No: C090117

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA THIRD APPELLATE DISTRICT

OLD EAST DAVIS NEIGHBORHOOD ASSOCIATION
Plaintiff and Appellant,

v.

CITY OF DAVIS; CITY COUNCIL OF THE CITY OF DAVIS
Defendants and Appellants.

TRACKSIDE CENTER, LLC
Real Party in Interest.

From the Superior Court in and for the County of Yolo
The Hon. Samuel T. McAdam
Case No. PT17-2111

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES, THE CALIFORNIA STATE ASSOCIATION OF COUNTIES, AND SACRAMENTO AREA COUNCIL OF GOVERNMENTS TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT CITY OF DAVIS; AMICUS CURIAE BRIEF

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TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL Third **APPELLATE DISTRICT, DIVISION**	COURT OF APPEAL CASE NUMBER: C090117
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APPELLANT/ PETITIONER: Old East Davis Neighborhood Association RESPONDENT/ REAL PARTY IN INTEREST: City of Davis; City Council of The City of Davis	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS *(Check one):* ☒ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	

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1. This form is being submitted on behalf of the following party (*name*): League of California Cities, The California State Association of Counties, and Sacramento Area Council of Governments

2. a. ☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	**Nature of interest *(Explain):***
(1)	
(2)	
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: December 24, 2020

Adam W. Hofmann
(TYPE OR PRINT NAME)

/s/ Adam W. Hofmann
(SIGNATURE OF APPELLANT OR ATTORNEY)

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

California Constitution

Statutes

Government Code,

Regulations

Other Authorities

APPLICATION TO FILE AMICUS CURIAE BRIEF

Pursuant to rule 8.200, subdivision (c) of the California Rules of Court, the League of California Cities ("Cal Cities"), the California State Association of Counties ("CSAC"), and Sacramento Area Council of Governments ("SACOG") respectfully request permission to file an amicus curiae brief in support of Appellant City of Davis. This application is timely made within 14 days after the filing of Old East Davis Neighborhood Association's reply brief on the merits.

No party or counsel for a party in this proceeding authored the proposed amicus brief in any part, and no such party or counsel, nor any other person or entity other than the amici curiae, made any monetary contribution intended to fund the proposed brief's preparation or submission. (See Cal. Rules of Court, rule 8.200, subd. (c)(3).)

IDENTITY AND INTEREST OF AMICI CURIAE

Cal Cities is an association of 477 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance.

CSAC is a non-profit corporation whose membership consists of the 58 California counties. CSAC sponsors a Litigation

Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide.

Cal Cities' and CSAC's Committees have determined that this case raises important issues that affect all cities. Specifically, the trial court's misapplication of the standard of judicial review governing local land-use decisions implicates the constitutionally allocated authority of cities and counties.

SACOG is a California joint powers authority and an association of local governments in the six-county Sacramento region. Its members include the counties of El Dorado, Placer, Sacramento, Sutter, Yolo, and Yuba, and the twenty-two (22) cities located within those counties, including the City of Davis. SACOG is the state-designated regional transportation planning agency for the counties of Sacramento, Sutter, Yolo, and Yuba, and the federally-designated metropolitan planning organization ("MPO") for the entire six-county region. It is responsible for developing the region's long-term transportation plan, known as the Metropolitan Transportation Plan ("MTP").

In 2008, California adopted the "Sustainable Communities and Climate Protection Act," Senate Bill 375 ("SB 375"). The bill requires MPOs to develop a Sustainable Communities Strategy ("SCS") as part of the MTP, the purpose of which is to identify policies and strategies to: identify areas to meet the regional housing needs for all economic segments of the population;

comply with the federal Clean Air Act; protect natural resources; and reduce greenhouse gas emissions from passenger vehicles and light trucks to target levels established by the California Air Resourced Board. SACOG adopted its first combined Metropolitan Transportation Plan/Sustainable Communities Strategy ("MTP/SCS") in 2012. The MTP/SCS is implemented by and through SACOG's member jurisdictions.

SACOG is interested in this litigation because the trial court's ruling impairs the ability of the City of Davis, and all of SACOG's members, to implement the MTP/SCS. The ruling disregards the deference that is owed to SACOG's member decisions, and specifically those approving critical "smart growth" development necessary to achieve the housing, land-use, environmental, transportation, and sustainability policies in the MTP/SCS, including the State of California's climate strategy of reducing GHG emissions through regional land planning implemented by local decision makers.

AMICUS CURIAE CAN ASSIST THE COURT IN DECIDING THIS MATTER

The standard of review that judges apply when considering local land-use decisions has been oft repeated and is discussed in the parties' briefs. However, its roots in constitutional and statutory grants of authority have not been well articulated in a published opinion in many years, and the parties have not had space in their briefs to consider that history in detail. By explicating those roots, Amici can help the Court resolve the

present dispute with an eye toward reaffirming appropriate deference to local governments and separation of powers.

DATED: December 24, 2020 HANSON BRIDGETT LLP

By: */s/ Adam Hofmann*
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BRIEF OF AMICI CURIAE

INTRODUCTION

In this case, the City of Davis interpreted its own General Plan and related planning documents and concluded that a mixed-use infill project was a good fit for the City. The trial court took a different view of that project and, though acknowledging the deference owed to the City's elected policy makers, supplanted those policy makers' judgment with its own. In so deciding, the court misapplied the standard of judicial review applicable to public agency decisions regarding land use, upholding a challenge to the City's decision without requiring the challenger to meet its burden to show that no reasonable person could have reached the same conclusion reached by the agency on the evidence before it.

The trial court erred, and this Court should reverse the judgment, and affirm the judicial deference owed to local governments in the reasonable interpretation and implementation of their own land-use and planning policies.

FACTUAL AND PROCEDURAL BACKGROUND

Amici hereby adopt and incorporate by reference the Background section of the City's Opening Brief, pages 9-14.

DISCUSSION

I. Land-use authority rests first and foremost with local governments, and courts must defer to their reasonable decisions.

A. Land-use decisions and policies must be consistent with an agency's general plan.

California Government Code Section 65300 requires that each locality within the State adopt a general plan for future development. A general plan is the basic charter that governs the direction of future land use in the locality. (*St. Vincent's School for Boys, Catholic Charities CYO v. City of San Rafael* (2008) 161 Cal.App.4th 989, 1007.) "A general plan articulates a community's vision of its long-term physical form and development." (AR 05639.) The general plan and its elements should comprise an integrated, internally consistent and compatible statement of policies for the future development of the county or city. (Gov. Code §§ 65300, 65300.5.) Under the State Planning and Zoning Law, a general plan must include a statement of development policies, and certain elements including land-use, circulation and transportation, housing, conservation of natural resources, open space, noise, safety, and environmental justice relating to disadvantaged communities. (Gov. Code, § 65302.) General plans also provide a foundation for the MTP/SCS, the region's plan to house all economic segments of the population over a twenty year period, the region's strategy for meeting state and federal requirements for resource preservation, clean air, and GHG emissions reductions, and the region's

blueprint for transportation funding and development incentives in order to meet the region's policy objectives. (See Gov. Code, § 65080, subd. (b)(2)(B), 65583.)

The general plan has thus been "aptly described as the constitution for all future developments within the city or county." (*Families Unafraid to Uphold Rural El Dorado v. Bd. of Supervisors of El Dorado County* (2014) 62 Cal.App.4th 1332, 1336 (*Families Unafraid*), internal quotations omitted.) Land-use decisions must be consistent with the general plan. (*San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 508 (*San Francisco Tomorrow*); see also *Families Unafraid*, at p. 1336 ["propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements"]; Gov. Code, § 65860, subd. (a) [requiring consistency between zoning ordinances and general plans].) This requirement, known as the consistency doctrine, has been described as the "linchpin of California's land-use and development laws; it is the principle which infused the concept of planned growth with the force of law." (*Corona-Norco Unified Sch. Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 994.)

Consistency does not require perfect conformity with the general plan, however. (See *Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1563 (*Pfeiffer*) ["[I]t is nearly, if not absolutely, impossible for a project to be in perfect conformity with each and every policy set forth in the applicable plan"].) It is enough that the proposed project will be compatible

with the objectives, policies, general land uses, and programs specified in the applicable plan. (*Ibid.*) An agency, therefore, even has discretion to approve a plan when the plan is not consistent with all of a specific plan's policies. (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1511.) Thus, a project is consistent if it will further the objectives of the general plan rather than obstruct their obtainment. (*Orange Citizens for Parks & Recreation v. Superior Court* (2016) 2 Cal.5th 141, 153 (*Orange Citizens*).)

For example, in *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, the reviewing court found no inconsistency between a project creating more jobs than housing and a general plan's policy of striving to improve the city's job-to-housing relationship. The court determined that it was sufficient that the public agency weighed the pros and cons to achieve an "acceptable mix." (*Id.* at 1268-1269.) Where the agency's decision was not unreasonable under the circumstances, and considering all evidence available, it should be upheld by a reviewing court.

B. Courts defer to agencies' consistency determinations, unless "a reasonable person could not have reached the same conclusion."

In rendering a decision on a land-use proposal, an administrative agency must make findings sufficient "to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.) Requiring an agency to state "legally relevant sub-conclusions supportive of its ultimate

decision" facilitates well-reasoned administrative decisions and judicial review of such decisions. (*Id.* at pp. 514-516.)

So long as an agency fulfills that obligation, however, courts must generally defer to its reasonable conclusions, including any determinations of consistency with its own general plan. (*Sacramentans for Fair Planning v. City of Sacramento* (2019) 37 Cal.App.5th 698, 707; see also *Anderson First Coalition v. City of Anderson* (2007) 130 Cal.App.4th 1173, 1192 [holding governmental agency has broad discretion "especially regarding general plan policies, which reflect competing interests"]; *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 677-78 [acknowledging any agency's "unique competence to interpret [its own] policies when applying them in its adjudicatory capacity"]; *Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 142 (*Save Our Peninsula Comm.*) [according "great deference to the agency's determination" of consistency].)

Consistent with this standard, courts overturn agency findings only upon finding that an agency abused its discretion by (1) not proceeding in a manner required by law, (2) failing to support its decision with findings, or (3) making findings not supported by substantial evidence. (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 357.) Put differently, courts must defer to a "procedurally proper consistency finding unless no *reasonable person* could have reached the same conclusion." (*Orange*

Citizens, *supra*, 2 Cal.5th at p. 155, italics added; accord *No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223, 243 [reviewing consistency finding to determine "only if, based on the evidence before City Council, a reasonable person could not have reached the same conclusion"]; *Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391 [same].)

Thus, reviewing a consistency determination, the court may neither substitute its view for that of a city council, nor reweigh conflicting evidence presented to that body. (*Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 717 (*Sequoyah Hills Homeowners Assn.*); *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 816.) Rather, a reviewing court's role "is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies." (*Pfeiffer*, *supra*, 200 Cal.App.4th at p. 1563.)

C. Judicial deference is enshrined in the constitutional and statutory authority of local governments to resolve the competing interests implicated by land-use policies and decisions.

Judicial deference to local land-use decisions derives from constitutional and legislative allocation of power to local governments and the related limits placed on judicial power by separation-of-powers principles. Policies in a general plan reflect competing interests, and the governing agency "must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes." (*Save Our Peninsula Comm.*, *supra*, 87 Cal.App.99 at

p. 142.) It is thus the province of elected officials to determine whether the specifics of a proposed plan are in harmony with the policies stated in the general plan and it is "emphatically, not the role of the courts to micromanage" development decisions made by local agencies. (*California Native Plant Soc'y v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 638 (*California Native Plant Soc'y*).)

1. In California, land-use authority resides primarily with local legislatures as part of their constitutional police power.

Under the State Constitution, a "county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7.) Thus, cities and counties have plenary authority to govern, subject only to the limitation that they exercise power within territorial limits and subordinate to state law. (*Candid Enterprises, Inc. v. Grossmont Union High Sch. Dist.* (1985) 39 Cal.3d 878, 885.) Apart from these limitations, the police power of a locality is as broad as that exercisable by the State Legislature itself. (*Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1181 (*Fonseca*).) This power extends to legislative objectives in furtherance of public safety, peace, health, and welfare. (*Massingill v. Dept. of Food & Agric.* (2002) 102 Cal.App.4th 498, 504.)

A city's broad police power is the constitutional source for its authority to regulate land through planning, zoning, and building ordnances. (*Fonseca*, *supra*, 148 Cal.App.4th at p. 1181.)

Thus, courts have long held that a local land-use regulation lies within the scope of the local government's authority if it is reasonably related to the public safety, health, and welfare. (*Associated Home Builders, Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 604.)

Noting the breadth of the police power, the United States Supreme Court explained that "the police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for the people." (*Village of Belle Terre v. Boraas* (1974) 416 U.S. 1, 9.) Police power allows cities and counties to "control and organize development within their boundaries as a means of serving the general welfare." (*Wal-Mart Stores Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273, 303, disapproved on other grounds in *Hernandez v. City of Turlock* (2006) 138 Cal.App.4th 273, 295.)

2. By legislative design, state laws and judicial review impose "only a minimum limitation" on local land-use authority and maintain "the maximum degree of control" by local agencies.

While police power is the constitutional source of the locality's land-use authority, the framework for exercising that power is outlined by the state's land-use and planning statutes. (*Fonseca, supra*, 148 Cal.App.4th at p. 1181.) The State Legislature has maintained local control, establishing "only a minimum of limitation in order that counties and cities may

exercise the maximum degree of control" over such matters. (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 782, citing Gov. Code, § 65800).

In prioritizing local control, the Legislature recognized "the diversity of the state's communities and their residents requires planning agencies and legislative bodies to implement [State Law] in ways that accommodate local conditions and circumstances, while meeting its minimum requirements." (Gov. Code, § 65300.7; accord Gov. Code, § 65300.9 [reflecting differences between the character and needs of various cities and counties].) Consistently, the Legislature found that each city and county must establish its own appropriate balance in the context of the local situation when allocating resources to meet these purposes. (*Ibid*.)

As the appellate court recognized in *City of Los Angeles v. State of California* (1982) 138 Cal.App.3d 526, 530, notwithstanding the Legislature's intent to protect California's land resources, the "decision making power in this area still rests largely with local governmental agencies." In fact, "decisions involving the future growth of the state, most of which are made and will continue to be made at the local level" are guided by the local general plan and proceed within the framework of statewide goals and policies. (Gov. Code, § 65030.1.)

The Legislature maintained this respect for the primacy of local decision making when establishing limited judicial review of general-plan consistency decisions, in 1982. (See *Concerned Citizens of Calaveras County v. Bd. of Supervisors* (1985) 166

Cal.App.3d 90, 96 [reasoning that the "Legislature intended no change in the [deferential] standard of review of general plans by the courts."].) And the Legislature continued to recognize local governments' authority and expertise when it enacted SB 375. Under that law, regional bodies like SACOG consider state goals, existing local planning, and input from local decision makers to develop regional transportation-and-development and land-use strategies to meet the region's transportation, housing, environmental, and climate goals. But SB 375 specifically acknowledges and preserves local agency authority to *implement* those goals through specific land-use decisions, balancing state and regional goals with the local community conditions and policy concerns. (See, e.g., Gov. Code, §§ 65080, subds. (b)(2)(B), (E), (G), & (J) ["Nothing in a sustainable communities strategy shall be interpreted as superseding the exercise of the land use authority of cities and counties within the region."]; Gov. Code, §§ 65580-65589.11; 14 Cal. Code Regs., tit. 14, § 15125, subd. (d).) Various other state laws similarly *incentivize* local governments to pursue land-use policies that advance regional and statewide concerns, but still rely on the local governments for implementation. (See, e.g., Gov. Code, §§ 65582.1, 65589.9, 65590, 65620, 65621.)

3. With primary land-use authority allocated to the unique expertise of local governments, separation of powers demands considerable deference by courts.

Consistent with the Legislature's determination that local governments are best suited to balance the local and regional

interests implicated by land-use decisions, the constitutional mandate of separation of powers supports judicial deference to local control in land use. (See, e.g., *San Francisco Tomorrow*, *supra*, 229 Cal.App.4th at p. 515, quoting *Western States Petroleum Assn. v. Super. Ct.* (1995) 9 Cal.4th 559, 572 ["Excessive judicial interference with the agency's quasi-legislative actions would conflict with the well-settled principle that the legislative branch is entitled to deference from the courts because of the constitutional separation of powers."]; Cal. Const., art. III, § 3 ["The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."].)

Courts exercise restraint when reviewing individual administrative land-use determinations because the "body which adopted the general plan in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity." (*Pfeiffer*, *supra*, 200 Cal.App.4th at p. 1563.) An agency's dual role as quasi-legislative when adopting the general plan and quasi-adjudicative when making consistency determinations uniquely positions it to weigh competing evidence. There is a strong policy reason for "allowing the governmental body which passed legislation to be given a chance to interpret or clarify its intention concerning that legislation[;]" thus, "construction of a statute by officials charged with its administration must be given great weight." (*City of*

Walnut Creek v. County of Contra Costa (1980) 101 Cal.App.3d 1012, 1021.)

This well-established boundary is rooted in fundamental separation of powers principles and has been one that courts have declined to overstep. (See *Sequoyah Hills Homeowners Assn.*, *supra*, 23 Cal.App.4th at p. 719-720 [holding that the court's function is simply to decide whether "city officials considered the applicable policies and the extent to which the proposed project conforms with those policies, whether the city officials made appropriate findings on the issue, and whether those findings are supported by substantial evidence"].) It is, "emphatically, *not* the role of the courts to micromanage" development decisions made by local agencies. (*California Native Plant Soc'y*, *supra*, 172 Cal.App.4th at p. 638, original italics.)

Adhering to the principles of separation of powers, it was not within the discretion of the court below to reject an administrative decision simply because the court would have made a different determination. (*California Native Plant Soc'y*, *supra*, 172 Cal.App.4th at p. 638.) As long as the agency could have, by weighing all available evidence, reasonably come to a determination of consistency, that decision must be upheld. (*Ibid.*) To avoid defeating the quasi-judicial function of the City Council granted by the Legislature, absent evidence of an arbitrary decision by the agency, the Court should maintain its deference to a determination of consistency.

II. The trial court acknowledged the deference it owed, but then failed to defer to the City's reasonable and factually supported findings, and this Court should reverse in order to ensure against future misapplications of the standard of review.

A. The City properly evaluated the project's consistency with the general plan and land-use policies, in light of the substantial evidence presented.

The City of Davis General Plan is comprised of goals, policies, standards and actions for 22 separate subjects. As briefly summarized below, the General Plan principles and policies that are the focus of this case are (1) Land Use and Growth Management Principle 4, (2) Land Use Policy 7.B., and (3) Urban Design Policy UD 2.3. Also relevant are provisions of the Core Area Specific Plan ("CASP") and the Davis Downtown and Traditional Residential Neighborhoods Design Guidelines.

First, General Plan Land Use Principle 4 states, "Accommodate new buildings with floor area ratios that can support transit use, especially within 1/4 mile from commercial areas and transit stops, but maintain scale transition and retain enough older buildings to retain small-city character." (1 JA 000099; AR 05700.)

Second, Land Use Policy 7B similarly provides: "The area along Third Street shall be treated with sensitivity because of potential impacts on adjacent land uses. Development along this corridor shall be of an appropriate scale and character in relation to the surrounding and adjacent land uses."

Third, General Plan Policy UD 2.3 states, "Require an architectural 'fit' with Davis' existing scale for new development projects." The standards for General Plan Policy UD 2.3 are as follows:

a. There should be a scale transition between intensified land uses and adjoining lower intensity land uses.

b. Taller buildings should be stepped back at upper levels in areas with a relatively smaller-scale character.

c. Buildings should be varied in size, density, and design. (1 JA 000100-000101.)

Also relevant is the CASP, which promotes "building up the downtown core (the area between First and Third streets and D Street and the-railroad tracks east of G Street) before greatly increasing densities in the remainder of the core area, thereby protecting existing residential neighborhoods and their character." (1 JA 000103; AR 05652.) The CASP section entitled "New Buildings in Residential Neighborhoods" states: "The single most important issue of infill development is one of compatibility, especially when considering larger developments. When new projects are developed adjacent to older single-family residences, concerns exist that the height and bulk of these infill projects do not have a negative impact on smaller scale buildings." (1 JA 000104; AR 06311.)

In this case, the evidence presented to the Council reflected that the Project site is an infill parcel identified by the City as an opportunity site, located on Third Street adjacent to Downtown Davis near rail transit. (1 JA 000130; AR 00005, 00673.) The

Project site is also proximate to Old East Davis, a predominantly residential neighborhood comprised of single-family homes and apartments. (1 JA 000087; AR 00457.) The Council considered the Project in a duly noticed public hearing, and considered its consistency with the General Plan and CASP. (See 1 JA 000143; AR 00691-00699.)

Voting 4-1 to approve the Project, the City Council concluded that the Project achieved appropriate mass and scale transition under the General Plan. (1 JA 000143; AR 00691-00699.) Among the Project components examined by the City Council in making its consistency findings were a 53-foot setback that the Project provided between the Trackside Center building and the nearest residential structure in the Old East Davis neighborhood, as well as building "stepbacks" on the side facing Old East Davis. (*Ibid.*) The Project incorporated stepbacks on each level of the building, resulting in the structure moving farther away from its residential neighbor as it increased in height.

For purposes of complying with the requirements of the California Environmental Quality Act, Public Resources Code Section 21000, et. seq., the City prepared a Sustainable Communities Environmental Assessment/Initial Study ("SCEA/IS"). A rendering contained in the SCEA/IS visually demonstrates these design features. (1 JA 000147; AR 00056, AR 00695.) The text of SCEA/IS describes the Project design as being "sensitive and responsive to the adjacent uses. Along the eastern edge, the architecture is designed to create a more traditional

residential look and feel. The building is massed away from the east and north in a series of step backs." (AR 00079.) The City Council expressly determined that these Project features contributed to achieving an appropriate mass and scale transition, consistent with the General Plan and Specific Plan. (See 1 JA 000143; AR 00691-00699.)

The City Council's finding of consistency was supported by the analysis provided by planning staff for the City of Davis in the staff report prepared for the Project. The staff report explains that the building mass "has been pushed over toward the railroad tracks…to move upper floors away from the nearby residential properties" and that the fourth story of the building, which only contains four units, "provides a substantial setback on the east (alley) side of 32 feet or greater." The Project's compatibility with its surroundings is described as being the result of "engaging street level design, building articulation and façade breaks, mix of building materials and architectural details, and stepped back upper stories on the east and north sides." (AR 00694.)

Based on an extensive examination of these factors, the City Council determined that the Project was of reasonable scale and provided sufficient mass transition, and it approved the Project.

B. Nevertheless, the trial court proceeded through its own consistency analysis and disregarded deference to the agency.

Although it acknowledged the deference owed to the City Council in reviewing that consistency determination, (2 JA

000330), the trial court actually proceeded with an independent comparison between the Project and the applicable General Plan, CASP, and Design Guidelines, dissecting the Project and its components and re-evaluating them against the court's own interpretation of the City's planning policies. (2 JA 000337 - 000343.) In approving the Project, the City Council made an express finding based on the record before it that the Project is consistent with the General Plan and associated planning documents. (2 JA 000260.) The trial court made a contrary finding, not by concluding that the City's findings were unsupported by substantial evidence, but by supplanting the City's conclusions with its own view of the evidence. (2 JA 000260, 000262.)

Specifically, the City Council found that the Project is consistent with the General Plan based on record evidence of the setbacks, stepped-back design of the Project, and features intended to create articulation and break up the mass of the building. (AR 00694, 00902-00903.) This, the Council found, provided reasonable scale and mass transition between the Downtown Core and Old East Davis Neighborhood, as contemplated by the City's General Plan. (*Ibid.*) Rather than evaluate the articulated basis for the City Council's decision and the record evidence that supported it, the trial court focused on record evidence that the proposed building is larger in scale than surrounding buildings, and evaluated the Project features under its own interpretation of what the City's General Plan policies

relating to scale and mass transition require. (2 JA 000344-000345.)

In this way, rather than *apply* the deferential standard it articulated, the court effectively applied a de novo standard of review, evaluating the Project as if it were considering the issue of consistency in the first instance and affording no deference to the City's findings. The Court should accordingly reverse in order to ensure trial courts that trial courts do not follow suit, honoring their constitutional duty to defer in name only.

CONCLUSION

Repudiating deference to a local agency's determination is contrary to notions of broad constitutionally-granted police power for cities and counties, legislative intent to allow California cities and counties to weigh competing interests in its land-use decision making, and fundamental principles of separation of powers. As such, this Court should reverse the trial court's decision in order to ensure appropriate deference to agency expertise in determining whether specific development projects, like the Trackside Project, are consistent with general plans and related policies.

DATED: December 24, 2020 HANSON BRIDGETT LLP

By: */s/ Adam Hofmann*
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DATED: December 24, 2020 SLOAN SAKAI YEUNG & WONG LLP

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WORD CERTIFICATION

I, Adam W. Hofmann, counsel for amici curiae the League of California Cities and California State Association of Counties, hereby certify, in reliance on a word count by Microsoft Word, the program used to prepare the foregoing "Application of the League of California Cities and California State Association of Counties to File Amicus Curiae Brief in Support of Appellant City of Davis; Amicus Curiae Brief," that it contains 4,873 words, including footnotes (and excluding caption, certificate of interested entities or persons, tables, signature block, and this certification).

Dated: December 24, 2020 By: */s/ Adam Hofmann*

Adam W. Hofmann

PROOF OF SERVICE

Old East Davis Neighborhood Association v. City of Davis et al.
Court of Appeal, Third District Case No.C090117
Yolo County Superior Court Case No. PT17-2111

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 500 Capitol Mall, Suite 1500, Sacramento, CA 95814.

On December 24, 2020, I served true copies of the following document described as:

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES, THE CALIFORNIA STATE ASSOCIATION OF COUNTIES, AND SACRAMENTO AREA COUNCIL OF GOVERNMENTS TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT CITY OF DAVIS; AMICUS CURIAE BRIEF

on the interested parties in this action as follows:

BY MAIL: I enclosed the document in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Hanson Bridgett LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid to:

The Hon. Samuel T. McAdam
c/o Clerk of the Court
Yolo County Superior Court
1000 Main Street,
Woodland, CA 95695

Via U.S. Mail only

AND

BY ELECTRONIC MAIL: By submitting an electronic version of the document to TrueFiling, who provides e-serving to all indicated recipients through email to:

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

Executed on December 24, 2020, at Sacramento, California.

Emily P. Griffing