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March 16, 2018

***Via TrueFiling***

Hon. Dennis M. Perluss, Presiding Justice
Hon. John L. Segal, Associate Justice
Hon. Kerry R. Bensinger, Associate Justice
California Court of Appeal, Second Appellate District
Ronald Reagan State Building
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

Re: *Covina Residents for Responsible Development v. City of Covina, et al.*
Second Appellate District Case No. B279590 – request for publication
(Los Angeles Superior Court Case No. BS147861)

Dear Justices Perluss, Segal, and Bensinger:

Pursuant to California Rules of Court, Rule 8.1120, subdivision (a), and on behalf of the League of California Cities (League), we respectfully request publication of the entire opinion issued by this Court in *Covina Residents for Responsible Development v. City of Covina*, filed on February 28, 2018 (the "Opinion"). This letter sets forth the League's interest in publication and the reasons the Opinion meets the standards for publication under California Rules of Court, Rule 8.1105, subdivision (c).

The Opinion is an important contribution to jurisprudence under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) and the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.). Most notably, the Opinion is the sole decision to discuss extensively Public Resources Code, section 21099 (Section 21099), a recently enacted amendment to CEQA focusing on the transportation analysis for transit-oriented infill projects. The Opinion contributes important analysis of the Legislative history of Section 21099, clarifies its role and effect, and contributes to a body of law that is of continuing public interest. For these reasons, the Opinion warrants publication.

## I. The League has an interest in publication of the Opinion. (Cal. Rules of Court, Rule 8.1120, subd. (a)(2).)

The League of California Cities is an association of 474 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, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, each of which has a vital interest in ensuring that the mandates of CEQA are fulfilled. The Committee identifies those cases concerning CEQA that are of statewide significance to its members. The Committee has identified this case as having such significance.

The League's members are routinely required to navigate CEQA prior to considering approval of proposed discretionary projects within their jurisdictions, including projects similar to the one at issue in the Opinion. Therefore, the appellate courts' interpretation of CEQA and the CEQA Guidelines is of great importance to the League. The League's members have an especially keen interest in case law that clarifies an agency's obligations and responsibilities with respect to statutory exemptions, including Section 21099. This relatively recent CEQA provision is frequently utilized by our members in the course of their mandated CEQA analysis. The continued development of published case law addressing this statutory exemption assists all cities in California in complying with CEQA.

## II. The Opinion should be published because it makes a significant contribution to the legal literature by reviewing the legislative history and development of Section 21099. (Cal. Rules of Court, Rule 8.1105, subd. (c)(7).)

The Opinion meticulously traces the Legislative history of Section 21099, and places this history within the context of efforts to reduce California's greenhouse gas (GHG) emissions.

As the Court describes, Section 21099 was enacted as part of Senate Bill No. 743 (2013–2014 Reg. Sess.) in order to "further the Legislature's strategy of encouraging transit-oriented, infill development consistent with the goal of reducing greenhouse gases." (Opinion at p. 15.) This Legislative goal was announced in the "Sustainable Communities and Climate Protection Act of 2008", also known as Senate Bill No. 375. (*Ibid*.) Senate Bill No. 375 was itself enacted to implement the "California Global Warming Solutions Act of 2006," popularly known as A.B. 32. Taken together, these

bills are part of a "'series of executive, legislative and administrative measures enacted to reduce'" GHG emissions and combat climate change. (*Id.* at p. 16.) Improved land use and transportation policies are critical to California's GHG reduction strategy. (*Id.* at pp. 15-16.)

Section 21099 exempts direct parking and aesthetic impacts as a significant effect under CEQA. To qualify for the exemption, the project must be located in developed urban areas (infill sites) within a quarter mile of transit centers (transit priority areas). (Opinion at pp. 14-15, 17, discussing Pub. Resources Code, § 21099, subds. (a)(4), (a)(7), (b)(3), (d)(1).) Through these enactments, "the Legislature has charted a course of long-term sustainability based on denser infill development, reduced reliance on individual vehicles and improves mass transit." Section 21099 "is part of that strategy." (Opinion at p. 23.)

As the Opinion describes in detail, Section 21099 is part of California's GHG reduction strategy in several ways. First, the statute encourages compact development near transit hubs, limits dependence on cars for transportation, and reduces vehicle miles traveled. (See Opinion at pp. 16-17.) Relatedly, by specifically exempting direct parking impacts as a significant effect, Section 21099 reflects the Legislature's evolving understanding of the cause of GHG emissions. Prior efforts focused on mitigating traffic congestion, by addressing impacts to levels of service. This approach permitted developers to mitigate GHG impacts by enlarging roadways and providing additional parking. These measures provided "'little benefit.'" (Opinion at p. 17, fn. 10.) Section 21099 recognizes this by exempting direct parking impacts as a significant effect under CEQA. (See Opinion at p. 18.) By streamlining environmental review for transit-oriented projects, Section 21099 promotes policies that will more directly reduce GHG emissions. (*Ibid.*)

By discussing this Legislative history, publication of the Opinion will contribute to the League and the public's understanding of the Legislature's intent to reduce GHG emissions, and Section 21099's role in that effort.

## III. The Opinion should be published because it provides a new interpretation, clarification, and construction of an existing rule of law and provision of a statute. (Cal. Rules of Court, Rule 8.1105, subds. (c)(3) and (c)(4).)

Although enacted in 2013, Section 21099 has only been discussed in one prior decision (see section IV, *infra*). The Opinion clarifies when Section 21099 applies and how its provisions should be interpreted.

First, the Opinion clarifies when Section 21099 applies. Environmental review for the project was completed before Section 21099 was enacted. The Petitioner unsuccessfully argued that the city could not rely on it. The Opinion made clear that this supposition was erroneous, stating, "[t]here is little doubt section 21099 applies" to the project. (Opinion at p. 17.) The Court then analyzed each requirement of Section 21099, before concluding that as an urban infill development in a transit priority area, the city had discretion to invoke the exemption. (*Ibid.*) The Opinion's holding can directly assist courts in adjudicating pending CEQA suits concerning projects where environmental review was completed before Section 21099 was enacted, but are relevant under its provisions.

Second, the Opinion distinguishes between direct and indirect parking impacts, consistent with the statute's plain language and in light of prior decisions' "somewhat" conflicting approaches to parking impacts. (Opinion at p. 19.)

In *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656 (*San Franciscans*), the court found that CEQA does not require an EIR to analyze the social effects parking shortfalls, but only the secondary transportation effects that occur when project visitors search for parking. (Opinion at p. 19.) The court in *Taxpayers for Accountable School Bond Spending v. San Diego Unified School District* (2013) 215 Cal.App.4th 1013, disagreed with *San Franciscan's* "broad" holding. (*Ibid.*) The Opinion distinguishes these cases on their facts, and reconciles them with Section 21099. The Opinion states that under Section 21099, the Legislature "endorsed the approach of the First District in *San Franciscans*." (Opinion at p. 21.)

Expanding on this analysis, the Opinion provides a clear rule for distinguishing between exempt direct impacts and indirect secondary impacts which must be analyzed. "[P]arking impacts, in and of themselves, are exempted from CEQA review." (Opinion at p. 21.) Thus, the petitioner's "concern [over] the lack of parking spaces" was a direct impact, and covered by the exemption. (*Ibid.*) In contrast, secondary impacts stemming from parking shortfalls, such as "'air quality, noise, safety, or any other impact associated with transportation'" must be analyzed. (*Ibid.*)

The Opinion's reasoning and approach is consistent with the Legislature's intent to streamline the environmental review process for qualifying transit-oriented infill projects, while preserving CEQA's intent to safeguard the environment. (See Public Res. Code, § 21000.) As published precedent, this clear guidance can aid local agencies in complying with CEQA under the exemption.

## IV. The Opinion should be published because it applies Section 21099 to a set of facts significantly different from those stated in published opinions. (Cal. Rules of Court, Rule 8.1105, subd. (c)(2).)

The sole prior case to discuss Section 21099 is *Protect Telegraph Hill v. City and County of San Francisco* (2017) 16 Cal.App.5th 261 (*Protect Telegraph Hill*), which provides only a brief analysis of Section 21099, and under a narrow set of facts.

In *Protect Telegraph Hill*, the Court of Appeal upheld approvals for a three-unit residential development, based on the CEQA Guidelines' categorical exemptions for small developments and renovations. The Planning Department also noted that the project qualified for an exemption under Section 21099. Petitioner unsuccessfully argued that the "unusual circumstances" exception to the categorical exemptions applied, because of the project's aesthetic impacts on views. The court rejected this argument, invoking Section 21099's exemption for aesthetic impacts. Section 21099's provisions regarding parking were not discussed. (*Protect Telegraph Hill*, *supra*, 16 Cal.App.5th at p. 272.)

In contrast to, and complimenting, the *Protect Telegraph Hill* decision, the Opinion offers an in-depth analysis of Section 21099's parking impact exemption, at a level of detail that exceeds the discussion in *Protect Telegraph Hill.*

## V. The Opinion should be published because it involves a legal issue of continuing public interest. (Cal. Rules of Court, Rule 8.1105, subd. (c)(6).)

The public's continuing interest in the development of CEQA supports publication. As the California Attorney General stated, "now more than 40 years old, [CEQA] is one of the state's most important environmental laws."[1] In 2017, California courts filed approximately 30 published CEQA decisions, including three decisions from the state Supreme Court. This reflects CEQA's importance and vitality to the state, local agencies, and the public. Although CEQA has been widely litigated, there is a dearth of case law concerning Section 21099. It is in the continuing public interest to fill this gap.

[1] Attorney General, CALIFORNIA ENVIRONMENTAL QUALITY ACT, *available at* https://oag.ca.gov/environment/ceqa (last viewed March 8, 2018).

For the above-cited reasons, the League respectfully requests the Court publish its Opinion in *Covina Residents for Responsible Development v. City of Covina*.

Very truly yours,

Whitman F. Manley

cc: see attached proof of service

*Covina Residents for Responsible Development v. City of Covina, et al.*
2nd Appellate District, Div. 7, Case No. B279590

**PROOF OF SERVICE**

I, Bonnie Thorne, am employed in the County of Sacramento. My business address is 555 Capitol Mall, Suite 800, Sacramento, CA 95814, and email address is bthorne@rmmenvirolaw.com. 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 for collection and processing mail whereby mail is sealed, given the appropriate postage and placed in a designated mail collection area. Each day mail is collected and deposited in a USPS mailbox after the close of each business day.

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**REQUEST FOR PUBLICATION**

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**SEE ATTACHED SERVICE LIST**

I declare under penalty of perjury that the foregoing is true and correct. Executed this 16th day of March 2018, at Sacramento, California.

Bonnie Thorne

*Covina Residents for Responsible Development v. City of Covina, et al.*
2nd Appellate District, Div. 7, Case No. B279590

**SERVICE LIST**

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