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SUPERIOR COURT – STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – UNLIMITED CIVIL JURISDICTION

YES IN MY BACK YARD, a California nonprofit corporation; SONJA TRAUSS; and JANET JHA,

Petitioners and Plaintiffs,

vs.

CITY OF LOS ANGELES; CITY COUNCIL OF THE CITY OF LOS ANGELES; and DOES 1-25,

Respondents and Defendants.

Case Number: 21STCP03883

PETITIONERS' OPENING BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDATE

Dept: 85
Judge: James C. Chalfant
Hearing Date: July 19, 2022
Time: 1:30 p.m

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I. INTRODUCTION

California's housing shortage is "a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing." (Gov. Code § 65589.5(a)(2)(J).) This case exemplifies the tactics that local governments have used to thwart the Legislature's clear directive to approve more housing.

Two years have passed since Petitioner Janet Jha submitted an application to construct 67 residential units, with seven units designated for very-low-income households, along the largest commercial corridor in the City of Los Angeles' San Fernando Valley community. Respondents City of Los Angeles and City Council of the City of Los Angeles have tried every tactic possible to prevent the application from moving forward. First, SB 330 requires local governments to accept Preliminary Applications and prohibits local governments from requiring information beyond that which is specified in the law. Respondents have refused to accept Petitioners Preliminary Application and have demanded information Respondents themselves say is optional. Second, the Permit Streamlining Act sets strict deadlines for local governments to timely process development applications, and Respondents have missed every one of those deadlines. The City has taken the position that Jha's application is not an application at all, and not subject to any state law protections. The City has refused to process the applications, not because of missing information, but because the City has erroneously determined that the project is prohibited by the site's single-family zoning.

The Housing Accountability Act ("HAA") prohibits local governments from disapproving code-compliant housing development projects unless certain public health or safety impact findings can be made. Petitioner merely seeks to construct a project that is compliant with the site's general plan designation. Respondents did not even attempt to make the required public health or safety impact findings, yet still disapproved the project because the City claims the project is prohibited by the site's single-family zoning – even though the HAA requires local governments to approve projects at the densities allowed under the general plan.

Respondents' actions clearly violation state law, and illustrate why the Legislature's housing goals continue to go unmet.

II. STATEMENT OF FACTS

Petitioner Janet Jha ("Jha") is the owner of 5353 Del Moreno Drive in the City of Los Angeles. The property is within an area governed by the Canoga Park - Winnetka - Woodland Hills - West Hills Community Plan ("Community Plan"), which is part of the Land Use Element of the City's general plan. The Community Plan designates the parcel for "Limited Commercial" uses, which allows for three different commercial zones: CR, CR1.5, and CR1. These zones allow for commercial uses, as well as multi-family residential uses with densities ranging from one unit per 400 square feet to one unit per 800 square feet of lot area. Despite the property's Limited Commercial land use designation, the site is zoned RA-1. The RA-1 zone prohibits all commercial and multi-family uses, allowing only one single-family residence per lot. Jha seeks to develop the parcel with a multi-family housing development, as allowed by the site's general plan Limited Commercial designation, and seeks a density bonus under state law. The proposed project includes one commercial unit and 67 residential units, with seven units designated for very-low-income households (the "Project").

On May 19, 2020, Jha submitted a complete City of Los Angeles Preliminary Application for the Project, also known as an SB 330 Application, and paid the required filing fee. (AR 00716-723, 00748.) The City refused to accept the SB 330 Application, not because of missing information, but "because the Preliminary Application contains inaccurate information regarding the use of Density Bonus." (AR 01110). The City asserted that although Jha proposed a project based on the density allowed under the general plan and requested a state density bonus, the City would not allow a density bonus on an RA-1 zoned site. (*Id.*) The City then directed Jha to submit an Affordable Housing Referral Form ("AHRF"), even though the City's SB 330 Application notes an AHRF is optional. (AR 01283.)

Following the Preliminary Application submittal, Jha submitted the development project application on August 18, 2020. (AR 01114.) Three days later, a City Planner explained that although "the general plan indicates this area as limited commercial[,] this lot is still zoned RA-

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1 and you will need to file for a zone change." (AR 01115.) The City Planner requested three documents: 1) a signed AHRF; 2) a signed Geographic Referral Form ("GRF"); and 3) a signed Hillside Referral Form. (*Id.*)

Jha had already attempted to obtain an AHRF, but the relevant department stated the property "is not eligible for a density bonus cause your site is zoned for single family uses" and "the City cannot issue an [AHRF] to you." (AR 01105.) The City told Jha there was absolutely no recourse to challenge its refusal because "[t]here is no appeal process for rejecting a referral form request." (AR 01103.) Jha contacted a different department to obtain a GRF, but that department requested detailed project plans because "[m]y job is to review your entire project and I have to make sure that your project complies with ALL of the requirements." (AR 01091.) One planner in that department was confused by the property's Limited Commercial designation with contradictory RA-1 zoning, prompting him to email his supervisors to "find out if there are any errors in its inclusion in the Plan and/or its designation." (AR 01098.) Another planner responded that the reason for the RA-1 zoning "is anyone's guess" and "the logic is not obvious." (*Id.*) After repeated attempts to obtain a signed GRF, the department refused. (AR 01099.)

On August 27, 2020, Jha provided the three completed forms the City had requested, except for the signatures the City refused to provide. (AR 01119.) The planner processing the application explained that "I cannot intake a case that does not have the required forms completed and signed off by the respective agencies." (AR 01120.) On September 18, 2020, the planner provided a checklist that requested an entirely new set of documents that had not been previously identified. Jha complied with the information requests and submitted the requested information on January 21, 2021. (AR 01131.) Thirty-six days later, the planner responded that the AHRF and GRF "need to be reviewed by their respective departments and signed off on before your application is submitted." (AR 01132) Jha asked how to appeal the decision, and the Planner responded "There is no appeal process for this. Your case is not complete, so I cannot accept it for filing." (AR 01146.)

On March 7, 2021, Jha cited the relevant Permit Streamlining Act ("PSA") provision that

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provides applicants a right to appeal an incompleteness determination and requested an appeal. (AR 01153.) Jha subsequently hired an attorney, and on June 7, 2021 Jha's attorney again demanded an appeal. On July 8, 2021, Jha submitted the City's appeal form designed for entitlement appeals, because the City does not have an appeal procedure in place for PSA incompleteness determinations. (AR 00423, 00625.)

On August 31, 2021, 378 days after Jha first submitted the development application and 177 days after Jha first requested an appeal, the City's Planning and Land Use Management ("PLUM") Committee held a hearing on the appeal. Staff recommended the appeal be denied because "an accurate and complete Geographic Project Planning Referral Form and Affordable Housing Referral Form" were not included in the application. (AR 00414.) Due to the supposed "missing" forms (which the City refused to sign), City staff asserted that "the application for a development project was never determined to be received" and was not subject to the PSA at all. (*Id.*) The report explained that the City had refused to sign the forms because the "proposed project is infeasible and not in conformance with the existing RA zoning." (AR 00420.)

Petitioners and Plaintiffs Yes In My Back Yard, Sonja Trauss, and Jha all submitted written comments and spoke during the hearing in support of the appeal. During deliberations, one committee member commented that "you can't do multifamily in residential agriculture in RA zones. You have to get it rezoned." (AR 00634.) The PLUM committee denied the appeal, and the next day the full City Council similarly denied the appeal without discussion. (AR 00606-07.)

III. ARGUMENT

A. Standard of Review

A petition for traditional mandamus is appropriate "to compel the performance of an act which the law specially enjoins," and is the appropriate method to compel the performance of a legal, ministerial duty. (CCP §1085; *Pomona Police Officers' Assn. v. City of Pomona* (1997) 58 Cal.App.4th 578, 583-84.) Whether a statute imposes a ministerial duty is a question of statutory interpretation reviewed de novo. (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 701.) Once a duty for a public agency is

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established, a court has no discretion to limit the availability of a writ of mandate to enforce that duty. (*Santa Clara County Counsel Attorneys Ass'n v Woodside* (1994) 7 Cal 4th 525, 28.)

A writ of administrative mandate is appropriate to challenge the "validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given." (CCP §1085) That inquiry is reviewed for an abuse of discretion, which is established if an agency has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. (*Id.*)

Unlike other administrative mandamus actions, under the Housing Accountability Act ("HAA") a court must inquire whether there is "substantial evidence that would allow a reasonable person to conclude that the housing development project" complies with applicable standards. (Gov Code § 655589.5(f)(4); *Cal. Renters Legal Advocacy & Educ. Fund v. City of San Mateo*, (2021) 68 Cal.App.5th 820, 837.) Also unique to the HAA, in any denial of a housing development project, the agency, not the Petitioner, "bears the burden of proof that its decision has conformed to the HAA" and that its findings are supported by a preponderance of the evidence. (*Cal. Renters Legal Advocacy & Educ. Fund,* 68 Cal.App.5th at 837.)

B. The City Violated SB 330.

As part of the Housing Crisis Act of 2019, the California Legislature added a new Preliminary Application process specifically for housing development projects, codified at Gov. Code § 65941.1. The purpose of the Preliminary Application, also known as the SB 330 Application, is to lock into place existing development standards. A local government is prohibited from applying development standards except those that were in effect at the time an SB 330 Application is submitted. (Gov. Code § 65589.5(o).)

Gov. Code § 65941.1(a) states that an applicant "*shall be deemed* to have submitted a preliminary application upon providing all of the following information" and goes on to list seventeen specific pieces of information that must be submitted. Gov. Code § 65941.1(b) allows each agency to create its own application form, but expressly states that the "form shall not require or request any information beyond that expressly identified in subdivision (a)."

Jha submitted a completed City of Los Angeles SB 330 Application form and provided

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all seventeen specific pieces of information listed in Gov. Code § 65941.1(a). (AR 00716-723, 00748.) The City, however, refused to accept the SB 330 Application and considers the application incomplete because Jha did not submit a signed AHRF – even though this form is not one of the required pieces of information listed in Gov. Code § 65941.1(a) and *the City's own SB 330 Application form states that the AHRF is optional.* (AR 01228.)

SB 330 also states that the law "shall not require an affirmative determination by a city, county, or city and county regarding the completeness of a preliminary application." (Gov. Code § 65941.1(d).) In other words, once the required information is provided, an SB 330 application is deemed submitted and an agency has a ministerial duty to accept the application.

The City refused to accept Jha's SB 330 Application – not because of missing information, but because "the Preliminary Application contains inaccurate information regarding the use of Density Bonus." (AR 01110.) The information provided, however, was not "inaccurate." Gov. Code § 65941.1(a)(10)-(11) merely requires an applicant to submit the "number of *proposed* below market rate units" and the "number of bonus units and any incentives, concessions, waivers, or parking reductions *requested*," regardless of whether the proposal or requests will be approved. The City later acknowledged that the information provided was accurate, noting that the project is "proposing to use the development standards of the underlying land use designation rather than the zone and proposing to use Density Bonus." The City simply refused to accept the Application because of a City Planner's erroneous affirmative determination regarding the proposal's compliance with the site's zoning. (AR 01283.) No such determination is required for an SB 330 Application to be deemed submitted, and compliance is not a valid basis for refusing to accept an SB 330 Application. Code compliance determinations occur later in the process.

The City failed to carry out its ministerial duty to accept an SB 330 Application that provided all seventeen pieces of information listed in Gov. Code § 65941.1 and violated SB 330 by requiring information beyond what is specifically listed. Petitioners seek an order commanding Respondents to perform their legal ministerial duties under SB 330, and a judicial declaration that Petitioner Jha's SB 330 Application is complete as a matter of law.

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C. The City Violated the Permit Streamlining Act.

1. Jha's Application is Deemed Complete as a Matter of Law.

The Permit Streamlining Act (PSA) provides precise time limits for agencies to act on development project applications following an SB 330 Preliminary Application. Once an development project application has been submitted, Gov. Code § 65943(a) requires an agency to make a written completeness determination within 30 calendar days, or else "the application together with the submitted materials shall be deemed complete." Courts are clear that agencies have "30 days, and 30 days only" to determine an application is incomplete. (*Orsi v. City Council of Salinas* (1990) 219 Cal. App. 3d 1576, 1584.)

Here, Jha's application is deemed complete as a matter of law because the City failed to make a completeness determination within 30 days as required by the PSA. Jha submitted a development project application on August 18, 2020, but the City did not provide a written completeness determination until 31 days later, on September 18, 2020. (AR 01114, 01303.) The City's belated letter is irrelevant, as the City has "30 days, and 30 days only" to notify an applicant that an application is incomplete. (*See Orsi,* 219 Cal. App. 3d at 1584.)

The PSA also states that when an application incompleteness determination is made, the agency must provide "an exhaustive list of items that were not complete." (Gov. Code § 65943(a).) Upon any resubmittal, a new 30-day review period begins, but the agency "shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete." (*Id.*) Although a planner requested three documents via email on August 21, the planner did not state that the email constituted an incompleteness determination. (AR 01115). Even if this email constituted the "exhaustive list of items that were not complete," Jha submitted the requested documents on August 27, 2020. (AR 01119.) Once those three documents were submitted, the application was complete and the City was prohibited from requesting "any new information that was not stated in the initial list of items that were not complete." Thus, if the August 21 email was the incompleteness determination, the information requests in the September 18 letter were invalid. Even assuming, once again, the City's belated September 18 letter included valid requests, Jha submitted responses to the requests on January

21, 2021, which would have begun a new 30-day review period. (AR 01131.) The City failed to meet *that* deadline, as the planner did not respond until 36 days later, on February 26, 2021. (AR 01132.)

The PSA also requires agencies to provide a right to appeal a completeness decision, and further requires a final written determination on the appeal within 60 calendar days. (Gov. Code § 65943(c).) If the final written determination is not made within that 60-day period, "the application with the submitted materials shall be deemed complete." (*Id.*) Even assuming, once again, the City's belated February 26, 2021 response was valid, Jha requested an appeal of the completeness determination on March 7, 2021, which began a 60-day period for the City to provide a final written determination on the appeal. (AR 01153.) The City failed to meet *that* deadline too. The City Council did not issue a final written determination on Jha's appeal until 178 days later, on September 1, 2021. (AR 00607.)

Respondents failed to meet every one of the PSA's deadlines, and as a result Jha's application is deemed complete as a matter of law.

2. The City's PSA Procedures are Illegal.

The City's failure to meet the required deadlines in this case is not the most egregious aspect of the City's PSA violations. The City's flagrantly illegal procedures and policies – designed to avoid compliance with the PSA altogether and subvert the ability of applicants to benefit from the PSA's legal protections – must not be tolerated. The City has a long history of refusing to accept permit applications for filing to circumvent the PSA's deadlines, just as it has here, a practice that courts have already found "improper" and "not to be condoned." (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2010) 187 Cal App. 4th 1461, 1473.) The City failed to carry out its ministerial duty by refusing to accept an application altogether in order to avoid PSA deadlines.

Moreover, the PSA is informational, not substantive, and requires that each agency maintain lists that "specify in detail the information that will be required *from any applicant*." (Gov. Code § 65940.) The City requires applicants to seek approval, in the way of signed forms, from up to *eighteen different departments* before an application is even allowed to be submitted.

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(AR 00088.) As exemplified in this case, each different department requests different information on a case-by-case basis, and City staff make subjective determinations whether the underlying project, not the information provided, complies with that department's rules. This is designed to occur completely outside of the PSA's protections where there are no deadlines, no appeals, and each department makes ad hoc information requests. Unless an applicant complies with each of the eighteen departments' demands and gains each department's approvals, the City will refuse to accept an application for filing. Essentially, City Planning is requesting information from *other City Departments*, not the Applicant.

This entire process is in violation of the PSA, which only allows agencies to request information *from the applicant* and prohibits agencies from requesting information that has not already been specified in detail on an application list. Petitioners seek an order commanding Respondents to perform their legal ministerial duties under the PSA to accept applications for processing, and to refrain from requesting information that has not been specified on an application list.

D. The City Violated the Housing Accountability Act.

1. The City Disapproved the Project Without Making the Required Findings.

The Legislature has recognized California's housing crisis is "partially caused by activities and policies of many local governments that limit the approval of housing…." §65589.5(a)(1)(B). To combat this, the HAA greatly limits a local government's ability to deny housing development projects that comply with applicable, objective general plan, zoning, and subdivision standards, except in cases where the agency finds by a preponderance of evidence that: (1) the project would have an unavoidable impact on public health or safety; and (2) there is no feasible method to satisfactorily mitigate or avoid the adverse impact other than the disapproval. (Gov. Code § 65589.5(j)(1)(A)-(B); *see also Honchariw v. County of Stanislaus* (2011) 200 Cal.App.4th 1066, 1081.) The HAA defines "disapproval" as any instance in which a local agency "[v]otes on a proposed housing development project application and the application is disapproved." (Gov. Code § 65589.5(h)(6).) A local agency must provide written

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documentation identifying any code compliance issues within 30 days of the date that the application is determined to be complete. (Gov. Code § 65589.5(j)(2).)

The City disapproved Jha's application because of its purported noncompliance with the project site's single-family zoning; the City did not provide written documentation identifying any other code compliance issues within 30 days of the application being deemed complete. The PLUM committee members voted to deny Jha's appeal and disapprove the project application because "you can't do multifamily in residential agriculture in RA zones. You have to get it rezoned." (AR 00634.) The City did not even attempt to make the two required findings necessary to disapprove the project under the HAA. (AR 00420, 00607.) Because the project *is* code-compliant and the zoning density is not applicable, as explained below, the disapproval without the required findings was an HAA violation. (*See Honchariw* 200 Cal.App.4th at 1081.)

2. Recent Amendments to the HAA Mandate a Determination of Code-Compliance When a Project is Consistent with General Plan Density.

The Legislature has amended the HAA several times to strengthen its provisions and close certain loopholes that local governments have exploited. Two key amendments have focused on a local government's initial determination regarding whether a project is code-compliant. First, in 2017 AB 1515 changed the standard of review a court must apply to review whether a project is code compliant. Prior to this amendment, significant deference was given to a local government's interpretation of its own code, and a compliance determination would generally be upheld unless the determination was arbitrary, capricious, or without an evidentiary basis. AB 1515 eliminated that deference, and requires a court to find a housing project compliant if substantial evidence would allow a reasonable person to conclude the project is compliant. (Gov. Code § 65589.5(f)(4); *Assembly Floor AB 1515 Analysis*, July 13, 2017, Respondents' RJN, Ex. 1, p. 3.)

Second, and most critical here, in 2018 AB 3194 set out to close a loophole that local governments have exploited to avoid compliance with the HAA: maintaining low zoning densities to force projects into discretionary rezoning processes. (*Senate Committee on Governance and Finance AB 3194 Report*, June 27, 2018, Respondents' RJN, Ex. 2, pp. 2-3.) AB 3194 fixed this

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problem in two ways. First, this bill specifically prohibits local governments from requiring rezoning in cases where the zoning is inconsistent with the general plan. Second, in cases where a local government argues that zoning *is* consistent with the general plan, the bill requires local governments to facilitate the density allowed under the general plan rather than the zoning. The amendment added Section (j)(4), which states:

> For purposes of this section, a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, ***and shall not require a rezoning***, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan, however, ***the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan*** and proposed by the proposed housing development project. (Emphasis added.)

The California Supreme Court has recognized that the general plan is a city's constitution for future development. (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.) In addition, the Housing Element of the general plan is heavily regulated and relied on by the California Department of Housing and Community Development to determine whether localities have the planned capacity to accommodate their Regional Housing Needs Allocation. The Legislature, to provide certainty to home builders and ensure that claims regarding residential capacity made in Housing Elements are accurate, has given clear primacy to the densities allowed under the general plan in state housing laws. For example, the City's own Planning Director has confirmed that another housing law with very similar language, SB 35, requires the approval of housing projects that utilize the maximum density allowed under the general plan and prohibits rezoning requirements. (AR 00145.) The City has failed to explain why the HAA differs from SB 35. Similarly, the Density Bonus Law also addresses both situations where zoning is consistent and inconsistent with the general plan. The law mandates that density bonuses be granted based on the "maximum allowable density" for the

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site, defined as: "the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, [it] means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail." (Gov. Code § 65915(o)(2).)

The HAA must be read to also allow the maximum allowable density under the general plan in the same manner as SB 35 and the Density Bonus Law. Otherwise, a local government would be required to grant a density bonus utilizing the general plan density but would then be free to deny the project under the HAA by relying on low zoning densities. This case demonstrates the absurdity of this interpretation, as Jha has requested a Density Bonus pursuant to state law utilizing the maximum density allowed under the site's general plan designation, and the City is *required* to approve the request. Yet, under the City's interpretation, the Project is "infeasible," cannot be approved without a zone change, and can be denied under the HAA. However, *this would result in a violation of the Density Bonus Law* because the City is required to grant the bonus pursuant to the general plan density. (Gov. Code § 65915(f).)

This result is not only absurd, but flies in the face of the Legislature's directive that the HAA "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." (Gov. Code §65589.5(a)(2)(L).) Statutes must be considered "in the context of the entire statutory system." (*People v. Woodhead* (1987) 43 Cal. 3d 1002, 1009.) Where two statutes could potentially conflict, a "court must, where reasonably possible, harmonize statutes, reconcile seeming inconsistencies in them, and construe them to give force and effect to all of their provisions." (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 805.) The only reasonable interpretation of the HAA – one that is consistent with other state housing laws and furthers the Legislature's intent – is that a local government must facilitate housing at the density allowed by the general plan, both in situations where zoning is consistent and inconsistent with the general plan.

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3. The City's Demand for a Rezoning Violates the HAA.

The City has erroneously determined that Jha must submit a request for a rezoning, even though the HAA strictly prohibits local governments from requiring a rezoning when, as here, the general plan and zoning are inconsistent. In this case, the zoning is clearly inconsistent with the general plan designation: the limited commercial designation is limited to three specific commercial zones and the subject property's RA-1 zoning category is not one of them. The RA-1 zoning entirely prohibits the two primary uses that limited commercial designation allows: commercial and multifamily. This inconsistency prompted one City planner to confer with supervisors to "find out if there are any errors" with the designation, and another planner stated that the reason for the RA-1 zoning "is anyone's guess" and "the logic is not obvious." (AR 01098.) Neither the City's own planners, nor any reasonable person, would conclude that a zoning district is consistent with the general plan when the zoning prohibits the two principal categories of uses specifically authorized by the general plan.

The City now argues that single-family zoning is consistent with the limited commercial designation based on the notion that any zoning that is "less intensive" than the uses allowed by the general plan is consistent – a theory the City calls the "hierarchy of uses." This theory contradicts case law and defies common sense.

The hierarchy of uses theory has already been explicitly rejected by a final judgment in the strikingly similar *Warner Ridge Associates v. City of Los Angeles* (1991) 2 Cal.App.4th 238 case.[1] In *Warner Ridge*, a parcel in the Canoga Park – Winnetka - Woodland Hills District Plan was designated as "neighborhood and office," which allowed for a range of commercial zones, but the property remained zoned RA-1. The property owner argued that the City was in

[1] *Warner Ridge* is unpublished, but California Rules of Court Rule 8.1115(1) permits a party to rely upon an unpublished opinion "[w]hen the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel." The opinion is unquestionably relevant to the doctrine of general plan and zoning consistency at issue in this case. The prerequisites for collateral estoppel are also met, as the consistency issue decided in *Warner Ridge* is identical to that presented in this litigation, was actually litigated, there was a final judgment on the merits of the issue, and the City was a party in the prior action. (*See Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.)

violation of Gov. Code § 65860, which requires consistency between zoning and the general plan. The City argued, as it does here, that RA-1 zoning is "less intensive" and therefore consistent with the commercial designation under its hierarchy of uses theory. The court found that "***[n]o reasonable person*** can seriously believe that a zoning ordinance which prohibits all commercial uses in an area designated in the general plan for commercial uses is 'consistent' with the general plan." The court explicitly rejected the 'hierarchy of uses' theory, stating that a "general plan which designates property for intense development with the contemplation that designation may thereafter be prohibited through zoning is, in effect, no general plan . . . . The hierarchy theory, in essence, repeals the consistency requirement."

The City's tactic here is the exact loophole the Legislature intended to close when AB 3194 prohibited rezoning requirements in cases where zoning is inconsistent with the general plan. For years local governments have relied on the deference afforded to interpretations of their own code and maintained zoning inconsistencies to retain as much discretion as possible over housing projects. (*Senate Floor AB 3194 Analysis*, August 8, 2018, Respondents' RJN, Ex. 3, p. 4.) The HAA amendments were described as "game changers" to prevent local agencies from going about business as usual and to further the Legislature's directive that the HAA be "implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." (*Id.*; Gov. Code §65589.5(a)(2)(L).) The City's hierarchy of uses theory flies in the face of the Legislature's clear intent and must be rejected – again.

4. The City Must Facilitate the Density Allowed by the General Plan.

Moreover, in cases where zoning *is* consistent, a local government may only apply objective zoning standards in a manner to "facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project." (Gov. Code § 65589.5(j)(4).) Here, Jha is proposing a project that is entirely consistent with the density allowed under the general plan's limited commercial designation. The City expressly acknowledged this, stating that "[i]n the case of this project, you're proposing to use the development standards of the underlying land use designation rather than the zone and proposing to use Density Bonus." (AR 01283.)

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If the RA-1 zoning is consistent with the site's Limited Commercial designation as the City claims, the City has the ability to apply objective RA-1 standards (e.g. setbacks, coverage, height, etc.) ***but only to the degree*** that it facilitates the density allowed by the Limited Commercial designation. Contrary to this requirement, the City is attempting to apply the *density* of the RA-1 zoning district to *prevent*, rather than facilitate, the density allowed by the limited commercial designation. This is in direct violation of the HAA's requirement to facilitate and accommodate the density allowed by the Limited Commercial designation.

5. The City's Disapproval was in Bad Faith.

The City disapproved Jha's development application without even attempting to make the required public health and safety impact findings. The City disapproved the application unless and until Jha meets the City's demand to secure a rezoning – even though such requirement is prohibited. The City's demand for a rezoning is based on a court-rejected theory that no reasonable person, not even their own City planners, could believe. The City's actions in this case were frivolous, without merit, and a clear bad-faith violation of the HAA. Petitioners therefore seek an order that the Project is deemed compliant and directing Respondents to approve the housing development project within 60 days pursuant to Gov. Code § 65589.5(k).

IV. CONCLUSION

The City has ignored its duties and responsibilities under California's most fundamental housing laws. The City's actions in this case exemplify one of the root causes of a housing shortage that has reached historic proportions. Two years have gone by since Jha proposed a 67-unit residential project, with seven units designated for very-low-income households. Not only have those desperately needed units not been built, but the City pretends that the application submitted for the project *does not even exist*. Petitioners seek an order requiring Respondents to carry out their duties under SB 330, the PSA, and the HAA, in addition to an order that the Project is deemed compliant and directing Respondents to approve the housing development project within 60 days.

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Respectfully Submitted,

Dated: May 20, 2022

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Dated: May 20, 2022

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PROOF OF SERVICE

YES IN MY BACK YARD, A CALIFORNIA NONPROFIT CORPORATION; SONJA TRAUSS; AND JANET JHA V. CITY OF LOS ANGELES; CITY COUNCIL OF THE CITY OF LOS ANGELES; AND DOES 1-25

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
CASE NO. 21STCP03883

I, **Sinaita'aga Taula**, declare that:

I am employed in the County of San Francisco, State of California. I am over the age of 18, and am not a party to this action. My business address is 601 Montgomery Street, Suite 400, San Francisco, California 94111.

On **May 20, 2022** I served:

PETITIONERS' OPENING BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDATE

in said cause addressed as follows:

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/XX/ **(BY E-SERVICE)** I served the above documents through One Legal in accordance with the Court's Local Rule 2.11 requiring all documents to be served upon interested parties via One Legal e-Service System.

/XX/ **(BY MAIL)** By placing a true copy thereof enclosed in a sealed envelope. I placed each such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at San Francisco, California, following ordinary business practices.

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

Dated: **May 20, 2022**

SINAITA AGA TAULA

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