[See fee exemption, Gov. Code § 6103]

Case No. H039707

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

KEEP OUR MOUNTAINS QUIET,

Plaintiff and Appellants,

v.

COUNTY OF SANTA CLARA, BOARD OF SUPERVISORS OF COUNTY OF SANTA CLARA,

Defendant and Respondent

CANDICE CLARK WOZNIAK, CANDICE CLARK WOZNIAK TRUST, RONALD J. KAUFFMAN, VELIMIR SULIC, MASONSULIC, INC.,

Real Parties in Interest and Appellants.

LEAGUE OF CALIFORNIA CITIES' AND CALIFORNIA STATE ASSOCIATION OF COUNTIES' APPLICATION FOR LEAVE TO FILE AN AMICUS BRIEF; AMICUS CURIAE BRIEF IN SUPPORT OF REAL PARTY IN INTEREST

Appeal from the Superior Court of California, County of Santa Clara
Case No. 1-12-CV-221481
The Honorable Joseph H. Huber

THE SOHAGI LAW GROUP, PLC
Margaret M. Sohagi, State Bar No. 126336
Philip A. Seymour, State Bar No. 116606
R. Tyson Sohagi, State Bar No. 254235
11999 San Vicente Boulevard, Suite 150
Los Angeles, California 90049-5136
Telephone: (310) 475-5700
Facsimile: (310) 475-5707

Attorneys for Amicus Curiae
LEAGUE OF CALIFORNIA CITIES and the CALIFORNIA STATE ASSOCIATION OF COUNTIES

APPLICATION FOR LEAVE TO FILE AN AMICUS BRIEF IN SUPPORT OF REAL PARTY IN INTEREST

Pursuant to Rule 8.200(c) of the California Rules of Court, the League of California Cities ("League") and the California State Association of Counties ("CSAC") respectfully request leave to file the accompanying amicus brief in this proceeding, in support of Real Party in Interest/Appellant, the Candice Clark Wozniack Trust.

This brief was drafted by Philip A. Seymour and R. Tyson Sohagi of The Sohagi Law Group, PLC on behalf of the amici, as counsel for the League and CSAC. No party or counsel for a party in the pending case authored the proposed amicus brief in whole or in part, or made any monetary contribution intended to fund its preparation.

STATEMENT OF INTEREST AS AMICI CURIAE

The League is an association of 473 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the state. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation

Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

Wherefore, the League and CSAC respectfully request that this Court grant this application for leave to file the accompanying amicus curiae brief.

DATE: August 18, 2014 By: 

Margaret M. Sohagi
Philip A. Seymour
R. Tyson Sohagi
THE SOHAGI LAW GROUP, PLC
Attorneys for Amicus Curiae
LEAGUE OF CALIFORNIA CITIES and the CALIFORNIA STATE ASSOCIATION OF COUNTIES

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I. INTRODUCTION

Every year the member cities and counties of the League of California Cities ("League") and the California State Association of Counties ("CSAC") must determine the appropriate method of complying with the California Environmental Quality Act ("CEQA") for thousands of projects of all types across the State. In some cases, it is clear that an environmental impact report ("EIR") must be prepared for a proposed project, pursuant to Public Resources Code § 21100. In other cases, the proposed project is exempt from detailed review under one of CEQA's numerous statutory exemptions or categorical exemptions. (Pub. Resources Code §§ 21080(b), 21080.1-21080.42, 21084; Guidelines[1] §§ 15260-15333.) In the case of many, many smaller projects, however, such as the project at issue in this case, the city or county must conduct a careful review of facts to determine whether the project qualifies for a negative declaration or a mitigated negative declaration (Pub. Resources Code § 21080(c)), or whether the project proponent must incur the cost and extended permit processing time required to prepare an EIR. The costs are by no means negligible. Although the CEQA Guidelines suggest that an EIR should "normally" be less than 150 pages, or 300 pages for "proposals of unusual scope or complexity," very few EIRs fall within either of these limits in current practice. (Guidelines § 15141; see e.g., *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 20 [1,000 page Draft and Final EIR.], *City of Fremont v. San Francisco Bay Area Rapid Transit Dist.* (1995) 34 Cal.App.4th 1780, 1784 [800 page Draft EIR.], *Laurel Heights Improvement Assn. v. Regents of University of*

[1] Title 14, California Code of Regulations, § 15000 et seq., hereafter, "Guidelines."

California (1993) 6 Cal.4th 1112, 1122, 1145 [900 page Draft EIR and 2,000 page Final EIR.].)

The fundamental purpose of CEQA is to promote protection of the environment for the benefit of the general public. (Pub. Resources Code § 21000, 21001, 21002.1(b); *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390.) CEQA, however, balances the need for environmental review with the cost and delay that such review requires. Thus, on the one hand, case law generally recognizes that CEQA sets a "low threshold" for preparing an EIR. (*Pocket Protectors v. City Of Sacramento* (2005) 124 Cal.App.4th 903, 928; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881.) An EIR must be prepared whenever a lead agency is presented with a "fair argument," based on substantial evidence, that the project may have a significant environmental effect. (*Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1603; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1399-1400.)

On other hand, it is also well established that the purpose of CEQA is not to generate paper, but to ensure that informed decisions are made with environmental consequences in mind. (*Laurel Heights*, 47 Cal.3d 376, 393.) Consequently, various provisions of CEQA make it clear that procedure is not to be exalted over substance when it comes to protecting the environment, and CEQA should not be used to inflict unnecessary costs, delays or interference on projects, particularly those which will not have any significant environmental effects. (Pub. Resources Code §§ 21002.1(e), 21003, 21093, 21100.2, 21151.5; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 576 ["Concurrently, we caution that rules regulating protection of the environment must not be

subverted into an instrument for the oppression and delay of social, economic or recreational development and advancement."].) Where the lead agency determines that there is no substantial evidence in the entire record before the agency that the project may have a significant environmental effect, the lead agency must prepare a negative declaration instead of an EIR. (Pub. Resources Code § 21080(c); Guidelines § 15070.) In the absence of substantial evidence that a project may have a significant environmental effect, the lead agency may not require an EIR for curiosity's sake or to merely assuage public opinion, but "shall" issue a negative declaration instead. (Pub. Resources Code § 21080(c); Guidelines § 15070; see also Pub. Resources Code § 21082.2(b) [public controversy alone is not a basis for requiring an EIR].) A legislative preference for substantive environmental results over paperwork is reflected in the provisions for mitigated negative declarations added to CEQA in 1994. (Pub. Resources Code §§ 21064.5, 21080(c)(2); Stats 1994, c. 1230.) Under the mitigated negative declaration procedure, a project which initially poses the potential to significantly impact the environment may qualify for a negative declaration instead by incorporating mitigation measures or project modifications that eliminate the potential for any significant adverse environmental effect. (Pub. Resources Code § 21064.5; Guidelines § 15070(b).) To qualify for a mitigated negative declaration, the project must pass essentially the same stringent test as a project claiming a negative declaration. There must be "no substantial evidence, in light of the whole record before the lead agency, that the project, *as revised*, may have a significant effect on the environment." (Emphasis added; Pub. Resources Code §§ 21080(c)(2) and 21064.5; Guidelines § 15070(b).)

Judicial review of a lead agency's decision to adopt a negative declaration or mitigated negative declaration is governed by what is commonly known as the "fair argument" test. An EIR is required "whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact." (*Quail Botanical Gardens,* 29 Cal.App.4th 1597, 1602, quoting *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.) Consequently, "the reviewing court's function is to determine whether substantial evidence supported the agency's conclusion as to whether the prescribed 'fair argument' could be made." (*Id*., quoting *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002.) In practical terms, this test generally means that whether the record contains substantial evidence, whether contradicted or uncontradicted, the proposed project may have a significant environmental effect. (*Id*.) In making this determination, the reviewing court does not act as a finder of fact, but rather performs a legal function of determining the "sufficiency of the evidence to support a fair argument" that an EIR is required. (*Gentry*, 36 Cal.App.4th 1359, 1400; *Quail Botanical Gardens,* 29 Cal.App.4th 1597, 1602, quoting *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1317-1318; *Pocket Protectors*, 124 Cal.App.4th 903, 928.)

A. The Problem of Uncertainty as to What Constitutes "Substantial Evidence"

In light of the foregoing, all parties in the CEQA review process have a vital interest in understanding what type and quantum of evidence constitutes "substantial evidence" requiring preparation of an EIR. The need is particularly acute for the League and CSAC's members, which must act as the actual decisionmakers for most projects subject to CEQA within

their jurisdictions. A clear understanding of the rules by project applicants and project opponents will also facilitate sound decisionmaking and avoid unnecessary litigation.

As discussed further below, CEQA, the State CEQA Guidelines and case law provide some useful guidance in this matter. Nevertheless, this case highlights two areas in which further guidance from the higher courts would be particularly useful.

1. Personal Observations of Non-Expert Witnesses

The first problematic area is purported factual observations by non-experts. Typically, these are statements by residents of the project area describing existing conditions or past experiences which are believed to shed light on potential environmental effects of a proposed project. No one questions that interested parties of all viewpoints are entitled to present such information, nor that such evidence may be relevant and useful in evaluating potential project impacts. Neither is it a question that citizens' factual observations, may, under certain circumstances, constitute substantial evidence. (*Pocket Protectors,* 124 Cal.App.4th 903, 932.) However, it is not always easy in practice to discern what portion of citizen testimony or written comments are factual, and what portions may more properly be classified as opinion, exaggeration, rumor or a mere statements of concern. Even as to seemingly factual statements, it is not always readily apparent what portion is solid fact, and what portion might be described as "poetic license." Without some constraints, a judicial rule favoring acceptance of citizen testimony at face value is in danger of degenerating, in practice, to the repudiated doctrine that public controversy over potential environmental impacts may in and of itself be grounds for preparing an EIR. (Pub. Resources Code § 21082.2(b).)

The League and CSAC assert that the rules governing citizen testimony on factual issues need to be further clarified for the benefit of the trial courts, for public agencies administering CEQA, and for the benefit of both project proponents and project opponents who wish to make their best case before public agency decisionmakers. As further discussed in this brief, key points of clarification or reaffirmation include the following:

a. Project-Related Cause and Effect

To be considered substantial evidence supporting a fair argument of potentially significant impacts, factual testimony must be relevant to show that the project may actually *cause* the alleged impacts. Testimony concerning existing environmental conditions or impacts caused by unrelated projects cannot be equated with evidence of significant project effects. Neither may citizen opinions on causation substitute for competent expert testimony on technical subjects where relevant expertise is required.

b. Relevant Standards of Significance

Citizen factual testimony must demonstrably relate to a recognized standard of significance, e.g., the significance thresholds actually utilized by the lead agency or a standard mandated by the CEQA Guidelines or other law. Personal, subjective standards are not a basis for finding an impact significant for purposes of CEQA.

c. Specificity

Testimony must be sufficiently specific and definite as to establish more than a mere speculative possibility of a significant impact. Where citizen testimony is vague or ambiguous, lead agencies are entitled to interpret the testimony as appears most reasonable in light of circumstances.

d. Effects on the Environment At-Large

The evidence must relate to impacts on the environment at-large, not impacts affecting only a few individuals or properties.

e. Evidence as a Whole

Evidence must be considered in light of the whole record. Vague, isolated or broad general statements need not be considered as substantial evidence where they are contradicted by objectively verifiable facts or otherwise demonstrated to be clearly inaccurate or unreliable.

2. Expert Disputes Over Methodology

It has long been recognized that competent fact-based expert opinion evidence offered by project opponents or others may constitute substantial evidence requiring preparation of an EIR. In recent years, however, lead agencies have been required with increasing frequency to consider expert opinions offered by project opponents that criticize the analytical methodologies employed by agency staff or by a project applicant's experts, but offer no independent conclusions that would support a finding of significant environmental impacts. One published case has declared the seemingly logical rule that mere requests for more accurate studies cannot in and of itself constitute substantial evidence requiring an EIR. (*Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 786.) The trial court decision in this case indicates that there is a further need for amplification of the rules governing expert disputes that reach only the issue of methodology rather than the ultimate significance of environmental effects.

II. CITIZEN FACTUAL TESTIMONY

A. Background Law

"Substantial evidence" is defined in the CEQA Guidelines as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines § 15384(a).) "Substantial evidence" includes fact, a reasonable assumption *predicated upon fact*, or expert opinion *supported by fact*." (Emphasis added; Pub. Resources Code § 21080(e)(1); Guidelines § 15384(b).) "Substantial evidence" has also been described in case law as "simply evidence which is of a 'ponderable legal significance … reasonable in nature, credible, and of solid value.'" (*Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 152, quoting *Lucas Valley Homeowners Assn. v. County of Marin* (1991) 233 Cal.App.3d 130, 142.)

CEQA, the Guidelines and case law also provide guidance as to what does not constitute "substantial evidence." "Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment." (Pub. Resources Code §§ 20180(e)(2); 21082.2(c); Guidelines § 15384(a); see *Citizen Action To Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 756-757.) "Substantial evidence" also does not include "mere uncorroborated opinion or rumor" or "concerns and suspicions about a project." (*Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1348.)

Opinions of non-experts on technical subjects, even where purportedly based on scientific principles, reports or studies prepared by

qualified experts, are not substantial evidence. (*Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2008) 157 Cal.App.4th 885, 908; *Bowman v City of Berkeley* (2004) 122 Cal.App.4th 572, 582-583 [project opponent's conclusions from toxic contaminant study not substantial evidence]; *Gentry,* 36 Cal.App.4th 1359, 1410 [opinions purportedly based on expert materials not placed in record]; *Save Cuyama Valley v. County Santa Barbara* (2013) 213 Cal.App.4th 1059, 1069-1070 [The court upheld the county's determination that photographs submitted by Petitioners, purportedly showing evidence of hydraulic impacts, were meaningless because Petitioners did not provide any information as to where the photographs were taken.] *Leonoff*, 222 Cal.App.3d 1337, 1352-1353 [Tests performed by non-experts related to traffic safety were did not constitute substantial evidence].) The existence of public controversy over the environmental effects of a project, however strident, does not require preparation of an EIR in the absence of substantial evidence that the project may have a significant environmental effect. (Pub. Resources Code § 21082.2(b).)

B. Personal Observations as Substantial Evidence

1. Problems Posed by Citizen Testimony

It has long been recognized that the sources of information a CEQA lead agency may rely on include factual testimony on non-technical subjects from local citizens and other non-experts. (*Pocket Protectors,* 124 Cal.App.4th 903, 932; *Ocean View Estates Homeowners Ass'n, Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 402; *Oro Fino Gold Mining*, 225 Cal.App.3d 872, 882; *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 173.) However, citizen testimony can be problematic in practice. It is not always

easy to distinguish between the factual content of citizen testimony – which may constitute substantial evidence for purposes of the fair argument test – and testimony that is more accurately described as rumor, unsubstantiated opinion or mere statements of concern. (*Leonoff*, 222 Cal.App.3d 1337, 1348.) Moreover, since the information offered is typically subjective, often anecdotal and generally qualitative rather than quantitative in nature, it is often difficult to assess precisely what objective facts should be inferred from the testimony. Imprecise memories coupled with imprecise words may make it difficult to discern the actual intensity, duration or frequency of conditions or events reported by lay witnesses.

These difficulties can be compounded by the fact that citizen testimony is often partisan in nature, and consequently often suffers from the vices of partisanship. Many of these problems are unavoidable in the type of informal proceedings which characterize land use decisions and most other governmental decisions that are subject to CEQA. The alternatives of allowing cross-examination of witnesses and taking testimony under oath are not practical given the calendars of most elected and appointed decisionmaking bodies, and would severely compromise CEQA's goal of encouraging public participation. Nominally, lead agencies have discretion to judge the credibility of witnesses and thus weigh the substantiality of their testimony accordingly. (*Gentry*, 36 Cal.App.4th 1359, 1400; *Quail Botanical Gardens*, 29 Cal.App.4th 1597, 1603.) In practice, however, this discretion is severely limited by the requirement that the lead agency specifically address and resolve issues going to the credibility of witnesses on the record where it chooses to reject factual assertions on credibility grounds. (*Pocket Protectors*, 124 Cal.App.4th 903, 934.) Few public agency decisionmakers have the time to

undertake burdensome findings dissecting the testimony of individual citizen witnesses, even were they willing to disregard the undesirable collateral effects of discouraging public participation and inviting personal acrimony inherent in such a process.

Uncritically applied, the rules concerning the value to be conferred on citizen testimony may easily morph into a rule that public controversy itself may be grounds for requiring an EIR. The Legislature has clearly foreclosed such a rule. (Pub. Resources Code § 21082.2(b).)

To ensure that lead agencies and trial courts do not feel compelled to give undue weight to insubstantial or irrelevant citizen testimony, it is worth this Court's time to clarify and amplify several relevant underlying principles.

2. Relevant Principles

While there is no recipe for eliminating the need for sound judgment in determining what citizen testimony may constitute substantial evidence for purposes of the fair argument test, some basic principles that can be distilled from experience and case law are worth reiterating.

a. Project-Related Cause and Effect

It is axiomatic that CEQA is concerned with environmental impacts potentially *caused* by a proposed project, not with study of the environment for its own sake. (Pub. Resources Code §§ 21065, 21080(c), (d); Guidelines §§ 15064, 15126.2; see, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1205 [the relevant question is whether a project "may cause a potentially substantial adverse impact on the environment as measured against the existing environmental baseline."]; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 875-876 [EIR not required to consider

impacts not caused by project]; *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273, 286, fn7 ["…courts could not presume that the enactment of a zoning ordinance 'may cause….a…physical change in the environment' (§ 21065), but would have to review the administrative record for evidence establishing both the requisite causal link as well as the requisite physical change in the environment."] overruled on other grounds in *Hernandez v. City of Hanford* (2007) 41 Cal.4th 279.) Consequently, to constitute substantial evidence supporting a fair argument, citizen testimony must be relevant to impacts that may be *caused* by the project.

In practice, much testimony received from private citizens either consists of (1) statements concerning existing conditions – which the citizens may be qualified to report, or (2) what amounts to speculation about changes the project may cause. Such testimony in certain circumstances may be useful in establishing existing baseline conditions. It cannot, however, be considered substantial evidence of potential future impacts, absent additional evidence that the project will cause additional effects. (See, e.g., *Lighthouse Field Beach Rescue,* 131 Cal.App.4th 1170, 1202-1205 [extensive testimony about past effects of off-leash dogs in city park not substantial evidence that revised policies will result in increased impacts]; *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 274-275 [distinguishing testimony on existing traffic conditions from opinion evidence concerning project effects on traffic safety]; *Association for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 735-736; *Watsonville Pilots Ass'n v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1094 ["The FEIR was not required to resolve the [existing] overdraft problem, a feat that was far beyond its scope"].) As discussed below, the

trial court in this case appears to have erred by confusing the issue of how sound "carries" – a background environmental condition – with the question of whether the project (including the proposed mitigation measures) would cause significant noise impacts.

As the foregoing cases illustrate, lay witnesses testifying about existing conditions or past events often also offer their own opinions, extrapolations or predictions as to how a proposed project will change conditions for the worse. Mere predictions of future impacts, unsupported by any specific facts or obvious cause-and-effect relationship, do not constitute substantial evidence. (*Gentry*, 36 Cal.App.4th 1359, 1417.) Opinions of non-experts also cannot be considered substantial evidence when they relate to technical issues that are properly the province of qualified experts. (See, e.g., *Porterville Citizens*, 157 Cal.App.4th 885, 907-908 [citizen testimony regarding future grading, drainage, and soil erosion impacts does not constitute substantial evidence]; *Leonoff*, 222 Cal.App.3d 1337, 1354 [Alleged air quality impacts from non-experts constitutes "[u]nsubstantiated opinions, concerns, and suspicions..."].) In this latter regard, citizen testimony does not become substantial evidence where it merely purports to be based on expert opinions or source materials that do not themselves appear in the record. (*Association for Protection etc.*, 2 Cal.App.4th 720, 735-736; *Gentry*, 36 Cal.App.4th 1359, 1417.)

b. Standards of Significance

Both the fair argument test and CEQA in general distinguish between environmental effects that are *significant* and those that are not. (Pub. Resources Code §§ 21002, 21002.1, 21068, 21080(c), 21100(b)(1), (c); Guidelines §§ 15064, 15070, 15126.2.) A "significant environmental effect" is defined as a "*substantial*, or potentially *substantial*, adverse

change in the environment." (Pub. Resources Code § 21068 (emphasis added); Guidelines § 15382.)

There is no question that many project opponents deeply and sincerely feel that any adverse change in the local environment would be significant in personal terms. It is thus not uncommon to hear testimony to the effect that virtually *any* new development in an area will compromise aesthetic values, unacceptably impair the safety and drivability of local streets, or expose residents to any number of other threats or inconveniences. Discretion to determine what constitutes a *significant* environmental effect, however, necessarily must be vested somewhere. By law it is vested in the governmental lead agency responsible for conducting the environmental review. (See *Bowman*, 122 Cal.App.4th 572, 587-594 [citizen opinion not determinative of whether aesthetic impacts are significant]; *Save Cuyama Valley*, 213 Cal.App.4th 1059, 1068; *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 493; Guidelines § 15064(b).) Many lead agencies utilize the sample environmental checklist found in CEQA Guidelines Appendix G as a source of significance criteria, but this is not required. (*Save Cuyama*, 213 Cal.App.4th 1059, 1068.) Absent a manifest abuse of discretion, the lead agency is entitled to rely on its own stated standards for determining the significance of impacts. (*Id*.; see, e.g., *National Parks and Conservation Ass'n v. County of Riverside* (1999) 71 Cal.App.4th 1341, 1358-1359 [noise standards in parklands]; Guidelines § 15064.7.) Even otherwise competent expert witnesses may not substitute their own standards of significance for those of the lead agency. (See, e.g., *Citizen Action To Serve All Students*, 222 Cal.App.3d 748, 755 [expert opinion that rush hour

traffic increases of 1% at impacted intersection would be significant not sufficient to create fair argument].)

To be considered "substantial evidence" supporting a fair argument that significant environmental effects may occur, citizen testimony must demonstrably relate to a recognized standard of significance, e.g., the significance thresholds actually utilized by the lead agency or a standard mandated by the CEQA Guidelines or other law. Citizen testimony concerning impacts that fall below a legitimately utilized lead agency standard of significance do not create a fair argument for finding a significant environmental effect. (*Banker's Hill,* 139 Cal.App.4th 249, 277 [minor impact on available parking did not rise to level of significant impact]; *Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1260 [minor impact on traffic did not rise to level of significant impact]). Individual citizens or interest groups are not entitled to usurp the lead agency's function of determining significance thresholds merely by substituting their own subjective standards, opinions or values as the measuring stick. This principle is reflected in part in the rule that the existence of public controversy over the environmental effects of a project cannot in and of itself require preparation of an EIR. (Pub. Resources Code § 21082.2(b).)

c. Effects on the Environment at Large

The evidence must relate to impacts on the public at-large, not impacts affecting only a few individual properties or persons. Indeed, many members of the public will often comment that their property, their home, their views, or their vehicular access with be significantly impacted. While these are all legitimate personal concerns, such conclusions do not constitute substantial evidence of a significant impact under CEQA when

the effects are limits to a few individuals. Numerous CEQA cases have held that "the question is whether a project [would] affect the environment of persons in general, not whether a project [would] affect particular persons." (*Parker Shattuck Neighbors*, 222 Cal.App.4th 768, 782-883; see also *Mira Mar Mobile Community*, 119 Cal.App.4th 477, 492); *Porterville Citizens*, 157 Cal.App.4th 885, 902; *Association for Protection etc.*, 2 Cal.App.4th 720, 734; *Banker's Hill*, 139 Cal.App.4th 249, 279.)

d. A Lead Agency Has Discretion to Interpret Vague or Ambiguous Citizen Testimony

A frequent problem with citizen testimony is that it is imprecise. Citizen testimony on observed environmental conditions or phenomena is typically qualitative rather than quantitative in nature. The words chosen to describe observed condition, moreover, are also often susceptible to a range of interpretations. Observers with different sensibilities may, for example, use the same terms, such as a "loud" noise or "heavy traffic" to describe a widely varying range of conditions, leaving decisionmakers to guess where, on an objective scale, an alleged impact should be rated, and whether it is significant when measured against the agency's significance criteria. Citizen testimony is also often anecdotal in nature, and is sometimes delivered with little information as to whether such events are common or rare. Where descriptions of frequency or duration are offered, the words chosen may also be ambiguous in nature. One witness may describe a series of recurring events as frequent or even constant, while another may describe the same set of events as occasional, without either clearly indicating whether such events typically occur on a weekly, monthly or even annual basis. It does not help that more partisan witnesses will often choose to report their observations in the more dramatic and extreme terms.

Citizen testimony is obviously most entitled to be considered substantial evidence when it is detailed and specific in nature. See, e.g., *Pocket Protectors,* 124 Cal.App.4th 903, 932 [project opponents offered detailed factual observations on these points, not mere general opinions.].) Where such detail and specificity are lacking, however, a lead agency necessarily must engage in some interpretation of imprecise or overly general statements to determine what factual conclusions they support or do not support.[2] In this circumstance, a lead agency should enjoy discretion to interpret the evidence in the light that seems most reasonable under the circumstances. In many cases, reference to other evidence in the administrative record may be of assistance in determining what meaning should be given to ambiguous testimony. (See Section II(B)(2)(e) below.) But in any event, a lead agency's interpretation of ambiguous evidence should be entitled to deference by a reviewing court if it is reasonable and in accord with other relevant facts.

Project opponents may argue that a lead agency, or reviewing court, is required to give ambiguous testimony the most extreme interpretation possible. There is, however, no legal basis for such a rule. Substantial evidence, by definition, consists of facts, or "reasonable assumption predicated on fact[s]." (Pub. Resources Code § 21080(e)(1).) Substantial evidence is also evidence which is "reasonable in nature, credible, and of solid value." (*Stanislaus Audubon,* 33 Cal.App.4th 144, 152.) Ascertaining the true factual content and meaning of ambiguous testimony necessarily requires the exercise of interpretive judgment. Lead agency

[2] In some cases, citizen testimony may be so vague and conclusory that it can be disregarded in its entirety. If the lead agency reasonably determines what facts are being alleged, it cannot reasonably consider such statements as substantial evidence supporting any conclusion.

decisionmakers cannot, for example, be bound to interpret words that were offered in a figurative sense or for dramatic value as literal facts where there is no objective basis for doing so. In the CEQA legislative scheme, primary responsibility for making these types of judgments is vested in lead agencies. This is consistent with principles found in other areas of law. Just as trial courts are generally best situated to weigh the evidentiary value of witness testimony, municipal decisionmakers who are familiar with background circumstances and who are the direct recipients of citizen testimony are generally far better situated to judge the true intended meaning and factual basis for ambiguous citizen testimony than a reviewing court reading from a dry transcript. Such reasonable deference is also required by the statutory standard of review that governs CEQA actions.

As noted previously, the fair argument test, in unabbreviated form, poses the question of whether "substantial evidence supported the agency's conclusion as to whether the prescribed 'fair argument' [that the project may have a significant impact] can be made." (*Quail Botanical Gardens*, 29 Cal.App.4th 1597, 1602, quoting *Friends of "B" Street*, 106 Cal.App.3d 988, 1002.) This formulation of the "fair argument" test derives from Public Resources Code § 21168 and 21168.5, which unambiguously establish that in CEQA actions, judicial review is limited to the question of whether substantial evidence supports *the respondent's* findings and determinations. (Pub. Resources Code §§ 21168, 21168.5.) In most situations, the shortened statement of the fair argument test, i.e., whether there is substantial evidence in the record that the project may have a significant impact, is a practical restatement of the test. In some circumstances, however, this restatement can ignore the discretion vested in a lead agency to interpret ambiguous or equivocal evidence. "Substantial

evidence," by definition, means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines § 15384(a).) It necessarily follows that where more than one interpretation of ambiguous information is possible, the lead agency's reasonable interpretation of the ambiguous evidence must be deemed supported by substantial evidence – and is therefore valid –even if other, more extreme interpretations might also be possible. This flows from the fact that it is ultimately *the agency's decision* that is reviewed for substantial evidence support, and that the courts do not act as independent finders of fact under Public Resources Code §§ 21168 and 21168.5.

What this rule means in practice is that where a reviewing court is presented with proffered evidence of a significant impact that is vague and ambiguous on its face, reasonable deference must be given to the agency's interpretation of the evidence. If the evidence is reasonably susceptible to an interpretation that supports the lead agency's determination, that interpretation should be accepted by the Court, even if a more expansive (or less expansive) interpretation would support a different result.

e. Evidence Must Be Considered In Light of the Whole Record

CEQA and the Guidelines clearly establish that the substantiality of evidence before the lead agency must be determined "in light of the whole record." (Pub. Resources Code §§ 21080(c)(1), (c)(2), (d); 21082.2(a); Guidelines § 15064(a)(1), 15070(a), (b)(2).) Consequently, while a lead agency does not compare the relative weight of substantial evidence supporting or militating against a finding of significance, it can and must conduct a "limited" weighing of proffered evidence to determine whether it

is indeed *substantial*. (*Pocket Protectors*, 124 Cal.App.4th 903, 935; *Citizens Committee to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1168.) The rule requiring consideration of all evidence in the record is obviously one of fairness and common sense. Facts seldom exist in a vacuum. While citizens advocating preparation of an EIR are generally entitled to the benefit of reasonable inferences from the evidence before the lead agency, some potential inferences may be shown to be completely unreasonable in light of other undisputed facts or circumstances present in the case. The decision to prepare a negative declaration or require an EIR should be based on objective facts. While lead agencies are not and should not be free to routinely disregard citizen testimony, they must have the ability to reject assertions that are clearly false, mistaken or untenable in light of other facts indisputably established by the record.

This common sense rule has multiple applications. Some citizen testimony received in public administrative proceedings simply is not true or accurate. Lead agencies are not required to credit evidence that consists of "unsubstantiated opinion or narrative" or "evidence which is clearly inaccurate or erroneous." (Pub. Resources Code § 21082.2(c).) As a matter of common sense, consideration of other evidence in the record may be necessary to determine whether an opinion or conclusion is unsubstantiated, or clearly inaccurate or erroneous. Isolated statements should not be considered as substantial evidence where they are contradicted by the vast weight of credible testimony or objectively verifiable facts, or where relevant technical evidence shows that claims by project proponents or opponents simply could not be accurate.

Lead agencies are also entitled to exercise reasonable discretion in evaluating conflicting or inconsistent statements received from the same

witness. It is not unusual, in the course of extended administrative proceedings, for individual witnesses to change their views in light of additional evidence, to amplify and clarify previous testimony, or to commendably correct past misstatements. In such cases, project opponents or supporters should not be able to cite testimony that has been effectively superseded or withdrawn as substantial evidence supporting their position. Where ambiguities exist, the lead agency is entitled to use its best judgment as to which testimony represents the true and considered final conclusions of the witness. Ordinarily, this will mean that testimony offered later in the proceedings is more reliable, and that more specific testimony will control over more general statements that might plausibly be read to support a different result.

Evidence in the record as a whole may often be decisive in determining what interpretation should be given to vague and ambiguous testimony by individual witnesses. When technical evidence in the record clarifies the plausible range of severity of effects that might be caused by the project, a lead agency will normally be justified in assuming that facts reported by individuals based on personal observations also fall within that range, notwithstanding the use of more colorful descriptive terms. Similarly, where a broad range of testimony establishes certain facts, a lead agency may reasonably disregard isolated statements expressing a more extreme view of the facts as being simply inaccurate or unwarranted exaggeration.

Unfortunately, the foregoing rules are often disregarded by project opponents eager to utilize any snippet of purported evidence in the record to support their claims. Some trial courts also occasionally appear to lose

sight of this rule where citizen testimony is at odds with scientific evidence or clearly verified facts.

C. Illustrations From This Case

The trial court decision and some arguments of the parties provide compelling examples of the types of errors addressed in this brief. The League and CSAC will consequently address some of these issues in abbreviated form.

1. Citizen Testimony on Residential Noise Impacts

The trial court correctly found that residents' testimony concerning the observed sound effects of large unregulated past events on the Wozniak property was not substantial evidence that the smaller, mitigated events authorized by respondent County would have significant impacts. (Trial Court Order, Filed 1-25-2013, page 9:19-21.) The trial court nevertheless unaccountably found that the residents' statements as to how noise "carries" over the local topography constituted substantial evidence supporting an argument that noise impacts would be significant. This is a non-sequitar that confuses evidence concerning background conditions with evidence showing that a project will actually *cause* significant impacts. (See Section II(B)(2)(a); *Banker's Hill*, 139 Cal.App.4th 249, 275 .) The trial court's conclusion also improperly bypasses consideration of the relevant standard of significance and the rule that evidence must be considered in light of the record as a whole.

How noise "carries" over any terrain is not an independent factor, divorced from the volume and character of the sound at its point of origin. The respondent County here utilized a standard of significance based on projected noise levels at the boundaries of the Wozniak property. The petitioners have not shown that use of this standard was unreasonable.

Based on extensive studies, the County also concluded that noise impacts would not be significant based on this standard. While petitioners contest the adequacy of these studies, they did not show the studies' ultimate conclusions to be incorrect.

However well noise may "carry" in the project area, it would be unreasonable to assume that noise levels would actually *increase* beyond the property boundary absent evidence of highly unusual conditions. No such evidence appears in the record. Consequently, there is no basis for concluding that noise levels experienced by local residents would exceed the County's standard of significance.

2. Testimony on Impacts on Public Open Space

In its respondent's brief on appeal, Keep Our Mountains Quiet ("KOMQ") places considerable emphasis on potential noise impacts to the uninhabited Bear Creek Redwoods Open Space Preserve administered by the Mid-Peninsula Open Space Preserve ("Midpen"). KOMQ relies heavily on letters from Midpen staff expressing concerns over potentially significant noise impacts to the Open Space Preserve. (AR 0545-0548, 1165-1166, 3661-3664, 4164-4165.) It does not appear that that the Midpen staff members who authored the letters can be deemed experts on the matter of noise impacts. (Cf. *Cathay Mortuary, Inc. v. San Francisco Planning Com.* (1989) 207 Cal.App.3d 275, 281.) In any event, the letters do not reflect any independent technical evaluation of noise impacts. (See Section II(A) regarding substantial evidence required to be based upon a foundation of fact.)

In assessing potential impacts to the Midpen open space, the County again used a significance standard based on noise levels at the property line. While Midpen's comments briefly contest the applicability of this

standard, the great bulk of Midpen's comments concern potential perceptions and disturbance of future hikers in the Preserve.[3] (AR 547 discussing impacts associated with a "*Draft* Bear Creek Redwoods / Sierra Azul Open Preserves Master Plan.") The comments state generally that increased public use of the park is expected in the future, that a trail will be constructed at some unspecified distance from the Wozniak property, and that off-trail hiking may also be permitted by future park regulations, although it apparently is not currently allowed.

This type of commentary cannot reasonably be construed as substantial evidence supporting a fair argument that noise impacts on the *existing* environment in the Preserve will be significant. Midpen's (and petitioners') concerns for impacts on future hikers ignore the standard of significance legitimately utilized by the County and the inherent methodology imposed by CEQA itself.

CEQA requires impacts to be based upon the *existing* physical conditions at the project site, not hypothetical future conditions. (Guidelines § 15125(a) and 15126.2(a); *Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1145-1146 [No CEQA analysis required for draft planning documents.] *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 322 ["Like an EIR, an initial study or negative declaration 'must focus on impacts to the existing environment, not hypothetical situations.'"].)

Regardless of their subjective views on the subject, these parties are not entitled to impose a standard that would permit no audible noise at all

[3] Wozniak contends that the standard cited by Midpen was not applicable, and represents an attempt by project opponents to change the standard of significance deemed appropriate by the respondent lead agency. As amicus curiae, the League and CSAC express no opinion on this narrow question.

within the Preserve boundaries. (*National Parks*, 71 Cal.App.4th 1341, 1358-1359.) Leaving this aside, the comments are also far too general in nature to be considered substantial evidence of a significant impact. A statement that a trail will be located near the project site says little about the number of hikers who might be affected – particularly given the limited frequency and restricted afternoon-and-evening hours for events on the Wozniak property – or the intensity of sound that might be experienced. Midpen's stated concerns for off-trail hikers are even less substantial. Given the limited number and timing of events permitted by the County conditional use permit, there is no basis beyond pure speculation that more than a small number of off-trail hikers would ever be exposed to heightened noise from the Wozniak property. (See *Porterville Citizens*, 157 Cal.App.4th 885, 900-901 [possibility of impact on a few people not substantial evidence of significant impact on the environment in general].) As to those few intrepid individuals, there is no basis for believing they would expect noise levels near the Preserve boundaries to be maintained at pristine levels that might be enjoyed in other areas of the Preserve.

While Midpen's comments were insufficient to trigger any requirement for preparation of an EIR, they did have the effect in this case of spurring further technical analysis by the County and real party in interest. The resulting facts underscore the importance of the principle that evidence in the record must be considered in light of the record as a whole. (*Gentry*, 36 Cal.App.4th 1359, 1380.) The County was able to determine from planning maps that the proposed trail referenced in the Midpen letters will be located some 810-feet from the project site at its closest approach, and apparently on the reverse side of an intervening slope. (AR 1137, 2738.) Projected sound levels were calculated and determined to be in the

30-40 dB DNL range, i.e., well below and recognized standard of significance. (AR 1137, 1140.) Considered in light of this specific objective evidence, Midpen's stated concerns were clearly insubstantial, even if such concerns might initially have appeared legitimate in the abstract.

3. Citizen Testimony on Traffic Hazards

The trial court found that testimony of local residents about road conditions and alleged hazards on Summit Road, the access route to the Wozniak property, constituted substantial evidence of a significant traffic safety hazard. (Trial Court Order, Filed 1-25-2013, pages 8-9.) The basis for the trial court's conclusion is not entirely apparent from the Order granting the petition for writ of mandate. It appears to be that an increase in the number of travelers on this road, some of them potentially inebriated at wedding celebrations, would presumably lead to an increase in the number of accidents on the road.

The decision of the trial court implicates two of the concerns addressed in this brief. First, the issue of traffic *safety* is properly a matter for expert opinion, since calculation of safety risks inherently require consideration of complex engineering and statistical data. The fact that local residents are familiar with local road conditions does not qualify them to speculate as to the frequency or severity of increased accidents that could occur from an incremental increase in travel on that roadway. The existence of challenging road conditions does not in and of itself ensure that a significant increase in safety incidents will occur. (See *Leonoff,* 222 Cal.App.3d 1337, 1351-1352; *Bankers Hill,* 139 Cal.App.4th 249, 274-275 ["although the testimony of the local residents arguably provides some evidence of the dangerous nature of the intersection, the record contains no

factual foundation for the claim that the Project would *exacerbate* that condition for pedestrians and drivers…[¶]…[i]t is based solely on unsubstantiated lay opinion.") As also discussed by the Court in *Leonoff,* 222 Cal.App.3d 1337, 1352:

> These statements by opponents of the project primarily contain unsubstantiated conclusions about traffic being dangerous near the project site. No opponent undertook to compare the nearby intersections with the proposed driveway nor to explain the cause of fatalities at one of those intersections. We find no conflict among Read's claim of limited visibility, Henson's timing exercise, and the facts reported by Public Works on October 21. They are simply different views of the same underlying reality. Read's claim, typical of most project opponents, did not state its factual basis. Unsubstantiated opinions, concerns, and suspicions about a project, though sincere and deeply felt, do not rise to the level of substantial evidence supporting a fair argument of significant environmental effect. Environmental decisions should be based on facts, not feelings.

Petitioners do not appear to disagree with this proposition; their Counsel submitted a letter from their traffic consultant which states "Because sight distance review involves safety and engineering decisions *only a licensed Civil Engineer would be competent to conduct such a review.*" (AR 1828.)

The trial court decision also begs the question of what standard of significance was utilized in determining that the citizen testimony created a "fair argument" that significant environmental effects may occur. As a matter of statistics, one can surmise that almost *any* increase in vehicle traffic on *any* street would incrementally increase the chances of accidents to some small degree. It does not follow that an EIR must be prepared for every project that will increase traffic on area roadways to some degree. (*Fairbank,* 75 Cal.App.4th 1243, 1260) Here, the issue of potential traffic safety impacts was addressed in expert reports submitted by the real party in interest. The citizen testimony on local road conditions does not suggest

that the expert reports overlooked any basic facts about road conditions or potential hazards. Conclusions as to the likelihood and severity of any increased traffic safety effects caused by the Project were properly left to qualified experts.

III. CRITICISMS OR QUESTIONS ABOUT METHODOLOGY ARE NOT SUBSTANTIAL EVIDENCE THAT A SIGNIFICANT ENVIRONMENTAL EFFECT MAY OCCUR

In recent years it has been increasingly common for project opponents to engage technical experts of their own to contest a lead agency's environmental conclusions. It is well settled that the conclusions of such experts – at least when testifying within their area of expertise and on the basis of relevant facts -- may constitute substantial evidence requiring an EIR. (*Quail Botanical Gardens,* 29 Cal.App.4th 1597, 1607.) However, not all expert testimony reaches the ultimate question of whether a particular impact may be significant when measured against relevant standards. Another tactic that has become common by opposition groups is presentation of an expert critique of the lead agency's methodologies which purports to show the inadequacy of the lead agency's analysis, but which fails to offer any factually supported alternate conclusion.

In *Parker Shattuck Neighbors*, 222 Cal.App.4th 768, 786, the court concluded under the fair argument standard that "…a suggestion to investigate [air quality impacts] further is not evidence, much less substantial evidence of an adverse impact," even when that suggestion comes from an expert on air quality. Mere disagreement over methodologies or purported identification of flaws in the lead agency's analysis are not a substitute for substantial evidence affirmatively indicating that significant environmental effects may be caused by the

project. "Conflicting assertions do not ipso facto give rise to substantial 'fair argument' evidence." (*Citizen Action To Serve All Students,* 222 Cal.App.3d 748, 755.) As various courts have observed since the earliest days of CEQA, "We reject the inference that the existence of factual controversy, uncertainty, conflicting assertions, argument, or public controversy can themselves nullify the adoption of a negative declaration when there is no substantial evidence in the record that the project as designed and approved will fall within the requirements of [CEQA]" for preparation of an EIR. (*Friends of "B" Street,* 106 Cal.App.3d 988, 1002, quoting *Running Fence Corp. v. Superior Court* (1975) 51 Cal.App.3d 400, 424.)

Other decisions have clearly indicated that to constitute substantial evidence requiring preparation of an EIR, qualified expert opinion must reach the ultimate question of whether a potential impact rises to the level of significance. (See, e.g., *Citizens Committee to Save Our Village,* 37 Cal.App.4th 1157, 1170-1170 [conclusions of landscape architect and historian not substantial evidence where unsupported by facts]; *Cathay Mortuary,* 207 Cal.App.3d 275, 281 [opinions of experts on planning issues unrelated to environmental impacts or outside their area of expertise "fails to establish a disagreement among experts 'over the significance of an effect on the environment…'"].) Still other courts have recognized that even a complete failure to study a potential impact does not necessarily require preparation of an EIR, absent affirmative substantial evidence that the impact will be significant. (*Lighthouse Field Beach Rescue,* 131 Cal.App.4th 1170, 1200-1207; *Gentry,* 36 Cal.App.4th 1359, 1379.) By the same reasoning, a mere disagreement about the adequacy of a lead

agency's studies or analyses cannot, standing alone, constitute substantial evidence requiring an EIR.

Where an opposing expert is unable or unwilling to expressly conclude that significant impacts may occur based on the available evidence, the only reasonable inference that can be drawn is that the expert does not believe the evidence demonstrates a reasonable probability that the effects will rise to the level of significance.

Project opponents are likely to rely on the adage that "[d]eficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) This principle does not dispense with the requirement that there be some substantial evidence in the record affirmatively showing that significant effects may occur. The issue actually addressed in the cited passage in *Sundstrom* arises when sparse evidence affirmatively suggests a reasonable possibility of a significant impact, and the lead agency fails to undertake a more thorough analysis which might show that the potential effect is unlikely to occur in practice.[4]

In practice, most public agencies do insist that private project proponents submit adequate evidence to affirmatively show whether a project will or will not have a significant environmental effect. In those

[4] In *Sundstrom*, the facts cited as a "clear illustration" of this principle were that the project had an on-site storage capacity of 3,000 gallons of sludge, but no site was available for off-site disposal of this sludge in the county. (202 Cal.App.3d 296, 311.) On these facts, it appeared likely – even inevitable – that once storage capacity was exhausted, the applicant would face a back-up in its waste disposal system, or be required to dispose of sewage sludge by unauthorized means. Further investigation might have disclosed that there were readily available alternate means of safely disposing of the sludge; the county, however, failed to investigate whether safe solutions were in fact available.

rare instances where reasonable efforts have not been made to evaluate an impact, it may be appropriate to rely on logical assumptions and inferences about the potential impacts of the project in lieu of documentary evidence. However, absent some factual basis in the record for concluding these impacts may be significant, a project opponent cannot fulfill its burden of citing substantial evidence in the record of a potentially significant impact merely by criticizing the studies relied upon by the lead agency.

The parties in this case have offered extensive arguments concerning the weight to be given to written comments received by the noise expert engaged by petitioners. Although the Court must draw its own conclusions, these comments appear to be overwhelmingly in the nature of criticisms of the applicant's experts' methodologies and recommendations for further study rather than affirmative opinions or conclusions about the severity of project noise impacts. Such comments are not substantial evidence supporting a fair argument that the project may in fact have a significant environmental effect.

IV. CONCLUSION

For the reasons set forth herein, Amici respectfully request that the Court find that Petitioners have not presented substantial evidence supporting fair argument of a significant environmental impact. Amici request that this Court reverse the judgment granting the Writ of Mandamus.

DATE: August 18, 2014 By: 

Margaret M. Sohagi
Philip A. Seymour
R. Tyson Sohagi
THE SOHAGI LAW GROUP, PLC
Attorneys for Amicus Curiae
LEAGUE OF CALIFORNIA CITIES and
the CALIFORNIA STATE
ASSOCIATION OF COUNTIES

CERTIFICATION OF WORD COUNT

The text of the BRIEF OF AMICUS CURIAE consists of 8,508 words, including footnotes. The undersigned legal counsel has relied on the word count of the Microsoft Word 2007 Word processing program to generate this brief. (Cal. Rules of Court, Rule 8.204(c)(1).)

DATE: August 18, 2014 By:

Margaret M. Sohagi
Philip A. Seymour
R. Tyson Sohagi
THE SOHAGI LAW GROUP, PLC
Attorneys for Amicus Curiae
LEAGUE OF CALIFORNIA CITIES and
the CALIFORNIA STATE
ASSOCIATION OF COUNTIES

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 11999 San Vicente Boulevard, Suite 150, Los Angeles, California 90049.

On August 18, 2014, I served true copies of the following document(s) described as **LEAGUE OF CALIFORNIA CITIES' AND CALIFORNIA STATE ASSOCIATION OF COUNTIES' APPLICATION FOR LEAVE TO FILE AMICUS BRIEF; AMICUS CURIAE BRIEF IN SUPPORT OF REAL PARTY IN INTEREST** on the interested parties in this action as follows:

☒ BY OVERNIGHT DELIVERY: I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

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

Executed on August 18, 2014, at Los Angeles, California.

Cheron J. McAleece
Printed Name

Cheron J. McAleece
Signature

SERVICE LIST

William P. Parkin Ryan Dooley Moroney Jonathan Wittwer Nicole Gildersleeve DiCamillo **WITTWER & PARKIN, LLP** 147 South River Street, Suite 221 Santa Cruz, CA 95060	**ATTORNEYS FOR PLAINTIFF AND APPELLANT KEEP OUR MOUNTAINS QUIET**
Elizabeth Gianna Pianca **OFFICE OF THE COUNTY COUNSEL** County Government Center, East Wing 70 W. Hedding Street, Ninth Floor San Jose, CA 95110	**ATTORNEY RESPONDENT COUNTY OF SANTA CLARA**
James G. Moose **REMY, MOOSE, MANLEY, LLP** 555 Capitol Mall, Suite 800 Sacramento, CA 95814	**ATTORNEY FOR REAL PARTY IN INTEREST AND APPELLANT CANDICE CLARK WOZNIAK, AS TRUSTEE, ETC.**
Barton G. Hechtman **MATTEONI, O'LAUGHLIN & HECHTMAN** 848 The Alameda San Jose, CA 95126	**ATTORNEY FOR REAL PARTY IN INTEREST AND APPELLANT CANDICE CLARK WOZNIAK, AS TRUSTEE, ETC.**
Honorable Joseph H. Huber **SUPERIOR COURT OF SANTA CLARA COUNTY** Downtown Superior Court 161 North First Street Department 21 San Jose, CA 95113	**RESPONDENT TRIAL COURT**
Clerk of the Court **CALIFORNIA SUPREME COURT** 350 McAllister Street San Francisco, CA 94102-7303	**SUPREME COURT**

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