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July 18, 2017

VIA HAND DELIVERY

Hon. Tani Gorre Cantil-Sakauye, Chief Justice
And Associate Justices of the California Supreme Court
Supreme Court of California
350 McAllister Street, Room 1295
San Francisco, California 94102-4797

Re: **Amicus Curiae Letter in Support of Petition for Review**
Friends of the College of San Mateo Gardens v. San Mateo County Community College District (2017) 11 Cal.App.5th 596, First Appellate Dist. (Div. 1)
Case No. A135892; California Supreme Court Case No. S242546

Dear Honorable Chief Justice and Associate Justices of the Supreme Court:

Pursuant to Rule 8.500(g) of the California Rules of Court, the League of California Cities ("the League") writes in support of the petition for review filed in the above-entitled action by Defendants and Appellants San Mateo County Community College District and San Mateo County Community College District Board of Trustees (collectively, "District").

Pursuant to 8.500(b) of the California Rules of Court, review should be granted in the above-referenced appeal to settle an important question of law and to secure uniformity of decisions. The Court of Appeal for the First District rendered a decision on May 5, 2017 in the above-referenced appeal ("Appellate Opinion") that was based on misinterpretations of the California Environmental Quality Act ("CEQA") that will have far-reaching implications. The Appellate Opinion both misinterpreted—on remand—this Court's decision in *Friends of the College of San Mateo Gardens v. San Mateo County Community College District* (2016) 1 Cal.5th 937 ("Supreme Court Opinion"), and put forward an overly broad application of the fair argument standard that could trigger an environmental impact report ("EIR") based on purely subjective and unsubstantiated lay opinions on aesthetics, even when the proposed change is entirely consistent with the aesthetics of its surroundings.

STATEMENT OF INTEREST

The League of California Cities is an association of 475 California cities dedicated to protecting and restoring local control as a means both 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, and identifies those cases

that have statewide or nationwide significance. The Committee has identified this case as having such significance, because the Court of Appeal's conclusions regarding the application of the fair argument standard to CEQA's subsequent review provisions and the evaluation of aesthetics under the fair argument standard will significantly undermine the ability of the League's members to effectively gauge the risk of proceeding on any project under a negative declaration ("ND") or mitigated negative declaration ("MND").

BACKGROUND

The First District's opinion reviewed the decision by the District to address a change in a facilities master plan ("Plan") through an addendum to its MND. In 2006, the District had published an MND ("2006 MND") regarding the Plan, which included renovation of the "Building 20 complex" ("Complex"). After adopting the 2006 MND, however, the District failed to obtain funding for the renovations to the Complex. As a result, in May 2011, the District issued a notice of determination indicating that the Complex would be demolished and replaced with a parking lot and accessibility and landscaping improvements. Pursuant to CEQA, the District concluded that a subsequent or supplemental EIR was not required, and chose to address the change through an addendum to the 2006 MND.

The Court of Appeal initially invalidated the District's decision to approve the demolition of the Complex without preparing a subsequent EIR. The Court of Appeal applied the so-called "new project" test and found it "clear" as a matter of law that the planned demolition of the Complex was a "new project." This Court reversed that decision. In its Opinion, this Court emphasized that the Court of Appeal had "deepened a disagreement among the appellate courts" by applying a "new project test." This Court rejected that test because it lacked a benchmark and would thus "inevitably invite arbitrary results." Instead, this Court laid out a two-part test: first, "a court determines that substantial evidence supports an agency's [implicit or explicit] decision to proceed under CEQA's subsequent review provisions"; and "the next—and critical—step is to determine whether the agency has properly determined how to comply with its obligations under those provisions." This Court stated that courts are to determine whether substantial evidence supported the agency's determination of these "predominantly factual question[s]," and "not to weigh conflicting evidence and determine who has the better argument."

On remand, the Court of Appeal again invalidated the District's decision to approve the project changes without preparing a subsequent EIR. The Appellate Opinion first held that the project changes "amounted to a modified project, meaning CEQA's subsequent review provisions apply." Ostensibly applying the Supreme Court Opinion, the Appellate Opinion further held that "use of an addendum violated [CEQA's subsequent review provisions] because there is substantial evidence to support a fair argument that the project changes might have a significant effect on the environment." This holding was based on two conclusions. First, the Court of Appeal concluded that reviewing courts should apply the fair argument standard of review in applying CEQA's subsequent review provisions to projects where the initial environmental document was an ND. Second, the Court of Appeal applied the fair argument standard of review to conclude that the District could not approve the demolition of the Complex by an addendum to the 2006 MND. The Court of Appeal reached this conclusion in

consideration of statements by two professors and a "number of students" describing the Complex in purely subjective terms, such as it being "'beautiful,'" or as distinct from the existing visual character of the site, such as being the only place "'to get away from the concrete and rigid plots of monoculture plantings that have taken over the campus.'"

GROUNDS SUPPORTING REVIEW

The Appellate Opinion misinterprets the Supreme Court Opinion on remand. The fair argument standard should apply to CEQA's subsequent review provisions narrowly, if at all. The Appellate Opinion undermines both the long-standing policy according deference to an agency's factual determinations as well as this Court's repeated direction that NDs, like EIRs, are entitled to a presumption of finality. Furthermore, the Appellate Opinion puts forward an overly broad application of the fair argument standard, and relies on subjective lay opinions regarding aesthetics as evidence of a significant environmental effect. This analysis will inevitably invite arbitrary results. Review of the Appellate Opinion is necessary to settle these important and far-reaching questions of law under CEQA, as well as to secure uniformity of decisions.

A. The Appellate Opinion Misinterprets the Supreme Court Opinion to Require Application of the Fair Argument Standard of Review.

As discussed below, in applying the fair argument standard of review the Appellate Opinion ignores the initial language of the Supreme Court Opinion and appears to misread the Supreme Court Opinion's response to plaintiff's concern about a possible "loophole in the statutory scheme"—a concern this Court found meritless. The initial language in the Supreme Court Opinion establishes a two-part inquiry, both parts of which comprise predominantly factual questions to be resolved by the agency and subject to court review for substantial evidence (not fair argument). Indeed, when this Court has imposed the fair argument test, it has done so clearly and unequivocally. (*See Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1114-1117 [referencing the "fair argument standard" repeatedly in applying the standard to the determination of whether the "unusual circumstances" exception precludes reliance on CEQA's categorical exemptions].) The Supreme Court Opinion makes no such clear statement either in the body of its analysis or in dismissing the possible "loophole" (which was determined not to exist). The Supreme Court Opinion is thus best read to limit court review to determining whether substantial evidence supports the agency's resolution of predominantly factual inquiries.

At most, the fair argument standard should apply narrowly to only those project modifications that produce new, "previously unstudied, potentially significant environmental effects"; the fair argument test does not apply to the determination of whether an MND requires major revisions due to effects that had been previously studied (like aesthetics here). To rule otherwise would eviscerate the elements of "finality" that the Supreme Court Opinion expressly upheld.

1. Courts apply the substantial evidence standard of review to this "predominantly factual question."

The Appellate Opinion's conclusion that courts should apply the fair argument standard of review is contradicted by the language of the Supreme Court Opinion it purports to interpret. The Supreme Court Opinion initially establishes a two-part inquiry and states that courts apply the substantial evidence standard of review to both parts. One example is this Court's statement that:

> [W]hether an initial environmental document remains relevant despite changed plans or circumstances—like the question whether an initial environmental document requires major revisions due to changed plans or circumstances—is a predominantly factual question. It is thus a question for the agency to answer in the first instance, drawing on its particular expertise. [Citation.] *A court's task on review is then to decide whether the agency's determination is supported by substantial evidence*; the court's job is not to weigh conflicting evidence and determine who has the better argument. [Citation.]

(Supreme Court Opinion, *supra,* 1 Cal.5th at pp. 952-53 [emphasis added] [internal quotation marks omitted].) Another example is this Court's statement that:

> An agency that proposes project changes thus must determine whether the previous environmental document retains any relevance in light of the proposed changes and, if so, whether major revisions to the previous environmental document are nevertheless required due to the involvement of new, previously unstudied significant environmental impacts. These are determinations for the agency to make in the first instance, *subject to judicial review for substantial evidence.*

(*Id.* at p. 944 [emphasis added].)

Of particular importance is this Court's focus on the inquiry being a "predominantly factual question" and, therefore, "a question for the agency to answer in the first instance, drawing on its particular expertise," which courts then review for substantial evidence. (*See* Supreme Court Opinion, *supra,* 1 Cal.5th at pp. 952-53.) This application of policy is well-established in the case law. (*See, e.g., Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 215 ["[O]n factual questions, our task 'is not to weigh conflicting evidence and determine who has the better argument.'" (quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427)].)

The Appellate Opinion, however, contains at least two important mischaracterizations of the Supreme Court Opinion. First, the Appellate Opinion misrepresents the Supreme Court Opinion's holding to suggest that courts apply the "fair argument" standard:

> *San Mateo Gardens* held that where a project is originally approved through a negative declaration, 'agencies [cannot] evade their obligation to prepare an EIR based on the more demanding 'fair argument' standard, so long as the potential

> environmental effects of the project are caused by changes in the project after a negative declaration has been approved.' [Citation.]

(Appellate Opinion, *supra,* 11 Cal.App.5th at p. 608 [quoting Supreme Court Opinion at p. 958].) This statement misleadingly quotes the Supreme Court Opinion's *summary of plaintiff's argument, not the Supreme Court's holding.* In dismissing the argument, the Supreme Court Opinion never expressly references the "fair argument" standard. Regardless of the underlying analysis an agency performs in evaluating project changes in light of the original environmental document, this Court stated that review is limited to the agency's factual determination. (*See* Supreme Court Opinion, *supra,* 1 Cal.5th at pp. 954, 952-53.)

Second, the Court of Appeal appears to have misconstrued the Supreme Court Opinion's comment that "judicial review must reflect the exacting standard that an agency must apply" (Supreme Court Opinion, *supra,* 1 Cal.5th at p. 953) as an invitation to ignore the initial language of the Supreme Court's Opinion (Appellate Opinion, *supra,* 11 Cal.App.5th at pp. 603, 606). However, what the Supreme Court Opinion referenced in determining the standard of review is the agency's factual inquiry, which is reviewed for substantial evidence. (*See* Supreme Court Opinion, *supra,* 1 Cal.5th at pp. 954, 952-53; *see also infra* Section A.2 [discussing this Court's explanation as to why there is no "loophole in the statutory scheme"].)

2. The inquiry is whether the modification requires major revisions to the original environmental document.

Despite the Supreme Court Opinion's language to the contrary, the Appellate Opinion concluded that the fair argument standard applied. The Appellate Opinion's conclusion appears to focus primarily on the Supreme Court's discussion of the potential "loophole in the statutory scheme," pursuant to which an agency would not have to prepare an EIR for a project change that might otherwise be compelled under the fair argument standard. (*See* Appellate Opinion, *supra,* 11 Cal.App.5th at pp. 606-608 [quoting almost entirely from the Supreme Court Opinion's dismissal of the loophole argument at pages 958-959 and concluding that the District's argument "would create just the sort of 'loophole' for agencies that the Supreme Court emphasized does not exist"].) The Supreme Court Opinion found this concern meritless, emphasizing that the inquiry on subsequent review is limited to "whether the modification requires major revisions to the negative declaration" and "not whether the environmental impacts of the modification are significant." (Supreme Court Opinion, *supra,* 1 Cal.5th at p. 958 n.6.) This Court explained that the contents of an EIR and an ND are different, and that "a 'major revision' to the initial negative declaration will necessarily be required if the proposed modification *may* produce a significant environmental effect *that had not previously been studied.*" (*Id.* [emphasis added]).) Nevertheless, the inquiry still focuses on the content of the original environmental document, and not an entirely new evaluation of environmental impacts.

As with the determination that the original environmental document remains relevant, the determination of the extent of this relevance is "a predominantly factual question." (Supreme Court Opinion, *supra,* 1 Cal.5th at pp. 944, 952-53.) Accordingly, it is a question for the agency to determine based on its expertise, and "[a] court's task on review is then to decide whether the

agency's determination is supported by substantial evidence; the court's job is not to weigh conflicting evidence and determine who has the better argument." (*Id.* at p. 953 [internal quotation marks omitted].) The Appellate Opinion's analysis, however, extended the court's review beyond the factual inquiry identified in the Supreme Court Opinion:

> There is only one reasonable interpretation of *San Mateo Gardens*: where, as here, an agency originally prepares a negative declaration, we must assess whether there is 'substantial evidence that the changes to a project for which a negative declaration was previously approved *might* have a significant environmental impact not previously considered in connection with the project as originally approved.'

(Appellate Opinion, *supra,* 11 Cal.App.5th at p. 608 [quoting Supreme Court Opinion, *supra,* 1 Cal.5th at p. 959].) This statement contradicts the "important" distinction made by the Supreme Court Opinion: that the inquiry is limited to "whether the modification requires major revisions to the negative declaration," and "not whether the environmental impacts of the modification are significant." (Supreme Court Opinion, *supra,* 1 Cal.5th at p. 958 n.6.) Otherwise, CEQA Guidelines section 15162 would have referred to environmental effects instead of whether "major revisions" in the original environmental document are required.

3. Failing to focus on the original environmental document undermines the finality of that document.

By not focusing its inquiry on whether major revisions are needed to the original environmental document, the Appellate Opinion undermines the presumption of finality that is to be accorded NDs. As stated by this Court:

> [T]he inquiry prescribed by the Guidelines is not whether the environmental impacts of the modification are significant, but whether the modification requires major revisions to the negative declaration because of the involvement of new, potentially significant environmental effects that had not previously been considered in connection with the earlier environmental study.

(Supreme Court Opinion, *supra,* 1 Cal.5th at p. 958 n.6.) This Court viewed these two inquiries as distinct. The former inquiry focuses on the modification in isolation whereas the latter focuses on the original environmental document. Simply because a modification has significant environmental impacts does not mean that there are necessarily new, potentially significant environmental effects that have not been considered in the original environmental document. Furthermore, it is the inquiry into whether the environmental effects of the modification have been addressed in the original environmental document that is fundamental to CEQA's subsequent review provisions. This inquiry is thus one of the limitations in CEQA's subsequent review provisions that are "designed to balance CEQA's central purpose of promoting consideration of the environmental consequences of public decisions with interests in finality and efficiency." (*Id.* at p. 949.)

After finding that substantial evidence supported the District's determination that the 2006 MND retained informational value, the Appellate Opinion ignored the 2006 MND by

defining its inquiry as simply "to assess whether substantial evidence shows that the Building 20 demolition project might have a significant effect on the environment." (Appellate Opinion, *supra,* 11 Cal.App.5th at pp. 608-09.) And, in concluding that it was improper to adopt an addendum, the Appellate Opinion does not address the 2006 MND, and simply reasons that, "[i]n sum, there is substantial evidence that the Building 20 demolition project might have a significant environmental effect due to its aesthetic impact on the College campus." (*Id.* at p. 611.) The Appellate Opinion thus ignores the analysis in the original environmental document, and essentially considers the modification in isolation—as if it were being considered on initial review—because the original environmental document was an MND.[1] As this Court repeatedly stated, however, NDs are entitled to the same presumption of finality as EIRs. (*See* Supreme Court Opinion, *supra,* 1 Cal.5th at pp. 955, 956, 958 n.6.)

4. This appellate opinion should be reviewed because it perfectly illustrates the error in applying the fair argument standard to subsequent review following NDs.

The 2006 MND at issue in this action perfectly illustrates the error in applying the fair argument standard to agencies' subsequent review following NDs. As the Appellate Opinion recognized, environmental effects related to demolitions in the Plan had been analyzed in the 2006 MND. (Appellate Opinion, *supra,* 11 Cal.App.5th at p. 605.) In fact, the Appellate Opinion found that substantial evidence supported the District's determination that the 2006 MND retained informational value, because the modification added the Complex to (and removed two buildings from) the Plan's original list of 16 buildings to be demolished but "did not affect the plans to demolish the 14 other buildings or remove the measures adopted to mitigate those plans' environmental effects." (*Ibid.*) The Appellate Opinion, however, fails to acknowledge that the 2006 MND included a review of the Plan's possible aesthetic impacts, including impacts arising from construction of parking, demolition of buildings, removal of trees and mature vegetation, and preservation of other buildings. Consequently, aesthetic effects had been considered, but the Appellate Opinion fails to acknowledge or address this aspect of the 2006 MND.

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[1] The Combined Opposition to Requests for Depublication filed by Friends of the College of San Mateo Gardens ("Opposition") makes a confused attempt to read the fair argument standard into the definition of substantial evidence, urging that the Supreme Court Opinion "implicitly recognized" that "the 'fair argument' standard is in fact encompassed within the 'substantial evidence' definition provided in CEQA Guidelines section 15384 [citation] and applied in section 15162." (Opposition, at 3.) The Opposition obfuscates the definition of substantial evidence in Section 15384. To employ this construction would undermine the accepted distinction between the "substantial evidence" standard of review (which authorizes lead agencies to disregard contrary evidence) and the "fair argument standard" (which does not). The Opposition's construction would also contradict the "important" distinction this Court made between the proper application of the substantial evidence standard under CEQA Guidelines section 15162 to determine "whether the modification requires major revisions to the negative declaration" instead of "whether the environmental impacts of the modification are significant." (*See* Supreme Court Opinion, *supra,* 1 Cal.5th at p. 958, 958 n.6.)

B. Review Should Be Granted Because the Appellate Opinion's Analysis of Aesthetic Impacts Is Out of Step with Precedent and Will Compel Agencies to Prepare EIRs Even When Unwarranted.

As with the Court of Appeal's erroneous application of the "new project test" (Supreme Court Opinion, *supra,* 1 Cal.5th at p. 951), the Court of Appeal has now put forward an analysis of aesthetics under the fair argument standard of review that will inevitably invite arbitrary results by relying on purely subjective lay opinions and presenting an analysis in conflict with other appellate decisions.

1. The Appellate Opinion's analysis of aesthetics fails to require substantial evidence.

In life, beauty is in the eye of the beholder. But purely subjective statements regarding the aesthetics of an existing building complex—particularly one entirely within and surrounded by a larger, developed campus—do not constitute substantial evidence supporting a fair argument. Under the "fair argument" standard, "a public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project 'may have a significant effect on the environment.'" (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1123 [citations omitted]; *see also* Pub. Resources Code, §§ 21080(d), 21082.2(d); CEQA Guidelines, §§ 15064(a)(1), (f)(1).) Substantial evidence "includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." (Pub. Resources Code, §§ 21080(e)(1); *see* Pub. Resources Code, 21082.2(c); CEQA Guidelines, § 15064(f)(5).) CEQA and the CEQA Guidelines, however, explicitly declare that, among other things, "[s]ubstantial evidence is not argument, speculation, unsubstantiated opinion or narrative, [or] evidence that is clearly inaccurate or erroneous." (Pub. Resources Code, § 21080(e)(2); *see* Pub. Resources Code, § 21082.2(c); CEQA Guidelines, § 15064(f)(5).) Accordingly, mere opinions, speculation, and generalized concerns do not constitute substantial evidence. (*Lucas Valley Homeowners Assn v. County of Marin* (1991) 233 Cal.App.3d 130, 163-164; *Citizen Action to Save All Students v. Thornley* (1990) 222 Cal.App.3rd 748, 757 [speculation without "hard fact" is not evidence]; *see also Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 580 [concluding that "mere argument and unsubstantiated opinion" in a comment letter drafted by counsel did not constitute substantial evidence].)

The Appellate Opinion recognizes the need for substantial evidence (Appellate Opinion, *supra,* 11 Cal.App.5th at p. 609), but establishes an arbitrary benchmark. The Appellate Opinion states that "an aesthetic impact 'by its very nature is subjective'" (*ibid.* [internal quotation marks omitted]) and that, "[a]s on other CEQA topics, the opinions of area residents, if based on direct observation, . . . may constitute substantial evidence in support of a fair argument." (Appellate Opinion, *supra,* 11 Cal.App.5th at 609 [quoting *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928 ("*Pocket Protectors*").) Although true from a hypothetical standpoint, the First District's benchmark is vague and would trigger a full EIR whenever an individual espouses a personal preference for the aesthetic qualities of a particular change. This is not the sort of substantiated opinion or factual evidence that supports a fair argument.

Among other things, this benchmark fails to indicate when such subjective opinions about aesthetic impacts "may constitute substantial evidence." Specifically, the Appellate Opinion fails to recognize that *Pocket Protectors* and more recent cases did not rely on purely subjective comments. The "specific concerns" found sufficient in *Pocket Protectors* were reasonably derived from factual observations, such as the "effect of long double rows of houses flanking a narrow private street" and "the excessive massing of housing with insufficient front, rear, and side yard setbacks." (*Pocket Protectors*, supra, 124 Cal.App.4th at p. 937.) Conversely, the Appellate Opinion includes purely subjective comments, such as the Complex being "beautiful" and providing a "sense of calm for the student body," and a Dawn Redwood tree being "tall and majestic" and "irreplaceable." (Appellate Opinion, *supra,* 11 Cal.App.5th at pp. 609, 611 [internal quotation marks omitted].) The Appellate Opinion thus lacks a meaningful benchmark and invites arbitrary results.

2. Review should be granted because the Appellate Opinion conflicts with other appellate decisions.

The Appellate Opinion conflicts with other appellate decisions in ruling that a physical change (in this case, to a building and courtyard) triggers an EIR even though the change is entirely consistent with the surrounding environment. The District pointed out that demolition of the Complex "would result in a loss of less than one-third of one percent of the total landscaped and open space on campus." (Appellate Opinion, *supra,* 11 Cal.App.5th at p. 610.) Quoting *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, 1026 ("*San Francisco Beautiful*"), the Appellate Opinion dismissed the District's argument because "[t]he significance of an environmental impact is not based on its size but is instead '"measured in light of the context where it occurs."'" (Appellate Opinion, *supra,* 11 Cal.App.5th at p. 610.) But the First District expressly measured the aesthetics of the building out of context. Indeed, the Appellate Opinion reasoned that "substantial evidence shows that the gardens around [the Complex] were *unique* in the campus setting." (*Ibid.* [emphasis added].)

The focus on whether a part of a site is "unique" turns existing precedent on its head and conflicts with other appellate decisions in the First District. In *San Francisco Beautiful*, the First District explained that the impact must be consistent with the existing character of the entire site and its surroundings, not that an inconsistent characteristic should be retained. (*San Francisco Beautiful, supra,* 226 Cal.App.4th at pp. 1026-27.) The language quoted from *San Francisco Beautiful* in the Appellate Opinion is taken from another decision by the First District: *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 589 ("*Bowman*"). The full quote from *Bowman* reinforces that the impact is evaluated in light of its conformity with the entire site and not the uniqueness of an individual building:

> The Guidelines confirm that the significance of an activity may vary with the setting. . . . To conclude that replacement of a virgin hillside with a housing project constitutes a significant visual impact says little about the environmental significance of the appearance of a building in an area that is already highly developed.

(*San Francisco Beautiful, supra,* 226 Cal.App.4th at p. 1026 [quoting *Bowman, supra,* 122 Cal.App.4th at p. 589]; *see Pocket Protectors, supra,* 124 Cal.App.4th at p. 939 [recognizing that *Bowman* analyzed aesthetics in light of the surrounding area and its zoning requirements].)

The Appellate Opinion also conflicts with appellate opinions from other districts. *San Francisco Beautiful* indicates that its interpretation was based, in part, on decisions analyzing impacts in light of their conformity with the entire site from the Third District (*see Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 243–244 [finding no significant impact from a residential development causing "a 'high level' of change" because the area was already residential]) and the Fourth District (*see Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1337–1338 [requiring an EIR regarding a large, high-density residential building introduced into a single-family residential neighborhood]). Furthermore, the Appellate Opinion arguably conflicts with the case it relies upon to derive its benchmark, which did not seek to preserve features inconsistent with the overall site and its surroundings. (*See Pocket Protectors, supra,* 124 Cal.App.4th at pp. 936-937 [Third District decision referring to comments regarding the "overall degradation of the existing visual character of the site," where the court had determined that the "project facially conflicts" with unit development plan adopted by the city].) Consequently, the Appellate Opinion is an outlier, and review should be granted on this independent ground.

CONCLUSION

For the reasons specified above, the League this this Court to grant the petition to review *Friends of the College of San Mateo Gardens v. San Mateo County Community College District* (2017) 11 Cal.App.5th 596.

Respectfully submitted,

DOWNEY BRAND LLP

Christian L. Marsh

Friends of the College of San Mateo Gardens v.
San Mateo County Community College District, et al.
Supreme Court of California Case No. S242546

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Downey Brand LLP, 455 Market Street, Suite 1500, San Francisco, California 94105. On July 18, 2017, I served the within document(s):

AMICUS CURIAE LETTER IN SUPPORT OF PETITION FOR REVIEW

☐ **BY E-MAIL:** by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

☒ **BY MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.

☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

☐ **BY PERSONAL DELIVERY:** by causing personal delivery of the document(s) listed above to the person(s) at the address(es) set forth below.

SERVICE LIST ATTACHED

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid 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.

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

Executed on July 18, 2017, at San Francisco, California.

Emilie Medalle-Alcantara

Friends of the College of San Mateo Gardens v.
San Mateo County Community College District, et al.
Supreme Court of California Case No. S242546

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