Case No. B267734
(Los Angeles County Super. Ct. No. BS142266)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

Nancy Armato and Rosario P. Armato,
Petitioners, Plaintiffs, Respondents, and Cross-Appellants,
v.
City of Manhattan Beach, et al.,
Respondent, Defendant and Cross-Respondents,

Joseph M. Paunovich,
Real Party in Interest and Appellant.

Appeal from the Los Angeles County Superior Court,
(Hon. Luis A. Lavin and Joanne O'Donnell)

APPLICATION OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES AND LEAGUE OF CALIFORNIA CITIES FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF IN SUPPORT OF POSITION OF RESPONDENT CITY OF MANHATTAN BEACH AND REAL PARTY IN INTEREST JOSEPH M. PAUNOVICH

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I. APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND INTEREST OF AMICUS CURIAE

Pursuant to Rule 8.200(c) of the California Rules of Court, the California State Association of Counties (CSAC) and the League of California Cities (League)[1] hereby request leave to file an amicus curiae brief in the above-entitled matter in support of Petitioners and Appellants Paradise Irrigation District, et al.

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 and has determined that this case is a matter affecting all counties in that this Court's decision will impact important issues of governance statewide.

The League is an association of 475 California cities united in promoting open government and home rule to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life in California communities. The League is advised by its Legal Advocacy Committee, which is composed of 24 city attorneys representing all regions of the State. The committee

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[1] No party or counsel for a party authored the attached brief, in whole or in part. No one made a monetary contribution intended to fund the preparation or submission of this brief.

monitors appellate litigation affecting municipalities and identifies those cases, such as the instant matter, that are of statewide significance.

II. ISSUES TO BE BRIEFED IN PROPOSED AMICUS CURIAE BRIEF

This case presents an important issue for Amici's member cities and counties: the extent to which staff approval of minor permit modifications is permissible. Land use and development projects constantly change from when the project is initially proposed until construction is complete and a certificate of occupancy is issued. During construction, minor project modifications are commonly necessary for a variety of reasons from varying site conditions to changes in the market and availability of materials.

The proposed amicus brief would be of assistance to this Court. First, the brief provides context to the arguments before this court by explaining the common practices in California's cities and counties with regard to permit modifications. Relatedly, the brief explains the practical impact if the trial court's decision is reversed. Requiring all minor modifications to permits to go before the Planning Commission would bog down the construction process, and will inevitably lead to additional administrative and judicial appeals. Finally, the brief notes the importance of deferring to local agencies in their interpretation of their own ordinances and regulations, and principle that has broad impact far beyond the facts of this case.

/ / /

III. CONCLUSION

For these reasons, CSAC and the League request leave to file the proposed amicus curiae brief.

Dated: October 6, 2017

Respectfully submitted,

/s/

JENNIFER B. HENNING
CSAC Litigation Counsel

Attorney for *Amicus Curiae*
California State Association of Counties and
League of California Cities

Case No. B267734
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INTRODUCTION

The California State Association of Counties and the League of California Cities respectfully submit this brief as friends of the Court in support of Defendant Respondent and Cross-Respondent City of Manhattan Beach (the "City") and the Real Party in Interest and Appellant Joseph M. Paunovich ("Mr. Paunovich").

The California State Association of Counties ("CSAC") is a non-profit corporation whose members consist of the 58 California counties. CSAC sponsors a Litigation Coordination Program administered by the County Counsels' Association of California and 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 and has determined that this case directly impacts counties of this State.

The League of California Cities (the "League") is an association of 475 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. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide significance. The Committee has identified this case as being of such significance.

CSAC and the League agree with the trial court's decision to uphold the Coastal Development Permit ("CDP") issued by the City to Mr. Paunovich, and do not intend to repeat the arguments made by the City and Mr. Paunovich on that issue. Rather, CSAC and the League write separately to urge this Court to reverse the trial court's decision to grant a writ of mandate commanding the City to set aside its approval of a minor modification to the Project. The City's approval of a minor modification to Mr. Paunovich's CDP without public hearing or notice should be restored as valid because: (1) the City Planning Commission, through the conditions imposed in the project's CDP and the City's Local Coastal

Program, properly delegated authority to the City's Community Development Director to approve minor project modifications in substantial conformity with the issued permit which is common practice throughout the State; (2) the City's determination that the change was a "minor project modification" subject to Community Development Director's approval under the CDP and not an "amendment" under the City's Local Coastal Program ("LCP") should be afforded deference; and (3) staff approval of minor permit modifications is necessary for local governments to operate efficiently, and prohibiting such approvals would have the unduly burdensome effect of slowing development and increasing costs for city and county planning departments.

ARGUMENT[1]

1. STAFF APPROVAL OF MINOR PERMIT MODIFICATIONS IS COMMON PRACTICE THROUGHOUT THE STATE.

Land use and development projects constantly change from when the project is initially proposed until construction is complete and a certificate of occupancy is issued. During construction, minor project modifications are commonly necessary for a variety of reasons from varying site conditions to changes in the market and availability of materials. Several cities and counties throughout the State address these commonplace changes in their project conditions or zoning ordinances by allowing minor project modifications to be processed at a staff level. Delegating review and approval authority to staff preserves limited government resources, allows for more efficient local government operation and development review, and prevents undue project delays and increased costs. To prohibit staff from approving minor permit modifications would create an undue burden on cities and counties and their planning

[1] The Facts of this case are fully described in Appellant's Opening Brief filed by Real Party in Interest and Appellant Joseph M. Paunovich on or about September 1, 2016.

commissions, and may increase litigation and the number of times a single project may be reviewed by the courts. Accordingly, this case involves a matter of statewide importance.

a. Minor modifications to land use permits are common.

Many land use and development projects are revised at some point between approval and final construction or occupancy. Revisions are common for numerous reasons. Common reasons for permit modifications include: (1) changes based on the applicants' personal preferences including changed circumstances or increased knowledge of local zoning requirements, which are commonly learned while processing project permits; (2) changes necessitated by project conditions and changes to comply with other entities' project conditions, for example conditions imposed subsequent to a city's or county's land use permitting as a result of permits or approval from the Department of Fish and Wildlife Service, the Air Pollution Control District, or the project's water or sewer purveyor, etc.; and (3) changes arising as a result of and during the actual construction process.

First, modifications are commonly requested based on changes to an applicant's personal circumstances, needs that the project is intended to fulfill, or local knowledge of zoning requirements. In the present case, Mr. Paunovich, requested a permit modification after learning through the permitting process some of the City's zoning standards that he determined would be beneficial to apply to his CDP. (3 CT 431-432, 1 AR 276.) Other personal reasons for an applicant to request permit modifications, particularly for residential development projects, include accommodations for additions to the applicant's family, caring for aging or ill relatives, or minor accommodations for disabilities, etc. These changes could be as minimal as changing the configuration of a driveway or adding a laundry room. The longer it takes to process a project, obtain a permit, and begin construction the more likely it is that an applicant will request permit

modifications and that permit modifications will be necessary to complete construction of the project.

Second, several cities and counties condition projects on subsequent review or compliance with other governmental entities' standards (i.e. the Fish and Wildlife Service, Fire Protection Districts, Air Pollution Control Districts, Flood Control Districts, local water or sewer purveyors, Architectural Review Boards, etc.) which may result in changes to the approved project. For example, a condition of project approval may include review and approval by an architectural review board. Architectural review boards commonly recommend design changes that may result in the need for, or the applicants desire to, make minor permit modifications.

Third, bidding and constructing a project commonly results in minor permit modifications. "Certainty of change is a constant of the construction process. Construction rarely proceeds as planned because there are always unexpected events and conditions that occur during construction and impact the contractor's ability to complete the project as planned." (Nolan Koon, "Construction Changes: A True Story of Money, Power, and Turmoil," (2016) 2016 Army Law. 25.) Projects typically go through the land use permitting process before bids are solicited to construct the project. Through the bidding and construction process changes are common for numerous reasons, including the lack of availability of certain materials specified in the project plans, which would necessitate a minor permit modification to complete the project. The legislature has acknowledged the frequency of changes during construction projects by specifically addressing change orders in the Public Contract Code and allowing local governments to delegate authority to staff to approve these changes to avoid project delays and cost escalations. (*See, e.g.*, Pub. Contract Code, § 20142, subd. (a)[the legislature allows county boards of supervisors to delegate authority to the county engineer or other county officer to order changes or additions to the work being performed under construction contracts].)

b. Several Counties and Cities throughout the State allow minor modifications to permits to be processed at the staff level.

Delegation of authority by a city or county to its staff is common to allow for the efficient review and processing of projects. (*See, e.g., Great Western Savings & Loan Assn. v. City of Los Angeles* (1973) 31 Cal.App.3d 403, 412 [interpreting Los Angeles City Code as delegating the authority to determine map compliance to the City's engineer].) As outlined in the standard conditions of project approval including in the CDP at issue, the City of Manhattan Beach allows minor permit modifications that substantially comply with the approved project description and plan to be processed by the City's Community Development Director without notice or public hearing. (See Appellant's Opening Brief, pages 30-40; 1 AR 3.) These minor permit modifications are distinguished from project amendments which require review by the CDP's approving authority and require notice and a hearing. (City of Manhattan Beach Local Coastal Program § A.96.180.) The City of Manhattan Beach's permit modification process is common throughout the State as several counties and cities have similar provisions in their standard conditions of project approval or zoning ordinances.

i. A City or County Planning Director may be delegated authority to review and approve changes to a project.

The legislative body of a city or county may delegate authority to its employees to carry out the powers of the city or county. (See *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1516.) Specifically, a city council or board of supervisors may allow planning directors and their staff to review and act on applications in compliance with the city's municipal code or the county's zoning ordinance. (Gov. Code, §§ 65100; 65103, subd. (g).) Government Code section 65100 requires city councils and county boards of supervisors to assign the functions of the planning agency to the planning department, commission, hearing

officers, etc. as the council or board deems necessary and appropriate. (*See also* Gov. Code, §§ 65900, 65901 [allowing cities and counties to create zoning administrators and delegate authority to the zoning administrator].)

The California Supreme Court acknowledged the legitimacy and importance of delegating discretionary authority to local government boards and employees to perform necessary government functions and provide government services in *Stanislaus County Dairymen's Protective Assn. v. Stanislaus County* (1937) 8 Cal.2d 378. In *Stanislaus County Dairymen* the county adopted an ordinance authorizing officers of the Stanislaus County Voluntary Tuberculosis Control Area and veterinarians to inspect, condemn and slaughter dairy cattle infected with tuberculosis. (*Id.* at p. 388-89.) The ordinance was challenged by the Dairymen's Association on several grounds including improper delegation of authority to county officers and veterinarians. In rejecting this argument, the Court noted "[i]t is a well-established rule of the law that authority may be delegated by the legislature to administrative boards or officers to adopt reasonable rules and terms to carry out the general purpose for which a statute is enacted, even though the delegated power confers a discretion or the necessity of determining terms, qualifications, or facts upon the board or officer within the scope of legislative act." (*Id.* at p. 389 (citations omitted).) The Court then discussed the importance of delegating authority to boards and employees for the efficient administration of government which, even in 1937, was deemed necessary to ensure performance of quasi-judicial and quasi-legislative government functions. The Court ultimately held, based on preemption by the California Agricultural Code, that the county improperly included veterinarians in the ordinance; however, the ordinance remained valid as this was a severable provision. Accordingly, as early as 1937, the California Supreme Court allowed cities and counties, either through boards adopting reasonable rules and terms (i.e. planning commissions imposing project conditions) or through statues (i.e. local zoning ordinances), to delegate authority.

Delegations are upheld by the courts as long as the delegation includes 'criteria' for exercising the delegated authority. (*Stoddard v. Edelman* (1970) 4 Cal.App.3d 544, 548, and footnote 2 [noting only two cases in which courts have struck ordinances attempting to delegate legislative authority].) In regards to what criteria are sufficient to support a delegation, the court in *Echevarritea v. City of Rancho Palos Verdes* (2001) 86 Cal.App.4th 472, 483 (citations omitted), stated that "[a] substantial amount of vagueness is permitted in California zoning ordinances' in order to permit delegation of broad discretionary power to administrative bodies." In *Echevarritea*, the court upheld an ordinance granting "broad discretionary power to the [View Restoration Commission] and the City." (*Id.* at p. 485.) The court determined that the ordinance limiting the height of foliage to that determined by the View Restoration Commission or, in absence of a Commission determination, to either the height of the ridge line, the foliage height as the date of the ordinance or 16 feet was not vague. Similarly in upholding the City of Pacifica's zoning ordinance prohibiting uses contrary to the general welfare and requiring structure to avoid monotony, the court in *Novi v. City of Pacifica* (1985) 169 Cal.App.3d 678, 682 (citations omitted), noted that "California courts permit vague standards because they are sensitive to the need of government in large urban areas to delegate broad discretionary power to administrative bodies if the community's zoning business is to be done without paralyzing the legislative process." Accordingly, standards for issuing land use permits have "almost uniformly been judicially approved." (*Stoddard v. Edelman* (1970) 4 Cal.App.3d 544, 548.) *Stoddard* involved the issuance of a conditional use permit for a synagogue in West Los Angeles that was opposed by the neighbors. The permit was challenged on the grounds that the Los Angeles Municipal Code provisions governing the issuance of a conditional use permit were too vague and therefore an unconstitutional delegation of legislative authority. (*Id.* at p. 548.) The Los Angeles Municipal Code allowed the zoning administrator to issue a permit if the "location will be desirable to the public

convenience or welfare and will be in harmony with the various elements of the master plan." (*Ibid*.) In rejecting this challenge, the court noted that while delegation of "unbridled discretion" is invalid, the city need only "establish an ascertainable standard" to have a valid delegation. (*Ibid*.) The court noted that these standards vary from general to specific and have been routinely upheld by the courts. Thus, the City's general welfare standard for issuing permits was valid.

Delegating authority to staff to approve minor permit modifications, subject to general criteria under which the authority may be exercised by staff, is permissible, whether done via conditions of project approval or in a city or county ordinance. In the present case, the City of Manhattan Beach's permit conditions and Local Coastal Program established a general criteria and standards under which staff was allowed to review and approve minor permit modifications. The City's permit conditions included both a "substantial compliance" with the approved project description and plans and a "substantial deviation" standard. (1 AR 4.) These standards together with the permit requirements, including the Local Coastal Program's formal permit amendment process created the criteria necessary for the City's Community Development Director to exercise the CDP's delegated authority and determine if a proposed permit modification was in substantial compliance with the CDP and could be approved at a staff level or was a substantial deviation from the CDP requiring a formal permit amendment to be filed. (Manhattan Beach Local Coastal Program § A.96.180.)

ii. Delegation of authority to staff to approve minor project modifications is often included in conditions of project approval or zoning ordinances.

Several cities and counties delegate authority to their Planning Directors and staff to approve minor permit modifications as part of the permitting process in either their conditions of project approval or zoning ordinances. The City of Manhattan Beach, in the present case, included three conditions in Mr.

Paunovich's conditional use permit delegating authority to staff, including that "[a]ny deviation from the approved plans must be reviewed and approved by [the City Community Development Director]." (1 AR 3.) Similarly, other cities and counties delegate authority to staff to review and, if appropriate, approve minor permit modifications in the conditions of project approval. For example, Tulare County's conditions of project approval include delegating authority to the Planning Director to approve minor permit modifications. Specifically, Tulare County's Code provides that when approving certain types of planning permits the Tulare County Planning Commission, Board of Supervisors, or Zoning Administrator may include a delegation to the Tulare County Planning Director to approve, without notice or hearing, minor modifications so long as the modification does not substantially change or alter the use approved or conditions imposed. (Tulare County Code, § 18.6.)

Similar permit conditions delegating authority to staff are commonly included as project conditions throughout the State. Orange County's standard permit conditions include: "[i]f the applicant proposes changes regarding the location or alteration of any use or structure, the applicant shall submit a changed plan to the Director, PDS [Planning and Development Services], for approval. If the Director, PDS, determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the changed plan as for the approved plot plan, he may approve the changed plan without requiring a new public hearing." (County of Orange, Standard Conditions of Approval Manual (2001).) The City of San Mateo includes in its permit approval conditions that construction shall substantially conform with the approved project plans and any changes shall be submitted to the Chief of Planning for review and approval prior to construction. (City of San Mateo, Conditions of Project Approval, page 1.) The City of Danville includes the following condition as a standard project condition: "[t]he project shall be constructed as approved. Minor modifications in the design, but

not the use, may be approved by the Planning Division." (See City of Danville, Heritage Resource Commission Resolution No. 2011-01 (Project Approval), page 37.) In addition, delegating other types of subsequent review and approval authority for permitted project to staff are common in permit conditions. For example, the City of San Pablo's standard conditions of approval include a condition that landscaping along the access road be approved by the Planning Director and the County of Santa Barbara's standard conditions of approval require that "[a]ll plans (such as Landscape and Tree Protection Plans) must be submitted for review and approval and shall be implemented as approved by the County." (See County of Santa Barbara, Casa Saville-Zissler Appeal, Attachment B: Conditions of Approval No. 2, page 1.)

Several California cities and counties have established categories of permit modifications in their zoning ordinances and delegated authority to staff to approve minor permit modifications without hearing or notice. (See e.g. Solano County Code, § 28.106; San Diego County Code, § 7609; Emeryville Municipal Code, § 9-7-105; Stockton Municipal Code, § 16.104; Fresno Municipal Code, § 15-5015; Truckee Municipal Code, § 18.84.070(B)(1); Roseville Municipal Code, §§ 19.74.010.H, 19.76.180, 19.78.020; San Pablo Municipal Code, §§ 17.16.110, 17.16.060.) These delegations to staff are commonly applicable in both the coastal and inland areas. For example, Ventura County's inland and coastal zoning ordinances designate three categories of permit modifications with varying requirements for review and approval, including staff approval. (Ventura County Coastal Zoning Ordinance, § 8181-10; Ventura County Non-Coastal Zoning Ordinance, § 8111-6.) Ventura County's three categories of modifications include: (1) adjustments, specifically site plan adjustments in the inland areas or permit adjustments in the coastal zone; (2) minor modifications; and (3) major modifications. Adjustments are defined as any change that would not alter any of the project's findings, would not have an adverse impact on surrounding properties, and would satisfy a few other enumerated limitations such as less than

a 10% increase or decrease to floor area, etc. (Ventura County Non-Coastal Zoning Ordinance, § 8111-6.1.1; Ventura County Coastal Zoning Ordinance, § 8181-10.4.2.a.) Adjustments may be approved by the Ventura County Planning Director or designee without a hearing. (*Ibid*.)

Similarly, Napa County's zoning ordinance designates three classifications of permit modifications and delegates authority to the County Planning Director to approve certain modifications. (Napa County Code, § 18.124.130.) The three classes of modifications and delegated authority include: (1) very minor modifications - changes which do not alter their "overall concept, density, intensity, or environmental impact" and which would result in a less than 10% increase in overall square footage and may be approved by the Napa County Planning Director without public hearing and notice; (2) minor modifications- changes that would not alter a use permit's "overall concept, density, intensity, or environmental impact" such as increases in square footage of up to 25% and are noticed to the public and if no objections are received may be approved administratively by the Napa County Planning Director; and (3) major modifications - increases in square footage of more than 25%, changes to the intensity, density, or overall concept of a facility, or changes which are deemed to be environmentally significant and may be approved by the Napa County Planning Commission after formal notice is provided to the public.

2. STAFF APPROVAL OF MINOR PERMIT MODIFICATIONS IS NECESSARY FOR LOCAL GOVERNMENTS TO OPERATE AND ANY CHANGES TO THIS PROCESS MAY HAVE NEGATIVE IMPACTS THROUGHOUT THE STATE.

Minor project modifications are appropriately reviewed and approved at the staff level without hearing and public notice so long as the modifications are minor and consistent with the approved project under applicable zoning ordinances and the City's interpretation of these ordinances. The initial project

approval, depending on the local zoning ordinance, will have already provided notice to the public and the opportunity for a hearing and public comment on the project. Any minor modifications to the project in compliance with the provisions of a city or county zoning ordinance or permit conditions should not reopen the initial permit approval process and invite additional bites at the proverbial administrative appeal and litigation apple.

If every modification to an approved permit, no matter how small or insignificant to the original approval, is required to be publicly noticed and have a formal hearing, the effects would be significant throughout the State. To require a public hearing before the decision maker with authority to approve the underlying permit would also include the opportunity to appeal the decision and would likely create an excessive log of cases required to be scheduled for hearing before city and county zoning administrators and planning commissions, as well as appeals to city councils and boards of supervisors, and ultimately potential additional litigation filed with the courts. In several cities and counties planning commissions are comprised of citizens who receive minimal compensation for their service and only meet once a week or once a month. Presenting every project modification or appeal of a project modification determination to the planning commission would create a backlog that would delay projects and, in turn, potential tax revenue typically realized upon completion of construction. Moreover, if modifications are proposed during construction, the likely delays would increase the time to complete construction, thus increasing both the costs to project applicants and the construction impacts to neighbors and neighborhoods. In addition, requiring every permit modification to be approved after public notice and hearing would allow project objectors to have numerous opportunities to object to and attempt to derail a project for minor reasons and could increase litigation, including the number of challenges and lawsuits for a single project.

Finally, in addition to the potential for negative impacts on neighbors, neighborhoods, staff time and resources, and court time and resources, changing

the process for staff level approval of minor permit modifications would also result in increased costs and decreased efficiency. Costs affected include permitting costs and construction costs. For example, Santa Barbara County's fees are based on staff time and associated permit processing costs. For comparison, a revised conditional use permit approved by the planning commission costs $8,000, while a revised conditional use permit approved by the zoning administrator or director only costs $3,000. However, a staff approved minor project modification, also referred to as a substantial conformity determination, costs $1,000 and a post approval review costs $226. (Santa Barbara County Ordinance No. 4991.) These differences in fees reflect the difference in the amount of staff time to process the request. (See also City of Irvine, Minor/Major Modification Information Sheet.) Additionally, as noted above, delays in consideration of permit modifications requested during project construction could increase the construction costs and could delay tax revenue available from the completed project. These increased costs could impose burdens on applicants and prevent minor modifications to a project that may be beneficial to the applicant and the community.

3. THE CITY'S DETERMINATION THAT THE CHANGE WAS A "MINOR PROJECT MODIFICATION" SUBJECT TO THE COMMUNITY DEVELOPMENT DIRECTOR'S APPROVAL UNDER THE CDP AND NOT AN "AMENDMENT" UNDER THE CITY'S LCP SHOULD BE AFFORDED DEFERENCE.

The courts, in exercising independent judgment, must give appropriate deference to an agency's interpretation of its own ordinance. (*Van Wagner Communications v. City of Los Angeles* (2000) 84 Cal.App.4th 499, 508.) The construction of an ordinance by an agency charged with its administration, while not necessarily controlling, is "entitled to great weight and should be respected by the courts unless it is clearly erroneous or unauthorized." (*City of Monterey v.*

Carrnshimba (2013) 215 Cal.App.4th 1068, 1087, citing *Anderson v. San Francisco Rent Stabilization & Arbitration Bd.* (1987) 192 Cal.App.3d 1336, 1343.)

This deference to local agencies is particularly important in the context of land use. City and county land use authority stems from the California Constitution. (Cal. Const., art. XI, § 7.) Public agencies all wrestle with the interpretation, implementation, and application of their policies and regulations on a daily basis. This provides city and county decision-makers with a keen understanding of the interpretation and implementation of those policies and regulations. For these reasons, the court in *Citizens for Beach Rights v. City of San Diego* (2017) 10 Cal.App.5th 1301, 1312, afforded deference to the City's interpretation of both its municipal code and conditions that it attached to a site development permit. Similarly, here, this Court should defer to the City's interpretation of its CDP and LCP.

CONCLUSION

To uphold the validity of the City of Manhattan Beach Community Development Director's actions and to allow minor permit modifications to be approved at a staff level would allow projects to continue to be developed within the City of Manhattan Beach. If the well-established delegations to staff to review and approve minor permit modifications are not upheld and applied in this matter, the burden on local governments may become untenable and substantially delay development in cities and counties throughout the State.

For the reasons discussed above and for the reasons argued by Appellant and Real Party in Interest, CSAC, and its member counties, and the League, and its member cities, respectfully ask this Court to reverse the trial court's judgment as related to staff approved minor permit modifications.

Dated: October 6, 2017

Respectfully submitted,

/s/

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JENNIFER B. HENNING
CSAC Litigation Counsel

Attorney for *Amicus Curiae*
California State Association of Counties and
League of California Cities

Word Count Certification
(Cal. Rules of Court, rule 14(c)(1))

The text of this brief, including footnotes but not including the tables of contents and authorities or this Certification, consists of 5,127 words as counted by the Microsoft Word processing program used to prepare this brief. The body of the brief is also printed in typeface of 13 points.

Dated: October 6, 2017

Respectfully submitted,

/s/

JENNIFER B. HENNING
CSAC Litigation Counsel

Attorney for *Amicus Curiae*
California State Association of Counties and
League of California Cities

Proof of Service by Mail
Armato v. City of Manhattan Beach
Case No. B267734

I, ASHLEY RAFFORD, declare:

That I am, and was at the time of the service of the papers herein referred to, over the age of eighteen years, and not a party to the within action; and I am employed in the County of Sacramento, California, within which county the subject mailing occurred. My business address is 1100 K Street, Suite 101, Sacramento, California, 95814. I served the within **APPLICATION AND PROPOSED AMICUS BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES AND LEAGUE OF CALIFORNIA CITIES FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT CITY OF MANHATTAN BEACH AND REAL PARTY IN INTEREST JOSEPH M. PAUNOVICH** by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

PROOF OF SERVICE LIST

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and by placing the envelopes for collection and mailing following our ordinary business 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 prepaid.

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

Executed on October 6, 2017 at Sacramento, California.

/s/

_____

ASHLEY RAFFORD