

Case No. H040789

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CALIFORNIA COURT OF APPEAL

SIXTH APPELLATE DISTRICT

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BAY AREA CLEAN ENVIRONMENT, INC.

Plaintiff/Appellant, v.

SANTA CLARA COUNTY *et al*,

Defendants/Respondents

LEHIGH SOUTHWEST CEMENT COMPANY *et al*.

Real Parties in Interest/Respondent

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Appeal from the Superior Court of California

County of Santa Clara

Honorable Joseph Huber, Judge Case

No. 112CV229236

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**THE TOWN OF LOS ALTOS HILLS' APPLICATION FOR EXTENSION OF  
TIME TO FILE APPLICATION TO FILE A BRIEF OF AMICUS CURIAE IN  
SUPPORT OF BAY AREA CLEAN ENVIRONMENT, INC.**

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**THE TOWN OF LOS ALTOS HILLS' APPLICATION FOR EXTENSION  
OF TIME TO FILE APPLICATION TO FILE A BRIEF OF AMICUS  
CURIAE IN SUPPORT OF BAY AREA CLEAN ENVIRONMENT, INC.**

Pursuant to Rules of Court Rule ("CRC") Rule 8.60 AND 8.63, the Town of Los Altos Hills ("the City") respectfully submits this application for a brief extension of time to file an application to file a brief of amicus curiae in support of Appellant, Bay Area Clean Environment, Inc.. ("BACE"). The application to file an amicus curiae brief is currently due on March 10, 2015. The Town seeks a 21 day extension to March 31, 2015 in order to prepare and file an application for permission to file an amicus curiae brief in support of BACE. The Town has not been granted any previous extensions in this matter.

Pursuant to CRC Rule 8.60(b), the presiding justice may extend the time to do any act required or permitted under the California Rules of Court upon a showing of good cause. Good cause exists for the Town's requested extension of time, as set forth below and in the attached Declaration of Babak Naficy and pursuant to CRC Rules 8.60 and 8.63(b).

As noted in CRC Rule 8.63(a)(3), there are "a variety of legitimate reasons [why] counsel may not always be able to prepare briefs or other documents within the time specified in the rules of court." Here, the Town's counsel seeks an extension of time for two good reasons.

First, owing to the Town's own internal rules and state law, the City Council was unable to meet and decide to retain counsel to prepare an amicus brief before today, March 9, 2015, only one day before the brief is currently due. Accordingly, the Town's counsel will have had no adequate time to prepare and file an application to file an amicus curiae brief prior to the current filing deadline. CRC Rule 8.63(b)(11).

Second, the Town's counsel is relatively new to the case, having only

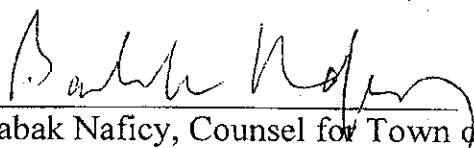
just been retained to represent the Town. CRC Rule 8.63(b)(7). To prepare an adequate amicus curiae brief, the Town's counsel will require additional time to become familiar with the factual and legal issues involved in the case.

The Town's counsel telephonically contacted counsel for both Santa Clara County and Lehigh Southwest Cement Company to discuss this application for extension of time. Neither counsel responded prior to this filing. See, Naficy Declaration at ¶4. The Town itself is not opposed to this Request and will be provided a copy of this application upon filing. CRC Rule 8.63(b)(2).

It is unlikely that any party would be prejudiced as a result of the relatively short extension of time being sought. The Town, on the other hand, would clearly be prejudiced by a denial of the request as the Town would be unable to file an amicus curiae brief in time to aid the court in its deliberations. CRC Rule 8.63(b)(7).

For these reasons, the Town respectfully requests that this application for an extension of time be granted and that the Town be allowed until and including March 31, 2015 in which to file its application to file an amicus curiae brief.

Respectfully Submitted on  
March 9, 2015

  
Babak Naficy, Counsel for Town of Los Altos  
Hills

**DECLARATION OF BABAK NAFICY IS SUPPORT OF THE TOWN  
OF LOS ALTOS HILLS' APPLICATION FOR EXTENSION OF TIME  
TO FILE A BRIEF OF AMICUS CURIAE IN SUPPORT OF BAY  
AREA CLEAN ENVIRONMENT, INC.**

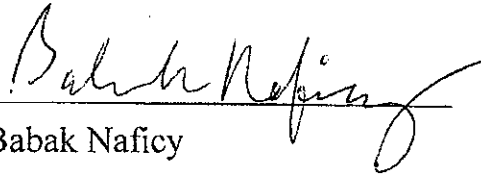
I, Babak Naficy, declare:

1. I have been retained to file an application to file an amicus curiae brief on behalf of the Town of Los Altos Hills ("the Town") in support of Bay Area Clean Environment, Inc. ("BACE").
2. I submit this declaration pursuant to the California Rules of Court, Rule 9.60(c), which requires that factual contentions in an application for extension of time must be supported by a declaration.
3. I was informed by the City Attorney of Los Altos Hills that on this day, March 9, 2015, the City Council of the Town of Los Altos Hills decided to retain me to prepare an amicus curiae brief in support of BACE. I will need additional time to become familiar with the factual as well as the legal issues in the case in order to prepare an adequate amicus curiae brief.
4. I called Elizabeth G. Pianca of the Santa Clara County Counsel's office to find out if the County opposes this application. I was unable to reach Ms. Pianca, but I left her a detailed message. At this time I have not heard back from Ms. Pianca. I also called attorneys Sean K. Hungerford and Thomas M. Swett of the law firm of HARRISON, TEMBLADOR, HUNGERFORD & JOHNSON LLP, representing the Real Party, Lehigh Southwest Cement Company in this matter. I was unable to talk to either gentlemen, but again, I left a detailed message. At this time, I have not heard back from either attorney. Accordingly, I do not know whether the County or the Real Party oppose this application. I do know that the Town supports this application.
5. I am not aware of any prejudice to any party from granting this application to extend time, which is made in good faith for the reasons set forth above.

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

Executed on this 9<sup>th</sup> day of March, 2015 in San Luis Obispo, California.

A handwritten signature in cursive script, appearing to read "Babak Naficy", written over a horizontal line.

Babak Naficy

**[PROPOSED] ORDER**

Good cause appearing, the Court grants the application of the City of Los Altos Hills for an extension of time to file an application to file a brief of Amicus Curiae in support of Appellant, Bay Area Clean Environment, Inc.. (“BACE”). Accordingly, the City’s application and the accompanying amicus curiae brief must be filed and served on or before March \_\_\_\_\_, 2015.

SO ORDERED.

Dated: \_\_\_\_\_, 2015

\_\_\_\_\_  
Presiding Judge