

S277628

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

| | |
|--|--|
| BARBARA MORGAN et al., Plaintiffs and Appellants, v. YGRENE ENERGY FUND, INC. et al., Defendants and Respondents. | Supreme Court Case # S277628 D079364 (4th Dist. Div. 1) (Super. Ct. No. 37-2019-00052045- CU-OR-CTL) |
| JANET ROBERTS et al., Plaintiffs and Appellants, v. RENEW FINANCIAL GROUP, LLC et al., Defendants and Respondents. | D079369 (4th Dist. Div. 1) (Super. Ct. No. 37-2019-00059601- CU-OR-CTL) |

San Diego County Sup. Ct. Cases 37-2019-00059601-CU-OR-CTL &
37-2019-00052045-CU-OR-CTL

Hon. Richard S. Whitney, Department 68, (619) 450-7068

**APPLICATION TO FILE A [PROPOSED] AMICUS CURIAE BRIEF OF
THE CALIFORNIA STATE ASSOCIATION OF COUNTIES AND THE
COUNTY ASSESSORS' ASSOCIATION IN SUPPORT OF DEFENDANTS
AND RESPONDENTS YGRENE ENERGY FUND, INC. ET AL. ON MORE
LIMITED EXHAUSTION OF REMEDIES GROUNDS**

Thomas R. Parker
Senior Deputy County Counsel
County of Los Angeles
Office of the County Counsel
500 West Temple Street, Room 652
Los Angeles, California 90012
(213) 974-1834/ tparker@counsel.lacounty.gov
Attorneys for Amici Curiae
Counsel for the California State Association of
Counties and County Assessors' Association

APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE
JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to Rule 8.520(f) of the California Rules of Court, the California State Association of Counties ("CSAC") and the County Assessors' Association ("CAA") respectfully request permission to file the accompanying Amicus Curiae Brief seeking clarification of the Assessment Appeals Board ("AAB") administrative remedy ruling in Barbara Morgan et al., v. Ygrene Energy Fund, Inc. et al., and Janet Roberts et al., v. Renew Financial Group, LLC et al., in support of Defendants and Respondents on the limited exhaustion of administrative remedies ground of failure to file a claim for tax refund only.¹

INTEREST OF AMICI CURIAE

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 is a matter affecting all counties.

¹ No party or counsel for a party authored the attached brief, in whole or in part. No one made a monetary contribution intended to fund the preparation or submission of this brief. (Cal. Rules of Court, rule 8.520(f)(4).)

CAA is a Statewide non-profit professional association for County Assessors representing each of California's 58 counties. The CAA was formed in 1902 and is dedicated to improving California assessment procedures and laws for the public good. By virtue of their roles as assessors, the members of the CAA possess considerable expertise with respect to property appraisal and assessment.

The issue of exhausting the appropriate administrative remedy for taxpayers entering into Property Assessed Clean Energy ("PACE") contractual special benefit assessment agreements challenging aspects of their contractual agreement is of direct relevance to members of CSAC and CAA because all 58 counties conduct quasi-judicial administrative hearings of ad valorem property tax appeals filed by taxpayers as a constitutional matter, whether those hearings are conducted by the county board of supervisors acting as the local board of equalization or the particular county board enacted an ordinance creating assessment appeals boards (collectively AABs). Further, all 58 members of CSAC, by law, issue county property tax bills to taxpayers with not only ad valorem property tax amounts owing, but also charges, special benefit assessments, parcel taxes, and fees (collectively "direct charges") that are not dependent on or impact the setting of ad valorem property by the county assessor and resulting ad valorem taxes.

NEED FOR FURTHER BRIEFING AND CLARIFICATION FROM THIS
COURT

Amici's counsel is familiar with the issues before this Court and the scope of their presentation and believes that further briefing is necessary to address matters not fully addressed by the parties' briefs. Amici wishes to address the following legal issues before this Court:

(1) The appropriateness of the lower court's holding that AABs possess jurisdictional authority to, and should hear, administrative claims of PACE claimants challenging one or more aspects of the PACE Program they entered into as an appropriate administrative remedy prior to filing a lawsuit in Superior Court; and

(2) The risk of the lower court decision being utilized in future litigation as legal authority for taxpayers being required to exhaust administrative remedies by filing AAB appeals of direct charges placed on the county property tax bills which do not relate to the county assessor's constitutional and statutory setting of ad valorem property tax value or making ad valorem property tax determinations related to ad valorem property tax valuation.

CONCLUSION

For the foregoing reasons, CSAC and CAA respectfully request the status of Amicus Curiae in this action and further request that the accompanying brief be accepted for consideration by this Court. As required, all parties are hereby served with this Application and the proposed Amicus Brief.

TABLE OF CONTENTS

| | <u>Page</u> |
|---|--------------------|
| I. INTRODUCTION | 1 |
| II. AABS HAVE NO CONSTITUTIONAL OR STATUTORY JURISDICTIONAL AUTHORITY TO HEAR PACE APPEAL APPLICATIONS | 2 |
| A. SUMMARY OF LOWER COURT RATIONALE | 2 |
| B. CONSTITUTIONAL, STATUTORY, AND REGULATORY JURISDICTIONAL AUTHORITY OF AABS | 4 |
| C. LOCAL BOARDS OF EQUALIZATION AND AABS' ADMINISTRATIVE APPEAL JURISDICTION REQUIRES A NEXUS BETWEEN A COUNTY ASSESSOR'S LOCAL ROLL VALUATION DECISION AND THE ACTION COMPLAINED OF ON APPEAL..... | 7 |
| D. AABS ARE NOT ARTICLE VI COURTS OF LAW | 8 |
| E. PACE SPECIAL BENEFIT ASSESSMENT DISPUTES ARE NOT WITHIN THE JURISDICTION OF AABS | 8 |
| F. AABS ARE NOT PROCEDURALLY EQUIPPED TO HEAR PACE APPEALS | 10 |
| III. AABS ARE NOT APPROPRIATE ADMINISTRATIVE REMEDY FORUMS FOR TAXPAYER CHALLENGES TO NON-AD VALOREM PROPERTY TAX "DIRECT CHARGES" PLACED ON COUNTY TAX BILLS | 14 |
| IV. CONCLUSION..... | 17 |

Document received by the CA Supreme Court.

TABLE OF AUTHORITIES

Page

CASES

Apple Computer, Inc. v. County of Santa Clara Assessment Appeals Board
(2003) 105 Cal.App.4th 1355 6

Hanjin Intern. Corp. v. Los Angeles County
Metropolitan Transportation Authority
(2003) 110 Cal.App.4th 1109 15

Harmony Gold U.S.A., Inc. v. County of Los Angeles
(2019) 31 Cal.App.5th 820 4

Kahan v. City of Richmond
(2019) 35 Cal.App.5th 721 3

Morgan v. Ygrene Energy Fund, Inc.
(2022) 84 Cal.App.5th 1002 passim

Plaza Hollister Ltd. Partnership v. County of San Benito
(1999) 72 Cal.App.4th 1 4

Steinhart v. County of Los Angeles
(2010) 47 Cal.4th 1298 4, 6

Williams & Fickett
(2017) 2 Cal.5th 1258 10

STATUTES

California Code of Regulations, Title 18, section 302..... 7

California Code of Regulations, Title 18, section 313(e)..... 11

California Code of Regulations, Title 18, section 322(f)..... 11

California Code of Regulations, Title 18, sections 301-326..... 7

Government Code, section 15606..... 7

Revenue and Taxation Code, section 1606..... 11

Revenue and Taxation Code, section 408..... 11

Revenue and Taxation Code, section 441..... 11

Revenue and Taxation Code, section 454..... 11

Revenue and Taxation Code, section 468..... 11

Revenue and Taxation Code, sections 1601, et seq..... 1

Revenue and Taxation Code, sections 1624 to 1624.05 6

Revenue and Taxation Code, sections 2602, et seq..... 1

Streets and Highways Code, section 5898.15..... 9

Streets and Highways Code, section 5898.16..... 9

Streets and Highways Code, section 5898.17..... 8

Streets and Highways Code, section 5898.17, subdivision a..... 9

Streets and Highways Code, sections 5000, et seq. 8

Streets and Highways Code, sections 5898.14, et seq..... 5

OTHER AUTHORITIES

59 Ops.Cal.Atty.Gen. 182 (1976)..... 6

CONSTITUTIONAL PROVISIONS

California Constitution, Article XIII, section 16 1

California Constitution, Article XIII, section 19 7

I. INTRODUCTION

The California Constitution, at Article XIII, Section 16, requires the county government to operate a quasi-judicial administrative property tax appeal system. The property taxes subject to that appeal system are ad valorem valuation assessments placed on the county's local tax rolls by the county assessor, pursuant to the Revenue and Taxation Code. The county board of supervisors serves as this appeal hearing body (the "local board of equalization") unless it, by ordinance, creates an AAB to hear the ad valorem property tax valuation appeals in its place. A large majority of the 58 counties in California utilize an AAB system to hear such appeals. Ad valorem property tax valuation and related determinations, such as changes in ownership, new construction, business property account audits, and the issuance of supplemental or escape assessments, are done by county assessors. Where the taxpayer (called the "assessee" in the Revenue and Taxation Code statutes and State Board of Equalization regulations and publications) disagrees with the county assessor, the taxpayer has a constitutional and statutory right to file a timely appeal application with the AAB in that county. (Cal. Const., art. XIII, § 16 and Rev. & Tax. Code, §§ 1601, et seq.) California counties also, by statute, are the local government entities responsible for issuing tax bills to taxpayers within their counties. (Rev. & Tax. Code, §§ 2602, et seq.)² The county tax bills usually contain not only the property tax amount owing, based on the ad

² All further statutory references are to the Revenue and Taxation Code unless otherwise indicated.

valorem property tax assessment on their property, but also direct charges from other local government entities within the county. These direct charges include, but are not limited to, parcel taxes, California Constitution, Article XIID, special benefit assessments, charges, fees, and, where authorized by State law, the costs of actions, such as nuisance abatement undertaken by a local government entity, among other miscellaneous government exactions. Direct charges are generally not based on, or tied as a functional or legal matter, to the actions of the county assessor in setting ad valorem property tax valuation assessments on the local roll. The county assessor's duties have no connection to the establishment, calculation, levying, or placement of direct charges on the county property tax bill.

II. AABS HAVE NO CONSTITUTIONAL OR STATUTORY JURISDICTIONAL AUTHORITY TO HEAR PACE APPEAL APPLICATIONS

A. SUMMARY OF LOWER COURT RATIONALE

The lower court opinion, commencing at page 1008 of its decision, concludes that AABs have the jurisdictional authority to hear PACE appeals, pursuant to Sections 1601(a), 1603(a), 1610.8, and 5140. Specifically, the lower court determined that the PACE special benefit assessments are "taxes," pursuant to Section 4801, because of the PACE statutory designation of PACE assessments as special benefit assessments to be collected on the county property tax bill.

(Morgan v. Ygrene Energy Fund, Inc. (2022) 84 Cal.App.5th 1002, at pp. 1013-1014.) The lower court relied on your Court's opinion in *Williams & Fickett v. County of Fresno* (2017) 2 Cal.5th 1258 (*Williams & Fickett*), at p. 1271, in

concluding that AABs possessed hearing jurisdiction over nonvaluation issues, encompassing not only nonvaluation issues associated with local roll property tax appeals, but also the nonvaluation PACE claims at issue here. (*Morgan, supra*, 84 Cal.App.5th at pp. 1002, 1008-1009, 1017.) The lower court further states that "the PACE assessments can only be treated as taxes" because the PACE assessments are "collected 'in the same manner as ordinary ad valorem property taxes are collected.'" (*Morgan, supra*, 84 Cal.App.5th at p. 1013.) *Morgan* continues by citing Section 4801 for the conclusion that "taxes" include "assessments collected at the same time and in the same manner as county taxes." (*Morgan, supra*, 84 Cal.App.5th at pp. 1013, 1014; *Kahan v. City of Richmond* (2019) 35 Cal.App.5th 721, at p. 737.) The *Morgan* decision recited the general constitutional and statutory scheme for taxpayers seeking to recover tax payments paid to local governments as well as the recognition of the county assessor's and AAB's role in the statutory property tax process. (*Morgan, supra*, 84 Cal.App.5th at p. 1013.) The *Morgan* opinion, having concluded that PACE special benefit assessments are the equivalent of "taxes," applied the two-part exhaustion of remedies formula to the plaintiffs. The first part of administrative remedies is the filing of an appeal with the AAB. The second, and separate administrative remedy, is the filing of a tax refund claim, pursuant to Section 5096, et seq. (*Morgan, supra*, 84 Cal.App.5th at pp. 1012-1013.) The lower court also incorrectly conflated the two administrative remedies by implying that the local board of equalization or AAB's appeal application form allowing for the

designation of the appeal as a tax refund claim illustrated the AAB's authority over the refund process. (*Morgan, supra*, 84 Cal.App.5th at pp. 1015-1017.) Existing law makes it clear that the tax refund claim process is a function of the county board of supervisors, not the local board of equalization or AAB. This is so even where the county board of supervisors also functions in a separate and independent status as the local board of equalization. (*Steinhart v. County of Los Angeles*, 47 Cal.4th at p. 1309; *Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1, at p. 34; *Harmony Gold U.S.A., Inc. v. County of Los Angeles* (2019) 31 Cal.App.5th 820, at p. 826.) From this statutory analysis comes the lower court's conclusion that PACE special benefit assessments falls within the jurisdiction of AABs.

B. CONSTITUTIONAL, STATUTORY, AND REGULATORY JURISDICTIONAL AUTHORITY OF AABS

Your Court stated, in *Wasatch Property Management v. Degrade* (2005) 35 Cal.4th 1111, at p. 1117, that "In ascertaining the meaning of a statute, we look to the intent of the Legislature as expressed by the actual words of the statute." It is important to start with the actual words of the constitutional provision creating local boards of equalization and AABs and the implementing statutes applicable to AABs. The description of the purpose and jurisdictional authority of AABs is clear and unambiguous.

Article XIII, Section 16, of the California Constitution provides the jurisdictional task of AABs. These boards are created and authorized to "equalize

the values of all property on the local assessment roll by adjusting individual assessments." (Emphasis added.) See also *Steinhart, supra*, 47 Cal.4th at p. 1307; *Apple Computer, Inc. v. County of Santa Clara Assessment Appeals Board* (2003) 105 Cal.App.4th 1355, at p. 1370. The constitutional provision does not speak of jurisdictional purpose and authority over administrative appeals of non-ad valorem direct charges related to property ownership. It focuses on "the local assessment roll" of the county. The local assessment roll ("local roll") is a specific and limited statutory creation that does not include PACE special benefit assessments (or other non-ad valorem property tax exactions on the property). (Sections 601, et seq.) Section 601 defines a local assessment roll by stating that: "The assessor shall prepare an assessment roll, as directed by the board [county board of supervisors], in which shall be listed all property within the county *which it is the assessor's duty to assess.*" (Emphasis added.) There is a limited and indelible connection between the local roll and the duties of the county assessor. Put simply, if the assessment is not based on the actions of the county assessor, the assessment does not go on the county's local roll.

There is no statutory obligation or discretionary authority for a county assessor levying or altering a PACE special benefit assessment. (Sts. & Hy. Code, § 5898.14, et seq.) Similarly, the California Revenue and Taxation Code statutes governing property taxes and related appeals by taxpayers, at Sections 1601 to 1646.1, further implement the specific constitutional purpose and jurisdictional authority of AABs. Sections 1601(c), 1603(a), 1603(b)(3), 1603(d), 1604(a)(1),

1605(f), 1605.5(b), 1606, 1607, 1610.2, 1610.6, and 1610.8 all refer to and focus on the presence of county assessor ad valorem property tax valuation determinations on the local roll of the county's property tax assessment system as the contested actions challenged by the affected taxpayer before AABs. Additionally, the only parties involved in AAB appeals in those statutes are the county assessor or their representative and the party paying the ad valorem property tax based on the valuation assessment. PACE special benefit assessments are not mentioned in those statutes nor in any other AAB-related statutes.

AABs are empowered to interpret statutes and regulations, make legal determinations, determine their jurisdiction to hear the pending appeal, and make factual findings. These administrative powers are only exercised in the limited context of local roll property tax valuation and related non-valuation property tax determinations. (59 Ops.Cal.Atty.Gen. 182 (1976); *Apple Computer, Inc. v. County of Santa Clara Assessment Appeals Board*, *supra*, 105 Cal.App.4th at p. 1370; *Steinhart*, *supra*, 47 Cal.4th at p. 1307.) The statutory description of the qualifying experience and training for members of the public to serve on AABs relates to the ad valorem property tax valuation of real and personal property exclusively. (Rev. & Tax. Code, §§ 1624-1624.05.)

C. LOCAL BOARDS OF EQUALIZATION AND AABS' ADMINISTRATIVE APPEAL JURISDICTION REQUIRES A NEXUS BETWEEN A COUNTY ASSESSOR'S LOCAL ROLL VALUATION DECISION AND THE ACTION COMPLAINED OF ON APPEAL

The State Board of Equalization, the constitutional state agency designated to oversee the county property tax system for the 58 counties, summarizes the jurisdiction of local boards and AABs and its formally adopted regulations governing AABs. (See Cal. Const., art. XIII, § 19; Gov. Code, § 15606.) The administrative appeal powers of AABs are solely related to reviewing determinations of county assessors in setting local roll property tax valuation assessments when timely appeals are filed by taxpayers. (Cal. Code Regs. tit. 18, § 302.) Amici further notes, for instance, that Section 1610.2 requires the county assessor or his or her deputy to attend all AAB hearings. This requirement alone emphasizes the jurisdictional nexus between county assessor determinations of property tax valuation, taxpayer appeals of those determinations, and the administrative appeal function of AABs. A review of relevant State Board of Equalization regulations reflects the limits on the authority of AAB jurisdiction. (Cal. Code Regs. tit. 18, §§ 301-326.) It does not make legal or logical sense to require the county assessor to attend (or have a deputy attend on his or her behalf) an AAB appeal hearing which does not implicate or directly address an official action of that county official. It is also uncontested in this case that the county assessor has nothing to do with PACE special benefit assessments, either generally

or particularly. None of the parties asserts that the county assessor has a hand in the governance of PACE special benefit assessments.

D. AABS ARE NOT ARTICLE VI COURTS OF LAW

AABs are not courts of law under California Constitution Article VI, Section 10, which are fully empowered judicial bodies able to decide all manner of legal disputes. PACE disputes involving contract obligations and language, the construction of improvements and/or the quality of the construction, unfair business practices, or allegedly fraudulent consumer transactions are the types of disputes for courts of law to resolve as practical and jurisdictional matters. The unavoidable effect of the *Morgan* holding is to transform AABs into de facto Article VI courts of law when PACE disputes arise.

E. PACE SPECIAL BENEFIT ASSESSMENT DISPUTES ARE NOT WITHIN THE JURISDICTION OF AABS

PACE "special benefit assessments" are not local roll property tax assessments set and enrolled by county assessors. They are a type of special benefit assessment directed to be placed on the county tax bill of the property owner, pursuant to the Improvement Act of 1911. (Sts. & Hy. Code, § 5000, et seq., 5898.17.) This point is somewhat recognized by the *Morgan* decision when it states, at page 1016, that "the central responsibility of county boards [local boards of equalization and AABs] is to decide questions of [property tax] valuation," citing to this Court's ruling in *Williams and Fickett, supra*, 2 Cal.5th at 1269. Nothing in the PACE special benefit assessment statutes authorizes AABs

to hear appeals from PACE special benefit assessees. PACE assessments are, by legislative definition, contractual special benefit assessments between the PACE provider (the non-government entity offering the PACE improvements) and the individual property owner under the Improvement Act of 1911. (Sts. & Hy. Code, § 5898.17, subd. a.)

Further, the PACE special benefit assessment amount owed by the individual property owner is not tied to or based on the assessee's property tax value on the county's local property tax roll (the local roll) except that the contractual amount of improvements' cost agreed to by the property owner cannot "result in the total amount of any annual property taxes and assessments exceeding 5 percent of the property's market value as determined at the time of the approval of the owner's contractual assessment." (Sts. & Hy. Code, §§ 5898.15, 5898.16.) This limited reference to the ad valorem property value of the PACE special benefit assessee's property is simply a standard by which it can be determined if the property owner seeks improvements beyond their means to repay over time. Otherwise, the amount of the PACE special benefit assessment is governed by the cost of the energy conservation improvements chosen by the property owner. The cost of energy conservation improvements contracted for does not change the property tax value of the property owner's property.

The lower court reads too much into this Court's language in *Williams & Fickett*, where your Court held that the AAB jurisdictional responsibility for "questions of valuation" and the stipulation process found at Section 5142 allows

AABs to hear "nonvaluation issues" and holds that nonvaluation issues, such as those raised in PACE disputes belong before local boards of equalization and AABs. (*Williams & Fickett, supra*, 2 Cal.5th 1258 at pp. 1269, 1271; cited at *Morgan, supra*, 84 Cal.App.5th at p. 1016.) The *Williams & Fickett* case involved a local roll property tax refund court action with property tax determinations made by a county assessor in the context of local roll property valuation. The *Morgan* opinion extends your Court's rationale too far by applying it to a totally separate statutory scheme unrelated to the county local roll property tax system.

F. AABS ARE NOT PROCEDURALLY EQUIPPED TO HEAR PACE APPEALS

There are practical and non-jurisdictional issues associated with AABs hearing PACE disputes. The only parties to an AAB hearing as a matter of law and binding State Board of Equalization regulations are the county assessor and the property tax assessee appealing the county assessor's ad valorem property tax determinations. The effect of the *Morgan* decision is to require the AAB to either hold a hearing with only the appealing PACE claimant attending to present his or her allegations (and evidence in support thereof) or to improperly require the defending PACE provider to attend the hearing to present their side of the dispute. The governing AAB statutes and State Board of Equalization regulations do not provide standing for a third party to appear who is not an "affected party" regarding the property's local roll valuation and to present their views on ad valorem property tax determinations to local boards of equalization and AABs.

It follows that where a third party (the PACE provider here) has no standing to appear at the AAB hearing regarding their PACE special benefit assessment or to challenge the AAB's determination in court, it makes no sense to have the AAB hold hearings on PACE complaint allegations. The county assessor has nothing to add to the proposed PACE appeal hearing determination in the way of information or legal position. Additionally, AABs are not procedurally organized to provide an appropriate PACE complaint hearing. AABs are prohibited from considering depositions in their hearings. (Cal. Code Regs. tit. 18, § 322(f).) AABs are not allowed to issue subpoenas for the taking of depositions. (Cal. Code Regs. tit. 18, § 322(f).) Formal rules of evidence need not apply in these proceedings (and usually are not applied to the property tax valuation hearings). (Cal. Code Regs. tit. 18, § 313(e).) The limited rules of "discovery" applied to local roll property tax appeal hearings, designed for ad valorem property tax disputes only, do not lend themselves to PACE disputes. (Rev. & Tax. Code, §§ 408, 441, 454, 468 and 1606.)

The lower court specifically cites Section 5142 as an administrative remedy for AABs to avoid having to actually hold PACE administrative appeal hearings. (*Morgan, supra*, 84 Cal.App.5th at 1016.) Subdivision (b) of that statute states the following:

"When the person affected or his or her agent and the assessor stipulate that an application involves only nonvaluation issues, they may file a stipulation with the county board of equalization stating that issues in dispute do not involve valuation questions....The filing of, and the acceptance by the board of, a stipulation shall be deemed

compliance with the requirement that the person affected file and prosecute an application for reduction under Chapter 1 (commencing with Section 1601) of Part 3 in order to exhaust administrative remedies. However, the filing of, and the acceptance by the board of, a stipulation under this subdivision shall not excuse or waive the requirement of a timely filing of a claim for refund."

The lower court suggests that a stipulation produced pursuant to Section 5142(b) and accepted by the AAB will avoid the need to hear and determine the merits of the PACE complaints. Amici respectfully submits that this reading of the statute is legally and contextually incorrect. This stipulation, if one is to be entered into, can only be made with the county assessor for reasons previously discussed herein. PACE providers and their subcontract agents have no statutory authority to approve the stipulation. As a practical matter, if the county assessor declines to participate at all in PACE dispute hearings, as they may reasonably decide to do, there can be no valid stipulation regarding an agreement that the dispute does "not involve valuation questions." Conversely, what happens if the county assessor is willing to enter into the stipulation and the PACE complainant is not? The AAB must then hold the hearing. The county assessor is in no position to provide any evidence regarding the PACE complainant's issues. The PACE provider, who is in a much better position to respond to the PACE complainant's issues, is not a party before the local board of equalization or AAB and cannot participate as a party to the proceeding. As a legal matter, with the county assessor having no statutory role or jurisdictional authority over any aspect of PACE special benefit assessments, the county assessor has no binding legal

authority to enter into such a stipulation and allow the resulting lawsuit to proceed to court, regardless of the general willingness or lack thereof on the county assessor's part to seek such a stipulation.

The Section 5142 stipulation process set forth above is relevant and appropriate, both practically and legally, where the county assessor acted on a local roll ad valorem property tax matter within their statutory authority and subsequently agrees to have the related "nonvaluation" matter proceed to court without an AAB hearing. Examples of nonvaluation local roll ad valorem disputes between county assessors and property tax assessees, which are legitimate subjects of Section 5142(b) stipulations, include disputes over the presence or absence of a change in ownership event, such as occurred in the *Steinhart, supra*, litigation before this court, a factual dispute regarding whether or not a taxpayer owned the property subject to assessment at all (the *Williams & Fickett, supra* case before this court) or a dispute regarding whether or not the taxpayer's new construction was complete such that the additional construction value should be added to the property's base year value. All of the examples above are related to county assessor determinations, which while themselves are not setting an ad valorem property tax value, will ultimately affect a determination by the county assessor on valuation assessments on the local roll.

In Amici's view, a ruling that application of the Section 5142(b) stipulation procedure to PACE appeals is only a convenient ad hoc procedural action without a basis in law to move a dispute out of the local board of equalization or AAB

hearing process (where it does not legally belong as set forth in this brief) and to facilitate the real parties to the PACE dispute filing their PACE-related pleadings in a court of law on their non-local roll non-property tax assessment issues. Amici respectfully suggests that this proverbial "square peg" dispute should not be incorrectly forced into an entirely different "round peg" administrative dispute process.

Lastly, AABs have no power of equity as a dispute resolution body because they are not courts of law. Possible equity-based remedies that might be available to PACE complainants based on the facts of their dispute would not be within the authority of the AAB. The AAB appeal system is simply not a process designed to handle non-local roll property tax valuation disputes, nor is it intended to take on such disputes as a constitutional and statutory matter.

III. AABS ARE NOT APPROPRIATE ADMINISTRATIVE REMEDY FORUMS FOR TAXPAYER CHALLENGES TO NON-AD VALOREM PROPERTY TAX "DIRECT CHARGES" PLACED ON COUNTY TAX BILLS

The *Morgan* Court, at page 1013-1014 of its opinion, states that "For purposes of applying the exhaustion rule, the PACE assessments can only be treated as taxes. This is because PACE assessments are collected" 'in the same manner as ordinary ad valorem property taxes are collected,'" citing Government Code Section 53340, subdivision (e), and Section 4801. The *Morgan* Court is generally correct when it posits that the latter statute includes in its use of the term "tax" for collection purposes, "assessments collected at the same time and in the

same manner as county taxes." (*Morgan, supra*, 84 Cal.App.5th at pp. 1013-1014.) The intent of Section 4801 is to allow "direct charges" from local governments to be placed on the county tax bill and all exactions listed on that bill to be collected at the same time and in the same way as if the direct charges were a property tax debt subject to statutes, such as Sections 5096 and 5040. The lower court cited *Kahan v. City of Richmond* (2019) 35 Cal.App.5th 721, at 737, as an example of a direct charge placed on the county tax bill. (*Morgan, supra*, 84 Cal.App.5th at p. 1014.) Another example of a direct charge placed on a county tax bill is the decision in *Hanjin Intern. Corp. v. Los Angeles County Metropolitan Transportation Authority* (2003) 110 Cal.App.4th 1109. In the *Hanjin* opinion, the taxpayer did not file an appeal of the Los Angeles County Metropolitan Transportation District ("MTA") special benefit assessments levied upon it with the Los Angeles County AAB. The court, in that case, held that the taxpayer had satisfied the exhaustion of the administrative remedies doctrine by filing its appeals with the defendant MTA, the agency levying the Article XIID special benefit assessments in question. (*Hanjin, supra*, 110 Cal.App.4th at 1112.) The court in *Hanjin, supra*, held that the four-year statute of limitations on tax refunds applied to a taxpayer's claim for refunds on alleged incorrectly calculated special benefit assessments. (*Hanjin, supra*, 110 Cal.App.4th at 1113-1114.) This Second District Court of Appeals case is instructive because not only is it a case about challenges to a direct charge (special benefit assessments as is the PACE case at issue here), but also because of the exhaustion of administrative remedies

required of the taxpayer. The taxpayer in *Hanjin* was not required to file its appeals with the Los Angeles County AAB before proceeding to court. It was only required to file its appeals of the special benefit assessments with the levying agency, MTA.

The State of California Legislative Analyst's Office ("LAO") described these direct charges and their presence on county tax bills thusly:

"A. A Property Tax Bill Includes a Variety of Different Taxes and Charges.

A typical California property tax bill consists of many taxes and charges including the 1 percent rate [the ad valorem property tax governed by Cal. Const. art. XIII A], voter-approved debt rates, parcel taxes, Mello-Roos taxes, and assessments.

Under the Constitution, other taxes and charges on the property tax bill (shown in 'Box C') may not be based on the property's taxable [ad valorem] value. Instead, they are based on other factors, such as the benefit the property owner receives from improvements...

B. Determining Other Taxes and Charges

All other taxes and charges on the property tax bill are calculated based on factors other than the property's assessed value. For example, some levies are based on the cost of a service provided to the property. Others are based on the size of the parcel, its square footage, number of rooms, or other characteristics...In addition to these three categories [assessments, parcel taxes, and Mello-Roos taxes], some local governments collect certain fees for service on property tax bills such as charges to clear weeds on properties where the weeds present a fire safety hazard."

(See Exhibit A, California Legislative Analyst's Office Report on Property Taxes, November 29, 2012.)

AABs, to date, have not been obligated by law to provide administrative remedy hearings for unhappy taxpayers contesting the non-ad valorem direct charges described above by the LAO. The *Morgan* court's rationale for extending AAB jurisdiction to PACE claimants, especially with its reliance on and its interpretation of statutes, such as Section 4801, will likely suggest to unhappy direct charge taxpayers and their attorneys in the future that the exhaustion of administrative remedies doctrine includes the filing of appeals with their AAB before going to court. AABs are no better equipped to hear and make determinations regarding special benefit assessments in general (not just PACE assessments), parcel taxes, Mello-Roos taxes, and miscellaneous other fees and charges placed on the county tax bill than they are hearing PACE assessments.

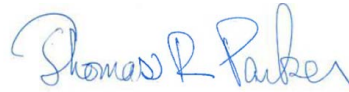
Amici respectfully urges this Court to make it clear in its ruling in this matter that AABs only have jurisdiction to ad valorem property tax appeals challenging actions and determinations of the county assessor. The ad valorem property tax determinations may be the valuation of property or related non-valuation aspects of the property's valuation for property tax purposes.

IV. CONCLUSION

The lower court erred as a matter of law in concluding that Plaintiffs and Appellants failed to exhaust administrative remedies for their PACE allegations by not filing administrative appeals with the local board of equalization or AAB. Amici does not disagree with the remainder of the lower court decision. Amici respectfully requests that this Court, in its decision, hold that taxpayers alleging

PACE provider violations or challenging non-ad valorem direct charges on their county tax bills in general must file tax refund claims and need not as well as should not attempt to exhaust any applicable tax dispute administrative remedies by filing appeals with the AAB of their respective county.

DATED: October 12, 2023



THOMAS R. PARKER
Senior Deputy County Counsel
County of Los Angeles
Office of the County Counsel

Attorneys for Amicus Curiae
California State Association of Counties
and California Assessors' Association

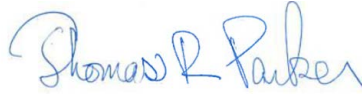
Document received by the CA Supreme Court.

**CERTIFICATION OF COMPLIANCE WITH CALIFORNIA RULES OF
COURT, RULE 8.204(c)(1)**

I hereby certify that this brief has been prepared using proportionately double-spaced 13-point Times New Roman typeface, pursuant to Rule 8.204(c)(1). According to the word count feature in my Microsoft Word software, this brief contains 4474 words.

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

DATED: October 12, 2023



THOMAS R. PARKER
Senior Deputy County Counsel
County of Los Angeles
Office of the County Counsel

Attorneys for Amicus Curiae
California State Association of Counties
and California Assessors' Association

Document received by the CA Supreme Court.

PROOF OF SERVICE

Case Name: **Barbara Morgan, et al. v. Ygrene Enery Fund, Inc.**
Case Number: **Cal. Supreme Court No. S277628**
4th District Division 1 D079364

I, Beatriz Hernandez, am employed in the County of Los Angeles, State of California. I am over the age of eighteen and am not a party to the within action; my business address is 500 West Temple Street, Room 652, Los Angeles, California 90012. On October 12, 2023, I served an electronic copy of the following document described as:

APPLICATION TO FILE A [PROPOSED] AMICUS CURIAE BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES AND THE COUNTY ASSESSORS' ASSOCIATION IN SUPPORT OF DEFENDANTS AND RESPONDENTS YGRENE ENERGY FUND, INC. ET AL. ON MORE LIMITED EXHAUSTION OF REMEDIES GROUNDS

on the parties listed on the attached Service List, below. I electronically filed the document mentioned above with the Clerk of the Court via TrueFiling on October 12, 2023. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Beatriz Hernandez

(NAME OF DECLARANT)

Beatriz Hernandez

(SIGNATURE OF DECLARANT)

Document received by the CA Supreme Court.

SERVICE LIST

| | | |
|-------------------------------------|--|--|
| Henning, Jennifer | California State Association of Counties | jhenning@counties.org |
| Levin, Fredrick | Orrick, Herrington & Sutcliffe LLP | flevin@orrick.com |
| Abugheida, Ali | Orrick, Herrington & Suitcliffe LLP | aabugheida@buckleyfirm.com |
| Tolmer, Bobette | Renne Public Law Group | btolmer@publiclawgroup.com |
| McGrath, Aileen | Akin Gump Strauss Hauer & Feld LLP | AMcGrath@akingump.com |
| Swiderski, James | James Swiderski | Law@WhatIsTheLaw.com |
| Dejesus, David | Reed Smith LLP | ddejesus@reedsmith.com |
| Lynch, Emily | Reed Smith LLP | elynch@reedsmith.com |
| Reeber, Nicole | Buckley LLP | nreeber@buckleyfirm.com |
| Girgado, Richard | Office of the County Counsel | ggirgado@counsel.lacounty.gov |
| Marder, Neal | Akin Gump Strauss Hauer & Feld LLP | nmarder@akingump.com |
| Attorney General - San Diego Office | Court Added | sdag.docketing@doj.ca.gov |
| Kashyap, Nisha | Public Counsel | nkashyap@publiccounsel.org |
| Henning, Jennifer | California State Association of Counties | jhenning@coconet.org |
| Levin, Fredrick | Orrick, Herrington & Sutcliffe LLP | flevin@buckleyfirm.com |
| Bremen, Jonathan | Public Law Center | jonbremen@gmail.com |
| McFarland, Kathleen | Buckley LLP | kmcfarlandramirez@buckleyfirm.com |
| Jaramillo, Joseph | Housing and Economic Rights Advocates | josephjaramillo@juno.com |
| Cho, Lisa | Office of the San Mateo County Counsel | lcho@smcgov.org |
| Webb, Jeffrey | Gibson Dunn & Crutcher, LLP | jwebb@gibsondunn.com |
| Henderson, April | Reed Smith LLP | ahenderson@reedsmith.com |
| Abugheida, Ali | Orrick, Herrington & Sutcliffe LLP | aabugheida@orrick.com |
| Lee, Kristine | California Assessors' Association | Kristine.Lee@co.kings.ca.us |
| Slattery, Michael | Renne Public Law Group | msslattery@publiclawgroup.com |

Document received by the CA Supreme Court.