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December 17, 2012

The Honorable William J. Murray
The Honorable Vance W. Raye
The Honorable Harry E. Hull
California Court of Appeal, Third Appellate District
621 Capitol Mall, 10th Floor
Sacramento, California 95814-4719

Re: Request for Publication
Sierra Club v. County of Tehama
(Third District Court of Appeal Case No. C066996)

Dear Justices Murray, Raye, and Hull:

Pursuant to California Rules of Court, rule 8.1120, subdivision (a), we respectfully request publication of the opinion issued by this Court in *Sierra Club v. County of Tehama*, Case No. C066996, filed on November 30, 2012 (the Opinion).

We submit this letter on behalf of the California State Association of Counties (CSAC) and the League of California Cities (League). This letter sets forth CSAC's and the League's interest in publication and the reasons CSAC and the League believe the Opinion meets the standards for publication set forth in California Rules of Court, rule 8.1105, subdivision (c).

The Parties to the appeal have not authored this letter in whole or in part, nor have the parties to the appeal made a monetary contribution for the preparation of this letter.

As described in more detail below, the Opinion discusses whether a county's general plan update (GPU) was internally consistent, and whether a tiered environmental impact report (EIR) was the appropriate environmental review document under the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000 *et seq.*) In addition, the Opinion considers whether the GPU EIR's project description was accurate and whether the EIR properly analyzed water supply impacts. The Opinion determines that the GPU was internally consistent and that it was proper for the county to prepare a first tier EIR. In reaching the conclusion that the EIR's water supply analysis was adequate, the Court applies the analysis in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412 and *In Re Bay Delta etc.*,

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(2008) 43 Cal.4th 1143 to circumstances that are frequently encountered by public agencies contemplating long-term planning and development projects. For this reason, the Opinion is of continuing public interest as it is relevant to public agencies that must consider and analyze complex water-supply issues before approving certain projects. Additionally, few published cases address first tier environmental review of general plan updates or amendments. The Opinion provides additional clarity and explanation of rules of law on an issue that frequently arises. It therefore merits publication.

1. CSAC and the League have an interest in publication of the *Sierra Club v. County of Tehama* Opinion. (California Rules of Court, Rule 8.1120, subdivision (a)(2).)

CSAC is a non-profit corporation. The membership consists 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.

The League is an association of 467 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 League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide or nationwide significance. The Committee has identified this case as having such significance.

CSAC and the League have an interest in the development of case law under CEQA. In particular, CSAC and the League have an interest in understanding the elements that compromise a legally adequate first-tier environmental review document for a general plan update. In addition, CSAC and the League have an interest in understanding the legal requirements for analyzing water supply impacts under CEQA.

The continued development of case law addressing these issues assists California cities and counties in complying with CEQA while avoiding the expenditure of public money on unnecessary, premature, or legally inadequate CEQA review.

2. The Opinion explains existing rules of law and involves a legal issue of continuing public interest. (California Rules of Court, Rule 8.1105, subdivision (c)(3), (6).)

CSAC and the League support publication of the Opinion.

Under the State Planning and Zoning Law, cities and counties are legally required to adopt general plans, and to update those plans on a regular basis. Those decisions are

subject to the environmental review requirements of CEQA. For this reason, cities and counties often must confront the prospect of preparing a legally adequate EIR to support their planning efforts.

Section I.C of the Opinion (Slip Opinion, pp. 19-24.) addresses claims that the GPU suffered from internal inconsistency. Based on the experience of the membership of the League and CSAC, it is not uncommon for opponents of controversial projects to allege general plan updates or amendments suffer from internal inconsistency. These allegations can often create substantial uncertainty and unnecessary delays in adopting general plan updates or amendments.

Section I.C offers further explanation on the application of Government Code, section 65300.5. The public has a continuing interest in clarifying this section of the Government Code to assist agencies in the efficient development of legally adequate general plans and general plan updates.

Section II.B of the Opinion (Slip Opinion, pp. 29-36) considers whether the GPU EIR was properly prepared as a first-tier environmental review document. The opinion provides extensive discussions regarding the tiering mechanism under CEQA and how this mechanism can be properly used to facilitate environmental review of general plan updates. The discussion explains and clarifies the level of detail appropriate for first tier documents in contrast to the detail required for specific projects which might follow. The public has a continuing interest in the efficient preparation of legally adequate CEQA documents, and this discussion assists cities preparing environmental review documents for general plan updates.

Section II.E of the Opinion (Slip Opinion, pp. 40-48) addresses whether the GPU EIR analyzed an accurate and stable description of the project. The Opinion clarifies the level of detail necessary for analysis of unspecified and uncertain future development in the context of a first tier general plan EIR. Whether a project description provides necessary information to support informed decision-making is a common theme in CEQA challenges to projects. Therefore, clarification of this issue in the context of a first tier EIR prepared for a general plan update will advance the public interest by providing guidance to cities in the process of preparing or updating general plans.

Section II.F.1 of the Opinion (Slip Opinion, pp. 48-54) addresses the adequacy of air quality and greenhouse gas emission analysis and mitigation in the first tier EIR. The opinion clarifies the extent to which emissions from construction impacts were required to be analyzed in a first tier review scenario. Clarification of this topic will assist public agencies in preparing legally adequate, first tier environmental review documents.

Section II.F.2. of the Opinion (Slip Opinion, pp. 54-61) clarifies the analysis and selection of feasible mitigation addressing potential impacts to agriculture. The petitioners disagreed with the County's rejection of mandatory conservation easements as a blanket mitigation measure. The court clarified that the County properly supported its

decision and the disagreement boiled down to one over policy. This is a common dispute between agencies and interest groups, and therefore, clarifying this issue will assist agencies when preparing first tier environmental review documents, especially for general plan amendments or updates.

Section II.F.3 of the Opinion (Slip Opinion, pp. 61-67) addresses whether the analysis of potential water supply impacts in the GPU EIR was legally adequate. As population in the State continues to increase, water supply issues have increasingly become a central aspect of many environmental review documents prepared under CEQA. The Supreme Court has addressed this issue in both *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412 and *In Re Bay Delta etc.* (2008) 43 Cal.4th 1143. The Opinion discusses the interaction between these two cases and clarifies the different factual circumstances that each addressed. By explaining the legal rules governing application of CEQA to analysis of water supply impacts, the Opinion makes a significant contribution to the legal literature concerning CEQA compliance in addition to involving a legal issue of continuing public interest.

CSAC and the League therefore respectfully submit that the Opinion warrants publication under California Rules of Court, Rule 8.1105, subdivisions (c)(3), (6).

3. The Opinion should be published because it applies existing rules of law to a set of facts significantly different from those stated in published opinions. (California Rules of Court, Rule 8.1105, subdivision (c)(2).)

In addition to the reasons discussed above, the Opinion is appropriate for publication because it applies existing rules of law to factual circumstances that have been addressed in few published cases. The Opinion reviews a first-tier EIR prepared for a general plan update and provides further discussion on the maximum growth rates analyzed and assumptions relied on by the county. In addition, the Opinion discusses the distinction between the worst-case growth rate and actual growth rate predicted and analyzed by the county in the EIR.

Few cases have addressed the adequacy of first tier EIRs prepared for the update or adoption of general plans. The case *In Re Bay Delta etc.* (2008) 43 Cal.4th 1143 discusses CEQA's tiering principles, but in the context of an EIR prepared for a long-term Bay-Delta management plan. In the case *Koster v. County of San Joaquin* (1996) 47 Cal.App.4th 29, the court discussed the concept of tiering, but the main issue before the court was whether the county had approved an activity subject to legal review. (*Id.*, pp. 39-40.) The appellate court remanded the issue of whether the county's first-tier EIR prepared for a general plan amendment was adequate. (*Id.* at p. 45.) The case *Endangered Habitats League v. State Water Resources Control Board* (1997) 63 Cal.App.4th 227 expands on the tiering analysis offered in *Koster*, but not in the context of a general plan amendment or update. (*Id.* at pp. 236-237.)

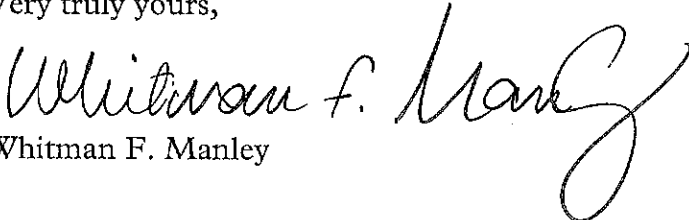
Finally, in *Watsonville Pilots Association v. City of Watsonville* (2010) 183 Cal.App.4th 1059, the appellate court considered whether a general plan EIR prepared as a first tier environmental document adequately analyzed aviation related impacts, whether it considered and evaluated a reasonable range of alternatives, and whether it adequately analyzed the water supply impacts. (*Id.* at pp. 1081, 1086-1087, 1090-1091.) While the *Watsonville* decision and the Opinion both address water supply issues, the Opinion addresses additional issues not present in the *Watsonville* case, such as whether the county properly prepared a tiered EIR in the first instance, and whether the EIR's project description was adequate. The *Watsonville* case did not address the analysis of worst-case or agency predicted growth rates—a primary topic in the Opinion.

Because few published cases have addressed first tier EIRs in the context of general plans, or an agency's selection and analysis of growth rates, the Opinion is therefore appropriate for publication under California Rules of Court, Rule 8.1105, subdivision (c)(2). Publication of the sections cited above would provide useful guidance to agencies in the process of adopting or updating a general plan through the CEQA tiering process.

4. Conclusion

CSAC and the League believe the Opinion meets several of the standards for publication set forth in California Rules of Court, rule 8.1105, subdivision (c). On behalf of CSAC and the League, we respectfully request that the Court certify the Opinion for publication. In the alternative, if the Court does not find the Opinion appropriate for full publication, CSAC and the League request that the Opinion be partially published in accordance with California Rules of Court, rule 8.1110, subdivision (a). Specifically, the Factual and Procedural Background, sections I.C, II.B, II.E, II.F.1, II.F.2, and II.F.3 of the Opinion should be published if it is certified only for partial publication. Discussions in section II of the opinion are of particular importance to the requesting parties, due to the limited number of published cases pertaining to these issues in the context of general plan updates or amendments.

Very truly yours,


Whitman F. Manley

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Third District Court of Appeal Case No. C066996

PROOF OF SERVICE

I am employed in the City and County of Sacramento. My business address is 455 Capitol Mall, Suite 210, Sacramento, California 95814. I am over the age of 18 years and not a party to the above-entitled action.

I am familiar with Remy, Thomas, Moose and Manley, LLP's practice whereby the mail is sealed, given the appropriate postage and placed in a designated mail collection area. Each day's mail is collected and deposited in a U.S. mailbox after the close of each day's business.

On December 17, 2012, I served the following:

LETTER REGARDING REQUEST FOR PUBLICATION

- On the parties in this action by causing a true copy thereof to be placed in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing mail addressed as follows; or
- On the parties in this action by causing a true copy thereof to be delivered via Federal Express to the following person(s) or their representative at the address(es) listed below; or
- On the parties in this action by causing a true copy thereof to be delivered by facsimile machine number (916) 443-9017 to the following person(s) or their representative at the address(es) and facsimile number(s) listed below; or
- On the parties in this action by causing a true copy thereof to be electronically delivered via the internet to the following person(s) or representative at the address(es) listed below:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct and this Proof of Service was executed on this 17th day of December 2012 at Sacramento, California.

Rachel N. Jackson

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