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LATE DIST

Katherine Douglas Appellant Comment Letter

From: Villalobos, David
Sent: Friday, April 4, 2025 12:06 PM
To: sbcob
Subject: FW: Richards Ranch Comment for April 8
Attachments: Exhibit A_2025-3-20 - Stipulation and Order re Consolidation and Briefing.pdf; Exhibit_B_RE_ HAU 1423_Santa Barbara County.pdf; April 4_ 2025 Letter to County re Appeal April 8_ 2025 Hearing(33302244.2).pdf; Exhibit _C_April 4 Letter Jha v. City of LA - Decision on Petition for Writ of Mandate - 07.24.24.pdf; April 4_ 2025 Letter to County re Appeal April 8_ 2025 Hearing(33302244.2).pdf

From: Andersen, Ginger C. <gandersen@bhfs.com>
Sent: Friday, April 4, 2025 11:59 AM
To: Villalobos, David <dvillalo@countyofsb.org>
Cc: Collins, Beth A. <bcollins@bhfs.com>; Carlson, Mack <mcarlson@bhfs.com>
Subject: Richards Ranch Comment for April 8

Find attached.

Ginger C. Andersen
Senior Land Use Project Manager
Brownstein Hyatt Farber Schreck, LLP
1021 Anacapa Street, 2nd Floor
Santa Barbara, CA 93101
805.882.1460 tel
805.260.8392 cell
gandersen@bhfs.com

Brownstein - we're all in.

Brownstein

Brownstein Hyatt Farber Schreck, LLP
805.963.7000 main
1021 Anacapa Street, 2nd Floor
Santa Barbara, California 93101

April 4, 2025

Beth A. Collins
Attorney at Law
805.882.1419 direct
bcollins@bhfs.com

VIA EMAIL: dvillalo@co.santa-barbara.ca.us

County of Santa Barbara
Clerk of the Board of Supervisors
105 E. Anapamu Street, Fourth Floor, Room 407
Santa Barbara, CA 93101

RE: Appeal of PC Denial of Appeal 25APL-0007
Richards Ranch, LLC Mixed-Use Project at Key Site 26
County Case Nos. 24TRM-00003, 24DVP-00018, and 24CUP-00033
APNs 107-250-019, -020, -021, and -022

Chair Capps and Honorable Supervisors:

This letter supplements our March 31, 2025 appeal letter related to our client Richards Ranch LLC's Mixed-Use Project at Key Site 26. We write with some additional information and an update.

As we mentioned during the appeal process before the Planning Commission, our firm sought technical assistance from the Housing Accountability Unit at California's Department of Housing and Community Development ("HCD") in November 2024 after County staff indicated that they may unilaterally revoke SB 330 vesting from projects if the County did not deem the project's application complete after an applicant had two 90-day cycles to provide responses. During that process, we met with HCD staff and HCD met with the County. It has come to our attention that in January 2025 HCD informed County staff that staff's position was incorrect and that it had enforced against the City of Beverly Hills for failing to give applicants unlimited 90-day cycles to be found complete consistent with the typical processing of applications under the Permit Streamlining Act. Specifically, HCD staff provided County staff with two Notices of Violation on this issue. The August 2024 Notice of Violation issued to Beverly Hills said:

> "**If the City determines that the application for the development project is not complete pursuant to Government Code section 65943, the development proponent is required to submit** the specific information needed to complete the application **within 90 days** of receiving the agency's written identification of the necessary information. **HCD reminds the City, however, that the 90-day deadline**

> **resets after each incompleteness determination. A project with multiple incompleteness letters and responses may have multiple 90-day periods**."[1]

In response to these Notices of Violation, the City of Beverly Hills stipulated that this interpretation of the law was correct in later litigation. (See Exhibit A.)

Correspondence between HCD and County staff reveals that staff refused to provide a written response explaining its position regarding the two 90-day cycle issue. Specifically, on January 13, 2025 HCD asked the County to provide a written response on "its interpretation on multiple review periods for Builder's Remedy projects." HCD followed up again on February 5, 2025 asking "if the County still plans to provide a written response on the number of allowed review periods." County staff responded on February 10, 2025 thanking HCD for the informational meeting and the letters sent to Beverly Hills, and then said that County staff does "not intended to write a written response on this issue." (See Exhibit B.) These delayed responses appear to show that the County intentionally sought to postpone issuance of a HCD letter while the County sought to strip an applicant of its rights under state housing law.

Additionally, for this Board's information, we attach a trial court decision from July 2024 in *Janet Jha v. City of Los Angeles*, cited in the HCD materials attached to our appeal, which also makes it clear that the County's position regarding the 90-day cycle issue is not supported by state law and is a violation of the Housing Accountability Act, which was enacted to streamline housing production and protect housing projects against this type of arbitrary and capricious conduct by agencies. (See Exhibit C.) Specifically, the Court held that:

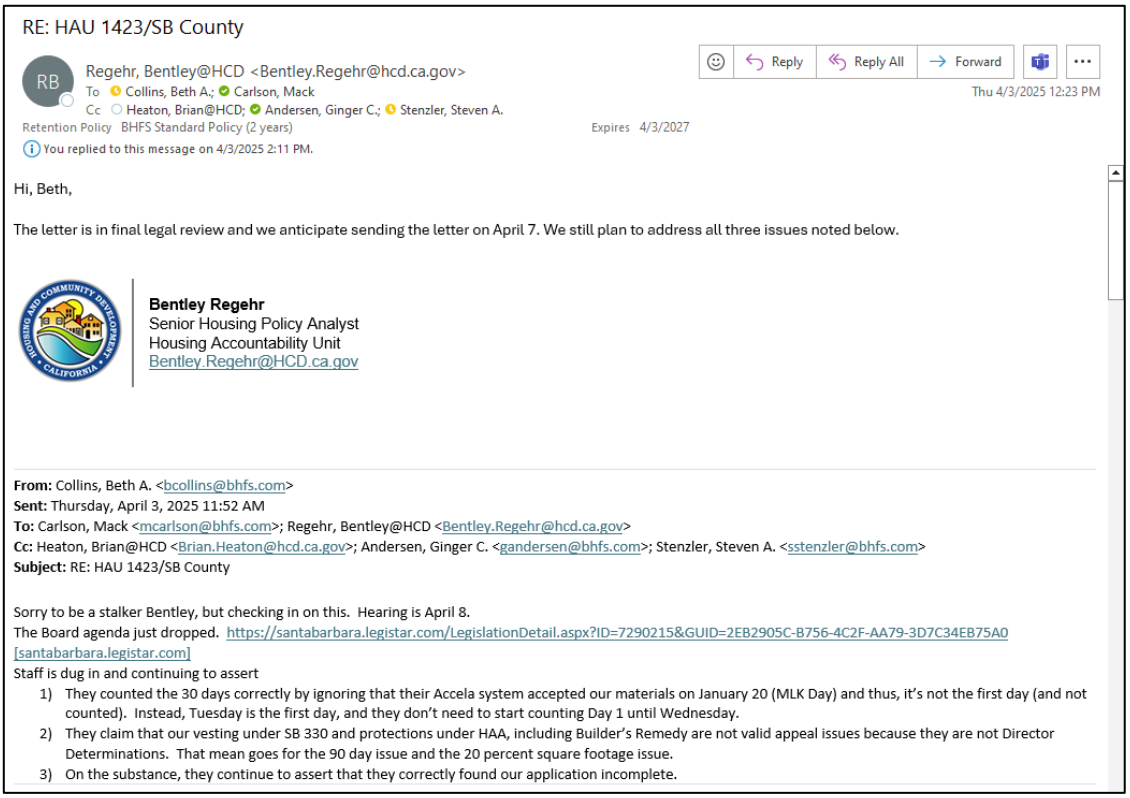
> The court agrees with Jha that **multiple iterations of the 90-day submission/30-day review are permissible under section 65941.1(d)(2).** Section 65941.1(d)(2) expressly refers to completeness pursuant to section 65943. In turn, section 65943(a) refers to "any subsequent review of the application determined to be incomplete", "any resubmittal of the application", and "a new 30-day period." The use of the words "any" and "new" in section 65943(a) indicate that multiple resubmissions of an application may be made. **The statute supports Jha's reading that the submission and completeness evaluation for an application is an iterative process with no limit on the number of submissions.**
>
> The court's conclusion is supported by the fact that **the court is "not dealing with the [Permit Streamlining Act] in a vacuum, but rather in its relation to the [Housing Accountability Act]," and the Legislature has mandated the [Housing Accountability Act] must be interpreted to**

[1] HCD, Notice of Violation to Beverly Hills (Aug. 22, 2024) https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/beverly-hills-hau-1071-nov-082224.pdf (emphasis added).

> **"afford the fullest possible weight to the interest of, and the approval and provision of, housing**." (*Save Lafayette v. City of Lafayette,* (2022) 85 Cal.App.5th 842, 855 (refusing to interpret the PSA to treat a multi-year delay as a resubmittal that terminated earlier vesting rights and instead recognizing the project's decade-old vesting rights in part because the [Housing Accountability Act's] policy that favors housing).) The City's interpretation makes it more difficult for applicants to maintain vesting rights and directly conflicts with the Legislature's clear mandate to interpret its provisions in favor of housing development.[2]

Ultimately, in what appears to be a politically motivated targeting of this affordable housing project, the Richards Ranch Project is the only project from which the County has sought to revoke its SB 330 vesting. During this appeal process, the County still has not provided any legal justification for its position. Instead, County staff take the position that the issue is not a Director Determination and therefore not a proper subject of this appeal. Not only are these actions by the County violations of state housing law and HCD guidance, the actions are violations in bad faith.

We have been told that HCD staff that "The letter is in final legal review and we anticipate sending the letter on April 7" and that the letter will address our appeal issues.



RE: HAU 1423/SB County

RB Regehr, Bentley@HCD <Bentley.Regehr@hcd.ca.gov>
To Collins, Beth A.; Carlson, Mack
Cc Heaton, Brian@HCD; Andersen, Ginger C.; Stenzler, Steven A.
Retention Policy BHFS Standard Policy (2 years) Expires 4/3/2027
You replied to this message on 4/3/2025 2:11 PM.

Reply | Reply All | Forward
Thu 4/3/2025 12:23 PM

Hi, Beth,

The letter is in final legal review and we anticipate sending the letter on April 7. We still plan to address all three issues noted below.

Bentley Regehr
Senior Housing Policy Analyst
Housing Accountability Unit
Bentley.Regehr@HCD.ca.gov

From: Collins, Beth A. <bcollins@bhfs.com>
Sent: Thursday, April 3, 2025 11:52 AM
To: Carlson, Mack <mcarlson@bhfs.com>; Regehr, Bentley@HCD <Bentley.Regehr@hcd.ca.gov>
Cc: Heaton, Brian@HCD <Brian.Heaton@hcd.ca.gov>; Andersen, Ginger C. <gandersen@bhfs.com>; Stenzler, Steven A. <sstenzler@bhfs.com>
Subject: RE: HAU 1423/SB County

Sorry to be a stalker Bentley, but checking in on this. Hearing is April 8.
The Board agenda just dropped. https://santabarbara.legistar.com/LegislationDetail.aspx?ID=7290215&GUID=2EB2905C-B756-4C2F-AA79-3D7C34EB75A0 [santabarbara.legistar.com]
Staff is dug in and continuing to assert

1) They counted the 30 days correctly by ignoring that their Accela system accepted our materials on January 20 (MLK Day) and thus, it's not the first day (and not counted). Instead, Tuesday is the first day, and they don't need to start counting Day 1 until Wednesday.
2) They claim that our vesting under SB 330 and protections under HAA, including Builder's Remedy are not valid appeal issues because they are not Director Determinations. That mean goes for the 90 day issue and the 20 percent square footage issue.
3) On the substance, they continue to assert that they correctly found our application incomplete.

[2] *Jha v. City of Los Angeles*, L.A.S.C. Case No. 23STCP03499 (Jul. 24, 2024) pp. 23-24 [attached as Exhibit C].

We hope that no matter the timing of this letter, the Board will review it carefully before making its decision on this appeal. Refusal to consider the HCD letter after the County's actions to delay its issuance would be further evidence bad faith.

Finally, it is worth noting again that the stakes are high here for the County. This is not saber-rattling—it is simply laying out the law and the facts. As stated in the HCD Notices of Violation to the City of Beverly Hills, HCD has the authority to refer violations of housing law to the California Attorney General for enforcement.[3] Enforcement by the California Attorney General subjects the County to penalties of between $10,000 to $50,000 per month as well as liability for the Attorney General Office's and HCD fees.[4] My client also has rights under state law to redress these wrongs in court. As we have explained repeatedly in our appeal and this process, there also are significant penalties for jurisdictions who violate state housing law, especially when it is done with knowledge and thus in bad faith. The County's actions thus far look like bad faith targeting an affordable housing project proposed on a site that has been identified for housing by this County in own Housing Element.

We are hopeful that the Board can right this ship and grant our appeal on Tuesday.

Respectfully submitted,

Beth A. Collins

[3] HCD, Notice of Violation to Beverly Hills (Dec. 2, 2024) https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/beverly-hills-nov-120224.pdf.
[4] Gov. Code, § 65009.1.

CALIFORNIANS FOR HOMEOWNERSHIP, INC.
Matthew P. Gelfand (SBN 297910)
matt@caforhomes.org
Allyson H. Richman (SBN 339822)
allyson@caforhomes.org
525 S. Virgil Ave.
Los Angeles, California 90020
Telephone: (213) 739-8206
Facsimile: (213) 480-7724

Attorneys for Petitioner,
Californians for Homeownership, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CALIFORNIANS FOR HOMEOWNERSHIP, INC., a California nonprofit public benefit corporation,

Petitioner,

v.

CITY of BEVERLY HILLS,

Respondent.

9300 WILSHIRE, LLC,

Real Party in Interest.

Case No. 24STCP02082

STIPULATION; [~~PROPOSED~~] ORDER

Assigned for all purposes to:
Hon. Curtis A. Kin (Dept. 82)

Petition filed: June 28, 2024

TO THE HONORABLE COURT:

CALIFORNIANS FOR HOMEOWNERSHIP, INC., 9300 WILSHIRE, LLC, and THE CITY OF BEVERLY HILLS (collectively the "Parties"), by and through their respective attorneys, hereby submit the following stipulation:

1. WHEREAS Case No. 24STCP02082 and Case No. 24STCP02964 (the "Writ Petitions"), both pending in this Department, concern the City's determination with respect to the same development application (the "Application"), and the Parties have therefore agreed to consolidate the matters for briefing and hearing;

2. WHEREAS the writ hearing in both matters has been scheduled for May 15, 2025; and

3. WHEREAS to conserve the resources of the Court and the Parties, the Parties have mutually agreed to narrow the issues being litigated in the partially-consolidated actions;

BE IT THEREFORE STIPULATED THAT

1. The Writ Petitions will be consolidated for purposes of briefing and hearing, but separate judgments shall issue in each case.

2. The following deadlines and page limits will apply to the consolidated matter:

   a. Petitioners' Joint Opening Brief (20 pages): March 17, 2025

   b. Respondent's Brief (20 pages): April 23, 2025

   c. Petitioners' Joint Reply Brief (15 pages): April 30, 2025

3. The Parties will forego litigating (1) the City's determination that the Application was incomplete due to the lack of a request for a general plan amendment or zone change and (2) the City's position that the 90-day expiration period for preliminary applications under Government Code section 65941.1 does not reset each time the City makes an incompleteness determination regarding the Application. The City agrees that, for the purposes of this litigation only, neither of these issues can serve as an independent basis for determining that the City's decision was lawful, and neither of these issues can serve as a basis for denying the Writ Petitions. Petitioners agree that neither of these issues constitutes an independent basis for granting the Writ Petitions, and that the City's agreement to forego litigating these issues does not constitute a concession that the City acted

unlawfully or that its decision lacked a good-faith basis.

Dated: March 17, 2025 CALIFORNIANS FOR HOMEOWNERSHIP

By: /s/
Matthew P. Gelfand
Attorneys for Petitioner
CALIFORNIANS FOR HOMEOWNERSHIP, INC.

Dated: March 17, 2025 COHEN LAW GROUP APC

By: /s/
Marc Cohen
Attorneys for Petitioner
9300 WILSHIRE, LLC

Dated: March 14, 2025 RICHARDS, WATSON & GERSHON APC

By: /s/
Ginetta L. Giovinco
Attorneys for Respondent
CITY OF BEVERLY HILLS

[~~PROPOSED~~] ORDER

Having considered the foregoing stipulation and for good cause shown, IT IS HEREBY ORDERED that:

1. Case No. 24STCP02082 and Case No. 24STCP02964 are hereby consolidated for purposes of briefing and hearing, but separate judgments shall issue in each case.

2. The following deadlines and page limits apply to the consolidated matter:

   a. Petitioners' Joint Opening Brief (20 pages): March 17, 2025

   b. Respondent's Brief (20 pages): April 23, 2025

   c. Petitioners' Joint Reply Brief (15 pages): April 30, 2025

DATED: 03/28/2025

Hon. Curtis A. Kin
Curtis A. Kin / Judge

From: Seawards, Travis
To: Regehr, Bentley@HCD
Cc: Plowman, Lisa
Subject: RE: HAU 1423/Santa Barbara County
Date: Monday, February 10, 2025 10:36:52 AM
Attachments: image002.png
image003.png

Hi Bentley

Thanks to you and Brian for the informational meeting a few weeks ago, and for sending the letters you sent to Beverley Hills. We do not have any follow up questions at this time, and do not intend to write a written response on this issue.

Thanks

Travis

Travis Seawards
Deputy Director
Development Review Division
Planning & Development Department
County of Santa Barbara
123 E. Anapamu St.
Santa Barbara, CA 93101
805-568-2518
tseawards@countyofsb.org
https://www.countyofsb.org/160/Planning-Development [countyofsb.org]

The County's Planning & Development Department offices will be closed on Nov. 28th and 29th in observance of Thanksgiving. Building and Planning Counters will be closed at noon on Wednesday, Nov. 27 and all day Tuesday, Dec. 24th. Offices will be closed from Wednesday, Dec. 25, 2024, through Wednesday, Jan. 1, 2025, in observance of the County's holiday closure. Note: Accela permit applications will not be accepted during the holiday closure. Please submit applications through Accela no later than 5 p.m. on Monday, Dec. 23, 2024. Accela will resume accepting applications on Jan. 2, 2025, at 8 a.m.

From: Regehr, Bentley@HCD <Bentley.Regehr@hcd.ca.gov>
Sent: Wednesday, February 5, 2025 8:48 AM
To: Seawards, Travis <tseawards@countyofsb.org>
Subject: RE: HAU 1423/Santa Barbara County

Hi, Travis,

Just wanted to check in to see if the County still plans to provide a written response on the number of allowed review periods.

Thank you,

Bentley Regehr
Senior Housing Policy Analyst
Housing Accountability Unit
Bentley.Regehr@HCD.ca.gov

From: Seawards, Travis <tseawards@countyofsb.org>
Sent: Tuesday, January 14, 2025 4:45 PM
To: Regehr, Bentley@HCD <Bentley.Regehr@hcd.ca.gov>; Plowman, Lisa <lplowman@countyofsb.org>
Cc: Heaton, Brian@HCD <Brian.Heaton@hcd.ca.gov>
Subject: RE: HAU 1423/Santa Barbara County

Thanks Bentley

Travis Seawards
Deputy Director
Development Review Division
Planning & Development Department
County of Santa Barbara
123 E. Anapamu St.
Santa Barbara, CA 93101
805-568-2518
tseawards@countyofsb.org
https://www.countyofsb.org/160/Planning-Development [countyofsb.org]

The County's Planning & Development Department offices will be closed on Nov. 28th and 29th in observance of Thanksgiving. Building and Planning Counters will be closed at noon on Wednesday, Nov. 27 and all day Tuesday, Dec. 24th. Offices will be closed from Wednesday, Dec. 25, 2024, through Wednesday, Jan. 1, 2025, in observance of the County's holiday closure. Note: Accela permit applications will not be accepted during the holiday closure. Please submit applications through Accela no later than 5 p.m. on Monday, Dec. 23, 2024. Accela will resume accepting applications on Jan. 2, 2025, at 8 a.m.

From: Regehr, Bentley@HCD <Bentley.Regehr@hcd.ca.gov>
Sent: Monday, January 13, 2025 11:33 AM
To: Plowman, Lisa <lplowman@countyofsb.org>; Seawards, Travis <tseawards@countyofsb.org>
Cc: Heaton, Brian@HCD <Brian.Heaton@hcd.ca.gov>

Subject: HAU 1423/Santa Barbara County

Lisa and Travis,

Please find the first and second Notice of Violation sent to Beverly Hills (the first NOV also includes the TA Letter sent in June).

As discussed, it would be helpful for HCD to receive a written response from the County on its interpretation on multiple review periods for Builder's Remedy projects.

Thank you,

Bentley Regehr
Senior Housing Policy Analyst
Housing Accountability Unit
Bentley.Regehr@HCD.ca.gov

Janet Jha v. City of Los Angeles et al., 23STCP03499

Decision on petition for writ of mandate: granted with remand

Petitioner Janet Jha ("Jha") seeks a writ of mandate compelling the Respondents City of Los Angeles and its City Council (collectively, "City") to review and process her development application pursuant to the Permit Streamlining Act ("PSA"), the Housing Accountability Act ("HAA"), and the Density Bonus Law ("DBL").

The court has read and considered the moving papers, oppositions, and replies, heard argument on July 18, 2024, and renders the following decision.

A. Statement of the Case

1. The Petition

Petitioner Jha filed the Petition against the City on September 21, 2023, alleging mandamus based on violations of the PSA, the HAA, and the DBL, and for declaratory relief. The Petition alleges in pertinent part as follows.

a. Housing Element Law

When the Legislature enacted the Housing Element Law, it declared that local governments need to designate and maintain a supply of land and adequate sites for the development of housing sufficient to meet the locality's housing need for all income levels. Pet., ¶21.

The HAA provides an avenue for developers to provide housing for very low, low-, or moderate-income households[1] when a local government fails to adopt a housing element in substantial compliance with the Housing Element Law. Pet., ¶22. The local government shall approve housing, and not condition that approval in a matter rendering that housing project infeasible, unless the local government can make certain written findings based upon a preponderance of the evidence. Pet., ¶23.

A local jurisdiction cannot determine whether its adopted element is in substantial compliance with the Housing Element Law. Pet., ¶25. It must submit a draft housing element to the State Department of Housing and Community Development ("HCD"), which must issue findings before the local jurisdiction adopts the housing element. Pet., ¶25. If HCD finds the draft element is not substantially compliant, the local jurisdiction must either revise the draft to address any issues or adopt the draft housing element with written findings explaining why it substantially complies with the Housing Element Law. Pet., ¶25. It must then submit the adopted housing element to HCD for it to find whether it substantially complies with the Housing Element Law. Pet., ¶25. In a March 16, 2023 memorandum, HCD advised that a local jurisdiction's housing element is only in substantial compliance with the Housing Element Law on the date HCD issues a letter finding to that effect. Pet., ¶26.

The Housing Element Law requires local governments to update their housing element in eight-year cycles. Pet., ¶27. The City had not adopted a substantially compliant housing element by the time the current cycle began on October 15, 2021. Pet., ¶27. Although it drafted a housing element on November 24, 2021, HCD found on February 22, 2022 that it was not substantially

[1] For convenience, very low, low-, and moderate-income households are sometimes referred to herein as "low-cost housing".

compliant. Pet., ¶28. The City revised and resubmitted the draft housing element on April 28, 2022, and HCD found it substantially compliant on May 11, 2022. Pet., ¶28. The City adopted the housing element on June 14, 2022, and HCD certified its compliance with the Housing Element Law on June 29, 2022. Pet., ¶28.

Under Government Code[1] sections 65589.5(o)(1) and 65941.1(a), a housing development applicant who submits a complete preliminary application is vested with the zoning and general plan standards in effect at the time of submission. Pet., ¶30. This includes entitlement to the HAA's builder's remedy if submitted when the jurisdiction does not have a compliant housing element, even if it adopts one during the entitlement process. Pet., ¶31. HCD confirmed as much in a June 2023 Notice of Violation issued to the City of La Cañada Flintridge and in an October 2023 Letter of Technical Assistance to the City of Santa Monica. Pet., ¶32, Ex. A.

b. The Project

On June 23, 2022, Jha submitted a preliminary application for a 40-unit project with 20% set aside as affordable to lower-income households at 13916 W. Polk Street (the "Project"). Pet., ¶53. Because the City found the preliminary application for the Project was complete on June 24, 2022, development rights in effect on that date vested for the Project. Pet., ¶54.

Jha proposed a housing project that reserved 20% of the units for low-cost housing while the City was out of compliance with the Housing Element Law. Pet., ¶55. Under the builder's remedy, the City was barred from disapproving the Project unless it made one of the written findings required under section 65589.5(d). Pet., ¶55.

On August 11, 2022, Jha filed an Affordable Housing Referral Form with the Affordable Housing Services Section of the City's Planning Department ("Planning"). Pet., ¶57. The City signed this form on December 12, 2023. Pet., ¶64. After a meeting with City staff on December 9, 2022, Jha was allowed to submit a PSA development application. Pet., ¶66. Jha submitted the application and paid the fees on December 21, 2022. Pet., ¶66.

On January 26, 2023, the City sent Jha a 39-page Project Review letter. Pet., ¶67. The Project Review asserted the application was incomplete and did not comply with objective zoning standards. Pet., ¶67. The Project Review further said that, although the Project was eligible for the builder's remedy, HAA does not specify the entitlement process that a local government can require. Pet., ¶68. Planning's position was that a general plan amendment ("GPA") and rezoning were the proper entitlement path. Pet., ¶68. This is not an entitlement at all, but rather a legislative action. Pet., ¶68.

Section 65589.5(d) does provide an entitlement path. Pet., ¶71. If HCD does not find a local jurisdiction's housing element substantially compliant by the jurisdiction's statutory deadline, the local jurisdiction may not use section 65589.5(d)(5) to deny a qualifying affordable housing project. Pet., ¶72. HCD's Notice of Violation to La Cañada Flintridge explained that a jurisdiction shall not disapprove a housing development project for low-cost housing, or condition approval in a manner that renders the housing development project infeasible for development for such households, without one of five written findings. Pet., ¶71, Ex. A.

On April 5, 2023, Jha resubmitted revised application materials in response to the Project Review. Pet., ¶81. The City sent a second Project Review asserting the application was incomplete for failure to comply with City code standards. Pet., ¶¶ 82-83. The letter emphasized that the City would not process the development application unless Jha sought legislative rezoning that she did not want. Pet., ¶85.

Jha appealed the City's incompleteness determination of her application. Pet., ¶86. The City Council's Planning and Land Use Management Committee ("PLUM") recommended denial of the appeal, and the City Council denied it on June 27, 2023. Pet., ¶¶ 92-93.

On May 16, 2023, the City wrote Jha a letter asserting that the preliminary application's submittal had expired and that Jha's vested rights therefore had terminated. Pet., ¶95. Section 65941.1(d)(2) states that if a public agency determines that the application for the development project is incomplete, the development proponent shall submit the specific information necessary to complete the application within 90 days of receiving the agency's written identification of the necessary information. Pet., ¶99. This means that the 90-day period resets with every new completeness determination. Pet., ¶99. The City wrongly interpreted the statute to mean that an applicant has only a single 90-day clock after the first written incompleteness determination. Pet., ¶100. Planning argued that, even if Jha were entitled to approval pursuant to the builder's remedy, it no longer applied because Jha's vesting rights had expired and the City's Housing Element was now in substantial compliance with the Housing Element Law. Pet., ¶104.

After Jha received the City's May 16 letter, she asked HCD to clarify the preliminary application expiration provision. Pet., ¶103. HCD confirmed that the application remains valid after a second incompleteness determination so long as the applicant resubmits within 90 days of that determination. Pet., ¶103.

c. Causes of Action

The first cause of action seeks mandamus for violation of the PSA. The PSA requires public agencies to compile lists of the information required from an applicant for a development project. Pet., ¶109. It also has strict timelines when an agency must determine whether an application is complete. Pet., ¶109. Agencies can only judge whether an application is complete based on the items in the checklist. Pet., ¶109.

The City's Project Review letters violated the PSA because they treated project consistency with a zoning ordinance or general plan as an item necessary for an application to be complete. Pet., ¶110. The City refuses to process an application when it makes a substantive decision regarding project consistency. Pet., ¶110. Section 65931 defines a development "project" as an activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. Pet., ¶111. This does not include rezonings or GPAs. Pet., ¶111. Courts have held that applicants cannot use the PSA to compel legislative changes to a zoning ordinance or a general plan. Pet., ¶111. Conversely, the City cannot demand that an applicant seek such changes through a PSA completeness determination. Pet., ¶111. The City refused to accept Jha's development application based on purported non-compliance with substantive zoning standards and criteria, not because of incomplete information. Pet., ¶114.

The second cause of action seeks mandamus for violation of the HAA. The City unlawfully disapproved the Project and failed to proceed in the manner required by law. Pet., ¶117. The City disapproved the low-cost housing Project without making one of the findings under section 65589.5(d)(1)-(5), and also did not support such findings by a preponderance of evidence in the record. Pet., ¶121. Although Jha submitted the preliminary application before the City's Housing Element was deemed substantially compliant with the Housing Element Law, the City attempted to deny her the builder's remedy. Pet., ¶122.

The third cause of action seeks mandamus for violation of the DBL. The Project reserved 20% of the units for low-cost housing. Pet., ¶128. This entitled the Project to two incentives or

concessions and a waiver or reduction of any development standards that will physically preclude the Project at the proposed density. Pet., ¶128. The City denied Jha those incentives without making the public health and safety findings required under the HAA. Pet., ¶129.

The fourth cause of action seeks declaratory relief. The City has avoided its obligations under state law through its refusal to process housing development projects that qualify under the builder's remedy. Pet., ¶132.

d. Prayer for Relief

Jha seeks a writ of mandate compelling the City to review and process development applications pursuant to the PSA and SB 330. Pet. Prayer, ¶¶ 1-2. Jha also seeks a writ of mandate (1) voiding the June 27, 2023 denial of the PSA appeal based on violation of section 655589.5(d), (2) compelling Planning to accept and process the Project application, and (3) compelling the City and Planning to take all steps necessary to process the application, approve the Project, and issue all related approvals within 60 days. Pet. Prayer, ¶3. Jha seeks a declaration concerning the City's violations. Pet. Prayer, ¶7. Jha also seeks attorneys' fees, costs, and fines under section 65589.5. Pet. Prayer, ¶¶ 8-10.

2. Course of Proceedings

On September 25, 2023, Jha served the City with the Petition and Summons.

On November 6, 2023, the parties stipulated to extend the deadline for all responsive pleading to February 1, 2024.

On March 5, 2024, the Court overruled the City's demurrer and denied its motion to strike.

On March 22, 2024, the City filed its Answer.

B. Governing Law

1. The Housing Element Law

The Legislature finds that the provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government. §65580(c). The Housing Element Law details the substantive requirements that each housing element must include. §65583(a)-(c).

At least 90 days prior to adoption of a revision of its housing element, or 60 days prior to the adoption of a subsequent amendment thereto, the local jurisdiction agency shall submit a draft element revision or draft amendment to HCD. §65585(b)(1). In the preparation of review findings, HCD may consult with any public agency, group, or person and shall receive and consider any written comments from such entities regarding the draft or adopted element or amendment under review. §65585(c).

HCD shall review the draft and report its written findings to the planning agency within 90 days of its receipt of the first draft submittal for each housing element revision, or 60 days of its receipt of a subsequent draft amendment or an adopted revision or adopted amendment to an element. §65585(b)(3). In its written findings, HCD shall determine whether the draft element or draft amendment substantially complies with the Housing Element Law. §65585(d).

Prior to the adoption of its draft element or draft amendment, the legislative body shall consider the findings made by HCD if they become available within the time limits set in section 65585. §65585(e).

If HCD finds that the draft element or draft amendment does not substantially comply with this article, the legislative body shall either change the draft element or amendment to so comply or adopt the draft element or draft amendment without changes. §65585(f). If the legislative body

adopts without changes, it shall include in its resolution of adoption written findings that explain why the legislative body believes the draft element or draft amendment substantially complies with the Housing Element Law despite HCD's findings. §65585(f)(2).

The legislative body shall submit a copy to HCD promptly after adopting the element. §65585(g). HCD shall then review it and report its findings to the planning agency within 60 days of submission. §65585(h).

"Despite the mandatory nature of many of the Housing Element Law's provisions compliance has been mixed statewide." Martinez v. City of Clovis, (2023) 90 Cal.App.5th 193, 226. The Legislature has amended the Housing Element Law multiple times since 2017, and a 2018 amendment, AB 72, increased HCD's oversight powers. Id. AB 72 added HCD's ability to review any local government action that is inconsistent with an adopted housing element and to revoke its findings of substantial compliance until the local jurisdiction complies. Id. at 226, n. 9; §65585(i), (j).

The Housing Element Law provides that a local government that fails to adopt a housing element that has been found to be in substantial compliance within 120 days of the statutory deadline is required to complete mandatory rezoning within one year instead of the permitted three years. §65583.2(c). If the one-year requirement applies, the local government's housing element cannot be found to be in substantial compliance until that city has completed the rezoning. §65588(e)(4)(C)(iii).

A local government that fails to substantially comply with the Housing Element Law is subject to enforcement action by the Attorney General. §65585(l). A failure to adopt a housing element found by HCD to be in substantial compliance makes the local government ineligible for certain program funding. §65589.11. A local government that is compliant with Housing Element Law requirements is awarded preference for certain state funding programs. §65589.9. A "compliant housing element" is defined for purposes of this preference as "an adopted housing element that has been found to be in substantial compliance with the requirements of this article by [HCD] pursuant to Section 65585." §65589.9(f)(2).

2. The Housing Accountability Act

a. Legislative Findings and Intent

The Legislature recognizes the lack of housing as a critical problem that threatens the economic, environmental, and social quality of life in California. §65589.5(a)(1)(A). It adopted the HAA in 1982 to "significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters." §65589.5(a)(2)(K). To date, the goal remains unfulfilled. Id.

The HAA reflects the Legislature's findings that "the availability of housing is of vital statewide importance," and that providing the necessary housing supply "requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of Californians of all economic levels." §65580(a)-(b).

Effective January 1, 2018, the Legislature significantly amended the HAA to strengthen its provisions, expand its applicability, and increase local governments' liability for violations. The HAA found that California is in a housing crisis that is "partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing". §65589.5(a)(1)(B).

The consequences of those actions include discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration. §65589.5(a)(1)(C).

Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects. §65589.5(a)(1)(D). The state's homeownership rate was at its lowest level since the 1940s and ranks 49 out of the 50 states. §65589.5(a)(2)(E). The lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians. §65589.5(a)(2)(F).

The HAA should be "interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." §65589.5(a)(2)(L).

It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety under either section 65589.5(d)(2) and 65589.5(j)(1) arise infrequently. §65589.5(a)(3).

It is the policy of the state that a local government not reject or make infeasible housing development projects that contribute to meeting the need determined pursuant to the HAA without a thorough analysis of the economic, social, and environmental effects of the action and without complying with section 65589.5(d). §65589.5(b).

b. Project Approval Based on Vested Rights

Section 65589.5 is referred to colloquially as the "anti-NIMBY law." Schellinger Brothers v. City of Sebastopol, (2009) 19 Cal.App.4th 1245 1253, n. 9. Subject to certain exceptions, a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application which included all the information required by section 65941.1(a) was submitted. §65589.5(o)(1).

A housing development project "shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity." §65589.5(f)(4).

Section 65589.5(j)(1) provides:

> "When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:
>
> (A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct,

and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density." (emphasis added).

Section 65589.5(j) applies to market rate housing as well as affordable housing. Honchariw v. County of Steinhaus, (2011) 200 Cal.App.4th 1066, 1070. The HAA applies to all residential housing developments and takes away the agency's ability to deny residential projects based on subjective development policies. Id. at 1072-77.

"Disapprove the housing development project" includes any instance in which a local agency "votes on a proposed housing development project application and it is disapproved", "fails to comply with the timer periods specified in Section 65950" or fails to meet the time limits specified in Section 65913.3. §65589.5(h)(6).

If the court finds that an agency acted in bad faith in disapproving a project in violation of the HAA, the appropriate remedy is an "order or judgment directing the local agency to approve the housing development project." §65589.5(k)(1)(A)(ii). "Bad faith" "includes, but is not limited to, an action that is frivolous or otherwise entirely without merit." §65589.5(l).

The local jurisdiction bears the burden of proving that its decision conforms to the conditions specified in section 65589.5. §65589.6.

c. The Builder's Remedy

A local agency shall not disapprove a housing development project for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low- or moderate-income households, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, for one of five conclusions:

(1) the local jurisdiction has adopted a housing element in substantial compliance with the Housing Element Law and has met or exceeded its share of the regional housing need allocation pursuant to section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by section 65008. §65589.5(d)(1).

(2) the proposed housing development would have a specific, adverse impact on the public health or safety that cannot be feasibly mitigated without rendering the project unaffordable or infeasible. A specific, adverse impact on public health or safety does not include inconsistency with the zoning ordinance or general plan land use designation. §65589.5(d)(2)(A);

(3) denial of the project is required to comply with specific state or federal law, and there is no feasible method to comply without rendering the project unaffordable or infeasible;

(4) the proposed land for the project is zoned for, and surrounded on at least two sides by, agriculture or resource preservation purposes;

(5) the housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the

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jurisdiction has adopted a revised housing element in accordance with section 65588 that is in substantial compliance with the Housing Element Law. §§ 65589.5(d)(1)-(5).

Section 65589.5(d)(5) means that, when the local government does not have a housing element in substantial compliance with the Housing Element Law, it cannot disapprove an applicable project based on inconsistencies with the jurisdiction's zoning ordinance or general plan land use designation. This is colloquially referred to as the "builder's remedy."

A "housing development project" includes any mixed-use development consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use. §65589.5(h)(2). "Housing for very low, low-, or moderate-income households" includes buildings where 20% of the units are sold or rented to lower income households. §65589.5(h)(3).

"Deemed complete" means the applicant has submitted a preliminary application pursuant to section 65941.1 or, if the applicant has not submitted a preliminary application, has submitted a complete application pursuant to section 65943. §65589.5(h)(5).

"Disapproval of a housing development project" includes whenever a local agency votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit. §65589.5(h)(6)(A).

A "specific, adverse impact" is a "significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." §65589.5(j)(1)(A). The Legislature's intent is that conditions that would have a specific, adverse impact upon the public health and safety should arise infrequently. §65589.5(a)(3).

d. Consistency with Other Laws

New housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income. §65590(d). Where it is not feasible to provide these housing units in a proposed new housing development, the local government shall require the developer to provide such housing, if feasible to do so, at another location within the same city or county, either within the coastal zone or within three miles thereof. Id.

Nothing in the HAA relieves the local agency from complying with, *inter alia*, the Coastal Act or the California Environmental Quality Act ("CEQA"). §65589.5(e). Nothing in the HAA, aside from section 65589.5(o), shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need. §65589.5(f)(1). However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development. Id.

3. The Permit Streamlining Act

The PSA (§§ 65920-964) states that there is a statewide need to ensure a clear understanding of the specific requirements which must be met for the approval of development projects and to expedite decisions on such projects. §65921. The PSA requires that each agency maintain lists that "specify in detail the information that will be required from any applicant." §65940.

Once a development project application has been submitted, the agency must make a written determination whether the application is complete within 30 calendar days, or else "the application together with the submitted materials shall be deemed complete." §65943(a). Agencies have "30 days, and 30 days only" to determine that an application is incomplete. Orsi v. City Council of Salinas, (1990) 219 Cal. App. 3d 1576, 1584.

When the agency makes an incompleteness determination, it must provide "an exhaustive list of items that were not complete" which is limited to those items required on the agency's submittal requirement checklist. §65943(a). Upon any resubmittal, a new 30-day review period begins during which the agency shall determine completeness, but the agency "shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete." §65943(a).

If the application is determined incomplete, the agency must provide a right to appeal that determination. §65943(c). There shall be a final written determination on the appeal no later than 60 calendar days after receipt of the written appeal. Id. If a final written determination is not made within that 60-day period, "the application with the submitted materials shall be deemed complete." Id.

Deemed complete does not necessarily mean deemed approved. *See* §65950 (agency shall approve or disapprove project within specified time limits). The PSA does not create an exception to the well-established law requiring hierarchical consistency of land use permits, zoning ordinances, and general plans. Land Waste Management v. Contra Costa County Board of Supervisors, ("Land Waste") (1990) 222 Cal.App.3d 950, 960. Hence, the PSA does not require that a permit application be deemed approved if not acted on within the statutory period when the permit application would require a legislative change in the applicable zoning ordinance, general plan, or other controlling land use legislation. Id. at 961.

The City's actions under the PSA are reviewed as traditional mandate. §65943(c).

4. The Density Bonus Law

The DBL (§§ 65915-18) is intended to allow a developer to include more total units in a project that would otherwise be allowed by the local zoning ordinance in exchange for low-cost rental units, and to "cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional public subsidy." §65915(u).

A local government shall grant one density bonus as specified in subdivision (f), incentives or concessions as specified in subdivision (d), waivers or reductions of development standards as described in subdivision (e), and parking ratios as described in subdivision (p), if an applicant agrees to construct a housing development that will contain stipulated percentages of low income and very low-income units or target population units (*e.g.*, disabled veterans). §65915(b).

A "housing development" means a development project for five or more residential units, including mixed use developments. §65915(i).

A "density bonus" means a "density increase over the otherwise maximum allowable gross residential density," but the developer also may elect "a lesser percentage of density increase, including, but not limited to, no increase in density." §65915(f). The amount of the density bonus varies according to the amount by which the percentage of low and very low-income units exceed the percentages. §65915(f).

Density bonuses shall be granted based on the "maximum allowable density" for the project site, defined as "the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, the maximum allowable density for the specific

zoning range and land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail." §65915(o)(5).

An applicant for a density bonus pursuant to subdivision (b) may submit a proposal for specific incentives or concessions. §65915(d)(1). The local government shall grant the requested incentive or concession unless (1) it makes a written finding, based on substantial evidence, that the project will not result in "identifiable and actual cost reductions" of affordable housing costs or for rents of the targeted units as specified in subdivision (c), (2) the concession or incentive would have a specific adverse impact upon public health and safety, the physical environment, or real property listed in the California Register of Historical Resources and for which there is no feasible method of mitigation without rendering the development unaffordable to low- and moderate-income households, or (3) the concession or incentive would violate state or federal law. §65915(d)(1)(A)-(C). §65915(d).

The applicant may also apply for and receive development waivers or reductions that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions/incentives permitted. §65915(e)(1). The local agency may not apply a development standard that will have this effect. §65915(e)(1). However, the local government is not required to waive or reduce development standards if there would be an adverse impact on health, safety, or the physical environment, and for which there is no feasible method of mitigation to avoid the impact. Id. Nor is the local government required to waive or reduce development standards that would have an adverse effect on real property listed in the California Register of Historical Resources, or to grant any waiver or reduction that would violate state or federal law. §65915(e)(1).

C. Standard of Review

1. Administrative Mandamus

Actions to enforce the HAA are brought as administrative mandamus. §65589.5(m); Honchariw v. County of Stanislaus, (2011) 200 Cal.App.4th 1066, 1072. *See* Pet. Op. Br. at 9.

The parties' principal debate for the HAA mandamus claim is whether (a) the City bears the burden of proof by a preponderance of the evidence under section 65589.6, (b) the HAA's "reasonable person" standard applies, pursuant to which a court must determine whether "substantial evidence...would allow a reasonable person to conclude that the housing development project" complies with applicable standards (§655589.5(f)(4)), and (c) any uncertainties should be resolved in favor of housing projects because the HAA must "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." §65589.5(a)(2)(L).

The City argues that these standards do not apply because the reasonable person standard only applies to deciding whether the Project complies with a local "applicable plan, program, policy, ordinance, [or] standard" for a final merits decision and the City has not made a merits decision disapproving the Project. §65589.5(f)(4), (j). The reasonable person standard also does not apply to determine whether density bonus or general plan amendment ("GPA") application procedures are applicable because they are "questions of statutory interpretation that [the court] will review independently." Cal. Renters Legal Advocacy & Educ. Fund v. City of San Mateo, ("Cal Renters") (2021) 68 Cal.App.5th 820, 839. Opp. at 13.

Jha correctly replies (Reply at 5) that the HAA's reasonable person standard applies to any action to enforce the HAA, including the determination whether a housing development project

"is consistent, compliant, or in conformity" with applicable standards. §655589.5(f)(4). The HAA also broadly defines "disapproval" as any instance in which an agency "[v]otes on a proposed housing development project application and the application is disapproved." §65589.5(h)(6). Nothing limits the HAA solely to a final merits decision. Additionally, the court finds that the City's actions constitute a disapproval. *See post.*

2. Traditional Mandamus

Actions under the PSA are governed by traditional mandamus. §65943(c). Neither party addresses what form of mandamus applies to enforcement of the DBL, but in this context it is governed by traditional mandamus.

A petition for traditional mandamus is appropriate in all actions "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station...." CCP §1085. A traditional writ of mandate is the method of compelling the performance of a legal, ministerial duty required by statute. *See* Rodriguez v. Solis, (1991) 1 Cal.App.4th 495, 501-02. Generally, mandamus will lie when (1) there is no plain, speedy, and adequate alternative remedy, (2) the respondent has a duty to perform, and (3) the petitioner has a clear and beneficial right to performance." Pomona Police Officers' Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-84 (internal citations omitted). Whether a statute imposes a ministerial duty for which mandamus is available, or a mere obligation to perform a discretionary function, is a question of statutory interpretation. AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, (2011) 197 Cal.App.4th 693, 701.

In the absence of a ministerial duty, traditional mandamus relief is unavailable unless the petitioner can demonstrate an abuse of that discretion. An agency decision is an abuse of discretion only if it is "arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair." Kahn v. Los Angeles City Employees' Retirement System, (2010) 187 Cal.App.4th 98, 106. In applying this deferential test, a court "must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." Western States Petroleum Assn v. Superior Court, (1995) 9 Cal.4th 559, 577. Mandamus will not lie to compel the exercise of a public agency's discretion in a particular manner. American Federation of State, County and Municipal Employees v. Metropolitan Water District of Southern California, (2005) 126 Cal.App.4th 247, 261. It is available to compel an agency to exercise discretion where it has not done so (Los Angeles County Employees Assn. v. County of Los Angeles, (1973) 33 Cal.App.3d 1, 8), and to correct an abuse of discretion actually exercised. Manjares v. Newton, (1966) 64 Cal.2d 365, 370-71. In making this determination, the court may not substitute its judgment for that of the agency, whose decision must be upheld if reasonable minds may disagree as to its wisdom. Id. at 371. A writ will lie where the agency's discretion can be exercised only in one way. Hurtado v. Superior Court, (1974) 11 Cal.3d 574, 579. No administrative record is required for traditional mandamus.

3. Overlap of HAA, PSA, and DBL

Jha argues that the issues under the PSA and DBL cannot be viewed in isolation, separate from the HAA's more favorable standards of review. Rather, these overlapping laws must be construed together to carry out the Legislature's directive that the law be interpreted to favor housing. Reply at 5. This is true, but it does not change the standard of review for enforcement of the PSA and DBL.

Jha further argues that the question "whether an application is complete for purposes of the PSA is also relevant under the HAA, which incorporates by reference the PSA's definition of a complete application." Lafayette v. City of Lafayette, (2022) 85 Cal.App.5th 842, 851. The court is "not dealing with the PSA in a vacuum, but rather in its relation to the HAA". Id. at 855. Similarly, a DBL eligibility determination is inextricably linked to the HAA's consistency determination. The HAA expressly incorporates the DBL by reference, stating "the receipt of a density bonus, incentive, concession, waiver, or reduction of development standards pursuant to Section 65915 shall not constitute a valid basis on which to find a proposed housing development project is inconsistent . . .." §65589.5(j)(3). In other words, a determination of consistency under the HAA also requires a determination of DBL eligibility, and both questions must be reviewed under the HAA's reasonable person standard. Reply at 6.

Insofar as it is evaluating a HAA claim, the court agrees that factual issues concerning the PSA and DBL determinations are governed by the reasonable person standard. However, a legal issue is "subject to *de novo* review. Citizens for E. Shore Parks v. State Lands Com., (2011) 202 Cal.App.4th 549, 573. The City is correct (Opp. at 13) that whether density bonus or GPA application procedures apply are "questions of statutory interpretation that [the court] will review independently." Cal. Renters, *supra,* 68 Cal.App.5th at 839.

In construing a statute, a court must ascertain the intent of the legislature so as to effectuate the purpose of the law. Brown v. Kelly Broadcasting Co., (1989) 48 Cal.3d 711, 724. The court first looks to the language of the statute, attempting to give effect to the usual, ordinary import of the language and seeking to avoid making any language mere surplusage. Brown v. Kelly Broadcasting Co., (1989) 48 Cal 3d 711, 724. Significance, if possible, is attributed to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose. Orange County Employees Assn. v. County of Orange, (1991) 234 Cal.App.3d 833, 841. The statutory language must be harmonized with provisions relating to the same subject matter to the extent possible. Id. "'The statute's words generally provide the most reliable indicator of legislative intent; if they are clear and unambiguous, '[t]here is no need for judicial construction and a court may not indulge in it. [Citation.]'" MCI Communications Services, Inc. v. California Dept. of Tax & Fee Administration, ("MCI") (2018) 28 Cal. App. 5th 635, 643.

If a statute is ambiguous and susceptible to more than one reasonable interpretation, the court may resort to extrinsic aids, including principles of construction and legislative history. MacIsaac v. Waste Management Collection & Recycling, Inc., (2005) 134 Cal.App.4th 1076, 1082 (*quoting* Riverview Fire Protection Dist. v. Workers' Comp. Appeals Bd., (1994) 23 Cal.App.4th 1120, 1126). In reviewing legislative history, ballot pamphlets, prior versions of the bill, legislative committee reports, legislative analyst reports, bill reports, and other legislative records are also appropriate sources indicative of legislative intent. In re John S., (2001) 88 Cal.App.4th 1140, 1144, n. 2; Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc., 133 Cal.App.4th 26, 32. Documents not constituting legislative history include authoring legislator's letters, press releases, and letters by interested persons not communicated to the legislature as a whole, including letters to the Governor urging that a bill be signed or not signed. statements. Id. at 37.

Where ambiguity still remains, the court should consider "reason, practicality, and common sense." Id. at 1084. This requires consideration of the statute's purpose, the evils to be remedied, public policy, and contemporaneous administrative construction. MCI, *supra,* 28 Cal.App.5th at 643. The enactment must be given a reasonable and commonsense interpretation consistent with the apparent purpose and intent of the lawmakers, practical rather than technical in

nature, and which, when applied, will result in wise policy rather than mischief or absurdity. Lungren v. Deukmejian, (1988) 45 Cal. 3d 727, 735. Finally, statutes are not construed in isolation and every statute must be read and harmonized with the statutory scheme. People v. Ledesma, (1997) 16 Cal.4th 90, 95.

In interpreting the HAA, the court does not defer to the City's interpretation of its own regulations. Although a court would normally defer to an agency's interpretation of its own ordinances, land use decisions under the HAA are different precisely because the HAA cabins the discretion of local agencies. Cal Renters, *supra,* 68 Cal.App.5th 820, 844. The court must engage in a "more rigorous independent review…in order to prevent the City from circumventing what was intended to be a strict limitation on its authority." Ruegg & Ellsworth v. City of Berkeley, (2021) 63 Cal.App.5th 277, 299.

D. Statement of Facts[2]

1. The Preliminary Application

On June 23, 2022, Jha submitted a preliminary application for the Project to vest the development standards in effect at that time pursuant to section 65941.1. AR 57-64. The Project is a 40-unit housing development that reserves 20% of the units for low-income households. Id.

2. The AHRF

On August 11, 2022, Jha filed an Affordable Housing Referral Form ("AHRF") with Planning's Affordable Housing Services Section. AR 100-12. AHSS staff did not respond to the submittal until 34 days later, on September 26, 2022. AR 1637. AHSS staff determined that the Project was not eligible for the DBL program. Id. The staff stated that the Property site is in the RA zone, which permits only one family dwelling and does not allow multi-family uses. LAMC

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[2] Petitioner Jha requests judicial notice of (1) a HCD letter of technical assistance to the City of Fillmore dated August 24, 2023 (Ex A) and (2) a HCD notice of violation issued to La Cañada Flintridge dated June 8, 2023 (Ex. B). The unopposed requests are granted. Evid. Code §452(c); American Indian Model School v. Oakland Unified School District, (2014) 227 Cal.App.4th 258, 293.

The City requests judicial notice of (1) the legislative history for SB 330 (§65941.1) (Ex. 1), (2) a March 16, 2023 memorandum from HCD's deputy director to planning directors and interested parties (Ex. 2), (3) a HCD letter of technical assistance to the City of Compton dated March 28, 2024, (4) a September 3, 2021 letter from HCD to the City concerning its draft housing element (Ex. 4), (5) a February 22, 2022 letter from HCD to Planning concerning the City's adopted housing element (Ex. 5), (6) a May 11, 2022 letter from HCD to Planning concerning the City's revised housing element (Ex. 6), (7) a June 29, 2022 letter from HCD to Planning concerning the City's adopted housing element (Ex. 7), (8) City Council files No. 21-1230 and 21-123—S1 concerning the City's housing element (Exs. 8, 9), (9) the City's housing element (Ex. 10), (10) Planning forms for density bonus, subdivision instructions, subdivider's statement, landscape plans, floor plans plot plans, and elevation plans (Ex. 11), (11) City Charter sections 100-07 (Ex. 12), and (12) year 2022 and 2023 calendars (Ex. 13). The requests are granted. Evid. Code §452(b), (c), (h).

In reply, Petitioner Jha requests judicial notice of a June 26, 2024 HCD letter of technical assistance to the City of Beverly Hills (Ex. 1). The request is granted. Evid. Code §452(c).

§12.07.A.1. Id. AHSS staff stated that Jha will need to apply for a zoning change to allow multi-family uses. Id.

Jha requested an appeal of Planning's refusal to process the AHRF. According to Jha, the City responded that there is no recourse to challenge the City's processing of an AHRF. *See* AR 1637.

On October 14, 2022, a City Planner notified Jha via email that the AHRF was still in the processing stage. He indicated that a GPA, multiple zoning changes, and fees exceeding $100,000 would be necessary for the Project. AR 1641-42.

3. The Application and Project Review Letters

Jha contends that she was unable to submit the Project application until the City agreed to sign the AHRF. After multiple emails and meetings with Jha, a City Planner signed the AHRF on December 12, 2022. AR 1754.

According to Jha, Planning insisted that her Density Bonus request was invalid. On December 12, 2022, Planning created a new application with a new planning case number for a GPA Application and zone changes. AR 171. Planning issued case numbers for both a Density Bonus Application (AR 2039-40) and a GPA Application (AR 1796-97).

On December 21, 2022, Jha paid $38,352.77 in application filing fees for a Density Bonus Application. AR 2039-40. She was also invoiced $136,557.20 for the GPA Application and zone changes. Id. Jha's counsel at trial informed the court that she never submitted a GPA Application and did not pay this invoice.

On January 6, 2023, Planning sent Jha a 39-page Project Review letter which stated that, while Jha believes the proper entitlement path for the Project is a Density Bonus, Planning's position is that the proper entitlement path is a GPA, zone change, various other zone adjustments, all of which are in City Charter section 558 and the LAMC and subject to the findings under section 65589.5(d). AR 2042. Planning's letter stated that section 65589.5(d) does not specify the entitlement process that can be required and confirmed that a Density Bonus is not the proper entitlement process. AR 2043. The letter cautioned that it was not a disapproval of the Project but rather an identification of the process by which the Project will be reviewed. AR 2043. The letter listed 54 items for correction of the information already submitted. AR 2043-79. Some of the corrections concerned the need for a GPA and zone change. *See* AR 2056. Other corrections sought compliance with various code requirements, such as requesting that Jha "show active engagement with the public street" and "show how human scale is maintained." AR 2048. According to Jha, the majority of items did not request information and instead sought signatures on referral forms by multiple City departments, including the Preliminary Application and Review Program Unit, Bureau of Engineering, Bureau of Sanitation, Housing Department, and Los Angeles Department of Building and Safety ("LADBS"). AR 2046-50. The various referral forms, in turn, were used by the different departments to indicate whether staff believed the Project complies with the City's code. *See, e.g.,* AR 39.

On April 5, 2023, Jha submitted revised application materials in response to Planning's Project Review letter. AR 2100-205. The City responded with a Second Project Review letter on April 28, 2023. AR 641-86. This letter again stated that Jha believes the proper entitlement path for the Project is a Density Bonus, but Planning's position is that the proper entitlement path is a GPA, zone change, various other zone adjustments, all of which are in City Charter section 558 and the LAMC and subject to the findings under section 65589.5(d). AR 642. Planning argued that section 65589.5(d) does not specify the entitlement process that can be required and confirmed

that a Density Bonus is not the proper entitlement process. AR 642. The letter again cautioned that it was not a disapproval of the Project but rather an identification of the process by which the Project will be reviewed. AR 642.

The Second Project Review letter also noted that the Project is now a condominium project based on the April 3, 2023 communication but that was not previously identified. AR 642. The documents submitted cannot be considered complete for a subdivision because no subdivision application had been made or paid for, and none of the items on the checklist and subdivider's statement form had been provided. AR 642. The letter listed 45 items for Jha to "amplify, correct, clarify, and supplement". AR 642-84. The majority of the corrections concerned the need for a GPA and zoning changes. *See, e.g.*, AR 675 ("correct the allowable maximum height for all buildings and structures") AR 645 ("needs to be amplified, corrected, clarified and supplemented to identify the correct type of entitlement requested (e.g., General Plan Amendment....").

4. The Appeal and Planning's Determination of Loss of Vesting Rights

On May 12, 2023, Jha appealed Planning's incompleteness determination to the City Council pursuant to the PSA. AR 719-27. On May 16, 2023, while the appeal was pending, Planning wrote Jha that she had lost her vesting rights from the June 23, 2022 preliminary application. AR 761-63. Planning's letter stated the preliminary application was deemed submitted on June 23, 2022, the 180-day period under section 65941.1(d)(2) ended on December 21, 2022. The City's letter added that on January 6 2023, Planning wrote the initial Project Review letter and more than 90 days had passed without receipt of all missing or incomplete information identified. AR 762. Although Jha had submitted a response to the City's January 6, 2023 incompleteness letter within 90 days (AR 386), the resubmittal did not satisfy the required information. AR 762. In addition, Jha had modified the Project to be a condominium project. AR 762.

A complaint was made to HCD about the loss of vesting, but HCD's June 28, 2023 email stated that its investigation found "no apparent violation" of housing law". AR 2921, 2962. Jha submitted her own inquiry to HCD to ask whether the Project's vesting rights expired after receiving a second incompleteness determination. An HCD staff member responded: "No, the preliminary application does not expire if the development application is deemed incomplete since Government Code section 65943 allows for resubmittal of the requested items." AR 2638.

5. The City Council Appeal

Planning provided the City Council with a June 12, 2023 staff report that repeated its position that the "correct entitlement path forward is not a Density Bonus request" and that the Jha must "proceed with a General Plan Amendment, Zone Change, Height District Change" and other entitlements. AR 786. Planning recommended denial of the appeal "due to flaws" in Jha's submittals (rather than any missing information). AR 823.

On June 20, 2023, the City Council's PLUM Committee conducted a hearing and unanimously recommended denial of Jha's appeal under the PSA. AR 1077-78.

On June 27, 2023, the City Council held an appeal hearing and voted to deny Jha's PSA appeal. AR 1138.

E. Analysis

Petitioner Jha seeks mandamus compelling the City to carry out its duties pursuant to the PSA, HAA, and DBL, accept her development application as complete, and approve the Project within 60 days.[3]

1. The PSA

The purpose of the PSA is "to expedite decisions" on development projects. The PSA is solely designed to gather information about the project being proposed, not to determine whether a project is zoning compliant. Once a development project application has been submitted, an agency must first determine whether the application is complete and provide an exhaustive list of incomplete items. §65943(a).[4]

In response to local governments' denial of housing projects, HCD has explained in a technical letter to the City of Filmore that a determination that an application is incomplete based on a purported zoning code inconsistency violates both the PSA and the HAA. HCD explained

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[3] Certain of the parties' arguments may be dealt with summarily. Jha is correct that the court determined on demurrer the builder's remedy applies to her project application. Pet. Op. Br. at 1. The City was required to update its sixth housing element cycle by October 15, 2021 but did not meet the deadline. The City was not in compliance with the Housing Element Law until HCD certified the City's housing element on June 29, 2022. The court determined that the City did not achieve housing element compliance by the June 23, 2022 date when Jha submitted a complete preliminary application, and therefore she may invoke the builder's remedy in section 65589.5(d). In doing so, the City still could require the Project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need. §65589.5(f)(1).

Although the City's opposition reiterates these arguments and raises new arguments that imposition of the builder's remedy would violate the City's right to home rule and constitute an underground regulation/penalty, the arguments are not persuasive. *See* Reply at 7. As a result, the court need not address the City's arguments on the builder's remedy, including headings E, F, H, and I. *See* Opp. at 17-21.

The City also argues that the preliminary application does not vest against later state regulations (Opp. at 17), apparently suggesting that the application does not vest with respect to the HCD's certification of the City's housing element. At trial, the City's counsel reiterated that section 65589.5(o) subjects the Project only to the local ordinances, policies, and standards in effect at the time of the preliminary application, not the HCD's action. This issue was raised and rejected by the court on demurrer. *See* Reply at 6. The HCD's action prevents the City's housing element from being compliant but is not itself an ordinance, policy, or standard.

Finally, the City correctly argues that Jha fails to support her declaratory relief pattern and practice claim. Opp. at 21. While Jha tries to maintain the viability of that claim by arguing that she may request discovery and a separate trial regarding the City's pattern and practice of violating state housing law after the mandamus claim is heard, she did not have leave to bifurcate her claims. *See* Reply at 14. The pattern and practice claim is waived. *See* Balboa Insurance Co. v. Aguirre, (1983) 149 Cal.App.3d 1002, 1010.

[4] The HAA provides a separate process to determine zoning code compliance after an application is accepted as complete. For projects with fewer than 150 units, the written compliance determination shall be provided "[w]ithin 30 days of the date that the application for the housing development project is determined to be complete." §65589.5(j)(2).

that a zoning code-compliance comment "cannot be used as a basis for determining the completeness of the application" and that when "a local jurisdiction improperly characterizes comments as incomplete items, the jurisdiction impermissibly raises the bar to achieving a complete application, in violation of the PSA." Pet. RJN Ex. A p. 2; RJN Ex. B, p. 5.

HCD's interpretation of the PSA is somewhat supported by section 65944(a), which prohibits an agency from requesting new information once a public agency accepts an application as complete. At that point, the local government may only request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application in the course of processing the application. Id.

Jha correctly contends that the City violated the PSA by demanding that she comply with zoning requirements in order for her application to be complete. Planning's Project Review letter states that the application "does not comply with objective zoning standards" and includes 34 demands for Jha to "clarify, amplify, correct, or otherwise supplement the information provided". Despite Planning's use of statutory language, the demands for corrections were based on the City's determination that the Project is not code-compliant rather than on missing items in the application. But this information can only be requested after the application is accepted as complete. Pet. Op. Br. at 11.

Jha also correctly argues that the City's demands for legislative action were outside the scope of the PSA, which only applies to "development projects", defined as "any activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." §65931. Zoning changes and general plan amendments are legislative acts and not development projects involving the issuance of an entitlement. Arnel Development Co. v. City of Costa Mesa, ("Arnel Development") (1980) 28 Cal. 3d 511, 514. Legislative acts are not entitlements as they are subject to referendum, are not reviewed against established standards, do not need to be supported by findings, and do not require notice and hearing for affected property owners. Id. at 522. The PSA "cannot be used to compel legislative changes to a zoning ordinance or a general plan because the act is limited to projects that are adjudicatory in nature." Land Waste, *supa,* 222 Cal.App.3d at 959; *see also* Landi v. County of Monterey, (1983) 139 Cal.App.3d 934, 935-37. In short, legislative actions such as rezonings and GPAs fall outside the scope of the PSA. Pet. Op. Br. at 11.

Jha contends that the only items identified in the City's Project Review letter that were missing from the application were applications for GPAs and zone changes. The City does not even have an application for a GPA, which may only be initiated by the City itself. City Charter §555(b). Thus, the City is demanding an application that does not exist. The City's demand for legislative change applications is itself a determination that the Project does not comply with current zoning. Its incompleteness determination based on missing legislative applications therefore was invalid. Pet. Op. Br. at 11-2.

According to the City, nothing in the PSA forbids it from reviewing the completeness of a legislative application based on an existing list of application requirements and then providing a written list of missing materials within the time specified by section 65943. The City may borrow from the PSA process even though an application is not subject to the deemed approved terms of section 65950 for an agency's failure to timely act. Land Waste, *supra,* 222 Cal.App.3d at 950, 961 (the PSA does not require that a permit application be deemed approved if not acted on within the statutory period when the permit application would require a legislative change; section 65950 does not compel legislative acts such as GPAs or zoning changes). Opp. at 14-15.

It is not clear what the City means by borrowing from the PSA process. Whether they are described as an entitlement or not, it is clear that the City cannot graft legislative changes such as a GPA or zoning change onto the completeness determination. The City's refusal to process an application based on a missing GPA Application was invalid.

Jha similarly argues that density bonus eligibility determinations similarly are outside the PSA. The DBL prohibits a local government from refusing to accept an application as incomplete merely because it believes the project is ineligible for a density bonus. Rather, the DBL states that "to provide for the expeditious processing of a density bonus application," a local government shall notify the applicant with the application is complete within the PSA's timelines. §65915(a)(3)(C). Only "[i]f the local government notifies the applicant that the application is deemed complete" may the agency provide a determination regarding density bonus eligibility. §65915(a)(3)(D). This determination regarding density bonus eligibility occurs after an application has been accepted as complete. Pet. Op. Br. at 12.

Jha states that the City refused to accept her application as complete based on an erroneous determination that the Project is not eligible for a density bonus. Planning's letters repeatedly state that a Density Bonus Application is "not the correct" entitlement path. Under the plain language of the DBL, the City's refusal to accept the application as complete based on a determination of density bonus ineligibility was invalid. Pet. Op. Br. at 12.

The City responds that Jha grafts the word "only" onto quoted language in section 65915(a)(3)(D) to incorrectly claim that the City is prohibited from identifying basic Density Bonus eligibility issues until an application is deemed complete. Jha promotes this rewriting to argue the City must accept and process all Density Bonus applications no matter how little information is provided. A court may not "under the guise of construction rewrite the law". DiCampli-Mintz v. County of Santa Clara, (2012) 55 Cal.4th 983, 992. Opp. at 14.

Section 65915(a)(3)(D) provides that "[i]f the local government notifies the applicant that the application is deemed complete", it may provide a determination regarding density bonus eligibility. It is true that the provision does not say that the local government can determine bonus density eligibility only in that circumstance. Nonetheless, the City cannot refuse to accept an application based on a determination of ineligibility for a density bonus. The DBL specifically allows local governments to create a "list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete." §65915(a)(3)(B). This is separate from a determination of density bonus eligibility and there is nothing in section 65915(a)(3)(B) permits a determination of ineligibility to be used to deny completeness. Section 65915(a)(3)(D) expressly states that any determination regarding the density bonus or eligibility for incentives, concessions, or waivers shall be based on the development project at the time the application is deemed complete. The City could not make this eligibility determination at the application completeness stage.

The City then argues that there is no basis to require a merits review of Jha's applications because Jha does not dispute that they are incomplete. The City notes that Planning issued a case number for both a Density Bonus Application (AR 2039-40) and a GPA Application (AR 1796-97). On January 6, 2023, Planning's letter identifying how both applications were incomplete. AR 2041-93. Jha submitted additional materials on April 5, 2023. AR 2100-2205. Planning's second letter on April 28, 2023 explained that both applications remained incomplete. AR 641-

86. Jha appealed the incompleteness decisions to the City Council. AR 719-27.[5] Planning's June 12, 2023 staff report explained why the GPA Application process applies, and why both applications remained incomplete. AR 3020-61. The City Council upheld the incompleteness determination on June 27, 2023. AR 1138. Opp. at 9-10.

The issues raised in the City's review letters concern documents and information that are required in the City's lists of application requirements. AR 1792-1928; City RJN Ex. 11. The City is entitled to demand compliance with its list of application information. §§ 65940, 65943. Opp. at 16.

Jha does not address the City's detailed identification of incompleteness issues for the GPA Application. She merely contends that the GPA Application cannot be used. On or about December 12, 2022, Planning emailed all the instructions for the GPA Application process, including a GPA Initiation Request form that Jha could have filled out for GPA initiation. AR 1807-12.[6] Planning explained that, while Jha's application indicates that she is requesting Project approval under section 65589.5, that section does not specify the entitlement process. AR 2043. Once the GPA Application is complete, the application would be subject to the HAA builder's remedy findings at section 65589.5(d)(5), if applicable. AR 2042, 3034. Opp. at 15.[7]

The City adds that the Density Bonus Application was incomplete. The application materials have been either incomplete or internally inconsistent throughout the process of reviewing application completeness, resulting in review letters dated January 6, 2023 (First Review – AR 2042-79), April 28, 2023 (Second Review – AR 641-86), July 12, 2023 (Third Review – AR1139-89), August 2, 2023 (Fourth Review – AR1271-72), and August 23, 2023 (Fifth Review – AR1273-1330). Opp. at 15-16.

Contrary to Jha's claim, Planning's demand that the application be made "consistent" does not refer to project consistency with a City development standard but rather that Jha's Density Bonus Application be internally consistent. AR 641-705, 2041-93, 3300-309. For example, the description of housing units has been inconsistent even though the application form states that applications "filed with unclear or inconsistent information will result in delays...." AR 1901. Jha's initial application papers described a 45-unit Project. AR 82, 228. Other papers describe the Project as 40 units. AR 41, 232. The number of proposed units, market rate units and/or

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[5] The City argues that Jha provided responses that failed to complete either application (AR 3448-69 (6/2/23), 3411-46 (6/16/23), 3299-309 (missing items)) and Planning responded (AR 3337-39 (6/14/23)). Opp. at 9-10.

[6] Jha reiterates that the City's Charter prohibits private parties from initiating GPAs. City Charter §555. There are no "GPA application procedures" because there is no such thing as a GPA application. Reply at 10. However, the case relied on by Jha expressly states that City Charter section 555(a) does not place any limitation on a private party's ability to request a GPA. Westsiders Opposed to Overdevelopment v. City of Los Angeles, (2018) 27 Cal.App.5th 1079, 1089. The court accepts the City's position that Jha could initiate the GPA process.

[7] According to the City, Jha submitted a GPA Application in part (AR 3052-53 (Staff Appeal Resp. #4), but it was incomplete as explained in Planning's reports and its Exhibit I to the City Council. AR 3299-309 (Ex. I). Opp. at 15. At trial, Jha's counsel denied that Jha ever submitted a GPA Application. The City's citation (AR 3052-53) is to staff's statement that Jha directed the City to use material from the Density Bonus Application for the GPA Application, and she has submitted material for the GPA Application. This is insufficient to show submission of a GPA Application.

affordable units remained inconsistent. AR 232, 1161, 1300. Other incompleteness and/or inconsistencies are: (1) failure to provide information about removal of off-site trees (AR 234, 663, 1299-1300, 1307-09); (2) an incomplete declaration regarding incentives and waivers (AR 667, 1301-03); (3) missing building permits and certificates of occupancy (AR 673, 1309); (4) illegible or inadequate floor plans (AR 677, 1313-14); and (5) missing landscaping and open space plans (AR 679, 1316). Opp. at 15-16.

Jha replies that her Density Bonus Application is complete. GPAs and zoning changes are outside the scope of PSA procedure, and most of the incomplete items were invalid demands for legislative changes, determinations of project consistency, and DBL eligibility determinations. Jha argues that she cannot go through all 45 pages of Planning's inane comments because of her briefing page limits but will address the items specifically discussed in the City's opposition, which demonstrate how the City abused the PSA process. Reply at 12-13.

While the City takes issue with the fact that Jah amended the Project from 45 units in the preliminary application to 40 units in the application, the HAA specifically allows an applicant to revise the number of units by less than 20% following the preliminary application submittal. §65589.5(o)(2)(E). Planning claimed the 40-unit Project is inconsistent with the AHRF that listed 45 units. AR 231. Planning failed to mention that Jha submitted the AHRF on August 11, 2022, just after the preliminary application. Planning failed to process the AHRF until December 12, 2022, four months after submittal and just a week before the deadline to submit a development application. AR 1754. The only reason the AHRF did not match the updated Project plans was because Planning failed to timely sign the form. Reply at 12.

The City also points to missing landscaping and open space plans, but Jha told Planning that landscaping and open space would not be included in the Project. AR 1316. She sought a DBL waiver from these requirements. Still, Planning argued that "[t]rees in the public right of way are landscaping." Id. In other words, Planning demanded that Jha submit a landscaping plan to identify existing off-site trees (that were already identified in her Tree Disclosure). Landscaping plans show the details of proposed landscaping, not the presence of existing off-site trees. *See* LAMC §12.21(G). Reply at 12-13.

The City points to an incomplete declaration regarding requested incentives and waivers. This is untrue. Jha did submit a complete declaration for waivers and incentives. AR 9-12. Planning did not request information from Jha and instead demanded that she confirm the applicable code standard with LADBS by submitting a Preliminary Zoning Form that is "intended to determine compliance with City zoning." AR 434, 1301. A determination regarding zoning code-compliance cannot be used as a basis for determining completeness. Reply at 13.

Other incomplete items included inadequate floor plans because the recreation room did not state whether it would be used as an "exercise room" or a "game room" (AR 1314), even though the term "recreation room" is defined as a room "designed to be utilized primarily for games, the pursuit of hobbies, social gatherings, and such activities." LAMC §12.03. The City also could not determine whether the clearly labeled rooftop terrace was a fourth story (AR 1315), yet simultaneously demanded that Jha "show how the terrace will be used directly on the plans" (AR 1314), as if Jha could predict how future residents will use their private terraces. Reply at 13.

Aside from the improper requirements for a GPA, zone change, and improper determination of density bonus eligibility, the court cannot determine from the parties' presentation whether the City had legitimate reasons to find the Density Bonus Application incomplete. There may be inconsistencies or incomplete information that could justify the

determination.[8] However, the City clearly chose the wrong path in requiring a GPA, zone change, and determining density bonus ineligibility, and these were the main reasons for the incompleteness determination. As a result, the City's incompleteness determination cannot be upheld.

2. Jha's Vesting Rights Did Not Expire

In SB 330, the Legislature added a provision to the PSA preliminary application process specifically for housing development projects, the purpose of which is to secure vesting rights and lock into place existing development standards. §65941.1. To maintain vesting rights, an applicant must submit a development application within 180 days of submitting a preliminary application. §65941.1(d). Additionally, if an agency makes an incompleteness determination "pursuant to Section 65943",[9] the applicant must submit the information needed to complete the application within 90 days or the preliminary application expires. Id.

Jha contends that the City unlawfully refused to recognize the Project's vesting rights. According to Jha, section 65941.1(d) specifically references the iterative process of application and completeness determination, stating that an applicant must respond within 90 days if the public agency makes an incompleteness determination "pursuant to Section 65943." §65941.1(d). An incompleteness determination "pursuant to Section 65943" includes both an initial completeness determination and any subsequent determination made in response to a resubmittal. In other words, each time a new written completeness determination is made pursuant to section 65943, an applicant has 90 days to respond in order to maintain vesting rights. Pet. Op. Br. at 13.

The City argues that Jha's interpretation of section 65941.1(d) is incorrect. An applicant does not have 90 days to respond each time an incompleteness determination is made. The developer has 180 days after submitting a preliminary application to submit "all of the information" required for a complete application. §65941.1(d)(1). If there is an incompleteness determination, the developer "shall submit" the information for completion in 90 days. §65941.1(d)(2). A failure to do so means that "the preliminary application shall expire and have no further force or effect." Id. Opp. at 11-12.

The City points to the legislative history of SB 330 (section 65941.1) as establishing that a single 90-day period to complete the application was added so that the law "delineates a protocol for both the applicant and the jurisdiction." Resp. RJN Ex. 1, pp. 83, 98-99, 277, 284, 289, 300. It is designed so that a "developer doesn't just put in an initial application, lock rules, then go away for 10 years and come back wanting locked rules for their project."[10]

As a result of an amendment, the American Planning Association ("APA") removed its opposition to SB 330 because there would be an "obligation of the applicant to pursue a complete application in a reasonable timeframe in order to retain their vested rights." Resp. RJN Ex. 1, p.

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[8] Neither party addresses Planning's point in the Second Project Review Letter that the Project is now a condominium project, the documents submitted cannot be considered complete for a subdivision because no subdivision application had been made or paid for, and none of the items on the checklist and subdivider's statement form had been provided. AR 642. At trial, Jha's counsel stated that the Project is a rental project, not a condominium project.

[9] Pursuant to the PSA, once an applicant resubmits an application in response to an agency's incompleteness determination, a new 30-day period begins wherein the agency must make another completeness determination. §65943(a).

[10] The City's citation for this quotation (Ex. 1, p. 267) is not in its requested judicial notice.

1184. The APA letter urged the Legislature to utilize the PSA's existing process but removed its opposition to SB 330 when amendments created an "obligation of the applicant to pursue a complete application in a reasonable timeframe in order to retain their vested rights." Resp. RJN Ex. 1, p. 68. The APA stated that it preferred the PSA's existing vesting trigger but noted that "these amendments are intended to ensure this new two-step application approval process creates incentives for the applicant to complete the development processes in a timely manner...." Id. The APA stated that the amendment "will require...the applicant to complete the process in a timely manner in order to receive the vesting benefits of the bill." Resp. RJN Ex. 1, p. 1182. Opp. at 11-12. [11]

The City concludes (Opp. at 10, 16) that this legislative history indicates that section 65941.1's 90-day provision is designed to cut off vesting rights and Jha's interpretation would interpret the 180-day and 90-day periods out of existence. *See* Select Base Materials, Inc. v. Bd. of Equalization, (1959) 51 Cal.2d 640, 645, 647 (statutes are construed to avoid rendering "nugatory important provisions of the statute."). Given this interpretation of section 65941.1(d), the Project has no builder's remedy protection because any vesting rights expired when Jha failed to submit a complete application within 90 days of Planning's January 6, 2023 incompleteness letter. AR 3037-38.

On May 16, 2023, Planning wrote Jha that she had lost her vesting rights from the June 23, 2022 preliminary application. AR 761-63. Planning stated the preliminary application was deemed submitted on June 23, 2022 and the 180-day period under section 65941.1(d)(2) ended on December 21, 2022. Planning wrote the initial Project Review letter on January 6 2023, and more than 90 days had passed without receipt of all missing or incomplete information identified. AR 762. Although Jha had submitted a response to the City's January 6, 2023 incompleteness letter within 90 days (AR 386), the resubmittal did not satisfy the required information. AR 762. Therefore, the vesting preliminary application had expired. AR 762.

The City notes that a complaint was made to HCD about the loss of vesting, but HCD's June 28, 2023 email stated that its investigation found "no apparent violation" of housing law". AR 2921, 2962. Opp. at 10, 16.

At trial, the City's counsel explained that the loss of vesting rights also means the loss of a section 65589.5(d) builder's remedy. The HAA prohibits a local government from applying development standards that were not in effect at the time a preliminary application is submitted. §65589.5(o). The HAA states that is a violation to require, or even attempt to require, a project to comply with an ordinance, policy, or standard not adopted and in effect when a preliminary application was submitted. §65589.5(k)(1)(A)(i)(III). If vesting rights under the preliminary application expire, then the builder's remedy – which applies only when the local government does not have a housing element in substantial compliance with the Housing Element Law – would not apply to Jha because the City now has a compliant housing element.[12]

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[11] Assuming that the APA's statement is proper legislative history, it is a statement by a third party and not accorded significant weight. *See* Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc., *supra,* 133 Cal.App.4th at 38.

[12] The City's counsel also stated that the loss of vesting rights would not prevent further review of the Project application. For this reason, Planning continued to review and deny Jha's Density Bonus Application as incomplete or internally inconsistent in additional review letters dated July 12, 2023 (AR 1139-89), August 2, 2023 (AR 1271-72), and August 23, 2023 (AR 1273-1330)

Section 65941.1(d)(1) provides that the applicant must submit an application that includes all necessary information within 180 days after submitting the preliminary application. The plain language of the provision sets a 180-day deadline. Section 65941.1(d)(2) provides that, if the agency determines that the application is incomplete pursuant to section 65943, the applicant shall submit the missing information within 90 days and the failure to do so will mean the application has expired. In turn, section 65943 provides that the agency must make a written determination on the completeness of an application within 30 days of submittal, or it will be deemed complete. §65943(a). Upon receipt of "any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application." Id.

At trial, the parties' counsel agreed on the relationship of section 65941.1(d)(1) and (2). If an applicant fails to submit an application within 180 days after the preliminary injunction, the 180-day deadline in section 65941.1(d)(1) bars it from doing so. If, on the other hand, an applicant submits an application within 180 days, it is timely even if it is incomplete. This is true despite the language in section 65941.1(d)(1) that the application must include "all of the information required to process the development application". Counsel agreed that an incomplete application submitted within 180 days is still timely under section 65941.1(d)(1). The court accepts the parties' interpretation.

The incompleteness issue is dealt with by section 65941.1(d)(2). This is where the parties diverge. The City contends that the applicant receives a single 90-day period to cure the incomplete application. If the information submitted does not complete the application, then the preliminary application expires and is no further force and effect. §65941.1(d)(2). Jha contends that there may be multiple iterations of this 90-day submission and 30-day evaluation process. So long as an applicant meets the 90-day deadline, there is no bar.

The court agrees with Jha that multiple iterations of the 90-day submission/30-day review are permissible under section 65941.1(d)(2). Section 65941.1(d)(2) expressly refers to completeness pursuant to section 65943. In turn, section 65943(a) refers to "any subsequent review of the application determined to be incomplete", "any resubmittal of the application", and "a new 30-day period." The use of the words "any" and "new" in section 65943(a) indicate that multiple resubmissions of an application may be made. The statute supports Jha's reading that the submission and completeness evaluation for an application is an iterative process with no limit on the number of submissions.

The court's conclusion is supported by the fact that the court is "not dealing with the PSA in a vacuum, but rather in its relation to the HAA," and the Legislature has mandated the HAA must be interpreted to "afford the fullest possible weight to the interest of, and the approval and provision of, housing." Save Lafayette v. City of Lafayette, (2022) 85 Cal.App.5th 842, 855 (refusing to interpret the PSA to treat a multi-year delay as a resubmittal that terminated earlier vesting rights and instead recognizing the project's decade-old vesting rights in part because the HAA's policy that favors housing).[13] The City's interpretation makes it more difficult for

[13] The City argues that the court in Save Lafayette v. City of Lafayette, *supra,* 85 Cal.App.5th at 854-55, rejected the prospect of a "deemed disapproved" consequence to passage of the PSA's timelines in part because no statutory text supported the argument and there is no statutory text to support Jha's argument either. Opp. at 16-17. Perhaps, but the point remains that the PSA and HAA must be interpreted to give full weight to the approval of housing.

applicants to maintain vesting rights and directly conflicts with the Legislature's clear mandate to interpret its provisions in favor of housing development.[14]

The legislative history provided by the City does not undermine this conclusion. The Assembly Bill Analysis states that "[i]f the local agency determines that the information provided is not complete, the proponent has 90 days after receiving this determination in writing to provide the information, or their preliminary application will expire." Resp. RJN Ex. 1, p. 40. This statement is consistent with the conclusion that when an applicant receives an incompleteness determination pursuant to section 65943 – not just the first incompleteness determination – an applicant has 90 days to respond. This interpretation does not read the 90-day deadline out of existence because an applicant still must diligently respond to each incompleteness determination within 90 days.

The June 28, 2023 email HCD email cited by the City is not weighty. HCD staff wrote that it had "received a request for a letter of support" for the Project and found "no apparent violation of state housing law." AR 2962. The email's conclusion is unsupported by any facts or analysis. In contrast, Jha submitted an inquiry to HCD asking whether the Project's vesting rights expired after receiving a second incompleteness determination. An HCD staff member responded: "No, the preliminary application does not expire if the development application is deemed incomplete since Government Code section 65943 allows for resubmittal of the requested items." AR 2638. Reply at 8-9. Jha responded to the City's incompleteness determination within 90 days as required and there was no violation of section 65941.1(d)(2).

Jha submitted the preliminary application on June 23, 2022. She filed the AHRF on August 11, 2022 and the City waited four months to sign it, until December 12, 2022. Jha paid her Density Bonus Application fees nine days later. After Planning sent her the January 6, 2023 Project Review letter, Jha submitted revised the application materials within 90 days, on April 5, 2023. After Planning's second Project Review letter of April 28, 2023, Jha promptly appealed on May 12, 2023. This timeline shows Jha's diligence in pursuing her application.

Jha's vesting rights did not expire, and the City's refusal to recognize them was inconsistent with the PSA and violated the HAA.

3. The City Disapproved the Project Under the HAA

It is undisputed that the Project meets the definition of "housing for very low, low-, or moderate-income households" under the HAA. §65589.5(h)(3). The HAA prohibits a local government from disapproving an affordable housing project unless it makes written findings based on a preponderance of the evidence in the record as to one of five specifically enumerated findings. §65589.5(d). The court has already determined that the City cannot disapprove the Project based on section 65589.5(d)(5) (the builder's remedy) because the City was not in compliance with the Housing Element Law on the date that Jha submitted a complete preliminary application. There is no evidence that any of the other enumerated findings apply, and the City did not attempt to make such findings. In short, there is no valid basis for the City to disapprove the proposed affordable housing Project.

The City argues that the court is reviewing the City's determination of incompleteness under PSA section 65943 as to both applications. The builder's remedy disapproval findings

[14] Can the local government ever end the cycle of resubmissions within 90 days? Probably so by relying on the 180-day period in section 65941.1(d)(1), but the court need not decide this issue.

apply to a merits disapproval of the Project entitlement, not an incompleteness appeal. §65589.5(d)(5). Nothing in the HAA equates a decision on PSA incompleteness to the disapproval of a project application or entitlement. *Cf.* §65589.5(h)(6)(HAA definition of "disapprove" references the "land use approvals or entitlements" for a building permit). Planning stated that the applications remain incomplete, but it will process either of them once complete. AR 3338. To the extent that Planning made an "early pre-decision compliance review," it was for Jha's information, not a decision on the merits. AR 764-76. The City has not made a final merits disapproval of either application, and for that reason Jha cannot claim that Planning's statement that the GPA Application is the correct process is itself a disapproval of the Project. Opp. at 19.

The short answer is that Jha is correct that the City Council's decision on completeness is a disapproval. Pet. Op. Br. at 17. The HAA defines disapproval as any instance in which an agency "[v]otes on a proposed housing development project application and the application is disapproved . . .." §65589.5(h)(6). While the City Council purported only to vote on whether the application was complete, its vote disapproved the Project based primarily on the City's perceived general plan and zoning inconsistencies. The City did not simply recommend a GPA and zone change; it required them. The City Council made clear the Project cannot be approved unless it is modified to be consistent with the general plan or the general plan is modified to be consistent with the Project. This is a disapproval.

4. The City Violated the HAA

The court has already determined that the builder's remedy applies, and therefore general plan and zoning inconsistencies are not a valid basis to deny the Project. The City did not make any written findings regarding any of the other four enumerated bases to disapprove an affordable housing project, and therefore the City's vote to disapprove the project was in violation of the HAA. §65589.5(k)(1)(A)(i).

The City correctly notes that the HAA does not specify procedures for the review and processing of a builder's remedy project. Unlike other HAA or DBL provisions, there is no HAA text that prevents legislative procedures from applying to projects receiving builder's remedy protection. *Cf.* §§ 65589.5(j)(4) (project "shall not require" rezoning), 65915(f)(5), (j)(1) (density bonus or incentive "shall not require" a plan amendment). There is also nothing in the HAA that says a builder's remedy project must be approved ministerially, or that a specific process must be used, in contrast to other statutes that expressly reference a ministerial process. *Cf.* §§ 65913.4(a), 66317(a), 65852.21, 66411.7(a), (b)(1). Opp. at 11.

The City argues that it is contrary to the plain language of section 65589.5(o) for Jha to claim that the City must use a process that does not follow the laws and policies under which the Project vested. The entitlements associated with the GPA Application honor the City policies in effect on the June 24, 2022 date of the preliminary application that specify the GPA Application procedure and satisfy the need to legalize the Project within the City's zoning and planning framework. §65589.5(o)(1); AR 1535-42. Nothing in the HAA prohibits the City from seeking a GPA or zone change. Opp. at 11-12.

The City relies on a March 28, 2024 HCD letter of technical assistance to the City of Compton in which HCD agreed that the HAA does not specify the process for reviewing a project with builder's remedy protection and also agrees that a jurisdiction may require a general plan amendment or zone change to review such a project. Resp. RJN Ex. 3. Opp. at 12.

HCD's letter stated that a jurisdiction without an adopted housing element in substantial compliance with state law when the preliminary application was submitted and subject to the

builder's remedy is not prevented by the HAA "from requesting a general plan/zoning code amendment" to avoid a legal non-conformity. Resp. RJN, Ex. 3. Further, the builder's remedy does not expressly prevent the city from requiring discretionary permits and/or legislative actions that would be required for similar projects *(e.g.*, GPAs, zoning changes, CUP, specific plan amendments). Ex. 3. HCD warned, however, that the HAA would be violated if the city's insistence on a GPA or zone change would render the project infeasible because it "delays project approval or increases the cost of the approval process." Ex. 3. Opp. at 12.

Jha agrees that the builder's remedy does not specify the entitlement process and that nothing requires the City to approve the Project ministerially. Jha correctly argues (Pet. Op. Br. at 15-16; Reply at 9) that the City attempts to sidestep the HAA by claiming that the builder's remedy does not specify the entitlement path that a local government must follow, and that the proper entitlement path for the Project is a GPA and zoning change. The HAA requires agencies to approve applications pursuant to the PSA's mandatory deadlines, and nothing permits an agency to force an applicant to seek a legislative change that is outside the scope of those protections. §65589.5(o)(6)(B); Land Waste, *supra*, 222 Cal.App.3d at 959. The HAA requires mandatory approval unless fact-specific findings are made, and forcing an applicant to seek a legislative action strips the applicant of these rights and protections.

Jha argues that GPAs are not entitlements, they are legislative acts. Arnel Development, *supra,* 28 Cal. 3d at 514. GPAs are governed by Chapter 3 of the Planning and Zoning Law, and most sections do not apply to charter cities. §65700. The review and approval of development projects, on the other hand, are governed by Chapter 4.5, the entirety of which applies to charter cities (including the PSA). § 65921. Legislative actions and the review of development projects are two distinct processes, subject to different procedures, and serve different functions. "[A] legislative action is the formulation of a rule to be applied to all future cases, while an adjudicatory act involves the actual application of such a rule to a specific set of existing facts." Patterson v. Central Coast Regional Com, (1976) 58 Cal.App.3d 833, 840. Reply at 9.

The court need not agree with Jha that GPAs and zone changes are not entitlements to agree that they are legislative enactments that cannot be compelled when the builder's remedy applies. The City cannot compel Jha to seek a legislative action through the review of a development project for the same reason Jha cannot compel the City to approve a legislative action through the submittal of a development application. The builder's remedy applies to projects, not properties, and legislative changes are not "housing development projects" governed by the HAA. Chandis Securities Co. v. City of Dana Point, (1996) 52 Cal.App.4th 475, 485-86. Reply at 9.

Jha is correct that the City's interpretation of the HAA would eviscerate the builder's remedy in section 65589.5(d)(5), which states that a local government must approve an affordable housing project notwithstanding any purported general plan or zoning inconsistency. In other words, requiring legislative changes is simply a more circuitous route of requiring general plan and zoning consistency, which is not permitted when a jurisdiction does not have a certified housing element and the builder's remedy applies. A local government with a compliant housing element could disapprove a project for such an inconsistency, or could inform an applicant that his or her project would be disapproved unless a legislative change is granted, but it cannot do so where an affordable housing project is protected by the builder's remedy.[15]

[15] According to Jha, the City attempts to nullify the builder's remedy by relying on section 65589.5(f)(1), which states that the HAA should not be interpreted to prohibit a local agency from requiring compliance "with objective, quantifiable, written development standards, conditions,

The City points to the language in section 65589.5(j)(4) that a project "shall not require a rezoning" to suggest that the City can require rezoning. Opp. at 11, 13. Jha correctly replies (Reply at 10) that section 65589.5(j)(4)'s reference to rezoning relates to a determination of project consistency, which is required for market-rate housing projects protected by the HAA. Section 65589.5(j)(4) states that a housing project is not inconsistent with applicable zoning standards, and rezoning is not required, if the project is consistent with objective general plan standards. For builder's remedy projects, consistency is not required for the project to be approved.

Jha notes (Reply at 10-11) that the HCD recently superseded March 28, 2024 Compton technical letter in a June 26, 2025 technical letter to the City of Beverly Hills. Reply RJN Ex. 1. The Beverly Hills technical letter noted that the March 28 letter to Compton stated that the HAA does not prohibit a city from requesting a general plan/zoning code amendment to avoid a legal non-conformity but also clarified that such an action may not be required where the builder's remedy applies. Reply RJN Ex. 1. In its Beverly Hills letter, HCD stated that the HAA is clear

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and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584." (emphasis added). The first step in the housing element process is for a local government to identify the "appropriate zoning and development standards" to accommodate its RHNA. §65583(c)(1). Section 65589.5(f)(1) only allows a local government to enforce standards that are "appropriate to, and consistent with," meeting a jurisdiction's RHNA. A local government that failed to have a certified housing element and is subject to the builder's remedy does not have standards "appropriate to, and consistent with" meeting its RHNA requirements. This is why the builder's remedy exists. If a local government has failed to go through the required housing element process to identify the standards "appropriate to, and consistent with" meeting its RHNA requirements, section 65589.5(d)(5) allows affordable housing projects a path to approval notwithstanding existing standards. Pet. Op. Br. at 16.

Moreover, section 65589.5(f)(1) requires that the development standards, conditions, and policies be applied to "facilitate and accommodate development at the density permitted on the site and proposed by the development," not to provide a backchannel method to thwart the protections of section 65589.5(d)(5). Jha proposed an affordable housing project at a time when the City did not have a compliant housing element and the "density permitted" on the site is not constrained by existing general plan and zoning density standards. The builder's remedy makes clear that such density standards are not a valid reason to disapprove the project. The City can enforce other objective standards (*e.g.*, height, setbacks) but must do so in a manner that facilitates and accommodates the density proposed by the Project. Pet. Op. Br. at 16-17.

Finally, section 65589.5(f) merely contains a series of general interpretive provisions regarding how the HAA should be "construed." Section 65589.5(d) provides the specific findings that a local government must make to lawfully disapprove a proposed affordable housing project. It is a basic canon of statutory construction that "when a general and particular provision are inconsistent, the latter is paramount to the former." CCP §1859. A general interpretive provision cannot be read to nullify the builder's remedy provision as it applies to a particular project. Interpreting section 65589.5(f)(1) to allow cities to impose zoning and general standards that section 65589.4(d)(5) states are not a valid reason to disapprove a project would reduce the builder's remedy to mere surplusage. A "construction making some words surplusage is to be avoided.'" People v. Valencia, (2017) 3 Cal.5th 347, 357. Pet. Op. Br. at 17.

While the court agrees with Jha's analysis, the City's opposition does not rely on section 65589.5(f)(1).

that a project protected by the builder's remedy may not be disapproved for inconsistency with the jurisdiction's general plan and zoning ordinance. §65589.5(d)(5). "Accordingly, a jurisdiction that refuses to process or approve a project subject to the Builder's Remedy due to the applicant's refusal to submit a GPA[zoning change] requires or required by the jurisdiction to resolve such an inconsistency violates the intent of the HAA." Ex. 1. The requirement of a GPA or zoning change is "essentially a requirement for consistency," and disapproval of a project for failure to resolve that inconsistency is effectively a disapproval on the grounds of inconsistency. Ex. 1. HCD also noted that Beverly Hills did not have a GPA or zone change on its submittal requirement checklist and under the PSA the city could not determine that an application is incomplete based on failure to include a request for a GPA or zone change. Ex. 1.

The deference and the weight given to an agency's interpretation is situational and dependent on the presence or absence of factors supporting the merit of the interpretation. Yamaha Corp. of America v. State Board of Equalization, (1998) 19 Cal.4th 1, 7-8, 12. Some deference is warranted where there are "indications of careful consideration by senior agency officials" or "the agency 'has consistently maintained the interpretation in question.'" Id. at 13. An administrative construction of a statute is only entitled to as much deference as is warranted by "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control". Hoechst Celanese Corp. v. Franchise Tax Bd., (2001) 25 Cal.4th 508, 524.

The Beverly Hills technical letter strongly supports Jha's position and is entitled to some weight. It is consistent with the court's view, which is that the City may not require GPA or zone change on Jha's Project that is protected by the builder's remedy. Therefore, the City violated the HAA.

5. The City Violated the DBL

The DBL (§§ 65915-18) is intended to allow a developer to include more total units in a project that would otherwise be allowed by the local zoning ordinance in exchange for low-cost rental units, and to "cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional public subsidy." §65915(u).

A local government shall grant one density bonus as specified in subdivision (f), incentives or concessions as specified in subdivision (d), waivers or reductions of development standards as described in subdivision (e), and parking ratios as described in subdivision (p), if an applicant agrees to construct a housing development that will contain stipulated percentages of low income and very low-income units or target population units (*e.g.*, disabled veterans). §65915(b).

A "housing development" means a development project for five or more residential units, including mixed use developments. §65915(i).

A "density bonus" means a "density increase over the otherwise maximum allowable gross residential density," but the developer also may elect "a lesser percentage of density increase, including, but not limited to, no increase in density." §65915(f). The amount of the density bonus varies according to the amount by which the percentage of low and very low-income units exceed the percentages. §65915(f).

Density bonuses shall be granted based on the "maximum allowable density" for the project site, defined as "the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. If the density

allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail." §65915(o)(5).

An applicant for a density bonus pursuant to subdivision (b) may submit a proposal for specific incentives or concessions. §65915(d)(1). The local government shall grant the requested incentive or concession unless (1) it makes a written finding, based on substantial evidence, that the project will not result in "identifiable and actual cost reductions" of affordable housing costs or for rents of the targeted units as specified in subdivision (c), (2) the concession or incentive would have a specific adverse impact upon public health and safety, the physical environment, or real property listed in the California Register of Historical Resources and for which there is no feasible method of mitigation without rendering the development unaffordable to low- and moderate-income households, or (3) the concession or incentive would violate state or federal law. §65915(d)(1)(A)-(C). §65915(d).

The applicant may also apply for and receive development waivers or reductions that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions/incentives permitted. §65915(e)(1). The local agency may not apply a development standard that will have this effect. §65915(e)(1). However, the local government is not required to waive or reduce development standards if there would be an adverse impact on health, safety, or the physical environment, and for which there is no feasible method of mitigation to avoid the impact. Id. Nor is the local government required to waive or reduce development standards that would have an adverse effect on real property listed in the California Register of Historical Resources, or to grant any waiver or reduction that would violate state or federal law. §65915(e)(1).

Jha argues that the amount of density bonus is based on the "maximum allowable gross residential density" or "base density," which the law defines as "the maximum number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan...." §65915(o)(6). On the other hand, incentives/concessions and waivers are awarded based on the percentage of "total units" that are restricted to low- and very-low income households. §65915(d). The DBL definition of "total units" is unrelated to zoning and is simply "a calculation of the number of units that: (i) Excludes a unit added by a density bonus awarded pursuant to this section. (ii) Includes a unit designated to satisfy an inclusionary zoning requirement." §65915(o)(8). In other words, the term "total units" simply means the number of units proposed for the project. Similarly, the DBL defines a "housing development" to mean "a development project for five or more residential units, including mixed-use developments" without any reference to zoning standards. §65915(i). Thus, a "housing development" is a project that proposes at least five units. Pet. Op. Br. at 18-19.

Jha's Project is a housing development that includes 20% of units restricted to low-income households and is therefore entitled to two incentives/concessions and an unlimited number of development standard waivers. §65915(d), (e). Jha proposed incentives to the applicable floor area ratio and low-impact development standards, as well as various waivers to development standards of setbacks, height limits, parking standards, and others. AR 136-37.

AHSS staff determined that the Project is not eligible for the DBL program. AR 1637. The staff stated that the Property site is in the RA zone, which permits only one family dwelling and does not allow multi-family uses. LAMC §12.07.A.1. AR 1637. AHSS staff stated that Jha will need to apply for a zoning change to allow multi-family uses. AR 145-47, 1637. In fact, the City unilaterally converted the application from a density bonus request to a zone change, assigning the Project a new Planning number. AR 171. Pet. Op. Br. at 19.

Jha contends that the City did not deny the requested incentives/concessions, and development standard waivers due to public health and safety concerns, but rather due to the City's erroneous determination that a site must be zoned for a minimum of five base units to be eligible for any of the DBL's protections. The number of base units is only relevant to calculate the density bonus which Jha does not seek. It is distinct from the "total units" used to determine eligibility for incentives/concessions/development standard waivers. So long as the project includes the minimum level of affordability, the City may only deny the proposed incentives/concessions/waivers for the statutorily enumerated reasons. §65915(d), (e). The DBL includes "very limited exceptions" to deny requested incentives/concessions/waivers and zoning inconsistency is not one of them. *See* Bankers Hill 150 v. City of San Diego, (2022) 74 Cal.App.5th 755, 770. The City's refusal to grant the incentives/concessions/waivers is a violation of the DBL. Pet. Op. Br. at 19.

The City responds that Jha incorrectly reads the DBL. Her literal reading of the terms "total units" and "housing development" in sections 65915(o)(8) and 65915(i), respectively, would create an absurd result. Both terms refer to the number of base units identified by the zoning and land use designation based on usage of the "housing development" term. *Compare* §§ 65915(b)(1)(G), (c)(1)(B)(ii)("all units in the development, including total units and density bonus units"), §§ 65915(a)(1)("When an applicant seeks a density bonus for a housing development"), 65915(b)(1)(if an applicant "seeks and agrees to construct a housing development, excluding any units permitted by the density bonus") *with* 65915(o)(8)(i)("total units...[e]xcludes a unit added by a density bonus"). Jha's literal application of the definitions in sections 65915(o)(8) and 65915(i) would permit a density bonus project in any industrial zone or land use category that does not authorize residential uses so long as the number of proposed units is five or more. At trial, the City's counsel reiterated that Jha's interpretation would allow incentives, concessions, and waivers for a project in an industrial zone. *See* Unzueta v. Ocean View School Dist., (1992) 6 Cal.App.4th 1689 (statutes are interpreted to avoid absurd results). Opp. at 14.

Scrutiny of the DBL shows the City is wrong. An applicant for a qualifying housing development make seek and obtain one density bonus as specified in subdivision (f), incentives or concessions as specified in subdivision (d), waivers or reductions of development standards as described in subdivision (e), and parking ratios as described in subdivision (p). §65915(b)(1). A "housing development" means a development project for five or more residential units, including mixed use developments. §65915(i). The developer may elect to seek no increase in density as part of her density bonus (§65915(f)) and may seek specific incentives or concessions (§65915(d)(1) and development waivers or reductions (§65915(e)(1)) as Jha has. While the density bonus available pursuant to section 65915(b) is defined as an increase to maximum allowable density (§65915(f)) and maximum allowable density means the greatest number units allowed by the zoning ordinance (§65915)(o)(6)), there is simply no tie between bonus density, incentives or concessions, and waivers or reductions in development standards that would permit application of the maximum allowable density definition too the latter two entitlements.

The court agrees with Jha (Reply at 11-12) that the City is equating the terms "total units" in section 65915(o)(8) and "base density" in 65915(o)(6) even though each has a specific, unique definition in the DBL. "Total units" refers to the number of units in a project excluding any density bonus units. §65915(o)(6). "Base density" is only relevant for determining the amount of density bonus and refers to the units allowed under the zoning or general plan. §65915(o)(8). Reading these terms to be identical would render the statutory definitions surplusage. *See* MacIsaac v.

Waste Management Collection & Recycling, Inc., (2005) 134 Cal.App.4th 1076, 1082. Reply at 11.

The plain language of the DBL controls. So long as a project that restricts a certain percentage of the "total units" to low-cost housing can be approved, it is eligible for incentives, concessions, and waivers with "very limited exceptions." *See* Bankers Hill 150 v. City of San Diego, (2022) 74 Cal.App.5th 755, 770. Zoning is not one of those exceptions. While the City argues that reliance on the plain language definition of "total units" would allow density bonus projects in zones where residential uses are not permitted, such as in an industrial zone, inconsistency with zoning or general plan requirements could be a valid reason to disapprove a project where (a) there would be an adverse impact on health, safety, or the physical environment, and for which there is no feasible method of mitigation to avoid the impact (b) there would be an adverse effect on real property listed in the California Register of Historical Resources, or (c) it would violate state or federal law. §65915(d)(1), (e)(1). Because the Project restricts 20% of the total units as affordable, the City's refusal to grant incentives, concessions, and waivers violated the DBL.[16]

F. Conclusion

The Petition is granted in large part. Jha is entitled to a judgment on her mandamus claims that (1) the City's determination that Jha's application is incomplete violated the PSA because the City wrongly required a GPA, zone change, and determined density bonus ineligibility, (2) the City violated the HAA by imposing a GPA and zone change on Jha's Project protected by the builder's remedy, (3) Jha's vesting rights did not expire, and the City's refusal to recognize them was inconsistent with the PSA and violated the HAA, and (4) the City's refusal to grant regulatory incentives, concessions, and waivers violated the DBL. Jha's claim for declaratory relief is denied. A writ shall issue directing the City to set aside the City Council's denial of the June 27, 2023 PSA appeal and to review and process Jha's Project application pursuant to the PSA, HAA and DBL as interpreted herein.

Jha's counsel is ordered to prepare a proposed judgment and writ, serve them on the City's counsel for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment and writ along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for August 27, 2024 at 9:30 a.m.

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[16] The City argues that it acted in good faith. Opp. at 21-22. The City's bad faith is relevant only to whether the court should direct it to approve the Project. §65589.5(k)(1)(A)(ii). If the court finds that an agency acted in bad faith in disapproving a project in violation of the HAA, the appropriate remedy is an "order or judgment directing the local agency to approve the housing development project" and attorney fees and costs. §65589.5(k)(1)(A)(ii). "Bad faith" "includes, but is not limited to, an action that is frivolous or otherwise entirely without merit." §65589.5(l). Jha fails to seriously address this issue and the court's decision requires further proceedings anyway.

Dated: July 23, 2024

Superior Court Judge

JAMES C. CHALFANT