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July 3, 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, CA 94102-4797

Re: **Request for Depublication of Appellate Opinion**
Friends of the College of San Mateo Gardens v. San Mateo County Community College District (May 5, 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 8.1125 of the California Rules of Court, the League of California Cities ("the League") respectfully requests that the Supreme Court of California depublish the opinion issued by the Court of Appeal for the First District on May 5, 2017 in the above-captioned action ("Appellate Opinion"). Depublication is warranted because the Appellate Opinion contains two erroneous conclusions that will have a profound effect on enforcement of the California Environmental Quality Act ("CEQA"). First, the Appellate Opinion concluded that the fair-argument standard of review applies to an agency's determination on subsequent review by misinterpreting—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"). In doing so, the Appellate Opinion undermines the long-standing policy according deference to an agency's factual determinations. Second, in reaching a conclusion with implications beyond the application of the subsequent-review provisions, the Appellate Opinion puts forward an overly broad application of the fair-argument standard that would require an environmental impact report ("EIR") or mitigated negative declaration ("MND") based on purely subjective lay opinions on aesthetics, even when such opinions regard only a small fraction of the interior of a developed college campus. This conclusion conflicts with other appellate-court precedent and will inevitably invite arbitrary results. Accordingly, the Appellate Opinion should have no precedential value.

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 an ND.

BACKGROUND

This Court of Appeal's opinion addressed the decision by the San Mateo County Community College District and its Board of Trustees (collectively, "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 MND in 2007, 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 or supplemental 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, however, 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 or supplemental 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 a negative declaration ("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.'"

DEPUBLICATION IS WARRANTED

The Appellate Opinion's application of CEQA's subsequent-review provisions is erroneous, and should not be allowed to have precedential value. The Court of Appeal's first conclusion misinterprets the Supreme Court Opinion on remand. At most, the fair-argument standard should apply only with regard to the narrow analysis of whether the particular project change at issue may result in "new" *and* "previously unstudied" significant environmental effects. Here, the First Appellate District essentially concluded that because the change in question had not been analyzed in the original MND, the impact of that change had been "unstudied" and therefore triggered fair-argument review. For that rule to stand, any change to a project previously approved under an ND would result in "unstudied" impacts, and be subjected to un-deferential fair-argument review. That interpretation directly conflicts with this Court's emphasis that NDs should be subjected to that same "finality" as EIRs.

The Court of Appeal's second conclusion is also erroneous, because it is based on an overly broad application of the fair-argument standard. The Appellate Opinion decision relies on purely subjective lay opinions regarding aesthetics as evidence of a purported potentially significant environmental effect, and will inevitably invite arbitrary results. These two erroneous conclusions are addressed in turn.

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

As discussed below, the Appellate Opinion ignores the language of the Supreme Court Opinion, and appears to be based primarily on a misreading of the Supreme Court Opinion's finding that the concern with a possible "loophole in the statutory scheme" was meritless. At most, the fair-argument standard should apply narrowly to only a modification that may have new and previously unstudied potentially significant environmental effect, and not to the determination of whether such an effect requires a major revision of the original environmental document. The Supreme Court Opinion states that the latter inquiry is a predominantly factual question subject to court review for substantial evidence. Arguably, however, the Supreme Court Opinion does not call for courts to apply the fair-argument standard at all. The initial

language in the Supreme Court Opinion establishes a two-part inquiry, both parts of which constitute predominantly factual questions to be resolved by the agency and subject to court review for substantial evidence. The Supreme Court Opinion—and particularly its analysis dismissing a possible "loophole in the statutory scheme"—is thus best read to limit court review to the agency's resolution of these predominantly factual inquiries.

1. Court's 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 to review of both parts of the inquiry. 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] [citing and quoting *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 215].) 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," with courts deciding whether the agency's determination is supported by 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, supra,* 62 Cal.4th at p. 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); *California Native Plant Soc. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 985 ["The agency is the finder of fact and we must indulge all reasonable inferences from

the evidence that would support the agency's determinations and resolve all conflicts in the evidence in favor of the agency's decision. [Citation.] That deferential review standard flows from the fact that the agency has the discretion to resolve factual issues and to make policy decisions." (internal quotation marks omitted)].)

The Appellate Opinion, however, contains at least two fundamental mischaracterizations of the Supreme Court Opinion. First, 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 recitation of the plaintiff's argument, not the Supreme Court Opinion's holding dismissing the plaintiff's argument. In dismissing the argument, the Supreme Court Opinion never makes a specific reference to courts applying the "fair argument" standard, or to courts reviewing the agency's underlying determination that a proposed modification may produce a significant environmental effect that had not been previously studied. Regardless of the underlying analysis an agency performs in making the factual determination that major modifications to the original environmental document are or are not needed, the Supreme Court stated that a court's review is limited to the agency's factual determination. (*See* Supreme Court Opinion, *supra,* 1 Cal.5th at pp. 954, 952-53)

The Court of Appeal appears to have misunderstood 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). As an initial matter, the Court of Appeal appears to have assumed that an "exacting standard" could not be a reference to the standard applicable to the "predominantly factual question" at issue. (*See id.* at p. 606 [contrasting the "'exacting standard'" referenced in the Supreme Court Opinion with "the deferential standard that applies when the project was originally approved by an EIR"].) A factual inquiry by the agency subject to deference, however, is exactly what the Supreme Court Opinion referenced in determining that the standard of review is 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 in not "a loophole in the statutory scheme"].) In addition, the Court of Appeal appears to ignore that the Supreme Court Opinion specifically identified which questions still needed to be addressed. In recognizing that "[o]ur conclusion today does not end this case," the Supreme Court Opinion recognized that it had not been asked to determine whether the District had abused its discretion in approving the demolition of the Complex, but it made no reference to the need for the Court of Appeal to determine the standard of review that should apply in making this determination. In fact, the Supreme Court Opinion stated the standard of review that would apply to both parts of

this two-part inquiry (*see* Supreme Court Opinion, *supra,* 1 Cal.5th at pp. 954, 952-53), and thus referred only to the application of this standard.

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 a potential "loophole in the statutory scheme," pursuant to which an agency would not have to prepare an EIR for a change that would otherwise be required under the fair-argument standard. (*See* Appellate Opinion, *supra,* 11 Cal.App.5th at pp. 606-08 [quoting almost entirely from the Supreme Court Opinion's dismissal of the loophole argument at pages 958-59 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, but the Appellate Opinion appears to misinterpret this Supreme Court Opinion's reasoning. Specifically, the Appellate Opinion fails to recognize the implications of the key distinction emphasized by the Supreme Court Opinion: that the inquiry is "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; *see also id.* at pp. 957-58.)

The Supreme Court Opinion made clear that the inquiry focuses on the original environmental document. 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.) This Court pointed out that this "distinction is important here, because whether 'major revisions' will be required as a result of project changes necessarily depends on the nature of the original environmental document." (*Id.* at pp. 957-58.) This Court explained that the contents of an EIR and an ND will be different, and that "no 'major revision' to the initial EIR is required if the initial EIR already adequately addresses any additional environmental effects that may be caused by the proposed modification" (*Id.* at p. 958), whereas "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*" (*ibid.* [second emphasis added]). Simply put, the inquiry focuses on the content of the original environmental document, and not a new determination of environmental impacts.[1]

As the Supreme Court Opinion recognizes, this inquiry is "a predominantly factual question." (Supreme Court Opinion, *supra,* 1 Cal.5th at p. 953.) The inquiry is whether major revisions to the ***original environmental document*** are necessary because the ***original***

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[1] The College District in its original MND reviewed, in-depth, the campus master plan's possible aesthetic impacts, including impacts arising from construction of parking, demolition of buildings, and preservation of other buildings. Consequently, the aesthetic impacts arising from these activities were not previously "unstudied" and, even if the fair-argument standard applied to this line of inquiry generally, it should not have applied in this instance.

environmental document does not address potential new environmental impacts. As clearly stated in the Supreme Court Opinion, as with the determination that the original environmental document remains relevant, the determination of the extent of this relevance is "a predominantly factual question." (*Id.* 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 erroneously 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 at p. 959].) This directly contradicts the key 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.) In fact, the Supreme Court pointed out that this distinction was "important" in dispelling the plaintiff's concern about a potential "loophole in the statutory scheme," because the plaintiff's argument "would have force" if the inquiry in Guidelines section 15162 referred to environmental effects instead of whether "major revisions" in the original environmental document are required. (*Id.* at 957-58.)

B. The Appellate Opinion Requires an EIR or MND Based on Purely Subjective Lay Opinion.

Regardless of whether the fair-argument standard applies to CEQA's subsequent-review provisions, the Appellate Opinion's overly broad application of the fair-argument standard of review should have no precedential value. As with the Court of Appeal's erroneous application of the "new project test" that this Court found would "inevitably invite arbitrary results" (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. Unlike the Court of Appeal's previous erroneous opinion, however, the Appellate Opinion's erroneous analysis of aesthetics pursuant to the fair-argument standard has implications extending beyond subsequent review of project modifications. As explained below, the Appellate Opinion will inevitably invite arbitrary results by relying on purely subjective lay opinions and by presenting an analysis in conflict with other appellate-court decisions.

1. The 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 broader, 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. Res. 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. Res. Code, §§ 21080(e)(1); *see* Pub. Res. 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. Res. Code, § 21080(e)(2); *see* Pub. Res. 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 a benchmark that is completely arbitrary. 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*").) The benchmark adopted by the Appellate Opinion thus appears to allow any subjective opinion as long as it is "based on direct observation."

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* 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.) In identifying substantial evidence, however, 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, if allowed to have precedential value, will inevitably invite arbitrary results.

2. The Appellate Opinion Conflicts with Other Appellate Decisions.

The Appellate Opinion conflicts with other appellate decisions by allowing a small impact, which would be consistent with its surroundings, to satisfy the fair-argument standard. 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.) The Appellate Opinion reasoned that "substantial evidence shows that the gardens around [the Complex] were ***unique*** in the campus setting." (*Ibid.* [emphasis added].) In support of this position, the Appellate Opinion refers to the comment that the Complex was "the only place left on campus where students, faculty, and staff [could] go to get away from the concrete and rigid plots of monoculture plantings that have taken over the campus." (*Ibid.*) The Appellate Opinion also referenced other similar comments, such as those describing the Complex as "the single surviving semi-natural asylum on the campus," "as having a positive aesthetic effect on the campus, especially in view of all the concrete that has been laid as part of the new landscaping of the campus," as providing a "sanctuary," and as "one of the last green spaces on campus." (*Id.* at pp. 609, 611 [internal quotation marks omitted].)

The focus on whether a part of a site is "unique" turns existing precedent on its head. It conflicts with other appellate decisions in the Court of Appeal for the First District. In *San Francisco Beautiful*, the Court of Appeal for 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.) Indeed, the language quoted from *San Francisco Beautiful* in the Appellate Opinion is taken from another decision by the Court of Appeal for 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: "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 Court of Appeal for 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].)

The Appellate Decision conflicts with decisions from the same and other appellate districts and, if allowed to have precedential value, will inevitably invite arbitrary results.

CONCLUSION

For the reasons specified above, the League respectfully requests that this Court order the depublication of *Friends of the College of San Mateo Gardens v. San Mateo County Community College District* (2017) 11 Cal.App.5th 596.

Very truly yours,

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 3, 2017, I served the within document(s):

REQUEST FOR DEPUBLICATION

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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 3, 2017, at San Francisco, California.

Candy Windsor

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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