DEPARTMENT 85 LAW AND MOTION RULINGS

Case Number: 24STCP00070 **Hearing Date:** September 26, 2024 **Dept:** 85

Yes In My Back Yard, Sonja Trauss, Bedrock Properties Group, and 8217 Winnetka v. City of Los Angeles and City Council of Los Angeles, 24STCP00070

Tentative decision on petition for mandamus: granted

Petitioners Yes In My Back Yard ("YIMBY"), Sonja Trauss ("Trauss"), Bedrock Properties Group ("Bedrock"), and 8217 Winnetka, LLC ("Winnetka") seek mandamus compelling Respondents City of Los Angeles and its City Council (collectively, "City") to set aside the City Council's decision for the Project and to carry out its required duties pursuant to state law.

The court has read and considered the moving papers, opposition, and reply,[1] and renders the following tentative decision.

A. Statement of the Case

1. Petition

On January 9, 2024, Petitioners filed the Petition against the City alleging causes of action for administrative mandamus and/or traditional mandamus and declaratory relief. The verified Petition alleges in pertinent part as follows.

Petitioner Bedrock proposes to build 360 new rental units to be constructed on Winnetka Avenue in Canoga Park (the "Project"), all of which meet the definition of "affordable housing" under state law. Pet., ¶2. Rather than following its own recently enacted expedited procedure for approving affordable housing projects, the City blocked the Project. Pet., ¶2. In so doing, the City abandoned its avowed commitment to housing, ignored the law, and cited demonstrably false and pretextual reasons for its decision to disapprove the project. Pet., ¶2. The City's actions violated state housing laws and City ordinances, executive orders, and regulations. Pet., ¶3.

After initially accepting Bedrock's application and identifying the Project as eligible for expedited approval under the City's new Executive Directive 1 ("ED1"), the City reversed this decision. Pet., ¶4. The City claimed that the Project is ineligible for the streamlined ED1 approval process because ED1 had been recently amended to exclude multi-family housing developments, such as the Project, that are situated in single-family zones. Pet., ¶5. However, state law provides that a developer's rights vest at the time the application for a development is submitted, meaning that the Project was "locked in" to the rules in effect at the time, including ED1 eligibility. Pet., ¶5.

The City contends that its own executive orders do not qualify as an enforceable policy upon which a developer could rely and that state vesting rights did not apply to ED1. Pet., ¶5. As a result, the City informed

Bedrock that it would be required to complete the ordinary, non-streamlined entitlement process. Pet., ¶6.

Following the City's actions, the State issued an opinion letter that ED1 did constitute an ordinance, standard, and/or policy in which a developer can obtain vesting rights. Pet., ¶7. The City eventually reasoned that Bedrock's ED1 rights vested but its application had expired because the City's own staff had failed to sign the updated application form. Pet., ¶9.

Petitioners contend that the City's actions conflict with the Permit Streamlining Act ("PSA"), the Housing Crisis Act ("HCA"), and the Housing Accountability Act ("HAA"). Pet., ¶¶ 12-15. Tthe City violated the PSA by failing to acknowledge that Bedrock's Affordable Housing Referral Form ("AHRF") application was complete and then misapplied the HCA when it determined that its ED1 rights had not vested. Pet., ¶24. The City's failure to provide a lawful basis to disapprove the Project and its decision to impose policies not in effect at the time the preliminary application was submitted also constitute violations of the HAA. Pet., ¶24.

Petitioners pray for (1) a writ of mandate commanding the City to declare the City Council's October 13, 2023 denial of the PSA appeal void, review and process the Project application pursuant to the PSA's and HAA's provisions, and order the City's Planning Department ("Planning") to accept and process the development application within 60 days, with the court to retain jurisdiction to ensure compliance; (2) a writ of mandate commanding the City to comply with the HAA, deem the Project compliant, and approve the Project within 60 days due to the City's bad faith actions pursuant to Government Code[2] section 65589.5; (4) a declaration that the City violated section 65589.5(d) by failing to process and accept the Project application, that the City Council violated section 65589.5(d) by failing to grant the appeal and direct staff to process the application, that the City's denial of vesting rights for the Project while granting such rights to similarly situated projects was arbitrary, capricious, and devoid of merit or evidentiary support, and that the City's actions constituted bad faith as defined by section 65589.5(l); (5) costs of suit and attorney fees under CCP section 1021.5; (6) fines and penalties under section 65589.5; and (7) for any other relief the court deems just and proper.

2. Course of Proceedings

On January 9, 2024, Petitioners filed the Petition.

On March 21, 2024, Respondents filed their Answer.

B. Governing Law

1. The Permit Streamlining Act

The PSA (§§ 65920-964) states that there is a statewide need to ensure a clear understanding of the specific requirements which must be met for the approval of development projects and to expedite decisions on such projects. §65921. The PSA requires that each agency maintain lists that "specify in detail the information that will be required from any applicant." §65940.

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

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

determine completeness, but the agency "shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete." §65943(a).

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

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

A local agency's actions under the PSA are reviewed as traditional mandate. §65943(c).

2. Housing Crisis Act

In 2019, the Legislature enacted the HCA, declaring a temporary housing emergency statewide in order to preserve existing housing, enhance protections for occupants, and increase certainty in the development review process. *See* SB 330 §2(b). Among other limitations, the law ensures housing production is not stymied by precluding an affected county or city – including charter cites and the electorate – from either reducing existing residential intensities or imposing a limitation on housing development within all or a portion of an affected city without first making a finding of an "imminent threat" to public health and safety. §§ 66300(a)(1)(B)(3), (b)(1)(A), (b)(1)(B)(i), 65589.5. The HCA prohibits an affected city:

> "...from enacting a development policy, standard, or condition, as defined, that would have the effect of (A) changing the land use designation or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing zoning district below what was allowed under the general plan or specific plan land use designation and zoning ordinances of the county or city as in effect on January 1, 2018...." §66300(b)(1) (emphasis added).

An "affected county" or "affected city" includes the electorate of an affected county or city exercising its local initiative or referendum power, whether that power is derived from the California Constitution, statute, or the charter or ordinances of the affected county or city. §66300(a)(3). "Reducing the intensity of land use" includes reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or any other action that would individually or cumulatively reduce the site's residential development capacity. §66300(b)(1)(A). These prohibitions apply to any land use designation amendment or change adopted on or after January 1, 2020, and any change as of that date is void. §66300(b)(2).

To maximize the development of housing within this state, section 66300 should be broadly construed and any exception thereto narrowly construed, including an exception for the health and safety of occupants of a housing development project. §66300(f)(2).

3. The Housing Accountability Act

a. Legislative Findings and Intent

The Legislature recognizes the lack of housing as a critical problem that threatens the economic, environmental, and social quality of life in California. §65589.5(a)(1)(A). It adopted the HAA in 1982 to "significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters." §65589.5(a)(2)(K). To date, the goal remains unfulfilled. Id.

The HAA reflects the Legislature's findings that "the availability of housing is of vital statewide importance," and that providing the necessary housing supply "requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of Californians of all economic levels." §65580(a)-(b).

Effective January 1, 2018, the Legislature significantly amended the HAA to strengthen its provisions, expand its applicability, and increase local governments' liability for violations. The HAA found that California is in a housing crisis that is "partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing". §65589.5(a)(1)(B). The consequences of those actions include discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration. §65589.5(a)(1)(C).

Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects. §65589.5(a)(1)(D). The state's homeownership rate was at its lowest level since the 1940s and ranks 49 out of the 50 states. §65589.5(a)(2)(E). The lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians. §65589.5(a)(2)(F).

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

It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety under either section 65589.5(d)(2) and 65589.5(j)(1) arise infrequently. §65589.5(a)(3).

It is the policy of the state that a local government not reject or make infeasible housing development projects that contribute to meeting the need determined pursuant to the HAA without a thorough analysis of the economic, social, and environmental effects of the action and without complying with section 65589.5(d). §65589.5(b).

b. Project Approval Based on Vested Rights

Section 65589.5 is referred to colloquially as the "anti-NIMBY law." Schellinger Brothers v. City of Sebastopol, (2009) 19 Cal.App.4th 1245 1253, n. 9. Subject to certain exceptions, a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application which included all the information required by section 65941.1(a) was submitted. §65589.5(o)(1).

Section 65941.1(d)(1) provides that the applicant must submit an application that includes all necessary information within 180 days after submitting the preliminary application. The plain language of the provision sets a 180-day deadline. Section 65941.1(d)(2) provides that, if the agency determines that the application is incomplete pursuant to section 65943, the applicant shall submit the missing information within 90 days and the failure to do so will mean the application has expired. In turn, section 65943 provides that the agency must make a written determination on the completeness of an application within 30 days of submittal, or it will be deemed complete. §65943(a). Upon receipt of "any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application." Id.

A housing development project "shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is

substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity." §65589.5(f)(4).

Section 65589.5(j)(1) provides:

> "When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:
>
> (A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
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> (B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density." (emphasis added).

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

Section 65589.5(j) applies to market rate housing as well as affordable housing. Honchariw v. County of Stanislaus, (2011) 200 Cal.App.4th 1066, 1070. The HAA applies to all residential housing developments and takes away the agency's ability to deny residential projects based on subjective development policies. Id. at 1072-77.

"Disapprove the housing development project" includes any instance in which a local agency "votes on a proposed housing development project application and it is disapproved", "fails to comply with the timer periods specified in Section 65950" or fails to meet the time limits specified in section 65913.3. §65589.5(h)(6).

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

The local jurisdiction bears the burden of proving that its decision conforms to the conditions specified in section 65589.5. §65589.6.

c. The Builder's Remedy

A local agency shall not disapprove a housing development project for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low- or moderate-income households, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, for one of five conclusions:

(1) the local jurisdiction has adopted a housing element in substantial compliance with the Housing Element Law and has met or exceeded its share of the regional housing need allocation pursuant to section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by section 65008. §65589.5(d)(1).

(2) the proposed housing development would have a specific, adverse impact on the public health or safety that cannot be feasibly mitigated without rendering the project unaffordable or infeasible. A specific, adverse impact on public health or safety does not include inconsistency with the zoning ordinance or general plan land use designation. §65589.5(d)(2)(A);

(3) denial of the project is required to comply with specific state or federal law, and there is no feasible method to comply without rendering the project unaffordable or infeasible;

(4) the proposed land for the project is zoned for, and surrounded on at least two sides by, agriculture or resource preservation purposes; or

(5) the housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with section 65588 that is in substantial compliance with the Housing Element Law. §§ 65589.5(d)(1)-(5).

Section 65589.5(d)(5) means that, when the local government does not have a housing element in substantial compliance with the Housing Element Law, it cannot disapprove an applicable project based on inconsistencies with the jurisdiction's zoning ordinance or general plan land use designation. This is colloquially referred to as the "builder's remedy."

A "housing development project" includes any mixed-use development consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use. §65589.5(h)(2). "Housing for very low, low-, or moderate-income households" includes buildings where 20% of the units are sold or rented to lower income households. §65589.5(h)(3).

"Deemed complete" means the applicant has submitted a preliminary application pursuant to section 65941.1 or, if the applicant has not submitted a preliminary application, has submitted a complete application pursuant to section 65943. §65589.5(h)(5).

"Disapproval of a housing development project" includes whenever a local agency votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit. §65589.5(h)(6)(A).

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

C. Standard of Review

1. The HAA

Actions to enforce the HAA are brought as administrative mandamus. §65589.5(m); Honchariw v. County of Stanislaus, *supra,* 200 Cal.App.4th at 1072. Although a court would normally defer to an agency's interpretation of its own ordinances, "land use decisions under the HAA are different," and "it is inappropriate

for [courts] to defer to the City's interpretation." California Renters Legal Advocacy & Education Fund v. City of San Mateo, ("CARLA"), (2021) 68 Cal.App.5th 820, 844. Thus, courts must engage in a "more rigorous independent review . . . in order to prevent the City from circumventing what was intended to be a strict limitation on its authority." Ruegg & Ellsworth v. City of Berkeley, (2021) 63 Cal.App.5th 277, 299.

HAA cases are governed by a "reasonable person" standard that favors project approval, under which a court must determine whether "substantial evidence . . . would allow a reasonable person to conclude that the housing development project" complies with applicable standards. §655589.5(f)(4). Additionally, the local agency bears the burden of proof to demonstrate that its decision conformed to the HAA. §65589.6. Finally, the HAA must "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 City argues that the reasonable person standard only applies to deciding whether the Project complies with a local "applicable plan, program, policy, ordinance, [or] standard" for a final merits decision and the City has not made a merits decision disapproving the Project. §65589.5(f)(4), (j). Similarly, the City argues that it does not bear the burden of proof by a preponderance of the evidence under section 65589.6 because the City Council did not make a final decision on the Project merits. Opp. at 13.

The HAA's reasonable person standard applies to any action to enforce the HAA, including the determination whether a housing development project "is consistent, compliant, or in conformity" with applicable standards. §655589.5(f)(4). The HAA also broadly defines "disapproval" as any instance in which an agency "[v]otes on a proposed housing development project application and the application is disapproved." §65589.5(h)(6). Nothing limits the HAA solely to a final merits decision.

The agency's decision must be based on the evidence presented at the hearing. Board of Medical Quality Assurance v. Superior Court, (1977) 73 Cal.App.3d 860, 862. The decision-maker is only required to issue findings that give enough explanation so that parties may determine whether, and upon what basis, to review the decision. Topanga Ass'n for a Scenic Community v. County of Los Angeles, (1974) 11 Cal.3d 506, 514-15. Implicit in CCP section 1094.5 is a requirement that the agency set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. Id. at 515.

2. The PSA

Actions under the PSA are governed by traditional mandamus. §65943(c). A petition for traditional mandamus is appropriate in all actions "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station...." CCP §1085. A traditional writ of mandate is the method of compelling the performance of a legal, ministerial duty required by statute. *See* Rodriguez v. Solis, (1991) 1 Cal.App.4th 495, 501-02. Generally, mandamus will lie when (1) there is no plain, speedy, and adequate alternative remedy, (2) the respondent has a duty to perform, and (3) the petitioner has a clear and beneficial right to performance." Pomona Police Officers' Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-84 (internal citations omitted). Whether a statute imposes a ministerial duty for which mandamus is available, or a mere obligation to perform a discretionary function, is a question of statutory interpretation. AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, (2011) 197 Cal.App.4th 693, 701.

3. Overlap of the HAA and PSA

Issues under the PSA cannot be viewed in isolation, separate from the HAA's more favorable standards of review. Rather, these overlapping laws must be construed together to carry out the Legislature's directive that the law be interpreted to favor housing. The question "whether an application is complete for purposes of the PSA is also relevant under the HAA, which incorporates by reference the PSA's definition of a complete application." Save Lafayette v. City of Lafayette, ("Save Lafayette") (2022) 85 Cal.App.5th 842, 851. The

court is "not dealing with the PSA in a vacuum, but rather in its relation to the HAA". Id. at 855. Insofar as it is evaluating a HAA claim, the factual issues concerning the PSA determinations are governed by the reasonable person standard.

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D. Statement of Facts[3]

1. The Mayor's ED 1 and Guidelines

On December 12, 2022, Mayor Karen Bass issued a Declaration of Local Emergency ("Declaration") in response to the City's ongoing housing and homelessness crisis. AR1581-86. The Declaration directed City agencies to provide "[r]egulatory relief . . . to create flexibility to address the crisis." AR1585.

On December 16, 2022, Mayor Bass issued ED1 which directed applications for 100% affordable housing projects to be exempt from discretionary review so long as they do not require a zoning change, variance, or general plan amendment, and which further directed City departments to provide a streamlined ministerial application review process for 100% affordable housing projects. AR 1588-90.

On February 9, 2023, City departments issued implementing guidelines for ED1 ("Guidelines" or "ED1 Guidelines") that outlined the eligibility criteria and general procedures for any project seeking ministerial ED1 approval. AR1592-605. The Guidelines excluded from the definition of 100% affordable project those projects with fewer than five units, any project that required a legislative action, any project that required a deviation from development standards, any project that required a subdivision map or coastal development permit, and any project proposing for-sale units. AR1593. The Guidelines informed applicants of vesting rights available under the HCA, stating that "housing projects qualify to submit an optional HCA Vesting Preliminary Application, which 'locks in' local planning and zoning rules at the time the complete application is submitted." AR1605.

2. The Project Preliminary Application

Petitioner Bedrock held a pre-application meeting with the City's Planning Department ("Planning") to discuss the Project, an affordable housing project at 8217 N. Winnetka Avenue. SAR 01-06. Staff informed Bedrock that the Project would be eligible for ED1 and to work with Planning's Affordable Housing Services Section ("AHSS") to determine the precise requirements. SAR 08-11.

On March 22, 2023, Bedrock submitted a preliminary application for the Project of 360 affordable units at a site zoned RA-1 and RD2-1 designated for Low Medium II Residential land use. AR 1542. In these zones, two-family dwellings are not permitted by-right. Multifamily development is not permitted in the RA zone and RA zones limit height to 30 feet. AR 1542.

On April 18, 2023, Bedrock submitted to AHSS an Affordable Housing Referral Form ("AHRF"), which Planning staff signed on June 15, 2023. AR 353-65. The purpose of the AHRF "is to confirm the Project's consistency with regulations" related to, *inter alia,* issues of affordable housing. AR1540. AHSS staff signed off on Bedrock' AHRF form, which identified the Project as eligible for ED1 ministerial processing. AR 353. City staff signed the form affirming that it was complete and checked the box identifying the Project as eligible for ED1. AR 105.

3. The First Amended ED1

On June 12, 2023, Mayor Bass issued a revised ED1 ("First Amended ED1"). AR 1639-41. The First Amended ED1 was largely the same, except that it excluded any 100% affordable housing project "located in

a single family or more restrictive zone." AR 1639.

4. The Project Application

On June 23, 2023, Bedrock submitted to Planning a development application ("Application") under the PSA. AR 200-05.

The Incompleteness Letter

Shortly thereafter, on June 30, 2023, Planning an incompleteness letter to Bedrock ("Incompleteness Letter") outlining how the Application was incomplete. AR1736-47. The Incompleteness Letter explained that the Application was incomplete for the following reasons: (1) the preliminary application was inconsistent with the Application in its number of units, parking spaces, and square footage; (2) the Application was missing bicycle parking information; (3) it was missing rear-yard reduction information; (4) there were inconsistencies in open space reduction amounts between the Application and the AHRF; (5) the Application was missing landscaping information; (6) the Application and AHRF had inconsistent unit, parking, setback, rear-yard reduction, and height proposals; (7) the Application was missing a letter from the City's Bureau of Engineering ("BOE") relating to dedication and improvement requirements; (8) the Application was missing a Preliminary Zoning Assessment form and architectural plans stamped by the Plan Check division of Los Angeles Department of Building and Safety ("LADBS"); (9) the submitted papers could not be read; and (10) it failed to disclose information about on and off site trees. AR 1736–46. The City sought a correct AJRF form (AR 1740) and explained that the missing Application items must be submitted by Bedrock within 90 days, or by September 28, 2023. AR 1736.

The Disapproval Letter

On July 6, 2023, Planning sent Bedrock a disapproval letter ("Disapproval Letter") stating that the Project was no longer eligible for ED1 processing pursuant to Mayor Bass's First Amended ED1 issued on June 12, 2023. AR 423. The Disapproval Letter explained that projects located in single-family or more restrictive zones are not eligible for ED1 processing and that there were other entitlement options available for Bedrock's Project. AR 423.

The Second Incompleteness Letter

On August 4, 2023, the City sent Bedrock another incompleteness letter ("Second Incompleteness Letter") explaining why the Application was still incomplete. AR 1751-54. The letter informed Bedrock that, because the Project does not qualify for ED1 processing as stated in the Disapproval Letter, the Application will be considered converted as of July 6, 2023 to a regular entitlement process that will proceed on a discretionary review process. AR 1751. The existing case number was being to a new case number that reflects that (1) the Project does not qualify for ED1 processing, (2) a change in the administrative review process, and (3) the Project remains vested in other LAMC provisions and land use plans besides ED1. AR 1751. The City would require Planning Commission approval and environmental review, a new set of application materials, and $35,000 in additional fees. AR 1751-52. The Second Incompleteness Letter added that the Application materials remained incomplete for the same reasons stated in the City's June 30, 2023, letter to Bedrock. AR 1752.

Bedrock immediately inquired how to appeal the refusal to process under ED1. AR 1998.

3. The Ethel Project

A project at 5511 North Ethel Avenue ("Ethel Project") was also deemed ineligible to vest in ED1's provisions, and that determination was also appealed.

Before the City acted on the Ethel Project appeal, the California Department of Housing and Community Development ("HCD"), sent the City a letter stating: "The central question between the City and the Applicant is as follows: Is an executive directive one of the rules, regulations, requirements, and policies that vest upon submission of a complete Preliminary Application? The answer is 'yes.'" AR 1853-55. HCD's letter explained that "ED1 is not excluded from the expansive HAA definition of 'ordinances, policies, and standards' and is therefore eligible for vesting." AR 1854.

The City Council's Planning and Land Use Management ("PLUM") Committee granted the Ethel Appeal and determined that the Ethel Project vested in ED1's ministerial process, a decision upheld by the City Council on September 26, 2023. Pet. RJN, Ex. A.

4. Bedrock's Appeal

On August 14, 2023, Bedrock timely appealed the City's conversion of the Application from an ED1 ministerial process to a discretionary path. AR 478-88. The appeal explained that "as a matter of State law the HCA Preliminary Application filed for the Project grants vesting protections that require the City's continued ED1 processing...." AR 479.

Planning submitted its report on Bedrock's appeal on September 28, 2023. AR 1536. Planning's appeal response did not dispute that the preliminary application's completeness before the First Amended ED1 was issued. AR 1550. Instead, Planning's response argued that ED1 "is not the equivalent of an ordinance, policy, standard, planning rule, or zoning rule," and there is no ability to "vest" in ED1's ministerial process. AR 1550. Planning concluded that vesting in ED1 "is beyond the authorization" of the HAA. AR 1550. Planning added that, "[a]s of the date of this Report, City Planning has not received further submission from [Bedrock] that would go toward completing or processing the original ADM Application or the converted CPC Application and ENV cases." AR 1542.

Also on September 28, 2023, Bedrock supplemented the Application with some of the missing items. AR 1370–535.

The HCD Email

Bedrock's appeal came before the PLUM Committee on October 3, 2023. AR 2144. Just before the hearing, the HCD sent the PLUM Committee an email directed at the question of whether the Project vested in the ED1. AR 972-93. The HCD stated that the Project and the Ethel Project "address the same question" and urged "the City to apply the law evenly across all ED1 projects and allow projects vested by the preliminary applications to be processed under the 'ordinances, policies, and standards' in effect when the complete preliminary application was submitted." AR 972-93.

At the PLUM Committtee hearing, City Councilperson Katy Yaroslavsky asked whether the HCD had weighed in on the vesting issue:

"MS. YAROSLAVSKY: So this is a question for planning. Uh, was this project ever issued a vesting letter?
MS. LAMB: Uh, this is Blake Lamb with the Planning Department. Yes. This project did receive a vesting preliminary application per the Housing Crisis Act.

MS. YAROSLAVSKY: Uh, did HCD issue a letter specific to this project?

MS. LAMB: I believe that HCD did issue a letter on this issue, and I believe it was specific to the project on Ethel. But let us look at the letter and confirm for you." AR 2187-88 (emphasis added).[4]

The PLUM Committee recommended denial of the appeal. AR 2156, SAR 0182–90.

The HCD formalized its position for the City Council appeal by issuing an October 12, 2023 letter of technical assistance stating that HCD "already issued technical assistance on this matter," and to the extent "any other ED1 projects address the same question raised by the project located at 5501-5511 N. Ethel Avenue, the technical assistance provided in HCD's September 14, 2023, letter applies." AR 2025-26.

At the October 13, 2023 City Council appeal hearing, Planning argued that the Project's vesting rights expired on September 29, 2023 because Bedrock did not respond to the first Incompleteness Letter within 90 days. SAR 185-86. Planning acknowledged that Bedrock had responded to the Incompleteness Letter and submitted the requested information within 90 days. SAR 187. The City claimed that Bedrock submitted the information at "approximately 2:30 or 3:00 p.m." on the last day of the deadline, and therefore AHSS staff did not have adequate time to review and sign Bedrock's AHRF. SAR 187. Planning staff stated: "Had we gotten this form even 1 or 2 days in advance of the September 28th deadline, we could have expedited the review." SAR 187.

The City Council denied Bedrock's appeal.

5. Post-Appeal Incompleteness Letters

On October 27, 2023, following City Council's decision to deny Bedrock's appeal, the City sent Bedrock a Third Incompleteness Letter explaining that the Project Application remained incomplete. AR 1009. The letter explained that, while Bedrock believes the proper entitlement path is ED1, Planning's position is that it is a Density Bonus under LAMC's Priority Housing Program. AR 1009. At the time of the Third Incompleteness Letter, Bedrock was still missing the updated AHRF concerning the 73.2% open space reduction and the BOE letter relating to dedication and improvements. AR1008-10. The Letter listed these two items required for completeness and hastened to add that "this communication is not a disapproval of the project...." AR 1009.

On January 25, 2024, after filing this lawsuit, Bedrock responded to the Third Incompleteness Letter by providing the two required items. AR 1157–60.

On February 22, 2024, Planning sent Bedrock a Fourth Incompleteness Letter stating that the Application remained incomplete because Bedrock had not submitted an Environmental Assessment form and documents with related fees. AR 1162.

6. The Second Amended ED1

On July 1, 2024, Mayor Bass issued a third ED1 ("Second Amended ED1"), stating that any project that has submitted "a Housing Crisis Act Vesting Preliminary Application Form to the Department of City Planning

prior to the effective date of this revised Executive Directive shall be deemed eligible to proceed under the regulations of the July 7, 2023, version of this Executive Directive." Pet., RJN, Ex. C.

E. Analysis

Petitioners seek mandamus compelling the City to carry out its duties pursuant to the PSA and HAA, accept Bedrock's development application as complete, and approve the Project within 60 days.

1. Violation of the HAA

The City bears the burden of proving that its decision conforms to the conditions specified in section 65589.5. §65589.6.

a. Vesting Rights Under ED1

The Legislature enacted the HCA in 2019 to prohibit what the Senate Floor Analysis described as "the most egregious practices" by local governments that prevent the development of new housing. Pet. RJN, Ex. B, p. 7. Specifically, the HCA added a new "preliminary application" process designed to "stop[] them from changing the rules on builders who are in the midst of going through the approval process." Id.

Under the HAA, a project associated with a complete preliminary application under section 65594.1 "shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application . . . was submitted." §65589.5(o). A project application is reviewed against zoning ordinances, land use plans, and standards in effect "at the time" or "on the date the application was deemed complete." §§ 65589.5(d)(5), (h)(5), (j)(1). Thus, section 65941.1 allows a housing developer to submit a preliminary application, which under the HAA vests the "ordinances, policies, and standards" in effect at the time a complete preliminary application is submitted. § 65589.5(o)(1). The HAA defines "ordinances, policies, and standards" broadly to include "general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency...." §65589.5(o)(4).

Bedrock submitted a preliminary application for the 100% affordable 360-unit housing Project on March 15, 2023, when ED1 was still in place and prior to the issuance of the First Amended ED1 in June 2023. AR 105-14, 1588-90, 1639-41. Initially, the City concluded that Project vested in ED1 and so informed Bedrock and Property owner Winnetka. AR 353. On July 6, 2023, the City told them that the Project was no longer eligible for ED1 processing. AR 423.

Petitioners contend that this was an error because the Project qualified for ED1. Nor is there any question that Bedrock submitted a complete preliminary application and obtained vesting rights before ED1 was amended, as Planning confirmed. AR 1550. The *only* question this court needs to decide is whether ED1 fits within the HAA's broad definition of "ordinances, policies, and standards." The answer is clearly yes, as HCD repeated to the City multiple times and the City recognized by granting vesting rights in ED 1 for the Ethel Project. Pet., Op. Br. at 12-13.

According to Petitioners, the plain language of the HAA demonstrates that the Legislature intended the HAA's vesting provision to apply to more than just legislatively enacted development standards. Section 65589.5(o) broadly defines the items eligible for vesting as "ordinances, policies, and standards", but also includes "any other rules, regulations, requirements, and policies of a local agency...."[5] This phrase necessarily means something more than just legislatively enacted general plan, zoning, and subdivision standards. Courts must "reject interpretations that render particular terms of a statute mere surplusage, instead giving every word some significance." MacIsaac v. Waste Management Collection & Recycling, Inc., (2005) 134 Cal.App.4th 1076, 1082; *see also* People v. McCart, (1982) 32 Cal.3d 338, 342-43 ("significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose"). The

phrase "any other rules, regulations, requirements, and policies" must include policies beyond legislatively enacted ordinances. The stated purpose of the vesting provision is to stop jurisdictions from changing the rules on builders in the midst of the approval process in a manner that would impact the feasibility of projects and ED1 clearly falls within that category. Pet., Op. Br. at 13-14.

The City argues that Petitioners have no vested rights under ED1 because executive directives are not zoning or land use ordinances, policies, or standards within the meaning of state law or the LAMC. §§ 65589.5, 65941.1. There can be no vesting in any version of ED1 because ED1 was issued by the Mayor in furtherance of her Declaration of a local state of emergency on homelessness. Pursuant to City Charter section 231(i), the Mayor has the power and duty to "declare a local emergency and coordinate the City's emergency response activities in accordance with procedures established by ordinance, and supervise emergency preparedness activities in the various departments and offices, including the Mayor's office, in a manner consistent with City policy." Opp. at 14.

A mayoral directive is distinct from a City policy. Under LAAC section 8.29:

> "During the period of a local emergency, and with respect to emergency preparedness and response activities, the Mayor shall be the Director of the Emergency Operations Organization, and all powers and duties herein conferred upon the Board or any officer or chief of a division shall be exercised subject to the direction and approval of the Mayor. The Director is authorized to promulgate, issue and enforce rules, regulations, orders and directives which the Director considers necessary for the protection of life and property." City's RJN, Ex. A (emphasis added).

LAAC sections 8.27 and 8.31, consistent with section 8630, make clear that an emergency declaration is limited in duration. Upon the termination of an emergency "by operation of law, such rules, regulations, orders, and directives shall terminate and be of no further force or effect." LAAC §8.31. City RJN, Ex. A. Opp. at 14.

A mayoral directive with such a limited timeline and scope does not equate to the type of zoning policies in which an applicant traditionally vests. Nor is it the type of local policy that is within the scope of vesting described in the HAA. The policies vested by a preliminary application are those planning and zoning policies adopted through a process reviewed by the City Planning Commission and City Council and determined to be consistent with the City's general plan, among other findings. *See* City Charter §558 (requirements for zoning). This administrative process provides the time to consider the City's long- and short-term policies, provides a more robust administrative record, and involves greater public involvement and debate than a mayoral directive issued on an emergency basis. Opp. at 14.

The City concludes that the HAA's reference to "ordinances, policies, and standards" is intended to vest projects against changes in long-term substantive requirements, not the temporary emergency processing schedules referenced in ED1. ED1 provides an expedited process, but it does not change the land use and zoning ordinances, policies, and standards that impact the scope and substantive requirements for a project. *See* City Charter §231(j). Opp. at 15.

The City makes good policy arguments about the hurried and less thoughtful crafting of mayoral directives, but ultimately that policy does not affect the plain meaning interpretation of both the HAA and ED1. In fixating on whether ED1 is an "ordinance policy or standard" under the HAA, the City ignores the language in section 65589.5(o) that expresses the Legislature's intent to apply the vesting rule broadly. The HAA extends the vesting rule to general plan, zoning, and subdivision standards and "any other rules, regulations, requirements, and policies of a local agency…" (§ 65589.5(o) (emphasis added). Section

65589.5(o) clearly states that vesting applies to all rules and policies, not just traditional general plan/zoning ordinances and enactments.

City Charter section 231(i) provides that the Mayor may establish procedures and implement policies not inconsistent with the City Charter or an ordinance through issuance of mayoral directives that are binding on all departments, commissions, appointed officers and employees of the City. City RJN Ex. A. ED1 is just such a policy and there is no evidence or argument that it was inconsistent with any City Charter provision or ordinance. It therefore is within the scope of section 65589.5(o) for vesting.

b. The Second Amended ED1

Petitioners persuasively argue that the City admitted that ED1 is subject to the HAA's vesting rights provision in its most recent Second Amended ED1. Under the City's ED1 Guidelines, applicants are informed that the submission of a preliminary application "locks in" the local planning and zoning rules. AR 1605. On July 1, 2024, Mayor Bass issued the Second Amended ED1, which states that any project submitting "a Housing Crisis Act Vesting Preliminary Application Form to the Department of City Planning prior to the effective date of this revised Executive Directive shall be deemed eligible to proceed under the regulations of the July 7, 2023 version of this Executive Directive." Pet., RJN, Ex. C, p. 7 (emphasis added). In other words, the Second Amended ED1 explicitly authorizes the vesting of a preliminary application under section 65941.1 based on the First Amended ED1. Pet., Op. Br. at 14; Reply at 4-5.

The City does not respond to this argument. The City cannot pick and choose which version of ED1 is subject to state vesting. Any project that submits a preliminary application is granted vesting rights, and those vesting rights extend to all existing local rules, regulations, requirements, and policies – including the version of ED1 in place at the time.

c. The HCD Letter

The HCD has agreed that ED1 is a rule or policy supporting vesting upon submission of a complete preliminary application under section 65589.5(o), both in connection with the Project as well as the Ethel project. AR 972-93, 1853-55.

The deference and the weight given to an agency's interpretation is situational and dependent on the presence or absence of factors supporting the merit of the interpretation. Yamaha Corp. of America v. State Board of Equalization, ("Yamaha") (1998) 19 Cal.4th 1, 7-8, 12. Some deference is warranted where there are "indications of careful consideration by senior agency officials" or "the agency 'has consistently maintained the interpretation in question.'" Id. at 13. An administrative construction of a statute is only entitled to as much deference as is warranted by "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control". Hoechst Celanese Corp. v. Franchise Tax Bd., (2001) 25 Cal.4th 508, 524.

The City argues that the HCD's opinion is not binding on the City Council or this court. *See, e.g.,* Interinsurance Exch. of the Auto. Club v. Superior Court, (2007) 148 Cal. App. 4th 1218, 1236 (no deference need be granted to state agency's letter opinion regarding the term "premium"). While HCD can opine on the proper interpretation of the Government Code, the issue of what constitutes a City rule or policy rests with the City Charter, LAAC, LAMC, and City Council, not HCD. *See* Yamaha, *supra,* 19 Cal. 4th at 14–15. Opp. at 18.

Moreover, the HCD technical assistance letters are not persuasive because the City is a charter city and has the authority to govern and manage its municipal affairs, adopt mayoral emergency directives, zone land, and to adopt general plans, zoning ordinances, and related development standards. Cal. Const. art. XI, § 5, 7.

Neither the Legislature nor a state agency may "interfere in the government and management of the municipality." Ex Parte Braun, (1903) 141 Cal. 204, 209. Municipal land use and zoning regulations are municipal affairs. Committee of Seven Thousand v. Superior Court, (1988) 45 Cal. 3d 491, 511. This constitutional power extends to the power to interpret its zoning regulations and development standards and to determine what constitutes planning and zoning ordinances and policies. *See, e.g.,* City of Walnut Creek, (1980) 101 Cal. App. 3d 1014, 1021 ("The construction placed on a piece of legislation by the enacting body is of very persuasive significance. Also, construction of a statute by officials charged with its administration must be given great weight"). The "fundamental rule [is] that interpretation of the meaning and scope of a local ordinance is, in the first instance, committed to the local agency...." Friends of Davis v. City of Davis, (2000) 83 Cal. App. 4th 1004, 1015. Accordingly, the court should not treat HCD's opinion of ED1 as persuasive or instructive. Opp. at 18-19.

It is true that the HCD's technical assistance letter for the Ethel project, and its email and technical assistance letter for the Project, are not binding. It is also true that the City may interpret its own Mayoral directive without interference from HCD. However, no City decision-maker or authority has purported to interpret ED1. Only Planning has done so as art of its advocacy before the City Council. AR 1550. An agency's interpretation of an ambiguous statute consisting only of the agency's litigating position is entitled to no deference. Culligan Water Conditioning, Inc. v. State Bd. of Equalization, (1976) 17 Cal. 3d 86, 92-93. The HCD's technical letter for the Ethel project is well-reasoned, conforms to a straightforward reading of section 65589.5(o), and expresses a view consistent with its view for this Project. The HCD opinions supporting Petitioners' position are entitled to some weight.

d. The First Amended ED1 Did Not Purport to Clarify ED1

The City argues that Mayor Bass's ED1 was meant to apply to multi-family zones, as evidenced by the fact that it expedited the 31 pending 100% affordable projects in multi-family zones that were languishing in the City's pipeline at the time. AR 1540; City RJN Ex. B. The referenced 31 projects are only located in zones that allow multi-family uses.

The City always retains authority to exercise its police powers which are the basis for zoning decisions. DeVita v. County of Napa, (1995) 9 Cal. 4th 763, 782. Thus, the First Amended ED1 may be applied retroactively to projects where, as here, there is evidence that retroactive application is necessary to trigger the application of ordinances, policies and standards that are necessary to protect public health and welfare. *See, e.g.*, §65589.5(o)(2); LAMC §12.26.A.3 (identifying exceptions to vesting). *See generally* Davidson v. County of San Diego, (1996) 49 Cal. App. 4th 639, 649. This is consistent with the Mayor's authority under LAAC section 8.29 as the Director of the Emergency Operations Organization. City RJN, Ex. A. Opp. at 16.

The City argues that its interpretation of its Mayor's executive directives is "entitled to great weight unless [] clearly erroneous or unauthorized." Symons Emergency Specialties v. City of Riverside, (2024) 99 Cal. App. 5th 583, 600 (2024) ("deference is appropriate even if the language of the ordinance is susceptible to more than one reasonable interpretation"). The court should defer to the City's interpretation regarding the purpose of ED1 because it has discretion over the interpretation of the limits and breadth of ED1—a processing schedule that was faster than required by state housing statutes. *See generally* §§ 65913.4, 65950(a)(4-5). *See also* People v. Continola, (1993) 15 Cal. App. 4th Supp. 4th 20, 24–25 (although mayor's emergency curfew order was silent on the issue, ordinance making it a crime to violate the order did not apply to homeless persons who did not perform an act to imperil lives or property). The City is entitled to greater deference because Planning and the Mayor have relevant expertise, and the ED1 text is "entwined with issues of fact, policy, and discretion" as disclosed by the ED1 record. Yamaha, *supra*, 19 Cal. 4th at 10–12. Opp. at 15-16.

The court agrees that the City has authority to interpret its own directives and that the Mayor has authority to clarify a directive. The problem is that nothing in ED1 indicates that it is restricted to multi-

family zones. AR 1588-90,1592-605. The First Amended ED1 added this restriction without any reference or suggestion that it was clarifying the intent of ED1. AR 1639-41. If ED1 was intended to prohibit projects in single-family zones, there at least should have been some clarifying language in the First Amended ED1. There is none. "The courts will not infer that the Legislature intended only to clarify the law unless the nature of the amendment clearly demonstrates that this is the case [citation] or the Legislature itself states in a particular amendment that its intent was to be declaratory of the existing law." Medina v. Bd. of Ret., (2003) 112 Cal.App.4th 864, 869–70.[6]

As Petitioners correctly note (Reply at 6), even if the City's reading of ED1 was plausible, in interpreting the HAA, the court does not defer to the City's interpretation of its own rules and regulations. Although a court would normally defer to an agency's interpretation of its own ordinances, land use decisions under the HAA are different precisely because the HAA cabins the discretion of local agencies. CARLA, *supra,* 68 Cal.App.5th at 844. The court must engage in a "more rigorous independent review…in order to prevent the City from circumventing what was intended to be a strict limitation on its authority." Ruegg & Ellsworth v. City of Berkeley, (2021) 63 Cal.App.5th 277, 299. The court must independently apply section 655589.5(f)(4) to determine whether substantial evidence would allow a reasonable person to conclude that the Project complies with ED1. Id. at 845.

Nothing in the First Amended ED1 shows that it was intended to clarify ED1 and therefore the court can only look to ED1's plain language. The fact that Planning confirmed that the Project complied with ED1 is substantial evidence that it was not limited to multi-family zones. AR 353-65.

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e. The Doctrine of Estoppel does Not Apply

The City argues that Petitioners essentially seek estoppel, and it is well settled that the City cannot be estopped from applying its zoning laws. "A party 'faces daunting odds in establishing estoppel against a governmental entity in a land use case. Courts have severely limited the application of estoppel in this context by expressly balancing the injustice done to the private person with the public policy that would be supervened by invoking estoppel to grant development rights outside of the normal planning and review process. Golden Gate Water Ski Club v. County of Contra Costa, (2008) 165 Cal. App. 4th 249, 259 (citations omitted). Indeed, the "doctrine of equitable estoppel will not be invoked as a matter of law even where a property owner relies on a permit issued by the public entity but the permit violates a zoning ordinance." Id. at 260. Opp. at 17.

Allowing Bedrock's preliminary application to vest due to an error in ED1 application would effectively estop the City from applying its zoning code. The City is entitled to correct its initial erroneous processing of the Project's preliminary application because estoppel arguments against government agencies are disfavored. *See generally* Feduniak v. California Coastal Commission, (2007) 148 Cal. App. 4th 1346, 1372–77 (reversing order estopping Coastal Commission from enforcing an easement and permit restrictions); Childhelp v. City of Los Angeles, (2023) 91 Cal. App. 5th 224. *See also* Consaul v. City of San Diego, (1992) 6 Cal. App. 4th 1781, 1794 (city cannot be estopped from enforcing laws); Fontana v. Atkinson, (1963) 212 Cal. App. 2d 499, 509 ("The mere fact that, without more, city officials fail to enforce a zoning ordinance against a violator will not estop the city from subsequently enforcing it against him."). Opp. at 16-18.

The City relies (Opp. at 17) on Pettitt v. City of Fresno, ("Pettitt") (1973) 34 Cal. App. 3d 813, 816, in which the Pettitts purchased a building spanning two addresses—one residential, one retail—to open a beauty salon. The city's planning department sent the Pettitts' agent a letter representing that both addresses had a non-conforming right allowing retail commercial use in an area zoned single family residential. Id. The Pettitts purchased the building, obtained a building permit, and spent substantial remodeling costs to turn the entire building into a beauty salon. Id. at 816–17. The city revoked the building permit after the work was done and denied the Pettitts' efforts to obtain a permit or variance. Id. at 817–18. The court of appeal rejected the Pettitts' estoppel argument, explaining that "estoppel will not be invoked against a government agency where it would defeat the effective operation of a policy adopted to protect the public." Id. at 822.

The City argues that, while ED1 did not expressly carve out single-family zoned areas, the clarified First Amended ED1 corrected that error just months later. The City's zoning did not change by virtue of ED1 and the First Amended ED1, nor could it. *See* City Charter §558 (City's RJN, Ex. A) (zone change procedures). That the City made an error by accepting Bedrock's preliminary application does not estop the City from applying the procedural zoning requirements that exist for the greater public's health and welfare. Pettitt, 34 Cal.App.3d 813, 819 (application of estoppel would "nullify 'a strong rule of policy, adopted for the benefit of the public....'"). An applicant cannot take advantage of the City's error to obtain an entitlement that was not intended to be available, and at a cost to the general public. Opp. at 18.

The City's argument suffers from the defect that there is no evidence the First Amended ED1 clarified ED1 to reflect its purpose. The rule disfavoring the application of estoppel against local governments has no bearing on Petitioners' claim that the City violated state housing laws. The HAA explicitly applies to charter cities and courts have confirmed that the HAA does not violate a charter city's municipal authority. § 65589.5(g); CARLA, *supra*, 68 Cal.App.5th at 851. As CARLA explained: "[T]he HAA does not wrest control from local governments so much as require them to proceed by way of clear rules adopted in advance, rather than by ad hoc decisions to accept or reject proposed housing." Id. *See* Reply at 6-7. Estoppel does not apply to the application of ED1 to vest Bedrock's rights under section 65589.5(o)(1).

f. Bedrock's Vesting Rights Did Not Expire Under the PSA

The purpose of the PSA is "to expedite decisions" on development projects. The PSA is solely designed to gather information about the project being proposed, not to determine whether a project is zoning compliant. Once a development project application has been submitted, an agency must first determine whether the application is complete and provide an exhaustive list of incomplete items. §65943(a).[7]

In SB 330, the Legislature added a provision to the PSA preliminary application process specifically for housing development projects, the purpose of which is to secure vesting rights and lock into place existing development standards. §65941.1. To maintain vesting rights, an applicant must submit a development application within 180 days of submitting a preliminary application. §65941.1(d). Additionally, if an agency makes an incompleteness determination "pursuant to Section 65943", the applicant must submit the information needed to complete the application within 90 days or the preliminary application expires. Id. Once an applicant resubmits an application in response to an agency's incompleteness determination, a new 30-day period begins wherein the agency must make another completeness determination. §65943(a).

An incompleteness determination "pursuant to Section 65943" includes both an initial completeness determination and any subsequent determination made in response to a resubmittal. In other words, each time a new written completeness determination is made pursuant to section 65943, an applicant has 90 days to respond in order to maintain vesting rights.

The City argues that an applicant does not have 90 days to respond each time an incompleteness determination is made. The developer has 180 days after submitting a preliminary application to submit "all of the information" required for a complete application. §65941.1(d)(1). If there is an incompleteness determination, the developer "shall submit" the information for completion in 90 days. §65941.1(d)(2). A failure to do so means that "the preliminary application shall expire and have no further force or effect." Id.

According to the City, there is no basis for an applicant to obtain an infinite number of 90-day opportunities to complete its project application and get 90 days to respond "each" time a new completeness determination is made. The plain language of section 65941.1 indicates the 90-day provision is designed to cut off vesting rights. Petitioners' interpretation would impermissibly interpret the 180-day and 90-day time periods out of existence. Select Base Materials, Inc. v. Bd. of Equalization, (1959) 51 Cal. 2d 640, 645, 647 (statutes are "construed with reference to the whole . . . so that all may be harmonized and have effect" and to avoid rendering "nugatory important provisions of the statute.") Opp. at 20.

The City notes that it has discretion to set the application completeness requirements. §65940. Bedrock's Project Application was not complete (AR 1541–42, 1008–10) and its preliminary application vesting rights expired on September 28, 2 023, 90 days after the City issued its June 30, 2023 Incompleteness Letter. §65941.1(d). The City's October 27, 2023 Incompleteness Letter explained how the Project Application still was incomplete even under an ED1 processing theory based on Bedrock's September 28, 2023 attempt to supplement its application. AR 1008–10. Opp. at 20.

Since Bedrock did not complete its Application prior to its appeal, the City Council agreed with Planning's determination that the Application was incomplete under the PSA. The City possesses discretion to take or reject an incomplete application and no writ may issue requiring the City to accept an incomplete application. *See* Hutchinson v. City of San Francisco, (1993) 17 Cal. App. 4th 791, 796; County of San Diego v. California, (1998) 164 Cal. App. 4th 580, 593 (traditional writ of mandate may not issue where agency is required to exercise discretion or judgment). Opp. at 19-20.[8]

Thus, the City argues that an applicant must achieve a complete application within 90 days of the initial incompleteness determination made pursuant to section 65943, reading the PSA's iterative process out of the statute. MacIsaac, *supra*, 134 Cal.App.4th at 1082 (courts must interpret statutes to "giv[e] every word some significance"). In other words, even if an applicant timely responds to an initial incompleteness determination within 90 days, under the City's theory the applicant does not get another opportunity to respond to a second incompleteness determination made "pursuant to Section 65943," and the preliminary application will expire. The City does not explain why an applicant only gets 90 days to respond from the first incompleteness determination made pursuant to section 65943, and not a subsequent incompleteness determination. Pet. Op. Br. at 14-15.

The City incorrectly interprets the PSA. Section 65941.1(d)(1) provides that the applicant must submit an application that includes all necessary information for processing within 180 days after submitting the preliminary application. The plain language of the provision sets a 180-day deadline. Section 65941.1(d)(2) provides that, if the agency determines that the application is incomplete pursuant to section 65943, the applicant shall submit the missing information within 90 days and the failure to do so will mean the application has expired. In turn, section 65943 provides that the agency must make a written determination on the completeness of an application within 30 days of submittal, or it will be deemed complete. §65943(a). Upon receipt of "any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application." Id.

The relationship of section 65941.1(d)(1) and (2) is that if an applicant fails to submit an application within 180 days after the preliminary application, the 180-day deadline in section 65941.1(d)(1) bars it from doing so. If, on the other hand, an applicant submits an application within 180 days, it is timely even if it is incomplete. This is true despite the language in section 65941.1(d)(1) that the application must include "all of the information required to process the development application". An incomplete application submitted within 180 days is still timely under section 65941.1(d)(1).

The incompleteness issue is dealt with by section 65941.1(d)(2). The City contends that the applicant receives a single 90-day period to cure the incomplete application. If the information submitted does not complete the application, then the preliminary application expires and is no further force and effect. §65941.1(d)(2).

Not so. There may be multiple iterations of this 90-day submission and 30-day evaluation process. So long as an applicant meets the 90-day deadline, there is no bar. Multiple iterations of the 90-day submission/30-day review are permissible under section 65941.1(d)(2). Section 65941.1(d)(2) expressly refers to completeness pursuant to section 65943. In turn, section 65943(a) refers to "any subsequent review of the application determined to be incomplete", "any resubmittal of the application", and "a new 30-day period." The use of the words "any" and "new" in section 65943(a) indicate that multiple resubmissions of an application may be made. The statute supports Petitioners' reading that the submission and completeness evaluation for an application is an iterative process with no limit on the number of submissions.

The court's conclusion is supported by the fact that the court is "not dealing with the PSA in a vacuum, but rather in its relation to the HAA," and the Legislature has mandated the HAA must be interpreted to "afford the fullest possible weight to the interest of, and the approval and provision of, housing." Save Lafayette, *supra*, 85 Cal.App.5th at 855 (refusing to interpret the PSA to treat a multi-year delay as a resubmittal that terminated earlier vesting rights and instead recognizing the project's decade-old vesting rights in part because the HAA's policy that favors housing).[9] The City's interpretation makes it more difficult for applicants to maintain vesting rights and directly conflicts with the Legislature's clear mandate to interpret its provisions in favor of housing development.[10]

As Petitioners argue, Bedrock responded to the City's incompleteness determination[11] within 90 days as required. Bedrock's preliminary application and associated vesting rights therefore did not expire. Pet., Op. Br. at 15.

Petitioners are correct that the City's failure to recognize their vesting rights is a violation of the HAA. The HAA states that a local agency commits a violation of the HAA if it "required or attempted to require a housing development project to comply with an ordinance, policy, or standard not adopted and in effect when a preliminary application was submitted." §65589.5(k)(1)(A)(i)(III) (emphasis added). The City confirmed that the Project was consistent with ED1, only to change course and issue a letter stating that the Project was no longer eligible "[p]er the [First Amended ED1] issued by Mayor Karen Bass on June 12, 2023". AR 423. The First Amended ED1 was not in effect when the preliminary application for the Project was submitted on March 15, 2023. AR 423. The City's attempt to require the Project to comply with policies not in effect when the preliminary application was submitted is a violation of the HAA. Pet., Op. Br. at 16.[12]

g. The City Disapproved the Project Under the HAA

It is undisputed that the Project meets the definition of "housing for very low, low-, or moderate-income households" under the HAA. §65589.5(h)(3). The HAA prohibits a local government from disapproving an affordable housing project unless it makes written findings based on a preponderance of the evidence in the record as to one of five specifically enumerated findings. §65589.5(d). The HAA does not limit disapprovals only to final decisions on entitlements, but rather defines disapproval to mean any instance in which an agency "[v]otes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit…." §65589.5(h)(6).

The City argues that no decision was made to approve or deny the Project. Under the Brown Act, the City Council could not have voted to disapprove the merits of the Project Application because the merits were not on the City Council agenda. §54954.2(a)(1), (a)(3), (b) (actions limited to agenda items). Instead, the City Council found the Application was not complete under section 65943, the item actually on its agenda. Id. As the staff report explains: "This report does not make a recommendation regarding the merits of any of the referenced Development Project Applications (*i.e.*, the ADM Application and CPC Application); and no decision-maker has approved, conditioned, or disapproved the referenced applications either." AR 1539. The question of Project approval or disapproval was not before City Council. *See* AR 2144–45 (agendizing for PLUM Committee Bedrock's appeal from Planning's determination of application incompleteness under the PSA); AR 2243–44 (agendizing for the City Council the PLUM Committtee's recommended action to sustain Planning's determination of incompleteness under the PSA). Opp. at 20-21.

The City argues that there is no text in the HAA or the PSA that equates a decision on a PSA incompleteness appeal with a disapproval of the merits of a development application subject to the HAA. *Compare* § 65589.5(d)(5), (h)(6) (HAA definition of "disapprove" references the "approvals or entitlements" for a building permit); §§ 65925-65934, 65940, 65941.1, 65943 (PSA provisions). Equating these actions would impermissibly nullify a city's ability to enforce its list of application requirements. §§ 65940, 65943; Select Base Materials, *supra,* 51 Cal. 2d 640, 645, 647 (statutes are harmonized to avoid rendering "nugatory

important provisions of the statute.") This is because every decision enforcing the application requirements would be considered a disapproval under the HAA. Opp. at 21.

HAA disapproval does not have to be the disapproval of an entitlement for a building permit. The HAA defines "disapproval" to mean any instance in which a local agency "[v]otes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit." § 65589.5(h)(6) (emphasis added). The term "including" is a "term of enlargement rather than limitation" and that "including" certain actions does not "place thereon a meaning limited to the inclusions." Flanagan v. Flanagan, (2002) 27 Cal. 4th 766, 774. Thus, while the HAA definition expressly applies to "approvals or entitlements," it is not exhaustive. Additionally, the definition applies to any "land use approvals or entitlements necessary for the issuance of a building permit," not just to approvals and entitlements for building permits. This includes preliminary approvals leading up to the approval of a building permit. Any vote that is necessary for an applicant to obtain a building permit and begin construction is governed by the HAA and a determination of application completeness is a necessary step in obtaining a building permit. Reply at 9-10.

Not all incompleteness decisions will qualify as HAA disapprovals, and the issue is a factual one. As Petitioners argue, the City's argument that PSA completeness determinations can never be disapprovals under the HAA is overbroad. The Legislature defined disapproval broadly to prevent local government tactics to prevent housing development. Reply at 10.

The City Council's decision on completeness for the Project application qualifies as a disapproval. Planning sent Bedrock a Disapproval Letter stating that the project was ineligible for ED1 and that Bedrock's ministerial application was being converted to a discretionary application. AR 1749. The City's Second Incompleteness Letter confirmed the conversion to a discretionary process and required the submittal of a discretionary application and additional fees. AR 425-26.

Bedrock appealed the determination of ED1 ineligibility and the conversion to a discretionary project. AR 478-88. Planning's staff report for the appeal argued that the Project was not eligible for ED1 (AR 1550, 1552, 1556) and the City Council adopted the staff report's rationale. AR 1537. While the City Council purported to vote only on whether the Application was complete, its vote disapproved the Project because Planning staff cancelled the ministerial application, converted it to a discretionary approval, issued a new application case number, and required Bedrock to submit a new application and $35,000 in additional permit fees. AR 425-26. Planning staff confirmed during the appeal hearing that the only missing items were those needed for a discretionary application. AR 2189. The City's cancellation of the ministerial application fit within the HAA's broad definition of disapproval based on the determination that the Project was not vested under ED1. *See* Pet. Op. Br. at 16-17.[13]

Petitioners' vesting rights did not expire, and the City's refusal to recognize them violated the HAA.

2. The City Violated the PSA

The PSA provides specific procedures that a local agency must follow when an application is submitted. An agency must first determine whether the application is complete and provide an exhaustive list of incomplete items. §65943(a). In any subsequent review of an application resubmittal, the agency shall not request any new information not stated in the initial list of incomplete items. Id. Pet., Op. Br. at 17.

The HCD has explained that a code-compliance comment "cannot be used as a basis for determining the completeness of the application" and that when "a local jurisdiction improperly characterizes comments as incomplete items, the jurisdiction impermissibly raises the bar to achieving a complete application, in violation of the PSA." Pet. RJN, Ex. D. The HCD's conclusion is bolstered by (1) section 65944, which prohibits an agency from requesting the applicant "clarify, amplify, correct, or otherwise supplement the information" submitted until "[a]fter a public agency accepts an application as complete" and (2) HAA section

65589.5(j)(2), which provides that the local agency's determination whether a project is "inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision" shall occur within 30 to 60 days after the "date that the application for the housing development project is determined to be complete." Pet. Op. Br. at 17.

The City Council's decision was about whether the Project complies with ED1. *See* AR 1550, 1552, 1556. The City's incompleteness determination was impermissibly based on its determination that the Project was ineligible for ED1 rather than any incomplete information. Planning's Fourth Incompleteness Letter confirms that the City has all the information for the ED1 application but refuses to approve the application due to the City Council's vote. The letter explains that Planning "finds that the project is inconsistent, because the filing path needs to be corrected...." AR 1163. In other words, the City is treating the ministerial Application as though it no longer exists because the City Council voted to disapprove it and converted it to a discretionary application. Whether Bedrock could submit a different application to secure approval of the Project is irrelevant under the PSA.

Moreover, the City's second incompleteness letter demanded new discretionary application materials that were not included in the initial list of incomplete items, which is prohibited by the PSA. *Cf.* AR 410-21 *and* 425-26. City staff confirmed during the appeal hearing that the only "missing" items in the application were those related to discretionary approvals, which were not identified in the initial list of incomplete items. AR 2189. This also violated the PSA. §65943(a).

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3. 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 an "order or judgment directing the local agency to approve the housing development project." §65589.5(k)(1)(A)(ii). "Bad faith" "includes, but is not limited to, an action that is frivolous or otherwise entirely without merit." §65589.5(l). A claim is "legally frivolous" if it is "not warranted by existing law or a good faith argument...." Peake v. Underwood, (2014) 227 Cal. App. 4th 428, 440. Bad faith can also be established based on actions that were taken for an improper purpose, such as for political reasons. Trujillo v. City of Los Angeles, (1969) 276 Cal. App. 2d 333, 338; Smith v. Selma Cmty. Hosp., (2010) 188 Cal. App. 4th 1, 34 (bad faith established if action is motivated by any purpose other than the faithful discharge of legal duties). If an agency is found to have disapproved a project in bad faith, a court must order the local government to approve the project within 60 days. §65589.5(k)(1)(A)(ii).

Petitioners note that the HCD sent the City a technical assistance letter in connection with the Ethel Project confirming that a housing project can vest in ED1's ministerial approval process, urging the City to follow the law and approve the Project. AR 1853-55. The City Council heeded this directive and approved the Ethel Project. Mere weeks later, the City faced the same situation for the Project. When the City Council asked staff whether the HCD's prior guidance only applied to the Ethel Project, staff responded that the letter was specific to the Ethel Project but "does depict and describe basically the situation the Project is in that's before you today." AR 2188-89. Despite recognizing that the two projects raised identical issues, and even though it had approved the Ethel Project just weeks earlier, the City Council voted to disapprove the Project. Pet., Op. Br. at 18.

Petitioners argue that this disparate treatment of the Project alone demonstrates the frivolous basis for disapproval. Worse, the HCD emailed City staff and Councilmembers shortly before the City Council voted to disapprove the Project, explaining that the Project and the Ethel project "address the same question" and urging the City "to apply the law evenly across all ED1 projects and allow projects vested by the preliminary applications to be processed under the "ordinances, policies, and standards" in effect when the complete preliminary application was submitted." AR 2025-26. Petitioners argue that Planning ignored the HCD email and misinformed the City Council that the HCD had not weighed in on the Project. AR 2188-89. Pet. Op. Br. at 18-19.

Petitioners contend that the only discernible difference between the two projects was their location in different council districts. The Ethel Project is located in Council District 4, represented by Councilmember Nithia Raman. The City Council followed Councilmember Raman's lead and approved the Ethel project. The

Project is in Council District 3, represented by Councilmember Bob Blumenfield, who openly expressed opposition to affordable housing projects in single family zones, writing a letter to his constituents urging them to submit comments in opposition to affordable housing in their neighborhoods. AR 1866-67. Pet. Op. Br. at 19.

The City's inconsistent conduct shows it is motivated by political considerations rather than a good faith interpretation of the law. The City agreed with the HCD that ED1 carried vesting rights for the Ethel project then came to the opposite conclusion for the Project. The City initially said the Project was vested in the ED1 approval process but later reversed course. The City now argues that ED1 does not qualify for vesting under HAA but the Second Amended ED1 issued in July 2024 explicitly says it does. Reply at 7.

Petitioners conclude that the City's politically motivated actions are precisely why California continues to suffer from a housing crisis despite the Legislature's attempts to ensure fair play. As CARLA explained, the HAA was designed to "hold local governments to a standard of objectivity in their decisionmaking" and "require them to proceed by way of clear rules adopted in advance, rather than by ad hoc decisions to accept or reject proposed housing." 68 Cal.App.5th at 850. The City thumbed its nose at the HCD, the Legislature, and the law when it disapproved a 100% affordable housing project for no other reason than one of its councilmembers did not want one in his back yard. That disapproval was clearly an act of bad faith. Pet. Op. Br. at 19.

The City has not acted in bad faith. The principal issues in this case are whether ED1 was intended to create vesting rights within the meaning of section 65589.5(o) and whether ED1 includes multi-family zones. There are no published appellate decisions on either issue and the City took good faith positions on both. Petitioners' arguments support the reasons why they should prevail but do not show bad faith.

While Petitioners claim that the City Council's decision was politically motivated, that claim is conjecture. It is clear that the City Council was trying to follow the law. It approved the Ethel project, showing that it fully supports low-cost housing development in compliance with the HAA. It then disapproved the Project but not because it was opposed philosophically to low const housing development.

Petitioners somewhat misconstrue Councilmember Blumenfield's letter to his constituents, which only explained that he supports ED1 generally, that ED1 had been clarified to state the Mayor's intent that it not apply to single family zoned lots, and that residents should submit a public comment to the PLUM Committee if they are concerned about large apartment buildings next to single family homes. AR 1866–67.

City staff also did not mislead the PLUM Committee about the HCD's position on the Project. At the time of the PLUM Committee hearing, the HCD had issued an email for the Project but not a letter of technical assistance. During the hearing, Councilmember Yaroslavsky asked Planning staff about the HCD's "letter." Planning staff responded: "I believe that HCD did issue a letter on this issue, and I believe it was specific to the project on Ethel. But let us look at the letter and confirm for you." AR 2187-88 (emphasis added). Planning staff was correct that the HCD's letter concerned the Ethel project and staff's failure to refer to the HCD's email for the Project was not misleading.

Finally, it was not bad faith for the City to disagree with the HCD. As Petitioners point out, the City was between a rock and a hard place facing a lawsuit either by a developer or a community group seeking to set aside the approval of a 100% affordable development. Opp. at 22. The City did not act in bad faith under the HAA.

F. Conclusion

The Petition is granted but the City did not act in bad faith. A judgment and writ shall issue directing the City to set aside its disapproval of the Project application as incomplete and take such further action consistent with this decision as permitted by the PSA and HAA.

Petitioners' counsel is ordered to prepare a proposed judgment and writ, serve them on the City's counsel for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for November 7, 2024 at 9:30 a.m.

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[1] Petitioners' 16-page opening brief and 11-page reply violate the respective 15-page and ten-page limits of CRC 3.1113(d). Petitioners' counsel is admonished that a signature page counts as part of the page limits.

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

[3] Petitioners request the court to take judicial notice of (1) a Planning and Land Use Management Committee ("PLUM") Report and Official Action of the Los Angeles City Council regarding an appeal of a determination of incompleteness under the PSA for the properties located at 5501 and 5511 North Ethel Avenue (the "Ethel Project") (Pet. RJN Ex. A); (2) the Senate Floor Analyses of SB 330 (Pet. RJN Ex. B); (3) a Third Revised Executive Directive No. 1 (Pet. RJN Ex. C); (4) a June 8, 2023 notice of violation issued by the HCD to the City of La Canada Flintridge and an August 24, 2023 HCD letter of technical assistance to the City of Fillmore (Pet. RJN Ex. D); and (5) a certified transcript of a September 26, 2023 City Council meeting for the Ethel project (Pet. RJN Ex. E). RJN Exhibits A and C-D are official acts and Exhibit B is legislative history, and all of them are judicially noticed. Evid. Code §452(b), (c). Exhibit E is a transcript not subject to judicial notice for the Project in this case and the request is denied.

The City requests the court to take judicial notice of (1) portions of the City Charter, Los Angeles Administrative Code ("LAAC"), and Los Angeles Municipal Code ("LAMC") (City RJN Ex. A) and (2) a December 16, 2022, Statement Accompanying Mayor Bass's Signing of ED1 (City RJN Ex. B). The requests are granted, although Exhibit B is judicially noticed for its existence, not the truth of its content. Evid. Code §452(b), (c).

[4] Petitioners contend that Ms. Lamb's statement was false. *See post.*

[5] Petitioners point out that other provisions of the HAA only apply to legislatively enacted development standards. A local agency is required to identify project inconsistencies only for "general plan, zoning, and subdivision standards and criteria, including design review standards." §65589.5(j)(1); *see also* §65589.5(k)(1)(A)(i)(II). Similarly, a local agency may disapprove an affordable housing project only where it is inconsistent with a "jurisdiction's zoning ordinance and general plan land use designation." §65589.5(d)(5). Pet. Op. Br. at 13.

[6] The City also cites the Declaration (AR 1581-86), ED1 (1588-90), the ED1 Guidelines (1592-605), and the First Amended ED1 (AR 1639-41). Opp. at 8. Other than the First Amended ED1, none makes any reference to a limitation to multi-family housing zones.

[7] The HAA provides a separate process to determine zoning code compliance after an application is accepted as complete. For projects with fewer than 150 units, the written compliance determination shall be provided "[w]ithin 30 days of the date that the application for the housing development project is determined to be complete." §65589.5(j)(2).

[8] The loss of vesting rights also means the loss of a section 65589.5(d) builder's remedy. The HAA prohibits a local government from applying development standards that were not in effect at the time a preliminary application is submitted. §65589.5(o). The HAA states that is a violation to require, or even attempt to require, a project to comply with an ordinance, policy, or standard not adopted and in effect when a preliminary application was submitted. §65589.5(k)(1)(A)(i)(III). If vesting rights under the preliminary application expire, then the builder's remedy – which applies only when the local government does not have a housing element in substantial compliance with the Housing Element Law – would not apply because the City has a compliant housing element.

[9] In Save Lafayette, petitioners argued that a project application submitted in 2011 lost its PSA vesting rights when the applicant submitted an alternative proposal in 2014 and subsequently "revived" the 2011 application in 2018. Id. at 846. The court explained that although the PSA could be interpreted to treat this multi-year delay as a resubmittal that terminated the 2011 vesting rights, the court recognized the project's decade-old vesting rights in part because the HAA's policy favoring housing weighed against interpreting the PSA in a manner that would eliminate vesting rights. Id. at 855.

The City argues that Save Lafayette is inapposite and unpersuasive on the issue of the 90-day rule because the case applies the plain language of the HAA and PSA to reject the argument that there is a "deemed disapproved" consequence to the PSA's timelines where there was no statutory text to support the argument. If anything, Save Lafayette supports the City's position because there is no statutory text to support Petitioner's argument of endless 90-day periods to complete the project application. Opp. at 20. Perhaps, but the salient point remains that the PSA and HAA must be interpreted to give full weight to the approval of housing.

[10] Can the local government ever end the cycle of resubmissions within 90 days? Probably by relying on the 180-day period in section 65941.1(d)(1), but the court need not decide this issue.

[11] In reply, Petitioners argue that Bedrock did provide a complete and legible application within 90 days, and the City's incompleteness determination was invalid. AR 1370. While the City's Third Incompleteness Letter concluded otherwise, the only incomplete item was a minor discrepancy on the plans where one page stated that the Project sought a 65% reduction in open space while another page listed a 73.2% open space reduction – an issue that a planner could easily determine by independently calculating the correct reduction percentage. AR 1008–10. Reply at 8.

The Third Incompleteness Letter also requested the results of the BOE investigation, which, as Bedrock explained, need not be completed until after the application is accepted as complete and was not included on the City's application checklist. AR 1374, 2131. The Third Incompleteness Letter also requested the signature of the City's staff on one of the application forms, which is not "incomplete" information that the applicant can provide. Reply at 8, n. 3.

This issue of completeness is raised for the first time in reply and is waived. Regency Outdoor Advertising v. Carolina Lances, Inc., (1995) 31 Cal.App.4th 1323, 1333.

[12] The City argues that the HAA does not apply at all until a local agency makes a "final merits" decision. Those words appear nowhere in the HAA. To the contrary, the HAA applies throughout the entire application process. The HAA requires a local government to make a written determination of project consistency within 30 or 60 days after an application is accepted as complete. §65589.5(j)(2). The HAA applies to certain CEQA decisions that necessarily occur before a final merits decision. §65589.5(h)(6)(D). Reply at 9.

[13] The City staff report's disclaimer that staff was not recommending disapproval of the Project does not make it so. The City Council's vote was a substantive decision regarding whether the applicant was eligible for ED1 vesting.

Case Number: 24STCV17942 **Hearing Date:** September 26, 2024 **Dept:** 85

Alston & Bird LLP v. 5860 West Jefferson I, LLC, 5860 West Jefferson LLC, and Samitaur Constructs, 24STCV17942

Tentative decision on application for right to attach order: denied