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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 Hon. Mitchell L. Beckloff, Dept. 86] **PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDATE** Date: March 24, 2021 Time: 9:30 a.m. Dept. 86 Action Filed: February 24, 2020

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I.

INTRODUCTION.

In denying the housing development project (the "Project") sought by Petitioner Snowball West Investments, L.P. ("Snowball"), the City of Los Angeles (the "City") unquestionably violated the Housing Accountability Act ("HAA"; Govt. Code §65589.5). Without making the required findings, the City denied the Project's Vesting Zone Change (which is not a required approval per the HAA), and thereby purported to deny the entire 215-unit housing project for which it had already certified the Final Environmental Impact Report ("FEIR") and given final approvals for its Vesting Tentative Tract Map, Site Plan Review and Project Permit Compliance. The 2018 amendments to the HAA change the traditional rules for the City's consideration of a housing development project. Because of the statewide housing crisis, the HAA forbids the City from denying Snowball's Project because even though the Project requires more density than is available under the existing zoning, that existing zoning is not consistent with the General Plan's land use designation, which permits the density proposed by the Project. As the City has made final, unchallenged findings that the Project complies with the objective requirements of the General Plan, the HAA requires the City to approve the Project as the City did not, and cannot, make the very specific and onerous findings required by the HAA for denial.

The HAA 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.*** 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 by the 2018 amendment to the statute to mean that a proposed project that is inconsistent with the applicable zoning standards (which are themselves inconsistent with the general plan) is entitled to approval so long as the project itself is consistent with the applicable general plan standards. §65589.5(j)(4) ("Section (j)(4)"). Both the HAA and another State law, the Housing Crisis Act (the "HCA") 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…., [T]he standards and criteria shall be applied to facilitate and accommodate development ***at the density allowed on the site by the general plan and proposed by the proposed housing development project***." *Id.;* ; *see also* the HCA at §65905.5(c)(2).

The City does not quarrel with any of its general obligations under the HAA. The City's opposition rests entirely on the assertion that the HAA does not apply to Snowball's Project because, it claims, the property's existing zoning is ***consistent*** with the existing general plan, so that Section (j)(4) does not apply and the City is free to deny the Project for any reason, or no reason at all. This is just wrong, and completely contrary to governing State law. As demonstrated by the text of the HAA and its legislative history, as admitted many times by the City itself, and under all other applicable standards, the existing zoning is ***not*** consistent with the general plan land use designations for Snowball's property. With this erroneous defense defeated, the City has no defense at all to Snowball's claims.

In addition, the City has failed to make the two mandatory findings for project denial in writing supported by a ***preponderance of evidence*** (not merely substantial evidence) in the record: (1) that the project would have a "specific, adverse 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). A "specific, adverse impact" is defined in the HAA as a "significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards…." *Id.*

Here, the City did not make the first required finding in its informal "findings" as the stated concerns regarding fire safety did not identify a significant, quantifiable, direct and unavoidable impact of the Project, nor were these "findings" based on any facts in the record at all, let alone "objective, identified written public health or safety standards." And the City does not even claim that it made the second required finding that there is no feasible method to mitigate or avoid any perceived adverse Project impact, nor could it, in that the City itself

certified the Project's FEIR which lists multiple fire safety mitigation measures and concludes that these measures mitigate the Project's impacts to a level of insignificance.

For all the reasons in Snowball's Opening Brief and below, the Court must grant Snowball's Petition for Writ of Mandate.

II.

SNOWBALL'S PROJECT MUST BE APPROVED UNDER THE HOUSING ACCOUNTABILITY ACT.

In the HAA, the State's Legislature finds and declares that the lack of housing is a crisis of historic proportions (§65589.5(a)(2)(A)), and that the state ranks 49th out of 50 in homeownership rates and in the supply of housing per capita (§65589.5(a)(2)(E)) causing a series of societal ills. Therefore, the Legislature declares that it "is the policy of the state 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(a)(2)(L)). The Legislature has demanded that ambiguity in the statute, if any, is to be interpreted in a manner that promotes the approval of housing. *Id.*

A. The Legislative History of the HAA's 2018 Amendment Shows it Was Designed to Prevent the Exact Defense Proffered by the City in This Case.

The HAA has been amended by the Legislature 23 times since its enactment in 1982, the more recent amendments seeking to strengthen its requirements and to close loopholes exploited by local governments to deny housing. The portion of the HAA that deals specifically with market-rate housing--such as the Snowball Project--is Section (4)(j), which was significantly amended in 2018, effective January 1, 2019 (AB3194). The Legislative History for Assembly Bill No. 3194 states the intention clearly. In the initial presentation of the bill, its author wrote:

> "This bill would prohibit a housing development project from being found inconsistent, not in compliance, or not in conformity, with the applicable zoning ordinance, and would prohibit a local government from requiring a rezoning of the project site, ***if the existing zoning ordinance does not allow the maximum residential use, density, and intensity allocable on the site by the land use or housing element of the general plan***." (Snowball's Request for Judicial Notice in Support of Reply Brief ("RJN"), Ex. E, p.1)

The Bill Analysis from the Assembly Committee on Housing and Community Development (April 25, 2018, RJN Ex. F) describes the purpose of the amendments as follows:

> "Despite the important improvements made to the HAA in last year's bill package, locals can still avoid the HAA by citing questionable health and safety concerns, or by ***requiring project-by project re-zonings or zoning variances even where a housing project is consistent with the housing allowed by the general plan***, thus rendering housing projects beyond the scope of the HAA's protections because they are technically 'inconsistent' with the zoning for the site." (RJN, Ex. F, p.5; Emphasis added)

The June 21, 2018 Legislative Counsel's Digest states that the "bill would authorize a local agency…to require the proposed housing development project to comply with the objective standards and criteria of the zoning that are consistent with the general plan, and would require the local agency to apply those standards and criteria to facilitate and accommodate development ***at the density allowed on the site by the general plan and proposed by the proposed housing development project***." (RJN, Ex. G, p.2; Emphasis added)

The Senate Committee on Governance and Finance considered the bill on June 27, 2018. Its Bill Analysis noted that "according to developers, some local agencies intentionally maintain inconsistences [between their zoning and general plans] to gain an additional measure of control over development. By maintaining low densities…that are inconsistent with the general plan for the express purpose of requiring rezoning, even when projects are consistent with housing density and other objective standards contained in the city or county's general plan, local governments can ensure that they maintain discretionary approval over projects." (RJN, Ex. H, p.2) The bill's author explained:

> "This bill is designed to strengthen the Housing Accountability Act by closing loopholes that undermine the law's applicability and effectiveness. Under the HAA, when a proposed project complies with objective planning rules, the local government cannot deny the project, or reduce its density, unless it makes a finding that the project would have a specific, adverse impact on public health or safety that cannot otherwise be mitigated. Unfortunately, some local agencies have required housing projects to obtain re-zonings or variances on a project-by-project basis, even when projects are consistent with housing density and other objective standards. AB 3194 provides that if a proposed housing development is consistent with objective general plan policies, but it is inconsistent with the zoning for the site because the local government has not made the zoning consistent with the

general plan, the project cannot be subjected to a re-zoning. However, the local government can still reject the project or require a down-sizing if it makes the necessary health and safety findings. This bill will continue to uphold the intent of the Housing Accountability Act, which is to ensure that more housing gets built in California." (RJN, Ex. H, p.3.)

The final adopted bill added Section (j)(4) to the HAA, which reads:

> "(4) For purposes of this section, ***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***. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan, however, ***the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project***." (Emphasis added.) (RJN, Ex. I, p.7)

Thus, the HAA was amended effective January 1, 2019 to close the exact "loophole" that the City claims exempts it from HAA compliance in this case. The City has kept the zoning for the Project site artificially low at RA-1 and A1-1 zones (which restricts density to 19 units (171AR34997)) while the Property is designated in the General Plan as Low Residential Low Medium I Residential (which permits density up to 244 units (51AR10161)) in order to create a situation in which Snowball is forced to apply for a re-zoning and the City may use that opportunity to reject the housing project. The City's claim that these restrictive zoning designations are consistent with the General Plan designation allowing significantly higher density is exactly what the amendment to the HAA was designed to prevent. The HAA explicitly provides that housing development is to be approved at the density allowed in the general plan and proposed by the project. Zoning that permits significantly less density than the general plan is, thus, inconsistent by definition.

B. The City's Own Final Findings State that Snowball's Existing Zoning is Not Consistent with the General Plan, as Required by Government Code §65860.

While conceding that the proposed R1-1 and RD5-1 zoning are listed as corresponding zones for the Property's Low Residential and Low Medium I Residential Plan designations, respectively, the City Attorney argues that the existing, more restrictive, zoning is also "consistent" with the General Plan. But this is belied by the City's own findings throughout the

administrative process which state that the zone changes are necessary to "bring the zoning into conformance with" the general plan.

For example, in its Vesting Tentative Tract Map Findings of Fact (a now final and unchallenged City approval), the City found that:

> "The Applicant is requesting a Vesting Zone Change to change the zoning on these portions of the Property from A 1-1 and RA-1 to RD5-1. The zone change would ***bring the zoning into conformance*** with the residential land use designation of Low Medium I… " (5AR909; Emphasis added)
>
> * * *
>
> "The Proposed Project includes a request for a Vesting Zone Change…to change the portion of the site that is designated as Low Medium I Residential to RD5-1 (Restricted Density Multiple Family), which will permit small-lot development, and ***bring the zoning into conformance with the existing General Plan land use designation***. Further, the zone change includes a request to R1-1 for the most northeasterly portion of the Project Site to permit Single-Family Homes ***consistent with the Low land use designation***…" (5AR913; Emphasis added);
>
> * * *
>
> "The Applicant is requesting a Vesting Zone Change from the current A1-1 and RA-1 designation to (T)(Q)RD5-1 (Restricted Density Multiple Family Zone), which is a corresponding zone provided for Low Medium I Residential. ***A zone change will bring the Project into consistency with the land use designation as required by law.*** The physical suitability of the Property for residential density (specifically RD5 density) was considered at the time the Community Plan was adopted…" (5AR915; Emphasis added)

Likewise, in its Vesting Zone Change Findings of Fact, the City's Planning Commission found that:

> "The recommended zone change to (T)(Q)RD5-1 and R1-1 ***would <u>create</u> consistency with the respective land use designations of Low Medium I and Low Residential***" (13AR2300; Emphasis added),

And in its certified and unchallenged Final Environmental Impact Report, the City reported that:

> "The intent of the requested vesting zone change on that portion of the site is to ***bring the zoning into conformance with the existing General Plan land use designation….***¶ [T]he zone change ***<u>achieves</u> consistency between the land use designation and zoning for the site….***¶ Thus, as the project site is currently limited to the density permitted by the RA-1 and A1-1 zones, the vesting zone change to RD5 would be consistent with the designation on the Community Plan land use map, including Footnote No. 20. The vesting zone change would essentially be implementing the land use designation of the Community Plan, which is the purpose of the zoning ordinance….¶ Since the project is seeking to upzone the property to be in conformance with the Community Plan

designation…***the zone change…would achieve land use-zoning compatibility on the site***….” (51AR10178-10179; Emphasis added)

As such, the City made numerous unappealed, unlitigated and, thus, final findings that the zone change was necessary to “create” or “achieve” consistency of the property’s zoning with the general plan designation. The City itself found that the existing zoning was ***not*** consistent with the general plan designation. It is irrelevant that the City Attorney takes a different position in this litigation; the administrative record itself contains the facts upon which this Court must rely, and the fact is that the Snowball property’s existing zoning needed to be changed to achieve consistency with the General Plan.

C. Footnote 23 Does Not Change This Conclusion.

The City Attorney’s revisionist argument in this litigation is that Footnote 23, appended to each of its Community Plans in 1991 in order for the City to avoid having to upzone approximately 8,000 separate City parcels to comply with Government Code §65860 (171AR35018-35019), means that not just the zones listed in each community plan as corresponding with that plan’s land use designations are consistent with the plan, but that all more restrictive zones are also magically consistent.

Besides being ***exactly*** the type of evasion that the 2018 amendment to the HAA was designed to outlaw, the City Attorney’s argument is faulty because it utterly ignores the last sentence of Footnote 23 itself, which states, “***It is the intent of the Plan that the entitlements granted shall be one of the zone designations within the corresponding zones shown on the Plan, unless accompanied by a concurrent Plan amendment.***” (171AR34998; Snowball’s RJN Ex. A at p.59) The City’s Opposition Brief includes this language when quoting Footnote 23, but never acknowledges it again, as it entirely destroys the City’s argument.

Clearly Footnote 23 states that while the City does not want to have to affirmatively upzone 8,000 parcels throughout the City that are zoned more restrictively than their corresponding general plan designation, when a project is considered for a property so restrictively zoned, “the entitlements granted ***shall*** be one of the…corresponding zones shown on the Plan….” Footnote 23 ***supports*** Snowball’s argument that zones more restrictive than the corresponding zones listed in the plan, such as the existing zones on the Property, are ***not***

consistent with the general plan designations, and must be upzoned to one of the listed corresponding zones to achieve consistency when a project is proposed.

D. Case Law Does Not Support the City's Far-Fetched Consistency Argument.

Finally, the City's argument flies in the face of established law that a zoning ordinance that restricts development is inconsistent with a general plan that contemplates more development. In *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, the Supreme Court held that an initiative that created a moratorium on building was inconsistent with a general plan that was pro-development. In other words, the Supreme Court held that an initiative measure in the nature of a zoning ordinance that restricted development was not consistent with a general plan that permitted development, and thus was invalid at the time it was passed. *Lesher, supra,* at 544. Here, the existing zoning limits the 58-acre property to 19 dwelling units (171AR34997) while the general plan designations allows as many as 244 units (51AR10161). *Lesher* supports that the City's restrictive zoning is not consistent with the general plan.

The authority cited by the City regarding the definition of consistency further proves Snowball's point. The City cites to *Naraghi Lakes Neighborhood Preservation Assn v. City of Modesto* (2016) 1 Cal.App.5th 9, and *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, but those cases deal only with a proposed project's consistency with a general plan, not the consistency of a zoning ordinance. *Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 994 holds that zoning is consistent with a general plan only when, "considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." *See also, Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1563. Here, zoning designations that allow only 19 homes on 58 acres certainly are inconsistent with plan designations allowing 215 homes, as the zoning limitation absolutely frustrates the achievement of the plan's objectives and policies to allow housing at the density specifically identified in the plan, and utterly frustrates the goals of the State's housing laws, including the HAA and the HCA.

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E. The Authority Claimed by the City, If Conceded, Would Undermine the Housing Accountability Act Altogether.

The City claims that ***any*** zoning designation more restrictive than the listed corresponding zones in a community plan is consistent with that plan's land use designation. Taken to its extreme, the City argues that it could zone a parcel open space preventing all development and still be consistent with a community plan designation of high density residential, and therefore, its denial of perhaps thousands of units of housing on that parcel is outside the purview of the HAA. By this logic, the City could entirely avoid providing state-mandated housing citywide by downzoning all of its areas planned for housing to the most restrictive zones and providing no housing at all. The HAA at §65589.5(j)(4) specifically prohibits the City from evading its housing obligations in this manner.

F. The City Is Not Entitled to Deference in its Consistency Determination.

The City also claims that it is entitled to deference (by which it means complete capitulation by the courts) in its interpretation of its own ordinances and plans, so that it can unilaterally decide that a zoning ordinance is consistent with its plan even if the objective facts show that it is not. (City's Opp. Brief, 16:16-26) But, here again, the City ignores the plain language of the HAA which changes the standard of review for determining consistency. While traditionally, significant deference is accorded to local governments' interpretations of their own plans, programs, policies, ordinances, standards, requirements and other similar provisions, the HAA departs from these traditional rules and sets forth its own standard for determining consistency. Under the HAA, consistency with an applicable plan exists if there is substantial evidence that could allow a ***reasonable person*** to conclude that it is consistent, compliant or in conformity with the applicable standards and requirements. Govt. Code §65589.5(f)(4). No reasonable person could conclude that zoning designations here permitting only 19 homes on 58 acres are consistent with the specific requirements of plan designations allowing 215 or more homes on the same property. In order to uphold the City's position, this Court would need to find that not one person among the Zoning Administrator, Planning Director, Deputy Advisory Agency and the unanimous City Planning Commission was reasonable in finding the Project consistent and the zoning inconsistent in this case. (*See*, Section II.B., *supra*.)

Because the existing zoning is inconsistent with the general plan designation, and because the project complies with the objective requirements of the general plan, the HAA requires that the City approve the Project without requiring a zone change unless it had made the required findings in the manner required by the HAA.

III.

THE CITY DID NOT, AND CANNOT, MAKE THE NECESSARY FINDINGS FOR DENIAL OF SNOWBALL'S PROJECT UNDER THE HAA OR ITS OWN MUNICIPAL CODE.

A. The City Did Not Make the Required HAA Findings.

In light of the HAA's clear applicability to Snowball's Project, the City was required to approve the Project unless it made two statutory findings "supported by a preponderance of the evidence in the record." Govt. Code §65589.5(j)(1). This standard is different than that usually afforded to cities when approving or denying development projects. The City wrongly claims that it is entitled to the usual deference to a city's legislative actions, completely ignoring that the HAA contains a much stricter level of scrutiny for the City's actions. The City claims that it is not even subject to the "substantial evidence" standard, which allows it to deny a project if there is any substantial evidence in the record in support but claims it can deny Snowball's Project for no reason at all, so long as its action is not arbitrary, unlawful, or unreasonable. This is all completely wrong under the terms of the HAA.

The City bases its argument on a single outdated case, decided under an early obsolete version of the HAA. *Mira Development Corp. v. City of San Diego* (1988) 205 Cal.App.3d 1202 was decided 20 years before the Legislature amended the HAA to add Section (j)(4), which provides that a zone change is not needed for a housing development project that is consistent with the general plan but the existing zoning is not. In *Mira*, the court held that because a rezoning was required to approve a project that was consistent with the general plan, the HAA ***as written at that time*** did not require the City of San Diego to approve it. *Mira, supra,* at 1222. The *Mira* court recognized the argument that the HAA, as then written, could require approval since the project conformed to the general plan, but rejected it "absent a clear legislative statement to

that effect." *Id.* The Legislature gave that "clear legislative statement" in the 2018 amendment adding Section (j)(4) to the HAA (*see*, Section II.A, *supra*), so the holding in *Mira* is no longer good law and does not support the City's argument.

Instead, the City has the burden here of proving that in denying the Vesting Zone Change for Snowball's Project, it made the necessary findings and that there was a preponderance of evidence in the record supporting them. *See* Govt. Code §65589.6 ("In any action taken to challenge the validity of a decision by a city… to disapprove a project… pursuant to Section 65589.5, the city… shall bear the burden of proof that its decision has conformed to all of the conditions specified in Section 65589.5."); §65589.5(j)(1) (findings for project disapproval must be based on a preponderance of evidence in the record). The City has failed on both fronts.

1. The City Did Not Make or Support the First Required Finding for Project Denial.

The first required finding is that "The housing development project would have a ***specific, adverse impact*** upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density." (§65589.5(j)(1)(A); Emphasis added) The HAA 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." *Id.*

Thus, the City's burden of proof in this litigation is to show that it identified a preponderance of evidence in the record that the Project would have a significant, quantifiable, direct and unavoidable impact on objective, identified written public health or safety standards, policies or conditions. The City's opposition brief does not meet this burden. It merely cites a finding allegedly made by the City: that the Project includes only two ingress/egress points (13AR2415), and "sits on a critical access point" (whatever that means) for the existing nearby homes (*id.*), potentially reducing the ability of existing and proposed residents to evacuate in the event of a fire. (*Id.*) (*See* City's Opp. at 20:15-20) The City's brief also claims that the City Council found that the Project's proposed fire control measures were "not suitable for a future in which fires across the wildlife-urban interface become more destructive and frequent."

(13AR2416) (*See* City's Opp. at 20:25-27) These alleged impacts on public health or safety are not quantified, they are not direct or unavoidable, nor do they show an impact on objective, identified written public health and safety standards. This alleged finding simply does not meet the standard of the HAA.

Nor has the City proven that the alleged finding is supported by a preponderance of evidence in the record. The "finding" cited by the City does not include citations to evidence or rely upon any expert opinion, study, data, or report. (13AR2414-2416) The concluding statement was the Councilmember's mere opinion. (*Id.*) The "finding" utterly ignores twelve years of thorough CEQA review and is completely contradicted by the final detailed factual findings the City adopted when approving the Vesting Tentative Tract Map, Site Plan Review, Project Permit Compliance and Final EIR for the exact same Project. (*Id.*) Without any actual evidence cited in the "finding," the City's opposition brief cites to "concerns" voiced by community members and articles about general fire safety for residential development. (*See* City's Opp. at 21:16-22:3) But nowhere does the City acknowledge the preponderance of evidence in the record--from its own Fire Department, Transportation Department, Public Works Department, and Planning Department, all of which approved the Project with detailed conditions of approval--as well as from expert sources (unlike the laypersons cited by the City and the articles that do not consider or reflect the particular project at issue here), that the Project's siting and ingress and egress are adequate under City Code and for fire safety, and that the Project not only does not add to the public health and safety risk from fires, but ***improves*** fire safety for the Project's future residents and the neighboring communities. (*See* discussion in Snowball's Opening Brief at 8:23-9:19 and 10:8-11:5; *and see also*, 5AR789-807; 6AR930-935, 944-948, 1030; 13AR2285-2294; 17AR3099-3104; 166AR34260-34261, 169AR34794-34796, 169AR34805-34807, 169AR34810-34813) Not only does this evidence preponderate in the record, the City has already made final, unchallenged findings of fact based on that evidence. (5AR809-818, 5AR862-864, 5AR908-919; 13AR2295-2315, 13AR2354-2356) The City has not met, and cannot meet, its burden of proving by a preponderance of evidence that there is a significant, quantifiable, direct, and unavoidable

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specific adverse impact on public health and safety caused by Snowball's Project. As such, the HAA prohibits the City from denying Snowball's Project. Govt. Code §65589.5(j)(1)(A).

2. The City Did Not Make or Support the Second Required Finding for Project Denial.

The second required finding is that "[t]here is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density." Govt. Code §65589.5(j)(1)(B). The City utterly failed to make this finding. The City's opposition brief does not claim that it did. Because the City wrongly claims it is not subject to the HAA, its brief never considers whether it made the findings required by the HAA.

Even had it tried, the City could not have carried its burden of proving that a preponderance of the evidence supports a finding that the Project's impacts on fire safety cannot satisfactorily be mitigated. The City certified the Final EIR that finds, based on detailed, scientific, quantified and objective evidence, that the Project's fire safety impacts are mitigated to a level of insignificance. (5AR862-864; 13AR2354-2356)

The City has not carried its burden of proof that it made this second finding, and in fact has conceded the point that it has not made the findings required by the HAA. As a result, this Court must reverse the City's Project denial. *Id.*

B. The City Did Not Make the Findings Required by Its Own Code.

The City's opposition barely concedes that its own Municipal Code also requires it to make findings when denying a Vesting Zone Change. In so doing, the City Attorney seeks to camouflage the City's failure to reference, let along make findings as required under, LAMC §12.32-Q, which states that "a vesting zone change may be…denied if… the City Council determines: …. (ii) the zone change is denied because it 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***." (Emphasis added)

As the alleged "findings" in the Councilwoman's letter are the City's sole claimed findings, and, as shown above, those findings are not based on facts in the record, they are not sufficient to support the City's action under its own Municipal Code, ***even if*** its actions were not already prohibited by State law.

IV.

SNOWBALL IS ENTITLED TO A WRIT OF MANDATE ON ALL THREE CAUSES OF ACTION IN ITS PETITION, PLUS AN AWARD OF ATTORNEYS' FEES.

As shown in its Opening Brief and above, Snowball is entitled to a writ of mandate pursuant to CCP §1085 ordering the City to issue its tract map clearances without requiring the approval of a zone change, as the HAA in §65589.5(j)(4) prohibits 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. (*See also,* HCA at Govt. Code §65905.5(c)(2).) The Planning Department's refusal to perform its ministerial duty to process Snowball's Map clearances after it has received all necessary City approvals is in violation of the law. *Great Western Sav. & Loan Assn. v. City of Los Angeles* (1973) 31 Cal.App.3d 403, 414.

Snowball is also entitled to a writ of mandate pursuant to CCP §1094.5 ordering the City to approve the Vesting Zone Change--even though not required under Section (j)(4) of the HAA and HCA--or to otherwise clarify that the Project has received all necessary approvals for the issuance of permits, for all the reasons in Snowball's Opening Brief and stated above. Because there is uncontradicted evidence in the record of the City's bad faith, this Court need not merely remand the matter back to the City for reconsideration; the Court is authorized to, and should, enter an "order or judgment directing the [City] to approve" Snowball's Project. Govt. Code §65589.5(k)(1)(A)(ii).

The judgment in this case should also include the mandatory award of attorneys' fees to Snowball as a prevailing petitioner in a suit under the HAA. Govt. Code §65589.5(k)(1)(A)(ii). And if the City fails to approve the Project in accordance with the Court's anticipated order or judgment within 60 days, this Court has a mandatory duty to impose a fine on the City *in a*

minimum amount of $10,000 per housing unit in the Project, or **$2,150,000.00**. Govt. Code §65589.5(k)(1)(B). Furthermore, if the Court finds that the evidence supports a finding that the City acted in bad faith when it denied Snowball's Project and the City fails to approve the Project within 60 days of this Court's order or judgment, the Court is instructed by the Legislature to *quintuple* the fine to **$10,750,000.00**. Govt. Code §65589.5(l).

These mandatory attorneys' fees and fines show how seriously the Legislature is taking local agencies' failure to approve housing for the residents of California and how seriously the Courts are instructed to enforce this law. "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." Govt. Code §65589.5(a)(2)(L).

V.

CONCLUSION.

For all the reasons set forth in Snowball's Opening Brief and above, 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 Vesting Zone Change and to approve the Vesting Zone Change as required by law, and to award Snowball its attorneys' fees pursuant to Govt. Code §65589.5(k)(1)(A)(ii).

DATED: March 9, 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 March 9, 2021, I served the foregoing documents described as:

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDATE

on all interested parties in this action by as follows:

Michael N. Feuer
Terry Kaufmann Macias
Donna Wong
Patrick Hagan
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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 March 9, 2021, at Encino, California.

Tiffany Perry
TIFFANY PERRY