Civil No. B231244
Santa Barbara Superior Court Case No. 1337356

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

MONARCH COUNTRY MOBILEHOME OWNERS ASSOCIATION,
Plaintiff and Respondent
vs.
THE CITY OF GOLETA, ET AL,
Defendant, Respondent & Appellant.

APPEAL FROM THE SUPERIOR COURT
OF SANTA BARBARA COUNTY

HONORABLE DENISE DE BELLEFEUILLE, JUDGE

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES TO FILE AN AMICUS CURIAE BRIEF

WILLIAM W. WYNDER, SBN 84753
SUNNY K. SOLTANI, SBN 209774
JEFF M. MALAWY, SBN 252428
LINDSAY TABAIAN, SBN 268586
ALESHIRE & WYNDER, LLP
18881 Von Karman Avenue, Suite 1700
Irvine, California 92612
Telephone: (949) 223-1170
Facsimile: (949) 223-1180

Attorneys for *Amicis Curiae*,
LEAGUE OF CALIFORNIA CITIES

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ALESHIRE & WYNDER, LLP
18881 Von Karman Avenue, Suite 1700
Irvine, California 92612
Telephone: (949) 223-1170
Facsimile: (949) 223-1180

Attorneys for *Amicis Curiae*,
LEAGUE OF CALIFORNIA CITIES

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rule of Court 8.208(e)(3), as counsel for *amicus curiae* League of California Cities, I hereby certify that I know of no entity or person that must be disclosed in this case under California Rule of Court 8.208(e), subdivisions (1) or (2).

Dated: June 19, 2012

ALESHIRE & WYNDER, LLP
WILLIAM W. WYNDER
SUNNY K. SOLTANI
LINDSAY M. TABAIAN

By: _____
Sunny K. Soltani
Attorneys for *Amicus Curiae*
LEAGUE OF
CALIFORNIA CITIES

APPLICATION FOR LEAVE
TO FILE AMICI CURIAE BRIEF

To the Honorable Denise De Bellefeuille, Judge:

Pursuant to California Rules of Court, Rule 8.200(c)(1), the League of California Cities respectfully requests leave to file the accompanying brief of *amicus curiae* in support of the City of Goleta.

Amicus Curiae, the League of California Cities (the "League" or "Cities"), is an association of 469 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 are of statewide or nationwide significance. The Committee has identified this case as being of such significance.

The League, and its constituent members, have a substantial interest in the outcome of this case because it involves the interpretation of Government Code § 66427.5 ("Section 66427.5"), the statute which largely governs the conversion of mobilehome parks to resident ownership. The interpretation of this statute has been, and continues to be, the subject of substantial ongoing litigation involving a host of California cities throughout the State.

This volume of litigation, including but not limited to the pending appeal, means that League members cities are left vulnerable to costly litigation and uncertainty as to the scope of their obligations and their discretion under Section 66427.5.

The specific question presented by this case – *i.e.*, whether Appellant/Respondent, City of Goleta ("City"), appropriately exercised its discretion to "consider" the survey of support prepared by Appellant/Real Party in Interest, Goleta Mobilehome Park, LP ("Parkowner") as a factor in its ultimate decision to "approve, deny or conditionally approve" the requested conversion – is one that has been presented to multiple courts in numerous cases across the state of California (and at various levels of judicial review). As such, the League member cities have a vested interest in presenting its view on the issues before this Court in an effort to urge uniformity of decision and consistency in the existing statutory and judicial opinions regarding the scope and application of that discretion.

In this brief, *Amicus*, on behalf of cities state-wide, urges this Court to determine that the City properly exercised the discretion vested in its planning agency (in this case, the City Council) codified in Section 66427.5 when it considered and ultimately approved the Parkowner's conversion application. *Amicus* submits that the City acted properly not because it was required to approve the conversion application, but rather because it had, and exercised the discretion granted by Section 66427.5 to approve or deny the application based on its consideration of the survey results. It properly exercised its discretion, and decided to approve.

In ruling on this case, it is important that the following legal doctrine remain intact: pursuant to Section 66427.5, a local planning agency is vested with the discretion to, in fact has an obligation to, "consider" (meaning to weigh, evaluate, balance, or give credence to) the results of the requisite "survey of support" submitted by the applicant as a part of its ultimate decision to approve, conditionally approve, or deny a conversion application. Stated simply, it must be clear that "consideration" of the

results of the resident survey has meaning, substance, and is related to the ultimate decision of a city's planning agency in acting on a conversion application.

The League believes that its perspective in this matter is worthy of the Court's consideration and that additional briefing will assist the Court in deciding this matter, and therefore hereby requests leave to file the amicus curiae brief attached hereto.

No party or counsel for a party in this appeal authored any part of the attached amicus curiae brief or made any monetary contribution to fund the preparation of the brief. No person or entity other than the League and its attorneys made any monetary contribution to fund the preparation of the brief.

Dated: June 19, 2012

ALESHIRE & WYNDER, LLP
WILLIAM W. WYNDER
SUNNY K. SOLTANI
JEFF M. MALAWY
LINDSAY M. TABAIAN

By: _____
Sunny K. Soltani
Attorneys for *Amicus Curiae*
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Facsimile: (949) 223-1180

Attorneys for *Amicus Curiae*,
LEAGUE OF CALIFORNIA CITIES

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I.

INTRODUCTION

Amicus Curiae, the League of California Cities (the "League" or "Cities"), is an association of 469 California cities dedicated to protecting and restoring local discretion 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 are of state or national significance. The Committee has identified this case as being of such significance.

The League, and its constituent members, has a substantial interest in the outcome of this case because it involves the interpretation of Government Code § 66427.5 ("Section 66427.5"), the statute which largely governs the conversion of mobilehome parks to nominal resident ownership. The interpretation of this statute has been, and continues to be, the subject of substantial ongoing litigation involving a host of California cities throughout the State.

This volume of litigation, including but not limited to the pending appeal, means that League member cities are left vulnerable to costly litigation and uncertainty as to the scope of their obligations and their discretion under Section 66427.5.

The specific question presented by this case – *i.e.*, whether Appellant/Respondent, City of Goleta ("City"), appropriately exercised its discretion to "consider" the requisite "survey of support" as a factor in its ultimate decision to "approve, deny or conditionally approve" the Parkowner's conversion application – is one that has been presented to

multiple courts in numerous cases across the state of California (and at various levels of judicial review). As such, the League member cities have a vested interest in advancing a legal position before this Court in an effort to urge uniformity of decision and consistency in the existing statutory and judicial opinions regarding the scope and application of that discretion.

In this brief, Amicus, on behalf of cities state-wide, urges this Court to determine that Appellant/Respondent, City of Goleta ("City"), properly exercised the discretion vested in its planning agency (in this case, the City Council) codified in Section 66427.5 when it considered and ultimately approved the conversion application of Appellant/Real Party in Interest, Goleta Mobilehome Park, LP ("Parkowner").

The City acted properly not because it was *required* to approve the conversion application, but rather because it had, and in fact exercised the discretion granted by Section 66427.5 to approve or deny the application based on its consideration of the survey results and the evidence before it. It properly exercised its discretion, and decided to approve. A contrary result would also have been consistent with the discretionary authority conferred by the statute.

In ruling on this case, it is important that the following legal doctrine be expressly re-affirmed: pursuant to Section 66427.5, a local planning agency is vested with the discretion to "consider" (meaning to weigh, evaluate, balance, or give credence to) the results of the required "survey of support" submitted by the applicant as a part of its ultimate decision to approve, conditionally approve, or deny a conversion application. Stated simply, this Court is urged to make explicit in its opinion that "consideration" of the results of the resident survey has

meaning, substance, and can form a basis for the ultimate decision of a city's planning agency in acting on a conversion application.

This rule of law does not impose additional requirements beyond those already codified in Section 66427.5 (as the trial court erroneously did in this case). Nor does such an articulation of the rule of law create a new standard that mandates approval or denial of an application based exclusively upon the results of the survey or the amount of resident support (or lack thereof).

To be clear, the legal position advocated by the League in this brief is ***not*** the same as that articulated by the Parkowner. In its opening brief, the Parkowner argues that the City acted appropriately in approving its conversion application because it was *required* to do so based upon the "limited" authority of local agencies. Conversely, in the instant *amicus* brief, the League argues that the City acted appropriately in approving the Parkowner's conversion application because it has the *discretion* to do so.

The League (unlike the Parkowner) also maintains that the City could have denied the subject conversion application if, after consideration of the resident survey, and exercising the discretion vested in the Council codified in the "plain language" of the statute, the City's legislative body had reached a different conclusion.

It should also be noted that, contrary to the Parkowner's arguments, the interpretive position urged by the League would not afford park residents a "veto" power over a conversion application merely because there is a lack of resident support for the conversion.

Rather, the League urges this court to affirm that local legislative bodies (not residents) have the *discretion* to approve or deny a conversion application based upon the agency's review of the resident survey,

considered with the other parts of the application. As detailed herein, this legal position affirms a rule of law which is clearly set forth in the plain language of the statute and which must not be muddied by the legal posturing or specific issues involved in this or other conversion litigation.

II.

SECTION 66427.5 VESTS THE CITY OF GOLETA WITH THE DISCRETION TO "CONSIDER" THE RESULTS OF THE RESIDENT SURVEY OF SUPPORT AS A PART OF ITS ULTIMATE DECISION TO "APPROVE, DENY OR CONDITIONALLY APPROVE" THE SUBJECT CONVERSION APPLICATION

A. The Plain Language Of Section 66427.5 Supports, But Does Not Mandate, The City's Exercise Of The Discretion To Approve Parkowner's Conversion Application

Conversion of a mobilehome park to resident ownership is governed by Government Code § 66427.5 ("Section 66427.5"). Pursuant to subdivision (e) of this statute, upon receipt of a complete conversion application, the local legislative body is directed to hold a hearing, at which it determines the application's compliance with Section 66427.5 and decides whether to "approve, conditionally approve, or disapprove" the same. (Section 66427.5(e).)

To comply, a parkowner/conversion applicant is required to conduct a survey of resident support in accordance with an agreement between the parkowner and an independent resident homeowners association ("HOA"), if any. (Section 66427.5(d).) Once this survey is conducted and prepared, subdivision (d) of Section 66427.5 requires that "[t]he results of the survey shall be submitted to the local agency upon the

filing of the tentative or parcel map, *to be considered as part of the subdivision map hearing prescribed by subdivision (e).*" (Emphasis added.)

In other words, the plain language of the statute expressly requires that the local legislative body "consider" the results of the resident survey *as a part* of its decision to either "approve, conditionally approve, or disapprove" a conversion application. (Section 66427.5(d)(5).) After such consideration, the legislative body may, *but need not*, approve, approve with conditions, or deny an application in connection with considering the results of the survey of support.

The results of the survey of support do not, as a matter of law, mandate a specific outcome in a planning agency's consideration of a conversion application. However, the inverse of that doctrine is equally true – the survey is not a ministerial act, the results of which are of no consequence or legal significance.

In the pending appeal, the City of Goleta received and "considered" the results of the resident survey "as a part" of its hearing and decision regarding the Parkowner's conversion application. As required by the statute, the City's city council weighed its consideration of the resident survey against other parts of Parkowner's application.

On one hand, the results of the Parkowner's survey of Monarch Mobilehome Park's residents (the "Residents") demonstrated that a majority of the Residents opposed park conversion. On the other hand, the Parkowner voluntarily agreed to a development agreement with the City whereby it would provide the Residents with significant additional economic incentives and protections above and beyond what is required by Section 66427.5. These incentives and protections were designed to

increase post-conversion resident ownership and avoid post-conversion economic displacement.

On this record, and exercising the discretion granted to it by the plain language of Section 66427.5, the City approved the Parkowner's application for conversion as authorized by law. However, it should be noted that, applying this same law, the City could have used this discretion to deny Parkowner's application, if it had determined that the record before it supported that conclusion.

B. Pursuant To The Binding *Colony Cove* Opinion, The City Had The Legal Authority To "Consider" The Survey Of Support And To Approve, Deny, Or Conditionally Approve The Parkowner's Conversion Application

In its Opening Brief, the Parkowner essentially argues that the city council's review of the survey of support is limited to a mere "receive and file," and that the results of the survey can have no bearing on that Council's ultimate decision to approve, deny or conditionally approve the conversion application. This "form over substance" argument, which would render the statute's "consider" language meaningless, was flatly rejected in the recent controlling opinion issued by this Second Appellate District in *Colony Cove Properties, LLC v. City of Carson* (August 31, 2010) 187 Cal. App. 4th 1487.

Colony Cove, which is the first and only published appellate opinion to discuss the authority granted by the word "consider" in Section 66427.5, has special relevance here because the attorneys for the parkowner in that case are the same attorneys representing the Parkowner in this case. In *Colony Cove*, at the trial court level, another parkowner was successful in persuading the court that the city had nothing more than

a "ministerial duty" to approve a conversion under Section 66427.5 without considering the results of the resident survey – *i.e.*, that the City had no discretion with respect to the survey results and must only "receive and file" the same. (*Colony Cove*, 187 Cal. App. 4th at 1491, 1495.)

However, on appeal, this Second Appellate District rejected that position. Specifically, the Court stated:

> Colony Cove urges that we follow the example of *Sequoia Park* by holding that the state fully occupies the area of mobilehome park conversion and that local regulation is wholly preempted. ***That construction would, as the trial court ruled, preclude the City from considering the contents of the survey of support during the subdivision map hearing process and limit it to purely ministerial duties*** – determining whether the survey had been prepared and filed in accordance with section 66427.5. ***The problem with this approach is that it fails to satisfactorily reconcile the language of the 2002 amendments with the stated intent of the Legislature.*** We instead begin our analysis of the ordinance's validity with the language of the statute itself and, in particular, the 2002 amendments.
>
> When the Legislature amended former section 66427.5 in 2002, it did not change the language now contained in subdivision (e), which continues to state that '[t]he scope of the [subdivision map] hearing shall be limited to the issue of compliance with this section.' However, the phrase 'limited to the issue of compliance with this section' must be interpreted in light of the new language of the preceding subdivision (d). . . . ***This language alone suggests that the contents of the survey, as opposed to its mere existence, are relevant to the approval process.*** By thereafter specifically stating that the results are 'to be considered as part of the subdivision map hearing prescribed by subdivision (e),' the Legislature made that intention explicit. ***Construing the statute to eliminate the power of local entities and agencies to consider the results of the survey when processing a conversion application would consign the 'to be considered' language of subdivision (d)(5) to surplusage.***"

(Id. at 1505-06 [emphasis added].)

This analysis articulates a rule of law that must remain clear and undisturbed in the pending appeal. This Court's decision in the present case must remain consistent with the general legal principle articulated by the *Colony Cove* court – *i.e.*, that Section 66427.5(d)(5) does not simply delegate a "ministerial duty" to local agencies (id. at 1497, 1505), but rather vests these legislative bodies with the discretion to "consider" the results of the resident survey as a part of their ultimate decision to approve, conditionally approve, or disapprove a conversion application (id. at 1506).

Colony Cove recognized that a court "must presume that the Legislature intended 'every word, phrase and provision...in a statute...to have meaning and to perform a useful function.'" (*Id.* at 1505 [quoting *Garcia v. McCutchen* (1997) 16 Cal. 4th 469, 476].) If the local legislative body were authorized only to ministerially determine that a resident survey had been conducted and submitted, and were required to consider the survey results but then could not approve or deny based on those results, the word "consider" in the statute would perform no useful function. As the Court in *Colony Cove* recognized (and condemned), it would be consigned "to surplusage." (*Id.* at 1506.)

Statutory interpretation "begin[s] with the statutory language because it is generally the most reliable indication of legislative intent." (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal. 4th 201, 211.) The Merriam Webster's dictionary defines "consider" as a *transitive verb* with the following meanings: "(1): to think about carefully: as (a): to think of especially with regard to taking some action, (b): to take into account; (2): to regard or treat in an attentive or kindly way; (3): to gaze on steadily or reflectively; or (4): to come to judge or classify." (Merriam Webster's

Collegiate Dictionary (10th ed. 1996).) Synonyms are also provided: "CONSIDER, STUDY, CONTEMPLATE, WEIGH mean to think about in order to arrive at a judgment or decision." (*Id.*)

As held in *Colony Cove*, the plain meaning of 66427.5 makes clear that the survey results are to be taken into account during the hearing, judged by the legislative body, and applied when acting to approve, conditionally approve, or disapprove a conversion application. The exercise of this discretion ***permits***, but does not ***mandate***, any particular decision, including the decision that was ultimately reached by the City of Goleta's City Council in this case.

C. The Legislative History Of Section 66427.5 Supports The City's Exercise Of The Discretion To Approve This Parkowner's Conversion Application

As noted in *Colony Cove*, the legislative history of this statute is in agreement with this reading. Accordingly, even should this court determine that the plain language of Section 66427.5(d)(5) contains ambiguity (which the League does not concede), the statute's legislative history still supports the League's position that the City is vested with the discretion to "consider" the resident survey in ruling on a mobilehome subdivision application.

Although the statute's legislative history spans several decades, it was most recently amended in 2002, when the Legislature adopted a bill entitled "AB 930" and amended Section 66427.5 to require a survey and consideration of its results. In Section 2 of this bill, the Legislature articulated the following statement of intent, which expressed its objectives in enacting this amendment:

> The court in [*El Dorado*] concluded that the subdivision map approval process specified in Section 66427.5 of the Government Code may not provide local agencies with the authority to prevent non-bona fide resident conversions. The court explained how a conversion of a mobilehome park to resident ownership could occur ***without the support of the residents and result in economic displacement. It is, therefore, the intent of the Legislature in enacting this act to ensure that conversions pursuant to Section 66427.5 of the Government Code are bona fide resident conversions.*** (Stats. 2002, chp. 1143, § 2 [emphasis added]; Colony Cove, 187 Cal. App. 4th at 1502.) **Courts must "adopt the construction that best effectuates the purpose of the law."** (*Shirk*, 42 Cal. 4th at 211 [emphasis added].) "[W]here the Legislature has expressly declared its intent, we must accept the declaration." (*Tyrone v. Kelley* (1973) 9 Cal. 3d 1, 11.)

In this statement, the Legislature clearly indicated that its intent in amending the statute was to require consideration of resident support in order to "provide local agencies with the authority to prevent" conversions that occur "without the support of the residents." Why else would the Legislature require a survey and consideration of its results?

As such, the legislative history of the survey amendments to Section 66427.5 make clear that the Legislature intended that lack of resident support could be used as a ***factor*** in the City's decision to approve or deny the Application. The legislative body, when considering the evidence before it, may, but need not, deny an application for which there is lack of resident support, or may, but need not, approve an application for which there is resident support.

II.

THE INTERPRETATION OF SECTION 66427.5 ADVOCATED BY THE PARKOWNER WOULD RENDER THE STATUTE'S "CONSIDER" LANGUAGE MEANINGLESS

This Parkowner makes largely the same arguments that have been made in numerous other park conversion lawsuits throughout the State of California. Stated generally, this Parkowner argues that lack of resident support cannot be the basis for a City's denial of a conversion application – that the survey must simply be conducted and submitted to the City Council and the Council must then approve. However, this interpretation of Section 66427.5, which is supported by untenable legal arguments (as detailed below), would render the word "consider" in the statute meaningless.

Surely, it could not have been the intention of the Legislature to draft language which served no purpose and had no meaning. As articulated by the *Colony Cove* court, a reviewing court "must presume that the Legislature intended 'every word, phrase and provision...in a statute...to have meaning and to perform a useful function.'" (*Id.* at 1505 [quoting *Garcia v. McCutchen* (1997) 16 Cal. 4th 469, 476].)

However, to accept the interpretation advocated by the Parkowner would be to ignore this directive. Simply put, this Parkowner's construction of Section 66427.5 requires that the last thirteen words of subdivision (d)(5) be excised from the statute. It is well established that an interpretation of a statute that treats the acts of the Legislature as inoperative must be disregarded. (*Shoemaker v. Myers* (1990) 52 Cal. 3d 1, 22.) As such, this Court should reject such a meaningless interpretation of subdivision (d).

For example, in its Opening Brief, the Parkowner argues that that *El Dorado Palm Springs, Ltd. v. City of Palm Springs* (2002) 96 Cal. App. 4th 1153 ("*El Dorado*") and *Sequoia Park Associates v. County of Sonoma* (2009) 176 Cal. App. 4th 1270 ("*Sequoia*") establish that Section 66427.5 limits local review to application of that section. (Appellant/Real Party In Interest's Opening Brief, pgs. 3-4.) Both of those cases did hold that subdivision (e) of Section 66427.5 limits local authority to "the issue of compliance with [Section 66427.5]" and preempts local authorities from "inject[ing] other factors" outside the statute. (*Sequoia*, 176 Cal. App. 4th at 1297.)

However, the Parkowner ignores the statutory directive in subdivision (d) that the legislative body must consider the results of the survey is part of Section 66427.5. (*Colony Cove*, 187 Cal. App. 4th at 1505.) Indeed, subdivision (d)(5) expressly states that the survey results are to be considered "*as part of the subdivision map hearing prescribed by subdivision (e)*".

As the court in *Colony Cove* recognized, when adopting AB 930 and adding this "consider" language to Section 66427.5, "the Legislature expressly expanded the statutory factors to be considered at the subdivision map hearing to include the results of the survey." (Id. at 1506.) Accordingly, the holdings in *El Dorado* and *Sequoia* actually require that the survey results be "considered" by the legislative body in approving or denying the Application at the hearing, not that they be ignored.

The Parkowner also argues that *Sequoia* and *El Dorado* establish the City is prohibited from conditioning approval of a Conversion application on the level of resident support. (Appellant/Real Party In Interest's Opening Brief, pgs. 7, 32-33.) Although the City of Goleta did

not condition its approval of the Parkowner's application on resident support, it should be made clear that neither of these cases have issued a holding that it could not have done so in its action on the application. Moreover, *Sequoia* and *El Dorado* are not applicable here – as they are preemption cases in which other cities attempted to impose extra-statutory conditions. Here, the City of Goleta applied the conditions and authority found within Section 66427.5.

Importantly, *Sequoia* did not discuss the extent of a local agency's authority when the local agency follows *Sequoia*'s command – *i.e., when the local agency applies Section 66427.5 alone* – as the City of Goleta did here. The provision of Section 66427.5 "alone" that is important here is subdivision (d)(5). *Sequoia* also did not discuss the authority granted by the statutory directive to "consider" the survey "results." (*See*, *Colony Cove*, 187 Cal. App. 4th at 1504 [stating, "Notably the [*Sequoia*] court did not address what meaning should be ascribed to the language of section 66427.5, subdivision (d) requiring that 'the results of the survey . . . be considered as part of the subdivision map hearing prescribed by subdivision (e).'"].)

In fact, the only mention of that authority by *Sequoia* was a statement that one of the only two powers a local agency has in reviewing a conversion application under Section 66427.5 is to determine whether there is resident support. Specifically, the Court held that "approval of a conversion plan is dependent only on the issues of ***resident support*** *and* ***the subdivider's efforts at avoiding economic displacement of nonpurchasing residents***." (*Sequoia*, 176 Cal. App. 4th at 1294 [emphasis added].)

Simply put, the court confirmed the Legislature's mandate that the agency be given the discretion to weigh the survey results in determining whether economic displacement is avoided, so long as the agency does not impose additional conditions or requirements beyond the statute. Accordingly, here, the City "considered" the issue of resident support, and weighed that along with the subdivider's efforts at avoiding economic displacement of the Residents.

In this case, although the resident survey demonstrated that a majority of the Residents did not support the conversion, the Council also recognized that with the additional economic protections and incentives that the Parkowner was voluntarily providing through its Development Agreement, economic displacement was no longer a significant concern. Based upon a consideration of these factors, this City Council ultimately decided to approve the Parkowner's conversion application.

A different City Council with different facts may have come to a different determination on this issue. However, it must remain clear that the City of Goleta is vested, by the Legislature, with the *discretion* to make the decision that it did. (*Section 66427.5.*) Likewise, if the City had determined that the Parkowner had not complied with Section 66427.5, that conclusion would also be within its discretion. Contrary to Parkowner's arguments, resident support is a factor to be considered, but is not a "veto power" which would reduce conversions to a ministerial process and undermine the language of Section 66427.5. (Section 66427.5(d),(e).)

The one and only published decision that has directly addressed the "consider" language is *Colony Cove*, which, as discussed above, determined that conversion applications are not ministerial, that the "contents of the survey, as opposed to its mere existence, are relevant to the approval process", and that construing the statute to eliminate an assessment of resident support as a factor in the approval or disapproval decision would consign the "to be considered" language "to surplusage." (*Colony Cove*, 187 Cal. App. 4th at 1497, 1505-1506.) As it was clearly not the intention of the legislature to draft language which had no function or significance, this Court should reject such a meaningless interpretation of subdivision (d).

III.

IN CONCLUSION, THE LEAGUE URGES THIS COURT TO RECOGNIZE THE DISCRETION GRANTED TO CITIES BY THE PLAIN MEANING, JUDICIAL INTERPRETATION AND LEGISLATIVE HISTORY OF SECTION 66427.5 – WHICH COLLECTIVELY AUTHORIZED THE CITY OF GOLETA TO "CONSIDER" THE RESULTS OF THE RESIDENT SURVEY AND TO USE THOSE RESULTS AS A FACTOR IN ITS DECISION ON THIS PARKOWNER'S APPLICATION

The League urges this Court that in reaching a determination on this case, whether it is to reverse the City or to uphold the City's decision, to make clear that, while arguably a City may not impose local municipal requirements beyond those set forth in section 66427.5, a local planning agency *may* and must in fact exercise the discretion vested in it under the existing language of the statute Section 66427.5 itself. A local planning agency is vested with the discretion, in fact required, to "consider" (meaning to weigh, evaluate, balance, or give credence to) the results of the required "survey of support" submitted by the applicant as a part of its

ultimate decision to approve, conditionally approve, or deny a conversion application.

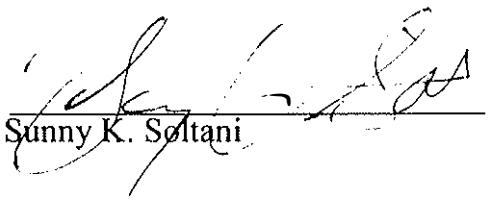
Dated: June 19, 2012

ALESHIRE & WYNDER, LLP
WILLIAM W. WYNDER
SUNNY K. SOLTANI
LINDSAY M. TABAIAN

By: _____
Sunny K. Soltani
Attorneys for *Amicus Curiae*
LEAGUE OF
CALIFORNIA CITIES

CERTIFICATE OF WORD COUNT

I certify that pursuant to Rule 8.204(c)(1) of the California Rules of Court, the attached *Amicus Curiae* Brief of the League of California Cities was produced on a computer and contains 4,108 words as counted by the Microsoft Word 2003 word-processing program used to generate this Appellant's Opening Brief.



Sunny K. Soltani

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA 92612.

On June 19, 2012, I served the within document(s) described as:

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES TO FILE AN AMICUS CURIAE BRIEF; *AMICUS CURIAE* BRIEF OF THE LEAGUE OF CALIFORNIA CITIES

on the interested parties in the interested parties in this action as stated on the attached mailing list.

[X] (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth on the attached mailing list. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Irvine, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on June 19, 2012, at Irvine, California.

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

MARY LYNN GENOVA
(Type or print name)

Mary Lynn Genova
(Signature)

SERVICE LIST

Supreme Court of California
350 McAllister Street
San Francisco, CA 94012

Santa Barbara Superior Court
Department 6
Anacapa Building
1100 Anacapa Street
Santa Barbara, CA 93101

James P. Ballantine
329 East Anapamu Street
Santa Barbara, CA 93101

Monarch Country Mobilehome Owners Association: Plaintiff and Respondent

Tim W. Giles
City of Goleta
130 Cremona Drive
Suite B
Goleta, CA 93117

City of Goleta: Defendant and Appellant

Thomas W. Casparian, Esq.
Gilchrist & Rutter
Wilshire Palisades Building
1299 Ocean Avenue
Suite 900
Santa Monica, CA 90401-1000

Goleta Mobile Home Park, LP: Real Party in Interest and Appellant