NO. B304699

IN THE SECOND DISTRICT COURT OF APPEAL, DIVISION FOUR

BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT,

Plaintiff, Appellant & Cross-Respondent,

v.

ALL PERSONS INTERESTED IN THE MATTER OF THE VALIDITY OF RESOLUTION 2017/09 OF THE BOARD OF DIRECTORS OF THE BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT LEVYING ASSESSMENTS WITHIN THE DISTRICT AND THE ASSESSMENTS, IMPROVEMENTS AND SERVICES, CONTRACT AND OTHER MATTERS AND PROCEEDINGS RELATING THERETO,

Defendants and Respondents.

Appeal from Judgment of the Los Angeles County Superior Court, Dept. 86
Superior Court Case No. BC684646
(Hon. Amy D. Hogue and Hon. Mitchell L. Beckloff, Judges Presiding)

APPLICATION OF LEAGUE OF CALIFORNIA CITIES, CALIFORNIA STATE ASSOCIATION OF COUNTIES, CALIFORNIA SPECIAL DISTRICTS ASSOCIATION, AND CALIFORNIA ASSOCIATION OF GHADS TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANT BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT; *AMICUS CURIAE* BRIEF

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

The League of California Cities, California State Association of Counties, California Special Districts Association, and California Association of GHADs are not aware of any entities or persons that must be listed in this certificate under California Rules of Court, rule 8.208.

Dated: December 7, 2021 BURKE, WILLIAMS & SORENSEN, LLP

By: */s/ Kevin D. Siegel*
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APPLICATION TO FILE *AMICUS CURIAE* BRIEF

I. INTRODUCTION

Pursuant to California Rules of Court, rule 8.520(f), *amici curiae* League of California Cities ("Cal Cities"), California State Association of Counties ("CSAC"), California Special Districts Association ("CSDA"), and California Association of GHADs ("Association of GHADs") (collectively, "*Amici*") respectfully request permission to file an *amicus curiae* brief in support of Appellant Broad Beach Geologic Hazard Abatement District ("BBGHAD").

This application is timely made within 14 days after the filing of the reply brief on the merits on November 23, 2021. (Rules of Court, rule 8.200(c)(1)).)

II. INTEREST OF *AMICI CURIAE*

Amici represent cities, counties, special districts, and geological hazard abatement districts throughout California.

Cal Cities is an association of 479 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians.

CSAC is a non-profit corporation having a membership consisting of the 58 California counties.

CSDA is a non-profit corporation with a membership of more than 900 special districts. CSDA's members provide a wide variety of public services to urban, suburban, and rural communities, including water, sewer, and waste removal services.

The California Association of GHADs is an association of geologic hazard abatement districts ("GHADs") that work to improve, enhance and

promote the effectiveness of GHADs in California and promote the utilization of GHADs in the prevention, mitigation, abatement, and control of geological hazards.

Each of the *Amici* has a process for identifying cases, such as this one, that warrant their participation.

Cal Cities is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Legal Advocacy Committee monitors litigation of concern to municipalities, identifying those cases that have statewide or nationwide significance.

CSAC sponsors a Litigation Coordination Program, which is administered by the California County Counsels' Association. CSAC's Litigation Committee monitors litigation of concern to California's counties.

CSDA is advised by its Legal Advisory Working Group, comprised of 25 attorneys that represent special districts throughout the State. The group monitors litigation of concern to special districts and identifies cases that have statewide or nationwide significance.

The Association of GHADs is overseen by a board of directors that monitors litigation of concern to GHADs throughout California.

Each of the *Amici* has determined that this case is of significance to its members. *Amici* have reviewed the parties' principal briefs and conclude that additional argument would assist the Court. They desire to provide points and authorities to explain their views regarding the constitutional, statutory, and case law at issue and the implications of the various arguments presented to this Court, and to assist this Court in evaluating the issues.

Accordingly, *Amici* respectfully request leave to file the brief combined with this application.

III. CONCLUSION

Amici respectfully request that the Court accept the accompanying brief for filing in this case.

Dated: December 7, 2021

BURKE, WILLIAMS & SORENSEN, LLP

By: */s/ Kevin D. Siegel*

Kevin D. Siegel
Megan A. Burke
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AMICUS CURIAE BRIEF

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AMICUS CURIAE BRIEF OF THE LEAGUE OF CALIFORNIA CITIES, CALIFORNIA STATE ASSOCIATION OF COUNTIES, CALIFORNIA SPECIAL DISTRICTS ASSOCIATION, AND CALIFORNIA ASSOCIATION OF GHADS IN SUPPORT OF APPELLANT BBGHAD

I. INTRODUCTION

Respondents contend that because the subject project will, as a collateral or incidental consequence of providing special benefits to the assessed properties, also provide benefits to other properties and the public-at-large, the value of those collateral/incidental benefits must be deducted from the special assessment amounts. Respondents' contention lacks merit.

First, Respondents' analysis is based on facile, unsupported interpretations of Proposition 218 and the case law decided thereunder.

Second, Respondents' overreaching interpretation of Proposition 218, if accepted by this Court, would undermine local governments' ability to pursue and finance worthy projects that provide special benefits to assessed properties and incidentally provide public benefits without support in the text or legislative history of Proposition 218.

Third, Respondents' contentions are contrary to the purposes of Proposition 218 and the separation of powers doctrine.

II. DISCUSSION

A. Appellant BBGHAD Properly Calculated Special Benefits Without Deducting Collateral or Incidental Benefits Conferred on Other Properties or the Public-at-Large.

1. Proposition 218 Requires Deduction of General Benefits, not Public Benefits.

All projects governed by Proposition 218 are public projects which serve public purposes and provide public benefits. But not all public projects provide "general benefits," as that term is used in Proposition 218 and discussed in the case law. Rather, where the costs of a public project to

specially benefit assessed properties—e.g., by making improvements to public infrastructure or widening a public beach, as is the case here—do not exceed the reasonable costs to confer those special benefits and only collaterally or incidentally provide public benefits, the value of such collateral public benefits need not be deducted from the assessments. Rather, Proposition 218 requires assessments to omit costs, if any, for benefits that are *not* particular and distinct benefits provided to the assessed properties—i.e., costs for *general* benefits must be omitted, not costs for public benefits. Here, since the costs of a project to protect oceanfront properties from rising seas do not exceed the reasonable costs of providing these special benefits—and the public benefits of a widened beach are collateral or incidental public benefits of the project, required by the Coastal Commission, State Lands Commission, and state law—there are no general benefits that must be deducted from the assessment budget.

We begin by examining provisions of Proposition 218 that define and distinguish special and general benefits. "'Special benefit' means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute 'special benefit.'" (Cal. Const., art. XIIID, § 2, subd. (i).)

General benefit is not defined. However, by defining "special benefit" as a "particular and distinct benefit over and above general benefits" (*ibid.*), Proposition 218 makes clear that general benefits are distinct from, and not subsumed within special benefits. In other words, if a property receives "a particular and distinct benefit" as compared to benefits generally conferred on properties or to the public, those particular and distinct benefits are special benefits, irrespective of benefits generally conferred.

This definitional distinction is supported by the operative text of

Proposition 218. Section 4(a) of Article XIIID provides in pertinent part:

> [1] The **proportionate special benefit derived by each identified parcel shall be determined** in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. [2] **No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred** on that parcel. [3] **Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel**. [Emphasis and bracketed numbers added.]

The first sentence requires a local government to calculate each property's proportionate special benefit in relation to total project costs; the second generally proscribes charging parcels for costs that exceed the "reasonable cost of the proportional special benefit conferred on that parcel;" and the third mandates that "[o]nly special benefits are assessable" and requires the local government to "separate the general benefits from the special benefits conferred on a parcel."

Thus, the requirements of section 4(a),[1] like the definitions of "special benefit" in section 2(i), make clear that special benefits are those that are distinct from, and over and above, general benefits. Further, an assessment imposed on a property may not exceed that property's proportionate special benefit, and shall not include any amount for benefits that are not particular and distinct to that property.

Which brings us to the question of whether the determination of a property's proportionate "particular and distinct" special benefit varies if it confers benefits on non-assessed parcels and persons as a collateral or

[1] Unspecified section references are to Article XIIID of the California Constitution.

incidental consequence of the project. Respondents contend that such collateral or incidental benefits are general benefits that must be deducted when calculating special benefits.[2] That contention is contrary to the law.

All projects subject to Proposition 218 are, of course, public projects. (See, e.g., Cal. Const., art. XIIID, § 4, subds. (a) [referring to public projects], and § 2, subd. (c), (f), and (h) [referring to capital and operating and maintenance expenses for public improvements and services].) This is true even where 100% of the benefits qualify as special benefits. (*Town of Tiburon v. Bonander* (2009) 180 Cal.App.4th 1057, 1063, 1077, 1080 [100% of the benefits of undergrounding overhead utilities qualified as special benefits]; *City of Saratoga v. Hinz* (2004) 115 Cal.App.4th 1202, 1224 ["The fact that a particular improvement project does not confer any general benefit on the community at large does not make the project any less public"].)

Thus, all projects governed by Proposition 218 necessarily provide *public* benefits, but do not necessarily provide *general* benefits. In other words, general benefits are not equivalent to public benefits, and the two terms should not be conflated.

Further, Proposition 218 does not require deduction of the value of *public* benefits from assessment budgets. Rather, as discussed above and specified in section 4(a), Proposition 218 requires assessments to omit costs, if any, for benefits that are *not* particular and distinct benefits provided to assessed properties—i.e., costs for *general* benefits must be omitted, as opposed to costs for *public* benefits.

While Proposition 218 defines and describes special benefits as

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[2] Proportionality refers to the relative costs and benefits among the specially benefitted properties, an evidentiary issue beyond the scope of this brief.

benefits over and above general benefits and makes clear that general benefits are not equivalent to public benefits, Proposition 218 does not provide further guidance as to how to differentiate between the two. For example, Proposition 218 does not suggest, prescribe, or proscribe any methodology for distinguishing special from general benefits; this is left to the judgment of the professional engineer retained to prepare the assessment. Such a lack of guidance is common to many Proposition 218 provisions. (See *Griffith v. Pajaro Valley Water Management Agency* (2013) 220 Cal.App.4th 586, 601 ["Proposition 218 prescribes no particular method for apportioning a fee or charge other than that the amount shall not exceed the proportional cost of the service attributable to the parcel"], disapproved on another issue by *City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191, 1209 fn. 6.)

Given this lack of guidance provided by Proposition 218 itself, we look to case law. Case law supports the proposition that where a project will, as a collateral or incidental consequence of providing special benefits, also provide benefits to other properties or the public-at-large, those benefits need not be classified as general benefits. As long as the owners of assessed properties do not pay more than their proportionate share of the local government's reasonable cost to confer special benefits, the assessments are proper.

In *Town of Tiburon*, the First District Court of Appeal considered whether the record demonstrated that special assessments to pay for the undergrounding of overhead utility lines, in a particular neighborhood, were for special benefits rather than general benefits. (*Town of Tiburon v. Bonander* (2009) 180 Cal.App.4th 1057, 1063, 1077.) The Court held that the Town had produced evidence that undergrounding utilities would provide particular and distinct aesthetic benefits to properties fronting such utility lines by removing unsightly wires, as well as particular and distinct

safety and service reliability benefits for such properties by reducing the risk of power-outages and dangers from downed utility lines. (*Id.* at 1078-79.)

All benefits were properly classified as special benefits (though the Town made a different error by failing to ensure that each assessed property was only charged its *proportionate* special benefit vis-à-vis what other properties were assessed). (*Id.* at 1080.) Thus, the Town had properly not deducted any general benefits.

Yet it is indisputable that public benefits are provided by undergrounding of utilities. For example, undergrounding utilities reduces risks of dangers to the general public from downed utility lines, particularly in this age of global warming and fire storms. Undergrounding also reduces risks of power outages that would harm the public-at-large, e.g., by preventing purchase and sales of goods and services from affected providers. In addition, undergrounding utilities improves aesthetics for the broader benefit of the public, e.g., more scenic public streets.

Thus, *Town of Tiburon* teaches that a local government may impose the entire cost of a public project on specially benefitted properties—based on evidence that the assessed properties received a distinct advantage not shared by other properties or the public-at-large—even when the project will provide public benefits as a collateral or incidental consequence of the project.

The *City of Saratoga* case provides further support. There, the project included widening and resurfacing a private road so that it could be dedicated to the City as a public street, as well as the installation of a water line and fire hydrant. (*City of Saratoga*, 115 Cal.App.4th at 1225.) Even though public benefits were provided by the expansion and improvement of the public street and water systems, including installation of a fire hydrant, the Court upheld the City's reliance on the engineer's determination that

the project provided no general benefits. (*Ibid.*)

A case involving a City of Pomona assessment district also supports Appellant BBGHAD. The Second District rejected a claim that assessments for costs of providing security services, among other programs, violated Proposition 218 by requiring assessees to pay for general benefits to the public-at-large, to whom safety benefits will inure. (*Dahms v. Downtown Pomona Property & Business Improvement Dist.* (2009) 174 Cal.App.4th 708, 723.) The Court also explained that that "the cap on the assessment for each parcel is the reasonable cost of the proportional special benefit conferred on that parcel." (*Ibid.*) Thus, as long as Appellant BBGHAD is not assessing properties for any costs that exceed their *proportionate* special benefit—which depends upon analysis regarding proportionality among assessees, an evidentiary issue beyond the scope of this brief—it did not err by assessing properties for special benefits without deducted collateral or incidental public benefits.

Thus, the *City of Saratoga* and *Pomona* cases also teach that a public agency may impose the entire cost of a public project on specially benefitted properties, where the assessed properties receive a particular and distinct advantage not shared by other properties or the public-at-large, including when the project will provide public benefits as a collateral or incidental consequence of the project.

Here, Appellant BBGHAD produced evidence that the assessed properties are only charged for particular and distinct benefits that the project will provide. It is of no consequence under Proposition 218 that a collateral or incidental consequence of the project will be a widened public beach that other property owners and members of the public are entitled to enjoy—as required by the Coastal Commission to secure regulatory approval of the project to protect the assessed properties. Proposition 218 does not require that such collateral or incidental benefits to other property

owners or the public-at-large be classified as general benefits and deducted from the assessments. Rather, they are properly considered public benefits, for which no costs must be deducted. Thus, under the text of Proposition 218 and the analysis of the *Tiburon*, *Saratoga*, and *Pomona* cases, this Court should reverse the trial court's judgment that Appellant BBGHAD improperly imposed special assessments without deducting general benefits.

There is no contrary case.

In the oft-cited *Silicon Valley* case, the Supreme Court considered whether the future acquisition, development, and maintenance of unspecified open space parcels across an 800-square mile district of 1.2 million people conferred special or general benefits. (*Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 437, 455.) Because the Open Space Authority produced no evidence regarding particular and distinct benefits (that is, special benefits) that will inure to particular properties—e.g., evidence regarding properties' proximity, expanded, or improved access to parks and open space—the Authority lacked evidence to show that the project would provide special benefits. (*Id.* at 455-56; see also *id.* at 452 fn. 8 ["the characterization of a benefit [as special or general] may depend on whether the parcel receives a direct advantage from the improvement (e.g., proximity to a park) or receives an indirect, derivative advantage resulting from the overall public benefits of the improvement (e.g., general enhancement of the district's property values)"].)

The Supreme Court neither stated nor implied that if the Open Space Authority had offered evidence that assessed properties would receive special benefits, then the collateral or incidental public benefits provided by the open space would have constituted general benefits. Thus, *Silicon Valley* does not address the essential question in this case: whether local

government may assess property for special benefits conferred without deducting the value of collateral or incidental public benefits.

Here, Appellant BBGHAD has produced evidence that the project will provide special benefits to the assessed properties by protecting them from destruction. Since that was not at issue in *Silicon Valley*, that case is inapposite as to the issue at bar. (*People v. Avila* (2006) 38 Cal.4th 491, 566 ["cases are not authority for propositions not considered"].)

Moreover, in *Silicon Valley*, the essential purpose of the assessments was to fund public amenities—the acquisition, development, and maintenance of open space land to be enjoyed by the whole public. Here, by contrast, the essential purpose of the assessments is to fund a project to protect the assessed properties from destruction, and Appellant BBGHAD produced evidence that the project will provide special benefits to the assessed properties in furtherance of this purpose. Thus, *Silicon Valley* provides no support for the trial court's conclusion that Appellant BBGHAD failed to subtract costs for general benefits.

Beutz v. County of Riverside is similar to *Silicon Valley*, and thus follows it. In *Beutz*, the Fourth District considered a "special assessment district consisting of all residential properties in the community of Wildomar in order to pay the annual ongoing costs of refurbishing and maintaining landscaping in four public parks in the community." (*Beutz v. County of Riverside* (2010) 184 Cal.App.4th 1516, 1519.) The Court held that the County produced no evidence regarding "how or to what extent *all* Wildomar residential properties in the aggregate, or specific Wildomar residential properties in particular, will specially benefit from their occupants' anticipated use of the parks." (*Id.* at 1533, italics in original.) Accordingly, *Beutz* followed *Silicon Valley* by holding that the County violated Proposition 218. (*Ibid.*)

But *Beutz* also sheds no light on the situation at bar, where there is

evidence that the sand-import project will provide special benefits to the assessed properties—by protecting against the encroaching seas—and that the special benefits do not exceed the reasonable cost to do so. Thus, *Beutz* is also inapt.

Moreover, as in *Silicon Valley*, the very purpose of the project in *Beutz* was to fund amenities for the general public, whereas the purpose of the assessments at issue here is to provide special benefits to the assessed properties. Further, the public benefits at issue here (widening of a public beach) are a collateral and incidental consequence of those special benefits (sand imports to protect seafront homes), which are provided at no additional cost. In addition, *Beutz* acknowledged that a different result is proper where the assessments pay for special benefits and only "concomitantly" benefit other properties or the public at-large, the situations at bar and in *Dahms v. Downtown Pomona Property & Business Improvement Dist.* (*Beutz,* 184 Cal.App.4th at 1537, citing and distinguishing *Dahms,* 174 Cal.App.4th at 723.) Further, as in *Silicon Valley*, the County in *Beutz* voluntarily chose to impose special assessments to fund amenities to benefit the public, whereas in the case at bar the public benefits are required by the Coastal Commission as a condition of proceeding with a project to specially benefit assessed properties. Thus, *Beutz* does not support the trial court's determination that Appellant BBGHAD failed to properly evaluate special benefits.[3]

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[3] The Fourth District also concluded that the assessments failed to deduct general benefits and were not proportionate among the assessed properties. (*Beutz,* 184 Cal.App.4th at 1532-33.) But those supplemental conclusions were unnecessary to the decision, since the Court held that there was no evidence of special benefits in the first instance. Moreover, without evidence of special benefits, the assessments necessarily failed to account for general benefits and were not proportionate. Accordingly, those supplemental conclusions provide no support for Respondents. (See *Fireman's Fund Ins. Co. v. Maryland Cas. Co.* (1998) 65 Cal.App.4th

2. Because the Public Benefits Are Regulatory Requirements for the Project, They Are Not General Benefits.

In addition, critical facts that distinguish the case at bar from *Silicon Valley* and *Beutz*, and confirm that the public benefits the BBGHAD project are not general benefits.

The public benefits of improved beach access are conditions of approval of the project, required by the Coastal Commission, for the local government to pursue a project to specially benefit the assessed properties. Thus, the project may only proceed because it satisfies the regulatory requirement imposed and enforced by the Coastal Commission. Proposition 218 does not require local governments to relieve specially benefitted properties of their obligation to pay for their special benefits because a regulatory agency will only allow the project to proceed if it benefits the public.

By contrast, in *Silicon Valley* and *Beutz*, local governments sought to assess properties for amenities they sought to provide to the general public. They were not compelled to acquire, develop, or maintain any public amenities as regulatory requirements or conditions of approval of a project to provide special benefits to assessed properties.

That is, of course, the situation here. To provide special benefits to the assessed properties, the Coastal Commission and State Lands Commission require that the project benefit the broader public. Thus, Appellant BBGHAD did not err by assessing the specially benefitted properties for their share of the costs of the special benefits.

1279, 1301 [portion of precedent that is "unnecessary to the decision in that case" is not precedential]; *Bryant v. Superior Court* (1986) 186 Cal.App.3d 483, 495-96 [purported ruling in precedent was not a holding, as the decision did not actually depend thereon; precedent was thus inapt].)

B. Affirming the Superior Court's Judgment Would Discourage and Undermine Financing of Worthy Public Projects that Specially Benefit Property.

The State Legislature has adopted scores of statutes that authorize local governments to impose assessments, including in (1) principal acts creating, and other acts authorizing and governing, special districts,[4] and (2) generally-applicable statutes that date back more than 100 years that authorize assessments for categories of improvements and services. Such generally applicable statutes include:

- Municipal Improvement Act of 1911 (Sts. & Hy. Code §§ 5000 – 6794), which authorizes assessments for public right-of-way, flood protection, water and sewer systems, and other public improvements and services. (See, e.g., Sts. & Hy. Code § 5101.)
- Municipal Improvement Act of 1913 (Sts. & Hy. Code §§ 10000 – 10706), which also authorizes assessments for public water systems, gas systems, lighting, transportation facilities, and other public improvements and services. (See, e.g., Sts. & Hy. Code §§ 10100, 10100.5.)
- Landscaping and Lighting Act of 1972 (Sts. & Hy. Code §§ 22500 – 22679), which authorizes assessments for landscaping, lighting and park improvements, among other things. (See, e.g., Sts. & Hy. Code § 22525.)

[4] See, e.g., *Solvang Muni. Improvement Dist. v. Bd. of Supervisors* (1980) 112 Cal.App.3d 545, 548, fn. 1 (referring to district's special legislation); Community Services District Law (Gov. Code §§ 61000-61250); Wat. Code, App. § 120-455 (Stanislaus County Flood Control Enabling Act); Wat. Code, App. § 83-188 (Shasta County Water Agency Act); Wat. Code, App. § 136-57 (Antelope Valley Storm Water Conservation and Flood Control Dist.); Wat. Code, App. § 114-379 (Tahoe-Truckee Sanitation Agency); Wat. Code, App. § 127-703 (Colusa Basin Drainage Dist.); Wat. Code, App. § 97-46 (Mojave Water Agency Law); Wat. Code, App. § 21-6 (Knight's Landing Ridge Drainage Dist.); Wat. Code, App. § 126-701 (Placer County Flood Control and Water Conservation Dist.); Wat. Code § 47100 (California Water Storage District Law); Wat. Code, App. § 31-12 (Drainage District Improvement Act of 1919).

- Benefit Assessment Act of 1982 (Gov. Code §§ 54703 – 54720), which authorizes assessments for flood control and drainage improvements, among other things. (See, e.g., Gov. Code § 54710.)
- Fire Suppression Assessments Act (Gov. Code §§ 50078 – 50078.20), which authorizes assessments for fire protection services. (See, e.g., Gov. Code § 50078.)

Local governments have long used these statutes to fund projects that specially benefit property. Proposition 218 certainly tightens the standards that local governments must satisfy, but it does not, and voters did not intend it to, eliminate local governments' authority to impose lawful special assessments.

Public projects that specially benefit property are increasingly expensive, particularly capital-intensive projects like the one at issue here, and those that provide critical infrastructure improvements, e.g., undergrounding utilities. For such projects to proceed, they must satisfy myriad requirements that provide public benefits, such as the public benefits required here by the Coastal and State Lands Commissions and other regulators, environmental mitigations required by the California Environmental Quality Act (CEQA), and other regulatory requirements.

If this Court were to affirm the trial court's judgment, the costs of environmental or other regulatory requirements that are necessary conditions for a project to proceed could not be charged to the specially benefitted properties—even though the assessments do not exceed the proportionate and reasonable costs to confer special benefits on each assessed parcel. As a result, either taxpayers will be compelled to pay for the costs of special benefits that should be paid by the specially benefitted properties, or local governments will be unable to pursue the project. Thus, affirming the trial court's judgment would mean that worthy projects, which would provide special benefits to assessed properties and also

provide public benefits as a collateral or incidental consequence, at no additional cost, will not secure necessary financing or will not proceed. That outcome, which is neither supported by Proposition 218 nor the case law, would be an unnecessary hindrance to local governments' and willingly-assessed property owners' ability to fund valuable projects as authorized by numerous statutes.

In addition, to uphold the judgment would be contrary to sound public policy. Proposition 218 authorizes, and justice and equity support, private property owners paying for the special benefits that public projects deliver to their properties. If the specially benefitted property owners were not to pay for such special benefits, either the public project will not proceed or taxpayers will pay, even though they do not enjoy the special benefits.

To allow a few naysayers to thwart worthy projects, or to avoid paying for their special benefits, based on arguments not founded in the law undermines sound public policy, and the purposes of the many statutes authorizing assessments and of Proposition 218. Accordingly, this Court should reverse the judgment and not allow Respondents to stop a beneficial project based on their misreading of the law.

C. A Contrary Conclusion Would Be Inconsistent with the Purposes of Proposition 218 and the Separation of Powers Doctrine.

1. The Superior Court's Judgment Is Contrary to the Purposes of Proposition 218.

Proposition 218 " 'protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent.' " (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 838, quoting Ballot Pamp., Gen. Elec., *supra*, text of Prop. 218, § 2, p. 108; reprinted as Historical Notes, 2A

West's Ann. Cal. Const. supra, foll. art. XIII C, § 1, p. 33.)[5]

To achieve this purpose, Proposition 218 imposed new requirements for local assessments, taxes, and property related fees. With respect to assessments, Proposition 218 requires local governments only to impose (i) justified, non-excessive assessments, which charge property owners only for the proportionate special benefit conferred on their property, (ii) following additional notice and opportunity for property owners to approve the assessments by weighted voting. (Cal Const., art. XIII D, § 4; *Silicon Valley*, 44 Cal.4th at 443].) Thus, the purpose is not to block special assessments, but to tighten the substantive requirements and ensure sufficient opportunity for property owners to consider whether they favor the imposition of assessments to benefit their property. (Cf. *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 220-21 ["The notice and hearing requirements of subdivision (a) of section 6 of California Constitution article XIII D will facilitate communications between a public water agency's board and its customers, and the substantive restrictions on property-related charges in subdivision (b) of the same section should allay customers' concerns that the agency's water delivery charges are excessive" (footnotes omitted)].)

Here, the vast majority of the homeowners approved the assessments (by weighted votes, as Proposition 218 requires, as well as by unweighted

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[5] The entire statement of purpose is as follows: " 'The people of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent.' " (*Ibid.*)

votes), after notice and opportunity to be heard. A small minority now seek to block the majority's will. Of course, they are entitled to judicial review, but their theory is unsupported by Proposition 218's text and the case law construing it.

Appellant BBGHAD's approval of the assessments is supported by evidence and within the scope of Proposition 218's requirements. The trial court's judgment invalidating the approval based on analysis not founded in the text Proposition 218 or the cases decided thereunder is contrary to both the letter and the purpose of Proposition 218.

2. The Superior Court's Judgment Is Contrary to the Separation of Powers Doctrine.

Amici acknowledge that Appellant BBGHAD bore the burden to prove special benefits and proportional allocation necessary to sustain the assessments. (Cal. Const., art. XIID, § 4, subd. (f).) But *Amici* also urge this Court to consider that under the separation of powers doctrine, to uphold the trial court's judgment would be inconsistent therewith.

Here, the local government acted in a legislative capacity when setting and imposing assessments, with the approval of a large majority of the assessed property owners (whether calculated using weighted or non-weighted voting). (*Silicon Valley*, 44 Cal.4th at 449; cf. *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 277 [adoption of rates and charges is legislation].)

Courts generally exercise restraint when reviewing the legality of legislation, pursuant to the separation of powers doctrine. (E.g., *Boatworks, LLC v. City of Alameda* (2019) 35 Cal.App.5th 290, 306; *City of Palo Alto v. Public Employment Relations Bd.* (2016) 5 Cal.App.5th 1271, 1310; *Smith v. Los Angeles County Bd. of Supervisors* (2002) 104 Cal.App.4th 1104, 1115.)

Since Proposition 218 has neither prescribed nor proscribed any

methodology by which local governments shall or shall not determine that the costs of the proportionate special benefits were properly assessed on the specially benefitted properties, this Court should respect Appellant's reasonable exercise of legislative judgment. To interfere with the local government's legislative judgment by siding with the challengers' preferences as to how such legislative judgment should have been exercised would be inconsistent with the separation of powers doctrine. Proposition 218 does not amend either article III (separation of powers) or VI (judicial branch) of our Constitution. Therefore, judicial review of legislation remains judicial review measuring legislation against legal standards. It cannot be judicial second-guessing from within a range of permissible assessment approaches.

III. CONCLUSION

Amici respectfully request that this Court reverse the trial court's judgment and publish its decision to provide much needed guidance to lower courts, assessing agencies, and property owners.

Dated: December 7, 2021 BURKE, WILLIAMS & SORENSEN, LLP

By: */s/ Kevin D. Siegel*
Kevin D. Siegel
Megan A. Burke
Attorneys for *Amici Curiae* League of California Cities, California State Association of Counties, California Special Districts Association, and California Association of GHADs

CERTIFICATE OF COMPLIANCE WITH

CALIFORNIA RULES OF COURT, RULE 8.204

We hereby certify that, under rules 8.204(c)(1) of the California Rules of Court, this *Amicus* Brief is produced using 13-point type and contains 4,807 words including footnotes, but excluding the application for leave to file, tables and this Certificate, fewer than the 14,000 words permitted by the rules. In preparing this Certification, we relied upon the word count generated by Microsoft Word.

Dated: December 7, 2021 BURKE, WILLIAMS & SORENSEN, LLP

By: */s/ Kevin D. Siegel*
Kevin D. Siegel
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

At the time of this service, I was over the age of 18 years of age and not a party to the within-entitled action. I am a citizen of the United States and am employed by Burke, Williams & Sorensen, LLP, whose business address is 1901 Harrison Street, Suite 900, Oakland, California 94612-3501.

On December 7, 2021, I served true copies of the following document(s) described as

APPLICATION OF LEAGUE OF CALIFORNIA CITIES, CALIFORNIA STATE ASSOCIATION OF COUNTIES, CALIFORNIA SPECIAL DISTRICTS ASSOCIATION, AND CALIFORNIA ASSOCIATION OF GHADS TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT; AMICUS CURIAE BRIEF

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

☒ **BY OVERNIGHT COURIER:** I placed the document(s) listed above in a sealed overnight courier envelope with an affixed pre-paid air bill, and caused the envelope to be delivered to an overnight courier agent for delivery to the addressee as indicated in the attached Service List.

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** on the following parties whose email addresses are listed below, in accordance with Code of Civil Procedure § 1010.6, and based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission from the court authorized e-filing service at TrueFiling.com, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on December 7, 2021, at Brentwood, California.

/s/ Laura A. Bates
LAURA A. BATES

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