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January 7, 2022

VIA TRUEFILING & U.S. MAIL

California Court of Appeal  
Third Appellate District  
914 Capitol Mall, 4th Floor  
Sacramento, CA 95814

Re: *Old East Davis Neighborhood Assn. v. City of Davis, et al.*, Case No. C090117  
Request for Publication (Cal. Rules of Court, rules 8.1105 & 8.1120)

Honorable Administrative Presiding Justice and Associate Justices of the Third District Court of Appeal:

Amici curiae League of California Cities, California State Association of Counties, and the Sacramento Area Council of Governments respectfully request that the Court publish its December 20, 2021 Opinion in *Old East Davis Neighborhood Assn. v. City of Davis, et al.*, Case No. C090117, pursuant to California Rules of Court, rule 8.1120(a).

#### **I. Amici Have an Interest in Requesting Publication**

League of California Cities (“Cal Cities”) is an association of 479 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. California State Association of Counties (“CSAC”) is a non-profit corporation whose membership consists of the 58 California counties. Cal Cities and CSAC determined that this case raises important issues that affect all cities and counties. Specifically, the trial court’s misapplication of the standard of judicial review governing local land-use decisions implicated the constitutionally allocated authority of cities and counties, and this Court’s Opinion correctly recognized the City of Davis’s authority.

Sacramento Area Council of Governments (“SACOG”) is a California joint powers authority and an association of local governments in the six-county Sacramento region, which includes the City of Davis. Among other things, it is responsible for developing the region’s long-term transportation plan, known as the Metropolitan Transportation Plan (“MTP”) and the region’s Sustainable Communities Strategy (“SCS”) as part of the MTP, which identifies 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 (“GHG”) from passenger vehicles and light trucks to target levels established by the California Air Resources Board. SACOG adopted its first combined MTP/SCS in 2012. SACOG is interested in this litigation because the trial court’s ruling would have impaired the ability of the City of Davis, and all of SACOG’s members, to implement the MTP/SCS, and this Court’s Opinion correctly reversed the trial court, thereby helping to ensure implementation of the MTP/SCS.

Document received by the CA 3rd District Court of Appeal.

Cal Cities, CSAC, and SACOG also were granted leave to file an amicus curiae brief in this case on January 7, 2021.

## II. The Opinion Satisfies the Standards for Publication

Rule of Court 8.1105(c) provides that an opinion “should be certified for publication in the Official Reports” if it meets any one of nine enumerated standards. The Opinion satisfies several standards. Publication is thus warranted.

*First*, the Opinion involves a legal issue of continuing public interest. (Cal. Rules of Court, rule 8.1105(c)(6).) As the Court knows, this case arose from a challenge to a decision by the City of Davis to authorize a mixed-use development between the City’s Downtown Core and Old East Davis neighborhoods. (Opinion 2-3.) A group of residents contended that—contrary to the recommendations of City staff and the conclusions of the City Council—the development was inconsistent with the City’s general and specific plans. (Opinion 3-8.) The trial court ultimately agreed and barred the development. (Opinion 9.)

Municipal determinations of consistency between proposed developments and relevant general and specific plans are a matter of considerable public importance. Those plans are the basic land use charters that govern the direction of future land use in the locality. (See *St. Vincent’s School for Boys, Catholic Charities CYO v. City of San Rafael* (2008) 161 Cal.App.4th 989, 1007.) And local planning agencies are given significant deference to evaluate projects for consistency with general and specific plans, ensuring the interests of various local stakeholders are balanced by the government entities most immediately responsible for, and responsive to, local citizens. (See, e.g., *Anderson First Coalition v. City of Anderson* (2007) 130 Cal.App.4th 1173, 1192; *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 677-78; *Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 142.)

In this case, the trial court acknowledged the deference owed to the City of Davis. (2 JA 000330.) But it then conducted an independent evaluation of the consistency between the proposed project and relevant plans. (2 JA 000337 - 000343.) Rather than evaluate the articulated basis for the City Council’s decision and the record evidence that supported it, as it should have done (see *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 357), the court focused on the record as a whole and ruled on the basis of its own view of what that record showed. (2 JA 344-345.) By correcting the trial court’s error in this regard, this Court’s Opinion rightly realigns land-use authority, respecting separation of powers and ensuring that local interests are being balanced by the entities with the factual and technical expertise and the proper democratic mandate.

Moreover, local general plans are a matter of significant public interest because they provide a foundation for SACOG’s 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, reductions of GHG emissions, 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).) The deference that is owed to SACOG’s members’ decisions, and specifically those approving critical “smart growth” development is 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. (See, e.g., Gov. Code, § 65080, subds. (b)(2)(B), (E), (G), & (J); §§ 65580-65589.11; 14 CCR 15125, subd. (d).) By respecting the City of Davis’s authority and expertise in implementing the MTP/SCS, the Opinion helps advance the State’s policy goals regarding development of sustainable communities. And by publishing the Opinion, the Court can guard the ability of other local agencies to implement SACOG’s MTP/SCS.

*Second*, the Opinion explains an existing rule of law and applies that rule to a new set of facts. (Cal. Rules of Court, rule 8.1105(c)(2), (3).) As discussed above, the deference owed to local planning agencies is reflected in existing case law. However, as also noted, the trial court’s nominal implementation of those standards led to what can only be viewed as an independent review of the underlying evidence. (2 JA 000330, 000337 - 000343.) The Opinion thus helps illuminate the deference owed to local agencies, especially in cases like this where reasonable minds may differ on the conclusions to be drawn from the available information.

*Third*, the Opinion addresses what might otherwise have been viewed as a conflict in existing case law. (Cal. Rules of Court, rule 8.1105(c)(4).) As respondents argued, some general plan policies are sufficiently specific and mandatory that courts may determine that a proposed project is clearly inconsistent. (See Opinion 15, discussing *Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Supervisors* (1998) 62 Cal.App.4th 1332, 1338 (*FUTURE*).) But as the Opinion explains, *FUTURE* does not—as respondents and the trial court seem to have believed—permit courts to supplant the reasoned conclusions of local agencies in the implementation of planning policies that require the exercise of local judgment. (Opinion 15-16.) The Opinion thus addresses what might otherwise be perceived as a conflict between case law recognizing local agencies’ discretion to implement land-use plans and a case like *FUTURE* that constrains that discretion in narrow circumstances.

For these reasons, amici request that the Court publish the Opinion.

Respectfully submitted,

/s/  
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Counsel for Cal Cities & CSAC

/s/  
Kirk Trost  
Counsel for SACOG

cc: All Parties (by TrueFiling)

**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 SAN FRANCISCO**

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 San Francisco, State of California. My business address is 425 Market Street, 26th Floor, San Francisco, CA 94105.

On January 7, 2022, I served true copies of the following document(s) described as **Request for Publication** on the interested parties in this action as follows:

**SERVICE LIST**

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

**BY MAIL:** I enclosed the document(s) 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.

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

Executed on January 7, 2022, at San Francisco, California.

  
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Nicolas S. Martinez

Document received by the CA 3rd District Court of Appeal.

**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.

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