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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11
12 Glendale Historical Society,
13 a California non-profit corporation;

14 Petitioner;

15 v.

16
17 City of Glendale and City Council of
18 the City of Glendale;

19 Respondents.
20 _____/

21 R & A Homes, LLC, *et al*;

22 Real Parties in Interest.
23 _____/

Case No. 21STCP01852

**Petitioner's Opening Brief
in support of
Petition for Writ of Mandamus**

[CEQA]

Assigned for All Purposes
Honorable Joel L. Lofton

Hearing: June 17, 2022
Time: 1:30 p.m.

Dept: X

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Introduction

One reason the South Glendale Historic Resources Survey and the Craftsman Survey were prepared and adopted is to ensure that single-family houses that are historically significant can continue to tell the story of Glendale and its development from the early years of the twentieth century. Unfortunately, the project as proposed drowns that story out. (Administrative Record (AR) [Tab] 1 [Page] 34 [Glendale Historical Society president Steve Hunt].)¹

For 40 years and counting, Glendale Historical Society members promote the continued vitality of Glendale's remaining historic buildings and neighborhoods. Maintaining significant architecture while accommodating new development protects and celebrates the City's quality of life, aesthetics, and culture.

It is also required by law. The City must avoid needless damage to its historic 'built environment' when approving new construction that complies with the California Environmental Quality Act's procedures and substantive mandates. The Society now seeks judicial relief — *for the first time in its four decades of advocacy* — because the City refuses to apply CEQA's mandates to the 1913 Liddell House, a classic Aeroplane Craftsman named for its first resident, painter Frank Rennsselear Liddell.



1913 Liddell House

¹ Facts and law in the Introduction are cited to the record, *post*. In this brief, some internal punctuation, words, citations, and footnotes will be omitted from quotations and some emphases will be added.

1 The City approved the subject 12-unit, three-story, market-rate residential
2 project at 534-538 North Kenwood Street in Glendale, relying on a Mitigated Negative
3 Declaration (MND) without preparing an Environmental Impact Report.

4 The Society seeks this Court’s peremptory writ to order the City to conduct an
5 EIR process to analyze potentially feasible project alternatives within a public process.

6 A project affecting California’s natural *or* built environment must undergo EIR
7 review if *any facts or fact-based reasonable assumptions or expert opinion* support a “fair
8 argument” of significant environmental impact, regardless of contrary evidence. The
9 EIR public process is designed for public agencies to analyze environmental effects and
10 then identify — and adopt, if feasible — mitigations and alternatives that can achieve
11 fundamental project goals while reducing or avoiding significant impacts.

12 *Whether a proposed project’s impacts to the integrity of a historic resource would be*
13 *significant is necessarily determined by experts*, while the significance of aesthetic and
14 visual impacts is subjective and evidence may meet the fair argument standard via
15 fact-based lay opinions. This record contains both types of evidence. As discussed *post*,
16 the proposed project, while not requiring full demolition of the Liddell House, would
17 overwhelm and obscure the 100-year-old treasure and adversely impact its character-
18 defining features and setting. The result would be potentially significant historic,
19 aesthetic, and visual impacts. The project “can be expected to cause substantial adverse
20 change to the significance of the historical resource.” (AR1 35.)

21 The Society and others requested preparation of an EIR to inform the Council’s
22 discretion, to analyze significant environmental impacts and identify potentially
23 feasible alternatives. The City Council majority approved the MND 3-1— Mayor Paula
24 Devine voted in favor of an EIR and another Councilmember recused himself.

25 The Society’s sole request is for issuance of a peremptory writ in the public
26 interest to set aside the MND and conduct an EIR process. While a desired outcome
27 would be a revised 12-unit project that avoids or reduces environmental impacts,
28 CEQA compliance is required regardless of how or whether the project may change.

1 **Statement of Facts**

2 **This is more complicated than just repairing a**
3 **dilapidated old building, ... This has more important**
4 **significance... *this historic house is still overwhelmed***
5 ***and loses its historic prominence by the massive,***
6 ***massive new construction shown in the revised plans.***
(AR3 604-605 [Mayor Paula Devine, City Council
Hearing, 5/4/21].)]

7 ***Environmental Setting.*** Expert assessment of the Liddell House site at 534
8 North Kenwood Street in two City-adopted historic resources surveys — the 2006-2007
9 City of Glendale Reconnaissance Survey and Historic Context Statement of Craftsman
10 Style Architecture and the 2017 South Glendale Historic Resources Survey — awarded
11 a California Historical Resources Status Code of 5S3. (AR2 310.)

12 *The City acknowledges that the Liddell House is a historic resource pursuant to CEQA*
13 *Guidelines [14 Cal. Code Regulations] section 15064.5, subdivision (a).* The California
14 Department of Parks and Recreation Primary Record DPR 523 form submitted by
15 architectural historian and Society expert Francesca Smith summarizes its key features:

16 The subject property contains two buildings; a two-story, Arts & Crafts
17 (Craftsman) style residence and a vernacular garage of the same style. The
18 residence architectural subtype is ‘Aeroplane,’ distinguished by the set-back
19 second floor and deep overhanging eaves which suggest the wings of a plane.
20 Its Craftsman features are the overall horizontal orientation and asymmetry of
21 the composition, its corner-wrapped entrance porch, extended decorative
22 purlins, ridge beams and rafter tails, elaborate ornamental joinery and
23 kneebraces at porch supports, the three-part natural wood door and sidelights,
24 capped plaster porch bases and corresponding endwall chimney, the exposed
25 keyway wood shingle cladding, the wide door and window casings, decorative
26 marginal muntins, the front and side-gabled, low sloping roofs. The shingled
27 exterior wall finish is battered at the corner bases, typical of the style.

28 ***

The single-story, four-door garage has a front-facing gable and is clad in painted,
beveled shiplap. It is rectangular and faces the alley at the rear of the property.
The deeply overhanging eaves, decorative rafter tails, purlin and ridgeboards
clearly establish its Craftsman style.

1 (AR1 36, 38.)

2 Historically, Glendale was a city of Craftsman houses, and the City recognizes
3 the importance of the style, providing a criterion for designation on the Glendale
4 Register of Historic Resources designed to encourage owners to preserve Craftsman
5 that may otherwise not be Register-eligible. The pace of escalating demolitions of
6 Craftsman houses to make way for multi-family buildings was a factor in the City's
7 action to survey its remaining Craftsman houses within multi-family zones in 2006-
8 2007. (See Request for Judicial Notice (RJN), *City of Glendale Reconnaissance Survey and*
9 *Historic Context Statement of Craftsman Style Architecture 2006-2007 (Craftsman Survey)*.)

10 The environs of the subject property at 534 N. Kenwood contain a mix of newer
11 multi-family buildings and vintage homes in various states of repair. (AR1 113-124.)

12 Only five of 521 Craftsman noted in City surveys were of the Aeroplane
13 subtype and four of the five were designated as historic out of 61 historic Craftsman
14 identified in the survey area. (RJN, *Craftsman Survey* at 37.) The survey noted the rarity
15 of the Aeroplane sub-type, as simpler designs for working-class and middle-class
16 families were typical in the City. The survey particularly called out the Liddell House
17 for its "iconic" double front gables, elaborate porch design, and garage. It states that the
18 Aeroplane "is perhaps the most distinctive of the Craftsman sub-styles represented in the
19 city, although there are not many examples. It is not only uncommon in this city, but
20 also throughout Southern California and the rest of the country." (*Id.* at 35.)



27 (AR7 1996, 534 and 538 N. Kenwood [Liddell House on right].)

28 **Project Description.** The project proposes a three-story, market-rate structure

1 with 11 units sharing a lot with the Liddell House, counted as a 12th unit. It would
2 demolish the home and garage at 538 North Kenwood and most of the Liddell House
3 rear yard and detached exemplary Craftsman garage featured in the *Craftsman Survey*.

4 The project would also both rehabilitate and alter the Liddell House. A semi-
5 subterranean garage would be excavated. A new building of about 18,000 square feet
6 and 17.5 feet higher than the Craftsman (40'-3" versus 22'-9") would be built five feet
7 closer to the street. Taking up a significant portion of the historic property, the new
8 "massive, massive" building (as characterized by Mayor Devine, AR3 605) would wrap
9 around the historic Craftsman. (AR4 900, 1137.)



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18 The project rendering angle disguises the 17-foot difference in height
19 but indicates size, mass, and proximity of new construction.

20 ***Administrative Process and Approval.*** A 20-day public review period for
21 the proposed MND began in May 2019. Comments from the Society and architectural
22 historian Francesca Smith identified problems with the analysis of the historic resource
23 and predicted adverse aesthetic impacts. However, the final MND concluded that the
24 project would have no potentially significant environmental impacts. (AR1 20-23.)

25 The Design Review Board had reviewed the project in September 2019 and
26 approved it with a 3-1 vote based on the MND. (AR7 1998.) The Society, Ms. Smith,
27 and members of the public objected to the size, scale, massing, and siting of the
28 proposed new construction, the demolition of the garage and alterations to other
character-defining features of the property, the project's failure to meet the federal

1 *Secretary of the Interior's Standards and Guidelines for Rehabilitation of Historic Properties*
2 (*Secretary's Standards*, AR7 1814-1866), inadequate and inappropriately deferred
3 mitigations, and failure to consider cumulatively considerable impacts. (*Post.*)

4 The Society appealed the Design Review Board's project approval to the City
5 Council. (AR7 1998.) The day before the Council's public hearing on the appeal on
6 May 4, 2021, the project applicant provided the City with a petition that stated:

7 We, the undersigned residents of Glendale, completely support this project.
8 It is appropriate for the site and will provide much needed residential units.
9 The existing historic house has been in dire need of rehabilitation for many
10 years. The proposed project will revitalize the neighborhood and at the same
11 time will save the existing Historic House.

12 (AR7 1792-98.)²

13 At and prior to the City Council's public hearing (AR2-489 – AR3-610
14 [Transcript]), the Society offered evidence that the City could not rely on an MND and
15 must prepare an EIR because the record includes substantial evidence to support a
16 "fair argument" that the project would have a significant impact on a qualified historic
17 resource as well as aesthetic and visual environmental impacts of new construction that
18 would crowd and tower over the Liddell House. (Transcript, *passim.*) Because
19 maintenance of the historic resources on the project site has been neglected, some
20 Glendale residents testified in support of the project, emphasizing their interest in its
21 rehabilitation sooner than later. (Transcript.)

22 Among those providing fair argument evidence was architectural historian
23 Francesca Smith, well-qualified under the *Secretary of the Interior's Professional*

24 ² Not all petition signers were local. Councilmember Ardy Kassakhian stated:
25 "I just want to mention something, ... I see this set of signatures that were submitted by
26 the applicant and, ... it's got 67 signatures in support of this project, and it would be
27 perhaps significant if it was neighbors and people in the immediate area, but there's
28 people here from Verdugo, from Dryden, from Elk, and not necessarily in the near
vicinity. So it doesn't really necessarily do yourself a favor when it's just a hodgepodge
of signatures saying that they generally support it and it's only 67 people in a city the
size of ours." (AR3 600-601.) The population of Glendale is over 200,000.

1 *Qualification Standards.* (AR6 1521-1527 [curriculum vitae].) Ms. Smith provided a
2 fact-based expert opinion that “the project would cause impacts to the historical
3 resource that are not adequately mitigated to ensure the continued significance” and
4 “would cause substantial adverse change to the main house, its garage and the setting
5 of the historical resource.” (AR1 35, AR6 1801.)

6 Public participation was severely restricted at the City Council’s virtual zoom
7 hearing. Three minutes before the hearing opened, the Mayor informed the public that
8 nine callers were already queued to speak and that the number of total callers would
9 likely be limited to twelve. The requests of many members of the public that phoned in
10 to speak were denied, despite objections. (*E.g.*, AR2:568-569.)

11 That evening, the Council approved the MND and the project with a 3-1 vote.

12 **Statement of the Case**

13 **The proposed apartment building will have significant**
14 **adverse impact by dwarfing the Historic building.**
15 **Altering the immediate surroundings of this resource ...**
16 **will obscure and visually diminish this rare Craftsman**
17 **treasure...Although we respect the applicant’s wishes**
18 **to maximize the development of the property, they**
19 **knowingly invested in land that featured a protected oak**
20 **and a home of historic character. Any hardships**
21 **encountered while developing the lot are self-imposed.**
22 (AR7 1991 [Glendale’s Adam Hills Neighborhood Association].)

23 The City filed a CEQA Notice of Determination on May 11, 2021, triggering a
24 30-day statute of limitations. (AR 2.) This action was timely filed on June 8, 2021. All
25 parties participated in a settlement conference via Zoom. Despite the parties’
26 subsequent efforts, the case has not settled. The status quo remains in place on the site.

27 **Standard of Review**

28 In deciding whether to issue judgment and a peremptory writ, the Court will
determine whether the City prejudicially abused its discretion by failing to proceed in
the manner required by law or making findings unsupported by substantial evidence.
(Code Civ. Proc., § 1094.5; Pub. Resources Code, § 21168.) The sole issue before the

1 Court is whether the MND relied upon for the demolition/housing project is
2 inadequate. The issue is one of law. This Court will consider whether the City
3 prejudicially abused its discretion in approving the project without an EIR process.

4 **The Fair Argument Standard.** CEQA requires that a lead agency conduct an
5 EIR process whenever a project “may have a significant impact on the environment.”
6 (Pub. Resources Code, § 21151, (a).) As a matter of law “an EIR is required ‘whenever
7 it can be fairly argued on the basis of substantial evidence that [a] project may have
8 significant environmental impact.’ ” (*Friends of the San Mateo College Gardens v. San*
9 *Mateo County Community College District* (2016) 1 Cal.5th 937, 957.) CEQA defines
10 substantial evidence as “fact, a reasonable assumption predicated upon fact, or expert
11 opinion supported by fact” and not argument, speculation, or unsubstantiated,
12 inaccurate, or erroneous opinion. (Pub. Resources Code, § 21080, (e).)

13 Agencies may adopt an MND only “*where clearly no significant effects would occur.*”
14 (Guidelines, § 15070, (b)(1).) There is a “low threshold requirement for initial
15 preparation of an EIR” rather than an MND that “reflects a preference for resolving
16 doubts in favor of environmental review when the question is whether any such review
17 is warranted.” (*League for Protection v. City of Oakland* (1997) 52 Cal.App.4th 896, 905.)

18 When presented with the requisite fair argument, an agency must prepare an
19 EIR *even if a different conclusion is arguably well-supported.* (*Pocket Protectors v. City of*
20 *Sacramento* (2004) 124 Cal.App.4th 903, 927, Guidelines, § 15064, (f)(1).) *Sierra Club v.*
21 *County of Sonoma* (1992) 6 Cal.App.4th 1307, explains:

22 ... the question is one of law, *i.e.*, ‘the sufficiency of the evidence to
23 support a fair argument.’ Under this standard, *deference to the agency’s*
24 *determination is not appropriate and its decision not to require an EIR*
can be upheld only when there is no credible evidence to the contrary.

25 (*Id.* at 1317-1318.) Evidence need not be “overwhelming or overpowering ... CEQA
26 does not impose such a monumental burden” to support a fair argument. (*Stanislaus*
27 *Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 151.)
28

1 **Dispute Among Experts.** Guidelines section 15064 (g) directs that “if there is
2 a *disagreement among expert opinion supported by facts* over the significance of an effect on
3 the environment, the [City] *shall treat the effect as significant and shall prepare an EIR.*”

4 **Layperson Evidence.** Fair argument evidence also includes the fact-based
5 reasonable assumptions of residents based on personal observations. (*Ocean View*
6 *Estates Homeowners Association v. Montecito Water District* (2004) 116 Cal.App.4th 396,
7 402-03 [residents’ subjective opinions regarding aesthetic impacts to private views
8 qualify as fair argument]; *Pocket Protectors v. City of Sacramento, supra*, 124 Cal.App.4th
9 at 932-937 [residents provided fair argument of project’s aesthetic impacts]; *Protect*
10 *Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1147-1148 [aesthetic judgments are
11 inherently subjective and qualified as fair argument evidence].)

12 Input from non-experts thus provides a fair argument as long as opinions are
13 fact-based and do not require technical training.

14 **Opinions of Elected or Appointed Officials.** Case law confirms that fact-
15 based opinions of commissioners or elected officials with knowledge of environmental
16 matters qualify as substantial evidence. (*Pocket Protectors, supra*, 124 Cal.App.4th at 934;
17 *Architectural Heritage Association v. County of Monterey* (2004) 122 Cal.App.4th 1095,
18 1115, *Protect Niles v. City of Fremont, supra*, 25 Cal.App.5th at 1148, 1151; *Stanislaus*
19 *Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 155.) Consistently, in
20 *Oro Fino Gold Mining Corporation v. County of El Dorado* (1990) 225 Cal.App.3d 872, 883,
21 a county supervisor’s opinion qualified as substantial evidence of a fair argument.

22 **Credibility.** Agencies and project applicants sometimes attempt to discount or
23 dismiss evidence based on a claimed lack of credibility. Case law establishes that while
24 courts may defer to a lead agency on “legitimate disputed issues of credibility” (*Protect*
25 *Niles v. City of Fremont, supra*, 25 Cal.App.5th at 1139), in CEQA cases expert evidence
26 of environmental impact may be discounted based on lack of credibility *only if* based
27 on specific findings adopted *before* approving an MND and *before* litigation is filed.
28

1 To preserve attacks on comments based on lack of foundation or credibility,
2 *explicit findings* discounting those comments must be made with sufficient
3 particularity to allow the reviewing court to determine whether there were
4 legitimate, disputed issues of credibility ... [otherwise] the fair argument test
5 would be effectively eviscerated *because much of the evidence submitted in [CEQA
6 proceedings] comes from people and entities who are interested in the outcome.*

7 (*Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358, 378.)

8 *Pocket Protectors, supra*, 124 Cal.App.4th at 934 consistently ruled years earlier
9 that because the fair argument standard “prefers resolving doubts in favor of
10 maximizing environmental review,” to reject evidence of impacts for lack of credibility
11 “we would have to find that the City Council actually resolved disputed factual
12 questions *going to credibility.*” (Original italics.) The illustrative example the Court used
13 was that if “an expert purporting to hold a Ph.D. testifies as to the environmental effect
14 of a project, a lead agency or a court may properly consider and ‘weigh’ evidence in the
15 record showing the expert never attended college and his Ph.D. is phony.” (*Id.* at 935.)

16 **Discussion: The City Must Conduct An EIR Process**

17 **I was going to propose after we find out about the EIR
18 and go through the comment period, that we send it
19 back to the [Design Review Board] for redesign.** (AR3 606,
20 [Mayor Paula Devine, City Council Hearing 5/4/21])

21 Two factors *greatly simplify the adjudication of this case* under well-settled law:

- 22 • It is undisputed that the Liddell House *qualifies as a historic resource* entitled to
23 the protections of CEQA.
- 24 • The record contains fact-based expert opinion supporting a fair argument that
25 the proposed project *may have* significant environmental impacts.

26 Under these facts, an EIR process is mandated by law to identify potentially
27 significant project impacts and identify potentially feasible mitigation measures and
28 project alternatives. (Pub. Resources Code, §§ 21002, 21151.)

1 **A. CEQA Encompasses Historic and Aesthetic Resources**

2 **Historic structures give us a sense of belonging and**
3 **commitment to a particular place. They have the potential**
4 **to bring people of diverse backgrounds together around a**
5 **shared past...There are also very concrete and measurable**
6 **economic benefits. Many, many studies have been done**
7 **that bear this out... I believe the design contemplated for this**
8 **1913 Craftsman property will destroy it if not directly, then**
9 **indirectly, by burying it in the shadow of a gargantuan and**
 poorly designed fake. I urge you to reject this design and
 instruct the developer to come back with a more compatible
 and scaled-down proposal. (AR2 435-436 [Dan Brotman].)

10 From its inception, CEQA has protected the ‘built’ environment along with the
11 natural environment. (Pub. Resources Code, § 21001, (b) [“... it is the policy of the state
12 to take all action necessary to provide the people of this state with ...enjoyment of
13 aesthetic, natural, scenic, and historic environmental qualities ...”].)

14 As the Supreme Court emphasized in *Friends of Sierra Madre v. City of Sierra*
15 *Madre* (2001) 25 Cal.4th 165, 183-184, while CEQA is “directed primarily to ecological
16 concerns and preservation of the environment,” it is “the policy of the state to
17 ‘preserve ... examples of the major periods of California history.’” (Pub. Resources
18 Code, § 21001, (c).) Accordingly, the CEQA definition of “environment” includes
19 “objects of historic or aesthetic significance.” (Pub. Resources Code, § 21060.5.)

20 Every public agency in California must conduct environmental review as
21 prescribed by CEQA whenever it takes a discretionary action — acting as trustee for
22 the people of California — that “may cause a substantial adverse change in the
23 significance of an historical resource.” (Pub. Resources Code, § 21084.1.) “Substantial
24 adverse change” encompasses “physical demolition, destruction, ... or alteration of the
25 resource or its immediate surroundings such that the significance of an historical resource
26 would be materially impaired.” (Guidelines, § 15064.5 (b)(1).) “Material impairment”
27 is defined in section 15064.5 (b)(2) and can be avoided by compliance with the
28 *Secretary’s Standards. (Id. at § (b)(3).)*

1 CEQA's overarching edict is that agencies "must ... consider measures that
2 might mitigate a project's adverse environmental impact and adopt them *if feasible*.
3 (Pub. Resources Code, §§ 21002, 21081.)" (*Mountain Lion Foundation v. Fish and Game*
4 *Commission* (1997) 16 Cal.4th 105, 124.) Our California Supreme Court has repeatedly
5 confirmed "CEQA's *substantive mandate* that public agencies refrain from approving
6 projects for which there are feasible alternatives or mitigation measures." (*Id.* at 134;
7 *accord, Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 264; *City of Marina*
8 *v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 350.)

9 An EIR process is of great practical import for projects affecting historic
10 resources, because *a lead agency must identify and adopt project alternatives that avoid or*
11 *reduce environmental impacts while accomplishing fundamental project objectives*. As noted,
12 a lead agency may rely on an MND only when a project "clearly" will have no
13 significant impacts, either because it is sufficiently mitigated or is environmentally
14 benign and needs no mitigation. In the absence of a fair argument to the contrary, an
15 agency *does not consider project alternatives because none are needed to prevent impacts*.

16 **B. The Liddell House is a Historic Resource**

17 The City acknowledges, and the record reflects, that the Liddell House is a
18 historic resource. The Primary Record DPR 523 form is cited *ante*. (AR1 35-42.) Since
19 historic status is undisputed, the Society will provide minimal but sufficient record
20 references rather than belaboring the point with redundant citations.

- 21 • **AR1 44.** City staff acknowledged project impacts to "the Craftsman style
22 house located at 534 North Kenwood Street ('Historic House') ... following
23 its identification as a historic resource in the 2007 *Craftsman Survey* and the
24 2018 South Glendale Historic Resource Survey." Staff *believes the house [is]*
25 *a rare example of the Airplane sub-style with very high historic integrity ..."*
- 26 • **AR1 45-49.** In responding to the Society's request for a project EIR, City
27 staff explained why it disagreed that the project would cause significant
28 impacts [see discussion *post*] to what it repeatedly referenced as a
"Historic House" and "historic resource."

- 1 • **AR1 175.** The staff report to the City Council for the final project approval
2 hearing in May 2021 recited that although “not currently listed on the
3 Glendale Register of Historic Resources, the two-story house at 534 North
4 Kenwood Street, built in 1913, was assigned a California Historical
5 Resource Status Code of 5S3 (appears to be individually eligible for local
6 listing or designation through survey evaluation) in the 2007 Craftsman
7 Survey and the 2018 South Glendale Historic Resource Survey. *This makes
8 the property a historic resource pursuant to Section 15064.5 (a) of the California
9 Environmental Quality Act (CEQA) [Guidelines].”*

8 **C. The Fair Argument Standard is Well Met**

9 The record includes substantial discussion and disagreement among experts as
10 to whether the project would have a significant impact. While cognizant of its duty to
11 fairly recite the evidence relied upon by the City and the project applicant/real party,
12 exploration of the details of the evidence is both impossible in this brief and largely
13 irrelevant in the context of the fair argument standard *as the Court will not weigh*
14 *competing evidence.* The Society will thus not address details of disputes that are not
15 relevant to the dispositive inquiry of whether the Society has met its burden of proof.

16 **Architectural Historian Francesca Smith.** Ms. Smith, a Glendale resident,
17 submitted reports urging project revisions to avoid or reduce environmental impacts.
18 City Councilmember Ara Najarian, an attorney, contended that Ms. Smith’s
19 expert opinions should be discounted because as a professional architectural historian
20 she is an advocate for historic preservation and is also a member of the Society.
21 She provided her expert opinion regarding significant impacts of the project without
22 compensation. (AR2 528-532.) Councilmember Najarian made clear that he’d “seen
23 Ms. Smith's resume, so I have no question with her actual qualifications.” (AR2 528.)
24 Without referencing CEQA, he stated that under state and federal law “a witness
25 cannot be an advocate.”(AR2 596.) “I need an expert who is unbiased.” (AR 530.)
26 Ms. Smith “is quite an advocate ” — and so she is not a credible expert. (AR2 528-531.)

27 Society attorney Amy Minter explained that, to the contrary, “under CEQA,
28 there isn't that same requirement, a strict requirement regarding bias that you're

1 describing from other types of trial litigation.” (AR2 529; *see ante* at 14.)

2 Mayor Paula Devine expressed her opinion that the record presented a dispute
3 among experts, including Francesca Smith, that indicated EIR review is required:

4 You know, Councilmember Najarian made a statement earlier in the evening
5 about an expert ... disputing the bias and advocacy, et cetera, et cetera. And I
6 can't make that judgment. *I think that that's what calls for an EIR. That's when*
7 *we need an EIR, is when we're not sure so that we can get an unbiased and neutral*
8 *opinion, an expert's opinion.* But that was why I asked the attorney about if
9 experts disagree. I guess I felt that I was hearing from experts. I think I heard
10 on the legal side of it, some very good arguments for and against. So, with that
11 being said, I just felt that both the appellant and the applicant's cases were very
12 credible, and they were equal in weight, in evaluating their different positions.

13 (AR3 569, 604-605; *see ante*, Guidelines, § 15064,(g).)

14 In approving the MND, the City made no findings disputing Francesca Smith's
15 credibility as an expert in historic resources. (AR1 20-24.) Her fact-based expert
16 opinions are substantial evidence supporting a fair argument of significant impacts:

17 • **AR7 1801-1812, Letter to Glendale Mayor and City Council, May 3, 2021**

18 The factual details of Ms. Smith's comprehensive and dense final report to the
19 City need not be dissected as the salient facts are not in dispute. Ms. Smith's expert
20 interpretation of the facts support her opinion that the project — as revised before its
21 final approval — may have significant adverse impacts to historic resources and
22 aesthetics and does not comply with the *Secretary's Standards*. (AR6 1803.) Ms. Smith's
23 report notes that the additional separation of 18 inches between the Liddell House and
24 the new project building would not resolve adverse impacts of their proximity:

25 While there is no established dimension that would automatically alleviate this
26 type of impact, the addition of the approximate length of a standard mixing
27 spoon or a back scratcher would not reduce the impact to less than significance
28 on the Frank Rennslear Liddell Residence. Additionally, there is no reason to
use a “wall-to-wall” measurement when the proposed new building would be
built on a single story, excavated semisubterranean garage, include paved
circulation areas and other components that would be far closer to the

1 Liddell Residence. Those dimension strings are not provided in the plans or
2 described in the Staff Report, because they are too close to the Liddell Residence
3 and would cause substantial adverse change to the main house, its garage and
4 the setting of the historical resource.

5 (AR6 1801, *see* 1802-1803.) Referencing the *Secretary's Standards*, Ms. Smith's report
6 further explains that the property's historic character is not restricted to the Liddell
7 House but "includes a larger setting that includes its reasonably deep setback, the front
8 and rear yards *and the extant Pre-World War I garage that each collectively contribute to the*
9 *property's overall character.*" (AR6 1803.) That character would be "permanently lost"
10 unless the project is revised. (*Ibid.*) Thus, "demolition of the extant garage is another
11 significant impact under CEQA." (*Id.* at 1804) In CEQA parlance, it would cause a
12 substantial adverse change in historic significance of the Liddell House via "physical
13 demolition, destruction or alteration of the resource *or its immediate surroundings* such
14 that the significance of an historical resource would be materially impaired." (*Ante.*)

15 The Smith report explains that research shows that the garage had been built by
16 1919, according to "Sanborn Fire Insurance Co. Maps of Glendale" (Volume 2, sheet
17 287), and is a very rare example of a two-car garage from that period." (AR6 1806-
18 1808.) Disputing the City's unsupported contention that the garage is not "original" —
19 built at the same time as the Liddell House — the report provides much detail,
20 including that the property was included in the 2007 City's *Craftsman Survey*, which
21 documents a "single-family residence and detached garage with a front lawn and
22 bushes along the front porch and primary elevation." (AR6 1807.) The property, and
23 not merely the residence, was found locally eligible for historic listing in that survey.
24 (*Ibid.*) The garage was specifically called out in the Craftsman Survey section on "The
25 Automobile and the Craftsman." (RJN.)

26 Ms. Smith's entire report, which cannot be fully described in the reasonable
27 space constraints of this brief, contains fact-based analysis of the property and project
28 that are recommended to the Court as worthy of review. Along with architectural and
historic setting, the report explains the historic stature of Frank Rennsseclear Liddell.
(AR6 1808 -1809.) Ms. Smith also suggests a potentially feasible project alternative:

1 “a CEQA-compliant project that would actually rehabilitate the Liddell Residence and
2 its garage and could add a smaller two-story project on the lot next door that would
3 not overpower the historical resource.” (AR6 1808.)

4 Ms. Smith’s report qualifies as fact-based expert opinion sufficient to support a
5 fair argument that the project may have significant impacts relating to historic,
6 aesthetic, and visual environmental impacts, and that EIR review is required by law.

7 • **AR1 248-259, PowerPoint to Design Review Board, September 12, 2019**

8 The colorful powerpoint speaks for itself, depicting site conditions, parameters
9 of the proposed project, the applicable *Secretary’s Standards*, failure to comply with the
10 *Standards*, and the reasons the project would result in a failure of the Liddell Residence
11 to meet historic register criteria. It also provides examples of successful additions to
12 historic properties. The powerpoint adds to reasonable assumptions and expert
13 opinion supporting a fair argument of significant project impacts.

14 • **AR 5 1359-1370, Email from Francesca Smith to Aileen Babakhani,
15 September 10, 2019**

16 The email methodically presents an analysis of the proposed project with
17 reference to applicable *Secretary’s Standards’ Guidelines* for projects that involve
18 proposals for rehabilitation — including significant expansion — of historic
19 buildings. Ms. Smith explains her extensive background as an architectural historian
20 and how the project does not follow established guidelines mandating that expansion
21 “must not alter the historic character of a property.” (AR5 1359-1360.) She explains
22 ways that project revisions can allow it to proceed effectively. (*Id.* at 1359-1370.) The
23 email again provides fact-based expert evidence meeting the fair argument threshold.

24 • **AR 6 1520-1529, Email from Francesca Smith to Ardashes Kassakhian
25 April 19, 2020**

26 This email provides a copy of Ms. Smith’s curriculum vitae, establishing her
27 expert credentials as an architectural historian with broad experience.
28

1 **Mayor Paula Devine.** Mayor Devine’s comments at the City Council hearing
2 on the MND appeal on May 4, 2021 are referenced throughout this brief and are
3 contained in full in the transcript of the hearing. The Mayor is an expert for purposes
4 of CEQA fair argument evidence, as explained *infra*, as an elected official with expertise
5 in land use decisionmaking. She expressed the opinion, based on facts, that the MND
6 appeal should be granted as the “massive massive” project would be incompatible with
7 the historic Liddell House and cause environmental impacts, and that a dispute among
8 experts made the MND insupportable and required an EIR. (AR 3 569-570, 604-606.)

9 **The Glendale Historical Society.** In the last ten years of its more than 40
10 years of advocacy in Glendale, the Society has twice appealed a Design Review Board
11 decision to City Council. This is its first legal action. (AR2 515.) It provided evidence
12 supporting a fair argument of significant impact, in addition to the expert reports of
13 Francesca Smith, providing facts and analysis of the reasons why the project may have
14 significant adverse historic, aesthetic and visual impacts.

15
16 • **AR5 1346-1357, Letter from Steve Hunt to the Design Review
17 Board, September 10, 2019 with attachment**

18 This comprehensive Society letter lays out in great detail the historic qualities
19 and character-defining features of the Liddell House and garage; concerns about the
20 project’s size, scale, massing, siting, and design; applicable guidelines for expansion
21 and rehabilitation of historic resources; the ‘fair argument’ standard; the presence of a
22 disagreement among experts; the need for EIR review rather than an MND; failure of
23 project to comply with the *Secretary’s Standards*; improper reliance on deferred and
24 unenforcable mitigation measures and an adequate MMRP; and ideas for an improved
25 project design as achieved in another City project. Its content presents a fair argument
26 of potentially significant environmental impacts.
27
28

1 • **AR7 1813-1978, Letter from Society Attorney Amy Minter to City**
2 **Council, May 3, 2021, with attachments**

3 In support of the Society’s appeal of the Design Review Board’s 2019 approval
4 of the project, attorney Amy Minter provided background context and technical
5 preservation-related guidelines and resources for historic preservation projects,
6 complimentary to the advocacy efforts of the Society seeking project revisions to
7 reduce or avoid significant historic, aesthetic, and visual impacts.

8 • **AR1 221-247, Society Notice of Appeal, September 26, 2019**

9 The comprehensive appeal documents submitted by Society attorney Amy
10 Minter explain the evidence supporting a fair argument of significant project impacts.
11 These include not only historic resource impacts relating to the Liddell House property,
12 but related aesthetic and visual impacts. The appeal documents a fair argument of
13 significant visual impacts to historic resources due to incompatibility of new
14 development, as in *Protect Niles, supra*, 25 Cal.App.5th 1129 and *Georgetown Preservation*
15 *Society, supra*, 30 Cal.App.5th 538. “Aesthetic impacts to a historic resource can be
16 found when a project is incompatible with its building height and architectural style.
17 *Ibid.*” (AR1 226.) The appeal also calls out unlawfully deferred mitigation measures
18 and inadequate findings to support the reliance on an MND rather than an EIR process.
19 (AR1 223-229.) The appeal also attaches a May 29, 2019 letter from the Society raising
20 many of the same points later raised in its letter of September 10, 2019, which it also
21 attaches. (*Id.* at 230-247; *see also* AR4 1065-1075 [appeal powerpoint].)

22 ***Emails and Testimony at Public Hearings.*** The Court is respectfully
23 referred to two transcripts: the Design Review Board hearing in September 2019 (AR2
24 414-482) and the City Council Hearing in May 2022 (AR2 489-610.) The statements by
25 the public as well as the representatives of the Society and the City are relevant, and
26 while consistent with the evidence already presented here are worthy of the Court’s
27 review. There are also hundreds of emails in the record, in volumes 7-10, far beyond
28 the space constraints of briefing but that also contain evidence supporting a fair

1 argument of potential significant impact from scores of residents concerned about
2 project impacts relating to historic, aesthetic, and visual impacts.

3
4 **D. City Objections do not Overcome the Fair Argument Evidence**
5 **and the City Failed to Make Adequate Approval Findings**

6 As explained above, a court’s application of the fair argument standard involves
7 neither weighing of evidence nor evaluation of project benefits. Land use decisions are
8 the bailiwick of elected decisionmakers. The legal question is solely whether the record
9 contains substantial evidence — facts or fact-based reasonable assumptions or expert
10 opinion — sufficient to support a low-threshold fair argument that the project *may*
11 have a significant environmental impact. (*Ante* at 12.)

12 While a petitioner’s offered expert evidence may be rejected if an agency’s
13 decisionmakers make supportable findings during the administrative process that the
14 expert is not credible, the City Council made no such finding. Councilmember Najarian
15 expressed an opinion regarding perceived bias of Francesca Smith simply as an
16 accomplished preservation advocate and Society member who volunteered to provide
17 her expert opinion, based on his knowledge of trial evidence standards inapplicable
18 here; regardless, the rest of the Council did not join in that opinion and made no
19 findings as to any purported lack of credibility.

20 All evidence relied upon by the City Council amounts to conclusory staff
21 statements and differences of opinion that are irrelevant to the Court’s review of the
22 record for fair argument evidence. (*E.g.*, AR4 1045-1062 [Appeal Arguments/Staff
23 Responses].) The City’s reliance on the MND is explained in a very lengthy staff report
24 to the City Council for its May 4, 2021, public hearing at which it approved the project.
25 (AR1 173-298 — AR2 299-406.) The staff report includes twelve exhibits plus sub-parts;
26 some of them are submissions by the Society. (*Ibid.*) The City also made findings
27 supporting the MND, including adopting the 2019 findings of the Design Review
28 Board. (AR1 20-25.) In particular, the City Council found that the MND and Mitigation
Monitoring Plan (MMRP) were prepared in compliance with CEQA. (AR1 20.)

There is no way to summarize the information in the City’s lengthy May 2021

1 staff report in this brief. The Society offers to review all of the evidence at a multi-day
2 merits hearing. But it is not necessary because all of the evidence offered by the City
3 *interprets uncontestable facts in the certified record and renders opinions/conclusions that differ*
4 *from those provided by the Society and its expert Francesca Smith.* Again, since the Court
5 will not weigh the evidence or consider the merits of the project, the City's lengthy
6 discussions cannot undo the Society's presentation of evidence sufficient to support a
7 fair argument of potential significant impact — defeating the MND/MMRP.

8 Attached to its resolution approving the MND, the City Council provided
9 lengthy responses to objections to the MND by the Society and Francesca Smith that
10 echo the responses justifying the MND/MMRP throughout the record. (AR1 28-50.)
11 A typical sample fairly representing the City's legal stance is provided below —
12 providing *City staff's opinions*, some very thoughtful, concluding that under the facts
13 and reports in the record the project's impacts will not be significant. *However*, the
14 Society provided competent *competing expert opinion under the same facts as to the project's*
15 *significant impacts. Conflicts in expert opinion require EIR review.* (Ante at 13.)

16 Staff acknowledges that the Apartment Building will be significantly larger than
17 the Historic House and that the latter's setting will be altered beyond its already
18 compromised status. *However, staff believes* the house, a rare example of the
19 Airplane sub-style with very high historic integrity, will remain eligible for
20 listing on the Glendale Register of Historic Resources if the Project is completed
21 in accordance with the proposed mitigation measures in the Final MND and
22 that a substantial adverse impact to the resource will therefore be avoided.

23 (AR1 44.) Aside from many pages expressing staff's *opinions* regarding the adequacy of
24 mitigation measures to meet the *Secretarys' Standards*, the City staff report's response to
25 the MND appeal letters and reports raising a fair argument of significant
26 environmental impacts relating to historic resources, visual impacts, and aesthetics, is
27 that the project will still require review by the Design Review Board which will assure
28 that no significant impacts will occur. For example:

1 The Commentor recommends that the Apartment Building be reduced in height
2 by at least one floor and by reducing unit sizes. *Staff believes* there are other
3 means to reduce perceived mass and scale. In addition the mass and scale of the
4 Proposed Project ... require *review and approval from the Design Review Board and*
this would assure the Project's compatibility with the Historic Resource [along with
other recommended conditions].

5 (AR1 45.) The fact that the project will be subject to further review by the Design
6 Review Board does not mean that “clearly” no significant impacts can occur, as would
7 be required to approve the project without an EIR. Indeed, that same Board approved
8 the project as-is in 2019, without the 2021 project revisions.

9 The opinions expressed by City staff demonstrate, at best, a dispute among
10 experts that requires an EIR process under well-settled law.

11 Conclusion

12
13 **I think the MND and the mitigation monitoring and**
14 **reporting for the project don't adequately address or**
15 **mitigate the appearance of the historic house losing its**
16 **historic prominence on that site or the historic impact**
17 **of the loss of the garage ... I'd like to see an EIR because**
18 **that's how we would get alternatives and the best way**
19 **not only to preserve this historic home but also to build**
20 **something beside it in that neighborhood that not only**
21 **looks good but is compatible, offers housing for everyone.**
22 (A3 605-606 [Mayor Devine, City Council Hearing 5/4/21].)]

23 The fair argument standard is well met by the record evidence. This Court's
24 judgment and a peremptory writ should order the City to set aside approvals relating
25 to the project at 534–538 N. Kenwood Street and to refrain from considering project
26 approval until it fully complies with CEQA by preparing an adequate EIR and
27 adopting feasible mitigation measures and alternatives.

28 April 20, 2022

Respectfully submitted,

BRANDT-HAWLEY LAW GROUP



Susan Brandt-Hawley
Attorney for Petitioner

3
4 **PROOF OF SERVICE**

5 I am a citizen of the United States and a resident of the County of Sonoma. I am
6 over the age of eighteen years and not a party to this action. My business address is
7 P.O. Box 1659, Glen Ellen, California 95442.

8
9 On April 20, 2022, I served one true copy of:

10
11 **Petitioner's Opening Brief**
12 **in support of**
13 **Petition for Writ of Mandamus**

14 _____ By placing a true copy enclosed in a sealed envelope with prepaid
15 postage, in the United States mail in Petaluma, California, to the
16 persons listed below.

17 _____ By electronic service via OneLegal on counsel as listed below.

18 x By emailing a copy to counsel as listed below.

19 Gillian Van Muyden

20 Lisa Weinberg

21 Yvette Nuekian

22 Alicia Bartley

23
24 I declare under penalty of perjury that the foregoing is true and correct and is
25 executed on April 20, 2022, at Glen Ellen, California.

26
27 

28 _____
Susan Brandt-Hawley