

Via Overnight Mail

July 15, 2013

Hon. Paul R. Haerle, Acting Presiding Justice
Hon. James A. Richman, Associate Justice
Hon. James R. Lambden, Associate Justice
First District Court of Appeal, Division 2
350 McAllister Street
San Francisco, CA 94102-7421

Court of Appeal
First Appellate District
Electronically

FILED
JUL 16 2013

Diana Herbert, Clerk
by Stacy Wheeler, Deputy Clerk

Re: **Request for Publication of *Brooktrails Township Community Services District v. Board of Supervisors of Mendocino County* (Case No. A135900) (filed June 26, 2013)**

Honorable Justices:

I am writing on behalf of the League of California Cities (“the League”) to request publication of this Court’s opinion in *Brooktrails Township Community Services District v. Board of Supervisors of Mendocino County* (“*Brooktrails*”) (Case No. A135900) filed June 26, 2013.

The League is an association of 467 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. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

The League believes that the *Brooktrails* opinion is appropriate for publication under rule 8.1105 of the Rules of Court because it provides an important clarification of Proposition 26, which is a legal issue of continuing public interest for all local governments across the State.

As explained in the *Brooktrails* opinion, Proposition 26 added new provisions to the California Constitution that expanded the definition of what constitutes a tax and, conversely, what constitutes a fee. Proposition 26 applies to all cities and local

governments in the State, and therefore has a very broad effect. Since its adoption by the voters of California in November of 2010, there have only been two published cases discussing the application of Proposition 26 — *Griffith v. City of Santa Cruz* (2012) 207 Cal.App.4th 982 and *Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310 — and neither of these cases addressed the important issue that is addressed in *Brooktrails*: whether Proposition 26 applies retroactively. The resolution of this question in the *Brooktrails* opinion is very important for the statewide application of Proposition 26 because it establishes that cities and other local governments do not have to revise their existing fees to comply with the requirements of Proposition 26.

Accordingly, the League requests that this Court order publication of its opinion in *Brooktrails* pursuant the California Rules of Court, rule 8.1120.¹

Respectfully submitted,

JARVIS, FAY, DOPORTO & GIBSON, LLP



Benjamin P. Fay

¹ The League disagrees with the trial court's reasoning, as stated on page 10 of this Court's opinion, that the repeal of the base fee for inactive customers would result in an increased base fee for the active customers that would, in effect, be a tax under Proposition 26. However, because the trial court's decision was reversed, this reasoning is not legally significant.

DECLARATION OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States and employed in the County of Alameda; I am over the age of eighteen years and not a party to the within entitled action; my business address is Jarvis, Fay, Doportto & Gibson, LLP, 492 Ninth Street, Oakland, California 94607.

On July 15, 2013, I served the within

REQUEST FOR PUBLICATION OF *BROOKTRAILS TOWNSHIP COMMUNITY SERVICES DISTRICT V. BOARD OF SUPERVISORS OF MENDOCINO COUNTY*

on the parties in this action, by placing a true copy thereof in a sealed envelope, each envelope addressed as follows:

Christopher James Neary
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Respondent BROOKTRAILS
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*Intervener and Appellant
Pro Per*

I caused each such envelope, with postage thereon fully prepaid, to

be placed in the United States mail to be mailed by First Class mail at Oakland, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 15, 2013, at Oakland, California.



Teresa Meyer