No. S251709

IN THE SUPREME COURT OF CALIFORNIA

PROTECTING OUR WATER & ENVIRONMENTAL RESOURCES et al.,

Plaintiffs and Appellants,

vs.

STANISLAUS COUNTY et al.,

Defendants and Respondents.

After a Decision by the Court Of Appeal, Fifth Appellate District,
Case No. F073634

Appeal from the Stanislaus County Superior Court
Case No. 2006153
The Honorable Roger M. Beauchesne, Judge, Presiding

APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANTS AND RESPONDENTS; AMICUS CURIAE BRIEF OF LEAGUE OF CALIFORNIA CITIES

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

OTHER AUTHORITIES

TABLE OF AUTHORITIES
(continued)

Page

REGULATIONS

APPLICATION TO FILE AMICUS CURIAE BRIEF

The League of California Cities ("League") requests leave to file an amicus curiae brief in support of the position of Defendants and Respondents County of Stanislaus, et al.

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 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 Court's decision in this matter involves important issues whose resolution may significantly impact the League's interests and the interests of cities and public agencies generally. Cities and other local agencies are subject to and must interpret, implement and apply the California Environmental Quality Act ("CEQA"; Pub. Resources Code, § 21000 et seq.) and the CEQA Guidelines (14 Cal. Code Regs., § 15000 et seq.) on a regular basis when considering applications for, analyzing, and issuing local land use approvals. Such local land use approvals by cities may include, but are not limited to, well-construction permits like those issued by Stanislaus County which are at issue in this case. Local agencies are

expressly required by CEQA to prepare and adopt local implementing procedures to facilitate CEQA compliance. In recognition that they are in the best position to determine the ministerial or discretionary nature of their own permitting and approval processes, local agencies are also encouraged to include in their local implementing procedures a list of ministerial local approvals – which are excluded from CEQA's scope – based on analysis and interpretation of their own laws.

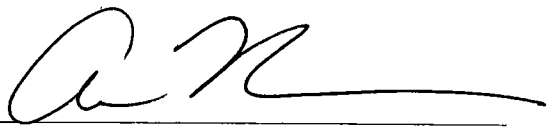
Plaintiffs and appellants in this matter have argued that courts reviewing CEQA challenges to local agency approvals should accord no deference at all to such local agency determinations. This position is incorrect because it is contrary to CEQA, the CEQA Guidelines, and relevant case law, and would negate the utility of legally-required local implementing procedures that are intended to (and do) make compliance with CEQA – a complex and detailed law – more tractable and efficient for all involved.

As the representative of hundreds of cities throughout the state, the League is uniquely situated to provide the Court with insight about the legal and practical implications of the Court's ultimate decision on this issue for cities and other local agencies. Consequently, the League respectfully requests that the Court grant it leave to file this amicus curiae brief, so that the Court may consider the interests of cities and other local agencies in complying with their obligations under CEQA and the CEQA Guidelines.

Dated: May 8, 2019

Respectfully submitted,

MILLER STARR REGALIA

By: 

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AMICUS CURIAE BRIEF

I. INTRODUCTION

For more than 35 years, Stanislaus County's legislatively adopted CEQA implementing procedures have set forth the County's determination – based on its analysis of its own laws and regulations – that well construction permits issued under Chapter 9.36 of the County Code are among the "projects or permits over which the [County] has only ministerial authority." (CEQA Guidelines, § 15022(a)(1)(B).) Notwithstanding the governing case law and plain text of the relevant CEQA Guidelines, and the County's long experience and intimate familiarity with its own permitting system, plaintiffs and appellants ("appellants") argue this Court should give "no weight" to the County's formal classification in its CEQA implementing procedures of its well construction permits as ministerial approvals, which are exempt from CEQA review. (Answer Brief, 24.)

This issue is of great practical importance to local agencies throughout the state who are tasked with implementing CEQA and rely upon the case law, the CEQA Guidelines, and their own local CEQA Guidelines and implementing procedures to do so. Because, as explained herein, CEQA requires courts to accord deference and respect to agencies' considered determinations that their own permit approval procedures are ministerial, the League of California Cities (the "League") respectfully

urges this Court to so hold and to reject appellants' contrary argument on this point.

II. RELEVANT LEGAL/REGULATORY BACKGROUND

CEQA applies only to discretionary project approvals or activities, while ministerial projects are excluded (or exempt) from its scope. (Pub. Resources Code, § 21081(a), (b)(1); *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 188.) Certain activities and approvals, such as the issuance of building permits and business licenses, and the approval of final subdivision maps, are presumed to be ministerial in nature absent discretionary provisions in the local ordinance or law establishing the requirements for the permit or approval. (CEQA Guidelines, § 15268(b).) As a matter of policy, a local agency may, consistent with CEQA, adopt an ordinance that allows certain land uses by right without the need to obtain any further discretionary approvals. (E.g., *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2019) 31 Cal.App.5th 80 [city zoning allowed high density multi-family housing by right without CUP; CEQA did not apply to project approval in compliance with zoning]; *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 14, 16 [county winery ordinance intended to streamline winery approval process and promote local viticulture and wine industry allowed certain boutique winery uses by right; given project objectives,

county's EIR "properly identified and discussed [only] mitigation measures that allowed a by-right use without further discretionary approvals"].)

Agencies may also properly adopt ordinances setting forth detailed, technical requirements and standards for permit issuance that are "specifically designed to mitigate environmental impacts through a permitting process." (*Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11, 28 fn. 17.) Such ordinances make the issuance of permits ministerial in nature, because any discretion provided under the ordinance does not "allow[] the agency to *further* mitigate potential environmental impacts to any meaningful degree." (*Ibid.* [analyzing Sonoma County's erosion control/vineyard development permitting ordinance as such an ordinance; court noted if law were otherwise and minor, irrelevant exercises of discretion rendered such ordinances discretionary it "would have the perverse effect of discouraging agencies from enacting [them]"], emph. added.)

Like laws in general, local land use ordinances are becoming increasingly complex; as indicated above, they can be technical, highly detailed, and contain numerous requirements and operative provisions that apply in different ways (or which may not apply at all) to different proposed projects as a result of property locations, physical characteristics, and other circumstances. Accordingly, while some local ordinances *categorically* declare the legislative body's intent that the permitting

scheme thereby established is ministerial in *all* its applications, courts do not unquestioningly accept and are generally "skeptical of such a categorical declaration" because "a determination whether issuing a permit is ministerial or discretionary generally must be made on the basis of the project's particular circumstances[.]" (*Sierra Club v. County of Sonoma, supra,* 11 Cal.App.5th at 24.)

Ultimately, "[w]hether an agency has discretionary or ministerial controls over a project depends on the authority granted by the law providing the controls over the activity. Similar projects may be subject to discretionary controls in one city or county and only ministerial controls in another." (*Id.* at 21, citing CEQA Guidelines, § 15002(i)(2); *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1114-1115.) Moreover, "[t]he relevant question in evaluating whether the approval of a particular project was discretionary is not whether the regulations granted the local agency some discretion in the abstract, but whether the regulations granted the agency discretion regarding the particular project. In other words, a regulation cited as conferring discretion must have been relevant to the project." (*Sierra Club v. County of Sonoma, supra,* 11 Cal.App.5th at 25; *see also McCorkle Eastside Neighborhood Group, supra,* 31 Cal.App.5th at 90 [even where "project involves both discretionary and non-discretionary actions," court held "the discretionary component of the

action must give the agency the authority to consider a project's environmental consequences to trigger CEQA."].)[1]

Whether the particular activity approved will or will not have significant adverse environmental effects is irrelevant to whether the approval is ministerial in nature; absent discretionary authority to deny or shape a proposed activity in response to environmental concerns, the action is ministerial and therefore exempt from CEQA even if "terrible environmental consequences" will result. (*Leach v. City of San Diego* (1990) 220 Cal.App.3d 389, 394, quoting *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 272.) Under the governing

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[1] These authorities recognize both the complex nature of modern land use statutes containing numerous, detailed and often technical provisions, as well as CEQA's project-specific focus. As stated in *Sierra Club*: "The principle that a discretion-conferring provision must have been relevant to the project grows directly out of CEQA's focus on individual projects. [Citation] Our review is directed not to the regulations themselves but to the agency's action in approving the project under those regulations. Thus, any regulation cited as granting discretion to the agency must actually have applied to the project under review. If it did not, the agency could not have exercised discretion under that regulation in approving the project." (*Sierra Club v. County of Sonoma, supra,* 11 Cal.App.5th at 26.) The League recognizes that, in bringing an action based on an alleged "pattern and practice" of CEQA violations in applying a permitting scheme, appellants apparently hope to avoid these limitations on ministerial/discretionary analysis that follow directly from CEQA's project-specific focus. But it seems to the League that, for the same reasons courts are "skeptical" of a "categorical declaration" of an ordinance's ministerial nature in all its applications (*id.* at 24), they should be equally skeptical of a petitioner's blanket assertion that an ordinance is discretionary in all (or even most) of its applications.

"functional test" for distinguishing ministerial from discretionary decisions in the CEQA context, a ministerial approval is held to exist where the applicant can compel project approval without any changes in design that might meaningfully alleviate adverse environmental consequences, and the agency exercises little or no judgment and merely determines whether the project conforms to fixed, objective standards. (CEQA Guidelines, §§ 15357, 15369; *Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286; *see Sierra Club v. Napa County Bd. of Sup'rs* (2012) 205 Cal.App.4th 162; *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924; *Health First v. March Joint Powers Authority* (2009) 174 Cal.App.4th 1135.)

Determining whether a particular action is discretionary or ministerial thus requires careful analysis of the statute or ordinance authorizing and providing controls over the action, and a local agency's consistent treatment and classification of its approval process as ministerial – while not conclusive on the issue – is entitled to judicial deference. (*Sierra Club v. Napa County Bd. of Sup'rs, supra,* 205 Cal.App.4th at 170 ["new Ordinance continued existing policy and practice such that [lot] line adjustments are ministerial acts not subject to CEQA"], 178 [noting CEQA Guidelines "acknowledge that the local public agency is the most appropriate entity to determine what is ministerial, based on analysis of its own laws and regulations, and urge that the agency make that determination

in *its* implementing regulations"]; see, *Sierra Club v. County of Sonoma, supra,* 11 Cal.App.4th at 23-24; CEQA Guidelines, §§ 15022(a)(1)(B), 15268(a), (c).) As noted by a leading CEQA treatise: "The [public] agency's determination is entitled to some deference given that the CEQA Guidelines acknowledge that lead agencies are the most appropriate entities to determine which of their actions are ministerial." (1 Kostka & Zischke, *Practice Under the California Environmental Quality Act* (CEB 2d ed. 2019), § 4.26, p. 4-32 [citing authorities].)

Generally, to the extent the determination that an activity is exempt from CEQA involves factual determinations, it is reviewed by courts for substantial evidence; to the extent it involves pure questions of law, it is reviewed de novo. (*Sierra Club v. County of Sonoma, supra,* 11 Cal.App.5th at 24.) The determination whether a local agency's ordinance or permitting scheme as applied to a particular proposed project is ministerial or discretionary will often involve both questions of law (in interpreting the ordinance's terms) and fact (in determining which of the ordinances' terms are relevant, and whether or how they apply to the particular project). As this Court recently noted – in the different context of assessing the informational sufficiency of an EIR's air quality human health impacts discussion – CEQA issues do not always fit neatly within the traditional procedural (de novo)/factual (substantial evidence) standard of review paradigm, and when factual questions predominate in a "mixed

question" of law and fact "a more deferential standard is warranted." (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, citing *Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.)

III. STATEMENT OF FACTS AND PROCEDURAL HISTORY

The League incorporates by reference herein the Statement of Facts and Statement of the Case contained at pages 13-26 of Respondents' Brief.

IV. ARGUMENT

A. The Plain Text of the CEQA Guidelines Encourages Public Agencies To Analyze Their Own Laws – As To Which They Have The Most Knowledge And Expertise – To Determine Which Project Approvals Are Ministerial, And Logically Recognizes That Public Agencies Are In The Best Position To Do So.

CEQA is a comprehensive and complicated statute which has been referred to as a "brambled thicket" and "an area of the law governed by the unfortunate fact that complicated problems often require complicated solutions." (*Fudge v. City of Laguna Beach* (2019) 32 Cal.App.5th 193, 196.) "Reflecting the need for further elaboration of [its] requirements in implementation, CEQA entrusts to the Governor's Office of Planning and Research (OPR) the responsibility of drafting the [CEQA] Guidelines[,]" which "serve to make the CEQA process tractable for those who must administer it, those who must comply with it, and ultimately, those members of the public who must live with its consequences." (*California*

Building Industry Assn. v. Bay Area Air Quality Management Dist. (2015) 62 Cal.4th 369, 383-384.) Whether considered as regulatory mandates or interpretive aids, this Court "afford[s] great weight to the Guidelines when interpreting CEQA, unless a provision is clearly unauthorized or erroneous under the statute." (*Id.* at 381, citation omitted.) In construing the CEQA Guidelines, this Court applies the principle that "the rules that govern interpretation of statutes also govern interpretation of administrative regulations." (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1097.)

As relevant to the issue of the deference to be accorded local agency determinations regarding the "ministerial" versus "discretionary" nature of their own laws and regulations governing project approval decisions, the CEQA Guidelines expressly provide:

> (a) Ministerial projects are exempt from the requirements of CEQA. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case-by-case basis.
>
> ....
>
> (c) Each public agency should, in its implementing regulations or ordinances, provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.

(CEQA Guidelines, § 15268(a), (c).)

CEQA itself requires public agencies to "adopt by ordinance, resolution, rule, or regulation, objectives, criteria, and procedures for the evaluation of projects... pursuant to [CEQA]" that are consistent with CEQA and the CEQA Guidelines. (Pub. Resources Code, § 21082; CEQA Guidelines, § 15022(a).) The CEQA Guidelines further elaborate that such "implementing procedures should contain at least [certain specified] provisions" and these include "[a] list of projects or permits over which the public agency has only ministerial authority." (CEQA Guidelines, § 15022(a)(1)(B).)

In compliance with CEQA and its Guidelines, the County here adopted the required local implementing procedures listing the County's ministerial approvals in 1983, following its 1973 adoption of the subject well-construction ordinance, and well-construction permits were included in the list.

No party has argued that the County's – or any local agency's – determination that a particular ordinance, approval or activity is ministerial in nature is *conclusive* on that issue, nor does the law so provide. Local agencies must act consistently with CEQA and the CEQA Guidelines, and "[i]f the law authorizing the action requires the agency to make discretionary determinations in approving the project, the agency's characterization of the activity as ministerial is not dispositive." (1 Kostka

& Zischke, *Practice Under the California Environmental Quality Act, supra,* § 4.26, p. 4-32, and cases cited.)

But to hold, as appellants urge this Court to do, that the County's formal determinations in this regard, as reflected in its statutorily mandated CEQA implementing procedures, are essentially meaningless and should be accorded no judicial deference at all would also misstate the law and violate applicable rules of statutory and regulatory interpretation. (*Berkeley Hillside Preservation v. City of Berkeley, supra,* 60 Cal.4th at 1097.) Specifically, such an interpretation of the law would (1) fail to give effect to the plain and usual meaning of the Guidelines, (2) effectively invalidate OPR's expert decision that the "determination of what is ministerial can most appropriately be made by the particular public agency involved based upon its analysis of its own laws," and (3) render surplusage OPR's directives that public agencies should make such determinations (whether in their implementing regulations or project-by-project) and make a list of ministerial projects and permits. Appellants' position also violates the principle that "[t]he law neither does nor requires idle acts." (Civ. Code, § 3532.)

As the First District reasoned in rejecting the same argument appellants advance here:

> Sierra Club argues we should not pay any deference to the County's classification of sequential lot line adjustments [as ministerial project approvals], but surely that is not the law.

> Otherwise, why would the governing regulations acknowledge that the local public agency is the most appropriate entity to determine what is ministerial, based on analysis of its own laws and regulations, and urge that the agency make that determination in *its* implementing regulations?

(*Sierra Club, supra,* 205 Cal.App.4th at 178, emph. in orig., citing CEQA Guidelines, §§ 15022(a)(1)(B), 15268(a), (c).)

Appellants have no answer to the First District's trenchant rhetorical question. Indeed, that question is wholly unaddressed by appellants, who neither directly challenge the validity of the CEQA Guidelines sections discussed above, nor even mention Guidelines §§ 15022 or 15268 (or, for that matter, Public Resources Code § 21082) anywhere in their Answer Brief.[2] The only case law authorities cited by appellants – *Agnew v. State Bd. of Equalization* (1999) 21 Cal.4th 310 and *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1 (see Answer Brief at 24) – pertain to the judicial deference given a state administrative agency's interpretation of a state statute through an interpretive regulation or policy, not a local lead agency's interpretation and analysis of its own land use

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[2] Accordingly, any implied argument that OPR's relevant regulations incorrectly state the governing law – as according deference to local agency determinations of the ministerial or discretionary nature of their own ordinances – would appear to be not only bereft of legal support, but forfeited as well. (*Friends of Juana Briones House v. City of Palo Alto, supra,* 190 Cal.App.4th at 313 [forfeiture of issue found because party's "failure 'to make a coherent argument' in support of its suggestion 'constitutes a waiver of the issue on appeal.'"], citation omitted.)

ordinance or determination as to its ministerial character. *Yamaha* holds the deference due to an administrative agency's interpretation of a statute, and the "weight" accorded it, are "fundamentally *situational*" and depend on a number of factors, which can be placed into the broad categories of (1) factors indicating "the agency has a comparative interpretive advantage over the courts" and (2) factors indicating the interpretation is probably correct. (*Yamaha, supra,* 19 Cal.4th at 12.)

The "first category" factors include agency expertise and technical knowledge – where the legal text is technical, complex or intertwined with fact issues – and also whether the interpretation is of one of the agency's own regulations, since it is "likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another." (*Id.* at 12.) These factors would all favor deference to a local agency's interpretation of its own ordinance as ministerial.

The "second category" factors include indications the agency's position was carefully considered by senior officials, long and consistently maintained by the agency, contemporaneous with adoption of the interpreted enactment, and formally adopted. (*Id.* at 13.) Again, these

factors would support deference to County's ministerial determination in this case, if they were to be applied.[3]

B. The Relevant Case Law Correctly Holds Local Agencies' Determinations As To Whether A Project Approval Is Ministerial Or Discretionary, Based On Analysis of Their Own Local Ordinances, Should Be Accorded Judicial Deference.

Appellants' Answer Brief asserts that:

> Whether a CEQA project approval is discretionary or ministerial is a question of law subject to de novo review. (*Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286, 303; *Health First v. March Joint Powers Authority* (2009) 174 Cal.App.4th 1135, 1142.) Several other decisions, while treating the question as one of law for the court to determine, suggest that some weight may be given to the local agency's views if warranted. (*Sierra Club v. Napa County* (2012) 205 Cal.App.4th 162, 178; *Friends of Westwood* [, *Inc. v. City of Los Angeles* (1987)]

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[3] Moreover, the *Yamaha* standards would potentially have more direct relevance if the issue here were whether particular CEQA Guidelines provisions – for example, the regulations defining "ministerial" or "discretionary" projects – were proper interpretations of, or consistent with or authorized by the CEQA statute. But appellants have raised no such issue, and no such issue is before this Court. Appellants have not challenged any CEQA Guidelines provision as an unauthorized regulation inconsistent with CEQA, nor do they grapple or quarrel with any relevant interpretation or definition contained in the CEQA Guidelines. They simply make the bald claim – unsupported by authority or reasoned argument – that it is wrong to accord any deference to local agencies' determinations, based on analysis of their own laws, that certain project approvals are ministerial in nature and not subject to CEQA. As explained herein, that argument lacks merit and must be rejected based on the plain language of the CEQA Guidelines; *Yamaha's* standards if applied would require its rejection as well.

191 Cal.App.3d [259,] 270; *Day v. City of Glendale* [(1975)] 51 Cal.App.3d [817,] 822.)

(Answer Brief, at 23.)

Appellants' synopsis inaccurately characterizes the relevant case law it cites with respect to the judicial deference required to be accorded local agency determinations regarding the ministerial character of their own laws and actions.

Preliminarily, none of the cases cited by appellants use the qualifying words "suggest," "some weight," or "if warranted" when addressing this issue; those are appellants' own characterizations. In *Friends of Juana Briones House, supra,* 190 Cal.App.4th 286, the court held that under the plain language of the governing municipal code provision, which it found to be "clear and unambiguous" (*id.* at 305-307), issuance of the demolition permit at issue was a ministerial approval, and thus it did not need to reach (and did not reach) "appellants' contention that the City's interpretation of the provision as ministerial is entitled to deference." (*Id.* at 305, fn. 6.)

In *Health First, supra,* 174 Cal.App.4th 1135, the court found the challenged project approval "ministerial" based on the definition of that term used in Guidelines § 15369 and relevant case law, but also expressly recognized that: "The determination of what is ministerial is most appropriately made by the public agency." (*Id.* at 1144, citing Guidelines,

§ 15268, *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1015.)

In *Friends of Westwood, Inc. v. City of Los Angeles, supra,* 191 Cal.App.3d 259, the court recognized that Guidelines § 15268(c) "requires each local agency to identify actions which it deems 'ministerial under the applicable laws and ordinances'" and that the City of Los Angeles had listed building permit approvals as a ministerial act, but held that "a municipality's classification of a certain approval process as ministerial is *not* conclusive." (*Id.* at 270, citing *Day v. City of Glendale* (1975) 51 Cal.App.3d 817, 822 ["The applicability of CEQA cannot be made to depend upon the unfettered discretion of local agencies, for local agencies must act in accordance with state guidelines and the objectives of CEQA."].) This point is entirely uncontroversial, and does not support appellants' argument.

Appellants' cited authorities are ultimately unhelpful to them because they do not stand for the proposition that the courts must (or even may) pay no mind to a local agency's determination as to the ministerial nature of its own permitting scheme. To the contrary, cases that have dealt with this issue have reached a contrary conclusion. For instance, after noting that "[c]ourts continue to recognize that actions by a local agency are discretionary when they require the exercise of the administrator's subjective judgment and are ministerial when they are taken under

regulations that allow for little or no exercise of such judgment[,]" and that the relevant guidelines and analysis have not changed in decades, the First District recently stated: "Guidelines section 15268, subdivision (a) makes clear that "[t]he determination of what is 'ministerial' can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as part of its implementing regulations or on a case-by-case basis." (*Sierra Club v. County of Sonoma, supra,*, 11 Cal.App.5th at 22-24, internal quotes and citations omitted.) Further, in deciding whether an agency abused its discretion in determining a particular approval was ministerial, courts "must be attentive to the directive of [this Guideline]." (*Id.* at 29.)

OPR's directive that deference be accorded to the local agency's determination in this context is practical, supported by the *Yamaha* factors (to the extent they apply), and supported by analogous authority in the land use context. (E.g., *Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1563 [great deference accorded to agency's general plan consistency determination "because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity"]; *San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 515 [legislative branch actions also entitled to judicial

deference for constitutional separation of powers reasons]; *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 569 [legitimate exercise of city's reserved police powers must be accorded judicial deference].) Many of the same considerations warranting judicial deference to a local agency's general plan consistency determinations also apply to a local agency's interpretation of the authority conferred on it by its own land use ordinance in the context of applying that ordinance to a particular project, an exercise which as noted above often involves mixed questions of law and fact. These considerations apply with particular force where, as here, the local agency has adopted and applied a permitting ordinance whose "provisions . . . are technical. A provision that appears to a lay person to grant discretion to an agency might, as understood by a person with technical knowledge, grant little or none in the context of a particular proposed project." (*Sierra Club v. County of Sonoma, supra,* 11 Cal.App.5th at 29.) Local expertise and experience is certainly relevant to these types of determinations.

No one in this case has argued that local agency determinations regarding the ministerial nature of their own project approvals are either "conclusive" or that they may properly be based on "unfettered discretion." More to the point, nothing in any of the cases pointed to by appellants suggests that *no* deference should be accorded to a local agency's classification – based on an analysis of its own laws and regulations – of a

particular approval action as ministerial. As expressly stated in *Sierra Club v. Napa County, supra,* 205 Cal.App.4th at 178, "surely that is not the law."

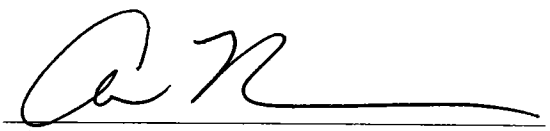
V. CONCLUSION

This Court should reject appellants' unsupported argument that it must give "no weight" to the County's classification in its CEQA implementing procedures that well construction permits issued pursuant to Chapter 9.36 of the County Code are ministerial approvals. While recognizing that the County's and other local agencies' determinations in this regard are not conclusive on the issue, this Court should follow the CEQA Guidelines and relevant case law requiring that courts afford them deference and respect, to the extent that they are based on the local agency's analysis of its own laws and consistent with relevant standards contained in CEQA and the CEQA Guidelines. To hold otherwise would contravene the law, sound public policy, and common sense, and ultimately render compliance with CEQA more difficult for all involved.

Dated: May 8, 2019

Respectfully submitted,

MILLER STARR REGALIA

By: 

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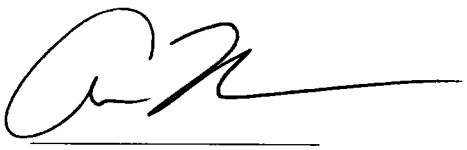
WORD COUNT CERTIFICATION

This brief's line spacing is double-spaced, except for footnotes, headings and indented quotations. The brief is proportionately spaced using Times New Roman 13-point typeface. According to the computer program used to prepare it, the brief contains 4,323 words, including footnotes, and excluding matters outside the body of the brief such as the title page, tables of contents and authorities, and this word certification count.

Dated: May 8, 2019



Arthur F. Coon

PROOF OF SERVICE

Protecting Our Water & Environmental Resources v. Stanislaus County
California Supreme Court, Case No. S251709

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Contra Costa, State of California. My business address is 1331 N. California Blvd., Fifth Floor, Walnut Creek, CA 94596.

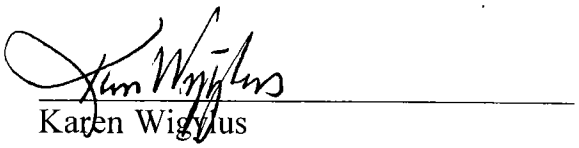
On May 8, 2019, I served true copies of the following document(s) described as **APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANTS AND RESPONDENTS; AMICUS CURIAE BRIEF OF LEAGUE OF CALIFORNIA CITIES** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Miller Starr Regalia for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Walnut Creek, California.

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

Executed on May 8, 2019, at Walnut Creek, California.



Karen Wigglus

SERVICE LIST
Protecting Our Water & Environmental Resources v. Stanislaus County
California Supreme Court, Case No. S251709

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