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October 15, 2012

Honorable William W. McGuiness, Administrative Presiding Justice  
Honorable Martin J. Jenkins, Associate Justice  
Honorable Peter J. Siggins, Associate Justice  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT, DIVISION 3  
350 McAllister Street  
San Francisco, CA 94102-7421

**RE: REQUEST FOR PUBLICATION**

***Kenneth Wachi v. City of Pleasanton* (Case No. A131348)**

Dear Justices McGuiness, Jenkins, and Siggins,

This firm represents the California Special Districts Association (CSDA) which is a nonprofit association comprised of more than 1,000 independent special districts throughout the State of California. The member special districts provide a wide array of public services to both suburban and rural communities including flood control and water conservation services involved in this case, as well as fire suppression, park and recreation, security and police protection, airport services, harbor and port services, cemeteries, libraries, sewage collection and treatment, and mosquito and vector control. All of these special districts were formed after a determination that the services they provide are necessary to the local community, and upon approval of a majority vote of the qualified electors in each community which such special districts serve.

The issues decided in this case are of critical importance to special district members of CSDA in light of this court's holding in the above-titled case. Specifically, the Opinion addresses the particular facts and circumstances of multi-public agency immunity in development and maintenance of bicycle trails and recreational pathways that cross jurisdictional boundaries.

CSDA respectfully urges the court to publish this decision on the grounds that the decision meets the criteria of California Rules of Court, Rule 8.1105, subdivisions (c)(2), (c)(4), and (c)(6), justifying publication for the following reasons:

1. The Court in its Opinion considered how Government Code section 831.4, providing immunity to a public entity for injuries caused by a condition on “any trail,” applied to a written agreement between the Alameda County Flood Control District (“District”) and the City of Pleasanton (“City”) permitting the City to operate the Alamo Trail for public recreational use on property owned by the District. No previous case has addressed the application of Government Code section 831.4 to the particular facts and circumstances of multi-public entity immunity where two public entities cooperated jointly in the development and maintenance of trails and other recreational pathways that cross jurisdictional lines.

The Court’s Opinion also clarifies the applicability of third-party beneficiary principles as applied to an agreement between two public entities in the context of governmental tort immunity. The Court’s finding that the appellant was not a third-party beneficiary of the agreement between the District and the City will provide important guidance to public entities seeking to enter into such agreements with other public entities in the future.

For the foregoing reasons, CSDA believes the Opinion satisfies the requirements of California Rules of Court, Rule 8.1105, subdivision (c)(2), in that it applies existing rules of law to a set of facts significantly different from those stated in previously published opinions. CSDA also believes the Opinion satisfies the requirements of California Rules of Court, Rule 8.1105, subdivision (c)(4), in that it provides important clarification of a provision of a statute, namely Government Code section 831.4.

2. Publication of the Court’s Opinion would foster cooperation between public entities seeking to open up public lands for recreational trails for public use by clarifying the scope of potential liability a public entity might face in the event a person is injured while using such trails. Potential liability for damages is a factor any public entity including special districts must take into account before deciding whether to open up land for public use. Clarification as to the application of Government Code section 831.4 to multi-public entity agreements to develop trails crossing jurisdictional boundaries will foster and promote such agreements by providing guidance to public entities.

For the foregoing reasons, CSDA believes the Opinion satisfies the requirements of California Rules of Court, Rule 8.1105, subdivision (c)(6), in that it involves a legal issue of continuing public interest.

In conclusion, CSDA believes that the Court’s Opinion meets several of the standards for publication set forth in California Rules of Court, Rule 8.1105, subdivision (c), and that publication of the Opinion would encourage and promote multi-public entity agreements

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to open up public lands for recreational trails for public use. CSDA respectfully requests the Court to certify the Opinion for publication.

Very truly yours,

A handwritten signature in blue ink, appearing to read "David W. McMurchie", written in a cursive style.

DAVID W. McMURCHIE

DWM:gb

## PROOF OF SERVICE

I, the undersigned, declare that I am a citizen of the United States, employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is: McMurchie Law, 2130 E. Bidwell Street, Suite 2, Folsom, California 95630.

On October 15, 2012, I served the foregoing document described as: **LETTER REQUESTING PUBLICATION OF *WACHI V. CITY OF PLEASANTON* (CASE NO. A131348) TO THE HONORABLE WILLIAM J. McGUINNESS, THE HONORABLE MARTIN J. JENKINS, AND THE HONORABLE PETER J. SIGGINS DATED OCTOBER 15, 2012** on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope as follows:

### SEE ATTACHED SERVICE LIST

(BY U.S. MAIL) I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing; and that the correspondence shall be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Folsom, California in the ordinary course of business.

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

Executed on October 15, 2012 at Folsom, California.

  
\_\_\_\_\_  
GARY B. BELL  
Legal Assistant

**SERVICE LIST**

*Wachi v. City of Pleasanton*

Case No. A131348

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