

S201116

IN THE SUPREME COURT  
OF THE  
STATE OF CALIFORNIA

BERKELEY HILLSIDE PRESERVATION, ET AL.  
Petitioners and Appellants,

v.

CITY OF BERKELEY, ET AL.  
Respondents and Real Parties in Interest.

MITCHELL D. KAPOR AND FREADA KAPOR-KLEIN  
Respondents and Real Parties in Interest.

SUPREME COURT  
**FILED**

JUL 27 2012

Frank A. McGuire Clerk  

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Deputy

After a Published Decision by The Court of Appeal  
First Appellate District, Division Four  
Civil Case No. A131254

After an Appeal From The Superior Court of Alameda County  
Case No. RG10517314  
Honorable FRANK ROESCH

**MOTION FOR JUDICIAL NOTICE OF RESPONDENTS AND REAL PARTIES  
IN INTEREST; SUPPORTING MEMORANDUM AND DECLARATION OF  
JULIA L. BOND; [PROPOSED] ORDER  
[Rules of Court, Rules 8.252, 8.520(g)]**

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**JUL 20 2012**

CLERK SUPREME COURT

Attorneys for Respondents and Real Parties  
in Interest Mitchell Kapor and Freada  
Kapor-Klein

Attorneys for Respondents City of  
Berkeley and City Council of the City of  
Berkeley

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in Interest Mitchell Kapor and Freada  
Kapor-Klein

Attorneys for Respondents City of  
Berkeley and City Council of the City of  
Berkeley

**I. NOTICE OF MOTION AND MOTION REQUESTING JUDICIAL NOTICE**

TO THE COURT AND COUNSEL FOR ALL PARTIES:

PLEASE TAKE NOTICE that, pursuant to Rules of Court, rules 8.252(a) and 8.520(g) and Evidence Code sections 459 and 452, Respondents City of Berkeley (“City”) and Respondents and Real Parties in Interest Mitchell Kapor and Freada Kapor Klein (“Kapors”) (collectively, “Respondents”) in the above-captioned appeal, hereby move the court for an order taking judicial notice of the following documents:

A. Legislative History of Public Resources Code section 21084, as enacted by Assembly Bill 889 (Knox 1972), Chapter 1154, Statutes of 1972.

1. All versions of Assembly Bill 889 (Knox-1972);
2. Procedural history of Assembly Bill 889 from the 1972 Assembly Final History;
3. Analysis of Assembly Bill 889, prepared for the Assembly Committee on Planning and Land Use;
4. Material from the legislative bill file of the Assembly Committee on Planning and Land Use on Assembly Bill 889 as follows:
  - a. Previously obtained material,
  - b. Up-to-date collection of material;
5. Analysis of Assembly Bill 889, prepared for the Senate Committee on Governmental Organization;
6. Material from the legislative bill file of the Senate Committee on Governmental Organization on Assembly Bill 889;
7. Four analyses of Assembly Bill 889, prepared by the Legislative Analyst;
8. Collected opinions of Legislative Counsel regarding Assembly Bill 889;

9. Material from the legislative bill file of Assembly member John T. Knox on Assembly Bill 889;

10. Material from the legislative bill file of Assembly member John T. Knox for the year 1972 on Assembly Bill 889;

11. Material from the legislative bill file of Assembly member John T. Knox for the years 1973 –1974 on Assembly Bill 889;

12. Post-enrollment documents regarding Assembly Bill 889 as follows:

- a. Previously Obtained Material,
- b. Up-to-date Collection of Material;

13. Material from the file of the Legislative Representative of the League of California Cities on Assembly Bill 889;

14. Excerpts regarding Assembly Bill 889 from the Journal of the Assembly, dated April 20, November 30, and December 1, 1972;

15. Excerpt regarding Assembly Bill 889 from the Journal of the Senate, dated December 1, 1972;

16. Excerpt regarding “State and Local Government” from the California Law Review, Vol. 61, No. 2, March 1973;

17. Excerpt regarding Assembly Bill 889 from the 1972 Summary Digest of Statutes Enacted and Resolutions Adopted prepared by Legislative Counsel.

B. Excerpts of Legislative History of Public Resources Code section 21084, subsection (b), as enacted by Assembly Bill 226 (Simitian 2011), Chapter 469, Statutes of 2011, as follows:

1. All versions of Senate Bill 226 (Simitian-2011);
2. Complete bill history of Senate Bill 226;
3. Analysis of Senate Bill 226, prepared for the Senate Committee on Environmental Quality;

4. Consent analysis of Senate Bill 226, prepared by the Office of Senate Floor Analyses;

5. Material from the legislative bill file of the Office of Senate Floor Analyses on Senate Bill 226;

Hereafter, these documents are collectively referred to as the “Legislative History.”

**II. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RESPONDENTS’ MOTION REQUESTING JUDICIAL NOTICE**

Respondents move that the court take judicial notice of the attached Legislative History pursuant to Evidence Code sections 452 and 459. The central issue in this case is the application of CEQA Guidelines section 15300.2(c), and its consistency with Public Resources Code section 21084. The Legislative History of section 21084 is therefore relevant to a material issue in this case, and is therefore subject to judicial notice. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 544 fn. 4 [granting request for judicial notice of legislative history materials because the materials were relevant to a material issue in the case].) In *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1127, the Court took judicial notice of the legislative history of Public Resources Code section 21092.1 in CEQA, observing that “our role in interpreting or construing a statute is to ascertain and effectuate the legislative intent.”

The Legislative History was not presented to the trial court or the Court of Appeal.

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The Legislative History does not relate to proceedings occurring after the order or judgment that is the subject of this appeal.

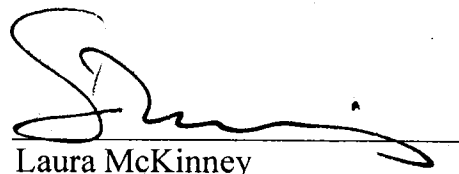
DATED: July 19, 2012

MEYERS, NAVE, RIBACK,  
SILVER & WILSON

By:   
Amrit S. Kulkarni  
Julia L. Bond  
Attorneys for Respondents and  
Real Parties in Interest Mitchell  
Kapor and Freeda Kapor-Klein

DATED: July 20, 2012

ZACH COWAN, City Attorney

By:   
Laura McKinney  
Attorneys for Respondents  
City of Berkeley and City  
Council of the City of Berkeley

**III. DECLARATION OF JULIA L. BOND IN SUPPORT OF RESPONDENTS' MOTION FOR JUDICIAL NOTICE**

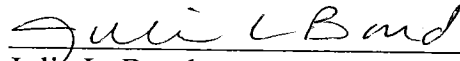
I, Julia L. Bond, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a principal of Meyers, Nave, Riback, Silver & Wilson, attorneys of record for the Kapors in the above captioned action. I have personal knowledge of the facts set forth herein and if called as a witness, I could competently testify to the matters stated herein.

2. Submitted herewith as Exhibit A is a true and correct copy of the Legislative History of Public Resources Code section 21084 as enacted by Assembly Bill 889 (Knox 1972), Chapter 1200, Statutes of 1977. The Legislative History was prepared by Legislative Intent Service, Inc.

3. Submitted herewith as Exhibit B is a true and correct copy of excerpts of the Legislative History of section 21084, subdivision (b) as enacted by Assembly Bill 226 (Simitian 2011), Chapter 469, Statutes of 2011. The Legislative History was prepared by Legislative Intent Service, Inc.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 19, 2012 at Oakland, California.

  
\_\_\_\_\_  
Julia L. Bond

**[PROPOSED] ORDER**

The motion of Respondents City of Berkeley and City Council of the City of Berkeley and Respondents and Real Parties in Interest Mitchell Kapor and Freada Kapor-Klein requesting judicial notice of the Legislative History contained in Exhibits A and B Re: Motion for Judicial Notice of Respondents and Real Parties in Interest is hereby granted.

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUSTICE OF THE SUPREME COURT



**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.

On July 20, 2012, I served true copies of the following document(s) described as **MOTION FOR JUDICIAL NOTICE OF RESPONDENTS AND REAL PARTIES IN INTEREST; [PROPOSED] ORDER GRANTING MOTION FOR JUDICIAL NOTICE OF RESPONDENTS AND REAL PARTIES IN INTEREST** on the interested parties in this action as follows:

Susan Brandt-Hawley Esq.  
Brandt-Hawley Law Group  
13760 Arnold Drive  
Glen Ellen, CA 95442

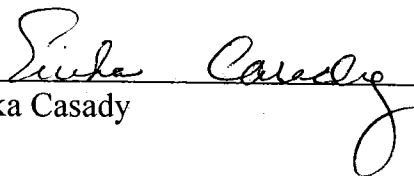
Alameda County Superior Court  
1225 Fallon Street  
Oakland, CA 94612

Court of Appeal  
First District Court of Appeal  
350 McAllister Street  
San Francisco, CA 94102

**BY MAIL:** I enclosed the document in a sealed envelope or package addressed to the person and courts at the addresses listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on July 20, 2012, at Oakland, California.

  
\_\_\_\_\_  
Erika Casady

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.

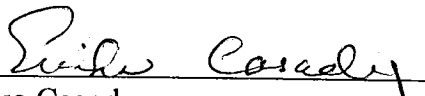
On July 20, 2012, I served true copies of the following document(s) described as **EXHIBITS – Volumes 1 – 4 Re: MOTION FOR JUDICIAL NOTICE OF RESPONDENTS AND REAL PARTIES IN INTEREST** on the interested parties in this action as follows:

Susan Brandt-Hawley Esq.  
Brandt-Hawley Law Group  
13760 Arnold Drive  
Glen Ellen, CA 95442

**BY MAIL:** I enclosed the document in a sealed envelope or package addressed to the person and courts at the addresses listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on July 20, 2012, at Oakland, California.

  
\_\_\_\_\_  
Erika Casady