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October 8, 2015

Honorable Presiding Justice Ignazio J. Ruvolo
Honorable Associate Justice Timothy A. Reardon
Honorable Associate Justice Jon B. Streeter
California Court of Appeal
First Appellate District
350 McAllister Street
San Francisco, CA 94102

Re: Request for Publication of *Berkeley Hillside Preservation v. City of Berkeley*
(September 23, 2015; Case No. A131254)

Dear Presiding Justice Ruvolo and Justices Reardon and Streeter,

Pursuant to California Rule of Court 8.1120(a), the California State Association of Counties (CSAC) respectfully requests publication of the Court's opinion in *Berkeley Hillside Preservation v. City of Berkeley* (September 23, 2015; Case No. A131254).

I. Interest of the California State Association of Counties

Established in 1895, CSAC is the unified voice of all 58 counties in California. Governed by elected county supervisors, CSAC is a nonprofit corporation dedicated to representing California county governments before the courts, federal government, and the California Legislature. CSAC sponsors a Litigation Coordination Program that is administered by the County Counsels' Association of California and overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

II. Reasons Supporting Request for Publication

The opinion meets the criteria for publication because it provides guidance on several legal issues of continuing public importance to California counties, cities, and other public agencies, advances a recent clarification of a statute, and makes a significant contribution to legal literature. (Cal. Rules of Court, rule 8.1105, subds. (c)(4), (6) and (7).) In particular, the opinion addresses three issues under the California Environmental Quality Act (CEQA) that, if published, would greatly assist counties, cities, and other public agencies in complying with CEQA and thus avoid the expenditure of public money on unnecessary or legally inadequate CEQA review.

First, the Court's opinion is the first to apply CEQA's unusual circumstances exception to categorical exemptions as that exception was recently articulated by the California Supreme Court. On appeal in *Berkeley Hillside*, the Supreme Court clarified that the unusual circumstances exception does not apply whenever it can be shown that a project may have a potentially significant effect on the environment, but where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. This opinion makes a significant contribution to the CEQA literature by explaining, in detail, that the project's size, location, and setting perhaps make it atypical as generally understood by a layperson, but not "unusual" within the

meaning of CEQA, especially given the substantial evidence relied upon by the City. The unusual circumstances exception arises frequently in public agencies' administration of CEQA, and the Court's discussion provides important guidance in applying the Supreme Court's recent interpretation.

Second, publishing the opinion would benefit future CEQA parties—and future courts considering their claims—by providing clear direction regarding the proper standard of review courts should apply when reviewing an agency's decision that a project does not present unusual circumstances. The opinion is the first to apply the Supreme Court's clarification that an agency's unusual circumstances determination is reviewed under the deferential substantial evidence standard of review. The Court correctly explains, to the benefit of future parties, that this standard is "stringent" and "deferential," and that petitioners must "come to terms" with record evidence supporting an agency's determination. By explaining and applying this standard, the Court's opinion advances the Supreme Court's resolution of the proper standard of review of the unusual circumstances exception, thus providing important guidance to future litigants and courts.

Third, the opinion makes a significant contribution to CEQA case law by clarifying an important issue regarding mitigation measures and their relationship to categorical exemptions. Here, appellants argued that the City's requirement of a traffic management plan for the proposed project precluded application of categorical exemptions because such a plan indicates that the project will have a significant effect on the environment. However, the Court held that a traffic management plan does not preclude a categorical exemption where the purpose of the plan is not to mitigate environmental impacts. After a close analysis of the facts, the Court found that the traffic management plan at issue was not proposed to mitigate environmental impacts, and that managing traffic during construction is a common and typical concern. The opinion contributes significantly to CEQA literature by reviewing and explaining relevant case law on the subject of mitigation measures and categorical exemptions, and applying this law to a new set of facts.

III. Conclusion

Publishing this case would greatly assist California counties, cities, and other public agencies in addressing future claims involving categorical exemptions under CEQA. The Court's opinion is clear, well-written, and rich in both factual and legal analysis. By identifying the relevant facts and carefully applying the Supreme Court's decision, the opinion provides clear guidance on several issues of continuing importance to California's public agencies, litigants, and the public in areas that required clarity. CSAC therefore respectfully requests that the Court order full publication of the opinion.

Very truly yours,

/s/

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