IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION 4

SNOWBALL WEST INVESTMENTS LP, Appellants, v. CITY OF LOS ANGELES and CITY PLANNING COMMISSION OF THE CITY OF LOS ANGELES, Respondents.	Case No. B314750

Appeal from the Superior Court, County of Los Angeles
Superior Court Case No. 20STCP00771
The Honorable Mitchell L. Beckloff and Robert S. Draper, Judges

Appellant's Opening Brief

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I.

INTRODUCTION

Appellant Snowball West Investments LP's ("Snowball") obtained final approvals from Respondent the City of Los Angeles (the "City") for a vesting tentative tract map ("Map"), site plan review ("SPR") and project permit compliance ("PPC"), and the City certified a Final Environmental Impact Report ("FEIR"), for a 215-unit housing development project (the "Project") in the northeastern part of the City. In its findings for those final approvals, the City stated that the Project was consistent with the applicable General, Community and Specific Plans (the "Plan"). The City also made findings throughout the Project's hearings that the proposed vesting zone change would "bring," "create" and "achieve" the property's zoning consistency with the Plan. Thus, the City itself found that the existing zoning was ***not*** consistent with the Plan. None of the City's Project approvals or findings were appealed or litigated. They are final.

The City made those zoning findings because the existing zoning for Snowball's property allows only 19 single-family homes, whereas the Plan's designation for the property allows 244 homes. Thus, the zoning is not consistent with the Plan. Nevertheless, and despite already approving all other entitlements for the Project and certifying the FEIR which found that all environmental impacts were

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mitigated to a level of insignificance, the City thereafter denied Snowball's vesting zone change application and refused to process the ministerial clearances of the conditions for its Map. This is a direct violation of the Housing Accountability Act ("HAA"), a key element of the State of California's aggressive legislative program to address the housing crisis.

The HAA, adopted in 1982, was amended in 2018 to address the exact situation faced by Snowball's Project: when a proposed housing project complies with the objective criteria set out in the general plan, but the zoning for the property is inconsistent with the general plan, the HAA requires the local government to approve the project at the density permitted in the general plan and without requiring a zone amendment. Govt. Code §65589.5(j)(4). The only avenue for the City to deny or downsize such a project is if it makes two specific findings based on the preponderance of the evidence, not merely the usual substantial evidence. §65589.5(j)(1)(A)-(B)

Here, the zoning – which permits only 19 homes (171AR334997) -- is clearly inconsistent with the general plan which permits 244 homes (51AR10161). Thus, under the plain language of the HAA, the City was required to approve Snowball's Project, and to do so without requiring a zone amendment, unless it made the required findings, which it did not. Therefore, the approvals that

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were given were enough for the Project to move ahead and the Map clearances should have been processed.

Instead, however, the City violated the HAA. Even after it approved all of the necessary entitlements for the Project, the City Council of the City of Los Angeles (the "Council") denied Snowball's application for a vesting zone change and refused to process Snowball's vesting tentative map on the grounds that the Project required a zone change and the City was not required to grant one.

While never mentioning or relying on it during the entire administrative process, the City has raised a post-hoc argument in this litigation that it can ignore the blatant inconsistency between its zoning and planning designations for Snowball's property based on a footnote in the Plan ("Footnote 23"), which it claims means that any zoning designation that is more strict than the general plan is "consistent" with the general plan. It claims it can zone a property to allow 19 homes when the Plan permits 244 homes and still be "consistent" with the Plan, merely because it said so. This claim is contrary to the plain language of Footnote 23. It is also contrary to precedent holding that zoning that restricts development is inconsistent with a general plan that contemplates more intense development. Most shockingly, it is also made by the City after it lost the same argument in a 1991 unpublished decision by the Court

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of Appeal. The City is barred by collateral estoppel from raising it again here.

The City's reliance on this argument is strong evidence, along with its actions on the zone change application, of its bad faith. The HAA allows the court to order a city to approve a housing project when it has acted in bad faith, and such a remedy is warranted here.

The law is clear. In the 2018 amendment of the HAA, the State legislature expressly prohibited downzoning practices such as these by local governments seeking to avoid providing their share of the State's critical housing needs. In the HAA, the Legislature finds and declares that the lack of housing is a crisis of historic proportions (§65589.5(a)(2)(A)), and that the state ranks 49th out of 50 in homeownership rates and in the supply of housing per capita (§65589.5(a)(2)(E)) causing a series of societal ills. Therefore, the Legislature declares that it "is the policy of the state that [the HAA] be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." (§65589.5(a)(2)(L)). The Legislature has demanded that ambiguity in the statute, if any, is to be interpreted in a manner that promotes the approval of housing. *Id.* And yet, the trial court ignored the express intent of the legislature when it ruled that the City has the right to sidestep its clear obligations under State law.

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The trial court erred in denying the writ of mandate on other grounds, as well. The City failed to make the findings required by the HAA and by its own Municipal Code when it denied the vesting zone change. As this Court reviews the meaning and application of State law and the failure to make adequate findings *de novo* on appeal, it should hold that the judgment in the City's favor was entered in error and must be reversed with directions to enter judgment and a writ of mandate in favor of Snowball.

II.

FACTUAL AND PROCEDURAL HISTORY

A. Project Description.

Snowball owns the property located at 6433 La Tuna Canyon Road, at the intersection of Tujunga Canyon Boulevard and La Tuna Canyon Road, comprising approximately 58 acres (the "Property"). (1AR212) Between the early 1960's and 2016, the southeasterly portion of the Property was the site of the Verdugo Hills Golf Course. (10AR1661; 14AR2508; 169AR34727) The Property lies next to a densely developed suburban area and is bounded by the Tujunga residential community to the north, La Tuna Canyon Road and the Foothill Freeway (Interstate 210) to the south, Tujunga Canyon Boulevard and a residential community to the east, and undeveloped hillside terrain to the west. (10AR1654-1656; 14AR2508)

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B. Property Planning and Zoning.

The City's General Plan Land Use Element consists of The Framework Element and the subordinate 35 community plans. (10AR1657) The Property is within the City's Sunland-Tujunga-Lake View Terrace-Shadow Hills-East La Tuna Canyon Community Plan (the "Community Plan") and within the City's San Gabriel/Verdugo Mountains Scenic Preservation Specific Plan (the "Specific Plan"). (10AR1654) Since the Community Plan was adopted in 1980, and then updated in 1997, the City's land use designations on the portion of the Property planned for development has always been Low Medium I Residential (10AR1654; 1657) and Low Residential. This area is currently zoned RA-1 (Residential Agricultural Zone) and A1-1 (Agricultural Zone). (10AR1655) This is the portion of the Property that the Project seeks to develop with homes. (10AR1656)[1]

Pursuant to §65860, the Los Angeles City Charter, and general planning and zoning principles, the zoning for a property is required to be consistent with its general plan land use designation.

[1] The northerly portion of the Property is Planned Minimum Residential and is currently consistently zoned RE40-1 (Residential Estate Zone). (10AR1654-1655; 16AR3017) The Project includes a dedication of this entire portion of the Property as Open Space. (10AR1656)

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The Community Plan's Low Medium I land use designation for the Property specifies the corresponding zones (*i.e.*, the zones that are consistent with the Plan) as: R2, RD3, RD4, RD5, RD6, RZ3, RZ4, RU, and RW1. (10AR1657; Appellants' concurrently filed Request for Judicial Notice ("RJN") "A", 1JA161-162) **The existing zones, RA-1 and A1-1, are not among the corresponding zones.** (*Id.*)

The corresponding zones for the Community Plan's Low Residential designation are RE9, RS, R1 and RU. (13AR2295) **The existing RA-1 zone is not among the corresponding zones**.

Footnotes 4 and 20 of the Community Plan apply to this portion of the Property, as well, adding additional parameters for future development, including that "development should be limited to no greater than that permitted by the RD5 Zone and shall be detached housing." (10AR1657 and 1665; 1JA161, 163; RJN "A") Thus, the Plan enumerates the consistent zones for the Low Medium I portion of the Property as R2, RD3, RD4 and RD5.

The application sought to change the zone in the Low Medium I portion of the Property to RD5-1, and the zone in the Low portion of the Property to R1-1. (10AR1665-1666; 13AR2295) Both of these are listed as corresponding zones for the plan designations in the Community Plan. (10AR1657; 13AR2295)

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The Community Plan, like all plans in the City, has an additional footnote that the City has heavily relied on in this litigation. Footnote 23 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 as 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." (1JA161; RJN "A")

The City added these footnotes to its community plans in 1991 in response to the enactment of §65860(d) which required that all zoning in the City be brought into consistency with the plans, and in settlement of *Federation of Hillside and Canyon Associations, Inc. v. City of Los Angeles,* Los Angeles Superior Court Case No. C526616, litigation seeking to force the City to comply with §65860. *Warner Ridge Associates v. City of Los Angeles* (Cal. Ct. App. 1991) 3 Cal.Rptr.2d 306, 315–316, *ordered not to be officially published (Mar. 12,*

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1992).[2] The City claims that the footnote means that all zoning that permits less dense development than the plan permits is consistent with that plan, even when a project is proposed that seeks to build at a density permitted under the plan but prohibited by the zoning. As shown below, this argument is the tail wagging the dog, as general plans cannot be amended to conform to zoning ordinances. *Lesher Communications, Inc., v. City of Walnut Creek* (1990) 52 Cal.3d 531, 541.

C. Administrative Proceedings.

1. The Applications Had Been Pending for 14 Years and Required No Variances, Adjustments, or Exceptions.

In 2007, applications were filed with the City to demolish the Verdugo Hills Golf Course and develop the Property with a housing development project consisting of 229 single family homes on roughly 28 acres of the 58-acre site, with more than 20 acres set aside as open space (the "Original Project"). (5AR859; 13AR2431-2458)

The application was converted to a "Vesting" Zone Change in 2008. (7AR1151-1152) The Map application was converted to a "small lot" subdivision in 2010 and proposed detached housing. (10AR1652) At no time during the entitlement process did Snowball's proposed redevelopment of the Property require any variances, adjustments, or exceptions. (169AR34750)

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[2] It is proper to cite to an unpublished decision in a Court of Appeal brief when it is cited for its collateral estoppel effect. Cal. Rules of Court, Rule 8.1115(b)(1). (See discussion at Section V.C.3, *infra*)

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2. The EIR and Revisions to the Project.

On May 21, 2009, the City released a Draft EIR for the Original Project which was circulated for public comment pursuant to the California Environmental Quality Act ("CEQA"). (14AR2516-2519) The Public Services section of the Draft EIR included a detailed Fire Protection analysis of the Original Project and recommended 17 fire-related mitigation measures based on written correspondence from Los Angeles Fire Department ("LAFD"), dated January 3, 2008. (43AR8313-8319) With conditions imposed on the Original Project, the Draft EIR concluded that all fire-related and public safety impacts would be mitigated to a less than significant level. (5AR862-864)

Following publication of the Draft EIR, in consultation with the City, Snowball decided to revise the Original Project. (9AR1412; 10AR1652) LAFD again reviewed the development and issued an approval letter on September 18, 2017, recommending updated conditions of approval. (17AR3099-3104) LAFD's letter was issued 17 days after the La Tuna Fire, a wildfire that burned over 7,000 acres near the Property. (*Id.*) With the incorporation of these conditions, the LAFD again concluded that all fire and public safety impacts would be mitigated to a less than significant level. (*Id.*; and 5AR862-864)

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Snowball thereafter worked with City staff to develop revisions to the Project that further reduced the housing units to 215. This alternative was described in the Final EIR's ("FEIR") Additions & Corrections and became the "Environmentally Superior Alternative" (the "Revised Project"). (5AR899-904) The FEIR was released on September 24, 2018. (17AR3148-3151) It included 18 fire-related mitigation measures and the LAFD approval updated after the nearby La Tuna Fire. (167AR34452-34458) The FEIR found that all fire and public safety impacts would be mitigated. (*Id.*; 5AR862-864)

3. The Deputy Advisory Agency Approvals.

The Planning Department issued a 208-page Staff Report recommending approval of the Map. On November 28, 2018, the City held its initial public hearing on the Project. (168AR34635) This was a joint hearing of the City's Deputy Advisory Agency for the Map and a City Planning Department Hearing Officer for the vesting zone change, SPR, and PPC. The Planning Director for the area's representative, City Councilmember Monica Rodriguez (the "Councilmember"), with whom Snowball had long been in communication, attended the hearing but did not take a position or make any recommendation. (10AR1787-1789) The City issued a Letter of Determination on February 19, 2019, certifying the FEIR,

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adopting the CEQA findings and mitigation measures, and approving the Map. (3AR364-499)

4. The City Planning Commission's Unanimous and Final Approvals.

On March 1, 2019, "part" of the Map determination was appealed to the City Planning Commission (the "CPC"). (4AR500-725) The appeal raised concerns regarding wildfire risk and fire safety, but no professional reports or studies were submitted in support. (*Id.*)

The City prepared a 386-page Staff Report for the May 23, 2019 CPC meeting, recommending that the appeal be denied and that the Vesting Zone Change, SPR, and PPC all be approved. (5AR755-756; 162AR33344-163AR33729) The recommendations were based on detailed findings supported by the evidence in the record and on the certified FEIR. (10AR1670-1786) At the CPC hearing, Snowball and Planning Department staff explained that the FEIR included analyses of the issues as required by CEQA and contained mitigation measures that reduced impacts, including fire and public safety, to a level of insignificance. (169AR34733-34734; 34750; 34796; 34801-34802) Staff stated that, altogether, there were 30 conditions of approval that addressed fire safety. (5AR757; 9AR1641; 169AR34802)

Retired LAFD Chief Andrew Fox testified in support of the Revised Project. (169AR34794-34796; 34806-34807; 34810-34813) Chief Fox described how he personally had overseen the firefighting

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and evacuation efforts for the 2017 La Tuna Fire. (169AR34795) He described how development of the Property would greatly ***improve*** the safety of the area. (169AR34796) By contrast, he stated that if a brush fire were to occur today, the Property's current condition (undeveloped open space and brush) would facilitate the rapid spread of fire to the existing surrounding homes. (169AR34794-34796; 34806-34807; 34810-34813)

Chief Fox explained that the development of the Property, as conditioned by LAFD, would provide fire safety benefits to both residents and the LAFD. (169AR34794) LAFD requirements included, for example, sprinkler systems for each home, non-combustible roof and building materials, and ingress and egress roads able to accommodate heavy fire apparatus and major evacuations during an emergency situation. (17AR3099-3104) He said that the Property's proximity to East and West-bound lanes of the 210 Freeway would be helpful in case of an evacuation. (169AR34795, lines 7-14) Chief Fox also explained that Snowball's proposed community center would provide an evacuation center in the event of a fire. (169AR34813, lines 9-12) The Revised Project would provide a permanent cache of firefighting foam at the Property that would be highly beneficial. (5AR864)

Toward the end of public testimony, and without warning to Snowball, the Planning Director for the Councilmember requested

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that the CPC deny the Revised Project. (169AR34791-34793) On rebuttal, Snowball expressed its surprise with the Councilmember's position and told the CPC that this was the first time Snowball had received any substantive feedback from the Councilmember or her staff. (169AR34797, lines 1-13) Despite the Councilmember's request, the CPC voted unanimously to approve the Revised Project, denying the appeal of the Map, approving the SPR and PPC, and recommending that the City Council approve the Vesting Zone Change. (168AR34647-34650)

On June 19, 2019, the CPC issued two Letters of Determination certifying the EIR, adopting the CEQA findings and mitigation program, and approving the Map, SPR and PPC. (5AR787-920; 12AR2154-2269) A "Corrected" Letter of Determination was mailed on July 2, 2019. (13AR2280-2398) ***These City approvals included findings that the Revised Project complies in full with the objective criteria and standards of the General Plan, Community Plan and Specific Plan.*** **(3AR483-494; 13AR2300-2306)**

No appeal was filed of any of the CPC's actions. (164AR33733-33735) No lawsuit was filed challenging the Map, SPR, PPC, or the FEIR. Thus, ***the City's approvals of the Map, SPR, and PPC, its certification of the FEIR, and all of the associated findings and conditions, are now final determinations of the City.***

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5. The City Council's Denial of the Vesting Zone Change.

Following the CPC approvals, the only item remaining to be acted upon by the City Council was the Vesting Zone Change, which, when approved, would bring the zoning into conformance with the Community Plan, as required by §65860 (although not necessary for project approval under the HAA and HCA).

Snowball had designed the Revised Project exactly as required by the Community Plan land use designation. The certified FEIR mitigated all project impacts. (5AR809-919) Snowball now had a certified EIR, and an approved and final Map, SPR, and PPC. Snowball had already voluntarily decreased project density from 229 units (Original Project) to the Map-approved 215 units (Revised Project). (10AR1652) Snowball had also entered into an agreement with the Mountains Recreation and Conservation Authority (the "MRCA Agreement") supported by major community groups VOICE, Tuna Canyon Detention Station Coalition, and the Trust for Public Land, which potentially would reduce the final number of units to 169. (161AR33240-33246) Snowball had agreed to dedicate more than half of the Property as passive recreational open space and to include a La Tuna Canyon Detention Center historic area on the site. (*Id.*)

The City had already adopted final detailed findings (1) that the Revised Project is in substantial conformance with the purposes,

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intent, and provisions of the General Plan as reflected in the adopted Community Plan and Specific Plan (3AR483-494; 13AR2295-2306), (2) for all the requested entitlements except the Vesting Zone Change showing that approval was supported by substantial evidence in the record (3AR483-494; 13AR2300-2306), (3) stating that the zone change was necessary to achieve consistency between the zone and the Plans, (5AR909, 913, and 915; 13AR2300; 51 AR10178-10179) and (4) certifying the FEIR and finding that the Revised Project would have no significant unmitigated impacts on fire safety or wildfire risk to the community. (5AR787-788; 862-864; 904)

A. The Planning and Land Use Committee Hearing.

A City Council Planning and Land Use Management Committee ("PLUM") meeting was held on December 10, 2019. Snowball submitted a letter in advance of the meeting, explaining that the only action to be taken by the City was approval of the Vesting Zone Change. (166AR34262-34264) The letter reminded the PLUM Committee that the FEIR had been certified and that all other entitlements for the Revised Project were final and had not been appealed. (*Id.* at 34262)

Nevertheless, ignoring over ten years' worth of expert testimony, studies, and prior City actions, the PLUM Committee voted to recommend that the City Council deny the Vesting Zone Change simply because the Councilmember for the Project's district

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wrote a letter asking that they deny it (the "Letter"). (170AR34911) The PLUM Committee's action was not based on any evidence or findings for denial. (166AR34297-34298)

B. The City Council Hearing.

The City Council hearing on the Vesting Zone Change proceeded in Snowball's absence the very next morning. (170AR34982-34990) The City Council, in accordance with its practice to vote in lockstep with the Councilmember in whose district a project lies, voted 14-0 to deny Snowball's Vesting Zone Change. (166AR34295; 170AR34989) This was after a brief public hearing at which the Councilmember spoke and, in doing so, gave her first and only statement about the Revised Project, which was a summation of her concerns that the City should reevaluate what types of projects are appropriate given climate change and the "new normal" of wildfires. (170AR34987-34988) She suggested that the City have some "realistic conversations" about the appropriateness of certain projects. She asked that the Vesting Zone Change be denied. (*Id.*)

The Councilmember's statements were not based on any factual data, evidence, reports, or studies. (*Id.*) No findings for denial were presented or made by the City Council as required by LAMC §12.32.Q.3(a)(2)(ii) and by the HAA §65589.5(j) (*Id.*; RJN "C"; 1JA196-197) Remarkably, in lieu of findings, the City Council

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adopted the Letter, which contained no facts or evidence, and called it "findings." (166AR34295-34298)

Snowball had warned the City multiple times of the applicability of the HAA and its requirement of project approval without appropriate findings, which could not be made in this case. (9AR1409-1496; 12AR2117-2126; 166AR34262-34264, 34291-34294; 170AR34883) Nevertheless, the City utterly ignored binding State law when denying Snowball's Vesting Zone Change, thereby purporting to deny Snowball's residential housing project.

6. The City Refuses to Process Snowball's Approved Subdivision Map.

Denial of the Vesting Zone Change left Snowball in a highly unusual predicament. Snowball has a certified FEIR, and a final, approved, and unchallenged Map, SPR, and PPC. Under the HAA and the HCA, Snowball is entitled to build in compliance with the objective standards and criteria of the conforming zoning and no zone change is required for the Property since the approved housing development project was found by the City to be consistent with the objective general plan standards and criteria, while the zoning is not. §§65589.5(j)(4) and 65905.5(c)(2). The only entitlement the City did not approve was the Vesting Zone Change, the one entitlement the City legally was obligated to approve because the zoning Snowball sought was called for in the Community Plan and is mandated by the consistency doctrine, the HAA and the HCA.

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Given the approved Map and that State law proscribes any need for a zone change for the Project, in January 2020 Snowball began the ministerial process of obtaining clearances of Map conditions from the Planning Department, a necessary step in obtaining Final Map approval. (171AR35048-35050) The Planning Department refused to process these ministerial clearances, claiming in error that the City Council's denial of the Vesting Zone Change prevented the Planning Department from granting them. (171AR34995-34999; 35048) Snowball advised the City that under the HAA and the HCA, the City was required to process the Project as though its zoning were consistent with the Community Plan and could not require a zone change for the Property because Snowball's housing development project is consistent with the objective general plan standards and criteria, while the existing zoning is not. §§65589.5(j)(4) and 65905.5(c)(2). (171AR34991-34994) Nevertheless, the City refuses to process clearances for Snowball's Map. (171AR34995-34999, 35048)

D. The Trial Court Proceeding.

Snowball timely filed its verified Petition for Writ of Mandate and Complaint on February 24, 2020. (1JA7-45)[3] It named the City

[3] References to the Joint Appendix are in the form: [Vol.] JA [Page Nos.]:[Line Nos., if applicable]. References to the single volume Reporter's Transcript are in the form RT [Page Nos]:[Line Nos.].

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and the City of Los Angeles Department of City Planning ("Planning Department") as Respondents. *Id.* The City filed its Answer on August 17, 2020. (1JA47-74)

After the writ of mandate portion of the case was briefed, and all of the issues in this appeal were raised (1JA76-2JA507), the trial court issued a partial tentative decision and held a hearing on March 24, 2021. (2JA509; RT 1-42) The trial court conducted a second session of oral argument on April 2, 2021. (RT 301-347)

On June 24, 2021, the trial court entered its Order Denying Petition for Writ of Mandate (the "Order"). (3JA593-608, 610) Because two causes of action for damages remained, the case was reassigned for all purposes to a non-writ courtroom. (3JA613) On August 18, 2021, the parties submitted a stipulation for entry of judgment.[4] (3JA616-622) Judgment was then entered on August 23,

[4] In the stipulation, the parties agreed "to have judgment entered … solely for the purpose of facilitating an appeal following the adverse determination of a critical issue in the Order pursuant to *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 399–403 and *Monticello Ins. Co. v. Essex Ins. Co.* (2008) 162 Cal.App.4th 1376, 1383-1384;" that "Snowball remains aggrieved by the judgment and retains the right to appeal;" and that "Snowball and the City agree that the Order and its underlying briefing and argument constitute the functional equivalent to a "properly litigated motion for summary judgment" per *McCarthy v. CB Richard Ellis, Inc.* (2009) 174 Cal. App. 4th 106, 121, such that the stipulated judgment shall be appealable and neither Snowball nor the City will raise appealability of such a judgment as an issue on appeal." (3JA617-618)

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2021. (3JA624-626, 628-632) Snowball filed its Notice of Appeal on August 26, 2021. (3JA634-635)

III.
STANDARD OF REVIEW

Under Code of Civil Procedure §1094.5, a writ of mandate shall issue where the agency commits a prejudicial abuse of discretion, such as denying Snowball's Vesting Zone Change in violation of the HAA. An abuse of discretion is established if the agency has not proceeded in the manner required by law, its order or decision is not supported by the agency's findings, or the findings are not supported by the evidence. §1094.5(b); *California Renters Legal Advocacy & Education Fund v. City of San Mateo ("CARLA")* (2021) 68 Cal.App.5th 820, 836-837. A failure to follow the requirements of the HAA is a failure to proceed in the manner required by law subject to reversal under §1094.5. *Honchariw v. County of Stanislaus* (2011) 200 Cal.App.4th 1066, 1072. Whether the City proceeded as required by law is subject to de novo review by the court. *Bledsoe v. Biggs Unif. Sch. Dist.* (2008) 170 Cal.App.4th 127, 134.

Under Code of Civil Procedure §1085(a), a writ of mandate shall issue where the agency fails to perform a ministerial act which the law specially enjoins, such as the processing of clearances for a final subdivision map, and where the Petitioner has no plain, speedy

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and adequate alternative remedy. *Great Western Sav. & Loan Assn. v. City of Los Angeles* (1973) 31 Cal.App.3d 403; *Youngblood v. Board of Supervisors* (1978) 22 Cal.3d 644, 656

To the extent this Court's decision rests on factual issues, its scope of review is identical to that of the trial court. *CARLA, supra*. This Court examines "the findings of the public entity itself and the relevant materials in the administrative record to determine whether the decision should be upheld, reviewing the City's action, and not the trial court's decision." *CARLA, supra*; *Kalnel Gardens, LLC v. City of Los Angeles* (2016) 3 Cal.App.5th 927, 937-938.

However, unlike in most writ cases where the Court inquires as to whether substantial evidence supports the government's action, under the HAA, the court reviews whether the government's decision was based on findings supported by a ***preponderance of the evidence.*** Govt. Code §65589.5(j)(1).

Also noteworthy is that under the HAA, consistency with an applicable plan exists only if there is substantial evidence that could allow a **reasonable person** to conclude that it is consistent, compliant or in conformity with the applicable standards and requirements. Govt. Code §65589.5(f)(4); *CARLA, supra,* at 837; *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 778.

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Questions of law, including the proper interpretation of a statute, are reviewed by this Court independently. *CARLA, supra.*

Finally, and very importantly, under the HAA, ***the City*** and not the Petitioner "***bear[s] the burden of proof*** that its decision has conformed to all of the conditions specified in Section 65589.5." §65589.6; *CARLA, supra.* (Emphasis added.)

IV.

OVERVIEW OF THE HOUSING ACCOUNTABILITY ACT

A. Local Agencies Must Approve Housing Developments Complying with Objective Planning Criteria Absent Health or Safety Impacts.

The Legislature recognized in the HAA that California is in a housing crisis that is at least "partially caused by activities and policies of many local governments that limit the approval of housing…" §65589.5(a)(1)(B). Recognizing that the statute's intent had not been fulfilled, the Legislature significantly amended the HAA, effective January 1, 2018, to strengthen its provisions, expand its applicability, and increase local governments' liability for violations. §65589.5(a)(2)(K). Known as the "Anti-NIMBY law," (*Honchariw, supra,* at 1068), the HAA provides that "***[i]t is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.***" §65589.5(a)(2)(L) (emphasis

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added). [5] The Courts have recognized that as "the Legislature has steadily strengthened the statute's requirements, it has made increasingly clear that those mandates are to be taken seriously . . . . The HAA is today strong medicine precisely because the Legislature has diagnosed a sick patient." *CARLA, supra,* at 854.

The HAA is a game changer when it comes to judicial review of local land use decisions. The key provision at issue in this litigation is subdivision (j), which provides that if a "housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete" the project ***must be approved*** unless the approving agency makes two findings in writing supported by a ***preponderance of evidence*** in the record: (1) that the project would have an unavoidable impact on public health or safety unless the

[5] The Legislature enacted a companion law to the HAA, the Housing Crisis Act ("HCA"), effective January 1, 2020. Government Code §65905.5. It limits the number of hearings a city can hold in connection with a housing development application. (§65905.5(a)) It also mirrors the language in the HAA at §65589.5(j)(4) stating that "A proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria, but the zoning for the project site is inconsistent with the general plan…." (§65905.5(c)(2)) This brief references this provision of the HCA along with the HAA, and shows that the City's actions violated both statutes.

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project is disapproved; and (2) that there is no feasible method to satisfactorily mitigate or avoid the adverse impact other than the disapproval of the project. §65589.5(j)(1)(A)-(B) (Emphasis added). The HAA narrowly defines a "specific adverse impact" as a "significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." §65589.5(j)(1)(A).

B. Under the HAA, a Housing Development Project that is Consistent with the General Plan, but Inconsistent with Current Zoning that is Itself Inconsistent with the General Plan, Must Be Approved Without Requiring a Zone Change.

The HAA's requirement that a local agency approve a housing development project that complies with "applicable, objective general plan, [and] zoning…standards" is further refined in the statute to mean that a proposed project that is consistent with the applicable general plan standards is entitled to approval even if it is inconsistent with the applicable zoning standards that are themselves inconsistent with the general plan. §65589.5(j)(4); *see also* the HCA at §65905.5(c)(2). Both laws state that a "proposed housing development project is not inconsistent with the applicable zoning standards and criteria, ***and shall not require a rezoning***, if the housing development project is consistent with the objective general

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plan standards and criteria but the zoning for the project site is inconsistent with the general plan…." (Emphasis added.)

C. The Court May Also Order a Project to be Approved Where There is Bad Faith.

If the court finds that an agency acted in bad faith in disapproving a project in violation of the HAA, the appropriate remedy is not merely a remand to the City for reconsideration of the project, but an "order or judgment directing the local agency ***to approve*** the housing development project." §65589.5(k)(1)(A)(ii) (Emphasis added). "Bad faith" "includes, but is not limited to, an action that is frivolous or otherwise entirely without merit." §65589.5(l).

V.

THE CITY DID NOT AND CANNOT CARRY ITS BURDEN OF PROVING IT COMPLIED WITH THE HAA

In its arguments below, the City's opposition rested almost entirely on the post-hoc assertion that the HAA does not apply to Snowball's Project because, it claims, the property's existing zoning is ***consistent*** with the existing general plan, so that Section (j)(4) does not apply and the City is free to deny the Project for any reason, or no reason at all. This is just wrong, and completely contrary to the City's statements throughout the entitlement process and to the governing State law. As demonstrated by the text of the HAA and

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its legislative history, as admitted many times by the City itself, and under all other applicable standards, the existing zoning is ***not*** consistent with the general plan land use designations for Snowball's property. In fact, the City is collaterally estopped from making its claim as it lost the same argument in the Court of Appeal decades ago. With this erroneous defense defeated, the City has no defense at all to Snowball's claims.

In addition, the City has failed to make the two mandatory findings for project denial in writing supported by a ***preponderance of evidence*** (not merely substantial evidence) in the record.

A. The HAA Applies Because the Project is a "Housing Development Project".

Subdivision (j) of the HAA applies to "housing development projects," defined, *inter alia*, as "a use consisting of … [r]esidential units only." § 65589.5(h)(2)(A). The Project here consists of an "all residential development" of up to 215 homes. (13AR2280) The Project is plainly a "housing development project" under the HAA. *Honchariw, supra,* at 1073-1074, 1077.

B. The Project Complies with All Applicable General Plan Standards.

The Project falls within the protections of subdivision (j) of the HAA because the City expressly has found that it "complies with applicable, objective general plan, zoning, and subdivision

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standards and criteria." §65589.5(j)(1).[6] A project is consistent with applicable standards and policies under the HAA "if there is substantial evidence that would allow a reasonable person to conclude that the housing development project…is consistent, compliant, or in conformity." §65589.5(f)(4); *CARLA, supra,* at 837; *Bankers Hill, supra,* at 778.

Here there is uncontroverted evidence that the Project is consistent with the General Plan and its constituent parts. The City's approval of the Map, which is now final, includes express findings based on substantial evidence in the record that the Map is consistent with the General Plan and its parts. (3AR484)

The findings then list specifically how the Project meets the General Plan's objectives and policies. (3AR484-487) The Map findings also conclude, based on substantial evidence in the record, that the design and improvement of the proposed subdivision are consistent with the applicable General and Specific Plans. (3AR487-489)

Likewise, the CPC's now-final approval of the SPR and PPC finds, based on substantial evidence in the record, that "the Project is in substantial conformance with the purposes, intent and provisions of the General Plan as reflected in the adopted Community Plan." (13AR2295) These findings then list specifically how the Project

[6] The issue of zoning is discussed, *infra*, at Section V.C.

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meets the various Plan elements' goals and objectives. (13AR2295-2302; 2304-2305)

C. The Project's Existing Zoning is Inconsistent with the General Plan

Since the Project conforms to the General Plan, but its zoning does not, the Project is deemed under the HAA to be consistent with applicable zoning and it does not require a rezoning. The HAA at §65589.5(j)(4) and the HCA at §65905.5(c)(2) both provide, in pertinent part:

> "…a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, ***and shall not require a rezoning***, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan…." (Emphasis added.)

Thus, as the City has found the Project consistent with the General Plan and all underlying plans, and since the current zoning is inconsistent with those plans[7], the Project must be found to be

[7] The City's findings for approval of the Project's entitlements state that the portion of the Property with the Plan designation Low Medium I has corresponding zones of R2, RD3, RD4, RD5, RD6, RZ3, RZ4, RU and RW1. (13AR2295) Based on Footnote 20, Snowball sought the corresponding zone of RD5-1 for that portion of the Property in place of the current inconsistent RA-1 and A1-1 zoning. (*Id.*)

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consistent with the applicable zoning and shall not require a rezoning, as it is subject to the protections of the HAA and HCA.

There are many reasons that this Court must find that the current zoning is inconsistent with the General Plan:

1. **The City's Own Final Findings State that Snowball's Existing Zoning is Not Consistent with the General Plan, as Required by Government Code §65860.**

While conceding that the proposed zoning designations for the Project are listed as corresponding zones for the Property's Plan designations, the City argues in this litigation that the existing, more restrictive, zoning is ***also*** "consistent" with the General Plan. But the City consistently stated the opposite at every stage of the Project's 14-year entitlement process. The City's post-hoc litigation position is belied by the City's own findings throughout the administrative process which uniformly state that the zone changes are necessary to "***bring*** the zoning into conformance with" the general plan.

Likewise, the portion of the Property with the Plan designation Low has corresponding zones of RE9, RS, R1, and RU. Snowball sought the corresponding zone of R1-1 for that portion of the Property in place of the current inconsistent RA-1. (*Id.*) ***Both Vesting Zone Changes are acknowledged by the City's own findings to be from a zoning designation inconsistent with the General Plan to one that is consistent. (Id.)***

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For example, in its Vesting Tentative Tract Map Findings of Fact (a now final and unchallenged City approval), the City found that:

> "The Applicant is requesting a Vesting Zone Change to change the zoning on these portions of the Property from A 1-1 and RA-1 to RD5-1. The zone change would **bring the zoning into conformance** with the residential land use designation of Low Medium I… " (5AR909; Emphasis added)
>
> * * *
>
> "The Proposed Project includes a request for a Vesting Zone Change…to change the portion of the site that is designated as Low Medium I Residential to RD5-1 (Restricted Density Multiple Family), which will permit small-lot development, and **bring the zoning into conformance with the existing General Plan land use designation**. Further, the zone change includes a request to R1-1 for the most northeasterly portion of the Project Site to permit Single-Family Homes **consistent with the Low land use designation**…" (5AR913; Emphasis added);
>
> * * *
>
> "The Applicant is requesting a Vesting Zone Change from the current A1-1 and RA-1 designation to (T)(Q)RD5-1 (Restricted Density Multiple Family Zone), which is a corresponding zone provided for Low Medium I Residential. **A zone change will bring the Project into consistency with the land use designation as required by law.** …" (5AR915; Emphasis added)

Likewise, in its Vesting Zone Change Findings of Fact, the City's Planning Commission unanimously found that:

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> "The recommended zone change to (T)(Q)RD5-1 and R1-1 **would create consistency with the respective land use designations of Low Medium I and Low Residential**" (13AR2300; Emphasis added)

And in its certified and unchallenged Final Environmental Impact Report, the City reported that:

> "The intent of the requested vesting zone change on that portion of the site is to **bring the zoning into conformance with the existing General Plan land use designation….**¶ [T]he zone change **achieves consistency between the land use designation and zoning for the site….**¶ Thus, as the project site is currently limited to the density permitted by the RA-1 and A1-1 zones, the vesting zone change to RD5 would be consistent with the designation on the Community Plan land use map, including Footnote No. 20. **The vesting zone change would essentially be implementing the land use designation of the Community Plan, which is the purpose of the zoning ordinance**….¶ Since the project is seeking to upzone the property to be in conformance with the Community Plan designation…**the zone change…would achieve land use-zoning compatibility on the site**…." (51AR10178-10179; Emphasis added)

As such, the City made numerous unappealed, unlitigated, final findings that the zone change was necessary to "create" or "achieve" consistency of the property's zoning with the general plan designation. In other words, ***the City itself found that the existing zoning was not consistent with the general plan designation.*** It is

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irrelevant that the City now takes a different position in this litigation; the administrative record itself contains the facts upon which this Court must rely, and the fact is that the City's staff and decisionmakers all agreed that the Snowball Property's existing zoning needed to be changed to achieve consistency with the General Plan.

2. Footnote 23 Does Not Change This Conclusion.

The City's revisionist argument in this litigation is that Footnote 23, appended to each of its Community Plans in 1991 in order for the City to avoid having to upzone approximately 8,000 separate City parcels to comply with Government Code §65860 (171AR35018-35019), means that the consistent zones are not just those listed in each community plan as corresponding with that plan's land use designations, but that ***all*** more restrictive zones are also magically consistent. But this simply is not what Footnote 23 says. Footnote 23 states, in pertinent part:

> "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….
>
> "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

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accompanied by a concurrent Plan Amendment." (1JA161; RJN "A"; 171AR34998)

Besides being **exactly** the type of evasion that the 2018 amendment to the HAA was designed to outlaw,[8] the City's argument is faulty because it utterly ignores the last sentence of Footnote 23 itself, which states, "**It is the intent of the Plan that the entitlements granted shall be one of the zone designations within the corresponding zones shown on the Plan, unless accompanied by a concurrent Plan amendment.**" (171AR34998; RJN "A"; 1JA161)

Clearly, read as a whole, Footnote 23 states that while the City in 1991 did not want to have to affirmatively upzone 8,000 parcels throughout the City that are zoned more restrictively than their corresponding general plan designation, it mandated that when a project is considered for a property so restrictively zoned, "the entitlements granted **shall** be one of the…corresponding zones shown on the Plan…."[9] (3JA450-451)

[8] See discussion, *infra*, at Section V.C.5.

[9] Of course, a property owner who seeks the upzoning required to achieve plan consistency has to pay a $29,468.00 filing fee. (LAMC §19.01.A.; *See,* RJN, Ex. "J" at p.1) If the City were to itself rezone the 8,000 inconsistently downzoned parcels in the City on its own initiative, it would miss out on the $235,744,000.00 in fees those property owners would be made to incur.

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Note the use of the mandatory "shall." Footnote 23 does not state that the City has the discretion to maintain or change a property's zoning to a designation more restrictive than the Plan allows. Nor could it, as this is, of course, barred by Government Code §65860, mandating plan/zone consistency.

Thus, Footnote 23 **supports** Snowball's argument that zones more restrictive than the corresponding zones listed in the plan, such as the existing zones on the Property, are **not** consistent with the general plan designations, and per Footnote 23's last paragraph, **must** be upzoned to one of the listed corresponding zones to achieve consistency when, as here, a project is proposed.

3. Case Law Contradicts the City's Far-Fetched Consistency Argument.

The City's argument also flies in the face of established law that a zoning ordinance that restricts development is inconsistent with a general plan that contemplates more intense development. In *Lesher*, *supra*, at 531, relied on by the Court in *Warner Ridge*, the Supreme Court held that an initiative that created a moratorium on building was inconsistent with a general plan that was pro-development. In other words, the Supreme Court held that an initiative measure in the nature of a zoning ordinance that restricted development was not consistent with a general plan that permitted development, and thus was invalid at the time it was passed. *Lesher,*

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supra, at 544. Here, the existing zoning limits the 58-acre property to 19 dwelling units (171AR34997) while the general plan designations allows as many as 244 units (51AR10161). Pursuant to *Lesher,* the City's restrictive zoning is not consistent with the general plan.

The cases cited below by the City regarding the definition of consistency, none of which deal with the HAA and therefore, unlike here, use a standard of review that is highly deferential to the local government, in fact further prove Snowball's point. The City cited to *Naraghi Lakes Neighborhood Preservation Assn v. City of Modesto* (2016) 1 Cal.App.5th 9, and *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, but those cases deal only with a proposed project's consistency with a general plan, not the consistency of a zoning ordinance. *Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 994 holds that zoning is consistent with a general plan only when, "considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." See also, *Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1563. (same)

Here, zoning designations that allow only 19 homes on 58 acres certainly are inconsistent with plan designations allowing 244 homes, as the zoning limitation absolutely frustrates the achievement of the plan's objectives and policies to allow housing at the density specifically identified in the plan, and utterly frustrates

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the goals of the State's housing laws, including the HAA and the HCA.

4. The City is Barred By Collateral Estoppel from Claiming that Footnote 23 Means a Zone Restricting Density is Consistent with a General Plan Designation Allowing Far Greater Density.

Decades ago, the City decisively lost the argument that Footnote 23 is a "get out of jail free card" that exempts it from the requirement that its zoning be consistent with its general plan. And the doctrine of collateral estoppel prevents the City from relitigating the issue in this case.

In *Warner Ridge Associates v. City of Los Angeles* (Cal. Ct. App. 1991) 3 Cal.Rptr.2d 306, 315–316, *ordered not to be officially published (Mar. 12, 1992)*,[10] the exact argument raised here by the City was firmly rejected. The Court discussed the history of the City's adoption of the plan footnotes like Footnote 23 and stated that it rejected the City's "hierarchy approach" to zoning consistency (*i.e.,* claiming that corresponding zones to a plan designation were the zones listed in the plan plus all more restrictive zones in the municipal code), because a zone that did not permit the density and uses permitted in the general plan was inherently inconsistent.

[10] It is proper to cite to an unpublished decision in a Court of Appeal brief when it is cited for its collateral estoppel effect. Cal. Rules of Court, Rule 8.1115(b)(1).

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> "Thus, the hierarchy theory improperly would allow the City to amend its General Plan through the enactment of inconsistent zoning ordinances.
>
> "This result violates the directive of *Lesher* which held general plans cannot be amended to conform to zoning ordinances. "The tail does not wag the dog." (*Lesher Communications, Inc., supra,* 52 Cal.3d at p. 541, 277 Cal.Rptr. 1, 802 P.2d 317.)
>
> "…. ***A general plan which designates property for intense development with the contemplation that designation may thereafter be prohibited through zoning is, in effect, no general plan***, and suffers the logical infirmity set forth above. Such a general plan certainly does not comport with the concept of a charter for land use which should provide guidance, continuity and stability. The hierarchy theory, in essence, repeals the consistency requirement." *Warner Ridge, supra,* at 315-316.

The City is barred by the doctrine of collateral estoppel from relitigating the exact issue that it lost in the *Warner Ridge* case. "The doctrine of collateral estoppel precludes relitigation of an issue previously adjudicated if: (1) the issue necessarily decided in the previous suit is identical to the issue sought to be relitigated; (2) there was a final judgment on the merits of the previous suit; and (3) the party against whom the plea is asserted was a party, or in privity with a party, to the previous suit." *Producers Dairy Delivery Co. v. Sentry Ins. Co.* (1986) 41 Cal.3d 903, 910; *Campbell v. Scripps Bank* (2000) 78 Cal.App.4th 1328, 1334.

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Here, all three elements of collateral estoppel are met: (1) the issue in *Warner Ridge* was whether the City's addition of the language in Footnote 23 to each of its community plans rendered an estate-sized residential zoning "consistent" with the community plan designation that called for more intense uses. The issue in this case is whether Footnote 23 in this community plan renders an estate-sized residential zoning "consistent" with the community plan designation that calls for more intense uses; (2) there was a final judgment on the merits in *Warner Ridge*; and (3) the City was the Respondent in that case and in this case.

As such, the City is bound by the Court's determination against it in *Warner Ridge* and is collaterally estopped from arguing again in this case that the Property's current A1-1 and RA-1 zoning is consistent with the Low Medium I Residential and Low Residential designations in its Community Plan because of the "hierarchy theory" derived from Footnote 23.

5. The Authority Claimed by the City, If Conceded, Would Undermine the Housing Accountability Act Altogether, as Evidenced by the Statute's Legislative History.

The City claims that **any** zoning designation more restrictive than the listed corresponding zones in a community plan is consistent with that plan's land use designation. Taken to its extreme, the City argues that it could zone a parcel open space preventing all development and still be consistent with a community

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plan designation of high density residential, and therefore, its denial of perhaps thousands of units of housing on that parcel is outside the purview of the HAA. By this logic, the City could entirely avoid providing state-mandated housing citywide by downzoning all of its areas planned for housing to the most restrictive zones and providing no housing at all. The HAA at §65589.5(j)(4) specifically prohibits the City from evading its housing obligations in this manner.

In fact, the legislative history of the HAA's 2018 amendment shows it was designed to prevent the exact defense proffered by the City in this case. The HAA has been amended by the Legislature 23 times since its enactment in 1982, the more recent amendments seeking to strengthen its requirements and to close loopholes exploited by local governments to deny housing. The portion of the HAA that deals specifically with market-rate housing--such as the Snowball Project--is Section (j)(4), which was significantly amended in 2018, effective January 1, 2019 (AB3194). The Legislative History for Assembly Bill No. 3194 states the intention clearly. (2JA465-473; RJN "E") In the initial presentation of the bill, its author wrote:

> "This bill would prohibit a housing development project from being found inconsistent, not in compliance, or not in conformity, with the applicable zoning ordinance, and would prohibit a local government from requiring a rezoning of the project site, **if the existing zoning ordinance does not allow**

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> **the maximum residential use, density, and intensity allocable on the site by the land use or housing element of the general plan**." (2JA465; RJN "E") (Emphasis added)

The Bill Analysis from the Assembly Committee on Housing and Community Development (April 25, 2018) (2JA475-481; RJN "F") describes the purpose of the amendments as follows:

> "Despite the important improvements made to the HAA in last year's bill package, locals can still avoid the HAA by citing questionable health and safety concerns, or by **requiring project-by project re-zonings or zoning variances even where a housing project is consistent with the housing allowed by the general plan**, thus rendering housing projects beyond the scope of the HAA's protections because they are technically 'inconsistent' with the zoning for the site." (2JA479; RJN "F") (Emphasis added)

The June 21, 2018 Legislative Counsel's Digest (2JA483-491; RJN "G") states that the:

> "bill would authorize a local agency…to require the proposed housing development project to comply with the objective standards and criteria of the zoning that are consistent with the general plan, and would require the local agency to apply those standards and criteria to facilitate and accommodate development **at the density allowed on the site by the general plan and proposed by the proposed housing development project**." (2JA484; RJN "G") (Emphasis added)

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The Senate Committee on Governance and Finance considered the bill on June 27, 2018. Its Bill Analysis (2JA493-496; RJN "H") noted that:

> "according to developers, some local agencies intentionally maintain inconsistences [between their zoning and general plans] to gain an additional measure of control over development. By maintaining low densities…that are inconsistent with the general plan for the express purpose of requiring rezoning, even when projects are consistent with housing density and other objective standards contained in the city or county's general plan, local governments can ensure that they maintain discretionary approval over projects." (2JA494; RJN "H")

The bill's author explained:

> "This bill is designed to strengthen the Housing Accountability Act by closing loopholes that undermine the law's applicability and effectiveness. Under the HAA, when a proposed project complies with objective planning rules, the local government cannot deny the project, or reduce its density, unless it makes a finding that the project would have a specific, adverse impact on public health or safety that cannot otherwise be mitigated. ***Unfortunately, some local agencies have required housing projects to obtain re-zonings or variances on a project-by-project basis, even when projects are consistent with housing density and other objective standards. AB 3194 provides that if a proposed housing development is consistent with objective general plan policies, but it is inconsistent with the zoning for the site because the local government has not made the zoning consistent with***

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> ***the general plan, the project cannot be subjected to a re-zoning***. However, the local government can still reject the project or require a down-sizing if it makes the necessary health and safety findings. This bill will continue to uphold the intent of the Housing Accountability Act, which is to ensure that more housing gets built in California." (2JA495; RJN "H") (Emphasis added)

The final adopted bill added Section (j)(4) to the HAA, which reads:

> "(4) For purposes of this section, **a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan**. If the local agency has complied with paragraph (2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning which is consistent with the general plan, however, **the standards and criteria shall be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project**." (2JA498-506 at 504; RJN "I") (Emphasis added.)

Thus, the HAA was amended effective January 1, 2019 to close the exact "loophole" that the City claims exempts it from HAA compliance in this case. The City has kept the zoning for the Project site artificially low at RA-1 and A1-1 zones (which together restrict

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density to 19 units (171AR34997)) while the Property is designated in the General Plan as Low Residential and Low Medium I Residential (which permits density up to 244 units (51AR10161)) in order to create a situation in which Snowball is forced to pay a large filing fee to apply for a re-zoning and the City may use that opportunity to reject the housing project. The City's claim that these restrictive zoning designations are consistent with the General Plan designation allowing significantly higher density is exactly what the amendment to the HAA was designed to prevent. The HAA explicitly provides that housing development is to be approved at the density allowed in the general plan and proposed by the project. Zoning that permits significantly less density than the general plan is, thus, inconsistent by definition.

6. The City Is Not Entitled to Deference in its Consistency Determination.

Finally, the City claimed below that it is entitled to deference (by which it means complete capitulation by the courts) in its interpretation of its own ordinances and plans, so that it can unilaterally decide that a zoning ordinance is consistent with its plan even if the objective facts show that it is not. (1JA263:16-26) But, here again, the City ignores the plain language of the HAA which changes the standard of review for determining consistency.

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While traditionally, significant deference is accorded to local governments' interpretations of their own plans, programs, policies, ordinances, standards, requirements and other similar provisions, the HAA departs from these traditional rules and sets forth its own standard for determining consistency. Under the HAA, consistency with an applicable plan exists only if there is substantial evidence that could allow a **reasonable person** to conclude that it is consistent, compliant or in conformity with the applicable standards and requirements. Govt. Code §65589.5(f)(4); *CARLA, supra,* at 837; *Bankers Hill 150, supra,* at 778.

The City's own Zoning Administrator, Planning Director, Deputy Advisory Agency and the unanimous City Planning Commission all found that the Project is consistent with the Plan and ***the zoning is inconsistent*** with the Plan in this case. (*See*, Sections V.B. and V.C.1, *supra*.) Not one of them concluded that zoning designations here permitting only 19 homes on 58 acres are consistent with the specific requirements of plan designations allowing 244 homes on the same property. Were each and every one of them unreasonable? Because in order to uphold the City's position, ***this Court would need to find that not one of those City decisionmakers was reasonable in finding the Project consistent and the zoning inconsistent in this case.***

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Because the existing zoning clearly is inconsistent with the general plan designation under the HAA's "reasonable person" standard, and because the project complies with the objective requirements of the general plan, the HAA requires that the City approve the Project without requiring a zone change unless it had made the required findings in the manner required by the HAA.

VI.

SNOWBALL IS ENTITLED TO A §1094.5 WRIT OF MANDATE AS THE PROJECT IS GOVERNED BY §65589.5(j) AND THE CITY CANNOT AND DID NOT MAKE THE NECESSARY FINDINGS FOR DENIAL

The City Council's determination to deny the Vesting Zone Change was arbitrary and capricious and totally lacking in evidentiary support in that it violated the HAA and HCA, the two State laws that require the City to approve the Project. The HAA provides that if a "housing development project complies with applicable, objective general plan, zoning,[11] and subdivision standards and criteria…in effect at the time that the application was

[11] As discussed in Sections IV and V, *supra,* a housing development project like Snowball's that is zoned inconsistently with the general plan but that is consistent with the objective general plan standards and criteria is treated as though it has been rezoned consistent with the general plan. §§65589.5(j)(4) and 65905.5(c)(2).

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deemed complete" the project ***must be approved*** unless the approving agency makes two findings in writing supported by a ***preponderance of evidence*** in the record: (1) that the project would have a specific, adverse impact on public health or safety unless the project is disapproved; and (2) that there is no feasible method to satisfactorily mitigate or avoid the adverse impact other than the disapproval of the project. §65589.5(j)(1)(A)-(B). The HAA narrowly defines a "specific, adverse impact" as a "significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." §65589.5(j)(1)(A). Both findings are required. §65589.5(j)(1).

In light of the HAA's clear applicability to Snowball's Project, it is important to emphasize that the City was required to approve the Project unless it made both of those statutory findings "supported by a preponderance of the evidence in the record." Govt. Code §65589.5(j)(1); *Honchariw, supra,* at 1079 and 1081. This standard is different than that usually afforded to cities when approving or denying development projects. The City wrongly claimed below that it is entitled to the usual deference to a city's legislative actions, completely ignoring that the HAA contains a much stricter level of scrutiny for the City's actions. The City claimed that it is not even subject to the "substantial evidence"

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standard, which allows it to deny a project if there is any substantial evidence in the record in support, but claims it can deny the zone change for Snowball's Project for no reason at all, so long as its action is not arbitrary, unlawful, or unreasonable. This is all completely wrong under the terms of the HAA.

The City based its argument below (1JA265:5-11) on a single outdated case, decided under an early obsolete version of the HAA. *Mira Development Corp. v. City of San Diego* (1988) 205 Cal.App.3d 1202 was decided ***20 years before the Legislature amended the HAA to add Section (j)(4)***, which provides that a zone change is not needed for a housing development project that is consistent with the general plan but the existing zoning is not. In *Mira*, the court held that because a rezoning was required to approve a project that was consistent with the general plan, the HAA ***as written at that time*** did not require the City of San Diego to approve it. *Mira, supra,* at 1222.

The Mira court recognized the argument that the HAA, as then written, could require approval since the project conformed to the general plan, but rejected it "absent a clear legislative statement to that effect." *Id.* The Legislature gave that "clear legislative statement" in the 2018 amendment adding Section (j)(4) to the HAA

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(see, Section II.A, supra),[12] so the holding in *Mira* is no longer good law and does not support the City's argument.

Instead, ***the City*** has the burden here of proving that in denying the Vesting Zone Change for Snowball's Project, it made both necessary findings and that there was a preponderance of evidence in the record supporting them. See Govt. Code §65589.6 ("In any action taken to challenge the validity of a decision by a city… to disapprove a project… pursuant to Section 65589.5, the city… shall bear the burden of proof that its decision has conformed to all of the conditions specified in Section 65589.5."); §65589.5(j)(1) (findings for project disapproval must be based on a preponderance of evidence in the record). The City has failed on both fronts.

A. The City Did Not Make or Support the First Required Finding for Project Denial.

The City cannot meet its burden of proving that it complied with these obligations under the HAA. §65589.6. Here, the City Council made neither required finding when denying the Vesting

[12] In fact, in introducing the amendment to §65585.9(j)(4), the bill's sponsor wrote that the Legislature intended "to supersede the holding and dicta in [*Mira*] to the extent that the decision declined to apply this subdivision to a proposed housing development on the basis of inconsistency with the existing zoning ordinance, notwithstanding that the project was consistent with the use, density, and intensity allowable on the project site by the general plan." (2JA471; RJN "E")

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Zone Change. (166AR34277-34279, 34297-34298) In fact, the City Council did not make any new findings of its own but stated that it was adopting the findings made by its PLUM Committee in recommending denial. (166AR34297) The PLUM Committee, in turn, stated that it was "adopting the findings presented by Council District 7 as the findings of the PLUM Committee…" (166AR34298) Those supposed "findings" are in the form of the letter from the Councilmember (the "Letter"). (166AR34277-34279; 170AR34870-34872)

The Letter, of course, does not reference §65589.5(j)(1)(A)-(B), nor does it contain any findings of fact at all, and certainly not the findings required for a housing development project to be denied under the HAA. (166AR34277-34279) In the Letter the Councilmember asked that the Vesting Zone Change be denied on the basis of fire and public safety concerns. (166AR34277-34279) Its conclusion stated, "Given that the findings related to public health and safety, and good zoning practices cannot be made in the affirmative, I request that the proposal for a Vesting Zone Change to change a portion of the project site from Al-1 and RA-1 to (T)(Q)RD5-1; and RA-1 to Rl-1 be denied." (*Id.* at 34279)

The Letter does not present facts that the Project would have a specific, adverse impact on public health or safety unless the Project is disapproved. (166AR34277-34279) Nor does it present facts that

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there is no feasible method to satisfactorily mitigate or avoid the alleged adverse impact on public health or safety other than disapproval. (*Id.*) The HAA requires there to be a preponderance of evidence of "objective, identified written public health or safety standards" that will incur a "significant, quantifiable, direct, and unavoidable impact" if the Project is not denied. §65589.5(j)(1)(A)-(B). The Letter contains none. (166AR34277-34279)

Instead, the Letter contains two paragraphs of speculation and opinion concerning fire safety, citing to no evidence in the record in support. (166AR34278) There is no evidence in the Letter that the Project's approval would have an unavoidable impact on fire safety, nor that any such impacts cannot be mitigated. (166AR34277-34279)

And, of course, there is significant substantial evidence to the contrary throughout the record. The FEIR, ***certified by the City***, concludes that any fire safety impacts of the Project are mitigated to less than significant. (13AR2354-2356) LAFD confirmed that the FEIR's mitigation measures mitigated fire safety concerns. (17AR3104) And the expert testimony of Retired LAFD Chief Andrew Fox showed, without contradiction, that development of the Property would greatly improve the safety of the area, rather than endanger it. (166AR34260-34261;169AR34794-34796; 34806-34807; 34810-34813) As the City must base its findings on a preponderance of the evidence, and the only evidence in the record

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reaches the conclusion that the Project does not have unmitigated impacts on public safety, the City's "findings" do not justify a denial of the Project under the HAA. §65589.5(j)(1)(A)-(B); *Honchariw*, *supra,* at 1081.

Faced with the absence of evidence in the record, let alone a preponderance of evidence, the City below merely cited a statement made by the Councilmember that the Project includes only two ingress/egress points (13AR2415), and "sits on a critical access point" (whatever that means) for the existing nearby homes (*Id.*), potentially reducing the ability of existing and proposed residents to evacuate in the event of a fire. (*Id.*) (1JA267:15-20) The City's brief also claims that the City Council found that the Project's proposed fire control measures were "not suitable for a future in which fires across the wildlife-urban interface become more destructive and frequent." (13AR2416) (1JA267:25-27) These alleged impacts on public health or safety are not quantified, they are not direct or unavoidable, nor do they show an impact on objective, identified written public health and safety standards. These statements do not meet the standard for findings under the HAA.

Nor can the City prove that these statements are supported by a preponderance of evidence in the record. The "finding" cited by the City below does not include citations to evidence or rely upon any expert opinion, study, data, or report. (13AR2414-2416) The

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concluding statement was the Councilmember's mere opinion. (*Id.*) The "finding" utterly ignores twelve years of thorough CEQA review and is completely contradicted by the final detailed factual findings the City adopted when approving the Vesting Tentative Tract Map, Site Plan Review, Project Permit Compliance and Final EIR for the exact same Project. (5AR809-818, 5AR862-864, 5AR908-919; 13AR2295-2315, 13AR2354-2356)

Without any actual evidence cited in the "finding," the City's opposition brief cited to "concerns" voiced by community members and articles about general fire safety for residential development, none of which constitutes evidence for findings under the HAA. (1JA268:16-269:3) And nowhere does the City acknowledge the preponderance of evidence in the record from its own Fire Department, Transportation Department, Public Works Department, and Planning Department, all of which approved the Project with detailed conditions of approval, as well as from expert sources, that (1) the Project's siting and ingress and egress are adequate under City Code and for fire safety, and (2) that the Project not only does not add to the public health and safety risk from fires, but **improves** fire safety for the Project's future residents and the neighboring communities. (1JA83:23-84:19); and see also, 5AR789-807; 6AR930-935, 944-948, 1030; 13AR2285-2294; 17AR3099-3104; 166AR34260-34261, 169AR34794-34796, 169AR34805-34807, 169AR34810-34813)

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Not only does this evidence preponderate in the record, the City has already made final, unchallenged findings of fact based on that evidence. (5AR809-818, 5AR862-864, 5AR908-919; 13AR2295-2315, 13AR2354-2356)

The City has not met, and cannot meet, its burden of proving by a preponderance of evidence the first finding that there is a significant, quantifiable, direct, and unavoidable specific adverse impact on public health and safety caused by Snowball's Project. As such, the HAA prohibits the City from denying Snowball's Project. Govt. Code §65589.5(j)(1)(A).

B. The City Did Not Make or Support the Second Required Finding for Project Denial.

The second required finding is that "[t]here is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density." Govt. Code §65589.5(j)(1)(B). The City utterly failed to make this finding, nor did it claim below that it did. Because the City wrongly claimed it is not subject to the HAA, its brief never considered whether it made the findings required by the HAA.

Even had it tried, the City could not have carried its burden of proving that a preponderance of the evidence supports a finding

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that the Project's impacts on fire safety cannot satisfactorily be mitigated. This is because the City certified the Final EIR that finds, based on detailed, scientific, quantified and objective evidence, that the Project's fire safety impacts ***are*** mitigated to a level of insignificance. (5AR862-864; 13AR2354-2356)

The City has not carried its burden of proof that it made this second finding, and in fact has conceded the point that it has not made the findings required by the HAA. As a result, this Court must reverse the City's Project denial. *Id*.

VII.

SNOWBALL IS ENTITLED TO A §1085 WRIT OF MANDATE AS THE CITY VIOLATED ITS MINISTERIAL DUTY TO PROCESS SNOWBALL'S VESTING MAP CLEARANCES

The HAA and HCA prohibit the City from requiring a zone change for a housing development project, like Snowball's, that is consistent with the objective General Plan standards and criteria but has zoning inconsistent with the General Plan. §§65589.5(j)(4) and 65905.5(c)(2). Thus, Snowball has obtained all necessary Project approvals and the Planning Department's refusal to perform its ministerial duty to process Snowball's Map clearances is in violation of the law. *Great Western Sav., etc., supra,* 31 Cal.App.3d 403; *Youngblood, supra,* 22 Cal.3d 644, 656 ("Approval of the final map thus becomes a ministerial act once the appropriate officials certify

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that it is in substantial compliance with the previously approved tentative map." [citing *Great Western, supra*, with approval]) Under the HAA, the Revised Project is entitled by law to go forward with its existing entitlements, and without a zone change, as the City has found that it is consistent with the objective general plan standards and criteria, and the zoning is inconsistent with the Plan. (*See*, Section III.C., *supra*.)

As the Planning Department has failed to act as required by law by failing to process Snowball's Map clearances (171AR34991-34994, 34995-35047, 35048), the issuance of a writ compelling the Planning Department to do so is mandated. *Great Western, supra,* at 414 (since the City's "duty relative to the final tract map was administrative and ministerial, under the provisions of Code of Civil Procedure section 1085, the issuance of a writ of mandate is the proper procedure to compel" the performance of the act.) Snowball is entitled to a writ of mandate directed to the Planning Department ordering it to take the ministerial action of processing Snowball's Map clearances without requiring the approval of a zone change for the Property in violation of the HAA.

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VIII.

THE CITY ACTED IN BAD FAITH ENTITLING SNOWBALL TO A WRIT OF MANDATE ORDERING THE CITY TO APPROVE THE VESTING ZONE CHANGE

If a court finds that the City acted in bad faith in disapproving Snowball's Vesting Zone Change or failing to process the Map clearances in violation of the HAA, that court is empowered to enter an "order or judgment directing the [City] to approve the housing development project." §65589.5(k)(1)(A)(ii). "Bad faith" is defined in the HAA as including, but not limited to, "an action that is frivolous or otherwise entirely without merit." §65589.5(l). According to *Black's Law Dictionary*, "frivolous" means "clearly insufficient on its face," and per *The Law Dictionary*, it means "lacking in any arguable basis or merit in either law or fact." *See also* Code of Civil Procedure §128.7; *Peake v. Underwood* (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 if it is 'nor warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.'")

The City's bad faith denial of Snowball's Project mandates a judgment requiring it to approve the Vesting Zone Change. Indeed, there can be no better example of bad faith than an agency deliberately and knowingly flouting the law as happened here, especially 30 years after the judgment against it in *Warner Ridge,*

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supra, and doing it in such a rushed fashion that Snowball was unable to even attend the final City Council hearing.

The Administrative Record is filled with evidence of the City's bad faith. For example, the PLUM Committee meeting was scheduled for September 17, 2019. (170AR34833-34838) Immediately following the CPC meeting, Snowball reached out to the Councilmember to discuss her newly expressed concerns. (166AR34281-34284) Snowball agreed four times to extend the City's time to act on the Vesting Zone Change as it continued to try to discuss the Project with the Councilmember. (170AR34841-34845; 34848-34867) The Councilmember's staff indicated that the Councilmember wanted to negotiate a deal, but never communicated specifically what she wanted from Snowball. (166AR34281-34284) On December 5, 2019, Snowball submitted another continuance request for the December 10, 2019 PLUM Committee meeting. (165AR34070) Snowball was still being told that it would have the opportunity to meet with the Councilmember. (166AR34281-34284) However, on December 6, 2019, Snowball learned that the Councilmember would not meet and would not be supporting another continuance. (*Id.*)

Project supporters and opponents attended the PLUM Committee meeting. (166AR34273-34275) The PLUM Committee Chair stated that he had over 60 speaker cards and that he would

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only allocate 30 minutes in total for public comment. (170AR34868-34869) He acknowledged that this would mean that not everyone would get an opportunity to speak. (*Id.*) This procedure deviated from typical PLUM Committee meetings in which the project applicant is a designated presenter and each side is guaranteed an equal allocation of time. (1JAR222; RJN "D")

The PLUM Committee Chair opened testimony by first calling up a representative of the Councilmember. (170AR34870) She read the Letter from the Councilmember into the record. (170AR34870-34872)

After the Letter was read, (no copy was provided to Snowball), the PLUM Committee Chair did not give Snowball's representatives the opportunity to present their case for the VZC. (170AR34870) Instead, he called speaker names at random. (*Id.*) It was merely by chance that one of Snowball's representatives was called to the podium later in the hearing. (170AR34881) He was given only one minute to explain Snowball's position and to respond to the Letter read into the record at the start of the hearing. (170AR34881-34885)

Retired LAFD Chief Andrew Fox submitted a speaker card at the PLUM Committee hearing on Snowball's behalf to respond to fire and public safety comments, but his name was never called. (166AR34275) If given the opportunity to speak, Chief Fox would

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have rebutted the Letter and provided expert facts on the fire and public safety aspects of the Revised Project, just as he had done before the CPC. (166AR34260-34261) Other experts and project supporters were not given any opportunity to speak before the 30 minutes expired. (170AR34870)

At the end of the truncated public testimony, the PLUM Committee members deliberated. (170AR34904) They asked City Planning staff and the City Attorney several questions about the Vesting Zone Change that were inadequately answered both from a factual and legal standpoint. (170AR34905-34906, 34908-34909) The Deputy City Attorney in attendance that day was unfamiliar with the case and said so. (170AR34908) She did not explain the findings the City Council would need to make for denial of the Vesting Zone Change under the City's Municipal Code and the HAA. (170AR34905-34906) In fact, one PLUM Committee member stated the City Attorney's explanation of the City's legal requirements was "clear as mud." (170AR34906) Snowball was not provided any opportunity to answer questions or to rebut statements before the Committee members voted on the Vesting Zone Change. (170AR34910-34911)

Later that evening, the City Clerk scheduled the Vesting Zone Change for the City Council meeting ***the next morning***, on December 11, 2019. (13AR2417-2422) Nobody from the City notified Snowball

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of the City Council meeting, which Snowball's counsel only learned of after receiving an automated email notification from the City Clerk's office at 8:00pm on December 10, 2019. (166AR34291-34294) Given the inadequate notice, it was impossible for Snowball to attend the City Council meeting the next morning. (166AR32481-34284) The City Council acted in Snowball's absence to deny the Vesting Zone Change. (170AR34982-34990)

As described in detail in Section II.C.5.B, *supra*, the City Council denied Snowball's Vesting Zone Change. (166AR34295; 170AR34989) The Council adopted the Councilmember's Letter as its findings, despite that it was not based on any factual data, evidence, reports, or studies. (166AR34295-34298) No findings for denial were presented or made by the City Council as required by LAMC §12.32.Q.3(a)(2)(ii) and by the HAA §65589.5(j) (*Id.*; 1JA196-197; RJN "C")

The Project is consistent with all applicable, objective zoning and land use criteria, both as a matter of fact and law. (*See,* Sections V.B. and C., *supra*) The City Council lacked a legitimate basis to deny the Project's Vesting Zone Change consistent with the HAA and the City Council did so in a manner that contravened the HAA. (*See,* Section III.C-E, *supra*) The City Council, acting at the behest of the Councilmember, acted knowingly and deliberately to violate the law. The City Council and its attorneys were advised directly and

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repeatedly by Snowball's counsel of the requirements of the HAA. (9AR1409-1496; 12AR2117-2126; 166AR34262-34264, 34291-34294; 170AR34883) They were warned of the consequences of violating the law. (*Id.*) Nevertheless, the City Council defied the law and, without even attempting to make the required findings, denied the Vesting Zone Change in direct violation of the HAA. [13]

The City's bad faith justifies the Court invoking its authority under §65589.5(k)(1)(A)(ii) to direct the trial court to enter an "order or judgment directing the local agency to approve the housing development project."

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[13] Nor is this case a one-time "error" by the City. It has consistently shirked its obligations under the HAA. For example, Snowball asks this Court to take judicial notice pursuant to Evidence Code §459(a) of the decision by the Hon. James Chalfant in a recent case brought against the City for violation of the HAA. *District Square, LLC v. City of Los Angeles*, LASC Case No. 20STCP00654 (1JA165-185; RJN "B") In *District Square*, the Court ordered the City to approve a housing development project that it wrongfully denied despite that it was mandated by the HAA to approve it, found that the City acted in bad faith warranting an order to approve the project, and awarded the applicant its attorneys' fees. (1JA176-189, 183-185; RJN "B") *District Square* shows that the City has a practice of flouting its obligations under the HAA. The City's pattern and practice of denying critically needed housing development projects in direct violation of State law must be put to an end.

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IX.

SNOWBALL IS ENTITLED TO A §1094.5 WRIT OF MANDATE AS THE CITY ABUSED ITS DISCRETION IN DENYING SNOWBALL'S VESTING ZONE CHANGE BASED ON INVALID FINDINGS UNDER ITS OWN CODE WHICH WERE ALSO LACKING EVIDENTIARY SUPPORT

In addition to its violation of state law, the City's denial of the Vesting Zone Change did not even comply with its own municipal code. The City Council's action was arbitrary and capricious and totally lacking in evidentiary support as it was not supported by valid findings required by LAMC §12.32.Q(3)(a)(2)(ii), and the inadequate findings made by the City were not supported by substantial evidence in the record.

Here, the only "findings" were the Letter (166AR34277-34279), which does not cite to LAMC §12.32.Q(3)(a)(2)(ii) at all, and states only opinion and speculation without any attempt to cite to evidence in the record, let alone substantial evidence, in support. In fact, the only relevant substantial evidence in the record directly contradicts the unsupported assertions in the Letter. (*See* Sections VI.A and B, *supra*)

As the alleged "findings" in the Councilwoman's letter are the City's sole claimed findings, and those findings are not based on facts in the record, they are not sufficient to support the City's action

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under its own Municipal Code, **even if** its actions were not already prohibited by State law.

X.

CONCLUSION

For all the foregoing reasons and based on the record in this matter, Snowball respectfully asks this Court to reverse the judgment below with directions for the trial court to enter judgment in Snowball's favor ordering the City to approve Snowball's Project, and including an appropriate award of attorneys' fees for Snowball.

DATED: April 8, 2022 Respectfully submitted,

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CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 8.204(c)(1))

I hereby certify that the text of this brief, including footnotes, consists of 13,993 words, as counted by Microsoft Word for Office 365, the word-processing program used to generate this brief.

DATED: April 8, 2022

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 5820 Canoga Avenue, Suite 300, Woodland Hills, CA 91367.

On April 8, 2022, I served the foregoing document described as: Appellant's Opening Brief on the interested parties in this action as follows:

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[X] **(BY ELECTRONIC SERVICE):** Pursuant to the agreement for electronic service reached with all counsel in this suit, I served the above referenced document to the email address listed in the service list below through the TrueFiling system at the time of filing.

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

DATED: April 8, 2022 Tiffany Perry
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Honorable Robert S. Draper Los Angeles Superior Court 111 N. Hill Street, Dept. 78 Los Angeles, CA 90012	VIA U.S. Mail
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