California Department of Justice **Office of the Attorney General**	***Legal Alert***	
Subject: Consistent interpretation of the Builder's Remedy in *Cal. Housing Defense Fund, et al. v. City of La Cañada Flintridge* (Super. Ct. L.A. County, Mar. 4, 2024, No. 23STCP02614) and *Shelby Family Partnership, L.P. v. City of Goleta, et al.* (Super. Ct. S.B. County, Feb. 26, 2025, No. 24CV000548)	*No.* OAG 2025-03 *Date:* June 5, 2025	*Contact for information:* housing@doj.ca.gov

TO: All Cities, Counties, Local Agencies, and other interested parties

The purpose of this legal alert, issued by the California Attorney General's Office ("Attorney General"),[1] is to assist California local officials, such as county supervisors and councilmembers, planning directors, city attorneys, and county counsel, by highlighting recent amendments to the Housing Accountability Act, and two recent trial court decisions interpreting the Housing Accountability Act's provisions regarding the Builder's Remedy.

What is the Builder's Remedy, and How did Recent Legislation (AB 1886 and AB 1893) Amend it?

The "Builder's Remedy," now defined in Government Code section 65589.5, subdivision (h)(11) as part of the Housing Accountability Act ("HAA"), is a clear statutory consequence of the failure of a local government to timely adopt a housing element in substantial compliance with the Housing Element Law. The Builder's Remedy limits a local government's ability to reject projects that include certain affordable housing components even when they are inconsistent with the jurisdiction's zoning ordinance or general plan. The Builder's Remedy only applies when a local government either (1) fails to timely adopt a substantially compliant housing element, or (2) falls out of substantial compliance. (Gov. Code, § 65589.5, subds. (d)(5)-(6).) A Builder's Remedy application is one submitted during the time frame when a local government's housing element is not in substantial compliance with Housing Element Law. (*Ibid*.) The Legislature recently clarified that substantial compliance with Housing Element Law is determined only by either the Department of Housing and Community Development ("HCD") or by a court of competent jurisdiction. (See Assem. Bill No. 1886 (Alvarez, 2024), adding Gov. Code, §§ 65585.03 and 65589.55.)

The Legislature originally enacted the Housing Accountability Act in 1982, against the backdrop of California's longstanding housing crisis. Eight years later, the Builder's Remedy provisions were added to the HAA in 1990, when the Legislature amended its findings to emphasize that the lack of affordable housing is "a critical statewide problem," a crisis made more acute by the refusal of local governments to process valid housing

[1] Under the California Constitution, "it shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced." (Cal. Const., Art. V, § 13.)

project applications. (See Gov. Code, § 65589.5, subds. (a)(1)(D), (g).) Specifically, the Legislature sought to halt actions by local governments that attempt to "deny, reduce the density for, or render infeasible housing development projects." (Gov. Code, § 65589.5, subd. (a)(2)(K) ["The Legislature's intent in enacting this section . . . was 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"].)[2]

Assembly Bill Number 1893 (Wicks, 2024), effective January 1, 2025, amended the HAA, including the Builder's Remedy.[3] The amendments clarified the scope of the Builder's Remedy, and also allow those with existing Builder's Remedy applications, deemed complete before January 1, 2025, to vest their applications under pre-existing law or opt in to the new Builder's Remedy provisions. (Gov. Code, § 65589.5, subd. (f)(7).) The bill also amended the HAA to further define "disapproval" of housing development projects and provided objective standards for such projects, including density standards and project location requirements. (Gov. Code, § 65589.5, subds. (h)(6), (11).) Importantly, the HAA now specifically provides that a local government's refusal to process a Builder's Remedy application may result in a HAA violation. (Gov. Code, § 65589.5, subds. (h)(6)(E), (G).)

The HAA includes several other statutory consequences for local governments that fail to comply with state law, or undertake frivolous appeals in order to delay housing, including penalties for the failure to comply with a court order pursuant to Government Code section 65589.5, subdivision (k), and mandatory appeal bonds pursuant to Government Code section 65589.5, subdivision (m). In furtherance of the Legislature's intent for HAA to be "interpreted and implemented to afford the fullest possible weight to . . . the approval . . . of housing," it is imperative that all local governments consistently interpret the Builder's Remedy and timely process related applications.

The Court's Interpretation of the Builder's Remedy in *California Housing Defense Fund, et al. v. City of La Cañada Flintridge*

The State's involvement in *California Housing Defense Fund, et al. v. City of La Cañada Flintridge* (Super. Ct. L.A. County, Apr. 5, 2024, No. 23STCP02614) ("*CalHDF* case") flows from the City of La Cañada Flintridge's failure to adopt a housing element that substantially complied with the Housing Element Law by the October 15, 2021 statutory deadline. The City remained out of compliance until November 17, 2023, when HCD certified its housing element as substantially compliant with the Housing Element Law. During that two-year period of non-compliance, La Cañada Flintridge received a Builder's Remedy application from a developer, filed via submittal of a preliminary application under the Housing Crisis Act ("SB 330"), and unlawfully disapproved it. Non-profit housing organization California Housing Defense Fund ("CalHDF") filed suit following the disapproval.

The State intervened in the *CalHDF* case on December 20, 2023, petitioning the court for a writ of mandate requiring La Cañada Flintridge to process the developer's Builder's Remedy application in accordance with state law. On March 4, 2024, the superior court granted petitioner CalHDF's and the State's petitions for writ of mandate, holding that La Cañada Flintridge did not have a housing element in substantial compliance with state law at the time the developer submitted its preliminary Builder's

[2] For legislative history and prior codification of these findings, see Stats. 1990, c. 1439 (S.B. 2011).

[3] HCD will provide further technical assistance to local governments and local agency planning staff regarding the newly amended HAA.

Remedy application. A copy of the court's opinion in the *CalHDF* case is attached to this Legal Alert.

In ordering La Cañada Flintridge to process the application in accordance with state law, the court focused on three key points:

1. The Legislature has expressed its intent that the HAA "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); *Cal. Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 854);

2. Pursuant to the HAA, a Builder's Remedy application vests at the time of submission of a complete preliminary application; and

3. The refusal to process a timely Builder's Remedy application is a violation of the HAA.

Specifically, as to the first point, the court held that a "disapproval" of a Builder's Remedy application is broadly interpreted under the HAA. Accordingly, the court held that the City's denial of the developer's appeal of an incompleteness determination constituted a "disapproval" within the meaning of the HAA.

Secondly, the court held that:

> The HAA defines "deemed complete" to mean that "the applicant has submitted *a preliminary application* pursuant to Section 65941.1." (Gov. Code, § 65589.5, subd. (h)(5) [emphasis added].) Section 65589.5, subdivision (o)(1) states "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." Construing these statutory provisions, along with section 65589.5, subdivision (d), the court concludes a[n application submitted under the] Builder's Remedy "vests" if the local agency does not have a substantially compliant housing element at the time a complete preliminary application pursuant to section 65941.1 is submitted and "deemed complete."

Finally, the court concluded that the disapproval of the developer's Builder's Remedy application, and La Cañada Flintridge's refusal to process the application as a Builder's Remedy application, was a violation of the HAA.

La Cañada Flintridge appealed, and on February 28, 2025, the superior court ordered La Cañada Flintridge to either post an appeal bond of $14 million, pursuant to Government Code section 65589.5, subdivision (m), or dismiss its appeal. On March 4, 2025, La Cañada Flintridge dismissed its appeal.

The Court's Interpretation of the Builder's Remedy in *Shelby Family Partnership, L.P. v. City of Goleta, et al.*

In *Shelby Family Partnership, L.P. v. City of Goleta, et al.* (Super. Ct. S.B. County, Feb. 26, 2025, No. 24CV00548) ("*Goleta* case"), the City of Goleta unlawfully refused to process an SB 330 preliminary application based on its theory that SB 330 applies only to "new" projects. The project applicant filed suit in Santa Barbara Superior Court and on December 20, 2024, the State filed an amicus brief in support of the petitioner. On February 26,

2025, the superior court issued an order requiring Goleta to process the at-issue affordable housing project pursuant to state law. A copy of the court's opinion in the *Goleta* case is attached to this Legal Alert.

In its decision, the court made two key findings:

1. SB 330 is not limited only to "new" development projects and does not foreclose applicants from amending a project to avail themselves of its protections, including submitting a preliminary application pursuant to the Builder's Remedy; and

2. Local governments cannot disapprove qualifying housing development projects, except in narrowly defined circumstances pursuant to the HAA.

In making these findings, the court reasoned that, for the purposes of the HAA:

> 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 [Goleta] 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 [Goleta] here falls within this statutory definition by demonstrating a clear intent to conclude the processing of the project as proposed . . . and not merely a rejection of an incidental amendment.

As in the *CalHDF* case, the court in the *Goleta* case broadly interpreted "disapprove the housing development project" to include actions by a local government that "conclude the processing of" a Builder's Remedy "project as proposed." Consequently, these cases correctly interpret the law to prohibit a local government from taking an action that forecloses the processing of a valid Builder's Remedy project. AB 1893 further defined "disapproval" under the HAA, adding that the failure to take *final administrative action* on a proposed housing development project application may constitute a disapproval under the HAA. (Gov. Code § 65589.5, subd. (h)(6) [providing a non-exhaustive list of 10 enumerated circumstances in which a project may be considered disapproved under the HAA].)

Key Takeaways Regarding the Vesting of Builder's Remedy Applications

The trial courts' decisions in the *CalHDF* and *Goleta* cases consistently interpret the HAA, holding that preliminary Builder's Remedy applications vest at the time of submission. The key points of the two decisions work in concert to support the Legislature's intent for the HAA to be interpreted broadly, in favor of a project's approval: (1) that Builder's Remedy applications vest at the time a preliminary application that meets the standards of SB 330 is submitted to the local government; (2) that a local government must process a preliminary application submitted under SB 330, even if it pertains to an already completed development application; (3) that refusal to process a valid Builder's Remedy application is a violation of the HAA; and (4) that the HAA's appeal bond provision requires courts to order that a local agency post a bond when it takes an appeal from an HAA judgment, to ensure the continued financial viability of the underlying housing development project, including Builder's Remedy projects.

These decisions provide significant guidance to local governments interpreting and implementing the HAA and the Builder's Remedy.

Possible Consequences for the Failure to Process a Builder's Remedy Application Pursuant to State Law

Consequences for the failure to properly implement in the Builder's Remedy could include:

Referral to or Intervention by the Attorney General: Where a local government has received a complete Builder's Remedy application after the housing element deadline in Government Code section 65588, subdivision (e), but before HCD has issued a substantial compliance certification for the local government's housing element, the local government's refusal to process the Builder's Remedy application in accordance with the law may result in HCD notifying the Attorney General of an HAA violation pursuant to Government Code section 65585, subdivision (j). (See also Gov. Code, § 65585.01 [providing HCD and the Attorney General an automatic right to intervene in existing third-party enforcement actions].)

HAA Penalties: Where a court has found that a local government has violated the HAA, a local government is potentially exposed to certain penalties under the HAA, including attorney's fees, and a minimum fine of $10,000 per unit of the proposed project pursuant to Government Code section 65589.5, subdivision (k). If a court finds that a local government acted in bad faith in violating the HAA and failed to follow a court's order or judgment, fines pursuant to Government Code section 65589.5, subdivision (k) will be multiplied by a factor of five. (Gov. Code, § 65589.5, subd. (l).) If a court has found that a local government previously violated the HAA within the planning period, the fines will be multiplied by an additional factor for each previous violation. (*Ibid*.)

HAA Appeal Bond Provision: Where a local government appeals a court order finding that the local government violated the HAA, the local government must post an appeal bond pursuant to Government Code section 65589.5, subdivision (m). The appeal bond provision is evidence of the Legislature's intent that the HAA 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).) In the *CalHDF* case, the court ordered La Cañada Flintridge to post an appeal bond of $14 million, following post-judgment discovery, including expert discovery, or dismiss its appeal.

Taken together, these consequences emphasize the importance of the HAA and the Legislature's intent to further promote housing development projects. Consistent interpretation and application of the HAA statewide, including processing Builder's Remedy applications without delay, is essential to reaching our collective mandate to resolve the housing shortage crisis.

LISA ELLS – 243657
ALEXANDER GOURSE – 321631
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, California 94105
Telephone: (415) 433-6830
Facsimile: (415) 433-7104
Email: lells@rbgg.com
agourse@rbgg.com

DYLAN CASEY – 325222
NICHOLAS ECKENWILER – 348744
CALIFORNIA HOUSING DEFENSE FUND
360 Grand Ave #323
Oakland, California 94610
Telephone: (443) 223-8231
Email: dylan@calhdf.org
nick@calhdf.org

Attorneys for Petitioner and Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CALIFORNIA HOUSING DEFENSE FUND, a California nonprofit public benefit corporation,

Petitioner and Plaintiff,

v.

CITY OF LA CAÑADA FLINTRIDGE,

Respondent and Defendant,

600 FOOTHILL OWNER, LP, a limited partnership,

Real Party in Interest

PEOPLE OF THE STATE OF CALIFORNIA, EX REL. ROB BONTA; CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT,

Petitioners-Intervenors.

Case No. 23STCP02614
Related Case No. 23STCP02575

NOTICE OF RULING ON PETITIONS FOR WRIT OF MANDATE (Code Civ. Proc., § 1019.5)

Judge: Hon. Mitchell L. Beckloff
Dept: 86
Trial Date: March 1, 2024

Action Filed: July 25, 2023

TO RESPONDENT CITY OF LA CAÑADA FLINTRIDGE AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on March 4, 2024, the Court in the above-captioned matter entered a Minute Order that, among other things, grants Petitioner's and Petitioner-Intervenors' petitions for writ of mandate for the reasons set forth in its contemporaneously filed "Order on Petitions for Writ of Mandate and Complaints for Declaratory Relief."

A true and correct copy of the aforementioned Minute Order, dated March 4, 2024, is attached as **Exhibit A** and is incorporated into this notice by this reference.

A true and correct copy of the aforementioned Order on Petitions for Writ of Mandate and Complaints for Declaratory Relief, dated March 4, 2024, is attached as **Exhibit B** and is incorporated into this notice by this reference.

DATED: March 6, 2024

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: */s/ Alexander Gourse*
Alexander Gourse

Attorneys for Petitioner and Plaintiff

Exhibit A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 86

23STCP02614 March 4, 2024
CALIFORNIA HOUSING DEFENSE FUND, A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION vs CITY OF CITY OFLA CANADA FLINTRIDGE 2:00 PM

Judge: Honorable Mitchell L. Beckloff
Judicial Assistant: F. Becerra
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter-Hearing on Petition for Writ of Mandate

The Court, having taken the matter under submission on 03/01/2024 for Hearing on Petition for Writ of Mandate, now rules as follows:

The court issues its ruling in accordance with the "ORDER ON PETITIONS FOR WRIT OF MANDATE AND COMPLAINTS FOR DECLARATORY RELIEF" consisting of 39 pages, filed this date and incorporated herein by reference to the Court file.

The petition for writ of mandate is granted for the reasons set forth in the Court's order.

Petitioner's exhibit 1 is ordered to be preserved unaltered until a final judgment is rendered in this case and is to be forwarded to the court of appeal in the event of an appeal.

Counsel for Petitioner is to prepare a proposed judgment, serve on the opposing parties for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then lodge (do not efile) the proposed judgment directly in Department 86 and file (do not lodge) a declaration stating the existence or non-existence of any unresolved objections (LASC Local Rule 3.231 (n)).

Counsel for Petitioner is to give notice.

Certificate of Mailing is attached.

Exhibit B

[redacted]

CALIFORNIA HOUSING DEFENSE FUND v. CITY OF LA CAÑADA FLINTRIDGE
Case Number: 23STCP02614 [Related to Case No. 23STPC02575]

Hearing Date: March 1, 2024

ORDER ON PETITIONS FOR WRIT OF MANDATE AND COMPLAINTS FOR DECLARATORY RELIEF

Under the Housing Accountability Act (HAA), Government Code[1] section 65589.5, a municipality may not "disapprove" a qualifying affordable housing project on the grounds it does not comply with the municipality's zoning and general plan if the developer submitted either a statutorily defined "preliminary application" or a "complete development application" while the city's housing element was not in substantial compliance with state law. (See § 65589.5, subds. (d)(5), (h)(5), (o)(1).) This statutory provision, colloquially known as the "Builder's Remedy," incentivizes compliance with the Housing Element Law by temporarily suspending the power of non-compliant municipalities to enforce their zoning rules against qualifying affordable housing projects.

Respondents, the City of La Cañada Flintridge, the City of La Cañada Flintridge Community Development Department, and the City of La Cañada Flintridge City Council (collectively, Respondents or the City) determined Petitioner 600 Foothill Owner, L.P.'s (600 Foothill) proposed mixed-use development did not qualify for the Builder's Remedy. Petitioner 600 Foothill, Petitioner California Housing Defense Fund (CHDF), and Petitioners-Intervenors the People of the State of California, Ex. Rel. Rob Bonta and the California Department of Housing and Community Development (HCD)(collectively, Intervenors), challenge Respondents' decision.

The petitions are granted. The court orders a writ shall issue directing Respondents to set aside their May 1, 2023 decision finding 600 Foothill's application does not qualify as a Builder's Remedy project and to process the application in accordance with the HAA.

JUDICIAL NOTICE

600 Foothill's Request for Judicial Notice (RJN) filed November 8, 2023 is denied as to Exhibit A and granted as to Exhibits B through F. Respondents' objections to Exhibits B through F are overruled. Respondents' objections 1 and 4 are sustained to the extent they pertain to Exhibit A.

---

[1] All further undesignated statutory references are to this code.

Respondents' RJN in support of its opposition to the 600 Foothill petition is granted as to all referenced exhibits except as to Exhibits D-3, V and BB.[2]

600 Foothill's Reply RJN of Exhibit AA is granted.

CHDF's RJN of Exhibits A through D is granted.

Respondents' RJN in support of its opposition to the CHDF petition is granted as to all referenced exhibits except as to Exhibit D-3 and V. Except as to Exhibits D-3 and V, the objections of Intervenors and CHDF are overruled.

For all RJNs, the court does not judicially notice any particular interpretation of the records. Nor does the court judicially notice the truth of hearsay statements within the judicially noticed records.

EVIDENTIARY OBJECTIONS, MOTION *IN LIMINE* AND CODE OF CIVIL PROCEDURE SECTION 1094.5, SUBDIVISION (E)

Preliminarily, the court finds none of the parties' evidentiary objections are material to the disposition of any cause of action or issue. The court nonetheless rules on the objections for completeness. The court notes it is not required to parse through long narratives with generalized objections. The court may overrule an objection if the material objected to contains unobjectionable material. The parties make many objections to multiple sentences where much or some of the material is not objectionable. (See Fibreboard Paper Products Corp. v. East Bay Union of Machinists, Local 1304, United Steelworkers . . . (1964) 227 Cal.App.2d 675, 712.)

600 Foothill's Objections

Declaration of Lynda-Jo Hernandez: All objections are overruled.
Declaration of Kim Bowan: All objections are overruled except 3, 12 and 17.
Declaration of Peter Sheridan: All objections are overruled.
Declaration of Keith Eich: All objections are overruled.
Declaration of Susan Koleda: All objections are overruled.
Declaration of Teresa Walker: All objections are overruled except 3, 11, 17, 26 and 29.
Declaration of Richard Gunter III: All objections are overruled except 5-8 and 14-20.

///

[2] Contrary to 600 Foothill's assertion, Respondents did not request judicial notice of Exhibit A to the Koleda declaration. 600 Foothill and Intervenors appear correct—Respondents did not submit Exhibits D-3 or V with the Koleda declaration. Accordingly, the court cannot judicially notice Exhibits D-3 or V.

Respondents' Objections to 600 Foothill's Evidence

Declaration of Melinda Coy: All objections are overruled.
Reply Declaration of Garret Weyand: All objections are overruled except 3, 4, 7 and 8.[3]

Intervenors' Objections

Declaration of Susan Koleda: All objections are overruled.

CHDF's Objections

Declaration of Teresa Walker: All objections are overruled except 2, 4 and 6.
Declaration of Susan Koleda: All objections are overruled.
Declarations of Eich, Bowman, Gunter III and Hernandez are all overruled as discussed *infra*.

Motion *In Limine*

Respondents' Motion *In Limine* to Exclude Issues or Evidence (filed February 5, 2024) is denied. Respondents do not demonstrate 600 Foothill has submitted any evidence concerning "infeasibility" of the project that is *outside* of the administrative record. Respondents do not require discovery to respond to 600 Foothill's infeasibility arguments given such arguments are based entirely on the administrative record. (See § 65589.5, subd. (m)(1); Code Civ. Proc., § 1094.5, subd. (e).)

Code of Civil Procedure section 1094.5, Subdivision (e)

Section 65589.5, subdivision (m)(1) in the HAA specifies "[a]ny action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure. . . ." Accordingly, the HAA causes of action are subject to the limitations on extra-record evidence in Code of Civil Procedure section 1094.5, subd. (e). Nonetheless, the HAA causes of action involve questions of substantial compliance with the Housing Element Law, governed, at least in part, by Code of Civil Procedure section 1085. (See e.g., § 65587, subd. (d)(2).) Code of Civil Procedure section 1094.5, subdivision (e) does not apply to a cause of action governed by Code of Civil Procedure section 1085.

The parties have neglected to suggest which parts of their declarations are subject to Code of Civil Procedure sections 1094.5, 1085 or both. The parties also have not moved to augment the administrative record pursuant to Code of Civil Procedure section 1094.5, subdivision (e). Under the circumstances, the court will admit and consider the parties' declarations despite the court

[3] The declaration is properly submitted to respond to the defense of unclean hands and allegations of "manipulation of the HCD approval process" discussed in Respondents' opposition brief.

having made no order to augment the record.[4] The court notes, however, even if the court excluded all the extra-record evidence submitted, including the lengthy Koleda declarations, the result here would not change.

BACKGROUND

The Housing Element Law[5]

"In 1980, the Legislature enacted the Housing Element Law, 'a separate, comprehensive statutory scheme that substantially strengthened the requirements of the housing element component of local general plans.' " (*Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 221-222 [*Martinez*].)

A housing element within a general plan must include certain components, including, but not limited to: an assessment of housing needs and the resources available and constraints to meeting those needs; an inventory of sites available to meet the locality's housing needs at different income levels, including the Regional Housing Needs Allocation (RHNA); a statement of goals, quantified objectives, and policies to affirmatively further fair housing; and a schedule of actions to address the housing element's goals and objectives. (§ 65583, subds. (a), (b), (c).)

"A municipality must review its housing element for the appropriateness of its housing goals, objectives, and policies and must revise the housing element in accordance with a statutory schedule. (§ 65588, subds. (a), (b).) The interval between the due dates for the revised housing element is referred to as a planning period or cycle, which usually is eight years." (*Martinez, supra,* 90 Cal.App.5th at 221-222.)

"Before revising its housing element, a local government must make a draft available for public comment and, after comments are received, submit the draft, as revised to address the comments, to the Department of Housing and Community Development (HCD). (§ 65585, subd. (b)(1); see § 65588 [review and revision of housing element by local government].) After a draft is submitted, the HCD must review it, consider any written comments from any public agency, group, or person, and make written findings as to whether the draft substantially complies with the Housing Element Law. (§ 65585, subds. (b)(3), (c), (d); . . . .) [¶] If the HCD finds the draft does not substantially comply with the Housing Element Law, the local government must either (1) change the draft to substantially comply or (2) adopt the draft without changes along with a resolution containing findings that explain its belief that the draft substantially complies with the law. (§ 65585, subd. (f).)" (*Martinez, supra,* 90 Cal.App.5th at 221-222.)

///

---

[4] At the conclusion of the hearing, the parties agreed the court could consider all of the evidence before it without regard to Code of Civil Procedure section 1094.5, subdivision (e).

[5] See section 65580, *et seq.*

The City's October 2021 and October 2022 Draft Housing Elements, and HCD's Findings the City Had Not Attained Substantial Compliance with the Housing Element Law

Under the Housing Element Law, the City had a statutory deadl ne of October 15, 2021 to adopt a substantially compliant 6th cycle housing element. (AR 443.) The City submitted its draft housing element to HCD on that day. (AR 443.)

On December 3, 2021, HCD informed the City while the draft "addresses many statutory requirements," to comply with the Housing Element Law, signif cant revisions were required. (AR 443, 445-453.) HCD identified fourteen areas within the first version of the City's draft housing element that required specific programmatic revisions, organized into three broad categories—housing needs, resources, and constraints; housing programs; and public participation. (AR 445-453.) As examples, HCD found the draft housing element lacked a sufficient site inventory analysis identifying potential sites for housing development distributed in a manner to affirmatively further fair housing, or an inadequate site inventory of the City's vacant and underutilized sites to meet the City's RHNA determination. (AR 445-447.)

Ten months later, on October 4, 2022, the City adopted its 2021-2029 housing element (October 2022 Housing Element). (AR 4504-4508, 4509 [Housing Element].) The City thereafter submitted its adopted Housing Element to HCD for review. (AR 5263.)

On December 6, 2022, HCD informed the City "[t]he adopted housing element addresses most statutory requirements described in HCD's [prior] review; however, additional revisions are necessary to fully comply with State Housing Element Law." (AR 5263 [referencing a May 26, 2021 review].) HCD's findings of non-compliance for the October 2022 Housing Element are discussed further in the Analysis section *infra*.

600 Foothill's Preliminary Application

On November 10, 2022—after the City's adoption of the October 2022 Housing Element but before HCD's December 6, 2022 review—600 Foothill submitted the Preliminary Application seeking the City's approval to construct a mixed-used project on a site located at 600 Foothill Boulevard, which is currently occupied by two vacant church buildings and a surface parking lot. (AR 5241.) 600 Foothill proposed to build 80 apartments on the site, 16 of which (or 20 percent) would be reserved for persons earning less than sixty percent of the area median income (the Project). (AR 5243.) 600 Foothill's Preliminary Application explained "given that the City continues to have a Housing Element that is out of compliance with state law," 600 Foothill proposed the Project as a Builder's Remedy project pursuant to section 65589.5, subdivision (d)(5) meaning the Project was not required to account for the City's zoning ordinance or general plan land use designation. (AR 5235.)

///

///

The City Staff Acknowledge Changes to the October 2022 Housing Element Are Necessary to Comply with HCD's Findings

The City's Director of Community Development, Susan Koleda, acknowledged on January 11, 2023 in an email communication that "[a]ll additional changes to the Housing Element have yet to be determined but will likely require additional [Planning Commission/City Council] approval." (AR 12894.) At the City's January 12, 2023 Planning Commission meeting, City staff acknowledged revisions were required for "the Housing Element to be in conformance" with applicable law. (AR 5274-5275.) Director Koleda also stated in a February 9, 2023 email communication that "additional clarifications were required" to the October 2022 Housing Element, and "[t]he additional information will be incorporated into a revised Housing Element, scheduled to be adopted by the City Council on February 21, 2023. It will then be submitted to HCD for review as a third submittal." (AR 13011.)

The City Adopts a February 2023 Housing Element, Fails to Rezone, and "Certifies" Its Substantial Compliance with the Housing Element Law

On February 21, 2023, the City adopted its third revised housing element which addressed the deficiencies to the October 2022 Housing Element identified by HCD. (AR 6274-6279.) In its resolution adopting the revised housing element, the City Council stated it "certifies that the City's Housing Element was in substantial compliance with State Housing Element law as of the October 4, 2022 Housing Element adopted by the City Council. . . ." (AR 6274.) Despite use of the word "certifies" in the City's resolution, Director Koleda opined at the February 21, 2023 council meeting that the "consensus" from the City Attorney, the City's consultants, and HCD was that "self-certification" of the City's housing element "is not an option." (AR 6207-6208; see also Opposition to Intervenors 19:18-21:7 ["wrongly accuse . . . of 'back-dating' and 'self-certifying' "].)

At the time the City adopted its third revised housing element on February 21, 2023, it had not completed the rezoning required by the Housing Element Law. Accordingly, on April 24, 2023, HCD found, although the February 2023 housing element addressed the previously identified deficiencies in the October 2022 Housing Element, and met "most of the statutory requirements of State Housing Law," the City was not in substantial compliance with the Housing Element Law because the City adopted the February 2023 housing element more than one year past the statutory due date of October 15, 2021 and the City had not completed its statutorily required rezoning. (AR 6297-6300; see also AR 7170-7171.) As a result, HCD found the City could not be deemed in substantial compliance with state law *until* it completed all required rezones. (AR 6297-6300; see § 65588, subd. (e)(4)(C)(iii). ["A jurisdiction that adopts a housing element more than one year after the statutory deadline . . . shall not be found in substantial compliance with this article until it has completed the rezoning required by" the Housing Element Law].)

In its April 24, 2023 letter, HCD also opined that "a local jurisdiction cannot 'backdate' compliance to the date of adoption of a housing element," and the City was not in substantial

compliance with the Housing Element Law as of October 4, 2022, notwithstanding its "certification" in the City's February 21, 2023 resolution. (AR 6297-6298.)

The City Determines 600 Foothill's Preliminary Application Could Not Rely on the Builder's Remedy and the City Council Affirms the Decision

On February 10, 2023, in response to 600 Foothill's Preliminary Application, the City issued an incompleteness determination (the First Incompleteness Determination) requesting additional detail on several issues. The First Incompleteness Determination did not allege any inconsistencies between the Project and the City's zoning ordinance and general plan. (AR 5276-5279.) Petitioner supplemented its application materials in response to the First Incompleteness Determination on April 28, 2023. (See AR 6305, 7095-7096, 7152-7153, 7169, 7166, 8050-8060.)

On March 1, 2023, the City issued a second incompleteness determination (the Second Incompleteness Determination). The Second Incompleteness Determination advised 600 Foothill the Builder's Remedy did not apply to the Project making the Preliminary Application incomplete for its failure to comply with the City's general plan zoning laws and residential density limitations. (AR 6280-6281; see AR 7176.)

On March 9, 2023, 600 Foothill appealed the Second Incompleteness Determination. (See § 65943, subd. (c); AR 6282-6287, AR 12926.) In support of its appeal, 600 Foothill provided a letter from its attorney explaining 600 Foothill's position the City Council's failure to grant the appeal would constitute a violation of the HAA. (AR 6304-6462, 6317 ["flouts the law"].)

The City Council heard 600 Foothill's appeal on May 1, 2023. The City Council voted unanimously to adopt Resolution No. 23-14, denying the appeal and upholding the Second Incompleteness Determination (the May 1, 2023 Decision). (AR 7151-7160, AR 7161-7168.)

On June 8, 2023, HCD sent the City a Notice of Violation advising the City it violated the HAA and Housing Element Law by denying 600 Foothill's appeal. (AR 7170-7175.) HCD summarized the alleged violations:

> The City cannot 'backdate' its housing element compliance date to an earlier date so as to avoid approving a Builder's Remedy application. In short, the October 4, 2022 Adopted Housing Element did not substantially comply with State Housing Element Law, regardless of any declaration by the City. Therefore, the Builder's Remedy applies, and the City's denial of the Project application based on inconsistency with zoning and land use designation is a violation of the HAA. (AR 7170.)

///

The City Determines the Application is Complete and the Project is Inconsistent with City's Zoning Code and General Plan

On May 26, 2023, the City informed 600 Foothill that its Project application was complete. (AR 7169.) On June 24, 2023, the City advised 600 Foothill:

> [I]t remains the City's position (as affirmed by City Council on May 1, 2023) that the 2021-2029 Housing Element was in substantial compliance with state law as of October 4, 2022. Based on that, staff reviewed the project for consistency with the General Plan, applicable provisions of the Downtown Village Specific Plan (DVSP), the Zoning Code, and the density proposed within the 2021-2029 Housing Element. In accordance with [] § 65589.5(j)(2)(A), this letter serves as an explanation of the reasons that the City considers the proposed project to be inconsistent, not in compliance, or not in conformity with these aforementioned guiding documents. (AR 7176.)

The City Completes Rezoning and HCD Certifies the City's Substantial Compliance with the Housing Element Law

On September 12, 2023, the City adopted a resolution completing its rezoning commitments set forth in its housing element. HCD reviewed the materials and, on November 17, 2023, sent a letter to the City finding the City had "completed actions to address requirements described in HCD's April 24, 2023 review letter." (Coy Decl. ¶ 12, Exh. D.)

Writ Proceedings

On July 21, 2023, 600 Foothill filed its verified petition for writ of mandate and complaint for declaratory and injunctive relief against Respondents. On July 25, 2023, CHDF filed its verified petition for writ of mandate and complaint for declaratory relief. The court has related the two actions and coordinated them for trial and legal briefing. The court denied Respondents' motion to consolidate the two actions.

On December 20, 2023, pursuant to a stipulation, Intervenors filed their petition for writ of mandate and complaint for declaratory relief in the CHDF proceeding.

For this proceeding, the court has considered 600 Foothill's Opening Brief, CHDF's Opening Brief, Intervenors' Opening Brief, Respondents' three opposition briefs, 600 Foothill's Reply Brief, CHDF's Reply Brief, Intervenors' Reply Brief, the administrative record, the joint appendix, all requests for judicial notice, and all declarations (including exhibits).[6]

///

///

[6] The court accounted for its evidentiary rulings as to the evidence.

STANDARD OF REVIEW

Pursuant to the Los Angeles County Court Rules (Local Rules), "[t]he opening and opposition briefs must state the parties' respective positions on whether the petitioner is seeking traditional or administrative mandamus, or both." (Local Rules, Rule 3.231, subd. (i)(1).) The parties must also provide their position on the standard of review in their briefing. (See Local Rule, Rule 3.231, subd. (i)(3).)

600 Foothill, CHDF and Respondents do not suggest the standard of review that applies to the causes of action. Intervenors argue Code of Civil Procedure section 1085, not Code of Civil Procedure section 1094.5, applies to their petition.

Under Code of Civil Procedure section 1094.5, subdivision (b), the relevant issues are whether (1) the respondent has proceeded without jurisdiction, (2) there was a fair trial, and (3) there was a prejudicial abuse of discretion. An abuse of discretion is established if the agency has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. (Code Civ. Proc., § 1094.5, subd. (b).)

In administrative mandate proceedings not affecting a fundamental vested right, the trial court reviews administrative findings for substantial evidence. Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion (*California Youth Authority v. State Personnel Board* (2002) 104 Cal.App.4th 575, 584-85), or evidence of ponderable legal significance which is reasonable in nature, credible and of solid value. (*Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 305 n. 28.) Under the substantial evidence test, "[c]ourts may reverse an [administrative] decision only if, based on the evidence . . ., a reasonable person could not reach the conclusion reached by the agency." (*Sierra Club v. California Coastal Com.* (1993) 12 Cal.App.4th 602, 610.) The court does "not weigh the evidence, consider the credibility of witnesses, or resolve conflicts in the evidence or in the reasonable inferences that may be drawn from it." (*Doe v. Regents of University of California* (2016) 5 Cal.App.5th 1055, 1073.)

To obtain a traditional writ of mandate under Code of Civil Procedure section 1085, there are two essential findings. First, there must be a clear, present, and ministerial duty on the part of the respondent. Second, a petitioner must have a clear, present, and beneficial right to the performance of that duty. (*California Ass'n for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 704.) "Generally, mandamus is available to compel a public agency's performance or to correct an agency's abuse of discretion when the action being compelled or corrected is ministerial." (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 700.)

An agency is presumed to have regularly performed its official duties. (Evid. Code, § 664.) Under Code of Civil Procedure section 1094.5, the "trial court must afford a strong presumption of correctness concerning the administrative findings." (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817.) A petitioner seeking administrative mandamus has the burden of proof and must cite

the administrative record to support its contentions. (See *Alford v. Pierno* (1972) 27 Cal.App.3d 682, 691.) Similarly, a petitioner "bears the burden of proof in a mandate proceeding brought under Code of Civil Procedure section 1085." (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1154.) A reviewing court "will not act as counsel for either party to a [challenge to an administrative decision] and will not assume the task of initiating and prosecuting a search of the record for any purpose of discovering errors not pointed out in the briefs." (*Fox v. Erickson* (1950) 99 Cal.App.2d 740, 742 [context of civil appeal.)

" 'On questions of law arising in mandate proceedings, [the court] exercise[s] independent judgment.' . . . . Interpretation of a statute or regulation is a question of law subject to independent review." (*Christensen v. Lightbourne* (2017) 15 Cal.App.5th 1239, 1251.)

ANALYSIS

Petition for Writ of Mandate – Violations of the HAA

600 Foothill, CHDF, and Intervenors seek a writ of mandate to enforce the requirements of the HAA against the City. Among other relief, they seek a writ directing Respondents to set aside the City Council's "decision, on May 1, 2023, to disapprove an application for a housing development project at 600 Foothill Boulevard, and compelling Respondent to approve the application or, in the alternative, to process it in accordance with the law." (CHDF Pet. Prayer ¶ 1; see also 600 Foothill Pet. Prayer ¶¶ 3-5 and Intervenors Pet. Prayer ¶¶ 1-3.)[7]

Standard of Review

As noted, the HAA at section 65589.5, subdivision (m)(1) specifies "[a]ny action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure. . . ." Nonetheless, Intervenors argue Code of Civil Procedure section 1085, not Code of Civil Procedure section 1094.5, applies because Respondents have a "ministerial duty under the HAA to process the Foothill Owner's Builder's Remedy application." (Intervenors' Opening Brief 10:27; see *Sunset Drive Corp. v. City of Redlands* (1999) 73 Cal.App.4th 215, 221-222. ["A writ of mandate may be issued by a court to compel the performance of a duty imposed by law."])

While there is a colorable argument Code of Civil Procedure section 1085 applies to parts of the HAA claims involving the Housing Element Law, given the Legislature's clear instructions in section 65589.5, subdivision (m)(1), the court concludes Petitioners' writ petitions to enforce the HAA are all governed by Code of Civil Procedure section 1094.5.

[7] 600 Foothill's writ claims under the HAA are alleged in its third through fifth causes of action while CHDF's and Intervenors' are alleged in their first causes of action.

The court's task "is therefore to determine whether the City 'proceeded in the manner required by law,' with a decision supported by the findings, and findings supported by the evidence; if not, the City abused its discretion." (*California Renters Legal Advocacy and Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 837.) The City "bear[s] the burden of proof that its decision has conformed to all of the conditions specified in Section 65589.5." (§ 65589.6.)

As noted, based on the circumstances, the court reaches the same result in its analysis even if the petitions, or parts thereof, are governed by Code of Civil Procedure section 1085. (See e.g., § 65587, subd. (d)(2) [action to compel compliance with Housing Element Law "shall" be brought pursuant to Code of Civil Procedure section 1085].) The HAA claims raise legal questions of statutory construction and concerns about Respondents' substantial compliance with the Housing Element Law. The court decides such issues independently, regardless of whether Code of Civil Procedure section 1094.5 or 1085 governs. (See e.g. *Martinez, supra,* 90 Cal.App.5th at 237.)

The City "Disapproved" the Builder's Remedy Project

600 Foothill contends the City "disapproved" the Project, as the term is defined in the HAA, because the City "determined that the Project could not proceed because it believed the Builder's Remedy was inapplicable." (600 Foothill Opening Brief 7:11-12.) CHDF and Intervenors make the same argument. (CHDF Opening Brief 21:25-28; Intervenors' Opening Brief 15:27-16:3.)

The Builder's Remedy, at section 65589.5, subdivision (d)(5) provides in pertinent part:

> (d) A local agency **shall not disapprove** a housing development project . . . for very low, low-, or moderate-income households . . . unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:
>
> . . . .
>
> (5) The housing development project . . . 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 jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article. (Emphasis added.)

Thus, to prove their claim under the HAA and to proceed with the Project as a Builder's Remedy, Petitioners must show the City "disapprove[d] a housing development project."

(§ 65589.5, subd. (d).)[8] Section 65589.5, subdivision (h)(6) provides to " '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** . . . ." (Emphasis added.)

Here, on May 1, 2023, the City Council denied Petitioner's appeal of the Second Incompleteness Determination stating:

> [T]he City Council of the City of La Cañada Flintridge hereby denies the appeal and upholds the Planning Division's March 1, 2023, incompleteness determination for the mixed use project at 600 Foothill Boulevard, on the basis that the 'builder's remedy' under the Housing Accountability Act does not apply and is not available for the project, and that the project did not 'vest' as a 'builder's remedy' project as alleged in the project's SB 330 Preliminary Application submission dated November 14, 2022, because the City's Housing Element was, as of October 4, 2022, in substantial compliance with the Housing Element law. (AR 7167.)

Notably, Director Koleda informed the City Council, prior to its vote on the appeal, that "if the appeal is denied, the project will be processed accordingly as a standard, nonbuilder's remedy project." (AR 7103.) Thus, the City Council "voted" on a proposed housing development project application and determined the Project could not proceed as a Builder's Remedy project—that is, the Project would be subject to the City's discretionary approvals.

The Legislature has expressed its intent that the HAA "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, subd. (a)(2)(L); *California Renters Legal Advocacy & Education Fund. v. City of San Mateo*, *supra*, 68 Cal.App.5th at 854.) In addition, "[a]s a basic principle of statutory construction, 'include' is generally used as a word of enlargement and not of limitation. . . . Thus, where the word 'include' is used to refer to specified items, it may be expanded to cover other items." (*Rea v. Blue Shield of California* (2014) 226 Cal.App.4th 1209, 1227.) Applying these canons of statutory construction, the court finds section 65589.5, subdivision (h)(6) should be given a broad construction. Because the City Council made clear any required land use approvals or entitlements would not be issued for the Project, **as a Builder's Remedy project**, the City Council's May 1, 2023 decision falls within the HAA's broad definition of "disapprove."

---

[8] It is undisputed the Project constitutes a "housing development project . . . for very low, low-, or moderate-income households" within the meaning of the HAA. HCD advised the City on June 8, 2023: "The Project is proposed as an 80-unit mixed-use project where 20 percent of the units (16 units) will be affordable to lower-income households. The residential portion equates to approximately 89 percent of the Project; therefore, the Project qualifies as a 'housing development project' under the HAA (Gov. Code, § 65589.5, subd. (h)(2)(B))." (AR 7171.) Respondents develop no argument to the contrary.

Respondents contend:

> 600 Foothill defined the "approvals" and "entitlements" it sought in its application – namely, a Conditional Use Permit (USE-2023-0016), Tentative Tract Map 83375 (LAND-2023-0001), and Tree Removal Permit (DEV-2023-0003). (AR 5285.) There was no vote on May 1, 2023, on any of these "required land use approvals" or "entitlements" and, thus, . . . the "vote" needed under the HAA has not occurred. (Opposition to 600 Foothill 19:22-26 [emphasis in original].)

Respondents' narrow interpretation of the statute is unpersuasive. (See § 65589.5, subd. (a)(2)(L).) While the City Council may not have voted to deny the conditional use permit, tentative tract map, and tree removal permit, the City Council voted on May 1, 2023 and determined the Project could not proceed as the project proposed—a Builder's Remedy project. Because the Project was proposed as a Builder's Remedy, the City Council's May 1, 2023 vote on the project application was a "disapproval" within the meaning of the HAA.

Respondents also contend "[t]he City cannot as a matter of law approve or disapprove a development project, including a project under the Builder's Remedy, prior to conducting environmental review under CEQA . . . ."[9] (Opposition to 600 Foothill 16:15-16.) Respondents argue the HAA does not authorize the court "to order the City to accommodate CEQA review after a possible finding by the Court of a violation of the HAA." (Opposition to 600 Foothill 16:25-26 [emphasis in original].)

Again, Respondents' arguments are unpersuasive—a city can disapprove a project without having undertaken CEQA review. Nothing requires a city to undertake CEQA review *before deciding to disapprove a project*. CEQA does not apply to "[p]rojects which a public agency rejects or disapproves." (Pub. Res. Code, § 21080, subd. (b)(5).) "[I]f an agency at any time decides not to proceed with a project, CEQA is inapplicable from that time forward." (*Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 850.) Respondents do not cite any language from the HAA that supports their position.[10]

---

[9] CEQA refers to the California Environmental Quality Act at Public Resources Code section 21000, *et seq.*

[10] During argument, the City emphasized its reliance on section 65589.5, subdivision (m)(1) its language concerning finality—an action cannot be brought to enforce the HAA's provisions until there is a "final action on a housing development project" and the City did not take final action on the Project—it merely determined the Project could not be built as a Builder's Remedy project and would be subject to discretionary approvals. As noted by 600 Foothill, an action to enforce the HAA may be initiated after a municipality imposes conditions upon, disapproves **or** takes final action on a housing project. The City made clear in its May 1, 2023 Decision that the Project could not proceed as proposed as a Builder's Remedy project.

While CEQA review is preserved by the HAA[11] nothing suggests a disapproval under the HAA can occur only after CEQA review or that a court lacks authority to issue a writ to *compel compliance with the HAA*, even if a Builder's Remedy project is subject to CEQA compliance. Notably, a suit to enforce the HAA must be filed "no later than 90 days from" project disapproval. (§ 65589.5, subd. (m)(1).) Further, 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, subd. (a)(2)(L).) Respondents' interpretation of the HAA, under which a disapproval cannot occur prior to CEQA review, would hinder the approval and provision of housing. Accordingly, an agency may "disapprove" a project under the HAA before conducting any environmental review under CEQA, and a petitioner's claim to enforce the HAA may be ripe for consideration even if CEQA review has not been performed or completed.

Respondents' reliance on *Schellinger Brothers v. City of Sebastopol* (2009) 179 Cal.App.4th 1245, 1262 [*Schellinger*] is misplaced. *Schellenger* involved a request **to compel** the certification of an environmental impact report. *Schellinger* did not hold that all claims under the HAA or other housing laws are unripe or cannot be filed until CEQA review is completed. The case did not address CEQA in the context of a claim to enforce the Builder's Remedy provision in the HAA. The case also did not suggest a trial court lacks discretion to structure a writ issued pursuant to the HAA in a manner that allows for CEQA review to be completed. "An opinion is not authority for propositions not considered." (*People v. Knoller* (2007) 41 Cal.4th 139, 154-55.)

The court acknowledges *Schellinger* advised the HAA "specifically pegs its applicability to the approval, denial or conditional approval of a 'housing development project' . . . which, as previously noted, can occur *only after the EIR is certified.* (CEQA Guidelines, § 15090(a).)" (*Schellinger, supra,* 179 Cal.App.4th at 1262.) Nonetheless, the court's statement must be interpreted in the context of the issues before that Court. Because the agency there had not disapproved the project at issue, the Court's reference to the "denial" of a housing development project was a dictum. In any event, as discussed, *Schellinger* did not decide the legal question presented here—whether the City "disapproved" a Project when it determined, through a vote of its City Council, the Builder's Remedy Project did not qualify for the Builder's Remedy under the HAA.[12]

---

[11] See section 65589.5, subdivisions (e) and (o)(6).

[12] Respondents indicate the City took action to pay for CEQA review of the Project starting in September 2023. (Opposition to 600 Foothill 18:11-14 [citing Sheridan Decl. Exh. JJ].) By that time, however, the City Council had already determined the Project could not proceed as proposed pursuant to the Builder's Remedy. (AR 7167; see also AR 7176.) Respondents do not explain the purpose of CEQA review for a project the City Council has determined could not be approved consistent with the law. This evidence does not support Respondents' position the City Council's May 1, 2023 Decision did not constitute a "disapproval" under the HAA.

Based on the foregoing, Petitioners have demonstrated the City Council "disapproved" the Project with its May 1, 2023 Decision within the meaning of the HAA. Respondents do not show the petitions are "unripe" because CEQA review has not been completed, or that CEQA review is a prerequisite to the "disapproval" of a Project under the HAA. In light of the court's conclusion, the court need not reach the parties' contentions regarding *California Renters v. City San Mateo* (2021) 60 Cal.App.5th 820 and appellate briefing from that case. (See Opposition to 600 Foothill 17:10-28 [citing Sheridan Decl. Exh. EE and FF].)

"Vesting" of the Builder's Remedy and the Date the Project Application was Deemed Complete

Respondents assert the filing of a SB 330 preliminary application does not "vest" the Builder's Remedy because "when a city is determining whether it can make the finding in subsection (d)(5), it considers the status of its Housing Element *as of the date the finding is made*." (Opposition to 600 Foothill 23:11-13 [emphasis in original].)

The HAA defines "deemed complete" to mean that "the applicant has submitted a *preliminary application* pursuant to Section 65941.1." (§ 65589.5, subd. (h)(5) [emphasis added].) Section 65589.5, subdivision (o)(1) states "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." Construing these statutory provisions, along with section 65589.5, subdivision (d), the court concludes a Builder's Remedy "vests" if the local agency does not have a substantially compliant housing element at the time a complete preliminary application pursuant to section 65941.1 is submitted and "deemed complete."

Respondents have not developed any argument the Preliminary Application, submitted in November 2022, lacked the information required by section 65941.1 or was otherwise incomplete within the meaning of the HAA. (See AR 5234-5246.)[13] Thus, if the City's housing element did not substantially comply with the Housing Element Law at that time (see analysis *infra*), the Builder's Remedy "vested" when 600 Foothill submitted its Preliminary Application in November 2022.[14]

Respondents' reliance on subdivision (o) of the HAA is misplaced. Section 65589.5, subdivision (o)(4) provides " '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." (Empasis added.)

---

[13] 600 Foothill's Preliminary Application used the form generated by the City. 600 Foothill completed the form and included necessary attachments.

[14] 600 Foothill's Preliminary Application was "deemed complete," within the meaning of the HAA, when 600 Foothill submitted its application in November 2022. (See AR 5241-5246, 7171; see also Gov. Code §§ 65589.5, subdivision (h)(5) and 65941.1.) During argument, Respondents appeared to conflate the Preliminary Application with a formal project application.

The housing element is a mandatory element of the general plan. (§ 65582, subd. (f).) Section 65589.5, subdivision (o)(1) precludes Respondents from retroactively applying a housing element to a Builder's Remedy project that "vested" before certification of the housing element.

Respondents' vesting argument is also inconsistent with the HAA's policy of promoting housing. (§ 65589.5, subd. (a)(2)(L).) If Respondents' position was correct, as a practical matter "no housing developer would ever submit a builder's remedy application because of the uncertainty about whether the project would remain eligible long enough to be approved." (CHDF Reply 19:8-9.)

600 Foothill's Preliminary Application was "deemed complete," for purposes of the HAA, in November 2022 when 600 Foothill submitted its Preliminary Application. If the Builder's Remedy applies (see *infra*), it therefore "vested" in November 2022.[15]

The City Could Not Be in Substantial Compliance with the Housing Element Law until it Completed Rezoning

Petitioners contend the City's housing element was not in substantial compliance with the Housing Element Law when 600 Foothill filed its Preliminary Application because the City had not completed the rezoning required by sections 65583, subdivision (c)(1)(A) and section 65583.2, subdivision (c). (See 600 Foothill Opening Brief 12:21-23.) Petitioners are correct.

Section 65588, subdivision (e)(4)(C)(i) states:

> For the adoption of the sixth revision and each subsequent revision, a local government that does not adopt a housing element that the department has found to be in substantial compliance with this article within 120 days of the applicable deadline described in subparagraph (A) or (C) of paragraph (3) shall comply with subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583 and subdivision (c) of Section 65583.2 within one year of the statutory deadline to revise the housing element.

Section 65588, subdivision (e)(4)(C)(iii) states:

> A jurisdiction that adopts a housing element more than one year after the statutory deadline described in subparagraph (A) or (C) of paragraph (3) **shall not be found in substantial compliance with this article until it has completed the**

[15] However, the court reaches the same result in its analysis below even if the application was deemed complete or "vested" anytime up to May 1, 2023, the date of City Council's decision. The City did not complete its required rezoning until September 12, 2023. (See § 65588, subd. (e)(4)(C)(iii).)

rezoning required by subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583 and subdivision (c) of Section 65583.2. (Emphasis added.)[16]

Thus, the statute mandates the jurisdiction "shall not be found in substantial compliance" until completing the rezoning. (*Ibid.*)[17] The plain language of the statutory prohibition is not limited to HCD; the prohibition therefore applies to the courts.

As applied here, the City's statutory deadline to adopt a substantially compliant 6th cycle housing element was October 15, 2021. (AR 443.) The City submitted its draft housing element to HCD on October 15, 2021. (AR 443.) Because the City failed to secure certification of its 6th cycle housing element within 120 days of its statutory deadline of October 15, 2021 (see AR 443-447), October 15, 2022 served as the City's deadline to complete its required rezoning. (§ 65583, subd. (c)(1)(A).) It is undisputed the City did not complete the required rezoning until September through November 2023.

Pursuant to the plain language of section 65588, subdivision (e)(4)(C)(iii), the City "shall not be found" in substantial compliance with the Housing Element Law until the City completed its rezoning in September through November 2023. As a result, the City did not have a substantially compliant housing element when 600 Foothill submitted its Preliminary Application to the City in November 2022; the Builder's Remedy therefore applies to the Project.

Respondents do not challenge the plain language interpretation of section 65588, subdivision (e)(4)(C)(iii).[18] Thus, they concede where an agency has failed to adopt a substantially compliant housing element by more than a year after the statutory deadline to do so, the agency cannot be found in substantial compliance with the Housing Element Law by HCD or a court until it

---

[16] During argument, Respondents objected to the court's consideration of legislative history referenced in the court's tentative order distributed prior to the hearing. The court relied 600 Foothill's RJN, Exh. D at 82 and Exh. E at 149. Respondents correctly argued resort to legislative history here is inappropriate given the plain language of the statute and lack of ambiguity. (See *River Garden Retirement Home v. Franchise Tax Bd.* (2010) 186 Cal.App.4th 922, 942.) While the parties later agreed the court could rely on all of the evidence that had been submitted by the parties, the court nonetheless revised its decision to eliminate the discussion of legislative history. Given Respondents' argument, there can be no claim the statute is unclear. "If there is no ambiguity, we presume the Legislature meant what is said and the plain meaning of the language controls." (*Ibid.*)

[17] In any event, as discussed *infra*, the court concludes the City did not adopt a substantially compliant housing element until after 600 Foothill submitted its complete Preliminary Application. Accordingly, even if the statutory bar of section 65588, subdivision (e)(4)(C)(iii) does not apply to the courts, the court still concludes the Builder's Remedy applies to the Project.

[18] As noted *supra* in footnote 16, Respondents agree there is no ambiguity in the statute.

completes its required rezoning. (*Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc.* (2003) 111 Cal.App.4th 1328, 1345, fn. 16 [failure to address point is "equivalent to a concession"].)

Respondents contend the "City could not rezone until it had a General Plan Housing Element under Section 65860(c), HCD did not promulgate draft [Affirmatively Further Fair Housing] requirements for the 6th Cycle housing element until April 23, 2020, and did not promulgate the final version until April 2021, only six months before the then-existing deadline (within SCAG) for submitting a 6th RHNA Cycle Housing Element." (Opposition to CHDF 8: 11-15.)

Respondents' evidence does not demonstrate actions or omissions of HCD or the Southern California Association of Governments (SCAG) precluded the City from adopting a substantially compliant housing element or the required rezoning. Director Koleda advises the final affirmatively further fair housing requirements were available by April 2021, and the City's RHNA increased by only two dwelling units between March 22, 2021 and July 1, 2021. (Koleda Decl. ¶¶ 20, 36.) As persuasively argued by Intervenors, the City "had sufficient time to accommodate its RHNA allocation, or at the very least, the two additional dwelling units added between March and July 2021." (Intervenors' Reply 16, fn. 8.) Respondents also do not show, with persuasive evidence, the timing of HCD's promulgation of affirmatively further fair housing requirements prevented the City from adopting a substantially compliant housing element.

Respondents also argue section 65588, subdivision (e)(4)(C)(iii)'s rezoning requirement "is illegal, unconstitutional, and unenforceable" because "[t]he Government Code specifically contemplates that rezoning will occur after adoption of an amendment to a General Plan, including Housing Elements, ..." (Opposition to Intervenors 12:19, 14:26-27.) Respondents' statutory argument is not fully developed, lacks sufficient analysis of governing legal principles, and is unpersuasive.

Respondents wholly fail to explain how section 65588, subdivision (e)(4)(C)(iii) is "illegal" or "unconstitutional." At most, Respondents assert section 65588, subdivision (e)(4)(C)(iii) conflicts with other statutes requiring consistency between the zoning ordinances of a general law city and its general plan, and the requirement such zoning ordinances be amended "within a reasonable time" to be consistent with a general plan that is amended. (Opposition to Intervenors 13:13-16 [citing § 65860].)

Respondents do not show a conflict between section 65588, subdivision (e)(4)(C)(iii) and section 65860 or any other statute. Contrary to Respondents' assertion, a city could comply with both statutes. Thus, as argued by 600 Foothill, a city could update its zoning simultaneously with the adoption of its housing element. A city could also adopt a housing element that is provisionally certified by HCD and then subsequently complete the rezoning, which is what occurred here. While section 65588, subdivision (e)(4)(C)(iii) may subject a city to the Builder's Remedy it if does not complete its rezoning at the same time adopts its housing element, Respondents do not show such possibility conflicts with section 65860 or that the

Legislature lacked the authority to impose such measures to encourage the development of housing.[19]

Because the City had not completed its required rezoning, the City's housing element was not in substantial compliance with the Housing Element Law when 600 Foothill filed the Preliminary Application in November 2022. As a result, the City Council prejudicially abused its discretion when it found the Builder's Remedy did not apply to the Project in its May 1, 2023 Decision.

Did the City's October 2022 Housing Element Substantially Comply with the Housing Element Law Without Consideration of Rezoning?

In its May 1, 2023 Decision, the City Council found "the 'builder's remedy' under the Housing Accountability Act does not apply and is not available for the project . . . because the City's Housing Element was, as of October 4, 2022, in substantial compliance with the Housing Element law." (AR 7167.) Petitioners contend the City Council's finding was a prejudicial abuse of discretion. The court agrees. The October 4, 2022 Housing Element was not in substantial compliance with the Housing Element Law.

Standard of Review—Substantial Compliance with Housing Element Law

"In an action to determine whether a housing element complied with the requirements of the Housing Element Law, the court's review 'shall extend to whether the housing element . . . *substantially complies* with the requirements' of the law. (§ 65587, subd. (b), italics added.) Courts have defined substantial compliance as '*actual* compliance in respect to the substance essential to every reasonable objective of the statute,' as distinguished from 'mere technical imperfections of form.' [Citations.] Such a review is limited to whether the housing element satisfies the statutory requirements, 'not to reach the merits of the element or to interfere with the exercise of the locality's discretion in making substantive determinations and conclusions about local housing issues, needs, and concerns.' " (*Martinez, supra,* 90 Cal.App.5th at 237.)

HCD is mandated by statute to determine whether a housing element substantially complies with the Housing Element Law. (See e.g., § 65585, subds. (i)-(j); Health & Saf. Code § 50459, subds. (a), (b).) Given HCD's statutory mandate and its expertise, HCD's determination of substantial compliance with the Housing Element Law, or lack thereof, is entitled to deference from the courts. (See *Hoffmaster v. City of San Diego* (1997) 55 Cal.App.4th 1098, 1113, fn. 13

[19] Further, even assuming a conflict existed, Respondents do not explain why section 65860 would take precedence over section 65588, subdivision (e)(4)(C)(iii) under the specific circumstances presented here (i.e., a statutory bar to attaining substantial compliance with the Housing Element Law until rezoning is complete). (See *State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 960-961. ["If conflicting statutes cannot be reconciled, later enactments supersede earlier ones [citation], and more specific provisions take precedence over more general ones."])

["We substantially rely on the Department of Housing and Community Development's interpretation [. . .] regarding compliance with the housing element law . . . ."]; accord *Martinez, supra,* 90 Cal.App.5th at 243 ["courts generally will not depart from the HCD's determination unless 'it is clearly erroneous or unauthorized' "].)

However, "HCD's housing element compliance determinations are not binding on courts." (See Intervenor Reply 10:2; see also 600 Foothill Opening Brief 15:8-9.) The trial and appellate courts "'independently ascertain as a question of law whether the housing element at issue substantially complies with the requirements of the Housing Element Law.' . . ." (*Martinez, supra,* 90 Cal.App.5th at 237.)[20] Thus, to be clear (and as noted during the hearing) the court has not deferred to HCD concerning substantial compliance—the issue is properly subject to the court's independent review as a question of law.

Affirmatively Further Fair Housing

As background, HCD found the City's October 2022 Housing Element did not substantially comply with the City's duties under the Housing Element Law to analyze how the housing element will affirmatively further fair housing. Specifically, HCD wrote:

> While the element now analyzes census tracts and sites with a concentration of affordable units (p. D71-73), it should still discuss whether the distribution of sites improves or exacerbates conditions. This is critical as the sites to accommodate the lower-income households are only located along Foothill Boulevard near the 210 Freeway. If sites exacerbate conditions, the element should include programs to mitigate conditions (e.g., anti-displacement strategies) and promote inclusive communities. (AR 5263-5264.)

HCD also found "the element must include a complete assessment of fair housing. Based on the outcomes of that analysis, the element must add or modify programs." (AR 5264.)

---

[20] While *Martinez* advises " '[t]he burden is on the challenger to demonstrate that the housing element . . . is inadequate" (*ibid.*), the HAA provides the City "bear[s] the burden of proof that its decision has conformed to all of the conditions specified in Section 65589.5." (§ 65589.6; see also § 65587, subd. (d)(2) [city has burden of proof in action to compel compliance with requirements of section 65583, subd. (c)(1)-(3)].) The parties do not address the language in *Martinez* or how it should be applied, if at all, in this proceeding. The court concludes based on sections 65589.6 and 65587, subdivision (d)(2) the burden is on Respondents to show the City Council's May 1, 2023 Decision complied with the HAA. Such a showing requires the City to demonstrate it attained substantial compliance with the Housing Element Law before 600 Foothill's submitted its Preliminary Application and it was "deemed complete." The court notes and clarifies, however, it would reach the same result herein even if the initial burden of proof is with Petitioners.

Housing elements must contain "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"—the "sites inventory." (§ 65583, subd. (a)(3).) The sites inventory must be accompanied by "an analysis of the relationship of the sites identified in the land inventory to the jurisdiction's duty to affirmatively further fair housing." (*Ibid.*) In addition, each updated housing element must include "a statement of the community's goals, quantified objectives, and policies relative to affirmatively furthering fair housing" (§ 65583(b)(1)), and must commit to programs that will, among other things, "Affirmatively further fair housing in accordance with [Section 8899.50]." (§ 65583, subd. (c)(10).)[21]

Here, the October 2022 Housing Element discloses the sites identified by the City to accommodate affordable housing are all located near the Foothill Freeway. (AR 5130.) In this context, HCD found the October 2022 Housing Element lacked sufficient analysis of the relationship of the sites identified in the land inventory to the City's duty to affirmatively further fair housing, i.e. whether the site inventory would improve or exacerbate fair housing conditions. (AR 5263-5264.)

Respondents do not cite to any specific analysis in the October 2022 Housing Element addressing the concern raised by HCD. (See Opposition to 600 Foothill 9:14 [citing AR 1741, 5203].) In fact, neither AR 1741 nor 5203 demonstrate the October 2022 Housing Element analyzed how the clustering of affordable housing near the Foothill Freeway would promote or exacerbate fair housing. While Respondents now explain in the context of *this proceeding* why the City clustered all affordable housing near the freeway (See Koleda Decl. ¶¶ 9-16),

---

[21] Section 8899.50, subd. (b)(1) provides: "A public agency shall administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and take no action that is materially inconsistent with its obligation to affirmatively further fair housing." Compliance with the obligation is mandatory. (*Id.* at subd. (b)(2).) The statute defines "affirmatively further fair housing" as:

> taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development. (*Id.* at subd. (a)(1).)

Respondents were required to include that analysis in the October 2022 Housing Element. (See § 65583, subds. (a)(3), (b)(1), and (c)(10).)[22]

Respondents contend the "City undertook numerous outreach efforts to reach a variety of economic groups, including via two housing workshops with 18 different stakeholder organizations." (Opposition to 600 Foothill 9:10-12 [citing Koleda Decl. ¶¶ 38-50 and AR 3896-3900, 4651].) Respondents do not cite any authority that outreach alone satisfies the City's statutory obligations to include in its housing element "an **analysis** of the relationship of the sites identified in the land inventory to the jurisdiction's duty to affirmatively further fair housing." (§ 65583, subd. (a)(3) [emphasis added].) Exercising its independent judgment on the statutory question, the court concludes outreach alone does not substantially comply with the requirement—outreach does not constitute analysis.

The deficiencies in the October 2022 Housing Element as to the affirmatively further fair housing analysis are demonstrated by changes made by the City in the February 2023 Housing Element.[23] Specifically, the February 2023 Housing Element added analysis—"the sites to accommodate the lower and moderate-income households are concentrated primarily in the western end of the City along the Foothill Boulevard Corridor, and near the 210 Freeway." (AR 6090.) The analysis recognized "adverse air quality conditions have the potential to be exacerbated" based on "close proximity to the freeway[.]" (AR 6090.) In addition, the revised February 2023 Housing Element committed to Program 24 to mitigate these impacts. (AR 6091; See also AR 5577-5578 [adding Program 24, "Mitigation for Housing in Proximity to Freeways" committing to building design measures for new residential development near the freeway].)

Respondents contend "those air quality mitigation measures were adopted in 2013 and the 2023 Housing Element merely added a heading regarding these existing measures." (Opposition to 600 Foothill 9:7-8 [citing Koleda Decl. ¶ 33 and AR 4515].) Respondents cite AQ Policy 1.1.6 from its General Plan Air Quality Element, which states the policy to "Ensure that new developments implement air quality mitigation measures, such as ventilation systems, adequate buffers, and other pollution reduction measures and carbon sequestration sinks, especially those that are located near existing sensitive receptors." (Koleda Decl. ¶ 33.)

---

[22] During argument, Respondents suggested the material included in the February 23, 2023 housing element had previously been provided in the October 2022 Housing Element. While it is true Table D-12 can be found in both versions of the housing element (compare AR 6090 p. D22 with AR 5158 p. D22), the February 23, 2023 revisions to the October 2022 Housing Element (AR 6090-6092) included additional narrative material beyond repeating information from Los Angeles County's Department of Public Health. Further, AR 5193-5204, identified by Respondents during the hearing as an analysis of how the clustering of affordable housing near the Foothill Freeway would promote or exacerbate fair housing within the October 2022 Housing Element, does not appear to address the issue. Finally, it does not appear Respondents cited any of this material in their briefs before the court in response to the claims raised by Petitioners. 600 Foothill objected to the argument as new during the hearing.

[23] See *supra* footnote 22.

While Program 24 and AQ Policy 1.1.6 have similarities, they are not the same. Program 24 identifies specific mitigation measures that apply to receptors near the freeways and is enforceable by HCD. (See § 65585, subd. (i) [requiring HCD to investigate a "failure to implement any program actions included in the housing element."].) In contrast, AQ Policy 1.1.6 is a shorter and more general policy that is *not enforceable by HCD* as a housing element program. Contrary to Respondents' assertion, the inclusion of Program 24 in the February 2023 Housing Element supports HCD's findings that the October 2022 Housing Element lacked sufficient analysis of the City's affirmatively further fair housing obligations.

Exercising its independent judgment on the issue, the court concludes the City's October 2022 Housing Element did not substantially comply with the affirmatively further fair housing requirements in section 65583, subdivisions (a)(3), (b)(1), and (c)(10).[24]

Nonvacant Sites Analysis

HCD found the October 2022 Housing Element's analysis of nonvacant sites did not sufficiently analyze "redevelopment potential and evaluate the extent existing uses impede additional development." (AR 5264.) HCD also found "as the element relies on nonvacant sites to accommodate 50 percent or more of the housing needs for lower-income households, the adoption resolution must make findings based on substantial evidence in a complete analysis that existing uses are not an impediment and will likely discontinue in the planning period." (AR 5264.)

For nonvacant sites, the Housing Element Law provides "the city or county shall specify the additional development potential for each site within the planning period and shall provide an explanation of the methodology used to determine the development potential." (§ 65583.2, subd. (g)(1).) In addition, "when a city or county is relying on nonvacant sites . . . to accommodate 50 percent or more of its housing need for lower income households, the methodology used to determine additional development potential shall demonstrate that the existing use . . . does not constitute an impediment to additional residential development during the period covered by the housing element. An existing use shall be presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued during the planning period." (§ 65583.2, subd. (g)(2).)

---

[24] In reaching this conclusion, the court has considered Respondents' assertion the City undertook outreach efforts "in the face of 'changing goal posts' and what appeared to be intentional obstructive behavior by HCD." (Opposition to 600 Foothill 9:16-21.) The court finds Respondents' evidence does not prove substantial compliance with the affirmatively further fair housing requirements in section 65583 or an excuse from substantial compliance. (See e.g. Koleda Decl. ¶¶ 49-50.) The court has also considered CHDF's arguments and evidence that the City discriminated on the basis of race and income when it selected sites for rezoning. The court further discusses CHDF's claims of discrimination and bad faith *infra*.

The Court of Appeal explains "there are many types of sites the Legislature has either deemed infeasible to support lower income housing or that require additional evidence of their feasibility or by-right development approvals before being deemed adequate to accommodate such housing [including] . . . when a city relies on over 50 percent of the inventory to be accommodated on nonvacant sites . . . . The goal is not just to identify land, *but to pinpoint sites that are adequate and realistically available* for residential development targets for each income level." (*Martinez, supra,* 90 Cal.App.5th at 244 [emphasis added].)

Here, more than 50 percent of the parcels included in the City's site inventory to accommodate the lower income RHNA are nonvacant. (AR 4506.) Accordingly, the City is required to comply with section 65583.2, subdivision (g)(2). The site inventory in the October 2022 Housing Element does not show substantial compliance with section 65583.2, subdivision (g)(2). (See AR 5124-5129.) The criteria used to describe nearly all of the lower income nonvacant sites are some combination of "underutilized site," "buildings that are older than 30 years," "vacant lot or parking lot with minimal existing site improvements," "property has not been reassessed" in some time, "antiquated commercial uses," or "existing use retained and institution would add residential units." (AR 5124-5129; see also AR 4601-4603 [discussing methodology].) While these factors may be relevant to and inform on the analysis of "additional development potential" required by section 65583.2, subdivision (g)(1), they do not sufficiently address in any substantive way whether the sites are "likely to be discontinued during the planning period," as required by section 65583.2, subdivision (g)(2).

In the resolution adopting the October 2022 Housing Element, the City Council made the following finding:

> Based on general development trends resulting from continuously rising land values, changes in desired land uses, the financial pressures placed on religious institutions that have been impacted by falling congregation numbers, aging structures, and underutilized properties, rising demand for housing, adjacency to public transportation and commercial services, and other factors/analysis as identified in the Section 9.4.1.3 Future Residential Development Potential and Section 9.4.1.4 Overview of Residential Development Potential and Realistic Capacity Assumptions by Zone of the Housing Element, the existing uses on the sites identified in the site inventory to accommodate the lower income RHNA are likely to be discontinued during the planning period, and therefore do not constitute an impediment to additional residential development during the period covered by the housing element. (AR 4506.)

The City Council's generalized statement does not reference any specific evidence to support a finding the existing uses of nonvacant sites, which were identified to accommodate housing need for lower income households, are "likely to be discontinued during the planning period." (§ 65583.2, subd. (g)(2).)

Further, Petitioners cite record evidence that the owners of several of the nonvacant sites included in the October 2022 site inventory, including certain sites identified for lower income households, informed the City they did not intend to redevelop the site or discontinue the existing use during the planning period. (See AR 5114-5116, 2222, 2238, 2206, 5126, 12812, 5233, 5123-5129, 6054-6061.)[25] Significantly, the City subsequently amended the housing element to disclose that some of the identified lower income category sites are "not currently available" and were included in the site inventory "as a buffer site because it may become available further along in the 6th cycle HE planning period." (AR 6054-6061, 6098.) Such a change in characterization is a major substantive change in the site inventory and demonstrates the October 2022 Housing Element did not substantially comply with the Housing Element Law.

The court has also reviewed Director Koleda's summary of changes to the October 2022 Housing Element. The court concludes, on the whole, Director Koleda's summary is consistent with Petitioners' arguments the October 2022 Housing Element was not substantially compliant and required significant changes. (See Koleda Decl. ¶ 56 and Exh. A.) As Intervenors argue, the substantial changes to the October 2022 Housing Element show the City did not substantially comply with section 65583.2, subdivision (g)(2) until *after* it adopted the October 2022 Housing Element.

Respondents assert the City "adopted a Site Inventory using both a data-driven model endorsed by HCD . . . and along with that gathered 'substantial evidence' by sending TWO mailings to each commercial and religious property owner in the City to determine potential inclusion on the Site Inventory." (Opposition to 600 Foothill 11:9-12 [citing Koleda Decl. ¶¶ 29, 54-56].) However, Respondents do not dispute it included multiple nonvacant sites in the October 2022 Site Inventory for which the City lacked substantial evidence, *in October 2022*, that the existing uses were "likely to be discontinued during the planning period." (§ 65583.2, subd. (g)(2).) Notably, Respondents do not cite any written communications with the nonvacant site owners, prior to the adoption of the October 2022 Housing Element, as evidence the uses were "likely to be discontinued during the planning period." (§ 65583.2, subd. (g)(2).)

Respondents assert their methodology should be sufficient. During the hearing, they followed HCD guidance and should not be penalized for doing so. Respondents also argue for purposes of section 65583.2, subdivision (g)(2), they should not be required to knock on owners' doors and undertake an active investigation for its sites inventory.

The court cannot find on this record the City followed HCD guidance on the section 65583.2, subdivision (g)(2) issue. While the City's reliance on methodology alone may be consistent with

---

[25] For example, a representative of a restaurant (Panda Express) wrote "we have NO intention of discontinuing the current use of this property during the next eight-year housing planning period." (AR 5115.) The owner of sites 86-89 on the October 2022 site inventory (identified in the lower income category) similarly informed the City that the premises are leased to retail store (Big Lots) under a 20-year lease with two 10-year extension options, and it had no intention of discontinuing the current use during the planning period. (AR 5116.)

HCD's section 65583.2, subdivision (g)(1) compliance guidance, that is not the case for section 65583.2, subdivision (g)(2).

As discussed during the hearing, HCD guidance specifies at Step 3 how to prepare a nonvacant sites inventory when a municipality has relied on "nonvacant sites to accommodate more than 50 percent of the RHNA for lower income households." (Koleda Decl., Exh. Q p. 26.) Consistent with section 65583.2, subdivision (g)(2), the guidance makes clear:

> If a housing element relies on nonvacant sites to accommodate 50 percent or more of its RHNA for lower income households, the nonvacant site's existing use is presumed to impede additional residential development, unless the housing element describes findings based on substantial evidence that the use will likely be discontinued during the planning period. (*Id.* at 27.)

"The goal is not just to identify land, *but to pinpoint sites that are adequate and realistically available* for residential development targets . . . ." (*Martinez, supra,* 90 Cal.App.5th at 244 [emphasis added].) Accordingly, HCD guidance also explains the "housing element should describe the findings and include a description of the substantial evidence they are based on," and a housing element "should describe the findings and include a description of the substantial evidence they are based on." (Koleda Decl., Exh. Q at 27.)
(*Ibid.*)

HCD further advised substantial evidence "includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (*Ibid.*) HCD provides specific examples of what constitutes substantial evidence "that an existing use will likely be discontinued in the current planning period . . . ." (*Ibid.*) Those examples include:

> [1] The lease for the existing use expires early within the planning period,
> [2] The building is dilapidated, and the structure is likely to be removed, or a demolition permit has been issued for the existing uses,
> [3] There is a development agreement that exists to develop the site within the planning period,
> [4] The entity operating the existing use has agreed to move to another location early enough within the planning period to allow residential development within the planning period.
> [5] The property owner provides a letter stating its intention to develop the property with residences during the planning period. (*Ibid.*)

Of the 21 nonvacant sites identified by the City as "sites that are adequate and realistically available for residential development targets" for lower income persons (*Martinez, supra,* 90 Cal.App.5th at 244), 19 percent or only four (sites 74, 91, 95 and 96) provide any site-specific evidence to support the City's inclusion of the site in its sites inventory. (AR 5124-5128.) For the four sites, the owner indicated some interest in redevelopment. (AR 5126, 5128.) The

remaining sites rely on the City's generalized methodology to meet their obligations under section 65583.2, subdivision (g)(2).

Respondents argue 600 Foothill's principal "actively manipulated" certain sites that were later deemed "buffer sites." (Opposition to 600 Foothill 10:22.) Respondents also blame deficiencies in their October 2022 site inventory on "dilatory guidance" of HCD and dilatory actions of SCAG. (Opposition to 600 Foothill 12:9-10.) Having considered the evidence cited by Respondents, the court finds Respondents' arguments unpersuasive. As discussed *infra* with Respondents' unclean hands defense, Respondents do not demonstrate 600 Foothill or its principals have engaged in any inequitable or wrongful conduct related to these proceedings, including the City's adoption of its housing element. Respondents also do not prove deficiencies in the site inventory of the October 2022 Housing Element resulted from actions or omissions of 600 Foothill, SCAG or HCD. Nor do Respondents cite any authority suggesting a city or county may be excused from substantial compliance with the Housing Element Law based on actions or omissions of SCAG, HCD or a project applicant.

Respondents contend the City was permitted "to rely upon letters with site owners and between itself and HCD not included specifically in its Housing Element" and the City "made reasonable inferences" from the information it received from site owners. (Opposition to 600 Foothill 12:15-19.) Respondents rely on *Martinez* to support their claims. (See *Martinez, supra,* 90 Cal.App.5th at 248.)

Martinez addressed the City of Clovis' nonvacant site analysis under section 65583.2, subdivision (g)(1); the Court did not analyze the heightened requirements of section 65583.2, subdivision (g)(2). (See *Martinez, supra,* 90 Cal.App.5th at 248-250.) While *Martinez* held the substantive material required by section 65583.2, subdivision (g)(1), need not appear in the Housing Element itself, the Court did not suggest nonvacant sites may be included in a site inventory if the agency lacks substantial evidence, or has not sufficiently investigated or analyzed, whether the sites are "likely to be discontinued during the planning period." (§ 65583.2, subdivision (g)(2).)

Here, Respondents have not cited substantial evidence to support the City's position multiple nonvacant sites listed in the October 2022 inventory could realistically be developed in a manner to satisfy the City's RHNA obligations. In addition, that Respondents made substantive revisions to the site inventory **after** October 2022 also supports a reasonable inference the City did not complete the analysis and attain the evidence required by section 65583.2, subdivision (g)(2), for many of the sites on its site inventory, **before** it adopted the October 2022 Housing Element. (Compare AR 5124-5129 with 6054-6061.)

Exercising its independent judgment, the court concludes the City's October 2022 Housing Element did not include a nonvacant site analysis that substantially complied with the Housing Element Law, including section 65583.2, subdivision (g)(2).

///

Realistic Assessment of Development Capacity

The Housing Element Law requires that municipalities "specify for each site [in its inventory] the number of units that can realistically be accommodated on that site." (§ 65583.2, subd. (c).) The law provides "the number of units calculated" for each site "shall be adjusted" to account for "the land use controls and site improvements requirement identified in paragraph (5) of subdivision (a) of Section 65583, the realistic development capacity for the site, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction, and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities." (*Id.* at subd. (c)(2).)

CHDF contends the October 2022 Housing Element did not substantially comply with these statutory provisions because it failed to apply a "downward adjustment on the number of units projected on each site to account for, among other constraints, the City's maximum floor-area ratio of 1.5 (AR 4607), its 80-percent maximum lot-coverage requirement (AR 4566), its 35-foot height limit (AR 4567), and significant parking requirements (AR 4572) for sites in mixed-use zones." (CHDF Opening Brief 20:4-7.)

Respondents did not address or rebut CHDF's argument. (*Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc., supra,* 111 Cal.App.4th at 1345, fn. 16 [failure to address point is "equivalent to a concession"].) The court concludes the City's October 2022 Housing Element did not substantially comply with Housing Element Law because the City failed to adjust the development capacity for each site based on the factors set forth in section 65583.2, subdivision (c)(2).[26]

Government Code Section 65583.2, Subdivision (h)

CHDF argues fewer than 50 percent of the October 2022 Housing Element's low-income sites were zoned exclusively for residential use, and the City did not include analysis showing it would "accommodate all of the very low and low-income housing need on sites designated for mixed use [and] allow 100 percent residential use and require that residential use occupy 50 percent of the total floor area of a mixed-use project." (CHDF Opening Brief 20:21-23 [citing § 65583.2, subd. (h)].) CHDF supports its assertion with citations to the administrative record. (CHDF Opening Brief 21:1-4 [citing AR 5124-5129, 4607-4610]; see also AR 4612.) Based on the

[26] During argument, the court engaged CHDF and Respondents at length on this issue. While Respondents provide an explanation that their rezoning included the required adjustments, the court finds Respondents conceded the issue by not addressing it in their brief. (Compare CHDF Opening Brief 19:20-20:15 with Opposition to CHDF 10:10-11:20.) Respondents' analysis of development constraints is not entirely clear and undeveloped in their brief. (See AR 4565-4570.)

evidence, CHDF argues the October 2022 Housing Element did not substantially comply with section 65583.2, subdivision (h).[27]

Respondents do not squarely address CHDF's position, and they do not show, with citation to the administrative record, the October 2022 Housing Element substantially complied with section 65583.2, subdivision (h). (Opposition to CHDF 12:4-9.) Accordingly, the court concludes the October 2022 Housing Element did not substantially comply with the Housing Element Law for this reason as well.

Based on the foregoing, the court concludes the October 2022 Housing Element did not substantially comply with the Housing Element Law. Accordingly, the City Council prejudicially abused its discretion when it found in its May 1, 2023 Decision the Builder's Remedy did not apply to the Project.

Respondents' Defenses to the HAA Causes of Action

Respondents raise a defense of unclean hands to the HAA causes of action asserted by 600 Foothill. Respondents also raise defenses of ripeness, exhaustion of administrative remedies, and claim the petitions violate rules designed to prevent piecemeal litigation.

Unclean Hands

A party seeking equitable relief must have "clean hands" and inequitable conduct by the party seeking relief is a complete defense. (*Dickson, Carlson & Campillo v. Pole* (2000) 83 Cal.App.4th 436, 446; *Salas v. Sierra Chem. Co.* (2014) 59 Cal.4th 407, 432.) The plaintiff must "come into court with clean hands, and keep them clean," or the plaintiff "will be denied relief, regardless of the merits of his claim." (*Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978.) For the doctrine to apply, "there must be a direct relationship between the misconduct and the claimed injuries." (*Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820, 846, citation omitted.)

Respondents contend "the only reasonable inference to draw [from the opposition evidence] is that on the eve of final review and approval of the Housing Element containing the Site Inventory, 600 Foothill's principal was running around town attempting to manipulate owners to 'decline' inclusion on the inventory and derail the process." (Opposition to 600 Foothill 14:2-5.) The court has reviewed all of the evidence cited by Respondents. (Koleda Decl. ¶¶ 46-51; Hernandez Decl. ¶¶ 4, 5; AR 7081-7085, 5233; Sheridan Decl. Exh. DD.) Respondents' assertion

[27] Section 65583.2, subdivision (h) provides in pertinent part: "At least 50 percent of the very low and low-income housing need shall be accommodated on sites designated for residential use and for which nonresidential uses or mixed uses are not permitted, except that a city or county may accommodate all of the very low and low-income housing need on sites designated for mixed use if those sites allow 100 percent residential use and require that residential use occupy 50 percent of the total floor area of a mixed-use project."

that Garret Weyand, one of 600 Foothill's principals, engaged in "deliberate attempts to manipulate the Site Inventory" is speculative and not supported by the evidence. (Opposition to 600 Foothill 10:22.) To the contrary, the court finds Weyand's public advocacy in support of the Project is not evidence of inequitable conduct. (See Reply Weyand Decl.) Respondents have not demonstrated, by a preponderance of the evidence, 600 Foothill or any of its principals, including Weyand and Jon Curtis, engaged in inequitable conduct that has a direct relationship to any cause of action in 600 Foothill's petition. Respondents failed to meet their burden of demonstrating unclean hands and their entitlement to the defense.[28]

Ripeness, Exhaustion, and Piecemeal Litigation

" 'A decision attains the requisite administrative finality when the agency has exhausted its jurisdiction and possesses 'no further power to reconsider or rehear the claim.' . . . Until a public agency makes a 'final' decision, the matter is not ripe for judicial review." (*California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1485.) Relatedly, "[t]he exhaustion doctrine precludes review of an intermediate or interlocutory action of an administrative agency. A party must proceed through the full administrative process 'to a final decision on the merits.' " (*Id.* at 1489.) There are exceptions to the exhaustion requirement, including "when the aggrieved party can positively state what the administrative agency's decision in his particular case would be." (*Edgren v. Regents of University of California* (1984) 158 Cal.App.3d 515, 520.)

Respondents do not show any lack of finality or any further administrative remedy to exhaust as to the May 1, 2023 Decision. The May 1, 2023 Decision of the City Council is final because there is no further avenue for administrative appeal. As discussed, the City disapproved (within the meaning of the HAA) the Project. Nothing in the HAA requires Petitioners to complete CEQA review before suing to enforce the HAA.

Respondents argue 600 Foothill did not sufficiently raise issues pursued in this proceeding, including that the City failed to rezone, the housing element does not meet its affirmatively further fair housing obligation, as well as the site inventory issues. The court concludes Petitioners sufficiently raised and preserved their contentions during the administrative proceedings. (See AR 6284-6286, 6307-6317.) Many of the issues in these petitions were also raised by HCD in letters to the City at the administrative level, including a notice of violation. (AR 7170-7175.)

Respondents argue "[n]o express 'disapproval' of the entire project occurred here . . . ." (Opposition to CHDF 16:25.) While not entirely clear, Respondents seemingly suggest 600 Foothill should *redesign the Project* to avoid reliance on the Builder's Remedy. Respondents do not develop an argument 600 Foothill has any legal obligation, under the circumstances here, to redesign the Project "as a standard, nonbuilder's remedy project." (AR 7103.). Respondents

[28] This defense only applies to 600 Foothill. Respondents do not develop any argument the HAA claims of CHDF or Intervenors are subject to the defense.

also do not show that any further administrative action, including appeal of the City's June 24, 2023 letter describing inconsistency between the Project and the City's general plan and zoning ordinances (see AR 7176), could remedy the harm suffered by 600 Foothill when the City Council determined the Builder's Remedy does not apply to the Project.

Moreover, Petitioners can positively state what the City's decision is with respect to 600 Foothill's application to develop the Builder's Remedy Project. In its May 1, 2023 Decision, the City Council made clear any required land use approvals or entitlements would not be issued for the Project as a Builder's Remedy project. Based on its review of the administrative record and the parties' declarations, the court finds no reasonable possibility Respondents, including the City Council, will change their position and process 600 Foothill's Project as a Builder's Remedy under the HAA. Accordingly, even if some additional appeal or administrative process were available, the futility exception to exhaustion applies under these facts. (See, e.g., *Felkay v. City of Santa Barbara* (2021) 62 Cal.App.5th 30, 40-41 [futility exception, which is a question of fact, applied where city "made plain" it would not permit the proposed development]; *Ogo Associates v. City of Torrance* (1974) 37 Cal.App.3d 830, 832-34 [futility exception applied where it was "inconceivable the city council would grant a variance for the very project whose prospective existence brought about the enactment of the rezoning" that necessitated the variance in the first place].)

Respondents do not demonstrate (1) the HAA claims in the petitions are unripe, (2) Petitioners failed to exhaust their administrative remedies, or (3) Petitioners have violated rules designed to prevent piecemeal litigation. Further, even if Petitioners have additional administrative remedies (such as an appeal of the June 24, 2023 inconsistency letter), the court finds exhaustion of such remedies is futile under the circumstances presented here.

CHDF's Claims of Bad Faith and Discrimination Based on Race and Income

CHDF contends:

> La Cañada Flintridge officials *clearly* acquiesced to the biases and prejudices of city residents when they revised the draft Housing Element's sites inventory and rezoning program to eliminate multiple 'low-income' sites south of Foothill Boulevard. This was a blatant violation of California and Federal fair housing laws alike. (See Gov. Code, § 65008, subd. (b)(1)(C) . . . ; Cal. Code Regs, tit. 2, § 12161, subd. (c) . . . ; *Mhany Management, Inc., supra*, 819 F.3d 581 . . . .) (CHDF Opening Brief 17:13-21.)

As acknowledged in reply, CHDF did not plead a cause of action in its petition alleging the City violated the Fair Housing Act or state or federal discrimination laws. (CHDF Reply 10:15-20.) CHDF also did not move to amend its petition or request leave to amend its petition. (See *Simmons v. Ware* (2013) 213 Cal.App.4th 1035, 1048. ["The pleadings are supposed to define the issues to be tried."])

In reply, CHDF argues the "City's discriminatory site-selection practices demonstrates the City did not substantially comply with the Housing Element Law's requirements to affirmatively further fair housing." (CHDF Reply 10:18-19.) However, CHDF failed to plead that claim in its petition. (See CHDF Reply 10:20-21 [citing CHDF Pet. ¶¶ 22, 26, 29-30 (generalized allegations the City "did not affirmatively further fair housing or provide an assessment of fair housing")].)

On the merits of CHDF's claim, even if the affirmatively further fair housing allegations in the petition are interpreted to encompass CHDF's arguments about race and income discrimination (a difficult task), the court finds Respondents' opposition persuasive. (Opposition to CHDF 13:5-15:21.) There is insufficient evidence the City Council "acquiesced" to or acted based on public comments at the August and September 2022 public hearings highlighted in CHDF's briefs. (See e.g., AR 2602-2603 ["different value system and much more high crime . . . the value system is different than people that move here"], 3491-3494 [similar comments from same individual at AR 2602-2603], 3539-3541, 3543-3545 ["dust off my shotgun" "likelihood of being some bad apples"], 3493 [additional similar comments from commenter at AR 2602-2603 and AR 3491-3494], 5107-5110 [crime and will become dangerous community], 5112 ["fear poor or homeless people will move into La Canada and bring crime"].)

While some of the public comments were quite unfortunate, CHDF cites statements of councilmembers out of context and does not show those councilmembers "agreed" with the public comments highlighted by Petitioners. (CHDF Opening Brief 10:13-11:6.) Even if the councilmembers could have stated their disagreement with certain public comments, but did not, there is insufficient evidence to support an inference the City Council took any action on the housing element based on the unfortunate public comments and discrimination.[29]

Other Contentions Related to the HAA Causes of Action

Several other contentions are not necessary to the court's ruling on the HAA claims. For completeness, the court briefly addresses them.

The court agrees with Intervenors that the City did not have authority under the HAA or Housing Element Law to backdate its housing element and "self-certify" or declare its housing element to be in substantial compliance with state law as of October 2022. (Intervenors Opening Brief 14:3-15:24.) Respondents appear to concede the point. (See Opposition to Intervenors 19:18-21:7 [asserting City did not back date or self-certify].)

[29] During argument, 600 Foothill provided a series of acts undertaken by Respondents that it believed demonstrated bad faith. Many of those acts, however, flowed from the City's belief it properly adopted the October 2022 Housing Element or the City's violation of the Permit Streamlining Act (PSA) discussed *infra*. Based on all of the evidence before the court, the evidence is insufficient to establish the City acted with bad faith and "will continue to use all means to obstruct" as suggested by CDHF during argument.

As argued by 600 Foothill, when HCD found the October 2022 Housing Element did not substantially comply with the law, section 65585, subdivision (f) required City to take "one" of the following actions: "(1) Change the draft element or draft amendment to substantially comply with this article; [or] (2) Adopt the draft element or draft amendment without changes [, but with] written findings which explain the reasons the legislative body believes that the draft . . . substantially complies with this article despite the findings of the department." (600 Foothill Opening Brief 14:16-19.) The court agrees the "City unlawfully blended these approaches by making some changes in response to HCD's comments, adopting the February 2023 Housing Element with written findings explaining why the October 2022 Housing Element was sufficient, and then resubmitting its revised draft to HCD." (600 Foothill Opening Brief 14:19-22.)

If the City believed its October 2022 Housing Element substantially complied with the Housing Element Law, it should have taken the action set forth in section 65585, subdivision (f)(2). Thereafter, the City could have sued for a judicial declaration that its October 2022 Housing Element substantially complied with state law. The City did not do so here.

The court finds 600 Foothill's arguments based on section 65589.5, subdivisions (j) and (o) are not ripe at this time. Once ripe, the claims are subject to exhaustion. (See 600 Foothill Opening Brief 9:12-10:21; Pet. ¶¶ 134-162.) Upon the remand ordered here, the City is required to process the application as a Builder's Remedy project and in accordance with the HAA, including sections 65589.5, subdivisions (j) and (o). Thus, it is premature to adjudicate today whether the City has complied with those provisions of the HAA.

Relatedly, since the court concludes the City is required by law to process the application pursuant to the Builder's Remedy provision of the HAA, the court need not address the financial infeasibility of a redesigned project. (600 Foothill Opening Brief 8:21-9:3 and 10, fn. 6.)

Summary of HAA Causes of Action and Scope of Writ Relief

The court finds the City Council prejudicially abused its discretion with its finding in its May 1, 2023 Decision that the Builder's Remedy does not apply to the Project. As a remedy, the court grants 600 Foothill's petition and will issue a writ directing Respondents to set aside the May 1, 2023 City Council decision finding 600 Foothill's Project does not qualify as Builder's Remedy and compelling the City to process the application in accordance with the HAA and state law. That remedy is consistent with section 65589.5, subdivision (k)(1)(A)(ii) of the HAA (compliance required in 60 days) and Code of Civil Procedure section 1094.5, subdivision (f).

CHDF argues the court should order the Project "approved" due to the City's alleged bad faith and unlawful discrimination. (CHDF Opening Brief 23:18-24:24.) For the reasons discussed, the court finds evidence the City Council "acquiesced" to or acted based on the public comments from the August and September 2022 public hearings highlighted in CHDF's briefs insufficient. (See e.g., AR 2602-2603, 3491-3494, 3539-3541, 3543-3545, 3493, 5107-5110, 5112.) CHDF has

not met its burden of demonstrating Respondents acted in bad faith in connection with those public comments.

CHDF also argues "[w]hen 600 Foothill subsequently proposed a project under the HAA's builder's remedy, the City Council concocted a bizarre scheme to evade judicial review of their decision to disapprove that project, ..." (CHDF Opening Brief 24:15-18.) 600 Foothill contends the court should order Respondents to approve the Project on similar grounds. (600 Foothill Reply 18:13-19:8.) While the court finds the City prejudicially abused its discretion with its May 1, 2023 Decision finding the Builder's Remedy inapplicable to the Project, the court does not find sufficient evidence to conclude the City Council acted in bad faith when it made its legally incorrect decision.

Further, even if it could be argued the City Council lacked a good faith reason to find the Project did not qualify as a Builder's Remedy, Petitioners do not show it would be equitable for the court to compel the City to approve the Project. Among other reasons, CEQA review is specifically preserved by the HAA. (See § 65589.5, subds. (e) and (o)(6); *Schellinger, supra,* 179 Cal.App.4th at 1245.) In the exercise of the court's discretion, the court finds a writ compelling Respondents to approve the Project, without CEQA review, would not be an equitable or proportionate remedy for the violations of the HAA at issue. Respondents should be permitted on remand to process 600 Foothill's application, as a Builder's Remedy, in conformance with state law, including the HAA and CEQA.

Based on the foregoing, the HAA causes of action are GRANTED IN PART.

600 Foothill's First Cause of Action – Violation of Housing Element Law

600 Foothill prays for a writ of mandate "compelling Respondents to adopt a revised housing element pursuant to Government Code Section 65754. 2" and "to complete the required rezoning consistent with an HCD-approved housing element." (Pet. Prayer ¶¶ 1-2.) 600 Foothill filed its petition on July 21, 2023. The petition alleged the City had not substantially complied with the Housing Element Law at that time. (Pet. ¶ 91.)

As discussed, the City completed the required rezoning in September through November 2023, after 600 Foothill filed its petition. On November 17, 2023, HCD sent a letter to the City finding the City had "completed actions to address requirements described in HCD's April 24, 2023 review letter" and was in substantial compliance with the Housing Element Law. (See Coy Decl. ¶ 12, Exh. D.)

600 Foothill has not pleaded in the petition, or argued in its briefing, there is any deficiency in the February 2023 Housing Element that HCD found to be substantially compliant with the Housing Element Law in November 2023, after the City completed its rezoning. Accordingly, the first cause of action is moot. (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573 ["A case is considered moot when 'the question addressed was at one time a live issue in the case,' but has been deprived of life 'because of events occurring after

the judicial process was initiated.' . . . . 'The pivotal question in determining if a case is moot is therefore whether the court can grant the plaintiff any effectual relief.'"])

600 Foothill's first cause of action is DENIED as moot.

600 Foothill's Second Cause of Action – Affirmatively Furthering Fair Housing

600 Foothill prays for a writ "compelling Respondents to comply with their statutory obligation to Affirmatively Further Fair Housing." (Pet. Prayer ¶ 9.) 600 Foothill's writ briefing, however, only challenges the City's compliance with affirmatively further fair housing obligations as to the October 2022 Housing Element and required rezoning. (See 600 Foothill Opening Brief 21:10-12; Pet. ¶¶ 106-108.) 600 Foothill does not develop any argument the City's February 2023 housing element, after completion of the required rezoning, does not comply with the City's affirmatively further fair housing obligations. Accordingly, the second cause of action is moot. (*Wilson & Wilson, supra,* 191 Cal.App.4th at 1573.) Alternatively, to the extent 600 Foothill contends in the petition the City remains out of compliance with its affirmatively further fair housing obligations (see Pet. ¶ 105), 600 Foothill has not sufficiently supported its position with evidence and legal analysis.

600 Foothill's second cause of action is DENIED as moot.

600 Foothill's Sixth Cause of Action – Violation of the PSA

600 Foothill contends the City violated the PSA in several ways with its incompleteness determinations and the City Council's May 1, 2023 Decision. (600 Foothill Opening Brief 19:14-20-25; Pet. ¶¶ 163-175.) 600 Foothill prays for a writ "compelling Respondents review and process applications pursuant to the Permit Streamlining Act's provisions, including refraining from refusing to process development applications based on erroneous assertions of incompleteness." (Pet. Prayer ¶ 4.)

600 Foothill has demonstrated Respondents violated the PSA in at least two respects. Specifically, section 65943, subdivision (a) provides "[i]f the application is determined to be incomplete, the lead agency shall provide the applicant with **an exhaustive list** of items that were not complete." (Emphasis added.) In addition, the list "**shall** be limited to those items actually required on the lead agency's submittal requirement checklist." (*Ibid.* [Emphasis added].) "**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**." (*Ibid.* [Emphasis added].)

While neither party has cited any published authority interpreting these provisions, the plain language of section 65943, subdivision (a) is clear. The PSA required the City to provide 600 Foothill with an "exhaustive list" of incomplete items in its First Incompleteness Determination; incomplete items are limited to items on the City's "submittal requirement checklist"; and the City could not later request new information it omitted from the initial list. Respondents

provide no alternative interpretation of the statutory language. (Opposition to 600 Foothill 20:5-21:8.) Director Koleda reports "it is **a common practice** for the City to provide information to a developer in the early stages of the application review regarding ways that the development does not meet applicable development standards." (Koleda Decl. ¶ 42 [emphasis added].) Even if true, the City's common practice does not supersede the statutory requirements of the PSA.

In violation of these provisions of the PSA, the Second Incompleteness Determination found the Project was inconsistent with City's zoning and general plan standards because the Project did not qualify as a Builder's Remedy. (AR 6280-6281.) However, that issue was not raised in the First Incomplete Determination and was also not included on the City's submittal requirement checklist. (See AR 5276-5279, 6280-6281; see also Koleda Decl. ¶ 42.) Accordingly, the City violated section 65943, subdivision (a).[30]

Respondents suggest 600 Foothill was not prejudiced by the violations of the PSA because the application was deemed complete on May 26, 2023. (Oppo. to 600 Foothill 22:19-21 [citing AR 7169].) Respondents do not cite any authority for the proposition that PSA violations are excused by a purported lack of prejudice. Moreover, 600 Foothill was prejudiced when Respondents made a legally unauthorized incompleteness determination.

600 Foothill does not cite a statute or published authority suggesting the appropriate remedy for these types of violations of the PSA is an order compelling the City to approve the project. As discussed for the HAA causes of action, the court will grant a writ directing Respondents to set aside the City Council's May 1, 2023 Decision and process 600 Foothill's application in accordance with the HAA. The violations of the PSA proven by 600 Foothill provide additional support for that remedy. 600 Foothill does not demonstrate any additional relief is justified under the PSA.

To the extent 600 Foothill prays for a writ directing the City to comply with the PSA in the future or with respect to development applications of non-parties (see Prayer ¶ 4), 600 Foothill

---

[30] 600 Foothill also contends "Respondents' Second Incompleteness Determination was issued on March 1, 2023 (AR 6280-81) more than 30 days after Petitioner submitted the Project application on January 13, 2023." (600 Foothill Opening Brief 20:22-24.) 600 Foothill did not pay the fees for the application until January 31, 2023, which was less 30 days before March 1, 2023. (AR 7161-7162.) When submitting its application, the City advised 600 Foothill "the 30-day time limit to determine completeness of a development application per Government Code Section 65943 does not begin until all invoiced fees have been paid." (AR 7161-7162) Section 65943 is ambiguous as to whether the 30-day period begins running when the application is submitted/received or when the fees are paid. While 600 Foothill has a colorable argument the 30-day period began when City "received" the application on January 13, 2023, Respondents' alternative interpretation is also reasonable. 600 Foothill has not submitted any legislative history to support its interpretation. Accordingly, the court is not persuaded 600 Foothill met its burden as to it complaint about timeliness under the PSA.

does not sufficiently support such a prayer in its briefing. Specifically, 600 Foothill does not explain how it has standing to enforce the PSA on behalf of non-parties, or how any claim with respect to the City's future compliance with the PSA is ripe for judicial review.

600 Foothill's sixth cause of action is GRANTED IN PART. The court finds the City violated the PSA in the manner it processed 600 Foothill's application. As a remedy, the May 1, 2023 Decision finding that the application was incomplete because the Project does not qualify as a Builder's Remedy must be set aside. In all others respect, the sixth cause of action is DENIED.

600 Foothill's Seventh and Eighth Causes of Action – State Density Bonus Law and Subdivision Map Act

600 Foothill argues the City Council's May 1, 2023 Decision effectively denied 600 Foothill's requests for a density bonus and concessions or incentives under the State Density Bonus Law, and "necessarily constituted a disapproval" under the Subdivision Map Act. (600 Foothill Opening Brief 21:25-22:12; see Pet. ¶¶ 176-197.)

The court's analysis of the seventh and eighth causes of action is similar to that set forth earlier with 600 Foothill's claims under section 65589.5, subdivisions (j) and (o). Upon remand, the City will be required to process 600 Foothill's application as a Builder's Remedy and in accordance with the HAA and other state housing laws, including the State Density Bonus Law and the Subdivision Map Act. It is premature at this time to adjudicate whether the City has complied with those statutes. 600 Foothill has been informed that the City's review process under the State Density Bonus Law and the Subdivision Map Act is ongoing. (See AR 7176-7178, 7169.) Accordingly, 600 Foothill does not prove its seventh and eighth causes of action are ripe for judicial review or that the issues have been exhausted. Further, to the extent 600 Foothill seeks a writ directing the City to "approve" the Project in full, it does not demonstrate it is entitled to that remedy, as discussed earlier.

600 Foothill's seventh and eighth causes of action are DENIED.

600 Foothill's Ninth Cause of Action is Stayed

Respondents specially moved to strike 600 Foothill's ninth cause of action (right to fair hearing) pursuant to Code of Civil Procedure section 425.16. The court denied the motion, and Respondents appealed. Given the appeal, the ninth cause of action is stayed. (See Code Civ. Proc., §§ 425.16, subd. (i), 916, subd. (a); *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 195.)[31]

///

[31] Respondents conceded at the time the court heard the special motion to strike that an appeal would stay only the ninth cause of action.

Causes of Action for Declaratory Relief by All Petitioners

Issuance of a declaratory judgment is discretionary. (Code Civ. Proc., § 1060.) Further, "it is settled that declaratory relief is not an appropriate method for judicial review of administrative decisions." (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 127; accord *Sheetz v. County of El Dorado* (2022) 84 Cal.App.5th 394, 414 ["administrative mandamus is 'the proper and sole remedy' to challenge a local agency's application of the law (e.g., application of a zoning ordinance to a particular property)"].)

Although the petitions include various requests for declaratory relief, all such requests pertain to the validity of City Council's May 1, 2023 Decision, including the City Council's determination the October 2022 Housing Element substantially complied with state law and the Project did not qualify as a Builder's Remedy. None of the Petitioners have developed a legal argument that declaratory relief is an appropriate, *or necessary*, form of judicial review of the administrative decisions at issue. Accordingly, Petitioners have not demonstrated they are entitled to declaratory relief.

600 Foothill's eleventh cause of action for declaratory relief, CHDF's second cause of action for declaratory relief, and Intervenors' second cause of action for declaratory relief are DENIED as unnecessary given the court's decision on the HAA causes of action.

Retention of Jurisdiction

The court found Respondents, "in violation of subdivision (d), disapproved a housing development project . . . without making findings supported by a preponderance of the evidence."[32] (§ 65589.5, subd. (k)(1)(A)(i).) Accordingly, the court is required to "retain jurisdiction to ensure that its . . . judgment is carried out . . . ." (*Id.* at subd. (k)(1)(A)(ii).)

CONCLUSION

The petitions of 600 Foothill, CHDF, and Intervenors to enforce the HAA are GRANTED IN PART. The court finds the City Council prejudicially abused its discretion when it found in its May 1, 2023 Decision that the Builder's Remedy does not apply to the Project. The court will grant a writ directing Respondents to set aside the City Council's decision, dated May 1, 2023, finding 600 Foothill's application does not qualify as a Builder's Remedy and to process the application in accordance with the HAA and state law. The HAA claims are denied in all other respects. 600 Foothill's first, second, seventh, and eighth causes of action are DENIED.

---

[32] The City's finding its October 2022 Housing Element was in substantial compliance with the Housing Element Law was not supported by substantial evidence. As discussed *supra*, HCD had advised the City why the October 2022 Housing Element was not in substantial compliance. Moreover, Director Koleda on January 11, 12 and February 9, 2023 appeared to accept HCD's evaluation that the City could not achieve substantial compliance with the Housing Element Law without "additional changes" and "clarifications." (AR 12894, 13011.)

600 Foothill's sixth cause of action is GRANTED IN PART. The court finds the City violated the PSA in the manner it processed 600 Foothill's application and, as a remedy, the May 1, 2023 Decision finding the application was incomplete because the Project does not qualify as a Builder's Remedy must be set aside. In all others respect, the sixth cause of action is DENIED.

600 Foothill's ninth cause of action is stayed pending Respondents' appeal of denial of its anti-SLAPP motion. (See Code Civ. Proc. §§ 425.16, subd. (i), 916, subd. (a).)

600 Foothill's eleventh cause of action for declaratory relief, CHDF's second cause of action for declaratory relief, and Intervenors' second cause of action for declaratory relief are DENIED.

As to Case No. 23STCP02614 brought by CDHF, the court will enter judgment on the first cause of action in favor of CDHF and Intervenors on the first cause of action.

As to Case No. 23STPC02575 brought by 600 Foothill, the court does not enter judgment at this time given the pending appeal on 600 Foothill's ninth cause of action and Respondents' special motion to strike. The matter is continued to December 4, 2024 at 9:30 a.m. for a hearing on the status of Respondents' appeal.

The court will retain jurisdiction over this matter (in both cases) as required by section 65589.5, subd. (k)(1)(A)(ii).

IT IS SO ORDERED.

March 4, 2024

Hon. Mitchell Beckloff
Judge of the Superior Court

PROOF OF SERVICE

California Housing Defense Fund v. City of La Cañada Flintridge
Case No. 23STCP02614

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is 101 Mission Street, Sixth Floor, San Francisco, CA 94105-1738.

On March 6, 2024, along with an *unsigned* copy of this proof of service, I served true copies of the following document(s) described as:

NOTICE OF RULING ON PETITIONS FOR WRIT OF MANDATE (Code Civ. Proc., § 1019.5)

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address szhu@rbgg.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on March 6, 2024, at San Francisco, California.

Sherry Zhu

SERVICE LIST
California Housing Defense Fund v. City of La Cañada Flintridge
Case No. 23STCP02614

Attorneys for Respondent City of La Cañada Flintridge

Adrian R. Guerra
City Attorney, City of La Cañada Flintridge
Michelle L. Villarreal
Erika D. Green
ALESHIRE & WYNDER, LLP
1 Park Plaza, Suite 1000
Irvine, CA 92614-8507
aguerra@awattorneys.com
mvillarreal@awattorneys.com
egreen@awattorneys.com

Peter C. Sheridan
Christopher L. Dacus
GLASER WEIL FINK HOWARD
JORDAN & SHAPIRO LLP
10250 Constellation Boulevard, 19th Floor
Los Angeles, CA 90067-6219
psheridan@glaserweil.com
cdacus@glaserweil.com

Attorneys for Real Party in Interest 600 Foothill Owner LP

Ryan M. Leaderman
Kevin J. Ashe
William E. Sterling
HOLLAND & KNIGHT, LLP
400 South Hope Street, 8th Floor
Los Angeles, CA 90071-2809
ryan.leaderman@hklaw.com
kevin.ashe@hklaw.com
william.sterling@hklaw.com

Attorneys for Petitioners-Intervenors People of the State of California ex rel. Rob Bonta and California Department of Housing and Community Development

ROB BONTA
Attorney General of California
CHRISTINA BULL ARNDT
DAVID PAI
Supervising Deputy Attorneys General
State Bar Nos. 175403, 227058
NINA LINCOFF
Deputy Attorney General
State Bar No. 348936
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
nina.lincoff@doj.ca.gov
Christina.Arndt@doj.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

Dated and Entered:	02/26/2025	Time:	10:00 AM
Judicial Officer:	Thomas P Anderle		
Deputy Clerk:	Veronica Robles	Dept:	SB Dept 3
Deputy Sheriff:			
Bailiff/Court Officer:	Brandon Thillman	Case No:	24CV00548
Court Reporter:	Lindy DeBoer		

Shelby Family Partnership LP vs City of Goleta et al

Parties Present:

Collins, Beth A	Attorney for Plaintiff
Brand, Alex	Attorney for Defendant

NATURE OF PROCEEDINGS*:* Motion: Partial Judgment; Motion: Judgment on Pleadings

Mr. Brand presented oral argument. After argument the Court adopted the tentative ruling as indicated below.

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.

DARREL E. PARKER, EXECUTIVE OFFICER

Minutes Prepared by:

Veronica Robles , Deputy