CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles
JUL 29 2022
Sherri R. Carter, Executive Officer/Clerk of Court

Yes in My Backyard, Sonja Trauss, and Janet Jha v. City of Los Angeles and City Council, 21STCP03883

Decision on petition for writ of mandate: granted

Petitioners Yes in My Backyard ("YIMBY"), Sonja Trauss ("Trauss"), and Janet Jha ("Jha") seek a writ of mandate directing Respondents City of Los Angeles ("City") and the City Council (collectively, "City") to deem the development application for a project at 5353 Del Moreno Drive ("Project") as complete pursuant to SB 330, the Housing Accountability Act ("HAA"), and the Permit Streamlining Act ("PSA"), and to approve the Project within 60 days.

The court has read and considered the moving papers, revised opposition,[1] and reply, heard oral argument, and renders the following decision.

A. Statement of the Case

1. Petition

Petitioners commenced this proceeding against the City on November 24, 2021. The Petition alleges claims for traditional and/or administrative mandamus under the PSA, traditional and/or administrative mandamus under the HAA, and declaratory relief for the application process The Petition alleges in pertinent part as follows.

On May 19, 2020, Jha submitted a preliminary application for the Project, which is a multi-family development with affordable units and one commercial unit at 5353 Del Moreno Drive ("Property"). The Property is in a "Limited Commercial" area within the Canoga Park-Winnetka-Woodland Hills-West Hills Community Plan ("Community Plan") area. The preliminary application included all the information listed in Government Code ("Govt. Code") section 65941.1 as necessary and Jha paid the required $1,060.26 fee on May 29, 2020.

On June 8, 2020, the City rejected the preliminary application and informed Jha that it was non-compliant with the Property's RA-1 zoning, which prohibits multi-family housing and more than one dwelling per lot. The City also stated that the Property is not eligible for a density bonus because the RA-1 zoning permits only one unit on the Project site, and it would require a rezoning of the Project site to permit a density bonus. The City directed Jha to verify the appropriate entitlement path and secure a signed Affordable Housing Referral Form ("AHRF"), something not required by Govt. Code section 65941.1 and SB 330.

On August 17, 2020, Jha submitted a completed AHRF. The City's Housing Services Unit refused to process an invoice or return a signed AHRF – or a Geographic Project Planning Referral

[1] As mentioned by the court at the hearing, the parties submitted a trial notebook with 37 requests for judicial notice -- most of them the City's requests -- without exhibit tabs. As a result, the court was forced to tab these exhibits. Counsel for both sides are admonished to provide exhibit tabs for future requests for judicial notice, particularly when they are lengthy.

The City also filed an opposition that is compliant with the font and 12-point requirements of CRC 2.104 and 2.105, but which squeezes words together in an apparent attempt at page limit compliance. This approach may be consistent with procedural rules, but it made the opposition difficult to read. The court recommends that the City's counsel not take this approach in the future.

Form ("GRF") – because it concluded that the Project is non-compliant with the Property's zoning.

On August 18, 2020, Jha submitted a complete development application to the City's Department of City Planning ("City Planning"). On September 18, 2020 – a day after the PSA's 30-day deadline for finding an application incomplete - Respondents issued Jha a completed "CP-7782.1 DCP Application Checklist and Deemed Complete" form ("Checklist") reflecting City Planning's belief that the application was incomplete.

Jha submitted the documents listed on the Checklist on January 21, 2021. On February 26, 2021, the City notified Jha that the application was still incomplete because (1) the Project is inconsistent with the Property's zoning, and (2) the application lacked staff signatures on the AHRF and GRF forms. The same day, Jha requested an appeal of the completeness determination. The City claimed that the application was unacceptable and technically not an application because it had not signed the referral forms, and therefore not subject to appeal.

In Jha's attempts to proceed with the Project over the following months, the City refused to take any action based on the absence of signed referral forms despite the fact that it, not Jha, was supposed to sign them. The City also demanded that Jha reduce the density of the Project to comply with the Property's zoning or seek rezoning, despite the fact that the Project complies with the Community Plan's designation of the area as Limited Commercial.

Only after Jha retained an attorney did the City provide an appeal before the City Council's Planning and Land Use Management Committee ("PLUM") in June 2021. YIMBY and its director Trauss provided written comments, attended the August 31, 2021 PLUM hearing, and testified. City Planning recommended denial based on the absence of signed referral forms and the fact that the application was incomplete. PLUM agreed that the PSA's 30-day compliance determination requirement had not been triggered and denied the appeal.

On September 1, 2021, the City Council heard and denied Jha's appeal, finding the application only would be complete after Jha reduces the density of the Project or sought rezoning.

Petitioners contend that the City Council's decision is part of the City's larger pattern of circumventing the PSA's deadlines by finding that permit applications have not been accepted. The City also previously has concluded that RA-1 zoning is consistent with the Property's Limited Commercial designation, despite the fact that RA-1 prohibits multi-family housing and the Limited Commercial designation permitting it.

Petitioners seek a writ of mandate directing the City to (1) review and process development applications pursuant to the PSA, SB 330, and the HAA, and not refuse to accept preliminary applications based on their incomplete status, (2) deem Jha's preliminary application complete under the PSA and SB 330, and (3) approve Jha's application pursuant to the HAA. Petitioners also seek attorney's fees and costs.

2. Course of Proceedings

No proof of service for the Petition is on file. On December 30, 2021, the City filed an Answer.

B. Standard of Review

1. Traditional Mandamus

Agency decisions under the HAA are reviewed as administrative mandamus. §65589.5(m); Honchariw v. County of Stanislaus, (2011) 200 Cal.App.4th 1066, 1072. *See* Opp.

at 15. The City argues that it has not disapproved the application under the HAA and Petitioners' claims for violation of the PSA and SB 330 are reviewed as traditional mandamus. *See* Opp. at 4. Although Petitioners disagree and contend that the Project has been disapproved, they do not dispute that this case lies in traditional mandamus.

A petition for traditional mandamus is appropriate in all actions "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station...." CCP §1085. Traditional mandamus permits judicial review of ministerial duties as well as quasi-legislative and legislative acts. County of Del Norte v. City of Crescent City, (1999) 71 Cal.App.4th 965, 972.

A traditional writ of mandate is the method of compelling the performance of a legal, ministerial duty required by statute. *See* Rodriguez v. Solis, (1991) 1 Cal.App.4th 495, 501-02. Generally, mandamus will lie when (1) there is no plain, speedy, and adequate alternative remedy, (2) the respondent has a duty to perform, and (3) the petitioner has a clear and beneficial right to performance." Pomona Police Officers' Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-84 (internal citations omitted). Whether a statute imposes a ministerial duty for which mandamus is available, or a mere obligation to perform a discretionary function, is a question of statutory interpretation. AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, (2011) 197 Cal.App.4th 693, 701.

In the absence of a ministerial duty, traditional mandamus relief is unavailable unless the petitioner can demonstrate an abuse of that discretion. An agency decision is an abuse of discretion only if it is "arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair." Kahn v. Los Angeles City Employees' Retirement System, (2010) 187 Cal.App.4th 98, 106. In applying this deferential test, a court "must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." Western States Petroleum Assn v. Superior Court, ("Western States") (1995) 9 Cal.4th 559, 577. Mandamus will not lie to compel the exercise of a public agency's discretion in a particular manner. American Federation of State, County and Municipal Employees v. Metropolitan Water District of Southern California, (2005) 126 Cal.App.4th 247, 261. It is available to compel an agency to exercise discretion where it has not done so (Los Angeles County Employees Assn. v. County of Los Angeles, (1973) 33 Cal.App.3d 1, 8), and to correct an abuse of discretion actually exercised. Manjares v. Newton, (1966) 64 Cal.2d 365, 370-71. In making this determination, the court may not substitute its judgment for that of the agency, whose decision must be upheld if reasonable minds may disagree as to its wisdom. Id. at 371. A writ will lie where the agency's discretion can be exercised only in one way. Hurtado v. Superior Court, (1974) 11 Cal.3d 574, 579.

2. Declaratory Relief

An action for declaratory relief is not appropriate to review an administrative decision. State of California v. Superior Court (Veta) (1974) 12 Cal.3d 237, 249. But it is available to contend that an agency has an unlawful pattern or practice that encompasses future and contingent legal rights. Eye Dog Foundation v. State Bd. of Guide Dogs for the Blind, (1967) 67 Cal.2d 536, 541. Declaratory relief enables the court to avoid piecemeal review of agency policies through a multiplicity of actions. Venice Town Council, Inc. v. City of Los Angeles, (1996) 47 Cal.App.4th 1547, 1565-66. Review of Petitioners' claim that the City has a pattern and practice of failing to

follow state law is properly a matter of declaratory relief.

C. Governing Law[2]

[2] Petitioners request judicial notice of the following: (1) Assembly Floor AB 1515 Analysis dated July 13, 2017 (Pet. RJN Ex. 1); (2) Senate Committee on Governance and Finance AB 3194 Report dated June 27, 2018 (Pet. RJN Ex. 2); and (3) Senate Floor AB 3194 Analysis dated August 8, 2018 (Pet. RJN Ex. 3). The requests are granted. Evid. Code §452(b).

The City requests judicial notice of the following: (1) Los Angeles Municipal Code ("LAMC") section 12.04 (Resp. RJN Ex. 1); (2) LAMC section 12.07 (Resp. RJN Ex. 2); (3) LAMC section 12.08-12.11 (Resp. RJN Ex. 2-6); (3) LAMC section 12.13.5 (Resp. RJN Ex. 8); (4) LAMC section 12.22-12.24 (Resp. RJN Ex. 9-11); (5) LAMC section 12.32 (Resp. RJN Ex. 12); (5) LAMC section 19.00 (Resp. RJN Ex. 13); (6) the City's General Plan, Framework Element, Chapter 1, The General Plan System (Resp. RJN Ex. 14); (7) Excerpts of Housing Element 2013-2021, adopted December 3, 2013 (Resp. RJN Ex. 15); (8) the Community Plan (Resp. RJN Ex. 16); (9) a General Plan Land Use Map for the Community Plan (Resp. RJN Ex. 17); (10) Council File No. 90-1422, Re: General Plan Amendment Clarifying Corresponding Zones and Density (Resp. RJN Ex. 18); (11) City Ordinance No. 173518, Re: Community Plan Update, Table 1 – Zone/Height District Changes Ordinance, Effective Nov. 7, 2000 (Resp. RJN Ex. 19); (12) SB8 (2021-2022 Reg. Sess.), Stats. 2021, Ch. 161 (Resp. RJN Ex. 20); (13) AB1584 (2021-2022 Reg. Sess.), Stats. 2021, Ch.360 (Resp. RJN Ex. 21); (14) SB1030 (2019-2020 Reg. Sess.), Stats.2020, Ch.165 (Resp. RJN Ex. 22); (15) AB 2345 (2019-2020 Reg. Sess.), Stats. 2020, Ch. 197 (Resp. RJN Ex. 23); (16) SB 330 (2019-2020 Reg. Sess.), Stats. 2019, Ch. 654 (Resp. RJN Ex. 24); (17) Assembly Committee on Housing and Community Development, Analysis of SB 330 (2019-2020 Reg. Sess.), as amended June 12, 2019 (Resp. RJN Ex. 25); (18) Assembly Floor Analysis of SB 330 (2019-2020 Reg. Sess.), Senate Third Reading, as amended Aug. 12, 2019 (Resp. RJN Ex. 26); (19) AB1763 (2019-2020 Reg. Sess.), Stats. 2019, Ch. 666 (Resp. RJN Ex. 27); (20) AB 3194 (2017-2018 Reg. Sess.), Stats. 2018, Ch. 243 (Resp. RJN Ex. 28); (21) AB 3194 (2017-2018 Reg. Sess.), as introduced Feb.16, 2018 (Resp. RJN Ex. 29); (22) AB 3194 (2017-2018 Reg. Sess.), as amended May 29, 2018 (Resp. RJN Ex. 30); (23) AB 3194 (2017-2018 Reg. Sess.), as amended June 21, 2018 (Resp. RJN Ex. 31); (24) Assembly Committee on Housing and Community Development, Analysis of AB 3194 (2017-2018 Reg. Sess.), as amended April 16, 2018 (Resp. RJN Ex. 32); (25) AB 2280 (2007-2008 Reg. Sess.), Stats. 2008, Ch. 454 (Resp. RJN Ex. 33); (26) Senate Transportation & Housing Committee, Analysis of AB2280 (2007-2008 Reg. Sess.), as amended June 18, 2008 (Resp. RJN Ex. 34); (27) AB 2280 (2007-2008 Reg. Sess.), as amended June 18, 2008 (Resp. RJN Ex. 35); (28) SB 35 Statewide Determination Summary (2020 and 2021) (Resp. RJN Ex. 36); (29) a calendar for the years 2020 and 2021 (Resp. RJN Ex. 37); and (30) the unpublished June 24, 2021 ruling in Snowball West Investments, LP v. City of Los Angeles, ("Snowball") Los Angeles Superior Court No. 20STCP00771 (Resp. RJN Ex. 38).

The requests for Ex. 1-6, 8-13, 20-24, 27-31, 33, 35 are granted under Evid. Code §452(b). The requests for Ex. 14-19, 25-26, 32, 34, and 36 are granted under Evid. Code §452(c). The request for Ex. 37 is granted under Evid. Code §452(h). Petitioners object to the request for judicial notice of the unpublished ruling in Snowball (Resp. RJN Ex. 38). Snowball is on appeal and has no precedential value or relevance. The request is therefore denied.

1. The Permit Streamlining Act

The Permit Streamlining Act (PSA) (§§ 65920-65964) states that there is a statewide need to ensure a clear understanding of the specific requirements which must be met for the approval of development projects and to expedite decisions on such projects. Govt. Code[3] §65921. The PSA requires that each agency maintain lists that "specify in detail the information that will be required from any applicant." §65940.

Once a development project application has been submitted, the agency must make a written determination whether the application is complete within 30 calendar days, or else "the application together with the submitted materials shall be deemed complete." §65943(a). Agencies have "30 days, and 30 days only" to determine an application is incomplete. Orsi v. City Council of Salinas, ("Orsi")(1990) 219 Cal. App. 3d 1576, 1584.

When the agency makes an incompleteness determination, it must provide "an exhaustive list of items that were not complete" which is limited to those items required on the agency's submittal requirement checklist. §65943(a). Upon any resubmittal, a new 30-day review period begins during which the agency shall determine completeness, 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." §65943(a).

If the application is determined incomplete, the agency must provide a right to appeal that determination. §65943(c). There shall be a final written determination on the appeal no later than 60 calendar days after receipt of the written appeal. Id. If a final written determination is not made within that 60-day period, "the application with the submitted materials shall be deemed complete." Id.

Deemed complete does not necessarily mean deemed approved. *See* §65950 (agency shall approve or disapprove project within specified time limits). The PSA does not create an exception to the well-established law requiring hierarchical consistency of land use permits, zoning ordinances, and general plans. Land Waste Management v. Contra Costa County Board of Supervisors, ("Land Waste") (1990) 222 Cal.App.3d 950, 960. Hence, the PSA does not require that a permit application be deemed approved if not acted on within the statutory period when the permit application would require a legislative change in the applicable zoning ordinance, general plan, or other controlling land use legislation. Id. at 961.

The City's actions under the PSA are reviewed as traditional mandate. §65943(c).

In reply, Petitioners request judicial notice of (1) Senate Floor AB 3194 Analysis dated August 8, 2018 (Reply RJN Ex. A), (2) Excerpts of Volume 8 of the Journal of the Senate, dated August 20, 1984 (Reply RJN Ex. B), (3) a technical assistance letter from the California Department of Housing and Community Development to the City of Millbrae, dated February 28, 2020 (Reply RJN Ex. C), and (4) excerpts of the City Council's approval and findings for a mixed use project at 1900 South Broadway (Council File 16-1058-S2) dated November 1, 2017 (Reply RJN Ex. D).

At the hearing, the City objected to Petitioners' reply exhibits as improper reply evidence. The objections are overruled. The request is granted for Reply RJN Exs. A, B, and D. Evid. Code §452(b), (c). The request is denied for Reply RJN Ex. C, which is not an official act.

[3] All further statutory references are to the Government Code unless otherwise stated.

2. SB 330

In SB 330, part of the Housing Crisis Act of 2019, the Legislature added a new preliminary application process for housing development projects. §65941.1. The purpose of the preliminary application -- also known as a SB 330 application -- is to freeze or lock into place existing development standards. A local government is prohibited from applying development standards that were not in effect at the time an SB 330 application was submitted. §65589.5(o).

An applicant "shall be deemed to have submitted a preliminary application upon providing all of the following information", a list consisting of 17 specific pieces of information that must be submitted. §65941.1(a). Each local agency shall compile a checklist and application form that applicants may use for the preliminary application. §65941.1(b)(1). The "checklist or form shall not require or request any information beyond that expressly identified in subdivision (a)." §65941.1(b).

In 2020, the Legislature added that a project's increase of 20% or more, in unit count or square footage, does not void preliminary application rights if the increase is from the Density Bonus Law (§65915), or from "any other locally authorized program that offers additional density or other development bonuses when affordable housing is provided." §§ 65941.1(c), 65589.5(o)(2)(E).

Within 180 days after submitted the requisite preliminary application, the applicant shall submit an application for a development project that includes all the information required to process the development application consistent with sections 65490, 65491, and 65491.5. §654491.1(d)(1). If the public agency determines that the application is not complete, the applicant shall submit the specific information required within 90 days. If the applicant does not do so, the preliminary application will expire and have no force and effect. §65491.1(d)(2).

This section shall not require an affirmative determination by the local agency regarding the completeness of a preliminary application or a development application for purposes of complying with section 65491.1. §65491.1(d)(3).

3. The City's Application Procedure

The City provides forms and instructions for an applicant seeking to freeze local regulations to submit a preliminary application. Bilow Decl., Exs. B, C.[4] The City does not consider a preliminary application or a project application to be filed until it has been completed in accordance with the City's rules and regulations, has been submitted with the required filing fee, and a receipt for the fees has been issued. LAMC §19.00.A (Resp. RJN Ex. 13). City Planning performs a brief review of the case contents for completeness of the application, site and building plans, authority to sign the application, and project description. AR 565. A case number is assigned, and a case jacket is prepared. Id. The case jacket is then transferred to the appropriate

[4] The City submitted the Declaration of Just Bilow as extra-record evidence. In traditional mandamus with a record, extra-record evidence may be received to assist the court in understanding an agency's quasi-legislative decision and to establish whether the agency fulfilled its duties. Outfitter Properties, LLC v. Wildlife Conservation Board, (2012) 207 Cal.App.4th 237, 251. Extra-record evidence also is appropriate for judicial review of informal administrative actions. Western States, *supra*, 9 Cal.4th at 576. Petitioners have not objected to this declaration.

City Planning division processing the case. Id.

The City's acceptance for filing starts the 30-day PSA clock in which City Planning reviews the case record to ensure that it has all the necessary documents and information to process the application, including the accuracy and completeness of the project description and all plans, entitlement requests with related code provisions, description of the project site and surrounding areas, prepared findings, and the submittal of all necessary supporting reports. AR 566. By the end of the 30-day period, City Planning must either determine that the case is complete or identify deficiencies and put the case on hold. AR 566.

If the City determines that an application remains incomplete, the decision can be appealed in writing to the City Council. The appeal is formally filed in writing using a City Planning appeal form. AR 260-312. The PSA does not prohibit an appeal form. *See* §65943(c).

4. The Housing Accountability Act

The Housing Accountability Act ("HAA") (§§ 65589.5-65589.6) (known as the "anti-NIMBY law") prohibits local governments from disapproving code-compliant housing development projects unless certain public health or safety impact findings are made.

The Legislature adopted the HAA in 1982 and amended it numerous times afterwards to "significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters." §65589.5(a)(2)(K).

The Legislature significantly amended the HAA, effective January 1, 2018, to strengthen its provisions, expand its applicability, and increase local governments' liability for violations. The HAA found that California is in the midst of a housing crisis that is "partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing," §65589.5(a)(1)(B). There were allegations that some local agencies intentionally maintain zoning inconsistencies with their general plan to gain an additional measure of control over development by requiring case-by-case rezoning, even when the projects are consistent with the objective standards of the general plan. Pet. RJN Ex. 2. Local agencies sometimes exploit this loophole to evade compliance with the HAA on the ground that the project is inconsistent with zoning standards. Id. In amending the HAA in 2017 and 2018, the Legislature hoped these "game changers" would undercut those efforts by requiring approval of creatin projects that are inconsistent with zoning even if the jurisdiction has not brought its zoning ordinance into compliance with the general plan. Pet. RJN Ex. 3; Reply RJN Ex. A.

The HAA should be "interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." §65589.5(a)(2)(L).

A local agency may require a "housing development project" to comply with objective plan and zone standards. §65589.5(f)(1), (j)(1), (j)(4). A housing development project "shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if "there is substantial evidence that would allow a reasonable person to conclude that" it is. §65589.5(f)(4).

Section 65589.5(j)(1) provides:

"When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be 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 shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density." (emphasis added).

The HAA defines a "specific, adverse impact" as a "significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." §65589.5(j)(1)(A). The Legislature intended that conditions that would have a specific, adverse impact upon the public health and safety should arise infrequently. §65589.5(a)(3).

The standards and findings required by the HAA apply to an agency's action on a project after an application is accepted for processing, when there is a vote, an approval, or a disapproval after the adoption of environmental analysis, or a decision on the requested entitlement. §65589.5(f)(4), (h)(6) and (j)(1), 65589.6, 65950; *compare* Cal. Renters Legal Advocacy & Educ. Fund, (2021) 68 Cal.App.5th 820, 832-33, 837 (city council's denial of application). 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." §65589.5(h)(6).

If a permitting agency considers a proposed housing development project to be inconsistent with "an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision," it must provide the applicant with written documentation identifying and explaining the claimed inconsistency within either 30 or 60 days of the submittal of a complete application, depending upon the size of the project. §65589.5(j)(2)(A). Absent timely notice, the project is deemed to be compliant with all applicable standards as a matter of law. §65589.5(j)(2)(B).

A housing development project is not inconsistent with the applicable zoning ordinance, and shall not require a rezoning, if it is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan. §65589.5(j)(4).

If the agency has provided timely notice of inconsistencies with the applicable plan or zoning, it may require the proposed housing development project to comply with the objective standards and criteria of the zoning that are consistent with the general plan. §65589.5(j)(4). In

that case, the standards and criteria shall be applied to facilitate and accommodate the development at the density allowed on the site by the general plan and proposed by the proposed housing development project. §65589.5(j)(4).

Agency decisions under the HAA are reviewed as administrative mandamus. §65589.5(m); Honchariw v. County of Stanislaus, *supra,* 200 Cal.App.4th at 1072. The 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. Cal. Renters Legal Advocacy & Educ. Fund v. City of San Mateo, (2021) 68 Cal.App.5th 820, 837. The agency "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. Id.; 65589.6.

If the court finds that an agency acted in bad faith in disapproving a project complying with applicable, objective general plan and zoning standards and criteria, without making the required findings, the court may issue an "order or judgment directing the local agency to approve the housing development project." §65589.5(k)(1)(A)(ii). "Bad faith" "includes, but is not limited to, an action that is frivolous or otherwise entirely without merit." §65589.5(l). The City bears the burden of proving that its decision conforms to the conditions specified in section 65589.5. §65589.6.

HAA Amendments

In 2017, AB 1515 changed the standard of review a court must apply to review whether a project is code compliant. AB 151 eliminated the deference given to a local government's interpretation of its own municipal code and requires a court to find a housing project compliant if substantial evidence would allow a reasonable person to conclude the project is compliant. §65589.5(f)(4); Pet. RJN, Ex. 1 p. 3 (Assembly Floor AB 1515 Analysis, July 13, 2017).

In 2018, AB 3194 sought 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. Pet. RJN Ex. 2, pp. 2-3 (Senate Committee on Governance and Finance AB 3194 Report dated June 27, 2018). AB 3194 added section 65589.5(j)(4) which prohibits local governments from requiring rezoning in cases where the general plan's density supports the project's density:

> "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."

AB 3194's proposed amendments to section 65589.5(i)(4) – now section 65589.5(j)(4) – would have prohibited an agency from finding that a proposed project is inconsistent or non-compliant with the applicable zoning ordinance, and would have eliminated a rezoning requirement, where "the existing zoning ordinance does not allow the maximum residential use, density, and intensity allocable on the site by the housing element or by the land use element of the general plan if it was adopted or updated within the previous 10 years." Resp. RJN Ex. 29 (emphasis added).

The American Planning Association ("APA") asserted to the Assembly Committee on Housing and Community Development that the proposed amendment obviated the general plan's purpose of being general and forced it to reflect the specific analysis of zoning ordinances. Resp. RJN Ex. 32. The May 29, 2018 revisions to AB 3194 therefore deleted this language. Resp. RJN Exs. 21, 30.

On June 21, 2018, AB 3194 revisions added language authorizing local agencies, following proper notice to the applicant, to require a project to comply with the objective standards and criteria of the inconsistent zoning that are consistent with the general plan, while applying the standards and criteria to facilitate and accommodate development at the density allowed by the general plan. Resp. RJN Ex. 31. This language was adopted as part of section 65589.5(j)(4). Resp. RJN Ex. 21.

5. The Density Bonus Law

The Density Bonus Law (§§ 65915-65918) mandates the approval of density bonuses and reduced development standards and parking for housing developments that set aside stipulated percentages of low income and very low-income units. §65915(b). The amount of the density bonus varies according to the amount by which the percentage of low and very low-income units exceed the percentages. §65915(f).

A "housing development" that replaces existing units and contains specified percentages of affordable or target population units (*e.g.*, disabled veterans), may obtain one density bonus, one to four incentives or concessions, and unlimited waivers of development standards that physically preclude the project. §65915(b).

The Density Bonus Law prohibits local governments from applying development standards that would preclude the construction of such projects. §65915(e)(1). An applicant may propose a waiver or reduction of development standards that have the effect of precluding the construction of a development meeting the Density Bonus Law's criteria. Id. The statute does not require a local government to waive or reduce development standards if there would be an adverse impact on health, safety, or the physical environment, and for which there is no feasible method of mitigation to avoid the impact. Id.

The Density Bonus Law mandates that density bonuses be granted based on the "maximum allowable density" for the project 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, 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." §65915(o)(5).

Amendments

On June 18, 2008, AB 2280's version of section 65915(o)(2) defined "maximum allowable residential density" as the density allowed under the zoning ordinance and land use element of the general plan, meaning the maximum if it was a range.

The Senate Transportation and Housing Committee heard comments that the land use element of a general plan can and often will conflict with zoning ordinances, causing confusion as to the applicable maximum density: "Theoretically the land use element and zoning should always be consistent. In reality, they are often inconsistent. In such cases, this bill will create confusion and conflict." Resp. RJN Ex. 34, p. 706. Section 65915(o)(2) therefore clarifies that if the general plan and zoning are inconsistent, the general plan prevails: "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."

The October 2019 version of SB 330 amending section 65589.5(o)(2)(e) stated that while housing development projects are generally subject to policies and ordinances in effect at the time completed, revision of the project subjects it to newer policies if the number of residential units or square footage of construction changes by at least 20%, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision. Resp. RJN Ex. 24.

In September 2020, SB 1030 clarified that the bonuses and incentives exempt from this 20% calculation include those from any locally authorized program that offers additional density or other development bonuses for providing affordable housing. Resp. RJN Ex. 22.

6. The City's Density Bonus Process

The City implements the Density Bonus Law through LAMC section 12.22.A.25, which incorporates on-menu incentives. *See* LAMC §12.22.A.25(f)(1)-(8).

A housing development project that has 10% of the total units for low-income households or 5% of the total units for very low-income households, either as rental or for sale units, shall be granted a minimum density bonus of 20%. Resp. RJN Ex. 9 (LAMC §12.22.A.25(c)). In addition to the density bonus and parking options identified in LAMC section 12.22A.25(c) and (d), a housing development project that qualifies for a density bonus shall be granted a number of incentives based on meeting required percentages of very low-, low-, and moderate-income households. Resp. RJN Ex. 9 (LAMC §12.22.A.25(e)). These incentives include using the area of any land required to be dedicated for street or alley purposes as lot area for purposes of calculating the maximum density permitted by the zone in which the project is located. Resp. RJN Ex. 9 (LAMC §12.22.A.25(f)(7)).

Due to existing City bonus programs, projects are entitled up to a 35% bonus and are ineligible for the state's 50% bonus. If a local agency has an ordinance or housing program that incentivizes the development of affordable housing and it allows for density bonuses that exceed those required by the December 31, 2020 version of section 65915, the local agency is not required to amend its program to comply with amendments to the bonus density incentives of section 65915(d). §65915(s). As of section December 31, 2020, section 65915(f) provided a maximum 35% bonus. AB 1763 (Resp. RJN Ex. 27). The City had over a 35% bonus effective Feb. 26, 2018. LAMC §12.24.U.26 (Resp. RJN Ex. 11).

Unless restricted to certain zones or locations, if approved by the Planning Commission as

the initial decisionmaker, or the City Council as the appellate body, any zone may apply a density bonus for a housing development project in which the density increase is greater than the maximum permitted in LAMC section 12.22.A.25. Resp. RJN Ex. 11 (LAMC §12.24.U.26).

A housing development located within a Transit Oriented Communities ("TOC") Affordable Housing Incentive Area shall be eligible for TOC Incentives if it provides minimum required percentages of On-Site Restricted Affordable Units, meets any applicable replacement requirements of section 65915(c)(3), and is not seeking and receiving a density or development bonus under the provisions of section 65915 or any other state or local program that provides development bonuses. Resp. RJN Ex. 9 (LAMC §12.22.A.31(b)(1)). An eligible housing development shall be granted increased residential density at rates that shall meet or exceed a 35% increase. Resp. RJN Ex. 9 (LAMC §12.22.A.31(b)(2)(i)).

7. <u>The City's Zoning</u>

In order to regulate the use of property, the City is divided into various zones with a defined order of most to least restrictive. Resp. RJN Ex. 1 (LAMC §12.04(a)). RA Suburban Zones (No. 4), for example, are more restrictive than C1.5 Limited Commercial Zones (No. 24). Resp. RJN Ex. 1 (LAMC §12.04(A)).

RA Suburban zones may have only specific types of buildings, including one-family dwellings. Resp. RJN Ex. 2 (LAMC §12.07(A)(1)). RA lots shall have a minimum width of 70 feet and a minimum area of 17,500 square feet, except for a two-family dwelling on lots having a side lot adjoining a lot in a commercial or industrial zone. Resp. RJN Ex. 2 (LAMC §12.07(C)(4)).

R1 One-Family zones may have only specific types of buildings, including one-family dwellings. Resp. RJN Ex. 3 (LAMC §12.08(A)(1)). R1 One-Family zone lots shall have a minimum width of 50 feet and a minimum area of 5,000 square feet, except for a two-family dwelling on lots having a side lot adjoining a lot in a commercial or industrial zone. Resp. RJN Ex. 3 (LAMC §12.08(C)(4)).

Any use permitted in an R1 One-Family zone is also permitted in an R2 Two-Family zone. Resp. RJN Ex. 4 (LAMC §12.09(A)(1)). Any use permitted in an R2 Two-Family zone is also permitted in an R3 Multiple Dwelling zone. Resp. RJN Ex. 5 (LAMC §12.10(A)(1)). Any use permitted in an R3 Multiple Family zone is also permitted in an R4 Multiple Dwelling zone. Resp. RJN Ex. 6 (LAMC §12.11(A)(1)). Any single-family dwelling, two-family dwelling, or apartment house use permitted in an R4 Multiple Dwelling zone is also permitted in a C1.5 Limited Commercial zone, provided that all R4 zone regulations are met. Resp. RJN Ex. 8 (LAMC §12.13.5(A)(1)).

Any change of use of a building, or a portion of a building, must conform to the current regulations of the zone and other applicable land use regulations. Resp. RJN Ex. 10 (LAMC §12.23(B)(7)(a)). However, in the R, C, or M zones, a non-conforming use may be changed to any use that is permitted in a more restrictive zone than the current zone. Resp. RJN Ex. 10 (LAMC §12.23(B)(7)(b)).

An owner of property may apply for a proposed land use ordinance if authorized to do so. Resp. RJN Ex. 12 (LAMC §12.32(B)). The applicant shall complete the application for that proposed land use ordinance, pay the required fee, and file the application with City Planning on a form it provides. Resp. RJN Ex. 12 (LAMC §12.32(B)).

An application or appeal shall be considered filed whenever it has been completed in

accordance with the applicable rules and regulations, has been submitted to the City department together with the required filing fees, and a receipt for the filing fees has been issued. Resp. RJN Ex. 13 (LAMC §19.00(A)). If at any time it is discovered during the processing of an application that the application has been improperly prepared, or requires pertinent information has not been submitted in accordance with established rules and regulations, upon notification to the applicant by the appropriate officer or employee, the time limits specified within the LAMC shall be suspended and not continue to run until the application has been rectified or the omitted information furnished in a proper manner. Resp. RJN Ex. 13 (LAMC §19.00(A)).

D. Statement of Facts

1. General Plan and Zoning Consistency

In 1978, the Legislature enacted AB 283 requiring all zoning ordinances adopted by a charter city with a population of 2,000,000 or more (*i.e.*, the City) to be consistent with the city's general plan by July 1, 1982. Reply RJN Ex. B. The City did not comply with the deadline. Reply RJN Ex. B.

In 1984, the Legislature introduced SB 1848 to extend the deadline for compliance to 1987. The governor chose not to sign it, finding it disturbing that the City had taken over six years to comply. Reply RJN Ex. B.[5]

2. The City's General Plan

The City's General Plan Housing Element includes an inventory of adequate sites for residential housing across all community plan areas without the need for any discretionary zoning action; the Property is not among them. Resp. RJN Ex. 15.

The Framework Element of the City's General Plan delegates the assignment of land designations to the community plans, which are tailored to local conditions, subject to the more general determinations of the General Plan. Resp. RJN Ex. 14, p. 166.[6]

C1.5 is one of the zones corresponding to the Limited Commercial land use designation. Resp. RJN Ex. 1 (LAMC §12.04.A). The General Plan land use map identifies CR, C1, C1.5, RAS3, RAS4, and P as the zones that correspond to a Limited Commercial designation. Resp. RJN Ex. 17.

Footnote 9 to the General Plan land use map expands the range of land use categories to include the less restrictive zones in each more restrictive zone listed on the land use map:

> "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

---

[5] In 2020 and 2021, the state released a Determination Summary identifying which cities and counties had not met their prorated very-low and low and above-moderate income Regional Housing Needs Assessment ("RHNA") and were subject to the streamlined ministerial approval process under SB 35. Resp. RJN Ex. 36. In both years, the state concluded that the City was subject to the SB 35 streamlining process for proposed developments with at least 50% affordability. Resp. RJN Ex. 36.

[6] For convenience, the court will refer to these land designations as made by the General Plan, not the Community Plan.

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." Resp. RJN Ex. 17 (emphasis added); AR 334-36,416.

The City Council adopted the language in Footnote 9 on March 27, 1991, amending all community plans to clarify that zones more restrictive than those shown on the legend are consistent with the General Plan. Resp. RJN Ex. 18, p. 246 (City Council File). The City Council memorialized the fact that the "changes are in substantial conformance with the purposes, intent, and provisions of the Land Use Element of the General Plan and serve as clarification of longstanding policy and interpretation of the Plan", which is that the "more restrictive zones are consistent with the applicable plan category." Ex. 18, p.261, 265. It clarifies the full range of corresponding zones "without requiring the recitation of each and every corresponding zone." Ex. 18, p. 266.

While the land use map does not explicitly indicate that the RA zone corresponds to the Limited Commercial category, Footnote 9 shows that the RA zone is included because the RA zone is more restrictive than the C1.5 zone. Resp. RJN Exs. 1,10 (LAMC §§12.04.A, 12.23.B.7(b) (listing zones most to least restrictive: RA, R1, R2, R3, R4 and C1.5). The RA zone uses also are permitted in the C1.5 zone. Resp. RJN Ex. 7 (LAMC §12.13.5.A.1); The R4 zone permits R3 (Resp. RJN Ex. 6 (LAMC 12.11.A.1)), the R3 permits R2 (Resp. RJN Ex. 5 (LAMC §12.10.A.1)), and the R2 permits R1 uses (Resp. RJN Ex. 4 (LAMC §12.09.A.1). The R1 zone permits one dwelling on a 5000 square foot lot (Resp. RJN Ex. 3 (LAMC §12.08.A.1, C.4)) and the RA zone requires one dwelling on a 17,500 square foot lot. Resp. RJN Ex. 2 (LAMC §12.07.A.1, C.4). Opp. at 10.

While the land use map has a footnote allowing affordable housing in Canoga to exceed the density normally permitted in R1 zones, the same is not true for Woodland Hills. Resp. RJN Ex. 17.

3. The Applications

Petitioner Jha owns the Property, which is located in Woodland Hills. *See* Pet. Op. Br. at 6; Resp. RJN Exs 16, 17. The Property is zoned RA-1 pursuant to LAMC section 12.07A, while also having a Limited Commercial land use designation under the Community Plan. AR 416; Resp. RJN Exs. 14, 16, 17. The Property currently is improved with a single-family home built in 1978. AR 114.

a. The First SB 330 Application

On May 19, 2020, Jha submitted a preliminary application -- also known as an SB 330 application -- for the Project. AR 504, 716-23. The Project sought to build 60 units: 43 base units, a density bonus of 35% (16 units) because 11% of the units (5) are for very low-income

households, and one additional unit because the five very low-income units are assigned to disabled veterans. AR 717. On May 21, 2020, Jha paid fees and surcharges for the application totaling $1,060.28. AR 748.

On June 8, 2020, the City asked Jha to provide a signed AHRF to verify the entitlements, indicate the public easements on the Property, and provide a site plan, building area diagram and table, and colors and materials for the elevations. AR 1284.

In response, Jha asked if the City could review the SB 330 preliminary application without the AHRF, which she claimed was optional and contrary to the purposes of state law. AR 1284. She added that, once the SB 300 form was approved, she knew that the Project would have to go through the AFHR and case filing for the density bonus just like any other project. AR 1284.

The City replied that Jha was proposing to use the development standards of the underlying land use designation rather than the zone and proposing to use a density bonus. AR 1283. State law does not allow, as Jha believed, her to choose the development standards of the General Plan land use designation over the development standards of the zoning laws to justify her claim. AR 1283. The SB 330 application asks the applicant to identify whether the project proposes to use a density bonus and Jah is doing so. AR 1283. The City planner had to make sure the information is accurate and complete and the information on the AHRF will confirm that. AR 1283.

Jha did not provide the AHRF at the time, noting that it might slow down her application and cause additional fees that she would be unable to pay. AR 1282-83.

b. <u>The Second SB 330 Application</u>

On June 18, 2020, Jha resubmitted the SB 330 preliminary application with a list of easements and codes she believed supported the Project based on General Plan land use. AR 778-79, 785-89. Where the application form asked about an AHRF under "Optional Related Documents," she wrote: "This form is not available." AR 1228.

On August 7, 2020, a City planner explained to Jha that the preliminary application was not complete under section 65941.1 because it contained inaccurate information regarding the density bonus. AR 1110. The preliminary application states that Jha is applying for a density bonus, but the zone does not support a density bonus development because it authorizes only a single-family dwelling. AR 1110. Additional density for the Project would have to be sought with a zoning change. AR 1110. The City planner indicated that it is important to have relevant information from the outset to avoid delays in reviewing and processing the application. AR 1110.

Jha replied that she never based her application on the RA-1 zoning of the Property. Rather, her application cited state laws permitting projects based on the General Plan without a requested zoning change. AR 1110.

c. <u>The First Project Application</u>

On August 14, 2020, Jha completed a standard project application on the City Planning form. AR 97-104. City Planning's application form asks for up to 18 applicable documents and referrals, not including proof of recorded covenants or easements on the property. AR 88. A City planner proposed that Jha submit the electronic file and deliver hard copies the following Monday. AR 1114. Jha therefore shared the file link and brought printed copies to City Planning on August 18, 2020. AR 1114.

On August 21, 2020, a City planner emailed Jha that, although the Property is Limited

Commercial under the General Plan, it is zoned RA-1 and she needed to seek a zone change. AR 1115. Additionally, per Measure JJJ and City policy, she could not seek a zone change and a density bonus at the same time. AR 1115. The density bonus could be filed only after City Planning approved the zoning change (nine to 12 months). AR 1115. The email also said that Jha was missing three essential referral forms; (1) a GRF from the Ventura Corridor Specific Plan, (2) an AHRF completed by the City's Housing Unit, and (3) a Bureau of Engineering Hillside Referral Form, which is important to determining if the streets can support the Project. AR 1115.

Jha replied on the same day that she was obtaining the requested referral forms, but that her Project is based on the General Plan. AR 1115. Her application included citations to the Govt. Code demonstrating that (1) City Planning could not reject an application unless the project is inconsistent with both the zoning ordinances and the general plan (§65589.5(d)(5)); and (2) City Planning must provide a written determination why the application is inconsistent with applicable requirements within 30 days of the application submission date. AR 1115-16. Jha asked for a written finding why her Project was rejected. AR 1116.

On August 26, 2020, the Housing Unit denied Jha's application for an AHRF because the Project site is zoned for single family use and the Project is therefore not eligible for a density bonus. AR 1105. Upon Jha's inquiry how to appeal, City Planning explained that there is no appeal process for a rejection of a referral form request. AR 1103.

On August 27, 2020, Jha emailed a City planner that she had submitted all documents needed to obtain the three requested referral forms from the respective units. AR 1119. She attached her requests and all unit responses and asserted that this fulfilled the City's document requests for her application. AR 1119. Of the three forms, only the Bureau of Engineering Hillside Referral Form was signed. AR 1204-14.

A City planner replied that upper management had reviewed Jha's request and decided that Jha needed to go back to the City units so they could complete the referrals. Until the respective units signed them, the application was not complete. AR 1120. Jha replied that a local agency cannot justify denying a housing project by denying the referral and then using the referral denial to deny the project. AR 1120.

d. <u>The City Planning Clarifying Memo</u>

On September 18, 2020, City Planning sent Jha a clarifying memorandum with instructions to return to the Specific Plan and Housing units to obtain the necessary referrals. AR 513. The memo explained that, per section 65913.4(a)(5)(A), developments eligible for streamlined review under SB 35 must comply with objective zoning standards and objective design review standards. AR 1215. A project deviating from objective zoning standards is not eligible for such streamlining but could remain consistent with objective standards after requesting zoning modifications or density bonuses. AR 1215. The email included a Checklist of items necessary to complete the Jha's application. AR 513, 1216-19.

Jha replied that the Project is not a SB 35 project, and she did not intend to convert the Project to one either. AR 349. She compared the language of SB 35 (§65913.4(5)(A)) to the language of the HAA (§65589.5) and queried whether they did not say the same thing. AR 349.

e. <u>The Second Project Application</u>

On January 1, 2021, Jha recompleted the Project application, acknowledging that she was

not able to submit all the requested documents from the Checklist within the 90-day deadline and requested an extension. AR 520, 824-31. The Project application sought to build 67 units: 43 base units, a density bonus of 35% (22 units) because 15% of the units (7) are for very low-income households, and two additional units because the seven very low-income units are assigned to disabled veterans. AR 825.

On January 4, 2021, the City replied that, because Jha's application was not complete for filing, no deadlines were in effect and she could submit whenever she chose, subject to the expiration dates on specific forms. AR 521.

On January 21, 2021, Jha delivered a package purportedly including all the documents identified on the Checklist necessary to complete the application. AR 1131. Later that day, the City replied that the application still had issues, reiterating that the RA-1 zone does not allow for multifamily housing and that AB 2345's 50% density increase is not applicable to the City. AR 501.

On January 25, 2021, a City planner reviewed the documents and added that there were a number of issues to resolve before Jha could receive clearance for the application. AR 548-50. He explained that the referral review is performed to determine if the application is ready to file and can include all materials, plans, and incentives/waivers that affect the Specific Plan and that there are a lot of items needed before he could give Jha clearance to file. AR 550.

One City planner conferred with supervisors to "find out if there are any errors" with the designation (AR 1098) and elicited a response from another planner that the reason for the RA-1 zoning may be the result of hilly topography but it "is anyone's guess" and "the logic is not obvious." AR 1100.

On February 26, 2021, a City planner explained to Jha that she needed to resolve multiple issues before submitting the application for further review, including having the GRF, AHRF, and Preliminary Zoning Assessment forms completed and signed by the respective City units. AR 522-23.

Jha asked about appealing this decision, but the City planner responded that there was no appeal process for an application that is not filed because it is incomplete. AR 1146.

In an internal City email dated June 8, 2021, the City planner denied receiving the application fee on May 29, 2020 because he never created a case or sent out any invoice. AR 538.

6. <u>The Appeal</u>

On March 7, 2021, while submitting the Preliminary Zoning Assessment form, Jha cited section 65943(c) to assert that an agency must have a process allowing applicants to appeal a decision that an application is not complete. AR 1153. Additionally, section 65589.5(j)(2)(B) automatically renders a project compliant with all relevant laws if the agency fails to provide necessary documentation. AR 1153. Jha asserted that, if City Planning denied her an appeal, it would inherently be failing to provide necessary documentation under section 65589.5(j)(2)(B) and the Project would automatically be deemed consistent. AR 1153.

Because City Planning asserted that there is no appeal from incompleteness determinations, on July 8, 2021 Jha appealed from an entitlement determination. AR 260-63.

a. <u>City Planning's Report and Recommendation</u>

On August 26, 2021, City Planning submitted an Appeal Recommendation Report

("Report") for the PLUM hearing on Jha's appeal. AR 406-22. The Report's chronology of correspondence claimed that Jha's January 21, 2021 submission (the second application) was treated as a new application for which City Planning issued an invoice that Jha paid. AR 413.

The Report summarized City Planning's rationale that the application had not been submitted for filing because several documents were still missing, including an accurate and completed AHRF and GRF. AR 414. Because of these failures, a City Planning case number was never created, entitlement fees were never invoiced or paid, and the application was not received. AR 414, 419. Therefore, the PSA's 30-day written determination requirement was never triggered. Alternatively, the City timely satisfied its obligations by the emails to Jha listing the deficiencies in the application. AR 414. Because Jha's documents were not "determined to be complete", City Planning never needed to determine in writing whether the Project is consistent with the "applicable plan, program, policy, ordinance, standard, requirement, or other similar provision" per section 65589.5 (the HAA). AR 417.

Further, the Project does not trigger the requirement of a consistency determination under section 65589.5(i)(2). AR 414. The Report noted that City Planning had warned Jha multiple times that the application was subject to the RA-1 zoning requirements of LAMC section 12.07A as well as the Limited Commercial designation of the General Plan. AR 414, 416. The Project does not comply with the objective standards of the RA zone because it does not allow multi-family residential or commercial uses. AR 414. Therefore, a multi-family density bonus project with commercial uses cannot be developed on the site. AR 414. Additionally, the Property's RA zoning is enforceable because City Planning has determined that the existing zone and land use designation are consistent. AR 414. In order to pursue the Project, Jha was advised that she would need to seek a zone change or seek approval of a SB 35 project. AR 414.

Footnote 9 to the General Plan makes it clear that the General Plan and the zoning are consistent; each land use category in the General Plan permits the less intensive zones referenced by the LAMC. AR 416. This means that the Project requires a zoning change and is not eligible for any density bonus. AR 416. Additionally, AB 2345's 50% density bonus is not applicable in the City, so any density bonus would be 35% at most. AR 416-17. It is also infeasible to seek both a 50% density increase per AB 2345 and a 20% density increase per AB 2442. The City is required to grant only one density bonus. §65915(b)(1), (f). These deficiencies are the reasons why the City refused to sign the AHRF and GRF. AR 420.

b. <u>Response</u>

On August 30, 2021, Jha submitted a rebuttal to the Report ("Response"). AR 313-33. The Response asserted that the City Planning staff's timeline of submission and acceptance does not provide a defense to the timeline requirements of SB 330. AR 315. The SB 330 timeline is strict and has nothing do to with City Planning staff's case number, checklist, the site's zoning as consistent with the general plan, and advice given to an applicant. AR 315. At a minimum, the City responded one day late to the August 18, 2020 application and six days late to the January 21, 2021 document production. Each violated section 65943(b), rendering the application complete. AR 315. There is no justification for the claim that, if entitlement fees and a case number are never generated – both of which are the City's responsibility, the 30-day determination requirement of the PSA is not triggered. AR 322-23.

As for LAMC's zoning regulations, the HAA must be interpreted to prioritize the interest

of and the approval of housing. AR 316. City Planning staff has confusingly tried to insert an argument of consistency between the Property's zoning and the General Plan. AR 316. Any zoning regulations that would constrict housing more than the General Plan are invalid, even if otherwise consistent. AR 316. Similarly, if the maximum allowable residential densities under the General Plan and zoning regulations conflict, the General Plan prevails. AR 316. Section 65589.5(d)(2) prohibits a city from denying a housing project based on the inconsistency between zoning and the general plan. AR 316. Finally, section 65589.5(j)(4) states that a proposed housing development project is consistent with the applicable zoning standards and criteria, and shall not require rezoning, if the housing development project is consistent with the objective general plan standards and criteria. AR 317. Whether the General Plan and the Property's RA-1 zoning are consistent is therefore a moot point. AR 316.

The Response also asserted that the Report misinterpreted footnote 9 of the General Plan in asserting that it is consistent with LAMC zoning regulations. AR 317. The Report does not quote the portion of footnote 9 stating that "the entitlements granted shall be one of the zone designations within the corresponding zones shown on the Plan." AR 318. RA-1 is not a zoning designation listed for Limited Commercial areas on the General Plan. AR 319. City Planning also failed to articulate an objective standard that shows how the RA zone is consistent with Limited Commercial designation; there is no similarity between use and density of the building uses allowed. AR 320.

The Response interpreted City Planning's September 18, 2020 memo on SB 35 as an admission that the Project would be approved if it were submitted under that law. AR 321. The Response argued that the language of SB 35 and SB 330 is so similar that if the Project should be approved under one, it should be approved under the other. AR 321-22.

The Response further argued that the GRF and AHRF were complete when submitted. AR 323-24. The City units are responsible for signing these forms and when they refused to do so, the claim that the application is incomplete because the forms were unsigned disregards state laws promoting development based on the General Plan. AR 324.

The Report claimed that the application did not trigger the PSA's consistency requirement, but section 65589.5(j)(2)(A) states that the requirement is triggered when the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision. AR 326. A city then has 30 days to provide a written explanation of that finding. AR 326. City Planning failed to meet this deadline on two separate occasions, even as Jha submitted all the documents on the Checklist. Nor did City Planning provide the required appeal process per section 65943(c). AR 326-27.

Finally, the Report claimed that the density bonus was incorrect, but AB 2345 requires that density bonuses be granted without discretionary approval. AR 328. Additionally, the City's bonus for 15% of low-income units is 5% less than AB 2345, which is only preempted if the City process results in greater bonuses. AR 329. The City's interpretation of AB 2442 correctly states that other density bonuses, such as for reserving units for disabled veterans, are in addition to the density bonus. AR 329-30.

7. <u>The Appeal Hearing</u>

The appeal hearing occurred as part of PLUM's August 31, 2021 meeting. AR 624. At

the hearing, City Planning gave a presentation that (1) the Project is prohibited and ineligible for density bonuses because the Property is zoned for RA-1; (2) the density bonus is incorrect; (3) footnote 9 of the General Plan permits the LAMC to further restrict land use through zoning; (4) the physical documents Jha submitted did not constitute a received application triggering PSA deadlines; (5) Jha failed to submit a completed and signed AHRF and GRF; and (6) the documents she provided for filing are not subject to the HAA's timeline for a determination of consistency. AR 595-602.

Petitioner Trauss commented that the Project does not require rezoning under the HAA, and therefore the application did not need to include a rezoning request. AR 619.

Another speaker opined that City Planning does not get to determine whether an application is submitted under the PSA based on whether it is complete. AR 620.

City Planning reiterated that the Project application was never accepted for case filing purposes, a case number was never created, and the entitlement application was therefore never required to be deemed complete. AR 625. Nevertheless, because the LAMC did not provide for the appeal process required under SB 330, City Planning complied with SB 330 by permitting Jha to use the appeal process before the City Council. AR 625.

City Planning asserted that the City's hierarchy of less-to-more intensive zones in LAMC section 1204(a) provides a basis for finding that the RA-1 zoning of a Limited Commercial area is consistent. AR 626.

Jha responded by (1) asking how City Planning can claim it did not receive anything when Jha submitted thousands of pages, and (2) the most City Planning has shown to support its position of consistency for LAMC AR-1 zoning and the General Plan's Limited Commercial designation of the same area is to quote half a footnote of the General Plan. AR 631-32.

During deliberations, one of the PLUM members opined that no one can have multi-family housing in RA zones without getting it rezoned; a ruling otherwise would subject the City to liability to other citizens who sue because the City permitted a multi-family project in a Ra-1 zone. AR 634.

8. The Appeal Decision

PLUM recommended that the City Council deny Jha's appeal and therefore sustain City Planning's denial of the preliminary application. AR 606. It agreed with City Planning's determination that the application is incomplete and cannot be accepted and that the Project does not comply with the RA-1 zoning requirements of the Property. AR 606.

In a meeting on September 1, 2021, the City Council voted to adopt this recommendation and deny the appeal. AR 607.

9. The City's Change in Position

The 2020 amendments to section 65589.5(o)(2)(E) enable a developer to add residential units or square footage after submitting a preliminary application if the addition is the result of a density bonus (§65915) or local program offering additional density or development bonuses when affordable housing is provided. Bilow Decl., ¶4.

Additionally, as of 2022, the distribution of uses over floor area no longer determines preliminary application eligibility. Bilow Decl., ¶3. SB 8, codified at section 65941.1, allows any project that creates a single dwelling unit to submit a preliminary application. Bilow Decl., ¶3.

As of mid-2021, City Planning waives a preliminary application's inconsistencies with state and local standards regarding affordable units, bonus units, unit count, and the distribution of residential and non-residential floor area. Bilow Decl., ¶3. These processing changes permit City Planning to review the feasibility of proposed uses and the proposed entitlement approval process separate from the preliminary application and recognize that an applicant may alter proposed uses and use a variety of density and development bonuses. Bilow Decl., ¶¶ 4-5.

As a result, on January 31, 2022, City Planner Justin Bilow ("Bilow") emailed Jha that her preliminary applications submitted for the Project could be confirmed as submitted. Bilow Decl., ¶6, Ex. A. Because of the quantity of applications filed with City Planning, some of which are abandoned, Bilow's email gave Jha the responsibility of informing City Planning if she would continue to pursue the application. Bilow Decl., ¶6, Ex. A.

10. The Previous Project

In 2017, PLUM required a community plan amendment changing the designation of a property from Limited Manufacturing to Community Commercial. Reply RJN Ex. D. It decided that a particular mixed-use project was not consistent with the City's community plan because the Limited Manufacturing land use does not allow for residential uses. Reply RJN Ex. D. As a result, an amendment to the plan was necessary to enable the residential project. Reply RJN Ex. D.

E. Analysis

Petitioners contend that the City violated its duties under SB 330, the PSA, and the HAA, and seek an order that the Project is deemed compliant and directing the City to approve it within 60 days.

1. Violation of SB 330

a. Mootness

The City argues that Petitioners' claims about the SB 330 preliminary application and application are moot. City Planning is willing to accept Jha's 2020 preliminary application as submitted because it has changed its processing policy for SB 330 applications. Bilow Decl., ¶¶ 3-8. The City concludes that Petitioners' claims about the preliminary application are conjecture because there is no evidence the City has returned to a prior practice, and any declaratory judgment would only recite the statute. *See* Burke v. City etc. of San Francisco, (1968) 258 Cal.App.2d 32, 34-35 (no controversy because the policy challenged was that of predecessor).[7] Opp. at 17.

The City adds that it timely issued a decision on Petitioners' appeal, which makes their claim that the City does not provide a PSA appeal moot. The City responded to and processed the appeal inquiry through a formal filing process, rendering a decision 54 days after it was filed. Since Jha sought a GRF from the Ventura Corridor Specific Plan and an AHRF from the City's Housing Unit out of order and submitted them as part of the Project application, the City addressed the completeness of the Project application and the referrals together in its decision. AR 406-69. Opp. at 17.

Petitioners reply that apparently an HAA amendment spurred City Planning's change in

[7] The City correctly notes that Petitioners have not briefed a pattern and practice claim and it is waived. *See* Pet. Prayer For Relief ¶1,2,4. Opp. at 22-23.

policy, not some change in the preliminary application requirements of SB 330. The preliminary application requirements of section 65941.1(a) remain the same, and the fact that the City now is willing to accept Jha's preliminary application merely confirms that its initial refusal was unlawful. The claim is not moot as the entire point of a SB 330 preliminary application is to lock the development standards in place at the time it is submitted. *See* §65589.5(o). A judicial declaration that Jha's preliminary application was complete as of the date it was originally submitted is entirely appropriate. Reply at 3.

The court agrees. Petitioners seek a judicial declaration that Jha's SB 330 preliminary application properly was submitted to City Planning -- apparently Petitioners are relying upon the May 19, 2020 preliminary application -- in order to lock in development standards. Pet. Op. Br. at 10. A judicial declaration would give Petitioners the benefit of locked in development standards at the time the SB 330 preliminary application was submitted. The City now is willing to accept the 2020 preliminary application as submitted, and the issue is whether that acceptance now as opposed to May 19 has any legal impact. While Petitioners fail to show any change in the City's development standards, and the City pointed out at the hearing that SB 330 only freezes zoning standards and not the building code, Petitioners' counsel argued that the City could make changes to its zoning standards between the court's judgment and the City's decision whether to approve Project. *See* §65950; Land Waste, *supra*, 222 Cal.App.3d at 958-60. That prospect means the submission of Jha's preliminary application is not moot.

b. The Preliminary Application Was Submitted

Petitioners contend that Jha submitted the preliminary application on May 19, 2020, providing all 17 pieces of information listed in section 65941.1(a). AR 716-23. Pet. Op. Br. at 9-10.

The City responds that Jha never formally filed the SB 330 application to trigger the PSA 30-day clock because it was "an informal drop-off" and fees were never paid. Opp. at 16.

The City's claim that Jha's application was never formally submitted is untenable. Jha asked City Planning how to submit the application and she complied with the City Planner's instructions to submit electronic copies and drop off physical copies in bins outside the City Planning office. AR 1113-15. City Planning confirmed receipt of the preliminary application. Id. Jha also paid all requested fees. AR 748. The City is really arguing that its refusal to file Jha's application made it an informal submission, but that argument is plainly bootstrapping a desired result. The application was formally submitted.

c. The City Should Have Accepted the SB 330 Application

The City contends that it substantially complied with SB 330 (§65941.1) because its review of whether the SB 330 preliminary application was complete gives effect to the express mandate that all 17 required categories of information -- such as "proposed uses" and "proposed approvals process" -- are provided. *See* §65941.1(a). *See* Lewis v. City of Hayward, (1986) 177 Cal.App.3d 103, 112 (city complied with the PSA because it made the application's incomplete status clear even though not in writing). Opp. at 17-18.

Petitioners note that the City refused to accept Jha's SB 330 application because she did not submit a signed AHRF, even though this form is not one of the required pieces of information listed in section 65941.1(a). AR 1228. Petitioners note that the submission of a SB 330

preliminary application "shall not require an affirmative determination by a city, county, or city and county regarding the completeness of a preliminary application or a development application for purposes of compliance with this section." §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 it. Pet. Op. Br. at 9-10.

The City refused to accept Jha's SB 330 preliminary application because "the Preliminary Application contains inaccurate information regarding the use of Density Bonus." AR 1110. Petitioners argue that the information provided was not inaccurate because section 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 this is true, 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." Pet. Op. Br. at 10.

The court agrees. The submission of a preliminary application differs from a project application in that there is no completeness determination. §65941.1(d). The City refused to accept the preliminary application because a City planner affirmatively determined that the Project did not comply with the Property's zoning. AR 1283. Yet, no compliance determination is required for an SB 330 preliminary application to be deemed submitted. The City failed to carry out its ministerial duty to accept an SB 330 application that provided all 17 pieces of information listed in section 65941.1, and it violated SB 330 by requiring information beyond that which was specifically listed.[8]

The issue of Jha's submission of a preliminary application is not moot, and her May 19, 2020 SB 330 application was submitted.

2. Violation of the PSA

a. The Project Application Must Be Deemed Complete

Petitioners argue that Jha's Project application must be deemed complete as a matter of law. The PSA provides precise time limits for agencies to act on an application. Once a project application has been submitted, section 65943(a) requires the local agency to make a written completeness determination within 30 calendar days, or else "the application together with the submitted materials shall be deemed complete." The agency has "30 days, and 30 days only" to determine an application is incomplete. Orsi, *supra,* 219 Cal. App. 3d at 1584. Pet. Op. Br. at 11.

(i). The August 18, 2020 Submission

On August 18, 2020 Jha completed a Project application on the City's form. AR 97-104,

[8] The City also argues that Jha's preliminary application has "no further force or effect" because she failed to file, with a filing fee, a complete project application with all required information within 180 days of submitting the preliminary application, and she failed to submit the information needed to complete the August 18, 2020 application within 90 days of receiving the City's notice of incompleteness on September 18, 2020. There is no extension of time available. §65941.1(d). Opp. at 16. Jha did not fail to submit a complete project application. *See post.*

1114. On August 21, 2020, City Planning emailed Jha and informed her that the Property is zoned RA-1 and she needed to seek a zone change, she could not seek a zone change and a Density Bonus at the same time, and her application was missing a GRF, an AHRF, and the Bureau of Engineering Hillside Referral Form. AR 1115.

On August 27, 2020, Jha told a City planner that she had submitted to the City's respective units all documents necessary for the three requested referral forms and their responses were attached. Hence, she had complied with the City's document requests for her Project application. AR 1119. Of the three forms submitted by Jha, only the Bureau of Engineering Hillside Referral Form was signed. AR 1204-14.

On August 28, 2020, a City planner replied that upper management had reviewed Jha's request and decided that she needed to go back to the City units for them to complete the referrals. Until the respective units signed them, the application would not be complete. AR 1120. On September 18, 2020, City Planning sent Jha a clarifying memorandum with instructions to return to the City's Specific Plan and Housing Units to obtain the necessary referrals. AR 513.

From these facts, Petitioners argue that Jha's application must be 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 her 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 1114, 1303. The City had exactly 30 days to notify Jha that her application was incomplete, and the belated September 18 memorandum is irrelevant. Pet. Op. Br. at 11.

The City responds that it complied with the PSA's timeline. Each time Jha submitted information, a new 30-day period began, and the City met that deadline each time. *See* §65943(a), (b). The City's emails constitute the written determinations of incompleteness and specifically itemized the missing information. The PSA does not specify the formality of the determination and emails were a regular form of communication between parties during COVID. *See* §65943(a), (b); Civil Code §1633.5. Opp. at 17.

The court agrees that the City planner's August 28, 2020 email informing Jha that her application was not complete (AR 1120) was a timely incompleteness determination.[9]

(ii). <u>The January 21, 2021 Submission</u>

On January 21, 2021, Jha submitted the documents listed in the September 18, 2020

---

[9] Petitioners argue that the PSA requires the agency to provide "an exhaustive list of items that were not complete" when an application incompleteness determination is made. §65943(a). A new 30-day review period begins upon any resubmittal, 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. Jha submitted the requested documents on August 27, 2020. AR 1119. Once they were submitted, the City was prohibited from requesting "any new information that was not stated in the initial list of items that were not complete." If the August 21 email was the incompleteness determination, the information requested in the September 18 letter was invalid. Pet. Op. Br. at 12.

The court views the City planner's August 28 email as the incompleteness determination and Petitioners fail to show what new information was sought in the September 18, 2020 letter that was not in the August 28, 2020 email.

memorandum, and this began a new 30-day review period. AR 1131. Petitioners argue that the City failed to meet the 30-day deadline to respond to her January 21, 2021 submission because the City planner did not respond until 36 days later, on February 26, 2021. AR 1132. Pet. Op. Br. at 11-12.

The City implicitly admits that the City planner's February 26, 2021 email was outside the 30-day review period and contends that the February 26 email simply repeated earlier notices within the 30-day period. *See* AR 315, 412, 513, 518-19, 522-23, 1215-23. The City argues that Orsi, *supra*, 219 Cal. App. 3d at 1576, is distinguishable because in that case the city was silent for 41 days (219 Cal.App.3d at 1584) whereas the City responded to every piecemeal submission from Jha. The City's consistent message to Jha was that it would be an idle act to accept and process an application for a land use approval that is not legally available. Civil Code §3532 ("The law neither does nor requires idle acts."). Opp. at 17.

The court notes that the February 26 email states that Jha must submit the GRF and the AHR forms signed by the appropriate units, which is the position consistently taken by the City. *See, e.g.,* AR 1115 (August 21, 2020 email). Nonetheless, Jha's January 21, 2021 application purported to submit all the information required in the September 18 memorandum; she did not simply reiterate her previous position. AR 1131. The City was required to respond in 30 days, did not do so, and Jha's application must be deemed complete.

(iii). The Appeal

Even if the City did not violate the 30-day deadline, the PSA requires the agency to provide a right to appeal a completeness decision, and further requires a final written determination on the appeal within 60 calendar days. §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.

The City argues that it rendered a decision 54 days after the formal appeal was filed on July 8, 2021. Opp. at 17.

While this is true, Jha was forced to appeal from denial of an entitlement because the City had no PSA completeness appeal process. Jha demanded an appeal on March 7, 2021. She warned the City was warned that it had to have an appeal process (*see* AR 1153) and a City planner admitted at the PLUM hearing that an "appeal procedure is not codified in the Los Angeles Municipal Code." AR 625.

The City failed timely to process Jha's appeal and the court construes Jha's March 7, 2021 demand as starting the PSA appeal clock. §65943(c). The March 7 demand began a 60-day period for the City to provide a final written completeness determination. AR 1153. The City failed to meet that deadline because the City Council did not issue a final written determination on Jha's appeal until 178 days later, on September 1, 2021. AR 607. Jha's application must be deemed complete as a matter of law for failure to provide a timely appeal.[10] [11]

---

[10] The City correctly points (Opp. at 16) out that the HAA standards and required findings apply to a project application that has been accepted for processing, when there is a vote, an approval, or a disapproval, or a decision on the requested entitlement. §§ 65589.5(f)(4), (h)(6), (j)(1), 65589.6, 65950. These standards are irrelevant to whether there is a submitted application under SB 330 and a complete application under the PSA.

[11] According to Petitioners, the City has a long history of refusing to accept permit

3. Violation of the HAA

a. Principles of Statutory Interpretation

Petitioners' contention that the City has violated the HAA presents issues of statutory interpretation. In construing a statute, a court must ascertain the intent of the legislature so as to effectuate the purpose of the law. Brown v. Kelly Broadcasting Co., (1989) 48 Cal.3d 711, 724; Orange County Employees Assn. v. County of Orange, ("Orange County") (1991) 234 Cal.App.3d 833, 841. The court first looks to the language of the statute, attempting to give effect to the usual, ordinary import of the language and seeking to avoid making any language mere surplusage. Brown v. Kelly Broadcasting Co., (1989) 48 Cal 3d 711, 724. Significance, if possible, is attributed to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. Orange County, *supra,* 234 Cal.App.3d at 841. "'The statute's words generally provide the most reliable indicator of legislative intent; if they are clear and unambiguous, '[t]here is no need for judicial construction and a court may not indulge in it. [Citation.]'" MCI Communications Services, Inc. v. California Dept. of Tax & Fee Administration, ("MCI") (2018) 28 Cal. App. 5th 635, 643.

If a statute is ambiguous and susceptible to more than one reasonable interpretation, the court may resort to extrinsic aids, including principles of construction and legislative history. MacIsaac v. Waste Management Collection & Recycling, Inc., (2005) 134 Cal.App.4th 1076, 1082 (*quoting* Riverview Fire Protection Dist. v. Workers' Comp. Appeals Bd., (1994) 23 Cal.App.4th 1120, 1126). Legislative committee reports, legislative analyst reports, bill reports, and other legislative records are appropriate sources indicative of legislative intent. In re John S., (2001) 88 Cal.App.4th 1140, 1144, n. 2.

Where ambiguity still remains, the court should consider "reason, practicality, and common sense." Id. at 1084. This requires consideration of the statute's purpose, the evils to be remedied, public policy, and contemporaneous administrative construction. MCI, *supra,* 28 Cal.App.5th at 643. The enactment must be given a reasonable and commonsense interpretation consistent with the apparent purpose and intent of the lawmakers, practical rather than technical in

---

applications for filing to circumvent the PSA's deadlines. Petitioners contend that the City wrongly requires applicants to seek signed approval forms from up to 18 different units before a project application may be submitted. AR 88. Petitioners contend that, as exemplified by this case, City units request information on a case-by-case basis and their staff makes subjective determinations whether the underlying project, not the information provided, complies with its rules, and all this occurs outside of the PSA's protections with no deadlines or appeals. Pet. Op. Br. at 12-13.

The PSA requires that each agency maintain lists that "specify in detail the information that will be required from any applicant." §65940. Local jurisdictions are precluded from requiring additional information, and the local agency must deem the application complete if all required information is provided. Resp. RJN Ex. 25, p. 589 (Analysis of SB 330 as amended June 12, 2019); Ex. 26, pp. 599 (analysis of SB 330 as amended August 12, 2019). The legality of the City's PSA procedure has not been adequately briefed and is unnecessary to the court's decision. Therefore, the court expresses no opinion whether the City's procedure unlawfully frustrates a project application's completeness by requiring one or more of its units to sign off on a substantive requirement. *See* §65940.

nature, and which, when applied, will result in wise policy rather than mischief or absurdity. Lungren v. Deukmejian, (1988) 45 Cal. 3d 727, 735.

If a statute is unambiguous, an agency's interpretation is entitled to no deference. Bonnell v. Medical Board, (2003) 31 Cal. 4th 1255, 1265. For an ambiguous statute, the interpretation of the agency operating under the statute "is entitled to consideration and respect, [but] it is not binding and it is ultimately for the judiciary to interpret[.]" Murphy v. Kenneth Cole Prods., Inc., (2007) 40 Cal. 4th 1094, 1105, n.7. An agency's interpretation of an ambiguous statute consisting only of the agency's litigating position, without promulgation of formal regulations, is entitled to no deference. Culligan Water Conditioning, Inc. v. State Bd. of Equalization, (1976) 17 Cal. 3d 86, 92-93.

b. The General Plan

A city adopts a general plan to guide its future development. §65300. 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. General plans generally do not state specific mandates or prohibitions, but rather policies and goals. Napa Citizens for Honest Government v. Napa County Bd. of Supervisors, (2001) 91 Cal.App.4th 342, 378.

The housing element of a local government's general plan is heavily regulated and relied on by the state's Department of Housing and Community Development to determine whether localities have the planned capacity to accommodate their Regional Housing Needs Allocation ("RHNA"). The Legislature, to provide certainty to home builders and ensure that claims regarding residential capacity in a local agency's housing element is accurate, has given primacy to the densities allowed under the general plan in state housing laws. *See* Pet. Op. Br. at 15.

The City's General Plan Framework Element states that the precise land use "designation will be determined in the community plan", which will "set forth how property may be used and form the basis for decisions on discretionary permits." Resp. RJN Ex. 14, p. 167 (General Plan Framework Element).[12] The City's 35 community plans collectively comprise the General Plan's Land Use Element.[13] Opp. at 19-20.

c. The HAA's General Plan Consistency Requirement

The Legislature has made numerous findings of a housing crisis in California that 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

---

[12] The City argues that Petitioners cannot claim zone/plan inconsistency through the General Plan's Housing Element because the Property's parcel number is not listed on the applicable page of the Community Plan's RHNA inventory of underdeveloped suitable sites identified for housing production without need for discretionary action. Resp. RJN Ex. 15 (Inventory); AR 473 (Property's A.P.N.). Opp. at 20. Petitioners do not purport to rely on the Property as an underdeveloped site.

[13] For ease of reference, the court will refer to the land designation set forth in the Community Plan as made by the General Plan.

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. §65589.5(j)(1)(A)-(B); *see also* Honchariw v. County of Stanislaus, *supra,* 200 Cal.App.4th at 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." §65589.5(h)(6). A local agency must provide written documentation identifying any plan, program, ordinance, or standard consistency, conformity, or compliance issues within 30 days of the date that the application is determined to be complete. §65589.5(j)(2). Pet. Op. Br. at 13-14.

Petitioners argue that the HAA mandates a determination of compliance with a city's zoning code when the project is consistent with the city's general plan density. The Legislature has amended the HAA several times to strengthen its provisions and close loopholes that local governments have exploited. Pet. Op. Br. at 14. AB 3194's amendments were described as "game changers" to give local agencies less deference and strengthen the HAA "by requiring approval of certain projects that are inconsistent with zoning if the jurisdiction has not brought its zoning ordinance in compliance with the general plan" so that the HAA would be "implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." Pet. RJN Ex. 3, p. 4; §65589.5(a)(2)(L). Pet. Op. Br. at 18.

In 2017, AB 1515 changed the standard of review that 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 its compliance determination would generally be upheld unless the determination was an abuse of discretion. 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" that the project is compliant. §65589.5(f)(4); Pet. RJN Ex. 1, p. 3.

In 2018, AB 3194 sought to close a loophole exploited by local governments to avoid compliance with the HAA by maintaining low zoning densities that force a project into a discretionary rezoning process. Pet. RJN Ex. 2, p. 3. AB 3194 fixed this problem by (a) prohibiting local governments from requiring a project applicant to seek rezoning where the zoning is inconsistent with the general plan and (b) where zoning is consistent with the general plan, requiring the local government to facilitate the density allowed under the general plan rather than the zoning.

AB 3194 added section 65589.5(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). Pet. Op. Br. at 14-15.

At the hearing, the court and counsel spent significant time discussing the meaning of this ambiguous provision. The court noted that the first sentence could be interpreted to mean that a housing development project is not inconsistent with zoning standards if it is consistent with the general plan's standards, and it does not matter whether the zoning is inconsistent with the general plan. This interpretation is a statement that "A necessarily is consistent with B" no matter what alternative exists; *i.e.,* whether the zoning is consistent or inconsistent. The court suggested that otherwise much of the first clause would be surplusage – specifically, the phrase "not inconsistent with the applicable zoning standards and criteria, and".

Discussion with counsel at the hearing persuaded the court that the first sentence does not have this meaning. Counsel explained that zoning standards can include more than density requirements; they can also include setbacks, side yards, and subjective requirements such as compatibility and aesthetics. Thus, "objective general plan standards" are distinct from the broader category of zoning standards. The means that the first clause of section 65589.5(j)(4) has meaning and is not surplusage. As such, the sentence provides that a project is not inconsistent with zoning standards (which are broad) if it is consistent with the objective general plan standards even though the zoning is inconsistent with the general plan.

At the hearing, Petitioners' counsel summarized their interpretation of section 65589.5(j)(4) as follows: a city must defer to its general plan's density requirements whether a property's zoning is consistent or inconsistent with the general plan. Pursuant to this interpretation, the first sentence of section 65589.5(j)(4) provides that a city must look to its general plan if the zoning is inconsistent, and the second sentence provides that a city may look to its zoning's objective standards if the zoning and general plan are consistent and must do so to facilitate and accommodate the site's density allowed by the general plan. In either circumstance, the city is required to permit the density allowed by the general plan.

The City argues that section 65589.5(j)(4) should not be interpreted always to require the general plan's density. Instead, zoning inconsistency is a prerequisite to application of the general plan's density. The plain text of both the HAA and the Density Bonus Law require a property's zoning to be inconsistent with the general plan before "the general plan density shall prevail," or a local government is required to accommodate "the density allowed on the site by the general plan." *See* §§ 65589.5(j)(4), 65915(o)(5). Opp. at 18.

The City argues that its interpretation ensures that "each part of the statute is given meaning," harmonizes, and does not "render nugatory important provisions." Select Base Materials, Inc. v. Board of Equalization, (1959) 51 Cal.2d 640, 645, 647. In contrast, Petitioners' interpretation of always requiring general plan density improperly renders the term "inconsistent" meaningless and attempts to improperly compel actions beyond the duties articulated by the statute's text based on legislative policy. *See* Larson v. Redondo Beach, (1972) 27 Cal.App.3d 332, 337-38 (denying mandamus because legislative policy statements did not enjoin the acts sought to be compelled). The City adds that its interpretation reinforces the zoning consistency with the general plan required by section 65860 which is a concept that is well established by section 65860 and associated caselaw.[14] Opp. at 18-19.

[14] The City also refers to Civil Code section 1645 (contract technical terms should be interpreted as professional would understand them) and County of Sacramento v. Hickman, (1967)

As part of its argument, the City contends that, like the first sentence, the second sentence of section 65589.5(j)(4) still requires inconsistency between zoning and the general plan before any requirement is imposed. If the general plan and zoning are consistent, no requirement is imposed by the second sentence.

The City's interpretation ignores the plain meaning of the second sentence. Its language expressly permits a city which has complied with the consistency/compliance determination requirements in subsection (j)(2) to require a project to comply with those objective zoning standards that are consistent with the general plan, but it must do so to in accordance with general plan density. The plain language of the second sentence does not require any inconsistency for general plan density to apply.

The City argues that the statute should not be interpreted so that general plan density always applies, pointing out that the inconsistency requirement was added to the HAA and the Density Bonus Law after the Legislature received comments about the relationship of zoning to the general plan. For the HAA, the Legislature added section 65589.5(j)(4) in 2018 after deleting language in the original bill that would have allowed projects to build at maximum general plan density. Resp. RJN Exs. 28-32 (AB 3194 analyses). Deletion of text means that the statute "should not be construed to include the omitted provision." People v. Tingcungco, (2015) 237 Cal.App.4th 249, 256. Thus, the deletion of section 65589.5(j)(4)'s language suggests that maximum density under the general plan should not apply without inconsistency with zoning. *See* Opp. at 18.

AB 3194's legislative history for section 65589.5(j)(4) initially would have prohibited an agency from finding that a proposed project is inconsistent with the zoning ordinance where the existing zoning ordinance does not allow the maximum residential use, density, and intensity permitted by the general plan. Resp. RJN Ex. 29. The APA objected and requested that the language be limited solely to density, explaining that "if the bill is amended to instead allow the developer to use the density specified in the housing element or zoning ordinance for a specific site, whichever is higher, APA would support that change." Resp. RJN, Ex. 32 p. 691 (emphasis added). AB 3194 was revised to delete this language. Resp. RJN Exs. 21, 30. Thus, the original HAA amendment would have broadly required maximum general plan use, density, and intensity and not merely maximum general plan density. The resulting compromise reduced the scope so that the use and intensity language was removed, but not maximum general plan density. Reply at 10-11.

Petitioners are correct that section 65589.5(j)(4) requires a city to defer to its general plan's density requirements whether a property's zoning is consistent or inconsistent with the general plan. This interpretation is consistent with 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." §65589.5(a)(2)(L). The HAA greatly limits a local government's ability to deny housing development projects that comply with applicable development standards, except in cases where the agency finds the project would have an unavoidable public health or safety impact. §65589.5(j)(1)(A)-(B).[15]

---

66 Cal.2d 841, 851 (constitutional provision incorporating statute should be construed to employ statute's meaning in the same sense), but neither bear on the statutory interpretation in this case.

[15] At the hearing, the City's counsel contended that this interpretation is inconsistent with

This interpretation is consistent with other pertinent housing statutes: SB 35 and the Density Bonus Law.

(i). The Density Bonus Law's Inconsistency Provision

The Density Bonus Law has a consistency provision:

> "[T]he 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." §65915(o)(5) (emphasis added). Pet. Op. Br. at 15-16.

The Density Bonus Law provides that a local government must apply "the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project" and, 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. §65915(o)(5).

The City argues that the Density Bonus Law's definition of "maximum allowable residential density" has two directions. The second sentence regarding zoning consistency with the land use element of the general plan contrasts with the first sentence stating that the maximum allowable density is the density allowed under the "zoning ordinance and land use element of the general plan". §65915(o)(5). The plain language of the first sentence directs the City to harmonize the impact of both zoning and the plan when there is consistency so that zone and plan can have "concurrent operation." Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles, (2012) 55 Cal.4th 783, 805. According to the City, Petitioners' interpretation that the general plan's density must always be applied would render the first sentence meaningless or redundant. Opp. at 19.

The first sentence exists for clarity and is not meaningless. As Petitioners argue (Reply at 9-10), section 65915(o)(5)'s language was intended to clear up any confusion that the maximum density allowed by the general plan applies when there is an inconsistency by laying out the alternatives. The first sentence of section 65915(o)(5) provides that the density bonus is the maximum density permitted by the general plan and zoning where they are consistent. The second sentence states that the density will be the general plan's density where the two are inconsistent. The Legislature added this inconsistency language after an analysis of the proposed amendment noted that "Theoretically the land use element and zoning should always be consistent. In reality, they are often inconsistent. In such cases, this bill will create confusion and conflict." Resp. RJN,

---

HAA subsection 65589.5(d)(5), which requires inconsistency with both zoning and the general plan for a local government to disapprove a very low, low-, or moderate-income housing project. There is no contradiction between requiring a city to comply with the density provided by its general plan for a market rate housing project and at the same time preventing a city from denying a low-income housing project unless it is inconsistent with both zoning and the general plan.

Ex. 34, p. 706. The analysis suggested picking one standard, either the zoning or general plan. Id. Instead, the Legislature added language that "[i]f 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."

(ii). SB 35's Inconsistency Provision

The City argues that SB 35 is a similar statute which streamlines projects providing 50% affordable units, and yet it does not make inconsistency a prerequisite to using general plan density. Rather, it seeks to "facilitate and expedite" housing for specified income levels in specific jurisdictions. §65913.4(a)(4); Ruegg & Ellsworth v. City of Berkeley, (2021) 63 Cal.App.5th 277, 326-27 (city's reliance on municipal code provision requiring very low-income units as ground to deny ministerial approval of low-income housing impermissibly frustrated SB 35). An SB 35 project is consistent with zoning "if the density proposed is compliant with the maximum density allowed within that land use designation...." §65913.4(a)(5)(A); *see also*, §65589.5(d)(5) (allowing denial of specified projects if inconsistent with "both" zoning and plan). The fact that the HAA and Density Bonus Law term "inconsistent" is not in SB 35 means that the Legislature meant to convey a different meaning. The omission of a provision from a similar statute concerning a related subject "is significant to show that a different legislative intent existed." County of San Diego v. San Diego NORML, (2008) 165 Cal.App.4th 798, 825. Opp. at 18, 22.

Petitioners correctly reply that SB 35 does have an inconsistency provision. Section 65913.4(b)(5)(B) requires projects to be governed by the general plan in cases where the general plan and zoning are mutually inconsistent. Reply at 10, n. 7.

At the hearing, the City's counsel acknowledged the inconsistency provision of section 65913.4(b)(5)(B) and argued that it concerns design review, not density. Counsel contended that section 65913.4(b)(5)(A) provides that a housing project complies with objective zoning standards for housing density if it complies with the general plan's land use designation while section 65913.4(b)(5)(B) provides that, if objective zoning and design review standards are inconsistent, then the project shall be deemed consistent with the zoning standards if consistent with the design review standards in the general plan.

Scrutiny of the plain language of section 65913.4(b)(5)(B) shows it to be broader than simply design standards. It provides that, if "objective zoning, general plan, subdivision, or design review standards are mutually inconsistent", then the general plan standards prevail. The "or" means that the general plan standards prevail if objective zoning standards are inconsistent with the general plan. Additionally, design review standards would not be expected to be in a general plan. Section 65913.4(b)(5)(B) is an inconsistency provision similar to the Density Bonus Law and the HAA. The Director of City Planning has confirmed that SB 35 requires the approval of housing projects that use the maximum density allowed under the general plan and prohibits rezoning requirements. AR 145.

(iii). Conclusion

The consistency provisions of SB 35 and the Density Bonus Law are similar to the HAA. Petitioners are correct that section 65589.5(j)(4) must be interpreted to allow a project the maximum allowable density under a city's general plan in the same manner as those statutes. Otherwise, a local government would be required to grant a density bonus using its general plan

density but would be free to deny the project under the HAA by relying on lower zoning densities. Pet. Op. Br. at 16.[16] Section 65589.5(j)(4) requires a city to defer to its general plan's density requirements whether a property's zoning is consistent or inconsistent with the general plan.

In any event, the Property's zoning is inconsistent with the General Plan. *See post.*

d. The Parties' Positions on Whether the Property's Zoning Is Inconsistent With the General Plan

The Property is within the Community Plan, which designates the subject parcel "Limited Commercial," with various corresponding "C" zones that allow for commercial uses and multi-family residential uses with densities up to one unit per 400 square feet. 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.

(i). The Disapproval

Petitioners argue that the City disapproved Jha's application and required a rezoning even though the Property's zoning is inconsistent with the General Plan. Pet. Op. Br. at 14.

The court agrees. The City claims that there was no disapproval because the City Council did not take a final vote on project entitlements, but the definition of disapproval is explicitly tied to the project application. 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." §65589.5(h)(6).) The City disapproved the Project because of its purported non-compliance with the Project site's single-family zoning. AR 606. A City Councilmember stated: "[Y]ou can't do multifamily in residential agriculture in RA zones. You have to get it rezoned." AR 634. The Council's final administrative action disapproved Jha's application based on an inconsistency finding and directed her to seek rezoning. Reply at 4, n. 3.

(ii). The Parties' Positions

Petitioners argue that the City erroneously determined that Jha must submit a request for a rezoning even though the HAA strictly prohibits local governments from requiring rezoning where the general plan and zoning are inconsistent. The Property's zoning is clearly inconsistent with the General Plan designation. The RA-1 zoning only allows one single-family unit and entirely prohibits the two primary uses of commercial and multifamily that are within the General Plan's Limited Commercial designation. No reasonable person would conclude that a zoning district is consistent with the general plan where the zoning prohibits the two principal categories of uses specifically authorized by the general plan. This inconsistency prompted one City Planner to confer with supervisors to "find out if there are any errors" with the designation (AR 1098) and elicited a response from another planner stated that the reason for the RA-1 zoning may be the

[16] Petitioners argue that this case demonstrates the absurdity of this interpretation, as Jha has requested a density bonus pursuant to the Density Bonus Law relying on the maximum density allowed under the Property site's General Plan designation, and yet the City's concludes that the Project cannot be approved without a zone change and can be denied under the HAA. This decision would violate the Density Bonus Law requirement that the City grant a density bonus pursuant to its General Plan density. *See* §65915(f). Pet. Op. Br. at 16.

result of hilly topography but it "is anyone's guess" and "the logic is not obvious." AR 1100. Pet. Op. Br. at 17; Reply at 8-9.

The City acknowledges that section 65860 requires the Property's zoning to be consistent with the General Plan, but it does not rigidly dictate the consistency required. *See* §65860(a)(2). A local agency action is consistent with the general plan if it will further the objectives and policies of the general plan and not obstruct their attainment. *See* Corona-Norco Unified Sch. Dis.t v. City of Corona, ("Corona-Norco") (1993) 17 Cal.App.4th 985, 994. It should not "frustrate" the achievement of the plan objectives and policies. Naraghi Lakes Neighborhood Preservation Assn. v. City of Modesto, (2016) 1 Cal.App.5th 9, 23 (giving deference to city's conclusion that shopping center was consistent with general plan policies and goals because its size limits were flexible). This does not mean that a property's zoning must be "in rigid conformity with every detail" of the general plan, such as zoning that exactly matches the density of the zones listed for the general plan. Id. at 17-18; *accord,* Sequoyah Hills Homeowners Assn. v. City of Oakland, (1993) 23 Cal.App.4th 704, 717-18 (upholding city's consistency determination for housing development despite not conforming precisely with land use designation because map permitted variation); Corona-Norco, *supra*, 17 Cal.App.4th at 994 (upholding city's approval of a zone change to single family where general plan was not specific and does not contain mandatory provisions). Opp. at 20.

The City contends that footnote 9 clarifies the impact of the General Plan legend's list of zones by stating that the full range of Limited Commercial corresponding zones includes the listed C1.5 zone as well as more restrictive zones such as RA. Resp. RJN Ex. 17. As a result, the RA zoning and its uses are "compatible with the objectives, policies, general land uses, and programs" specified in the General Plan category of Limited Commercial because it can operate concurrently with the General Plan's maximum plan density allowed. §65860(a)(2). In other words, the RA zone's limitation to one dwelling does not exceed the 43-unit density of the Limited Commercial C1.5 zone, and the zone does not "prohibit what the [plan] commands or command what it prohibits." Sherwin Williams Co. v. City of Los Angeles, (1993) 4 Cal.4th 893, 902 (local anti-graffiti ordinance not preempted by state law penalizing the sale of aerosol paint to minor as misdemeanor).[17]

The City concludes that Petitioners have not shown the zone-plan inconsistency prerequisite to applying general plan density under the HAA and Density Bonus Law. §§65589.5(j)(4), 65915(o)(5). The 67-unit Project does not comply with RA-1 standard of one dwelling on the lot and the Property therefore requires a zone change to accommodate the Project. *See* §65589.5(f)(4), (j)(1); Mira Dev. Corp. v. City of San Diego, (1988) 205 Cal.App.3d 1202, 1222 (HAA findings do not apply to a project that requires legislation because it does not comply with existing standards); Resp. RJN Ex. 12 (LAMC §12.32 zone changes). Opp. at 19, 22.

e. Warner Ridge

[17] The City argues that Petitioners cannot claim the RA zoning or footnote 9 is inherently void, as land use legislation is voidable only if an action is timely brought within 90 days of the adoption. §65009; Gonzalez v. County of Tulare, (1998) 65 Cal. App. 4th 777, 789. Opp. at 20. Petitioners do not argue that the Property's RA zoning is void; they only argue that it is inconsistent with the General Plan which must prevail.

Petitioners argue that the City's hierarchy of zoning use theory was rejected in an unpublished case, Warner Ridge Associates v. City of Los Angeles, ("Warner Ridge"), (1991) 2 Cal. App. 4th 238.[18] Pet. Op. Br. at 17-18.

In Warner Ridge, a 21.5-acre parcel in the City's Community Plan area was designated as "neighborhood and office," which allows for a range of commercial zones, but the property was zoned RA-1 (rural residential) and A1-1 (agricultural). Id. at 244. The property owner sought to build a 810,000 square foot commercial project and applied for a zoning change to C4. Id. at 244. When the City rejected the project, the owner argued that the City was in violation of section 65860's requirement of 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 of the General Plan under its hierarchy of uses theory. Id. at 246.

The trial court stated that the question is whether "a zoning ordinance is consistent with the general plan if the ordinance prohibits all commercial uses in an area designated in the general plan for commercial use?" Id. at 247. The trial court stated that the answer is "obviously no." Id. The trial 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." Id. Such an ordinance is not consistent with the plan in any meaningful sense of the word "consistent". Id.

The appellate court reviewed the comprehensive, long-term nature of a general plan, which sits atop the hierarchy of local governmental law regulating land use. Id. at 249. The court note that the general plan consistency requirement in state law has transformed general plans from "just an 'interesting study'" into the land use charter for a city. Id. at 250. A zoning ordinance inconsistent with the general plan is invalid and not vice versa; the tail does not wag the dog. Id. at 251.

The court found that the record showed the City's zoning was so inconsistent with the General Plan as to override the deference normally accorded to such an ordinance – zoning which prohibits commercial development must, perforce, necessarily be inconsistent with a general plan which permits such development. Id. at 252. The court rejected the City's contention that the residential suburban zoning is consistent with the General Plan because the City's hierarchical scheme of zoning incorporates any less intense use. Id. at 253-254. The court found this hierarchy theory had a logical fallacy which would permit the City to prohibit an entire category of land use specifically permitted in the General Plan. Id. at 254. Yet, the City cannot pass a zoning ordinance that is inconsistent with the General Plan. Id. at 254. The hierarchy theory would improperly allow the City to amend its General Plan through the enactment of inconsistent zoning ordinances. Id. at 254. In order for zoning to be consistent with the General Plan, at a minimum it cannot prohibit an entire category of use permitted by the General Plan. Id. 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." Id.

f. Collateral Estoppel

[18] The California Supreme Court granted review of Warner Ridge, but withdrew the review on March 12, 1992 at the petitioner's request and ordered the appellate opinion depublished.

Petitioners note that Warner Ridge is unpublished, but CRC 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." Pet. Op. Br. at 18.

Under collateral estoppel (issue preclusion), once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude the re-litigation of the issue in a suit on a different cause of action involving a party to the first case. San Remo Hotel, L.P. v. City & County of San Francisco, (2005) 545 U.S. 323, 336. Collateral estoppel prevents re-litigation when the following factors are met: (1) the issue is identical to an issue decided in a prior proceeding; (2) the issue was actually litigated; (3) the issue was necessarily decided; (4) the decision in the prior proceeding is final and on the merits; and (5) the party against whom collateral estoppel is asserted was a party to the prior proceeding. Gabriel v. Wells Fargo Bank, N.A., (2010) 188 Cal.App.4th 547, 556.

Petitioners argue that Warner Ridge 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 to the prior action. *See* Lucido v. Superior Court, (1990) 51 Cal.3d 335, 341.

The City responds that Warner Ridge does not meet the test for collateral estoppel because it did not involve the actual litigation and necessary decision of the identical issues raised by Petitioners concerning the Property. *See* Church v. San Mateo County Assessment Appeals Board, ("Church") (2022) 52 Cal.App.5th 310, 321-22 (not applying issue preclusion); County of Los Angeles v. County of Los Angeles Assessment Appeals Bd., (1993) 13 Cal.App4th 102, 110. (not applying collateral estoppel to contracts that were "similar" but concerned different property). Opp. at 21.

The City argues that Warner Ridge does not involve the Property or the consistency of the RA zone. Instead, it decided a challenge under section 65860 to a newly adopted RS zone to determine whether the zoning should be set aside. Opp. at 21. While Warner Ridge discussed its disagreement with the City's hierarchy theory and part of the footnote language, it did not decide whether the City's zones and plans "may allow a lower use" or whether "a less intense use is included within a more intense use, or whether such a use may be permitted," calling the question "beside the point." *See* Morgan v. Imperial Irrigation Dist., (2014) 223 Cal.App.4th 892. 906 (a case does not stand for a proposition not considered).

This is mostly true,[19] but irrelevant. Warner Ridge held that the City's hierarchy theory had a logical fallacy which would permit the City to prohibit an entire category of land use specifically permitted in the General Plan, improperly allowing the City to amend its General Plan through the enactment of inconsistent zoning ordinances. Warner Ridge did not address whether the City's zoning may permissibly cascade to permit lower uses; it only held that the City's zoning cannot be consistent with the General Plan where it prohibits an entire category of use permitted by the General Plan. But it is this consistency holding, not the lawfulness of the City's zoning hierarchy or cascading, that is germane to this case.

The City contends that Petitioners' reliance on Warner Ridge is problematic for two other

[19] The challenge was to property zoned RA-1. It was not rezoned to RS until the City Council's decision rejecting the project. Warner Ridge, *supra*, 2 Cal.App.4th at 245.

reasons. First, it attempts to convert an unpublished case into citable precedent on an issue of law – *i.e.*, what development standard applies. Yet, legal questions are not subject to collateral estoppel. Church, *supra,* 52 Cal.App.5th at 310, 322. Second, collateral estoppel does not apply where injustice would result. *See* Pacific Maritime Association v. California Unemployment Ins. Appeals Bd., ("Pacific Maritime") (1965) 236 Cal.App.2d 325, 333-34 (citing Restatement of Judgments section 70). The City argues that the application of collateral estoppel to this case would create a public injustice by preventing the City and individual property owners from litigating development standards within the zoning and planning context of an individual parcel. Opp. at 21.

Petitioners reply that Warner Ridge decided an issue of ultimate fact as applied to law, not a pure question of law, because it decided whether single family zoning is consistent with the General Plan's commercial land use designation under state law consistency requirements. Reply at 7, n. 4. While teasing out the difference between an issue of law and ultimate facts is sometimes difficult, the court agrees. Warner Ridge decided that the City's cascading or hierarchy zoning is not consistent with the General Plan where it prohibits an entire category of use permitted by the General Plan. The case applied zoning consistency law to the facts of the City's zoning and General Plan; it did not decide a question of law.

The City's argument misunderstands Pacific Maritime's injustice exception, which stated that collateral estoppel does not apply where injustice would result from the application of one rule of law in subsequent actions between the same parties and a different rule of law in subsequent actions between other persons. 236 Cal.App.2d at 333-34 (applying injustice exception to unemployment benefits where ruling that prior case determining that employee left his employment voluntarily under labor agreement provisions would affect other employees and other employers). In future lawsuits concerning the consistency of the City's General Plan and zoning, the developer will be a different person or entity, but the City will be on the other side. If collateral estoppel applies, the same rule of law should apply in every such action. Therefore, the injustice exception does not apply.

Thus, the City is collaterally estopped from contending that its cascading zoning is consistent with its General Plan under the HAA where it prohibits an entire category of uses permitted by the General Plan.

g. Footnote 9 Does Not Make the Property's Zoning Consistent with the General Plan

Even if, *arguendo*, the City is not collaterally estopped by Warner Ridge, the court finds its reasoning persuasive.[20]

---

[20] The City argues that, if the court relies on any ruling about the existing zones and uses allowed by a land use category under the footnote language and within the context of section 65589.5(j)(4), the superior court decision in Snowball West Investments, LP v. City of Los Angeles, LASC 20STCP00771, is relevant. Resp. RJN Ex. 38. Opp. at 21. The court declined to judicial notice this ruling, which is not binding on the court.

In any event, Snowball did decide that footnote 23 of a land use map (which appears similar to Footnote 9) had been interpreted by the City for 50 years as a cascading of zones, this interpretation was entitled to deference, Snowball failed to provide any legal justification to disregard footnote 23, and therefore had not demonstrated zoning inconsistency within the City's

The Property is zoned RA-1 and has a Limited Commercial land use designation under the General Plan. The General Plan land use map identifies CR, C1, C1.5, RAS3, RAS4, and P as the zones that correspond to a Limited Commercial designation. Resp. RJN Ex. 17; *see* Resp. RJN Ex. 1 (LAMC §12.04.A). The City's position is that RA-1's single-family zoning is consistent with the Limited Commercial designation because any zoning that is less intensive than the uses allowed by the General Plan is consistent, a theory that the City calls a hierarchy of uses.

Footnote 9 to the General Plan land use map expands the range of land use categories to include the less restrictive zones in each more restrictive zone listed on the land use map:

> "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." Resp. RJN Ex. 17 (emphasis added); AR 334-36,416.

The City Council adopted this language for Footnote 9 on March 27, 1991, amending all community plans to clarify that zones more restrictive than those shown on the legend are consistent with the General Plan. Resp. RJN Ex. 18, p. 246 (City Council File). The City Council memorialized the fact that the "changes are in substantial conformance with the purposes, intent, and provisions of the Land Use Element of the General Plan and serve as clarification of longstanding policy and interpretation of the Plan", which is that the "more restrictive zones are consistent with the applicable plan category." Ex. 18, p.261, 265. It clarifies the full range of corresponding zones "without requiring the recitation of each and every corresponding zone." Ex. 18, p. 266.

Thus, the City concludes that the RA zone is included in the Limited Commercial designation because the RA zone is more restrictive than the C1.5 zone. The zones thereafter cascade to less intense uses, such that the R4 zone permits R3, the R3 permits R2, and the R2 permits R1. The R1 zone permits one dwelling on a 5000 square foot lot (Resp. RJN Ex. 3 (LAMC §12.08.A.1, C.4)) and the RA zone requires one dwelling on a 17,500 square foot lot. Resp. RJN Ex. 2 (LAMC §12.07.A.1, C.4). Therefore, the RA zone is consistent with the General Plan's Limited Commercial designation because it is included by footnote 9. *See* Opp. at 10.

The City argues that it is entitled to deference concerning its interpretation of its zoning code and Footnote 9. 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; MCH Operating Lt'd Partnership v. City of San Jose, (2003) 106 Cal.App.4th 204,

---

community plan under the HAA. Ex. 38, pp. 745-46. Warner Ridge provides that missing legal analysis.

219 (upholding a city's interpretation of its ordinance). Courts grant significant deference because agencies have the expertise and knowledge to administer their laws. Yamaha Corp. of America v. St. Bd. Of Equal., (1998) 19 Cal.4th 1, 12. The City's zoning regulations and Footnote 9 are subject to long-standing and consistent interpretation. It is the City's expertise, expressed as an interpretation, "that is the source of the presumptive value of the agency's views." Id. at 11. *See*, City of Walnut Creek v. County of Contra Costa, (1980) 101 Cal.App.3d 1012, 1021 ("The construction placed on a piece of legislation by the enacting body is of very persuasive significance."). Opp. at 15, 20-21.

Petitioners argue that Footnote 9 is explained by the City's long history of ignoring state law and is the very loophole the Legislature intended to close in AB 3194's prohibition against rezoning in cases where zoning is inconsistent with the general plan. In 1978, AB 283 required the City to achieve zoning and general plan consistency by July 1, 1982. City of Los Angeles v. State of California, (1982) 138 Cal.App.3d 526. Rather than comply, the City unsuccessfully argued the requirement was unconstitutional. The court held that all City ordinances must be consistent with its General Plan and ordered that "conformity shall be achieved by July 1, 1982." Id. at 532. The City disregarded the court's ruling and failed to comply. Governor Deukmejian vetoed a proposed extension to the deadline, finding it "disturbing" that the City failed to comply and "inappropriate" to extend the deadline. Pet. RJN, Ex. B. Reply at 5.

Despite all three branches of state government mandating compliance, the City still failed to achieve consistency. The City was then sued in Federation of Hillside and Canyon Associations, Inc. v. City of Los Angeles, ("Federation") LASC C526616, to prevent the issuance of new permits until consistency was achieved. *See* Elysian Heights Residents v. City of Los Angeles, (1986) 182 Cal.App.3d 21, 26.[21] Federation potentially involved the rezoning of thousands of parcels in the City, and the City agreed to a stipulated judgment that required a permit moratorium and implementation of a consistency program, adopting the hierarchy theory to achieve consistency for purposes of the stipulated judgment. Warner Ridge, *supra,* 2 Cal. App. 4th at 253.

In 1990, the City was sued again in Warner Ridge. Faced again with the threat of thousands of lawsuits, the City appealed and immediately "attempted to set its hierarchy theory in concrete" by adding a footnote to every community plan. Id. at 253. It lost. Reply at 6-7.

Petitioners' recitation of footnote 9's history shows the City's motivation in adopting it but does not reflect on the City's interpretation of it. The City has a long-standing interpretation of footnote 9 to mean that the full range of Limited Commercial corresponding zones include more restrictive zones such as RA. Resp. RJN Ex. 17. This interpretation is entitled to deference and the court accepts it. MCH Operating Lt'd Partnership v. City of San Jose, (2003) 106 Cal.App.4th 204, 219 (upholding a city's interpretation of its ordinance).

Petitioners also argue that the City focuses on the first sentence of footnote 9 and ignores the last sentence which states: "It is the intent of the Plan that the entitlements granted shall be one of the zone designations within the corresponding zones shown on the Plan, unless accompanied by a concurrent Plan amendment." Resp. RJN Ex. 17 (emphasis added); AR 334-36, 416.

---

[21] A court decision may be judicially noticed for its existence and for the truth of the results reached, but not the truth of hearsay contained in the record. People v. Harbot, (1997) 61 Cal.App.4th 123, 127. The court is citing historical facts in appellate cases for background purposes only.

Petitioners argue that this is a mandatory directive that requires the City to approve projects according to the zones identified in the General Plan's land use designation. This is consistent with the Framework Element's directive that the community plans "form the basis for decisions on discretionary permits." Read together, the General Plan and the Framework Element clearly requires entitlements to be issued per the General Plan designation even if the zoning is inconsistent. This is exactly what the HAA requires. Reply at 5.

The second sentence of footnote 9 does not aid Petitioners' argument. It is a forward-looking instruction that, if the City grants a discretionary entitlement, it "shall be one of the zone designations within the corresponding zone shown on the Plan." This sentence ensures greater certainty about ever changing future zoning and does not mean that a project must be approved in accordance with the General Plan's designations.

Contrary to the City's position, however, its interpretation of footnote 9 does not mean that the Property's RA zoning is consistent with the General Plan as furthering its objectives and policies and not obstructing their attainment. *See* Corona-Norco, *supra,* 17 Cal.App.4th at 994. Warner Ridge rejected the City's zoning hierarchy as consistent with its General Plan where it prohibits all commercial uses in an area designated by the General Plan for commercial use. The City's hierarchy zoning has a logical fallacy that would permit the City to prohibit an entire category of land use specifically permitted in the General Plan. Yet, the City cannot pass a zoning ordinance that is inconsistent with the General Plan, and the hierarchy zoning improperly allows the City to amend its General Plan through the enactment of inconsistent zoning ordinances. As Warner Ridge stated, 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." Id. at 254.

Thus, Warner Ridge found that the City's cascading zoning is inconsistent with the General Plan where the General Plan permits commercial use and the zoning prohibits an entire category of commercial use. This is not an issue of interpreting footnote 9 or the City's zoning. Assuming that the City's interpretation of footnote 9 is correct, the Property's zoning is inconsistent with the General Plan under the HAA.[22]

---

[22] As Petitioners argue (Reply at 7), Warner Ridge did not decide whether the City may permit a less intensive use where the General Plan has a Limited Commercial land use designation, and the City's cascading zoning shows that it can do so. Despite this fact, Petitioners contend (Reply at 8) that the City also does not consistently apply the General Plan footnotes to allow a less intense designation than listed on the General Plan. The City routinely requires property owners to seek a general plan amendment to change a property to a less intense designation. *See* Pet. RJN Ex. D (City required a General Plan amendment from the more intense Limited Manufacturing designation to the less intense Community Commercial designation because the "Limited Manufacturing land use does not allow residential uses"). Pet. RJN, Ex. D. *See also* Westsiders Opposed to Overdevelopment v. Los Angeles, (2018) Cal.App.5th 1079, 1083 (City required redesignation from the more intense Light Industrial to less intense General Commercial designation to accommodate residential project).

The City does not respond to this argument. Clearly, the City cannot at once ignore the footnotes to force a General Plan amendment to be consistent with zoning's less intense designation and then rely on the General Plan footnotes as consistent with zoning and require rezoning to be

Warner Ridge's reasoning aside, Petitioners note (Reply at 7-8) that the HAA changed the standard of review. The HAA amendments eliminated the deferential arbitrary and capricious standard and requires a court to find a housing project compliant if there is substantial evidence that would allow a reasonable person to conclude that it is. §65589.5(f)(4). "[B]ecause the HAA cabins the discretion of a local agency to reject proposals for new housing, it is inappropriate for us to defer to the City's interpretation." Cal. Renters Legal Advocacy & Educ. Fund v. City of San Mateo, (2021) 68 Cal.App.5th 820, 844. The Property's RA-1 zoning eliminates an entire category of commercial use designed in the General Plan. The RA zoning is inconsistent with the General Plan because it does not further the objectives and policies of the General Plan and instead obstructs their attainment. *See* Corona-Norco, *supra,* 17 Cal.App.4th at 994.

The Property's RA zoning is inconsistent with the General Plan's Limited Commercial designation under the HAA.

h. Even if the General Plan and Zoning Are Consistent, the City Must Facilitate the Density Allowed by the General Plan

Even if the Property's RA-1 zoning were consistent with the Limited Commercial designation, the City still may only apply objective RA-1 standards (*e.g.*, setbacks, coverage, height, etc.) to the degree that they facilitate the density allowed by the Limited Commercial designation. §65589.5(j)(4).

Petitioners argue that the Project is consistent with the density allowed under the General Plan's Limited Commercial designation. The City acknowledged as much, stating that "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 1283. Pet. Op. Br. at 18. Yet, the City is attempting to apply RA-1 zoning density to prevent, not facilitate, the density allowed by the Limited Commercial designation. Pet. Op. Br. at 19. Even if the zoning were consistent, the City must only apply the zoning in a manner that facilitates the maximum density allowed on the Property site under the General Plan. Reply at 10.

The City does not respond to this argument, which is mooted by the court's conclusions that the General Plan's designation prevails.

4. The Remedy

Petitioners argue that the City disapproved Jha's Project application without attempting to make the required public health and safety impact findings. Instead, the City disapproved the application unless and until Jha meets the City's demand to secure a rezoning – even though such requirement is prohibited under the HAA – based on a court-rejected theory that no reasonable person, not even the City planners, could believe. The City's actions were frivolous, without merit, and a bad-faith violation of the HAA. Petitioners seek an order that the Project is deemed compliant and directing Respondents to approve it within 60 days pursuant to section 65589.5(k)(1)(A)(i), (ii). Pet. Op. Br. at 19.

The HAA defines "bad faith" as an action that is "frivolous or otherwise entirely without merit." §65589.5(l). There is more than one test for this determination, and the City's conduct does not meet any of them. Burkle v. Burkle, (2006) 144 Cal.App.4th 387, 401 (conduct that is

---

consistent with the General Plan's more intense designation.

"objectively unreasonable"); Peake v. Underwood, (2014) 227 Cal.App.4th 428, 440 (a claim 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").

Petitioners have not shown that the City's actions occurred with an improper motive or are entirely without merit under the HAA. At the hearing, Petitioners' counsel argued that the City's actions with respect to the SB 330 preliminary application and project application show bad faith. Without agreeing with this conclusion, the court notes that a bad faith violation of the PSA is not the same as bad faith under the HAA. The City has a legitimate, if wrong, interpretation of section 65589.5(j)(4), and the court does not agree that Warner Ridge found footnote 9 to be void. In fact, footnote 9 cannot be entirely void because there are permissible applications of its cascading theory. Warner Ridge simply held that this cascading does not alter the inconsistency of the City's zoning and General Plan.

The City's actions were taken in good faith. The court will not order the City to approve the Project. 65589.5(k)(1)(A)(ii). Instead, the court shall issue a judgment and writ compelling compliance with the HAA in 60 days. §65589.5(k)(1)(A)(i)(II), (ii).

F. Conclusion

The Petition is granted. A writ shall issue deeming the SB 330 application to have been submitted, deeming the Project application complete, and directing the City to comply with the HAA in 60 days.

Petitioners' counsel is ordered to prepare a proposed judgment and writ of mandate, serve them on the City's counsel for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment and writ along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for September 13, 2022 at 1:30 p.m.

Dated: July __, 2022

JAMES C. CHALFANT

Superior Court Judge