

1 Timothy J. Tatro, Cal. State Bar No. 175633
Peter A. Zamoyski, Cal. State Bar No. 185579
2 TATRO & ZAMOYSKI, LLP
12264 El Camino Real, Suite 400
3 San Diego, CA 92130-3063
TEL: (858) 244-5032
4 FAX: (858) 847-0032

5 Attorneys for Plaintiff
DE ANZA COVE HOMEOWNERS
6 ASSOCIATION, INC.

7
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

**DECLARATION OF FORMER
STATE ASSEMBLYMAN
LAWRENCE KAPILOFF**

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19 I, LAWRENCE KAPILOFF, declare that:

20 1. I am the author of Assembly Bill 447, passed in 1981, which is commonly known as the
21 Kapiloff Bill. I make this declaration based upon personal knowledge and would and could
22 competently testify hereto in court if so requested.

23 2. I have lived in San Diego since 1961. I was elected in 1972 to represent San Diego as an
24 Assemblyman to the California State Assembly, 78th District, where I served until September 1982.
25 My district included the mobilehome park located at 2727 De Anza Road, San Diego, California
26 ("the Park"). Among other things during my tenure as an Assemblyman, I was the Chairman of the
27 Water, Parks & Wildlife Committee from 1978 to 1980. Throughout my decade of public service
28 in the State Capitol, I was very active in all issues concerning state tidelands. In addition, I carried

Tatro & Zamoyski, LLP
12264 El Camino Real,
Suite 400
Del Mar, CA 92130-3063
(858) 244-5032

1 168 bills that were passed, as well as three constitutional amendments.

2 3. In 1982, I retired from the State Assembly to accept an appointment to the bench as a Judge
3 of the Superior Court here in San Diego. Although I retired from the bench at the end of 1994, I
4 have served regularly as a retired judge on assignment in the Juvenile Division of the San Diego
5 Superior Court since then.

6 4. In 1981, in response to the Legislature's great concern over the City of San Diego's attempt
7 to terminate the leasehold interests at De Anza Cove on Mission Bay, I authored what is now
8 commonly referred to as the "Kapiloff Bill." I was intimately involved in the floor debates,
9 committee and general legislative discussions, public input, input from the City of San Diego, and
10 all phases of the Bill. In essence, all communication, debate, and input on the Bill went through
11 me.

12 5. As expressed in the Kapiloff Bill and discussed in legislative sessions, we were concerned
13 that, since mobilehome spaces were so scarce in San Diego, the mobilehome owners at the Park
14 would be left with nothing if the City terminated the leases without advance planning, relocation,
15 and, as applicable, compensation. The Kapiloff Bill was drafted and passed in an effort to protect
16 the mostly elderly mobilehome residents from the hardships they would suffer by closure of the
17 mobilehome park. The Bill was also passed to halt development of the land at least through
18 November 2003.

19 6. I have read that the City of San Diego has argued that the Kapiloff Bill necessitates removal
20 of Park residents immediately after November 23, 2003. The Kapiloff Bill does not so state.
21 Rather, the Kapiloff Bill mandates that after November 23, 2003, the City is required to follow the
22 Mission Bay Master Plan as it existed in 1981. I recall that this particular clause of the Kapiloff
23 Bill was specifically requested by the City of San Diego. In committee discussions, we were
24 reluctant to grant the City such discretion, but, in a compromise, we amended the Bill. Under the
25 Mission Bay Master Plan, the City can make different choices as to how it wants to use the land
26 around Mission Bay. Since permissible development of the lands around Mission Bay is based on
27 a ratio between park land and commercial development, the City can decide if it wants to convert
28 the De Anza Cove to true parkland or develop it for commercial use consistent with the provisions

1 of the Tideland Trust and the Mission Bay Master Plan. If the City discontinues the use of the land
2 as a mobilehome park—and either develops it into a hotel or returns the land to true park use—it
3 was always my intention in drafting the Bill, and my position in all discussions supporting the Bill,
4 that the City would follow all applicable state laws and properly phase-out the use as a mobilehome
5 park in a humane manner so as to do the least damage to the residents. There was never any
6 legislative debate or communication that I recall to the contrary.

7 7. I have also read that the City of San Diego has argued that the Kapiloff Bill somehow
8 exempts the City from compliance with the body of laws known as the Mobilehome Residency
9 Law (MRL), and the tenant impact reporting requirements mandated by the MRL. Again, nowhere
10 in the Kapiloff Bill are any such words or intent stated. Moreover, it was never agreed during *any*
11 discussion or debate by the Legislature in enacting the Kapiloff Bill to suspend the provisions of
12 the MRL as they apply to the City of San Diego or as they apply to the De Anza Cove mobilehome
13 park. If I, or the Legislature, during any of our discussions in committee or with City
14 representatives, had wanted any provision of the MRL not to apply to De Anza Cove, we would
15 have specifically written that into the Kapiloff Bill. We did not.

16 8. Moreover, during our committee discussions, we never agreed that the Kapiloff Bill would
17 take the place of any other benefits or protections to which De Anza Park residents may be entitled
18 under any other state law. Indeed, the Kapiloff Bill does not contain any language requiring, nor
19 did we ever agree that, residents must waive any of their statutory rights under the law.

20 9. In addition, I have learned that the City of San Diego asserts that it has not made any
21 “planning decision, action, or inaction” with regard to the mobilehome park. To the contrary, the
22 Kapiloff Bill itself *requires* the City of San Diego’s express ratification of the Bill. If the City did
23 not ratify the Bill, it would have become inoperative because it was a permissive bill, not a
24 mandate.

25 10. In 1981, before the Bill was enacted, I had numerous direct contacts with the City of San
26 Diego’s representatives, including John Wetzel, regarding the language and purpose of the Kapiloff
27 Bill—which was to protect the Park’s mobilehome owners and residents. I made it abundantly
28 clear to Mr. Wetzel and the City that if the City chose not to ratify the Kapiloff Bill, I would

1 introduce legislation that would have the effect of removing the land from City control under the
2 Tidelands Trust and to designate it as State park land with phase-in protections for the residents.
3 We further discussed that, if the State reclaimed the land, the City would not only lose control over
4 the land, but it would lose the valuable revenue stream from rents that it was then enjoying and
5 would continue to enjoy for the next 20 years. In addition, I explained that the City would lose the
6 right to develop the land for a potentially more lucrative use in the future—a right that it now
7 enjoys. Facing these significant consequences, the City of San Diego weighed its options and made
8 a decision—it expressly ratified the Kapiloff Bill through the resolution passed by the City Council
9 in January 1982.

10 11. The City of San Diego has had over 20 years to prepare for the expiration of the ground
11 lease and the sunset of the Kapiloff Bill, to follow the provisions of the Mobilehome Residency
12 Law, to prepare a tenant impact report, to hold public hearings, and to gather and distribute
13 financial and other resources to help relocate the owners and residents of the Park.

14 12. Even if the State had reclaimed the land from the City—and later began to close the
15 mobilehome park as the City is presently attempting—the State itself would be required to follow
16 the mandates of the Mobilehome Residency Law. To do otherwise would go against the
17 Legislature's express intent as codified in the MRL and against the Legislature's continuing
18 concern for senior citizens, the disabled, and those with limited or fixed incomes.


19 13. There is nothing on the face of the Kapiloff Bill, and there is absolutely no legislative
20 history or intent that I am aware of, that was intended to permit the City of San Diego to evict these
21 mobilehome park owners and residents without first complying in full with the applicable State
22 laws, including the provisions of the Mobilehome Residency Law and the Mello Act. Proof of my
23 intentions in this regard are found in my and my colleagues' support and passage of two bills that
24 were contemporaneous with the Kapiloff Bill: Government Code section 65863.7 of the
25 Mobilehome Residency Law, which was sponsored by Assemblyman Chet Wray, and the Mello
26 Act, which was sponsored by Assemblyman Mello. The thrust of all of these legislative efforts was
27 to protect mobilehome residents and low-income housing. Again, if I, or the Legislature, had
28 wanted any provision of the MRL or the Mello Act not to apply to De Anza Cove, we would have

1 specifically written that into the Kapiloff Bill. We did not.

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3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct. Executed on June 18, 2004 at San Diego, California.

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Lawrence Kapiloff