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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SNOWBALL WEST INVESTMENTS, L.P., a California limited partnership, Petitioner and Plaintiff, v. CITY OF LOS ANGELES; CITY OF LOS ANGELES DEPARTMENT OF CITY PLANNING; and DOES 1 through 10, inclusive Respondents and Defendants.	CASE NO. 20STCP00771 [Assigned for all purposes to the Hon. Mitchell Beckloff, Dept. 86] PETITIONER'S OPENING BRIEF IN SUPPORT OF WRIT OF MANDATE [Petitioner's Request for Judicial Notice filed concurrently] [CCP §§1085 and 1094.5] Date: March 24, 2021 Time: 9:30 a.m. Department: 86 Action Filed: February 24, 2020

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I. INTRODUCTION

At issue is a housing development project for which Respondent City of Los Angeles (the "City") has issued all approvals necessary under State and local law, but pandering to politics and NIMBYism, the City refuses to allow to be built. This is the type of improper City conduct the Legislature envisioned preventing when it enacted the Housing Accountability Act ("HAA"). The Legislature cited in the HAA the "lack of housing" as a "critical problem" of "historic proportions" that "threatens the economic, environmental, and social quality of life in California." The Legislature enacted the HAA "to significantly increase the approval and construction of new housing" by "effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects…" Govt. Code § 65589.5(a)(2)(K).[1]

The record in this case reveals a twelve-year entitlement process for a housing development project that the City itself stated in express written findings complies with all applicable, objective general plan and other land use regulations, policies and standards. In these circumstances, the HAA severely restricts the discretion of permitting agencies and prohibits them from denying the housing development except upon a showing that the development would have significant, quantifiable, direct, and unavoidable health or safety impacts based upon objective, identified written public health or safety standards, findings that the City did not make here.

Petitioner and Plaintiff Snowball West Investment, L.P. ("Snowball") obtained final approvals from the City for a Vesting Tentative Tract Map (the "Map"), Site Plan Review ("SPR") and Project Permit Compliance ("PPC"), and a certified Final Environmental Impact Report ("FEIR") for a 215-unit housing development project in the northeast part of the City (the "Project"). The City made express written findings that the Project is entirely consistent with the applicable Community Plan and Specific Plan. These final approvals were not appealed, and no litigation was filed. Snowball was eager to begin development of this critically-needed housing development.

Snowball sought to begin the ministerial process of obtaining clearances of conditions for its Map from Respondent City of Los Angeles Department of City Planning (the "Planning Department"),

[1] All statutory references are to the Government Code unless otherwise indicated.

a necessary step in obtaining Final Map approval. The Planning Department refused to process these ministerial clearances, claiming in error that the project needs to obtain a zone change before the clearances can be given. This is wrong as a matter of law, as the HAA and its companion law, the Housing Crisis Act of 2019 (the "HCA") provide that ***no zone change is required for a housing development project that is consistent with the objective general plan standards and criteria***. §§65589.5(j)(4) and 65905.5(c)(2). The City made findings that Snowball's housing development project is consistent. Thus, Snowball is entitled to a writ of mandate pursuant to Code of Civil Procedure §1085 ordering the City and the Planning Department to undertake the ministerial act of processing Snowball's Map clearances without requiring a zone change.

Additionally, Snowball is entitled to a writ of mandate pursuant to Code of Civil Procedure §1094.5 against the City as the City wrongly, arbitrarily and capriciously denied Snowball's ultimately unnecessary application for a Vesting Zone Change ("VZC"). In denying the VZC after Snowball already had obtained final approval of its FEIR, Map, SPR and PPC, the City Council did not make the findings required under the HAA and the Los Angeles Municipal Code ("LAMC"). Furthermore, the purported findings the City Council adopted for the denial are inadequate as a matter of law, are unsupported by substantial evidence in the record, and contradict without explanation the findings the City made in approving the Map, SPR and PPC.

There is no question that the Court must issue these writs of mandate. But more than that, given the City's bad faith, the HAA empowers the Court to enter a judgment ordering the City to approve the housing development project. The Project is a textbook example of a project that meets the purposes and criteria of the HAA. The Legislature enacted the HAA and considerably strengthened the statute over the years precisely because of the tendency of local governments to bow to NIMBYism, contribute to the state's historic housing crisis, and unjustifiably deny housing projects just as the City has done here. The Court must issue a writ of mandate ordering the City to approve the VZC, and/or ordering the City to process Snowball's Map clearances and building permits because no zone change approval is required under the HAA and the HCA.

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II. OVERVIEW OF THE HOUSING ACCOUNTABILITY ACT

A. Local Agencies Must Approve Housing Developments Complying with Objective Planning Criteria Absent Health or Safety Impacts

The Legislature recognized in the HAA that California is in a housing crisis that is at least "partially caused by activities and policies of many local governments that limit the approval of housing…" §65589.5(a)(1)(B). Recognizing that the statute's intent had not been fulfilled, the Legislature significantly amended the HAA, effective January 1, 2018, to strengthen its provisions, expand its applicability, and increase local governments' liability for violations. §65589.5(a)(2)(K). Known as the "Anti-NIMBY law," (*Honchariw v. County of* Stanislaus (2011) 200 Cal.App.4th 1066, 1068), the HAA provides that "***[i]t 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.***" §65589.5(a)(2)(L) (emphasis added).

The HAA is a game changer when it comes to judicial review of local land use decisions. The key provision at issue in this litigation is subdivision (j), which provides that if a "housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete" the project ***must be approved*** unless the approving agency makes two findings in writing supported by a ***preponderance of evidence*** in the record: (1) that the project would have an unavoidable impact on public health or safety unless the project is disapproved; and (2) that there is no feasible method to satisfactorily mitigate or avoid the adverse impact other than the disapproval of the project. §65589.5(j)(1)(A)-(B) (Emphasis added). The HAA narrowly defines a "specific adverse impact" as a "significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." §65589.5(j)(1)(A).

B. Under the HAA, a Housing Development Project that is Inconsistent with its Zoning but Consistent with the General Plan Must Be Approved Without Requiring a Zone Change

The HAA's requirement that a local agency approve a housing development project that complies with "applicable, objective general plan, [and] zoning…standards" is further refined in the statute to mean that a proposed project that is inconsistent with the applicable zoning standards is

entitled to approval so long as it is consistent with the applicable general plan standards. §65589.5(j)(4); *see also* the HCA at §65905.5(c)(2). Both state that a "proposed housing development project is not inconsistent with the applicable zoning standards and criteria, ***and shall not require a rezoning***, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan…." (Emphasis added.)

C. The Court May Also Order a Project to be Approved Where There is Bad Faith

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

III. STATEMENT OF FACTS

Snowball owns the property located at 6433 La Tuna Canyon Road, at the intersection of Tujunga Canyon Boulevard and La Tuna Canyon Road, comprising approximately 58 acres (the "Property"). (1AR212) Between the early 1960's and 2016, the southeasterly portion of the Property was the site of the Verdugo Hills Golf Course. (10AR1661; 14AR2508; 169AR34727) The Property lies next to a densely developed suburban area, and is bounded by the Tujunga residential community to the north, La Tuna Canyon Road and the Foothill Freeway (Interstate 210) to the south, Tujunga Canyon Boulevard and a residential community to the east, and undeveloped hillside terrain to the west. (10AR1654-1656; 14AR2508)

The City's General Plan Land Use Element consists of The Framework Element and the subordinate 35 community plans. (10AR1657) The Property is within the City's Sunland-Tujunga-Lake View Terrace-Shadow Hills-East La Tuna Canyon Community Plan (the "Community Plan") and within the City's San Gabriel/Verdugo Mountains Scenic Preservation Specific Plan (the "Specific Plan"). (10AR1654) Since the Community Plan was adopted in 1980, and then updated in 1997, the City's land use designations on the Property have always been Low Medium/Multiple Family Residential and Minimum Residential. (10AR1654; 1657) Portions of the Property are zoned RA-1 (Residential Agricultural Zone), A1-1 (Agricultural Zone), and RE40-1 (Residential Estate Zone). (10AR1655; 16AR3017)

Pursuant to §65860, the Los Angeles City Charter, and general planning and zoning principles, the zoning for a property is required to be consistent with its general plan land use designation. In this case, however, the zoning is not consistent with the Community Plan. (*Id.*) The Community Plan's land use designation for the Property specifies the corresponding zones as: RD1.5, RD2, RD3, RD4, RD5, RD6, RZ3, RZ4, RU, and RW1. (10AR1657; RJN Ex. "A" pp. 59-60.) RA-1, A1-1, or RE40-1 are not among the corresponding zones. (*Id.*) Footnotes 4 and 20 of the Community Plan apply to portions of the Property, adding additional parameters for future development, including that "development shall be limited to no greater than that permitted by the RD5 Zone and shall be detached housing." (10AR1657 and 1665; RJN Ex. "A" pp. 59, 61.)

In 2007, applications were filed with the City to demolish the Verdugo Hills Golf Course and develop the Property with a housing development project consisting of 229 single family homes on roughly 28 acres of the 58-acre site, with more than 20 acres set aside as open space (the "Original Project"). (5AR859; 13AR2431-2458) The Original Project consisted of three related applications. Case No. CPC-2007-3082 requested a Zone Change from the inconsistent RA-1 and A1-1 zones to the Community Plan specified RD5-1 zone, a SPR, and a PPC. (13AR2437-2458; 16AR3048) Case No. VTT-69976 requested a Vesting Tentative Tract Map for a subdivision of 229 homes. Case No. ENV-2007-3083-EIR was for the Environmental Impact Report ("EIR"). (13AR2432-2436)

Originally filed as a regular zone change in 2007, the application was converted to a "Vesting" Zone Change in 2008. (7AR1151-1152) Originally filed as a standard subdivision map, the Map application was converted to a "small lot" subdivision in 2010 and proposed detached housing. (10AR1652) At no time during the entitlement process did Snowball's proposed redevelopment of the Property require any variances, adjustments, or exceptions. (169AR34750)

On May 21, 2009, the City released a Draft EIR for the Original Project which was circulated for public comment pursuant to the California Environmental Quality Act ("CEQA"). (14AR2516-2519) The Public Services section of the Draft EIR included a detailed Fire Protection analysis of the Original Project and recommended 17 fire-related mitigation measures based on written correspondence from Los Angeles Fire Department ("LAFD"), dated January 3, 2008. (43AR8313-8319) The Property is in a Very High Fire Hazard Severity Zone which required that mitigation

measures be implemented for the future safety of the project's residents and the surrounding community. (5AR797-798) With these conditions imposed on the Original Project, the Draft EIR concluded that all fire-related and public safety impacts would be mitigated to a less than significant level. (5AR862-864)

Following publication of the Draft EIR, in consultation with the City, Snowball decided to revise the Original Project. (9AR1412; 10AR1652) LAFD again reviewed the development and issued an approval letter on September 18, 2017, recommending updated conditions of approval. (17AR3099-3104) LAFD's letter was issued 17 days after the La Tuna Fire, a wildfire that burned over 7,000 acres near the Property. (*Id.*) The LAFD letter stated that "The inclusion of the above recommendations, along with any additional recommendations made during later reviews of the proposed project, will reduce the impacts to an acceptable level." (17AR3104) With the incorporation of these conditions, the LAFD again concluded that all fire and public safety impacts would be mitigated to a less than significant level. (*Id.*; and 5AR862-864)

Snowball thereafter worked with City staff to develop revisions to the Project that further reduced the housing units to 215. This alternative was described in the Final EIR's ("FEIR") Additions & Corrections and became the "Environmentally Superior Alternative" (the "Revised Project"). (5AR899-904) The FEIR was released on September 24, 2018. (17AR3148-3151) It included 18 fire-related mitigation measures and LAFD approval updated after the nearby La Tuna Fire. (167AR34452-34458) The FEIR found that all fire and public safety impacts would be mitigated. (*Id.*; 5AR862-864)

The Planning Department issued a 208-page Staff Report recommending approval of the Map. On November 28, 2018, the City held its initial public hearing on the Project. (168AR34635) This was a joint hearing in front of the City's Deputy Advisory Agency for the Map and a Hearing Officer for the VZC, SPR and PPC. Project supporters and opponents attended the hearing and gave public testimony. (7AR1284-1285; 8AR1286-1332) Opponents voiced concerns including, but not limited to, fire safety and wildfire risk. (10AR1787-1788) Sitting on the Deputy Advisory Agency panel was a LAFD representative who, after hearing fire-related comments, did not revise or add to the recommended fire safety conditions or mitigation measures. (5AR757) The Planning Director for the area's representative, City Councilmember Monica Rodriguez (the "Councilmember"), with whom

Snowball had long been in communication, attended the hearing but did not take a position or make any recommendation. (10AR1787-1789) The City issued a Letter of Determination on February 19, 2019, certifying the FEIR, adopting the CEQA findings and mitigation measures, and approving the Map. (3AR364-499)

On March 1, 2019, "part" of the Map determination was appealed to the City Planning Commission (the "CPC"). (4AR500-725) The appeal raised concerns regarding wildfire risk and fire safety, but no professional reports or studies were submitted in support. (*Id.*)

The City prepared a 386-page Staff Report for the May 23, 2019 CPC meeting, recommending that the appeal be denied and that the VZC, SPR and PPC all be approved. (5AR755-756; 162AR33344-163AR33729) The recommendations were based on detailed findings supported by the evidence in the record and on the certified FEIR. (10AR1670-1786) At the CPC hearing, Snowball and Planning Department staff explained that the FEIR included analyses of the issues as required by CEQA and contained mitigation measures that reduced impacts, including fire and public safety, to a level of insignificance. (169AR34733-34734; 34750; 34796; 34801-34802) Staff stated that, altogether, there were 30 conditions of approval that addressed fire safety. (5AR757; 9AR1641; 169AR34802)

Retired LAFD Chief Andrew Fox testified in support of the Revised Project. (169AR34794-34796; 34806-34807; 34810-34813) Chief Fox described how he personally had overseen the firefighting and evacuation efforts for the 2017 La Tuna Fire. (169AR34795) He described how development of the Property would greatly ***improve*** the safety of the area. (169AR34796) By contrast, he stated that if a brush fire were to occur today, the Property's current condition (undeveloped open space and brush) would facilitate the rapid spread of fire to the surrounding homes. (169AR34794-34796; 34806-34807; 34810-34813)

Chief Fox explained that the development of the Property, as conditioned by LAFD, would provide fire safety benefits to both residents and the LAFD. (169AR34794) LAFD requirements included, for example, sprinkler systems for each home, non-combustible roof and building materials, and ingress and egress roads able to accommodate heavy fire apparatus and major evacuations during an emergency situation. (17AR3099-3104) He said that the Property's proximity to East and West-bound lanes of the 210 Freeway would be helpful in case of an evacuation. (169AR34795, lines 7-14)

Chief Fox also explained that Snowball's proposed community center would provide an evacuation center in the event of a fire. (169AR34813, lines 9-12) The Revised Project would provide a permanent cache of firefighting foam at the Property that would be highly beneficial given that fire apparatus can only carry a limited amount of firefighting foam that is typically consumed very quickly during firefighting operations. (5AR864)

Toward the end of public testimony, and without warning to Snowball, the Planning Director for the Councilmember requested that the CPC deny the Revised Project. (169AR34791-34793) On rebuttal, Snowball expressed its surprise with the Councilmember's position and told the CPC that this was the first time Snowball had received any substantive feedback from the Councilmember or her staff. (169AR34797, lines 1-13) Despite the Councilmember's request, the CPC voted unanimously to approve the Revised Project. (168AR34647-34650) Specifically, the CPC voted unanimously to deny the appeal, to approve the SPR and PPC, and to recommend that the City Council approve the VZC. (*Id.*)

On June 19, 2019, the CPC issued its Letter of Determination certifying the EIR, adopting the CEQA findings and mitigation program, and approving the Map. (5AR787-920) A second CPC Letter of Determination for the remaining entitlements was also mailed the same day. (12AR2154-2269) A "Corrected" Letter of Determination was mailed on July 2, 2019. (13AR2280-2398) ***These City approvals included findings that the Revised Project complies in full with the objective criteria and standards of the General Plan, Community Plan and Specific Plan.*** (3AR483-494; 13AR2300-2306)

No appeal was filed of any of the CPC's actions. (164AR33733-33735) No lawsuit was filed challenging the Map, SPR, PPC, or the FEIR. Thus, ***the City's approvals of the Map, SPR, and PPC, its certification of the FEIR, and all of the associated findings and conditions, are now final determinations of the City***.

Following the CPC approvals, the only item remaining to be acted upon by the City Council was the VZC, which, when approved, would bring the zoning into conformance with the Community Plan, as required by §65860 (although not necessary for project approval under the HAA and HCA).

Snowball had designed the Revised Project exactly as required by the Community Plan land use designation. The certified FEIR mitigated all project impacts. (5AR809-919) Snowball now had a certified EIR, and an approved and final Map, SPR, and PPC. Snowball had already voluntarily

decreased project density from 229 units (Original Project) to the Map-approved 215 units (Revised Project). (10AR1652) Snowball had also entered into an agreement with the Mountains Recreation and Conservation Authority (the "MRCA Agreement") supported by major community groups VOICE, Tuna Canyon Detention Station Coalition, and the Trust for Public Land which potentially would reduce the final number of units to 169. (161AR33240-33246) Snowball had agreed to dedicate more than half of the Property as passive recreational open space and to include a La Tuna Canyon Detention Center historic area on the site. (*Id.*)

The City had already adopted final detailed findings that the Revised Project is in substantial conformance with the purposes, intent, and provisions of the General Plan as reflected in the adopted Community Plan and Specific Plan. (3AR483-494; 13AR2295-2306) The City had also adopted final detailed findings for all the requested entitlements, showing that approval was supported by substantial evidence in the record. (3AR483-494; 13AR2300-2306) The City had adopted final findings certifying the FEIR and finding that the Revised Project would have no significant unmitigated impacts on fire safety or wildfire risk to the community. (5AR787-788; 862-864; 904)

A City Council Planning and Land Use Management ("PLUM") meeting was scheduled for September 17, 2019. (170AR34833-34838) Immediately following the CPC meeting, Snowball reached out to the Councilmember to discuss her newly expressed concerns. (166AR34281-34284) Snowball agreed four times to extend the City's time to act on the VZC as it continued to try to discuss the Project with the Councilmember. (170AR34841-34845; 34848-34867) The Councilmember's staff indicated that the Councilmember wanted to negotiate a deal, but never communicated specifically what she wanted from Snowball. (166AR34281-34284) On December 5, 2019, Snowball submitted another continuance request for the December 10, 2019 PLUM Committee meeting. (165AR34070) Snowball was still being told that it would have the opportunity to meet with the Councilmember. (166AR34281-34284) However, on December 6, 2019, Snowball learned that the Councilmember would not meet and would not be supporting another continuance. (*Id.*)

Snowball wrote a letter in preparation for the December 10, 2019 PLUM Committee meeting, explaining that the only action to be taken by the City was approval of the VZC. (166AR34262-34264)

The letter reminded the PLUM Committee that the FEIR had been certified and that all other entitlements for the Revised Project were final and had not been appealed. (*Id.* at 34262)

Project supporters and opponents attended the PLUM Committee meeting. (166AR34273-34275) The PLUM Committee Chair stated that he had over 60 speaker cards and that he would only allocate 30 minutes in total for public comment. (170AR34868-34869) He acknowledged that this would mean that not everyone would get an opportunity to speak. (*Id.*) This procedure deviated from typical PLUM Committee meetings in which the project applicant is a designated presenter and each side is guaranteed an equal allocation of time. (RJN Ex. D p. 120)

The PLUM Committee Chair opened testimony by first calling up a representative of the Councilmember. (170AR34870) She read a letter from the Councilmember into the record (the "Letter"). (170AR34870-34872) In the Letter the Councilmember asked that the VZC be denied on the basis of fire and public safety concerns. (13AR2414-2416) Its conclusion stated, "Given that the findings related to public health and safety, and good zoning practices cannot be made in the affirmative, I request that the proposal for a Vesting Zone Change to change a portion of the project site from Al-1 and RA-1 to (T)(Q)RD5-1; and RA-1 to Rl-1 be denied." (*Id.* at 2416)

The Letter did not include citations to evidence or rely upon any expert opinion, study, data, or report. (*Id.* at 2414-2416) The concluding statement was the Councilmember's mere opinion. (*Id.*) The Letter utterly ignored twelve years of thorough CEQA review and completely contradicted the final findings the City adopted when approving the Map, SPR, PPC and FEIR for the exact same Project. (*Id.*)

The Letter also cited to the wrong portion of the LAMC. (*Id.* at 2414) She stated that the City Council must make affirmative findings to approve the Zone Change pursuant to LAMC §12.32.C. (*Id.*) In fact, Snowball's application was a "Vesting" Zone Change under LAMC §12.32.Q. (13AR2280; RJN Ex. "C" pp. 94-95.) To deny the VZC application, the law required the City to make findings that the VZC "…is not in substantial conformance with the purposes, intent or provisions of the General Plan or is not in conformance with public necessity, convenience, general welfare and good zoning practice and the reason for not conforming with the plan." (RJN Ex. "C" pp. 94-95.) The "plan" referenced in Section 12.32.Q(3)(a)(2)(ii) refers in this case to the Community Plan.

The Community Plan is mentioned nowhere in the Letter, nor does the Letter acknowledge that the basis for the VZC is the City's own Community Plan that designates the Property for the exact zoning sought by Snowball. (13AR2414-2416) While the Councilmember may have been attempting to offer her unsupported opinion regarding public necessity, general welfare, and zoning practices, the Letter fails to identify those as the reasons that the proposed zone does not conform to the plan as required by Section 12.32.Q(3)(a)(2)(ii), nor does it offer any evidence in support of the findings required under the HAA if a housing development that conforms to the requirements of the General Plan is to be denied. (*Id.*)

After the Letter was read, (no copy was provided to Snowball), the PLUM Committee Chair did not give Snowball's representatives the opportunity to present their case for the VZC. (170AR34870) Instead, he called speaker names at random. (*Id.*) It was merely by chance that one of Snowball's representatives was called to the podium later in the hearing. (170AR34881) He was given only one minute to explain Snowball's position and to respond to the Letter read into the record at the start of the hearing. (170AR34881-34885)

Retired LAFD Chief Andrew Fox submitted a speaker card at the PLUM Committee hearing on Snowball's behalf to respond to fire and public safety comments, but his name was never called. (166AR34275) If given the opportunity to speak, Chief Fox would have rebutted the Letter and provided expert facts on the fire and public safety aspects of the Revised Project, just as he had done before the CPC. (166AR34260-34261) Other experts and project supporters were not given any opportunity to speak before the 30 minutes expired. (170AR34870)

At the end of the truncated public testimony, the PLUM Committee members deliberated. (170AR34904) They asked City Planning staff and the City Attorney several questions about the VZC that were inadequately answered both from a factual and legal standpoint. (170AR34905-34906, 34908-34909) The Deputy City Attorney in attendance that day was unfamiliar with the case and said so. (170AR34908) She did not explain the findings the City Council would need to make for denial of the VZC under the City's Municipal Code and the HAA. (170AR34905-34906) In fact, one PLUM Committee member stated the City Attorney's explanation of the City's legal requirements was "clear

as mud." (170AR34906) Snowball was not provided any opportunity to answer questions or to rebut statements before the Committee members voted on the VZC. (170AR34910-34911)

Ignoring over ten years' worth of expert testimony, studies, and prior City actions, the PLUM Committee voted to recommend that the City Council deny the VZC simply because the Councilmember wrote a letter asking that they do just that. (170AR34911) The PLUM Committee's action was not based on any evidence or findings for denial. (166AR34297-34298)

Later that evening, the City Clerk scheduled the VZC for the City Council meeting ***the next morning***, on December 11, 2019. (13AR2417-2422) Nobody from the City notified Snowball of the City Council meeting, which Snowball's counsel only learned of after receiving an automated email notification from the City Clerk's office at 8:00pm on December 10, 2019. (166AR34291-34294) Given the inadequate notice, it was impossible for Snowball to attend the City Council meeting the next morning. (166AR32481-34284)

The City Council hearing proceeded without Snowball in attendance. (170AR34982-34990) The City Council, in accordance with its practice to vote in lockstep with the Councilmember in whose district a project lies, voted 14-0 to deny Snowball's VZC. (166AR34295; 170AR34989) This was after a brief public hearing at which the Councilmember spoke and, in doing so, gave her first and only statement about the Revised Project, which was a summation of her concerns that the City should reevaluate what types of projects are appropriate given climate change and the "new normal" of wildfires. (170AR34987-34988) She suggested that the City have some "realistic conversations" about the appropriateness of certain projects. She asked that the VZC be denied. (*Id.*)

Once again, the Councilmember's statements were not based on any factual data, evidence, reports, or studies. (*Id.*) No findings for denial were presented or made by the City Council as required by LAMC §12.32.Q.3(a)(2)(ii) and by the HAA §65589.5(j) (*Id.*; RJN Ex. "C" pp. 94-95) Remarkably, in lieu of findings, the City Council adopted the Letter and called it "findings." (166AR34295-34298)

Snowball had warned the City multiple times of the applicability of the HAA and its requirement of project approval. (9AR1409-1496; 12AR2117-2126; 166AR34262-34264, 34291-34294; 170AR34883) Nevertheless, the City utterly ignored binding State law when denying Snowball's VZC, thereby purporting to deny Snowball's residential housing project.

Denial of the VZC has left Snowball in a highly unusual predicament. Snowball has a certified FEIR, and a final, approved, and unchallenged Map, SPR, and PPC. Under the HAA and the HCA, Snowball is entitled to build in compliance with the objective standards and criteria of the conforming zoning and no zone change is required for the Property since the approved housing development project was found by the City to be consistent with the objective general plan standards and criteria.§§65589.5(j)(4) and 65905.5(c)(2). The only entitlement the City did not approve was the VZC, the one entitlement the City legally was obligated to approve because the zoning Snowball sought was called for in the Community Plan and is mandated by the consistency doctrine, the HAA and the HCA.

Given the approved Map, in January 2020 Snowball sought to begin the ministerial process of obtaining clearances of Map conditions from the Planning Department, a necessary step in obtaining Final Map approval. (171AR35048-35050) The Planning Department refused to process these ministerial clearances, claiming in error that the City Council's denial of the VZC prevented the Planning Department from granting the clearances. (171AR34995-34999; 35048) Snowball advised the City that under the HAA and the HCA, the City was required to process the Project as though its zoning were consistent with the Community Plan and could not require a zone change for the Property because Snowball's housing development project is consistent with the objective general plan standards and criteria. §§65589.5(j)(4) and 65905.5(c)(2). (171AR34991-34994) Nevertheless, the City has refused to process clearances for Snowball's Map. (171AR34995-34999; 35048)

IV. THE CITY VIOLATED THE HAA AND THE LAMC BY REFUSING TO PROCESS SNOWBALL'S MAP CLEARANCES AND BY DENYING SNOWBALL'S VZC

A. Legal Standards

Under Code of Civil Procedure §1085(a), a writ of mandate shall issue where the agency fails to perform a ministerial act which the law specially enjoins, such as the processing of clearances for a final subdivision map, and where the Petitioner has no plain, speedy and adequate alternative remedy.

Under Code of Civil Procedure §1094.5, a writ of mandate shall issue where the agency commits a prejudicial abuse of discretion, such as denying Snowball's VZC and violating the HAA. An abuse of discretion is established if the agency has not proceeded in the manner required by law, its order or decision is not supported by the agency's findings, or the findings are not supported by the evidence. §1094.5(b). A failure to follow the requirements of the HAA is a failure to proceed in the

manner required by law subject to reversal under §1094.5. *Honchariw, supra,* at 1072. Whether the City proceeded as required by law is subject to de novo review by the court. *Bledsoe v. Biggs Unif. Sch. Dist.* (2008) 170 Cal.App.4th 127, 134. And the court's review of the evidence is governed by a preponderance of the evidence standard. Govt. Code §65589.5(j)(1). Importantly, under the HAA, ***the City*** and not the Petitioner "***bear[s] the burden of proof*** that its decision has conformed to all of the conditions specified in Section 65589.5." §65589.6. (Emphasis added.)

B. <u>The HAA Applies Because the Project is a "Housing Development Project"</u>

Subdivision (j) of the HAA applies to "housing development projects," defined, *inter alia*, as "a use consisting of … [r]esidential units only." § 65589.5(h)(2)(A). The Project here consists of an "all residential development" of up to 215 homes. (13AR2280) The Project is plainly a "housing development project" under the HAA. *Honchariw, supra,* at 1073-1074, 1077.

C. <u>The Project Complies with All Applicable General Plan and Zoning Standards</u>

The Project falls within the protections of subdivision (j) of the HAA because the City expressly has found that it "complies with applicable, objective general plan, zoning, and subdivision standards and criteria." §65589.5(j)(1). A project is consistent with applicable standards and policies under the HAA "if there is substantial evidence that would allow a reasonable person to conclude that the housing development project…is consistent, compliant, or in conformity." §65589.5(f)(4).

Here there is uncontroverted evidence that the Project is consistent with the General Plan and its constituent parts. The City's approval of the Map, which is now final, includes express findings based on substantial evidence in the record that "[t]he proposed tract map is consistent with the General Plan and applicable specific plans. The proposed tract map is consistent with the General Plan Framework, the Sunland-Tujunga-Lake View Terrace-Shadow Hills-East La Tuna Canyon Community Plan, the San Gabriel and Verdugo Mountains Scenic Preservation Plan Area, the Housing Element and the Mobility Plan 2035." (3AR484) The findings then list specifically how the Project meets the General Plan's objectives and policies. (3AR484-487) The Map findings also conclude, based on substantial evidence in the record, that the design and improvement of the proposed subdivision are consistent with the applicable General and Specific Plans. (3AR487-489)

Likewise, the CPC's now-final approval of the SPR and PPC finds, based on substantial evidence in the record, that "the Project is in substantial conformance with the purposes, intent and provisions of the General Plan as reflected in the adopted Community Plan." (13AR2295) These findings then list specifically how the Project meets the Community Plan, General Plan, Framework Element, Mobility Element, Air Quality Element and Health and Wellness Element's goals and objectives. (13AR2295-2302; 2304-2305)

Since the Project conforms to the General Plan, the Project is deemed under the HAA to be consistent with applicable zoning and it does not require a rezoning because "the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan." §65589.5(j)(4). The HAA at §65589.5(j)(4) and the HCA at §65905.5(c)(2) both provide, in pertinent part:

> "…a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, ***and shall not require a rezoning***, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan…." (Emphasis added.)

Thus, the City has found the Project consistent with the General Plan and all underlying plans, and since the current zoning is inconsistent with those plans[2], the Project must be found to be consistent with the applicable zoning and subject to the protections of the HAA and HCA.

D. Snowball is Entitled to a §1085 Writ of Mandate as the City Violated its Ministerial Duty to Process Snowball's Vesting Map Clearances

The HAA and HCA prohibit the City from requiring a zone change for a housing development project, like Snowball's, that is consistent with the objective General Plan standards and criteria but has zoning inconsistent with the General Plan. §§65589.5(j)(4) and 65905.5(c)(2). Thus, the Planning

[2] The City's findings for approval of the Project's entitlements state that the portion of the Property with the Plan designation Low Medium I has corresponding zones of R2, RD3, RD4, RD5, RD6, RZ3, RZ4, RU and RW1. (13AR2295) Based on Footnote 20, Snowball sought the corresponding zone of RD5-1 for that portion of the Property in place of the current inconsistent RA-1 and A1-1 zoning. (*Id.*) Likewise, the portion of the Property with the Plan designation Low has corresponding zones of RE9, RS, R1, and RU. Snowball sought the corresponding zone of R1-1 for that portion of the Property in place of the current inconsistent RA-1. (*Id.*) Both Vesting Zone Changes are acknowledged by the City's own findings to be from a zoning designation inconsistent with the General Plan to one that is consistent. (*Id.*)

Department's refusal to perform its ministerial duty to process Snowball's Map clearances is in violation of the law. *Great Western Sav. & Loan Assn. v. City of Los Angeles* (1973) 31 Cal.App.3d 403; *Youngblood v. Board of* Supervisors (1978) 22 Cal.3d 644, 656 ("Approval of the final map thus becomes a ministerial act once the appropriate officials certify that it is in substantial compliance with the previously approved tentative map." [citing *Great Western, supra*, with approval]) Under the HAA, the Revised Project is entitled by law to go forward with its existing entitlements, and without a zone change, as the City has found that it is consistent with the objective general plan standards and criteria. (*See*, Section III.C., *supra*.)

As the Planning Department has failed to act as required by law by failing to process Snowball's Map clearances (171AR34991-34994, 34995-35047, 35048), the issuance of a writ compelling the Planning Department to do so is mandated. *Great Western, supra,* at 414 (since the City's "duty relative to the final tract map was administrative and ministerial, under the provisions of Code of Civil Procedure section 1085, the issuance of a writ of mandate is the proper procedure to compel" the performance of the act.) Snowball is entitled to a writ of mandate directed to the Planning Department ordering it to take the ministerial action of processing Snowball's Map clearances without requiring the approval of a zone change for the Property in violation of the HAA.

E. Snowball is Entitled to a §1094.5 Writ of Mandate as the City Abused its Discretion in Denying Snowball's Vesting Zone Change in Violation of the HAA and HCA

The City Council's determination to deny the Vesting Zone Change was arbitrary and capricious and totally lacking in evidentiary support in that it violated the HAA and HCA, State laws which require the City to approve the Project. The HAA provides that if a "housing development project complies with applicable, objective general plan, zoning,[3] and subdivision standards and criteria…in effect at the time that the application was deemed complete" the project ***must be approved*** unless the approving agency makes two findings in writing supported by a ***preponderance of evidence*** in the record: (1) that the project would have an unavoidable impact on public health or safety unless the project is disapproved; and (2) that there is no feasible method to satisfactorily mitigate or avoid the

[3] As discussed in Section III.C, *supra*, a housing development project like Snowball's that is zoned inconsistently with the general plan but that is consistent with the objective general plan standards and criteria is treated as though it has been rezoned consistent with the general plan. §§65589.5(j)(4) and 65905.5(c)(2).

adverse impact other than the disapproval of the project. §65589.5(j)(1)(A)-(B). The HAA narrowly defines a "specific adverse impact" as a "significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." Govt. Code §65589.5(j)(1)(A).

Thus, the City Council was required to approve Snowball's VZC, thereby finalizing the last arguably needed approval for Snowball's housing development project, unless it made the two required findings supported by a preponderance of evidence. *Honchariw, supra,* at 1079 and 1081. The City cannot meet its burden of proving that it complied with these obligations under the HAA. §65589.6. Here, the City Council made neither required finding when denying the VZC. (166AR34277-34279, 34297-34298) In fact, the City Council did not make any new findings of its own but stated that it was adopting the findings made by its PLUM Committee in recommending denial. (166AR34297) The PLUM Committee, in turn, stated that it was "adopting the findings presented by Council District 7 as the findings of the PLUM Committee…" (166AR34298) Those supposed "findings" are in the form of the Letter. (166AR34277-34279)

The Letter, of course, does not reference §65589.5(j)(1)(A)-(B), nor does it contain any findings of fact at all, and certainly not the findings required for a housing development project to be denied under the HAA. (166AR34277-34279) The Letter does not present facts that the Project would have an unavoidable impact on public health or safety unless the Project is disapproved. (*Id.*) Nor does it present facts that there is no feasible method to satisfactorily mitigate or avoid the alleged adverse impact on public health or safety other than disapproval. (*Id.*) The HAA requires there to be a preponderance of evidence of "objective, identified written public health or safety standards" that will incur a "significant, quantifiable, direct, and unavoidable impact" if the Project is not denied. §65589.5(j)(1)(A)-(B). The Letter contains none. (166AR34277-34279)

Instead, the Letter contains two paragraphs of speculation and opinion concerning fire safety, citing to no evidence in the record in support. (166AR34278) There is no evidence in the Letter that the Project's approval would have an unavoidable impact on fire safety, nor that any such impacts cannot be mitigated. (166AR34277-34279) And, of course, there is significant substantial evidence to the contrary throughout the record. The FEIR, ***certified by the City***, concludes that any fire safety impacts

of the Project are mitigated to less than significant. (13AR2354-2356) LAFD confirmed that the FEIR's mitigation measures mitigated fire safety concerns. (17AR3104) And the expert testimony of Retired LAFD Chief Andrew Fox showed, without contradiction, that development of the Property would greatly improve the safety of the area, rather than endanger it. (166AR34260-34261;169AR34794-34796; 34806-34807; 34810-34813) As the City must base its findings on a preponderance of the evidence, and the only evidence in the record reaches the other conclusion, the City's "findings" do not justify a denial of the Project under the HAA. §65589.5(j)(1)(A)-(B); *Honchariw*, *supra*, at 1081.

Thus, not only did the City fail to make the findings required by §65589.5(j)(1)(A) and (B), the opinion and speculation offered by the City as its "findings" are not based on a preponderance of the evidence in the record, and in fact, are contradicted by substantial evidence in the record. The City cannot meet its burden of proving the contrary. The HAA provides that if the Court finds that the City disapproved a housing development project in violation of §65589.5(j), the court shall issue an order or judgment compelling compliance with this section within 60 days. §65589.5(k)(1)(A)(i)(II) and (ii)

1. <u>The City Acted in Bad Faith Entitling Snowball to a Writ of Mandate Ordering the City to Approve the Vesting Zone Change</u>

If the Court finds that the City acted in bad faith in disapproving Snowball's VZC in violation of the HAA, the Court is empowered to enter an "order or judgment directing the [City] to approve the housing development project." §65589.5(k)(1)(A)(ii). "Bad faith" is defined in the HAA as including, but not limited to, "an action that is frivolous or otherwise entirely without merit." §65589.5(l). According to *Black's Law Dictionary*, "frivolous" means "clearly insufficient on its face," and per *The Law Dictionary*, it means "lacking in any arguable basis or merit in either law or fact." *See also* Code of Civil Procedure §128.7; *Peake v. Underwood* (2014) 227 Cal.App.4th 428, 440 ("A claim is factually frivolous if it is 'not well grounded in fact' and it is legally frivolous if it is 'nor warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.'")

The City's bad faith denial of Snowball's Project mandates a judgment requiring it to approve the VZC. Indeed, there can be no better example of bad faith than an agency deliberately and knowingly flouting the law as happened here and doing it in such a rushed fashion that Snowball was unable to even attend the final City Council hearing. The Project is consistent with all applicable,

objective zoning and land use criteria, both as a matter of fact and law. (*See,* Section III.C, *supra*) The City Council lacked a legitimate basis to deny the Project's VZC consistent with the HAA and the City Council did so in a manner that contravened the HAA. (*See,* Section III.C-E, *supra*) The City Council, acting at the behest of the Councilmember, acted knowingly and deliberately to violate the law. The City Council and its attorneys were advised directly and repeatedly by Snowball's counsel of the requirements of the HAA. (9AR1409-1496; 12AR2117-2126; 166AR34262-34264, 34291-34294; 170AR34883) They were warned of the consequences of violating the law. (*Id.*) Nevertheless, the City Council defied the law and, without even attempting to make the required findings, denied the VZC in direct violation of the HAA. The City's bad faith justifies the Court invoking its authority under §65589.5(k)(1)(A)(ii) to enter an "order or judgment directing the local agency to approve the housing development project."[4]

F. Snowball is Entitled to a §1094.5 Writ of Mandate as the City Abused its Discretion in Denying Snowball's VZC Based on Findings Lacking Evidentiary Support

The City Council's action was arbitrary and capricious and totally lacking in evidentiary support in that the decision of the City to deny the VZC was not supported by valid findings required by LAMC §12.32.Q(3)(a)(2)(ii) and the HAA (§65589.5(j)(1)(A) and (B)), and the inadequate findings made by the City were not supported by substantial evidence in the record.

LAMC §12.32.Q(3)(a)(2)(ii) requires that, when denying a vesting zone change, the City Council must find that "the zone change is denied because it is not in substantial conformance with the purposes, intent or provisions or the General Plan or is not in conformance with public necessity, convenience, general welfare and good zoning practice and the reason for not conforming with the plan." (RJN Ex. "C" pp. 94-95.) Here, the only "findings" were the Letter (166AR34277-34279), which does not cite to

[4] The Court is asked to take judicial notice pursuant to Evidence Code §452(d) of the decision by the Hon. James Chalfant in a recent case brought against the City for violation of the HAA. A true and correct copy of the ruling in *District Square, LLC v. City of Los Angeles*, LASC Case No. 20STCP00654 is attached as Exhibit "B" to Snowball's concurrently filed Request for Judicial Notice. In *District Square*, the Court ordered the City to approve a housing development project that it wrongfully denied despite that it was mandated by the HAA to approve it, found that the City acted in bad faith warranting an order to approve the project, and awarded the applicant its attorneys' fees. (RJN Ex. "B" at pp.74-76, 81-83.) *District Square* shows that the City has a practice of flouting its obligations under the HAA. Its pattern and practice of denying critically needed housing development projects in direct violation of State law and must be put to an end.

LAMC §12.32.Q(3)(a)(2)(ii) at all, and states only opinion and speculation without any attempt to cite to evidence in the record, let alone substantial evidence, in support. As shown in Section III.E., *supra*, the only relevant substantial evidence in the record directly contradicts the unsupported assertions in the Letter.

Furthermore, the City Council's determination to deny the VZC violated State law which requires the City to bring its zoning into consistency with its general plan. "[C]ity zoning ordinances shall be consistent with the general plan of the …city…." §65860. The existing zoning is not consistent with the corresponding zones set forth in the General Plan for the Property. *See*, Section III.C. at footnote 2, *supra*. Per §65860, the City must amend the zoning to be consistent with its General Plan.

G. Under the HAA, Snowball is Entitled to an Award of Attorneys' Fees

The HAA at §65589.5(k)(1)(A)(ii) provides that the court "shall award reasonable attorneys' fees and costs of suit to the plaintiff or petitioner" in a successful writ of mandate action under the HAA. The award of fees in this action, should Snowball prevail, is mandatory. (*Id.*) This court should include an award of attorneys' fees to Snowball in its judgment, in an amount to be determined on subsequent motion.

V. CONCLUSION

Based on the foregoing, Snowball respectfully requests that this Court grant its Petition for Writ of Mandate and order the City within 60 days either to process Snowball's Map clearances and other Project permits without requiring a zone change, or alternatively, to revoke its December 11, 2019 decision to deny Snowball's VZC and to approve the VZC as required by law, and to award Snowball its attorneys' fees pursuant to §65589.5(k)(1)(A)(ii).

DATED: January 22, 2021

Respectfully submitted,

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 16633 Ventura Boulevard, Suite 1220, Encino, CA 91436-1872.

On January 22, 2021, I served the foregoing documents described as:

PETITIONER'S OPENING BRIEF IN SUPPORT OF WRIT OF MANDATE

on all interested parties in this action by as follows:

Michael N. Feuer
Terry Kaufmann Macias
Donna Wong
Patrick Hagan
200 North Main Street
City Hall East, Room 701
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[X] **(BY EMAIL OR ELECTRONIC TRANSMISSION)**: I caused a copy of the document(s) to be sent from e-mail address tperry@gaineslaw.com to the persons at the 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 January 22, 2021, at Encino, California.

Tiffany Perry
TIFFANY PERRY