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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA

SHELBY FAMILY PARTNERSHIP, L.P., Petitioner and Plaintiff, v. CITY OF GOLETA, a municipality; CITY OF GOLETA COUNCIL, a governing body; and DOES 1 through 20, inclusive, Respondents and Defendants.	Case No. 24CV00548 Assigned for All Purposes to the Honorable Thomas P. Anderle **BRIEF OF AMICUS CURIAE THE STATE OF CALIFORNIA EX REL. ATTORNEY GENERAL IN SUPPORT OF PETITIONER'S MOTION FOR JUDGMENT** Date: January 15, 2025 Time: 10:00 a.m. Dept.: 3

INTRODUCTION

The Attorney General, as the chief constitutional officer charged with enforcing the laws of the State of California, respectfully submits this brief as amicus curiae on behalf of the State in support of the Motion for Judgment filed by Petitioner and Plaintiff Shelby Family Partnership, L.P. (hereinafter, "Shelby").[1] Shelby seeks to obtain the benefits of two state laws for its project: the Housing Accountability Act (HAA) and the Housing Crisis Act of 2019 (Senate Bill 330). The City of Goleta's rejection of Shelby's preliminary application, and its disapproval of housing protected by the HAA, undermine the Legislature's purpose in passing both laws and exacerbates the acute housing shortage both laws were intended to address. In the interest of ensuring state law is enforced consistent with its purpose and meaning, the Attorney General offers this brief to assist the Court's consideration of the important issues here.[2]

ARGUMENT

I. THE CITY DID NOT HAVE DISCRETION TO REFUSE TO ACCEPT A COMPLETE PRELIMINARY APPLICATION

The City's actions to "return" a preliminary application—an application which merely amended an existing development application to include 13 affordable units for lower-income households—contravene the express language of SB 330. By operation of law, Shelby's preliminary application was complete at the time it fulfilled the statutory criteria and paid the applicable fee. (Gov. Code, § 65941.1, subd. (a).)[3] The City had no authority to "return" a completed preliminary application, nor refuse to process it on the grounds that SB 330 preliminary applications cannot be submitted to revise a completed development application. The City's claim that SB 330 cannot apply to existing projects is unsupported by the statutory language or by legislative history.

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[1] At an *ex parte* hearing held on December 20, 2024, this Court granted the Attorney General's application for leave to file this amicus brief.

[2] The Attorney General's amicus brief is limited to the issue raised regarding the applicability of SB 330 and the HAA to preexisting housing development project applications.

[3] All further statutory references are to the Government Code, unless otherwise indicated.

A. The City Has a Ministerial Duty to Deem Complete a Preliminary Application Fulfilling All Criteria

SB 330 curtails a local agency's ability to alter the standards applicable to the project by creating a process by which a developer can, by submitting a preliminary application, "freeze" the standards that are applicable to its project. The law allows the developer to do this at its option, specifying that a preliminary application is *deemed* to be complete when certain criteria are fulfilled, with no role for a local agency in making that ascertainment.

Section 65941.1(a) provides that an applicant "shall be deemed to have submitted a preliminary application upon providing all of the following information about the proposed project to the city, county, or city and county from which approval for the project is being sought and upon payment of the permit processing fee," before listing the 17 pieces of information that must be submitted. This language, "*shall* be deemed," means the City *must* accept a preliminary application that on its face fulfills the 17 criteria and is accompanied by the processing fee. The City, therefore, has a ministerial duty to accept Shelby's preliminary application.

For the avoidance of doubt, the Legislature specifically defined the term "deemed complete" separately in the HAA to emphasize that a preliminary application is complete *upon submission*, regardless of any action by the receiving agency:

> Notwithstanding any other law, until January 1, 2030, "deemed complete" means that 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.
>
> (Gov. Code, § 65589.5, subd. (h)(5).)

An application is thus "deemed complete" by operation of law. Section 65941.1, subdivision (d)(3) makes this even more clear: "[t]his section shall not require an affirmative determination by a city, county, or city and county regarding the completeness of a preliminary application or a development application for purposes of compliance with this section." This is, therefore, a ministerial duty. (*Hudson v. County of Los Angeles* (2014) 232 Cal.App.4th 392, 408 ["An act is 'ministerial' when a public officer is required to perform it in a prescribed manner when a given state of facts exists, in obedience to the mandate of legal authority and without

regard to his, her, or its own opinion concerning the act's propriety"].) Shelby's rights under the preliminary application, therefore, vested as soon as its application was complete and its fee was paid.

To be sure, it may seem odd that a housing development applicant would choose to submit a preliminary application when a pre-existing development application has already been "deemed complete." But the applicant's motivation for doing so is not for local agencies to question, and thus, not for a court to judge, when determining whether a local agency failed to perform its ministerial duty under SB 330. Once an agency receives a complete preliminary application under SB 330 containing the statutorily-required 17 items, it is automatically deemed complete under Government Code section 65941.1, subdivision (a). Nothing in SB 330 permits a local agency to reject a preliminary application because it believes the application is futile or unwise, may ultimately be denied, or because the agency and the applicant have a difference of opinion regarding how the application should be processed. A preliminary application, therefore, cannot be "returned" in a manner that allows a local agency to shirk its ministerial duty to accept and process complete SB 330 preliminary applications under state law. And, as discussed below, nothing in state law precludes an applicant from submitting multiple applications or submitting an amended application of an already completed application.

B. The Plain Language of SB 330 Does Not Preclude a Modification of an Existing Project

There is nothing in the language of SB 330 or the HAA that indicates the Legislature intended the "preliminary application" procedure to apply solely to new housing projects. In fact, the phrases "new development" and "new project" do not appear in the HAA at all. The City's attempt to read such a limitation into the statute is unsupported by the statutory language.

Because the statutory language is unambiguous, this Court need not resort to other tools of statutory construction. (*Uber Technologies Pricing Cases* (2020) 46 Cal.App.5th 963, 973.) Had the Legislature intended to limit the preliminary application process solely to *new* projects, it could have included such a provision in the statute—but it did not. (*Tracy v. Municipal Court* (1978) 22 Cal.3d 760, 764 ["In the absence of compelling countervailing considerations, we must

assume that the Legislature knew what it was saying and meant what it said"] [cleaned up].) Instead, the Legislature defined a new form of application—a "preliminary application"—and specified what a local agency must do when one is received.

And the policy provisions set forth in the HAA suggest that the court should not credit the limitation the City reads into the statute. Indeed, the HAA must be interpreted in favor of "the approval and provision of housing." (§ 65589.5(a)(2)(L).) Further, the Legislature directed courts not to construe the HAA "in a manner that would . . . lessen the protections afforded to a housing development project, that are established by any other law." (§ 65589.5(o)(5).) The City's reading would allow the City to rob the project of the protections of either the HAA or the Subdivision Map Act, contravening the Legislature's stated intent and its instructions to the courts. (*Cal. School Employees Assn. v. Governing Bd. of South Orange County Community College Dist.* (2004) 124 Cal.App.4th 574, 593 [courts should not adopt a statutory interpretation that "would frustrate the legislative intent" behind an enactment].)

C. The City's Interpretation Is Contrary to Legislative Intent

Apart from finding no support in the plain text of the statute, the City's argument that "preliminary applications" may only be submitted for *new* housing projects, combined with its efforts to avoid its ministerial duty to deem a complete preliminary application complete, would undermine the Legislature's intent in passing SB 330. There is no indication that the Legislature intended this provision to apply only to new, clean-sheet projects after January 1, 2020. Instead, the legislative history demonstrates that the Legislature intended to prevent local jurisdictions from doing exactly what the City did here.

The Legislature was specifically concerned by local jurisdictions altering project standards in the midst of their consideration of a project. "In some cases," the Legislature noted, "this may mean amending those standards while a city or county is actively considering a project for approval." (SB 330, 2019 Stats. Ch. 654, 09/05/19 Senate Floor Analysis, p. 8). For that reason, "SB 330 freezes in time the standards that were in place when a preliminary application, a new term created in the bill, is filed." (*Ibid.*) And the Legislature intended to give local jurisdictions no discretion to "return" a complete preliminary application. In fact, it gave them no role in the

process other than to assess whether an application is complete: a local jurisdiction "*must deem the application to be complete* if all of the required information is provided." (SB 330, 2019 Stats. Ch. 654, 09/04/19 Assembly Floor Analysis, p. 4 [emphasis added].)

The City's interpretation of the law would perpetuate the exact pattern of behavior the Legislature sought to stop—altering the standards applicable to a project mid-stream. As of the date of its preliminary application, Shelby's project was protected by the vesting provisions of the Subdivision Map Act. Those standards vested in 2011 when its Vesting Tentative Tract Map (VTTM) was determined to be complete. The City now argues that those protections may be revoked, and new development standards applied, because Shelby wants to include thirteen affordable housing units in its development plan, and, by utilizing SB 330, seeks to vest development standards applicable in 2023 *in addition to* what has already vested under its existing 2011 VTTM. Shelby does not seek "retroactive vesting" of a *new* tract map, and even if the standards applicable to the project did conflict, it would still not authorize the "return" of an SB 330 application. Forcing Shelby to choose between vesting under the Subdivision Map Act or vesting under SB 330, when no such Hobson's choice was ever contemplated by the Legislature in enacting SB 330, is exactly the kind of mid-stream alteration of applicable standards the Legislature intended to prohibit.[4]

The Legislature passed SB 330, also known as the Housing Crisis Act of 2019, precisely because of the critical lack of affordable housing in this state. (Stats. 2019, ch. 654, § 2, subd. (a)(5) ["The housing crisis has particularly exacerbated the need for affordable homes at below market rates"].) It would be antithetical to that purpose, and at odds with legislative intent, to allow the City to block an SB 330-protected project solely *because* Shelby sought to add affordable units to its project. This Court should, therefore, not adopt such an interpretation of SB 330, especially when the language of the statute is itself not ambiguous on these points.

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[4] The Attorney General is aware of California Department of Housing and Community Development's email dated May 12, 2023, stating that SB 330 does not allow for "retroactive vesting." As noted by Petitioners' counsel, subsequent email communications from HCD clarifies that HCD was not concluding that vesting provisions of the Subdivision Map Act are relinquished upon the filing of an SB 330 preliminary application. (See Opp. to MJOP, Collins Exh. D. at 1.)

II. THE CITY'S "RETURN" OF THE PRELIMINARY APPLICATION CONSTITUTED AN UNLAWFUL DISAPPROVAL UNDER THE HOUSING ACCOUNTABILITY ACT

A. The City's Actions Rejected an HAA-Protected Project Without Making Required Findings

When a developer submits a complete preliminary application, its project is subject to the protections of the HAA. (§ 65589.5(o)(1).) For that reason, the City's decision to "return" the application constitutes a separate violation of the HAA.

Section 65589.5(d) provides that "[a] local agency shall not disapprove a housing development project . . . for very low, low-, or moderate-income households . . . 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," unless the agency makes "written findings, based upon a preponderance of the evidence in the record," that one of five specific criteria in the statute is satisfied. (§ 65589.5(d)(1)-(5).) The City made no such findings here. Instead, it stated that it was "returning" the preliminary application without further explanation.

Shelby's project is a "housing development project" as defined in the HAA because it creates only residential units. (§ 65589.5(h)(2).) Shelby's project also qualifies as "[h]ousing for very low, low-, or moderate-income households" because at least 20% of the total residential units (13 out of 56) will be sold or rented to lower-income households. (§ 65589.5(h)(3).) Therefore, the City could only disapprove Shelby's project if it made one of the findings provided in Government Code section 65589.5(d), in writing, and based upon a preponderance of the evidence. (See also *id*. at (j)(1) [specifying additional findings to disapprove an HAA-protected project].) The City did no such thing here.

B. The City's Actions Constitute a "Disapproval" Within the Meaning of the HAA

The City contends that it did not "disapprove" the project because it opted to "return" the application. (City MJOP, p. 12, lines 17-18; p. 13, lines 9-10.) Tellingly, the City cites no statutory or decisional authority that "returning" an application—which would have the same practical effect as a disapproval—is a permissible option. And there is none.

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While the HAA does not specifically state that a "return" of an application constitutes an unlawful "disapproval," the statute is worded broadly to include the specific practices listed in the HAA *in addition* to other practices not listed. (§ 65589.5(h)(6) ["'Disapprove the housing development project' *includes* any instance in which a local agency does any of the following," emphasis added].) The City's argument that that list is exclusive and comprehensive stands to undermine the protections of the HAA. The Legislature could not have been expected to anticipate *every* practice a local agency could invent that has the substantive effect of denying a housing project. And the City's interpretation of this provision impermissibly limits the scope of the HAA's protections, which must be read to promote the production of housing. (Gov. Code, § 65589.5(a)(2).)

Finally, the Attorney General notes that, effective January 1, 2025, which precedes the date of this hearing, the HAA's definition of "disapproval" includes SB 330 violations. (Gov. Code, § 65589.5, subd. (h)(6)(H), as amended by Stats. 2024, ch. 268, § 2.) Specifically, the HAA forbids local agencies to disapprove a housing development project by asserting that "the applicant has otherwise lost its vested rights under the preliminary application for any reason other than those described in subdivisions (c) and (d) of Section 65941.1." (*Ibid*.) Though the City's conduct precedes the effective date of this law, the City's continuing refusal to even process a completeness review of Shelby's preliminary application may implicate the prospective application of the amended HAA.

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CONCLUSION

The HAA and SB 330 were enacted and amended to provide current and future Californians a fighting chance amidst a housing shortage of epic proportions. The City's "return" of Shelby's SB 330 preliminary application undermines that goal. For these laws to work, courts—particularly at the local trial court level—must compel cities like Goleta to follow the law. The Attorney General respectfully requests that this Court do so, and grant Shelby's Motion for Judgment in its entirety.

Dated: December 20, 2024

Respectfully submitted,

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DECLARATION OF SERVICE BY E-MAIL

Case Name: **Shelby Family Partnership LP v. City of Goleta et al.**

Case No.: **24CV00548**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230.

On December 20, 2024, I served the attached **BRIEF OF AMICUS CURIAE THE STATE OF CALIFORNIA EX REL. ATTORNEY GENERAL IN SUPPORT OF PETITIONER'S MOTION FOR JUDGMENT** by transmitting a true copy via electronic mail, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on December 20, 2024, at Los Angeles, California.

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Declarant

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Signature

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