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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF MARIN**
12

13 SAVE THE PLASTIC BAG COALITION,
14 an unincorporated association,

15 Petitioner,

16 v.

17 COUNTY OF MARIN, a political
18 subdivision of the State of California;
19 MARIN COUNTY DEPARTMENT OF
20 AGRICULTURE, WEIGHTS &
21 MEASURES, an agency of the County of
22 Marin; and DOES 1-100, inclusive,

23 Respondents.
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) Case No. CIV 1100996

)
) Assigned to Judge M. Lynn Duryee
) Dept. L

)
) **PETITIONER'S REPLY BRIEF IN**
) **RESPONSE TO COUNTY'S OPPOSITION**
) **MEMORANDUM AND CALIFORNIANS**
) **AGAINST WASTE'S AMICUS BRIEF**

) Hearing date: September 13, 2011
) Time: 9:00 a.m.
) Department: L
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1 **I. INTRODUCTION AND SUMMARY**

2 Petitioner hereby responds to the County's opposition memorandum
3 (hereinafter "County's brief") and the Californians Against Waste ("CAW") amicus
4 brief.¹ Petitioner makes the following points in this brief:

- 5 **A.** The County made no findings whatsoever and no determination regarding
6 categorical exemptions. It never responded in any way to Petitioner's
7 objections and evidence. We cite clear authority showing that the lack of
8 findings is fatal to the County's position. (*Ukiah* and *CalBeach Advocates*,
9 *infra*.)
- 10 **B.** Categorical exemptions under CEQA Guidelines §15307 and §15308 are
11 unavailable if there is no "regulatory process" involving "procedures for
12 protection of the environment." There is no such regulatory process
13 regarding the banning of plastic bags. In the only case cited by the County
14 and CAW on this point, there was a comprehensive federal and state
15 regulatory scheme for the protection of the environment, which the County
16 and CAW fail to mention. (*Magan*, *infra*.)
- 17 **C.** The County is not permitted to rely on the 5-cent fee or any other mitigation
18 measure as a ground for relying on categorical exemptions. We cite clear
19 authority for this strict rule. (*Azusa Land* and *Salmon Protection*, *infra*.)
- 20 **D.** Petitioner made a fair argument that banning plastic bags would have
21 significant negative effects on the environment as a result of the proliferation
22 of paper and reusable bags. The LA County EIR addressed and calculated
23 specific impacts within a large area of California and found that significant
24 negative environmental impacts would occur, even with a 10-cent paper bag
25 fee. The LA County EIR is indisputably substantial evidence.

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28 ¹ On August 19, 2011, this Court approved Petitioners' request to file a joint reply to the
County's and CAW's briefs with a 15-page limit.

1 E. The Legislature's grand solution for plastic bags in AB 2449 is to recycle
2 them and protect them from local interference. Therefore, local plastic bans
3 are preempted.

4 II. ARGUMENT

5 A. The County Made No Determination Or Findings Regarding Categorical 6 Exemptions And Petitioner Therefore Objects

7 The County's brief is based entirely on categorical exemptions. However, the
8 County never made any findings regarding categorical exemptions. The Board of
9 Supervisors did not adopt a resolution regarding categorical exemptions or even vote
10 on the issue. The only action taken by the County regarding categorical exemptions
11 was a Notice of Exemption dated February 3, 2011, nine days after the Ordinance was
12 adopted. (AR tab E at 6.)

13 CAW argues that the County was not required to make findings. (CAW brief at
14 12.) However, the two cases cited by CAW stand for the *opposite* proposition. The first
15 case cited by CAW is *Ass'n for Protection of Environmental Values v. City of Ukiah*
16 (1991) 2 Cal.App.4th 720. In that case, the court stated:

17 *East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula*
18 *Unified School Dist., supra*, 210 Cal.App.3d 155, does not
19 require findings of the nonexistence of each of the exceptions
20 to a categorical exemption. Rather, it requires the agency to
21 consider the issue of significant effects and cumulative
22 impacts of a proposed project in determining whether the
project is exempt from CEQA where there is some information
or evidence in the record that the project might have a
significant environmental effect. (*Id.*, at pp. 171-173.)

23 The second case cited by CAW is *CalBeach Advocates v. City of Solana Beach* (2002)
24 103 Cal.App.4th 529, in which the court stated:

25 Categorical exemptions, then, are for projects that do not
26 involve ministerial decisions and may not be used if a
27 particular project has a significant or cumulatively significant
28 effect. (Guidelines, § 15300.2.) Accordingly, the determination
that a project falls under a categorical exemption requires
discretionary factfinding.

1 (*Id.* at 540-541.)

2 In its opposing brief, the County argues ***for the first time*** that the Petitioner's
3 evidence is not substantial evidence that there may be significant negative
4 environmental impacts. The County made no such finding. Before the County filed its
5 opposing brief in this case, it had never responded to or made findings regarding
6 Petitioner's Objections and evidence.² The County also never made a finding that "the
7 regulatory process involves procedures for protection of the environment" as required
8 by Guidelines §15307 and §15308.

9 The County failed to follow the required procedure and thereby waived and
10 forfeited its right to rely on categorical exemptions. Therefore, Petitioner objects to the
11 County's assertion of and all of its arguments in support of categorical exemptions.
12 The remainder of this brief does not waive that objection.

13 **B. The Categorical Exemptions Are Inapplicable**

14 If plastic bag bans are categorically exempt from CEQA, the Supreme Court
15 would have said so in the *Manhattan Beach* case. Why would the Supreme Court
16 engage in an extensive analysis of CEQA requirements regarding plastic bag bans if
17 such bans are exempt? In fact the Supreme Court stated: "According to plaintiff, the
18 movement to ban plastic bags is a broad one, active at levels of government where an
19 appropriately comprehensive environmental review ***will be required.***" (*Manhattan*
20 *Beach*, Slip Op. at 23, n.10, emphasis added.)³ In other words, plastic bags are most
21 definitely *not* exempt from CEQA.

22 Guidelines §15307 and §15308 state that they only apply "where the regulatory
23 process involves procedures for protection of the environment." Guidelines §15307
24 gives an example:

25 _____
26 ² The Agricultural Commissioner's letter is dated December 7, 2011 (AR tab #83), two
27 weeks before Petitioner submitted its Objections on December 28, 2011.

28 ³ To be consistent with the opening brief and the County's brief, Petitioner continues to
cite the *Manhattan Beach* slip opinion. The case has since been reported at 52 Cal.4th
155.

1 Class 7 consists of actions taken by regulatory agencies as
2 authorized by state law or local ordinance to assure the
3 maintenance, restoration, or enhancement of a natural
4 resource where the regulatory process involves procedures
5 for protection of the environment. *Examples include but are
not limited to wildlife preservation activities of the State
Department of Fish and Game.*

6 (Emphasis added.) The State Department of Fish and Game has promulgated
7 regulations to protect wildlife. See <http://www.fgc.ca.gov/regulations/2011/#360>. There
8 is an entire “*regulatory process*” in place for that purpose including “*procedures*” for
9 protection of the wildlife that cities and counties must follow. There is no “regulatory
10 process” for banning plastic bags that contains “procedures” for the protection of the
11 environment with respect to the environmental problems caused by a proliferation of
12 paper bags and reusable bags. The County cannot wish away the language of §15307
13 and §15308.

14 Petitioner produced substantial evidence that paper bags may cause significant
15 negative environmental impacts. “Where there is a reasonable possibility that a project
16 or activity may have a significant effect on the environment, an exemption is improper.”
17 (*Int’l Longshoremen’s & Warehousemen’s Union v. Board of Supervisors* (1981) 116
18 Cal.App.3d 265, 276.)

19 The County cites *Magan v. County of Kings* (2002) 105 Cal.App.4th 468.
20 (County brief at 9.) Kings County banned the dumping of sewage sludge on
21 agricultural land. It claimed that the ban was exempt under Guidelines §15308 and the
22 court agreed. The *Magan* case is easily distinguishable for two reasons that the
23 County and CAW fail to mention.

24 First, the dumping of sewage sludge was subject to “federal and state
25 regulations.” (*Magan, supra*, at 471.) The Code of Federal Regulations sets “standards
26 ... for sewage sludge applied to the land.” (40 C.F.R. part 503.1(a)(1).) For example,
27 composed “Exception Quality Sewage Sludge” was determined by the U.S.
28 Environmental Protection Agency to be acceptable for spreading on agricultural land.
Therefore such sludge was exempt from the Kings County ban. (*Id.*) The following

1 paragraph in the *Magan* opinion confirms that spreading of sewage sludge to
2 agricultural land is subject to a regulatory process for environmental protection:

3 Class B sewage sludge must meet the pathogen reduction
4 standards set forth in 40 Code of Federal Regulations part
5 503.32(b) (2002). Class A sewage sludge must meet the
6 higher pathogen reduction standards set forth in 40 Code of
7 Federal Regulations part 503.32(a) (2002). Exceptional quality
8 sewage sludge must meet one of the class A pathogen
9 reduction alternatives set forth in 40 Code of Federal
10 Regulations part 503.32(a) and the more stringent pollution
11 concentration standards set forth in 40 Code of Federal
Regulations part 503.13(b) (3) (2002). Finally, EQ-Compost,
organic composted material containing sewage sludge, must
meet the standards for Exceptional Quality Sewage Sludge
and undergo a process to further reduce the amount of
pathogens and reach a stage of reduced biological activity.

12 (*Magan, supra.* at 471-472.) There were comprehensive environmental protections and
13 procedures already in place and there was no need to Kings County to second-guess
14 the EPA on sewage sludge impacts.

15 Second, the appellant in *Magan* produced no evidence of a potential adverse
16 environmental impact. The court found that “Appellant has failed to support his claims
17 with *any* evidence in the record.” (*Id.* at 477, emphasis *by court.*)

18 Marin County relied solely on two categorical exemptions as the basis for not
19 preparing an Initial Study or EIR. There is no way that the County can overcome the
20 lack of an existing regulatory process to protect the environment from a proliferation of
21 paper and reusable bags. If the County loses the exemption argument, the Ordinance
22 is invalid.

23
24 **C. The County Was Not Permitted To Take Into Account The 5-Cent Paper**
25 **Bag Fee When Determining Whether The Project Was Exempt**

26 The County states that it “agrees” with Petitioner’s arguments about the
27 negative environmental impacts of paper bags. (County brief at 1.) That is an important
28 concession that waives the County’s defense.

1 The County tries to save itself by suggesting that the 5-cent paper bag fee is
2 somehow a regulatory process that would qualify the ordinance for a categorical
3 exemption. (County brief at 2.) CAW makes a similar argument. (CAW brief at 14.) It is
4 a bootstrap approach that has been rejected by the Court of Appeal. In *Azusa Land*
5 *Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165,
6 the court stated:

7 In determining whether the significant effect exception to a
8 categorical exemption exists, “[i]t is the possibility of a
9 significant effect ... which is at issue, not a determination of
10 the actual effect, which would be the subject of a negative
11 declaration or an EIR. Appellants cannot escape the law by
taking a minor step in mitigation and then find themselves
exempt from the exception to the exemption.”

12 The reason is not simply because that is what the Guidelines
13 require; the fundamental reason is substantive. The
14 Guidelines dealing with the second phase of the
15 environmental review process [the Initial Study resulting in a
16 possible Mitigated Negative Declaration] contain elaborate
17 standards -- as well as significant procedural requirements --
18 for determining whether proposed mitigation will adequately
protect the environment and hence make an EIR
unnecessary; in sharp contrast, the Guidelines governing
preliminary review do not contain any requirements that
expressly deal with the evaluation of mitigation measures.

19 (*Id.* at 1200, citations omitted.) In *Salmon Protection & Watershed Network v. County*
20 *of Marin* (2004) 125 Cal.App.4th 1098, the court stated:

21 As the trial court properly found, the County erred in relying
22 upon mitigation measures to grant a categorical exemption
23 from CEQA.... If a project may have a significant effect on the
24 environment, CEQA review must occur, and only then are
25 mitigation measures relevant.... The County made a
premature and unauthorized environmental evaluation at the
preliminary stage of considering eligibility for a categorical
exemption.

26 (*Id.* at 1107-1108; see “*Can’t Mitigate Your Way To A Categorical Exemption, Court*
27 *Says.*” <http://www.cp-dr.com/node/443>.)
28

1 LA County in its EIR found that a plastic bag ban with a 10-cent fee would have
2 significant negative environmental impacts. Therefore, Marin County must accept that
3 there will be a significant negative impacts resulting from its Ordinance, *as it must be*
4 *assumed for the purpose of categorical exemptions that there would be no fee at all on*
5 *paper bags.*

6 In any event, and without waiving the point that mitigation measures cannot
7 form part of a categorical exemption determination, the County's mitigation measures
8 would not ensure that there would be no significant negative environmental impacts.
9 The 5-cent paper bag fee is too low and there is no fee at all on reusable bags.

10 The County points to the example of the District of Columbia, which has a 5-
11 cent fee on plastic and paper bags. Petitioner pointed out in the opening brief that
12 massive amounts of reusable bags have been are being given away in DC. But more
13 importantly:

- 14 • Section 6(b) of the DC law states that part of the fee collected by stores shall
15 be remitted to the city and used for "[p]roviding reusable carryout bags to
16 District residents, with priority distribution to seniors and low-income
17 residents." (AR tab #84.) **Marin County does not have a similar program.**
- 18 • DC regulations provide that stores may credit customers 5 cents for every
19 reusable bag that a customer brings to the store to carry his or her goods.
20 (AR tab #80.) If they do give such credits, stores may keep two cents out of
every five cents they charge for plastic or paper bags. **Marin County does**
not have a similar program.

21 Referring to DC, the County states: "But petitioner fails to mention that County
22 has also implemented many of these same outreach and education programs."
23 (County brief at 12.) The County refers to 1 AR Tab A at pages 6-9. When we review
24 those pages, we can see that he County has given away 14,837 reusable bags since
25 2007 at farmers markets, festivals, and the County Fair. But there is not one word
26 about any *future* giveaways in Marin County. There is no institutionalized program
27 regarding reusable bags in Marin County similar to the one incorporated in DC law.
28 Comparing DC and Marin County is comparing apples and oranges.

1 **D. Petitioner Made A Fair Argument Regarding Significant Negative**
2 **Environmental Impacts**

3 The Supreme Court said that the analysis applicable to a small city such as
4 Manhattan Beach does not apply to a “larger governmental body, which might
5 precipitate a significant increase in paper bag consumption.” (*Manhattan Beach*, Slip
6 Op. at 22.) The court also ruled that “cumulative impacts should not be allowed to
7 escape review when they arise from a series of small-scale projects.” In such cases, a
8 “comprehensive environmental review will be required.” (*Id.* at 23, n.10.)

9 The Agricultural Commissioner’s letter concedes that “paper bags have
10 *significantly* larger GHG emissions and result in greater atmospheric acidification,
11 water consumption and ozone production than plastic bags.” (AR tab #83 at page 3,
12 emphasis added.) While the Supreme Court cautioned against “overreliance” on life
13 cycle assessments for small cities, it also said that they “may well be a useful guide for
14 the decisionmaker when a project entails substantial production or consumption of the
15 product.” (*Manhattan Beach*, Slip Op. at 24.) The Supreme Court definitely did ***not*** say
16 that life cycle assessments are inapplicable to plastic bag bans. By not precluding their
17 applicability, the Supreme Court confirmed their applicability.

18 CAW asserts that the Supreme Court in *Manhattan Beach* found that the life
19 cycle studies are too generic because they did not present evidence tailored to the city.
20 (CAW brief at 10.) In fact, the Supreme Court found no such thing. The Supreme Court
21 said that Manhattan Beach was too small for the application of life cycle studies to
22 determine environmental impacts. (*Manhattan Beach*, Slip Op. at 23.) But following
23 that statement the court said that “the analysis would be different for a ban on plastic
24 bags by a larger governmental body, which might precipitate a significant increase in
25 paper bag consumption.” (*Id.*)⁴

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28 ⁴ No EIR was in evidence in the *Manhattan Beach* case as none existed at the time of
adoption of the Manhattan Beach ordinance in July 2008. The LA County EIR was
certified in 2010.

1 Petitioner only had to present a fair argument, not a tailored study. (*City of*
2 *Ukiah, supra*, 2 Cal.App.4th at 728.) In *Sundstrom v. County of Mendocino* (1988) 202
3 Cal.App.3d 296, the court stated:

4 The agency should not be allowed to hide behind its own
5 failure to gather relevant data.... CEQA places the burden of
6 environmental investigation on government rather than the
7 public. If the local agency has failed to study an area of
8 possible environmental impact, a fair argument may be based
9 on the limited facts in the record. Deficiencies in the record
may actually enlarge the scope of fair argument by lending a
logical plausibility to a wider range of inferences.

10 (*Id.* at 311.)

11 The LA County EIR is a major part of the evidence that Petitioner presented to
12 the County. (Objections at 39-40.) It is not generic and it is not a life cycle assessment.
13 It is a comprehensive detailed environmental study that addresses and calculates
14 specific environmental impacts of a plastic bag ban in all 88 cities and the
15 unincorporated parts of LA County and determines that there would be significant
16 negative environmental impacts. The LA County EIR is *indisputably* substantial
evidence.⁵

17 The Agricultural Commissioner asserts that one of the reasons for the
18 Ordinance is that there are no recycling markets for plastic bags. (AR tab #83 at page
19 4.) If the recycling of plastic bags is relevant, then the recycling of paper bags and
20 reusable bags are also relevant.⁶

21 How will Marin Sanitary Service and other local waste management entities
22 cope with an increase in paper bags and reusable bags coming through the recycling
23 and waste stream? As CAW acknowledges, stores can remove their plastic bag
24 recycling bins in plastic bags are banned. (CAW brief at 6.) If that is the case, then
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26 ⁵ The LA County EIR can be used as a template by Marin County for its own EIR,
thereby reducing time, expense, and workload.

27 ⁶ In fact, there are plastic bag recycling bins at supermarkets and other stores in Marin
28 County covered by AB 2449. There are good markets for recycled plastic bags
deposited in the bins, including Trex, AERT, and Hilex and other recyclers. (Objections
at 9; AR tabs ##50-54.)

1 consumers will have no way to recycle their plastic reusable bags. (Such bags are
2 permitted under Ordinance §5.46.030.) The County made no finding on this issue.

3 Petitioner's Objections address the recycling and disposal issue extensively,
4 including the issue of toxic substances such as lead in reusable bags and the impact of
5 those in landfills. (Landfills are addressed in the Objections at 5, 13, 14, 25, 27, 28, 30,
6 33.)

7 CAW also argues that the Supreme Court ruled that only environmental impacts
8 in the project area may be considered. (CAW brief at 10, 14.) The Supreme Court
9 actually said the exact opposite. It stated as follows:

10 “ [T]he project area does not define the relevant environment
11 for the purpose of CEQA when a project's environmental
12 effects will be felt outside the project area.’ [Citation.] Indeed,
13 ‘the purpose of CEQA would be undermined if the appropriate
14 governmental agencies went forward without an awareness of
15 the effects a project will have on areas outside of the
16 boundaries of the project area.’ [Citation.]” (*Muzzy Ranch Co.*
v. Solano County Airport Land Use Com., *supra*, 41 Cal 4th at
17 p. 387.)

18 (*Manhattan Beach*, Slip Op. at 21.) The court said that there can be “less detail” about
19 impacts outside the project area. (*Id.* at 23.) The court certainly did not say that those
20 impacts can be ignored, as CAW wrongly maintains.

21 The County points out that no project can qualify for a categorical exemption
22 “when the cumulative impact of successive projects of the same type in the same
23 place, over time is significant.” (County brief at 13 *citing* Guidelines §15300.2.) This
24 limitation makes sense in the context of a categorical exemption.

25 Suppose county X proposes to ban the spreading of sewage sludge on
26 agricultural land and that counties Y and Z have already adopted bans on the same
27 subject. Counties Y and Z are subject to the federal regulatory process, meaning that
28 there is no concern of an accumulation of *unregulated* environmental impacts in those
other places. The “same place” language of §15300.2 highlights the importance of the
regulatory process requirement.

1 The County says that other cities in Marin have not yet acted so only
2 unincorporated parts of the County are relevant to the discussion. (County brief at 14.)
3 The County is proposing a CEQA shell game under which the County goes first and
4 then each city passes a ban and an Initial Study or EIR remains elusive and undone.
5 This Court should not permit such a ruse. The County should be required to prepare
6 the Initial Study for the entire county, taking into account the possibility and its plan
7 that all parts of the county will be covered by a plastic bag ban.

8 In *San Franciscans for Reasonable Growth v. City and County of San Francisco*
9 (1984) 151 Cal.App.3d 61, 75, the court stated:

10 [W]e must reject the argument that, because some of the
11 projects under review might never be built, it was reasonable
12 for the Commission not to consider any of them in its
13 cumulative analyses. Such argument is without merit. The fact
14 that the EIR's subject project itself might be built, rather than
15 the fact that it might not be built, creates the need for an EIR.
16 Similarly, the fact that other projects being reviewed are as
17 close to being built as the subject project makes it reasonable
18 to consider them in the cumulative analyses.

19 We also reject the argument that the Commission was entitled
20 to ignore projects that have not passed all regulatory hurdles.

21 The County can run, but it cannot hide from its master plan for the entire county.⁷

22 **E. Response To Arguments Regarding Preemption**

23 The County asks this Court to disregard the Governor's statement on the
24 ground that it is technically not part of the legislative history. However, the Governor's
25 statement confirms that the legislative scheme precludes local bans.

26 CAW argues that there is no conflict between AB 2449 and the Ordinance.
27 (CAW brief at 4.) In the opening brief, Petitioner discusses how the Ordinance conflicts
28 with and disrupts the statewide scheme. One only has to look at the definitions of

⁷ Petitioner was surprised to read the following in the County's brief at page 14: "As petitioner concedes, unincorporated Marin County is actually smaller than the city of Manhattan Beach and has significantly less commercial enterprise." Petitioner has made no such concession.

1 “reusable bags” in AB 2449 and the Ordinance to see another conflict. (Pub. Res.
2 Code §42250(d); Ordinance §5.46.030.) Surely by defining a reusable bag in a
3 statewide bill, the Legislature was precluding conflicting definitions of reusable bags.

4 As CAW points out, AB 2449 declares areas of statewide concern: (1) requiring
5 a store to collect, transport, or recycle plastic bags; (2) imposing a plastic bag fee; and
6 (3) requiring a store to conduct auditing or reporting with regard to plastic bags. CAW
7 argues that as a plastic bag *ban* is not expressly mentioned, a city or county may ban
8 them. (CAW brief at 5 *citing* Pub. Res. Code §42254(a).) CAW’s argument makes no
9 sense. The Legislature was clearly preempting *any* local regulation of plastic bags,
10 including bans. It was *protecting* plastic bags from local interference. Why would the
11 Legislature prohibit local fees on plastic bags designed to reduce their usage, but allow
12 local bans of plastic bags designed to reduce their usage? It would not. The
13 Legislature’s grand statewide solution is to *recycle* plastic bags, not ban them. AB
14 2449 promotes recycling, including installation of plastic bag recycling bins in stores.

15 “Whenever the Legislature has seen fit to adopt a general scheme for the
16 regulation of a particular subject, the entire control over whatever phases of the subject
17 are covered by state legislation ceases as far as local legislation is concerned.”
18 (*American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1253.)
19 No express preemption language is necessary for preemption to occur. (*Id.* at 1252.)

20 **III. CONCLUSION**

21 This Court is requested to grant the Petition and issue a writ of mandate
22 invalidating the Ordinance.
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DATED: August 22, 2011

STEPHEN L. JOSEPH

A handwritten signature in black ink, appearing to be 'S. L. Joseph', with a long horizontal stroke extending to the right.

Attorney for Petitioner
SAVE THE PLASTIC BAG COALITION

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PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am over the age of 18 and not a party to the within action. My business address is 350 Bay Street, Suite 100-328, San Francisco, CA 94133.

On August 22, 2011, I deposited copies of PETITIONER'S REPLY BRIEF IN RESPONSE TO COUNTY'S OPPOSITION MEMORANDUM AND CALIFORNIANS AGAINST WASTE'S AMICUS BRIEF in sealed envelopes with postage fully prepaid in the United States Mail at San Francisco, California. The envelopes were addressed as follows:

Patrick K. Faulkner
COUNTY COUNSEL
David L. Zaltsman, Deputy
3501 Civic Center Drive, #275
San Rafael, CA 94903

Rachel Vida
3307 Seabright Avenue
Davis, CA 95616

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 date of deposit for mailing stated herein.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 22, 2011 at San Francisco, California.
