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FEE EXEMPT – GOVT. CODE § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SNOWBALL WEST INVESTMENTS, L.P., a California limited partnership,

Petitioner and Plaintiff,

v.

THE CITY OF LOS ANGELES; CITY OF LOS ANGELES DEPARTMENT OF CITY PLANNING; and DOES 1-10, inclusive,

Respondents and Defendants.

Case No. 20STCP00771

Assigned to Hon. Mitchell L. Beckloff, Dept. 86

OPPOSITION TO PETITION FOR WRIT OF MANDATE

Action Filed: Feb. 24, 2020
Trial Date: March 24, 2021

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I. INTRODUCTION

Petitioner Snowball West Investments, L.P. ("Snowball") may not use the Housing Accountability Act ("HAA," Gov't Code § 65589.5) to either control legislative discretion, or compel an administrative tract map clearance for a project that fails to comply with current development standards. The City of Los Angeles ("City") has the discretion to deny Snowball's requested zone change legislation. The City also has the authority under the HAA, current zoning, and current land use plan language, to refuse an administrative clearance for Snowball's 215 dwelling unit project that greatly exceeds the 19 units authorized by current zoning standards ("Project"). Snowball is not entitled to a writ for either of these City actions.

While the HAA generally provides protections for housing development projects, it provides no assistance to Snowball's claims. The HAA at Section 65589.5(j)(1) requires specified findings to deny a project that complies with objective zoning and planning standards; but Snowball's Project does not comply without a zone change. In addition, Section 65589.5(j)(4) excuses a zone change where the zone is inconsistent with the General Plan; but no inconsistency exists here.

The Court should deny the petition for writ of mandate because the denial of Snowball's zone change legislation is legally authorized and prompted by concerns about public welfare. There is no language in the HAA that creates a ministerial duty for the City to approve any zone change legislation, or make findings to deny any legislation. The denial is a legislative act entitled to significant deference due to the separation of powers. Further, the City denied Snowball's request for zoning to accommodate 215 units upon specified reasons. Among the reasons: adding residences to the already fire-prone Verdugo Hills area would increase fire hazards to human life.

This Court should also deny the writ because the City's clearance action enforces current zoning standards as allowed by the HAA. The HAA expressly authorizes the City to require the Project to comply with objective zoning and General Plan standards. Gov't Code §65589.5 (f) and (j)(4).

The City may enforce the site's current zoning under the HAA because the zoning is entirely consistent with the General Plan. The City's General Plan has a Land Use Element comprised of 35 Community Plans. Applicable to Snowball's Project is the Sunland-Tujunga-Lakeview Terrace-Shadow Hills-East La Tuna Canyon Community Plan ("Community Plan"). The Community Plan's

General Plan Land Use Map Footnote 23 ("Footnote 23") explains why the current zoning is consistent. The footnote states that a land use category's full range of corresponding zones are those zones listed in the Community Plan's General Plan Land Use Map legend ("Map Legend"), "as well as" those more restrictive zones (*i.e.*, less intensive uses) permitted by the municipal code but not listed in the Map Legend. Here, the relevant portions of the project site are currently zoned A1-1 (Agricultural Zone) or RA-1 (Residential Agricultural Zone), and have a Community Plan land use category designation of Low Medium I Residential or Low Residential. The municipal code identifies these zones as more restrictive than, and permitted by, the corresponding zones that are listed in the Map Legend for these land use designations. Therefore, even though the current RA-1 and A1-1 zones are not listed in the Map Legend, they are also considered corresponding zones and are consistent with the Low Medium I Residential and Low Residential land use designations.

The City's administrative clearance denial is based on this decades-old Community Plan and municipal code interpretation, and enforces Community Plan footnote language. The action upholds the Community Plan's status as a part of the City's General Plan, Land Use Element, the "constitution" for the area's development. This interpretation of local plans and codes is subject to judicial deference.

Based on the above, this Court should reject Snowball's HAA arguments that are premised upon ignoring Footnote 23. Snowball contends that the City's clearance action violates the HAA (Gov't Code §65589.5 (j)(4)) because the Map Legend does not list the current zones as corresponding zones for the applicable land use designations. This allegedly makes the current zones inconsistent with the Community Plan, excuses the need for a zone change to facilitate the proposed 215- unit density, and requires the City to provide the administrative clearance under the HAA. However, the municipal code and Footnote 23 demonstrate that this argument is incorrect.

For all of these reasons, the City's actions were taken in good faith. For these same reasons, the City has no ministerial duty to approve Snowball's zone change or provide an administrative development clearance, and no writ may issue ordering the City to do so.

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II. PERTINENT PROJECT BACKGROUND

A. The Property's Current RA and A1 Zoning Limits Development to 19 Units.

Snowball is the owner of a 58-acre property located at 6433 La Tuna Canyon Road, the former site of the Verdugo Hills Golf Course ("Property"). (1AR0211-13, 1AR0007) The Property, consisting of eight parcels, is located within the Sunland-Tujunga-Lakeview Terrace-Shadow Hills-East La Tuna Canyon Community Plan ("Community Plan"). (10AR1654) The portions of the Property relevant to this litigation are: 1) those designated by the Community Plan with a land use category of Low Medium I Residential and currently zoned A1-1 (Agricultural Zone) or RA-1 (Residential Agricultural Zone); and 2) those designated Low Residential and currently zoned RA-1. (10AR1655; 16AR3017) Based on the Property's zoning, its hillside status, and slope density restrictions, the maximum density permitted on the site is 19 dwelling units. (171AR34997)

B. The Approvals For The 215 Unit Development Are Subject to a Zone Change Condition That Requires a Zone Change To Accommodate Proposed Density.

In 2007, Snowball applied for land use approvals to develop 229 homes on the Property. (13AR2431-2458) The applications included a zone change (later converted to a vesting zone change), site plan review, project permit compliance, and a vesting tentative tract map ("Project"). (13AR2432-2458; 16AR3048) The vesting zone change sought to upzone the RA-1 and A1-1 sections of the Property to RD5-1 (Restricted Density Multiple Dwelling Zone) and R1-1 (One-Family Zone) in order to accommodate the proposed density. (13AR2437-58; 16AR3048) The RD5-1 and R1-1 zones are listed by the Map Legend as corresponding zones of the Low Medium I Residential and Low Residential land use designations. (Pet.'s RJN, Exh. A at pp. 59, 60.) Other portions of the Property subject to different land use designations or zoning were not a part of the zone change request.

In February 2019, the City's Deputy Advisory Agency conditionally approved the vesting tentative tract map for a reduced density development of 215 homes. (3AR364-499). The action was subsequently appealed to the City Planning Commission ("CPC"). (4AR500-725) On June 19, 2019, the CPC issued a written letter of determination approving the tract map and denying the appeal; recommending Council approve the requested vesting zone change; approving site plan review and project permit compliance; and certifying the EIR. (5AR787-920; 13AR2280-2398)

The tract map approval was expressly conditioned on Snowball obtaining a zone change for the RA-1 and A1-1 sections of the Property identified in the vesting zone change request, as follows:

> "13.I Zone Change. The approval of the tract map is conditioned upon the approval of the related case number CPC-2007-3082-VZC-SPR-SPP, and this Project shall comply with the conditions of approval in CPC-2007-3082-VZV-SPR-SPP. In the event that that CPC-2007-3082-VZC-SPR-SPP is not approved, the number of dwelling units shall be limited to that permitted by the existing A1-1 and RA-1 Zones and a revised tract map shall be submitted for approval."

(5AR0801) (hereafter "Zone Change Condition")

C. City Council Denied Snowball's Requested Zone Change in Light of the Increasing Severity of Area Wildfires, and Other Specified Factors.

The vesting tentative tract map, project permit compliance, site plan review and EIR actions became final because they were not appealed to City Council ("Council). (164AR33733-33735) The final land use approval required for the Project was the approval of the zone change by Council. (5AR0801) However, this did not occur. Council's Planning and Land Use Management ("PLUM") Committee recommended denial of the zone change in response to the increasing number and severity of wildfires along the wildland-urban interface around Los Angeles, and public concerns arising from such dangers. (170AR34911; 13AR2414-2416; 166AR34295-98) Council adopted that PLUM recommendation, and denied the zone change at its meeting of December 11, 2019. (*Id*.) Council did not adopt the recommended action or analysis of the City Planning Commission.

The written findings adopted by Council identify several grounds for the denial:

First, Council found that the proposed zone change would have an adverse effect on public health and safety, and general welfare, for a number of reasons. (13AR2415) Among them, the Project included only two ingress/egress points for a hillside development of 215 homes in a Very High Fire Severity Zone, factors which could cause havoc in the event of an evacuation. (*Id.*) In addition, the types of fires requiring evacuations appear to be occurring with increasing frequency and severity in the northeast section of the City near the Property. (*Id.*) The written findings also note that after the City Planning Commission heard the Project proposal, another wildfire – the Saddle Ridge Fire – erupted in the same Council District and damaged over 100 structures, closed schools for weeks due to lingering smoke, and required the evacuation of over 100,000 people. (*Id.*)

Second, Council determined that the requested zone change would be inconsistent with good zoning practice. (13AR2415) Council noted that the surrounding area is less densely developed with residences in stark contrast to the high density proposed by Snowball. (*Id.*)

Third, Council noted that the project site was absent from the list of suitable sites associated with the City's Housing Needs Assessment in the General Plan, Housing Element.[1] That list identifies desirable areas to place housing density to accommodate projected population growth. (13AR2416)

Based on the foregoing, Council determined that existing fire control measures and standards were not suitable for a future in which fires across the wildlife-urban interface become more destructive and frequent. (*Id.*) On that basis, Council made the zoning and general welfare/ public safety findings in the negative, and denied the zone change. (*Id.*)

D. The City Refused A Tract Map Clearance For The Project's Zone Change Condition On The Basis of Current Zoning And Footnote 23

Snowball attempted to clear conditions on its tract map for a 215-unit development. Snowball claimed it was entitled to clearance of the Zone Change Condition under Government Code Section 65589.5(j)(4) because the existing zoning was allegedly inconsistent with the applicable land use designations. (171AR34991-94) The Planning Department refused the clearance and explained that the site was still subject to zoning that restricted density to 19 units. (171AR34995-99) The Planning Department explained that due to long established code interpretation and Footnote 23, the current zones are corresponding zones of the relevant land use designations, and therefore consistent with the Community Plan. (*Id.*)

[1] The Housing Element of the City's General Plan (https://planning.lacity.org/plans-policies/housing-element), contains a Housing Needs Assessment at Chapter 1. Associated with this assessment, Appendix H is a list of undeveloped and underdeveloped suitable sites that can accommodate new housing. The parcel numbers for Snowball's Property are not listed in Appendix H on the pages for the Community Plan area at pages 280-283. (City's RJN, Exh. I.)

III. PERTINENT REGULATORY BACKGROUND

A. Footnote 23 Expands The Range of Corresponding Zones To Also Include The More Restrictive Zones Not Listed In the Map Legend.

The Community Plan Map Legend lists the RD5 zone as a corresponding zone of the Low Medium I land use designation, and the R1 zone as a corresponding zone of the Low Residential land use designation. (Pet.'s RJN, Exh. A at pp. 59, 60.)

However, Footnote 23 to the Map Legend expands the range of corresponding zones to also include those more restrictive zones whose uses are permitted in the RD5 and R1 zones by the municipal code. (171AR34998) Footnote 23 states:

> Each Plan category permits all indicated corresponding zones as well as those zones referenced in the Los Angeles Municipal Code (LAMC) as permitted by such zones unless further restricted by adopted Specific Plans, specific conditions and/or limitations of project approval, Plan footnotes or other Plan map or text notations.
> Zones established in the LAMC subsequent to the adoption of the Plan shall not be deemed corresponding to any particular Plan category unless the Plan is amended to so indicate.
> 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.

(*Id.*; *see also* Pet.'s RJN, Exh. A at pp. 59)

This footnote language was adopted on March 27, 1991, as an amendment to all community plans to clarify the full range of corresponding zones that are consistent with each land use category designation. (171AR3500-35019) It memorialized long-standing interpretation policy that each plan land use category permits all listed corresponding zones, as well as those more restrictive zones referenced in the LAMC. (171AR35023)

There is no general or site-specific footnote in the Community Plan Map that forbids lower density zoning on the Property. Although the Property is subject to the site-specific Footnote 20, the footnote does not separately require RD5 zoning for the site, but states that "development should be limited to no greater than RD5." (Pet.'s RJN, Exh. A at 60.)

While the face of the Map Legend does not list the RA and A1 zones as corresponding zones for the Low Medium I and Low Residential land use designations, they are more restrictive than the listed RD5 and R1 zones. (City's RJN, Exh. A [LAMC §12.04-A (identifying the order of most to least restrictive zones in the order A1, RA, R1 and RD)]; *see also* 171AR34998; Pet.'s RJN, Exh. A at pp.

59.) Therefore, the RA and A1 zones and their uses are permitted by the R1 and RD zones listed in the Map Legend. (City's RJN, Exh. B [LAMC §12.05-A (A1 zone and permitted uses)]; Exh. C [12.07-A (RA zone and permitted uses); Exh. D [12.08-A (R1 zone and permitted uses)]; Exh. E [12.09.1-A (RD zone and permitted uses)]; Exh. F [12.23-B.7 (allowing nonconforming uses to change to any use that is permitted in a more restrictive zone)].) Consequently, the RA and A1 zones are included within the range of corresponding zones for the Low Medium I and Low Residential land use designations.

B. The HAA Authorizes The Enforcement of Objective Standards and Requires Findings to Deny A Project In Specified Circumstances.

The HAA authorizes a local agency to require a housing development to comply with "objective" general plan, zoning, subdivision, and design standards. Gov't Code § 65589.5(f)(1), (j)(1) and (j)(4). When a project complies with objective standards, a local agency that disapproves the project is required to base its decision upon written findings supported by a preponderance of the evidence in the record that: 1) the housing development project would have a specific, adverse impact upon the public health or safety, as defined in the HAA; and 2) there is no feasible method to satisfactorily mitigate or avoid the adverse impact, other than disapproval. Gov't Code 65589.5(j)(1). The HAA also explains that a proposed housing development project "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." Gov't Code 65589.5(j)(4). Judicial review of the HAA denial findings takes place under Code of Civil Procedure section 1094.5. Gov't Code § 65589.5(m). In a judicial challenge, the burden of proving that the disapproval findings at subdivision (j) are supported by a preponderance of evidence does not shift to the agency. This is in contrast to the burden of proof for disapproval findings at subdivision (d) related to very low, low and moderate income projects as defined by the HAA. Gov't Code §65589.5(i).

IV. LEGAL STANDARDS

A. Zone Change Denials Receive Deferential Review Under Traditional Mandate.

A zone change is a legislative action, and therefore subject to a highly deferential review. *Tandy v. Oakland* (1962) 208 Cal. App. 2d 609, 611 (holding that courts generally refuse to overturn a refusal to rezone, and denying attempted rezoning from residential to commercial); *Lockard v. City of*

Los Angeles (1949) 33 Cal.2d 453, 461 (upholding rezoning from light manufacturing to commercial, to the detriment of the owners); *Sladovich v. County of Fresno* (1958) 158 Cal.App.2d 230, 239 (upholding a refusal to rezone residential-agricultural property to match the adjacent industrial zones). A denial of zoning legislation is reviewed under a traditional writ of mandate to determine if the action is unreasonable, arbitrary, capricious or entirely lacking in evidentiary support. *Toso v. City of Santa Barbara* (1980) 101 Cal.App.3d 934, 942-44 (reviewing under a traditional writ of mandate and holding the refusal to rezone was not "unreasonable," questioned on other grounds). Legislative zoning decisions must be held valid unless there is no reasonable relation to the public welfare, or the action is arbitrary. *Lockard*, *supra*, 33 Cal.2d at 461. The sole issue is whether or not there is any reasonable basis to support the legislative determination of the governing body. *Ensign Bickford Realty Corp. v. City Council* (1977) 68 Cal. App. 3d 467, 475 (upholding a refusal to rezone residential property to commercial). The appellate court will reverse where the lower court substitutes its judgment for that of the local legislative body. *Lockard*, 33 Cal.2d at 462; *see also Chandis Sec. Co. v. City of Dana Point* (1996) 52 Cal. App. 4th 475, 482 (upholding referendum denial of zone change).

B. <u>The City's Interpretation of Its Own Regulations Receives Deferential Review.</u>

The Court also owes a heightened level of deference to the City's legal interpretation of its own municipal code and General Plan. Under well-settled case law, the City's interpretation must "be respected by the courts unless it is clearly erroneous or unauthorized." *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1087, 1091 (granting deference to a city's interpretation of its zoning code, noting its interpretation "is entitled to great weight"); *see also Yamaha Corp. of America v. St. Bd. Of Equalization* (1998) 19 Cal.4th 1, 8; *MCH Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 219 (upholding a city's interpretation of its own rent control ordinance). Courts grant this great deference because agencies have the expertise and special knowledge to promulgate and administer their own laws. *Id.* A petitioner bears the burden to show that a city's interpretation is clearly erroneous or unauthorized. *Id.* at 225-26; *Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1564 (upholding consistency finding).

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C. It is Snowball's Burden to Demonstrate The Satisfaction of Any Conditions Precedent Prior to Compelling a Ministerial Duty Under Traditional Mandate.

The City's denial of an administrative clearance is reviewed under a traditional writ of mandate to determine if the action is unreasonable, arbitrary or capricious. *Bright Development v. City of Tracy* (1993) 20 Cal.App.4th 783, 799-800 (applying traditional writ of mandate to find that applying an "unwritten, informal" policy to a development was "palpably unreasonable and arbitrary").

To compel an alleged duty in a traditional writ of mandate action, it is a petitioner's burden to establish that a public officer must perform a ministerial act, or "an act which the law specifically enjoins." Civ. Proc. Code ("CCP") §1085(a)*; see* Evid. Code § 500 (the burden of proof is on the party "as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting"); Civ. Proc. Code § 1109 ("[E]xcept as otherwise provided" the procedural rules governing civil actions apply to mandamus actions). It is an act that a public officer is required to perform an act in a prescribed manner, under legal authority, and without regard to his own judgment concerning the act's propriety, when a given state of facts exists. *Cal. Assn. for Health Services at Home v. State Dept. of Health Services* (2007) 148 Cal.App.4th 696, 707-708 (2007).

However, a writ cannot "control discretion as to a matter lawfully entrusted to the [agency.]" *State of Cal. v. Superior Ct. of Orange County* (1974) 12 Cal.3d 237, 247. Failure to demonstrate a ministerial duty in a traditional mandate action is fatal to the claim. *Galbiso v. Oroso Pub. Util. Dist.* (2010) 182 Cal.App.4th 652, 674 (2010); *Larson v. Redondo Beach* (1972) 27 Cal.App.3d 332, 337.

V. ARGUMENT

A. The Zone Change Denial Was Not Arbitrary, Unlawful, or Unreasonable.

1. The HAA Does Not Require The City To Approve Legislation or Make Findings to Deny Legislation.

The HAA does not require the City to approve Snowball's legislation because the HAA does not apply to projects that require a legislative approval, and says nothing about a duty to approve legislation. Instead, the HAA requires specified findings to deny a housing development project if it is a project subject to the Permit Streamlining Act ("PSA") codified at Government Code §§65920-65964.1. Gov't Code §65589.5(h)(5), (h)(9) and (j)(1-2) (referencing applications that are "complete" under the

PSA at Gov't Code §65941.1 and § 65943). Any project which seeks quasi-adjudicatory approvals in conjunction with zone change legislation, such as Snowball's project here, is not subject to the PSA. *See Land Waste Management v. Contra Costa County* (1990) 222 Cal.App.3d 950, 956, 959 (The PSA is limited to "only . . . 'projects' which are adjudicatory in nature.").

Further, the HAA only requires specified findings to deny a housing development project that "complies" with objective general plan and zoning standards, and Snowball's project does not. Gov't Code § 65589.5(j)(1). Since Snowball's project seeks a zone change to allow 215 dwelling units in lieu of the 19 units allowed by current zoning, its project does not meet objective standards and its denial therefore does not require HAA findings. *See Mira Development Corp. v. City of San Diego* (1988) 205 Cal.App.3d 1202, 1222 (HAA findings to deny a project don't apply to a project that requires legislative action because the project is not one that complies with existing standards).

While Snowball argues that the HAA requires the City to approve its requested zone change, or make HAA findings for the zone change denial, its failure to cite authority for this argument waives the argument. *See Atchley v. City of Fresno* (1984) 151 Cal. App. 3d 635, 647 (a point "without any argument of or authority for the proposition, it is deemed to be without foundation and requires no discussion.").

2. The City's Zone Change Denial Is An Exercise of Legislative Discretion Entitled to Deference, and Does Not Require Specific Findings of Fact.

As a matter of law, Council has the legislative discretion to grant or deny zone changes, and the wisdom of such zoning actions is a matter for legislative determination. *Lockard, supra*, 33 Cal.2d at 461. To the extent the City's legislative action is "debatable," it will not be disturbed by a court. *Id*. at 462. Such legislative actions are given deference by the courts due to the separation of powers doctrine, which directs courts to exercise limited review of legislative actions. *Tandy*, supra, 208 Cal. App. 2d at 611 (denying writ and upholding denial of rezoning); *accord*, *Toso*, 101 Cal.App.3d 934, 942-44 (denying writ and holding the refusal to rezone was not "unreasonable."). No specific findings are necessary to enact, repeal, or amend zoning ordinances, because they are minimally reviewable by the court. *Cormier v. County of San Luis Obispo* (1984) 161 Cal.App.3d 850, 857 (upholding general plan amendment without specific findings).

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Based on the above authorities, the Court must therefore reject the argument that the zone change denial was "not supported by valid findings." The Court may only review the action "to inquire as to whether the scheme of classification and districting is arbitrary or unreasonable, but the decision of the zoning authorities as to matters of opinion and policy will not be set aside or disregarded by the courts unless the regulations have no reasonable relation to the public welfare or unless the physical facts show that there has been an unreasonable, oppressive, or unwarranted interference with property rights in the exercise of the police power." *Lockard*, *supra*, 33 Cal.2d at 461.

Snowball does not argue that the City's decision had "no reasonable relation to the public welfare" or that there has been "an unreasonable, oppressive, or unwarranted interference with property rights in the exercise of the police power." It does not because the City has not interfered with Snowball's property rights at all. Snowball continues to be able to build the 19 units under current zoning. The City has merely exercised its legislative discretion to deny a requested zone change based on stated reasons. On that basis alone, the action is not arbitrary and the writ must be denied.

3. The Zone Change Denial Is Supported by Written Findings About Public Safety and Zoning Practice, to the Extent Such Findings Were Required.

The record shows that the zone change denial was reasoned and not arbitrary. Even if findings were required under LAMC Section 12.32, the City made them in writing and on the record. (City's RJN, Exh. G [LAMC § 12.32].) Under LAMC § 12.32-C.7, the City may "approve an ordinance only after making findings that its action is consistent with the General Plan and is in conformity with public necessity, convenience, general welfare and good zoning practice." (*Id.*)

The language of LAMC subsection C.7 is reinforced in subsection Q, pertaining to vesting zone changes, and explains that an application with vesting rights can still be denied where "it is not in substantial conformance with…the General Plan or is not in conformance with public necessity, convenience, general welfare and good zoning practice." (*Id.*) This language does not mean that a zone change must be approved unless findings to deny are made. *Compare*, City's RJN, Exh. G [LAMC § 12.32-Q] *with* Gov't Code §65915(d) *and* City's RJN, Exh. H [LAMC § 12.22.A.25(g) (stating that a density bonus incentive shall be granted unless findings are made to deny the request)]. Instead, it means that "[n]otwithstanding Subdivision 2.(a)" which confers a vested right to develop in compliance

with laws in effect when an "application is deemed complete," the existence of vesting rights does not prevent Council from denying the zone change. LAMC §12.32-Q.2.(a) and Q.3.(a)(2) (City's RJN Exh. G).

The City made findings to deny the zone change on the record at the December 9, 2019 PLUM hearing and in the written decision adopted as the City Council's findings two days later. As set forth above, the zone change denial is subject to a highly deferential review, and cannot be overturned unless it has no reasonable relation to the public welfare. *Lockard v. City of Los Angeles, supra,* 33 Cal.2d 453, 461. The City's findings in this case easily surpass that standard.

Council found that the requested zone change would be inconsistent with good zoning practice because the zone change would increase density in an area that is less densely zoned, and for this reason would be incompatible with the surrounding environment. (13AR2415) This would increase density in a manner that is not to scale and would be incompatible with the surrounding environment. (*Id.*) It would also be inconsistent with good zoning practice because the Project site is absent from the list of suitable sites associated with the Housing Needs Assessment. (*Id*.)

Council also found the proposed zone change would have an adverse effect on public health and safety, or general welfare, for a number of reasons. For one, the Project included only two ingress/egress points, for a proposed 215 hillside homes. (13AR2415) In addition, the site sits on a critical access point for the existing single-family homes along Tujunga Canyon Boulevard north of the I-210 freeway. (*Id.*) These aspects of the Project potentially reduce the ability of the existing and proposed residents to evacuate in the event of a fire. (*Id.*)

The findings state that two of the largest wildfires in the City's recent history occurred in the last two years, and exist as further support for concerns that "fires are getting worse." (*Id.*) After Snowball's proposal was heard by the CPC, the Saddle Ridge Fire erupted in the very same Council District and damaged structures, closed schools for weeks, and required the evacuation of over 100,000 people. (*Id.*) Based on these events, the City Council found that existing fire control measures such as those proposed for Snowball's project were not suitable for a future in which fires across the wildlife-urban interface become more destructive and more frequent. (13AR2416) On that basis, City Council

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did not make the zoning, general welfare and public safety findings in the affirmative, resulting in the denial of the requested zone change.

4. The Zone Change Denial Is Supported by Ample Evidence in the Record.

At best, Snowball has cited evidence in the legislative record that the City's action is "debatable" and should not be disturbed. *Lockard, supra*, 33 Cal.2d 453, 462. By any standard, the Court must sustain the City's denial based on the legislative record.

The record shows the requested zone change would be inconsistent with good zoning practice. It is an indisputable fact that the surrounding area is less densely zoned. The surrounding areas to the north, west, and south are either undeveloped areas or zoned only for low-density single-family homes under RE-11-H zoning (Residential Estate, which allows one single family dwelling with a minimum area of 11,000 square feet per lot). (7AR1092.) In stark contrast, RD-5 zoning allows multifamily dwellings, including apartments. (City's RJN, Exh. E.) It would allow 215 homes where none previously existed and without any substantial public service improvements. (13AR2415) In addition, there is no evidence in the record to suggest that the Property was listed as a "suitable site" associated with the City's Housing Needs Assessment. (*See* City's RJN, Exh. I.)

In support of the general welfare/public safety finding, the record also shows that dozens of community members voiced specific concerns regarding fire safety and potential problems arising from a dense new community on the edge of the wildland-urban interface. (166AR34209-34249) They attached recent articles explaining the fire hazards presented by the Project's density. One article from a Professor of Environmental Analysis, noted "the tight link between housing developments hammered into the wildland-urban interface – the fire zones – and the highway and energy infrastructures" that residents "will need to flee [from these peripheral communities] every time a fast-moving fire, like the Saddle Ridge…." presents itself. (166AR34245) The author recommended that agencies "launch open-session discussion" about placing residential development in fire zones because "[t]hey cannot ignore the reality that their actions have added more fuel to an already flammable landscape and have turned what we have been describing as 'wildfires' into structural fires." (*Id.*)

Another article points out that "[s]cientists have increasingly found that loss of property and life from fire is overwhelmingly the result of precariously placed housing in and bordering wildland areas –

residential developments that are, themselves, a major driver sparking conflagrations." (166AR34211) That article also noted that wildfire researchers are "calling for an open debate about whether and to what extent new housing should be limited in fire-prone areas,..." (166AR34212)

Council ultimately recommended a reevaluation of existing land-use policies to determine the viability of current building codes and standards within the Very High Fire Hazard Severity Zone, where the Property sits. (13AR2416) The written findings call attention to seeking recommendations from the Wildland-Urban Interface Hazard Mitigation Group (comprised of the Los Angeles Fire Department and other City departments, including the Department of City Planning), which were not yet available at the time of the City's determination. (*Id.*; *see also* City's RJN, Exh. J.) Accordingly, the City Council made the findings in the negative, and denied the zone change. (13AR2416)

Snowball's evidentiary criticism of the City Council misstates applicable legislative review and evidence standards. First, the preponderance of evidence standard does not apply to legislative actions like zone changes, contrary to Snowball's argument. (Pet.'s Br. at 19-20.) Rather, legislative actions are subject to a highly deferential review, and cannot be overturned unless the Court finds that the decision had no reasonable relation to the public welfare. *Lockard*, supra, 33 Cal.2d 453, 461. Second, nothing in the law requires Council's legislative action to cite specific evidence in the record here. (*See* Pet.'s Br. at 20.) The action is supported if there is any evidence in the legislative record that "shows a reasonable basis for the action of the zoning authorities, and, if the reasonableness of the ordinance is fairly debatable, the legislative determination will not be disturbed" regardless of whether that evidence is cited by the decision. *Lockard, supra,* 33 Cal.2d 453, 462; *see also, Cormier,* 161 Cal.App.3d 850, 857 (upholding plan amendment without findings); *accord,* Code Civ. Proc. § 1094.5(c) (requiring findings to be sustained if they are supported by substantial evidence in light of the whole record).

B. <u>The HAA Does Not Excuse Snowball's Project From Needing A Zone Change.</u>

1. Footnote 23 Explains That The Property's Current Zoning is Consistent With The Property's Land Use Designation Categories.

Snowball fails to demonstrate a zone-General Plan inconsistency here, a prerequisite to the HAA excusing a zone change. Gov't. Code § 65589.5(j)(4). Snowball identifies no evidence in the record, or applicable law, to demonstrate a zone-plan inconsistency here. Snowball contends that the

Property's zoning is allegedly inconsistent with its land use designation because the Property is currently zoned A1-1 and RA-1, while the Map Legend does not list these zones as corresponding zones of the Property's Low Medium I Residential or Low Residential land use designations. However, Snowball identifies no evidence or law to demonstrate a zone-plan inconsistency here.

Snowball's argument ignores Footnote 23. Then it fails to cite evidence or law to show how the Property's current zoning is inconsistent with the Community Plan; how it is outside the range of uses allowed by the land use category designations; or how it would "obstruct" the policies of the General Plan. *See Corona-Norco Unified*, 17 Cal.App.4th 985, 994.

Footnote 23 explains that the Property's A1-1 and RA-1 zoning is consistent because the zones are included within the range of corresponding zones for the Property's land use designations. They are corresponding zones even though they are not expressly listed by the Map Legend.

California's Planning and Zoning law is comprised of a hierarchy of interrelated land use and development regulations. The City adopts a comprehensive General Plan to guide its future development. Govt. Code § 65300. The General Plan Framework Element states that the precise land use "designation" will be determined in the community plan." (City's RJN, Exh. L) The City's 35 Community Plans collectively comprise the General Plan's Land Use Element and provide more specific land use guidance. Pub. Res. Code § 21083.3(e) (a community plan contains specific development policies and measures by area).

With regard to what zones and uses are allowed in each land use designation, the Community Plan (*i.e.* General Plan) provides that "[e]ach Plan category indicates the corresponding zones permitted by the Plan unless further restricted by the Plan text, footnotes, adopted Specific Plans or other specific limitations on discretionary approvals." (Pet.'s RJN, Exh. A at pp. 59.) Here, the relevant portions of the Property are those designated by the Community Plan as: 1) Low Medium I Residential and currently zoned A1-1 or RA-1; and 2) those designated Low Residential and currently zoned RA-1.

Footnote 23 to the Community Plan Map specifically states that the full range of corresponding zones includes the RD5 and R1 zones listed in the Map Legend for these land use categories, "as well as" the more restrictive zones (*i.e.*, less intensive uses) permitted by the LAMC but not listed in the Map Legend. The LAMC identifies the RA-1 and A1-1 zones as more restrictive than, and permitted

by, the RD5 or R1 zones. (City's RJN, Exh. A [LAMC §12.04-A (identifying the order of most to least restrictive zones in the order A1, RA, R1 and RD)]; Exhs. B, C, D, E, F [LAMC §§ 12.05, 12.07, 12.08, 12.09.1, 12.23].) Therefore, even though the Map Legend does not list the RA-1 and A1-1 zones as corresponding zones of the Low Medium I Residential or Low Residential land use categories, these zones are also considered corresponding zones. Since the current zones are consistent with the Community Plan, the HAA therefore does not excuse the zone change required for Snowball's project.

Zone-plan inconsistency remains an unsatisfied prerequisite to Snowball's claim. *Compare* Gov't Code § 65589.5(j)(4) *with* § 65913.4(a)(5)(A) (a housing statute that allows use of the "maximum density" of the land use designation without the prerequisite of zone-plan inconsistency).

2. The City's Clearance Action Implements An Established Interpretation Based On Plan Language, And is Entitled to Significant Deference.

The Court owes a heightened level of deference to the City's legal interpretation of its own municipal code and General Plan. Under well-settled case law, the City's interpretation must "be respected by the court unless it is clearly erroneous or unauthorized." *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1087, 1091 (granting deference to a city's interpretation of its zoning code provision concerning use classifications, noting the construction "is entitled to great weight"); *see also MCH Operating Limited Partnership*, *supra*, 106 Cal.App.4th at 219.

Courts grant this great deference to the City's interpretation of its own zoning codes and land use plans because agencies have the expertise and special knowledge to promulgate and administer their own laws. *Id.*; *see also San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 677 (upholding plan amendment citing "great deference" to an agency's consistency determination). Moreover, Petitioner bears the burden to show that the City's interpretation of its own code is clearly erroneous or unauthorized. *MCH Operating Limited Partnership, supra*, 106 Cal.App.4th at 225-26; *Pfeiffer*, *supra*, 200 Cal.App.4th at 1564.

Snowball presents no argument or authority to suggest that the City's interpretation of Footnote 23 is clearly erroneous or unauthorized. Yet, Snowball has known the City's interpretation of its zones and Footnote 23 since the City issued its letter refusing Snowball's administrative clearance.

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(171AR34998) Further, Footnote 23 and this interpretation has been in place since 1991. (171AR35023, 171AR35047) Thus, Snowball's inconsistency argument is without merit.

3. "Consistency" Means "Compatibility," And Does Not Require an Exact Match With The List on the Map Legend.

The City's zoning is "consistent" with the Community Plan and General Plan under authorities related to Government Code §65860, governing zone-plan consistency. The HAA does not separately define "consistency" or "inconsistency." However, the concept is understood and well established by Government Code §65860, applicable to local zoning and planning actions.

The HAA does not define inconsistency as zoning that fails to exactly match the full range of uses authorized by the land use plan designation, or even zoning that fails to match the list of corresponding zones on the Map Legend as Snowball claims. It is understood through the definition of "consistency" that exact conformity with every general plan policy is not the test for consistency. *Pfeiffer, supra*, 200 Cal.App.4th at 1565 (consistency determination upheld for a storage and waste management facility on a site designated as low density residential). Therefore, precise conformity to the full range of uses related to the land use designation, or an exact match between the zoning and the list of corresponding zones in the Map Legend here, is not required.

The test for determining whether zoning is consistent with the Community Plan hinges on whether the zoning is "compatible" with the applicable objectives, policies, and goals of the general plan. Gov. Code § 65860(a)(2) (requiring zone and general plan consistency). In other words, consistency requires the proposed zoning to be compatible with the objectives, policies, general land uses, and programs specified in the applicable plan, and not "frustrate" their achievement. *Naraghi Lakes Neighborhood Preservation Assn. v. City of Modesto* (2016) 1 Cal.App.5th 9, 18 (finding a shopping center was consistent with general plan policies and objectives despite exceeding size limits). In fact, it is understood that no "project could completely satisfy every policy stated in the [General Plan], and State law does not impose such a requirement." *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 719 (upholding approval of housing development as consistent with general plan goals and policies despite not conforming precisely with land use designation).

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Courts have interpreted this provision as requiring that a planning action be "in agreement or harmony with' the terms of the applicable plan, not in rigid conformity with every detail thereof." *Naraghi*, 1 Cal.App.5th 9, 17-18, citing *San Franciscans Upholding the Downtown Plan*, 102 Cal.App.4th 656, 678; *accord, Sequoyah Hills, supra*, 23 Cal.App.4th at 717-18; *Corona-Norco Unified*, 17 Cal.App.4th 985, 994 (upholding a zone change stating that an action "is consistent with the general plan if, considering all it aspects it will further the objectives and policies of the general plan and not obstruct their attainment"). "[T]he essential question is 'whether the project is compatible with, and does not frustrate, the general plan's goals and policies." *Naraghi*, 1 Cal.App.5th at 18.

Here, a finding of consistency implements Footnote 23 and harmonizes the Community Plan with the LAMC as required by statutory interpretation principles. *See Select Base Materials, Inc. v. Bd. of Equalization* (1959) 51 Cal.2d 640, 645 (statutes should be "construed with reference to the whole…so that all may be harmonized and have effect."). The current zoning also assists with the attainment of numerous Community Plan policies, goals, and objectives that are aimed at maintaining rural character and limiting suburban sprawl. (*See* Pet.'s RJN, Exh. A at pp. 21 [Objective 1-6: "To limit residential density and minimize grading in hillside areas."]; pp. 22 [Objective 1-8: "To promote and protect the existing rural, single-family equestrian oriented neighborhoods in RA zoned areas and "K" Districts."]; pp. 33 [Objective 9-1: "To ensure that fire facilities and fire protection services are sufficient for the existing and future population and land use."].)

4. Snowball Utterly Fails To Establish Zone-Plan Inconsistency, A Condition Precedent to Triggering Any Duty Under The HAA.

Here, Snowball has not and cannot show the existence of a ministerial duty because it has failed to demonstrate a zone-plan inconsistency. In the absence of zone-plan inconsistency, a zone change is not excused, and Snowball does not meet the prerequisite in the HAA that a project comply with objective planning and zoning standards before disapproval findings are required. Gov't Code 65589.5(j)(1). Therefore, Snowball cannot rely on the HAA to claim that the City has a ministerial duty to make any HAA findings, or claim that the City has a ministerial duty to clear the tract map's Zone Change Condition. The absence of a ministerial duty is fatal to Snowball's writ. *See Galbiso*, 182 Cal.App.4th 652, 674; *Larson*, 27 Cal.App.3d 332, 337.

First, it is incorrect for Snowball to argue that the City, through the CPC, already found the proposed zoning consistent with the General Plan. Council did not make that finding or adopt any consistency findings recommended by the CPC. The CPC provides a "recommendation" to Council for zone change legislation; and the CPC is not Council, the legislative body that must "adopt," "approve or disapprove" any zone change legislation. (City's RJN, Exh. K [Charter § 558(b)]; Exh. G [LAMC §12.32-C.1, C.7, Q.3(a)(2)].) Thus the CPC's recommendation cannot support Snowball's argument.

Second, Snowball's argument that its proposed zoning is consistent with the General Plan is inapplicable here. It is Snowball's burden to show that the *current* zoning is inconsistent with the Community Plan before the HAA can excuse or preempt a zone change. Govt. Code § 65589.5(j)(4). The relevant analysis concerns the Property's existing zoning, not the proposed future zoning.

Third, Snowball's argument that the City is prevented from changing its findings and enforcing its zoning standards is legally untenable because it is well settled law that the City cannot be estopped from enforcing Footnote 23 or its zoning regulations by reason of the actions, inactions or recommendations of the CPC. *Schafer v. City of Los Angeles* (2015) 237 Cal.App.4th 1250, 1259 (upholding the city's denial of a permit for a parking lot that had been in use for decades); *Smith v. County of Santa Barbara* (1992) 7 Cal.App.4th 770, 774 (allowing the revocation of a land use permit issued in error). Snowball may not use these recommendations and approvals against the City here.

C. Snowball's Collateral Challenge to the Tract Map's Zone Change Condition is Barred by the Statute of Limitations.

Snowball also may not resurrect claims against the tract map's Zone Change Condition that are already barred by the statute of limitations in Government Code Section 66499.37. (Pet's Br. at 17-19.) Section 66499.37 broadly applies to "[a]ny action or proceeding to attack . . . the decision of an advisory agency ..., or to determine the... legality, or validity of any condition... attached thereto. . . " such as the tract map decision here. Gov't Code § 66499.37; *Sumner Hill Homeowners' Assoc. Inc. v. Rio Mesa Holdings* (2012) 205 Cal. App. 4th 999, 1023-24. If no challenges are filed and served within 90 days of the decision, "all persons are barred" from challenging the action. *Id.*

Here, the Zone Change Condition was imposed on June 19, 2019, but Snowball did not file this action until February 24, 2020, 240 days later and well beyond the 90-day statute of limitations

imposed by Section 66499.37. (13AR2280-2398.) Snowball may not now recharacterize its barred claims as a challenge to the recent zone change denial or clearance action to evade the limitations period. *Honig v. San Francisco Planning Dept*. (2005) 127 Cal. App.4th 520, 528 (barring claim against planning department action characterized as challenge to a building permit based on the analogous 90-day limitations period of Gov't Code §65009).

D. The City Acted in Good Faith On Snowball's Project.

For the foregoing reasons, the HAA does not require the City to approve Snowball's zone change or provide it a clearance, and as a consequence these actions were taken in good faith. The HAA defines "bad faith" as an action that is "frivolous or otherwise entirely without merit." Gov. Code § 65589.5(l). While there is more than one standard for the term "frivolous," the City's conduct does not meet any of them. *Burkle v. Burkle* (2006) 144 Cal.App.4th 387, 401 (finding "frivolous" to mean conduct that is "objectively unreasonable"); *Millennium Corporate Solutions v. Peckinpaugh* (2005) 126 Cal.App.4th 352, 360 (finding "frivolous" to mean done "for an improper motive" or "indisputably has no merit"); *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 is it is 'not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law."). Snowball has not cited any authority that suggests the City's interpretations or actions are entirely without merit or with improper motive. Thus there is no basis for a finding of bad faith.

VI. CONCLUSION

For the foregoing reasons, the City requests this Court deny the petition for writ of mandate.

Dated: Feb. 22, 2021

MICHAEL N. FEUER, City Attorney
TERRY KAUFMANN MACIAS, Sr. Assistant City Attorney
DONNA WONG, Deputy City Attorney
PATRICK HAGAN, Deputy City Attorney

By: _____
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CITY OF LOS ANGELES and the
DEPARTMENT OF CITY PLANNING

PROOF OF SERVICE

I, the undersigned, say: I am over the age of 18 years and not a party to the within action or proceeding. My business address is 200 North Main Street, 701 City Hall East, Los Angeles, California 90012.

On February 22, 2021, I served the foregoing documents described as: **OPPOSITION TO PETITION FOR WRIT OF MANDATE** on all interested parties in this action as follows:

Fred Gaines, Esq.
Lisa A. Weinberg, Esq.
Kimberly A. Rible, Esq.
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Encino, CA 91436-1872

[ ] BY MAIL - I deposited such envelope(s) for collection, processing and mailing by my office. I am readily familiar with the business practice of my office for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing in affidavit; and/or

[X] BY ELECTRONIC MAIL – I transmitted via EMAIL the document(s) listed above to the parties set forth above on this date.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 22, 2021, at Los Angeles, California.

SHEENA PARACUELLES