SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

THE TOWN OF LOS GATOS, a California municipal corporation, Plaintiff, vs. ARYA PROPERTIES, LLC, et al. Defendants. AND RELATED CROSS-ACTION	Case No. 25CV462276 ORDER RE: MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION (*Order on Submitted Matter*)

I. Introduction

Plaintiff in this case is the Town of Los Gatos, which filed its complaint for declaratory relief against defendants Arya Properties, LLC (Arya) and Los Gatos Boulevard Properties, LLC (Boulevard, and collectively, defendants). The complaint seeks "a declaration of [the Town's] rights and duties with respect to the processing of applications for housing development projects" and "judicial guidance on the correct interpretation of [Government Code[1] s]ection 65941.1, so that it may process

[1] Further unspecified statutory references are to the Government Code.

development projects in full accordance with its legal rights and obligations, and so affected developers may have similar clarity as to their, and the Town's, rights and duties." (Complaint, ¶ 1.) The complaint asserts the Town's position that "to retain extraordinary vesting rights granted by the Housing Crisis Act [of 2019, sections 65941.1, 65943, and 66300], developers should complete their applications within the reasonable period of time granted by the Legislature [while] [d]efendants claim that they may retain these vesting rights indefinitely while continuing to submit incomplete applications, and building no housing." (*Ibid.*)

Specifically, the Town's complaint alleges that under section 65941.1, subdivision (e)(2) (section 65941.1(e)(2)), "after the 180-day period to submit a complete application expires," there is only "a single 90-day period … within which a project applicant must complete a [development] application to maintain vesting" while defendants maintain that the vesting of "a preliminary application remains in effect so long as applicants re-submit [a development] application found to be incomplete within 90 days after receiving a list of incomplete items—no matter how long the overall process takes, how little change is made in the plans, or how many notices of incompletion the Town provides—allowing successive and unending 90-day periods after each incompleteness determination." (Complaint, ¶¶ 16, 17.) The complaint's prayer seeks "a judicial declaration that [section 65941.1(e)(2)]'s reference to 'the 90-day period' within which to submit specific information needed to complete a [development] application refers to a single 90-day period."

Defendants Arya and Boulevard, in turn, filed a cross-complaint/petition against the Town, the Town of Los Gatos Community Development Department, and the Town of Los Gatos Planning Division (collectively, the Town cross-defendants) alleging causes of action for (1) a writ of mandate directing the Town cross-defendants to comply with the Permit Streamlining Act (PSA, section 65920 et seq.) with respect to Arya and Boulevard's respective projects; (2) a writ of mandate directing the Town cross-defendants to comply with the Housing Accountability Act

(section 65589.5) with respect to Arya and Boulevard's respective projects; and (3) declaratory relief. The declaratory relief cause of action alleges an actual controversy in that: "Cross-defendants' policies and procedures … operate to avoid obligations imposed by state law, such as (1) [the] refusal to process housing development projects that qualify under the 'Builder's Remedy' section of the Government Code; and (2) [the] disregard[of] the vested rights of Preliminary Applications and associated housing development project applications under state law," in that the Town cross-defendants' actions are prohibited by the HAA, section 65589.5, California Senate Bill 330 (SB 330), specifically section 65941.1, and the PSA, section 65943.

The Town and the Town cross-defendants filed a motion for summary judgment on both the complaint and cross-complaint, respectively, and alternatively for summary adjudication of the complaint's single declaratory relief cause of action. The notice of motion asserts as its grounds that "the undisputed facts establish that the 90-day period in … section 65941.1(e)(2) refers to a single 90-day deadline within which to submit all of the information needed to complete the preliminary application as set forth in the statute, or else the preliminary application and associated vesting expires." This ground is asserted to resolve both the complaint and cross-complaint in the Town's and the Town cross-defendants' favor in that "all causes of action are based on the dispute over this 90-day deadline in" section 65941.1(e)(2). In this regard, the notice of motion further seeks a judicial declaration that "[s]ection 65941.1(e)(2)'s reference to 'the 90-day period' within which to submit specific information needed to complete a preliminary application refers to a single 90-day period."[2]

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[2] The Town's counsel somewhat inconsistently clarified its position in argument at the hearing, asserting it more precisely as section 65941.1, subdivisions (e)(1) and (e)(2), read together, mean that "the total amount of time available to complete the development application is 270 days. 180 days, referred to in (e)(1), plus a 90-day period to complete, for a total period of 270 days. … [¶] …

Thus, as apparently agreed by the parties, the motion in essence presents a single legal issue—the correct statutory interpretation of section 65941.1. Although the motion is one for summary judgment or adjudication under Code of Civil Procedure section 437c, it does not pivot on whether there are disputed issues of material fact. Indeed, the material facts appear to be undisputed such that the single issue presented by the motion is one of law. This, despite the parties' evidence in support of and in opposition to the motion, and their respective separate statements, going well beyond the material facts needed to resolve the dispositive legal issue presented by motion.

The motion came on for hearing before the Honorable Helen E. Williams on October 15, 2025, at 1:30 p.m. in Department 66. Counsel of record appeared. After full consideration of the papers on both sides, the authorities submitted, as well as oral argument by the parties,[3] the court orders as follows:

II. Factual and Procedural Background

A. The Pleadings as Relevant to the Motion

As noted, this action presents a complaint for declaratory relief by plaintiff and cross-defendant the Town against defendants and cross-complainants Arya and

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Because the total period is 270 days, multiple submissions are possible if a developer acts quickly." (RT pp. 15-16.) In other words, the Town's position incorporates the possibility that multiple incompleteness determinations by the agency are permitted and responses thereto, but if the total period exceeds 270 days, the developer's vested entitlement rights under section 65941.1, subdivision (e)(1) are lost.

[3] The court previously granted the applications of amici curiae in support of defendants and cross-complainants California Housing Defense Fund, Californians for Homeownership, and Yes In My Backyard to file a single brief in opposition to the motion, further allowing the Town and the Town cross-defendants a single response brief. At the hearing, the court also allowed brief and collective argument by counsel for one amicus party and rebuttal to that argument by the Town's counsel. The court has considered the amici brief and arguments and the Town's responses thereto in ruling on the motion.

Boulevard, and a cross-complaint in mandate and declaratory relief against the Town cross-defendants.

The complaint sets out the Town's view of the legal issue presented. It alleges that the preliminary application for a housing development project as provided at section 65941.1, subdivision (a) allows developers to "vest" housing projects as entitlements very early in the planning process, when only conceptual plans have been prepared. (Complaint at ¶ 13.) Once a preliminary application is submitted with all required components, the developer gains "vested rights" to develop the project according to the standards and fees that were in place at the time of submission. (*Ibid*.)

The complaint further alleges that under section 65941.1, a project proponent must complete a formal application and move a project forward within the statutory deadlines provided at section 65941.1, subdivision (e), or else the project loses vesting. (Complaint at ¶ 14.) "To maintain the vesting conferred by the preliminary application, the development proponent must submit an application for approval of the housing development project under the PSA (sections 65940 et seq., 65941, and 65943). (*Ibid*.) The deadline for submitting the project application under section 65941.1, subdivision (e)(1) is 180 calendar days after submission of a preliminary application that contains all of the statutorily required information." (*Ibid*.) The complaint then quotes section 65941.1, subdivision (e)(1) as follows:

> Within 180 calendar days after submitting a preliminary application with all of the information required by subdivision (a) to a city, county, or city and county, the development proponent shall submit an application for a development project that includes all of the information required to process the development application consistent with Sections 65940, 65941, and 65941.5. (Complaint at ¶ 14, quoting statute.)

As noted, the complaint further pleads that the controversy in this declaratory relief action is the correct interpretation of section 65941.1(e)(2), which provides, as quoted:

> If the public agency determines that the application for the development project is not complete pursuant to Section 65943 [the PSA], the development proponent shall submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information. *If the development proponent does not submit this information within the 90-day period, then the preliminary application shall expire and have no further force or effect.* (Complaint at ¶ 15, quoting statute, italics added.)

According to the complaint, many local agencies throughout the State, including the Town, contend that "after the 180-day period in section 65941.1, subdivision (e)(1) to submit a complete application expires, this provision refers plainly to a single 90-day review period (the 90-day period) within which a project applicant must complete a preliminary application to maintain vesting." (Complaint at ¶ 16.) "This provides an applicant with at least 270 days total to merely submit plans that include all items required by the local agency's application form before a preliminary application expires." (*Ibid*.)

By contrast, according to the complaint, "defendants contend that a preliminary application remains in effect so long as applicants re-submit an application found incomplete within 90 days after receiving a list of incomplete items—no matter how long the overall process takes, how little change is made in the plans, or how many notices of incompletion the Town provides—allowing successive and unending 90-day periods after each incompleteness determination." (Complaint at ¶ 17.)

The cross-complaint/petition makes allegations and claims and seeks relief beyond the correct interpretation of section 65941.1 in support of its three causes of action. But it also alleges as material to all three causes of action cross-defendants' view that under section 65941.1(e)(2), the "completeness determination [of a development application] is an iterative process that contemplates the possibility of resubmissions and 30[-]day response periods to make a [d]evelopment [a]pplication complete." (Cross-complaint at ¶ 31.) It further alleges that section 65941.1(e)(2) expressly cross-references section 65943, which contains an iterative process that

contemplates multiple resubmission windows." (Cross-complaint at ¶ 32; see also cross-complaint at ¶¶ 47-49, 56, 65, 69 [e.g., "the necessary predicate for the Town's declaratory relief action is that the parties disagree as to the meaning and interpretation of" section 65941.1].)

Thus, the proper statutory construction and interpretation of section 65941.1(e)(2) as the dispositive legal issue presented by the motion appears to be well framed by the pleadings. (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1253 [pleadings delimit issues to be considered on summary judgment].) Again, although the material facts appear to be undisputed here, the question remains whether the Town and Town cross-defendants are dispositively entitled to judgment (or adjudication) as a matter of law based on their asserted position on the dispositive legal issue, on which the Town and Town cross-defendants as the moving parties bear the burden of persuasion. (*Aguilar, supra*, 25 Cal.4th at p. 850 [from start to finish, moving party bears the burden of persuasion that there is no disputed issue of material fact *and* that they are entitled to judgment as a matter of law].)

B. Undisputed Material Facts as Relevant to the Motion[4]

1. <u>The Town's Compliance With its Required Housing Element Update</u>

[4] The relevant facts as treated by both sides in their respective separate statements are larded with irrelevant information, improper and biased characterizations, and legal conclusions. The stated facts are also with some frequency not supported by admissible evidence (see two separate orders on evidentiary objections issued in connection with this motion, which are incorporated here by reference). The court here reframes the undisputed material facts from the separate statements to the unadorned basics as necessary only to decide the motion. Further, it does not appear that the moving parties responded to the defendants/cross-complainants' "additional material facts and supporting evidence" reflected at the end of these parties' filed response to separate statement in opposition to the motion. The court will therefore accept the relevant and material facts stated there as undisputed for purposes of the motion.

Under the housing element law, the Town was required to adopt a compliant housing element update for its Sixth Cycle Regional Housing Needs Allocation (RHNA) (2023-2031) by January 31, 2023. (Additional Material Fact No. 1.) From February 1, 2023, to July 10, 2024, the Town did not have a substantially compliant housing element and was therefore subject to the builder's remedy during this compliance gap. (Ex. H to Brooks Decl.)

2. The Arya Project

On November 14, 2023, while the Town was out of compliance with its housing element requirements, Arya submitted a preliminary application for a project to be located at 15300 and 15330 Los Gatos Boulevard, Los Gatos (Arya Project). (Complaint at ¶ 26; Town's Sep. Stmt. at Fact No. 1.) Arya followed its preliminary application with the timely submission of its development application on May 10, 2024, within the 180-day deadline set forth in section 65941.1, subdivision (e)(1). (Town's Sep. Stmt. at Fact No. 3 and response.)

The Town responded with a letter dated June 5, 2024, within 30 days, determining Arya's development application to be incomplete under section 65943. (Town's Sep. Stmt. at Fact No. 1.) Arya timely responded to the Town's first incompleteness determination on September 2, 2024, within 90 days as provided by section 65941.1(e)(2). (*Ibid.*) The Town then issued its second incompleteness determination on September 25, 2024, within 30 days. (*Ibid.*) Arya timely responded to the second incompleteness determination on November 27, 2024, 63 days later and within 90. (*Ibid.*) On December 23, 2024, the Town provided Arya with its third determination of incompleteness, followed by a letter dated January 30, 2025, from the Town's Community Development Director, notifying Arya of the right to appeal the incompleteness determination. (Town's Sep. Stmt. at Fact No. 4 and response.) The Town also communicated its position that Arya's preliminary application had expired and lost vesting because its development application remained incomplete after a second resubmittal. (Ex. C to Paulson Decl.)

On February 7, 2025, defendant Arya submitted an appeal of the Town's position that the preliminary application had expired because Arya's application remained incomplete after a second submittal. (Complaint at ¶ 29; Town's Sep. Stmt. at Fact No. 5.)

3. The Boulevard Project

Boulevard submitted a preliminary application on September 12 or 13, 2023 (it doesn't matter which), for a builder's remedy project located at 14849 Los Gatos Boulevard, Los Gatos, known as "the Luxe Builder's Remedy Project." (Boulevard Project) (Complaint at ¶ 32; Town's Sep. Stmt. at Fact No. 7 and response thereto; Additional Material Fact No. 9.) The Town was then out of compliance with its housing element requirements. Boulevard then submitted its development application on March 8, 2024, within section 65941.1, subdivision (e)(1)'s 180-day deadline. (Complaint at ¶ 34; Town's Sep. Stmt. at Fact No. 9.)

The Town responded with a letter dated April 3, 2024, within 30 days, determining the application to be incomplete under section 65943. (Complaint at ¶ 34; Town's Sep. Stmt. at Fact No. 10 and response thereto; Additional Material Fact No. 9.) Boulevard responded to the Town's April 3, 2024 incompleteness letter on July 2, 2024, 90 days later. (Complaint at ¶ 34; Town's Sep. Stmt. at Fact No. 11.) The Town responded with its second incompleteness determination on July 24, 2024, within 30 days. (Town's Sep. Stmt. at Fact No. 11 and response thereto.) Boulevard timely responded to the second incompleteness determination on October 21, 2024, 89 days later. (Town's Sep. Stmt. at Fact No. 11 and response thereto.) On November 20, 2024, the Town responded with a third incompleteness determination. (Town's Sep. Stmt. at Fact No. 11 and response thereto.)

On January 30, 2025, the Town's Community Development Director issued a letter notifying Boulevard of its right to appeal the incompleteness determination. (Complaint at ¶ 34; Town's Sep. Stmt. at Fact No. 12.) The Town also communicated its position that Boulevard's preliminary application had expired

and lost vesting because its development application remained incomplete after a second resubmittal. (Ex. C to Paulson Decl.)

On February 7, 2025, Boulevard submitted an appeal of the Town's position that the preliminary application had expired because Boulevard's development application remained incomplete after a second resubmittal. (Complaint at ¶ 34; Town's Sep. Stmt. at Fact No. 12.)

III. Motion for Summary Judgment, or in the Alternative, Summary Adjudication

As noted, the Town seeks an order granting summary judgment in its favor on the complaint and the Town cross-defendants seek the same with respect to the cross-complaint. In the alternative, the Town requests an order granting summary adjudication of its complaint, which alleges the single cause of action for declaratory relief on the parties' conflicting legal interpretations of section 65941.1(e)(2). The correct interpretation of this statutory text is thus the single and dispositive legal issue presented by the motion.

A. Town's Request for Judicial Notice

"Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117.)

In support of the motion, and without objection, the Town requests judicial notice of the following:

(1) The California Affordable Housing Pipeline (Pipeline) Brief which is publicly available online (Request for Judicial Notice [RJN] at Ex. A);

(2) May 27, 2025 Minute Order issued in this case (Ex. B);

(3) Authentication of Legislative History (Ex. C);

(4) Assembly Committee on Local Government – Committee Background Request re. Measure SB 330 Response (Authored by Senator Nancy Skinner) (Ex. D);

(5) Assembly Committee on Housing and Community Development – Summary of SB 330 (June 19, 2019 hearing) (Ex. E);

(6) Assembly Committee on Local Government's Report on SB 330 (July 10, 2019 hearing) (Ex. F);

(7) Senate Amendment to Senate Bill No. 330 (March 25, 2019; 2019 – 2020 Reg. Sess.) (Ex. G); and

(8) June 12, 2019 American Planning Association Memorandum to Members of the Assembly Housing Committee re. SB 330 (Skinner) – Neutral if Amended (Ex. H).

The unopposed request appears relevant to issues raised in connection the motion for summary judgment and adjudication. (See *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301[information subject to judicial notice must be relevant to the issue at hand].) The court accordingly grants the request and takes judicial notice of Exhibit A as the Pipeline Brief is publicly available online and not reasonably subject to dispute. (Evid. Code, § 452, subd. (h); see, e.g., *People v. Miami Nation Enterprises* (2016) 2 Cal.5th 222, 231 [taking judicial notice of screenshots from United States Patent and Trademark Office's website].) The court takes judicial notice of Exhibit B as a record of the superior court. (Evid. Code, § 452, subd. (d); see *Stepan v. Garcia* (1974) 43 Cal.App.3d 497, 500 [the court may take judicial notice of its own file]; see also *Steed v. Dept. of Consumer Affairs* (2012) 204 Cal.App.4th 112, 122 (*Steed*) [trial court may take judicial notice of minute order, but not of truth of factual findings and determinations on which the minute order is based].) The court takes judicial notice of Exhibits C through H as they constitute legislative history materials with respect to SB 330. (Evid. Code, § 452, subd. (c); see *Global Financial Distributors Inc. v. Super. Ct.* (2019) 35 Cal.App.5th 179, 190,

fn. 4 ["We grant Global Financial's request to take judicial notice of the legislative history of [Code of Civil Procedure] section 418.10"]; see also *Guinn v. County of San Bernardino* (2010) 184 Cal.App.4th 941, 949, fn. 4 ["We take judicial notice of the legislative history materials pertaining to Senate Bill No. 2215 contained in the record on appeal"].)

B. Defendants' Request for Judicial Notice

In opposition, defendants request judicial notice of the following:

(1) Letter of Technical Assistance dated August 30, 2024, issued by the Department of Housing and Community Development Division of Housing Policy Development (HCD) to the Town entitled: "Town of Los Gatos – Saratoga Road Project – Letter of Technical Assistance" (Ex. A);

(2) Notice of Violation dated December 2, 2024, issued by HCD to the City of Beverly Hills entitled: "Beverly Hills Builder's Remedy Applications – Notice of Violation" (Ex. B);

(3) Notice of Potential Violation dated February 12, 2025, issued by HCD to the Town entitled: "Town of Los Gatos – 980 University Avenue Project – Notice of Potential Violation" (Ex. C);

(4) Notice of Violation dated July 16, 2025, issued by HCD to the City of Cupertino entitled: "City of Cupertino – Permit Streamlining Act 90-Day Review – Notice of Violation" (Ex. D);

(5) Judgment Granting Petition for Writ of Mandate filed on September 17, 2024, in the case of *Janet Jha v. City of Los Angeles, et al.* (case no. 23STCP03499) in Los Angeles County Superior Court (Ex. E);

(6) Judgment Granting Petition for Writ of Mandate, filed on November 8, 2024, in the case of *Cal., Cnty. of Los Angeles, Yes in My Backyard, Trauss, et al. v. City of Los Angeles* (case no. 24STCP0070) in Los Angeles County Superior Court (Ex. F);

(7) 2024 Assembly Floor Analysis of Assembly Bill 1893, as amended August 23, 2024 ("AB 1893") (Ex. G).

Defendants request judicial notice of Exhibits A through D under Evidence Code section 452, subdivisions (b), (c), and (h) as they constitute public records issued by HCD. The Town does not oppose the existence of the HCD documents but contends the court should not afford them any weight or deference in ruling on the motion. This objection however has no bearing on whether judicial notice is proper under the Evidence Code as to these exhibits. Thus, the request for judicial notice of Exhibits A through D is granted.

Defendants request judicial notice of Exhibits E and F as records of the superior court in Los Angeles County under Evidence Code section 452, subdivision (d). The Town objects to the request on the ground that the exhibits constitute unpublished trial court opinions lacking precedential value. (See *Crab Addison, Inc. v. Super. Ct.* (2008) 169 Cal.App.4th 958, 963, fn. 3 [appellate court declined to take judicial notice of trial court order which had no precedential value and judicial notice could not be used to impart value it did not have].) The objection lacks merit as the exhibits constitute trial court judgments where judicial notice is permitted. "Judicial notice is properly taken of the existence of a factual finding in another proceeding, but not of the truth of that finding." (*Steed, supra,* 204 Cal.App.4th at p. 120; see *O'Neill v. Novartis Consumer Health, Inc.* (2007) 147 Cal.App.4th 1388, 1405 ["A court may take judicial notice of a court's action, but may not use it to prove the truth of the facts found and recited"]; see also *Professional Engineers v. Department of Transportation* (1997) 15 Cal.4th 543, 590, superseded by statute on another ground in *Consulting Engineers & Land Surveyors of California v. Department of Transportation* (2008) 167 Cal.App.4th 1457 ["[J]udicial notice of findings of fact does not mean that those findings of fact are true, but, rather, only means that those findings of fact were made"].) Therefore, the request for judicial notice of Exhibits E and F is granted. The court acknowledges that the results in

these two superior court cases as reflected in the documents has no precedential or authoritative value and the court will afford them none.

Finally, defendants request judicial notice of Exhibit G as an official act of the California Legislature under Evidence Code section 452, subdivision (b). (See *Elsner v. Uveges* (2004) 34 Cal.4th 915, 929, fn. 10 [Supreme Court grants request for judicial notice of legislative history of assembly bill]; *Tellez v. Super. Ct.* (2020) 56 Cal.App.5th 439, 449, fn. 3 ["We grant Tellez's request for judicial notice of Assembly Bill 3234, several interim drafts of the bill, several legislative analyses of the bill, and the governor's signing statement for the bill"].) The Town objects to the request as the legislative history of Exhibit G does not refer to any statute at issue in the case. But the court finds the exhibit is relevant to arguments raised in support of the opposition and thus the request for judicial notice as to this exhibit is granted.

C. Post-Hearing Submission

After the motion hearing, defendants submitted by letter (but did not file as it does not appear on the court's Odyssey docket) an advisement of a "Legal Alert" issued by the California Department of Justice, Office of the Attorney General, dated November 14, 2025 (OAG 2025-04).[5] The Legal Alert is directed to "All Cities, Counties, and other interested parties" and its subject is identified as "Consistent Interpretation of the Permit Streamlining Act's 90-day Rule to Resubmit Housing Development Applications." The Legal Alert provides analysis and concludes that "for purposes of determining whether a housing development project application is complete, an applicant is entitled to as many 90-day review and resubmission periods as necessary, and, throughout the process, retains the rights that vest upon the submission of a preliminary application under the Housing Crisis Act [of 2019]." The Legal Alert also cites HCD's technical assistance letters directed to various

[5] The letter merely pointed out the existence of the Legal Alert, which the court asked to be provided with.

jurisdictions on the application of section 65941.1(e)(2)'s 90-day rule, which are consistent with the Legal Alert's analysis and conclusion, and argues that HCD's interpretation of the statute is entitled to some deference, citing *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 221–222 (*Martinez*) ("courts generally will not depart from the HCD's determination unless 'it is clearly erroneous or unauthorized').

The Town cross-defendants filed an objection to defendants' letter and the court's consideration of the Legal Alert, challenging its authoritative and deferential value and urging the court instead to exercise its independent judgment in construing the relevant statute. The objection also notes that the Legal Alert is not "new," having been issued before the hearing in this case.

As explained below, the court will at the threshold exercise its independent judgment on the proper construction of the statute and will not defer to the Legal Alert, but the court recognizes that the analysis and conclusions stated therein precisely mirror both the position of the HCD on the relevant issue, for which there exists authority for *some* deference, and the arguments of defendants themselves in opposition to the motion.

D. Legal Standard

Any party may move for summary judgment. (Code Civ. Proc., § 437c, subd. (a); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*).) "The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact *and* that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c), italics added.) "The object of the summary judgment procedure is 'to cut through the parties' pleadings' to determine whether trial is necessary to resolve their dispute. [Citation.]" (*Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1020.)

"[T]he party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact…" (*Aguilar, supra,* 25 Cal.4th at p. 850.) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Id.* at p. 851.)

If the moving party makes the necessary initial showing, the burden of production shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); see *Aguilar, supra,* 25 Cal.4th at p. 850.)

A triable issue of material fact exists "if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar, supra,* 25 Cal.4th at p. 850, fn. omitted.) If the party opposing summary judgment presents evidence demonstrating the existence of a disputed material fact, the motion must be denied. (*Id.* at p. 856.)

Throughout the process, the trial court "must consider all of the evidence and all of the inferences drawn therefrom." (*Aguilar, supra,* 25 Cal.4th at p. 856.) The moving party's evidence is strictly construed, while the opponent's is liberally construed. (*Id.* at p. 843.)

Similarly, "[a] party may seek summary adjudication on whether a cause of action, affirmative defense, or punitive damages claim has merit or whether a defendant owed a duty to a plaintiff. [Citation.] 'A motion for summary adjudication…shall proceed in all procedural respects as a motion for summary judgment.' [Citation.]" (*California Bank & Trust v. Lawlor* (2013) 222 Cal.App.4th 625, 630.)

"[S]ummary judgment (or summary adjudication) is a drastic remedy and should be used with caution. [Citation.] Because summary judgment is a drastic procedure all doubts as to the propriety of granting a motion for summary judgment should be resolved in favor of the party opposing the motion. [Citations.]" (*Tully v.*

World Savings & Loan Assn. (1997) 56 Cal.App.4th 654, 660; see *Kernan v. Regents of University of California* (2022) 83 Cal.App.5th 675, 684 ["The drastic remedy of summary judgment may not be granted unless reasonable minds can draw only one conclusion from the evidence"].)

E. Legal Overview—Relevant Housing Laws

There is no doubt that California is perceived to be experiencing an unprecedented and long-term housing crisis, decades old. The Legislature has attempted to address the crisis over time with many and ongoing changes to housing laws to encourage and promote the production of housing, especially low-income housing. The crisis is reflected in legislation itself: "California has a housing supply and affordability crisis of historic proportions." (§ 65589.5, subd. (a)(2)(A).) "This 'despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels.' " (*California Renters Legal Advocacy and Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 830 (San *Mateo*), quoting § 65589.5, subd. (a)(2)(J).)

Legislative efforts to address the housing crisis include the Housing Element Law (§ 65580 et seq.), under which each city and local jurisdiction is required to have a "comprehensive, long-term general plan for [its] physical development." (§ 65300.) Each general plan must have a housing element consisting of standards and plans for housing sites that " 'shall endeavor to make adequate provision for the housing needs of all economic segments of the community.' [Citations.]' (*California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 444; see also § 65580 [legislative findings concerning housing element law].) "A municipality [or other jurisdiction] must review its housing element for the appropriateness of its housing goals, objectives, and policies and must revise the housing element in accordance with a statutory schedule." (*Martinez, supra*, 90 Cal.App.5th at p. 222, citing § 65588, subds. (a) & (b).) "The interval between the due dates for the revised

housing element is referred to as a planning period or cycle, which is usually eight years." (*Ibid*., citing § 65588, subds. (e)(3), (f)(1).)

"The projected regional housing needs for a planning period are determined by the HCD in consultation with regional 'councils of government.' " (*Martinez, supra*, 90 Cal.App.5th at p. 223, citing §§ 65584, subd. (a) & (b), 65584.01, 65588, subd. (e)(3).) "Based on HCD's regional housing needs determination, each regional council of government adopts a 'final regional housing needs plan that allocates a share of the regional housing need' among the cities and counties within its region." (*Ibid*., citing § 65584, subd. (b).)

Local governments are required by the Housing Element Law to adopt comprehensive updates to the housing element of their general plans in the eight-year cycles to provide sufficient zoning capacity to accommodate their respective fair shares of the regional housing need. For jurisdictions that fail to adopt a substantially compliant housing element by the statutory deadline, the HAA includes a provision that requires the approval of certain housing development projects regardless of whether the project complies with local zoning and general plan standards. (§ 65589.5, subds. (d), (h)(11).) This provision is known as the "builder's remedy," which now applies to projects submitting a preliminary application for development during a time period in which the jurisdiction did not have a substantially compliant housing element, even if the jurisdiction later achieves compliance. (§ 65589.5, subd. (o)(1); see also § 65941.1 [preliminary application process])

The HAA represents another comprehensive and regularly amended legislative effort to promote and increase the state's housing supply at all income levels. "The HAA was enacted in 1982 in an effort to address the state's shortfall in building housing approximating regional needs, and the Legislature has amended the law repeatedly in an increasing effort to compel cities and counties to approve

more housing. [Citations.]" (*Save Lafayette v. City of Lafayette* (2022) 85 Cal.App.5th 842, 850 (*Save Lafayette*).)

Among other things, "[t]he HAA provides that when a proposed housing development complies with objective general plan, zoning, and subdivision standards and criteria in effect at the time the application is deemed complete, the local agency may disapprove the project or require lower density only if it finds the development would have specific adverse effects on public health or safety that cannot feasibly be mitigated. [Citations.]" (*Safe Lafayette, supra,* 85 Cal.App.5th at p. 850, citing § 65589.5, subd. (j)(1).)

In 2019, the Legislature also enacted the Housing Crisis Act (HCA, SB 330, stats. 2019, ch. 654, § 13), which added the "preliminary application" process to the PSA (at section 65941.1) for housing development projects. Under this process, once a project applicant submits a complete preliminary application, the HAA vesting rights provision prohibits a local government from subjecting the housing project to "an ordinance, policy, or standard beyond those in effect when a preliminary application was submitted." (§ 65589, subd. (o).) This locks in a developer's right to pursue a project under the rules in effect when the preliminary application is complete even if the rules later change. This gives developers desired certainty about the rules that will apply to a project and avoids those rules changing midstream but before the formal development application is complete, which has historically been the point at which a project attains vested rights as an entitlement.

Vesting rights are an important part of builder's remedy projects as this remedy is available only when a jurisdiction is not in substantial compliance with the Housing Element Law. If a permit application process is lengthy, the timing of vesting rights takes on added importance and the builder's remedy will not provide its intended benefit if vesting rights are lost.

The HCA included provisions added to the PSA to address and establish early vesting for a project. The PSA was first enacted years ago to " 'ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects.' [Citation.] Under the [PSA], public agencies must maintain 'one or more lists that shall specify in detail the information that will be required from any applicant for a development project.' [Citation.] This list of information must 'indicate the criteria which the agency will apply in order to determine the completeness of any application submitted to it for a development project.' [Citation.]" (*Old Golden Oaks LLC v. County of Amador* (2025) 111 Cal.App.5th 794, 799 (*Old Golden Oaks*).) The goal of the PSA is to relieve permit applicants from protracted and unjustified delays in processing their permit applications. (*Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1438.)

"After an agency receives an application for a development project, it must determine whether the application is complete and notify the applicant of its determination within 30 days. [Citation.] If the agency determines an application is incomplete, it must 'provide the applicant with an exhaustive list of items that were not complete. That list shall be limited to those items actually required on the lead agency's submittal requirement checklist.' [Citation.]" (*Old Golden Oaks, supra,* 111 Cal.App.5th at p. 800.) For preliminary applications, the checklist items are prescribed by statute and may not be added to by the jurisdiction. (See § 65941.1, subds. (a) & (c).)

Finally, section 65943, part of the PSA, provides a process, which is expressly iterative, for the determination of completeness of a development application.

Iterative process

F. Declaratory Relief Principles/Ripeness

"Code of Civil Procedure section 1060, which governs actions for declaratory relief, provides: 'Any person interested under a written instrument … , or under a

contract, or who desires a declaration of his or her rights or duties with respect to another … may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action … for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract.' " (*California Public Records Research, Inc. v. County of Yolo* (2016) 4 Cal.App.5th 150, 185 (*County of Yolo*).)

" 'Declaratory relief operates prospectively, serving to set controversies at rest before obligations are repudiated, rights are invaded or wrongs are committed. Thus the remedy is to be used to advance preventive justice, to declare rather than execute rights. [Citation.]' [Citation.] 'The correct interpretation of a statute is a particularly suitable subject for a judicial declaration. [Citation.] Resort to declaratory relief therefore is appropriate to attain judicial clarification of the parties' rights and obligations under the applicable law. [Citation.]' [Citation.]" (*County of Yolo, supra,* 4 Cal.App.5th at p. 185.)

As a preliminary matter, Defendants, in opposition, contend the case is not ripe for adjudication and the Town's claim for declaratory relief fails on that basis alone.

" 'The fundamental basis for declaratory relief is the existence of an actual, present controversy over a proper subject.' [Citation.]" (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79.)

"Whether a case is founded upon an 'actual controversy' centers on whether the controversy is justiciable. 'The principle that courts will not entertain an action which is not founded on an actual controversy is a tenet of common law jurisprudence, the precise content of which is difficult to define and hard to apply. The concept of justiciability involves the intertwined criteria of ripeness and standing. A controversy is "ripe" when it has reached, but not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to

be made.' [Citations.]" (*Stonehouse Homes LLC v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 540 (*Stonehouse Homes*).)

" 'The ripeness requirement … prevents courts from issuing purely advisory opinions. [Citation.] It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion.' [Citations.]" (*Stonehouse Homes, supra,* 167 Cal.App.4th at p. 540.)

"To determine if a controversy is ripe, we employ a two-pronged test: (1) whether the dispute is sufficiently concrete that declaratory relief is appropriate; and whether withholding judicial consideration will result in the parties suffering hardship. [Citations.] 'Under the first prong, the courts will decline to adjudicate a dispute if "the abstract posture of [the] proceeding makes it difficult to evaluate … the issues" [citation], if the court is asked to speculate on the resolution of hypothetical situations [citation], or if the case presents a "contrived inquiry" [citation]. Under the second prong, the courts will not intervene merely to settle a difference of opinion; there must be an imminent and significant hardship inherent in further delay. [Citation.]' [Citations.]" (*Stonehouse Homes, supra,* 167 Cal.App.4th at p. 540.)

To the extent the Town argues it has not disapproved the projects, defendants assert the case is not ripe and the claim for declaratory relief must be rejected.[6] The court notes the Town submitted evidence of its position (and reiterated at oral argument) that the applications for the projects have not been denied. (See Paulson Decl. at ¶¶ 22, 24; see Town's Sep. Statement at Fact Nos. 6, 13, 19, 26.) As a threshold matter, defendants do not address the two-pronged test for ripeness under California case authority and thus the contention is undeveloped. (See *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52 ["We are not

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[6] The cross-complaint contends that the Town cross-defendants' course of conduct resulted in disapproval of the project applications as a matter of law, under the HAA. (See § 65589.5, subd. (h)(6)(D), (F), and (H), and subd. (k).)

required to examine undeveloped claims or to supply arguments for the litigants"].) Nor does the court find defendants' cases to be persuasive as they consider the ripeness doctrine in connection with whether a public agency has made a decision that is final. (See *California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1485 ["Until a public agency makes a final decision, the matter is not ripe for judicial review"]; see also *Santa Barabara County Flower & Nursery Growers Assn. v. County of Santa Barbara* (2004) 121 Cal.App.4th 864, 875 ["In the context of administrative proceedings, a controversy is not ripe for adjudication until the administrative process is completed and the agency makes a final decision that results in a direct and immediate impact on the parties"].)

But the action for declaratory relief here addresses a single legal issue involving interpretation of section 65941.1(e)(2). As noted above, the Town contends the statute's reference to a 90-day period to submit a complete preliminary application refers to a single 90-day period, after the expiration of the 180-day period to submit a complete development application, to maintain vesting. By contrast, defendants argue the preliminary application remains in effect so long as the applicants resubmit an application within 90 days after receiving a list of incomplete items – no matter how many times this process takes. Furthermore, the briefing submitted by defendants and amici in opposition clearly demonstrates the presence of an actual controversy about the statute's interpretation. Thus, the legal issue appears to be ripe and proper for resolution by way of this motion for summary judgment and adjudication. (See *Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1401–1402 [the propriety of the application of summary judgment to declaratory relief lies in the trial court's function to render such a judgment when only legal issues are presented for determination]; see also *Sambrano v. City of San Diego* (2001) 94 Cal.App.4th 225, 236 ["Legal issues can be resolved on summary judgment only where there are no material disputed factual issues"].)

G. Rules of Statutory Interpretation

"Our essential task in interpreting a statute ' "is to determine the Legislature's intent so as to effectuate the law's purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine that language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment. If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy." [Citation.] "Furthermore, we consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose." [Citation.]' [Citation.]" (*Jackpot Harvesting Co., Inc. v. Super. Ct.* (2018) 26 Cal.App.5th 125, 140 (*Jackpot Harvesting*).)

"California courts follow an approach to determine legislative intent that involves up to three steps. [Citation.] The first step is our 'examin[ation of] the actual language of the statute. [Citations.]' [Citation.] We do so ' "because the statutory language is generally the most reliable indicator of legislative intent." [Citations.]' [Citation.] In this first step, we scrutinize 'words themselves, giving them their "usual and ordinary meanings" and construing them in context. [Citation.]' [Citation.] And we 'will apply common sense to the language at hand and interpret the statute to make it workable and reasonable. [Citation.]' [Citation.] In doing so, if we find the statutory language to be 'clear, its plain meaning should be followed. [Citation.]' [Citation.] Thus, if there is no ambiguity, ' "we presume the Legislature meant what it said, and the plain meaning of the language governs.

[Citations.]" ' [Citation.]" (*Jackpot Harvesting, supra,* 26 Cal.App.5th at pp. 140–141.)

"If we determine the statutory language is unclear, we will proceed to the second step and review the legislative history. [Citations.] In doing so, we 'examine the legislative history and statutory context of the act under scrutiny.' [Citation.] Under these circumstances, we 'select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.' [Citation.]" (*Jackpot Harvesting, supra,* 26 Cal.App.5th at p. 141.)

"In the event the proper interpretation of the statute is not evident after examining the legislative history, 'we must cautiously take the third and final step in the interpretive process. [Citation.] … Where an uncertainty exists, we must consider the consequences that will flow from a particular interpretation. [Citation.] Thus, "[i]n determining what the Legislature intended, we are bound to consider not only the words used, but also other matters, 'such as context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy and contemporaneous construction.' [Citation.]" [Citation.]' [Citation.]" (*Jackpot Harvesting, supra,* 26 Cal.App.5th at p. 141.)

"An overarching principle for our interpretation of statutes is that courts have a 'limited role in the process of interpreting enactments from the political branches of our state government. In interpreting statutes, we follow the Legislature's intent, as exhibited by the plain meaning of the actual words of the law, " ' "whatever may be thought of the wisdom, expediency, or policy of the act." ' " [Citation.] "… [T]he judicial role in a democratic society is fundamentally to interpret laws, not write them. …" [Citation.] It cannot be too often repeated that due respect for the political branches of our government requires us to interpret the laws in accordance with the expressed intention of the Legislature. "This court has

no power to rewrite the statute so as to make it conform to a presumed intention which is not expressed." [Citations.]' [Citation.]" (*Jackpot Harvesting, supra,* 26 Cal.App.5th at pp. 141–142.)

Finally, as relevant here, the vesting of rights by the completion of a preliminary application is part of the HAA, at section 65589.5, subdivision (o)(1), which refers over to section 65941.1. The Legislature has expressly added an "interpretive gloss" or command to the HAA at section 65589.5, subdivision (a)(2)(L), which provides that it "is the policy of this state that [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." (See *Save Lafayette*, *supra*, 85 Cal.App.5th at p. 853; *San Mateo, supra*, 68 Cal.App.5th at p. 887.)

H. Analysis

1. Plain Language of Section 65941.1, subdivision (e)

Under the above principles, the court first examines the plain language set forth in section 65941.1, subdivision (e)(1) and (2) which provides:

> (1) Within 180 calendar days after submitting a preliminary application with all of the information required by subdivision (a) to a city, county, or city and county, the development proponent shall submit an application for a development project that includes all of the information required to process the development application consistent with Sections 65940, 65941, and 65941.5.
>
> (2) If the public agency determines that the application for the development project is not complete pursuant to Section 65943, the development proponent shall submit the specific information needed to complete the application *within 90 days* of receiving the agency's written identification of the necessary information. *If the development proponent does not submit this information within the 90-day period, then the preliminary application shall expire and have no further force or effect.* (§ 65941.1, subd. (e)(1) – (2), italics added.)

As to section 65941.1(e)(2), it is the Town's position as articulated in its briefing that the plain language refers only to or allows only for a *single* 90-day period for resubmission of the development application or response to an

incompleteness determination. Or at least that with more than one submission, the total period must not exceed 270 days (a maximum of 180 days for submission after a preliminary application is complete, plus 90 to respond to an incompleteness determination, setting aside the 30 days the locality has to initially respond to the development application). Exceeding that, according to the Town, if the development application is not complete, the vesting rights conferred with the preliminary application are lost.

On its face, the statute itself does not specify whether an applicant's resubmission or response to an incompleteness determination is limited to a single 90-day period or whether this process is iterative and can be repeated. The Town argues that the phrase "the 90-day period" is synonymous with a single resubmission or response period within which to complete the development application, pointing the court to the article "the" and its dictionary definition. (See *Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1121–1122 ["When attempting to ascertain the ordinary, usual meaning of a word, courts appropriately refer to the dictionary definition of that word"].) While multiple definitions of the word exist, the Town relies on a dictionary definition for "the" as follows: "used as a function word to indicate that a following noun or noun equivalent is a unique or a particular member of its class." (Merriam-Webster's Online Dict. (2026) http://www.merriam-webster.com/dictionary/the [as of January 16, 2026].) Given the word "the" and the fact that the word "period" is singular, the Town contends the plain language of the statute refers to a *single* 90-day period.

But it is more linguistically likely, in the context of the statute and the PSA as a whole, that the word "the" preceding "90-day period" in section 65941.1(e)(2) is simply an anaphoric reference—a word or phrase that refers back to an antecedent term already mentioned in the text to ensure coherence and reduce repetition—to the "90 days" in the prior sentence and without limitation on the number of 90-day periods allowed.

Despite the Town's arguments, there is no such frequency limitation mentioned in section 65941.1(e)(2) and a plain reading does not require this interpretation. Moreover, the Town's position improperly isolates the terms "90 days" and "the 90-day period" in section 65941.1(e)(2), plucking them from the entire operative statutory scheme of which this section is a part and ignoring their place and context within this very subdivision, which specifically cross-references section 65943 that is likewise contained within the PSA and provides for the iterative process leading to a determination of completeness. Subdivision (a) of that section states in full:

> "Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. If the application is determined to be incomplete, the lead agency shall provide the applicant with an exhaustive list of items that were not complete. That list shall be limited to those items actually required on the lead agency's submittal requirement checklist. In *any subsequent review* of the application determined to be incomplete, the local 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. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. *Upon receipt of any resubmittal application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application.* If the application is determined not to be complete, the agency's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description." (§ 65943, subd. (a), italics added.)

The incorporation of section 65943 into section 65941.1(e)(2) indicates that the Legislature intended for these two statutes to be read in harmony with each another. (See *People v. Harrison* (2025) 116 Cal.App.5th 1145, 1156 ["[B]y this cross-reference, the Legislature indicated it intends these two statutes to be read together"].) So doing establishes that there is a new 30-day period during which the

public agency must determine the completeness of the development application with every resubmission or response to an incompleteness determination made within 90 days of a prior incompleteness determination, after the initial development application is made within 180 days of a complete preliminary application, as referenced in section 65941.1, subdivision (e)(1). And that the 90-day periods continue with each subsequent determination of incompleteness.

The use of the words "any" and "new" as referencing a resubmittal in section 65943, subdivision (a) also suggests that multiple resubmissions in response to succeeding incompleteness determinations may be made without a preliminary application expiring as provided in section 65941.1(e)(2). Indeed, neither statute expressly limits the number of resubmissions by a development proponent in response to successive incompleteness determinations. Therefore, the incorporation of section 65943 into section 65941.1(e)(2) supports a plain reading of the latter that multiple resubmissions within 90 days of successive incompleteness determinations, ultimately leading to completeness by an ever narrowing list of incomplete items, are allowed without expiration of the vesting conferred by a preliminary application. The court rejects the speculative notion that this could theoretically lead to a project proponent simply resubmitting the same information over and over ad infinitum in successive responses without some narrowing of incompleteness issues—like Groundhog Day—while retaining vested rights, as it doubtful that such a course of action could reasonably be viewed as an applicant engaging in good faith in the prescribed process that requires responses within deadlines.

The Town contends that the iterative aspects of section 65943 are not applicable to or incorporated into section 65941.1(e)(2) by the express reference, as section 65943 addresses only development applications, not preliminary applications. But this assertion lacks merit as there is no such express limitation and both statutes pertain to the process of determining whether an application is

complete as well as to the path leading to that determination, and section 65941.1(e)(2) expressly incorporates section 65943.

The Town alternatively contends that, unlike section 65493, there is no "reset" language included in section 65941.1(e)(2) and the court is not permitted to add provisions not contained in a statute. (See *Prang v. Los Angeles County Assessment Appeals Bd.* (2024) 15 Cal.5th 1152, 1177 [as a general rule, when the Legislature uses a term in one provision of a statute but omits from another, the court generally presumes the Legislature did so deliberately, in order to convey a different meaning]; see also *People v. Guzman* (2005) 35 Cal.4th 577, 587 [inserting additional language into a statute violates the cardinal rule of statutory construction that courts must not add provisions to statutes].) While section 65941.1(e)(2) might be more clearly understood if it included express reset language, such addition appears both unnecessary and redundant, given that section 65941.1(e)(2) already expressly cross-references section 65943. And, as the statutes are properly read together in harmony, the absence of the reset provision is not fatal to reading section 65941.1(e)(2) to include multiple 90-day resubmission periods as part of the iterative process described at section 65943 without leading to loss of vesting. In other words, the court rejects the argument that reading the plain text of the statute this way requires adding language that the Legislature intentionally omitted.

The Town further argues that the newer section 65941.1(e)(2), providing a 90-day period to respond to an incompleteness determination without an express reference to that period repeating, should somehow control to the exclusion of section 65943, which does provide for an iterative process. (See *Bledstein v. Super. Ct.* (1984) 162 Cal.App.3d 152, 160 (*Bledstein*) ["A well-settled rule of statutory construction is that in the event of a conflict between two statutes, effect will be given to the more recently enacted law"]; see also *Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1504 ["[A] more recent provision is typically more persuasive

than an older one."].) "However, the rule giving precedence to the more recently enacted statute is invoked only if the two cannot be harmonized. [Citation.] This is because rules of construction are designed to aid in resolving doubts about the meaning of statutes and not to create doubts or defects regarding legislative intent." (*Bledstein, supra,* 162 Cal.App.3d at pp. 160–161.) In this, the Town fails to articulate how the two statutes are actually in conflict and cannot be harmonized. And, as already noted, the two statutes appear to be in harmony as section 65941.1(e)(2) expressly cross-references section 65943 and both provisions are directed to a completeness determination and the process required or allowed to get there.

The court thus concludes that a plain and textual reading of section 65941.1(e)(2) allows for multiple and successive 90-day periods within which to respond to incompleteness determinations following the submission of a development application within 180 days of a complete preliminary application as provided at section 65941.1, subdivision (e)(1), without loss of project vesting and access to the builder's remedy.

2. Legislative History and Other Interpretive Aids

As noted, where the terms of a statute are clear, there is no need to resort to interpretive aids. (See *City of Brentwood v. Department of Finance* (2020) 54 Cal.App.5th 418, 428 ["If the language is clear and unambiguous, there is no need to resort to other indicia of legislative intent"].) But "[w]here statutory provisions are unclear, they should be interpreted to achieve the purpose of the statutory scheme and the public policy underlying the legislation. [Citation.] 'An important aid in this regard is the legislative history of the statute. [Citation.]' [Citation.]" (*Conrad v. Medical Bd.* (1996) 48 Cal.App.4th 1038, 1046.) The court has concluded that the terms of section 65941.1(e)(2), read in the context of the statute as a whole and the entire statutory scheme of which it is a part, is clear enough to permit a facial or textual reading. The Town does not assert in any event that the statute is

ambiguous, arguing instead that its plain meaning supports the Town's interpretation. But if interpretive aids are required because of some ambiguity, if anything, they appear to support the same plain statutory meaning the court has ascribed to section 65941.1(e)(2).

The Town cross-defendants direct the court to various legislative history materials incorporated as part of their request for judicial notice. (See Town's RJN at Exs. D-F.) Defendants do not substantively address these materials in their opposition. But considering them does not lead to the conclusion that the Legislature intended to limit section 65941.1 to one 90-day resubmission period for a project proponent to retain vested rights conferred by a preliminary application. Nothing in the proferred legislative history compels a contrary conclusion, including the clear legislative intention expressed in the materials to promote much-needed housing development, especially affordable housing, as quickly as possible.

The Town also urges the court to refrain from giving weight or deference to the HCD guidance letters addressing the interpretation of section 65941.1 attached in support of defendants' request for judicial notice. (See defendants' RJN at Exs. A-D.)

"An agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts; however, unlike quasi-legislative regulations adopted by an agency to which the Legislature has confided the power to 'make law,' and which, if authorized by the enabling legislation, bind this and other courts as firmly as statutes themselves, the binding power of an agency's interpretation of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation." (*Yamaha Corp. of America v. State Bd. Of Equalization* (1998) 19 Cal.4th 1, 7 (*Yamaha*), italics omitted.)

"Courts must, in short, independently judge the text of the statute, taking into account and respecting the agency's interpretation of its meaning, of course,

whether embodied in a formal rule or less formal representation. Where the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court. Depending on the context, it may be helpful, enlightening, even convincing. It may sometimes be of little worth. [Citation.] Considered alone and apart from the context and circumstances that produce them, agency interpretations are not binding or necessarily even authoritative." (*Yamaha, supra,* 19 Cal.4th at pp. 7–8.)

That said, "courts generally will not depart from the HCD's determination unless 'it is clearly erroneous or unauthorized.' [Citations.]" (*Martinez, supra,* 90 Cal.App.5th at p. 243.)

The HCD letters submitted here in support of defendants' request for judicial notice align with their interpretation of the statute, rejecting the Town's opposing view. For example, in a letter to the Town, HCD stated in relevant part:

> "The 90-day deadline restarts with each subsequent resubmittal by the applicant. Subdivision (d) of Government Code section 65941.1 references section 65943, which provides for an iterative process in which deadlines reset upon resubmittal. Because of that reference, it is reasonable to conclude that the subdivision envisions a similar back-and-forth process. Nothing in the subdivision explicitly precludes this. … An interpretation that there is a single finite 90-day review period is inconsistent with both the intent of the PSA and the Legislature when it introduced this system in Senate Bill 330 (Chapter 654, Statutes of 2019)." (Defendants' RJN at Ex. A.)

The remaining HCD letters directed to other jurisdictions on the same point likewise assert that section 65941.1(e)(2)'s 90-day deadline resets after each incompleteness determination made by a city. (Defendants' RJN at Exs. B-D.) According to HCD, under section 65941.1(e)(2), a development with multiple incompleteness determinations and responses may have multiple 90-day periods while vested rights conferred by a preliminary application are retained. (*Ibid.*)

In short, the Town argues the HCD letters explaining its view of the relevant statute within its scope of authorized agency action are not worthy of deference and offer minimal assistance to the court in its task. The court first reiterates that its

interpretation of section 65941.1(e)(2) to provide for multiple resubmissions and 90-day deadlines is independent of the HCD letters or other interpretive aids, and the court has exercised its independent judgment in this regard. That said, the court finds the HCD letters, which establish a consistent interpretive history by HCD in this regard since the statute was enacted in 2019 to have some persuasive value. And, despite the Town's arguments, the court does not find HCD's views on the issue to be "clearly erroneous or unauthorized" and thus commanding no deference.

As a final point, the court briefly addresses the public policy arguments made by the parties in support of their respective positions on the dispositive legal issue presented by this motion. (See *Moore v. Super. Ct.* (2020) 58 Cal.App.5th 561, 54 [for purposes of statutory interpretation, the court may consider "evils to be remedied" by the statute and public policy].) In particular, the Town contends the statute affords only a single 90-day period as California is in a housing crisis and it makes little sense for preliminary-application vesting to continue infinitely. By contrast, defendants echo the expressed legislative concern that jurisdictions have used incompleteness determinations to attempt to free themselves from builder's remedy projects that have garnered public opposition and thereby skirt and thwart the development of necessary housing at all levels of affordability while contributing to, instead of helping to address, the housing crisis that the Legislature is actively targeting.

The court concludes that the highlighted public policy and legislative purposes, on balance, favor the interpretation of section 65941.1(e)(2) as proffered by defendants. And there is no evidence before the court on this motion of the parade of horribles offered by the Town in the form of developers dragging their feet while infinitely maintaining vesting of their projects or unreasonably extending the process of reaching completeness determinations by manipulation and gaming. Instead, it appears that reading section 65941.1(e)(2), as the Town urges, to require the loss of project vesting after a single 90-day resubmission in response to an

initial incompleteness determination fails to recognize the reality that achieving completeness of a development application, especially for large projects, inherently involves and may even require the iterative process as reflected in section 65943 and that the reading urged would likely result in more delay and less housing development as vesting rights are lost—anathema to the very purposes the Legislature is so obviously trying to achieve.

IV. Disposition

To conclude, based first on its independent judgment but secondarily in consideration of other interpretive aids that align, the court is convinced that section 65941.1(e)(2), by its express cross-reference to section 65943, allows for multiple 90-day resubmission periods for a project proponent to respond to successive incompleteness determinations without losing the project vesting conferred by a preliminary application as provided at section 65941.1, subdivision (e)(1). While there are no disputed issues of material fact presented on this motion, the moving parties have consequently not demonstrated their entitlement to summary judgment or adjudication on the complaint or cross-complaint/petition as a matter of law.

The motion for summary judgment on the complaint and cross-complaint is accordingly DENIED, as is the alternative motion for summary adjudication of the complaint.

This case is set for a further case management conference on March 17, 2026, at 1:30 in Department 66.

SO ORDERED.

Dated: January 29, 2026

Hon. Helen E. Williams
Judge of the Superior Court