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LLP

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March 12, 2019

Presiding Honorable Justice Mary J. Greenwood
and Honorable Associate Justices Adrienne J. Grover
and Allison M. Danner
Sixth District Court of Appeal
333 West Santa Clara Street, Suite 1060
San Jose, CA 95113

Re: Request for Publication: *Turn Down the Lights v. City of Monterey*
Sixth Appellate District Case No. H044656
Monterey County Superior Court Case No. M116731

Dear Honorable Justices:

Pursuant to California Rules of Court, Rule 8.1120, on behalf of the League of California Cities and Respondent City of Monterey in this case, we respectfully request publication of the opinion issued by this Court in *Turn Down the Lights v. City of Monterey* filed February 28, 2019 (the “Opinion”). This letter explains the League’s and the City’s interest in publication and the reason why the Opinion meets a standard for publication under California Rules of Court, Rule 8.1105 (c).

The Opinion should be published because it provides a cogent explanation of what factors may constitute adequate public notice to trigger the requirement for would-be litigants to exhaust administrative remedies before filing suit in court, as prescribed under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The duty outlined in Public Resources Code section 21177 to exhaust administrative remedies applies to categorical exemption determinations where an opportunity to make concerns known is provided and adequate notice is provided by the public agency. Therefore, if the Opinion is published it would provide additional guidance to public agencies by interpreting the principles regarding exhaustion and notice that were explained in the Supreme Court’s decision in *Tomlinson v. County of Alameda*. Having such guidance could avoid recurring litigation challenging the sufficiency of notice under similar circumstances.

1. The League of Cities and the City of Monterey have an interest in the Opinion’s publication. (California Rules of Court, Rule 8.1120(a)(2).)

The League of California Cities is an association of 475 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

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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.

The City of Monterey has an interest in explanations and applications of case law regarding CEQA, especially regarding the requirements of adequate notice in the context of exhaustion of administrative remedies for projects determined to be exempt from CEQA. The City of Monterey is affected like all other public agencies by this decision. Specifically, the City of Monterey has an interest as a city overseeing projects that qualify for an exemption from CEQA. Consequently, the City of Monterey has an interest in the Opinion's publication.

2. The Opinion should be published because it applies case law related to adequate notice to a set of facts significantly different from those stated in published opinions. (Cal. Rules of Court, Rule 8.1105(c)(2).)

As established in *Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, the duty to exhaust administrative remedies "triggered in a categorical exemption case must be decided on a case-by-case basis." Here, the Petitioner argued that their duty to exhaust was not triggered because the face of the City Council agenda for the meeting at which the Council considered a contract for replacing existing streetlights with LED light fixtures did not reference CEQA, even though the supporting three-page publicly available staff report stated clearly and simply that the project was "exempt from CEQA regulations."

The Opinion applied the reasoning of the Court in *Tomlinson*, that for a project subject to exemption entirely from CEQA, "the only potential notice necessary to trigger the duty to exhaust administrative remedies is...notice of the ground for the agency's exemption determination and a hearing or other opportunity for members of the public to raise objections. (*Id.* at 291.) The Opinion holds the Monterey City Council's agenda description of its plan was a sufficient description for concerned residents to investigate the matter further by reading the corresponding staff report or attending the meeting where the plan was to be discussed. A concerned resident could have found the CEQA discussion in the staff report with "relative ease" because it was three pages long and "unambiguously stated" the project was "exempt from CEQA under Guidelines section 15302."

The Opinion found that notice of a CEQA determination is not required "to be given on the meeting agenda as opposed to in an accompanying staff report." This portion of the Opinion is important in that it distinguishes *Defend Our Waterfront v. State Lands Commission* (2015) 240 Cal.App.4th 570, on the unique facts of that case and declines to interpret the holding in that case to create a mandatory agenda notice requirement for all exemption determinations. Because sufficient notice was found to

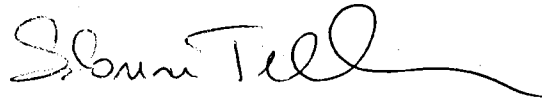
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have been provided on the record in this case, the Opinion concluded the duty to exhaust was triggered and Petitioner failed to provide evidence of a defect in the notice.

Projects that are eligible for an exemption from CEQA are often assumed to be uncontroversial and sometimes are not publicized as widely or in as much detail as required for a project that requires fuller environmental review. The issue of what kind of agency statements and documents may constitute adequate notice to trigger the requirement to exhaust available administrative remedies under CEQA is likely to arise repeatedly for local agencies considering projects subject to exemption. Publication of this Opinion would benefit all public agencies by providing one common example of a potentially acceptable form of notice for similarly exempt projects. Publication of the Opinion is justified because it applies the law to a new set of facts, thereby clarifying the law and satisfying the requirements for publication under California Rules of Court, Rule 8.1105, subdivision (c)(2).

On behalf of the League of California Cities and the City of Monterey, we respectfully request that the Court certify the Opinion for publication.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sabrina Teller", with a long horizontal flourish extending to the right.

Sabrina V. Teller

cc: Service list

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Superior Court of California Case No.: M116731

PROOF OF SERVICE

I, Judith A. Salas, am employed in the County of Sacramento. My business address is 555 Capitol Mall, Suite 800, Sacramento, CA 95814, and email address is jsalas@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.

On March 12, 2019, I served the following:

REQUEST FOR PUBLICATION

- BY FIRST CLASS MAIL** by causing a true copy thereof to be placed in a sealed envelope, with postage fully prepaid, addressed to the following person(s) or representative(s) as listed below, and placed for collection and mailing following ordinary business practices.
- BY ELECTRONIC TRANSMISSION OR EMAIL** by causing a true copy thereof to be electronically delivered to the following person(s) or representative(s) at the email address(es) listed below, via the Court's electronic filing service provider. I did not receive any electronic message or other indication that the transmission was unsuccessful.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12TH day of March, 2019, at Sacramento, California.


Judith A. Salas

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