

STRUMWASSER & WOOCHELLP

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May 23, 2006

Robert J. Zweden
City Attorney
City of Albany
1730 Solano Avenue
Berkeley, CA 94707

Re: Albany Shoreline Protection Initiative

Dear Bob:

Please excuse my delay in responding formally to your inquiry regarding our firm's possible interest in working with you in preparing a legal analysis for the City of Albany of the proposed Albany Shoreline Protection Initiative pursuant to Elections Code section 9212.

As I mentioned to you on the phone last week, we would very pleased to have the opportunity to work on this project with you. As you can see from the enclosed firm resume, our firm has done a lot of work in the initiative and referendum area, especially on land use planning issues, and there are aspects of this proposed initiative that raise some fairly complex - and interesting - legal questions. Although it is difficult to predict at the outset exactly how much time this effort would take, I would propose that we bill the matter at our standard hourly rates for our other public agency clients, but that we would further agree to "cap" our billings for preparation of the Section 9212 report at a maximum of \$10,000 - subject to a mutually agreed upon exception if the work should turn out to be more extensive than initially contemplated for some unforeseen reason.

I look forward to hearing further from you regarding this endeavor.

Sincerely,



Fredric Woocher

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The Firm

STRUMWASSER & WOOCHEER is one of the most respected law firms in California, known for its successful resolution of major public-interest and public-policy matters. Since its founding in 1991, the firm has litigated landmark cases ranging from political and election law to economic regulation and consumer protection, from constitutional law and civil rights to education law, from environmental protection to workers' rights. In trial and appellate courts, legislative halls and administrative tribunals, Strumwasser & Woocher has collected a broad array of victories in path-making litigation — including roughly 50 published appellate decisions — and advised clients on the day's most compelling social and policy issues.

Representative Matters**CONSTITUTIONAL LAW & CIVIL RIGHTS**

The firm represents an array of public agencies and private parties in selected matters involving constitutional, regulatory, and environmental issues, particularly with respect to local land use regulation, as well as in other matters of public interest. For example, Strumwasser & Woocher defended the Los Angeles Ethics Commission in a challenge to the city's conflict-of-interest legislation, and defended the City of Huntington Beach in a federal lawsuit seeking to invalidate city-imposed campaign-finance limits. The firm has won precedential cases applying California's "anti-SLAPP" statute protecting citizens who participate in a public environmental review process from retaliatory defamation suits.

Employment Discrimination. Strumwasser & Woocher secured settlement of an action alleging race discrimination in employment of probation officers and in delivery of services to juvenile probationers.

Anti-SLAPP. In 1994 California passed legislation to protect the victims of "SLAPP" cases ("Strategic Lawsuits Against Public Participation"), suits brought, typically by developers, against individuals and groups that appear before government agencies in opposition to development permits. Strumwasser & Woocher won early landmark cases applying the law to defend an archaeologist on a development project, and has successfully represented other private citizens and Public Interest Organizations who had been sued for their public speech. *Dixon v. Superior Court*, 30 Cal. App. 4th 733 (1994).

Striking Down Discrimination in Insurance Legislation. On behalf of the California Insurance Commissioner and in conjunction with several local and national civil rights and consumer rights organizations, Strumwasser & Woocher won a judgment declaring new state insurance legislation invalid and unconstitutional. The statutory amendments in question discriminated against previously uninsured

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drivers—indirect violation of Proposition 103, a sweeping pro-consumer initiative regulating the insurance industry. *The Foundation for Taxpayer and Consumer Rights, et al. v. Garamendi* (Feb. 20, 2004, BS086235).

HUD Redlining Study. Strumwasser & Woocher advised the U.S. Assistant Secretary of Housing and Urban Development for Civil Rights on enforcement of anti-redlining rules under the Fair Housing Act, and served as special counsel in hearings the Secretary conducted on possible rulemaking.

Title VI Compliance Analysis. As counsel to the Los Angeles Unified School District, Strumwasser & Woocher is conducting a groundbreaking quantitative and legal study of the District's bond-financed school-construction and modernization program to determine whether any practices in implementing the program have a disparate impact on minority students.

Car-Financing Class Action. The firm is co-counsel in ongoing nationwide proposed class action alleging unfair competition and discrimination in automobile finance charge mark-ups assessed against Black and Latino consumers.

ECONOMIC REGULATION

Among its prominent work, Strumwasser & Woocher has served for over a decade as Special Counsel to all three elected California Insurance Commissioners, whom the firm has advised and represented in all phases of the implementation of Proposition 103, the 1988 insurance-reform initiative. Strumwasser & Woocher developed Commissioner John Garamendi's rate-regulatory program, prosecuted the administrative cases on the insurance companies' rebate liability, and successfully defended the Commissioner's program in scores of state- and federal-court lawsuits, resulting in over \$1 billion in consumer refunds.

Proposition 103. As special counsel to the California Insurance Commissioner, Strumwasser & Woocher has played a pivotal role in his implementation of Proposition 103, the insurance-reform initiative passed by the voters in 1988. The firm designed the Commissioner's rate-regulation program, drafted the regulations, tried the test cases brought by the insurance industry, resulting in the program being upheld against all challenges. *Amwest Surety Ins. Co. v. Wilson*, 11 Cal. 4th 1243 (1997); *20th Century v. Garamendi*, 8 Cal. 4th 216 (1994), cert. denied sub nom *Century-National Ins. Co. v. Quackenbush*, 513 U.S. 1153 (1995); *State Farm Mutual Automobile Ins. Co. v. Quackenbush*, 77 Cal. App. 4th 65 (1999); *Fireman's Fund Ins. Companies v. Quackenbush*, 52 Cal. App. 4th 599 (1997); *Safeco Ins. Co. v. Garamendi*, 11 Cal. App. 4th 1141 (1992); *State Farm Mut. Auto. Ins. Co. v. Garamendi*, 12 Cal. App. 4th 206 (1992); *Wilshire Ins. Co. v. Garamendi*, 5 Cal. App. 4th 1573 (1992); *California Auto. Assigned Risk Plan v. Garamendi*, 234 Cal. App. 3d 1486 (1991); *Fireman's Fund Ins. Co. v. Quackenbush*, 87 F.3d 290 (9th Cir. 1997); *Fireman's Fund Ins. Co. v. Garamendi*, 790 F. Supp. 938 (N.D. Cal. 1992).

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California Earthquake Authority. The firm is regulatory counsel to a state agency created to write residential earthquake insurance after the private industry withdrew from the market following the Northridge Earthquake. Strumwasser & Woocher advises the Authority on regulatory, intergovernmental, and technical issues and represents it in judicial and administrative litigation.

The firm has advised and represented insurance regulators in Washington, Missouri, Texas, and New Mexico, and has served as special counsel to the U.S. Department of Housing and Urban Development on homeowners' insurance discrimination.

California Electricity Deregulation. In 2001, when California's electricity-deregulation experiment became an unprecedented disaster, Strumwasser & Woocher represented TURN (The Utility Reform Network), the state's leading utility-ratepayer advocacy organization, in litigation to block a multi-billion-dollar bail-out of the utilities at the expense of consumers. The firm initially successfully defended actions of the California Public Utilities Commission obtained by TURN holding the utilities to the terms of the deregulation legislation. When the PUC entered a secret bail-out deal with one of the utilities, the firm initially succeeded in blocking the deal in a decision overturned by the California Supreme Court. *Southern California Edison Co. v. Lynch*, 307 F.3d 794 (9th Cir. 2002); *Pacific Gas & Elec. Co. v. Lynch*, 216 F. Supp. 2d 1016 (N.D. Cal. 2002); *Southern California Edison Co. v. Peevey*, 31 Cal. 4th 781 (2003); *Southern California Edison Co. v. Public Utilities Com'n*, 117 Cal. App. 4th 1039 (2004).

California Independent System Operator. Following accusations that during the electric-power crisis of 2001, the ISO, the non-profit corporation that operates the bulk of the state's grid, attempted to manipulate the power market. Strumwasser & Woocher was retained by the ISO, at the behest of the California Senate, as independent investigators to report on the charges.

EDUCATION LAW

A large part of the firm's practice currently consists of representing and advising the Los Angeles Unified School District, the nation's second largest school system, in diverse arenas on a broad array of legal and legislative matters — from issues of constitutional law, to implementation of sweeping changes in charter school law, to a perumbra of issues arising out of the financing and execution of the District's multi-billion-dollar school-construction program. The firm serves as LAUSD's principal counsel in constitutional matters, advising and representing the District on issues involving First and Fourth Amendment policy analysis and litigation.

State Bonds for Urban Schools. On behalf of the Los Angeles Unified School District, Strumwasser & Woocher successfully challenged California's allocation of state school-construction bond money on the ground that it funded suburban and rural districts rather than more seriously overcrowded urban districts. The challenge resulted in reform of the state's allocation method and \$25 billion in new statewide bond

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money with explicit set-asides for critically overcrowded schools, in statutes that the firm negotiated in the Legislature.

LAUSD School Bonds. As counsel to the Los Angeles Unified School District, Strumwasser & Woocher drafted two bond propositions, Measure K and Measure R, that were approved by the voters, giving LAUSD nearly \$7 billion for the largest school-construction program in the nation. As counsel to the bond campaign, Strumwasser & Woocher advises it on election-law issues.

Church Challenge to School-District's Condemnation. The firm defeated a challenge filed by a church that had purchased land being condemned to build a school to alleviate student-overcrowding that claimed the First Amendment and federal statute precluded the taking of church property.

Weapon-Searches in Schools. Strumwasser & Woocher successfully defended Los Angeles Unified School District at trial and on appeal against a damages claim filed by an untenured teacher whose contract was not renewed after she twice obstructed searches of her classroom pursuant to the District's weapon-search policy (crafted in consultation with the ACLU and law-enforcement officials). *Motevallt v. Los Angeles Unified School District*, ___ Cal. 4th ___, 18 Cal. Rptr. 3d 562 (Sept. 9, 2004).

Interscholastic Athletics Due Process. The firm achieved a settlement for state high school basketball champions after suing the California Interscholastic Federation to challenge an administrative decision sustaining allegation of improper player recruiting.

ELECTION LAW

The firm has an active elections law and ethics-in-government practice, representing candidates, political committees, corporations, citizen groups, and public agencies in compliance matters and in litigation on ballot access issues, campaign finance and ethics regulations, initiative and referendum law, and contested elections. Over the years, the firm has represented numerous political committees and organizations in drafting state and local ballot measures and in litigation over the qualification of initiative and referendum petitions for the ballot.

Representation of Candidates and Committees. In every election cycle, Strumwasser & Woocher advises and represents candidates and campaign committees in election law matters. Issues typically involve candidate qualifications, ballot designations and official voter-pamphlet arguments, recounts and election contests. *Jeffrey v. Superior Court*, 102 Cal. App. 4th 1 (2002); *Nicolopoulos v. City of Lawndale*, 91 Cal. App. 4th 1221 (2001); *Woo v. Superior Court*, 83 Cal. App. 4th 967 (2000); *Schweisinger v. Jones*, 68 Cal. App. 4th 1320 (1998).

California Common Cause. Representing an intervenor public interest organization, the firm unsuccessfully sought from the California Supreme Court reformation of Proposition 73, the campaign-

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reform initiative previously enjoined from enforcement by a federal court, in order to resurrect the measure's campaign-contribution limits. *Kopp v. Fair Pol. Practices Com.*, 11 Cal. 4th 607 (1993).

Native American Tribal Representation. Strumwasser & Woocher has represented and advised the Agua Caliente Band of Cahuilla Indians in electoral and constitutional issues, including the negotiation of its 1999 Gaming Compact with the Governor of California. The firm drafted for the Tribe Proposition 70 on the November 2004 California ballot, and has handled election-law litigation in connection with that initiative measure.

Open Primary Initiative. Recently prevailing in the California Court of Appeal, Strumwasser & Woocher worked on behalf of the proponents of Proposition 62 — a citizen-sponsored open primary initiative that appeared on California's November 2004 ballot — who challenged the California Legislature's effort to undermine Proposition 62 by placing a competing measure on the ballot that unconstitutionally combined two unrelated proposed amendments to the California Constitution in violation of the California Constitution's separate-vote requirement. After the California Court of Appeal ruled in favor of Proposition 62 and held that the Legislature's improperly conjoined measures must appear on the ballot as two separate proposed constitutional amendments, the California Supreme Court granted review. The case is pending. *Californians for an Open Primary v. Shelley*, 121 Cal. App. 4th 222, rev. granted (2004).

Congressional Election Contests. The firm successfully represented Members of Congress Loretta Sanchez and Jane Harman in election contests before the House Oversight Committee and in court. *Dornan v. Sanchez*, 978 F. Supp. 1315 (C.D. Cal. 1997).

Compton Mayoral Election. Strumwasser & Woocher successfully represented the winner of the Compton mayoral election in an appeal that overturned the trial court's decision to remove him from office on the mistaken theory that the runner-up would have won the election had his name been listed first, rather than second, on the ballot. *Bradley v. Perrodin*, 106 Cal. App. 4th 1153 (2003).

El Toro Conversion. The firm represented parties seeking to develop the abandoned El Toro Marine Air Station as a commercial airport in lieu of further expansion of existing airports in urban centers. The representation included litigation over conflicting ballot measures and over environmental regulation. *Citizens for Jobs and the Economy v. County of Orange*, 94 Cal. App. 4th 1311 (2002); *Songstad v. Superior Court*, 93 Cal. App. 4th 1202 (2001).

Representation of Election Officials. Strumwasser & Woocher frequently represents local election and ethics officials in litigation when governmental lawyers have a conflict or lack sufficient expertise.

Electronic Voting Machine. The firm represents clients seeking recounts of elections conducted on electronic voting machines and organized non-partisan, public interest suit to vindicate statutory guarantee of a meaningful recount when local elections officials denied access to voting machine data.

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ENVIRONMENTAL LAW

Strumwasser & Woocher represents a wide range of environmental organizations, homeowner groups, and public agencies in environmental and land-use litigation under the California Environmental Quality Act, the Clean Air Act, California's Safe Drinking Water and Toxic Enforcement Act (Proposition 65), the Subdivision Map Act, historic-preservation laws, and various other regulatory laws.

Exxon Oil Tankering. The firm represented the County of Santa Barbara when it was sued by Exxon, challenging, on Commerce Clause grounds, a county ordinance seeking to prevent oil-spill damage to county beaches by requiring the use of pipeline, rather than oil tankers, to transport oil to a Santa Barbara refinery.

Lead Poisoning. The firm successfully prosecuted, under California's Proposition 65, a manufacturer for failing to warn its employees of lead-poisoning, securing substantial settlement for injured employees.

California Senate. The firm represented the Senate Rules Committee in a challenge to the Senate's power to require a gubernatorial appointee seeking confirmation to hold hearings before licensing a nuclear-waste dump. *California Radioactive Materials Management Forum v. Department of Health Services*, 15 Cal. App. 4th 841 (1993).

Americans for Nonsmoking Rights. Strumwasser & Woocher successfully represented an anti-smoking group in challenging a tobacco-industry-sponsored referendum seeking to block Los Angeles ordinance banning smoking in restaurants. *Browne v. Russell*, 27 Cal. App. 4th 1116 (1994).

Native American Heritage Commission. Strumwasser & Woocher successfully represented a group of Native Americans to block construction of a parking lot and strip-mall on a sacred site located on a state-college campus. *Native American Heritage Com. v. Board of Trustees*, 51 Cal. App. 4th 675 (1996).

SCAQMD Hearing Board. The firm serves as outside counsel to the Hearing Board of the South Coast Air Quality Management District, the air-pollution control agency for the 16 million people living in the Southern California air basin. Strumwasser & Woocher advises the Hearing Board on administrative, constitutional, and environmental law, and represents the board in state and federal litigation.

Anti-Smoking Education Funds. Strumwasser & Woocher successfully challenged, on behalf of anti-tobacco groups, the California Legislature's diversion of funds earmarked by the voter-enacted Proposition 99 for anti-smoking education programs. *American Lung Assn. v. Wilson*, 51 Cal. App. 4th 743 (1996).

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Representation of Homeowners Against Developers. The firm represents several Los Angeles area homeowner associations in actions against private developers and local governmental bodies alleging non-compliance with land use and environmental laws.

LABOR LAW

Strumwasser & Woocher represents labor unions and related groups in a diverse body of cases seeking to advance worker interests in precedent-setting litigation and in legislative reforms.

Garment Workers Class Action. As counsel to a class of garment workers wrongfully denied minimum-wage and overtime pay, the firm achieved a \$1.5 million settlement for approximately 350 employees of contractors to Guess?, Inc.

SEIU. The firm has worked with representatives of the Service Employees International Union to develop a legislative strategy and to draft proposed legislation to reform existing laws governing nursing homes in California to improve working conditions for nursing home care aides and the quality of care for residents, expand job opportunities for nursing home aides, and help SEIU increase its membership.

UNITE. Strumwasser & Woocher has advised and represented the Union of Needletrades, Industrial and Textile Employees on antitrust issues concerning consolidation of the industries in which the union represents employees.

AFSCME. The firm has represented the American Federation of State, County and Municipal Employees, AFL-CIO, in an action to remove the officers of a local Los Angeles bargaining unit for failure to hold elections as required by the International's constitution and by-laws. Strumwasser & Woocher also advises AFSCME in complying with California campaign finance and election laws.

Professional Staff

FREDRIC D. WOOCHER entered private practice after serving two years as Special Counsel to California Attorney General John Van de Kamp, whom he represented and advised on government ethics, environmental law, and consumer-protection issues, including implementation of Proposition 103. Prior to his government service, Mr. Woocher spent seven years with the Center for Law in the Public Interest, litigating a broad range of public interest issues involving land-use, environmental law, hazardous substances regulation, First Amendment protection, and civil rights cases. He is an acknowledged authority on the initiative and referendum process and on campaign financing issues. Mr. Woocher has successfully argued before both the United States and California Supreme Courts as well as other appellate and trial courts. He served as Chair of the State Bar's Committee on Human Rights, as a member of the State Bar

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Committee on the Environment, and as a member of the Los Angeles County Judicial Evaluations Committee. He is a graduate of Yale University (A.B.) and Stanford (Ph.D., J.D.), and was President of the Stanford Law Review. Mr. Woocher was law clerk to United States Supreme Court Justice William J. Brennan, Jr., and Chief Judge David L. Bazelon of the United States Court of Appeals for the D.C. Circuit. In May 1999, Mr. Woocher was nominated by President Clinton to serve as United States District Court Judge for the Central District of California, but the nomination expired when the Senate adjourned in December 2000 without having taken action to confirm his nomination.

MICHAEL J. STRUMWASSER co-founded Strumwasser & Woocher after seventeen years with the California Department of Justice, the last eight years as Special Assistant Attorney General, where he litigated some of the state's largest antitrust, consumer-protection, and environmental cases, including California's challenges to major supermarket and oil-company mergers, defended consumer interests in utility-rate litigation, and represented the Governor of California in Nuclear Regulatory Commission health-and-safety reviews. Mr. Strumwasser is a nationally-recognized authority on insurance- and utility-regulation, having successfully represented consumers and regulators in state and federal courts and agencies and before Congress and the California Legislature. He was lead counsel for California Insurance Commissioner John Garamendi, developing his regulations to implement Proposition 103 and successfully defending the program against numerous industry challenges. Mr. Strumwasser advises and consults for officials across the nation on economic regulation. He has represented numerous public agencies and officials and advises various California public agencies on government-law matters. Mr. Strumwasser has appeared in the United States and California Supreme Courts and regularly litigates a wide range of constitutional and public-policy cases throughout the trial and appellate courts on behalf of public and private clients. He holds A.B., M.S., and J.D. degrees from UCLA.

GREGORY G. LUKE joined Strumwasser & Woocher after serving as staff attorney with the ACLU of Southern California. Before moving to Los Angeles, Mr. Luke spent three years as Senior Staff Attorney with the National Voting Rights Institute in Boston where he specialized in voting rights and campaign finance reform litigation. During this time, he co-authored "Challenging *Buckley v. Valeo*: A Legal Strategy" for the Akron Law Review as well as other material published in Supreme Court Debates, The Economist, and the League of Women Voters National Voter Magazine. Before joining the National Voting Rights Institute, Mr. Luke spent two years as an Associate with Cravath, Swaine, & Moore, in New York and clerked for the Honorable Thomas K. Moore, Chief Judge of the United States District Court of the Virgin Islands. During law school, Mr. Luke interned with the Middlesex County District Attorney's Office in Boston, the Legal Services Center of Jamaica Plain, the Office of the Attorney General of Massachusetts, the Lawyers Committee For Human Rights, and the Honorable Martin Lee, Q.C., in Hong Kong. He was a Harlan Fiske Stone Scholar at Columbia Law School and a Human Rights Program Fellow. Mr. Luke received his J.D. *cum laude* in 1994 from Harvard Law School and a B.A. *cum laude* in East Asian Studies from Yale. As a Yale-China Teaching Fellow stationed at Hunan Medical University in the late 1980's, Mr. Luke became fluent in Mandarin. Since joining Strumwasser & Woocher, Mr. Luke has focused on elections, education, and regulatory conflicts. He leads the firm's efforts in two groundbreaking challenges to the use of electronic voting machines in California.

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AIMEE DUDOVITZ became a member of Strumwasser & Woocher after practicing in a small law office. Ms. Dudovitz received her law degree from the University of California at Davis where she was Order of the Coif, an Articles Editor, active in the King Hall Legal Foundation and Prison Law Clinic, received American Jurisprudence Awards in Civil Procedure and Legal Writing and assisted in revising *McCormick On Evidence*. Ms. Dudovitz recently represented intervenors in California's same-sex marriage litigation. She has drawn her practice toward political and election laws while overseeing compliance with FPPC reporting requirements, representing a client at a Section 8 administrative hearing, and coordinating "get out the vote." Ms. Dudovitz has clerked with both the Honorable Harry Pregerson of the United States Court of Appeals for the Ninth Circuit and the Honorable Dean D. Pregerson of the United States District Court for the Central District of California. Ms. Dudovitz has co-published *Branch v. Smith - Election Law Federalism After Bush v. Gore: Are State Courts Unconstitutional Interlopers in Congressional Redistricting?*, 2 Election L.J. 91 (2003), and authored *California Democratic Party v. Jones: The Constitutionality of Blanket Primary Laws*, 44 N.Y.L. Sch. L. Rev. 13 (2000). Ms. Dudovitz graduated Phi Beta Kappa from the University of California at Santa Cruz with a B.A. in Politics and Philosophy. She was chair of the Student Union Assembly, co-founder of Slug Books and chartered a non-profit bookstore.

ZAHIRAH WASHINGTON joined Strumwasser & Woocher after serving as a Schwarz Fellow in the Natural Resources Defense Council's (NRDC) Southern California office. Among her recent history, Ms. Washington clerked at the NRDC in New York, New York, after interning with W. Haywood Burns Environmental Education Center and Arbor Hill Environmental Justice Corp. in Albany, New York, and with the United States Environmental Protection Agency in Washington, DC. Ms. Washington received her J.D. *cum laude* from Tulane Law School, where she participated in the Environmental Law Society, the Public Interest Law Foundation, Inns of Court, and Tulane's nationally recognized Environmental Law Clinic. While in law school, Ms. Washington studied international and human rights law at McGill University in Montreal, Quebec. Prior to law school, Ms. Washington was a member of AmeriCorps. Ms. Washington graduated with a B.A. in Political Science from Vassar College. During her undergraduate career, Ms. Washington participated in American University's Washington Semester Program where she studied public law.

BRYCE GEE joined Strumwasser & Woocher after working as an associate at the law firm of Irell & Manella, where his practice focused on copyright law, securities law, and general litigation. Notably, he worked with copyright scholar David Nimmer in representing Clare Milne, the heir of the author of the Winnie-the-Pooh novels, in a federal action to reclaim the copyrights in those works. Mr. Gee received his J.D. from Yale Law School, where he served as an Editor for the Yale Law Journal. While in law school, he also worked at the TRO Clinic, assisting battered women obtain temporary restraining orders. Mr. Gee graduated Phi Beta Kappa from Cornell University with a B.A. in Economics. As an undergraduate, he participated in the Cornell-in-Washington Program, during which he wrote a thesis on the economic effects of the proposed deregulation of the electricity industry; he concurrently interned at the United States Department of the Treasury in the Economic Policy Office, researching and analyzing current policy issues, such as the Asian financial crisis.

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ELLEN YANG started her legal career as an associate at the law firm of Quinn Emanuel Urquhart Oliver & Hedges LLP, working on various cases involving copyright and trademark infringement, employment law, RICO, securities litigation, and general business litigation. While at Quinn Emanuel, Ms. Yang participated in a three-week federal trial on trademark infringement claims, and a state court trial on defamation claims, which resulted in a six-figure jury award to the client. Ms. Yang received her J.D. from New York University School of Law, where she served as Senior Articles Editor for the *Annual Survey of American Law* journal. During this time, she also collaborated with the NAACP Legal Defense and Educational Fund on death penalty appeals through the Federal Capital Punishment clinic. Ms. Yang also chaired the second and third annual Korematsu Lecture on Asian Americans and the Law, honoring keynote speakers such as Bill Lann Lee and Harold Koh. Ms. Yang received her undergraduate degree from the University of California at Berkeley in Molecular and Cell Biology and Political Science. While in college, she spent two summers at the National Institutes of Allergy and Infectious Diseases, Molecular Microbiology division, conducting laboratory research on the HIV-1 promoter region.

JOSHUA C. LEE joined Strumwasser & Woocher in 2001 as an analyst after serving for a year as Assistant Director of the University of Southern California Center for Global Education. A Phi Beta Kappa graduate of the University of Southern California School of Economics, Mr. Lee's recent work includes econometric analysis of Title VI compliance for a major school district and aiding in the independent investigation of a state public utility. Mr. Lee attended graduate school at the University of Edinburgh, Scotland, and studied German at Berlin's Humboldt Universität. He wrote his thesis on the effect of the availability heuristic on perceptions of value. Prior to his work for the firm, Mr. Lee conducted research into new conductive, non-stick polymer coatings for electrical scalpels for a surgical supply company and studied microbial metabolism at NASA's Ames Research Center. He has won two gold medals and a silver in international gymnastics competitions and has a black belt in Tae Kwon Do. Mr. Lee graduated *summa cum laude* from the University of Southern California with an MA and BA in Economics and a BA in German.

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March 29, 2006

Robert J. Zweben
City Attorney
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Dear Mr. Zweben:

Thank you for sending me the background information on Albany's pending Waterfront initiative. Confirming our telephone conversation, I am excited about the possibility of working with you in analyzing the issues, all of which are quite familiar for me and fall squarely within my expertise.

As you know, I joined Hanson Bridgett last year after serving for 12 years as the City Attorney for the City of Napa. My practice focuses on all aspects of municipal law. I have extensive experience advising clients and litigating in land use, zoning and planning, the California Environmental Quality Act ("CEQA"), real property entitlements, police power, municipal taxation, Brown Act, Public Records Act, code enforcement, intergovernmental relations, grand juries, elections, and, as is particularly relevant here, initiatives and referenda. I recently assisted a major public utility client in evaluating a variety of possible challenges to an initiative measure addressing issues quite similar to those now confronting Albany.

During my years as the City Attorney for the City of Napa, I drafted and analyzed many land use and other initiatives for the City, and successfully defended two lawsuits arising from a land use referendum challenging the City's approval of a development project requiring a variety of legislative General Plan and zoning changes. One case, in the federal court, went to the United States Supreme Court; the other went to the California Court of Appeal. I also successfully defended against constitutional challenge the City's Inclusionary Ordinance requiring developers of market rate housing to provide affordable housing as a condition of development; the reported decision was the first of its kind nationwide. *Home Builders Ass'n v. City of Napa*, 90 Cal. App. 4th 188, rev. den. 2001 Cal. LEXIS 6166 (Cal. Sept. 12, 2001), cert. den. 535 U.S. 954, 152 L. Ed. 2d 353 (2002).

Prior to my tenure in Napa, I served as Senior Deputy City Attorney in Berkeley. There, I successfully defended the Housing Element of the City's General Plan against CEQA and State Planning Law challenges arising from the voters' approval of the City's Rent Stabilization initiative measure. *Black Property Owners Ass'n v. City of Berkeley*, 22 Cal. App. 4th 974 (1994). I also successfully defended pre-election challenges to two different City initiative measures.

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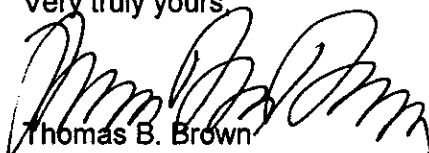
In Napa and Berkeley alike I have successfully litigated many other land use and other municipal law cases that similarly have resulted in favorable reported decisions. Examples are: *Smith v. City of Napa*, 120 Cal.App.4th 194 (2004); *Saad v. City of Berkeley*, 24 Cal. App. 4th 1206 (1994); *Fisher v. County of Alameda*, 20 Cal. App. 4th 12 (1993); *City of Berkeley v. Cukierman*, 14 Cal. App. 4th 1331 (1993). In addition, I have litigated many, many other cases in the federal and state trial and appellate courts.

I have taught Land Use Law as a Visiting Professor at Sonoma State University (Spring Semester 2002), and have spoken and presented academic papers on many occasions on land use, the California Environmental Quality Act ("CEQA"), and other municipal law issues. (Land Use and CEQA Update, League of California Cities City Attorneys Department, Fall & Spring Conferences (Oct. 2003 & May 2003); Inclusionary Housing: The Napa Experience, California Planning Association Annual Conference, San Diego, CA (Fall 2002); Inclusionary Housing: The Napa Experience, American Planning Association (APA) National Conference, Chicago, IL (Apr. 2002); Limitations On Civil Grand Juries Acting In Their "Watchdog" Capacity, League of California Cities Annual Conference, San Francisco, CA (Oct. 1995); Emerging Issues For Utility Users Taxes, League of California Cities Annual Conference, San Francisco, CA (Oct. 1993). A copy of my biography also is attached for your convenience.

Based on what you have provided me, and on our conversation, the cost of providing the research and analysis that would result in a final, written memorandum setting forth the issues and applicable law, as well as my conclusions, would not exceed \$7,500 to \$10,000.

Please let me know if there is anything else I can do or answer for you. I would be happy to meet with you, the City Manager and any other City officials to answer any questions you might have.

Very truly yours,


Thomas B. Brown

TBB:ld

Attachment

**HANSON
BRIDGETT**

**MARCUS
VLAKOS
RUDY-LLP**

Thomas B. Brown, Of Counsel

Public Agency Section; Environmental Practice Group; Government Relations Practice Group; Real Estate Practice Group

Based in our San Francisco and North Bay Offices

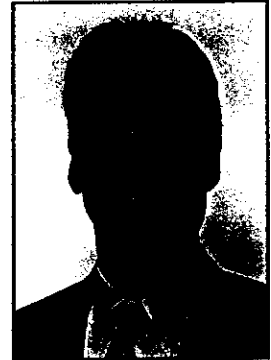
Direct Phone: 415-995-5857 • tbrown@hansonbridgett.com

Education: University of California, Hastings College of the Law (J.D., 1982);

University of California, Santa Barbara (B.A., 1978)

Thomas B. Brown joined Hanson Bridgett after serving for 12 years as the City Attorney for the City of Napa. Prior to his tenure at the City of Napa, Tom served as Senior Deputy City Attorney for the City of Berkeley.

Tom represents both public agency and private clients. His practice focuses on all aspects of municipal law. He has extensive experience advising clients and litigating in land use, zoning and planning, the California Environmental Quality Act ("CEQA"), real property entitlements, police power, municipal taxation, Brown Act, Public Records Act, code enforcement, intergovernmental relations, grand juries, elections, initiatives and referenda.



Tom is admitted to practice before all California courts, the Federal District Courts for the Northern and Eastern Districts of California, the Ninth Circuit Court of Appeal, and the United States Supreme Court.

Other Academic Distinctions

Visiting Professor, California Land Use Law, Sonoma State University (Spring Semester 2002)

Published Opinions

Smith v. City of Napa, 120 Cal.App.4th 194 (2004)

Home Builders Ass'n v. City of Napa, 90 Cal. App. 4th 188, rev. den. 2001 Cal. LEXIS 6166 (Cal. Sept. 12, 2001), cert. den. 535 U.S. 954, 152 L. Ed. 2d 353, 122 S. Ct. 1356, 2002 U.S. LEXIS 1946, 70 U.S.L.W. 3595 (2002)

Saad v. City of Berkeley, 24 Cal.App.4th 1206 (1994)

Black Property Owners Ass'n v. City of Berkeley, 22 Cal. App. 4th 974 (1994)

Fisher v. County of Alameda, 20 Cal. App. 4th 12 (1993)

City of Berkeley v. Cukierman, 14 Cal. App. 4th 1331 (1993)

Publications

Note, *The Reliance/Privity Requirement In Lawsuits Against Developers For Fraud And Concealment*, CALIFORNIA REAL PROPERTY JOURNAL, Vol. 3, No. 3 (Summer 1985)

Note, *Condemnation Interest*, THE APPRAISAL JOURNAL, Vol. LIII, No. 1 (1984)

Notable Speeches & Presentations

Land Use and CEQA Update, League of California Cities City Attorneys Department, Fall & Spring Conferences (Oct. 2003 & May 2003)

Inclusionary Housing: The Napa Experience, California Planning Association Annual Conference, San Diego, CA (Fall 2002)

Inclusionary Housing: The Napa Experience, American Planning Association (APA) National Conference, Chicago, IL (Apr. 2002)

Limitations On Civil Grand Juries Acting In Their "Watchdog" Capacity, League of California Cities Annual Conference, San Francisco, CA (Oct. 1995)

Emerging Issues For Utility Users Taxes, League of California Cities Annual Conference, San Francisco, CA (Oct. 1993)

www.hansonbridgett.com

HB → To see this bio or other Hanson Bridgett attorney bios online, go to www.hansonbridgett.com/attorneys



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WYNDER, LLP**
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18881 Von Karman Ave.
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Irvine, CA 92612
Phone 949.223.1170
Fax 949.223.1180

March 27, 2006

SENDER'S E-MAIL:
DHAUBERT@AWATTORNEYS.COM

Robert Zweben, Esq.
City Attorney
1730 Solano Avenue
Berkeley, CA 94707

Re: Albany Waterfront Specific Plan Initiative

Dear Mr. Zweben:

Thank you for contacting me regarding the proposed Albany Waterfront Specific Plan Initiative (the "Initiative"). I greatly appreciate the opportunity to assist you and the City of Albany in this very important matter.

I have briefly reviewed the documents you provided and considered the issues you identified that need to be analyzed. The issues you raise, including the Initiative's effect on the role of the Planning and Zoning Commission as established by the Albany City Charter and the General Plan (similar to the issues raised in *Marblehead v. City of San Clemente* (1991) 226 Cal.App.3d 1504), are significant ones. In addition, my own review has produced some other aspects of the Initiative which raise potential legal questions about the measure which should be analyzed.

Because of the many issues presented by the Initiative, it is difficult to give an estimate of costs since it is hard to predict how much time will be needed to research each issue. Moreover, new issues may become apparent once detailed research is started. As you know, the time put into a project will like this will dictate the quality of the analysis.

I would certainly work to stay within any reasonable budget set by the City for this task. At this point, I believe a budget of at least \$10,000-\$20,000 would be adequate to analyze the issues already identified and prepare a memorandum for City Council. If you wish, I could provide you a more precise cost estimate once I have commenced my research. At that time I would be in a better position to give a more definitive evaluation of the time and resources this project will take.

As for the timeline, your suggested deadline of the end of May seems appropriate. The Initiative Title and Summary which you provided me (Exhibit 3) is dated March 14, 2006, so I assume the Initiative petition is beginning to circulate now and it would take some time for the Initiative proponents to gather the required signatures.



Robert Zweben, Esq.
March 27, 2006
Page 2

For your review, I have enclosed our firm's retainer agreement, modified to reflect this project for the City of Albany. As you may know, our firm's practice is devoted almost exclusively to representing cities and other public agencies. In this regard, we are different from some firms that also advise developers and others with interests that often diverge from those of our local government clients.

If you have any questions regarding this matter, please do not hesitate to contact me at (949) 223-1170. I look forward to working with you.

Very truly yours,

ALESHIRE & WYNDER, LLP

A handwritten signature in black ink, appearing to read 'D. Haubert', written in a cursive style.

Douglas P. Haubert

Enclosure

cc: Eric Dunn, Esq.

March 28, 2006

VIA FACSIMILE
(510) 526-9190

Robert Zweben, Esq.
Albany City Attorney
1730 Solano Avenue
Berkeley, CA 94707

Re: Request for Proposal

Dear Mr. Zweben:

Pursuant to our telephone conversation last week, the purpose of this letter is to provide you with a proposal in connection with your request that our law firm undertake a legal analysis of the Albany Shoreline Protection Initiative ("Initiative").

As we discussed, I am a partner with Rutan & Tucker, LLP in the Municipal & Governmental Agency and Land Use & Natural Resources Departments. Approximately 50% of my practice consists of drafting and litigating local land use initiative and referenda matters. I have also drafted and/or assisted in the drafting of several statewide initiative measures, including Proposition 50 (2002 ballot) and Charter Schools Initiative (1998 election cycle). I have also served as general counsel to numerous campaign committees, including the Proposition 50 qualification committee, and the Riordan for Governor Committee (2002).

To this end, I have successfully represented the prevailing parties in numerous Court of Appeal decisions concerning the state and local initiative process, and I have also obtained successful published decisions in a variety of related land use matters, including *San Jose Christian College v. City of Morgan Hill* (9th Cir. 2004) 360 F.3d 1024; *Schroeder v. City of Irvine* (2002) 97 Cal.App.4th 174 [election matter concerning the re-use of MCAS El Toro; obtained \$80,000 in attorneys' fees for municipal client]; *Native American Sacred Site Association v. City of San Juan Capistrano* (2004) 120 Cal.App.4th 961 [case of first impression holding that voter-sponsored measure adopted by the city council is exempt from CEQA]; *Ventura County Christian School v. City of San Buenaventura* (C.D. 2002) 233 F.Supp.2d 1241; and *Montclair Parkowners v. City of Montclair* (9th Cir. 1999) 211 F.3d 1144.

Based on my preliminary review of the Initiative to date, it is my belief that we can provide you with a comprehensive legal analysis of the Initiative for approximately \$6,000.00 to \$10,000.00. As we discussed, we would be willing to charge a blended rate of \$225.00 per hour, which is a discount of approximately 40% off of my normal hourly rate.

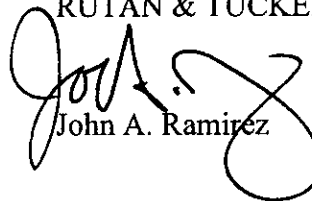
Robert Zweben, Esq.
March 28, 2006
Page 2

Please contact me upon your receipt of this letter so that we may discuss how the City would like to proceed.

In closing, we are tremendously appreciative of your consideration of us to perform the above-referenced analysis, and we look forward to working with the City in this endeavor.

Sincerely,

RUTAN & TUCKER, LLP



John A. Ramirez

JAR:df

KANE, BALLMER & BERKMAN

A LAW CORPORATION

JOSEPH W. PANNONE
TELEPHONE (213) 452-0128
joe@kbblaw.com

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www.kbblaw.com

BRUCE D. BALLMER
(RETIRED)
ROBERT P. BERKMAN
(1919-2001)

April 12, 2006

Robert J. Zweben
City Attorney
City of Albany
1730 Solano Avenue
Berkeley, CA 94797

Re: Shoreline Protection Initiative

Dear Mr. Zweben:

Thanks for your interest in having Stephanie Scher and I assist you and your city council with an analysis of the above initiative. Per your request, enclosed is a sample initiative report and legal analysis related to another initiative on the ballot in one of our other client's communities.

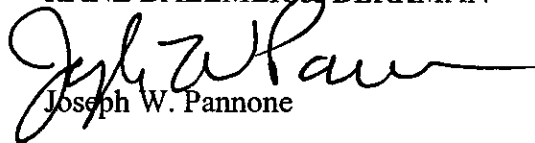
We worked on that analysis from its inception. The ballot measure was ultimately defeated at the polls, so no legal challenge was needed.

Our hourly rate for assisting your community would be \$250. We estimate it shouldn't take more than 55 hours to accomplish preparation of a report of the subject initiative, assuming the City of Albany staff would be actively involved with the preparation, fact gathering and non-legal analysis.

Also enclosed is a proposed agreement to engage our services. After we have received a duplicate original signed by the City, we will begin our further review of the matter.

Thank you again for your inquiry and interest. We look forward to working with you.

Very truly yours,
KANE BALLMER & BERKMAN


Joseph W. Pannone

Enclosures



WORDEN WILLIAMS APC

Representing Public Agencies, Private Entities, and Individuals

March 30, 2006

Via Facsimile and U.S. Mail

Robert J. Zweben, City Attorney
City of Albany
1730 Solano Avenue
Berkeley, California 94707

Re: Albany Shoreline Protection Initiative

Dear Mr. Zweben:

Thank you for forwarding the Albany Shoreline Protection Initiative ("Initiative") materials and for providing an outline of some of the pertinent issues for consideration. We are excited about the opportunity to assist with this matter.

Dwight Worden and I gave the Initiative a quick review. Our impression is that the Initiative leaves several unanswered questions and pushes the envelope of what is permissible. The Initiative has elements commonly found in other initiatives, such as general plan amendments. Other provisions of the Initiative, however, go far beyond anything we have seen. The Initiative directs the City to prepare a specific plan and completely rewrites the rules governing how it is to be done. The threshold question is whether the Initiative violates the *Marblehead* principal that initiatives must be legislative and not adjudicative or administrative in nature. Further, even if the Initiative provisions are considered legislative, is the specific plan procedure, that includes, among other things, creation of a Citizen's Task Force, an improper impediment on the planning process similar to what was found unlawful in a recent Orange County initiative case. *Citizens For Jobs v. County of Orange* (2002) 94 Cal.App. 4th 1311.

The second general area of concern is the lack of specificity. The Initiative has no definitions. With the exception of the General Plan amendments, the Initiative does not specify what it is amending, i.e. City Charter, Zoning Ordinance or otherwise. The reach of the Initiative is extremely broad, prohibiting any development until such time as the specific plan has been completed. However, there are no defined exclusions from its provisions. Depending how development is defined, the

AREAS OF PRACTICE
PUBLIC AGENCY
LAND USE AND ENVIRONMENTAL
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ESTATE PLANNING AND ADMINISTRATION
CIVIL LITIGATION
BUSINESS

ATTORNEYS
TRACY K. RICHMOND
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KEN A. CARIFFE
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KRISTEN M'BRIDE
D. DWIGHT WORDEN
Of Counsel
W. SCOTT WILLIAMS
Of Counsel

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SOLANA BEACH
CALIFORNIA
92075

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858 753-5198 FACSIMILE

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Initiative could stop the landowner from doing almost anything. The only express limitation is general direction to implement the Initiative in a manner that does not violate a person's constitutional or legal rights. Thus, the Initiative has left the City with the task of determining exactly what development might be allowed.

Another area of concern is the Initiative's focus on one property owner. The California Supreme Court upheld an initiative directed towards only three property owners and seemed to indicate an initiative directed at only one property owner would be legal in *Arnel Development Company v. City of Costa Mesa* (1980) 28 Cal.3d 511, 514. Whether *Arnel* and subsequent cases would uphold the validity of the current Initiative which is focused on a single property owner is a question we would consider as part of the review.

Notwithstanding our preliminary concerns, our analysis of the Initiative would be from the vantage point of whether it can be applied and interpreted in a manner that would support its validity. This is consistent with the approach taken by the courts to uphold citizens' initiatives whenever possible. We would closely review the Initiative provisions and make an assessment of how they might be legitimately applied. Our analysis would cover the issues outlined in your letter, as well as any other areas of importance. We will review pertinent case law to determine the extent to which some of the Initiative provisions have been upheld or overturned by the courts. We will review the Initiative provisions for consistency with the City charter and ordinances. Our opinion would outline those Initiative elements that raise concerns and provide an assessment of their legality.

I am comfortable that we would be able to complete the assessment by the end of May or earlier if required.

Turning to a cost estimate, we propose a reduced fee structure. Dwight Worden's normal hourly rate is \$300 per hour and mine is \$250 per hour. Our firm typically reduces its rates for public agency and public interest clients. Consistent with this policy, we propose to complete the Initiative analysis at the following reduced rates:

D. Dwight Worden	\$200.00 per hour
D. Wayne Brechtel	\$175.00 per hour
Associate Attorneys	\$150.00 per hour
Land Use Paralegal	\$110.00 per hour

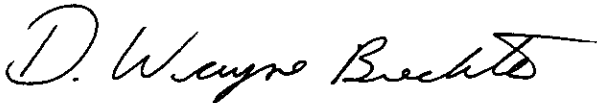
My estimate of the cost to complete the legal research and prepare a written opinion is \$8,000 to \$10,000. The estimate generally presumes approximately 12 hours of paralegal time to obtain and review pertinent documents, 15 hours of associate legal research, 20 hours of my time to closely review the Initiative and legal research and draft the written opinion, and 5 hours

of Dwight Worden's time to consult. I would be principally responsible for the project, but would be assisted by Dwight Worden who would consult and help review the final product. The time estimates are general and are likely to vary. We have not anticipated any travel but would be happy to do so if you want. I would let you know in advance if I thought the estimated amount was going to be exceeded.

We appreciate the opportunity to make this proposal. To assist the decision making process, attached is a summary of some of the initiative matters that have been handled by this office. Please feel free to give me a call if you have any questions or comments regarding the proposal set forth above. The proposal can be accepted by signing below where designated. If you would like a more formal attorney client fee contract, please let me know.

Very truly yours,

WORDEN WILLIAMS, APC



D. Wayne Brechtel
dwb@wordenwilliams.com

DWB:lg

Dated: _____

Accepted by City of Albany

By

Robert J. Zweben, City Attorney

Worden Williams, APC

Summary of Initiative Matters

The following is a summary of some of the initiative matters that have been handled by this office.

Jurisdiction

City of San Diego: Representing a coalition of environmental groups in the 1980s, drafted Proposition C, which imposed a vote requirement on general plan amendments that increased density. The initiative passed, and was the first of its type in the state.

City of Del Mar: Representing a local environmental group in the 1980s, drafted Measure B, which required preparation of a specific plan and a voter ratification thereafter for certain large scale developments.

City of Del Mar: Represented, and continue to represent, the City as special counsel to implement Measure B, a beach protection initiative, including administrative implementation, administrative hearings for abatement of encroachments and successful defense of the Measure.

City of Riverside: Representing environmental groups in the 1980s, drafted Measure C as a follow-up to an earlier growth control initiative. Measure C passed and imposed stricter growth control measures on certain hillside and agricultural areas of Riverside. We acted as counsel for the initiative proponents in the successful defense of the initiative in *Garat v. City of Riverside* (1991) 2 Cal.App.4th 259.

Most recently, our firm successfully challenged approval of a large-scale development in the City of Riverside that violated the terms and conditions of Measure C. *Friends of Riverside's Hills, et al. v. City of Riverside*, Superior Court case number RIC 426830. A Final Judgment is pending.

County of Riverside: Represented environmental groups in a county-wide growth control initiative. The initiative withstood a pre-vote challenge, but was defeated at the polls.

City of Redlands: Drafted a growth control measure in the 1980s that passed.

City of Pasadena: Drafted a growth control initiative that passed.

City of Tuolumne: Drafted a county-wide growth control measure that was defeated at the polls.

City of Loma Linda: Drafted a hillside protection initiative that passed.

City of Escondido: Represented the City of Escondido as special counsel to analyze and report on a solid waste initiative in the 1990s.

Newport Beach: Assisted a local citizen group on a traffic control measure that passed in 2000. In 2006, helped author an additional growth control measure for which signatures are currently being gathered.

City of San Clemente: Represented the City as special counsel on initiatives to address and analyze growth control and the impact of Marblehead.

City of Carlsbad: Drafted a "baby prop 13" initiative that required public vote on expenditures of more than \$1 million.