BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,

MOLLER CONTRA COSTA RE INVESTORS, LLC,	OTA NO.	230713806
J.S.L.L., INC.,		230713807
J. LAWRENCE and L. LAWRENCE,		230713808
J.S.S.R., INC.,		230713809
J. RAPHEL and S. RAPHEL,		230713810
TAHOMA, INC.,		230713811
T. THOMPSON and L. THOMPSON,		230713812

APPELLANT.

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Wednesday, April 22, 2026

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at 400 R Street, Sacramento, California, 95811, commencing at 1:38 p.m. and concluding at 3:39 p.m. on Wednesday, April 22, 2026, reported by Ernalyn M. Alonzo, Hearing Reporter, in and for the State of California.

APPEARANCES:

Panel Lead:	ALJ JOSH LAMBERT
Panel Members:	ALJ SHERIENE ANNE RIDENOUR ALJ KEITH T. LONG
For the Appellant:	CHANTAL RENTA JACK PREATZELLIS
For the Respondent:	STATE OF CALIFORNIA FRANCHISE TAX BOARD BLAKE CUNNINGHAM MIRA COUTINHO

I N D E X

E X H I B I T S

(Appellant's Exhibits 1-11 were received into evidence at page 7.)

(Department's Exhibits A-O were received into evidence at page 7.)

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CLOSING STATEMENT

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Sacramento, California; Wednesday, April 22, 2026

1:38 p.m.

JUDGE LAMBERT: We are now on the record in the Office of Tax Appeals oral hearing for the consolidated appeals of Moller Contra Costa RE Investors, LLC, J.S.L.L., Inc., J. Lawrence and L. Lawrence, J.S.S.R., Inc., J. Raphel and S. Raphel, Tahoma, Inc., and T. Thompson and L. Thompson, Case Nos. 230713806, 230713807, 230713808, 230713809, 230713810, and 230713811, and 230713812. The date is April 22nd, 2026, and the time is 1:38 p.m.

My name is Josh Lambert, and I'm the lead panel member for this hearing. And my co-panelists today are Judge Ridenour and Judge Long.

For FTB, can you please introduce yourselves for the record by stating your names.

MR. CUNNINGHAM: Hi. Blake Cunningham, Respondent.

MS. COUTINHO: And Mira Coutinho for Franchise Tax Board Respondent.

JUDGE LAMBERT: Thank you. And for Appellants, can you please introduce yourselves for the record by stating your names.

MS. RENTA: Sure. Chantal Renta.

MR. PRAETZELLIS: And Jack Praetzellis. We have two witnesses here with us.

MR. LAWRENCE: Jeff Lawrence.

MR. THOMPSON: Thomas Thompson.

JUDGE LAMBERT: Okay. Great thank you all for attending.

The issues in this appeal are as follows: Whether Moller Contra Costa RE Investors, LLC held property primarily for sale pursuant to IRC section 1031(a)(2)(A); and whether further interest should be abated.

FTB previously agreed to abate interest from December 4th, 2019, through April 5th, 2022. FTB submitted Exhibits A through N, and Appellants had no objections. And Appellants submitted 1 through 6 and submit five new exhibits. So we can renumber those to 7 through 11.

Does that sound okay to Appellants?

MS. RENTA: Yes. That's okay. Sorry.

JUDGE LAMBERT: Okay. And does FTB have any objections to the new exhibits?

MR. CUNNINGHAM: No objections. But we've submitted Exhibits A through O.

JUDGE LAMBERT: A through O. Okay. Let me just look at that. What was Exhibit O, again?

MR. CUNNINGHAM: There was the audit determination letter that was submitted with the revised issue statement.

JUDGE LAMBERT: Oh, okay. Okay. Do Appellants have objection to that exhibit?

MS. RENTA: No. We have -- we have the determination letter as Exhibit 9.

JUDGE LAMBERT: Okay. Okay. We'll just add O, and 1 through 11 for Appellants, and admit that into to the record.

(Appellant's Exhibits 1-11 were received into evidence by the Administrative Law Judge.)

(Department's Exhibits A-O were received into evidence by the Administrative Law Judge.)

So, the order of the hearing would be Appellants have 90 minutes, then we'll take a break possibly, if it's going 90 minutes. And then FTB will have a chance to question the witnesses, and then FTB will have 30 minutes, and Appellants will have 10 minutes for their rebuttal. FTB will have 10 minutes for a rebuttal, and Appellants will have 5 minutes for a closing. So, at this time, we can proceed to Appellants' presentation.

And since there are two witnesses, could the witnesses please raise your right hands.

///

T. THOMPSON,

produced as a witness, and having been first duly sworn by the Administrative Law Judge, was examined, and testified as follows:

J. LAWRENCE,

produced as a witness, and having been first duly sworn by the Administrative Law Judge, was examined, and testified as follows:

JUDGE LAMBERT: So, at this time, Ms. Renta, you could proceed with your presentation.

MS. RENTA: Sure. Thank you.

JUDGE RIDENOUR: Real quick before we do, I just want to confirm if the Exhibit 9 -- Appellants' Exhibit 9 is what you had previously given to us as Exhibit O? I just want to make sure it is exact. I can't find those, so I just want to make it is what you submitted.

MS. COUTINHO: I'll just check one minute and let you know. It should be the audit determination letter. They were both submitted after the prehearing conference, but we'll double check on that.

JUDGE RIDENOUR: Thank you.

JUDGE LAMBERT: You could proceed, and we'll make sure we have that. Thanks.

PRESENTATION

MS. RENTA: Sure. Thank you. So as we already stated we have two witnesses before us. There are also two --

MR. PREATZELLIS: Sorry. Can you please turn on the PowerPoint?

JUDGE RIDENOUR: Our hearing reporter is having a hard time hearing you. Could you please speak louder.

MS. RENTA: Oh, I'm sorry. Is that better?

THE HEARING REPORTER: Yes. Thank you.

MS. RENTA: Okay. I apologize. Great.

So as we said we have two witnesses before us. We also have two issues. So, the structure is going to be going over the first issue, facts, applicable law, argument, and then we'll conclude both issues. That will be the structure. We also have an appendix that lists all the exhibits. As we said, our two witnesses. We have Mr. Lawrence and Mr. Thompson, who both have been sworn in.

So the first issue that we're going to address is whether Molla -- Moller -- excuse me -- Contra Costa RE Investors, LLC, held the property primarily for sale pursuant to Internal Revenue Code section 1031(a)(2)(A).

And now I'm going to turn over to Jack.

MR. PREATZELLIS: Okay. All right. What we're going to start with -- speaking to Mr. Thompson.

So, Mr. Thompson, if you could unmute yourself.

DIRECT EXAMINATION

BY MR. PREATZELLIS:

Q From 2000 through the financial crisis, what did Braddock and Logan, the, enterprise, look like?

A When you refer to Braddock and Logan, it's a generic name for affiliated legally independent entities that were engaged in a number of different aspects of the real estate business. We had a home building and land development operation. We had a significant investment property portfolio consisting of apartment projects, office, land and retail operations.

Q Okay. And can you please describe Braddock and Logan's business before the financial crisis, and then how and why it changed after the financial crisis?

JUDGE LAMBERT: Oh, can I just -- I think last time you were not on the microphone. Maybe if you wanted to repeat what you were stating before?

MR. THOMPSON: Okay. I wasn't close enough?

JUDGE LAMBERT: I'm not sure if it was not on or not close enough, yeah.

MR. THOMPSON: Before the financial crisis, Braddock and Logan -- when counsel uses the term Braddock and Logan, he's referring to the collection of various entities. It had been our longstanding practice to divide each project into a separate entity, legal liability issues primarily, occasionally financing impacting that. We had, prior to 2008, a homebuilding and land development operation, as well as owning multifamily properties, apartments, office buildings, land, and retail operations; each of which was typically maintained in a separate legal entity.

In -- in 2008, obviously, the financial crisis opened a lot of eyes to how the world had changed. And subsequent to that, as we worked very hard coming out of that to maintain our business, we -- we recognized that because of the changes in the risk environment and the amount of capital it required to continue in the homebuilding and land development business, we elected to wind up our homebuilding operations; and we went ahead and did so. We laid off the -- the construction staff that we had over the years, as well as them sales and marketing operations. And by 2012, that was largely completed.

Q So, when you mentioned risk associated with the homebuilding business, are you referring to personal guarantees of people who are developing property?

A That -- that is certainly one of the risks. The financials, the cost to be in the business and the risks associate with financing it and in an increasingly volatile environment had simply become too great.

Q What -- what were the signs of personal guarantees that were outstanding at the time of the financial crisis.

A In 2008, we collectively had about $275 million of guarantees -- personal guarantees on construction-related real estate debt, which we proceeded to work our way through on all of those projects and pay it off, all the debts entirely, and the land loans associated with that business. And by 2012, we had no remaining debt associated with any of those kinds of projects.

Q And was that a consideration in exiting the development business -- the homebuilding business?

A Absolutely. It was -- the world had changed, and for us personally, it was -- it was just too risky. And the cost to acquire new projects had continue to build was continuing up. We've all seen an increase -- an increase in house prices, and that's also reflected in land prices.

Q So, can you please describe what Braddock and Logan services did with the Moller property before Moller was formed and why?

A Well, in 2010, the land business was -- was still very bad. The market was very soft, and we had the opportunity to put the Moller property into a long-term purchase contract, which would allow us to benefit from what we anticipated would be a rebound in the marketplace, as some of the traditional factors effecting California real estate began to reassert themselves. We knew that Silicon Valley was growing. We knew the population in the Bay Area was growing. And it was clear that the depressed historical -- the depressed levels of sales and prices that we saw in 2010 would rebound. We just didn't know when.

Q And so what did Moller do with the purchase or -- sale. What did the Moller purchase and sale agreement come with entitlement-wise when acquired?

A We -- when we put the property under the purchase and sale agreement, it had previously been the subject of some environmental work and EIR had been certified on the project pursuant to the City of Dublin's housing plan in the 90s. And then as recently as the mid-2000s, the EIR had been amended and re-certified. And the findings of that EIR, the benefits associated of the property run with the property, so they came with it.

MR. PRAETZELLIS: Okay. Next slide, please.

BY MR. PRAETZELLIS:

Q So -- so, what are we looking at on -- on this slide here?

A The -- the -- the black lines on the picture are the boundaries of the Moller Ranch property. On the lower-left side, there's a -- the gray squiggle is Camino Tassajara, the county road. It was a two-lane road by which the property was accessed.

Q Why obtain the ability to purchase this property?

A We anticipated that the -- the growth that was continuing and would eventually rebound, would ensure to the benefit of this property from an evaluation standpoint, inasmuch it was part of Dublin's housing plan.

Q And what was the market, at the point in time when the right to purchase this property was acquired, what was the market for vacant land?

A Well, as I mentioned earlier, the market was very, very soft. And there was very little activity going on in the purchasing of land at that time because most of the homebuilders who were still in the business had land they were working through. There were thousands of other parcels available. So, the -- the market -- it was a good time to be a buyer.

MR. PRAETZELLIS: Next slide.

BY MR. PRAETZELLIS:

Q So, what do these photos show?

A The photo on the left is the northern quadrant of the City of Dublin in 2010. The Moller Property is on the upper-left side of that parcel. I think you can still see where Camino Tassajara ran through. And then the photo on the right is 2015. So many -- so much of what you see up there developed in the five-year period was absorbing some of that excess inventory in the marketplace. And you can that the city had built out dramatically in just that five-year period.

Q Okay. And we can move on to the next side.

Can you tell us about the formation of Moller Contra Costa Real Estate Investors and the intent of that business?

A Sure. Having just gone through the financial crisis, we knew that we had no desire to take on the debt and the risk associated with developing a property of that nature. But as I testified, we also knew that as the market improved and that property would likely be a good investment, so we formed an LLC, as per our practice, to acquire that investment. And the name Moller RE Real Estate Investors is reflective of our intent, which we also documented in the recitals of the operating agreement because we knew that we would never develop that property. We knew that it was a good investment, and we bought it as such.

MR. PRAETZELLIS: Next slide, please.

Okay. Now, we're going to turn briefly to

Mr. Lawrence.

JUDGE LAMBERT: Excuse me. Can you make sure you speak into the microphone more.

MR. PRAETZELLIS: Yeah.

JUDGE LAMBERT: I'm not sure they hear you on the stream as good.

MR. PRAETZELLIS: I just got to lean forward a little bit because of -- I've used all the cord.

Okay. So we are on slide 10. Okay.

DIRECT EXAMINATION

BY MR. PRAETZELLIS:

Q What did the City of Dublin do after Moller was formed with respect to the property?

A The city was looking to -- to proceed with their general plans -- excuse me -- general plans and their housing element.

Q And what did Moller do at that point in time?

A At that time, we had just -- we were working on the zoning and the testing map.

Q And how much time did Moller spend doing those things?

A Very little. It was very little. It was such a small participation that the City was asking us to be involved with.

MR. PRAETZELLIS: Okay. Next slide, please.

BY MR. PRAETZELLIS:

Q Can you please describe the timing of the Development Agreement put in place between Moller and the City of Dublin?

A I signed the -- excuse me. I signed the D.A. on November 16th of 2012, and then it was -- went to city council January 5th, of 2013, and became effective 30 days thereafter.

Q Is the recording date of the Development Agreement, to your knowledge, of any meaning?

A None. None whatsoever.

Q Why is that, do you believe?

A It -- it became effective at the 30 days thereafter, and the recommendation was at the leisure of the City and the county recorders, but it was still in effect at the time 30 days after it was approved. So, the recordation had nothing to do with whether or not it was effective or not.

Q What did the Development Agreement do?

A It vests the rights of the entitlements on the property and also, make sure that the property is locked in place to be able to not -- and assure not that any condemnation might happen on the property. It locks in on those entitlements.

Q Did it require Moller to develop the property?
A No, it did not.
Q Okay. So -- I'm sorry. Why enter into the Development Agreement?
A So, to assure that the entitlements that were on the property were preserved and that those were locked in and vested.
Q And if they aren't preserved and locked in and vested, do they go stale and lose value?
A Yes. Those -- they -- they would lose their -- there's a life expectancy on those entitlements.

RE-DIRECT EXAMINATION

BY MR. PRAETZELLIS:
Q Okay. Mr. Thompson -- or -- yes. So, Moller completed the purchase and sale agreement on February 15, 2013. Can you please explain the financing of that exercise?
A Yes. Actually, the purchase agreement had a much longer period to run. We weren't obligated to close in 2013. However, the sellers -- the seller, collectively, was a large group of people, many of whom were elderly and in poor health. And they approached us and asked us if we would close early so they could have some money sooner rather than later. We -- we didn't have an obligation per

the terms of the contract to do that, but we agreed to accommodate their desire to close earlier, and requested that they would carry back half of the purchase price in the form of a note that they agreed to do so in order to induce us to move forward sooner than we had to.

Q Were the terms of the seller carry-back note a good deal?

A Yes. They were -- it was a good deal for us in terms of the -- the timing and -- and the cost of the note, the interest on the note.

Q Was it convenient financing as well?

A It -- it was convenient at a time when commercial banks really weren't very interested in making loans on land investments.

Q And the other half of the money, that was an insider loan; right?

A Yes. Our third partner in the Moller RE Investors, JSSR, Inc., put up the additional funds necessary to close, again, in the form of a note, which Moller RE paid interest on.

Q Was there any concern ever that that insider note would be called if it came due?

A No. We knew that all of us had an incentive to make sure that it would be extended.

Q And the seller carry-back, if it came due, was there money available within the investors to pay it off?

A Yes. We had the resources sufficient to pay off the seller note if we needed to.

MR. PRAETZELLIS: Okay. Next slide, please.

BY MR. PRAETZELLIS:

Q So did Moller receive unsolicited offers to purchase the property?

A Yes. Numerous.

Q And why do you think Moller started getting those unsolicited offers to purchase the property?

A The DA was -- the Development Agreement -- excuse me -- was approved by the City of Dublin in January of 2013. And it's no coincidence that a couple of weeks later people in the development community began calling us and asking us about the property. They monitor what's going on in the approval processes in all the various cities. And when Dublin approved the project, the D.A., those rights were vested and it -- so, they began calling us and inquiring about its availability for sale.

Q Was there -- or what was the business practice in responding to unsolicited offers?

A It -- it had been our business practice, for as long as I've been at Braddock and Logan, to -- on a property inquiry, somebody expresses interest in it to respond in writing. We did that for a number of reasons;

one, to be transparent in our dealings with people. It's a small community out there, and we didn't want ambiguities or someone to be concerned that they weren't being treated as a -- fairly, I guess. And it -- it was a method by which Joe and Jeff and I could know who had called and what the discussions had been.

Q Okay. So can you please walk through each of these instances of the unsolicited offers? And if you can't see the PowerPoint, you can use my copy.

A Okay. Sure. I'm -- I can. On --

Q Okay. And, I guess, starting with February 7th?

A On February 7th, Jeff Lawrence was called by Scott Montgomery of K. Hovnanian Homes. He and -- and K. Hovnanian is a national -- a publicly traded homebuilder, one of the top 10 in the country. And they inquired as to the availability of the property. Jeff also received a call, at that same timeframe, from John Ryan of Brookfield Homes, also nationally ranked large public homebuilder. And they -- the answer to both of them at the time in the form of an email was, "Thank you for your interest in the property. The project is not for sale."

Q Okay. And then March 6?

A In March 6. Joe Killinger, who was the divisional president for the San Francisco Bay Area for

K. Hovnanian called Joe and essentially, asked the same question. Would we be interested in selling the same property? Joe responded in an email that the property is not for sale. He specifically mentioned that we purchased the property with the intention for holding it for appreciation, and that we think it's an excellent long-term investment opportunity.

Q And April 9?

A Andy Byde responded to the Hoffman company, "The property is not for sale. Our intention is to hold the property."

Q And then May 17?

A On May 17th, actually, Standard Pacific submitted a formal Letter of Intent with the terms under which they would agree to buy the property. And Joe responded to their Letter of Intent with an email back, "The property is not for sale. We purchased the property with the intent of holding it for a long-term investment. And we believe the property will increase in value."

Q Okay. And then July 15?

A I was contacted on July 15th by Chris Apostolopoulos. He was the divisional president for KB Homes in the San Francisco Bay Area. KB is a big national builder. I think, at the time, they were third or fourth largest in the country. And asked me if we would be interested in selling the property. And I responded to him, "No we are continuing to hold the property, and it is not for sale."

Q And then July 25th?

A On July 25th, Rich Ambrosini of DR Horton Homes, at the time, the number one homebuilder in the country. Rich was the regional president there. And he asked me about the property and whether or not we'd be interested in selling it. And I responded to him that, "We're holding the property for a long-term investment, and it is not for sale."

Q And I'm sorry. Did you -- I must have missed it. What is DR Horton again? They are --

A DR Horton is -- is a national homebuilder, the largest publicly traded. At the time, they were the largest homebuilder in the country. I -- I think they still are.

Q Okay. And then August 23rd?

A August 23rd, Andy Byde responded to Union Properties that the property is not for sale.

Q Okay. So, you -- you mentioned that you received an LOI from Standard Pacific. Can you -- well, did -- was the LOI signed and returned? And then also, can you remind us who Standard Pacific was?

A Standard Pacific, a publicly traded

homebuilder -- I don't know their ranking, but they're certainly very large. No, we never signed and returned the Letter of Intent because the property wasn't for sale. We weren't interested in marketing it.

MR. PRAETZELLIS: Okay. Next slide.

So, now we are going to transition into Moller's maintenance of the property, and Mr. Lawrence is going to testify that Moller was a good citizen that protected its investment. It fixed a fence, demoed hazardous structures and trees, and removed abandoned cars, and just managed its vegetation for fire purposes. It seems like a perverse intent to suggest that this work on the property is evidence of -- of anything.

MR. PRAETZELLIS: So next slide.

RE-DIRECT EXAMINATION

BY MR. PRAETZELLIS:

Q Okay. So please tell the panel about the fence repair at the property?

A Yeah. We -- we were obligated to repair the fence. We had cattle on the fence. The estate is a fenced-in estate. There's a law to make sure the cattle stay fenced in, and we were close to a very busy county road. And so, we maintained those fences.

Q Okay. Next slide, please. So, Moller demolished some structures at the property. Why?

A Those homes were abandoned, and we were having trespassers there. We abandoned -- we -- we demoed those as a result of liability issues and for fire protection.

MR. PRAETZELLIS: Okay. Next slide, please.

BY MR. PRAETZELLIS:

Q Okay. Moller moves some abandoned vehicles from the property. Why?

A Yeah. We did this as well for that very reason to clean up. We had, you know, ongoing activity that was a problem there, trespassing. So, we couldn't secure the site, so we got rid of those things that were a nuisance.

MR. PRAETZELLIS: Next slide, please.

BY MR. PRAETZELLIS:

Q Okay. Dead and dying eucalyptus. We know Moller removed some eucalyptus trees at the property. Why?

A These eucalyptus trees were contiguous to those structures. And again, we had ongoing activity there, and those were dangerous. As well as for fire protection, we removed the trees.

MR. PRAETZELLIS: Next slide.

BY MR. PRAETZELLIS:

Q Why did -- why did Moller cut the vegetation at the property?

A Every year during the springtime, the City sends out to property owners and/or people of interest that are in those properties. In this case, we received notices from the City from the fire department saying it's time, the springtime, to cut the vegetation. So, it was our requirement to do so.

MR. PRAETZELLIS: Okay. Next slide, please.

BY MR. PRAETZELLIS:

Q Okay. I want to turn now to the PG&E easement and deposit. Can you please explain PG&E's easements at the Moller property?

A Yeah. PG&E had two easements on the property: One for act -- access -- vehicular access to maintain a substation there; the other one was for access -- electrical access to get access to their substation to provide power.

Q So, was this substation important to PG&E?

A Yes. It was a -- it had been there since the 80s. It was there, designed specifically to take care of the Tri-Valley area -- the entire area, just not the home -- the housing area, but the whole entire Tri-Valley area, which included Livermore, Dublin, and parts of San Ramon.

Q Okay. Did you ultimately realize that the PG&E easement was a problem for PG&E in the Moller property?

A Yeah. It became apparent that they didn't have the access that they needed. And it was something that we saw that they were going to need. They didn't have the appropriate amount of area in order to expand that substation.

Q And why -- why was that a potential problem for the Moller property?

A It would have been direct conflict with how the property was designed. And we were concerned that PG&E, they have the right to condemn, and they could have condemned the property so that they would have had a larger access -- bigger access to their substation. So we chose to enter into an agreement with them, and come to an agreement rather than waiting for them.

Q And how did that -- how did that materialize? What -- what did you have to do to get to an agreement with them?

A So, in order to come to these agreements and for them to do design work to determine what was the best access for them, we had to place deposits with PG&E. And those deposits were -- were -- were for design work and for drafting agreements to come up with a finalized agreement. And so, we felt that that was much more reasonable and less expensive to enter into these agreements -- deposit agreements and get the design work, rather than concern ourself with condemnation.

MR. PRAETZELLIS: Okay. Next slide, please.

RE REDIRECT EXAMINATION

BY MR. PRAETZELLIS:

Q Okay. Mr. Thompson, in March of 2014, Moller entered into an exclusive listing agreement with Cushman and Wakefield. Why?

A I had first met Marc Renard of Cushman and Wakefield in the mid-2000s when we were attempting to buy a portfolio of apartment properties that they had in Salt Lake City that they were representing the seller on. And we stayed in touch over the years. And I ran into him at a real estate conference that year, and he was telling me about -- we were talking about the market, and he relayed to me the details of a transaction that he had just been able to broker with a foreign investor on a piece of property in Southern California at, frankly, an astronomical price, and intimated that he would be able to deliver the same type of buyer on - on our property, and nothing came of it.

Q And so the -- the Cushman and Wakefield listing agreement didn't result in the sale of a property?

A No.

Q Did they earn a commission?

A No.

Q Did they have anything to do with the ultimate sale to Toll Brothers of the property?

A No.

Q Did the listing agreement relate at all, timing-wise, to the recordation of the Development Agreement?

A No. It had no correlation.

Q Okay. Moving on, did -- did Moller have any involvement with the replacement -- in the replacement of the Tassajara culvert?

A No.

MR. PRAETZELLIS: Okay. I think we're ready for the next slide.

BY MR. PRAETZELLIS:

Q Okay. How did Toll Brothers come to acquire the property?

A Todd Callahan was the land acquisition manager for Toll Brothers in the Bay Area. They're another big national homebuilder publicly traded company. He made an unsolicited inquiry to us about the property and ultimately, made an offer that we accepted and entered into the exchange.

Q So Toll Brothers came to you?

A Toll Brothers approached us, yes.

Q Okay. What happened with the exchange? What did

Moller acquire?

A Well, Moller entered into a deferred exchange, pursuant to those guidelines. We assigned the property to the exchange accommodator and transferred the property. It relinquished the property, I should say. And then to complete the exchange, we acquired two multifamily properties, which we still own today.

MR. PRAETZELLIS: Thank you.

MS. RENTA: Okay. Great. So now -- can you hear me? Sorry. I want to make sure.

So, now we're gonna change gears and go to the applicable law in this case. As you know, this involves a 1031 exchange. And generally, there are three requirements for a valid 1031 exchange, and here all three are met. So, as you heard, the transaction was an exchange. The transaction involved like kind properties. And here, both the relinquished property and the two replacement properties were all held for investment. And the Treasury Regulation clarifies that when you hold unproductive real estate and you're not dealer and you're holding it for the purpose to realize the increase in value, you're holding that property for investment, not primarily for sale.

So, what is primarily for sale mean? So, we look. So the word primarily means a first importance or principally. So, here the Appellants in this case would to have had to hold the property for the principal purpose of sale. As you've heard before, they received numerous unsolicited offers, and each and every single time said the property was not for sale. The mere fact that they eventually sold that property to Toll Brothers is not conclusive of their intent for holding the property. We agree, and so does the Respondent, that a taxpayer can change their intent. They can acquire it for one intent, subsequently change the intent, but it is the time of the exchange that controls the intent.

This matter is obviously in the Ninth Circuit, so to the extent that the Ninth Circuit case law does exist, we'll turn to that. And in this case, Bolker makes it clear that if you have the intent to not liquidate the investment or to use it for personal pursuits, then you're holding for investment. Unfortunately, 1031 case law is pretty scarce on the this topic. But he case law we do have does turn to the 1221 factors. There are nine factors. Not all of them are going to be weighted in this case, because 1221 has a different statutory language as it relates to primarily for sale.

So, here are the factors with the greatest weight, are going to be factor 1, 2, and 9. That is, the first factor, the purpose for which the property was initially acquired you can look at Moller's operating agreement. It makes it clear it was formed for investment purposes, the purpose for which it was subsequently held. Each and every single communication to an unsolicited offer, what did the Appellant say? Not for sale. And the purpose which the property was held at the time of sale, no evidence that they ever changed their intent for which they acquired it and held it; and it was always for investment purposes.

As I've said repeatedly, Moller held this property for investment, not primarily for sale. Sorry, if -- sorry, if you feel like I'm repeating it, but we -- this case is so fact dependent. Once again, Moller's operating agreement, you can look at the agreement. It say it was formed for the purpose to hold property for investment. You can see the internal communications related to the PG&E deposit. These are internal between the Appellants. What did they say? No intention to develop this property. Holding it for appreciation. Once again, numerous offers all unsolicited. And each and every single time, the Appellant say the property is not for sale.

There are numerous expenditures that have been pointed to you by the Respondent, because the Respondent says that those expenses done by the Appellants, those amount to development on the property, right. They're saying that there was not just merely legal paper development, but that there was rather physical development on the property. What do they point to? Repairing a fence. As you heard from the Appellants, there was a grazing lease on the property. They were required, under California law, to maintain that fence, and that's what they did. You saw the image. You can see the image on the left of the fence. It was falling apart. They repaired the fence.

Second, removing the structures. You heard the testimony today. The structures were in hazardous conditions. They were nuisances. What did they do? They removed it. They wanted to reduce the liability, maintain the property, and protect their investment. The PG&E deposits, there was a real risk there that PG&E would realize that their easements were not valid -- were not sufficient on that property. They didn't want to go through a condemnation proceeding. So, what did they do? They approached PG&E. They paid refundable deposits. You can look at the communications where they discuss these deposits. You can see that they were hesitant to pay the amount. But what did they say? They were refundable. If it doesn't work out, they can get their money back. There was less risk in paying those deposits than allowing the

PG&E to have an easement that was not sufficient.

Here are other things; maintaining the weeds on the property, getting rid of abandoned vehicles, cutting down the dead and dying trees. This is all compliance with city -- with city code. All the -- all the Appellants did in this case was maintain the property. They didn't grade the property. They didn't subdivide. All they did was basic maintenance. Any landowner would have done this.

Another thing that's been alleged by the Respondent is that the property's increased value is heavily reliant upon the Development Agreement. We've provided data. It's been in the record. It's our Exhibit 4. It's been in the record for some time, but it has a complete list from a third-party title company of home sales in the City of Dublin in the year 2010 and in the year 2015. And you can see the dramatic increase in price, and also the volume of sales.

And now I'd like to ask, if I may, Mr. Thompson if you could just describe, sort of, the market conditions that were leading to these home prices.

MR. THOMPSON: Certainly. As I testified, in 2010 when we were able to put the Moller property into contract, in the City of Dublin, at that time, in that year, there were 90 home sales -- new home sales, and the average sales price was about $744,000. In -- in 2015, I remember when we bought this, anticipating the market would rebound, frankly, we were surprised at how rapidly it -- it came back. And in 2015, five years later, the -- there were almost 200 sales of new homes in Dublin, and the sales prices were significantly higher. And the rapidity of the sales, the number of sales, and the much higher sales prices are, frankly, why the property appreciate in value so dramatically.

MS. RENTA: Thank you.

Another misstatement that you probably see in Respondent's briefing is that this property came with 66 entitlements. So the 66 entitlements are what drove the value increase in the property, from the time that the Appellants in this case closed on the property, to the time they sold it to Toll Brothers. That's simply incorrect. There were only three entitlements on this property. You have the Development Agreement. You have the entitlements staging, which is zoning. And then you had the approved vesting tentative map. Those are three entitlements. There were not 66 entitlements on this property driving the value. And as you saw before and as you've heard here, as Mr. Thompson testified, the value of the property was driven primarily by the market. You can see the data. There's an increase in home sales and an increase in volume from 2010 to 2015.

All the -- all the actions that were related to the Development Agreement, all of that was purely legal steps to secure entitlements on the property. It does not show that the property was being held primarily for sale. And that's further supported by Buono. In Buono, the taxpayers there acquired property. They had no intention to develop that property. However, they did know that if they were to secure a subdivision plan, it would lead to the increase in value of their investment. So what did they do? They submitted documents to the city for subdivision, submitted sketch plats, also had utility, landscaping designs. They attended a series of meetings related to the subdivision. What does the Tax Court say? All they did was take purely legal steps to enhance the property, and that was acceptable. They were not found to have hold the property primarily for sale. And that is exactly what occurred here. Mere -- all you're -- you're gonna hear purely legal steps. There was no physical development on this property.

Additional Ninth Circuit case law also supports that the Appellants in this case held the property for investment. You can see in Bolker. And we recognize that there's very differing facts here, but it still supports the intent argument, right. The corporation was formed with a purpose of development and abandoned it due to market conditions prior to the corporation's distribution to its sole shareholders.

So, they distributed the property out to the sole shareholder. The shareholder had executed a contract to exchange that property. They then exchanged the property after it was distributed to them. And what did the Ninth Circuit say? Qualified non-recognition treatment. They said the important fact was to look at the lack of intent to either liquidate the investment or to use it for personal pursuits. And that is exactly what exists here.

Once again, Maddison, and we recognize that there's differing facts, but this is also a Ninth Circuit case. The taxpayer there exchanged property and contributed that replacement property into a separate entity, a limited partnership. And the question became whether or not that was acceptable, whether a limited partnership could have the same intent. And what did the Ninth Circuit say? Yes. Although, Moller didn't enter into any prearranged contracts or do any further contribution of any replacement property into a separate legal entity, we think it's important that it still demonstrates that Moller held this property for investment.

You could see that the purchase agreement was contributed to Moller. Moller was formed with an expressed intent to hold that property for investment. It's very clear in the operating agreement. It repeatedly communicated to unrelated third parties its intent to hold this property for investment purposes. And when it acquired replacement property -- you've heard today -- two properties that it still holds to this day for investment purposes.

As I mentioned earlier, the 1221 factors are used in 1031 to determine the intent for which a taxpayer holds property. As we said, 1221 has different statutory language as it relates to primarily for sale and, therefore, some of these factors aren't going to have great weight in this case. So here, when you look at the factors that do, the first factor, you know, the purpose for which the property in this case was initially acquired. It's clear, once again -- as I said. I apologize. I'm going to be repeating myself a lot, but you're going to -- but it's the truth. The operating agreement states that this entity, Moller, was formed for the purpose to hold this property for investment, and all of the communications surrounding this property all state that this property was not for sale. This factor supports that the Appellants in this case held the property for investment.

The second, the purpose which the property was subsequently held. Here, multiple unsolicited offers for the property. You can see them starting in 2013. And what do the Appellants say each and every single time? Not for sale. That factor further supports that the Appellants in this case held the property for investment purposes.

You can look at the third factor, the extent to which improvements were made to the property. There weren't improvements on the property. The Appellants merely engaged in maintaining the property. They removed hazardous structures, dead and dying trees. You can even see on Exhibit K that the trees are listed on the expense schedule as dead and dying. There was no improvements made to this property. This factor supports that the Appellants were holding the property for investment. As we said, not all the factors are going to have weight here. So, the next two factors, they're -- they're not really applicable in this case. Neither is the factor at the top.

But if you look to the extent of advertising, promotion, or other activities or efforts in soliciting buyers, the communications you saw were all unsolicited. And each -- they didn't put any effort to get those offers in 2013. Additionally, the listing of the property of brokers, there was one exclusive listing agreement. They didn't have -- it was for a very short time, explored options with international investors, and nothing came of it. This also supports that the Appellants in this case were holding this property for investment.

And last, a factor that has great weight, the purpose for which the property was held at the time of sale. As we said, it was acquired with the intent to hold for investment. It was subsequently held for the -- with the purpose for holding it for investment, and it did not change at any time. At the time of the exchange in 2015 with Toll Brothers, they were still holding that property for investment.

There are numerous cases that have been cited in this matter, and many of them are distinguishable. So in Jersey Land, the taxpayer there acquired property because they needed to support an additional business. So, they entered into this lease option agreement. And that lease option agreement made the purchase contingent on the taxpayer, in that case, actually filling and grading the property to make it suitable for commercial and industrial purposes. There's nothing in the purchase agreement that requires the Appellants in this case to take any physical actions with respect to the property. In addition to that, the purchase agreement on the terms of the agreement does not require the Appellants in this cause to obtain any legal entitlements.

They could have purchased this -- this property without any physical development on the property, without any legal entitlements on the property. Additionally, in Jersey Land, the taxpayer expended $600,000. And the Respondent is going to point to that for support that the expenditures here, especially the PG&E deposit, show that the Appellants in the case held this property primarily for sale. But if you look at $600,000 in the 1970s to 2015, there's clearly a significant difference in the amount expended at that time. And also, I want to remind everyone that those deposits were non-refund -- were refundable deposits. They could get the money back. It had less risks to pay the deposits, than to risk condemnation on the property.

Additionally, you're gonna see the Respondent point to land dynamics. But once again, I just want to point out the land dynamics really deals with the replacement property. In that case, the taxpayer had an orange grove that they changed for grassland. One year later they sold the grassland. And so the question became whether or not they had acquired that grassland replacement property with the intent to sell, and they found that there was a prospectus. From -- from the taxpayer at the time that said their purpose was to buy and sell property. So, clearly that's different. We don't have that here. The operating agreements for the Appellants in this case state very clearly that its purpose for formation was for investment purposes.

Additionally, Sugar Land; Sugar Land is a very important case because I think it really ties in and proves further that the Appellants held this property for investment. And Sugar Land, you had a taxpayer that was a developer. They acquired 900 acres just outside of Houston to develop it. That land was originally an oil field. So over a 10-year period, they engaged in significant remediation on that property; plugging and capping oil wells, doing environmental cleanup. And then that, unfortunately, leads into the financial crisis of the 2007 and 2008. So what do they do? They realize this isn't feasible anymore. We can't build on it. So they change their purpose. They enter into a unanimous written consent that expresses that purpose is now changed to hold this property with investment purpose. They no longer intended to develop and sell it.

And what did -- and what -- how'd the court rule? The taxpayer's purpose clearly changed. It was evidenced by that written consent. And the same is one true here. You can see Moller was formed with the purpose to hold this property for investment. It never changed its purpose.

Turning to Baker Enterprises, another case that's going to be cited. Once again, the formation documents there it listed two business purposes, none of which were investment. The primary one was to operate a restaurant. The second one was to construct buildings and to sell them and actively engage in physical development on the properties. It acquired multiple properties and actually developed them; submitted multiple tentative maps, obtained the estimates for off-site costs, communicated to a buyer that it wasn't willing to sell it but would exchange it. None of those facts exist here. The taxpayer here was formed for the purpose of investment. It's clear on that -- it's clear on the operating agreement. They communicated multiple times that this property was not for sale. They did not engage in any physical development on this property. They did not get cost estimates for off-site improvements, because there were no off-site improvements for which they were obligated to pay.

So, once again, I apologize for repeating myself throughout this whole hearing. But the Appellants in this case held this property for investment. All of the facts, all of the evidence before you supports that. You can see

Moller's operating agreement clearly formed with an expressed purpose to hold this property for investment purposes. You can see numerous unsolicited offers. They may be described as one-way communications, but these are people who pick up the phone; they call you directly. They knew that this property was around, and that there was movement on it by the city, because the city council issued a public hearing and said that the Development Agreement was approved in January of 2013.

It's not a coincidence that February 7th, two unsolicited offers are coming in. And those offers continue from February until August of 2013, and every time the Appellants say this property is not for sale. An offer, a Letter of Intent for $92 million in May of 2013 -- not for sale. And the reason why there's no prices on any of the other offers is because they weren't entertaining them. They had no interest in selling. So they never asked about the price. Each and every single time they say, "Not for sale." Once again, there was no physical development on this property. Each and every activity, each expenditure, which the Respondent is going to point to, was either required or was a way to reduce liability. Each and every single action that was taken by the Appellants demonstrates and supports that this property was acquired for the purpose of investment. It was held for the purpose of investment. And at the time of the exchange, it continued to hold that property for investment.

And now I'll just turn really quickly to the second issue, which relates to interest abatement, and whether or not Moller is entitled to further interest abatement. I want to present a timeline of communications with the Franchise Tax Board just to support the timing. And so as you can see in February 21st, 2019, that is when the Notice of Proposed Assessment was issued to the Appellants. The Appellants timely filed a protest April 19, 2019. The then-representative for the Appellants on June 20th, 2019, did notify the Franchise Tax Board of its change of address. So, there was no issue with the Franchise Tax Board being able to contact the representative of the Appellants in this case. They had the information and yet, nothing from the Franchise Tax Board until September 8th, 2022. This is more than three years after they filed their protest.

So we get a communication September 8th, 2022. That's the initial contact letter and IDR 1. The Appellants responded to that September 15th. You get a second IDR 2 requests, October 12, 2022. November of 2022, Appellants responded. And then March 14th, 2023, we get the Franchise Tax Board issue a determination letter related to the protest. The area -- the timing that we take issue with is the timing between the protest, which was in April of 2019 and to when the Franchise Tax Board actually contacted us in September of 2022. There's really no explanation offered for such a long delay in responding to the protest; more than three years.

And so we do want to say that there is authority that allows the Franchise Tax Board to abate interest in this case. You know, one of -- one of the factors is whether or not the Appellants or the taxpayers in this case are the cause for the delay. And as we showed you before, you can see that the Appellants timely responded to each request. The Appellants timely filed their protest. They notified change of address for the representative and yet, still silence for more than three years. So, while we know that the Franchise Tax Board has agreed to abate interest for December 4, 2019, to the period ending on April 5th, 2022, we don't think this is sufficient. We don't think it reflects the full period of the delay. And they've offered, really, no explanation as to why it was delayed for more than three years.

And so, we believe that the Appellants in this case are entitled to further interest abatement. We believe that an appropriate period would be reflecting June of 2019 to the September 8th communication of 2022 because there's no reasonable explanation as to why the Franchise Tax Board waited more than three years to contact the Appellants as it relates to these protests in this matter. And any delay associated with these protests has nothing to do with the Appellants. You can see when they were contacted that they always timely responded.

So, we would ask that the Franchise Tax Board consider -- we'd ask that this panel consider abating the interest further, if we get to the issue. And it only comes up if you find that the Appellants in this case did not hold the property for investment purposes. And we believe the record and the testimony you've heard today overwhelmingly supports that this property was always held for investment purposes. So as a reminder, Moller was formed with the expressed purpose of holding the property for investment. They repeatedly rejected numerous unsolicited offers. There's internal communications that even state that they had no intention to develop this property as it relate to PG&E deposits. You can see it in there, no intention to develop this property.

There were only 3 entitlements on this property, not 66. It was the market that drove the rapid increase in the value of this property, not actions taken by these Appellants. All of the expenditures that you're going to hear about today from the Respondent to just -- to suggest that there was physical development on this property, all of these are maintenance on the property or to reduce liability from hazardous conditions. The applicable authorities that we pointed to today and that are in our briefs all support that the Appellants held this property for investment.

The Respondent's position in this case has always relied on a mischaracterization of the facts, on a misunderstanding of when the Development Agreement was effective. But as you heard, the recording date has nothing to do with the effective date of the development. You can look at the agreement. You can look at the recitals. Recital K tells you that it was effective. The approval date is February 15th, 2013. And when you look at section 4 of the Development Agreement, which is Exhibit H, you can see the effective date is defined as the approval date, which is February 15th, 2013.

So, that Development Agreement was already in effect in 2013 when those unsolicited offers came in. And each and every single time, the Appellants said the property is not for sale. And all of the record supports that the invest -- that the Appellants in this case acted as investors, and they held this property for investment. And as I said before, Moller is entitled to further interest abatement. There was an unreasonable delay in responding to the protest, more than three years. None of that was attributable to any of the Appellants or the Appellants' representative in this case at the time. And we -- we don't have any clear explanation as to why it took more than three years to respond.

So, we would ask that there be some consideration that if you find that Moller did not hold this property for investment, that further interest would be abated for a period that extends from June 2019 to at least September 2020 -- of 2022 -- excuse me -- to when the Franchise Tax Board contacted us in regards to the protest. And we have an appendix of exhibits for Respondent and Appellants, and we thank you so much for your time.

JUDGE LAMBERT: Thank you for the presentation and for the witness testimony.

I will turn to FTB and see if you have any questions for the witnesses.

MR. CUNNINGHAM: No questions. Thank you.

JUDGE LAMBERT: Okay. Thank you.

And I'll turn to the panel to see if they have any questions.

Judge Ridenour, do you have any questions?

JUDGE RIDENOUR: Looking at the -- and I don't know if Mr. Lawrence or Mr. Thompson or both will want to answer this, so I'll let you two decided. But between, like, February 7, 2013, when you guys were receiving the unsolicited offers to purchase, which you declined, to April 10, 2015, when you went into -- oh, no. I'm sorry. You sold in 2015, but between then and April 14th, 2014, you did a listing agreement to sell with Moller and Cushman, and I'm wondering what happened between that time for you guys to decide to actually get into a listing agreement?

MR. LAWRENCE: We -- we were relying on the Cushman Wakefield assertion that they could access a buyer pool that, frankly, we couldn't. And if you look at the agreement, we weren't certain that we wanted to even sell the property. When Cushman took it out, the agreement doesn't require us to sell the property. It set a minimum purchase price for consideration. We are -- remember that this was predicated on the notion that they could bring in investors that would presumably pay significantly more than what the developers we knew would -- would be willing to pay for the property, which, unfortunately, didn't materialize from that respect.

The -- the commission -- there was no commission due. There was a break fee established. So, if we didn't receive an offer that we thought was sufficiently enough to -- for us to liquidate our investment, we had no obligation to sell.

JUDGE RIDENOUR: Okay. I understand it's in the exhibits, but can you remind what the minimum selling price was in that agreement?

MR. LAWRENCE: The minimum was $95 million.

JUDGE RIDENOUR: Ninety-five million. Okay. And then you sold it. Someone said something about a $92 million, and I was wondering is that one of the unsolicited offers?

MR. LAWRENCE: Yes. The Standard Pacific Letter of Intent listed a sales price for $92 million.

JUDGE RIDENOUR: Thank you. So, not that big of a difference from that. I mean, it is, but it's not in the whole grand scheme of things -- I hate to say it -- but between that and what you guys were giving your minimum threshold for in the purchase agreement. And then you go and sell it for $100 million, which is again, not that big of a difference in the whole grand of scheme of things to the original $92. And so I'm just trying to understand why 2013 you're like no. And then you're like 2014, maybe $98. And then, you know, like it seems like there aren't these big differences for you to be like this was the number we were looking for.

MR. LAWRENCE: I'm -- I'm happy to speak to that.

JUDGE RIDENOUR: Please.

MR. LAWRENCE: One of the things that was a consideration for us, the -- the market had -- had improved dramatically, and it continued to be very strong at that time frame. But if you look at it, the recovery was really well under way. And in 2015, if you go back and look at what people were talking about in the newspapers, there was already some discussion about when would the Feds raise interest rates. Interest rates had been held very low for a very long time, and it was a question of when would they would raise rates? When would they raise rates? Which we knew would raise mortgage rates, which we know would probably likely slow sales.

And when Toll Brothers came in with their offer of $99 million, and it was a -- a very clean offer. There wasn't a very long contingency period. We collectively said this has worked well, let's go ahead and do an exchange. We had also, at that time, realize that there were exchange properties on the market that we thought would be good properties to own for the long run. So, we had an incentive to go ahead and make that exchange so that we could take advantage of a marketplace on the other side as well.

JUDGE RIDENOUR: Thank you so much. No further questions.

MR. LAWRENCE: Thank you.

JUDGE LAMBERT: Judge Long, did you have any questions?

JUDGE LONG: No questions at this time. Thank you.

JUDGE LAMBERT: I think I had a couple of questions. I was wondering like, as to the Development Agreement, it was recorded in March 2014, and it states there's the desire to develop the property as a single-family residential project. And could that have been amended if that wasn't the intent at all, or why was it allowed to be recorded that way?

MR. LAWRENCE: Your Honor, the Development Agreement did not require us to engage in any development activity. It -- it simply stated that development would be allowable under certain conditions having been achieved. And those are set out in the conditions of approval to implement the development of the property. We had no obligation to commence development on any timeline. And, in fact, we had no obligation to develop the property. And as we intended to hold it, we had locked in the rights associated with that, including the ability to know which fees the property could be subject to and any additional changes in the approval environment. Had -- we had -- we had achieved certainty with respect to that, but we didn't have requirement to move forward with development at any time. And we didn't do so.

JUDGE LAMBERT: Okay. Thank you. And also, the listing agreement and the Development Agreement, you know, they appear to be closer to, you know, the date of the exchange. And if we're looking at the intent of that time, then -- I guess maybe you've spoken to this -- but would that make -- why would we give less weight, supposedly, to the Development Agreement and listing agreement, you know, when they're closer to the date that we're looking at where the other information, such as the rejections of sales offers came before and perhaps the intent changed as it came closer to the date?

MR. LAWRENCE: Well, so the -- the rights associated with the Development Agreement vested when the council approved the Development Agreement. There's a 30-day appeal period that had lapsed. And on February 15th in 2013, all rights were secured under the Development Agreement. The -- the city is obligated, per state statute, to record that as a public document in a timely fashion. They didn't do so. I don't know why. But it really wasn't a concern for us because we weren't attempting to sell the property. So if -- it took them quite a bit longer than the statutory period to record that Development Agreement, but it wasn't really a concern of ours at the time.

JUDGE LAMBERT: Okay. Thank you. That's all the questions that I have.

At this time we could take a break for 10 minutes, and we'll go off the record.

(There is a pause in the proceedings.)

JUDGE LAMBERT: Okay. We're ready. We can go back on the record.

Just to note that we do have that Exhibit N from FTB, so I'll just note that for the record.

And, Mr. Cunningham, you could do your presentation for 30 minutes, and you can proceed when ready.

MR. CUNNINGHAM: Thank you. Just for clarification, that's Exhibit O, correct?

JUDGE LAMBERT: Exhibit O. Oh, yeah. Okay.

MR. CUNNINGHAM: Just for clarification.

JUDGE LAMBERT: I'm getting confused on this exhibit a little, but okay. Thanks. Exhibit O.

You can proceed.

PRESENTATION

MR. CUNNINGHAM: Good afternoon. My name is Blake Cunningham, and I'm here with Mira Coutinho, and together we represent Respondent Franchise Tax Board.

There are two issues in this appeal: First, whether Appellants have established error in Respondent's determination that Moller held Moller Ranch primarily for sale under Internal Revenue Code section 1031; and second, whether Appellants have established grounds to abate additional interest.

The Internal Revenue Code section 1031 provides that generally no gain or loss shall be recognized on the exchange of real property held for productive use in a trade or business or investment if such real property is exchanged solely for real property of like kind. However, non-recognition treatment does not apply to any exchange of property primarily held for sale. Therefore, to qualify for like kind exchange treatment under 1031, Appellants must establish that at the time of the exchange, the relinquished property, Moller Ranch was not held by Moller primarily for sale but primarily for investment. Not only has Appellants failed to meet their burden of proof, but the facts demonstrate Moller held Moller Ranch primarily for sale.

To determine Moller's actions, it is necessary to look at the taxpayer's activity associated with holding the property. In analyzing the term "primarily for sale," in cases such as Baker, courts have referenced nine factors. These nine factors are derived from Internal Revenue Code section 1221 cases. However, in viewing the cases in a 1031 perspective, they are viewed more broadly. This is because for 1221 purposes, the court must look to whether property is primarily held for sale to customers in their ordinary course of its trade or business. Since 1031 does not require property to be sold to customers in its ordinary course of its trade or business, we only need to look to factors that determine whether Moller held Moller Ranch primarily for sale.

As noted in Baker, this is a facts and circumstance test, and no one factor is conclusive but rather, all the applicable factors taken as a whole govern. It is Appellants' burden to establish they held Moller ranch primarily for investment, not for sale. Therefore, Appellants must show that in examining all the factors, Moller's activities are primarily of that of an investor. In analyzing these factors, the court in Baker states that contemporaneous facts are given greater weight than to unsubstantiated statements regarding intent. As I will explain, in examining the relevant factors, the record overwhelmingly supports Moller's actions that Moller Ranch was held primarily for sale, and Respondent's denial of Moller's like kind exchange should be sustained.

The first factor is the purpose for which the property was initially acquired. Based on the objective evidence, Moller's purpose would initially acquire Moller

Ranch was holding it primarily for sale. Prior to its purchase of Moller Ranch, Moller entered into a Development Agreement. The Development Agreement sets forth an infrastructure sequencing program to develop roads, sanitary sewer improvements, water infrastructure, storm drainage for areas to be occupied, as well as other utilities. The agreement also includes land use approvals, a general plan, a district rezoning developments, plans and a vesting tentative tract map. This level of preparation and involvement with the City of Dublin, whether these actions were performed by the City of Dublin or Moller, demonstrates an initial intent to acquire Moller Ranch primarily for sale.

In addition, when Moller acquired Moller Ranch, it did so under identical terms to those that were originally negotiated by BLS. Moller paid a premium because the purchase agreement included terms that required Moller to pay added costs for the approval of additional permitted homes. This demonstrates that Moller had the intent when it initially acquired Moller Ranch to acquire it primarily for sale. Despite Appellants' testimony, the objective facts, such as the Development Agreement entered into with the City of Dublin, establish that Moller was wearing the hat of a developer, rather than an investor when it purchased Moller Ranch.

As the court did in Baker, the OTA should give more weight to the objective facts in the record than the oral testimony. While BLS began the pre-application and zoning process with the City of Dublin, BLS released the master plan to create a unique housing community on Moller Ranch. Both BLS and Moller acted seamlessly under the control of Appellants at the a planning commission public hearing in 2012 when the Moller Ranch project was discussed. Lawrence, acting on behalf of BLS, even though Moller, now, at this time owned the purchase option, discussed the goals of building an exciting place to live and felt the project allowed them to take a challenging piece of property and build a unique project. The following month, the City of Dublin approved the zoning. Since Moller now owned the option, BLS as Moller's agent must have been explaining Moller's intent as to the master plan.

In Jersey Land, the court found it significant that Jersey Land's other corporations acquired and approved real estate during this time. The court indicated that although this fact did not conclusively establish that Jersey Land was also operating as developer, it found it highly relevant in establishing Jersey Land's intention. Under the rational of Jersey Land, the fact that BLS and Moller acted in concert with each other under the direction and control of the same three owners, supports Moller's actions and demonstrate that Moller acquired Moller Ranch primarily for sale.

The second factor is the purpose for which Moller Ranch was subsequently held. In this case, the objective facts demonstrate that Moller continued to hold Moller Ranch primarily for sale after its purchase. As previously mentioned, Moller entered into a Development Agreement with the City of Dublin and was identified as the developer. Section (b) of the recital statement signed by Moller Ranch, states that developer Moller intends to purchase, desires to develop, and hold an equitable interest in the property. At no point during ownership did Moller void this agreement or discontinue this plan. In fact, Moller recorded the Development Agreement with Alameda County in 2014 memorializing its continued intent to have Moller Ranch subdivided and developed.

Additionally, Moller's exclusive listing agreement further demonstrates its intent to hold Moller Ranch primarily for sale. This listing agreement began in March 2014, 17 days prior to the recording of the Development Agreement and lasted over five months. The timing of the listing agreement coincided with Moller's finalizing the Development Agreement. Also, Moller's intent was memorialized and conveyed to members of the public. In the 2014 annual progress report by the City of Dublin presented in March of 2015 that the report publicly convey that Moller Ranch was rezoned for development.

The Development Agreement, exclusive listing agreement, master plan, and the annual progress report are all objective evidence establishing that Moller subsequently held Moller Ranch with the same intent that it acquired Moller Ranch to hold primarily for sale. Consequently, Moller continued to hold Moller Ranch primarily for sale subsequent to its purchase and through its sale in 2015. Appellants argue they received several unsolicited offers to sell Moller Ranch, which they declined. Moller's rejection of these unsolicited offers appear to be of less significance when considering that the Development Agreement with the City of Dublin had not been recorded at the time of the offers. More importantly, the exclusive listing agreement to sell Moller Ranch was entered into only seven months after receipt of the last rejected offer which coincided with the recording of the agreement.

This indicates an attempt to maximize their offers. Also, the court in Baker determined that receiving an unsolicited offer was no persuasive considering all the other objective evidence. Therefore, the facts support Moller subsequently held Moller Ranch primarily for sale.

The third factor is the purpose for which the property was held at the time of sale. Only seven months after the exclusive listing agreement expired, Moller entered into an option agreement to sell Moller Ranch to Toll Brothers. The ultimate sale of Moller Ranch included permits, approvals, and agreements, mostly prepared between 2012 and 2025. Exhibit L, 109 through 113 shows that there are 92 sellers documents that were included in the sale. This demonstrates Moller's continued intent to subdivide and sell Moller Ranch to the highest bidding developer. At no time during ownership did Moller's action reflect any change in intent. As a result, the facts show Moller always held Moller Ranch primarily for sale.

The fourth factor is the extent to which improvements were made to the property by the taxpayer. Moller invested millions in design, engineering, legal, permitting, and various demolition and fencing costs during Moller's option and actual ownership period. As Appellants noted, some of these expenses can be considered routine maintenance of the property. However, the extent and number of expenses are more in line with developing the property. Moller spent extensive non-customary costs, which establish Moller was acting as that of a developer, not investor.

Exhibit K lists all of Moller's developments on the property up to the sale date. These expenses include consulting fees, city planning fees, landscape architecture, utility design, biological consultant, and a traffic study to name a few. Also, Exhibit L, the sale agreement, includes a list of documents that further show the extensive cost Moller spent for completion of applications, agreements, entitlements, environmental reports, and design costs from 2012 through to 2015. These developmental costs go beyond routine maintenance and are improvements to Moller Ranch to prepare the property for development. The extent to which the property was developed is objectively determined by the remarkable increase in the price of Moller Ranch.

Moller Ranch was purchased by Moller for $28 million and sold for $100 million, almost four times the purchase price. This substantial increase in value can be attributed in part to Moller's expenditures far beyond routine maintenance and appreciation, but establish Moller was preparing Moller Ranch for development. Consequently, the extent to which Moller improved Moller Ranch weighs in favor of determining that Moller Ranch was held primarily for sale.

The fifth factor is the extent of advertising, promotion, or other active efforts used in soliciting buyers for the sale of the property. The exclusive listing agreement require the broker to publish and distribute brochures, create a website to advertise the sale of Moller Ranch, and required Moller to reimburse these costs for marketing Moller Ranch. Additionally, even with potential interested buyers who provided unsolicited offers, Moller still decided to spend money on marketing Moller Ranch for sale. Therefore, Moller made an active effort to advertise and promote the sale of Moller Ranch, which establishes Moller Ranch held primarily for sale.

The sixth factor courts analyze is the listing of the property with brokers. As mentioned, Moller entered into an exclusive listing agreement with Cushman and Wakefield as the broker. The exclusive listing agreement indicates that the broker will undertake an international marketing effort to secure a purchaser for Moller Ranch. While Appellant attempts to dismiss this factor by saying that the agreement was to explore the value of the property, there is nothing in the record to support that statement. This agreement with brokers establish that Moller Ranch was held primarily for sale. Furthermore, if Cushman and Wakefield could field an offer of $95 million or more, they would receive $250,000 whether accepted or not. This establishes that if Moller would have received the price that they wanted, they would have sold the property.

Finally, the remaining factors are the ordinary business of the taxpayer, the frequency number, and continuity of sales, and the extent and nature of the transactions involved. These factors do not apply because for purposes of 1031, we do not look at the factors relating to customers in the ordinary course of its trade or business or the frequency, number, and continuity of sales. Moller's operating agreement may have listed the purpose of Moller to hold property for investment purposes, however, the objective facts establish that Moller was wearing the hat of a developer, rather than an investor during its ownership of Moller Ranch, suggesting that its ordinary course of business was to hold Moller Ranch primarily for sale.

Appellants cite Bueno, Conner, and Sugar Land Ranch to support its position that Moller Ranch was primarily held for investment. However, these are 1221 cases, and the courts focus mostly on factors not relevant to 1031 cases, such as the number of sales entered into by the taxpayer. In these cases, the court relied on the development of the property to establish whether there was a sale to customers in the ordinary course of its trade or business. There was little to no analysis about holding the property primarily for sale.

As the court in Black and Baker explained, for 1031 there is no requirement that the taxpayer hold property for sale to customers in the ordinary course of its trade or business. And therefore, the determination of primarily held for sale under 1031 is broader than under 1221, a standard with a low bar. To establish primarily held for sale, there's also no requirement to subdivide the property. Weighing all the relevant factors in the record supports the finding that Moller Ranch was held primarily for sale. Moller's actions viewed in totality distinctly reflect Moller's intent to acquire and Moller Ranch primarily for sale, and there is no evidence Moller ever changed their intent.

Respondent does not dispute that Moller, like most real estate, may have held Moller Ranch in part for investment purposes. However, the objective evidence in the record shows that Moller Ranch was held primarily for sale. Appellants have not met their burden to show error in Respondent's determination that Moller Ranch was held primarily for sale and, therefore, Respondent's assessment should be sustained.

Next, regarding interest abatement, Revenue &

Taxation Code section 19101 requires that interest be assessed from the date a payment is due through the date that it is paid. Respondent's imposition of interest is mandatory. Interest is not a penalty imposed on the taxpayer, and there is no reasonable cause exception to the imposition of interest. It is simply compensation for the use of money. To obtain relief from interest, taxpayers must qualify under one of three exceptions: Unreasonable error or delay caused by a managerial or ministerial act; financial hardship; or reliance on written advice by Respondent.

Respondent abated interest from December 4th, 2019, to April 5th, 2022. However, Appellant states additional interest should be abated because Respondent did not take any action on the protest. Appellants filed their protest on April 19th, 2019, and the protest was assigned to staff on September 3rd, 2019. Respondent determined a three-month period following the initial assignment is not an unreasonable error or delay. From that point, until consistent progress resumed on the case, April 5th, 2022, reflects the period to which interest is abated. As stated in the Internal Revenue Code section 6404, Respondent cannot abate interest for delays caused by organizing and prioritizing workloads. But Respondent may consider interest abatement, as done here, for situations involving unreasonable error or delays in assigning a case.

Office of Tax Appeals only has jurisdiction to determine whether Respondent's denial of interest abatement was an abuse of discretion. Respondents have already reviewed the period requested by Appellant and determined there is no managerial or ministerial act. For these reasons, Respondent request that other than the conceded amount of interest, Respondent's actions be sustained.

Thank you. We're happy to answer any questions.

JUDGE LAMBERT: Thank you.

I'll ask the panel if they have questions.

Judge Ridenour, do you have any questions?

JUDGE RIDENOUR: Yes. I was wondering if you can go into a little bit more detail about what was occurring at the FTB between April 19th, 2019, and September 18th, 2022, that it took three years to respond to a protest.

MR. CUNNINGHAM: Yeah. I don't have -- as far as the period where we abated interest, we don't have anything in the record that shows there is any -- any action on the case. But from the date that -- that we stopped abating interest, the case was resigned, and we determined work was -- they're working on the case at that point.

JUDGE RIDENOUR: Okay. Thank you.

JUDGE LAMBERT: And, Judge Long, do you have any questions?

JUDGE LONG: No questions. Thank you.

JUDGE LAMBERT: And I think I had a couple of questions. I was wondering when it says, "Held primarily for sale," like, in that context the word primarily, does that mean like more than 50 percent, like, if you're going to weigh it on scale, like, 51 percent held for sale and 49 for investment, or how high would it be on the scale in terms of investment versus sale?

MR. CUNNINGHAM: Well, I think in defining primarily for sale, the courts have looked to those nine factor, and then they weigh those factor in determining when you weigh those factors -- the facts and circumstance, if you weigh that those factors determine that it's primarily held for sale, then it would be primarily held for sale. And if you determine that it's more held for investment, then it would be more for investment. So I think those factors you weigh as facts and circumstance, and then you weigh which way -- what those factors support.

MS. COUTINHO: Just to add to that, I think a taxpayer can hold property for multiple reasons. But the one that would be the primary or the majority, if we're thinking numerically, would be the primary purpose. And, in this case, we've determined primarily for sale.

JUDGE LAMBERT: Okay. Thank you. And I was wondering -- let me just check my notes. So, you're arguing that the property was always held for sale, you know, so even with the operating agreement and sale rejections, you're still -- your argument is that it was always held for sale?

MR. CUNNINGHAM: Correct. As far as the operating agreement, it states it's held for investment, but the facts show, overwhelming, that it was held primarily for sale. So, yes. And -- and like I said, I do recognize that there's unsolicited offers, but the court, such in, you know, Baker's, you know, found that, you know, getting an unsolicited offer wasn't persuasive when you review -- when you viewed all the other -- other factors.

JUDGE LAMBERT: Okay. Thanks. And the Appellants were stating that the improvements were just those that were required by the law, instead of for investment purposes. I'm not sure, but do you have a response to the fact that it seems some of the improvements were just required to maintain the property?

MR. CUNNINGHAM: Yes. I will -- where is my exhibit? Exhibit K shows -- this shows a list of all -- this is their ledger that shows the list of all of their expenses. And if you'll notice in the right column, you have various things, such as structural engineering, biological permitting, utility design, grazing lease buyout. On the second page you have a traffic study. So, it's our position that while some of these expenses, like fencing maybe, you would need to do whether it was held for investment or for sale. Some expenses could be either way. A majority of these expenses are showing that they're holding it primarily for sale as they're doing work as an investor.

JUDGE LAMBERT: Okay. Thank you very much.

Now, we can turn to Appellants' rebuttal for 10 minutes.

And, Ms. Renta, you can proceed when you're ready.

MS. RENTA: Sure. Thank you, Judge Lambert. Sorry. Let me move in. Sorry.

CLOSING STATEMENT

MS. RENTA: So, I do want to address a few things that were stated, and it relates to the objective evidence in this case, and how there's no objective evidence to support that the Appellants here were holding the property for investment. I do want to say that the Respondent did say that the Development Agreement was recorded by Moller. But if you look, and you turn to Exhibit H, go to page 1. At the exact top of the left-hand corner of the page, what does it say? Recording requested by City of Dublin. Moller had nothing to do with the recording of this Development Agreement.

Additionally, when you look at the timeline, you heard Respondent say the Development Agreement approved in January of 2013. If you look at the terms of the agreement in Exhibit H, if you go to the exhibit, turn to page -- to the recitals, you look at the recitals on the exhibit, this is the objective evidence in this case. You can turn to recital K. It says -- confirms January 15th, 2013, city council, City of Dublin adopted the ordinance that approve this Development Agreement. And the approval date is listed as February 15th, 2013. That is on page 3 of the Exhibit H, that when you turn and you go to Section 4, which is on page 4 of Exhibit H, what is the effective date? It's the approval date that was listed in the recital K, which is February 15th, 2013. The Development Agreement was in effect in 2013.

There are numerous unsolicited offers. These are offers from real buyers. Each and every single one of those, they could have purchased this property. The reason why there is only a $92 million offer is because it was a Letter of Intent, and they never asked any other party for a purchase price because why? They were not holding this property for sale. They didn't even entertain it. They did that. That was after the Development Agreement was in effect. They had no involvement as you can see on page 1 of Exhibit H with the recording of this Development Agreement. That was an action that was taken unilaterally by the City of Dublin. So, I just wanted to point that out because that is a misstatement of a fact. Moller did not record the Development Agreement.

Additionally, they had another unsolicited offer. That's Toll Brothers. They never marketed this property at the time in 2015 to sell it. They ran into Toll Brothers, and a representative asked and inquired about this property. You heard that testimony today. This property was sold to Toll Brothers from an unsolicited offer. And each -- each and every single communication repeatedly throughout the record -- there's written record -- contemporaneous written record stating not for sale. There's record after the Development Agreement is in effect that this property is not for sale.

And I also want to point out that the Respondent talks about Jersey Land and how the court in that case said it was important the other activities of the entities being developers. But that's because if you read the case what does the court say? The taxpayer did not offer any evidence otherwise. That's why they found it highly relevant. Here, countless evidence; they transferred into a separate entity. The entity is formed expressed purpose to hold for investment. Countless unsolicited offers after the Development Agreement is in effect, and they say not for sale.

You heard the testimony. Why would you sell in 2015 if your goal is for long-term investment? The market was changing. The market generally dictates when an investor is going to liquidate their investment. You heard there was concern the market was changing, and they received an unsolicited inquiry from Toll Brothers, and that is when they sold. Each and every single time they were approached about this property, they communicated not for sale until the market dictated when the relevant period was for them to liquidate their investment. And that is what occurred.

The record is full of objective evidence that supports the intent for which this property was acquired, for which it was subsequently held, and for which existed at the time of the exchange. And the Respondent relies on the recording date for the Development Agreement to justify that it was at the time of exchange that the intent was primarily for sale. But if you look on the face of the Development Agreement, look at the terms. It's very clear that it was in effect before the recording date. The Appellants had nothing to do with the recording of this document. That was all City of Dublin.

We also heard the Respondent talk about the intent in the annual report. Moller has no participation in drafting the annual report for the City of Dublin. All that was just repeating things that had occurred in the past, and there's -- there's no involvement from the Appellants in this case in that type of annual report. And most of the terms of the Development Agreement were likely approved by the city, boilerplate language. So, there wouldn't probably be any need to amend that type of language in this context when you're not going to develop the property. There was no intent and no requirement to develop this property. And they made it clear in their communications that they were never going to develop this property.

Thank you.

JUDGE LAMBERT: Thank you, Ms. Renta.

Now, Mr. Cunningham, did you want to give your rebuttal for 10 minutes now?

MR. CUNNINGHAM: Yes. Thank you.

CLOSING STATEMENT

MR. CUNNINGHAM: I just wanted to respond to a couple of Appellants' points. First of all, we believe the recording date is very relevant because that lets the world know that there's a Development Agreement. Until it's recorded, it is not finalized. It can be changed. So, I do think that the date of the Development Agreement being recorded is -- is very relevant.

Also, they mention about the -- how the markets improve, but I -- I did want to point out, again, that seven months after the rejection of the last inquiry there was an exclusive listing agreement. And in that exclusive listing agreement, there was language that said if an offer was brought to them of $95 million or more, they would have to pay $250,000. So, that would lead us to believe that potentially the unsolicited offers, they possibly did not get the value that they were looking for.

And also, regarding the information from the City of Dublin in -- in their statement, you know, that -- that information Moller was quoted on -- BLS was quoted on record as -- as making statements regarding that I stated before regarding their plan to develop the property. So, I -- I think it was more than just the City of Dublin making that statement. That was -- and that's all I have.

Thank you.

JUDGE LAMBERT: Thank you.

And I will turn to Appellants for their closing remarks for five minutes.

So, Ms. Renta, you can make closing remarks for five minutes.

MS. RENTA: Thank you, Judge Lambert. Sorry.

ADDITIONAL CLOSING STATEMENT

MS. RENTA: So, as you heard today, you have the record before you. You've heard the testimony. The Appellants acquired this property with the expressed purpose to hold it for investment. That's clear from the operating agreement. There was countless unsolicited offers for this property. And each and every single time they communicated the property was not for sale, that they were holding it for long term. You can even see internal communication related to PG&E deposits where they say they have no intention to develop the property.

Buono makes it clear that Appellants were entitled to take purely legal steps to secure entitlements on this property for -- to be able to develop it without having an intent to develop and holding it primarily for sale. You are allowed to take purely legal steps to enhance the value of your investment, and that is exactly what occurred here.

Additionally, the Development Agreement -- yes, it was recorded by the City of Dublin in March of 2014. But if you look at the agreement itself, look at the objective evidence, look at the signature page; when did the Appellants sign it? November of 2012. The agreement was -- the city ordinance approved. So, it was law for the City of Dublin effective February 15th, 2013. You can see in Exhibit B the city council approvals. Throughout the time of acquiring, holding this property Moller expressed its intent with holding it that it was not for sale, and it was holding for long-term appreciation.

That intent did not change. It was acquired for investment. It was held for investment. And when you look at the exchange, what occurred? An unsolicited offer from Toll Brothers. The market was changing, and the Appellants in this case decided that now was the time to consider an unsolicited offer for the property. That is exactly what occurred. The record -- the objective record and the testimony you've heard from today supports that this property was held for investment. It was not held primarily for sale within the meaning of 1031(a)(2)(A), and that the Appellants properly recorded this as a deferred 1031 exchange on their 2015 return.

Thank you.

MR. CUNNINGHAM: I'm sorry. Judge Lambert, can I make one clarification on her statement? I believe the agreement was recorded by the County of Alameda, not by the City of Dublin. So it was recorded to Alameda County.

MS. RENTA: Yes. I apologize. It was requested to be recorded by the City of Dublin, and it was recorded by the respective county.

JUDGE LAMBERT: Okay. Thank you.

And I want to thank the parties for appearing today.

So, if there's nothing further, I'm going to conclude the hearing, and the panel will issue a written opinion within 100 days.

And also thank you to the witnesses for their testimony also.

So the record is now closed, and have nice rest of your day.

MS. RENTA: Judge Lambert, we if may request, I think we may need to request, like, just to confirm the exhibits in this case. And we would also like to ask if it would be possible to keep it open for a closing brief, if the panel would consider that.

JUDGE LAMBERT: Okay. Well --

MS. RENTA: -- just given the testimony heard today.

JUDGE LAMBERT: Well, let me just open the record back up.

MS. RENTA: Thank you, Judge Lambert.

JUDGE LAMBERT: Okay. So, first to confirm the exhibits -- okay. So, which exhibit did you want to confirm?

MS. RENTA: We just want to review, because if recall Exhibit O, we believe that there might be a duplicate. So I just want to confirm Appellants' exhibits numbers, because I believe you're renumbering them. So, we just want to be able to tie them back accurately, if that's okay.

JUDGE LAMBERT: If there's a duplicate it's fine.

MS. RENTA: Okay.

JUDGE LAMBERT: As long as it's in the record --

MS. RENTA: Okay.

JUDGE LAMBERT: -- it doesn't mattered. And what was the reason for more briefing?

MS. RENTA: We would like to just file a closing brief, given the testimony that's been heard today and all the facts presented. And, you know, this is the first time we're hearing that Moller recorded -- was a responsible party for recording the Development Agreement and the timeline came in yesterday. So, we would like to just have a closing brief just to resolve some issues.

JUDGE RIDENOUR: So, if I'm understanding this correctly, the witnesses, which you have been working with, I presume, up to today gave testimony that you weren't expecting? So, now you want to be able to do a --

MS. RENTA: No. We just would like to, since this is the first time that testimony is being presented for the case, just to restate the facts of this case, because the facts are heavily in dispute in this matter.

JUDGE RIDENOUR: Okay.

MR. CUNNINGHAM: I'm sorry. Can I speak on that.

JUDGE LAMBERT: Yeah.

MR. CUNNINGHAM: We would object. There -- there's already been three briefings by Appellant, and two by Respondent. And I believe the facts are -- I think maybe the application of the facts are in dispute, but the facts are all in the record. And nothing -- at least from our side today -- is -- was anything stated that isn't already in the record.

JUDGE LAMBERT: Okay. Yeah. I don't think we need to do post-hearing briefing necessarily. So, I still want to close the record after this. But, you know, if after reviewing the case we could always ask for additional briefing, but at this time, you know, we can review the file and, you know, determine the facts from there and issue the opinion and see how that goes.

MS. RENTA: Sounds good. Thank you.

JUDGE LAMBERT: Okay. So, I'll close the record, and thank you.

(Proceedings concluded at 3:39 p.m.)

HEARING REPORTER'S CERTIFICATE

I, Ernalyn M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 10th day of June, 2026.

____
ERNALYN M. ALONZO
HEARING REPORTER