2d Civil No. B314750
LASC No. 20STCP07711

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION 4

SNOWBALL WEST INVESTMENTS L.P., a California Limited Partnership,

Petitioner and Appellant,

v.

CITY OF LOS ANGELES; and CITY OF LOS ANGELES DEPARTMENT OF CITY PLANNING,

Respondents.

Appeal from the Superior Court of Los Angeles County,
The Honorable Mitchell L. Beckloff, Department 86
Case No. 20STCP00711

RESPONDENT CITY OF LOS ANGELES' BRIEF

MICHAEL N. FEUER, City Attorney (SBN 111529x)
TERRY P. KAUFMANN MACIAS, Sr. Ass't City Atty. (SBN 137182)
DONNA WONG, Deputy City Attorney (SBN 210741)
200 North Main Street, City Hall East, Room 701
Los Angeles, California 90012
Telephone: 213.978.8064; Fax: 213.978.8090
E-mail: Donna.Wong@lacity.org

Attorneys for Respondents,
CITY OF LOS ANGELES

Document received by the CA 2nd District Court of Appeal.

INITIAL CERTIFICATE OF INTERESTED ENTITES OR PERSONS

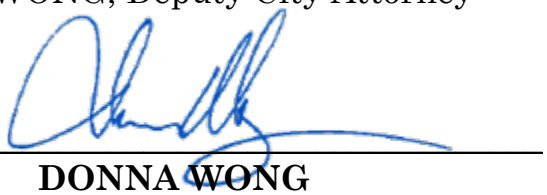
(Cal. Rules of Ct., Rule 8.208)

This form is being submitted on behalf of the Respondents, City of Los Angeles and City of Los Angeles Planning Commission (City of Los Angeles).

There are no interested entitles or parties that need to be listed in this certificate under Rule 8.208.

Dated: July 28 2022

MICHAEL N. FEUER, City Attorney
TERRY P. KAUFMANN MACIAS, Sr. Ass't City Atty.
DONNA WONG, Deputy City Attorney

By: 

DONNA WONG
Deputy City Attorney

Attorneys for Respondents,
CITY OF LOS ANGELES; CITY OF LOS ANGELES DEPARTMENT OF CITY PLANNING

Document received by the CA 2nd District Court of Appeal.

TABLE OF CONTENTS

Page

I. INTRODUCTION 20

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY 23

A. The Project Proposes 215 Units On A Site With A Maximum Density of 19 23

B. The Tentative Map Includes A Zone Change Condition 25

C. The City Denied Upzoning For Density In Light of Wildfires and Other Specified Factors 25

D. The City Denied A Clearance For The Project's Zone Change Condition Due To Zoning and General Plan Footnote 23 27

E. The Trial Court Denied Snowball's Writ Petition, And The Parties Facilitated This Appeal. 28

III. REGULATORY AND LEGISLATIVE BACKGROUND 30

A. General Plan Footnote 23 Makes A Land Use Category Consistent With Listed Zones "As Well As" Unlisted More Restrictive Zones 30

B. The HAA Makes Inconsistent Zoning A Prerequisite To Applying Plan Density 33

Document received by the CA 2nd District Court of Appeal.

C. The HAA Authorizes The Enforcement Of Objective Standards, And Regulates Decisions On PSA Applications 35
IV. STANDARD OF REVIEW 38
A. The Court Determines Whether The City's Denial of Legislation and A Map Clearance Is Arbitrary, Capricious or Unreasonable 38
B. The City Is Entitled To Deference On Its Interpretation of City Land Use Regulations, And Its General Plan Consistency Determination 39
C. Snowball Erroneously Claims The HAA's Preponderance Of Evidence And Reasonable Person Standards Apply 40
1. HAA Requirements Are Tied To PSA Events That Do Not Apply To This Project Dependent On Legislation 40
2. The "Reasonable Person" Standard Addresses Whether A "Development," Not Property Zoning, Is Consistent 43
3. The Disapproval Requirements Apply To Developments, Unlike The Project, That Comply With Applicable Standards 44

Document received by the CA 2nd District Court of Appeal.

4. The HAA Does not Regulate The Project's Post-Decision Clearances Or Final Map Requirements 45
D. Snowball Bears The Burden To Demonstrate A Right To The Writ, And That The Judgment Is Wrong or Unsupported 47
E. Collateral Estoppel Was Not Raised In the Trial Court And Is Waived 49
V. LEGAL ARGUMENT 50
A. The City's Denial Of Upzoning Legislation Is Lawful, And Not Arbitrary or Unreasonable 50
1. Snowball's Project Fails To Comply With Applicable Standards And Does Not Trigger The Disapproval Requirements 50
2. Council's Denial of Upzoning Legislation Is An Exercise of Discretion Entitled to Deference . 52
3. The Denial Is Based On Written Determinations About Public Safety and Zoning Practice 54
4. The Record Has Ample Evidence to Support Council's Denial 56
5. LAMC§12.32 And Footnote 23 Are Silent About When Zone Changes Must Be Approved 59

Document received by the CA 2nd District Court of Appeal.

B. Snowball Fails To Establish A HAA Obligation To Apply Plan Density And Excuse The Project's Zone Change 61
1. Zone-Plan Inconsistency Is A Prerequisite To Applying Plan Density Without A Zone Change 61
2. Footnote 23 Explains That The Property Fails to Satisfy The Zone-Plan Inconsistency Prerequisite 64
3. The City's Interpretation of Footnote 23 Is Entitled to Deference 68
4. The Property's Zoning Is Consistent And Compatible With General Plan Policies, And Does Not Violate A Mandatory Plan Policy.... 70
5. Warner Ridge Did Not Decide The Issues Here, Does Not Change The Analysis, And The Argument Is Waived 76
6. Snowball Completely Fails At Establishing An Alleged Obligation Under The HAA 79
C. Snowball's Noncompliance With The Zone Change Condition Is An Alternative Basis to Uphold the Judgment 82

Document received by the CA 2nd District Court of Appeal.

1. The Zone Change Condition is Enforceable Because HAA Claims Are Barred And Waived 82
2. The City Raised The Statute of Limitations, But The Trial Court Abused Its Discretion When It Denied An Amended Answer To Plead This Meritorious Defense 84
3. The Clearance Denial Is Factually And Legally Valid 87
D. There Is No Bad Faith 89
1. The City's Actions Are Lawful Under The HAA and General Plan 89
2. The Referenced Housing Crisis Act Section Does Not Apply To Legislation, Or Clearances 90
3. The Record Discloses Compliance With Applicable Procedures And A Response To Constituent Concerns 90
4. One Case Does Not Constitute a Pattern Or Practice 92
VI. CONCLUSION 93
CERTIFICATE OF COMPLIANCE 94

Document received by the CA 2nd District Court of Appeal.

TABLE OF AUTHORITIES

Page(s)

Cases

Arnel Development Co. v, City of Costa Mesa
(1980) 28 Cal.3d 511 ..... 41, 45, 53, 91

Associated Builders & Contractors, Inc. v. San Francisco Airports Commission
(1999) 21 Cal.4th 352..... 48

Bankers Hill 150 v. City of San Diego
(4th Dist. 2022) 74 Cal.App.5th 755 42

Bay Area Citizens v. Association of Bay Area Governments
(1st Dist. 2016) 248 Cal.App.4th 966..... 61

Bettencourt v. Hennessy Industries, Inc.
(1st Dist. 2012) 205 Cal.App.4th 1103..... 86

Bright Development v. City of Tracy
(3rd Dist. 1993) 20 Cal.App.4th 783 39

Brown v. County of Los Angeles
(2nd Dist. 2012) 203 Cal.App.4th 1529..... 62

Building Code Action v. Energy Resources Conservation etc.
(1st Dist. 1980) 102 Cal.App.3d 577 91

Burkle v. Burkle
(2nd Dist. 2006) 144 Cal.App.4th 387..... 89

California Building Industry Assn. v. State Water Resources Control Bd. (*CBIA*)
(2018) 4 Cal.5th 1032..... 65

Document received by the CA 2nd District Court of Appeal.

TABLE OF AUTHORITIES (CONT'D)

Page(s)

Cases (cont'd)

California Federation of Teachers v. Oxnard Elementary Schools
(2nd Dist. 1969) 272 Cal.App.2d 514 48

California Renters etc. v. City of San Mateo
(1st Dist.2021) 68 Cal.App.5th 820..... 42, 43, 92

Californians for Native Salmon etc. v. Department of Forestry
(1st Dist. 1990) 221 Cal.App.3d 1419 93

Carson Harbor Village, Ltd v. City of Carson etc.
(2nd Dist. 1999) 70 Cal.App.4th 281..... 60

Chandis Sec. Co. v. City of Dana Point
(4th Dist. 1996) 52 Cal.App.4th 475 53

Church v. San Mateo County etc.
(1st Dist. 2022) 52 Cal.App.5th 310..... 77

Citizens for Beach Rights v. City of San Diego
(4th Dist. 2017) 17 Cal.App.5th 230 66

Citizens for Improved Sorrento Access, Inc. v. City of San Diego
(4th Dist. 2004) 118 Cal.App.4th 808,814 48

City of Monterey v. Carrnshimba
(6th Dist. 2013) 215 Cal.App.4th 1068 ..... 39, 60, 69

City of Morgan Hill v. Bushey
(2018) 5 Cal.5th 1068..... 67

City of Torrance v. Southern California Edison Co.
(2nd Dist. 2021) 61 Cal.App.5th 1071..... 85

Document received by the CA 2nd District Court of Appeal.

TABLE OF AUTHORITIES (CONT'D)

Page(s)

Cases (cont'd)

City of Walnut Creek v. County of Contra Costa
(1st Dist.1980) 101 Cal.App.3d 1012 69

Common Cause v. Board of Supervisors
(1989) 49 Cal.3d 432 ..... 47, 51, 80

Cormier v. County of San Luis Obispo
(2nd Dist. 1984) 161 Cal.App.3d 850 ..... 53, 59

Corona-Norco Unified etc. v. City of Corona
(4th Dist. 1993) 17 Cal.App.4th 985 .....*passim*

County of Los Angeles v. County of Los Angeles Assessment Appeals Bd.
(2nd Dist. 1993) 13 Cal.App.4th 102..... 77

County of Sacramento v. Hickman
(1967) 66 Cal.2d 841 70

County of San Diego v. San Diego NORML
(4th Dist. 2008) 165 Cal.App.4th 798 62

deBottari v. City Council
(4th Dist. 1985) 171 Cal.App.3d 1204..... 67

DiCampli-Mintz v. County of Santa Clara
(2012) 55 Cal.4th 983.....*passim*

East Bay Mun. Utility Dist. v. Department of Forestry etc.
(1st Dist. 1996) 43 Cal.App.4th 1113..... 93

Document received by the CA 2nd District Court of Appeal.

TABLE OF AUTHORITIES (CONT'D)

Page(s)

Cases (cont'd)

Elysian Heights etc. v. City of Los Angeles
(2nd Dist. 1986) 182 Cal.App.3d 21 66

Endangered Habitats League, Inc. v. County of Orange
(4th Dist. 2005) 131 Cal.App.4th 777 71

Ensign Bickford Realty Corp. v. City Council
(1st Dist. 1977) 68 Cal.App.3d 467 ..... 38 53

Families Unafraid etc. County v. County Board of Supervisors
(3rd Dist. 1998) 62 Cal.App.4th 1332 72

Federation of Hillside etc. v. City of Los Angeles
(2nd Dist. 2004) 126 Cal.App.4th 1180..... 45

Franklin Mint Co. v. Manatt, Phelps etc.
(2nd Dist. 2010) 184 Cal.App.4th 313..... 49, 77

Great Western etc. v. City of Los Angeles
(2nd Dist. 1973) 31 Cal.App.3d 403 ..... 48, 87, 88

Greenfield v. Mandalay Shores etc.
(2nd Dist. 2018) 21 Cal.App.5th 896..... 60, 69

Hawkins v. County of Marin
(1st Dist. 1976) 54 Cal.App.3d 587 83

Hensler v. City of Glendale
(1994) 8 Cal.4th 1..... 83, 84

Hernandez v. City of Pomona
(2009) 46 Cal.4th 501..... 77

Document received by the CA 2nd District Court of Appeal.

TABLE OF AUTHORITIES (CONT'D)

Page(s)

Cases (cont'd)

Honchariw v. County of Stanislaus
(5th Dist. 2011) 200 Cal.App.4th 1066 42

Hopkins v. Hopkins
(2nd Dist. 1953) 116 Cal.App.2d 174 ..... 86, 87

Hyman v. Tarplee
(1st Dist. 1944) 64 Cal.App.2d 805 ..... 86, 87

Jacobson v. County of Los Angeles
(2nd Dist. 1977) 69 Cal.App.3d 374 ..... 50, 77

Kramer v. State Board of Accountancy
(2nd Dist. 1962) 200 Cal.App.2d 163 91

Land Waste Management v. Contra Costa County
(1st Dist. 1990) 222 Cal.App.3d 950 40

Landi v. County of Monterey
(1st Dist.1983) 139 Cal.App.3d 934 ..... 40, 41

Lesher Communications, Inc. v. City of Walnut Creek
(1990) 52 Cal.3d 531 .....*passim*

Lockard v. City of Los Angeles
(1949) 33 Cal.2d 453 .....*passim*

Long Beach Police Officer Association v. City of Long Beach
(2nd Dist. 1984) 156 Cal.App.3d 996 48

Document received by the CA 2nd District Court of Appeal.

TABLE OF AUTHORITIES (CONT'D)

Page(s)

Cases (cont'd)

Los Angeles v. San Fernando
(1975) 14 Cal.3d 199 79

Marshall v. Marshall
(2nd Dist. 1956) 140 Cal.App.2d 475 ..... 86, 87

MCH Operating Lt'd Partnership v. City of San Jose
(6th Dist. 2003) 106 Cal.App.4th 204 60

Meridian Ocean Systems, Inc. v. State Land Commission
(2nd Dist. 1990) 222 Cal.App.3d 153 41

Millennium Corporate Solutions v. Peckinpaugh
(2nd Dist. 2005) 126 Cal.App.4th 352..... 89

Mira Development Corp. v. City of San Diego
(4th Dist. 1988) 205 Cal.App.3d 1201..... 41

Morgan v. Superior Court of Los Angeles County
(2nd Dist. 1959) 172 Cal.App.2d 527 86

Napa Citizens for Honest Government v. Napa County Bd. of Supervisors
(1st Dist. 2001) 91 Cal.App.4th 342..... 30

Naraghi Lakes etc. v. City of Modesto
(5th Dist. 2016) 1 Cal.App.5th 9 ..... 71, 73

Nestle v. Santa Monica
(1972) 6 Cal.3d 920 85

No Oil, Inc. v. City of Los Angeles
(2nd Dist. 1987) 196 Cal.App.3d 223 ..... 39, 60, 69

Document received by the CA 2nd District Court of Appeal.

TABLE OF AUTHORITIES (CONT'D)

Page(s)

Cases (cont'd)

Pacific Palisades Bowl etc. v. City of Los Angeles
(2012) 55 Cal.4th 783 ..... 46, 75

Palmdale Hospital Medical Center v. Department of Health Services
(2nd Dist. 1992) 8 Cal.App.4th 1306 ..... 78, 79

Peake v. Underwood
(4th Dist. 2014) 227 Cal.App.4th 428 89

People v. Snook (*Snook*)
(1997) 16 Cal.4th 1210 ..... 43, 46, 60

People v. Tingcungco
(2nd Dist. 2015) 237 Cal.App.4th 249 62

People v. Wilkinson
(2004) 33 Cal.4th 821 ..... 51, 66, 90

Pfeiffer v. City of Sunnyvale City Council
(6th Dist. 2011) 200 Cal.App.4th 1552 ..... 71, 73

Pomona Police Officer's Association v. City of Pomona
(2nd Dist. 1997) 58 Cal.App.4th 578 39

Raceway Ford Cases
(2016) 2 Cal.5th 161 91

Rhiner v. Worker's Comp. Appeals Bd.
(1993) 4 Cal.4th 1213 68

Document received by the CA 2nd District Court of Appeal.

TABLE OF AUTHORITIES (CONT'D)

Page(s)

Cases (cont'd)

San Franciscans etc. v. City and County of San Francisco
(1st Dist. 2002) 102 Cal.App.4th 656 73

Schafer v. City of Los Angeles
(2nd Dist. 2015) 237 Cal.App.4th 1250 81

Schreiber v. City of Los Angeles
(2nd Dist. 2021) 69 Cal.App.5th 549 45

Select Base Materials, Inc. v. Bd. of Equalization
(1959) 51 Cal.2d 640 ..... 46, 63, 75

Sequoyah Hills Homeowners Association v. City of Oakland
(1st Dist. 1993) 23 Cal.App.4th 704 ..... 71, 72, 74, 75

Shamisan v. Department of Conservation
(2nd Dist. 2006) 136 Cal.App.4th 621 ..... 51, 80

Sherwin Williams Co. v. City of Los Angeles
(1993) 4 Cal.4th 893 76

Sladovich v. County of Fresno
(4th Dist. 1958) 158 Cal.App.2d 230 53

Smith v. County of Santa Barbara
(2nd Dist. 1992) 7 Cal.App.4th 770 81

Document received by the CA 2nd District Court of Appeal.

TABLE OF AUTHORITIES (CONT'D)

Page(s)

Cases (cont'd)

Soderling v. City of Santa Monica
(2nd Dist. 1983) 142 Cal.App.3d 501 88

Stardust Mobile Estates, LLC v. City of San Buenaventura
(2nd Dist. 2007) 147 Cal.App.4th 1170..... 49

Stubblefield Construction v. City of San Bernardino
(4th Dist. 1995) 32 Cal.App.4th 687 92

Sumner Hill Homeowners' Assoc. Inc. v. Rio Mesa Holdings
(5th Dist. 2012) 205 Cal.App.4th 999 84

Tandy v. Oakland
(1st Dist. 1962) 208 Cal.App.2d 609 ..... 38, 52

Toso v. City of Santa Barbara
(2nd Dist. 1980) 101 Cal.App.3d 934 53

Venice Coalition etc. v. City of Los Angeles
(2nd Dist. 2019) 31 Cal.App.5th 42..... 67

Warner Ridge Assoc. v. City of Los Angeles
(1991) 2 Cal.App.4th 238.....*passim*

Yamaha Corp. of America v. St. Bd. Of Equal.
(1998) 19 Cal.4th 1.....*passim*

Youngblood v. Board of Supervisors
(1978) 22 Cal.3d 644 87

Document received by the CA 2nd District Court of Appeal.

TABLE OF AUTHORITIES (CONT'D)

Page(s)

California Statutes

Civil Code
§§13,1645 70

Code of Civil Procedure
§§472, 473(a)(1), 576 85
§475 ..... 48, 82
§1085(a) 47, 51
§1094.5 49
§1094.5(c) 59
§1109 47
§1858 ..... *passim*

Evidence Code
§500 47
§664 49

Government Code
§54950 et seq. 91
§54954.3(a) 91
§54954.3(b) 92
§65009 ..... 21, 66, 67, 83
§65009(c)(1)(A) 67
§65009(c)(1)(B) 66
§65300 30
§65589.5 49
§65589.5(a)(3),(d)(2)(A),(j)(1) 47
§65589.5(d)(2),(h),(j)(1) 36
§65589.5(d)(5) 62
§65589.5(f)(1),(h)(2),(h)(8),(j)(1),(j)(4) 35
§65589.5(f)(1),(h)(8) 46

Document received by the CA 2nd District Court of Appeal.

TABLE OF AUTHORITIES (CONT'D)

Page(s)

Statutes (cont'd)

§65589.5(f)(4) 21, 37, 74
§65589.5(f)(4),(j)(1)-(2) 43
§65589.5(h) 33
§65589.5(h)(2),(h)(8),(j)(4) 33
§65589.5(h)(5) 36
§65589.5(h)(6),(j)(1) 45
§65589.5(h)(6),(h)(7),(j)(1) 49
§65589.5(h)(5),(h)(6),(h)(9),(j)(1)-(2) 37, 50
§65589.5(h)(9) 37
§65589.5(j)(1) 22, 44, 51
§65589.5(j)(1)-(2) 46
§65589.5(j)(1),(h)(6),(h)(8) 44
§65589.5(j)(1),(4) 80
§65589.5(j)(2) 33
§65589.5(j)(2)(A)-(B) 37
§65589.5(j)(4) ..... *passim*
§65589.5(k)(1)(B) 37
§65589.5(l) 89
§65589.6 37
§65860 ..... *passim*
§65860(a)(2) 35, 51, 70
§65860(a)(2),(c) 70
§65860(c) 66, 67, 77
§65905.5 90
§65905.5(a) and(b)(1) 90
§65905.5(b)(2) 90
§65905.5(c)(2) 90
§65913.4 62
§65913.4(a)(5)(A) 62
§65915(d) 55, 61
§65920(a) 36

Document received by the CA 2nd District Court of Appeal.

TABLE OF AUTHORITIES (CONT'D)

Page(s)

Statutes (cont'd)

§65920 et seq. 22, 36, 40
§65940 90
§§65940 and 65950 36
§§65940, 65941.1, 65943, 65950, 65952, 65956 41
§65941.1 36
§§65941.1(d), 65940, 65943 36
§65943 ..... 36, 37
§§65943 and 65941.1 36
§65950 ..... 36, 40, 41
§65950(a) 36, 37
§65950(a), 65956(b) 37
§66458 45
§66458(a) 47, 88
§§66458(a), 66457(a) 46
§66499.37 ..... *passim*

Public Resources Code
§ 21083.3(e) 30

City of Los Angeles Codes

Los Angeles Charter §558(b) 80

Los Angeles Municipal Code (LAMC)
§ 12.04 32
§ 12.05 32
§ 12.07 32
§ 12.08 32
§ 12.09.1 ..... 24, 32, 57
§ 12.22 ..... 55, 61
§ 12.23 ..... 32, 33
§ 12.32 ..... 54, 55, 56, 60, 61, 80, 91

Document received by the CA 2nd District Court of Appeal.

I. INTRODUCTION

The Trial Court determined that the City of Los Angeles (City) acted properly on Snowball West Investment's (Snowball) proposed 215 unit subdivision in the Verdugo Hills (Project). First, when the City denied upzoning for the hillside development site in the Very High Fire Severity Zone (Property) based on wildfire concerns. Then, because the upzoning was not approved, when the City denied a clearance for the Project's tentative map condition that requires "approval" of that upzoning legislation (Zone Change Condition).

Snowball's proposed 215 units greatly exceed the 19 allowed by zoning. As a result, the Property needs upzoning legislation for increased density. Instead, Snowball claims that the Housing Accountability Act (HAA) at Government Code §65589.5(j)(4),[1] excuses this zone change. Snowball claims the HAA allows development at the higher density of any zone that corresponds to the Property's General Plan land use categories (Plan Density).

The HAA makes Plan Density applicable, without a zone change, "if" site zoning is "inconsistent" with the General Plan (Zone-Plan Inconsistency). However, the Property does not meet this prerequisite.

[1] All statutory reference are to the California Government Code unless otherwise stated.

Document received by the CA 2nd District Court of Appeal.

The Property's zoning is consistent with the General Plan based on Footnote 23 of the applicable map. It explains that each land use category permits all corresponding zones listed on the land use map, "as well as" those more restrictive zones referenced in the Los Angeles Municipal Code (LAMC) as "permitted by" the listed zones. That means the Property's more restrictive A1 (Agricultural) and RA (Residential Agricultural) zoning is consistent with its General Plan land use categories because they are more restrictive than, and permitted by, the higher density zones that are listed. Any claim that Footnote 23 is invalid is a collateral attack barred by the statute of limitations in §65009.

Other plan policies and text also support the determination that zoning is consistent, and that Zone-Plan Inconsistency is absent. The City is entitled to deference on its General Plan consistency determination, and its interpretation of Footnote 23.

Contrary to Snowball's briefing, the HAA's standards do not apply to reviewing the City's denials. The "reasonable person" standard at §65589.5(f)(4), which favors development approvals, does not apply to the above consistency determination. It is limited to determining in an adjudicatory application whether a "development project" is consistent with a development standard.

In addition, the HAA's disapproval findings based on a preponderance of evidence (Disapproval Requirements) do not apply to the City's denials because existing zoning is applicable to

Document received by the CA 2nd District Court of Appeal.

the Property. The Disapproval Requirements at §65589.5(j)(1) apply to a fully adjudicatory development application submitted and decided under the Permit Streamlining Act (PSA) (§65920 et seq.) when a development "complies" with applicable objective development standards. However, the Project's 215 units do not comply with the applicable zoning standards that allow 19. Further, the Project's applications are dependent on or seek legislation. Legislative actions that are not subject to the PSA, or consequently the HAA.

To the extent City Council needed to make any findings, it determined that the proposed upzoning legislation would negatively impact public safety and general welfare due to wildfire hazards, and be inconsistent with good zoning practice. That is far from being arbitrary or irrational, the standard of review for denials of zone change legislation.

The Trial Court's judgment is also correct on an alternative basis: the City has unqualified authority to enforce the unchallenged Zone Change Condition. The City argued below that the statute of limitations in §66499.37 barred Snowball's collateral challenge to the condition's enforceability. However, the Trial Court abused its discretion by denying the filing of an amended answer to raise this meritorious defense. The judgment is correct because there is no dispute that Snowball failed to obtain the specified upzoning.

Document received by the CA 2nd District Court of Appeal.

The City's actions were in good faith for the foregoing reasons, and additional ones discussed herein. Among them, the unpublished case of *Warner Ridge Assoc. v. City of Los Angeles*, *infra*, does not change the consistency analysis even though it references the footnote language. It did not decide whether more restrictive zones are "permitted by" listed corresponding zones. Further, Snowball waived this collateral estoppel argument in the Trial Court.

The City requests this Court uphold the judgment for all these reasons.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. The Project Proposes 215 Units On A Site With A Maximum Density of 19

Snowball owns 58-acres at 6433 La Tuna Canyon Road, formerly the Verdugo Hills Golf Course (Property). (1AR0211-13,1AR0007.) The Property's eight parcels are subject to the Sunland-Tujunga-Lakeview Terrace-Shadow Hills-East La Tuna Canyon Community Plan (Community Plan), one of the 35 community plans that comprise the City's General Plan, Land Use Element (General Plan). (10AR1654; 1JA270,2JA427[Framework].)

The portions of the Property relevant to this litigation are: 1) those designated by the General Plan with a land use category

Document received by the CA 2nd District Court of Appeal.

of Low Medium I Residential and currently zoned A1-1[2] (A1 or Agricultural) or RA-1 (RA or Residential Agricultural); and 2) those designated Low Residential and currently zoned RA-1. (10AR1655;16AR3017.) The zoning restrictions permit a maximum density of 19 dwelling units. (171AR34997.)

In 2007, Snowball submitted applications to develop 229 homes. (13AR2431-2458.) The applications included requests for zone change legislation, a vesting tentative tract map, and other quasi-adjudicatory requests (Project). (13AR2432-2458; 16AR3048.) The zone change sought to upzone the RA and A1 sections of the Property to RD5 (RD5 [3] /RD or Restricted Density Multiple Dwelling) and R1 (R1 or One-Family) in order to increase density. (13AR2437-58; 16AR3048.) The RD5 and R1 zones are listed by the applicable General Plan map as corresponding zones of the Property's Low Medium I Residential and Low Residential land use categories. (1JA161-62.) The zone change application did not include Property areas subject to different land use categories or zoning.

In February 2019, the Deputy Advisory Agency conditionally approved the vesting tentative tract map (tentative

[2] The "-1" is a height district reference, and does not impact the uses or density in this cases.

[3] RD5 is a type of RD zone. (2JA316[LAMC§12.09.1.B.4].)

Document received by the CA 2nd District Court of Appeal.

map) at a reduced density of 215 homes. (3AR364-499.) It was appealed to the City Planning Commission (CPC). (4AR500-725.)

B. The Tentative Map Includes A Zone Change Condition

The CPC issued a June 19, 2019, determination letter that approved the tentative map and denied the appeal; recommended City Council (Council) approve the zone changes; and approved the other entitlements. (5AR787-920; 13AR2280-2394.)

The CPC approved the tentative map on the express condition the Project obtain a zone change:

> "13.I Zone Change. The approval of the tract map is conditioned upon the approval of the related case number CPC-2007-3082-VZC-SPR-SPP, and this Project shall comply with the conditions of approval in CPC-2007-3082-VZV-SPR-SPP. In the event that that CPC-2007-3082-VZC-SPR-SPP is not approved, the number of dwelling units shall be limited to that permitted by the existing A1-1 and RA-1 Zones and a revised tract map shall be submitted for approval." (5AR0801) (Zone Change Condition)

C. The City Denied Upzoning For Density In Light of Wildfires and Other Specified Factors.

The tentative map and quasi-adjudicatory approvals became final because they were not appealed to Council. (164AR33733-33735) The zone change was the last approval required. (5AR0801.) Council's Planning and Land Use Management (PLUM) Committee recommended denial based on

Document received by the CA 2nd District Court of Appeal.

proposed determinations in a December 10, 2019, Council District letter, the increasing number and severity of wildfires in the City, and public concerns arising from such dangers. (170AR34911; 166AR34270-72,34295-98.) Council adopted PLUM's recommendation, and denied the zone change on December 11, 2019. (*Id.*)

Council did not adopt the CPC's analysis, and instead adopted the following determinations and grounds for denial:

First, the zone change would have an adverse effect on public health and safety, and general welfare. (166AR34271.) The Project includes only two ingress/egress points for 215 hillside homes in a Very High Fire Severity Zone. (*Id.*) The Property also sits on a "critical access point" for existing homes. (*Id.*) These Project features potentially reduce the ability of existing and proposed residents to evacuate in a wildfire. (*Id.*) The analysis notes that two of the largest wildfires in the City's recent history occurred in the last two years, and support concerns that "fires are getting worse." (*Id.*) In addition, after the CPC hearing, the Saddle Ridge Fire erupted in the Project's Council District, damaged structures, and required over 100,000 people to evacuate. (*Id.*)

Document received by the CA 2nd District Court of Appeal.

Second, the zone change would be inconsistent with good zoning practice. (166AR34270-71.) It would significantly increase density in an area that is less densely zoned, and for this reason "increase density in a manner that is not to scale and incompatible with the existing environment." (166AR34271.)

Third, it would also be inconsistent with good zoning practice because the Property is absent from the list of suitable sites associated with the Housing Needs Assessment in the General Plan, Housing Element. That list identifies desirable areas to place housing density to accommodate projected population growth. (166AR34271; 1JA260].)

Based on the foregoing, Council determined that existing fire control measures and development standards are not suitable for a future in which fires across the wildlife-urban interface are becoming more destructive and frequent. (166AR34271-72.) Then Council made the zoning and general welfare/ public safety findings in the negative, and denied the zone change. (166AR34270-2,34295-98.)

D. The City Denied A Clearance For The Project's Zone Change Condition Due To Zoning and General Plan Footnote 23

Snowball asked to clear the tentative map's Zone Change Condition under §65589.5(j)(4) on a theory the existing zoning is

Document received by the CA 2nd District Court of Appeal.

inconsistent with the applicable General Plan land use categories. (171AR34991-94.)

The Planning Department denied the clearance and explained: Council did not approve the zone change; utilizing the 215 unit tentative map density requires satisfaction of the Zone Change Condition; and Plan Density does not apply to the Property because Footnote 23 of the applicable General Plan map indicates the Property's zones are consistent with the General Plan, and continue to limit density to 19 units. (171AR34995-~~99~~.)

E. The Trial Court Denied Snowball's Writ Petition, And The Parties Facilitated This Appeal.

Snowball filed its Petition and Complaint for damages on February 24, 2020, and the City answered on August 17, 2020. (1JA7-45,47-74.)

The parties addressed the writ claims as follows. Snowball filed its opening brief without raising *Warner Ridge, infra*. (1JA76-246.) Then the City filed its Opposition raising the limitations period in §66499.37. (1JA248-76[argument at p.274-75], 2JA283-439.) Snowball filed a reply, but did not respond to the statute of limitations or reference *Warner Ridge*. (2JA441-507.)

Document received by the CA 2nd District Court of Appeal.

After the Trial Court issued a partial tentative and held an initial hearing (2JT509; RT1-42[4]), Snowball submitted an unsolicited letter brief objecting to the statute of limitations defense. The City then timely noticed an Ex Parte Application to amend its Answer in order to allege the limitations period in §66499.37. (2JA511-568[letter at p.539].) Snowball opposed it. (3JA575-89.) Subsequently, the Trial Court issued a second tentative, held a second hearing, and heard and denied the Ex Parte Application on April 2, 2021. (3JA591; RT301-47.)

The Trial Court formally rejected Snowball's HAA arguments, and on that basis denied the writ petition on June 24, 2021. (3JA593-608.)

The parties recognized the ruling's material impact on the remaining constitutional takings claims, and stipulated to an entry of judgment in order to facilitate this Appeal. (3JA616-22.) The lower court entered judgment pursuant to the stipulation on August 23, 2021. (3JA624-26,628-32.) Snowball filed its Notice of Appeal on August 26, 2021. (3JA634-35.)

[4] Refers to: Reporter's Transcript, pages 1-42.

Document received by the CA 2nd District Court of Appeal.

III. REGULATORY AND LEGISLATIVE BACKGROUND

A. General Plan Footnote 23 Makes A Land Use Category Consistent With Listed Zones "As Well As" Unlisted More Restrictive Zones

California's Planning and Zoning law consists of a hierarchy of interrelated development regulations. The City adopts a General Plan to guide its future development. (§65300.) The General Plan Framework Element states that the precise land use "designation," or category, will be determined in the community plan." (2JA438-39.) Thirty-five community plans collectively comprise the City's General Plan's Land Use Element and provide more specific development guidance by area. (Pub. Res. Code § 21083.3(e).) However, they generally "do not state specific mandates or prohibitions." (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (1st Dist.2001) 91 Cal.App.4th 342,378.)

The Community Plan's General Plan Land Use Map (Map) has a Legend (Legend) that lists "RD5" as a corresponding zone of the Low Medium I land use category, and "R1" as a corresponding zone of the Low Residential land use category. (1JA161-62[Map].)

Map Footnote 23 (Footnote 23) expands the range of corresponding zones to also include those more restrictive zones

Document received by the CA 2nd District Court of Appeal.

whose uses are permitted in the RD5 and R1 zones by the LAMC. (171AR34998; 1JA161.) It states:

> 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. (*Id.*)

On March 27, 1991, the City added this footnote language to all community plans in order to clarify the full range of corresponding zones that are consistent with each land use category. (171AR3500-35019.) It did so "without requiring the recitation of each and every corresponding zone." (171AR35023.) Similar language exists in the Community Plan text. (1JA117-18.) The footnote language memorialized the fact the "plans have been interpreted consistently" to mean that each land use category permits all listed corresponding zones, "as well as" those more restrictive zones referenced in the LAMC. (171AR35018-19,35021-27,35031,35042-46[Council File].)

Document received by the CA 2nd District Court of Appeal.

There is no general or site-specific Map footnote that forbids existing lower density zoning in higher density land use categories, commands a minimum existing zoning density or development intensity, or narrows the range of existing corresponding zones. Although the Property is also subject to Footnote 20 that states "development should be limited to no greater than RD5," that footnote does not command minimum zoning. (1JA161-63.)

Footnote 23 explains the RA and A1 zones are corresponding zones for the Low Medium I and Low Residential land use categories, even though the Legend does not list them. The LAMC identifies the RA and A1 zones as more restrictive than the listed RD5 and R1 zones. (2JA287-290; 2JA322 [LAMC§12.04.A and 12.23.B.7(b), identifying most to least restrictive zones as A1, RA, R1 and RD/RD5]; 2JA316 [LAMC§12.09.1.B.4, RD5 is a type of RD zone]; see also 171AR34998-99, 1JA161.)

The LAMC also permits the RA and A1 zones and uses in the listed R1 and RD5 zones. (2JA292-98 [LAMC§12.05.A and C.4(b) (A1 uses, including one dwelling per 2.5 acres)]; 2JA300-04 [LAMC§12.07.A and C.4 (RA uses, including one dwelling per 17,000 sq.ft.)]; 2JA306-13 [LAMC§12.08.A and C.4 (R1 uses, including one dwelling per 5000 sq.ft.)]; 2JA315-17 [LAMC§12.09.1.A and B.4 (RD/RD5 uses, including one dwelling

Document received by the CA 2nd District Court of Appeal.

per 5000 sq.ft. in RD5)]; 2JA319-326 [LAMC§12.23.B.7 (nonconforming use may change to any use permitted in a more restrictive zone)].) Consequently, the RA and A1 zones are corresponding zones.

B. The HAA Makes Inconsistent Zoning A Prerequisite To Applying Plan Density

The HAA rules that regulate the review and approval of housing development applications state that "if" a "housing development project" is consistent with applicable "objective" general plan standards and criteria "but the zoning for the project site is inconsistent with the general plan," (Zone-Plan Inconsistency) a development is "not inconsistent" with zoning and shall not require a rezoning. (§65589.5(h)(2),(h)(8),(j)(4).) The HAA does not define "inconsistent." (§65589.5(h).) If there is Zone-Plan Inconsistency and the City provides timely documentation of noncompliance with a standard pursuant to §65589.5(j)(2), the City may make the development 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…." (§65589.5(j)(4).)

Document received by the CA 2nd District Court of Appeal.

The Legislature adopted paragraph §65589.5(j)(4) in 2018 via Assembly Bill (A.B.) No. 3194. (Stats.2018,ch.243, §1 [CRJN,Exh.M,[5] A.B.3194].) The Housing Crisis Act of 2019 and its 2021 amendment did not change this paragraph. (Stats.2019,ch.654 §3 [CRJN,Exh.Q]; Stats.2021,ch.161 §1 [CRJN,Exh.R].)

The Legislature adopted paragraph (j)(4) after changing course and *deleting* introduced bill text that would have automatically protected developments proposed at "maximum" Plan Density. (CRJN,Exh.N,P,M [compare, A.B.3194 as introduced Feb.16, 2018, p.12, with amendment of May 29, 2018, p.12, and with Stats.2018,ch.243, p.9]; 2JA471; RT314:7-26[6].) It altered course after receiving an objection that the introduced provision "'would take away the whole purpose of the General Plan being general and would eliminate the long-standing relationship between the General Plan and zoning, forcing the General Plan map to be like the much more specific zoning map.'" (CRJN,Exh.O [Analysis p.7-8].)

The phrase, "zoning for the project site is inconsistent with the general plan," is understood through §65860, which defines "consistent" zoning as zoning that is "compatible" with general

[5] Refers to: City's Request for Judicial Notice on Appeal, Exhibit M.

[6] Refers to: Reporter's Transcript, page 314, lines 7-26.

Document received by the CA 2nd District Court of Appeal.

plan objectives, policies and programs. (§65860(a)(2).) Legislative committee comments confirm that understanding by stating that zoning may be approved when it is "consistent with the general plan." (CRJN,Exh.O [Analysis p.6, "Planning mechanisms"].) State law does not specify the range of zones or density that can be considered consistent with a general plan's land use category. (§65860.)

C. The HAA Authorizes The Enforcement Of Objective Standards, And Regulates Decisions On PSA Applications

First, the HAA declares that "nothing in this section shall be construed to prohibit" a local agency from requiring a "housing development project" to comply with "objective" development standards. (§65589.5(f)(1),(h)(2),(h)(8),(j)(1),(j)(4).)

Then the HAA regulates the review and decision of housing development applications by tying its requirements to specified PSA events. When a development complies with applicable "objective" standards in effect at the time the application is "deemed complete," but the City proposes to "disapprove the housing development project" application or approve it at a "lower density," the City must base its decision upon written factual findings supported by a "preponderance of the evidence in the record" that: 1) the development would have a "specific,

Document received by the CA 2nd District Court of Appeal.

adverse impact" upon the public health or safety; and 2) there is no feasible method to satisfactorily mitigate or avoid the impact, other than to disapprove the development or lower its density (collectively "Disapproval Requirements"). (§65589.5(d)(2),(h),(j)(1).)

"[D]eemed complete" means that an applicant has submitted a "complete application pursuant to Section 65943" (Development Application), or a Preliminary Application pursuant to §65941.1 that precedes a Development Application.[7] (§65589.5(h)(5); see generally §§65941.1(d),65940,65943 [providing 180 days to submit a Development Application].) Both §§65943 and 65941.1 are codified in the PSA. (§65920(a); see generally §§65920 et seq. [PSA also includes §§65940 and 65950].)

To "disapprove the housing development project," means the City "votes" to disapprove a Development Application, or the City fails to comply with the timelines at PSA §65950(a). PSA §65950 requires the City to "approve or disapprove" an application within 60-180 days depending on the type of development and environmental analysis, or be deemed approved in certain

[7] Preliminary Applications are not germane to the Appeal. They became available in 2020, after Snowball submitted applications. (Stats.2019,ch.654 §8 [CRJN,Exh.Q].) (5AR787-920; 13AR2280-2398,2431-2458).)

Document received by the CA 2nd District Court of Appeal.

circumstances. (§65950(a),65956(b).)

A development is "deemed" compliant with a standard if the City does not provide timely "documentation" of noncompliance after an application is "determined to be complete." (§65589.5(j)(2)(A)-(B).) "[D]etermined to be complete" means an applicant has submitted a complete Development Application pursuant to PSA §65943. (§65589.5(h)(9).)

When evaluating a Development Application, a development is "deemed" compliant with an "applicable" standard, if there is "substantial evidence" that would allow a "reasonable person to conclude" that the development is compliant. (§65589.5(f)(4).)

If the City proposes to "disapprove" a Development Application, or approve it at a "lower density," the "burden of proof" is on the City to demonstrate that its decision conforms to the HAA. (§§65589.6; 65589.5(h)(6),(j)(1)-(2).) If there is a violation, the unit count on the date an application is deemed complete under PSA §65943, is used to calculate fines. (§65589.5(k)(1)(B).)

Document received by the CA 2nd District Court of Appeal.

IV. STANDARD OF REVIEW

A. The Court Determines Whether The City's Denial of Legislation and A Map Clearance Is Arbitrary, Capricious or Unreasonable

A zone change is a legislative action subject to a highly deferential review. A court inquires whether the action is "arbitrary or unreasonable," but does "not substitute its judgment for that of the zoning authorities if there is any reasonable justification for their action." (*Lockard v. City of Los Angeles* (1949) 33 Cal.2d 453,461 [upholding rezoning from light manufacturing to commercial to the detriment of owners].)

The sole issue is whether or not there is any reasonable basis to support the denial of rezoning legislation. (*Ensign Bickford Realty Corp. v. City Council* (1st Dist.1977) 68 Cal.App.3d 467,475, *infra*, explained regarding "anti-competitive" zoning.)

The courts generally "have no such power" to compel a legislative act. (*Tandy v. Oakland* (1st Dist.1962) 208 Cal.App.2d 609,611, *infra*.) A reviewing court will reverse where the lower court substitutes its judgment for that of the legislative body. (*Lockard*, 33 Cal.2d 453,462.)

As to the City's clearance denial, the Court similarly asks whether the action is unreasonable, arbitrary or capricious, entirely lacking in evidentiary support, or whether the agency

Document received by the CA 2nd District Court of Appeal.

has failed to follow the procedure and give the notices required by law. (*Pomona Police Officer's Association v. City of Pomona* (*Pomona*) (2nd Dist.1997) 58 Cal.App.4th 578,584; *Bright Development v. City of Tracy* (3rd Dist.1993) 20 Cal.App.4th 783,794-95,799-800 [applying an "unwritten, informal" policy to a final map was "palpably unreasonable and arbitrary" under traditional writ of mandate].)

B. The City Is Entitled To Deference On Its Interpretation of City Land Use Regulations, And Its General Plan Consistency Determination

The City's interpretation of its enactments must "be respected by the courts unless it is clearly erroneous or unauthorized." (*City of Monterey v. Carrnshimba* (6th Dist.2013) 215 Cal.App.4th 1068, 1087,1091 [a city's interpretation of its code "is entitled to great weight"].)

Courts defer to the City's interpretation of its own land use regulations "unless no reasonable person could have reached the same conclusion on the evidence before it." (*No Oil, Inc. v. City of Los Angeles* (2nd Dist.1987) 196 Cal.App.3d 223,243-249, *infra*.) The deference is significant because agencies have the expertise to administer their laws, especially when the interpretation "includes careful consideration by senior agency officials." (*Yamaha Corp. of America v. St. Bd. Of Equal.* (1998) 19 Cal.4th

Document received by the CA 2nd District Court of Appeal.

1,12-13.) In contrast, it is Snowball's burden to show the interpretation is clearly erroneous or unauthorized. (*Id.* at 6-7.)

As to General Plan consistency, courts also defer to the City's determination that land use legislation is consistent with a general plan unless "a reasonable person could not have reached the same conclusion." (*Corona-Norco Unified etc. v. City of Corona* (*Corona-Norco*) (4th Dist.1993) 17 Cal.App.4th 985,992 [upholding zone change].)

C. Snowball Erroneously Claims The HAA's Preponderance Of Evidence And Reasonable Person Standards Apply

1. HAA Requirements Are Tied To PSA Events That Do Not Apply To This Project Dependent On Legislation

The HAA ties these requirements to Development Application events under the PSA (§65920 et seq.) (Sec.III.C, *supra*). That means developments dependent on legislation, like the Project here, are not reached by the requirements. It is because applications for legislation and adjudicatory applications dependent on legislation are not subject to the PSA. (See *Land Waste Management v. Contra Costa County* (1st Dist.1990) 222 Cal.App.3d 950,955-61 [timeline in PSA §65950 did not apply to an adjudicatory application dependent on rezoning]; *Landi v. County of Monterey* (1st Dist.1983) 139 Cal.App.3d 934,937

Document received by the CA 2nd District Court of Appeal.

[timeline in PSA §65950 did not apply to rezoning application because it was "not meant to impose a rigorous timetable" on the "policy-making legislative function"]; see also *Meridian Ocean Systems, Inc. v. State Land Commission* (2nd Dist.1990) 222 Cal.App.3d 153,167-68 [declining to apply §65950 to permit applications dependent on quasi-legislative policy action].)

As a result, the HAA does not apply to the clearance of a tentative map condition dependent on the approval of legislation either. (*Id.*) Additionally, the HAA simply does not apply to clearances because the PSA (and HAA) does not contain provisions that regulate post-decision clearances. (See generally §§65940,65941.1,65943,65950,65952,65956.)

The distinction between adjudicatory and legislative actions is applicable here. Adjudicatory actions apply existing rules to a set of facts, whereas a legislative action, like rezoning, formulates the rule. (*Landi* at 936; see *Arnel Development Co. v, City of Costa Mesa* (1980) 28 Cal.3d 511,521-24 [stating that "rezoning is a legislative act," and rejecting argument that rezoning for a "relatively small" portion of land is adjudicatory].)

Based on the above, the HAA requirements apply to fully adjudicatory developments with Development Applications submitted and decided under the PSA, but not developments or clearances that depend on upzoning legislation as Snowball claims (OB54-64). (*Mira Development Corp. v. City of San Diego*

Document received by the CA 2nd District Court of Appeal.

(*Mira*) (4th Dist.1988) 205 Cal.App.3d 1201,1221-23 [HAA Disapproval Requirements inapplicable to rezoning denial].)

There is no HAA text that changes the standards for reviewing rezoning legislation, or developments dependent on rezoning legislation (Sec.IV.A, *supra*. It would be reversible error for the Court to accept Snowball's invitation to rewrite the HAA to do that. (Civ.Proc.Code (C.C.P.) §1858 [a court may not "insert what has been omitted, or to omit what has been inserted…."]; *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983,992 [Reversing a ruling that added recipients to the claims presentation requirements, and stating a court may not "under the guise of construction rewrite the law."].)

Past cases applied the HAA requirements to purely quasi-adjudicatory application decisions. (See generally *California Renters etc. v. City of San Mateo* (*California Renters*) (1st Dist.2021) 68 Cal.App.5th 820,832-33,839 ["design guidelines" disapproval]; *Bankers Hill 150 v. City of San Diego* (4th Dist.2022) 74 Cal.App.5th 755,764-67,777-78 [Density Bonus]; *Honchariw v. County of Stanislaus* (5th Dist.2011) 200 Cal.App.4th 1066,1070,1077-81 [subdivision].)

Document received by the CA 2nd District Court of Appeal.

2. The "Reasonable Person" Standard Addresses Whether A "Development," Not Property Zoning, Is Consistent

The HAA unambiguously limits the "reasonable person" standard to the context of adjudicating a "development project" described in a Development Application submitted under the PSA. (§65589.5(f)(4),(j)(1)-(2).) It says a development is "deemed consistent" with an applicable "standard, requirement or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project…is consistent,…." (§65589.5(f)(4).)

The text does not reference the Appeal issues of whether: 1) existing or proposed zoning is consistent with the General Plan (OB52-54); 2) proposed zoning is consistent with general welfare or good zoning practice (OB53,58); or 3) existing zoning is consistent with the General Plan to allegedly satisfy a tentative map condition under the HAA (OB63-64). (RT40:17-41:10.) (See *California Renters,* 68 Cal.App.5th 820,839 [Whether standards "are 'applicable' and 'objective' for purposes of the HAA is a question of law; whether the project is consistent with those standards is one of fact, to be evaluated under …[§65589.5](f)(4)."]; *People v. Snook* (*Snook*) (1997) 16 Cal.4th 1210,1216-17 [where a statute is "clear and unambiguous, the

Document received by the CA 2nd District Court of Appeal.

provision should be applied according to its terms without further judicial construction…"].)

Assuming for argument the "reasonable person" standard applies at all to this Appeal, an issue that might be addressed is one that Snowball does not dispute: the Project's 215 unit density does not comply with the zoning standards that limit density to 19. (OB23,44.)

3. The Disapproval Requirements Apply To Developments, Unlike The Project, That Comply With Applicable Standards

The HAA states that when a development "complies with applicable, objective…standards," the disapproval of the Development Application must be based upon specified findings supported by a preponderance of evidence (Disapproval Requirements) (Sec.III.C, *supra*). (§65589.5(j)(1),(h)(6),(h)(8).)

The Disapproval Requirements do not apply to developments that require zone change legislation because those developments by nature fail to comply with objective standards. (§65589.5(j)(1); *Mira*, 205 Cal.App.3d 1201,1221-23 [Disapproval Requirements did not apply to a development that "required a rezoning, and thus was not in compliance"].) *Mira* remains good law where, as here, the zoning is consistent with the General Plan (Sec.II.A,III.A, *supra*). Moreover, the factual disapproval findings would be out of place because factual findings are not

Document received by the CA 2nd District Court of Appeal.

needed for a valid legislative act. (See *Arnel*, 28 Cal.3d 511,521-24 [rezoning "does not require explicit findings"]; *Federation of Hillside etc. v. City of Los Angeles* (*Federation*) (2nd Dist.2004) 126 Cal.App.4th 1180,1195 [upholding General Plan Framework, stating that "[a] legislative act is presumed valid" and explicit findings are not needed].)

Applying the Disapproval Requirements to developments that require legislation conflicts with precedent that upholds a city's discretion to deny zoning legislation (Sec.IV.A, *supra*). Such an interpretation eliminates legislative discretion, and absurdly provides a right to requested upzoning legislation unless cities can make the findings to deny it. (See generally *Schreiber v. City of Los Angeles* (2nd Dist.2021) 69 Cal.App.5th 549,556 ["[b]y requiring the city to grant incentives unless it makes particular findings, the statute places the burden of proof on the city to overcome the presumption…."].)

4. The HAA Does not Regulate The Project's Post-Decision Clearances Or Final Map Requirements

The absence of HAA text that expressly regulates the post-decision clearance of conditions, or expressly overrides final map requirements in §66458, means these functions are not intended and may not be inserted through statutory interpretation. (§65589.5(h)(6),(j)(1); C.C.P.§1858; *DiCampli-Mintz*, 55 Cal.4th

Document received by the CA 2nd District Court of Appeal.

983,991-92 [a court may not "rewrite the law"]; *Snook*, 16 Cal.4th 1210,1216-17 [a statute that is "clear and unambiguous…should be applied according to its terms…"].)

Applying the HAA to clearances takes the HAA requirements out of their pre-decision Development Application review context and ignores PSA references (Sec.III.C, *supra*). (§65589.5(j)(1)-(2).) It also conflicts with the HAA itself. The HAA states it shall not be "construed to prohibit" the City from requiring compliance with "objective" standards and "conditions." (§65589.5(f)(1),(h)(8).)

Applying the Disapproval Requirements in the post-decision context here also violates the requirement that the City "shall disapprove the map" if the final map does not conform to state and local subdivision laws "and any rulings made thereunder" for the conditional approval of a tentative map. (§§66458(a),66457(a) [a final map "conforming" to the conditionally approved tentative map may be filed].) It renders this final map requirement meaningless and prevents it from operating concurrently with the HAA. (*Select Base Materials, Inc. v. Bd. of Equalization* (1959) 51 Cal.2d 640,645,647 [statutes are "construed with reference to the whole…so that all may be harmonized and have effect" and to avoid rendering "nugatory important provisions of the statute."]; *Pacific Palisades Bowl etc. v. City of Los Angeles* (*Pacific Palisades*) (2012) 55 Cal.4th 783,805

Document received by the CA 2nd District Court of Appeal.

[courts harmonize statutes so that they have "concurrent operation"].)

Applying the Disapproval Requirements in the post-decision context (OB63-64), while not clearly briefed in the Trial Court (1JA92-94), would absurdly require the City to approve a final map that does not comply with tentative map conditions, or face HAA claims if the City demands compliance as the Government Code commands. (§66458(a).) This would regularly occur because the disapproval findings require evidence of a "specific, adverse impact," which does not involve noncompliance with zoning or plan standards and "arise[s] infrequently." (§65589.5(a)(3),(d)(2)(A),(j)(1).)

D. Snowball Bears The Burden To Demonstrate A Right To The Writ, And That The Judgment Is Wrong or Unsupported

Snowball's claims fall under a traditional writ of mandate standard where it is Snowball's burden to establish that the City must take an action "the law specially enjoins." (C.C.P§1085(a)*;* see Evid. Code §500; C.C.P.§1109.)

General requirements or policy statements (OB12,31) "cannot override the specific" language of a statute to establish a ministerial duty for a writ. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432,444, *infra*.)

Document received by the CA 2nd District Court of Appeal.

Snowball must prove that it has satisfied any conditions precedent to compelling an alleged ministerial duty. (*Great Western etc. v. City of Los Angeles* (*Great Western*) (2nd Dist.1973) 31 Cal.App.3d 403,410 [map approval is ministerial where the developer has "complied with the conditions"]; see also *Associated Builders & Contractors, Inc. v. San Francisco Airports Commission* (1999) 21 Cal.4th 352,361-68 [the petitioner must prove as a jurisdictional issue, an interest or right that is "actual or imminent, not conjectural or hypothetical"].)

On appeal in a traditional mandate case, the "judgment is presumed to be correct," and it is an appellant's burden to show there is prejudicial error justifying reversal. (*California Federation of Teachers v. Oxnard Elementary Schools* (2nd Dist.1969) 272 Cal.App.2d 514,541 [upholding denial of writ, superseded on other point]; C.C.P.§475.) Thus, an appellate court will resolve evidence conflicts in favor of the judgment, will not disturb the lower court's factual findings supported by substantial evidence, and will do so even if the evidence is conflicting. (*Long Beach Police Officer Association v. City of Long Beach* (*Long Beach*) (2nd Dist.1984) 156 Cal.App.3d 996,1001 [upholding writ, rejecting request to re-weigh conflicting evidence]; *Citizens for Improved Sorrento Access, Inc. v. City of San Diego* (*Sorrento*) (4th Dist.2004) 118 Cal.App.4th 808,814

Document received by the CA 2nd District Court of Appeal.

[conflicting evidence "insufficient to undermine" denial of writ and conclusion that legislative findings were supported].) However, for statutory interpretation issues, review is de novo. (*Pomona,* 58 Cal.App.4th 578,584.)

The burden is Snowball's because Snowball does not challenge a "decision" to disapprove a Development Application described in §65589.5 (Secs.III.C,IV.C, *supra*). A challenge to such a decision is brought under C.C.P §1094.5, with the City bearing the burden of proving HAA compliance. (§65589.6 [addressing decisions under §65589.5(h)(6),(h)(7),(j)(1)].) In that context, a court presumes that the City regularly performed its official duties, and that its findings are supported by substantial evidence. (Evid. Code §664; *Stardust Mobile Estates, LLC v. City of San Buenaventura* (2nd Dist.2007) 147 Cal.App.4th 1170,1180.)

E. Collateral Estoppel Was Not Raised In the Trial Court And Is Waived

Snowball's collateral estoppel argument (OB45-47) is waived for this Appeal because Snowball did not raise or prove it in the Trial Court. (1JA76-99; 2JA441-459; 3JA593-608; RT1-42,301-47.) (*Franklin Mint Co. v. Manatt, Phelps etc.* (2nd Dist.2010) 184 Cal.App.4th 313,332-33 [failure to present evidence or obtain a ruling on collateral estoppel waived the issue].) With some exceptions, "issues not raised in the trial court cannot be

Document received by the CA 2nd District Court of Appeal.

raised for the first time on appeal." (*Jacobson v. County of Los Angeles* (2nd Dist.1977) 69 Cal.App.3d 374,392-93 [arguing for the first time on appeal that the agency should have prepared an environmental impact report].)

V. LEGAL ARGUMENT

A. The City's Denial Of Upzoning Legislation Is Lawful, And Not Arbitrary or Unreasonable

1. Snowball's Project Fails To Comply With Applicable Standards And Does Not Trigger The Disapproval Requirements

Snowball's Project satisfies none of the criteria to trigger the Disapproval Requirements. The HAA ties its requirements to the disapproval of a Development Application submitted pursuant to the PSA, for a fully quasi-adjudicatory development, that complies with applicable objective standards (Secs.III.C and IV.C., *supra*). (§65589.5(h)(5),(h)(6),(h)(9),(j)(1)-(2).)

The Project cannot trigger the Disapproval Requirements because the Project is legislative in character, and its applications are not subject to the PSA events or timelines that are expressly tied to the Disapproval Requirements (Secs.II.B-D,III.C,IV.C, *supra*). (5AR0801; 13AR2432-2458; 16AR3048.) (§65589.5(h)(5),(h)(6),(h)(9),(j)(1)-(2).)

Document received by the CA 2nd District Court of Appeal.

The Project does not trigger the Disapproval Requirements because it does not comply with applicable objective zoning standards. (§65589.5(j)(1).) The Project proposes 215 dwelling units when the zoning allows 19 (OB14,23,44; see Secs.II.A,IV.C.3, *supra*). The existing lower density zoning density remains applicable because Footnote 23 and the LAMC indicate the zoning is consistent with the General Plan (Secs.II.A,II.D,III.A-B, *supra*). (§§65589.5(j)(4),65860(a).)

Snowball's failure to cite facts or specific HAA text (OB54-63) that creates a "duty" for the City to approve the Project's upzoning legislation and clearance, or comply with the Disapproval Requirements, waives these arguments. (C.C.P.§1085(a); *People v. Wilkinson* (*Wilkinson*) (2004) 33 Cal.4th 821,846 fn.9 [when an argument is made without citation to authority, "the court may treat it as waived, and pass it without consideration"].)

General HAA policy statements about "the approval and provision of, housing" (OB12,31) are insufficient to create a ministerial duty beyond what is specified by statutory text. (*See Common Cause,* 49 Cal.3d 432,444 [reversing, finding no duty to adopt a particular program even if it would be the most effective means of achieving statutory policy goal]; *Shamisan v. Department of Conservation* (2nd Dist.2006) 136 Cal.App.4th

Document received by the CA 2nd District Court of Appeal.

621,640-41 [statement of legislative intent did not impose a duty enforceable by writ].)

This Appeal invites the Court to improperly "rewrite" the HAA to address developments dependent on legislation. (*DiCampli-Mintz*, 55 Cal.4th 983,991-92; C.C.P§1858.)

The Appeal also invites the Court to contradict established legal precedent in a way that: eliminates a jurisdiction's discretion to deny zone change legislation (Sec.IV.A, *supra*); defers to a developer's legislative interpretation and policy judgments in lieu of the implementing agency or legislative body (Sec.IV.A-B, *supra*); and requires the approval of proposed legislation or the clearance of unsatisfied conditions unless a municipality can make findings to deny them (Sec.IV.C, *supra*).

2. Council's Denial of Upzoning Legislation Is An Exercise of Discretion Entitled to Deference

Council has legislative discretion to grant or deny Snowball's upzoning legislation, and the wisdom of its decision to deny the legislation is a matter for its own determination. (*Lockard,* 33 Cal.2d 453,461.) If its legislative denial is "debatable," it will not be disturbed by a court. (*Id*. at 462.) The Court provides judicial deference to a rezoning denial due to the separation of powers doctrine that directs limited review. (*Tandy*, 208 Cal.App.2d 609,611 [upholding refusal to rezone

Document received by the CA 2nd District Court of Appeal.

from residential to commercial, stating that courts generally refuse to overturn a refusal to rezone]; *Toso v. City of Santa Barbara* (2nd Dist.1980) 101 Cal.App.3d 934,942-44 [deciding under traditional mandamus that the refusal to rezone was not "unreasonable," questioned on other grounds]; *Sladovich v. County of Fresno* (4th Dist.1958) 158 Cal.App.2d 230,239-40 [upholding a refusal to rezone residential-agricultural property to the adjacent industrial zones]; *Ensign Bickford Realty,* 68 Cal.App.3d 467,475 [upholding a refusal to rezone residential property to commercial]; *Chandis Sec. Co. v. City of Dana Point* (4th Dist.1996) 52 Cal.App.4th 475,482 [upholding referendum denial of zone change]

Generally, no specific factual findings are necessary to deny Snowball's upzoning legislation because zoning legislation actions are minimally reviewable. (*Cormier v. County of San Luis Obispo* (2nd Dist.1984) 161 Cal.App.3d 850,857 [upholding general plan amendment without specific findings]; see also *Arnel,* 28 Cal.3d 511, 521-24 [zoning legislation does not require findings].) The Court should therefore reject the argument that the zone change denial was "not supported by valid findings" (OB71).

Document received by the CA 2nd District Court of Appeal.

The Court will "inquire as to whether the scheme of classification and districting is arbitrary or unreasonable, but the decision of the zoning authorities as to matters of opinion and policy will not be set aside or disregarded by the courts unless the regulations have no reasonable relation to the public welfare or…there has been an unreasonable, oppressive, or unwarranted interference with property rights…." (*Lockard,* at 461.)

Here, the denial is based on stated health and safety reasons tied to undisputed physical facts, and Snowball is still able to build 19 units under current zoning. As a result, Snowball does not, and cannot, argue that the denial of upzoning legislation has "no reasonable relation to the public welfare" or that there is an "unwarranted interference with property rights." (*Id*.) The judgment should be affirmed for these reasons alone.

3. The Denial Is Based On Written Determinations About Public Safety and Zoning Practice

Contrary to Snowball's argument, LAMC§12.32.Q does not require findings to deny proposed zone changes. Even if findings could be required, Council made them in writing and on the record. (13AR2414-16; 166AR34270-72,34295-98.) Council determined that based on stated reasons, upzoning would be inconsistent with good zoning practice and have an adverse effect

Document received by the CA 2nd District Court of Appeal.

on public health and safety, or general welfare. (166AR34271-72.)

LAMC§12.32.Q.3(a)(2) explains that notwithstanding the existence of vesting zone change rights, Council still has the discretion to deny Snowball's upzoning. (2JA266-67,330,341-42 [*compare*, LAMC§12.32.C.7, with Q.3(a)(2)].) The LAMC states Council may "approve an ordinance only after making findings that its action is consistent with the General Plan and is in conformity with public necessity, convenience, general welfare and good zoning practice." (2JA330 [LAMC§12.32.C.7].) This discussion is reinforced when the LAMC states that "[n]otwithstanding Subdivision 2.(a)" vesting rights, a vesting zone change may be denied where Council "determines" that "it is not in substantial conformance with…the General Plan or is not in conformance with public necessity, convenience, general welfare and good zoning practice." (2JA341-42 [LAMC§12.32.Q.2.(a) and Q.3(a)(2)].)

A comparison of LAMC§12.32.Q with the density bonus provision that states an incentive shall be granted unless findings are made to deny, illustrates a difference in text that means LAMC§12.32.Q does not require upzoning approval in the absence of denial determinations, and does not require denial findings at all. (Compare 2JA341-42 [LAMC§12.32.Q.3(a)(2)], with §65915(d) and 2JA371-72 [LAMC§12.22.A.25(g)(2)(i).c.)

Document received by the CA 2nd District Court of Appeal.

Instead, LAMC§12.32 upholds legislative discretion, and means that vesting rights, fixed upon the date of filing an application, do not at all prevent Council from denying Snowball's upzoning. (2JA341-42 [LAMC§12.32.Q.2.(a) and Q.3.(a)(2)].)

The upzoning denial is subject to a highly deferential review, and cannot be overturned unless it has no reasonable relation to the public welfare (Secs.IV.A and V.A.2, *supra*). The PLUM findings adopted as Council's determinations easily surpass this standard, and also discuss the topics in LAMC§12.32.Q. (166AR34270-72, 34295-98.)

4. The Record Has Ample Evidence to Support Council's Denial

At best, Snowball cites evidence that the upzoning denial is "debatable" and should not be disturbed. (*Lockard,* 33 Cal.2d 453,462.) Under recognized legal standards and the separation of powers doctrine, the Court is required to affirm the judgment based on the legislative record. (*Id.*)

The record shows that upzoning would be inconsistent with good zoning practice. It is undisputed that surrounding areas to the north, west, and south are either undeveloped or zoned for "very" low-density single-family homes. (7AR1092; 162AR33352-54.) In stark contrast, RD5 zoning allows multifamily dwellings

Document received by the CA 2nd District Court of Appeal.

and apartments. (2JA315-17 [LAMC§12.09.1.A and B.4.) Upzoning would allow 215 homes where none previously existed. (162AR33352-54.) In addition, the Property is not listed as a "suitable site" associated with the housing needs assessment. (2JA414-417; 1AR172.)

The record also shows that upzoning would be inconsistent with general welfare and public safety. The Project's two ingress/egress points and physical siting at a critical access point for homes to the north and east are undisputed. (162AR3352-54,33361.)

In addition, dozens of constituents voiced specific concerns regarding fire safety arising from proposed density. (166AR34209-34249.) They attached recent articles explaining the fire hazards presented by the density. One article from a Professor of Environmental Analysis, noted "the tight link between housing developments hammered into the wildland-urban interface – the fire zones – and the highway and energy infrastructures" that residents "will need to flee [from these peripheral communities] every time a fast-moving fire, like the Saddle Ridge…." presents itself. (166AR34245-48.) The author recommended agencies re-think residential development in fire

Document received by the CA 2nd District Court of Appeal.

zones because development has "turned what we have been describing as 'wildfires' into structural fires." (*Id.*)

Another article points out that "loss of property and life from fire is overwhelmingly the result of precariously placed housing in and bordering wildland areas – residential developments that are, themselves, a major driver sparking conflagrations." (166AR34211.) That article noted that wildfire researchers are "calling for an open debate about whether and to what extent new housing should be limited in fire-prone areas,..." (166AR34212.)

Council ultimately recommended reevaluating existing land use policies and building standards within the Very High Fire Hazard Severity Zone where the Property sits. (166AR34272.) Council's determinations call attention to seeking recommendations from the Wildland-Urban Interface Hazard Mitigation Group, which were not available when Council denied upzoning. (*Id.*; *see also* 2JA419-22.)

Snowball's evidentiary criticism of Council's determinations misapplies legal standards (OB57-63). First, the HAA's preponderance of evidence standard does not apply to zone change legislation (Secs.IV.C.1,IV.C.3, *supra*). Rather, it is

Document received by the CA 2nd District Court of Appeal.

subject to a highly deferential review (Sec.V.A.2, *supra*), and cannot be overturned unless it has "no reasonable relation to the public welfare." (*Lockard*, 33 Cal.2d 453,461.)

Second, nothing in the law requires Council to cite specific evidence in the record. (1JA95; OB60-61,71.) The action is supported if "the record shows a reasonable basis for the action of the zoning authorities, and, if the reasonableness of the ordinance is fairly debatable, the legislative determination will not be disturbed." (*Lockard,* 33 Cal.2d 453,462; see also *Cormier,* 161 Cal.App.3d 850,857 [upholding plan amendment without findings]; accord C.C.P.§1094.5(c) [findings are sustained in light of the whole record].) Moreover, on appeal, any conflicting evidence cited by Snowball must be resolved in support of upholding the judgment. (*Long Beach,* 156 Cal.App.3d 996, 1001; *Sorrento*, 118 Cal.App.4th 808, 814 [both rejecting requests to weigh conflicting evidence].)

5. LAMC§12.32 And Footnote 23 Are Silent About When Zone Changes Must Be Approved

Both texts specify considerations *if* Council decides to approve Snowball's upzoning legislation, but contrary to Snowball's argument (OB71-72), stop short of specifying when Council must approve it.

Footnote 23 unambiguously refrains from stating that a zone change must be granted if requested, or that Council is

Document received by the CA 2nd District Court of Appeal.

prohibited from denying a zone change to a corresponding zone on the Legend. It states that zone change "entitlements granted shall be one of the zone designations within the corresponding zones shown on the Plan,…" (1JA161;RT12:3-28.) The language umambiguously applies if a zone change entitlement is "granted." Footnote 23 "should be applied according to its terms without further judicial construction." (*Snook,* 16 Cal.4th 1210,1216-17.)

If the Court finds any ambiguity, the City receives deference in the above interpretation as the enacting and implementing agency. Deference is appropriate because the legislative history and Snowball provide no evidence the interpretation is clearly erroneous or unauthorized. (171AR35000-47.) (*No Oil,* 196 Cal.App.3d 223,243-249 [deferring to the City's interpretation of "industrial" in the district plan when the record included a contrary interpretation from high-ranking officials]; *City of Monterey,* 215 Cal.App.4th 1068,1087,1091; *Carson Harbor Village, Ltd v. City of Carson etc.* (*Carson*) (2nd Dist.1999) 70 Cal.App.4th 281,290; *MCH Operating Lt'd Partnership v. City of San Jose* (*MCH*) (6th Dist.2003) 106 Cal.App.4th 204,219; *Greenfield v. Mandalay Shores etc.* (2nd Dist.2018) 21 Cal.App.5th 896,901 fn.3 [all deferring to a city's interpretation of its ordinances]. See *Yamaha*, 19 Cal.4th 1, 6-8.)

LAMC§12.32 equally refrains from specifying when Council must approve a zone change. LAMC§12.32.Q.3(a)(2) explains

Document received by the CA 2nd District Court of Appeal.

that notwithstanding vesting rights, Council may in its discretion still deny the zone change. (2JA330,341-42 [compare LAMC§12.32.C.7, with Q.3(a)(2)].) This provision confirms Council's discretion to deny upzoning, but not that upzoning must be granted unless findings to deny are made (Sec.V.A.3, *supra*). (Compare 2JA341-42 [LAMC§12.32.Q.3(a)(2)], with §65915(d) and 2JA371-72 [LAMC§12.22.A.25(g)(2)(i).c].)

B. Snowball Fails To Establish A HAA Obligation To Apply Plan Density And Excuse The Project's Zone Change

1. Zone-Plan Inconsistency Is A Prerequisite To Applying Plan Density Without A Zone Change

The HAA states the Property's zoning must be "inconsistent" with the General Plan (Zone-Plan Inconsistency) before Plan Density applies under §65589.5(j)(4) without a zone change. This plain language requires the Court to reject any argument that the paragraph automatically allows development at maximum Plan Density because the "statutory language is generally the most reliable indicator of legislative intent." (*Bay Area Citizens v. Association of Bay Area Governments* (1st Dist.2016) 248 Cal.App.4th 966,977,998 [deferring to an agency's interpretation of new laws, relying on the plain language, bill emphasis, and the Legislature's declarations].)

Document received by the CA 2nd District Court of Appeal.

When the Legislature deleted language that would have allowed developments to automatically use "maximum" Plan Density (Sec.III.B, *supra*), the Legislature intended that the HAA "should not be construed to include the omitted provision." (*People v. Tingcungco* (2nd Dist.2015) 237 Cal.App.4th 249,256.) This HAA paragraph expresses current legislative policy even after Housing Crisis Act amendments. (Stats.2019,ch.654 §3; Stats.2021,ch.161 §1 [CRJN,Exh.Q,R].)

By requiring zoning to be "inconsistent" with the General Plan, this paragraph conveys a different meaning than the housing approval statute at §65913.4 which automatically applies Plan Density irrespective of Zone-Plan Inconsistency. (1JA271,ln.7-9; see also §65589.5(d)(5) [allowing disapproval of specified developments if inconsistent with "both" zoning and plan].) In §65913.4 a development that meets specified criteria 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).) The omission of similar language from §65589.5(j)(4) "is significant to show that a different legislative intent existed." (*County of San Diego v. San Diego NORML* (4th Dist.2008) 165 Cal.App.4th 798,825; *Brown v. County of Los Angeles* (2nd Dist.2012) 203 Cal.App.4th 1529,1549.)

The second sentence of paragraph (j)(4) clarifies the consequence of Zone-Plan Inconsistency described in the first

Document received by the CA 2nd District Court of Appeal.

sentence by allowing the City to apply individual objective "standards and criteria" consistent with the General Plan in a way that facilitates Plan Density. (§65589.5(j)(4).) Snowball's argument (OB51-52) that zoning standards shall always facilitate Plan Density even where zoning is consistent with the plan, would allow the second sentence to render the first sentence meaningless or redundant. The admonition in the first sentence that a development "shall not require a rezoning" if compliant with General Plan standards, would be unnecessary because Plan Density will always apply. It would also be unnecessary to declare that a development is considered consistent with zoning standards and criteria if it is compliant with plan standards. Determining consistency with zoning standards would be unnecessary because zoning standards will always be required to facilitate Plan Density. This interpretation would also fail to recognize the statutory relationship between zoning and the General Plan under §65860. (CRJN,Exh.O [Analysis p.7-8].) (*Select Base Materials,* 51 Cal.2d 640,645,647 [statutes are harmonized and "construed with reference to the whole" to avoid rendering "nugatory important provisions"].)

Document received by the CA 2nd District Court of Appeal.

2. Footnote 23 Explains That The Property Fails to Satisfy The Zone-Plan Inconsistency Prerequisite

The Property's zoning is consistent with the General Plan based on Footnote 23. It explains that the full range of corresponding zones for the Property's land use categories includes the RD5 and R1 zones listed in the Legend, "as well as" the more restrictive RA and A1 zones permitted by the LAMC but not listed in the Legend. When Footnote 23 is methodically followed (Sec.III.A, *supra*), the Property's existing zones are consistent. Here, Footnote 23 informs the consistency determination, not some alleged financial motive to charge zone change application fees (OB42fn.9).

Snowball's Appeal ask the Court and City to disregard Footnote 23's plain language (OB41-54). It claims Zone-Plan Inconsistency because the Property's A1 and RA zones are not "those listed" on the Legend as corresponding zones (OB41).

Snowball's citation to *Lesher Communications, Inc. v. City of Walnut Creek* (*Lesher*) (1990) 52 Cal.3d 531, is unpersuasive on its interpretation of Footnote 23 (OB17,41-44) because *Lesher* did not decide the issues Snowball cites the case for. *Lesher* did not

Document received by the CA 2nd District Court of Appeal.

broadly decide that a "zoning ordinance that restricts development is inconsistent with a general plan that contemplates more intense development" (OB43-44). It also did not decide that general plans are prohibited from recognizing consistency in a wide range of decades-old, presumptively valid, existing zoning that "permits less dense development" than the plan maximum (OB17). *Lesher* is not authority for these issues it did not consider. (*California Building Industry Assn. v. State Water Resources Control Bd.* (*CBIA*) (2018) 4 Cal.5th 1032,1043 ["…cases are not authority for propositions that are not considered."].)

Lesher is also unpersuasive because the facts and mandatory plan language that allowed the court to find inconsistency there, are distinguishable from, and simply not present in, Snowball's case. *Lesher* involved a timely challenge to a newly enacted "building moratorium" triggered by existing traffic congestion. (52 Cal.3d 531,536-37.) The moratorium existed on the same roads where the general plan stated traffic congestion "will continue to increase" and "drivers will have to adjust." (*Id.*) Initiative text indicated it could not be upheld as a general plan amendment to avoid the inconsistency issue. (*Id.* at

Document received by the CA 2nd District Court of Appeal.

543-44.) The city did not argue consistency under other plan text, but argued consistency based on a subsequent plan amendment and §65860(c). (*Id*. at 544-45.) However, new plan language could not "save" the initiative because that language did not exist when the initiative passed. (*Id*. at 545-46.) Further, §65860(c) did not help because §65860(c) concerns valid zoning that becomes inconsistent under a subsequent plan amendment, a circumstance absent in *Lesher*. (*Id*.)

Relying on *Lesher* is inappropriate here for several additional reasons. First, it relies on the speculative premise that the City adopted Footnote 23 to "save" zoning that was invalid when passed (OB17,42). That argument is waived because Snowball cites no evidence or law to demonstrate invalidity at the time of passage. (*Wilkinson*, 33 Cal.4th 821, 846 fn.9.) Further, the Property's zoning is presumptively valid because any claim of invalidity is barred as an untimely attack on existing zoning that has been in place for decades. (162AR33356-59 [no recent zone changes in Property's history; 1JA72,ln1-4.) (§65009(c)(1)(B); see also *Citizens for Beach Rights v. City of San Diego* (*Citizens*) (4th Dist.2017) 17 Cal.App.5th 230,238-39; [§65009 barred a claim that the underlying planning action was invalid when recharacterized as a challenge to the building permit]. Accord *Elysian Heights etc. v. City of Los Angeles* (2nd

Document received by the CA 2nd District Court of Appeal.

Dist.1986) 182 Cal.App.3d 21,29-30 [upholding a building permit issued in accordance with zoning inconsistent with the general plan, discussing §65860(c)].)

Second, to the extent Snowball claims *Lesher* invalidates the consistency "practice" embodied in Footnote 23 (OB17,46,70 fn.13), that argument is simply a direct attack on the General Plan barred by the 90-day statute of limitations based on the footnote's 1991 enactment date. (171AR35000-06,35047; 1JA72,ln.1-4.) (§65009(c)(1)(A); *Venice Coalition etc. v. City of Los Angeles* (2nd Dist.2019) 31 Cal.App.5th 42,51-52 [§65009 barred challenge to a process embodied in a specific plan that was recast as a pattern and practice claim].)

Third, *Lesher* relied heavily upon the reasoning in *deBottari v. City Council* (4th Dist.1985) 171 Cal.App.3d 1204, a case with reasoning later disapproved of in *City of Morgan Hill v. Bushey* (*Morgan Hill*) (2018) 5 Cal.5th 1068, at 1084-86. (*Lesher,* 52 Cal.3d 531,541,544.)

Lastly, Snowball tries to use *Lesher* to claim that a general plan amendment cannot establish consistency with valid zoning that becomes inconsistent through a later plan amendment, when *Lesher* did not involve that §65860(c) situation (OB17,41-43). (*Lesher* at 545-46.) In doing so, Snowball also disregards *Morgan Hill*, where the California Supreme Court explains that in a §65860(c) scenario a city can "simultaneously alter the general

Document received by the CA 2nd District Court of Appeal.

plan and zoning," "add zoning designations," or "alter the general plan" to achieve consistency. (5 Cal.5th 1068,1086,1090, and 1091.) Moreover, the Property's zoning has remained consistent through subsequent plan amendments, and Footnote 23 is merely a formal recognition of existing policy (Sec.III.A, *supra*).

For all these reasons, it must be acknowledged that General Plan Footnote 23 identifies a broad range of zones that are consistent and corresponding to a land use category. The "tail" (zoning), is not wagging the "dog" (General Plan), as Snowball claims (OB46) Although Snowball invites this Court to second-guess the wisdom of allowing a wide range of consistent zones, this is not the Court's role when reviewing or interpreting legislation. (*Lockard,* 33 Cal.2d 453,461; see also *Rhiner v. Worker's Comp. Appeals Bd*. (1993) 4 Cal.4th 1213,1226 [rejecting proposed statutory construction because "second-guessing that policy determination, …, is not an appropriate task for this court."].)

3. The City's Interpretation of Footnote 23 Is Entitled to Deference

Footnote 23 is plain and unambiguous and is not eligible for application of statutory construction principles, but assuming it is ambiguous the Court owes a heightened level of deference to the City's interpretation of it. (1JT271-72.)

Document received by the CA 2nd District Court of Appeal.

The City's interpretation of Footnote 23 and its zoning code must "be respected by the court unless it is clearly erroneous or unauthorized." (*City of Monterey,* 215 Cal.App.4th 1068,1087,1091; *No Oil,* 196 Cal.App.3d 223,243-249; *Carson,* 70 Cal.App.4th 281,290; *MCH,* 106 Cal.App.4th 204,219; *Greenfield,* 21 Cal.App.5th 896,901 fn.3; see *Yamaha,* 19 Cal.4th 1,8.)

Circumstances describing the enactment and application of the zoning code and Footnote 23 (Secs.II.B-D,III.A, *supra*), indicate the City is entitled to deference here. They are regulations recommended, enacted and implemented by staff, CPC and Council that 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." (*Yamaha,* at 11. See *City of Walnut Creek v. County of Contra Costa* (1st Dist.1980) 101 Cal.App.3d 1012,1021 ["The construction placed on a piece of legislation by the enacting body is of very persuasive significance."].)

Snowball fails at its burden of showing that the City's interpretation here is clearly erroneous or unauthorized. (*Yamaha,* at 6-7; *MCH*, 106 Cal.App.4th at 225-26.) It presents no evidence or authority on this point. Yet, Snowball has known the City's interpretations and conclusion since the City issued its letter refusing Snowball's tentative map clearance. (171AR34998-99.) Further, Footnote 23 has been in operation

Document received by the CA 2nd District Court of Appeal.

since 1991. (171AR35047.)

4. The Property's Zoning Is Consistent And Compatible With General Plan Policies, And Does Not Violate A Mandatory Plan Policy

The HAA's reference to zoning that is "inconsistent" is understood through §65860 and associated caselaw in the land use context (Secs.III.B,V.B.1, *supra,* and 1JT272-73.) This context-specific technical understanding prevails over a common or "literal" definition that might simply mean a failure to be an exact match. (See generally Civ.Code §§13,1645; *County of Sacramento v. Hickman* (1967) 66 Cal.2d 841,851.) Neither the HAA nor §65860 define Zone-Plan Inconsistency as zoning that fails to exactly match the full range of uses authorized by the General Plan as Snowball argues (OB43-52). (§65860(a)(2),(c.).)

When zoning is "consistent," it is "compatible" with General Plan objectives, policies and programs. (§65860(a)(2).) Statutory text does not rigidly dictate what it means to be consistent, limit the range of amendments that can achieve consistency, or require a narrow range of zones for consistency. (§65860(a)(2),(c).) It is not the function of this Court to "rewrite the law" and insert these limitations through statutory construction. (*DiCampli-Mintz*, 55 Cal.4th 983,991-92; C.C.P.§1858.)

Document received by the CA 2nd District Court of Appeal.

The Property's zoning is consistent even if it is not "in rigid conformity with every detail" of the General Plan, such as exactly matching the maximum densities (1JA161-62) allowed by the Property's land use designations. (*Naraghi Lakes etc. v. City of Modesto* (*Naraghi*) (5th Dist.2016) 1 Cal.App.5th 9,17-18 [shopping center was consistent despite exceeding size limits]. See *Corona-Norco,* 17 Cal.App.4th 985,994 [upholding a zone change if "considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment"]. See also *Sequoyah Hills Homeowners Association v. City of Oakland* (*Sequoyah*) (1st Dist.1993) 23 Cal.App.4th 704,717-18 [housing development was consistent despite not conforming precisely with plan land use designation]; *Pfeiffer v. City of Sunnyvale City Council* (6th Dist.2011) 200 Cal.App.4th 1552,1565 [consistency determination upheld for a waste facility on a site designated as low density residential].)

In contrast, "inconsistent" zoning is zoning that conflicts with a "fundamental, mandatory and clear" General Plan policy. (*Endangered Habitats League, Inc. v. County of Orange* (4th Dist.2005) 131 Cal.App.4th 777,782-83 ["area plans" that caused Santiago Canyon Road level of service to be "D/E," were

Document received by the CA 2nd District Court of Appeal.

inconsistent with plan standard stating "[Level of Service] C shall …be maintained on Santiago Canyon Road."]; *Families Unafraid etc. County v. County Board of Supervisors* (3rd Dist.1998) 62 Cal.App.4th 1332,1340-42 ["LDR" zoning was inconsistent with plan policy that states the LDR zone "shall be further restricted to those lands contiguous to Community Regions and Rural Centers…" when the site was not contiguous].)

The Property's zoning is also consistent under the test for inconsistent zoning because here, the General Plan (i.e. Community Plan) "is not as specific…and does not contain mandatory provisions." (*Corona-Norco,* 17 Cal.App.4th 985,996 [upholding zone change consistency finding]; *Sequoyah Hills Homeowners Association v. City of Oakland* (*Sequoyah*) (1st Dist.1993) 23 Cal.App.4th 704,718-19 [upholding consistency finding stating, "none of the policies on which appellant relies is mandatory…We agree."].) (1JA161,162[Footnote 23]; 1JA120-24[goals,objectives,policies]; 1JT261,270-73.)

The essential question here - whether the existing zones are "compatible with, and do[] not frustrate, the general plan's goals and policies" - was answered years ago when the City

Document received by the CA 2nd District Court of Appeal.

memorialized its existing interpretation policy in Footnote 23. (*Naraghi,* 1 Cal.App.5th 9,18.)

The City's General Plan consistency determination here is entitled to deference unless "a reasonable person could not have reached the same conclusion." (*Corona-Norco,* at 992 [upholding a zone change against a claim of plan inconsistency]; *Federation,* 126 Cal.App.4th 1180,1195-96 [upholding general plan unless "a reasonable person could not conclude the plan is internally consistent"]; *San Franciscans etc. v. City and County of San Francisco* (*San Franciscans*) (1st Dist.2002) 102 Cal.App.4th 656,677-78 [upholding plan amendment citing "great deference" to the agency's general plan consistency determination due to its competence at interpreting and balancing plan policies].)

Snowball fails at its burden to demonstrate through evidence and citation to the record that the City's consistency determination is "based on evidence from which no reasonable person could have reached the same conclusion." (*San Franciscans*, at 677. Accord *Naraghi,* 1 Cal.App.5th 9,19; *Corona-Norco,* 17 Cal.App.4th 985,992.; *Pfeiffer,* 200 Cal.App.4th 1552,1563-66 [burden of unreasonableness not met and consistency determination upheld].) It does not cite evidence or

Document received by the CA 2nd District Court of Appeal.

law to show how the current zoning is inconsistent with the General Plan. It does not show how zoning uses are outside the range of uses allowed by the Property's land use categories, or how the zoning would obstruct "mandatory provisions" of the General Plan. (See *Corona-Norco,* 17 Cal.App.4th 985,994,996; *Sequoyah*, 23 Cal.App.4th 704,718-19.)

These consistency cases are persuasive, if not controlling, because the HAA only changed the test for whether a "development project" is consistent with an applicable standard in the context of adjudicating a Development Application subject to the PSA (Sec.IV.C.1-2, *supra*). (§65589.5(f)(4).) The test for determining whether "zoning" is consistent with the General Plan remains the same. To the extent these cases don't involve §65589.5(j)(4), it is a distinction without a meaningful difference since the HAA does not define "inconsistent."

Here, there are four reasons that existing zoning is consistent and compatible with the General Plan.

First, the current zoning assists with attaining a number of Community Plan objectives that are aimed at maintaining rural character, minimizing hillside development, and limiting suburban sprawl. (1JA123 [Objective 1-6]; 1JA124 [Objective 1-8]; 1JA135 [Objective 9-1].)

Document received by the CA 2nd District Court of Appeal.

Second, the zoning follows the plain language of Footnote 23 (Secs.III.A,V.B.2, *supra*). In contrast, finding Zone-Plan Inconsistency ignores Footnote 23, or renders it void and meaningless by failing to harmonize the footnote with other City land use regulations. (See *Select Base Materials,* 51 Cal.2d 640,645.) While Footnote 23 requires a future zone change to be one of the zones listed on the Legend for a land use category, no zone changes were granted here so that provision is irrelevant. (1JA161.)

Third, the zoning is compatible with and does not frustrate the concurrent operation of the density and use maximums of the zones listed on the Legend for the Property's land use categories. (*Pacific Palisades*, 55 Cal.4th 783,805 [statutes are harmonized to have "concurrent operation"].) This is because the maximum zoning density of 19, is also permitted by the Property's land use categories whose zones allow 215 units. (1JA161-63; 171AR34997.)

There is no mandatory or specific plan policy about residential density that the existing zoning violates. (1JA120-24.) (*Corona-Norco,* 17 Cal.App.4th 985,996; *Sequoyah,* 23 Cal.App.4th 704,718-19 [both upholding consistency due to lack of specific, mandatory plan requirement].) This is because within a land use category the Community Plan does not command a minimum existing

Document received by the CA 2nd District Court of Appeal.

zoning, density or use; and the plan does not prohibit more restrictive existing zoning, lower density, or less intense use. (Sec.III.A, *supra*; RT8:2-9:3,312:13-28.) Even if this question was viewed through state preemption law, which asks a similar question but does not provide the test here, there is still no inconsistency because the existing zoning does not "prohibit what the [plan] commands or command what it prohibits." (See generally *Sherwin Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 902.)

Fourth, the zoning is compatible with and does not frustrate the General Plan Housing Element. It acknowledges the Property's parcel numbers are not listed in the General Plan, Housing Element, Appendix H, the inventory of undeveloped and underdeveloped suitable sites that can accommodate required new housing production. (2JA414-417; 1AR172[parcel numbers].)

For these reasons the zoning is consistent.

5. Warner Ridge Did Not Decide The Issues Here, Does Not Change The Analysis, And The Argument Is Waived

Snowball's collateral estoppel argument based on *Warner Ridge Assoc. v. City of Los Angeles* (1991) 2 Cal.App.4th 238 (OB17-18), is waived on Appeal because it was not raised in the Trial Court. (1JA76-99; 2JA441-459; 3JA593-608; RT1-42,301-

Document received by the CA 2nd District Court of Appeal.

47.) (*Franklin Mint,* 184 Cal.App.4th 313,332-33; *Jacobson,* 69 Cal.App.3d 374,392-93.)

Nevertheless, the City addresses the substance here. The unpublished case does not involve the question of whether more restrictive zones and uses are included in less restrictive zones, nor does it involve this Property, or the consistency of existing valid zones with the existing General Plan such as in a §65860(c) context. (Compare 2 Cal.App.4th 238,244-45,257, with *Morgan Hill*, 5 Cal.5th 1068,1086,1090, and 1091.) Instead, it decided a timely challenge under §65860, to a newly adopted "RS" zone that was inconsistent with the General Plan at the time of enactment. (*Id*. at 244-45,257.)

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 Snowball raises. (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501,511-12; *Church v. San Mateo County etc.* (*Church*) (1st Dist.2022) 52 Cal.App.5th 310,321-22 [no issue preclusion]; *County of Los Angeles v. County of Los Angeles Assessment Appeals Bd.* (2nd Dist.1993) 13 Cal.App.4th 102,110. [no collateral estoppel against contracts that were "similar" but concerned different property].)

While *Warner Ridge* disagreed with the City's "hierarchy theory" and mentioned part of the footnote language, the opinion

Document received by the CA 2nd District Court of Appeal.

itself states that it is *not authority* for Snowball's issues because they were not considered. (*CBIA,* 4 Cal.5th 1032,1043.) The opinion states that it does 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 questions "beside the point." (2 Cal.App.4th 238,254.)

Applying collateral estoppel here is problematic for three other reasons. First, the decision incorrectly characterizes City policy as authorizing the future adoption of zones that are absent from an applicable land use category, as Snowball also claims (OB47). In doing so, it ignores the last footnote sentence that requires future approved entitlements, or zone changes, to be one of the zones listed as corresponding zones on the applicable map. (2 Cal.App.4th 238,254; 1JA161-62; 171AR35047.) That last footnote sentence supports the holding in *Warner Ridge*, not any disagreement with the "hierarchy theory."

Second, it converts an unpublished case into citeable precedent to determine an issue of law – i.e. what the footnote language means and what development standard applies. (*Church*, 52 Cal.App.5th 310, 322.) The Second District and California Supreme Court have declined to apply collateral estoppel against a public agency on a legal issue. (*Palmdale Hospital Medical*

Document received by the CA 2nd District Court of Appeal.

Center v. Department of Health Services (2nd Dist.1992) 8 Cal.App.4th 1306,1311 [declining collateral estoppel for a legal issue against the public agency on public interest grounds]; *Los Angeles v. San Fernando* (1975) 14 Cal.3d 199,230 [declining collateral estoppel for a water rights legal issue between the same the parties on public interest and third-party injustice grounds], overruled on other grounds.)

Third, collateral estoppel will create a public injustice by preventing the City and third-party property owners from litigating applicable development standards within the historical regulatory context of an individual parcel. The courts will not apply collateral estoppel to foreclose the re-litigation of an issue of law involving "a public agency's ongoing obligation to administer statutes and regulations which were enacted for the benefit of the public" but not before the court. (*Palmdale Hospital,* 8 Cal.App.4th 1306,1311; see*, Los Angeles v. San Fernando*, 14 Cal.3d 199,230.)

6. Snowball Completely Fails At Establishing An Alleged Obligation Under The HAA

Snowball cannot meet its burden to show the existence of an obligation under the HAA (Sec.IV.D, *supra*), because it first fails to satisfy its burden of demonstrating the prerequisite Zone-Plan Inconsistency (Secs.II.A,III.A,V.B.1-5, *supra*).

Document received by the CA 2nd District Court of Appeal.

In the absence of inconsistency, the HAA does not allow Plan Density or excuse a zone change (Secs.III.B and V.B.1, *supra*). Thus, the 215 unit Project is noncompliant with the applicable zoning standards that allow 19; it depends on upzoning; and the Disapproval Requirements are inapplicable (Secs.IV.C, *supra*). (§65589.5(j)(1),(4).)

The absence of a ministerial duty is fatal to Snowball's Appeal. (1JT273-74.) General HAA policy statements about "the approval and provision of, housing" (OB12,31) cannot create a ministerial duty that exceeds statutory language, or insert a duty into the HAA where none exists. (*Common Cause,* 49 Cal.3d 432,444; *Shamisan,* 136 Cal.App.4th 621,640-41; C.C.P.§1858.)

Snowball's following arguments are unavailing to its claim that the City's denials should be approvals:

First, it is incorrect to argue that the City, through the CPC, already found the proposed zoning consistent with the General Plan (OB20-22,35-37). Council did not make that finding or adopt any of the CPC findings. The CPC only provides a "recommendation" to Council; and the CPC is not Council, the legislative body that must "adopt," "approve or disapprove" any upzoning legislation. (2JA424-25, [Charter §558(b)]; 2JA328-330, 341-21 [LAMC§12.32-C.1, C.7, Q.3(a)(2)].)

Document received by the CA 2nd District Court of Appeal.

Second, Snowball's argument that the proposed zoning is consistent with the General Plan is inapplicable (OB35-37). It is Snowball's burden to show that the *existing* zoning is inconsistent with the plan before Plan Density applies. (§65589.5(j)(4).)

Third, Snowball's reliance on *Lesher* (OB43-46) is not controlling for the reasons already discussed (Sec.V.B.2, *supra*).

Fourth, Snowball speculates about the meaning of staff statements concerning the proposed zones bringing the Property "into conformance," or that the proposed zones would "achieve" compatibility (OB39-40). Those statements refer to the idea the proposed zones will not "achieve" incompatibility, or cause the Property to be "out of conformance" or "inconsistent" with the General Plan because they are among the zones listed on the Legend for the Property's land use categories. (RT22:1-15.) Staff comments do not say that the existing zones are "inconsistent."

Fifth, any argument that the City is prevented from changing its findings and enforcing its zoning standards (OB17-27,35-41,57-64) is legally untenable because the City cannot be estopped from enforcing Footnote 23 or existing zoning regulations by reason of the CPC's actions, inactions or recommendations. (*Schafer v. City of Los Angeles* (2nd Dist.2015) 237 Cal.App.4th 1250,1259; *Smith v. County of Santa Barbara* (2nd Dist.1992) 7 Cal.App.4th 770,774 [both allowing the revocation or denial of a permit issued in error].) For this same

Document received by the CA 2nd District Court of Appeal.

reason Snowball cannot claim that accepting a zone change application and fee prevents the City from denying upzoning or enforcing existing zoning (OB42 fn.9,52).

C. Snowball's Noncompliance With The Zone Change Condition Is An Alternative Basis to Uphold the Judgment

1. The Zone Change Condition is Enforceable Because HAA Claims Are Barred And Waived

The Zone Change Condition is enforceable because the statute of limitations in §66499.37 and waiver doctrine, immunize it from legal attack. Thus, the Project must obtain the upzoning. Since Snowball admits that it failed to obtain it (OB25-26), there is no basis for a writ that orders the City to issue a clearance. Consequently, this Court is entitled to uphold the judgment denying the writ even if it finds error in the ruling that denied the writ on HAA and consistency grounds. (3JA602-3,5,fn.9.) The reason is that it simply cannot be shown "that a different result would have been probable" without that error. (C.C.P.§475.)

Under the prejudicial error doctrine, the Court of Appeal may uphold the judgment on the alternative basis that the statute of limitations in §66499.37 bars this lawsuit's collateral

Document received by the CA 2nd District Court of Appeal.

attack on the enforceability of the Zone Change Condition. (C.C.P.§475; *Hawkins v. County of Marin* (1st Dist.1976) 54 Cal.App.3d 587,593 [upholding the ruling even though "the trial court made no mention of the statute of limitations … [and] may have decided the case on other grounds…."].) The substance of Snowball's attack is that under the HAA, the City "could not require a zone change" as a tentative map condition. (OB27,54,64.) But as a barred claim, it cannot render the condition unenforceable.

Snowball may not resurrect the barred claim by simply recharacterizing it as a challenge to the clearance denial. (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1,25-26 [barring constitutional takings claim and considering it "waived" based on a failure to administratively or judicially challenge the foundational map condition]. Accord, *Citizens,* 17 Cal.App.5th 230,238-39 [barring planning claim under §65009 characterized as a building permit challenge].)

Here, the City approved the Zone Change Condition on June 19, 2019, but Snowball did not file these HAA claims until February 24, 2020, which is 240 days later and well beyond the 90-day limitations period. (13AR2280-2398.) Section 66499.37

Document received by the CA 2nd District Court of Appeal.

bars the claims because it broadly applies to any proceeding that challenges the "validity of any condition" attached to a tentative map; and if no challenges are filed and served within 90 days of the tentative map decision, "all persons are barred" from challenging it. (§66499.37; *Hensler,* 8 Cal.4th 1,25-26; see *Sumner Hill Homeowners' Assoc. Inc. v. Rio Mesa Holdings* (5th Dist.2012) 205 Cal.App.4th 999,1023-24 [barring claim under the California Constitution].)

In addition, Snowball's failure to administratively appeal the condition fails to exhaust administrative remedies and is a second reason Snowball waives any challenge to it. (RT34:11-26.) (*Hensler,* 8 Cal.4th 1,11-12.)

2. The City Raised The Statute of Limitations, But The Trial Court Abused Its Discretion When It Denied An Amended Answer To Plead This Meritorious Defense

The City's writ briefing raised the limitations period in §66499.37 to bar Snowball's HAA claim that the City "could not require a zone change" through the Zone Change Condition. (1JA91ln.15; 2JA457,ln.8-13). The Trial Court abused its discretion when it denied the City's request to file an amended Answer in order to specifically plead a defense disclosed by the

Document received by the CA 2nd District Court of Appeal.

Administrative Record and Petition, generally referenced in the Answer, briefed in the Opposition, but not responded to on reply. (13AR2280-2398[approval date]; 1JA7-45[Petition ¶88-90]; 1JA47-74[Answer ¶12-13]; 1JA274-75[Opposition]; 2JA441-507[Reply]; 3JA591[Ruling].)

After an initial writ hearing, Snowball objected through an unsolicited letter brief (RT345:11-28). The City timely noticed an Ex Parte Application before the second hearing in order to amend its Answer and specifically plead the limitations period. (2JA511-568[letter at p.539].) Snowball opposed by claiming contrary to the record that it would be prejudiced because it "has not had the opportunity address the [limitations] issue," and that its claim is not barred because it "does not challenge the original condition of approval" but an alleged "misinterpretation" of it. (3JA580,ln.16-582,ln.8.)

The rule is that courts liberally permit amendment, finding that denial of leave to amend is rarely justified, and that amendment should be allowed when the amendment does not impair or prejudice the rights of the opposite party. (C.C.P.§§472,473(a)(1),576[authorizing amendment after commencement of trial]; *Nestle v. Santa Monica* (1972) 6 Cal.3d 920,939 [reversing denial of complaint amendment]; *City of Torrance v. Southern California Edison Co.* (2nd Dist.2021) 61 Cal.App.5th 1071,1091 [allowing amendment to include "any

Document received by the CA 2nd District Court of Appeal.

other viable claims."]; *Hyman v. Tarplee* (1st Dist.1944) 64 Cal.App.2d 805,813-14 [allowing amendment of answer just prior to trial].)

If as here, the motion is timely and there is no evidence the amendment will prejudice the opposing party, "it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion." (*Morgan v. Superior Court of Los Angeles County* (2nd Dist.1959) 172 Cal.App.2d 527,530-31 [complaint amendment compelled, noting no trial delay].)

Hopkins v. Hopkins (2nd Dist.1953) 116 Cal.App.2d 174 (superseded on other grounds), is instructive here because after analyzing the amendment of an answer similar to the amendment of a complaint, the Second District found an abuse of discretion in denying an amended answer where denial had the effect of "depriv[ing] defendant of the benefit of a meritorious defense" concerning the limitations period. (*Id.* at 184-85. See *Marshall v. Marshall* (2nd Dist.1956) 140 Cal.App.2d 475,478,481 [upholding amendment to answer at close of trial to "conform to proof"]; compare with, *Bettencourt v. Hennessy Industries, Inc.* (1st Dist.2012) 205 Cal.App.4th 1103,1116 [denying amendment that would sufficiently plead a cause of action is an abuse of discretion].)

Document received by the CA 2nd District Court of Appeal.

Denying the City's amendment is an abuse of discretion for the additional reason Snowball would not be prejudiced. It had the opportunity to address the defense on reply or at hearing, and the undisputed facts in the administrative record disclosed the defense so there could be no additional discovery or delay.

Denying amendment prevented the City from fully raising a meritorious defense concerning its clearance denial in the Trial Court. (See *Hopkins,* 116 Cal.App.2d 174,184-85; *Marshall,* 140 Cal.App.2d 475,478,481; *Hyman,* 64 Cal.App.2d 805,813-14.) However, the City renews that defense here on appeal.

3. The Clearance Denial Is Factually And Legally Valid

The denial is factually valid because Snowball admits that the Zone Change Condition's specified legislation was not approved (OB26). Snowball's cited cases agree with this City denial. (*Great Western,* 31 Cal.App.3d 403,414-15 [approval was ministerial because "the conditions imposed…had been complied with."]; *Youngblood v. Board of Supervisors* (1978) 22 Cal.3d 644,654 [upholding map approval because "the subdivider had complied with all conditions…."].) However, they did not decide if a condition is satisfied by operation of the HAA (OB63-64), or decide when a final map must be "ministerially" processed without complying with conditions. Thus, those cases are not

Document received by the CA 2nd District Court of Appeal.

authority for the propositions cited by Snowball. (*CBIA,* 4 Cal.5th 1032,1043.)

The denial is also legally valid. The City is required to deny the clearance because "[i]f the map does not conform, the legislative body shall disapprove the map." (§66458(a).) The Project's "fulfillment of all tentative map conditions is, from the outset, a condition of final map approval." (*Soderling v. City of Santa Monica* (2nd Dist.1983) 142 Cal.App.3d 501,505 [upholding denial of final map for a failure to satisfy a tentative map condition, and holding that a challenge to a tentative map condition taken after denial of the final map was barred by the limitations period].) The clearance and final map approval are not "ministerial" (OB63) until Snowball demonstrates the specified zone change "approval" occurred. (5AR0801.) (Compare *Soderling* at 505, with *Great Western,* 31 Cal.App.3d 403,414-15.)

The clearance denial is valid for the additional reason it does not trigger the Disapproval Requirements. First, there is no PSA or HAA text that applies the Disapproval Requirements to the post-decision clearance of conditions (Secs.III.C,IV.C.4, *supra*). Second, the clearance cannot be controlled by the PSA or the HAA because it requires the exercise of legislative discretion (Secs.IV.C.1, IV.C.3,V.A.1-2, *supra*). Third, §65589.5(j)(4) cannot satisfy the condition as a matter of law because there is no Zone-Plan Inconsistency (Sec.V.B, *supra*).

Document received by the CA 2nd District Court of Appeal.

D. There Is No Bad Faith

1. The City's Actions Are Lawful Under The HAA and General Plan

For all the reasons discussed in Sections II through V, *supra*, the City's actions were in good faith.

The City's conduct does not meet the HAA definition of "bad faith," or other standards for "frivolous" action. The HAA defines "bad faith" as an action that is "frivolous or otherwise entirely without merit." (§65589.5(l).) While there is more than one standard for the term "frivolous," the City's conduct does not meet any of them. (*Burkle v. Burkle* (2nd Dist.2006) 144 Cal.App.4th 387,401 ["frivolous" means conduct that is "objectively unreasonable"]; *Millennium Corporate Solutions v. Peckinpaugh* (2nd Dist.2005) 126 Cal.App.4th 352,360 ["frivolous" means done "for an improper motive" or "indisputably has no merit"]; *Peake v. Underwood* (4th Dist.2014) 227 Cal.App.4th 428,440 ["[a] claim is factually frivolous if it is 'not well grounded in fact' and it 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."].)

Snowball has not cited any authority or fact that suggests the City's interpretations or actions are entirely without merit or have an improper motive. Snowball's following theories of bad faith fail as well.

Document received by the CA 2nd District Court of Appeal.

2. The Referenced Housing Crisis Act Section Does Not Apply To Legislation, Or Clearances

The Housing Crisis Act provision at §65905.5, does not apply to legislation or the clearance of map conditions as claimed. (OB32fn.5,63.) Section 65905.5(c)(2) has no application to the Appeal even though it has language similar to §65589.5(j)(4). Section 65905.5 imposes a five "hearing" limit to either approve or disapprove a Development Application submitted pursuant to PSA §65940. (§65905.5(a) and(b)(1).) However, the hearing limit "does not include a hearing to review a legislative approval, including any appeal,…." (§65905.5(b)(2).)

Further, it is silent about the clearance of final map conditions, or post-decision actions. (§65905.5.) It is not the function of the courts to rewrite this provision to insert the omitted actions challenged in this Appeal. (C.C.P.§1858; *DiCampli-Mintz*, 55 Cal.4th 983,991-92.)

3. The Record Discloses Compliance With Applicable Procedures And A Response To Constituent Concerns

Snowball complains about a lengthy list of entitlement review events but does not allege any specific law violated, thus the Court may pass the complaints "without consideration." (*Wilkinson,* 33 Cal.4th 821,846 fn.9.) To the extent legal authority is later presented on reply the matter is improperly raised.

Document received by the CA 2nd District Court of Appeal.

(*Raceway Ford Cases* (2016) 2 Cal.5th 161,178 [courts "generally do not consider arguments raised for the first time in a reply brief"].) While the legal grounds for Snowball's complaints are not clearly articulated, the City attempts to address them below.

The purported fair "hearing" or "rushed" review issues raised by Snowball (OB65-69), are concerns that apply to adjudicatory actions, but do not apply here because "rezoning is a legislative act." (*Arnel,* 28 Cal.3d 511,521-24 [rezoning did not involve a right to a "hearing"]; *Building Code Action v. Energy Resources Conservation etc.* (1st Dist.1980) 102 Cal.App.3d 577,584 ["notions of fairness or due process … are not applicable" to the adoption of regulations].)

To the extent Snowball had a right to be heard on its upzoning legislation under the LAMC, Council Rules, and the Brown Act (§54950 et seq.), the City provided Snowball with an opportunity to be heard before the Councilmembers at PLUM (OB67; 166AR34295-98), but was not required to provide a second hearing before the full Council. (2JA328-330 [LAMC§12.32.C]; §54954.3(a) [public comment is not required on an item where a committee of the legislative body already allowed comment]. Accord, *Kramer v. State Board of Accountancy* (2nd Dist.1962) 200 Cal.App.2d 163,174-75 [no fair hearing violation when the board revoked a license without a full hearing upon the report of the hearing officer who held the hearing].)

Document received by the CA 2nd District Court of Appeal.

Per Council Rules, Snowball presented unlimited written comments to PLUM and Council (164AR33854-55; 166AR34262-64,34280-84) and had one minute to speak like others at PLUM (OB67). (1JA207-08,222 [Rules 7,8,62].) It was within Council's Brown Act discretion to limit total comment time for the item, or the time for individual speakers, as Snowball mentions (OB66-67). (§54954.3(b).)

Lastly, there is no improper motive in opposition comments from an elected Councilmember who is "supposed to respond to the concerns of his or her constituents." (*Stubblefield Construction v. City of San Bernardino* (4th Dist.1995) 32 Cal.App.4th 687,711 [finding no "arbitrary or irrational" action in a legislator's alleged "vendetta" against a project that resulted in the passage of legislation that stopped the project].) *Stubblefield* affirms that it is the job of a Councilmember to respond to constituent concerns about fire hazards, and that the denial of upzoning here cannot be categorized as arbitrary or irrational. (*Id*.)

4. One Case Does Not Constitute a Pattern Or Practice

The HAA ruling in *District Square, LLC v. City of Los Angeles* represents one of presumably hundreds of developments that the City has acted on since the HAA took effect in 1982. (*California Renters,* 68 Cal.App.5th 820,830.) It is distinguishable

Document received by the CA 2nd District Court of Appeal.

from the instant case because the development there was fully adjudicatory. It demonstrates a court found "one agency decision" violated the HAA over 40 years, not an alleged practice or policy contrary to the HAA. (Compare *East Bay Mun. Utility Dist. v. Department of Forestry etc.* (1st Dist.1996) 43 Cal.App.4th 1113,1123-24,1131-32 [denying declaratory relief because there was no proof of "ongoing" practice], with *Californians for Native Salmon etc. v. Department of Forestry* (1st Dist.1990) 221 Cal.App.3d 1419,1422 ["overarching quasi-legislative policy"].)

VI. CONCLUSION

For these reasons, the City requests this Court uphold the Trial Court judgment.

Dated: July 28, 2022

MICHAEL N. FEUER, City Attorney
TERRY P. KAUFMANN MACIAS, Sr. Ass't City Atty.
DONNA WONG, Deputy City Attorney

By: _____
DONNA WONG
Deputy City Attorney

Attorneys for Respondents,
CITY OF LOS ANGELES; CITY OF LOS ANGELES DEPARTMENT OF CITY PLANNING

Document received by the CA 2nd District Court of Appeal.

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that the enclosed brief, including footnotes, is produced using Century Schoolbook type, 13 point type size, and that it contains 13,986 words. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: July 28 2022

MICHAEL N. FEUER, City Attorney
TERRY P. KAUFMANN MACIAS, Sr. Ass't City Atty.
DONNA WONG, Deputy City Attorney

By: _____

DONNA WONG
Deputy City Attorney

Attorneys for Respondents,
CITY OF LOS ANGELES; CITY OF LOS ANGELES DEPARTMENT OF CITY PLANNING

Document received by the CA 2nd District Court of Appeal.

PROOF OF SERVICE

I, the undersigned, declare that I am over the age of 18 years and not a party to the within action or proceeding. My business address is 200 North Main Street, 701 City Hall East, Los Angeles, California 90012.

I am familiar with the business practice at the Office of the City Attorney for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the City Attorney is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On July 28, 2022, I electronically served the attached:

RESPONDENT CITY OF LOS ANGELES' BRIEF

by transmitting a true copy via this Court's TrueFiling system.

Document received by the CA 2nd District Court of Appeal.

On July 28, 2022, I served participants in this case who have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, a true copy thereof enclosed in a sealed envelope in the internal mail collection service at the Office of the City Attorney, addressed as follows:

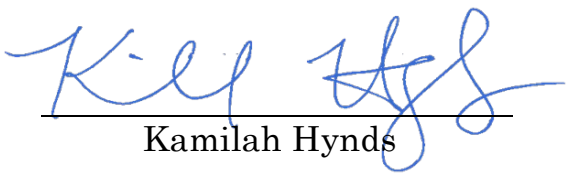
Fred N. Gaines
Lisa A. Weinberg
Gaines & Stacey LLP
5820 Canoga Avenue, Suite 300
Woodland Hills, CA 91367

Attorneys for Petitioner and Appellant: Snowball West Investments, L.P.
(via TrueFiling)

Hon. Mitchell L. Beckloff
c/o Clerk of the Court
Los Angeles Superior Court,
Department 86, Room 836
111 North Hill Street
Los Angeles, California 90012

(via U.S. Mail)

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 28, 2022, at Los Angeles, California.



Kamilah Hynds

Document received by the CA 2nd District Court of Appeal.