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May 22, 2013

The Honorable Sandra L. Margulies
The Honorable Robert L. Dondero
The Honorable Kathleen M. Banke
California Court of Appeal, First Appellate District
350 McAllister Street
San Francisco, California 94102-7421

Re: Request for Publication --
Coalition for Adequate Review v. City and County of San Francisco
(First District Court of Appeal Case No. A131487)

Dear Justices Margulies, Dondero, and Banke:

Pursuant to California Rules of Court, rule 8.1120, subdivision (a), we respectfully request publication of the opinion issued by this Court in *Coalition for Adequate Review v. City and County of San Francisco*, Case No. A131487, filed on May 9, 2012 (the Opinion).

We submit this letter on behalf of the League of California Cities ("League"). This letter describes the League's interest in publication and the reasons the Opinion meets the standards for publication set forth in California Rules of Court, rule 8.1105, subdivision (c).

The parties to the appeal have not authored this letter in whole or in part, nor have the parties to the appeal made a monetary contribution for the preparation of this letter.

As described in more detail below, the Opinion discusses whether the City and County of San Francisco's general plan contained elements required by Government Code section 65302 following amendments to facilitate the Market and Octavia Area Plan. The Opinion specifically addresses whether the city's land use element contained sufficient standards of population density and building intensity and if the land use and circulation elements correlated. The Opinion also discusses the first-tier nature of the Environmental Impact Report ("EIR") analysis in the context of general plan updates and amendments. Finally, the opinion upholds the EIR's analysis of potential impacts, including parking, transit, and shadow impacts.

1. **The League has an interest in publication of the *Coalition for Adequate Review v. City and County of San Francisco* Opinion. (California Rules of Court, Rule 8.1120, subdivision (a)(2).)**

The League is an association of 469 California cities dedicated to providing 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 having such significance.

The League has an interest in the development of case law under the State Planning and Zoning Law and CEQA. In particular, the League has an interest in cases that address the nature and scope of discretion available to municipalities when interpreting the general plan elements and standards required by the Planning and Zoning Law. The League also has an interest in understanding the legal requirements for a legally adequate first-tier environmental review document for a general plan amendment or update. The continued development of case law addressing these issues assists California cities and counties in complying with CEQA while avoiding the expenditure of public money on unnecessary, premature, or legally inadequate CEQA review.

2. **The Opinion explains existing rules of law and involves a legal issue of continuing public interest. (California Rules of Court, Rule 8.1105, subdivision (c)(3), (6).)**

There are three reasons why the League believes the Opinion is worthy of publication because it explains existing rules of law and involve legal issues of continuing public interest.

First, under the State Planning and Zoning Law, cities and counties are legally required to adopt general plans, and to update those plans on a regular basis. The Planning and Zoning Law spells out the issues that a general plan must address in order to be legally adequate. In particular, Government Code section 65302 provides that a general plan must include a "land use element" that contains "a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan." (*Id.* at subd. (a).) An early case -- *Twain Harte Homeowners Assn. v. County of Tuolumne* (1982) 138 Cal.App.3d 664 -- suggests that, in order to comply with this requirement, the land-use element must establish a quantitative ceiling on population density.

Section II.A.1 of the Opinion makes clear that, while the land-use element must contain a standard, a limit on population density is one permissible approach, but not the only one. For example, an agency may adopt policies that have the effect of limiting

population density (by, for example, placing limits on building heights). Or, as a matter of policy, the agency may decide to adopt policies that do not establish a fixed limit on population density. These are no less "standards" than a limit on population density.

The decision is important because it demonstrates that these options are available to local agencies. Such flexibility to adapt land-use policies to local conditions is crucial in view of the wide range of conditions faced by cities and counties across the state.

Second, section II.A.2 of the Opinion addresses local agency discretion under Government Code section 65302 to comply with the requirement to ensure that the various elements of a general plan be correlated with one another. Few cases address the correlation requirement. In *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, the court determined a land use and circulation element did not correlate because the land use element did not discuss the possibility that state highways could be inadequate to handle increased growth.

The Opinion provides a useful counterpoint to *Concerned Citizens of Calaveras County*. In this case, the petitioners argued the city's circulation element did not "correlate" with the land use element because the Market and Octavia land use plan called for increased density, while the circulation plan recommended fewer parking spaces. The area plan cited research that people's transportation choices are dynamic and influenced by a variety of factors. The Opinion upheld the city's discretion to rely on this approach in the circulation element and weigh and balance competing interests when forming policy. The Opinion is helpful because it reaffirms local agencies' discretion to make policy decisions of this sort.

Third, section II.B.2 of the Opinion considers whether the EIR for the Market and Octavia Area Plan was properly prepared as a first-tier environmental review document. The opinion discusses at length tiering principles under CEQA, and how tiering can be used to facilitate environmental review of general plan updates or amendments. The discussion explains and clarifies the level of detail appropriate for first tier review documents, in contrast to the detail required for specific projects which might follow. Section II.B.3 also clarifies the level of detail required in first tier review in the context of establishing appropriate baselines.

Local agencies often use tiering concepts in the preparation of environmental documents for general plans or similar planning documents. There are, however, relatively few cases addressing the use of tiering in this context. The public has a continuing interest in the efficient preparation of legally adequate CEQA documents, and this Opinion will assists cities preparing environmental review documents for general plan updates or amendments.

The League therefore respectfully requests that the Court publish the Opinion under California Rules of Court, Rule 8.1105, subdivisions (c)(3), (6).

3. The Opinion should be published because it applies existing rules of law to a set of facts significantly different from those stated in published opinions. (California Rules of Court, Rule 8.1105, subdivision (c)(2).)

The Opinion is appropriate for publication, in addition to the reasons discussed above, because it applies existing rules of law to factual circumstances that have been addressed in few published cases. As noted above, the Opinion reviews a first-tier EIR prepared for general plan amendments and provides further discussion of the discretion municipalities can exercise when establishing population density and building intensity standards under the Government Code.

The court in *Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180 also addressed the correlation requirements and agency discretion, but the discussion in that case focuses on the city's ability to fund future transportation improvements and whether the land use element contained meaningful proposals to address changes reflected in the land use element. Here, by contrast, the petitioner argued the elements did not correlate because the land use element called for increased density while the circulation element recommended relatively fewer parking spaces. The city addressed this supposed contradiction by citing to research indicating that transportation choices are dynamic and respond to a variety of factors. Further, the city relied on limits on the form of building, such as height restrictions, rather than direct restrictions on population densities. The Court concluded that this approach was acceptable. The Opinion noted that the Planning and Zoning law provides municipalities with broad discretion in formulating development policies, and determined the land use and circulation elements properly correlated. This discussion clarifies correlation requirements between land use and circulation elements and warrants publication because few cases have addressed these issues.

The Opinion also warrants publication because few cases address the adequacy of first tier EIRs prepared for the update, amendment, or adoption of general plans. The case *In Re Bay Delta etc.* (2008) 43 Cal.4th 1143 discusses CEQA's tiering principles, but in the context of an EIR prepared for a long-term Bay-Delta management plan. In the case *Koster v. County of San Joaquin* (1996) 47 Cal.App.4th 29, the court discussed the concept of tiering, but the main issue before the court was whether the county had approved an activity subject to legal review. *Endangered Habitats League v. State Water Resources Control Board* (1997) 63 Cal.App.4th 227 expands on the tiering analysis offered in *Koster*, but not in the context of a general plan amendment or update. (*Id* at pp. 236-237.) *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729 addressed tiering principles in the context of a port master plan. Finally, *Watsonville Pilots Association v. City of Watsonville* (2010) 183 Cal.App.4th 1059 involved a challenge to an EIR prepared for a General Plan update, but did not address tiering principles.

The League believes publication of the Opinion is appropriate under California Rules of Court, Rule 8.1105, subdivision (c)(2) because it addresses a first-tier EIR prepared for a general plan document. Given the frequency with which agencies use tiering principles in this context in order to comply with CEQA, and the relative paucity of published case law addressing this issue, publication is warranted.

The League respectfully requests that the Court certify the Opinion for publication.

Very truly yours,

Whitman F. Manley

Proof of service attached

Coalition for Adequate Review v. City and County of San Francisco
First District Court of Appeal, Case No. A131487

AMENDED PROOF OF SERVICE

I am a citizen of the United States, employed in the City and County of Sacramento. My business address is 455 Capitol Mall, Suite 210, Sacramento, California 95814. I am over the age of 18 years and not a party to the above-entitled action.

I am familiar with Remy Moose Manley, LLP's practice whereby the mail is sealed, given the appropriate postage and placed in a designated mail collection area. Each day's mail is collected and deposited in a U.S. mailbox after the close of each day's business.

On May 22, 2013, I served the following:

REQUEST FOR PUBLICATION

✓ On the parties in this action by causing a true copy thereof to be placed in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing mail addressed as follows; or

___ On the parties in this action by causing a true copy thereof to be delivered via Federal Express to the following person(s) or their representative at the address(es) listed below; or

___ On the parties in this action by causing a true copy thereof to be delivered by facsimile machine number (916) 443-9017 to the following person(s) or their representative at the address(es) and facsimile number(s) listed below:

I declare under penalty of perjury that the foregoing is true and correct and that this Proof of Service was executed this 22nd day of May, 2013, at Sacramento, California.

Rachel N. Jackson

Coalition for Adequate Review v. City and County of San Francisco
First District Court of Appeal, Case No. A131487

PROOF OF SERVICE
Service List

Mary Ann Miles 364 Page Street #36 San Francisco, CA 94102	Attorney for Plaintiff/Appellant *Coalition for Adequate Review* **VIA U.S. Mail**
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