII, Section 25.5(a)(7), should not be punished or impaired because the drafters of that initiative may or may not have anticipated every possible means of legislative circumvention. For this Supreme Court to interpret Article XIII, Section 25.5(a)(7) in such a manner would not only be inconsistent with its historic deference to voter initiatives (*See, e.g.*, *Blotter v. Farrell* (1954) 42 Cal.2d 804) but could actually result in the wholesale denigration of the institution of the initiative and weaken the ability of California voters to influence the government that is established to serve them.

IX. CONCLUSION.

Assuming for the moment that Article XIII, Section 25.5(a)(7) of the California Constitution was not written with absolute clarity to plug all loopholes and prevent all legislative manipulations, Irvine and its public and private partners which have invested sweat and financial equity in the attempted reuse of a closed military base should not be jeopardized — if not penalized — by what everyone knows is, at worse, a drafting

ambiguity. Unlike legislation, which is often rife with ambiguities and infirmities that can be quickly corrected through immediate clean-up or subsequent legislation, initiatives as expressions of voter will are more difficult to modify. Since voters do not enjoy the benefits of legislative "white-outs," "do-overs," and "mulligans," only the courts can protect voter intent. Rules of statutory analysis and construction should not thwart the clear desire of the voters to protect redevelopment revenues for local redevelopment purposes, or the desire of Irvine and its partners to turn a contaminated wasteland into a public and private jewel for the benefit of all of Southern California.

Irvine respectfully submits that the Petition for Writ of Mandate should be granted ordering Respondents to refrain from enforcing AB 1x 26 and 27 for the reasons set forth herein.

Dated: September 29, 2011

Respectfully submitted

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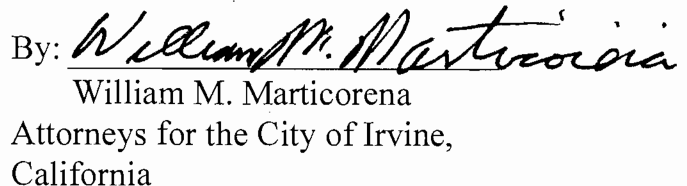
By: 
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CERTIFICATE OF COMPLIANCE

(California Rules of Court, Rule 8.204)

I certify that pursuant to California Rules of Court, Rule 8.204, that the foregoing Amicus Curiae Brief of the City of Irvine, California in Support of the Petition for Writ of Mandate of the California Redevelopment Association, League of California Cities, City of Union City, City of San Jose, and John F. Shirey is proportionally spaced, has a typeface of 13 points or more and contains 7,216 words, as calculated by the word-processing system used to prepare the brief, which was MSWord, version 2007.

Dated: September 29, 2011

RUTAN & TUCKER, LLP

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PROOF OF SERVICE BY MAIL

California Redevelopment Association, et al. v. Ana Matosantos, et al.
California Supreme Court Case No. S194861

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed by the law office of Rutan & Tucker, LLP in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 611 Anton Boulevard, Fourteenth Floor, Costa Mesa, California 92626-1931.

On September 29, 2011, I served on the interested parties in said action the within:

AMICUS CURIAE BRIEF OF THE CITY OF IRVINE, CALIFORNIA IN SUPPORT OF THE PETITION FOR WRIT OF MANDATE OF THE CALIFORNIA REDEVELOPMENT ASSOCIATION, LEAGUE OF CALIFORNIA CITIES, CITY OF UNION CITY, CITY OF SAN JOSE, AND JOHN F. SHIREY

by placing a true copy thereof in a sealed envelopes addressed as stated on the attached Service List. In the course of my employment with Rutan & Tucker, LLP, I have, through first-hand personal observation, become readily familiar with Rutan & Tucker, LLP's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice I deposited such envelopes in an out-box for collection by other personnel of Rutan & Tucker, LLP, and for ultimate posting and placement with the U.S. Postal Service on that same day in the ordinary course of business. If the customary business practices of Rutan & Tucker, LLP with regard to collection and processing of correspondence and mailing were followed, and I am confident that they were, such envelopes were posted and placed in the United States mail at Costa Mesa, California, that same date. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on September 29, 2011, at Costa Mesa, California.

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

Tara L. Morgan
(Type or print name)

(Signature)

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SERVICE LIST

California Redevelopment Association, et al. v. Ana Matosantos, et al.
California Supreme Court Case No. S194861

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