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August 16, 2013

File No. 99005

VIA MESSENGER

Hon. Judith McConnell, Presiding Justice  
California Court of Appeal  
Fourth Appellate District, Division One  
750 B Street, Suite 300  
San Diego, CA 92101

~~Court of Appeal~~ Fourth District  
**FILED**  
**AUG 19 2013**  
Kevin J. Lane, Clerk  

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DEPUTY

Re: *San Diego Citizenry Group v. County of San Diego*  
Fourth District Court of Appeal Case No. D059962  
Request for Publication (Cal. Rules of Court, Rule 8.1120(a))

Dear Presiding Justice McConnell:

Pursuant to Rule 8.1120 of the California Rules of Court, and on behalf of the California State Association of Counties ("CSAC"), we respectfully urge this Court to publish the Court of Appeal's opinion in *San Diego Citizenry Group v. County of San Diego* (2013), D059962 ("SDCG" or the "Opinion").

This letter sets forth CSAC's interest in publication and the reasons we believe SDCG meets the standards for publication set forth in California Rule of Court 8.1105(c). As described in more detail below, SDCG provides direct guidance regarding the scope of legislative authority to define project objectives in an ordinance of broad applicability, and the extent to which environmental impact reports ("EIR") for such ordinances must discuss and consider feasible mitigation measures and project alternatives. Most CEQA case law arises in the context of particular projects, and there is relatively little case law to provide guidance to counties when enacting ordinances that broadly apply to a county or an area of a county. The Opinion also clarifies the way in which the compliance with law prong of the abuse of discretion standard is applied in reviewing determinations in a certified EIR, clarifying and explaining an existing rule of law. See Rule of Court 8.1105(c) subsections (2) and (3). In addition, the fact pattern presents legal issues of continuing public interest. See Rule of Court 8.1105(c) subsection 6.

**A. The Interest of the California State Association of Counties In Publication Of The Opinion**

CSAC is a non-profit corporation with membership consisting of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is 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.

**B. The Opinion Meets the Requirements for Publication**

1. The Opinion Provides Important Guidance Regarding the Scope of Legislative Authority to Define Project Objectives in an Ordinance of Broad Applicability

*SDCG* merits publication on many grounds. The Opinion is a cogent explication of several primary concepts of CEQA law as they relate to judicial review EIRs, and in particular an EIR evaluating an ordinance of broad applicability. The Opinion deftly covers such diverse issues as the adequacy of mitigation measures and the required level of discussion of significant impacts. The Opinion provides critical guidance to counties, as there is little or no CEQA case law governing the CEQA evaluation of such ordinances.

One of the fundamentally important holdings in the Opinion is that a city or county, in exercising its legislative function, need not discuss or consider a generalized suggestion that further mitigation is required to be set forth in an EIR, when the EIR already evaluates mitigation for the uses allowed by the ordinance, and when that further mitigation would be inconsistent with the county's core legislative objectives. Similarly, the case holds that a legislative body may reject alternatives as infeasible if the alternatives would not meet the project's legislative objectives. The ability of cities and counties to define their legislative goals and pass legislation that meets these goals is critical to basic legislative functioning. *SDCG* contributes significantly to a clear understanding of the interplay between CEQA and legislative authority in the context of the analysis of mitigation measures and alternatives, and should be published.

Other published cases address the general concept of the feasibility of mitigation measures or alternatives, but none of the existing cases directly address the deference given to a lead agency within the context of an ordinance of broad applicability. Indeed, most of the cases cited by the *SDCG* Court to support the Court's holding regarding mitigation measures and project alternatives address individual discretionary approvals rather than a broad-based ordinance. *See, e.g., Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4<sup>th</sup> 1042 [expansion of a hospital campus]; *Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist.* (1994) 24 Cal.App.4<sup>th</sup> 826 [construction of an elementary school]; *Tracy First v. City of Tracy* (2009) 177 Cal.App.4<sup>th</sup> 912 [construction of a grocery store]; *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4<sup>th</sup> 704 [small residential subdivision]; *Laurel Heights Improvement Assn. of San Francisco, Inc. v. The Regents of the University of California* (1988) 47 Cal.3d 376 [relocation of a portion of a pharmacy school]; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 [development of resort hotel].

Given this long line of cases considering the sufficiency of mitigation and alternatives analyses of individual discretionary projects, it is both unsurprising and notable that *SDCG* does not cite to numerous cases that address EIRs of broad ordinances. It is precisely because such cases do not abound that *SDCG* makes an important contribution to the development of the law. In

defining the interplay of legislative authority and the required content and analysis of an EIR, the Opinion makes a significant contribution to the development of CEQA and land use law. See Rule of Court 8.1105(c)(2), (3).

2. The Opinion Clarifies the Legal Standards of Review Applied to EIR Contents

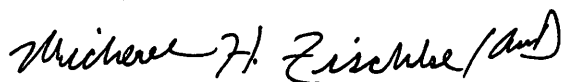
*SDCG* also clearly explains the legal distinction between how a court reviews what information an EIR must contain, and how a court reviews a claim regarding the adequacy of such information when it is provided.

“When an agency fails to include information mandated by CEQA in the environmental analysis, the agency fails to proceed in a manner required by law. [] However, where the agency includes the relevant information, but the *adequacy* of the information is disputed, the question is one of substantial evidence.” Slip Op. at p. 13 (citations omitted).

This issue is often raised in CEQA litigation challenging county enactments, and the Opinion is important in confirming that whether an agency has complied with the law is determined based on a review of the record as a whole. Slip Op. at p. 14. The Opinion also provides an important reminder that an EIR “is presumed to be legally adequate and the party challenging the legal adequacy bears the burden of establishing otherwise.” Slip Op. at p. 14. This statement of law is of particular importance when the project in question is an ordinance of broad applicability wherein a legislative body has made policy decisions about general land use.

For the foregoing reasons, CSAC respectfully urges the Court to publish the Opinion.

Sincerely,



Michael H. Zischke

MHZ/amd

PROOF OF SERVICE AND CERTIFICATION

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2049 Century Park East, 28th Floor, Los Angeles, California 90067-3284.

(FOR MESSENGER) My business address is Nationwide Legal, 1609 James M. Wood Blvd. 2nd Fl., Los Angeles CA 90015-1005.

On August 16, 2013, I served the foregoing document(s) described as **REQUEST FOR PUBLICATION (Cal. Rules of Court, Rule 8.1120(a))** on ALL INTERESTED PARTIES in this action by placing  the original  a true copy thereof enclosed in a sealed envelope addressed as follows:

**See Attached Service List**

On the above date:

(BY  U.S. MAIL/ EXPRESS MAIL) The sealed envelope with postage thereon fully prepaid was placed for collection and mailing following ordinary business practices. I am aware that on motion of the party served, service is presumed invalid if the postage cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing set forth in this declaration. I am readily familiar with Cox, Castle & Nicholson LLP's practice for collection and processing of documents for mailing with the United States Postal Service and that the documents are deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business.

(BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

(BY FACSIMILE TRANSMISSION) On August 18, 2013, at \_\_\_\_ a.m./p.m. at Los Angeles, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2.306 of the California Rules of Court. The telephone number of the sending facsimile machine was (\_\_\_\_) \_\_\_\_-\_\_\_\_, and the telephone number of the receiving facsimile number was (\_\_\_\_) \_\_\_\_-\_\_\_\_. A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

(BY E-MAIL OR ELECTRONIC TRANSMISSION) - On \_\_\_\_\_, at \_\_\_\_ a.m./p.m. at Los Angeles, California, I served the above-referenced document by electronic mail to the e-mail address of the addressee(s) pursuant to Rule 2.260 of the California Rules of Court. The transmission was complete and without error and I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

(BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

(FEDERAL ONLY) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I hereby certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 16, 2013, at Los Angeles, California.

  
\_\_\_\_\_  
Kim L. Miller

San Diego Citizenry Group  
v.  
County of San Diego  
(Super. Ct. No. 37-2010-00099703 CU-TT-CTL)

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<p>Fourth Appellate District Symphony Towers Clerk of the Court 750 "B" Street Suite 300 San Diego, CA 92101-8189 Ph: 619.744.0760</p>	<p>1 original and 4 copies to the court</p>
<p>Superior Court of San Diego Hall of Justice Hon. Timothy B. Taylor, Dept. 72 330 W. Broadway San Diego, CA 92101 Phone: 619.450.7275</p>	<p>Superior Court of San Diego</p>