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Filed by City of Simi Valley
Exempt from Filing Fee
[G.C. Section 6103]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

YES IN MY BACK YARD, a California Nonprofit Corporation

Petitioner,

v.

CITY OF SIMI VALLEY, SIMI VALLEY PLANNING COMMISSION, and SIMI VALLEY CITY COUNCIL

Respondents,

JM SQUARED DEVELOPMENT, LLC, a California Limited Liability Company,

Real Party in Interest

CASE NO.: 56-2020-00539590-CU-WM-VTA
RELATED TO CASE NO.:
56-2020-00539593-CU-WM-VTA

RESPONDENT CITY OF SIMI VALLEY'S NOTICE OF DEMURRER AND DEMURRER TO PETITIONER YES IN MY BACK YARD'S PETITION FOR WRIT OF ADMINISTRATIVE MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF DION O'CONNELL

[Filed concurrently with Respondent's Request for Judicial Notice and [Proposed] Order]

Dept. : 40
Judge : Hon. Mark S. Borrell
Hearing Date:
Time :

Petition Filed: January 31, 2020

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on _____ at

a.m./p.m., in Department 40 of the above-entitled Court, located at 800 S. Victoria Avenue, Ventura, California, 93009, before the Honorable Mark S. Borrell, Judge Presiding, Respondent CITY OF SIMI VALLEY will and hereby does demur to the Petition for Writ of Administrative Mandate filed by Petitioner, YES IN MY BACK YARD.

This demurrer shall be based on this Notice, the attached Memorandum of Points and Authorities, the Declaration of Dion O'Connell, Respondent's Request that the Court Take Judicial Notice and Exhibits attached thereto, all of the pleadings and papers on file in this case, and upon such oral argument that is necessary and properly presented at the hearing of this motion.

Dated: June 9, 2020

Lonnie J. Eldridge, City Attorney
Office of the City Attorney, City of Simi Valley

By: Dion O'Connell
DION O'CONNELL
Assistant City Attorney
Attorneys for the Defendant,
CITY OF SIMI VALLEY

DEMURRER TO PLAINTIFFS' COMPLAINT

Respondent, CITY OF SIMI VALLEY, hereby demurs to Petitioner's Petition for Writ of Administrative Mandate on the grounds that:

1. The Petition fails to state facts sufficient to constitute a cause of action (California Code of Civil Procedure, section 430.10 (e)), because Government Code Section 65589.5 (known as the "Housing Accountability Act"), upon which Petitioner bases its claim, is not applicable to Real Party in Interest JM SQUARED DEVELOPMENT, LLC's attempt to build a 108-bed Residential Care Facility for the Elderly in a single-family residential zone.

Dated: June 9, 2020

Lonnie J. Eldridge, City Attorney
Office of the City Attorney, City of Simi Valley

By: _____
DION O'CONNELL
Assistant City Attorney
Attorneys for the Defendant,
CITY OF SIMI VALLEY

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Real Party in Interest, JM SQUARED DEVELOPMENT, LLC ("JM SQUARED") applied for a discretionary Conditional Use Permit ("CUP") with Respondent, CITY OF SIMI VALLEY ("CITY") in order to gain approval to build a 108-bed Residential Care Facility for the Elderly ("Facility") within an area of the CITY zoned for single-family residences. After the CITY's Planning Commission ("Commission") and then its City Council ("Council") denied approval of the CUP, Petitioner, YES IN MY BACK YARD ("YIMBY"), a "housing organization" (Petition, par. 3), filed a Petition for Writ of Administrative Mandate, in which it asserts that California Government Code[1] § 65589.5 (known as the "Housing Accountability Act," or "HAA"), compels CITY to approve the 108-bed Facility in a single-family residential zone.

A CUP denial is reviewed under the substantial evidence test, in which the agency's findings are presumed to be supported by the administrative record and the challenging petitioner has the burden to show otherwise. The court "may reverse an agency's decision only if, based on the evidence before the agency, a reasonable person could not reach the [agency's] conclusion." *Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1244. Accordingly, "'the reviewing court must resolve reasonable doubts in favor of the administrative findings and decision.' [Citation.]" *Dore v. County of Ventura* (1994) 23 Cal.App.4th 320, 327.

By contorting the HAA to apply to this Facility, YIMBY is attempting to turn a discretionary exercise of a city's police power into a ministerial duty to accept in a single-family residential neighborhood virtually any business with the term "residential" attached to it. As set forth more fully below, constructing this Facility in a single-family neighborhood is not a housing development project as defined by the HAA. Based upon

[1] All section references are to the Government Code, unless otherwise specified.

the statutory framework surrounding the HAA, guidance from the agency with oversight of the HAA, California's Department of Housing and Community Development ("HCD"), and based upon the legislative history – which reveals that the legislature considered, and then removed, language placing special needs facilities such as Residential Care Facilities for the Elderly ("RCFE") of seven or more beds within the protections of the HAA – this large Facility does not evade discretionary City land use review.

II. STATEMENT OF FACTS

JM SQUARED proposed building a 108-bed Facility on a 19.2-acre parcel near the intersection of Cochran Street and Welcome Court in the CITY (Department of Environmental Services ("ES") Memorandum, November 4, 2019 Council Agenda Item No. 4B ("Memorandum").[2] The parcel is in a single-family residence ("SFR") zone. Because this zone was Residential Medium ("RM"), such a large-scale Facility -- in contrast to a maximum six-resident RCFE per Health & Safety Code § 1569.85 -- was not allowed by right. Thus, JM SQUARED was required to apply for a discretionary CUP. On September 4, 2019, the Commission voted to deny the project, finding the 265-foot-long Facility did not blend with the natural environment, and among other things, the scale was incompatible with the nearby SFRs. (Memorandum, pp. 2 – 4).

In its appeal to Council, JM SQUARED alleged the Commission violated the HAA by denying the CUP in an untimely manner without the HAA's required written findings. The CITY determined that the Facility was not a "Housing Development Project" under the HAA, because the 108 beds were not "residential units," or "housing units," based on HCD guidance in the CITY's Annual Progress Report ("APR")[3]. "For purposes of counting units toward the [Regional Housing Needs Allocation ("RHNA")], HCD only gives credit for 'housing units' as defined by the California Department of

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[2] Request for Judicial Notice ("RJN"), Exhibit 2, JM Squared Development, LLC v. City of Simi Valley, et al., VCSC Case No. 56-2020-00539593-CU-WM-VTA, Petition for Writ of Mandate, Exhibit 2.

[3] RJN, Exhibit 3E, HCD Housing Element Annual Progress Report Instruction.

Finance ("DOF") for inclusion in the annual E-5 City/County Population and Housing Estimates report, which is the same as the US Census definition for a housing unit," which provides:

> "Housing Unit. A housing unit is ... a group of rooms, or a single room occupied or intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants do not live and eat with other persons in the structure..." *(Memorandum, p. 5.)*

Council denied the appeal, upholding Commission's denial of JM SQUARED's application for a CUP, finding: the development would not blend in with the natural environment due to the large scale of the proposed building; the proposed two- story building is double the height of the existing [neighboring] residences; the entire building is approximately 265 feet long compared to the nearest residences approximately 47 to 117 feet long; the design, location operating characteristics, and size of the proposed use is not compatible with the existing and future land uses in the vicinity; and, the narrow 40-foot width of Cochran Street would cause congestion and difficulty for large emergency vehicles during an emergency, such as an earthquake or a fire.[4] Petitioner YIMBY, a nonprofit housing organization, and JM SQUARED, timely filed separate Petitions for Writ of Mandate on January 31, 2020.

III. LEGAL STANDARD FOR DEMURRER

An objection to the pleading may be made by demurrer where, as here, it appears on the face of the complaint or petition that the pleading does not state facts sufficient to constitute a cause of action and is uncertain. Code Civ. Proc. §§ 430.10, 430.30. The function of a demurrer is to test the legal sufficiency of the complaint by raising questions of law; although the facts alleged in the complaint are deemed admitted, plaintiff's contentions, deductions or conclusions of fact or law are not. *Schmidt v. Foundation Health* (1995) 35 Cal.App.4th 1702, 1706. In reviewing an order sustaining a demurrer, a reviewing Court assumes "the truth of all material factual

[4] RJN, Exhibit 1, City Council Resolution No 2019-46, dated November 13, 2019.

allegations, and we are required to accept them as such, together with those matters subject to judicial notice." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

A demurrer to a petition for writ of mandate is appropriate. "[R]eview is governed by settled standards, which apply ... whether a demurrer challenges a complaint or a petition...." *SJJC Aviation Services, LLC v. San Jose*, 12 Cal. App. 5th 1043, 1051.

IV. ARGUMENT

A. The Housing Accountability Act Does Not Apply to this Facility.

YIMBY asserts that the 108-bed Facility is a "housing development project" and thus protected by the HAA's requirement that a denial could only be effected by written public health or safety findings issued within 30 days of the project application's deemed completion date. (Petition, par. 35-40). YIMBY thus claims each of the 108 beds in the Facility is a housing unit, and as such, is synonymous with the undefined HAA term "residential unit."(Petition, par. 41-46). Before addressing the Petition's alchemy equating large-scale Facility beds with residential units, YIMBY's fruitless effort to label this Facility "supportive housing"(Petition par. 47) is summarily warded off by the plain statutory language stating that supportive housing is occupied by persons with low incomes.[5]

Rather than merely pointing to like-sounding terms that include the word "residential" as proof that each of the 108 beds is a housing unit, a more thorough analysis is required of: the statutory framework in which the HAA is housed; HCD guidance regarding units it counts toward CITY's RHNA numbers; and, the legislative history of the HAA and related statutes. The analysis reveals the Legislature did not intend to include a 108-bed large-scale RCFE within the HAA's protections. Therefore,

[5] Section 65582 (g) & (i), which is in the same "Housing Elements" article as the HAA.

none of the HAA's provisions apply to this Facility. CITY's Planning Commission and Council reviewed JM SQUARED's application for a CUP to insert a 108-bed Facility into a single-family neighborhood like any other land use request and must be reviewed under a substantial evidence standard. (*See Levi Family Partnership, L.P. v. City of Los Angeles* (2015) 241 Cal.App.4th 123.)

1. Housing Elements Statutory Language does not define "residential unit."

The HAA is housed in Title 7, Division 1, Chapter 3, Article 10.6 of the Government Code ("Housing Elements" §§ 65580 — 65589.11). Within Article 10.6 is § 65582, which sets forth several definitions of terms used in the article. However, "residential unit," is not defined in § 65582. The HAA's § 65589.5(h) provides several definitions that apply to that section: "Housing development project" means a use consisting of either: residential units only, mixed-use developments, or transitional housing or supportive housing. Yet, the HAA similarly does not define "residential unit." As set forth below, HCD will not count the 108-bed Facility as having "housing units" for the purpose of counting toward CITY's RHNA obligation. It cannot be a "residential unit."

2. The Housing Element Statutory Framework

Each California city is required to adopt a general plan ("Plan") encompassing long-term development policy goals (§ 65300). The Plan must contain seven elements, including a housing element (§ 65302), which are updated every 5 to 8 years (§ 65588). Before each update, the substantive requirements are addressed through the RHNA process (§§ 65584-65584.09), by which each locality is assigned its share of responsibility for the regional housing need. To accommodate the RHNA, a city must conduct an inventory of land zoned for housing that identifies specific sites, describes existing uses and densities, and states specifically how many units can be

accommodated per site (§§ 65583(a)(3); 65583.3). HCD reviews each city's housing element and whether the element complies with state law (§ 65585). HCD works with the regional councils of governments ("COG") to determine the aggregate regional need. COG and HCD then allocate the region's need to each city/county (§ 65584). CITY is in the Southern California Association of Governments ("SCAG") COG.

3. HCD Guidance Indicates a 108-Bed Facility Contains No Housing Units.

In its letters over the past nine years, HCD notified SCAG of its RHNA determination for the upcoming periods, while also noting that because the Group Quarter Population "doesn't constitute a 'household' population generating demand for a housing unit, the group quarter population is excluded from the calculation of the household population, and is not included in the housing need."[6]

In HCD's recent instructions regarding APR preparation, HCD stated:

> "'[N]ew housing unit' means housing units as defined by [DOF] for inclusion in [DOF's] annual 'E-5 City/County Population and Housing Estimates' report, which is the same as the Census definition of a housing unit."[7]

Moreover, HCD recently issued its Housing Element Site Inventory Guidebook:

> "**Census definition of a unit:** A housing unit is a house, an apartment, a group of rooms, or a single room occupied or intended for occupancy as separate living quarters. **Separate living quarters are those in which the occupants do not live and eat with other persons in the structure**..." (Emphasis added.)[8]

HCD, the "Department" to which both §§ 65582 and 65589.5 refer, will not count JM SQUARED's 108 beds toward the CITY's RHNA. Note that the Guidebook commands "the site inventory must be prepared using the standards, form, and definitions adopted

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[6] RJN, Exhibit 3C, HCD letter dated August 17, 2011 re RHNA determination; see also, RJN, Exhibit 3D, HCD Final RHNA letter to SCAG, dated October 15, 2019.

[7] RJN, Exhibit 3E, Housing Element Annual Progress Report Instructions, pp. 4, 8.

[8] RJN, Exhibit 3G, HCD Housing Element Site Inventory Guidebook, **May 19, 2020**

by HCD." (*Id.*, at p. 9.) Note also, the HAA allows a city to disapprove an affordable housing project if, *inter alia*, the city had met or exceeded its RHNA, provided:

> "The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by [HCD] pursuant to Section 65400." (§ 65589.5 (d)(1).)

Thus, if JM SQUARED's project were an affordable project (which it clearly is not), YIMBY's reading of § 65589.5 would deprive CITY of a statutory defense, as CITY calculated its RHNA under HCD definitions, pursuant to § 65400 and § 65589.5. Clearly, the Legislature, and HCD, would not place any city in such an absurd circumstance.

4. The Legislative History of Housing Legislation.

a. AB 218 (Simitian, 2003); Passed and Vetoed.

In 2003, AB 218's author acknowledged that institutional care facilities for seniors, including congregate housing, "which provides individual living quarters with shared dining facilities,"[9] were not taken into consideration when calculating whether a local entity meets its RHNA share; and the intent of AB 218 was to create an incentive for local governments approval of congregate housing by allowing it to count towards satisfying their RHNA requirements. (*Id.*) Although passed, the legislation was vetoed.[10]

b. SB 1322 (Cedillo, 2006); Passed and Vetoed.

Roughly two years later, Senator Cedillo introduced SB1322, which, among other provisions, added emergency shelters and "special needs facilities" as the type of facilities enjoying the same protections as housing development projects within the HAA. The bill defined "special needs facilities" to include residential care facilities for the elderly[11] with seven or more residents.[12] The Assembly Committee on Local Government

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[9] RJN, Exhibit 5, Assembly Bill 218, Senate Housing & Community Development Committee Analysis.

[10] RJN, Exhibit 6, Assembly Bill 218, Governor's Veto.

[11] As defined in Section 1569.2 of the Health and Safety Code.

noted emergency shelters and residential service facilities faced tremendous resistance at the local level and found it difficult to obtain the required conditional use permits:

> "8) Under current law, residential service facilities that serve six or fewer persons must be treated the same as other residential uses in the permitting process.[13] Generally...small residential service facilities are a by-right use in residential zones in most communities. SB 1322 would dramatically expand by-right zoning for such facilities by requiring by-right zoning for facilities of any size. A 100-bed facility would have to be treated the same as a 4-bed facility."[14]

In August 2006, a Senate Rules Committee analysis added:

> "Because emergency shelters and special needs facilities do not contain housing 'units,' they are not considered housing development projects and are therefore not currently protected by the anti-NIMBY law."(Emphasis added.) [15]

The American Planning Association ("APA") lobbied against the bill, arguing, "Allowing a group home with an unlimited number of residents in a residential neighborhood, however, would impose substantial impacts on residents of homes near those facilities."[16] SB 1322 also faced strong opposition from individual cities, and from the League of California Cities ("League"), which objected that "a facility serving 150 people would be treated the same as a facility serving 8 persons..."[17]

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[12] RJN, Exhibit 7G, Failed Legislation, Predecessor (from a previous session), Senate Bill 1322 (2005-2006); Excerpts from printed bill materials; as amended in Assembly August 24, 2006 (pp. 635-682);

[13] Pursuant to Health & Safety Code Section 1569.85

[14] RJN, Exhibit 7J.

[15] [15] RJN, Exhibit 7J, Senate Third Reading analysis, August 24, 2006, p.p. 1121-1122.

[16] RJN, Exhibit 7J, p.

[17] RJN, Exhibit 7I, pp. 843-844 League, pp. 855-856 Riverside, p. 860 Torrance; see also, Exhibit 7J, pp. 1158-1169 League, pp. 1174-1175 Oakland.

Most notably, HCD, the department charged with administering the HAA, recommended a veto.[18] Thereafter, the Governor did veto it, stating that it limited cities' "authority to condition or deny certain projects as would otherwise be allowed by law" and that such "mandated, by right, zoning ... usurps local government discretion."[19]

c. SB 2 (Cedillo, 2007), Enacted.

Senator Cedillo, the author of the vetoed SB 1322, introduced SB 2 in December 2006, in substantially the same form as SB 1322, including the special needs/RCFE provisions.[20] However, this time around, HCD and others such as the League and the APA, joined a working group crafting the bill.[21] By June 2007, the special needs/RCFE provisions had been deleted from SB 2.[22] The League dropped opposition; it then passed and brought emergency shelters within the HAA's protections.

The rejection by the Legislature of a specific provision in an act as originally introduced is most persuasive that the act should not be construed to include the omitted provision. *Rich v. State Board of Optometry* (1965) 235 Cal. App. 2d 591, 607. Courts have uniformly held that a statute cannot be interpreted to include what was specifically excluded. To do so "would be ... judicial legislation in contravention of the legislative intent logically implied from the rejection by the Legislature of an identical provision." *People v. Brannon* (1973) 32 Cal.App.3d 971, 977." "When the Legislature rejects language from a bill ... it should be construed according to the final version." *Stroh v. Midway Restaurant Systems, Inc.* (1986) 180 Cal.App.3d 1040, 1055.

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[18] RJN, Exhibit 7J, The Business, Transportation and Housing Agency Enrolled Bill Report dated September 12, 2006, pp. 794-856.

[19] RJN, Exhibit 7H, p. 745.

[20] RJN, Exhibit 7A, pp. 2-15.

[21] RJN, Exhibit 7C, pp.155-156.

In *Wilson v. City of Laguna Beach* (1992) 6 Cal.App.4th 543, the Court considered Senate Bill 1534, which established accessory dwelling units in § 65852.2. As introduced, the bill included allowed local governments to demand additional parking. That provision was deleted before passage. After citing *Rich* and *Stroh*, the Court noted that "many local governments opposed the bill after it was amended, precisely because it did not allow additional parking to be considered." (*Id.*, at p. 555; *see also*, *Berry v. American Express Publishing, Inc.* (2007) 147 Cal. App. 4th 224, 230-231; Ventura v. City of San Jose (1984) 151 Cal.App.3d 1076, 1080-1081.)

After acknowledging that large RCFEs could not be counted toward a local entity's RHNA in the vetoed AB 218 in 2003, the Legislature took two more swings at inserting large RCFEs within the HAA's protections in the vetoed SB 1322, and in the early versions of SB 2. YIMBY petitions this Court to grant through litigation what the Legislature could not achieve through legislation. This Court should not interpret the HAA to include the Facility's 108 beds as housing units entitled to the HAA's protections.

V. CONCLUSION

For the reasons stated hereinabove, Respondent City of Simi Valley respectfully requests that this Court sustain its demurrer without leave to amend.

Dated: June 9, 2020

Lonnie J. Eldridge, City Attorney
Office of the City Attorney, City of Simi Valley

By: _____
DION O'CONNELL
Assistant City Attorney
Attorneys for Respondent,
CITY OF SIMI VALLEY

[22] RJN, Exhibit 7A, pp. 59-71.

DECLARATION OF DION O'CONNELL

I, Dion O'Connell, do hereby declare:

1. I am an Assistant City Attorney with the Office of the City Attorney of the City of Simi Valley ("CITY"). I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently hereto.

2. I am familiar with the litigation entitled, YES IN MY BACK YARD ["YIMBY"], a California Nonprofit Corporation, v. CITY OF SIMI VALLEY, Ventura Superior Court Case ("VCSC") No. 56-2020-00539590-CU-WM-VTA, and related Case entitled, JM SQUARED DEVELOPMENT, LLC v. CITY OF SIMI VALLEY, et al., VCSC Case No. 56-2020-00539593-CU-WM-VTA. I am aware that the YIMBY litigation concerns Petitioner YIMBY's Petition for Writ of Administrative Mandate in which it claims that the CITY OF SIMI VALLEY ("CITY") violated the Housing Accountability Act (Government Code Section 65589.5, "HAA") in the manner in which CITY denied Real Party in Interest JM SQUARED DEVELOPMENT LLC'S ("JM SQUARED") application for a Conditional Use Permit to develop a 108-bed Residential Care Facility for the Elderly near the area of Cochran Street and Welcome Court in the CITY. I also am aware JM SQUARED filed a Petition reflected in the related case mentioned hereinabove, alleging similar HAA claims, as well as other causes of action, and that it intends to file a First Amended Petition when VCSC reopens for all civil filings.

3. In compliance with VCSC's successive Administrative Orders regarding Implementation of Emergency Relief in Response to COVID-19, the dates of March 16, 2020 through June 9, 2020, have been declared as judicial holidays for the purpose of filing documents with the Court. On June 5, 2020, VCSC published a notice stating that June 10, 2020 is the first date after the aforementioned judicial holidays on which VCSC will accept all civil court filings, and beginning Monday, June 15, 2020, the clerk's office will begin accepting reservations for civil law and motion matters. Because court personnel have been unavailable

to discuss pending matters either in person or on the telephone, I, like every other counsel, have been unable to secure a reservation for a hearing date for the Demurrer motion to which this Declaration is attached.

4. On June 3, 2020, I engaged in a Zoom meeting with Sarah Hoffman and Ryan Patterson of Zacks, Freedman & Patterson, PC, representing YIMBY, and Benjamin Reznik and Matthew Hinks of Jeffer Mangels Butler & Mitchell, LLP, representing JM SQUARED. I informed counsel that our conversation served to satisfy the CITY's obligation to meet and confer pursuant to Code of Civil Procedure Section 430.41 as a prerequisite to the CITY's filing of a demurrer in the above-entitled case. I informed counsel I intended to base the demurrer on the HAA's statutory language, the State of California Department of Housing and Community Development's ("HCD") guidance regarding the definition of "housing units, and the HAA's legislative history, specifically SB 1322 and SB 2.

5. During the June 3, 2020 Zoom meeting, we also discussed: the status of the Ventura County Superior Court probably opening back up June 10; whether or not the parties would prefer that the two matters be consolidated; whether YIMBY would grant CITY a short extension of time to file its demurrer, given the uncertainty surrounding VCSC's reopening; JM SQUARED's intention to file a Judgment on the Pleadings ("JOP"), also targeting a June 10 filing date; an agreement that when CITY secures the earliest possible date [allowed by CCP Section 1005 and 1013], I would also request the same hearing date for JM SQUARED's JOP; Mr. Hinks also confirmed that the CITY indeed would have thirty days within which to file its pleading in response to his expressed intention to file JM SQUARED's First Amended Petition for Writ of Mandate when VCSC reopens for all civil filings.

6. After our Zoom meeting, in response to counsel's request, I attached an HCD document and pasted links to SB1322 (2006) and SB2 (2007) to an email to all counsel named hereinabove, all of which documents indicate the legislature's intent and HCD's

guidance to not include large RCFEs within the requirements, deadlines and penalties of the HAA.

7. On Friday, June 5, 2020, I received an email from Kim Borden, Public Records Act Requests, Staff Services Manager I (Specialist) Housing & Community Development Legal Affairs Division, in response to a Public Records Act Request I had submitted several weeks ago. Those records are attached to CITY's Request for Judicial Notice ("RJN"), Exhibit 3.

8. Also on Friday, June 5, 2020, I discovered another legislative bill, AB 218 (2003) that I incorporated into the demurrer to which this declaration is attached, and is reflected in RJN, Exhibits 5 & 6.

9. Although I intend to call Department 40 the morning of Monday, June 15, 2020, in an effort to secure a reservation number for a hearing date on which the demurrer and JOP could be heard, in the event the court picks hearing dates on its own due to the expected crush of cases for which hearings will be requested, I request the Court not schedule the hearings between August 17, 2020 and August 28, 2020, as I will be out of town for most of that period.

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

Executed June 9, 2020 at Simi Valley, California.

DION O'CONNELL
Assistant City Attorney
Declarant

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF VENTURA

I am employed in the County of Ventura, State of California.

I am over the age of 18 and not a party to this action. My business address is City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, California 93063, which is located in the county where the mailing described below took place.

On the date stated below, I caused to be served in the manner indicated the following document, **RESPONDENT CITY OF SIMI VALLEY'S NOTICE OF DEMURRER AND DEMURRER TO PETITIONER YES IN MY BACK YARD'S PETITION FOR WRIT OF ADMINISTRATIVE MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF DION O'CONNELL** on the party/parties involved addressed as follows:

SEE ATTACHED SERVICE LIST

[ ] **By Personal Delivery**: I caused each such envelope to be delivered by hand to the parties listed above at the _____ on _____, 2020

[X] **By Mail:** I caused each envelope, with postage thereon fully prepaid, to be placed in the United States mail at Simi Valley, California. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

[ ] **By Facsimile:** By use of facsimile machine telephone number (805) 526-2489, I served a copy of the within document on the interested parties at the facsimile numbers listed. The transmission was reported as complete and without error.

[] **Electronically:** By sending the documents to the persons at the electronic service addresses shown below.

[] **By Overnight Delivery**: I caused each envelope, with delivery fees provided for, to be deposited in a box regularly maintained by UPS or Federal Express. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for overnight delivery and know that in the ordinary course of my business practice the document(s) described above will be deposited in a box or other facility regularly maintained by UPS or Federal Express or delivered to an authorized courier or driver authorized by UPS or Federal Express to receive documents on the same date that is placed at my place of business for collection.

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

Executed on June 9th, 2020 at Simi Valley, California.

Natalie Bellefontaine

Natalie Bellefontaine, Legal Administrative Assistant
City Attorney's Office, City of Simi Valley

Ryan J. Patterson
Sarah M. K. Hoffman
ZACKS, FREEDMAN & PATTERSON, PC
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San Francisco, CA 94104

Counsel for Yes In My Back Yard

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