CIVIL LAW AND MOTION CALENDAR
2/26/25
10 am

***Shelby Family Partnership, L.P., v. City of Goleta, et al.* #** 24CV00548

HEARING

(1) Petitioner's Motion for Judgment on Writ of Mandate (Partial)

(2) Respondents' Motion for Judgment on the Pleadings

ATTORNEYS

For Petitioner and Plaintiff Shelby Family Partnership, L.P.: Beth A. Collins, Matthew L. Hofer, Mackenzie W. Carlson, Brownstein Hyatt Farber Schreck, LLP

For Respondents and Defendants City of Goleta and City of Goleta Council: Isaac M. Rosen, Alexander M. Brand, Chloe Graham, Best Best & Krieger LLP

For Amicus Curiae State of California ex rel. Attorney General: Rob Bonta, Daniel A. Olivas, David Pai, Thomas P. Kinzinger, Office of the California Attorney General

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RULING

(1) For the reasons and to the extent set forth herein, the motion of petitioner Shelby Family Partnership, L.P., for judgment on its first and second causes of action for issuance of a writ of mandate is granted. The court will issue a writ of mandate as and when appropriate.
(2) For the reasons set forth herein, the motion of respondent and defendants City of Goleta and City of Goleta Council for judgment on the pleadings is denied in its entirety.

Background

(1) Project Submission

This proceeding involves a development project (the Shelby Project) on real property located at 7400 Cathedral Oaks Road in Goleta (the Property). (Administrative

Record, vol. 1, at p. 20 [1 AR 20].) (Note: The parties use different methods of citing to the administrative record. Herein, citations to the administrative record are as follows: [volume] AR [page number of the pdf document of that volume of the administrative record]. Citation to an electronic administrative record by the parties should not require the court to search an index to determine which volume (i.e., pdf document) of a multi-volume record contains the cited material nor require the court to go to a page number different from the page number of the pdf document. (See Cal. Rules of Court, rules 2.109, 3.1110(c) [documents must be consecutively paginated starting on the first page].)) The Property is surrounded by the Glen Annie Golf Course to the north and east, El Encanto Creek and Northgate Drive condominiums to the west, and Cathedral Oaks Road and single family residential development to the south. (First Amended Petition [FAP], ¶ 53; Answer, ¶ 53.) Petitioner Shelby Family Partnership, L.P. (Shelby LP or Petitioner) is the owner of the Property. (FAP, ¶ 1; 1 AR 114.)

As of 2005, the Property was within the AG-II-40 zone district. (1 AR 114.) In 2005, Shelby LP submitted applications for a General Plan Amendment (05-154-GPA), a rezone (05-154-RZ), a Zoning Ordinance Text Amendment (05-154-OA), a Vesting Tentative Map (VTM) (05-154-VTM), a Development Plan (05-154-DP), and a Development Agreement (05-153-DA) (collectively, Entitlements) to return the Property to its prior General Plan and zoning designations for residential development. (FAP, ¶ 54; Answer, ¶ 54.) The applications for the Entitlements (individually or collectively, the 2011 Application) were determined to be complete by respondent City of Goleta (City) on or before March 10, 2011, after refinements to the Shelby Residential Project applications were submitted on February 1, 2011. (*Ibid.*)

In 2012, City voters approved Measure G (i.e., the Agricultural Land Protection Initiative) that, among other things, established a voter-approval requirement for changing Agricultural General Plan land use designations or zoning for parcels larger than ten acres until December 31, 2032, absent certain findings. (FAP, ¶ 55; Answer, ¶ 55.) The City Council recently approved adding a measure on the November 5, 2024, ballot to extend Measure G to 2052. (*Ibid.*)

In 2013, City's then-City Attorney, Tim W. Giles, provided a memorandum to the Goleta City Council which provided an opinion that "The Goleta Agricultural Land Protection Initiative does not apply to the Shelby project because the rules for processing the Shelby project vested, or became fixed, under the Subdivision Map Act upon completion of the application in 2011, prior to the initiative being proposed in 2012. This fact was disclosed as part of the Impact Report prepared by the City Attorney at the request of the City Council, prior to the election, to help voters understand the impacts of the proposed initiative." (FAP, ¶ 56 & exhibit D; Answer, ¶ 56.)

In 2016, Shelby LP put processing of the Entitlements on hold with the City in response to the Goleta Water District enacting a moratorium on new or additional water service connections. (FAP, ¶ 58; Answer, ¶ 58.) In early 2023, the Goleta Water District indicated the intent to rescind the moratorium on new or additional water service connections, and its Board of Directors officially rescinded the moratorium on December 12, 2023. (FAP, ¶ 59; Answer, ¶ 59.)

On March 16, 2023, Shelby LP submitted an "SB 330 Preliminary Application" (the March 2023 Application). (FAP, ¶ 62; Answer, ¶ 62.) Shelby LP characterizes this application as a preliminary application revising the development plan for the Shelby Project to include at least 13 units affordable to lower-income households and not proposing any changes to the Vesting Tentative Tract Map (VTTM). (Motion, at p. 10; 1 AR 196-252.)

On March 21, 2023, the City Attorney sent a letter to Shelby LP's counsel asserting, among other things, that the March 2023 Application was not a project subject to SB 330 or the Builder's Remedy. (1 AR 298-305.) At this time, the City's Housing Element remained substantially out of compliance with State Housing Element Law. (14 AR 20-24.)

On November 29, 2023, Shelby LP filed its second "SB 330 Preliminary Application" (SPA). (1 AR 310-380; 2 AR 20; FAP, ¶ 69; Answer, ¶ 69.)

On December 5, 2023, City staff sent a series of emails stating that the SPA was returned and the check for the fees had been placed in the mail. (FAP, ¶ 70; Answer, ¶ 70.) On December 21, 2023, the City Planning & Environmental Review Director Peter Imhof rejected Shelby LP's appeal. (FAP, ¶ 75; Answer, ¶ 75.)

(2) Procedural History

On January 30, 2024, Shelby LP filed its original petition and complaint asserting seven causes of action: (1) traditional writ of mandate—violation of SB 330 preliminary application law (Gov. Code, § 65941.1); (2) administrative writ of mandate—violation of Housing Accountability Act (Gov. Code, § 65589.5); (3) administrative writ of mandate—violation of Housing Accountability Act (Gov. Code, §§ 65589.5, subd. (*o*), 66474.2); (4) administrative writ of mandate—violation of Housing Accountability Act (Gov. Code, §§ 65589.5, subd. (*o*); (5) traditional writ of mandate—violation of State Housing Element Law (Gov. Code, §§ 65580 et seq., 8899.50); (6) injunctive relief (Code Civ. Proc., §§ 525, 526); and (7) declaratory relief.

On June 26, 2024, with City's demurrer to the original petition and complaint pending, Shelby LP filed its FAP asserting six causes of action: (1) traditional writ of mandate—violation of SB 330 preliminary application law (Gov. Code, § 65941.1);

(2) administrative writ of mandate—violation of Housing Accountability Act (Gov. Code, § 65589.5); (3) administrative writ of mandate—violation of Housing Accountability Act (Gov. Code, §§ 65589.5, subd. (*o*), 66474.2); (4) administrative writ of mandate—violation of Housing Accountability Act (Gov. Code, §§ 65589.5, subd. (*o*); (5) traditional writ of mandate—violation of State Housing Element Law (Gov. Code, §§ 65580 et seq., 8899.50); and (6) declaratory relief.

On August 29, 2024, respondents filed their answer to the FAP, admitting and denying allegations thereof and asserting 15 affirmative defenses.

On September 12, 2024, Shelby LP filed its motion for judgment on the first and second causes of action of the FAP.

On October 7, 2024, respondents filed their motion for judgment on the pleadings as to each cause of action of the FAP. Also on October 7, Shelby LP requested, and the court entered, dismissal as to the third and fourth causes of action of the FAP. All motions are opposed by the respective responding parties.

On December 20, 2024, with leave of court, the California Attorney General filed an amicus brief supporting Shelby LP. On January 10, 2025, the respondents filed opposition to the amicus brief.

The court held a hearing on this matter on January 15, 2025. At that hearing the court adopted its tentative in which the court determined that Shelby LP is entitled to issuance of a writ of mandate under its first cause of action to compel the City to accept the SPA and to process the SPA as discussed therein. The court also determined that City's motion for judgment on the pleadings would be denied as to the first cause of action for the same reason. The court observed that the consequences of these determinations were not clear as to the remaining matters before the court. The court requested further briefing, which the parties timely provided.

Analysis

(I) Previous Determinations Restated

For completeness and convenience, this section I repeats the court's analysis and determinations adopted at the January 15, 2025, hearing.

(1) Petitioner's Motion for Judgment

(A) Procedural Matters

Respondents first argue in their opposition that this motion is procedurally improper because respondents have answered the FAP and denied, i.e., disputed factual assertions in the FAP, relying upon Code of Civil Procedure section 1094.

"If a petition for a writ of mandate filed pursuant to Section 1088.5 presents no triable issue of fact or is based solely on an administrative record, the matter may be determined by the court by noticed motion of any party for a judgment on the peremptory writ." (Code Civ. Proc., § 1094.)

In this case, the petition is based on the administrative record and, where appropriate, upon judicially noticed materials. The matter may therefore be determined upon motion. The motion is therefore not inappropriate on that basis. The court has, by its scheduling orders, permitted this motion for judgment as to the first and second causes of action, effectively bifurcating trial on the merits as to these causes of action.

In support of the motion for judgment, Shelby LP requests that the court take judicial notice of: (Petitioner's Requests for Judicial Notice [PRJN], exhibit A) a memorandum dated January 15, 2013, authored by City Attorney Tim W. Giles and directed to the Goleta City Council; (exhibit B) a letter dated February 16, 2023, from Shannan West, Housing Accountability Unit Chief with the California Department of Housing and Community Development, Division of Housing Policy Development, to Jennifer Armer, Planning Manager for the Town of Los Gatos; (exhibit C) a letter dated July 23, 2024, from Shannan West, Housing Accountability Unit Chief with the California Department of Housing and Community Development, Division of Housing Policy Development, to Sharon Goei, Community Development Director for the City of Gilroy; (exhibit D) an email exchange, dated between May 18, 2023, and May 25, 2023, between John Buettner, Housing Accountability Manager for the California Department of Housing and Community Development, Housing Policy Division, staff and attorneys representing the City of Goleta, and counsel for Shelby LP; (exhibit E) an email exchange, dated between January 5, 2024, and January 29, 2024, between Grace Wu, Senior Housing Policy Specialist with the California Department of Housing and Community Development, Housing Policy Development Division, Housing Accountability Unit, and counsel for Shelby LP; (exhibit F) an email exchange, dated between April 3, 2023, and May 17, 2023, between various officials and staff from the California Department of Housing and Community Development and counsel for Shelby LP; (exhibit G) emails sent by staff at the City of Goleta to Shelby LP's counsel on December 5, 2023, without attachments.

The court grants these unopposed requests for judicial notice. Judicial notice does not extend to the truth of facts set forth in judicially noticed documents. (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117.)

(B) First Cause of Action for Traditional Mandamus

(i) Standards of Review

The first cause of action is for traditional writ of mandate under Code of Civil Procedure section 1085. "A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person." (Code Civ. Proc., § 1085, subd. (a).)

" '[A] court may issue a writ of mandate to compel a public agency or officer to perform a mandatory duty. [Citation.] "This type of writ petition 'seeks to enforce a mandatory and ministerial duty to act on the part of an administrative agency or its officers.' " ' [Citation.] To obtain relief on this basis, the petitioner must establish the existence of a public officer's or a public entity's 'clear, present, and ministerial duty where the petitioner has a beneficial right to performance of that duty.' [Citations.] Under this theory, '[m]andamus may issue ... to compel an official both to exercise his discretion (if he is required to do so) and to exercise it under a proper interpretation of the applicable law.' [Citation.] However, ' " '[t]he writ will not lie to control discretion conferred upon a public officer or agency.' " ' [Citation.]" (*Alameda Health System v. Alameda County Employees' Retirement Assn.* (2024) 100 Cal.App.5th 1159, 1177.)

Here, Shelby LP seeks to compel City to accept its SPA as complete as of the date of its submission and payment of the applicable fee, and thereby to process the SPA according to applicable law. Shelby LP argues that the City is limited to determining completeness of the application to accept or to reject it and that the City has a ministerial duty to accept the application.

City argues that former Government Code section 65941.1 (see below re "former") does not require the City to accept and process the SPA as an amended application because preliminary applications "are only for new development projects." (Opposition, at p. 7.)

(ii) Submission

Former section 65941.1, subdivision (a) provides:

"An applicant for a housing development project, as defined in paragraph (3) of subdivision (b) of Section 65905.5, 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:

“(1) The specific location, including parcel numbers, a legal description, and site address, if applicable.

“(2) The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.

“(3) A site plan showing the location on the property, elevations showing design, color, and material, and the massing, height, and approximate square footage, of each building that is to be occupied.

“(4) The proposed land uses by number of units and square feet of residential and nonresidential development using the categories in the applicable zoning ordinance.

“(5) The proposed number of parking spaces.

“(6) Any proposed point sources of air or water pollutants.

“(7) Any species of special concern known to occur on the property.

“(8) Whether a portion of the property is located within any of the following:

“(A) A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178.

“(B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

“(C) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45 of the Health and Safety Code.

“(D) A special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency.

“(E) A delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

“(F) A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code.

“(9) Any historic or cultural resources known to exist on the property.

“(10) The number of proposed below market rate units and their affordability levels.

"(11) The number of bonus units and any incentives, concessions, waivers, or parking reductions requested pursuant to Section 65915.

"(12) Whether any approvals under the Subdivision Map Act, including, but not limited to, a parcel map, a tentative map, or a condominium map, are being requested.

"(13) The applicant's contact information and, if the applicant does not own the property, consent from the property owner to submit the application.

"(14) For a housing development project proposed to be located within the coastal zone, whether any portion of the property contains any of the following:

"(A) Wetlands, as defined in subdivision (b) of Section 13577 of Title 14 of the California Code of Regulations.

"(B) Environmentally sensitive habitat areas, as defined in Section 30240 of the Public Resources Code.

"(C) A tsunami run-up zone.

"(D) Use of the site for public access to or along the coast.

"(15) The number of existing residential units on the project site that will be demolished and whether each existing unit is occupied or unoccupied.

"(16) A site map showing a stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code and an aerial site photograph showing existing site conditions of environmental site features that would be subject to regulations by a public agency, including creeks and wetlands.

"(17) The location of any recorded public easement, such as easements for storm drains, water lines, and other public rights of way." (Gov. Code, § 65941.1, subd. (a).)

(Note: At the time the SPA was submitted, a slightly different version of section 65941.1 was effective. (Stats. 2021, ch. 161, § 6.) This earlier version was amended in 2022, effective January 1, 2024, (Stats. 2022, ch. 258, § 27) and again in 2024, effective January 1, 2025 (Stats. 2024, ch. 358, § 2). The revisions do not substantively affect the arguments of the parties but, in some cases, the relevant subdivisions have been re-lettered. The parties' papers were filed prior to the effective date of the most recent amendment and reflect the former version of section 65941.1. All further statutory references herein to the Government Code, current or former, are to the version in effect in November 2023.)

As noted above, former section 65941.1 applies to a "housing development project" as defined in section 65905.5, subdivision (b)(3):

"(A) 'Housing development project' has the same meaning as defined in paragraph (2) of subdivision (h) of Section 65589.5.

"(B) 'Housing development project' includes, but is not limited to, projects that involve no discretionary approvals and projects that involve both discretionary and nondiscretionary approvals.

"(C) 'Housing development project' includes a proposal to construct a single dwelling unit. This subparagraph shall not affect the interpretation of the scope of paragraph (2) of subdivision (h) of Section 65589.5." (Gov. Code, § 65905.5, subd. (b)(3).)

Section 65905.5, subdivision (b)(3)(A), in turn looks to the definition in former section 65589.5, subdivision (h)(2):

" 'Housing development project' means a use consisting of any of the following:

'(A) Residential units only.

"(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

'(C) Transitional housing or supportive housing." (Former Gov. Code, § 65589.5, subd. (h)(2).)

Starting at former section 65589.5, subdivision (h)(2), "housing development project" is defined as a use of land for housing purposes. This definition does not exclude prior proposed or partially completed projects. The fact, therefore, that Shelby LP had a prior development project pending with the City for the same real property, i.e., the 2011 Applications, does not exclude the SPA from the definition of "housing development project." Accordingly, there is persuasive and substantial evidence presented that the Shelby Project as reflected in the SPA is a "housing development project" within the meaning of Government Code former section 65589.5, subdivision (h)(2)(A), section 65905.5, subdivision (b)(3)(A), and former section 65941.1, subdivision (a). (E.g., 1 AR 310-313, 332-339.) Shelby LP, as the party applying for development is for the same reason also an "applicant for a housing development project."

Moreover, Shelby LP has shown, and City has not disputed, that Shelby LP has provided the information about the proposed project to the City as required by former section 65941.1, subdivision (a)(1) through (17). (E.g., 1 AR 332-339.) There is also evidence presented that Shelby LP made the payment required for the SPA as an application. (2 AR 32.)

Shelby LP has provided all of the information and payment required by former section 65941.1, subdivision (a) so that under the plain meaning of the statute the "applicant for a housing development project … shall be deemed to have submitted a preliminary application …." Thus, under former section 65941.1 the SPA is deemed submitted to the City. Because the SPA is deemed submitted to the City, it is correspondingly then received by the City under section 65943:

"Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the

determination to the applicant for the development project. If the application is determined to be incomplete, the lead agency shall provide the applicant with an exhaustive list of items that were not complete. That list shall be limited to those items actually required on the lead agency's submittal requirement checklist. In any subsequent review of the application determined to be incomplete, the local 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. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. 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. If the application is determined not to be complete, the agency's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description." (Gov. Code, § 65943, subd. (a).)

The determination of completeness under section 65943, subdivision (a) is qualified and extended by former section 65941.1, subdivision (d):

"(1) Within 180 calendar days after submitting a preliminary application with all of the information required by subdivision (a) to a city, county, or city and county, the development proponent shall submit an application for a development project that includes all of the information required to process the development application consistent with Sections 65940, 65941, and 65941.5.
"(2) If the public agency determines that the application for the development project is not complete pursuant to Section 65943, the development proponent shall submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information. If the development proponent does not submit this information within the 90-day period, then the preliminary application shall expire and have no further force or effect.
"(3) This 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." (Former Gov. Code, § 65941.1, subd. (d).)

Former section 65941.1, subdivision (d)(3)'s use of the term "section" rather than "subdivision" as in subdivision (d)(1) indicates that subdivision (d)(3) is not limited to subdivision (d). (See Gov. Code, § 10.) Hence, the City is not required to make an affirmative determination regarding the completeness of the SPA to comply with section 65941.1. As this discussion demonstrates, there is a certain tension between section 65943 and former section 65941.1. Section 65943 requires the City to

determine in writing whether the application is complete; former section 65941.1 does not require an affirmative determination of completeness. This tension is resolved by noting the provisions that deem a preliminary application to be complete without affirmative determination by the City:

"If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter." (Gov. Code, § 65943, subd. (a).)

Thus, if a City fails to make an affirmative determination of completeness, and correspondingly fails to make an affirmative determination of incompleteness, then the law makes the determination by deeming the application complete. "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).) Here, a written determination of incompleteness was not made within 30 days after receipt and the application is an application for a development permit. The SPA is thus, by operation of law, a complete submitted preliminary application.

(iii) Processing the Application

As the above discussion concludes, the SPA was, by operation of law, deemed submitted and received by the City, and then deemed complete. Further action by the City up to this point in the analysis is neither required nor needed. How the application must now be processed is a core dispute between the parties. The City is not free to ignore a complete preliminary application for a housing development project. The City must act upon it. As discussed above, the City acted upon the SPA by rejecting it on the improper ground that a preliminary application cannot be made where a prior development application exists for the property. The City has a ministerial duty to process the SPA which may be compelled by writ of mandate.

What that means in this context, however, is not immediately obvious. The principle that creates the fundamental dispute between the parties is set forth in the Housing Accountability Act (HAA):

"Subject to paragraphs (2), (6), and (7), and subdivision (d) of Section 65941.1, a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application including all of the information required by subdivision (a) of Section 65941.1 was submitted." (Gov. Code, § 65589.5, subd. (*o*)(1).)

“For purposes of this subdivision, ‘ordinances, policies, and standards’ includes general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency, as defined in Section 66000, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions.” (Gov. Code, § 65589.5, subd. (*o*)(4).)

Shelby LP argues that the “ordinances, policies, and standards” in effect at the time of the submission of the SPA include those matters vested as a result of the 2011 Applications. The City argues that Shelby LP’s approach improperly retroactively applies the HAA to the 2011 Application, that is, allows for retroactive vesting.

It is useful to consider the situation involving vesting tentative tract maps under the Subdivision Map Act (Gov. Code, § 66410 et seq.):

“The Subdivision Map Act (Act) permits a subdivider to file a ‘vesting tentative map’ whenever the Act requires a tentative map. This procedure is intended to provide greater statutory protection to subdividers than was afforded under the common law vested rights doctrine. [Citations.]

“The intent of the Legislature in enacting the vesting tentative map statute (Gov. Code, §§ 66498.1–66498.9) is spelled out in Government Code section 66498.9: ‘By the enactment of this article, the Legislature intends to accomplish all of the following objectives: [¶] (a) To establish a procedure for the approval of tentative maps that will provide certain statutorily vested rights to a subdivider. [¶] (b) To insure that local requirements governing the development of a proposed subdivision are established in accordance with Section 66498.1 when a local agency approves or conditionally approves a vesting tentative map. The private sector should be able to rely upon an approved vesting tentative map prior to expending resources and incurring liabilities without the risk of having the project frustrated by subsequent action by the approving local agency....’

“Government Code sections 66498.1–66498.9 were enacted in response to the erosion of the common law doctrine of vested rights. [Citations.] The Legislature enacted these provisions to freeze in place those ‘ordinances, policies and standards in effect’ at the time the vesting tentative map application is deemed complete. [Citation.] These provisions enable the private sector to rely on vesting maps to plan and budget development projects. [Citation.] ‘The vesting tentative map statute now offers developers a degree of assurance, not previously available, against changes in regulations.’ [Citations.]” (*Bright Development v. City of Tracy* (1993) 20 Cal.App.4th 783, 792–793 (*Bright Development*).)

The vesting tentative tract map statute includes language that is parallel to that in the HAA:

"When a local agency approves or conditionally approves a vesting tentative map, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards described in Section 66474.2." (Gov. Code, § 66498.1, subd. (b).) "Except as otherwise provided in subdivision (b) or (c), in determining whether to approve or disapprove an application for a tentative map, the local agency shall apply only those ordinances, policies, and standards in effect at the date the local agency has determined that the application is complete pursuant to Section 65943 of the Government Code." (Gov. Code, § 66474.2, subd. (a).)

With the use of nearly identical language found in section 65589.5, subdivision (*o*)(1), there is a strong reason to believe that the purpose behind the application of only those ordinances, policies, and standards in effect at the time of completion expressed in section 66474.2 and explained in *Bright Development* is the same purpose behind section 65589.5.

The case of *North Murrieta Community, LLC v. City of Murrieta* (2020) 50 Cal.App.5th 31 (*Murrieta*), which was not cited by any party, is instructive. In *Murrieta*, the plaintiff was a developer of a project within the defendant city. (*Id*. at p. 34.) In July 1999, the plaintiff developer obtained approval for a vesting tentative map on the part of the project property. (*Ibid*.) The map locked in place fees the defendant city could charge the developer until the vesting tentative map expired two years later. (*Ibid*.) In March 2001, four months before the map would expire, the plaintiff developer and the defendant city entered into a development agreement covering the entire project property. (*Ibid*.) The development agreement extended the term of the vesting tentative map for 15 years and also locked in place regulations and fees on the project for the same time. (*Ibid*.) The development agreement explicitly allowed the defendant city to impose new mitigation fees to address the effects of development not fully mitigated by fees or exactions at the time of the development agreement. (*Id*. at p. 35.) The defendant city subsequently imposed new fees, which the plaintiff developer protested. (*Ibid*.)

In the trial court in *Murrieta*, the plaintiff developer sought a writ of mandate to return the fees and sought judicial declarations that the defendant city could not impose those fees under the development agreement until it expired. (*Murrieta*, *supra*, 50 Cal.App.5th at p. 35.) The trial court determined that the defendant city was permitted to impose the fees. (*Ibid*.) The plaintiff developer appealed. (*Ibid*.)

On appeal in *Murrieta*, the court framed this issue to be decided as "whether a subsequent development agreement can alter the builder's vested rights under the vesting tentative map." (*Murrieta*, *supra*, 50 Cal.App.5th at p. 35.) After explaining the common purpose of vesting tentative maps and development agreements, the court noted:

“Thus, obtaining either a vesting tentative map or entering a development agreement allows a builder to rely on the regulations, conditions, and fees that exist at the planning stage when assessing the economics of completing a development that may take years or even decades to complete. ‘The purpose of [a] vesting tentative map and [a] development agreement is to allow a developer who needs additional discretionary approvals to complete a long-term development project as approved, regardless of any intervening changes in local regulations.’ [Citations.]” (*Murrieta*, *supra*, 50 Cal.App.5th at p. 41.)

The *Murrieta* court observed:

“A vesting tentative map does not freeze regulations and fees indefinitely. The tentative map statute, which applies to vesting tentative maps, provides all tentative maps expire 24 months after their initial approval, though that period may be extended by ordinance up to 12 months. [Citation.] Here, the [defendant city] approved [plaintiff developer’s] vesting tentative map on July 28, 1999. That means the map—and [the plaintiff developer’s] rights—were set to expire on July 28, 2001. [Citation.] [¶] As it happens, the [defendant city] and [plaintiff developer] came to an agreement to extend the term of the vesting tentative map by nearly 15 years. They accomplished this by entering the development agreement. The Legislature specifically allowed ‘a tentative map on property subject to a development agreement ... may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement.’ [Citation.] So, in March 2001, when [the plaintiff developer] was four months away from losing all the rights the vesting tentative map had conferred, they negotiated an extension of those rights with the [defendant city] as part of the development agreement concerning the entire [project].” (*Murrieta*, *supra*, 50 Cal.App.5th at p. 42.)

“However, the terms of the development agreement make clear the [defendant city] did not agree to extend all the rights conveyed by the vesting tentative map. [The plaintiff developer] made concessions. For one, the parties agreed the date on which the [the defendant city] would be barred from imposing new fees and conditions was March 5, 2001, the effective date of the agreement, not the date the vesting tentative map was approved.” (*Murrieta*, *supra*, 50 Cal.App.5th at p. 42, italics omitted.) The plaintiff developer “also agreed to allow the [defendant city] to impose new mitigation fees under certain conditions.” (*Ibid*.)

The *Murrieta* court rejected the argument that the vesting tentative map provides a separate source of rights that was unaffected by the development agreement. (*Murrieta*, *supra*, 50 Cal.App.5th at p. 44.) “[A]ltering the protections of the vesting tentative map was an explicit and critical part of the agreement. Some provisions benefited the developer. They obtained the [defendant city’s] agreement to limit for a period of 15 years their ability to impose new regulations, conditions, and fees not

provided for by the agreement. But some provisions benefited the [defendant city]. Most importantly, the provision giving it discretion to increase mitigation fees so long as they were generally applicable and aimed at mitigation not already provided for. [the plaintiff developer] can't claim the benefit of the provisions that benefit them but disclaim the provisions that don't." (*Ibid*.)

The *Murrieta* court thus concluded that the development agreement gave the defendant city the authority to impose new, generally applicable mitigation fees. (*Id*. at p. 45.)

Underlying the decision in *Murrieta* is that the rights attendant to vesting tentative tract maps are separate rights from rights under a development agreement so that rights in vesting tentative tract maps, like other property rights, may be compromised or conditioned by later contract—which give rise to separate contract rights. As *Murrieta* points out, had there been no development agreement in *Murrieta*, the vesting tentative tract map rights would have been resolved according to the statutory law and expired. But this point also demonstrates that the development agreement is a separate source of rights, duties, and conditions.

In construing section 65589.5, subdivision (*o*)(1), it is also important to consider the rules of construction provided in the HAA:

"It is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." (Gov. Code, § 65589.5, subd. (a)(2)(L).)

"This subdivision [(*o*)] shall not be construed in a manner that would lessen the restrictions imposed on a local agency, or lessen the protections afforded to a housing development project, that are established by any other law, including any other part of this section." (Gov. Code, § 65589.5, subd. (*o*)(5).)

Putting together these concepts, the Entitlements acquired under the 2011 Application were, at the time of the completeness of the SPA, rights vested in Shelby LP. Following the reasoning in *Murietta*, the amendments made to the Shelby Project by the SPA would affect the legal status of the Entitlements only to the extent that such amendments would have affected the legal status of the Entitlements without consideration of the HAA. This is so because the "ordinances, policies, and standards" at the time of the completeness of the SPA would include legal rules of how entitlements under other law would be altered by substantive amendment. To the extent that such amendments do not modify or extinguish an Entitlement by operation of law, the legal rights not so affected are part and parcel of the SPA.

An alternative interpretation of subdivision (*o*)(1) would run counter to the interpretive rule of subdivision (*o*)(5) by lessening the protections afforded to Shelby LP for the Shelby Project established by other law. An alternative interpretation would also run counter to the policy established in subdivision (a)(2)(L) to give weight to the approval and provision of housing by forcing Shelby LP either to lose the benefits of the HAA by moving forward with the earlier version of the Shelby Project with its Entitlements or to lose the benefits of its Entitlements by moving forward with the SPA as if it were a wholly new project. The clear legislative intent of the HAA is to promote housing by providing additional opportunities for approval based upon the status quo ante of rights and conditions.

In this way, the HAA is not "retroactively" vesting anything. "Generally, a law has retroactive effect when it functions to change the legal consequences of a party's past conduct by imposing new or different liabilities based upon such conduct. [Citation.] [¶] '[T]he critical question for determining retroactivity usually is whether the last act or event necessary to trigger application of the statute occurred before or after the statute's effective date. [Citations.] A law is not retroactive "merely because some of the facts or conditions upon which its application depends came into existence prior to its enactment." [Citation.]' [Citation.]" (*Ventura County Deputy Sheriffs' Association v. County of Ventura* (2021) 61 Cal.App.5th 585, 591.)

Here, the most reasonable interpretation of the HAA is that it takes the rights and conditions of development projects as they are under other law and provides additional rights going forward. This is a prospective application of the HAA, not an improper retroactive application.

Shelby LP is therefore entitled to issuance of a writ of mandate under the first cause of action to compel the City to accept the SPA and to process the SPA as discussed herein.

(II) Matters Not Determined at January 15, 2025, Hearing

(1) Issuing a Writ of Mandate

In supplemental briefing, Shelby LP argues that the next step as to the first cause of action is "preparation and issuance of a writ of mandate compelling the City to accept and process the SPA in accordance with the Ruling and with applicable law." (Shelby LP Supp. Brief, at p. 4.) The City argues that the court's ruling is incorrect, but if the court sticks with its ruling, then the City agrees that the writ should require only that City accept and process the application. (City Supp. Response Brief, at p. 2.) Both parties agree that it is premature and inappropriate for the court to make any determinations now as to how the SPA should be processed.

This ruling therefore disposes of the first cause of action substantively. However, the court is not in a position to issue the writ at this time because other causes of action remain pending. "Under California procedure there is ordinarily only one final judgment in an action." (*Evans v. Dabney* (1951) 37 Cal.2d 758, 760.) The one final judgment rule applies where a complaint includes both a petition for writ of mandate and other claims. (*Griset v. Fair Political Practices Com'n* (2001) 25 Cal.4th 688, 697; *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743.) The issuance of the writ must therefore await determination of the remainder of Petitioner's action.

(2) Second Cause of Action for Administrative Mandate

The parties agree the second cause of action for administrative writ of mandate based upon a violation of the HAA is ripe for adjudication. The parties disagree as to whether the court's disposition of the first cause of action has any impact upon the disposition of the second cause of action. Accordingly, the court will address the merits of the second cause of action.

(A) Standards of Review

"Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury. (Code Civ. Proc., § 1094.5, subd. (a).)

"The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (Code Civ. Proc., § 1094.5, subd. (b).)

"Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record." (Code Civ. Proc., § 1094.5, subd. (c).)

"On ' "purely legal" ' questions, we exercise independent judgment and a decision 'must "be reversed if based on erroneous conclusions of law." ' [Citation.]" (*Family*

Health Centers of San Diego v. State Dept. of Health Care Services (2023) 15 Cal.5th 1, 10.) "The interpretation of a statute presents a question of law." (*MCI Communications Services, Inc. v. California Dept. of Tax & Fee Administration* (2018) 28 Cal.App.5th 635, 643.)

(B) "Disapproved"

In the second cause of action, Shelby LP asserts that the City "disapproved" the Project without making required findings under the HAA. The City argues that it did not "disapprove" the Project under statutory definitions and the status of the SPA. The resolution of this dispute depends upon the scope of the City's obligations under the HAA.

"A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, 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, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following: …." (Former Gov. Code, § 65589.5, subd. (d).)

" 'Disapprove the housing development project' includes any instance in which a local agency does any of the following:

"(A) 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.

"(B) Fails to comply with the time periods specified in subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

"(C) Fails to meet the time limits specified in Section 65913.3." (Former Gov. Code, § 65589.5, subd. (h)(6).)

Shelby LP argues that returning the SPA is effectively "disapproval" because by returning the SPA the City is necessarily refusing to act upon the SPA. The City argues that returning an amendment to an existing application is different from disapproving a project under the definition of section 65589.5, subdivision (h)(6). To resolve this conflict, it is first necessary to examine what is the "project" in the definition. The analysis of the first cause of action is helpful here. As discussed above, the court concludes that the "project" is the Shelby Project as modified in the SPA. Consequently, any disapproval of the SPA is a disapproval of a "project." The record thus supports, and the court finds, that the Shelby Project as modified in the

SPA is a “housing development project … for very low, low-, or moderate-income households ….”

“Our primary task is to ‘determine and effectuate legislative intent’ by looking to the statute’s language. [Citation.] ‘ “ ‘ “As in any case involving statutory interpretation, our fundamental task here is to determine the Legislature’s intent so as to effectuate the law’s purpose. [Citation.] We begin by examining the statute’s words, giving them a plain and commonsense meaning.” ’ ” ’ [Citation.] ‘ “[W]e look to ‘the entire substance of the statute ... in order to determine the scope and purpose of the provision ... . [Citation.]’ [Citation.] That is, we construe the words in question ‘ “in context, keeping in mind the nature and obvious purpose of the statute ... .” [Citation.]’ [Citation.]” ’ [Citation.] Further, ‘ “when a statute contains a list or catalogue of items, a court should determine the meaning of each by reference to the others, giving preference to an interpretation that uniformly treats items similar in nature and scope.” [Citation.]’ [Citations.]” (*People v. Nieber* (2022) 82 Cal.App.5th 458, 470–471.)

The word “disapprove” means, among other things, “[t]o pass unfavorable judgment on (something); to reject.” (Black’s Law Dict. (12th ed. 2024); see also Webster’s 3d New Internat. Dict. (1986) [“to refuse approval to: decline to sanction: reject”].) The plain meaning of “disapprove” therefore starts with the concept of rejection. The statutory definition uses the word “includes” before its list of inclusions. “ ‘Includes’ is ‘ordinarily a term of enlargement rather than limitation.’ [Citation.] The ‘statutory definition of a thing as “including” certain things does not necessarily place thereon a meaning limited to the inclusions.’ [Citation.]” (*Flanagan v. Flanagan* (2002) 27 Cal.4th 766, 774.)

The conduct of City clearly is one of rejection of the SPA. The City specifically identifies that it is returning the SPA, including returning the payment for the SPA. (2 AR 130.) The City clearly states the reason for the return is the proposition, rejected by this court for the reasons stated above, that “SB 330 preliminary applications cannot modify or amend existing applications ….” (*Ibid.*) This constitutes a clear statement from the City that it is finally rejecting, and will not further process, the SPA as the modified Shelby Project.

It is noteworthy that the statutorily defined term is “disapprove the housing development project” and not merely “disapprove.” Not all returns of proposed amendment paperwork would or should constitute a disapproval of “the … project.” When viewing the three items “included” within the statutory definition of “disapprove the housing development project,” each is based upon the failure of the City to proceed with the processing of the project as required by law, either by expressly rejecting the project by vote or by neglecting time obligations. The conduct of the City here falls within this statutory definition by demonstrating a clear intent

to conclude the processing of the project as proposed by Shelby LP and not merely a rejection of an incidental amendment.

There is no dispute that the City has not made findings required by section 65589.5, subdivision (d). Indeed, the City's position, consistent with its arguments explained in the context of the first cause of action, has been that no findings were required.

The court concludes that the record shows that the City has "disapproved the housing development project" by its return of the SPA without making required findings. Consistent with the disposition of the first cause of action and based upon a review of the entire record, the court finds that Shelby LP is entitled to issuance of a writ of mandate compelling the City to set aside its disapproval of the Shelby Project and to further process the Shelby Project in accordance with law and consistent with this ruling.

(C) Good or Bad Faith

The second cause of action raises the additional issue of bad faith. "The court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner …." (Gov. Code, § 65589.5, subd. (k)(1)(A)(ii).)

"Bad faith" is defined in the HAA: "For purposes of this section, 'bad faith' includes, but is not limited to, an action that is frivolous or otherwise entirely without merit." (Gov. Code, § 65589.5, subd. (*l*).) (Note: By referring to "section," this definition is expressly applicable to bad faith determinations beyond those cited in subdivision (*l*). (See Gov. Code, § 10.)) Under this standard, the court finds that the City's actions in rejecting the SPA were not in bad faith. The record is clear in showing that the City consistently took the legal position that vested rights under a prior application could not be relied upon in making an application that invoked recently enacted provisions of the HAA with different rights and obligations. The court disagrees with the City's conclusions for the reasons explained herein, but finds that the City's arguments are not frivolous or made in bad faith. The HAA is a complex statute that has been the subject of continual amendments to address an increasing complex housing problem. As this lengthy discussion perhaps demonstrates, how these statutory provisions fit together is not, and has not been, a simple or obvious matter.

The court will not therefore issue orders under section 65589.5, subdivision (k)(1)(A)(ii) based upon the conduct of City asserted by Shelby LP in this proceeding as in "bad faith."

(III) Motion for Judgment on the Pleadings

As noted previously, the City has made a motion for judgment on the pleadings as to each of the causes of action of the FAP.

"A party may move for judgment on the pleadings." (Code Civ. Proc., § 438, subd. (b)(1).) "The motion provided for in this section may only be made on one of the following grounds: [¶] … [¶]

"(B) If the moving party is a defendant, that either of the following conditions exist:

"(i) The court has no jurisdiction of the subject of the cause of action alleged in the complaint.

"(ii) The complaint does not state facts sufficient to constitute a cause of action against that defendant." (Code Civ. Proc., § 438, subd. (c)(1)(B).) "The motion provided for in this section may be made as to either of the following: [¶] (A) The entire complaint or cross-complaint or as to any of the causes of action stated therein." (Code Civ. Proc., § 438, subd. (c)(2)(A).)

"The grounds for motion provided for in this section shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. Where the motion is based on a matter of which the court may take judicial notice pursuant to Section 452 or 453 of the Evidence Code, the matter shall be specified in the notice of motion, or in the supporting points and authorities, except as the court may otherwise permit." (Code Civ. Proc., § 438, subd. (d).)

"A motion for judgment on the pleadings 'is equivalent to a demurrer ….' [Citation.]" (*Templo v. State* (2018) 24 Cal.App.5th 730, 735.)

Because the court has found in favor of Shelby LP and against the City on the merits of the first and second causes of action to the extent set forth above, the motion for judgment on the pleadings will be denied as to the first and second causes of action.

Shelby LP's sixth cause of action is for declaratory relief. The sixth cause of action includes requests for declarations that are encompassed within the subject matter of the first and second causes of action. As with a demurrer, a motion for judgment on the pleadings does not lie as to part of a cause of action. (See Code Civ. Proc., § 458, subd. (c)(1)(B)(ii); *Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1047.) The motion for judgment on the pleadings will be denied as to the sixth cause of action.

Shelby LP dismissed its third and fourth causes of action on October 7, 2024. The motion for judgment on the pleadings is therefore moot as to these causes of action.

Shelby LP's fifth cause of action is for traditional writ of mandate to find that the Housing Element adopted by the City on December 5, 2023, does not substantially comply with State law and to compel the City to adopt a revised Housing Element pursuant to Government Code section 65754. (FAP, prayer, ¶ 5.)

(1) Requests for Judicial Notice

In support of the motion for judgment on the pleadings, the City requests that the court take judicial notice of: (Respondent's Motion for Judgment on the Pleadings Request for Judicial Notice [RMJP RJN], exhibit 1) a copy of a communication from the Department of Housing and Community Development in response to Shelby LP's request for technical assistance; and (exhibit 2) the City's notice of certification of the administrative record in this matter. The request for judicial notice is granted as to exhibit 1. (See Evid. Code, § 452, subd. (c).) As to exhibit 2, the court grants the motion as to the filing and contents of the document entitled "Notice of Certification and Certification of the Administrative Record." (See Evid. Code, § 452, subd. (d)(1).) With respect to exhibit 1, exhibit 1 is merely a notice filed with the court and not a request for judicial notice as to the underlying administrative record. The court does not consider the underlying administrative record in determining this motion for judgment on the pleading. (See *Saint Francis Memorial Hospital v. State Department of Public Health* (2021) 59 Cal.App.5th 965, 974.)

In opposition to the motion for judgment on the pleadings, Shelby LP requests judicial notice of: (Petitioner's Response to Motion for Judgment on the Pleadings Requests for Judicial Notice [PMJP RJN], exhibit A) a letter dated February 16, 2023, from Shannan West, Housing Accountability Unit Chief with the California Department of Housing and Community Development, Division of Housing Policy Development, to Jennifer Armer, Planning Manager for the Town of Los Gatos; (exhibit B) a letter dated July 23, 2024, from Shannan West, Housing Accountability Unit Chief with the California Department of Housing and Community Development, Division of Housing Policy Development, to Sharon Goei, Community Development Director for the City of Gilroy; (exhibit C) an email exchange, dated between May 18, 2023, and May 25, 2023, between John Buettner, Housing Accountability Manager for the California Department of Housing and Community Development, Housing Policy Division, staff and attorneys representing the City of Goleta, and counsel for Shelby LP; (exhibit D) an email exchange, dated between January 5, 2024, and January 29, 2024, between Grace Wu, Senior Housing Policy Specialist with the California Department of Housing and Community Development, Housing Policy Development Division, Housing Accountability Unit, and counsel for Shelby LP; (exhibit E) an email exchange,

dated between April 3, 2023, and May 17, 2023, between various officials and staff from the California Department of Housing and Community Development and counsel for Shelby LP; (exhibit F) the request for dismissal of Shelby LP's third and fourth causes of action, filed in this action on October 7, 2024.

The court grants these unopposed requests for judicial notice. Judicial notice does not extend to the truth of facts set forth in judicially noticed documents. (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117.)

(2) Pleading Issues

The City argues that there is a rebuttable presumption of validity of the validity of the housing element once the California Department of Housing and Community Development (HCD) has found that the element substantially complies with the requirements of the HAA.

"In any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, both of the following shall apply, as applicable:

"(a) There shall be a rebuttable presumption of the validity of the element or amendment if, pursuant to Section 65585, the department has found that the element or amendment substantially complies with the requirements of this article.

"(b) There shall be a rebuttable presumption of the invalidity of the element or amendment if, pursuant to Section 65585, the department has found that the element or amendment does not substantially comply with the requirements of this article." (Gov. Code, § 65589.3.) (Note: Subdivision (b) and the related text making two subdivisions were added to section 65589.3 in 2024. (Stats. 2024, ch. 269, § 6.))

Citing the administrative record, the City argues that Shelby LP's allegations are insufficient to rebut the presumption in favor of validity the City's Housing Element.

"The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

"(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following: [¶] … [¶]

"(3) An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites, and an analysis of the relationship of the sites identified in the land inventory to the jurisdiction's duty to affirmatively further fair housing. [¶] … [¶]

"(5) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, local processing and permit procedures, and any locally adopted ordinances that directly impact the cost and supply of residential development. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7)." (Former Gov. Code, § 65583, subds. (a)(3), (5), added by Stats. 2022, ch. 654, § 1 [effective from Jan. 1, 2023, to March 24, 2024].)

Shelby LP alleges that the City's Housing Element fails to substantially comply with the requirements of subdivision (a)(3) and (5), among other things:

"Respondents' adopted Housing Element fails to substantially comply with State Housing Element Law because its site inventory is inadequate. … The inventory identified in Respondents' adopted Housing Element fails to satisfy the statutory requirements. For example, as discussed above, the site inventory relies on non-vacant parcels but fails to show these sites have 'realistic and demonstrated potential for redevelopment during the planning period' based on a methodology that factors in existing uses, past experiences with redevelopment, current market trends, and existing leases or contracts, among other things, as required by Government Code sections 65583(a)(3) and 65583.2(g)(1)." (FAP, § 125.)

"Respondents' adopted Housing Element also fails to contain sufficient analysis of potential and actual governmental constraints on housing. … As explained above, Respondents failed to analyze the governmental constraints on housing for the Housing Element's existing site inventory, and its candidate rezone sites, by relying on unproven, high-density, in-fill developments to meet Respondents' RHNA obligations despite no evidence that any such development is feasible. The Housing

Element also fails to accurately characterize local processing and permit procedures." (FAP, § 126.)

While under section 65589.3 a rebuttable evidentiary presumption arises where the preliminary fact exists that the HCD has made findings of substantial compliance, or not, an evidentiary presumption is only a matter of evidence. (Evid. Code, §§ 604, 606.) A party pleads ultimate facts, not evidentiary matter. (See, e.g., *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872 ["each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged"].) Here, Shelby LP has alleged that the City's adopted Housing Element is deficient and has made specific allegations as to the manner in which the Housing Element is deficient. In order to resolve the dispute, it will be necessary for the court to consider the entire administrative record applying the appropriate standard of review. A motion for judgment on the pleadings (or a demurrer) is not a substitute for the careful review necessary for a resolution of the merits.

The allegations are sufficient to state a cause of action for issuance of a writ of mandate. The fifth cause of action is therefore sufficient for pleading purposes and the motion for judgment on the pleadings will be denied. The court neither makes nor intends this ruling on the sufficiency of the pleadings to suggest any resolution on the merits of the cause of action.

Thomas. P. Anderle, Judge