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12

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF MONTEREY**

15 TURN DOWN THE LIGHTS,
16 Petitioner,
17
18 v.
19 CITY OF MONTEREY,
20 Respondent.

Case No. M116731

Petitioner's Supplemental Brief
in Support of
Petition for Writ of Mandamus

21 _____/

Hon. Lydia M. Villarreal

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Table of Contents

1		
2		
3	Introduction.....	1
4	Discussion.....	1
5	Question 1. Petitioner contends that the City Council failed to provide	
6	“public notice accurately describing the City Council’s proposed	
7	action in November 2011.” What does Petitioner contend would	
8	have constituted such notice? In what manner does Petitioner	
9	contend the City was required to provide such notice to the public?	
	What is the authority for Petitioner’s responses to these questions?.	1
10	Question 2 The City Council meeting's agenda states, “public appearance	
11	items . . . do not require formal noticing as public hearings.”	
12	What is the authority for this assertion? What are the requisite	
13	components for noticing “public appearance items” under	
14	applicable law? Did the City comply with these requirements?	
15	If so, how? What are the requisite components of “formal noticing”	
16	under applicable law? Did the City comply with these	
17	requirements? If so, how?.....	7
18	Question 3. Assuming arguendo that the Project were found to be within	
19	the scope of the “Class 2” categorical exemption, would the unusual	
20	circumstances exception [Guidelines, § 15300.2 (c)] apply? Why	
21	or why not?.....	10
22		
23		
24		
25		
26		
27		
28		
	Conclusion.....	17

Table of Authorities

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Case Law

Page

Berkeley Hillside Preservation v. City of Berkeley
(2015) 60 Cal.4th 1086 11-13, 16

Citizens for a Green San Mateo v. San Mateo Community College District
(2014) 226 Cal.App.4th 1572..... 3

Defend Our Waterfront v. California State Lands Commission
(2015) 240 Cal.App.4th 570..... 2, 3

Environmental Law Fund, Inc. v. Town of Corte Madera
(1975) 49 Cal.App.3d 105..... 4, 7

International Longshoremen’s and Warehousemen’s Union v. Board of Supervisors (1981) 116 Cal.App.3d 265. 3

McQueen v. Board of Directors of the Mid-Peninsula Regional Open Space District (1988) 202 Cal.App.3d 1136 4, 5

Tomlinson v. County of Alameda (2012) 54 Cal.4th 281. 3

Statutes

Government Code section 65090..... 8

Government Code section 65091. 8

Government Code section 65092..... 8

Government Code section 65094..... 9

Public Resources Code section 21177..... 2, 7

Other Authorities

CEQA Guidelines section 15300.2, subdivision (c)..... 11

CEQA Guidelines, Appendix G, section I, subdivision (d). 16

1 as to any grounds for noncompliance with this division for
2 which there was no public hearing or other opportunity for
3 members of the public to raise those objections orally or in
4 writing before approval of the project, or if the public agency
5 failed to give the notice required by law.

6 (Pub. Resources Code, § 21177, subd (e), italics added.)

7 Because no particular public notice is required before an agency proceeds
8 with a project approval based on exemption from CEQA, the relevant part of
9 section 21177 subdivision (e) is within the second clause: there was no
10 “*opportunity for members of the public to raise ... objections orally or in*
11 *writing before approval of the project.*” Adequate public notice was not
12 required, but without it Turn Down the Lights members were not held to a
13 requirement to exhaust administrative remedies.

14 This precise issue was addressed and resolved in *Defend Our Waterfront*
15 *v. California State Lands Commission* (2015) 240 Cal.App.4th 570, 582-586
16 (*Defend Our Waterfront*). The First District Court of Appeal affirmed the trial
17 court’s ruling that a petitioner was not required to exhaust administrative
18 remedies when the relevant public notice did not disclose that an agency
19 proposed to take any CEQA action. (*Id.* at 583-84.) The petitioner filed a timely
20 mandamus action after a Notice of Exemption was filed. (*Id.* at 579.) The trial
21 court ruled that the agency’s reliance on a CEQA exemption was unlawful (*id.* at
22 580), and its judgment was affirmed (*id.* at 587-591).

23 In *Defend Our Waterfront*, the State Lands Commission argued that the
24 public received adequate notice of its intention to adopt a CEQA exemption. A
25 staff report accessible via a hyperlink posted on its meeting agenda mentioned
26 the CEQA exemption, although the posted agenda did not. The Court held that
27 this was not adequate notice because “someone would have to take the
28 additional steps of accessing and reviewing the report in order to learn that a

1 CEQA issue would be decided at the . . . meeting.” (*Id.* at 584.) Going further,
2 the Court held that even if a member of the petitioner group happened to
3 somehow receive actual notice, “subdivision (e) does not provide that actual
4 notice satisfies CEQA’s notice requirement.” (*Id.* at 584.) This ruling is
5 consistent with *International Longshoremen’s and Warehousemen’s Union v.*
6 *Board of Supervisors* (1981) 116 Cal.App.3d 265, 276-274, which held that
7 notice of a CEQA action cannot be legally inferred by evidence of actual notice.
8 Such a rule “would invite disputes” over the facts relevant to the notice.

9 In its briefing on the merits, the City argued that *Defend Our Waterfront*
10 was incorrectly decided. (City Opposition, p. 24.) The City then referenced
11 irrelevant cases with distinguishing facts, including cases simply stating that
12 CEQA requires no particular process for public notice of an exemption. (*Ibid.*,
13 citing *San Lorenzo Valley Community Advocates for Responsible Education v.*
14 *San Lorenzo Valley Unified School District* (2006) 139 Cal.App.4th 1356,
15 1385-86; *Robinson v. City and County of San Francisco* (2012) 208 Cal.App.4th
16 950, 961.) The issue is the informational adequacy of the notice, not whether
17 there is a specific template to be utilized by the agency. As *Defend Our*
18 *Waterfront* makes evident, notice that does not even mention CEQA is
19 inadequate to give notice of a CEQA determination.

20 The City also referenced *Tomlinson v. County of Alameda* (2012) 54
21 Cal.4th 281, 285, in which there was no dispute about the adequacy of notice
22 specifically disclosing that a categorical exemption was proposed for adoption at
23 an upcoming public hearing. And in *Citizens for a Green San Mateo v. San*
24 *Mateo Community College District* (2014) 226 Cal.App.4th 1572, 1585, decided
25 by the First District Court of Appeal, Division 4, the same division that decided
26 *Defend Our Waterfront* a few months later, the complex facts involved the
27 statute of limitations relative to amendment of a project approved years earlier
28 on a negative declaration.

1 *McQueen v. Board of Directors of the Mid-Peninsula Regional Open*
2 *Space District* (1988) 202 Cal.App.3d 1136 is also on point on the facts of the
3 present case. *McQueen* considered whether a regional district's plan to acquire
4 property contaminated with toxics was exempt from CEQA. It was known that
5 the subject property contained toxic and hazardous substances; however, the
6 district's Notice of Exemption described the purchase of surplus property,
7 without mentioning this fact, which was the key CEQA issue. (*Id.* at 1144.) On
8 appeal, the Sixth District rejected an affirmative defense that petitioner failed to
9 exhaust remedies as to toxics, because the public notice was inaccurate and
10 misleading:

11 . . . [E]xhaustion of administrative remedies has not been
12 required of CEQA petitioners who did not receive proper
13 notice of administrative hearings. (Citations.) We consider
14 petitioner's situation tantamount to a lack of notice due to
15 the incomplete and misleading project description employed
16 by the district. While there is evidence the district gave
17 notice of the proposed property acquisition, there is no
18 evidence that the notice mentioned the acquisition of toxic,
19 hazardous substances. To apply the exhaustion requirement
20 under these circumstances . . . would require the public to
21 ferret out the true nature of the public agency's project and
22 its possible environmental consequences.

23 (*Id.* at 1150-1151.)

24 A separate exception to the exhaustion of remedies requirement is where
25 the petitioner is pursuing the lawsuit in the public interest and the petitioner
26 did not appear in the administrative proceedings and had no notice of them.
27 (*Environmental Law Fund, Inc. v. Town of Corte Madera* (1975) 49 Cal.App.3d
28 105, 114.) The exception is applicable here.

1 ***Exhaustion of Remedies is Excused In this Case Because the City***

2 ***Provided Inadequate Notice.*** In this case, the project notice was eight words

3 on a City Council agenda: “Award Street and Tunnel Lighting Replacement

4 Project Contract.” (AR:44.) The notice did not violate CEQA, since no notice of

5 a proposed categorical exemption was required, but was inadequate to provide a

6 meaningful opportunity for public comment – lacked “proper notice” under

7 *McQueen* (at p. 1150) – because:

- 8 • The agenda notice did not mention any proposed CEQA action.
- 9
- 10 • The project is a citywide action to install new LED streetlights
- 11 throughout the city, with a different light that appears brighter and
- 12 more intense than the sodium lights of a lower intensity brightness
- 13 and a different glow than that in place for many years. The agenda
- 14 notice statement of “replacement” implied “of like kind.” Because
- 15 the City did not intend to replace the lights with like kind, the notice
- 16 should have stated that new LED streetlights would be installed
- 17 citywide and would be an increase in perceived brightness.
- 18 • The agenda did not disclose that the new LED streetlights would be
- 19 installed in the Historic District.
- 20
- 21 • The agenda notice described only the award of a contract, like the
- 22 agency’s purchase of property in *McQueen, supra*, 202 Cal.App.3d
- 23 1136.
- 24

25 The item should have said “Consider Awarding \$1,000,000 Contract for

26 Installation of LED Streetlights Different from the Existing Sodium Lights;

27 Citywide including Historic Districts; CEQA Exemption Proposed.” The City

28 knows how to write a descriptive agenda item, as shown by the detailed

1 description of the next item on the City's agenda in November 2011:

2 8. Pass Ordinance to Print to Ban the Use of Plastic
3 Single-Use Carry-Out Bags and Prohibit the Free
4 Distribution of Recycled Paper Bags by Retail
5 Establishments (Negative Declaration Proposed)
6 (Plans & Public Works - 802-07)

7 (AR:45.)

8 Although the plastic bag issue was a "public appearance" item like the
9 LED streetlight project, rather than a "public hearing," the agenda detailed what
10 was proposed (an ordinance to ban plastic single-use carry-out bags and
11 prohibit the free distribution of recycled paper bags) and to whom the ordinance
12 applied (retail establishments and, by implication, their customers). Critically,
13 the description disclosed the Council's intention to take a CEQA action:

14 "Negative Declaration Proposed."¹ (*Ibid.*)

15 Applying the law to the facts of this case, the agenda notice for the LED
16 streetlight project provided in November 2011 did not violate CEQA, because
17 CEQA has no notice requirements for approval of projects via a claimed
18 exemption. However, because the notice neither adequately described the LED
19 streetlight project nor mentioned that the Council proposed to take any CEQA
20 action, under the relevant case law, including *McQueen* and *Defend Our*

21
22
23 ¹ The Court may recall that at the hearing in this case on May 11, 2016,
24 counsel for the City argued that the plastic bag agenda item had attracted
25 substantial public turnout at the Council meeting, and argued that turnout was
26 evidence that the notice provided for "public appearance" items was sufficient.
27 This had not been argued in the City's brief. Petitioner notes in addition to a
28 much more detailed agenda item description, the City also published notice of the
plastic bag agenda item in the newspaper. (Request for Judicial Notice filed
concurrently with this brief, Exh. A.) Thus, in that matter, the City's provision of
informative content in the agenda item description and also the City's publication
of the notice encouraged public participation.

1 *Waterfront*, there was no meaningful “opportunity for members of the public to
2 raise those objections orally or in writing before approval of the project.” (Pub.
3 Resources Code, § 21177, subd. (e).)

4 The first notice provided to the concerned public that the City was relying
5 on a categorical exemption to approve the LED streetlight project was a Notice
6 of Exemption filed in February 2012, almost three months after the approval.
7 (AR:1.)

8 As a separate and further matter, Petitioner Turn Down the Lights is
9 pursuing this lawsuit in the public interest and neither Petitioner nor its
10 members appeared at the administrative proceedings and had no notice of
11 them. Thus, Turn Down the Lights meets the exception to the exhaustion of
12 remedies requirement described in *Environmental Law Fund, Inc. v. Town of*
13 *Corte Madera*, supra, 49 Cal.App.3d 105, 114.

14 The instant lawsuit is not barred by the doctrine of exhaustion of
15 administrative remedies, and the City has failed to prove its affirmative defense
16 on the record.

17
18 **Question 2 The City Council meeting's agenda states, “public**
19 **appearance items . . . do not require formal noticing as public**
20 **hearings.” What is the authority for this assertion? What are**
21 **the requisite components for noticing “public appearance**
22 **items” under applicable law? Did the City comply with these**
23 **requirements? If so, how? What are the requisite components**
24 **of “formal noticing” under applicable law? Did the City comply**
25 **with these requirements? If so, how?**

26
27 Monterey has what appears to be an ad hoc practice of treating some
28 project approvals as “public appearance items” without holding “public

1 hearings.” Petitioner is unaware of any such distinction in Monterey’s Charter
2 or City Code or in case law. Petitioner frankly looks forward to the City’s
3 response to this question, as Petitioner cannot find authority or precedent for
4 discretionary governmental actions to *approve projects* (as opposed to study
5 items or receive reports or similar activities) via “public appearance” as
6 distinguished from “public hearings.” Thus, the City’s action to approve the
7 LED streetlight project appears to require a public hearing subject to noticing
8 requirements for such hearings under the Brown Act. (Gov. Code, §§ 65090,
9 65091.)

10 The Brown Act generally provides the manner of required notice of a
11 public hearing, whether mailed to an affected property owner and surrounding
12 property owners (Gov. Code, § 65091), published in at least one newspaper of
13 general circulation at least 10 days prior to the hearing (*id.* at § 65091(a)(5)), or,
14 if there is no such newspaper of general circulation, posted at least 10 days
15 before the hearing in at least three public places (*id.* at § 65090(a)(b)). Also, “a
16 local agency may give notice of the hearing in any other manner it deems
17 necessary or desirable” (*id.* at §§ 65090(c), 65091(c)) and must also provide at
18 least 10-day notice to persons that have filed written requests (*id.* at § 65092).
19 Pursuant to the Brown Act, public hearing notices are required to include
20 descriptive information:

21 As used in this title, ‘notice of a public hearing’ means a
22 notice that includes the date, time, and place of a public
23 hearing, the identity of the hearing body or officer, a
24 general explanation of the matter to be considered, and a
25 general description, in text or by diagram, of the location
26 of the real property, if any, that is the subject of the
27 hearing.
28

1 (Gov Code, § 65094.) If the City had followed these public hearing notice
2 procedures, the City would have mailed notice to James Bryant and also
3 presumably would have mailed notice to every property owner in the City or
4 published a notice in the newspaper. The City also would have explained the
5 project in some detail – almost assuredly more than eight words, based on the
6 City’s published public hearing notices (RFJN, Exh. B)– and would have
7 explained that the new LED streetlights were proposed to be installed City-wide,
8 on all City streets.

9 A Monterey City Code section on the procedure and notice required for a
10 public hearing is at AR:327.

11 C. Notice. Notice of the hearing shall be given in the
12 following manner (Ord 3326, 06/2003):

13 1. Mailed or Delivered Notice. At least 10 days prior to
14 the hearing, notice shall be mailed to the applicant,
15 affected agencies, anyone who made a request for a
16 notice, and all owners of property 150 feet from each
17 corner of the site and 300 feet of the boundaries of the
18 site up and down both sides of the streets it fronts, as
shown on the last equalized property tax assessment role.

19 2. Posted Notice. Notice shall be posted at the
20 Department of Plans and Public Works and the Office of
21 the City Clerk and on or adjacent to the project site.

22 3. Hearing Agenda. The public hearing agenda and
23 packet of information shall be made available to the public
24 in the Monterey Public Library three days prior to the
public hearing.

25 D. Contents of Notice. The notice of public hearing shall
26 contain:

27 1. A description of the location of the development site
28 and the purpose of the application;

- 1 2. A statement of the time, place, and purpose of the
- 2 public hearing;
- 3 3. A reference to application materials on file for
- 4 detailed information; and
- 5 4. A statement that any interested person or an
- 6 authorized agent may appear and be heard.

7 (AR:327.) This section is for a use permit or variance; the notice and
8 procedures for other public hearings is similar, as best Petitioner can determine.

9 Here, the City did not mail notice of the LED streetlight project agenda
10 item to anyone, including James Bryant, who had requested notice for lighting
11 projects in the historic district (AR:592).² As discussed, the City's agenda
12 provided only a cursory and insufficient description of the item; this excused
13 exhaustion of administrative remedies and is also, arguably, not in compliance
14 with the Brown Act.

15 In this case, the only notice was the agenda description.

16 **Question 3. Assuming arguendo that the Project were found to**
17 **be within the scope of the "Class 2" categorical exemption,**
18 **would the unusual circumstances exception [Guidelines,**
19 **§ 15300.2 (c)] apply? Why or why not?**
20

21 Turn Down the Lights takes the position that the unusual circumstances
22 exception would apply if this project were within the scope of the Class 2
23

24 _____
25 ² The Mayor had assured Mr. Bryant that lighting in the historic districts
26 would be addressed carefully by the City, with several layers of review, when the
27 Mayor said, "We will be working with the Historic Preservation Commission and
28 the Architectural Review Committee, and perhaps a historic facilities consultant,
to aid us in creating the best lighting for this [Friendly Plaza] and other
locations." (AR 591).

1 categorical exemption. “A categorical exemption shall not be used for an activity
2 where there is a reasonable possibility that the activity will have a significant
3 effect on the environment due to unusual circumstances.” (CEQA Guidelines,
4 § 15300.2, subd. (c).)

5
6 **Standard of Review.** The California Supreme Court ruled in *Berkeley*
7 *Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086 (*Berkeley*
8 *Hillside*) that consideration of the unusual circumstance exception requires two
9 steps.

10 First, the substantial evidence standard applies to the determination of
11 whether a project’s circumstances are unusual. If so, the fair argument standard
12 next applies to whether the project may have any significant environmental
13 impacts. *Berkeley Hillside* directs that if the unusual circumstances exception is
14 invoked, an agency must consider “evidence in its own files of potentially
15 significant effects, regardless of whether that evidence comes from its own
16 investigation, the proponent’s submissions, a project opponent, or some other
17 source.” (*Berkeley Hillside, supra*, 60 Cal.4th 1086, 1103.)

18 . . . [T]o establish the unusual circumstances exception, it
19 is not enough for a challenger merely to provide
20 substantial evidence that the project may have a
21 significant effect on the environment On the other
22 hand, evidence that the project will have a significant
23 effect does tend to prove that some circumstance of the
24 project is unusual. An agency presented with such
25 evidence must determine, based on the entire record
26 before it - including contrary evidence regarding
27 significant environmental effects - whether there is an
28 unusual circumstance

1 (*Id.*, p. 1105.)

2 A party may also establish an unusual circumstance
3 . . . without evidence of an environmental effect, by
4 showing that the project has some feature that
5 distinguishes it from others in the exempt class, such as
6 its size or location. In such a case . . . a party need only
7 show a reasonable possibility of a significant effect due to
8 that unusual circumstance.

9 Alternatively . . . a party may establish an unusual
10 circumstance by evidence that a project will have a
11 significant environmental effect. That evidence, if
12 convincing, necessarily also establishes that an activity
13 ‘will have a significant effect on the environment due to
14 unusual circumstances.’

15 (*Berkeley Hillside, supra*, 60 Cal.4th at 1103, italics added.)

16 The Supreme Court distinguished between evidence that a project will
17 have a significant effect, which makes it unusual, with evidence that it may have
18 a significant effect, which may not be unusual. (*Id.* at 1105-1110.) The latter
19 scenario requires additional evidence that a circumstance is unusual, such as
20 size or location. (*Id.* at 1103.) The Court also directed that a finding of unusual
21 circumstances is to be reviewed under the “substantial evidence prong” of Public
22 Resource Code section 21168.5. (*Id.* at 1114.) “Agencies must weigh the
23 evidence and determine ‘which way the scales tip’ . . . and reviewing courts . . .
24 must affirm that finding if there is any substantial evidence . . . to support it.”

25 (*Ibid.*)

26 Finally, the *Berkeley Hillside* majority indicated that its “approach is
27 consistent with the concurring opinion’s statement of its central proposition:
28 When it is shown ‘that a project will have a significant environmental effect, it

1 necessarily follows that the project presents unusual circumstances.” (*Id.* at
2 1105.) The concurring opinion by Liu and Werdegar, J.J., consistently pointed
3 out that “[e]ven under the cumbersome rules set forth today, it is hard to
4 imagine that any court, upon finding a reasonable possibility of significant
5 effects under the fair argument standard, will ever be compelled to find no
6 unusual circumstances and . . . uphold the applicability of a categorical
7 exemption.” (*Id.* at 1134.)

8 The record in this case discloses no evidence that the City considered
9 whether or not there was substantial evidence of unusual circumstances, as
10 required by *Berkeley Hillside*. In fact, the evidence is manifest.

11
12 ***Evidence of Unusual Circumstances.*** The Supreme Court instructs that
13 “conditions in the vicinity” of the project are relevant to the determination of
14 whether a case presents “typical or unusual” circumstances relevant to the
15 categorical exemption exception. (*Berkeley Hillside, supra*, 60 Cal.4th at 1119.)
16 Monterey assuredly places this case into the latter category; according to the
17 official City statement, “Monterey is the most historic city in California.”
18 (AR:523; see Opening Brief at p. 3; AR:737-753; 759-823.) The Monterey Old
19 Town Historic District is honored with listing as a National Historic Landmark.
20 (AR:451; 723; 540-541 [maps].) Downtown Monterey retains the most
21 significant collection of properties and adobes in California dating from the
22 Mexican Colonial period. (AR:451; 753-756.)

23 As petitioner Turn Down the Lights discussed in its merits briefs, City
24 staff assured the City Council that a different light fixture would be used in the
25 Historic District (Opening Brief at p. 8; Reply Brief at p. 7), but that turned out
26 to be untrue:

1
2 COUNCILMEMBER SELFRIDGE: In our historic
3 district, will the lights look like that? Or will they
4 be somehow in a correct format?

5 MR. HELMS: They won't look -- they won't look
6 like that. There is a separate grant for decorative
7 lights, and they'll look exactly the way they look now.

8
9 (AR:20.)

10 The evidence in the record documenting the unique environmental
11 setting for the LED streetlight project is contained in the City's own plans and
12 planning documents:

- 13 • Monterey is "one of the most historic cities in the western United
14 States" (AR:451).
- 15 • "Monterey is the most historic city in California." (AR 523)
- 16 • "Historic Monterey is unique in that it has an identified architectural
17 style native to the City." (AR:570 [Downtown Plan].)
- 18 • "Several plan policies address the protection of existing scenic vistas
19 in the Planning Area. The Urban Design Element policies for
20 Shoreline and Bay (policies a.6, a.7, and a.9) call for protection and
21 enhancement of views to and from specific unique shoreline
22 environments (i.e. San Carlos Beach and Cannery Row)." (AR:454.)
- 23 • "'Preservation and reinforcement of Monterey's historic character' is
24 the first goal of the Economic Element of the City's General Plan. A
25 significant number of Monterey's key economic activities occur in
26
27
28

1 historic areas, are dependent on the historic ambiance of Monterey
2 and would be diminished if that ambiance is compromised.”

3 (AR:482.)

- 4
- 5 • “The Monterey Peninsula has a long and storied history as a haven
6 for artists, especially painters drawn to the area’s unique landscape.”
7 (AR:767 [National Historic Landmark District and Downtown Area -
8 Context Reconnaissance Survey].)
 - 9 • “. . . [T]he area’s unique coastal scenery” (*Ibid.*)
 - 10 • “Many of the artists who settled in Monterey were attracted to the
11 city’s unique building stock.” (AR:791.)
 - 12 • Prominent local artist Myron Oliver “so freely poured out his rich
13 resources toward the preservation of Monterey’s historic and esthetic
14 uniqueness.” (AR:795) Oliver was an early owner of Casa de La
15 Torre (AR:788, 795), the historic adobe (AR:409; 769 [photo]) later
16 occupied by James Bryant (AR:592), member of Turn Down the
17 Lights, who carried on Oliver’s tradition of preserving Monterey’s
18 architectural and historic resources.
 - 19 • The City’s proposed addition of lighting to Friendly Plaza, a small
20 park in the historic district, was of significant public interest and
21 controversy. The City’s Historic Preservation Commission had two
22 meetings in September 2009 and October 2009. The City noticed a
23 formal public hearing for both meetings (AR:613-614 [Sept. 2009];
24 631-632 [Oct. 2009]), and posted the site (AR:610-612) and notified
25 property owners in the area (AR:593-614 [Sept. 2009]; 616-634 [Oct.
26 2009]). Public commenters included Mr. Bryant (AR:593-594; 616-
27
28

1 617), Alliance of Monterey Area Preservationists (AR:595-596), and
2 the Monterey Institute for International Studies (AR:590).

- 3 • “Wooded Canyons. Most of Monterey’s neighborhoods sit on various
4 gently sloping mesas, and are defined by and insulated from other
5 neighborhoods by wooded canyons. These canyons are wonderful
6 natural barriers, which limit neighborhood size and have allowed
7 neighborhoods to grow with unique characteristics and architectural
8 styles.” (AR:432 [General Plan].)

9
10 Even among the diverse and eclectic collection of cities in California, the
11 City of Monterey is unique, and its landmark Old Town National Historic
12 Landmark District is especially so.

13 The standard for unusual circumstances is well met.

14
15 ***The Record Contains a Fair Argument of Significant Impacts.***

16 Under *Berkeley Hillside*, CEQA’s unique “fair argument” standard applies to the
17 question of whether a project proposed for a categorical exemption meets the
18 unusual circumstances exception vis-à-vis evidence of significant environmental
19 effects. (*Berkeley Hillside, supra*, 60 Cal.4th at 1119.) The CEQA Guidelines
20 recognize that a project that may “create a new source of substantial light or
21 glare which would adversely affect day or nighttime views” may have a
22 significant environmental impact. (Guidelines, App. G, § I, subd. (d).) Experts
23 refer to glare as “the most annoying and safety related aspect of light pollution.”
24 (AR:967.) The record discussed in Petitioner’s briefs on the merits documents a
25 fair argument of environmental impacts:

26
27 Residents confirmed that the new, much stronger lights
28 were harsh and glaring; were painful to look at and

1 obtrusive; created unsafe driving situations; detracted
2 from the quality of life in the City; shone through private
3 windows on private property; and impacted the historic
4 qualities of the Old Town Historic District. (E.g., AR:681
5 [complaints that lights are too bright]; 682 [lights are
6 bright and cause glare, trespass into homes]; 683 [lights
7 shine through windows]; 685 [excessive light, ruins night
8 sky]; 693 [lights impact quality of life]; 695 [lights
9 negatively impact the landmark district]; 696 [lights are
10 too bright]; 700-701 [light is “painful”; City-added light
11 “shields” don't work]; 706-708 [bright lights intrude into
12 yard, are unsafe, are visible from block away,]; 711, 865
13 [lights impair sleep]; 874-875 [newspaper articles]; see
14 877-884, 901, 911-912, 921-1005.)

15
16 (Opening Brief at p. 9, see also pp. 9-11, 21.)

17 The unusual circumstances exception applies to the LED streetlight
18 project.

20 Conclusion

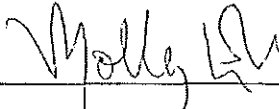
21 Turn Down the Lights thanks the Court for the opportunity to file this
22 supplemental brief. Because the City did not give adequate notice of its
23 intention to approve the citywide LED streetlight project, nor that it planned to
24 rely on a categorical exemption, Turn Down the Lights is excused from
25 exhaustion of remedies. The project is not encompassed within the claimed
26 categorical exemption. Even if the project fit within the scope of the exemption,
27 the exemption is not applicable due to unusual circumstances.

1 Turn Down the Lights respectfully requests the Court grant the Petition
2 for Writ of Mandate and issue a peremptory writ in the public interest. To
3 comply with CEQA, the City of Monterey must set aside its approval of the LED
4 streetlight project and the categorical exemption, prepare an appropriate
5 environmental document, and adopt feasible mitigation measures and
6 alternatives to reduce significant impacts.

7
8 September 12, 2016

Respectfully submitted,

9 STAMP|ERICKSON

10 by 
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