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October 3, 2023

VIA E-FILING

The Honorable Kathleen E. O'Leary, Presiding Justice
The Honorable Joanne Motoike, Associate Justice
The Honorable Thomas A. Delaney, Associate Justice
California Court of Appeal
Fourth Appellate District, Division Three
601 W. Santa Ana Boulevard
Santa Ana, CA 92701

Re: Request for Publication
Historic Preservation Alliance, et al. v. City of Laguna Beach, et al.
Fourth Appellate District, Division Three Case No. G061671

Dear Presiding Justice O'Leary and Associate Justices Motoike and Delaney:

Pursuant to California Rules of Court, Rule 8.1120, subdivision (a), on behalf of the League of California Cities and the City of Glendale, we respectfully request publication of the entire opinion issued by this Court and authored by Justice Motoike in *Historic Preservation Alliance, et al. v. City of Laguna Beach, et al.*, filed on September 13, 2023 (the Opinion). The League of California Cities (Cal Cities) is an association of California cities committed to protecting cities through education and advocacy to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, composed of 24 city attorneys from all regions of the State, and when authorized by the Committee, Cal Cities weighs in on legal issues where its participation is likely to help advance the legal interests of all California cities. The Legal Advocacy Committee has authorized Cal Cities to request publication of the Opinion. As a member of Cal Cities, the City of Glendale (Glendale) shares these interests and supports publication of the Opinion to provide important clarity for all California cities. This letter sets forth the reasons the Opinion meets the standards for publication under California Rules of Court, Rule 8.1105, subdivision (c).

The Opinion is an important contribution to jurisprudence under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 *et seq.*) and the State CEQA

The Honorable Kathleen E. O'Leary, Presiding Justice
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October 3, 2023
Page 2

Guidelines (Cal. Code Regs., tit. 14, § 15000 *et seq.*) (the CEQA Guidelines). It is the sole decision to provide an extensive and clear explanation of the Public Resources Code and the

CEQA Guidelines regarding the responsibilities of local agencies considering projects that are alleged to adversely affect historic resources and clarifies the standard of judicial review and burden of proof to be used by the courts when an authorized categorical exemption is invoked to approve such projects. The Opinion articulates an important analysis of those provisions, clarifies their role and application, and complements a body of law that is of broad and continuing public interest. For these reasons, the Opinion warrants publication.

Cal Cities and the City of Glendale have a vital interest in ensuring greater clarity regarding the mandates of CEQA. Cities are routinely required to navigate CEQA prior to considering approval of proposed discretionary projects within their jurisdictions, including projects similar to the one at issue in the Opinion. Glendale has a particular interest in the publication of the Opinion because it has nine (9) existing historic districts and with more in process, it has an active and vocal historic resources advocacy group that frequently comments upon and sometimes challenges discretionary projects involving historic resources. Therefore, the Court's interpretation of CEQA and the CEQA Guidelines is of great importance. California cities and counties have a keen interest in case law that explains and clarifies their obligations and responsibilities with respect to the identification of historic resources and applicable categorical exemptions, including the historical resource exemption set forth in Section 15331 of the CEQA Guidelines. The development of published case law addressing this exemption helps all local agencies comply with CEQA.

An opinion "should be certified for publication in the Official Reports" if it meets any of the nine separately listed criteria in California Rules of Court, Rule 8.1105(c). The Opinion squarely meets at least three of the criteria:

- (1) It "[a]dvances a . . . clarification[,] and construction of an existing rule of law and provisions of a statute";
- (2) It "[a]pplies an existing rule of law to a set of facts significantly different from those stated in published opinions"; and
- (3) It "[i]nvolves a legal issue of continuing public interest."

(Cal. Rules of Court, Rule 8.1105, subds. (c)(2), (4) & (6).)

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1. The Opinion should be published because it advances a clarification and construction of existing provisions of CEQA. (Cal. Rules of Court, Rule 8.1105, subd. (c)(4).)

The “Class 31” historical resource exemption has not been analyzed in any published decision since its promulgation in 1998. This is the first Opinion that builds on and expands an analysis of CEQA cases, statutes and regulations to clarify and construe how the “Class 31” exemption should be interpreted and applied by local agencies and, equally important, how those local agency determinations should be reviewed by the courts.

The standard of judicial review and the associated burdens of proof dominated the parties’ briefing and argument and were the pivotal legal issues addressed by the Opinion. In particular, the Court resolved those issues as follows:

- (1) Where there is substantial evidence in the whole of the administrative record to support a local agency’s finding that a project is consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties (the Secretary’s Standards), the project is therefore categorically exempt under the “Class 31” exemption; and
- (2) The substantial evidence standard, rather than the fair argument test, applies where the application of the “Class 31” exemption and the historical resource exception to the exemption (CEQA Guidelines, § 15300.2, subd. (f)) depend on the same issue – *i.e.*, whether the project complies with the Secretary’s Standards.

With particular regard to the latter issue, Appellants persistently asserted that they need only make a fair argument a project does not comply with the Secretary’s Standards in order to compel the preparation of an environmental impact report. The Opinion (at pp. 22-23) rejected this argument, pointing out the obvious: “If this was all the challenger had to establish, the historical resource categorical exemption would be meaningless.”

In short, publication of the Opinion provides significant benefit to local agencies, the public, and the courts to finally explain how the “Class 31” historical resource exemption may apply to proposed projects involving possible adverse effects to historic buildings, and further explain how findings that a project is consistent with the Secretary’s Standards shall be reviewed by the courts.

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

The City of Laguna Beach approved the residential remodel project proposed by Real Parties in Interest Ian and Cherlin Kirby based on a determination that the proposed project was categorically exempt from CEQA's review under the "Class 31" historical resource exemption. (CEQA Guidelines, § 15331.) This determination was grounded on the City of Laguna Beach's factual finding that the project, as revised on several occasions before its eventual approval, is consistent with the Secretary's Standards, which provides guidelines for rehabilitating historic buildings.

While there are several published CEQA cases dealing with the consideration of and action on projects implicating possible historic resources, a number of which were cited and discussed in the Opinion, there is not a single published decision interpreting and applying the "Class 31" historical resource exemption. The briefs and oral argument of the parties recognized this void. The factual background of the Opinion, especially the invocation and application of the "Class 31" historical resource exemption and its reliance on the Secretary's Standards, is neither identical nor even similar to the facts underlying any other published case. Appellants' Petition for Rehearing (at p. 5) concedes the lack of precedent.

As a result, the Court's careful and in-depth recital and analysis of the CEQA review process, the historical resource exemption, the historical resource exception, the role of the Secretary's Standards, and the nuanced interrelationship of these concepts uniquely provide concise, comprehensive and meaningful guidance to parties, local agencies and California courts when analyzing projects and the potential application of the "Class 31" exemption.

3. The Opinion should be published because it involves a legal issue of continuing public interest. (Cal. Rules of Court, Rule 8.1105, subd. (c)(6).)

The public's continuing interest in clarifying the scope of CEQA supports publication. In 2022, California courts filed approximately 16 published CEQA decisions, reflecting CEQA's importance and influence on the activities of the state, local agencies, and the public. Although CEQA has been widely litigated, including several cases involving historic resource issues, there is a complete absence of published case law concerning the interpretation and application of CEQA Guidelines Section 15331 to discretionary projects found to be consistent with the Secretary's Standards. It is in the continuing public interest to fill this gap and thereby reduce the probability that the issues settled by the Opinion will be relitigated in the future at the public taxpayers' expense.

The Honorable Kathleen E. O'Leary, Presiding Justice
The Honorable Joanne Motoike, Associate Justice
The Honorable Thomas A. Delaney, Associate Justice
October 3, 2023
Page 5

For each of the foregoing reasons, the League of California Cities and the City of Glendale respectfully request that the Court publish its Opinion in *Historic Preservation Alliance v. City of Laguna Beach*.

Respectfully submitted,

LEAGUE OF CALIFORNIA CITIES



Sheri Chapman, General Counsel

CITY OF GLENDALE



Michael J. Garcia, City Attorney

CA 4th District Court of Appeal Division 3 Court Name	PROOF OF SERVICE	G061671 Case Number
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10-03-2023

Date

/s/Gillian van Muyden

Signature

van Muyden, Gillian (176801)

Last Name, First Name (Attorney Number)

Glendale City Attorney's Office

Firm Name
