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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA – UNLIMITED JURISDICTION

YES IN MY BACK YARD, a California Nonprofit Corporation Petitioner, vs. 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 PETITIONER YES IN MY BACK YARD'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEMURRER (CCP § 1094.5; Govt. Code § 65589.5) Dept: 40 Judge: Hon. Mark S. Burrell Hearing Date: August 10, 2020 Time: 8:30 am Petition filed: January 31, 2020

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I. INTRODUCTION

Housing in California is "the most expensive in the nation," with the housing shortage presenting a "critical problem" for the state. (Gov. Code ("HAA") § 65589.5(a)(1)(A)-(B).) The Housing Accountability Act was enacted in 1982 (and recently strengthened) to address the desperate need for housing in California, squarely targeting the "activities and policies of many local governments that limit the approval of housing [and] increase the cost of land for housing." (*Id*.) The HAA requires local agencies to approve a proposed "housing development project" if it complies with "objective general plan, zoning, and subdivision standards and criteria." (Gov. Code § 65589.5(j)(1).) A local agency may only disapprove a code-compliant project if it makes "written findings supported by a preponderance of the evidence on the record" that the project would have a "specific, adverse impact upon the public health or safety" that cannot be mitigated. (*Id.*)

Regrettably, decades later, the anti-development attitudes the HAA was enacted to curtail still persist, including in Simi Valley. In this case, the Real Party in Interest ("Real Party") proposed to build a 108-unit residential care facility for senior citizens (the "Project"). The Project complies with all "applicable, objective general plan, zoning, and subdivision standards and criteria" (Gov. Code § 65589.5(j)(1)) and would provide much-needed housing for a vulnerable population group. However, the City of Simi Valley, through its Planning Commission and City Council (collectively, "Respondent"), yielded to neighbor opposition and denied the Project for unlawful reasons. Respondent's denial decision did not identify any objective standards with which the Project was allegedly non-compliant. Nor did Respondent make written findings, based on a preponderance of evidence, that the Project would have unmitigable health and safety impacts. Rather, Respondent has asserted that the HAA does not apply to the Project because the units in the Project do not include kitchens. This is a specious attempt to circumvent the HAA, which clearly compels approval of the Project.

The question before the Court is whether a residential care facility is a "housing development project" for the purposes of the HAA. The answer to this question must be "yes." Here, the proposed residential care facility can meet any of the HAA's three alternative definitions of "housing development project" because it: (A) consists of "residential units;" (B) is a "mixed-use development;" and (C) is "supportive housing." (Gov. Code § 65589.5(h)(2).)

II. FACTUAL BACKGROUND

In February 2018, Real Party filed an application to build a 108-unit residential care facility for senior citizens on land that is zoned for this use. (Request for Judicial Notice ("RJN"), Exh. A.) The Project will be located on 1.6 acres of a 19.2-acre parcel of undeveloped land that backs up to State Route 118 in Simi Valley. (*Id*.) It will include 68 senior care housing units and an additional 40 memory care units for patients suffering from Alzheimer's Disease or other debilitating forms of dementia. (*Id*.) This model allows seniors to remain in their homes as they "age in place."

Real Party spent years working with Respondent and made significant concessions, including downsizing the Project at Respondent's request, by eliminating a series of proposed cottages. (RJN Exh. B at AR1767-68.) The Project application was deemed complete on May 28, 2019. (RJN Exh. C.) The Planning Department found that the Project: 1) is consistent with the General Plan; 2) complies with all applicable provisions of the Development Code; 3) is consistent with the City's design guidelines; and 4) is compatible with existing and future land uses in the vicinity, in terms of aesthetics, character, scale, and view protection. (RJN Exh. A at AR916-19.)

On September 4, 2019, the Project came before the City Planning Commission for approval. At that meeting, members of the Planning Department spoke glowingly of the Project and Real Party's efforts to work with the City and recommended approval. (*See* RJN Exh. A, Exh. B at AR1699-1700.) However, after a handful of neighbors spoke out against the Project, the Planning Commission denied it. Planning Commissioner John Casselbery Jr. acknowledged the "market need for assisted living and for memory care units in the City" but suggested the site would be more appropriate for single-family homes. (*Id*. at 1780-81.)

It is unsurprising that members of the Planning Commission recognized the need for this type of housing. The City's General Plan includes a dedicated section on senior housing that notes that "Simi Valley's senior population increased . . . 150 percent between 1990 and 2010" and that "43 percent of senior renters were overpaying for housing." (RJN at Exh. D, at 4-19, internal citations omitted.) Given the pressing need for senior housing, the City's Housing Element includes Goal 4.3 to "Encourage the construction of specialized housing for senior citizens in the community, including planned senior communities." (*Id*. at 4-95.)

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Real Party appealed the Planning Commission's decision to the City Council. Once more, however, neighbors came forward with specious concerns, mostly revolving around traffic and a bizarre notion that people might drive to the Project if there were a forest fire, causing a traffic jam. This was in spite of the fact that the Real Party performed not one, but two traffic studies, and complies with all "public health, safety, and welfare" requirements. (Exh. A, AR0919.) The neighbors' "safety" concerns were illusory and served as a smokescreen for their real objection – they didn't want senior housing in their neighborhood.

Petitioner submitted a letter informing Respondent of its obligation under the HAA to approve the Project. (RJN Exh. E.) However, the City Attorney came up with a novel interpretation of the HAA in a transparent attempt to circumvent its application to the Project. He wrongly advised the City Council that the Project is not a "housing development project" for the purposes of the HAA, because in his opinion, the proposed residential care units are not "residential units." (RJN Exh. F at AR1188-89.) The basis for this assertion was that the individual units would not have kitchens. (*Id.*)

The City Council bowed to neighborhood opposition and denied the Project on November 4, 2019. In its draft denial resolution No. 2019-46, the City Council cited only four bases for denial. (RJN, Exh.G.) These findings include allusions to vague, cursory assertions that the Project is not "architecturally integrated into the terrain" and that the "housing type and bulk of the proposed building [is] out of scale." (*Id.*) Finally, Respondent asserted "safety" concerns regarding traffic and emergency situations. (*Id.*) However, Respondent did not make the written findings required by the HAA for denial of a housing development project, let alone findings supported by substantial evidence on the record.

III. ARGUMENT

In denying the Project, Respondent willfully disregarded its state law obligations under the HAA, which *is* applicable to the Project and compels its approval. Importantly, the HAA reverses the usual burden of proof for writ petitions; in cases alleging improper denial of a project under the HAA, the *public agency* bears the burden of proof to show that its decision complied with the HAA. (Gov. Code § 65589.6.)

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A. Standard of Review

As against a demurrer, a complaint "must be liberally construed to determine if it states a cause entitling a plaintiff to any relief, legal, equitable or extraordinary." (*Wilson v. Transit Authority of City of Sacramento* (1962) 199 Cal.App.2d 716, 720-21.) "Pleadings must be reasonably interpreted; they must be read as a whole and each part must be given the meaning that it derives from the context wherein it appears." (*Speegle v. Board of Fire Underwriters* (1946) 29 Cal.2d 34, 42.) All that is necessary as against a demurrer is to plead facts entitling the plaintiff to some relief. (*Tristam v. Marques* (1931) 117 Cal.App. 393, 397.)

In this case, Petitioner pleads that Respondent acted in bad faith and wrongfully denied a housing development project without making the findings required by the HAA. These facts, if proven, entitle Petitioner to reversal of Respondent's decision and an order approving the Project. (Gov. Code § 65589.5(k)(1)(A)(ii).) Indeed, the City Council staff report acknowledged that, "If the Project were subject to the HAA, Respondent's discretion would be limited because of the strict requirements of that law." (Exh, F, AR1188.) This is a tacit acknowledgement that if the HAA applies to the Project, Respondent would be required to approve it.

B. Petitioner Has Stated a Cause of Action Under The HAA

The question in this demurrer is whether a residential care facility, comprised of individual units with a shared kitchen and dining facility, constitutes a "housing development project" for the purposes of the HAA. The HAA defines "housing development project" as:

> . . . a use consisting of <u>any</u> of the following:
> (A) Residential units only.
> (B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.
> (C) Transitional housing or supportive housing.

(Gov. Code § 65589.5(h)(2), emph. added.) The Project proposes a 108-unit residential care facility for senior citizens. Petitioner must prevail on this demurrer because the Project is "a use consisting of … [r]esidential units." "Residential units" is not defined in the HAA, or elsewhere in California's Housing Element Law (Gov. Code § 65580 *et seq.*). The HAA contains no language that excludes residential care facilities from its scope; Respondent is attempting to read an exclusion into the HAA that simply does not exist. The HAA's purpose and plain language extend

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to the creation of *all* types of housing, including residential care facilities like the Project. Even if the Project's units were not "residential units" for the purposes of the HAA, the Project would qualify as "supportive housing" and a "mixed-use development" as defined by the HAA and related legislation.

1. The HAA Is A Remedial Statue That Must Be Construed Broadly To Promote The Creation Of Housing

In interpreting the HAA, the Court's fundamental task "is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute." (*Day v. City of Fontana* (2001) 25 Cal.4th.268, 272.) First, the HAA is a remedial statute, and as such, must be liberally construed to promote "the statewide goal of a sufficient supply of decent housing to meet the needs of all Californians." (Gov. Code § 65589(d), emph. added; *Bunner v. Imperial Ins. Co*. (1986) 181 Cal.App.3d 14, 20–21: A remedial statute should be liberally construed to promote its underlying public policy.)

Second, the HAA specifically requires that it be "interpreted and implemented in a manner to afford *the fullest possible weight* to the interest of, and the approval and provision of, *housing*." (Gov. Code § 65589.5(a)(2)(L), emph. added.) This is the lens through which the HAA must be interpreted. A purpose-led interpretation of "housing development project" requires that it be liberally construed to promote the creation of "housing." Importantly, the HAA's legislative findings do not qualify or otherwise restrict the term "housing." The findings refer generally to the approval of "housing" for "all Californians." (Gov. Code § 65589.5(a)(2)(B).) Nothing in the legislative findings suggests that "housing" should be construed narrowly so as to exclude housing for senior citizens. To the contrary, the HAA directs that it be "construed consistent with, and in promotion of, the statewide goal of a sufficient supply of decent housing to meet the needs of all Californians." (Gov. Code § 65589(d).)

When the Court is faced with a choice between two interpretations, one of which would promote housing and the approval of code-compliant projects, and the other would inhibit housing, the former construction must be adopted. Respondent's interpretation of the HAA would artificially narrow its scope and make it more difficult to build housing for senior citizens – the very opposite of the HAA's purpose.

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2. The Project Qualifies As "Residential Units" Under The HAA

i. A Residential Care Facility Meets The Plain Language Definition of "Residential Units"

It is well-established under the "plain meaning" rule that the courts will adopt a literal interpretation of a statutory term, "unless it is repugnant to the obvious purpose of the statute." (*Lungren v. Deukmejian* (1988) 45 C.3d 727, 735.) As the California Supreme Court has observed, "[b]ecause the statutory language is generally the most reliable indicator of legislative intent, we first examine the words themselves, giving them their usual and ordinary meaning and construing them in context. (*Esberg v. Union Oil Co.* (2002) 28 Cal.4th 262, 268.) And as the Court of Appeal has held, *when interpreting the HAA*, "The words of the statute are the starting point. Words used in a statute should be given the meaning they bear in ordinary use." (*Honchariw*, (2011) 200 Cal. App. 4th 1066, 1073.)

Here, the HAA's definition of "housing development project" includes a use comprising "residential units only." "Residential units" is not defined in the HAA (or elsewhere in the Housing Element law), which in itself suggests it is not meant as a term of art. The Merriam-Webster Dictionary defines "residential" as "used as a residence or by residents," and "residence" is defined as "the place where one actually lives."[1] Similarly, "reside" means "to dwell permanently or continuously."[2] That is, "residential unit" plainly means a unit that is the occupant's primary and permanent place of residence, as opposed to a transient or temporary stay. The HAA does *not* require that residential units include separate cooking or eating facilities in order to qualify for approval under the HAA, and the City has cited no authority to this effect.

The Project at issue in this case proposes 68 assisted living and 40 memory care units – a total of 108 individual units, with shared dining and recreational amenities. Each unit has its own living room, sleeping are, and bathroom. (RJN Exh. N.) Senior citizens will live in the units as their permanent and continuous place of residence. These dwellings are clearly akin apartment units and unlike, for example a hospital or hotel room. The fact that the Project is composed of residential

[1] *See* "Residential." *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/residential; "Residence." *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/residence. Accessed 27 Jul. 2020.

[2] *See* "Reside." *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/reside; "Reside." Accessed 27 Jul. 2020.

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care units does not change the fact that they are "residential units" for the purposes of the HAA, because the HAA's plain language extends to *all* residential units.

ii. The Simi Valley Municipal Code Confirms That Residential Care Facilities Have Residential Units And Are A Residential Use.

Respondent's own Code supports the proposition that a residential care facility is composed of residential units. Simi Valley Municipal Code ("SVMC") § 9-80.020 defines a "Residential Care Facility" as a "single-dwelling unit or multiple-unit facility . . . that provides 24-hour non-medical care of unrelated persons who are in need of personal services . . . ." (RJN Exh. H.) Moreover, § 9-24.030 states that residential care facilities are "Residential Uses" – a category that also includes multi-family dwellings, single-family dwellings, and other types of housing. (RJN Exh. 10 at 5-6.) By contrast, hospitals are classed as a "Retail and Service" use. (*Id.*) That is, Respondent's own Code clearly states that residential care facilities like the Project are "residential uses" that contain "dwelling units." Because the Project is unambiguously a residential use, containing residential accommodation, its units are residential in nature. The Respondent is improperly attempting to read qualifications into the term "residential unit" in order to limit its scope, and the position it has taken in this litigation is inconsistent with its own Code.

As discussed above, the HAA directs the courts to interpret its provisions in a manner that affords the "fullest possible weight" to the approval of housing. (Gov. Code § 65589.5(a)(2)(L).) Consistent with this directive, residential care units must be classified as "residential units." Given that the HAA does not in any way exclude residential units for seniors from its scope, the Project is a "housing development project" and is entitled to mandatory approval under the HAA.

iii. Respondent's Interpretation Would Lead To An Absurd Result

It is well-established that if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed. (*Troppman v. Valverde* (2007) 57 Cal.Rptr.3d 306.) The courts must construe a statute to promote its purpose, render it reasonable, and avoid absurd consequences. (*Baker-Hoey v. Lockheed Martin Corp.* (App. 4 Dist. 2003) 3 Cal.Rptr.3d 593.) Here, Respondent's argument – that a residential care unit is not a "residential unit" – would lead to an absurd result and must be rejected.

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The definition of "housing development project" includes "[m]ixed-use developments consisting of residential and nonresidential **uses** with at least two-thirds of the square footage designated for residential use." (Gov. Code § 65589.5(h)(2)(B), emph. added.) (It is worth noting that this definition focuses on residential *uses*, not *units*.) As noted above, "residential" means "used as a residence or by residents," and a person "resides" in the place he or she dwells "permanently or continuously." (Merriam-Webster, *supra*.) A residential care facility is therefore a residential "use" because its occupants reside there permanently and continuously. Indeed, the SVMC states that residential care facilities are a "residential use." (SVMC, § 9-24.030; See also RJN Exh. I.) This means that a project proposing a residential care facility for at least two-thirds of its square footage, combined with *any* non-residential use, is a "mixed-use development" (and therefore a housing development project) for the purposes of the HAA.

If a residential care unit were not a "residential unit" under the HAA, it would lead to a ridiculous result that undermines the HAA's purpose: a residential care facility would be deemed a "housing development project" under para (h)(2)(B) if it included an additional, non-residential use, but not under para (h)(2)(A) (residential only) if it were the only use. This is patently absurd; the HAA's applicability to a project cannot depend on the addition of a *non*-residential use.

3. The Project Is Also A "Mixed Use Development" Under The HAA

The HAA's definition of "housing development project" also includes "[m]ixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use." (Gov. Code § 65589.5(h)(2)(B).) Similarly, SVMC § 9-80.020.M defines a Mixed-Use Development as "[a] cohesive development that contains a combination of commercial, office, and residential uses side-by-side in a single building." (RJN Exh. H.)

Here, even if the Project did not include residential "units," it contains a combination of residential *uses* and nonresidential uses, and is therefore is a mixed-use development under both the HAA and the SVMC. To wit, the Project's residential units constitute at least two thirds of its square footage. As discussed *supra* at § III.B.2.i, the Project's residential units are a residential use because the occupants live there continuously and permanently, and Respondent's own Code

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defines a residential care facility as a "residential use." (SVMC, § 9-24.030; See also RJN Exh. 10.) In addition to the 108 residential care units, the Project contains nonresidential uses that make up less than one third of its square footage, including a commercial kitchen, offices, and a hair salon. The Project therefore qualifies as a "mixed-use development" (and therefore a housing development project) that is entitled to approval under the HAA.

4. The Project Is Also "Supportive Housing" Under The HAA

Even if the Project were not composed of "residential units," it is "supportive housing" for the purposes of the HAA, because it would provide housing for residents in need of memory care. The HAA's definition of "housing development project" explicitly includes "supportive housing." (Gov. Code § 65589.5(h)(2)(C)).) "Supportive housing" is defined in the state Housing Element law as any housing provided for certain "target populations." (Gov. Code § 65582(g).) These "target populations" include "elderly persons" with low incomes, and individuals of *any* income who would be eligible for services provided pursuant to the Lanterman Developmental Disabilities Services Act ("LDDS Act.") (Gov. Code § 65582(i).) In pertinent part, the LDDS Act provides services for individuals with "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability . . . ." (Welfare and Institutions Code § 4512.)

Here, the Project provides assisted living services and memory care units that will accommodate elderly people with conditions such as dementia and Alzheimer's disease. These are "disabling conditions" that are "closely related to intellectual disability" and "require treatment similar to that required for individuals with an intellectual disability."[3] As such, residents of the Project would be eligible for services provided pursuant to the LDDS Act. This means that even if the Project were not comprised of residential units (and it is), the Project would be entitled to mandatory approval as "supportive housing."

[3] The US Alzheimer's Association notes that disorders grouped under the general term "dementia" are caused by abnormal brain changes that trigger "a decline in thinking skills, also known as cognitive abilities, severe enough to impair daily life and independent function." Alzheimer's Association, *What Is Dementia? available at* https://www.alz.org/alzheimers-dementia/what-is-dementia (last visited Jul. 28, 2020).

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The Respondent incorrectly claims that "supportive housing" is targeted only at the homeless population. This narrow interpretation conflicts with the plain language of the HAA and the Welfare and Institutions Code, and has no basis.

C. Respondent's Arguments On Demurrer Cannot Prevail

Respondent advances only two arguments in support of its attempt to circumvent the HAA's clear requirement that the Project be approved. First, Respondent claims that residential care units do not count toward its Regional Housing Needs Allocation ("RHNA") obligation, so they cannot be classified as a "housing development project." This argument requires several leaps in logic and is unsupported by the plain language of the state Housing Element law (Gov. Code § 65580 *et seq*.). Second, Respondent cites failed attempts to amend the HAA as evidence of its meaning, notwithstanding the extensive authorities holding that this type of legislative history is unhelpful in determining legislative intent.

1. The Department of Housing and Community Development's Guidelines Do Not Assist Respondent.

a. There Is No Link Between What Constitutes a "Housing Unit" For RHNA Purposes, And A "Residential Unit" For HAA Purposes.

The state Housing Element law requires all California cities to meet their share of the regional housing target. (Gov. Code § 65583.2.) As part of the RHNA process, all cities must conduct an inventory of land, identify specific sites that are suitable for the creation of new housing, and identify how many units could be built on each site. (*Id.*) The Department of Housing and Community Development ("HCD") is responsible for overseeing the RHNA process. Respondent suggests that because HCD does not count "group quarter" housing as "housing units" for RHNA purposes, residential care units are not "residential units" for HAA purposes.

But there is no link between the HCD's administrative interpretation regarding what constitutes a "unit" for RHNA purposes, and the Legislature's language regarding what constitutes a "housing development project" under the HAA. Respondent provides no authority for its contention that HCD's RHNA Guidelines should drive the Court's interpretation of the HAA. This is because there *is no such authority* – nothing in the HAA, its legislative history, or interpreting authorities, link the RHNA process to the construction of the HAA.

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b. A Kitchen Is Not Required for A Unit To Be Counted Under RHNA.

Respondent asserts that a housing unit can only be counted in the RHNA process if it contains a kitchen. This is incorrect; the Housing Element law specifically includes categories of housing in the RHNA process that *do not include kitchens*. For example, Gov. Code § 65583(c)(1) enumerates Single Room Occupancy housing in the list of housing types that the Housing Element/RHNA process is meant to create. Single Room Occupancy housing does *not* include individual kitchens. Therefore, a unit does not need a kitchen in order to count towards RHNA.

Respondent further asserts that the Census definition of a "unit" applies to the HAA because the HCD guidelines use the Census definition. Respondent argues: "HCD only gives credit for 'housing units' as defined by the California Department of Finance . . . which is the same as the US Census definition for a housing unit." (RJN Exh. F, AR1188.) However, Respondent's argument is premised on an *outdated* census definition. The current, 2010 Census definition, defines "housing unit" as follows:

> a house, an apartment, a group of rooms, or a single room intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live separately from any other individuals in the building and which have a direct access from the outside of the building or through a common hall . . . . ***Units in assisted living facilities are considered to be housing units***, however, units in nursing homes are not considered to be housing units.

(RJN Exh. J, emph. added.) Under the Respondent's own approach, the Project is composed of "residential units" because assisted living units are expressly included in the 2010 Census definition. The Project qualifies as an "assisted living facility" because it includes 68 "assisted living" units. (RJN Exh. A.) The current definition also does not refer to separate eating or cooking facilities, and would apply to the Project because the residents reside in separate living quarters and have direct access to their units through a common hall.

Even if the old definition of "housing unit" applied (and it does not), the Project would also meet this definition. Respondent claims that the outdated Census definition excludes residential care units because it defines a "housing unit" as:

> 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 and which have direct access from the outside of the building or through a common hall.

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(RJN Exh. K, emph. added.) This definition does not exclude residential care facilities like the Project. The Project proposes single rooms intended to be lived in by separate occupants. (RJN Exh. A, AR915.) Each room would have its own bathroom and living area. (RJN Exh. N.) The rooms also have direct access through a common hall, as shown on the site plan. (*Id*.) Although the units do not have individual kitchens, so that the residents would eat together, the residents do not "live" with other persons in the building; each resident would live separately in his or her own unit. The Project provides some shared amenities, such as a lounge and hair salon (RJN Exh. A, AR916), but so do many apartment buildings. Sharing a common amenity with unrelated persons who happen to live in the same building is not the same thing as living together. That is, the residents of the Project do not "live *and* eat" together. Therefore, the Project also meets the old Census definition of "housing unit" relied on by Respondent. Under either standard, the Project includes housing units.

c. Even If HCD Requires A Kitchen To Count A Housing Unit For RHNA Purposes, Its Interpretation Is Incorrect.

Even if Respondent had accurately represented HCD's "housing unit" definition, and *even if* this interpretation were somehow relevant to the HAA's definitions of "residential unit" and "residential use," HCD's interpretation is incorrect. If the HCD's "unit" definition excluded *all* housing with shared dining or living areas from the RHNA process as Respondent claims, it would be incorrect, because this approach conflicts with the state Housing Element law itself. To wit, Gov. Code § 65583(c)(1) requires cities to identify sites for the development of "a variety of types of housing for all income levels, **including** multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing." (Respondent's RJN, Exh. 3G, HCD Housing Element Site Inventory Guideline, emph. added.)

This non-exhaustive list includes several categories of housing that, under Respondent's approach, would not meet HCD's "unit" definition. For example, single-room occupancy units usually do not include a kitchen,[4] yet they may be counted in the RHNA inventory. The units in the

[4] SVMC § 9-80.020 defines a "Single Room Occupancy" unit as a "small residential unit (usually between 200-350 square feet) consisting of one habitable room in a structure with other similar units. Residents may share bathrooms and/or kitchen facilities . . . ." (See RJN Exh. 9.)

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Project are analogous to single-room occupancy units, in that the occupants live separately in their individual units but have shared amenities. The Legislature's inclusion of single-room occupancy units (and similar forms of housing) in the RHNA process shows that it did not intend to limit RHNA's scope to units with separate living and eating facilities. (Gov. Code section 65583(c)(1).) A residential care unit may therefore satisfy the Housing Element's definition of "unit."

d. The HCD's Interpretation Is Not Entitled To Deference.

If the HCD's interpretation excludes residential care facilities (and it arguably does not), then HCD's interpretation of Housing Element law is wrong, as shown above. Moreover, even if HCD's interpretation were plausible, the agency's interpretation is not entitled to deference. The courts have expressly held that the Legislature did not delegate interpretive authority to an agency merely because it enacted an ambiguous statute. (See *Spanish Speaking Citizens' Found., Inc. v. Low* (2000) 85 Cal.4th 1179, 1216: the courts are not required to follow reasonable agency interpretation of ambiguous statute.) Rather, the courts must exercise independent judgment. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7-8.) Here, the expansive language of Gov. Code § 65583(c)(1) makes it clear that housing with shared amenities should be counted as part of the RHNA process. If HCD's interpretation is inconsistent with the statutory language, then the interpretation is incorrect.

D. The Legislative History Does Not Support Respondent's Interpretation Of The HAA.

1. Legislative History Cannot Be Used To Create Ambiguity.

Respondent argues that the HAA does not extend to residential care facilities because unsuccessful amendments to the HAA have been proposed to make explicit what Petitioner asserts was already implicit in the HAA's definitions. Respondent's invocation of the HAA's legislative history is inapposite, given that as discussed above, the terms "residential unit" and "residential use" have a clear literal meaning. (*Milner v. Dep't of Navy* (2011) 562 U.S. 562, 574: "Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it.") Because the HAA contains clear statutory language regarding its scope and purpose, it is not necessary or appropriate to resort to the legislative history. Respondent's approach seeks to *create* ambiguity

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rather than clear it up. Accordingly, pronouncements by members of the Legislature and the Governor, or prior attempts to amend the HAA cannot be used to muddy the HAA's plain language.

2. Attempts To Amend The HAA Are Irrelevant To The Interpretive Process, And In Any Event Have Been Overtaken By Subsequent Amendments To The HAA.

The authorities cited by Respondent are inapposite. Respondent notes that the Legislature has previously attempted to make explicit that the HAA includes congregate housing, such as residential care facilities, but these bills were either vetoed or abandoned. Respondent suggests that these failed amendments should bind the Court's present interpretation of the statutory language. This is not correct, and it is unsupported by the authorities. It is well-established that the "[Courts] do not consider unsuccessful subsequent bills to be helpful in determining the Legislature's earlier intent." (*Nevarrez v. San Marino Skilled Nursing & Wellness Centre, LLC* (2013) 221 Cal.App.4th 102, 133.) Here, Respondent relies on:

i. Statements made by members of the Legislature as to the meaning of the HAA, which are "neither binding nor conclusive. The Legislature has no authority to interpret a statute. That is a judicial task." (*Granberry v. Islay Investments,* (1995) 9 Cal.4th 738, 746.)

ii. Bills that attempted to amend the HAA but did not pass. But unpassed bills, "as evidences of legislative intent, have little value." (*Granberry v. Islay Investments*, *supra*, 746.) The courts "can rarely determine from the failure of the Legislature to pass a particular bill what the intent of the Legislature is with respect to existing law." (*Ingersoll v. Palmer* (1987) 43 Cal.3d 1321, 1349.) As the California Supreme Court held, "there is little logic and some incongruity in the notion that one Legislature may speak authoritatively on the intent of an earlier Legislature's enactment . . . ." (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 244.)

iii. Veto statements, to which the Court owes "no deference." (*Martinez v. Regents of Univ. of California* (2010) 50 Cal. 4th 1277, 1289.)

All of the authorities cited by the Respondent are distinguishable, as they all involve a different question: how the court should approach earlier versions of the *same bill* when interpreting the finally-enacted legislation. For instance, in *Rich v. State Board of Optometry* the Court was interpreting the final language of a bill that had been amended during the legislative process. (*Rich v. State Board of Optometry* (1965) 235 Cal.App 2d 591.) Similarly, the Court in

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People v. Brannon analyzed the legislature's intent when it removed language from a bill before it was finally enacted, rather than a failed subsequent attempt to amend an existing statute. (*People v. Brannon* (1973) Cal. App.3d 971, 976-977.) These cases are entirely different from what occurred here, where the legislature attempted and failed to amend the pre-existing language of the HAA. Respondent misses the distinction between a failed attempt to insert language into a bill before that bill is finally passed, and a failed attempt to place new language into an existing statute.

The California Courts have consistently held that failed attempts to include language in a statute cannot speak to the meaning of a previously defined term. At most, the failed amendments to the HAA might reflect the *subsequent* Legislature's intent at the time those amendments were proposed. However, it " provides very limited, if any, guidance even as to that intent" because the failure to enact an amendment "may indicate many things other than approval of a statute's judicial construction, including the pressure of other business, political considerations, or a tendency to trust the courts to correct its own errors." (*Sierra Club v. San Joaquin Local Agency Formation Com*. (1999) 21 Cal.4th 489, 506.)

In any event, the definition of "mixed-use development" was significantly broadened *after* the Legislature attempted to explicitly include "congregate housing" in the HAA. (RJN Exh. L.) Previously, the HAA restricted the commercial uses in a "mixed-use development" to "neighborhood commercial uses" on the first floor of a project. (RJN Exh. M.) In 2018, this definition was expanded so that a mixed-use development can now include *any* non-residential use, including a salon or offices. This new definition clearly includes the proposed Project.

In sum, Respondent's reliance on failed attempts to amend the HAA is misplaced. These attempts cannot be relied on by the Court. In any event, these early legislative quarrels have been overtaken by the recent expansion of the HAA's "mixed-used development" definition.

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court give the HAA its full effect and reject Respondent's demurrer.

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