CASE NO. S204771

ORIGINAL

In the Supreme Court of the State of California

STERLING PARK, L.P., a California limited partnership, and CLASSIC COMMUNITIES, INC., a California corporation,

Plaintiffs and Appellants,

vs.

CITY OF PALO ALTO,

Defendant and Respondent

SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE

DECLARATION OF DAVID P. LANFERMAN

MEMORANDUM OF POINTS AND AUTHORITIES

After a Decision by the Court of Appeal

Sixth Appellate District

Case No. H036663

On Appeal from the Santa Clara Superior Court
The Honorable Kevin McKenney, Judge

Case No. 1-09-CV-154134

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
ROBERT J. STUMPF, JR., CAL. BAR NO. 72851
JAMES G. HIGGINS, CAL. BAR NO. 238188
FOUR EMBARCADERO CENTER, 17TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-4109
TELEPHONE: 415-434-9100

RUTAN & TUCKER, LLP
DAVID P. LANFERMAN, CAL. BAR NO. 71593
5 PALO ALTO SQUARE
3000 EL CAMINO REAL, SUITE 200
PALO ALTO, CA 94306-9814
TELEPHONE: 650-320-1500

ROSEN BIEN GALVAN & GRUNFELD LLP
SANFORD JAY ROSEN, CAL BAR NO. 62566
ERNEST J. GALVAN, CAL. BAR NO. 196065
315 MONTGOMERY STREET, TENTH FLOOR
SAN FRANCISCO, CA 94104
TELEPHONE: 415-433-6830

Attorneys for Plaintiffs and Appellants
STERLING PARK, L.P. AND CLASSIC COMMUNITIES, INC.

Appellants Sterling Park, L.P. and Classic Communities, Inc. (Sterling) respectfully request the Court to take judicial notice of the following document that is attached as **Exhibit A** to the Declaration of David P. Lanferman, filed herewith: California Assembly Bill No. 1600, as approved by the Governor on September 21, 1987, and filed with the Secretary of State on September 22, 1987. This bill added sections 66000-66003 to the Government Code.

The court of appeal's opinion below is largely based upon its erroneous assumption that the scope and applicability of broadly-formulated current sections 66020 and 66021 of the Government Code, which broadly relate to "any fees . . . or other exactions," should be deemed to be limited by reference to a descriptive phrase included in the Legislature's definition of the word "Fee" in the differently-chaptered and subsequently-enacted section 66000, subdivision (b). Accordingly, the text of section 66000-66003, as originally enacted in Assembly Bill. No. 1600 in 1987 and set forth in **Exhibit A**, is relevant to the issues raised on review with this Court.

This request for judicial notice is authorized by section 452 of the California Evidence Code and Rule 8.252 of the California Rules of Court. The attached document is relevant to demonstrate (1) the Legislature's intent that the statutory protest procedures it previously codified in sections 66020 and 66021 were distinct from, and not related to, the later enactment

of section 66000, and (2) the Legislature did not intend the statutory definition of the word "Fee" in section 66000, subdivision (b), of Chapter 5 of the Mitigation Fee Act to be used to limit or narrow the scope and applicability of the protest remedy under sections 66020 and 66021 in Chapter 9 of the Mitigation Fee Act.

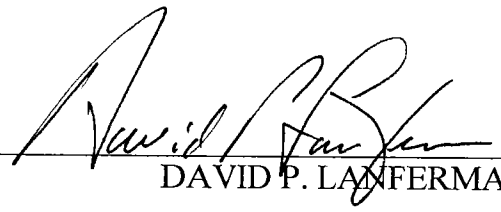
This motion is based on the Declaration of David P. Lanferman and the supporting memorandum of points and authorities.

DATED: January 28, 2013

SHEPPARD, MULLIN, RICHTER
& HAMPTON LLP

ROSEN BIEN GALVAN 7 GRUNFELD LLP

RUTAN & TUCKER, LLP

By 
DAVID P. LANFERMAN

Attorneys for Plaintiffs and Appellants,
Sterling Park, L.P., and Classic Communities, Inc.

DECLARATION OF DAVID P. LANFERMAN

I, David P. Lanferman, declare:

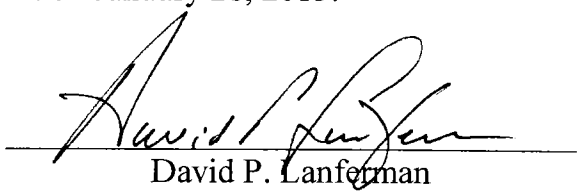
1. I am an attorney licensed to practice in the State of California and am one of the attorneys for defendants and appellants Sterling Park, L.P. and Classic Communities, Inc. (Sterling) and make this declaration in support of Sterling's Supplemental Request for Judicial Notice.

2. I have attached the following document, which the Legislative Intent Service obtained from official state records and provided to me, to this declaration as **Exhibit A**: California Assembly Bill No. 1600, as approved by the Governor on September 21, 1987 and filed with the Secretary of State on September 22, 1987. This bill added sections 66000-66003 to the Government Code.

Sterling requests the Court to take judicial notice of this document pursuant to section 459 of the Evidence Code and Rule 8.252 of the California Rules of Court. The attached document is relevant is relevant to the issues raised on review with this Court. Specifically, the court of appeal's opinion below is largely based upon its erroneous assumption that the scope and applicability of broadly-formulated current sections 66020 and 66021 of the Government Code, which broadly relate to "any fees . . . or other exactions," should be deemed to be limited by reference to a descriptive phrase included in the Legislature's definition of the word

"Fee" in the differently-chaptered and subsequently-enacted section 66000, subdivision(b). Accordingly, the text of section 66000-66003, as originally enacted in Assembly Bill. No. 1600 in 1987 and set forth in **Exhibit A**, is relevant to the issues raised on review with this Court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at Palo Alto, California on January 28, 2013.



David P. Lanferman

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Evidence Code section 459 and California Rules of Court, Rule 8.252, and in response to issues raised by the briefing below and in this Court, Sterling respectfully requests the Court to take judicial notice of the document that is attached as **Exhibit A** to the Declaration of David P. Lanferman, filed herewith: California Assembly Bill No. 1600, as approved by the Governor on September 21, 1987, and filed with the Secretary of State on September 22, 1987. This bill added sections 66000-66003 to the Government Code.

The court of appeal's opinion below is largely based upon its erroneous assumption that the scope and applicability of broadly-formulated current sections 66020 and 66021 of the Government Code, which broadly relate to "any fees . . . or other exactions," should be deemed to be narrowed and limited by reference to a descriptive phrase included in the Legislature's definition of the word "Fee" in the differently-chaptered and subsequently-enacted section 66000, subdivision (b). Accordingly, the text of section 66000-66003, as originally enacted in Assembly Bill. No. 1600 in 1987 and set forth in **Exhibit A**, is relevant to the issues raised on review with this Court.

"In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including

committee reports, underlying the enactment of a statute." (*Hale v. Southern California IPA Medical Group, Inc.* (2001) 86 Cal.App.4th 919, 927; see also *Lorenz v. Commercial Acceptance Insurance Co.* (1995) 40 Cal.App.4th 981, 988 [granting request to take judicial notice of legislative intent service history].) It is appropriate for appellate courts to take judicial notice of such legislative history materials, even where the "plain meaning" of statutory language appears clear. (See *Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1332, 1335: "To determine the most reasonable interpretation of a statute, we look to its legislative history and background." (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 543.) Although we conclude that the meaning of 'net monetary recovery' is plain, it is helpful to look at section 1032's legislative history in light of the conflict on this issue.")

Courts have frequently taken judicial notice of the same types of legislative documents as included in this motion for judicial notice, as follows:

a. Various versions of a legislative bill. (*Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1040-1041.)

b. Legislative final histories. (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 376-377.)

c. Legislative committee bill analysis worksheet and other documents from a legislative committee file. (*People v. Connor*, *supra*, 115 Cal.App.4th at 681 n. 3.)

Sterling's counsel David P. Lanferman obtained the document in question from Legislative Intent Service (LIS). Documents supplied by LIS have consistently been utilized by this Court and the courts of appeal, either when proffered by the parties or on a court's own motion, and LIS has often been mentioned in appellate opinions as the source of legislative history evidence. (See, e.g., *People v. Sanchez* (2001) 24 Cal.4th 983, 992 n. 4; *People v. Brown* (1993) 6 Cal.4th 322, 334 (2004).)

The document that is the subject of this Supplemental Request for Judicial Notice was not presented to the trial court. Nor does it relate to proceedings occurring after the court of appeal's opinion below. For all these reasons, it is appropriate for the Court to take judicial notice of Judicial notice of these documents is appropriate. (Cal. Rule Court, Rule 8.252(a)(2)(B)-(C).)

CONCLUSION

For these reasons, Sterling respectfully requests the Court to take judicial notice of **Exhibit A** to the Declaration of David P. Lanferman.

DATED: January 28, 2013

SHEPPARD, MULLIN, RICHTER
& HAMPTON LLP

ROSEN BIEN GALVAN 7 GRUNFELD LLP

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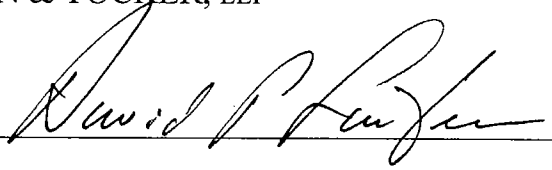
By 

DAVID P. LANFERMAN

Attorneys for Plaintiffs and Appellants,
Sterling Park, L.P., and Classic Communities, Inc.

CHAPTER 927

An act to add Chapter 5 (commencing with Section 66000) to Division 1 of Title 7 of the Government Code, relating to development projects.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1600, Cortese. Development projects: fees.

(1) Existing law imposes various requirements with respect to fees exacted in connection with land development approvals by public agencies.

This bill would, with certain exceptions, require specified local agencies establishing, increasing, or imposing fees (not including taxes or assessments) for specified public improvements, services, or community amenities to be collected from applicants for approval of development projects to make specified findings, segregate the fees in special accounts, reexamine the necessity for the unexpended balance of the fee, as specified, every 5 years, and refund to the then current owner or owners of the development project any unexpended portion of the fee for which need cannot be demonstrated at the time of this review, together with any accrued interest. The bill would permit various methods of refund, and would permit a local agency to utilize moneys otherwise subject to refund for other purposes serving the development project for which the fee was paid if the cost of making the refund exceeds its amount, as determined at a noticed public hearing. The above requirements would impose a state-mandated local program. Local agencies imposing these fees for defined facilities or improvements would be authorized to adopt and annually review a specified capital facilities plan. The bill would become operative January 1, 1989.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $500,000 statewide and other procedures for claims whose statewide costs exceed $500,000.

This bill would declare that there are no costs in this act requiring reimbursement, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.

The people of the State of California do enact as follows:

SECTION 1. Chapter 5 (commencing with Section 66000) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 5. FEES FOR DEVELOPMENT PROJECTS

66000. As used in this chapter:

(a) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(b) "Fee" means a monetary exaction, other than a tax or special assessment, which is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, or fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, or any other municipal public corporation or district; provided that "local agency" does not include a school district if Senate Bill No. 97 of the 1987–88 Regular Session is enacted and becomes effective on or before January 1, 1988.

(d) "Public facilities" includes public improvements, public services, and community amenities.

66001. (a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall do all of the following:

(1) Identify the purpose of the fee.

(2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Sections 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.

(3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

(4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(b) In any action imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

(c) Upon receipt of a fee subject to this section, the local agency shall deposit, invest, account for, and expend the fees pursuant to Section 53077.

(d) The local agency shall make findings once each fiscal year with respect to any portion of the fee remaining unexpended or uncommitted in its account five or more years after deposit of the fee to identify the purpose to which the fee is to be put and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged. The findings required by this subdivision need only be made for moneys in the possession of the local agency and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date.

(e) The local agency shall refund to the then current record owner or owners of the development project or projects on a prorated basis the unexpended or uncommitted portion of the fee, and any interest accrued thereon, for which need cannot be demonstrated pursuant to this subdivision. A local agency may refund the unexpended or uncommitted revenues by direct payment, by providing a temporary suspension of fees, or by any other means consistent with the intent of this section. The determination by the governing body of the local agency of the means by which those revenues are to be refunded is a legislative act.

If the administrative costs of refunding unexpended or uncommitted revenues pursuant to this subdivision exceed the amount to be refunded, the local agency, after a public hearing, notice of which has been published pursuant to Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which fees are collected subject to this chapter and which serves the project on which the fee was originally imposed.

66002. (a) Any local agency which levies a fee subject to Section 66001 may adopt a capital improvement plan, which shall indicate the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees.

(b) The capital improvement plan shall be adopted by, and shall be annually updated by, a resolution of the governing body of the local agency adopted at a noticed public hearing. Notice of the hearing shall be given pursuant to Section 65090. In addition, mailed notice shall be given to any city or county which may be significantly affected by the capital improvement plan. This notice shall be given no later than the date the local agency notices the public hearing pursuant to Section 65090. The information in the notice shall be not less than the information contained in the notice of public hearing and shall be given by first-class mail or personal delivery.

(c) "Facility" or "improvement," as used in this section, means any of the following:

(1) Public buildings, including schools and related facilities; provided that school facilities shall not be included if Senate Bill 97 of the 1987–88 Regular Session is enacted and becomes effective on or before January 1, 1988.

(2) Facilities for the storage, treatment, and distribution of nonagricultural water.

(3) Facilities for the collection, treatment, reclamation, and disposal of sewage.

(4) Facilities for the collection and disposal of storm waters and for flood control purposes.

(5) Facilities for the generation of electricity and the distribution of gas and electricity.

(6) Transportation and transit facilities, including but not limited to streets and supporting improvements, roads, overpasses, bridges, harbors, ports, airports, and related facilities.

(7) Parks and recreation facilities.

(8) Any other capital project identified in the capital facilities plan adopted pursuant to Section 66002.

66003. This chapter does not apply to a fee imposed pursuant to a reimbursement agreement by and between a city or county and a property owner or developer for that portion of the cost of a public facility paid by the property owner or developer which exceeds the need for the public facility attributable to and reasonably related to the development. This chapter shall become operative on January 1, 1989.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution, because this act does not mandate a new program or higher level of service on local government. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 4 (commencing with Section 17550) of Part 7 of Division 2 of Title 2 of the Government Code.

O

Sterling Park L.P. et al., v. City of Palo Alto et al.
In the Supreme Court of the State of California, Case No. S204771
On Review from the Sixth District Court of Appeal, 6th Civil No. H036663
After an Appeal from the Superior Court of Santa Clara County, Case No. 109-CV-154134

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco; I am over the age of eighteen years and not a party to the within entitled action; my business address is Four Embarcadero Center, 17th Floor, San Francisco, California 94111-4109.

On January 29, 2013, I served the following documents described as

SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE

the interested parties in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

Juliet E. Cox
Goldfarb Lipman LLP
1300 Clay Street, 9th Floor
City Center Plaza
Oakland, CA 94612
Attorney for City of Palo Alto

☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of the 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.

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

Executed on January 29, 2013, at San Francisco, California.

Richard Breese