

C090177

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

CIVIL NO. C090117

OLD EAST DAVIS NEIGHBORHOOD ASSOCIATION, *et al.*
Plaintiff, Respondent & Cross-Appellant

v.

CITY OF DAVIS, *et al.*
Defendants, Appellants and Cross-Respondents

TRACKSIDE CNETER
Real Party-in-Interest, Appellant and Cross-Respondent

On Appeal from the Judgment entered by the Superior Court, County of Yolo,
Case No. PT17-2111
The Honorable Samuel T. McAdam, presiding.

RESPONDENT'S/CROSS-APPELLANT'S REPLY BRIEF

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I.

INTRODUCTION

Respondent/Cross-Appellant Old East Davis Neighborhood Association (“OEDNA”) respectfully submits this Reply Brief to Appellant Trakside Center’s Cross-Respondent’s Opposition Brief and Appellant City of Davis’ Cross-Respondent’s Opposition Brief. OEDNA challenged the City of Davis’ approval of approval of the Sustainable Communities Environmental Assessment/Initial Study (“SCEA/IS”) for the Trakside Center Project (“Project”) and approval of the Project on the grounds that such approvals violate the requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code, section 21000 *et seq.*; Davis Municipal Code (“DMC”) section 40.13A; and the Planning and Zoning Law, Government Code, section 65000 *et seq.* The court granted the Petition for Writ of Mandate on the grounds that the Project is inconsistent with the fundamental policies of the General Plan that mandate a transition between the downtown core area and adjacent neighborhood and that the Project violated CEQA as the SCEA/IS failed to adequately address the Project’s inconsistency with the General Plan and Core Area Specific Plan (“CASP”). (Joint Appendix (“JA”) 336-345.) While the trial court granted the Petition for Writ of Mandate with regards to the Second Cause of Action, the trial court did not address all of the issues raised in the Second Cause of Action.

Additionally, the trial court denied the Third Cause of Action holding that City did not have mandatory duty to strictly comply with the design guidelines. As demonstrated below and in OEDNA's Opening Brief, the plain language of the zoning code imposes a mandatory duty to comply with the design guidelines.

II. LEGAL DISCUSSION

A. THE SCEA/IS FAILED TO ADEQUATELY ANALYZE AND MITIGATE THE PROJECT'S ENVIRONMENTAL IMPACTS

The City mistakenly argues that OEDNA misunderstands the law governing review of Transit Priority Projects. (Davis Opp. Br., 31.) Through the Second Cause of Action, OEDNA seeks a determination as to whether substantial evidence supports the City's approval of the SCEA/IS as provided in Public Resources Code, section 21155.2.

The City also argues that OEDNA only challenges the judgment in the First Cause of Action. (Davis Opp. Br., 32.) The City is mistaken. As stated in OEDNA's Opposition Brief and Opening Brief, OEDNA seeks to have the additional issues raised in the Petition for Writ of Mandate regarding whether substantial evidence supports the City's approval of the SCEA/IS. While the trial court correctly found that the SCEA/IS failed to address the Project's inconsistency with the General Plan and related planning provisions (AA 345), the trial court did not rule on the remaining issues in the Second Cause of Action. As set forth in OEDNA's Opening Brief, in addition to failing to address the inconsistency with the General Plan as set forth by the trial court, the SCEA/IS

also failed to adequately address the Project’s inconsistency with the General Plan policies on historic preservation. Additionally, the trial court did not address the SCEA/IS failure to adequately address the foreseeable loss of the leased land and potential impacts from hazardous materials at the Project site.

1. THE PROJECT IS INCONSISTENT WITH THE GENERAL PLAN POLICIES ON HISTORIC PRESERVATION AND WILL IMPACT THE CONSERVATION DISTRICT

As anticipated, Trackside Center argues that SCEA/IS adequately addressed the Project’s impacts to historic resources and that OEDNA’s complaint is nothing more than a mere disagreement among experts. Trackside Center argues that since the City concurred with the SCEA/IS determination that it agreed with the HRA studies and conclusions and disagreed with the conclusion of the GEI Consultants, the issue amount to a disagreement among experts.

“When a challenge is brought to studies on which an EIR is based, ‘the issue is not whether the studies are irrefutable or whether they could have been better. The relevant issue is only whether the studies are sufficiently credible to be considered *as part of* the total evidence that supports the’ agency's decision. [Citation.] ‘A clearly inadequate or unsupported study is entitled to no judicial deference.’ (*East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 299.)

This is not a mere disagreement of experts. Instead, GEI Consultants identified areas that HRA simply failed to address.

As was previously determined by the Historic Resources Management Commission, the analysis in the revised documentation by HRA does not adequately account for the impact the proposed project would have on the Conservation District, a defined area that needs to be considered during planning process for proposed projects, and designated historic resources. Currently, the location of the proposed project contains single-story buildings. Construction of a 4-story building would result in an indirect impact to the setting and feeling of the designated historic resources and the larger neighborhood. HRA's revised analysis notes that the setting is not specifically discussed in the original documentation designating these properties as historic resources. However, HRA's analysis did not identify which aspects of integrity are important. It is the opinion of GEI that setting and feeling are important aspects of integrity that assist in conveying the historical significance of the three houses and Old East Davis. Setting and feeling are not necessarily limited to parcel boundaries, but also the surrounding area, which in this instance includes the Old East Davis neighborhood. The neighborhood where the historic resources are located helps to convey the property's character and while there have been intrusions on the neighborhood, there is still a strong sense of place and time in Old East Davis. (AR 116.)

Thus, GEI identified not a disagreement with HRA, but a significant flaw in HRA's original analysis and the revised analysis. The City's Master Response to comments confirms that the review was limited to impacts on historic resources identified in the HRA analysis. (AR 0044-0048.) Thus, the HRA analysis was incomplete and inadequate and it was limited to historic properties. (See AR 13229.)

GEI's conclusions are supported by the Historical Resource Management Commission that determined that the Project would have a significant adverse effect on three nearby "merit" and "landmark" historic properties due to the change in setting and have a significant impact on the wider Conservation Overlay District, which the HRA analysis did not address. (AR 13627-13629, 3503-3510, 3313-3320.) Thus, the City's determination regarding the impact to the Conservation District is not supported by substantial evidence. Additionally, the Project is inconsistent with the General Plan's historic preservation policies to maintain the historic character of neighborhoods that include the Project site.¹

B. OEDNA DID NOT FORFEIT ITS CHALLENGES UNDER CEQA.

The City argues that OEDNA forfeited its CEQA claims that trial court did not rule upon because OEDNA did not object to the trial court's tentative ruling. The City cites to no legal authority that failure to object to a tentative ruling constitutes a forfeiture to raise those issues on appeal. Moreover, the City does not argue that CEQA issues in this appeal were not raised before the trial court. In fact,

The City further argues that OEDNA's forfeits the CEQA issues it raises on appeal because OEDNA did not request a statement of decision. However,

¹ OEDNA's Opening Brief also addressed the leased land and hazardous substances at the Project site. While this Reply Brief does not address those issues, OEDNA rests on the arguments and legal authority set forth in the Opening Brief.

the Court prepared a statement of decision and in that statement of decision ruled on all the causes of action. (See AR 325-346.) However, the trial court's statement of decision indicates that was prepared after the court having conducted a thorough review of every document and legal authority submitted by the parties. (JA 346, fn 7.) While the court ruled on the SCEA/IS issue and found out it legally inadequate, the court elected not to rule on the remaining allegations in the Second Cause of Action regarding the inadequacy of the SCEA/IS. Although the trial court clearly thorough reviewed the administrative record, briefs and legal authority, the trial court was clearly aware of those issues in the Second Cause of Action.

The City's reliance on *Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885 is misplaced because there the trial court did not rule on an entire cause of action and the petitioners did not object to the failure to rule on the cause of action. (*Id.* at 911.) In the present matter, the trial court actually ruled on the Second Cause of Action and held that Petitioner prevailed on that cause of action. (JA 345.) However, there were some issues within that cause of action, while considered by trial court were not addressed in the final statement of decision.

C. THE PROJECT VIOLATES THE CITY OF DAVIS' DESIGN GUIDELINES

The City argues that the Design Guidelines only describe a preferred policy direction and are not mandates. (City Opp. Br. at 17.) The City,

however, ignore the plain language of Davis Municipal Code (“DMC”) section 40.13A.020 provides that:

- (a) The (DTRN) overlay district *shall* be applied to the area defined on the downtown and traditional residential neighborhood district map.
- (b) Wherever the guidelines for the DTRN conflict with the existing zoning standards including planned development, the more restrictive standard *shall* prevail.

The Code use of the term “shall” clearly indicates that compliance with the Design Guidelines are mandatory as if they were zoning standards. (*See* Gov’t Code, § 14 “shall” is mandatory.) The City fails to explain how the Court can ignore the mandatory language contained in Code. Given the mandatory requirements that the Design Guidelines apply to this matter, the Project clearly conflicts with the Design Guidelines.

1. The Project Fails To Adhere To Quantifiable Design Guidelines And A Standard For Mixed Use Mass & Scale.

The Design Guidelines for Mixed Use Mass & Scale (AR 6085) provide the following measurable criteria:

- A. A building shall appear to be in scale with traditional single-family houses along the street front. (With an accompanying image showing a new building having basic dimensions in a 1:1 scaling with neighboring houses.)
- B. Design a front elevation to be similar in scale to those seen traditionally on the block. And subsequently: “The primary plane of the front should not appear taller than those of typical structures in the neighborhood.

- C. Minimize the perceived scale of a building, by stepping down its height toward the street and neighboring smaller structures.” And subsequently: “The front wall of a building should not exceed two stories in height.”
- D. “The primary building face should not exceed the width of a typical single family building in a similar context.” And subsequently: “A single wall plane should not exceed the maximum facade width of a traditional building in the neighborhood. If a building is wider overall than those seen typically, divide the large facade into subordinate wall planes that have dimensions similar to those of traditional buildings in the neighborhood.”

Criteria A - D support fundamental policies of the General Plan and Core Area Specific Plan, as they concern the required scale transition from the Project building to adjacent smaller structures, as well as the specific transition from buildings in the downtown core to the Old East Davis neighborhood. (AR 6311 [General Plan Policy UD 2.3]; AR 5803; AR 6264 [CASP Section 4.2,; CASP Land Use Policy 7B]; , AR 6101 [Core Transition East guidelines]; JA 336 [Trial Court’s Statement of Decision, pg. 12 at line 20 *et seq.*].)

Provision A and its accompanying image appear in the DDTRN Design Guidelines below the title, “Mixed-Used Design Guidelines: Building Mass & Scale”, at the same vertical position on the page as the general guideline: “Maintain the scale of a new structure within the context of existing buildings on the block.” (AR 6085.) The general guideline is stated in the imperative, and that the use of “shall” in Provision A makes it “...mandatory in nature.” (City of Davis’ Opening Brief, 49.)

Although the City implies that Provision A is not a guideline— because it is not a bullet item to the left of the page (Appellants’ Reply Brief and Cross-Respondents’ Brief of City of Davis and the City Council of the City of Davis, 19 (“Davis Opp. Br.”)— in fact Provision A and its accompanying image are shown among other design guidelines for Mixed-Use Mass and Scale. Provision A and the image are mutually-reinforcing— the image demonstrating an implementation of how a new building would “... appear to be in scale with traditional single-family houses along the street front”.

Arguing that Provision A is not a “standard”, the Appellants suggest that statements of standards must specify numerical minimums, or “minimum acceptable limits” (Davis Opp. Br., 19-20), but this is excessively narrow and incorrect. According to the DDTRN Design Guidelines, “Standards, adopted through ordinance, state required action or implementation. Language utilized for standards is unequivocal and often quantifiable.” (AR 6036.) Provision A was adopted by ordinance along with the DDTRN Design Guidelines. (DMC, § 40.13A.010.)

Consider the statement: “The height of a building’s front facade shall not exceed two times its width.” This would arguably be treated as a standard under the Design Guidelines’ definition, though a minimum limit is not stated, and is implied only indirectly: the front facade’s width could implicitly be no less than one half its height. Taking another example, the Project’s Final Planned

Development Standards (AR 797) state Project specifications, such as the building height and lot coverage, but these are clearly not minimums— if they were, a structure taller than approved, and covering more of the lot, could be built. The statement, “A building shall appear to be in scale with traditional single-family houses along the street front”, accompanied by an image showing buildings in a 1:1 scaling, and adopted by ordinance as part of the DDTRN Design Guidelines, is also correctly understood as a standard.

Project data compiled by City staff, along with scaled line drawings produced by a licensed general contractor show that the Project fails to meet each of the quantitative criteria A - D above. According to the Project’s Final Planned Development Standards (AR 797), the Project building has four stories, reaching a maximum height of 50 feet, 6 inches, and its built area is 47,983 square feet. The width of the Project building’s front facade is greater than 94 feet (AR 863), and the height of the Project’s front facade is 36 feet. (AR 863.) In contrast, the houses along the Project’s street front have one story, reaching heights of 20 to 25 feet. The widths of their front facades are 30 to 40 feet, and the heights of their front facades are approximately 12 feet. (AR 122-136; 6563-6566; 6683-6686.) These houses have built areas of approximately 1000 to 2000 square feet. (AR 857.)

A. The Project’s basic dimensions— its number of stories, maximum height, built area, and facade width and height— are at least two to three

times greater, and for some dimensions an order of magnitude greater, than those of houses along the street front. The Project does not “...appear to be in scale with...” these houses. (AR 122-136; 6563-6566; 6683-6686.)

- B. The Project’s front facade is approximately three times taller than those of typical houses in the neighborhood, and the planar area of the Project’s front elevation is four or more times greater than those of houses on the block and to the east of the Project. (AR 122-136; 6563-6566; 6588-6597; 6683-6686.)
- C. The Project building is stepped down toward the street and neighboring houses, but the Project’s front wall is three stories in height, exceeding the two story guideline. (AR 695; 863.)
- D. The width of the Project’s primary building face is at least three times larger than those of typical single family buildings adjacent to the Project. (AR 122-136; 6563-6566; 6588-6597; 6683-6686.) The Project’s primary building face is not subdivided into smaller planes. (AR 863.)

In finding that the Project is “Generally Consistent” with the Mixed-Use Mass and Scale guidelines, the City did not evaluate Provisions A-D using measurement or quantification. The City’s compliance check for Building Mass and Scale (AR 902-903) was qualitative and non-specific, delving into

matters such as architectural styles and uses of former buildings on the Project site, which are unrelated to the Mass and Scale guidelines. The City's compliance check evaded the Mass and Scale criteria, which are quantitative and specific. The text in the compliance table does not support the City's finding of "general consistency" with the guidelines for project Mass and Scale.

2. The City Cannot Employ Guidelines for the B and 3rd Visioning Area as Evidence for Project Consistency As These Guidelines do not Apply to the Project.

Design Guidelines arising from the B and 3rd Visioning Process apply to restricted, clearly-defined blocks at the western edge of downtown near the University campus. (*See* Respondent's Opposition Brief and Cross-Appellant's Opening Brief ("ROB"), 30; AR 126.) These guidelines are textually marked, with specific references to the B and 3rd location, and to greater building heights or densities. (ROB, 30; AR 122-136; 3207-3210.) The design guidelines for the B and 3rd Visioning area do not apply to the Project, because the Project site is not within the B and 3rd Visioning area. (ROB, pg. 31.)

The mixed-use design guideline, "Increased building scale and height may be allowed in portions of mixed use special character areas such as along B and 3rd Streets where new development patterns are allowed" (AR 6085) has textual markings tying it to the B and 3rd Visioning area. This guideline was newly introduced as part of the 2007 revisions to the original (2001) DDTRN Design Guidelines, to accommodate specific changes resulting from the B and

3rd Visioning Process (compare AR 6085 with 16015). The “increased building scale and height”, and “new development patterns” in the guideline refer to the “...larger scale and higher density development pattern...” allowed in the B and 3rd Visioning area under the revised Design Guidelines. (AR 6033.)

The Appellants incorrectly conjoin the guideline, “Increased building scale and height...” to the Project, stating that the guideline “...obviously applies to all mixed-use properties, which without question includes Trackside.” (Davis Opp. Br., 18.) This claim does not withstand scrutiny. Aside from the clear provenance of the guideline— as arising from, and applying specifically to, the B and 3rd Visioning area— the 2007 Design Guidelines contain language obviating the blanket application implied by the Appellants. The B and 3rd Visioning Process was undertaken to “...redefine the community’s objectives for development on *portions of B and 3rd Streets* within three special character areas.” (AR 6033 [emphasis added].) The phrase “...portions of B and 3rd Streets within three special character areas” plainly refers to *areas of overlap* between the specific blocks of the B and 3rd Visioning area, and three Special Character Areas identified in the original (2001) DDTRN Design Guidelines. The Project is located within the Third Street Special Character Area (AR 6109-6111), but it is not located in the area of

overlap with the B and 3rd Visioning area. The guideline “Increased building scale and height...” does not apply to the Project.

The need to distinguish, and only narrowly apply, guidelines specific to the B and 3rd Visioning area was affirmed by Historical Resources Management Commissioner Richard Rifkin during the HRMC’s December 12, 2016 public hearing on the Trackside proposal. During the hearing, Mr. Rifkin stated: “I want to go back, briefly, to something Mr. Pope said. He mentioned—he read sections from the design guidelines for the Third Street Character Area that mentioned increased building intensity being permitted. I want to note, for the record, that guidance is specifically applied to the area in the Third and B Street Visioning Process in 2007. It does not apply to the Trackside Center site, and I covered that in my November 9th written comments.” (AR 3500-3501.)

The City would have the Court use the phrase “...such as along B and 3rd Streets...” to imagine that there are other planning areas in the City’s Conservation Overlay District like the B and 3rd Visioning area, in which buildings of a “...larger scale and higher density development pattern...” may be allowed. (Davis Opp. Br., 17-18.) The B and 3rd Visioning Process, and the guidelines arising from it, were unique and unrepeated elsewhere in the Conservation Overlay District. No such other areas exist. Appellants object that Old East Davis Neighborhood Association does not explain how the guideline, “Increased building scale and height...” would be reconciled— when

applicable— with the guideline, “A building shall appear to be in scale with traditional single-family houses along the street front.” (AR 6085; Davis Opp. Br., 18.) It would be a diversion for us to do so. The guideline, “Increased building scale and height...” is under discussion because the Appellants made inapposite use of it. (Opening Brief of Appellants City of Davis and City Council of the City Davis (“City’s Opening Brief”), 40, 50.)

The City’s compliance check for Building Mass and Scale (AR 695) also inappropriately conjoins the Project to the B and 3rd Visioning area, using the same guideline, “Increased building scale and height...” as evidence for Project consistency. For reasons discussed above, this guideline does not apply to the Project and does not support the City’s finding of “general consistency” with Mixed Use Mass and Scale guidelines. (*Id.*)

The City’s error in the compliance table is compounded by an incorrect and misleading reference to guidelines for a special character area: “The project is in the Third Street Special Character Area where increased building scale and height are allowed.” (*Id.*) This sentence could be understood to imply that “...increased building scale and height...” are allowed throughout the Third Street Special Character Area, but this is erroneous. On the contrary, the guidelines for the Third Street Special Character Area state that: “Buildings vary from one to three stories”, “Two and three story buildings should predominate,” and subsequently: “Careful transition to adjacent single story

buildings should be incorporated.” (AR 6109.) No text in the Third Street Special Character Area guidelines refers to “increased building scale and height.” (AR 6109-6111; ROB, 32.) As discussed above, the Project site is not within the area of overlap between the Third Street Special Character Area and the B and 3rd Visioning area, where in the latter, “...increased building scale and height may be allowed.” The City’s finding of “general consistency” for Mixed Use Mass and Scale is further, and severely, weakened by the use of these inapposite references.

3. The City Unreasonably Found That The Project Is Consistent With The Design Guidelines.

The Third Street Corridor case study that the City relied on in making Project approvals (AR 697-698) does not support the City’s consistency finding. Contrary to the City’s claims that the case study has a fourth story (Davis Opening Brief, 48), and is “...nearly identical to the Project” (JA 304 [City’s Request for Statement of Decision]), the case study is a three-story building that is significantly less imposing than the four-story, 47,983 square foot Project building. (JA 316-318 [Petitioner’s Responses to Request for Statement of Decision]; JA 16 [Trial Court’s Statement of Decision]; ROB, 37-39.)

The City’s consistency finding is further diminished because the City did not reasonably explain how the Project makes a transition to single story residential buildings, as called for in the Third Street Special Character Area

and Core Transition East guidelines. The Third Street Special Character Area guidelines state that: “Careful transition to adjacent single story buildings should be incorporated.” (AR 6109.) And the Core Transition East guidelines state that: “This area should improve the visual and land use transition from the Commercial Core to the Old East residential neighborhood.” (AR 6101.) The trial court found that “One overarching principle set forth in the General Plan and the Design Guidelines here is that the subject property serve as a ‘transition’ from the Core Commercial Area to the Old East Davis neighborhood.” (JA 333 [Trial Court’s Statement of Decision].) The trial court went on to state that “...the conclusion above, that this property is a transition property, constitutes a fundamental policy of the General Plan.” (*Id.*, pg. 12 at line 20.) Yet the trial court ultimately found that “Nothing in the Staff Report or record rationally explained how a 47,900 square foot building constituted a transition project.” (*Id.*, pg. 19 at line 20.)

The City’s Historical Resources Management Commission reviews development projects in the Conservation Overlay District for consistency with the DDTRN Design Guidelines. During the HRMC’s December 12, 2016 public hearing on the Trackside Center proposal, Chair Rand Herbert stated: “...this commission has always treated a project like that as having to follow the Design Guidelines. And so if the Design Guidelines say two to three stories, that’s pretty solid guidance....” (AR 3500 at line 6.) A motion for the HRMC

to find that the project is consistent with the applicable DDTRN Design Guidelines subsequently failed unanimously (0-7). (AR 3320.)

At the Planning Commission's August 23, 2017 public hearing on the Trackside Center proposal, a motion to recommend that the City Council *not approve* the Project's Design Review, based on concerns of consistency with prior application of the Design Guidelines, passed unanimously (6-0). (AR 3130.)

In summary, the City failed to heed unanimous findings of Project inconsistency from both the HRMC and Planning Commission. The City's claims of Project consistency with the Third Street Special Character Area and Core Transition East guidelines, calling for a scale and visual transition, were not supported by reasonable argument. The Third Street Corridor case study does not support a consistency finding. The City relied on inapposite guidelines for the B and 3rd Visioning Area in making its consistency finding. And the City failed to evaluate the Project's consistency in light of quantifiable guidelines for Mixed Use Mass and Scale. For these reasons, substantial evidence does not support the City's consistency finding. (*Sequoyah Hills Homeowners Ass'n. v. City of Oakland* (1993) 23 Cal.App.4th 704, 717.)

- 4. The Project's Planned Development standards conflict with the more restrictive standard for Mass & Scale from the DDTRN Design Guidelines, yet the City failed to consider, and correctly apply, Municipal Code Section 40.13A.020 in making Project approvals.**

The Downtown and Traditional Residential Neighborhood Overlay District and Design Guidelines were instituted, among other reasons, to: a) Conserve the traditional neighborhood character, fabric and setting while guiding future development, reuse, and reinvestment (DMC, § 40.13A.010 (a)); b) plan for new commercial and residential infill construction that is compatible and complementary to the character of existing neighborhood areas within the district. (DMC, § 40.13A.010 (c)); provide guidelines to clarify the community’s expectations for the type and quality of development within the district. (DMC § 40.13A.010(e).)

The City’s Planned Development zoning code states the City’s intention that some development, subject to land use law and other provisions “...be relieved from the rigid standards of conventional zoning.” (DMC, § 40.22.010.) The Trackside Center project is a Planned Development. (AR 669 *et seq.*) In an apparent effort to harmonize the goals of the Conservation Overlay District with the Planned Development zoning code, Davis Municipal Code section 40.13A.020 states: “Wherever the guidelines for the DTRN conflict with the existing zoning standards including planned development, the more restrictive standard shall prevail.”

The Mixed-Use Mass and Scale guideline, “A building shall appear to be in scale with traditional single-family houses along the street front” (AR 6085) conflicts with the Project’s Planned Development Standards (AR 797), because

specifications in the PD Standards— for a four story building, reaching a maximum height of 50 ft., 6 in., with a built area of 47,983 square feet - frustrate the Mass and Scale guideline’s requirement that the building “...appear to be in scale with traditional single family houses along the street front.” (AR 122-136; 6563-6566; 6588-6597; 6683-6686.)

The DTRN Overlay District and Design Guidelines, including the Mass and Scale guideline, were adopted by ordinance. (DMC, § 40.13A.010.) The Mass and Scale guideline states a “required action or implementation” (AR 6036) and therefore has the weight of a standard. Because the Mass and Scale provision would require that the Project building “...appear to be in scale with...” the houses along the street front— houses which are significantly smaller in size than the building specified in the Project’s Planned Development Standards— the Mass and Scale provision is the more restrictive standard. Therefore according to section 40.13A.020, the Mass and Scale provision “shall prevail”.

The City did not disclose DMC section 40.13A.020 (b) in the Project’s SCEA/IS, much less analyze the issues the code section raises for Project approval: whether or not the Project as proposed invokes a conflict between standards; and if so, why one standard or the other is the more restrictive. (Respondent’s Opposition Brief, pgs. 54-55; AR 6638-6640; 6687-6689.) Because of the City’s failures to disclose, analyze and correctly apply DMC

PROOF OF SERVICE

I am employed in the County of Yolo; my business address is 417 Mace Boulevard, Suite J-334, Davis, California; I am over the age of 18 years and not a party to the foregoing action. On December 10, 2020, I served a true and correct copy of

CROSS-APPELLANT’S REPLY BRIEF

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 X (by mail) on all parties in said action listed below, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a United States mailbox in the City of Davis, California.

Clerk of the Court
Yolo County Superior Court
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I declare under penalty of perjury that the foregoing is true and correct.
Executed on December 10, 2020, at Davis, California.

/s/
Donald B. Mooney