Supreme Court Case No. S161190

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

COMMUNITIES FOR A BETTER ENVIRONMENT et al,
Plaintiff, Appellant, and Respondent,

v.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT,
Defendant, Respondent and Petitioner

CONOCOPHILLIPS COMPANY, Real Party in Interest

CARLOS VALDEZ et al, Plaintiffs, Appellants, and Respondent
v.
SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, Defendant, Respondent, and Petitioner;
CONOCOPHILLIPS COMPANY, Real Party in Interest

After a Decision by the Court of Appeal
Second Appellate District, Division Two
Case No. B193500

APPLICATION FOR LEAVE TO FILE BRIEF, AND PROPOSED BRIEF OF *AMICUS CURIAE* CALIFORNIA SCHOOL BOARDS ASSOCIATION IN SUPPORT OF SUPREME COURT PETITIONERS SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT AND CONOCOPHILLIPS COMPANY

(Cal. Rules of Court, Rule 8.520(f))

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[California Rules of Court, Rule 8.520(f)]

TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to Rule 8.520(f)(1) of the California Rules of Court, *amicus curiae*, California School Boards Association respectfully requests permission of the Chief Justice to file the attached brief in support of petitioner South Coast Air Quality Management District and the other parties that urge reversal of the decision of the Court of Appeal, Second Appellate District. Pursuant to California Rules of Court Rule 8.520(f)(2), this application is timely made, as it is being filed within (thirty) 30 days after the final reply briefs were filed by the parties on October 2, 2008.

The California School Boards Association ("CSBA") and its Education Legal Alliance ("Alliance") have determined that the decision of the Court of Appeal in *Communities for a Better Environment v. South Coast Air Quality Management District* (2007) 158 Cal.App.4th 1336 (hereafter the "*CBE* Decision") introduced substantial uncertainty into the law governing the proper determination of a baseline for purposes of California Environmental Quality Act ("CEQA") review of modifications to existing facilities. For this reason, CSBA and its Alliance request that CSBA be permitted to file its *amicus curiae* brief in support of petitioner South Coast Air Quality Management District.

CSBA is a non-profit corporation that provides various services to roughly 1,000 member school districts and county offices of education throughout the State of California. Its Alliance supports litigation in cases of statewide significance to all California schools.

CSBA and the Alliance are vitally interested in this case because this Court's articulation of the proper method by which baseline should be determined for CEQA purposes will impact school district and county office of education activities that involve either the transfer of students, or the construction, remodeling, renovation, modernization, or upgrading of school facilities, or any combination thereof. As explained more fully in the proposed Brief of *Amicus Curiae* set forth following this application, prior to the *CBE* Decision, school districts and county offices of education could commence such activities in reliance on the maximum authorized total student enrollment as the proper baseline against which to measure whether significant environmental impacts would be created, regardless of whether the school district's or the county office of education's activity had undergone prior CEQA review. Now, under the *CBE* Decision, school districts and county offices of education will be required to conduct a CEQA review every time they decide to proceed with a transfer of students or with construction or modernization of any school facilities, even if the proposed project will not result in a student capacity above historic or authorized levels. Such a CEQA review, in turn, may also require mitigation measures that will result in costs and delay that the school districts and the county offices of education would not otherwise be obligated to suffer.

The *CBE* Decision causes two additional negative impacts on school districts and on county offices of education. First, the *CBE* Decision effectively does away with CEQA's short statute of limitations. If permitted to stand, the *CBE* Decision will subject school district and county office of education projects that were previously approved without CEQA challenges to be re-opened and subject to further review long after the statute of limitations has expired. Second, the *CBE* Decision will require that the CEQA baseline be determined by the conditions existing

immediately prior to initiation of CEQA review even when the maximum student enrollment capacity fluctuates from year to year and the conditions preceding CEQA review are not representative of historic levels. This inherently flawed exercise will cause needless delay and consumption of scarce public funds, while producing no readily apparent benefit.

For these reasons, CSBA respectfully requests that the Court grant its request for leave to file the proposed "Brief of *Amicus Curiae* California School Boards Association In Support of Supreme Court Petitioners South Coast Air Quality Management District and ConocoPhillips Company" that immediately follows this application.

Dated: October 30, 2008.

Respectfully submitted,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD, A Professional Corporation

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PROPOSED BRIEF OF *AMICUS CURIAE* CALIFORNIA SCHOOL BOARDS ASSOCIATION IN SUPPORT OF SUPREME COURT PETITIONERS SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT AND CONOCOPHILLIPS COMPANY

I.

INTRODUCTION

A. California School Boards Association's Member Public School Districts And County Offices Of Education Are Obligated To Provide School Facilities.

The California School Boards Association ("CSBA") is a California non-profit corporation. CSBA is a member-based association comprised of school board and county board of education members who serve as the elected representatives of nearly 1,000 kindergarten through twelfth-grade school districts and county offices of education throughout California.[1] CSBA supports local school board governance, and it advocates on behalf of school districts. As part of CSBA, the Education Legal Alliance ("Alliance") helps to ensure that local school boards retain the authority to fully exercise the responsibilities vested in them by law to make appropriate policy and fiscal decisions for their local educational agencies. The Alliance represents its members, which are over 800 of the state's approximately 1,000 school districts, by addressing legal issues that are of statewide concern to school districts. The Alliance's activities include

[1] School districts and county offices of education, by way of their respective governing boards, are the State of California entities authorized by statute to engage in numerous activities that may constitute projects within the meaning of CEQA, including but not limited to the transferring of students, the closing of school facilities, the expansion of enrollment at school facilities and the construction and remodeling of schools. Both school districts and county offices of education will be harmed by the *CBE* Decision if it is affirmed by this Court. The term "school district" shall hereafter refer to both school districts and county offices of education. Likewise, the term "school board" shall hereafter refer to both school boards and county boards of education.

joining in litigation, such as this Court's review of the *CBE* Decision, in which the interests of public education are at stake.

The California school districts that are members of CSBA and the Alliance provide educational services to the State's students. As part of their educational services, school districts are responsible for providing and maintaining necessary, adequate and safe school facilities, including classrooms, along with other education facilities and administrative and technical support structures for public school students, teachers and staff. School districts provide these amenities by undertaking the construction of new facilities along with the remodeling, renovation, modernization, and upgrading of existing facilities. Many of the public school buildings in our State were originally constructed twenty or more years ago, and some were even built before CEQA became effective in 1973.

B. Student Enrollment Capacity Approved By The State.

The maximum number of students that may be accommodated at a school is determined through the school's design process. Typically, a school district's architect prepares plans and specifications, with input from the local district. These plans and specifications are subsequently reviewed and approved by the State, through its Office of Public School Construction and the Division of the State Architect. The student enrollment capacity of a school, for purposes of the CEQA review, is based on the school's design, as approved and authorized by the local district and the State.

C. Total Student Populations At Schools Vary Over Time.

The total student population at any particular school routinely fluctuates due to a variety of reasons. These include, but are not limited to: population growth or decline within an attendance area; the normal advancement of elementary school age children into high school educational facilities as a population base matures; unification of

non-unified school districts; the closure of adjacent schools; and the modification of attendance boundaries.

II.

DISCUSSION

A. The *CBE* Decision Would Require School Districts To Undertake Costly And Unnecessary CEQA Review And Mitigation Measures.

Determination of the proper baseline under CEQA is a critical issue for CSBA, the Alliance, and all school districts within California. Depending on how the baseline is measured, a school district's project may be exempt from CEQA, or a negative declaration, rather than a more comprehensive and costly environmental impact report ("EIR"), may be sufficient.

1. Under The *CBE* Decision, School Districts Cannot Use Maximum Approved Student Enrollment Capacity As The Baseline And Must Conduct CEQA Review.

The following is an example of a hypothetical school district that is based on characteristics of actual school districts in CSBA's membership.

When the district in this hypothetical example originally built its high school, it received approval from the State to construct a high school for a maximum student enrollment capacity of 2,000 students. That might have been only a few years ago, or it may have been decades ago. Today, that school district cannot demonstrate prior CEQA review at the particular school, for any number of reasons. Among those are the following possibilities: (1) The school predates the enactment of CEQA; (2) The school's compliance with CEQA did not result in the generation of an EIR; or (3) The school district cannot now locate the records of prior CEQA compliance, because the records have been destroyed pursuant to a public records retention policy, or because the records have been lost due to staff turnover or relocation of the district's administrative offices. In this

example, since the establishment of this particular high school, the student population has fluctuated, at one point reaching the maximum approved student enrollment capacity of 2,000 students. This particular school's population has since declined to 1,200 students. Recently, the school district determined that it is necessary to transfer up to 800 students to the high school because of school closures at high school sites elsewhere, or because of adjustments to school boundaries, or because of overcrowding issues. As a result, the total enrollment at the high school will again reach the maximum approved student enrollment capacity of 2,000 students. In order to accommodate the increased enrollment, it will be necessary for the school district to remodel or otherwise modify the existing classrooms or other facilities at the high school site.

Prior to the *CBE* Decision, the school district in the above example could have properly used the school's maximum approved capacity of 2,000 students as the proper baseline for CEQA purposes. However, under the *CBE* Decision, the school district could potentially be required to use the "existing conditions on the ground" immediately preceding CEQA review (i.e., only 1,200 students), as the baseline for determining whether the transfer of students or the construction or renovation of school facilities creates significant environmental impacts requiring CEQA review. This result is required under the *CBE* Decision even if the existing conditions on the ground are not representative of the actual historical conditions. Furthermore, even though the school district, in the above example, received approval to build a school for a maximum capacity of 2,000 students and the maximum capacity was actually reached at some point in the past, the *CBE* Decision would potentially require further CEQA review every time a school district decided to transfer students from one school to another, or decided to proceed with construction, remodeling, renovation, modernization, or upgrading of school facilities.

Under the same or similar circumstances described above, if a school district is required to prepare an EIR, the result may be that the school district is obligated to implement expensive and unnecessary mitigation measures that it would not otherwise be required to undertake. Even absent additional mitigation requirements, the bare requirement of a new EIR introduces at least some degree of uncertainty to a school district's ability to complete the proposed school project. For example, in order to accommodate the increase in traffic and noise that will occur when the 800 students are transferred to the 1,200-student existing high school, the hypothetical school district in our example may find it necessary, under CEQA standards, to widen intersections or make roadway improvements in order to mitigate traffic impacts or build sound walls in order to mitigate sound impacts. Those measures would not be necessary in order to physically accommodate a population that was within the 2,000-student capacity originally approved for the high school. They could, however, be required if the *CBE* Decision stands. Requiring such expenditures by a cash-strapped school district will impede the school district's ability to provide adequate and safe school facilities to students in a timely and cost-effective manner. Additionally, it is difficult to implement such mitigation measures years or decades after a school has already been approved, since all of the funds allocated for construction of the school will have already been spent by then. Finally, as a result of severe budgetary restraints impacting public schools in general, school districts today cannot afford to pay for the cost of preparing EIRs or the cost of implementing the expensive mitigation measures that are attendant to the EIR process. Absent the *CBE* Decision, school districts will not need to engage in such mitigation measures, so long as their schools are proposed to operate within their enrollment baselines.

2. The *CBE* Decision Affects The Determination Of Baseline And Creates Uncertainty Regarding CEQA Review Requirements.

The baseline issue that the *CBE* Decision raises is particularly troublesome in the context of transfers of students and school closures. Under current case law, such activities by a school district may be exempt from CEQA compliance. For example, in *City of South Gate v. Los Angeles Unified School District* (1986) 184 Cal.App.3d 1416, 1423–1426, the court held that the transfer of students from one school to another due to boundary adjustments to remedy school overcrowding issues, that did not involve any school closures or remedial construction, was not a project under CEQA. A similar result was reached in *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School District* (2006) 139 Cal.App.4th 1356, 1395 (hereafter *San Lorenzo Valley*). In that case, the court of appeal held that the transfer of students from two schools to two other schools that was done to accommodate the enrollment change caused by school closures, and that required the construction of portable classrooms, was a project under CEQA. However, the court said the project was exempt pursuant to the Class 14 categorical exemption that Title 14, section 15314 of the California Code of Regulations provides for so-called minor additions to schools.

As a result of the *CBE* Decision, there is now substantial uncertainty regarding what procedures school districts must follow in order to comply with CEQA. If the baseline does not include the maximum approved student enrollment capacity when a school district proposes to conduct activities, such as transferring students, or remodeling school facilities to accommodate additional students, the school district may not qualify for an exemption from CEQA. As discussed above, this will be expensive and

time consuming for a public school system that can ill afford additional costs or additional roadblocks.

Whether the Class 14 categorical exemption applies is measured based on the original designed and approved capacity of the school to physically house students. (*San Lorenzo Valley*, *supra*, 139 Cal.App.4th at 1387–1388.) Specifically, the Class 14 categorical exemption "consists of minor additions to existing schools within existing school grounds where the addition does not increase *original student capacity* by more than 25% or ten classrooms, whichever is less." (14 Cal. Code Regs., § 15314 (italics added).) The plain language of this categorical exemption indicates that the California Resources Agency intended that the baseline for evaluating whether this particular categorical exemption applies should be defined as the operation at the school site's maximum approved student enrollment capacity.

Title 14, section 15302 of the California Code of Regulations also supports the South Coast Air Quality Management District's baseline argument. That section sets forth the Class 2 categorical exemption for replacement or reconstruction of existing structures. Under Section 15302, the replacement or reconstruction of existing structures is exempt from CEQA where "the new structure will be located on the same site as the structure replaced and will have substantially the same purpose *and capacity*." (14 Cal. Code Regs. § 15302 (italics added).) Importantly, the baseline for purposes of Section 15302 consists of the existing building's *capacity*, not the existing *level of use*.

B. The *CBE* Decision Ignores CEQA's Short Statute Of Limitations And Allows Review Of School District Projects That Were Approved Long Ago.

1. The *CBE* Decision's Approach Contravenes CEQA's Short Statute Of Limitations And Creates Uncertainty For School Districts.

Public Resources Code section 21167 provides a short statute of limitations periods for challenges to the approval of projects on the grounds of noncompliance with CEQA. (Pub. Resources Code, § 21167; 14 Cal. Code Regs., § 15112, subd. (a).) The short statute of limitations periods range from 30 to 180 days. (Pub. Resources Code, § 21167; 14 Cal. Code Regs., § 15112; *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307, 1314.)

Even if no CEQA review is completed, the CEQA statutory and regulatory scheme provides a short limitations period for filing a challenge opposing the project. Public Resources Code section 21167, subdivision (a) provides that where "a public agency is carrying out or has approved a project that may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment," a project opponent has 180 days to file a legal challenge. (Pub. Resources Code, § 21167, subd. (a); *see also* 14 Cal. Code Regs., § 15112, subd. (5)(c).)

Once the statute of limitations has run, further legal challenges are foreclosed. However, this is not the case under the Court of Appeal's holding in the *CBE* Decision. The *CBE* Decision creates uncertainty because it allows a project opponent to challenge a project on CEQA grounds years, and perhaps even decades, after the 30-day to 180-day limitations periods have expired. This is true even though the new activity would do nothing more than cause the project to continue to operate within its maximum approved capacity. This is also true even if the project never faced any CEQA compliance challenges when it was originally constructed.

Continuing our example from above, with the facts of the *CBE* Decision in mind: A school district may administer and operate school facilities that were approved decades ago, and that were designed to house student enrollment capacities approved under prior standards regulated by the State of California's Department of Education. As in the *CBE* Decision, the design decisions were never challenged under CEQA, or if the decisions were challenged, they were ultimately resolved in a satisfactory manner. The time for challenging the sufficiency of prior CEQA review or the failure to perform CEQA review has expired. (*Bloom v. McGurk*, *supra*, 26 Cal.App.4th at 1314; *Fund for Environmental Defense v. County of Orange* (1988) 204 Cal.App.3d 1538, 1544.) As the court held in *Bloom*, to subject a facility established decades earlier, and operated without any subsequent change, to preparation of an EIR in order to renew a permit would "derogate the brief statute of limitation for challenges to agency actions under CEQA." (*Bloom v. McGurk*, *supra*, 26 Cal.App.4th at 1314.) Furthermore, the uncertainty raised by the *CBE* Decision may result in significant and costly additional CEQA-based legal challenges to school projects over issues that were satisfactorily resolved earlier, under a regulatory strategy administered by the State.

2. *Bloom* Is A Baseline Case.

Although *Bloom* concerns the applicability of a Class 1 categorical exemption and does not use the word "baseline" in the opinion, it is a baseline case. The court in *Bloom* concluded that even though the facility had not undergone prior CEQA review, because the facility had operated unchanged since it had been established, the baseline included the facility as approved and permitted. (26 Cal.App.4th at 1314–1316.)

The method of determining the proper baseline, as defined in Title 14, section 15125 of the California Code of Regulations is the same regardless if the public agency determines an exemption applies or

determines that it is necessary to prepare a negative declaration or EIR. (*Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1278.) Specifically with regard to exemptions, a categorical exemption applies to a project that the Resources Agency has determined will not have a significant effect on the environment. (14 Cal. Code Regs., § 15300.) Before potential environmental effects can be assessed it is necessary for the public agency to determine the proper baseline against which to measure significant environmental impacts that may require an initial study. (*See San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 657–658 (hereafter *San Joaquin Raptor Rescue Center*).) Accordingly it follows that in *Bloom*, the court found it necessary to first determine the proper baseline, before it could conclude that the Class 1 categorical exemption applied.

C. Courts Have Accepted Baselines Measured By Maximum Levels Of Capacity Based On Established Uses, Including Uses Established By Permit.

1. Alternative Baselines Are Acceptable Where Capacity Routinely Fluctuates.

Where levels of operations have fluctuated over time, courts have recognized that an alternative baseline may be appropriate. When conditions immediately preceding commencement of CEQA review are not representative of actual historical conditions because operations routinely vary from year to year, courts have allowed "established levels of a particular use...to be part of an existing environmental setting." (*San Joaquin Raptor Rescue Center, supra*, 149 Cal.App.4th at 658 citing *Fat v. County of Sacramento, supra* 97 Cal.App.4th at 1274, 1278; *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238, 242 (hereafter *Fairview Neighbors*); *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1196.)

In *Fairview Neighbors*, because mine operations were widely variable depending on various factors, the court allowed the baseline to be the traffic levels occurring when the mine operated at peak capacity pursuant to a prior conditional use permit (CUP). The court held that the EIR "appropriately assumes the existing traffic impact level to be the traffic generated when the mine operates at full capacity pursuant to the entitlement previously permitted by CUP-1328, as extended by the compliance agreement." (*Fairview Neighbors*, *supra*, 70 Cal.App.4th at 242–243.) In more general terms, maximum levels of capacity based on established use include levels of use established by a permit, where the permitted maximum capacity was actually achieved in the past. (*Ibid.*)

Including a maximum level of capacity based on established use in the baseline, even if pursuant to a permit, is not a hypothetical situation because the maximum operational capacity was actually achieved in a prior year. (*San Joaquin Raptor Rescue Center*, *supra*, 149 Cal.App.4th at 658; *see also Fairview Neighbors*, *supra*, 70 Cal.App.4th at 242–243.) Additionally, the maximum capacity based on established use may be included in the baseline even if the facility is operating at a level lower than the maximum operational capacity when commencing CEQA review. (*Fairview Neighbors*, *supra*, 70 Cal.App.4th at 241–243.)

It should be noted that in the cases discussed above, the occurrence or non-occurrence of prior CEQA review was not a factor in determining whether a maximum level of capacity based on established use should be considered as part of the baseline.

California courts have reviewed legal challenges to the adequacy of a school district's CEQA review involving shifts in student population without addressing the alternative baseline concerns when student

enrollment fluctuates over time. (*See, e.g., San Lorenzo Valley, supra*, 139 Cal.App.4th 1356 (school district's decision to close two elementary schools and to transfer students from those schools to other district schools was a "project" under CEQA); *East Peninsula Educ. Council, Inc. v. Palos Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155 (CEQA applied to a school district's decision to close a high school and transfer students to other campuses); *City of South Gate v. Los Angeles Unified School Dist., supra*, 184 Cal.App.3d 1416 (school district's decision to transfer students as a result of boundary adjustments was exempt from CEQA).) These cases involved facts similar to the hypothetical school district example described above. Although the issue of whether the proper baseline includes the maximum approved student enrollment capacity was not addressed in these opinions, the determination of baseline was an implicit, necessary and critical preliminary decision. Without determination of a baseline, a school district could not have ascertained whether an exemption to CEQA applied or whether its proposed activities created significant environmental effects warranting an initial study followed by either a negative declaration or an EIR. Additionally, the courts could not have determined whether a school district's CEQA review was supported by substantial evidence if it did not know the proper baseline. Because these prior school district cases did not address the proper determination of baseline at issue here, it is necessary for this Court to resolve this issue so that school districts know what is required for purposes of CEQA compliance.

2. School Districts Will Be Harmed If The *CBE* Decision Is Affirmed.

A school district's total student population routinely fluctuates from year to year, as described above. Because of this inherent variability, the actual enrollment of a school site immediately preceding CEQA review

may not necessarily be representative of historic operation levels at that school site, for purposes of ascertaining a baseline. In spite of the fluctuation in student population, if a school district merely transfers students to another school or undertakes remodeling and construction that may be the result of student transfers, in accordance with the cases above, the school district should be allowed to rely on the maximum approved student enrollment capacity as its baseline against which to measure significant environmental impacts of its proposed action. In contrast, under the *CBE* Decision, school districts will be required to engage in lengthy and costly CEQA review even if a proposed school modification project will not result in a total student enrollment capacity above historic levels of established use. Thus, it is critical that the baseline for an existing school site include the maximum approved student enrollment capacity because it is against this baseline that the District measures whether or not its proposed activity will cause significant environmental impacts requiring further environmental review (i.e., preparation of an EIR).

3. School District Activities Triggering CEQA Review Are Entitled Projects And An Alternative Baseline May Be Allowed.

It should be further noted that in briefs filed with this Court, petitioner South Coast Air Quality Management District distinguishes the method of determination of baseline for land use plans versus projects that have received their developmental entitlements. Under the land use plan line of cases, separately codified at Title 14, section 15125, subdivision (e) of the California Code of Regulations, the baseline is the existing physical conditions. CSBA asserts that school district activities described in this Brief of *Amicus Curiae* are entitled projects similar to real party in interest ConocoPhillips Company's project and the entitled projects in cases cited by petitioner South Coast Air Quality Management District.

In contrast, the baseline for entitled projects is determined in accordance with Title 14, section 15125, subdivision (a) of the California Code of Regulations. Section 15125, subdivision (a) states:

> An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will *normally* constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. (italics added)

The use of the word "normally" suggests that lead agencies have some flexibility with respect to determining baseline. This interpretation is supported by case law and comments by the California Resources Agency. (*Fat v. County of Sacramento*, *supra*, 97 Cal.App.4th at 1278; Second Request for Judicial Notice, Exhibit D, p.14.) Thus, consistent with case law and the intent of the Resources Agency, school districts may use the maximum approved student enrollment capacity as a baseline, even if the school site is not accommodating the maximum capacity at the time of CEQA review, to the extent its decision can be supported by substantial evidence.

III.

CONCLUSION

For the reasons discussed above, *amicus curiae* California School Boards Association believes that the judgment of the Court of Appeal should be reversed.

Dated: October 30, 2008.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT FOR PROPOSED BRIEF OF *AMICUS CURIAE* CALIFORNIA SCHOOL BOARDS ASSOCIATION

Pursuant to California Rules of Court Rule 8.520(c), Attorneys for *Amicus Curiae*, California School Boards Association hereby certify that the number of words contained in APPLICATION FOR LEAVE TO FILE BRIEF, AND PROPOSED BRIEF, including footnotes but excluding the Table of Contents, Table of Authorities, this Certificate, and any attachments, is 5,424 as calculated using the word count of the computer program used to prepare the brief.

Proposed Brief of *Amicus Curiae* California School Boards Association in Support of Supreme Court Petitioners South Coast Air Quality Management District and ConocoPhillips Company is thus submitted in compliance with the maximum word limit of 14,000 words as provided in Rule 8.520(c).

Dated: October 30, 2008

Respectfully submitted,

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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On October 30, 2008, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

APPLICATION FOR LEAVE TO FILE BRIEF, AND PROPOSED BRIEF OF *AMICUS CURIAE* CALIFORNIASCHOOL BOARDS ASSOCIATION IN SUPPORT OF SUPREME COURT PETITIONERS SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT AND CONOCOPHILLIPS COMPANY

(Cal. Rules of Court, Rule 8.520(f))

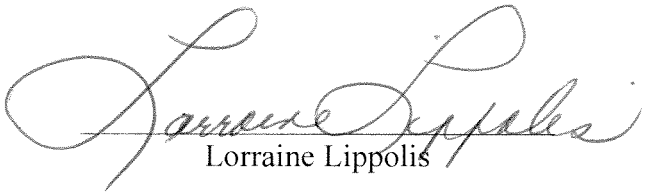
in a sealed envelope, postage fully paid, addressed as follows:

See AttachedServiceList

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

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

Executed on October 30, 2008, at Sacramento, California.



Lorraine Lippolis

CALIFORNIA SUPREME COURT
Case No. S161190

CBE, et al. v. SCAQMD, et al.
(After a Decision by the Court of Appeals
Second Appellate District, Division Two
Case No. B193500)

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