



October 23, 2014

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Honorable Tani Cantil-Sakauye, Chief Justice
and Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-3600

Re: *City of Pasadena v. Superior Court (Mercury Casualty Co.)*
Case No. S221455 (Court of Appeal No. B254800)
**Letter in Support of Request for Depublication (Cal. Rules of
Court, rule 8.1125(b))**

To the Chief Justice and the Associate Justices of the California Supreme Court:

The California State Association of Counties ("CSAC"), the Association of California Water Agencies ("ACWA"), the California Special Districts Association ("CSDA"), and the Midpeninsula Regional Open Space District ("Midpen") write in support of the depublication request filed by the League of California Cities ("League") and the California Park & Recreation Society ("CPRS").

I. Interest in the Case

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of County Counsels throughout the State. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case raises issues affecting all counties. Specifically, many counties have enacted tree, canopy or forest plans, and have significant concern that this opinion, which constitutionalizes the issue of damages caused by trees included in such plans, is inappropriate and risks the continuation of these important planning tools.

ACWA is a non-profit public benefit corporation organized and existing under the laws of the state of California since 1910. ACWA is comprised of over 450 water agencies, including cities, municipal water districts, irrigation districts, county water districts, California water districts and special purpose agencies. ACWA's Legal Affairs Committee, comprised of attorneys from each of ACWA's regional divisions throughout the State, monitors litigation and has determined that this case involves

issues of significance to ACWA's member agencies. By unanimous vote, the ACWA Legal Affairs Committee determined to seek depublication of this opinion.

CSDA is a nonprofit association representing approximately 1,000 special districts throughout California. These special districts provide a wide variety of public services to both suburban and rural communities, including fire suppression and emergency medical services; water supply, treatment and distribution; sewage collection and treatment; recreation and parks; security and police protection; airport services; harbor and port services; solid waste collection, transfer, recycling and disposal; cemeteries; libraries; mosquito and vector control; road construction and maintenance; pest control and animal control services. CSDA monitors litigation of concern to its members and identifies those cases that are of statewide significance. CSDA has identified this case as being of such significance in light of its dramatic expansion of inverse condemnation strict liability for public agencies, its disregard of the well recognized cause of action in the Government Claims Act for dangerous condition of public property and immunities related thereto, and the severe adverse effect on public agency finances resulting from this decision if allowed to stand.

Midpen is a special district, formed by the voters in 1972, with the mission to acquire and preserve a regional greenbelt of open space land in perpetuity; protect and restore the natural environment; and provide opportunities for ecologically sensitive public enjoyment and education. Midpen presently owns and manages over 62,000 acres, including more than 30,000 acres of forest and woodland habitat preserved, restored and actively managed by Midpen staff, and approximately 250 miles of hiking trails. Midpen's district boundaries cover an area of 550 square miles, located proximate to and serving as an open space buffer for a large, densely populated urban area, which includes all or a portion of 17 cities: Atherton, Cupertino, East Palo Alto, Half Moon Bay, Los Altos, Los Altos Hills, Log Gatos, Menlo Park, Monte Sereno, Mountain View, Palo Alto, Portola Valley, Redwood City, San Carlos, Saratoga, Sunnyvale, and Woodside. Midpen has identified this opinion as one that has the potential to significantly expand its liability related to the forests it manages and maintains. More broadly, this decision could weaken important government immunities relied on by Midpen under the California Government Claims Act to protect it from liability for a variety of natural conditions on public property.

II. The League/CPRS Depublication Request Should Be Granted

CSAC, ACWA, CSDA, and Midpen concur in the arguments set forth in the depublication request filed by the League and CPRS. That request correctly notes that the opinion expands damages in an unprecedented way by allowing a constitutional claim for inverse condemnation to go forward for occurrences that had, until this decision, been

limited by the California Government Claims Act (Gov. Code, §§ 810-996). As the depublication request makes clear, this expansion not only conflicts with well-established law on the application of article 9, section 19 of the California Constitution, but also allows plaintiffs to avoid the carefully constructed restrictions of the Government Claims Act.

The scope of this opinion contains no language limiting its application to urban trees plans along a street, but appears to apply to a wide variety of public facilities. Indeed, trees and other natural features are often included as environmental mitigation, -- such as habitat replacement, visual screening of facilities, assuring neighborhood compatibility, and general beautification -- in connection with public improvements necessary for water supply, storage, transmission, and distribution projects, as well as flood control. Midpen and members of CSAC, CSDA, and ACWA have a variety of operations subject to this opinion, including electrical generation facilities, and countless parks and recreational facilities, which often contain trees and similar natural features. The strict liability imposed by this opinion expands exposure for these operations far beyond that contemplated by the Legislature in the Government Claims Act. CSAC, ACWA, CSDA and Midpen therefore support the depublication request pending before this Court.

III. Conclusion

For the foregoing reasons, CSAC, ACWA, CSDA and Midpen District support the League/CPRS request for depublication, and respectfully urge this Court to grant the request.

Respectfully Submitted,



Jennifer B. Henning, SBN 193915

Litigation Counsel

California State Association of Counties

On behalf of CSAC, ACWA, CSDA
and Midpen

Proof of Service Attached

Proof of Service by Mail
City of Pasadena v. Superior Court
Case No. S221455

I, MARY PENNEY, declare:

That I am, and was at the time of the service of the papers herein referred to, over the age of eighteen years, and not a party to the within action; and I am employed in the County of Sacramento, California, within which county the subject mailing occurred. My business address is 1100 K Street, Suite 101, Sacramento, California, 95814. I served the within **LETTER IN SUPPORT OF DEPUBLICATION REQUEST** by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

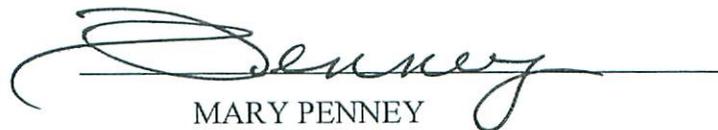
Proof of Service List

Party	Attorney
City of Pasadena : Petitioner	Michele Beal Bagneris City Attorney's Office 100 N. Garfield Avenue, Room N210 Pasadena, CA 91109 Michael G. Colantuono Colantuono, Highsmith & Whatley, PC 300 S. Grand Avenue, Suite 2700 Los Angeles, CA 90071
Superior Court of Los Angeles County : Respondent	Frederick Bennett Superior Court of Los Angeles County 111 North Hill Street, Room 546 Los Angeles, CA 90012
Mercury Casualty Company : Real Party in Interest	Timothy E. Cary Law Offices of Robert A. Stutman, P.C. 3230 E. Imperial Highway, Suite 312 Brea, CA 92211 Timothy E. Cary Law Offices of Robert A. Stutman, P.C. 75-145 St. Charles Place, Suite 1 Palm Desert, CA 92211

League of California Cities et al: Pub/Depublication Requestor	Manuela Albuquerque BURKE WILLIAMS AND SORENSEN LLP 1901 Harrison Street Oakland, CA 94612-3501
Court of Appeal	Court of Appeal Second District, Division 3 Ronald Reagan State Building 300 S. Spring Street 2nd Floor, North Tower Los Angeles, CA 90013

and by placing the envelopes for collection and mailing following our ordinary business practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 23, 2014, at Sacramento, California.


MARY PENNEY