Electronically FILED by Superior Court of California, County of Los Angeles on 05/09/2022 02:39 PM Sherri R. Carter, Executive Officer/Clerk of Court, by R. Perez,Deputy Clerk
22STCP01756

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: James Chalfant

COX, CASTLE & NICHOLSON LLP
Andrew B. Sabey (State Bar No. 160416)
Scott B. Birkey (State Bar No. 209981)
E.J. Schloss (State Bar No. 313167)
50 California Street, Suite 3200
San Francisco, California 94111-4710
Telephone: (415) 262-5100
Facsimile: (415) 262-5199
Email: asabey@coxcastle.com;
sbirkey@coxcastle.com; eschloss@coxcastle.com

Attorneys for Petitioner
PICKWICK INVESTMENT, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - CENTRAL

PICKWICK INVESTMENT, LLC,

Petitioner,

v.

CITY OF BURBANK, CITY COUNCIL OF THE CITY OF BURBANK, and DOES 1-25,

Respondents.

Case No. 22STCP01756

VERIFIED PETITION FOR WRIT OF MANDATE (CODE CIV. PROC. §§ 1085, 1094.5; GOV. CODE §§ 65913.4, 65589.5)

I. INTRODUCTION

1. The City Council of the City of Burbank (the "City") acted in bad faith when it denied the Pickwick housing project (the "Project"), and it did so knowingly and willingly in violation of state housing law.

2. The City Council knew that a denial of the 96 dwelling-unit Project would violate state housing law because the law is unequivocal, and because they had been repeatedly advised—by the applicant for the Project, by their *own* Community Development Department, as advised by the City Attorney, and by the state Department of Housing and Community Development ("HCD") – that the Project fit squarely within the eligibility criteria of housing law and, thus, should have been approved by the City Council.

3. The City Council's desire to appease existing homeowners, who oppose additional housing in their neighborhood, caused the Council to ignore the mandates of Senate Bill 35 ("SB 35") and the Housing Accountability Act ("HAA"), which apply to the Project because the Project is consistent with all applicable objective standards and all other eligibility requirements. The City Council's bad faith denial of the Project buckled under to the worst instincts of the existing homeowners, while blocking the development of much needed housing in the City.

4. The City Council's action is yet another example of how local governments abuse their position to deny housing to the detriment of the State of California. The state's housing crisis is the collective result of this political self-preservation, played out again and again across the state. The new laws, including amendments to the HAA, and SB 35, which makes housing approvals ministerial under appropriate circumstances like those presented here, were specifically designed to prevent this abuse of local power.

5. For years, cities have relied on unfettered discretionary authority to deny housing projects with impunity. In the City, evidence of the impact this has on the approval of desperately needed new housing can be found in the 2013-2021 Regional Housing Needs Assessment ("RHNA") cycle, which required the City to plan for an additional 2,684 dwelling units, comprised of 694 Very Low Income dwelling units; 413 Low Income dwelling units; 443 Moderate Income dwelling units; and 1,134 Above Moderate Income dwelling units.[1]

6. During such time, the City produced a total of only 1,081 units (approximately 40% of its RHNA allocation) comprised of 3 Very Low Income dwelling units (0.4% of its RHNA allocation); 265 Low Income dwelling units (64.1% of its RHNA allocation); 61 Moderate Income dwelling units (13.7% of its RHNA allocation); and 752 Above Moderate Income dwelling units (66.3% of its RHNA allocation).[2] Across the board, the City failed to facilitate the construction of its housing requirement.

7. The City's Community Development Director concluded in writing that the

[1] See the City's Annual Element Progress Report (April 12, 2022), available at https://burbank.granicus.com/MetaViewer.php?view_id=42&clip_id=9755&meta_id=394900.
[2] *Id.*

Project was eligible for streamlining and protection under both SB 35 and the HAA, and both the Assistant Community Development Director and Planning Manager confirmed the same at the Project's public hearing. Based on the Project's eligibility for SB 35 streamlining, the Community Development Department counted the Project's proposed units toward its RHNA requirements in the City's March 2022 Revised Draft Housing Element.[3]

8. HCD, the state agency tasked with interpreting and preparing guidelines for SB 35, even weighed in on the Project's eligibility for SB 35 streamlining, concluding without equivocation that the Project was eligible for SB 35. On November 10, 2021, a Senior Housing Policy Specialist with HCD confirmed in correspondence with the Community Development Department that the Project was eligible for SB 35 streamlining. Further, in a letter to State Senator Anthony Portantino dated February 23, 2022, HCD provided a four-page analysis regarding the eligibility of the Project for SB 35, in which it succinctly concluded as follows: "In short, HCD concludes that the Project is eligible."

9. At the Project's public hearing on April 18, 2022, Scott Plambaeck, Planning Manager with the Community Development Department told the City Council what it would later ignore:

> "**In conclusion, staff has determined that the [P]roject is consistent with SB 35 pursuant to Government Code § 65913.4 and staff has determined that the Project is consistent with all SB 35 criteria and applicable objective design and development standards."** [Emphasis added.]

10. Ignoring their own Community Development Department and HCD, all five members of the City Council voted to deny the Project.

11. Before casting their denial votes, members of the City Council sought to give themselves cover for what would ensue. Mayor Jess Talamantes presciently warned the public about the impact of violating SB 35:

> "We don't like it, it's taking our local control away from us, but nonetheless that's what Sacramento put down…A law is the law. And that's what it is—it's the law. I mean, if you want to circumvent something and you try to get away with it, fine.

[3] The City's Revised Draft 2021-2029 Housing Element (March 2022), available at https://www.burbankhousingelement.com/wp-content/uploads/2022/04/4_1_22-Revised-Draft-Housing-Element.pdf.

> **But if you get caught, you're going to get spanked. And that's going to cost a lot of money to our residents."** [Emphasis added.]

12. Council Member Nick Schultz cautioned similarly:

> "But the last thing that I want to say to those watching at home is that this is not the end. There is a strong probability that this will go to court. We'll see what the court has to say and it may be out of our hands at some point. **So I only say that because I know it's very easy to get caught up in the moment and make a lot of commitments and promises but the reality is this is a matter that may be decided by the court and may be out of our hands."** [Emphasis added.]

13. These statements paint the picture of a City Council that has invited the consequences of their failure to apply the law. The City Council shunned the opportunity to use their platform to educate their constituents about the mandates of state law and the important public policy objective to address the state's housing supply crisis. In failing to abide by the law it recognized as governing its action, the City Council chose to punt its responsibility to the courts. Meanwhile, the residents of California suffer and continue to be denied opportunities for housing, including the 96 dwelling units the Project would have provided.

14. In unlawfully denying the Project, the City Council violated both SB 35 and the HAA. Accordingly, Petitioner is left with no choice but to bring this action to enforce the mandates of state housing law against the City.

II. PARTIES

15. Pickwick Investment, LLC (the "Petitioner") is a California limited liability company. Petitioner is the owner of the Property. Specifically, Petitioner is the Project "applicant" as that term is used in SB 35 and is explicitly authorized under the HAA to "bring an action to enforce" the HAA. Gov. Code §§ 65913.4, 65589.5, subd. (k)(1)(A)(i).

16. Respondent City of Burbank (the "City") is a charter city located in the County of Los Angeles. Specifically, the City is the "local agency" that disapproved the Project. Gov. Code § 65589.5, subd. (j)(1).

17. Respondent City Council of Burbank ("City Council") is the governing body of Respondent City.

III. JURISDICTION AND VENUE

18. The court has general subject matter jurisdiction over state law claims, including

traditional and administrative writ of mandate claims pursuant to Code of Civ. Proc. §§ 1085 and 1094.5, and Government Code § 65589.5.

19. The Court has personal jurisdiction over Respondents City and City Council (collectively, "Respondents") pursuant to Code of Civ. Proc. § 410.10.

20. The real property that is the subject of this action is located at and around 921-1001 W. Riverside Drive in the City and in the County of Los Angeles.

21. Venue for this action properly lies with this Court pursuant to Code of Civil Procedure §§ 392, 393 subd. (b), 394 and 395.

22. Petitioner has performed any and all conditions precedent to filing this action and has exhausted any and all available administrative remedies to the extent required by law.

23. Petitioner is beneficially interested in the outcome of the proceeding and does not have plain, speedy or adequate alternative remedies in the ordinary course of law.

IV. LEGAL BACKGROUND

24. The state legislature has recently adopted and strengthened state housing law to inhibit the denial of appropriate housing development projects.

25. In 2017, the state legislature adopted SB 35, which requires a streamlined, ministerial approval process for eligible housing development projects. SB 35's streamlined, ministerial project approval process was intended to "provide[] reforms and incentives to facilitate and expedite the approval and construction of affordable housing." Gov. Code § 65582.1. SB 35 provides that housing development projects that comply with various threshold criteria and that also comply with the applicable, objective planning standards may be eligible for a streamlined, ministerial project approval process. Gov. Code § 65913.4, subd. (a).

26. A housing development project will be found consistent with the applicable, objective planning standards "if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards." Gov. Code § 65913.4, subd. (c)(3). This standard is the opposite of the traditional, deferential standard local agencies normally enjoy when interpreting their own codes. The state legislature implemented this evidentiary standard to prohibit local jurisdictions from asserting discretion to

reach conclusions that proposed housing projects were incompliant. Further, SB 35 is to "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply." Gov. Code § 65913.4, subd. (n).

27. Specifically, SB 35 applies within local jurisdictions, like the City, that have made insufficient progress towards their RHNA allocations. Based on the City's insufficient progress towards meeting the applicable RHNA allocation requirements, SB 35 mandates that eligible housing development projects that set aside 10 percent of their units for lower-income households are subject to the streamlined, ministerial project approval process.[4]

28. In recent years, the state legislature has also repeatedly strengthened the protections of the HAA, which was originally adopted in 1982. These amendments further restrict local governments' ability to deny and limit housing production. Similar to SB 35, a housing development project is eligible for the protections of the HAA if it complies with the objective general plan, zoning, and subdivision standards in effect at the time an application is deemed complete. Gov. Code § 65589.5, subd. (j)(1). Like SB 35, the HAA includes an intentional change in the standard of review that local governments traditionally enjoy, providing instead that the housing project will be found compliant if there is substantial evidence that would allow a reasonable person to so conclude. Gov. Code § 65589.5, subd. (f)(4). Again, this avoids the gamesmanship local agencies have long engaged in, asserting they have special expertise to find objectively compliant housing proposals somehow fail to meet their criteria.

29. If a housing development project is eligible for the protections of the HAA, a local government can only deny or reduce the density of the project in limited circumstances: where it finds that the project would have a specific, adverse impact upon the public health or safety ***and*** where it finds that there is no feasible method to mitigate or avoid such specific, adverse impact. Gov. Code § 65589.5, subd. (j)(1). If the local government cannot make these findings and support such findings based on the "preponderance of the evidence," then the local

[4] HCD's SB 35 Statewide Determination Summary (June 18, 2021), available at https://www.hcd.ca.gov/policy-research/docs/sb35_statewidedeterminationsummary.pdf.

government ***may not*** disapprove or reduce the density of a housing development project. Gov. Code § 65589.5, subd. (j)(1).

30. To help eliminate indiscriminate and arbitrary project denials motivated by politics, SB 35 and the HAA represent the state legislature's intent to divest local governments, like the City, of their discretionary authority to deny appropriate and qualifying housing development projects.

V. STATEMENT OF FACTS

The Property

31. The Property consists of a single, 5.05-acre lot, located at 921-1001 W. Riverside Drive in the City and in the County of Los Angeles. The Property is presently developed with an underutilized bowling alley, ornamental gardens, and a surface parking lot.

32. The Property is designated under the General Plan for *Rancho Commercial* land uses. The City's Burbank2035 General Plan was adopted on February 19, 2013. The General Plan states that the *Rancho Commercial* land use designation permits "20 units per acre with discretionary approval." The General Plan further states that "[t]he *Rancho Commercial* designation is located in the unique Rancho Neighborhood that allows for the keeping of horses on single-family residential properties**,** and a variety of low-intensity multi-family residential and commercial uses."

33. Accordingly, the General Plan indicates that residential uses, at a density of 20 units per acre, are permitted in the *Rancho Commercial* land use designation.

34. The Property is zoned *Commercial Recreation* (C-R).[5] The City's Municipal Code ("BMC") at § 10-1-2436.5, contains a table indicating that "[i]n the [*Commercial Recreation*] zone, all uses shall be consistent with the maximum FAR and maximum residential density, as prescribed in the General Plan, as follows:…" Following this, BMC § 10-1-2436.5 then contains a chart which states that for the Property's *Rancho Commercial* land use designation, the "maximum residential density" is "20 units/acre." A footnote to the table in BMC § 10-1-

[5] See the City's Zoning Map (effective 2019), available at https://www.burbankca.gov/documents/173607/0/20210101_Zoning_Map.pdf/c8bc55ed-98cf-505d-3892-7e1657bca8f1?t=1618866483006.

2436.5 indicates that the "maximum residential density" of "20 units/acre" is permitted.

35. Accordingly, the BMC states that residential uses, at a density of 20 units per acre, are permitted in the *Commercial Recreation* zone.

36. Therefore, residential uses at a density of 20 units per acre are permitted in both the Property's *Rancho Commercial* land use designation and the Property's *Commercial Recreation* zone.

The Project's Application and Review Process

37. The Project is eligible for both SB 35 streamlining and the protections of the HAA.

38. The Project proposed to construct a total of 96 for-sale condominium dwelling units, of which 10 units would have been set aside for low income households, thereby creating new housing opportunities for those traditionally excluded from homeownership. The Project also will comply with SB 35's labor requirements by ensuring that the Project's construction would pay prevailing wages and employ a skilled and trained workforce. Gov. Code § 65913.4, subd. (a)(8)(A)(ii) and subd. (a)(8)(B).

39. For purposes of satisfying the requirements of both SB 35 and the HAA, the Project was carefully designed to be consistent with the applicable objective general plan and zoning standards, objective subdivision standards, and objective design review standards. The Project applicant confirmed the Project's eligibility for SB 35 streamlining with the Community Development Department.

40. On July 1, 2021, Petitioner submitted the Project's *SB 35 Notice of Intent to Submit Application* (the "SB 35 NOI") to the City.

41. The SB 35 NOI submitted to the City on July 1, 2021 indicated that the Project proposed to construct 98 for-sale dwelling units in townhomes. The SB 35 NOI included a project description and a SB 35 Eligibility Checklist, which discussed in detail the Project's compliance with each of the enumerated criteria for SB 35 eligibility. Per the requirements of SB 35, the SB 35 NOI also provided a discussion of each of the enumerated criteria required for a "preliminary application" as set forth in Gov. Code § 65941.1, subd. (a). Gov. Code § 65913.4, subd. (b)(1)(A)(i). The SB 35 NOI also included numerous attachments that supported

the information contained therein.

42. On July 30, 2021, the City's Community Development Department responded to Petitioner's SB 35 NOI with the City's SB 35 consistency analysis and a request for supplemental documentation and information in order to support Petitioner's claim that the Project was subject to SB 35. For each of the enumerated SB 35 submission criteria, the City's response letter either identified that the Project was "[c]onsistent" with SB 35's requirements, or that additional documentation and information were required to help the Community Development Department make its determination.

43. In relevant part, the response letter determined that the Project was "[c]onsistent" with the requirement that the Project be located on "[a] site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use."

44. Between September and October 2021, Petitioner provided additional information and documentation to the City in order to supplement the SB 35 NOI. Petitioner's additions to the SB 35 NOI addressed the criteria and documentation requested by the Community Development Department in its July 30, 2021 response letter. The SB 35 NOI included a revised consistency analysis, and numerous new documents to support the Project's consistency with the requirements of SB 35. The SB 35 NOI also indicated that the Project would be reduced *from* 98 *to* 96 for-sale dwelling units in townhomes.

45. On November 10, 2021, Fidel Herrera, a Senior Housing Policy Specialist with HCD sent an email to representatives of the City's Community Development Department regarding the Project's eligibility for SB 35 streamlining. The email states that "[b]ased on the information reviewed including the Burbank2035 General Plan, Burbank Municipal Code (BMC) and Article 24 Rancho Master Plan zones, the Streamlined Ministerial Approval Process (SB 35) applies to the project at 921-1001 W. Riverside Drive."

46. On November 15, 2021, the Community Development Department responded to Petitioner's SB 35 NOI. The Community Development Department's response letter stated that

"[a]fter reviewing the application and items that you [Petitioner] submitted, staff has determined that your application is Complete." The response letter included an SB 35 consistency analysis, which analyzed the Project's consistency with each of the SB 35 eligibility criteria. The SB 35 consistency analysis concluded that the Project was "[c]onsistent" with each requirement of SB 35.

47. The response letter again determined that the Project was "[c]onsistent" with the requirement that the Project be located on "[a] site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use."

48. On February 23, 2022, HCD wrote to State Senator Anthony Portantino, who had inquired with HCD regarding the Project's eligibility for a streamlined, ministerial approval under SB 35. HCD's letter was intended to provide "HCD's interpretation regarding the Project's eligibility for a streamlined ministerial approval process under the statute." HCD summarized its analysis as follows: "In short, HCD concludes that the Project is eligible." HCD's letter also included a 4-page analysis regarding the issue of whether residential uses were permitted within the Property's zone and General Plan designation, and concluded they were.

49. On February 24, 2022, Petitioner submitted its completed SB 35 Application for the Project to the Community Development Department.

50. The Project's SB 35 Application also included an application for a Vesting Tentative Tract Map (No. 83627) to facilitate the creation of the Project's for-sale, residential condominium units. SB 35 provides that a Vesting Tentative Tract Map application may also be subject to the ministerial approval process permitted under SB 35. Gov. Code § 65913.4, subd. (d)(2).

51. The Project's SB 35 Application further identified that the Project would request a Density Bonus Law incentive to reduce a front yard setback, as was consistent with and permitted under both SB 35 and the BMC based on the Project's set aside of 10% of the

Project's units for low income households. Gov. Code § 65913.4, subd. (a)(4)(C); BMC § 10-1-635.

52. Accordingly, neither the Project's request for a Vesting Tentative Tract Map nor the request for a Density Bonus Law incentive to reduce a front yard setback impacted the Project's eligibility for the streamlined, ministerial approval process allowed under SB 35.

53. The Community Development Department began its thorough review of the Project's SB 35 Application upon submission. The City also scheduled the Project for a public hearing before the City Council to be held on April 18, 2022.

54. Prior to the public hearing, members of the public put pressure on the City's elected officials to overrule the Community Development Department's SB 35 consistency determination. Members of the public submitted correspondence to the City Council urging the City to circumvent its legal obligations under SB 35. One letter went so far as to demand the City Council to violate state law, claiming that "[i]t is up to our elected officials to stand up to and confront bad law when it is obvious it is not in the interests of your constituents; and that is exactly what I expect from our Burbank City Council – even if it means a law suit!" Perhaps knowing the futility of arguing that the Project did not comply with the City's objective standards, public opposition coalesced around the unsupported and irrelevant claim that the Project posed a safety risk to horses stabled within the neighborhood.

55. On March 23, 2022, the Community Development Department published an updated draft of the Burbank 2021-2029 Housing Element. The draft Housing Element counted the Project's proposed 96 units towards the City's RHNA obligations based on the justifiable assumption that the Project would be approved as a matter of ministerial duty due to its consistency with SB 35.

The April 18, 2022 Public Hearing and the Denial of the Project

56. On April 18, 2022, the date of the hearing, the Community Development Department issued its Staff Report regarding the Project. The Staff Report unequivocally states that the Project met all the eligibility criteria for the streamlined ministerial process under SB 35. The Staff Report also referenced an attached, 25-page SB 35 Consistency Analysis, which

detailed how the Project would be consistent with each of the City's applicable objective standards.

57. The conclusion of that Staff Report states the following:

> "Staff recommends the City Council conditionally approve the Project. **Having met all criteria per California Government Code 65913.4, the proposed Project qualifies for the Streamlined Ministerial Approval Process under SB 35 and the City's Streamlined Ministerial Approval Process []. Based on the prior review and analysis, it is the Community Development Director's determination that the Project meets all the findings required for the approval under SB 35.** Furthermore, Project approval is warranted as the Project is consistent with the applicable *Commercial Recreation* (CR) Zone, objective design review and development standards, the applicable *Burbank2035* General Plan goals and objective policies, and the applicable requirements for a housing development project of this type under local and State Density Bonus Law, [t]he City's Inclusionary Housing Ordinance**, and the applicable provisions of [t]he Housing Accountability Act…**" [Emphasis added.]

58. In short, the Community Development Department, which had extensively reviewed the Project over a nine-month period, found that the Project was consistent with *each and every* requirement and objective standard required for eligibility under SB 35. The Staff Report further concluded that the Project was subject to the protections of the HAA.

59. The Community Development Department's expert analysis would fall on deaf ears because the City Council ignored the law and public policy when it denied the Project.

60. During the April 18, 2022 public hearing, Assistant Community Development Director Fred Ramirez and Planning Manager Scott Plambaeck provided a presentation to the City Council regarding the Project's eligibility for streamlining under SB 35.

61. Both Fred Ramirez and Scott Plambaeck urged the City Council to ministerially approve the Project because the Community Development Department had determined that the Project met every requirement and was consistent with every objective standard required for eligibility under SB 35.

62. Rather than heed this warning, the City Council promulgated its pretextual theory that residential uses were somehow not permitted in either the Property's *Rancho Commercial* General Plan land use designation or *Commercial Recreation* zone.

63. The City Council's theory makes so little sense that even Council Member Sharon Springer admitted on the record that she "went down the rabbit hole" in order to find support

for it. For obvious reasons, including the fact that both the General Plan and the BMC state that residential uses may be permitted in both the *Rancho Commercial* General Plan land use designation and the *Commercial Recreation* zone, staff, and at times even the City Attorney, tried to dissuade the City Council from relying on this unsupported theory to deny the Project.

64. In defiance of state law, the City Council unanimously denied the Project.

65. On April 25, 2022, the City published its denial resolution No. 22-29,310 (the "Denial Resolution") for the Project. The threadbare Denial Resolution adopted by the City Council evinces the lack of legal support for the denial. The Denial Resolution primarily relies on the debunked theory that residential uses are not permitted at the Property. Further, the Denial Resolution repeats the baseless claim made by the Project's opponents that the Project would pose a safety risk for horses.

66. Independent of its debunked theory, the Denial Resolution does not identify an objective standard with which the Project would not comply. Further, the Denial Resolution does not make either of the two denial findings required under the HAA.

FIRST CAUSE OF ACTION

(Petition For Writ of Mandate – Violation of SB 35)

(Gov. Code § 65913.4; Code Civ. Proc. §§ 1085, 1094.5)

67. Petitioner re-alleges and re-incorporates by reference all preceding allegations in their entirety, as if fully set forth herein.

68. Gov. Code § 65913.4 provides that a development project that satisfies the objective planning standards and requirements listed in Gov. Code § 65913.4, subd. (a) shall be "subject to a streamlined, ministerial approval process" and "is not subject to a conditional use permit."

69. The applicable objective planning standards are defined as "standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal." Gov. Code §

65913.4, subd. (a)(5).

70. Gov. Code § 65913.4, subd. (c) provides that "a development is consistent with the objective planning standards specified in [Gov. Code § 65913.4] subdivision (a) if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards." This low threshold is designed to prohibit a local jurisdiction like the City from incorrectly interpreting or applying an objective planning standard in order to find a project incompliant.

71. Gov. Code § 65913.4, subd. (n) further requires that Gov. Code § 65913.4 "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply."

72. Gov. Code § 65913.4 "expressly limits local governments' authority over applications for development of affordable housing projects meeting the specified criteria…" *Ruegg & Ellsworth v. City of Berkeley*, 63 Cal.App.5th 277, 299 (2021).

73. Petitioner satisfied each of the objective planning standards in Gov. Code § 65913.4, subd. (a) and all other requirements for eligibility under SB 35.

74. Petitioner provided the City with substantial evidence that would allow a reasonable person to conclude that the Project was consistent with each of the City's objective planning standards, as well as all other requirements for eligibility under SB 35, including numerous notifications; applications; support documents; attachments; and analyses and explanations.

75. The City's own Community Development Department correctly determined that the Project complied with the objective planning standards in Gov. Code § 65913.4, subd. (a) as well as all other requirements for eligibility under SB 35.

76. As part of this determination, the Community Development Department also concluded that both the Property's *Rancho Commercial* General Plan land use designation and *Commercial Recreation* zoning permit residential uses.

77. The City Council, in the Denial Resolution for the Project, erroneously identified one objective planning standard to which it alleges the Project did not comply. The City

Council's argument in this regard is meritless and does not negate the substantial evidence provided by Petitioner supporting that the Project was consistent with each of the objective planning standards in Gov. Code § 65913.4, subd. (a) required for eligibility under SB 35. The City Council's denial is also not supported by the substantial evidence provided by the City's own Community Development Department in their Staff Report and analysis of the Project.

78. The City had a ministerial duty to approve the Project.

79. The City failed to perform its ministerial duty to approve the Project pursuant to Gov. Code § 65913.4 when the City Council denied the Project on April 18, 2022.

80. Code of Civ. Proc. § 1085 provides that "[a] writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins…" Mandamus relief is available to compel a local government to perform a ministerial act that is prescribed by law. *Ochoa v. Anaheim City Sch. Dist.*, 11 Cal.App.5th 209, 223-24 (2017).

81. Therefore, Petitioner is entitled to a writ of mandate setting aside the City's denial and directing the City to ministerially approve the Project.

SECOND CAUSE OF ACTION

(Petition for Writ of Mandate – Violation of HAA)

(Gov. Code § 65589.5, subd. (j); Code Civ. Proc. §§ 1085, 1094.5.)

82. Petitioner re-alleges and re-incorporates by reference all preceding allegations in their entirety, as if fully set forth herein.

83. The HAA limits a local agency's ability "to deny, reduce the density for, or render infeasible housing development projects…" Gov. Code § 65589.5, subd. (a)(2)(K). Specifically, the HAA states that "[w]hen 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 the application was deemed complete but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density," the local agency must make two findings. Gov. Code § 65589.5, subd. (j). As a

threshold matter, a housing development project shall be deemed compliant with any applicable standards "if there is substantial evidence that would allow a reasonable person to conclude that the housing development project…is consistent, compliant, or in conformity." Gov. Code § 65589.5, subd. (f)(4).

84. To deny a compliant project the local government must first find that "[t]he 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." Gov. Code § 65589.5, subd. (j)(1)(A). Second, the local government must also find that "[t]here is no feasible method to satisfactorily mitigate or avoid the [specific,] adverse impact….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." Gov. Code § 65589.5, subd. (j)(1)(B).

85. The HAA further requires that both of such findings be "supported by a preponderance of the evidence on the record…" Gov. Code § 65589.5, subd. (j)(1). A local agency may not deny an eligible project without making the findings required by the HAA. *Honchariw v. County of Stanislaus,* 200 Cal.App.4th 1066, 1081 (2011). The HAA "thus imposes mandatory conditions limiting [a city's] discretion" to deny housing permits. *N. Pacifica, LLC v. City of Pacifica*, 234 F.Supp.2d 1053, 1059 (N.D. Cal. 2002). Further, the HAA is to "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." Gov. Code § 65589.5, subd. (a)(2)(L).

86. Petitioner provided the City with substantial evidence that would allow a reasonable person to conclude that the Project was consistent, compliant, and in conformity with any applicable development standards, including numerous application materials; support documents; attachments; and analyses and explanations.

87. The City's own Community Development Department correctly concluded that the Project was consistent, compliant, and in conformity with any applicable development standards and that the HAA applied to the Project.

88. Therefore, in order to deny the Project, the City was required to make both of the findings required under the HAA and support such findings by a preponderance of the evidence on the record.

89. Having failed to make both of such findings as part of the Denial Resolution for the Project, despite repeated warnings from both Petitioner and the City's own Community Development Department, the City Council failed to proceed in the manner required by law. Accordingly, Petitioner is entitled to an order or judgment compelling the City to comply with the HAA, including, but not limited to, an order that the City take action on the Project. Gov. Code § 65589.5, subd. (k)(1)(A)(ii).

90. Further, the City Council willingly violated state law by concocting claims that were frivolous and entirely without merit regarding the Project. Accordingly, the City acted in "bad faith" for purposes of the HAA. Gov. Code § 65589.5, subd. (k)(1)(A)(ii), (l). Since the City acted in bad faith when it disapproved the Project, Petitioner is entitled to an order or judgment directing the City to approve the Project. Gov. Code § 65589.5, subd. (k)(1)(A)(ii).

PRAYER FOR RELIF

WHEREFORE, Petitioner prays for relief as follows:

1. For an order or judgment compelling Respondents to comply with SB 35 and the HAA, including but not limited to an order enjoining Respondents to set aside their unlawful denial and to take appropriate action to approve the Project.

2. For costs of suit as allowed by law, including attorneys' fees pursuant to Government Code § 65589.5, subd. (k)(1)(C)(2), Code of Civil Procedure § 1021.5, Government Code § 800, subd. (a), and/or other applicable provisions of law.

3. For fines to be assessed as warranted pursuant to Government Code § 65589.5, subd. (k)(1)(B).

4. For injunctive relief pursuant to Government Code § 525.

5. For the Court to retain continuing jurisdiction to ensure compliance with its orders pursuant to Government Code § 65589.5, subd. (k)(1)(A)(ii).

6. For such other further relief as this Court may deem just and proper.

DATED: May 9, 2022

Respectfully submitted,

COX, CASTLE & NICHOLSON LLP

By: _____

Andrew B. Sabey
Scott B. Birkey
E.J. Schloss
Attorneys for Petitioner
PICKWICK INVESTMENT, LLC

DocuSign Envelope ID: FD77796A-6EDB-4800-85AC-3E9EBA504547

VERIFICATION

[Executed in California – State or Federal]

I have read the **VERIFIED PETITION FOR WRIT OF MANDATE (CODE CIV. PROC. §§ 1085, 1094.5; GOV. CODE §§ 65913.4, 65589.5)** and know its contents. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

(Check applicable paragraph)

☐ I am a party to this action.

☐ I am a general partner of PICKWICK INVESTMENT, LLC, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

☐ I am a member of _____, a Limited Liability Company, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

☐ I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their office, and I make this verification for and on behalf of that party for that reason.

☒ I am an officer of PICKWICK INVESTMENT, LLC, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

Executed on May 6, 2022, at Ladera Ranch, California.

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

DocuSigned by:
Matthew J Waken
8C33235AB55E4DD...

Matthew Waken