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DE ANZA COVE HOMEOWNERS  
6 ASSOCIATION, INC.

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO**

10 DE ANZA COVE HOMEOWNERS  
ASSOCIATION, INC., a California non-profit  
11 corporation,

12 Plaintiff,

13 v.

14 CITY OF SAN DIEGO, a California  
municipality;  
15 and DOES 1-100, inclusive,

16 Defendants.

Case No. GIC 821191

**PLAINTIFF'S SEPARATE  
STATEMENT OF UNDISPUTED  
FACTS AND EVIDENCE IN  
SUPPORT OF MOTION FOR  
SUMMARY ADJUDICATION**

**DATE:** June 7, 2005  
**TIME:** 11:00 a.m.  
**DEPT:** 66  
**I/C JUDGE:** Honorable Charles Hayes

**Complaint Filed:** November 17, 2003  
**Trial Date:** June 10, 2005.

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19 Plaintiff De Anza Cove Homeowners Association, Inc. ("HOA") submits the following  
20 statement of undisputed material facts, together with references to supporting evidence, in support  
21 of the HOA's Motion for Summary Adjudication of the following matters:

UNDISPUTED MATERIAL FACTS:	SUPPORTING EVIDENCE:
1. The City dredged Mission Bay and created the peninsula of De Anza Cove and landfill sufficient for grading.	Exhibit 63 to NOL, First Amendment to the Master Lease.
2. In 1953, the City entered into a 50-year lease to develop a mobilehome park.	Exhibit 63 to NOL, Master Lease.
3. The purpose of the lease was to authorize construction of: "384 permanent units, 126 vacation units, and 12 transient units at the Park."	Exhibit 5 to NOL.
4. The City also directed that at least 160 permanent units be constructed by 6/15/63.	Exhibit 5 to NOL.

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5. The City Charter, Section 55 requires a two-thirds vote of the electorate in order to allow residential use of City parkland, including De Anza Cove.	Exhibit 59 to NOL, San Diego City Charter, Section 55.
6. In 1962, the City re-zoned a large portion of Mission Bay—including De Anza Cove—to “park and recreational” use, notwithstanding the land’s pre-existing use as a mobilehome park.	Exhibit 23 to NOL, Report to Planning Commission, dated December 4, 1991 at p.1; Exhibit 61 to NOL, City Attorney Memo dated August 2, 1978, p.2.
7. In 1969, when the City’s lessee’s requested assignment to its new entity, De Anza Harbor Resort & Golf, LLC (DHRG), the City insisted that DHRG propose a plan to redevelop De Anza Cove for “new uses” within one year.	Exhibit 6 to NOL, Ninth Amendment to the Master Lease dated January 5, 1970, at p. 3.
8. The City included a provision in the Ninth Amendment that subjected DHRG to a substantial financial penalty if it failed to submit a redevelopment plan within the first year of the assignment.	Exhibit 6 to NOL, Ninth Amendment to the Master Lease dated Jan. 5, 1970 at p. 4, ¶ 29.
9. The City included the following provision in the Ninth Amendment to the lease: “In the event only that [DHRG] fails to submit a plan for redevelopment to the City Manager within one year following the effective date of the 9 <sup>th</sup> Amendment to the Lease Agreement hereof . . . then the rental requirement of 5% of gross income from trailer park rentals . . . shall be increased to 20% of said gross income immediately and automatically..”	Exhibit 6 to NOL, Ninth Amendment to the Master Lease dated Jan. 5, 1970 at p. 4, ¶ 29.
10. Lawrence Kapiloff is the author of Assembly Bill 447, passed in 1981, which is commonly known as the Kapiloff Bill.	Kapiloff Declaration at ¶ 1.
11. Lawrence Kapiloff was elected in 1972 to represent San Diego as an Assemblyman to the California State Assembly, 78 <sup>th</sup> District.	Kapiloff Declaration at ¶ 2.
12. Lawrence Kapiloff served as an Assemblyman to the California State Assembly, 78 <sup>th</sup> District until September 1982.	Kapiloff Declaration at ¶ 2.
13. Lawrence Kapiloff’s district included the mobilehome park located at 2727 De Anza Road, San Diego, California.	Kapiloff Declaration at ¶ 2.
14. During his tenure as an Assemblyman, Lawrence Kapiloff was the Chairman of the Water, Parks & Wildlife Committee from 1978 to 1980.	Kapiloff Declaration at ¶ 2.
15. Lawrence Kapiloff carried 168 Bills that were passed as well as three constitutional amendments.	Kapiloff Declaration at ¶ 2.
16. In 1982, Lawrence Kapiloff retired from the State Assembly to accept an appointment to the bench as a Judge of the Superior Court here in San Diego.	Kapiloff Declaration at ¶ 3.

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17. Lawrence Kapiloff retired from the bench at the end of 1994 and has served regularly as a retired judge on assignment in the Juvenile Division of the San Diego Superior Court since then.	Kapiloff Declaration at ¶ 3.
18. Lawrence Kapiloff was intimately involved in the floor debates, committee and general legislative discussions, public input, input from the City of San Diego, and all phases of the Bill.	Kapiloff Declaration at ¶ 4.
19. In essence, all communication, debate, and input on the Bill went through Lawrence Kapiloff.	Kapiloff Declaration at ¶ 4.
20. Legislature was concerned over the City of San Diego's attempt to terminate the leasehold interests at De Anza Cove on Mission Bay.	Kapiloff Declaration at ¶ 4.
21. The Legislature was concerned that, since mobilehome spaces were so scarce in San Diego, the mobilehome owners at the Park would be left with nothing if the City terminated the leases without advance planning, relocation, and, as applicable, compensation.	Kapiloff Declaration at ¶ 5.
22. The Kapiloff Bill was drafted and passed in an effort to protect the mostly elderly mobilehome residents from the hardships they would suffer by closure of the mobilehome park.	Kapiloff Declaration at ¶ 5.
23. The Bill was also passed to halt development of the land at least through November 2003.	Kapiloff Declaration at ¶ 5.
24. The Kapiloff Bill does not state that Park residents must be removed immediately after November 23, 2003.	Kapiloff Declaration at ¶ 6; Exhibit 13 to NOL.
25. The Kapiloff Bill mandates that after November 23, 2003, the City is required to follow the Mission Bay Master Plan as it existed in 1981.	Kapiloff Declaration at ¶ 6; Exhibit 13 to NOL, Assembly Bill 447 at Section 3(b).
26. The City of San Diego specifically requested the language allowing the City to conform Park use to the Mission Bay Master Plan after the lease expired in November 2003, rather than being limited to using the Park for "open space."	Kapiloff Declaration at ¶ 6; Exhibit 8 to NOL.
27. In committee discussions, the legislature was initially reluctant to grant the City so much discretion over future land use of the Park.	Kapiloff Declaration at ¶ 6.
28. In a compromise, however, the legislature amended the Bill, deleting the reference to "open space."	Kapiloff Declaration at ¶ 6; Exhibit 8 to NOL.
29. Under the Mission Bay Master Plan, the City can make different choices as to how it wants to use the land around Mission Bay.	Kapiloff Declaration at ¶ 6.

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30. Since permissible development of the lands around Mission Bay is based on a ratio between park land and commercial development, the City can decide if it wants to convert the De Anza Cove to true parkland or develop it for commercial use consistent with the provisions of the Tideland Trust and the Mission Bay Master Plan.	Kapiloff Declaration at ¶ 6.
31. If the City discontinues the use of the land as a mobilehome park—and either develops it into a hotel or returns the land to true park use—it was the legislature’s intention in drafting the Bill, that the City would follow all applicable state laws and properly phase-out the use as a mobilehome park in a humane manner so as to do the least damage to the residents.	Kapiloff Declaration at ¶ 6.
32. No Legislative debate or communication to the contrary was made.	Kapiloff Declaration at ¶ 6.
33. Nowhere in the Kapiloff Bill is any intent stated to exempt the City from compliance with the body of laws known as the Mobilehome Residency Law (MRL), or the tenant impact reporting requirements mandated by the MRL.	Kapiloff Declaration at ¶ 7; Exhibit 13 to NOL.
34. The legislature never agreed during <i>any</i> discussion or debate that by enacting the Kapiloff Bill the provisions of the MRL as they apply to the City of San Diego or as they apply to the De Anza Cove mobilehome park would be suspended.	Kapiloff Declaration at ¶ 7.
35. If the Legislature, during any of its discussions in committee or with City representatives, had wanted any provision of the MRL not to apply to De Anza Cove, it would have specifically written that into the Kapiloff Bill.	Kapiloff Declaration at ¶ 7.
36. During Legislative committee meetings, the legislature never agreed that the Kapiloff Bill would take the place of any protection or other benefits to which the De Anza Residents could be entitled to under other state law.	Kapiloff Declaration at ¶ 8.
37. The Kapiloff Bill does not contain any language requiring, nor did the legislature ever agree that, residents must waive any of their statutory rights under the law.	Kapiloff Declaration at ¶ 8; Exhibit 13 to NOL.
38. Contrary to the City of San Diego assertion that it has not made any “planning decision, action, or inaction” with regard to the mobilehome park, the Kapiloff Bill itself <i>requires</i> the City of San Diego’s express ratification of the Bill.	Kapiloff Declaration at ¶ 9.

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39. If the City did not ratify the Bill, it would have become inoperative because it was a permissive bill, not a mandate.	Kapiloff Declaration at ¶ 9.
40. In 1981, before the Bill was enacted, Lawrence Kapiloff had numerous direct contacts with the City of San Diego's representatives, including John Wetzel, regarding the language and purpose of the Kapiloff Bill—which was to protect the Park's mobilehome owners and residents.	Kapiloff Declaration at ¶ 10.
41. It was made abundantly clear to Mr. Wetzel and the City that if the City chose not to ratify the Kapiloff Bill, the legislature would introduce legislation that would have the effect of removing the land from City control under the Tidelands Trust and to designate it as State park land with phase-in protections for the residents.	Kapiloff Declaration at ¶ 10.
42. If the State reclaimed the land, the City would not only lose control over the land, but the City would lose the valuable revenue stream from rents that it was then enjoying and would continue to enjoy for the next 20 years.	Kapiloff Declaration at ¶ 10.
43. The City would lose the right to develop the land for a potentially more lucrative use in the future—a right that it now enjoys.	Kapiloff Declaration at ¶ 10.
44. Facing these significant consequences, the City of San Diego weighed its options and made a decision—it expressly ratified the Kapiloff Bill through the resolution passed by the City Council in January 1982.	Kapiloff Declaration at ¶ 10; Exhibit 12 to NOL.
45. The City of San Diego has had over 20 years to prepare for the expiration of the ground lease and the sunset of the Kapiloff Bill, to follow the provisions of the Mobilehome Residency Law, to prepare a tenant impact report, to hold public hearings, and to gather and distribute financial and other resources to help relocate the owners and residents of the Park.	Kapiloff Declaration at ¶ 11.
46. Even if the State had reclaimed the land from the City—and later began to close the mobilehome park as the City is presently attempting—the State itself would be required to follow the mandates of the Mobilehome Residency Law.	Kapiloff Declaration at ¶ 12.
47. It was never agreed during <i>any</i> discussion or debate by the Legislature in enacting the Kapiloff Bill to suspend the provisions of the MRL as they apply to the City of San Diego or as they apply to the De Anza Cove mobilehome park.	Kapiloff Declaration at ¶ 13.

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48. There is nothing on the face of the Kapiloff Bill that permits the City of San Diego to evict the mobilehome park owners and residents without first complying in full with the applicable State laws, including the provisions of the Mobilehome Residency Law and the Mello Act.	Kapiloff Declaration at ¶ 13; Exhibit 13 to NOL.
49. Proof of the Legislature's intent is found in the support and passage of two bills, by the state assembly, that were contemporaneous with the Kapiloff Bill: Government Code section 65863.7 of the Mobilehome Residency Law, which was sponsored by Assemblyman Chet Wray, and the Mello Act, which was sponsored by Assemblyman Mello.	Kapiloff Declaration at ¶ 13.
50. The thrust of all of these legislative efforts was to protect mobilehome residents and low-income housing.	Kapiloff Declaration at ¶ 13.
51. If Assemblyman Kapiloff or the Legislature had wanted any provision of the MRL or the Mello Act not to apply to De Anza Cove, they would have specifically written that into the Kapiloff Bill.	Kapiloff Declaration at ¶ 13.
52. In 1979, Mike Gotch was elected as Councilman for District 6 of the City of San Diego, which included De Anza Cove mobilehome park.	Gotch Declaration at ¶ 2.
53. Mike Gotch served two terms as a City Councilman, which ended in 1987.	Gotch Declaration at ¶ 2.
54. Three years later, Mike Gotch was elected as an Assemblyman to the California State Assembly, 78 <sup>th</sup> District, where he served until 1994. Once again, his district included the De Anza Cove mobilehome park.	Gotch Declaration at ¶ 3.
55. After completing his term in the Assembly, Mike Gotch joined Governor Davis's office in 1999 and served as the Governor's legislative secretary until 2003.	Gotch Declaration at ¶ 4.
56. As legislative secretary, Mike Gotch worked directly with the Assembly and Senate representatives and their staff shaping, advancing, and negotiating the language, scope, and propriety of thousands of bills each year.	Gotch Declaration at ¶ 4.
57. According to Former Councilman Gotch, the City of San Diego's current assertions that it has not made any "planning decision, action, or inaction" regarding the De Anza Cove mobilehome park belies the facts.	Gotch Declaration at ¶ 6.

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58. Throughout Councilman Gotch's tenure, the City was intricately involved in every planning decision regarding De Anza Cove; the City took actions concerning the intended change of use of this property.	Gotch Declaration at ¶ 6.
59. After many months of consideration, in early June 1981, the City Council passed a resolution to plan the redevelopment of the property.	Gotch Declaration at ¶ 7; Exhibit 7 to NOL.
60. The plan called for notifying the De Anza residents that redevelopment may occur in the future and that the redevelopment plans might affect the length of their residency.	Gotch Declaration at ¶ 7; Exhibit 7 to NOL.
61. The Council's plan directed the City Manager to negotiate a lease amendment with its lessee, the predecessor to DHRG—an amendment that would see the City's then current rent revenues increase dramatically.	Gotch Declaration at ¶ 7; Exhibit 7 to NOL.
62. Throughout the many months that the Council considered this proposed resolution, it was Councilman Gotch's intent that the City Manager include in the lease amendment the "orderly relocation of the mobile home units from the De Anza area."	Gotch Declaration at ¶ 7; Exhibit 7 to NOL.
63. It was intended that all redevelopment and relocation plans would be prepared and implemented in consultation with the affected residents, and consideration would be given to the security, safety, and quiet enjoyment of the affected residents.	Gotch Declaration at ¶ 7; Exhibit 7 to NOL.
64. Before taking action on June 8, 1981, the City considered what would happen at the end of 2003 with regards to the residents' relocation benefits if no redevelopment occurred before then.	Gotch Declaration at ¶ 8.
65. In a memo dated April 16, 1981, the City Manager—in response to the Council's request—reported that "if displacement were to occur at the end of the lease in 2003, the relocation costs could be on the order of \$7 million."	Gotch Declaration at ¶ 8; Exhibit 10 to NOL, p. 3.
66. The anticipated amount of relocation costs owed to residents was less than the projected revenues generated even if the property remained a mobilehome park through 2003—and even before the City's decision to increase its rent revenue from the property.	Gotch Declaration at ¶ 8; Exhibit 10 to NOL.
67. The City Council also considered the significant increase in revenues that the City would generate from the De Anza Cove property if the property were to be developed as a resort hotel.	Gotch Declaration at ¶ 8.

