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September 21, 2012

**VIA U.S. MAIL**

Honorable Tani Cantil-Sakauye, Chief Justice  
and Honorable Associate Justices  
of the Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4797

Re: Support for Petition for Review of *City of Hayward v. Board of Trustees of the California State University*, Case No. S203939

Honorable Chief Justice Cantil-Sakauye and Associate Justices:

On behalf of the California Fire Chiefs Association ("Cal Chiefs"), I write to support the City of Hayward's petition for review of the above-referenced case. Cal Chiefs is comprised of the chiefs of over 1,100 fire agencies throughout California. Cal Chiefs' members lead city fire departments, fire districts, state and federal government agencies, and corporate fire brigades. Cal Chiefs' purpose is to further the professional advancement of its members to promote and maintain greater protection of life and property from fire, natural and human-caused disasters, and other emergencies. Cal Chiefs is concerned that the Court of Appeal's decision could harm fire agencies throughout California. With respect, California Chiefs urges this Court to grant the City's petition for review for the three reasons stated below.

**1. Inconsistency with *City of San Diego v. Board of Trustees of the California State University* (Case No. S199557)**

The decision in this case is inconsistent with *City of San Diego v. Board of Trustees* (2011) 201 Cal.App.4th 1134, of which this Court unanimously granted review on April 18, 2012 (Case No. S199557). Specifically, the *San Diego* court disregarded as *dicta*

Honorable Tani Cantil-Sakauye, Chief Justice  
and Honorable Associate Justices  
September 21, 2012  
Page 2

language in this Court's decision in *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341 stating that CSU's mitigation payments are "feasible" as the California Environmental Quality Act (CEQA) uses the term only if approved by the Legislature. The *San Diego* court determined that CSU could not argue it had no obligation to fund off-site measures to mitigate the traffic and transit impacts of a campus expansion when, as here, it had not even asked the Legislature for funding.

Here, the First District read the same language from *Marina* to conclude that CSU's **only** duty to mitigate off-site impacts of its campus expansion project is to ask the Legislature for funds. (Slip Op. at 30). In addition to the prejudice the City and its fire and other public services will suffer if this Court declines review, the disparate treatments the First and Fourth Districts have given *Marina* demonstrate that the lower courts require further guidance from this Court as to CEQA's demands of state agencies as to activities which affect other public services.

Moreover, even if this Court views this petition as not independently justifying review, Cal. Chiefs respectfully submits this Court should consider granting review and holding the case pending decision of the *San Diego* case pursuant to California Rules of Court, Rule 512, subd. (d)(2).

**2. The Court of Appeal Incorrectly Concluded that Cities Have a Constitutional Obligation to Provide Fire Service**

The *City of Hayward* case has the potential to significantly change the level of fire and emergency services provided to California residents by shifting the burden to fund the services required by a project from the project's proponent to local fire service agencies. Such a rule would give government agencies free rides on the budgets of others, impairing the ability of all to plan, fund and deliver life-safety and other essential services despite our contrary constitutional commitments. *E.g.*, Cal. Const. art. XIII, § 24, subd. (b) ["The Legislature may not reallocate, transfer, borrow, appropriate, restrict the use of, or otherwise use the proceeds of any tax imposed or levied by a local government solely for the local government's purposes."]; art. XIII B, § 6 [forbidding State to impose unfunded mandates on local government]; art. XIII, § 32 [*Woosley v. State of California*, 3 Cal. 4th 758, 789 (1992) ["This constitutional limitation rests on the

premise that strict legislative control over the manner in which tax refunds may be sought is necessary so that governmental entities may engage in fiscal planning based on expected tax revenues.”[.]

The City argues here that CEQA requires the CSU Trustees to mitigate the increased demand for fire department services expansion of its Hayward campus will generate. The Court of Appeal rejected this argument, although it acknowledged that degraded response times may affect the spread of fire, decrease the risk of survival, and change the type and severity of injuries and burns. It concluded that this is not an environmental impact within CEQA’s ken. (Slip Op. at 10.) Therefore, the appellate court concluded CEQA does not require CSU to mitigate it.

Rather than requiring CSU to mitigate the environmental impacts its own analysis shows its project will cause, the Court of Appeal instead discovered a constitutional obligation in the City to provide apparently unlimited fire and life safety services. The court cites Article XIII, § 35(a)(2) of our Constitution, aspirational language from 1993’s Proposition 172 which provides supplemental half-cent sales tax funding for police and fire services. That lofty language states, “The protection of the public safety is the first responsibility of local government and local officials have an obligation to give priority to the provision of adequate public safety services.” Cal. Const. art. XIII, § 35, subd. (a)(2).

No court prior to that below has ever read this aspirational language to impose a mandatory, or even a heightened, duty upon local law enforcement to provide police and fire services. Nor can it be fairly read to do so. That language must be read in context with this language, also from article XIII, § 35: “to assist local governments in maintaining a sufficient level of public safety services, the proceeds of the tax enacted pursuant to this section shall be designated exclusively for public safety.” Cal. Const. art. XIII, § 35, subd. (a)(3). Thus, the voters’ purpose in adopting Proposition 172 was plain — they wished to tax themselves to enhance local governments’ ability to deliver police and fire services, not to invite the CSU to degrade that ability.

Thus, the Court of Appeal’s reading of Proposition 172 as mandating that the City and other fire and life-safety agencies provide any particular level of service is an error of statewide significance which justifies this Court’s review.

**3. The Decision Will Adversely Affect Safety Services Throughout the State**

As this Court is well aware, public agencies throughout California are struggling to maintain existing services levels in the current fiscal environment. Requiring new development, especially tax-exempt development like that in issue here, to fund the increased service demand it will generate is essential to doing so. When the state proposes to build a project, a local agency like Hayward may not impose additional fees or conditions on the project to mitigate a project's impacts. However, as this Court construed it in the *City of Marina* case, CEQA does require state agencies to mitigate the significant environmental impacts of their projects.

If the *Hayward* case is permitted to stand unreviewed, all state agencies — not just state universities and colleges — will be free to offload the fire safety demands of their new developments on neighboring fire departments. The Court of Appeal does not dispute that these impacts are real and significant. (Slip Op. at 10 [noting that degraded response times may affect the spread of fire, increase the severity of burns and decrease survival rates].) If unmitigated, these impacts will degrade response times. The environment will be affected. When firefighters are slower to respond; buildings burn longer, degrading air and water quality and taxing water supplies. Structures will be at greater risk of burning down and health and life will be jeopardized. These effects are not mere social or economic changes (Slip Op. at 10) but are environmental impacts that are just as important as (if not more important than) noise impacts, geological impacts, or traffic impacts — all of which an environmental document must analyze under CEQA.

These impacts cannot be dismissed on a blithe and factually unsupported assumption that the City will somehow find the means to maintain existing service levels. (Slip Op. at 15 [so long as the City continues to perform its fire obligations, "there is no basis to conclude that the project will cause a substantial adverse effect on human beings."]). CEQA requires more than unsupported assumptions of this sort.

Moreover, it is also equally possible — and perhaps more likely — that the City's service levels will decline, needed additional personnel will not be provided, and response

Honorable Tani Cantil-Sakauye, Chief Justice  
and Honorable Associate Justices  
September 21, 2012  
Page 5

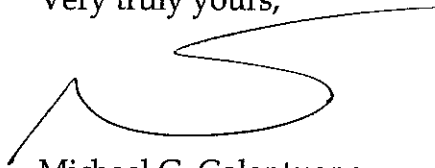
times will increase. If so, it is foreseeable that CSU's project will have a substantial adverse effect on human beings, an impact that should have been analyzed in the EIR pursuant to the State CEQA Guidelines, 14 CCR § 15065, subd. (a)(4), and which may well be capable of feasible mitigation as CEQA defines the term.

**Conclusion**

Thus, the City's petition out to be granted to resolve the lower courts' confusion regarding the *Marina* decision, to prevent the unwarranted transformation of Proposition 172's effort to enhance local safety services into an invitation to the state to degrade them, and to pursue CEQA's core purpose to require that the significant adverse consequences of new projects be well understood and, if feasible, mitigated.

As an association of first responders charged with ensuring public safety, Cal Chiefs respectfully request this Court grant the City of Hayward's petition for review.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael G. Colantuono". The signature is stylized with a large, sweeping loop that extends to the right and then curves back down and left.

Michael G. Colantuono

MGC:aal

Attachment: Proof of Service

**PROOF OF SERVICE**

*City of Hayward v. Board of Trustees of the California State University*  
Case No. S203939

I, Ashley A. Lloyd, declare:

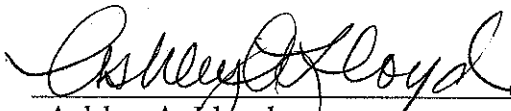
I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My business address is 11364 Pleasant Valley Road, Penn Valley, California 95946. On SEPTEMBER 21, 2012, I served the document(s) described as **SUPPORT FOR PETITION FOR REVIEW** on the interested parties in this action as by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

**SEE ATTACHED LIST**

X **BY MAIL:** The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Penn Valley, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

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

Executed on SEPTEMBER 21, 2012, at Penn Valley, California.

  
\_\_\_\_\_  
Ashley A. Lloyd

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