From: noreply@civicplus.com <noreply@civicplus.com>
Sent: Tuesday, April 1, 2025 5:55 PM
To: Planning <Planning@losgatosca.gov>
Subject: Online Form Submission #15772 for Community Development Contact Form

[EXTERNAL SENDER]

Community Development Contact Form

First Name	Kyunam
Last Name	Shim
Email Address (Required)	[redacted]
Phone Number	[redacted]
Tell Us About Your Inquiry (Required)	Comment Regarding A Planning Project
Address/APN you are inquiring About (Required)	143 and 151 East Main Street
Message (Required)	Dear Los Gatos Planning Department, I am writing to express my concerns about the proposed development at 143 and 151 East Main Street, which would introduce 30 housing units on a narrow roadway in a fire-prone area of Los Gatos. This part of town is within a designated high wildfire risk zone. In the event of a fire or other emergency, the only available evacuation route is a single, narrow road. The addition of 30 households in this location would significantly increase traffic congestion and could severely hinder evacuation efforts, putting the lives of both existing and new residents at risk. I respectfully urge the City of Los Gatos to reconsider this development or ensure that comprehensive safety measures and alternative evacuation plans are in place before any approval is granted. With wildfire threats becoming increasingly frequent and severe, prioritizing public safety is more important than ever.

Thank you for your attention to this critical matter.

Sincerely,
Kyunam Shim
[redacted]
Los Gatos, CA 95030
[redacted]
[redacted]

Add An Attachment if applicable	*Field not completed.*

Email not displaying correctly? View it in your browser.

From: noreply@civicplus.com <noreply@civicplus.com>
Sent: Thursday, May 1, 2025 9:55 PM
To: Planning <Planning@losgatosca.gov>
Subject: Online Form Submission #15863 for Community Development Contact Form

[EXTERNAL SENDER]

Community Development Contact Form

First Name	*Field not completed.*
Last Name	*Field not completed.*
Email Address (Required)	[redacted]
Phone Number	*Field not completed.*
Tell Us About Your Inquiry (Required)	Comment Regarding A Planning Project
Address/APN you are inquiring About (Required)	143-151 E. Main St
Message (Required)	Letter to Council requesting EIR for SB 330 projects
Add An Attachment if applicable	scan0789.pdf

LAW OFFICES OF
BRENT N. VENTURA
Inactive
[redacted]
LOS GATOS, CA 95032
[redacted]

April 30, 2025

Mayor Matthew Hudes and
Honorable Town Councilmembers
Town of Los Gatos
110 E. Main St.
Los Gatos, CA 95030

Re: **Every SB330 Builders Remedy Projects Currently Pending Approval in Los Gatos**

101 S Santa Cruz Ave.
14288 Capri Dr.
15300- 15330 Los Gatos Blvd.
14849 Los Gatos Blvd.
15459-16392 Los Gatos Blvd.
15349-15367 Los Gatos Blvd.
15171 Los Gatos Blvd
14917-14925 Los Gatos Blvd
101 Blossom Hill Rd.
16492 Los Gatos Blvd.
143-151 E. Main St.
16250-16270 Burton Road
980 University Ave.
101 S. Santa Cruz Ave.
178 Twin Oaks Rd.
14789 Oka Rd.

Dear Mayor Hudes and Honorable Councilmembers,

Please accept this communication as a respectful plea to the Council to adopt a much more aggressive posture in reviewing all of these SB 330 applications. The current cautious and conservative review process, will fail to fully inform yourselves as decision makers of all the impacts and health and safety risks that these projects will impose on our community, especially when evaluated .cumulatively

The Town should demand and insist that an EIR be conducted to identify all the impacts posed by these projects, whether in reviewing each individual application, especially the more massive developments, or at a minimum, preparation of an EIR to review the cumulative impacts all these projects will impose on a community such as ours with very limited resources.

Some of the impacts that are not being reviewed in any depth at all during the current review process include the impacts on the Town's ability to fight urban wildfire, wildfire evacuation ability, building beyond the capacity of our urban waters supply system to sustain firefighting against wildfire, building beyond the capacity of our sewage system, building in known floodzones, cumulative impacts on our the capacities and service levels that can be sustained by our educational, roadway, emergency responders ,and capital improvement systems.

These items address health and safety issues directly affecting current residents and the Town as a whole. Health and safety issues as Town wide objective review standards. These are not issues affecting design or building standards. Health and Safety issues are protected review issues under the language of SB330 . That statutory language recited protects the Town in taking action to gain information to promote public health and safety.through the environmental review process.

SB330 does not preclude a California jurisdiction from requiring EIRs for builder remedy projects. I have completed some research, and I am unaware of any subsequent legislation that has been adopted by the State that specifcally prevents jurisdictions from requiring Environmental Impact Reports on any SB 330 development application. If I am misinfomed here, I apologize, But what I have heard is that the Governor's Emergency Declaration relating solely to the affected LA wildire area, somehow, now prohibits agencies from demanding EIRs be prepared for any builders remedy projects. I strongly disagree. I believe the legal representatives of these applicants are attempting to intimidate and threaten our elected officials by claiming legal rights that have not yet been granted.

So unless there is specific legislation changing the original scope and rights specified in SB 330, this Council should and must proceed to demand EIRs to protect public health and safety. I firmly believe whatever financial risks you fear, will be acceptable to your constituents. The people of this community want to protect our unique quality of life, and insure the ongoing health and safety of all residents. The very people you represent would rather the Town fight these projects undermining public health and safety, than have its elected leaders throw its hand into the air, saying "there is nothing we can do."

It is a time for strong leadership and accepting some risks for the future well being of all. Courage not fear. The people of this community will rally behind you!

Respectfully submitted,

Brent N. Ventura

BRENT N. VENTURA

BNV/bt

LAW OFFICES OF
BRENT N. VENTURA
Inactive
[redacted]
LOS GATOS, CA 95032
[redacted]

May 1, 2025

Mayor Matthew Hudes and
Honorable Town Councilmembers
Town of Los Gatos
110 E. Main St.
Los Gatos, CA 95030

Re: **Every SB 330 Builders Remedy Projects Currently Pending Approval in Los Gatos**

101 S Santa Cruz Ave.
14288 Capri Dr.
15300- 15330 Los Gatos Blvd.
14849 Los Gatos Blvd.
15459-16392 Los Gatos Blvd.
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16492 Los Gatos Blvd.
143-151 E. Main St.
16250-16270 Burton Road
980 University Ave.
101 S. Santa Cruz Ave.
178 Twin Oaks Rd.
14789 Oka Rd.

Dear Mayor Hudes and Honorable Councilmembers,

Since the filing period for SB 330 projects has terminated, and while the review process has commenced and is underway, there have been two critically significant changes to the health and safety, as well as the sustainability of residential habitation in identified portions of Los Gatos. Both of these critically significant public health and safety changes occurred after January 1, 2025.

The first of these was two urban wildfires in the Los Angeles metropolitan area that manifested current Fire Codes and Standards are inadequate for emergency responders to save life or property. Firefighting resources proved woefully inadequate, and the urban/municipal water supply was exhausted briefly after the conflagration commenced. Also, the rapid spread of wildfire in the urbanized, densely populated areas, which occurred in quarter mile leaps, by windblown embers illustrated the extreme risk of wildfire spreading from wildfire risk zones into heavily urbanized, densely populated areas, once thought completely safe from the threat, creates entirely new threats and health and safety issues when considering community development.

The second critical change after 1/1/25 occurred when CALFIRE finalized its maps identifying in Los Gatos the zones of severe wildfire risk. As you are well aware, the land area of Los Gatos at risk of severe wildfire was greatly increased than what previous analysis had predicted. There are some SB 330 projects proposed that are either within, adjacent to or within a half mile a severe wildfire risk zone. The idea of greatly intensifying residential densities in areas identified as subject ot severe wildfire risk is objective grounds to question the health and safety of proceeding with these projects.

Whether these facts alone give the Town valid legal grounds to deny these projects, is an open legal question. But it does seem prudent for the Town to make inquiry, and require the State and/or HCD to issue clear guidance to jurisdictions reviewing these projects, as to whether public health and safety are protected and satisfied by allowing the construction of high density residential towers immediately adjacent or within a half mile of severe wildfire risk zones. If the State mandates these projects despite the patent and severe risks, than at least the Town should be indemnified from liability. The State should immunize jurisdictions for compelling them to approve high density residential projects under SB 330 when doing so clearly raise very significant health and safety risks to both current and future residents of the community.

Regardless, while the Town seeks to gain clarity from HCD, the State or the Courts on these health and safety concerns. Los Gatos as an independent government entity in California can proceed independently without any prior authorization, to act, on an Emergency basis, and immediately protect the health and safety of its current residents

by enacting a new Fire Building Code.

My legal research indicates that the Town as its own independent legal government entity in California has the right to enact and adopt its own, specific fire building codes that reflect the specific risks, geography, climate, and topography of our jurisdiction. Los Gatos is not obligated to adopt and implement any national or Statewide Fire Code. The Town has the legal authority to draft, adopt, and implement its own Fire Code reflecting the very specific Firefighting risks facing the hillside community with 3 different severe wildfire risk zones within our borders.

The Town is currently endangering the health and safety of its citizens, to whom they have a sworn duty to protect, by delegating the Building Fire Permit authority to a Central Fire clerk, working with an outdated Fire Code that was drafted and implemented without absolutely any consideration of the health and safety issues::

- The zones of severe wildfire risk coming down from the hillsides directly into Downtown Los Gatos;

- That the LA wildfires showed the urban water supply system failed leaving firefighters without sufficient water pressure and adequate water supply to fight the wildfire;

-That emergency evacuation Notices failed, and first responders were unsuccessful in evacuating in the region exposed to fire resulting in extremely high deaths and injuries;

- That the Los Angeles conflagration was spread from burning areas to areas up to a half a mile away that were uninvolved in the initial firestorm by windblown burning embers which firefighters had no ability to contain;

- That to now build very high density, high rise residential towers within, adjacent to, or within a half mile of severe wildfire risk zones presents an imminent, clear and present danger to public health and safety;

Los Gatos needs to immediately adopt a new, current Fire Building Code that

incorporates and mitigates the harsh realities and lessons from the tragic LA wildfires, as well area the large area of the community identified as being located within a severe wildfire risk zone.

If Los Gatos does not act independently and immediately,it will take years for the administrative process to collaborate and develop a new statewide firefighting building code to incorporate the recent lessons learned. Los Gatos needs to immediately take the leash of this beast, and on an emergency basis, inlight of the imminent clear and present threat to public health and safety adopt a new Fire Building Code that all new construction projects in Los Gatos must satisfy in order to obtain necessary permits before any construction can commence.

I make note that it from my review of some of the revised development plans submitted for some of the taller projects (6-13 story towers), to supply only that towers fire suppression needs, will significantly lower the water pressure available to the surrounding neighborhood!. The plans also indicate the specifics on their Fire suppression plans will be "deferred" until the time of sumbittal of the permits.. This appears to be an obfuscation and misleading the Town and Central Fire of the wildfire and firefighting risks addressed in this correspondence.

There is no requirement under state law that existing homeowners and neighborhoods should have their emergency water pressure reduced in order to facilitate these SB 330 projects. In fact, the underlying guidance in SB 330 is that these projects should proceed only where consistent with insuring the general health and safety of current residents.

While these residential towers with their fully sprinkled fire suppression systems and metal facades may be immune form wildfire risks, they accomplish same only by compromising the water pressure and water supply available for firefighters to suppress fire in the surrounding neighborhoods.

I urge the Town Council to immediately address this issue. From my limited research and without any specific expertise, can advise that the following measures must be incorporated into Los Gatos' new Fire Building Code

- Every new construction over 35' in height located within, or within one-half mile of any severe risk wildfire zone, must have an independent water supply system on site such that its fire suppression system is independent of the existing urban water system and will not affect either the available water supply or water pressure to any of the surrounding area. Such on site water supply system shall include dual gravity fed tanks and dual mechanically supplied water for its internal firefighting needs sufficient to suppress fire for 2 hours.
- Every new construction over 55' in height, more than one-half mile away from any severe wildfire risk zone, must have an independent water supply system on site such that its fire suppression system is independent of the existing urban water system and will not affect either the available water supply or water pressure to any of the surrounding area. Such on site water supply system shall include dual gravity fed tanks and dual mechanically supplied water for its internal firefighting needs sufficient to suppress fire for 2 hours.

Thank you for your courteous consideration of this matter.

Respectfully submitted,

BRENT N. VENTURA

BNV/bt

From: cory fuller [redacted]
Sent: Friday, May 2, 2025 12:40 PM
To: Clerk <Clerk@losgatosca.gov>
Subject: Public Comment: Special Meeting 143-151 E. Main Street

[EXTERNAL SENDER]

Good morning -

I write to support this project that I believe is special in that it actually accomplishes something very rare in our Town. Namely, new housing in our downtown core that is desperately needed to reduce our car dependence and builds in walkability.

This is housing that will provide customers and parishioners to the businesses and churches and all that is downtown, We should welcome that if we care about our downtown businesses.

It is also important because in 2025 families come in all shapes and sizes and we need variations of missing middle housing to accommodate this fact.

Finally, it is modest in size and scope compared to the seven story, hundreds of units developments we are increasingly seeing. 30 units is a nice small size perfect for our small Town feel.

Thank you,

Cory Fuller

From: [redacted]
Sent: Sunday, May 4, 2025 10:08 PM
To: Joel Paulson <jpaulson@losgatosca.gov>
Cc: Town Manager <Manager@losgatosca.gov>; Gabrielle Whelan <GWhelan@losgatosca.gov>
Subject: Fwd: Clarification Request Regarding Builder's Remedy and the Status of the January 30, 2023 Housing Element

[EXTERNAL SENDER]

LOS GATOS COMMUNITY ALLIANCE

To: Mr. Joel Paulson, Director of Community Development

From: Los Gatos Community Alliance -

Date: May 5, 2025 Email 1

Dear Mr. Paulson,

I am writing to request clarification regarding the legal status of the Town's Housing Element adopted on January 30, 2023, and its relationship to Builder's Remedy eligibility for projects filed during the intervening period before state certification on July 10, 2024.

The Staff Report for 143 and 151 E Main Street project states the Town's sixth cycle Housing Element was certified by HCD on July 10, 2024. It further notes that the preliminary application for the project was vested as of May 3, 2024—prior to certification—and therefore qualifies as a Builder's Remedy project.

However, the April 30, 2025, Staff Report to the Planning Commission regarding the N40 development contains the following statement:

"Although this project meets the new definition of a 'builder's remedy project,' the applicant instead has chosen to be subject to the Town's Housing Element adopted on January 30, 2023, and the NF-SP zoning in effect on the vesting date of April 18, 2023...."

This appears to suggest that the January 30, 2023 Housing Element was legally valid and applicable to projects after the date of adoption.

This contradicts the prior assertion.

Could you please clarify the following:

1. Was the January 30, 2023 Housing Element considered legally in effect at any time before state certification on July 10, 2024?

2. If it was not, does that mean any project vested during that window from January 31, 2023 until July 10, 2024 would qualify as a Builder's Remedy project under State Housing Law?

3. Can a project applicant voluntarily choose to adhere to the provisions of the Housing Element adopted January 30, 2023 and applicable zoning, even though it was not certified by HCD and found to not comply with State Housing Law?

4. Does that waive their ability to invoke Builder's Remedy, even if they would otherwise qualify?

This clarification is essential for accurately interpreting project applications and guiding applicants on their rights and obligations under current housing law.

Thank you for your guidance on this matter.

Los Gatos Community Alliance

Facts Matter; Transparency Matters; Honesty Matters

-----Original Message-----
From: Lulu Yahoo <[redacted]
Sent: Monday, May 5, 2025 3:49 PM
To: Council <Council@losgatosca.gov>
Subject: Dio condo

[EXTERNAL SENDER]

Dear council members,

I am writing to let you know that we strongly oppose the development of the condo building at the cafe dio site. This plan is unbelievably irresponsible. We as neighbours can't even imagine who would come up with such idea and what their motivation is other than destroy this town.

My son was hit by a car while riding his bike two winters ago right in front of the high school. It's all because the traffic was so bad and the cars are driving so aggressively and impatiently to get through. How on earth did this project pass environment impact evaluation such as traffic and parking? Accidents involve cars and bikes happen quite a bit on LG blvd during the commute hours, adding this condo will put all the kids going to school on foot or bike in an even more dangerous situation. If the project goes through despite of community outcry, then the city would be accountable for the consequences, isn't it?

Lulu

From: noreply@civicplus.com <noreply@civicplus.com>
Sent: Monday, May 5, 2025 10:46 PM
To: Planning <Planning@losgatosca.gov>
Subject: Online Form Submission #15874 for Community Development Contact Form

[EXTERNAL SENDER]

Community Development Contact Form

First Name	Youn Jung
Last Name	Ko
Email Address (Required)	[redacted]
Phone Number	*Field not completed.*
Tell Us About Your Inquiry (Required)	Comment Regarding A Planning Project
Address/APN you are inquiring About (Required)	143-151 E Main Street
Message (Required)	Subject: Concerns Regarding Proposed Development at 143–151 E. Main Street Dear City Council / Planning Commission I am writing to express my concerns regarding the proposed development of a 30-unit building at 143–151 E. Main Street, directly adjacent to the only high school in our city. The high school is already facing long-standing issues of overcrowding, and introducing a high-density residential project in such close proximity would only exacerbate the situation. While development may appear beneficial in general, this specific project could overwhelm our already strained infrastructure. Furthermore, a new three-story building in this area would likely trigger additional redevelopment in the surrounding neighborhood, altering the character of our historic downtown. The streets in this area are only one lane in each direction and

	are not equipped to handle increased traffic. This poses safety concerns for both residents and high school students, especially during peak hours. In addition, the site lies within a wildfire-prone area. In the event of an emergency evacuation, access is currently limited to a single narrow road. Increasing residential density in this location would make evacuation efforts more difficult and dangerous. For these reasons, I respectfully urge the city to reconsider or closely re-evaluate the proposed development at 143–151 E. Main Street. The safety, accessibility, and quality of life of our community must remain a top priority. Sincerely, Youn Jung(Lucy) Ko [redacted]
Add An Attachment if applicable	*Field not completed.*

From: Magary, Kate [redacted]
Sent: Monday, May 5, 2025 4:51 PM
To: Council <Council@losgatosca.gov>
Subject: 151 & 143 Main Street condo development comment

[EXTERNAL SENDER]

Hi,

I am a science teacher at LGHS and I would like to say I appreciate the town building more housing near downtown. In fact, I would like to encourage more housing (of any kind) that is affordable for teachers given the high cost of housing in the county and the lack of affordability for public employees including teachers and classified district staff. I live in Mountain View and our local elementary district has partnered with the city to build affordable housing for school district employees.

I would also like to make sure that the town's plan includes traffic safety at the intersection where this is to be built. A traffic study should be done along E. Main Street and Los Gatos Blvd. including the crosswalks adjacent to LGHS. The long stretch of road without stop signs or lights is scary as a driver and I worry about our students crossing safely and drivers being able to safely exit the parking lot and planned garage along High School Court. Additionally, some of the crosswalks along this street (from downtown all the way to Blossom Hill) could use more pedestrian visibility at the unprotected intersections and crossings, such as lights to alert drivers when pedestrians are in the crosswalk. Given how many young students are walking along this route, not just from LGHS but also Van Meter and Fisher, it is important to protect their routes to school.

Kate Magary

[redacted]

Physics and AP Physics 1 teacher - Los Gatos High School

Room 306

-----Original Message-----

From: Anna Sanders [redacted]

Sent: Monday, May 5, 2025 5:49 PM

To: Council <Council@losgatosca.gov>

Subject: Comment regarding the proposed 30-condo unit development at 151 & 143 Main Street (Cafe Dio site)

[EXTERNAL SENDER]

To the Members of the Town Council:

I'm a long time Los Gatos resident and a parent of a Los Gatos High school student, and I strongly oppose the building of 30-condo unit near Los Gatos High school for the reasons provided below:

- noise and dust from the construction which will disrupt high school classes

- potentially unsafe situations due to the construction site so close to high school

- adding up to already dire traffic and parking situation in the downtown and particularly near high school

- adding up to already high population density of Los Gatos town and thus putting a toll on our public schools and other important infrastructure, including kids' infrastructure.

Unfortunately, there is a feeling that Town Council doesn't have the best interests of currents residents at heart. Los Gatos already seems to be not very kid friendly town, with underwhelming playgrounds that are wearing out and in need to be renovated; with non-existence of kids centers or indoor playgrounds; with lack of overall kids' infrastructure.

Instead of addressing these issues, yet another housing unit (among other housing proposals) is about to be approved.

I think it is time for the Town Council to prove that current residents and their interests matter the most, and not to put our high schoolers in jeopardy. If not just money matters for Town, but the quality of life, Town Council needs to reject that housing proposal near Los Gatos High school.

From: lucia gehrkre <[redacted]
Sent: Monday, May 5, 2025 5:59 PM
To: Council <Council@losgatosca.gov>
Subject: Cafe Dio development

[EXTERNAL SENDER]

Hello,

As a lifelong resident of Los Gatos and alum of LGUSD and LGHS, I was shocked to hear of the plan to put apartments next to LGHS. If you have ever had to drive down E. Main at pick up or drop off, you know extreme traffic you will be forced to navigate. As a parent of two LGHS students, I have to say I fear an emergency in or near LGHS. There is no way emergency personnel, parents, students and staff will be able to get in or out of this area. There is no solution to the traffic issues, but adding apartments will just exacerbate an already dangerous situation. I hope you see this extreme danger and vote no on this development.

Please help save this our kids and community from a very unnecessary danger.

Thank you.

Lucia Arredondo

Blossom Hill teacher and proud LGHS parent.

[redacted]

From: Montgomery Kersten [redacted]
Sent: Monday, May 5, 2025 7:45 PM
To: Council <Council@losgatosca.gov>
Subject: Condo development near LG High School

[EXTERNAL SENDER]

As a resident of Los Gatos, and with three sons attending Los Gatos High School, I strongly object to any approval of this development.

The reason is the density of traffic in this area is already completely bumper to bumper, and adding more residents to this area, and the time of construction will simply destroy the ability of any citizen or student to drive in this area. Getting to and from the High School will be impossible. Why would we do this to our community for some real estate developer's profits?

Today, every morning and every afternoon, high school traffic totally paralyzes all streets around the high school.

Were construction of the proposed development to begin, forever after our students will be eternally late to classes, and to pickup.

I am stunned this proposal was ever approved by any aspect of Los Gatos' Planning Department.

I urge the members of our Town government who read this message to themselves get in their car tomorrow and drive to the 7/11 by the High School by 8:15AM, and then just watch how traffic is impossible now. Then turn right out of the 7/11 and go down the street all the way to the exit for Highway 17 and watch the mile long line of cars hoping to get to the high school. NOW: imagine what it would be were this project to be approved: NO movement of cars whatsoever.

We can stop this stupidity now.

Montgomery Kersten

Los Gatos

From: James Lloyd [redacted]
Sent: Tuesday, May 6, 2025 2:40 PM
To: Matthew Hudes <MHudes@losgatosca.gov>; Rob Moore <RMoore@losgatosca.gov>; Mary Badame <MBadame@losgatosca.gov>; Rob Rennie <RRennie@losgatosca.gov>; Maria Ristow <MRistow@losgatosca.gov>
Cc: Wendy Wood <WWood@losgatosca.gov>; Clerk <Clerk@losgatosca.gov>; Chris Constantin <CConstantin@losgatosca.gov>; Gabrielle Whelan <GWhelan@losgatosca.gov>; Planning <Planning@losgatosca.gov>
Subject: public comment re item 1 for 5/6/25 Council meeting

[EXTERNAL SENDER]

Dear Los Gatos Town Council,

The California Housing Defense Fund ("CalHDF") submits the attached public comment re item 1 for tonight's Council meeting, the proposed 30-unit "Builder's Remedy" project at 143 and 151 E. Main Street, which includes 6 low-income units.

Sincerely,

James M. Lloyd
Director of Planning and Investigations
California Housing Defense Fund
[redacted]
CalHDF is grant & donation funded
Donate today - https://calhdf.org/donate/

May 6, 2025

Town of Los Gatos
110 E. Main St.
Los Gatos, CA 95030

Re: Proposed Housing Development Project at 143 and 151 E. Main Street

To: mhudes@losgatosca.gov; rmoore@losgatosca.gov; mbadame@losgatosca.gov; rrennie@losgatosca.gov; mristow@losgatosca.gov

Cc: wwood@losgatosca.gov; Clerk@losgatosca.gov; CConstantin@losgatosca.gov; gwhelan@losgatosca.gov; planning@losgatosca.gov

Dear Los Gatos Town Council,

The California Housing Defense Fund ("CalHDF") submits this letter to remind the Town of its obligation to abide by all relevant state laws when evaluating the proposed 30-unit "Builder's Remedy" project at 143 and 151 E. Main Street, which includes 6 low-income units. These laws include the Housing Accountability Act ("HAA") and SB 330.

Under the HAA,[1] a city (or town) may not disapprove a qualifying affordable housing project (i.e., a housing development project that provides at least 20 percent of the total units to lower households, as defined by Health and Safety Code Section 50079.5) on the grounds it does not comply with the city's zoning and general plan if the developer submitted either a statutorily defined "preliminary application" or a "complete development application" while the city's housing element was not in substantial compliance with state law. (See Gov. Code, § 65589.5, subds. (d)(5), (h)(5), (o)(1).[2]) This statutory provision temporarily suspends the power of non-compliant municipalities to enforce their zoning rules against qualifying affordable housing projects. (See, e.g., *California Housing Defense Fund v. City of La Cañada Flintridge*, Case Number: 23STCP02614 (attached), for a recent court decision affirming the plain language of the statute in this regard.) The Town's Housing Element was not in substantial

[1] AB 1893, effective January 1, 2025, has amended the "Builder's Remedy" provisions of the HAA. However, the AB 1893 allows for vested Builder's Remedy applications to proceed under the previous version of the law. (Gov. Code, § 65589.5, subd. (f)(7)(A).)
[2] These code section numbers correspond to the HAA as it existed when the preliminary application for the project at issue was submitted (i.e. before AB 1893 went into effect).

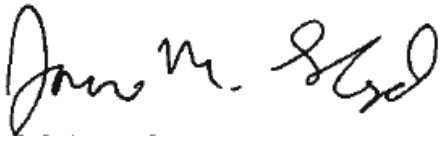
compliance with state law when the preliminary application under SB 330 was submitted. The Town must therefore allow the project to be developed as proposed.

As you are well aware, California remains in the throes of a statewide crisis-level housing shortage. New housing such as this is a public benefit: by providing affordable housing, it will mitigate the state's homelessness crisis; it will bring new customers to local businesses; it will grow the Town's tax base; and it will reduce displacement of existing residents by reducing competition for existing housing. It will also help cut down on transportation-related greenhouse gas emissions by providing housing in denser, more urban areas, as opposed to farther-flung regions in the state (and out of state). While no one project will solve the statewide housing crisis, the proposed development is a step in the right direction. CalHDF urges the Town to approve it, consistent with its obligations under state law.

CalHDF is a 501(c)(3) non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at www.calhdf.org.

Sincerely,

Dylan Casey
CalHDF Executive Director



James M. Lloyd
CalHDF Director of Planning and Investigations

[redacted]

CALIFORNIA HOUSING DEFENSE FUND v. CITY OF LA CAÑADA FLINTRIDGE
Case Number: 23STCP02614 [Related to Case No. 23STPC02575]

Hearing Date: March 1, 2024

ORDER ON PETITIONS FOR WRIT OF MANDATE AND COMPLAINTS FOR DECLARATORY RELIEF

Under the Housing Accountability Act (HAA), Government Code[1] section 65589.5, a municipality may not "disapprove" a qualifying affordable housing project on the grounds it does not comply with the municipality's zoning and general plan if the developer submitted either a statutorily defined "preliminary application" or a "complete development application" while the city's housing element was not in substantial compliance with state law. (See § 65589.5, subds. (d)(5), (h)(5), (o)(1).) This statutory provision, colloquially known as the "Builder's Remedy," incentivizes compliance with the Housing Element Law by temporarily suspending the power of non-compliant municipalities to enforce their zoning rules against qualifying affordable housing projects.

Respondents, the City of La Cañada Flintridge, the City of La Cañada Flintridge Community Development Department, and the City of La Cañada Flintridge City Council (collectively, Respondents or the City) determined Petitioner 600 Foothill Owner, L.P.'s (600 Foothill) proposed mixed-use development did not qualify for the Builder's Remedy. Petitioner 600 Foothill, Petitioner California Housing Defense Fund (CHDF), and Petitioners-Intervenors the People of the State of California, Ex. Rel. Rob Bonta and the California Department of Housing and Community Development (HCD)(collectively, Intervenors), challenge Respondents' decision.

The petitions are granted. The court orders a writ shall issue directing Respondents to set aside their May 1, 2023 decision finding 600 Foothill's application does not qualify as a Builder's Remedy project and to process the application in accordance with the HAA.

JUDICIAL NOTICE

600 Foothill's Request for Judicial Notice (RJN) filed November 8, 2023 is denied as to Exhibit A and granted as to Exhibits B through F. Respondents' objections to Exhibits B through F are overruled. Respondents' objections 1 and 4 are sustained to the extent they pertain to Exhibit A.

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[1] All further undesignated statutory references are to this code.

Respondents' RJN in support of its opposition to the 600 Foothill petition is granted as to all referenced exhibits except as to Exhibits D-3, V and BB.[2]

600 Foothill's Reply RJN of Exhibit AA is granted.

CHDF's RJN of Exhibits A through D is granted.

Respondents' RJN in support of its opposition to the CHDF petition is granted as to all referenced exhibits except as to Exhibit D-3 and V. Except as to Exhibits D-3 and V, the objections of Intervenors and CHDF are overruled.

For all RJNs, the court does not judicially notice any particular interpretation of the records. Nor does the court judicially notice the truth of hearsay statements within the judicially noticed records.

EVIDENTIARY OBJECTIONS, MOTION *IN LIMINE* AND CODE OF CIVIL PROCEDURE SECTION 1094.5, SUBDIVISION (E)

Preliminarily, the court finds none of the parties' evidentiary objections are material to the disposition of any cause of action or issue. The court nonetheless rules on the objections for completeness. The court notes it is not required to parse through long narratives with generalized objections. The court may overrule an objection if the material objected to contains unobjectionable material. The parties make many objections to multiple sentences where much or some of the material is not objectionable. (See Fibreboard Paper Products Corp. v. East Bay Union of Machinists, Local 1304, United Steelworkers . . . (1964) 227 Cal.App.2d 675, 712.)

600 Foothill's Objections

Declaration of Lynda-Jo Hernandez: All objections are overruled.
Declaration of Kim Bowan: All objections are overruled except 3, 12 and 17.
Declaration of Peter Sheridan: All objections are overruled.
Declaration of Keith Eich: All objections are overruled.
Declaration of Susan Koleda: All objections are overruled.
Declaration of Teresa Walker: All objections are overruled except 3, 11, 17, 26 and 29.
Declaration of Richard Gunter III: All objections are overruled except 5-8 and 14-20.

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[2] Contrary to 600 Foothill's assertion, Respondents did not request judicial notice of Exhibit A to the Koleda declaration. 600 Foothill and Intervenors appear correct—Respondents did not submit Exhibits D-3 or V with the Koleda declaration. Accordingly, the court cannot judicially notice Exhibits D-3 or V.

Respondents' Objections to 600 Foothill's Evidence

Declaration of Melinda Coy: All objections are overruled.
Reply Declaration of Garret Weyand: All objections are overruled except 3, 4, 7 and 8.[3]

Intervenors' Objections

Declaration of Susan Koleda: All objections are overruled.

CHDF's Objections

Declaration of Teresa Walker: All objections are overruled except 2, 4 and 6.
Declaration of Susan Koleda: All objections are overruled.
Declarations of Eich, Bowman, Gunter III and Hernandez are all overruled as discussed *infra*.

Motion *In Limine*

Respondents' Motion *In Limine* to Exclude Issues or Evidence (filed February 5, 2024) is denied. Respondents do not demonstrate 600 Foothill has submitted any evidence concerning "infeasibility" of the project that is *outside* of the administrative record. Respondents do not require discovery to respond to 600 Foothill's infeasibility arguments given such arguments are based entirely on the administrative record. (See § 65589.5, subd. (m)(1); Code Civ. Proc., § 1094.5, subd. (e).)

Code of Civil Procedure section 1094.5, Subdivision (e)

Section 65589.5, subdivision (m)(1) in the HAA specifies "[a]ny action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure. . . ." Accordingly, the HAA causes of action are subject to the limitations on extra-record evidence in Code of Civil Procedure section 1094.5, subd. (e). Nonetheless, the HAA causes of action involve questions of substantial compliance with the Housing Element Law, governed, at least in part, by Code of Civil Procedure section 1085. (See e.g., § 65587, subd. (d)(2).) Code of Civil Procedure section 1094.5, subdivision (e) does not apply to a cause of action governed by Code of Civil Procedure section 1085.

The parties have neglected to suggest which parts of their declarations are subject to Code of Civil Procedure sections 1094.5, 1085 or both. The parties also have not moved to augment the administrative record pursuant to Code of Civil Procedure section 1094.5, subdivision (e). Under the circumstances, the court will admit and consider the parties' declarations despite the court

[3] The declaration is properly submitted to respond to the defense of unclean hands and allegations of "manipulation of the HCD approval process" discussed in Respondents' opposition brief.

having made no order to augment the record.[4] The court notes, however, even if the court excluded all the extra-record evidence submitted, including the lengthy Koleda declarations, the result here would not change.

BACKGROUND

The Housing Element Law[5]

"In 1980, the Legislature enacted the Housing Element Law, 'a separate, comprehensive statutory scheme that substantially strengthened the requirements of the housing element component of local general plans.' " (*Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 221-222 [*Martinez*].)

A housing element within a general plan must include certain components, including, but not limited to: an assessment of housing needs and the resources available and constraints to meeting those needs; an inventory of sites available to meet the locality's housing needs at different income levels, including the Regional Housing Needs Allocation (RHNA); a statement of goals, quantified objectives, and policies to affirmatively further fair housing; and a schedule of actions to address the housing element's goals and objectives. (§ 65583, subds. (a), (b), (c).)

"A municipality 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. (§ 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 usually is eight years." (*Martinez, supra,* 90 Cal.App.5th at 221-222.)

"Before revising its housing element, a local government must make a draft available for public comment and, after comments are received, submit the draft, as revised to address the comments, to the Department of Housing and Community Development (HCD). (§ 65585, subd. (b)(1); see § 65588 [review and revision of housing element by local government].) After a draft is submitted, the HCD must review it, consider any written comments from any public agency, group, or person, and make written findings as to whether the draft substantially complies with the Housing Element Law. (§ 65585, subds. (b)(3), (c), (d); . . . .) [¶] If the HCD finds the draft does not substantially comply with the Housing Element Law, the local government must either (1) change the draft to substantially comply or (2) adopt the draft without changes along with a resolution containing findings that explain its belief that the draft substantially complies with the law. (§ 65585, subd. (f).)" (*Martinez, supra,* 90 Cal.App.5th at 221-222.)

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[4] At the conclusion of the hearing, the parties agreed the court could consider all of the evidence before it without regard to Code of Civil Procedure section 1094.5, subdivision (e).

[5] See section 65580, *et seq.*

The City's October 2021 and October 2022 Draft Housing Elements, and HCD's Findings the City Had Not Attained Substantial Compliance with the Housing Element Law

Under the Housing Element Law, the City had a statutory deadl ne of October 15, 2021 to adopt a substantially compliant 6th cycle housing element. (AR 443.) The City submitted its draft housing element to HCD on that day. (AR 443.)

On December 3, 2021, HCD informed the City while the draft "addresses many statutory requirements," to comply with the Housing Element Law, signif cant revisions were required. (AR 443, 445-453.) HCD identified fourteen areas within the first version of the City's draft housing element that required specific programmatic revisions, organized into three broad categories—housing needs, resources, and constraints; housing programs; and public participation. (AR 445-453.) As examples, HCD found the draft housing element lacked a sufficient site inventory analysis identifying potential sites for housing development distributed in a manner to affirmatively further fair housing, or an inadequate site inventory of the City's vacant and underutilized sites to meet the City's RHNA determination. (AR 445-447.)

Ten months later, on October 4, 2022, the City adopted its 2021-2029 housing element (October 2022 Housing Element). (AR 4504-4508, 4509 [Housing Element].) The City thereafter submitted its adopted Housing Element to HCD for review. (AR 5263.)

On December 6, 2022, HCD informed the City "[t]he adopted housing element addresses most statutory requirements described in HCD's [prior] review; however, additional revisions are necessary to fully comply with State Housing Element Law." (AR 5263 [referencing a May 26, 2021 review].) HCD's findings of non-compliance for the October 2022 Housing Element are discussed further in the Analysis section *infra*.

600 Foothill's Preliminary Application

On November 10, 2022—after the City's adoption of the October 2022 Housing Element but before HCD's December 6, 2022 review—600 Foothill submitted the Preliminary Application seeking the City's approval to construct a mixed-used project on a site located at 600 Foothill Boulevard, which is currently occupied by two vacant church buildings and a surface parking lot. (AR 5241.) 600 Foothill proposed to build 80 apartments on the site, 16 of which (or 20 percent) would be reserved for persons earning less than sixty percent of the area median income (the Project). (AR 5243.) 600 Foothill's Preliminary Application explained "given that the City continues to have a Housing Element that is out of compliance with state law," 600 Foothill proposed the Project as a Builder's Remedy project pursuant to section 65589.5, subdivision (d)(5) meaning the Project was not required to account for the City's zoning ordinance or general plan land use designation. (AR 5235.)

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The City Staff Acknowledge Changes to the October 2022 Housing Element Are Necessary to Comply with HCD's Findings

The City's Director of Community Development, Susan Koleda, acknowledged on January 11, 2023 in an email communication that "[a]ll additional changes to the Housing Element have yet to be determined but will likely require additional [Planning Commission/City Council] approval." (AR 12894.) At the City's January 12, 2023 Planning Commission meeting, City staff acknowledged revisions were required for "the Housing Element to be in conformance" with applicable law. (AR 5274-5275.) Director Koleda also stated in a February 9, 2023 email communication that "additional clarifications were required" to the October 2022 Housing Element, and "[t]he additional information will be incorporated into a revised Housing Element, scheduled to be adopted by the City Council on February 21, 2023. It will then be submitted to HCD for review as a third submittal." (AR 13011.)

The City Adopts a February 2023 Housing Element, Fails to Rezone, and "Certifies" Its Substantial Compliance with the Housing Element Law

On February 21, 2023, the City adopted its third revised housing element which addressed the deficiencies to the October 2022 Housing Element identified by HCD. (AR 6274-6279.) In its resolution adopting the revised housing element, the City Council stated it "certifies that the City's Housing Element was in substantial compliance with State Housing Element law as of the October 4, 2022 Housing Element adopted by the City Council. . . ." (AR 6274.) Despite use of the word "certifies" in the City's resolution, Director Koleda opined at the February 21, 2023 council meeting that the "consensus" from the City Attorney, the City's consultants, and HCD was that "self-certification" of the City's housing element "is not an option." (AR 6207-6208; see also Opposition to Intervenors 19:18-21:7 ["wrongly accuse . . . of 'back-dating' and 'self-certifying' "].)

At the time the City adopted its third revised housing element on February 21, 2023, it had not completed the rezoning required by the Housing Element Law. Accordingly, on April 24, 2023, HCD found, although the February 2023 housing element addressed the previously identified deficiencies in the October 2022 Housing Element, and met "most of the statutory requirements of State Housing Law," the City was not in substantial compliance with the Housing Element Law because the City adopted the February 2023 housing element more than one year past the statutory due date of October 15, 2021 and the City had not completed its statutorily required rezoning. (AR 6297-6300; see also AR 7170-7171.) As a result, HCD found the City could not be deemed in substantial compliance with state law *until* it completed all required rezones. (AR 6297-6300; see § 65588, subd. (e)(4)(C)(iii). ["A jurisdiction that adopts a housing element more than one year after the statutory deadline . . . shall not be found in substantial compliance with this article until it has completed the rezoning required by" the Housing Element Law].)

In its April 24, 2023 letter, HCD also opined that "a local jurisdiction cannot 'backdate' compliance to the date of adoption of a housing element," and the City was not in substantial

compliance with the Housing Element Law as of October 4, 2022, notwithstanding its "certification" in the City's February 21, 2023 resolution. (AR 6297-6298.)

The City Determines 600 Foothill's Preliminary Application Could Not Rely on the Builder's Remedy and the City Council Affirms the Decision

On February 10, 2023, in response to 600 Foothill's Preliminary Application, the City issued an incompleteness determination (the First Incompleteness Determination) requesting additional detail on several issues. The First Incompleteness Determination did not allege any inconsistencies between the Project and the City's zoning ordinance and general plan. (AR 5276-5279.) Petitioner supplemented its application materials in response to the First Incompleteness Determination on April 28, 2023. (See AR 6305, 7095-7096, 7152-7153, 7169, 7166, 8050-8060.)

On March 1, 2023, the City issued a second incompleteness determination (the Second Incompleteness Determination). The Second Incompleteness Determination advised 600 Foothill the Builder's Remedy did not apply to the Project making the Preliminary Application incomplete for its failure to comply with the City's general plan zoning laws and residential density limitations. (AR 6280-6281; see AR 7176.)

On March 9, 2023, 600 Foothill appealed the Second Incompleteness Determination. (See § 65943, subd. (c); AR 6282-6287, AR 12926.) In support of its appeal, 600 Foothill provided a letter from its attorney explaining 600 Foothill's position the City Council's failure to grant the appeal would constitute a violation of the HAA. (AR 6304-6462, 6317 ["flouts the law"].)

The City Council heard 600 Foothill's appeal on May 1, 2023. The City Council voted unanimously to adopt Resolution No. 23-14, denying the appeal and upholding the Second Incompleteness Determination (the May 1, 2023 Decision). (AR 7151-7160, AR 7161-7168.)

On June 8, 2023, HCD sent the City a Notice of Violation advising the City it violated the HAA and Housing Element Law by denying 600 Foothill's appeal. (AR 7170-7175.) HCD summarized the alleged violations:

> The City cannot 'backdate' its housing element compliance date to an earlier date so as to avoid approving a Builder's Remedy application. In short, the October 4, 2022 Adopted Housing Element did not substantially comply with State Housing Element Law, regardless of any declaration by the City. Therefore, the Builder's Remedy applies, and the City's denial of the Project application based on inconsistency with zoning and land use designation is a violation of the HAA. (AR 7170.)

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The City Determines the Application is Complete and the Project is Inconsistent with City's Zoning Code and General Plan

On May 26, 2023, the City informed 600 Foothill that its Project application was complete. (AR 7169.) On June 24, 2023, the City advised 600 Foothill:

> [I]t remains the City's position (as affirmed by City Council on May 1, 2023) that the 2021-2029 Housing Element was in substantial compliance with state law as of October 4, 2022. Based on that, staff reviewed the project for consistency with the General Plan, applicable provisions of the Downtown Village Specific Plan (DVSP), the Zoning Code, and the density proposed within the 2021-2029 Housing Element. In accordance with [] § 65589.5(j)(2)(A), this letter serves as an explanation of the reasons that the City considers the proposed project to be inconsistent, not in compliance, or not in conformity with these aforementioned guiding documents. (AR 7176.)

The City Completes Rezoning and HCD Certifies the City's Substantial Compliance with the Housing Element Law

On September 12, 2023, the City adopted a resolution completing its rezoning commitments set forth in its housing element. HCD reviewed the materials and, on November 17, 2023, sent a letter to the City finding the City had "completed actions to address requirements described in HCD's April 24, 2023 review letter." (Coy Decl. ¶ 12, Exh. D.)

Writ Proceedings

On July 21, 2023, 600 Foothill filed its verified petition for writ of mandate and complaint for declaratory and injunctive relief against Respondents. On July 25, 2023, CHDF filed its verified petition for writ of mandate and complaint for declaratory relief. The court has related the two actions and coordinated them for trial and legal briefing. The court denied Respondents' motion to consolidate the two actions.

On December 20, 2023, pursuant to a stipulation, Intervenors filed their petition for writ of mandate and complaint for declaratory relief in the CHDF proceeding.

For this proceeding, the court has considered 600 Foothill's Opening Brief, CHDF's Opening Brief, Intervenors' Opening Brief, Respondents' three opposition briefs, 600 Foothill's Reply Brief, CHDF's Reply Brief, Intervenors' Reply Brief, the administrative record, the joint appendix, all requests for judicial notice, and all declarations (including exhibits).[6]

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[6] The court accounted for its evidentiary rulings as to the evidence.

STANDARD OF REVIEW

Pursuant to the Los Angeles County Court Rules (Local Rules), "[t]he opening and opposition briefs must state the parties' respective positions on whether the petitioner is seeking traditional or administrative mandamus, or both." (Local Rules, Rule 3.231, subd. (i)(1).) The parties must also provide their position on the standard of review in their briefing. (See Local Rule, Rule 3.231, subd. (i)(3).)

600 Foothill, CHDF and Respondents do not suggest the standard of review that applies to the causes of action. Intervenors argue Code of Civil Procedure section 1085, not Code of Civil Procedure section 1094.5, applies to their petition.

Under Code of Civil Procedure section 1094.5, subdivision (b), the relevant issues are whether (1) the respondent has proceeded without jurisdiction, (2) there was a fair trial, and (3) there was a prejudicial abuse of discretion. An abuse of discretion is established if the agency has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. (Code Civ. Proc., § 1094.5, subd. (b).)

In administrative mandate proceedings not affecting a fundamental vested right, the trial court reviews administrative findings for substantial evidence. Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion (*California Youth Authority v. State Personnel Board* (2002) 104 Cal.App.4th 575, 584-85), or evidence of ponderable legal significance which is reasonable in nature, credible and of solid value. (*Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 305 n. 28.) Under the substantial evidence test, "[c]ourts may reverse an [administrative] decision only if, based on the evidence . . ., a reasonable person could not reach the conclusion reached by the agency." (*Sierra Club v. California Coastal Com.* (1993) 12 Cal.App.4th 602, 610.) The court does "not weigh the evidence, consider the credibility of witnesses, or resolve conflicts in the evidence or in the reasonable inferences that may be drawn from it." (*Doe v. Regents of University of California* (2016) 5 Cal.App.5th 1055, 1073.)

To obtain a traditional writ of mandate under Code of Civil Procedure section 1085, there are two essential findings. First, there must be a clear, present, and ministerial duty on the part of the respondent. Second, a petitioner must have a clear, present, and beneficial right to the performance of that duty. (*California Ass'n for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 704.) "Generally, mandamus is available to compel a public agency's performance or to correct an agency's abuse of discretion when the action being compelled or corrected is ministerial." (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 700.)

An agency is presumed to have regularly performed its official duties. (Evid. Code, § 664.) Under Code of Civil Procedure section 1094.5, the "trial court must afford a strong presumption of correctness concerning the administrative findings." (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817.) A petitioner seeking administrative mandamus has the burden of proof and must cite

the administrative record to support its contentions. (See *Alford v. Pierno* (1972) 27 Cal.App.3d 682, 691.) Similarly, a petitioner "bears the burden of proof in a mandate proceeding brought under Code of Civil Procedure section 1085." (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1154.) A reviewing court "will not act as counsel for either party to a [challenge to an administrative decision] and will not assume the task of initiating and prosecuting a search of the record for any purpose of discovering errors not pointed out in the briefs." (*Fox v. Erickson* (1950) 99 Cal.App.2d 740, 742 [context of civil appeal.)

" 'On questions of law arising in mandate proceedings, [the court] exercise[s] independent judgment.' . . . . Interpretation of a statute or regulation is a question of law subject to independent review." (*Christensen v. Lightbourne* (2017) 15 Cal.App.5th 1239, 1251.)

ANALYSIS

Petition for Writ of Mandate – Violations of the HAA

600 Foothill, CHDF, and Intervenors seek a writ of mandate to enforce the requirements of the HAA against the City. Among other relief, they seek a writ directing Respondents to set aside the City Council's "decision, on May 1, 2023, to disapprove an application for a housing development project at 600 Foothill Boulevard, and compelling Respondent to approve the application or, in the alternative, to process it in accordance with the law." (CHDF Pet. Prayer ¶ 1; see also 600 Foothill Pet. Prayer ¶¶ 3-5 and Intervenors Pet. Prayer ¶¶ 1-3.)[7]

Standard of Review

As noted, the HAA at section 65589.5, subdivision (m)(1) specifies "[a]ny action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure. . . ." Nonetheless, Intervenors argue Code of Civil Procedure section 1085, not Code of Civil Procedure section 1094.5, applies because Respondents have a "ministerial duty under the HAA to process the Foothill Owner's Builder's Remedy application." (Intervenors' Opening Brief 10:27; see *Sunset Drive Corp. v. City of Redlands* (1999) 73 Cal.App.4th 215, 221-222. ["A writ of mandate may be issued by a court to compel the performance of a duty imposed by law."])

While there is a colorable argument Code of Civil Procedure section 1085 applies to parts of the HAA claims involving the Housing Element Law, given the Legislature's clear instructions in section 65589.5, subdivision (m)(1), the court concludes Petitioners' writ petitions to enforce the HAA are all governed by Code of Civil Procedure section 1094.5.

[7] 600 Foothill's writ claims under the HAA are alleged in its third through fifth causes of action while CHDF's and Intervenors' are alleged in their first causes of action.

The court's task "is therefore to determine whether the City 'proceeded in the manner required by law,' with a decision supported by the findings, and findings supported by the evidence; if not, the City abused its discretion." (*California Renters Legal Advocacy and Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 837.) The City "bear[s] the burden of proof that its decision has conformed to all of the conditions specified in Section 65589.5." (§ 65589.6.)

As noted, based on the circumstances, the court reaches the same result in its analysis even if the petitions, or parts thereof, are governed by Code of Civil Procedure section 1085. (See e.g., § 65587, subd. (d)(2) [action to compel compliance with Housing Element Law "shall" be brought pursuant to Code of Civil Procedure section 1085].) The HAA claims raise legal questions of statutory construction and concerns about Respondents' substantial compliance with the Housing Element Law. The court decides such issues independently, regardless of whether Code of Civil Procedure section 1094.5 or 1085 governs. (See e.g. *Martinez, supra,* 90 Cal.App.5th at 237.)

The City "Disapproved" the Builder's Remedy Project

600 Foothill contends the City "disapproved" the Project, as the term is defined in the HAA, because the City "determined that the Project could not proceed because it believed the Builder's Remedy was inapplicable." (600 Foothill Opening Brief 7:11-12.) CHDF and Intervenors make the same argument. (CHDF Opening Brief 21:25-28; Intervenors' Opening Brief 15:27-16:3.)

The Builder's Remedy, at section 65589.5, subdivision (d)(5) provides in pertinent part:

> (d) A local agency **shall not disapprove** a housing development project . . . for very low, low-, or moderate-income households . . . unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:
>
> . . . .
>
> (5) The housing development project . . . 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 this article. (Emphasis added.)

Thus, to prove their claim under the HAA and to proceed with the Project as a Builder's Remedy, Petitioners must show the City "disapprove[d] a housing development project."

(§ 65589.5, subd. (d).)[8] Section 65589.5, subdivision (h)(6) provides to " 'disapprove the housing development project' **includes** any instance in which a local agency does any of the following: (A) 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** . . . ." (Emphasis added.)

Here, on May 1, 2023, the City Council denied Petitioner's appeal of the Second Incompleteness Determination stating:

> [T]he City Council of the City of La Cañada Flintridge hereby denies the appeal and upholds the Planning Division's March 1, 2023, incompleteness determination for the mixed use project at 600 Foothill Boulevard, on the basis that the 'builder's remedy' under the Housing Accountability Act does not apply and is not available for the project, and that the project did not 'vest' as a 'builder's remedy' project as alleged in the project's SB 330 Preliminary Application submission dated November 14, 2022, because the City's Housing Element was, as of October 4, 2022, in substantial compliance with the Housing Element law. (AR 7167.)

Notably, Director Koleda informed the City Council, prior to its vote on the appeal, that "if the appeal is denied, the project will be processed accordingly as a standard, nonbuilder's remedy project." (AR 7103.) Thus, the City Council "voted" on a proposed housing development project application and determined the Project could not proceed as a Builder's Remedy project—that is, the Project would be subject to the City's discretionary approvals.

The Legislature has expressed its intent that the HAA "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." (§ 65589.5, subd. (a)(2)(L); *California Renters Legal Advocacy & Education Fund. v. City of San Mateo*, *supra*, 68 Cal.App.5th at 854.) In addition, "[a]s a basic principle of statutory construction, 'include' is generally used as a word of enlargement and not of limitation. . . . Thus, where the word 'include' is used to refer to specified items, it may be expanded to cover other items." (*Rea v. Blue Shield of California* (2014) 226 Cal.App.4th 1209, 1227.) Applying these canons of statutory construction, the court finds section 65589.5, subdivision (h)(6) should be given a broad construction. Because the City Council made clear any required land use approvals or entitlements would not be issued for the Project, **as a Builder's Remedy project**, the City Council's May 1, 2023 decision falls within the HAA's broad definition of "disapprove."

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[8] It is undisputed the Project constitutes a "housing development project . . . for very low, low-, or moderate-income households" within the meaning of the HAA. HCD advised the City on June 8, 2023: "The Project is proposed as an 80-unit mixed-use project where 20 percent of the units (16 units) will be affordable to lower-income households. The residential portion equates to approximately 89 percent of the Project; therefore, the Project qualifies as a 'housing development project' under the HAA (Gov. Code, § 65589.5, subd. (h)(2)(B))." (AR 7171.) Respondents develop no argument to the contrary.

Respondents contend:

> 600 Foothill defined the "approvals" and "entitlements" it sought in its application – namely, a Conditional Use Permit (USE-2023-0016), Tentative Tract Map 83375 (LAND-2023-0001), and Tree Removal Permit (DEV-2023-0003). (AR 5285.) There was no vote on May 1, 2023, on any of these "required land use approvals" or "entitlements" and, thus, . . . the "vote" needed under the HAA has not occurred. (Opposition to 600 Foothill 19:22-26 [emphasis in original].)

Respondents' narrow interpretation of the statute is unpersuasive. (See § 65589.5, subd. (a)(2)(L).) While the City Council may not have voted to deny the conditional use permit, tentative tract map, and tree removal permit, the City Council voted on May 1, 2023 and determined the Project could not proceed as the project proposed—a Builder's Remedy project. Because the Project was proposed as a Builder's Remedy, the City Council's May 1, 2023 vote on the project application was a "disapproval" within the meaning of the HAA.

Respondents also contend "[t]he City cannot as a matter of law approve or disapprove a development project, including a project under the Builder's Remedy, prior to conducting environmental review under CEQA . . . ."[9] (Opposition to 600 Foothill 16:15-16.) Respondents argue the HAA does not authorize the court "to order the City to accommodate CEQA review after a possible finding by the Court of a violation of the HAA." (Opposition to 600 Foothill 16:25-26 [emphasis in original].)

Again, Respondents' arguments are unpersuasive—a city can disapprove a project without having undertaken CEQA review. Nothing requires a city to undertake CEQA review *before deciding to disapprove a project*. CEQA does not apply to "[p]rojects which a public agency rejects or disapproves." (Pub. Res. Code, § 21080, subd. (b)(5).) "[I]f an agency at any time decides not to proceed with a project, CEQA is inapplicable from that time forward." (*Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 850.) Respondents do not cite any language from the HAA that supports their position.[10]

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[9] CEQA refers to the California Environmental Quality Act at Public Resources Code section 21000, *et seq.*

[10] During argument, the City emphasized its reliance on section 65589.5, subdivision (m)(1) its language concerning finality—an action cannot be brought to enforce the HAA's provisions until there is a "final action on a housing development project" and the City did not take final action on the Project—it merely determined the Project could not be built as a Builder's Remedy project and would be subject to discretionary approvals. As noted by 600 Foothill, an action to enforce the HAA may be initiated after a municipality imposes conditions upon, disapproves **or** takes final action on a housing project. The City made clear in its May 1, 2023 Decision that the Project could not proceed as proposed as a Builder's Remedy project.

While CEQA review is preserved by the HAA[11] nothing suggests a disapproval under the HAA can occur only after CEQA review or that a court lacks authority to issue a writ to *compel compliance with the HAA*, even if a Builder's Remedy project is subject to CEQA compliance. Notably, a suit to enforce the HAA must be filed "no later than 90 days from" project disapproval. (§ 65589.5, subd. (m)(1).) Further, 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, subd. (a)(2)(L).) Respondents' interpretation of the HAA, under which a disapproval cannot occur prior to CEQA review, would hinder the approval and provision of housing. Accordingly, an agency may "disapprove" a project under the HAA before conducting any environmental review under CEQA, and a petitioner's claim to enforce the HAA may be ripe for consideration even if CEQA review has not been performed or completed.

Respondents' reliance on *Schellinger Brothers v. City of Sebastopol* (2009) 179 Cal.App.4th 1245, 1262 [*Schellinger*] is misplaced. *Schellenger* involved a request **to compel** the certification of an environmental impact report. *Schellinger* did not hold that all claims under the HAA or other housing laws are unripe or cannot be filed until CEQA review is completed. The case did not address CEQA in the context of a claim to enforce the Builder's Remedy provision in the HAA. The case also did not suggest a trial court lacks discretion to structure a writ issued pursuant to the HAA in a manner that allows for CEQA review to be completed. "An opinion is not authority for propositions not considered." (*People v. Knoller* (2007) 41 Cal.4th 139, 154-55.)

The court acknowledges *Schellinger* advised the HAA "specifically pegs its applicability to the approval, denial or conditional approval of a 'housing development project' . . . which, as previously noted, can occur *only after the EIR is certified.* (CEQA Guidelines, § 15090(a).)" (*Schellinger, supra,* 179 Cal.App.4th at 1262.) Nonetheless, the court's statement must be interpreted in the context of the issues before that Court. Because the agency there had not disapproved the project at issue, the Court's reference to the "denial" of a housing development project was a dictum. In any event, as discussed, *Schellinger* did not decide the legal question presented here—whether the City "disapproved" a Project when it determined, through a vote of its City Council, the Builder's Remedy Project did not qualify for the Builder's Remedy under the HAA.[12]

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[11] See section 65589.5, subdivisions (e) and (o)(6).

[12] Respondents indicate the City took action to pay for CEQA review of the Project starting in September 2023. (Opposition to 600 Foothill 18:11-14 [citing Sheridan Decl. Exh. JJ].) By that time, however, the City Council had already determined the Project could not proceed as proposed pursuant to the Builder's Remedy. (AR 7167; see also AR 7176.) Respondents do not explain the purpose of CEQA review for a project the City Council has determined could not be approved consistent with the law. This evidence does not support Respondents' position the City Council's May 1, 2023 Decision did not constitute a "disapproval" under the HAA.

Based on the foregoing, Petitioners have demonstrated the City Council "disapproved" the Project with its May 1, 2023 Decision within the meaning of the HAA. Respondents do not show the petitions are "unripe" because CEQA review has not been completed, or that CEQA review is a prerequisite to the "disapproval" of a Project under the HAA. In light of the court's conclusion, the court need not reach the parties' contentions regarding *California Renters v. City San Mateo* (2021) 60 Cal.App.5th 820 and appellate briefing from that case. (See Opposition to 600 Foothill 17:10-28 [citing Sheridan Decl. Exh. EE and FF].)

"Vesting" of the Builder's Remedy and the Date the Pro ect Application was Deemed Complete

Respondents assert the filing of a SB 330 preliminary application does not "vest" the Builder's Remedy because "when a city is determining whether it can make the finding in subsection (d)(5), it considers the status of its Housing Element *as of the date the finding is made*." (Opposition to 600 Foothill 23:11-13 [emphasis in original].)

The HAA defines "deemed complete" to mean that "the applicant has submitted a *preliminary application* pursuant to Section 65941.1." (§ 65589.5, subd. (h)(5) [emphasis added].) Section 65589.5, subdivision (o)(1) states "a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application including all of the information required by subdivision (a) of Section 65941.1 was submitted." Construing these statutory provisions, along with section 65589.5, subdivision (d), the court concludes a Builder's Remedy "vests" if the local agency does not have a substantially compliant housing element at the time a complete preliminary application pursuant to section 65941.1 is submitted and "deemed complete."

Respondents have not developed any argument the Preliminary Application, submitted in November 2022, lacked the information required by section 65941.1 or was otherwise incomplete within the meaning of the HAA. (See AR 5234-5246.)[13] Thus, if the City's housing element did not substantially comply with the Housing Element Law at that time (see analysis *infra*), the Builder's Remedy "vested" when 600 Foothill submitted its Preliminary Application in November 2022.[14]

Respondents' reliance on subdivision (o) of the HAA is misplaced. Section 65589.5, subdivision (o)(4) provides " 'ordinances, policies, and standards' includes **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." (Empasis added.)

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[13] 600 Foothill's Preliminary Application used the form generated by the City. 600 Foothill completed the form and included necessary attachments.

[14] 600 Foothill's Preliminary Application was "deemed complete," within the meaning of the HAA, when 600 Foothill submitted its application in November 2022. (See AR 5241-5246, 7171; see also Gov. Code §§ 65589.5, subdivision (h)(5) and 65941.1.) During argument, Respondents appeared to conflate the Preliminary Application with a formal project application.

The housing element is a mandatory element of the general plan. (§ 65582, subd. (f).) Section 65589.5, subdivision (o)(1) precludes Respondents from retroactively applying a housing element to a Builder's Remedy project that "vested" before certification of the housing element.

Respondents' vesting argument is also inconsistent with the HAA's policy of promoting housing. (§ 65589.5, subd. (a)(2)(L).) If Respondents' position was correct, as a practical matter "no housing developer would ever submit a builder's remedy application because of the uncertainty about whether the project would remain eligible long enough to be approved." (CHDF Reply 19:8-9.)

600 Foothill's Preliminary Application was "deemed complete," for purposes of the HAA, in November 2022 when 600 Foothill submitted its Preliminary Application. If the Builder's Remedy applies (see *infra*), it therefore "vested" in November 2022.[15]

The City Could Not Be in Substantial Compliance with the Housing Element Law until it Completed Rezoning

Petitioners contend the City's housing element was not in substantial compliance with the Housing Element Law when 600 Foothill filed its Preliminary Application because the City had not completed the rezoning required by sections 65583, subdivision (c)(1)(A) and section 65583.2, subdivision (c). (See 600 Foothill Opening Brief 12:21-23.) Petitioners are correct.

Section 65588, subdivision (e)(4)(C)(i) states:

> For the adoption of the sixth revision and each subsequent revision, a local government that does not adopt a housing element that the department has found to be in substantial compliance with this article within 120 days of the applicable deadline described in subparagraph (A) or (C) of paragraph (3) shall comply with subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583 and subdivision (c) of Section 65583.2 within one year of the statutory deadline to revise the housing element.

Section 65588, subdivision (e)(4)(C)(iii) states:

> A jurisdiction that adopts a housing element more than one year after the statutory deadline described in subparagraph (A) or (C) of paragraph (3) **shall not be found in substantial compliance with this article until it has completed the**

[15] However, the court reaches the same result in its analysis below even if the application was deemed complete or "vested" anytime up to May 1, 2023, the date of City Council's decision. The City did not complete its required rezoning until September 12, 2023. (See § 65588, subd. (e)(4)(C)(iii).)

rezoning required by subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583 and subdivision (c) of Section 65583.2. (Emphasis added.)[16]

Thus, the statute mandates the jurisdiction "shall not be found in substantial compliance" until completing the rezoning. (*Ibid.*)[17] The plain language of the statutory prohibition is not limited to HCD; the prohibition therefore applies to the courts.

As applied here, the City's statutory deadline to adopt a substantially compliant 6th cycle housing element was October 15, 2021. (AR 443.) The City submitted its draft housing element to HCD on October 15, 2021. (AR 443.) Because the City failed to secure certification of its 6th cycle housing element within 120 days of its statutory deadline of October 15, 2021 (see AR 443-447), October 15, 2022 served as the City's deadline to complete its required rezoning. (§ 65583, subd. (c)(1)(A).) It is undisputed the City did not complete the required rezoning until September through November 2023.

Pursuant to the plain language of section 65588, subdivision (e)(4)(C)(iii), the City "shall not be found" in substantial compliance with the Housing Element Law until the City completed its rezoning in September through November 2023. As a result, the City did not have a substantially compliant housing element when 600 Foothill submitted its Preliminary Application to the City in November 2022; the Builder's Remedy therefore applies to the Project.

Respondents do not challenge the plain language interpretation of section 65588, subdivision (e)(4)(C)(iii).[18] Thus, they concede where an agency has failed to adopt a substantially compliant housing element by more than a year after the statutory deadline to do so, the agency cannot be found in substantial compliance with the Housing Element Law by HCD or a court until it

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[16] During argument, Respondents objected to the court's consideration of legislative history referenced in the court's tentative order distributed prior to the hearing. The court relied 600 Foothill's RJN, Exh. D at 82 and Exh. E at 149. Respondents correctly argued resort to legislative history here is inappropriate given the plain language of the statute and lack of ambiguity. (See *River Garden Retirement Home v. Franchise Tax Bd.* (2010) 186 Cal.App.4th 922, 942.) While the parties later agreed the court could rely on all of the evidence that had been submitted by the parties, the court nonetheless revised its decision to eliminate the discussion of legislative history. Given Respondents' argument, there can be no claim the statute is unclear. "If there is no ambiguity, we presume the Legislature meant what is said and the plain meaning of the language controls." (*Ibid.*)

[17] In any event, as discussed *infra*, the court concludes the City did not adopt a substantially compliant housing element until after 600 Foothill submitted its complete Preliminary Application. Accordingly, even if the statutory bar of section 65588, subdivision (e)(4)(C)(iii) does not apply to the courts, the court still concludes the Builder's Remedy applies to the Project.

[18] As noted *supra* in footnote 16, Respondents agree there is no ambiguity in the statute.

completes its required rezoning. (*Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc.* (2003) 111 Cal.App.4th 1328, 1345, fn. 16 [failure to address point is "equivalent to a concession"].)

Respondents contend the "City could not rezone until it had a General Plan Housing Element under Section 65860(c), HCD did not promulgate draft [Affirmatively Further Fair Housing] requirements for the 6th Cycle housing element until April 23, 2020, and did not promulgate the final version until April 2021, only six months before the then-existing deadline (within SCAG) for submitting a 6th RHNA Cycle Housing Element." (Opposition to CHDF 8: 11-15.)

Respondents' evidence does not demonstrate actions or omissions of HCD or the Southern California Association of Governments (SCAG) precluded the City from adopting a substantially compliant housing element or the required rezoning. Director Koleda advises the final affirmatively further fair housing requirements were available by April 2021, and the City's RHNA increased by only two dwelling units between March 22, 2021 and July 1, 2021. (Koleda Decl. ¶¶ 20, 36.) As persuasively argued by Intervenors, the City "had sufficient time to accommodate its RHNA allocation, or at the very least, the two additional dwelling units added between March and July 2021." (Intervenors' Reply 16, fn. 8.) Respondents also do not show, with persuasive evidence, the timing of HCD's promulgation of affirmatively further fair housing requirements prevented the City from adopting a substantially compliant housing element.

Respondents also argue section 65588, subdivision (e)(4)(C)(iii)'s rezoning requirement "is illegal, unconstitutional, and unenforceable" because "[t]he Government Code specifically contemplates that rezoning will occur after adoption of an amendment to a General Plan, including Housing Elements, ..." (Opposition to Intervenors 12:19, 14:26-27.) Respondents' statutory argument is not fully developed, lacks sufficient analysis of governing legal principles, and is unpersuasive.

Respondents wholly fail to explain how section 65588, subdivision (e)(4)(C)(iii) is "illegal" or "unconstitutional." At most, Respondents assert section 65588, subdivision (e)(4)(C)(iii) conflicts with other statutes requiring consistency between the zoning ordinances of a general law city and its general plan, and the requirement such zoning ordinances be amended "within a reasonable time" to be consistent with a general plan that is amended. (Opposition to Intervenors 13:13-16 [citing § 65860].)

Respondents do not show a conflict between section 65588, subdivision (e)(4)(C)(iii) and section 65860 or any other statute. Contrary to Respondents' assertion, a city could comply with both statutes. Thus, as argued by 600 Foothill, a city could update its zoning simultaneously with the adoption of its housing element. A city could also adopt a housing element that is provisionally certified by HCD and then subsequently complete the rezoning, which is what occurred here. While section 65588, subdivision (e)(4)(C)(iii) may subject a city to the Builder's Remedy it if does not complete its rezoning at the same time adopts its housing element, Respondents do not show such possibility conflicts with section 65860 or that the

Legislature lacked the authority to impose such measures to encourage the development of housing.[19]

Because the City had not completed its required rezoning, the City's housing element was not in substantial compliance with the Housing Element Law when 600 Foothill filed the Preliminary Application in November 2022. As a result, the City Council prejudicially abused its discretion when it found the Builder's Remedy did not apply to the Project in its May 1, 2023 Decision.

Did the City's October 2022 Housing Element Substantially Comply with the Housing Element Law Without Consideration of Rezoning?

In its May 1, 2023 Decision, the City Council found "the 'builder's remedy' under the Housing Accountability Act does not apply and is not available for the project . . . because the City's Housing Element was, as of October 4, 2022, in substantial compliance with the Housing Element law." (AR 7167.) Petitioners contend the City Council's finding was a prejudicial abuse of discretion. The court agrees. The October 4, 2022 Housing Element was not in substantial compliance with the Housing Element Law.

Standard of Review—Substantial Compliance with Housing Element Law

"In an action to determine whether a housing element complied with the requirements of the Housing Element Law, the court's review 'shall extend to whether the housing element . . . *substantially complies* with the requirements' of the law. (§ 65587, subd. (b), italics added.) Courts have defined substantial compliance as '*actual* compliance in respect to the substance essential to every reasonable objective of the statute,' as distinguished from 'mere technical imperfections of form.' [Citations.] Such a review is limited to whether the housing element satisfies the statutory requirements, 'not to reach the merits of the element or to interfere with the exercise of the locality's discretion in making substantive determinations and conclusions about local housing issues, needs, and concerns.' " (*Martinez, supra,* 90 Cal.App.5th at 237.)

HCD is mandated by statute to determine whether a housing element substantially complies with the Housing Element Law. (See e.g., § 65585, subds. (i)-(j); Health & Saf. Code § 50459, subds. (a), (b).) Given HCD's statutory mandate and its expertise, HCD's determination of substantial compliance with the Housing Element Law, or lack thereof, is entitled to deference from the courts. (See *Hoffmaster v. City of San Diego* (1997) 55 Cal.App.4th 1098, 1113, fn. 13

[19] Further, even assuming a conflict existed, Respondents do not explain why section 65860 would take precedence over section 65588, subdivision (e)(4)(C)(iii) under the specific circumstances presented here (i.e., a statutory bar to attaining substantial compliance with the Housing Element Law until rezoning is complete). (See *State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 960-961. ["If conflicting statutes cannot be reconciled, later enactments supersede earlier ones [citation], and more specific provisions take precedence over more general ones."])

["We substantially rely on the Department of Housing and Community Development's interpretation [. . .] regarding compliance with the housing element law . . . ."]; accord *Martinez, supra,* 90 Cal.App.5th at 243 ["courts generally will not depart from the HCD's determination unless 'it is clearly erroneous or unauthorized' "].)

However, "HCD's housing element compliance determinations are not binding on courts." (See Intervenor Reply 10:2; see also 600 Foothill Opening Brief 15:8-9.) The trial and appellate courts "'independently ascertain as a question of law whether the housing element at issue substantially complies with the requirements of the Housing Element Law.' . . ." (*Martinez, supra,* 90 Cal.App.5th at 237.)[20] Thus, to be clear (and as noted during the hearing) the court has not deferred to HCD concerning substantial compliance—the issue is properly subject to the court's independent review as a question of law.

Affirmatively Further Fair Housing

As background, HCD found the City's October 2022 Housing Element did not substantially comply with the City's duties under the Housing Element Law to analyze how the housing element will affirmatively further fair housing. Specifically, HCD wrote:

> While the element now analyzes census tracts and sites with a concentration of affordable units (p. D71-73), it should still discuss whether the distribution of sites improves or exacerbates conditions. This is critical as the sites to accommodate the lower-income households are only located along Foothill Boulevard near the 210 Freeway. If sites exacerbate conditions, the element should include programs to mitigate conditions (e.g., anti-displacement strategies) and promote inclusive communities. (AR 5263-5264.)

HCD also found "the element must include a complete assessment of fair housing. Based on the outcomes of that analysis, the element must add or modify programs." (AR 5264.)

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[20] While *Martinez* advises " '[t]he burden is on the challenger to demonstrate that the housing element . . . is inadequate" (*ibid.*), the HAA provides the City "bear[s] the burden of proof that its decision has conformed to all of the conditions specified in Section 65589.5." (§ 65589.6; see also § 65587, subd. (d)(2) [city has burden of proof in action to compel compliance with requirements of section 65583, subd. (c)(1)-(3)].) The parties do not address the language in *Martinez* or how it should be applied, if at all, in this proceeding. The court concludes based on sections 65589.6 and 65587, subdivision (d)(2) the burden is on Respondents to show the City Council's May 1, 2023 Decision complied with the HAA. Such a showing requires the City to demonstrate it attained substantial compliance with the Housing Element Law before 600 Foothill's submitted its Preliminary Application and it was "deemed complete." The court notes and clarifies, however, it would reach the same result herein even if the initial burden of proof is with Petitioners.

Housing elements must contain "an inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level"—the "sites inventory." (§ 65583, subd. (a)(3).) The sites inventory must be accompanied by "an analysis of the relationship of the sites identified in the land inventory to the jurisdiction's duty to affirmatively further fair housing." (*Ibid.*) In addition, each updated housing element must include "a statement of the community's goals, quantified objectives, and policies relative to affirmatively furthering fair housing" (§ 65583(b)(1)), and must commit to programs that will, among other things, "Affirmatively further fair housing in accordance with [Section 8899.50]." (§ 65583, subd. (c)(10).)[21]

Here, the October 2022 Housing Element discloses the sites identified by the City to accommodate affordable housing are all located near the Foothill Freeway. (AR 5130.) In this context, HCD found the October 2022 Housing Element lacked sufficient analysis of the relationship of the sites identified in the land inventory to the City's duty to affirmatively further fair housing, i.e. whether the site inventory would improve or exacerbate fair housing conditions. (AR 5263-5264.)

Respondents do not cite to any specific analysis in the October 2022 Housing Element addressing the concern raised by HCD. (See Opposition to 600 Foothill 9:14 [citing AR 1741, 5203].) In fact, neither AR 1741 nor 5203 demonstrate the October 2022 Housing Element analyzed how the clustering of affordable housing near the Foothill Freeway would promote or exacerbate fair housing. While Respondents now explain in the context of *this proceeding* why the City clustered all affordable housing near the freeway (See Koleda Decl. ¶¶ 9-16),

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[21] Section 8899.50, subd. (b)(1) provides: "A public agency shall administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and take no action that is materially inconsistent with its obligation to affirmatively further fair housing." Compliance with the obligation is mandatory. (*Id.* at subd. (b)(2).) The statute defines "affirmatively further fair housing" as:

> taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development. (*Id.* at subd. (a)(1).)

Respondents were required to include that analysis in the October 2022 Housing Element. (See § 65583, subds. (a)(3), (b)(1), and (c)(10).)[22]

Respondents contend the "City undertook numerous outreach efforts to reach a variety of economic groups, including via two housing workshops with 18 different stakeholder organizations." (Opposition to 600 Foothill 9:10-12 [citing Koleda Decl. ¶¶ 38-50 and AR 3896-3900, 4651].) Respondents do not cite any authority that outreach alone satisfies the City's statutory obligations to include in its housing element "an **analysis** of the relationship of the sites identified in the land inventory to the jurisdiction's duty to affirmatively further fair housing." (§ 65583, subd. (a)(3) [emphasis added].) Exercising its independent judgment on the statutory question, the court concludes outreach alone does not substantially comply with the requirement—outreach does not constitute analysis.

The deficiencies in the October 2022 Housing Element as to the affirmatively further fair housing analysis are demonstrated by changes made by the City in the February 2023 Housing Element.[23] Specifically, the February 2023 Housing Element added analysis—"the sites to accommodate the lower and moderate-income households are concentrated primarily in the western end of the City along the Foothill Boulevard Corridor, and near the 210 Freeway." (AR 6090.) The analysis recognized "adverse air quality conditions have the potential to be exacerbated" based on "close proximity to the freeway[.]" (AR 6090.) In addition, the revised February 2023 Housing Element committed to Program 24 to mitigate these impacts. (AR 6091; See also AR 5577-5578 [adding Program 24, "Mitigation for Housing in Proximity to Freeways" committing to building design measures for new residential development near the freeway].)

Respondents contend "those air quality mitigation measures were adopted in 2013 and the 2023 Housing Element merely added a heading regarding these existing measures." (Opposition to 600 Foothill 9:7-8 [citing Koleda Decl. ¶ 33 and AR 4515].) Respondents cite AQ Policy 1.1.6 from its General Plan Air Quality Element, which states the policy to "Ensure that new developments implement air quality mitigation measures, such as ventilation systems, adequate buffers, and other pollution reduction measures and carbon sequestration sinks, especially those that are located near existing sensitive receptors." (Koleda Decl. ¶ 33.)

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[22] During argument, Respondents suggested the material included in the February 23, 2023 housing element had previously been provided in the October 2022 Housing Element. While it is true Table D-12 can be found in both versions of the housing element (compare AR 6090 p. D22 with AR 5158 p. D22), the February 23, 2023 revisions to the October 2022 Housing Element (AR 6090-6092) included additional narrative material beyond repeating information from Los Angeles County's Department of Public Health. Further, AR 5193-5204, identified by Respondents during the hearing as an analysis of how the clustering of affordable housing near the Foothill Freeway would promote or exacerbate fair housing within the October 2022 Housing Element, does not appear to address the issue. Finally, it does not appear Respondents cited any of this material in their briefs before the court in response to the claims raised by Petitioners. 600 Foothill objected to the argument as new during the hearing.

[23] See *supra* footnote 22.

While Program 24 and AQ Policy 1.1.6 have similarities, they are not the same. Program 24 identifies specific mitigation measures that apply to receptors near the freeways and is enforceable by HCD. (See § 65585, subd. (i) [requiring HCD to investigate a "failure to implement any program actions included in the housing element."].) In contrast, AQ Policy 1.1.6 is a shorter and more general policy that is *not enforceable by HCD* as a housing element program. Contrary to Respondents' assertion, the inclusion of Program 24 in the February 2023 Housing Element supports HCD's findings that the October 2022 Housing Element lacked sufficient analysis of the City's affirmatively further fair housing obligations.

Exercising its independent judgment on the issue, the court concludes the City's October 2022 Housing Element did not substantially comply with the affirmatively further fair housing requirements in section 65583, subdivisions (a)(3), (b)(1), and (c)(10).[24]

Nonvacant Sites Analysis

HCD found the October 2022 Housing Element's analysis of nonvacant sites did not sufficiently analyze "redevelopment potential and evaluate the extent existing uses impede additional development." (AR 5264.) HCD also found "as the element relies on nonvacant sites to accommodate 50 percent or more of the housing needs for lower-income households, the adoption resolution must make findings based on substantial evidence in a complete analysis that existing uses are not an impediment and will likely discontinue in the planning period." (AR 5264.)

For nonvacant sites, the Housing Element Law provides "the city or county shall specify the additional development potential for each site within the planning period and shall provide an explanation of the methodology used to determine the development potential." (§ 65583.2, subd. (g)(1).) In addition, "when a city or county is relying on nonvacant sites . . . to accommodate 50 percent or more of its housing need for lower income households, the methodology used to determine additional development potential shall demonstrate that the existing use . . . does not constitute an impediment to additional residential development during the period covered by the housing element. An existing use shall be presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued during the planning period." (§ 65583.2, subd. (g)(2).)

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[24] In reaching this conclusion, the court has considered Respondents' assertion the City undertook outreach efforts "in the face of 'changing goal posts' and what appeared to be intentional obstructive behavior by HCD." (Opposition to 600 Foothill 9:16-21.) The court finds Respondents' evidence does not prove substantial compliance with the affirmatively further fair housing requirements in section 65583 or an excuse from substantial compliance. (See e.g. Koleda Decl. ¶¶ 49-50.) The court has also considered CHDF's arguments and evidence that the City discriminated on the basis of race and income when it selected sites for rezoning. The court further discusses CHDF's claims of discrimination and bad faith *infra*.

The Court of Appeal explains "there are many types of sites the Legislature has either deemed infeasible to support lower income housing or that require additional evidence of their feasibility or by-right development approvals before being deemed adequate to accommodate such housing [including] . . . when a city relies on over 50 percent of the inventory to be accommodated on nonvacant sites . . . . The goal is not just to identify land, *but to pinpoint sites that are adequate and realistically available* for residential development targets for each income level." (*Martinez, supra,* 90 Cal.App.5th at 244 [emphasis added].)

Here, more than 50 percent of the parcels included in the City's site inventory to accommodate the lower income RHNA are nonvacant. (AR 4506.) Accordingly, the City is required to comply with section 65583.2, subdivision (g)(2). The site inventory in the October 2022 Housing Element does not show substantial compliance with section 65583.2, subdivision (g)(2). (See AR 5124-5129.) The criteria used to describe nearly all of the lower income nonvacant sites are some combination of "underutilized site," "buildings that are older than 30 years," "vacant lot or parking lot with minimal existing site improvements," "property has not been reassessed" in some time, "antiquated commercial uses," or "existing use retained and institution would add residential units." (AR 5124-5129; see also AR 4601-4603 [discussing methodology].) While these factors may be relevant to and inform on the analysis of "additional development potential" required by section 65583.2, subdivision (g)(1), they do not sufficiently address in any substantive way whether the sites are "likely to be discontinued during the planning period," as required by section 65583.2, subdivision (g)(2).

In the resolution adopting the October 2022 Housing Element, the City Council made the following finding:

> Based on general development trends resulting from continuously rising land values, changes in desired land uses, the financial pressures placed on religious institutions that have been impacted by falling congregation numbers, aging structures, and underutilized properties, rising demand for housing, adjacency to public transportation and commercial services, and other factors/analysis as identified in the Section 9.4.1.3 Future Residential Development Potential and Section 9.4.1.4 Overview of Residential Development Potential and Realistic Capacity Assumptions by Zone of the Housing Element, the existing uses on the sites identified in the site inventory to accommodate the lower income RHNA are likely to be discontinued during the planning period, and therefore do not constitute an impediment to additional residential development during the period covered by the housing element. (AR 4506.)

The City Council's generalized statement does not reference any specific evidence to support a finding the existing uses of nonvacant sites, which were identified to accommodate housing need for lower income households, are "likely to be discontinued during the planning period." (§ 65583.2, subd. (g)(2).)

Further, Petitioners cite record evidence that the owners of several of the nonvacant sites included in the October 2022 site inventory, including certain sites identified for lower income households, informed the City they did not intend to redevelop the site or discontinue the existing use during the planning period. (See AR 5114-5116, 2222, 2238, 2206, 5126, 12812, 5233, 5123-5129, 6054-6061.)[25] Significantly, the City subsequently amended the housing element to disclose that some of the identified lower income category sites are "not currently available" and were included in the site inventory "as a buffer site because it may become available further along in the 6th cycle HE planning period." (AR 6054-6061, 6098.) Such a change in characterization is a major substantive change in the site inventory and demonstrates the October 2022 Housing Element did not substantially comply with the Housing Element Law.

The court has also reviewed Director Koleda's summary of changes to the October 2022 Housing Element. The court concludes, on the whole, Director Koleda's summary is consistent with Petitioners' arguments the October 2022 Housing Element was not substantially compliant and required significant changes. (See Koleda Decl. ¶ 56 and Exh. A.) As Intervenors argue, the substantial changes to the October 2022 Housing Element show the City did not substantially comply with section 65583.2, subdivision (g)(2) until *after* it adopted the October 2022 Housing Element.

Respondents assert the City "adopted a Site Inventory using both a data-driven model endorsed by HCD . . . and along with that gathered 'substantial evidence' by sending TWO mailings to each commercial and religious property owner in the City to determine potential inclusion on the Site Inventory." (Opposition to 600 Foothill 11:9-12 [citing Koleda Decl. ¶¶ 29, 54-56].) However, Respondents do not dispute it included multiple nonvacant sites in the October 2022 Site Inventory for which the City lacked substantial evidence, *in October 2022*, that the existing uses were "likely to be discontinued during the planning period." (§ 65583.2, subd. (g)(2).) Notably, Respondents do not cite any written communications with the nonvacant site owners, prior to the adoption of the October 2022 Housing Element, as evidence the uses were "likely to be discontinued during the planning period." (§ 65583.2, subd. (g)(2).)

Respondents assert their methodology should be sufficient. During the hearing, they followed HCD guidance and should not be penalized for doing so. Respondents also argue for purposes of section 65583.2, subdivision (g)(2), they should not be required to knock on owners' doors and undertake an active investigation for its sites inventory.

The court cannot find on this record the City followed HCD guidance on the section 65583.2, subdivision (g)(2) issue. While the City's reliance on methodology alone may be consistent with

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[25] For example, a representative of a restaurant (Panda Express) wrote "we have NO intention of discontinuing the current use of this property during the next eight-year housing planning period." (AR 5115.) The owner of sites 86-89 on the October 2022 site inventory (identified in the lower income category) similarly informed the City that the premises are leased to retail store (Big Lots) under a 20-year lease with two 10-year extension options, and it had no intention of discontinuing the current use during the planning period. (AR 5116.)

HCD's section 65583.2, subdivision (g)(1) compliance guidance, that is not the case for section 65583.2, subdivision (g)(2).

As discussed during the hearing, HCD guidance specifies at Step 3 how to prepare a nonvacant sites inventory when a municipality has relied on "nonvacant sites to accommodate more than 50 percent of the RHNA for lower income households." (Koleda Decl., Exh. Q p. 26.) Consistent with section 65583.2, subdivision (g)(2), the guidance makes clear:

> If a housing element relies on nonvacant sites to accommodate 50 percent or more of its RHNA for lower income households, the nonvacant site's existing use is presumed to impede additional residential development, unless the housing element describes findings based on substantial evidence that the use will likely be discontinued during the planning period. (*Id.* at 27.)

"The goal is not just to identify land, *but to pinpoint sites that are adequate and realistically available* for residential development targets . . . ." (*Martinez, supra,* 90 Cal.App.5th at 244 [emphasis added].) Accordingly, HCD guidance also explains the "housing element should describe the findings and include a description of the substantial evidence they are based on," and a housing element "should describe the findings and include a description of the substantial evidence they are based on." (Koleda Decl., Exh. Q at 27.)
(*Ibid.*)

HCD further advised substantial evidence "includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (*Ibid.*) HCD provides specific examples of what constitutes substantial evidence "that an existing use will likely be discontinued in the current planning period . . . ." (*Ibid.*) Those examples include:

> [1] The lease for the existing use expires early within the planning period,
> [2] The building is dilapidated, and the structure is likely to be removed, or a demolition permit has been issued for the existing uses,
> [3] There is a development agreement that exists to develop the site within the planning period,
> [4] The entity operating the existing use has agreed to move to another location early enough within the planning period to allow residential development within the planning period.
> [5] The property owner provides a letter stating its intention to develop the property with residences during the planning period. (*Ibid.*)

Of the 21 nonvacant sites identified by the City as "sites that are adequate and realistically available for residential development targets" for lower income persons (*Martinez, supra,* 90 Cal.App.5th at 244), 19 percent or only four (sites 74, 91, 95 and 96) provide any site-specific evidence to support the City's inclusion of the site in its sites inventory. (AR 5124-5128.) For the four sites, the owner indicated some interest in redevelopment. (AR 5126, 5128.) The

remaining sites rely on the City's generalized methodology to meet their obligations under section 65583.2, subdivision (g)(2).

Respondents argue 600 Foothill's principal "actively manipulated" certain sites that were later deemed "buffer sites." (Opposition to 600 Foothill 10:22.) Respondents also blame deficiencies in their October 2022 site inventory on "dilatory guidance" of HCD and dilatory actions of SCAG. (Opposition to 600 Foothill 12:9-10.) Having considered the evidence cited by Respondents, the court finds Respondents' arguments unpersuasive. As discussed *infra* with Respondents' unclean hands defense, Respondents do not demonstrate 600 Foothill or its principals have engaged in any inequitable or wrongful conduct related to these proceedings, including the City's adoption of its housing element. Respondents also do not prove deficiencies in the site inventory of the October 2022 Housing Element resulted from actions or omissions of 600 Foothill, SCAG or HCD. Nor do Respondents cite any authority suggesting a city or county may be excused from substantial compliance with the Housing Element Law based on actions or omissions of SCAG, HCD or a project applicant.

Respondents contend the City was permitted "to rely upon letters with site owners and between itself and HCD not included specifically in its Housing Element" and the City "made reasonable inferences" from the information it received from site owners. (Opposition to 600 Foothill 12:15-19.) Respondents rely on *Martinez* to support their claims. (See *Martinez, supra,* 90 Cal.App.5th at 248.)

Martinez addressed the City of Clovis' nonvacant site analysis under section 65583.2, subdivision (g)(1); the Court did not analyze the heightened requirements of section 65583.2, subdivision (g)(2). (See *Martinez, supra,* 90 Cal.App.5th at 248-250.) While *Martinez* held the substantive material required by section 65583.2, subdivision (g)(1), need not appear in the Housing Element itself, the Court did not suggest nonvacant sites may be included in a site inventory if the agency lacks substantial evidence, or has not sufficiently investigated or analyzed, whether the sites are "likely to be discontinued during the planning period." (§ 65583.2, subdivision (g)(2).)

Here, Respondents have not cited substantial evidence to support the City's position multiple nonvacant sites listed in the October 2022 inventory could realistically be developed in a manner to satisfy the City's RHNA obligations. In addition, that Respondents made substantive revisions to the site inventory **after** October 2022 also supports a reasonable inference the City did not complete the analysis and attain the evidence required by section 65583.2, subdivision (g)(2), for many of the sites on its site inventory, **before** it adopted the October 2022 Housing Element. (Compare AR 5124-5129 with 6054-6061.)

Exercising its independent judgment, the court concludes the City's October 2022 Housing Element did not include a nonvacant site analysis that substantially complied with the Housing Element Law, including section 65583.2, subdivision (g)(2).

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Realistic Assessment of Development Capacity

The Housing Element Law requires that municipalities "specify for each site [in its inventory] the number of units that can realistically be accommodated on that site." (§ 65583.2, subd. (c).) The law provides "the number of units calculated" for each site "shall be adjusted" to account for "the land use controls and site improvements requirement identified in paragraph (5) of subdivision (a) of Section 65583, the realistic development capacity for the site, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction, and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities." (*Id.* at subd. (c)(2).)

CHDF contends the October 2022 Housing Element did not substantially comply with these statutory provisions because it failed to apply a "downward adjustment on the number of units projected on each site to account for, among other constraints, the City's maximum floor-area ratio of 1.5 (AR 4607), its 80-percent maximum lot-coverage requirement (AR 4566), its 35-foot height limit (AR 4567), and significant parking requirements (AR 4572) for sites in mixed-use zones." (CHDF Opening Brief 20:4-7.)

Respondents did not address or rebut CHDF's argument. (*Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc., supra,* 111 Cal.App.4th at 1345, fn. 16 [failure to address point is "equivalent to a concession"].) The court concludes the City's October 2022 Housing Element did not substantially comply with Housing Element Law because the City failed to adjust the development capacity for each site based on the factors set forth in section 65583.2, subdivision (c)(2).[26]

Government Code Section 65583.2, Subdivision (h)

CHDF argues fewer than 50 percent of the October 2022 Housing Element's low-income sites were zoned exclusively for residential use, and the City did not include analysis showing it would "accommodate all of the very low and low-income housing need on sites designated for mixed use [and] allow 100 percent residential use and require that residential use occupy 50 percent of the total floor area of a mixed-use project." (CHDF Opening Brief 20:21-23 [citing § 65583.2, subd. (h)].) CHDF supports its assertion with citations to the administrative record. (CHDF Opening Brief 21:1-4 [citing AR 5124-5129, 4607-4610]; see also AR 4612.) Based on the

[26] During argument, the court engaged CHDF and Respondents at length on this issue. While Respondents provide an explanation that their rezoning included the required adjustments, the court finds Respondents conceded the issue by not addressing it in their brief. (Compare CHDF Opening Brief 19:20-20:15 with Opposition to CHDF 10:10-11:20.) Respondents' analysis of development constraints is not entirely clear and undeveloped in their brief. (See AR 4565-4570.)

evidence, CHDF argues the October 2022 Housing Element did not substantially comply with section 65583.2, subdivision (h).[27]

Respondents do not squarely address CHDF's position, and they do not show, with citation to the administrative record, the October 2022 Housing Element substantially complied with section 65583.2, subdivision (h). (Opposition to CHDF 12:4-9.) Accordingly, the court concludes the October 2022 Housing Element did not substantially comply with the Housing Element Law for this reason as well.

Based on the foregoing, the court concludes the October 2022 Housing Element did not substantially comply with the Housing Element Law. Accordingly, the City Council prejudicially abused its discretion when it found in its May 1, 2023 Decision the Builder's Remedy did not apply to the Project.

Respondents' Defenses to the HAA Causes of Action

Respondents raise a defense of unclean hands to the HAA causes of action asserted by 600 Foothill. Respondents also raise defenses of ripeness, exhaustion of administrative remedies, and claim the petitions violate rules designed to prevent piecemeal litigation.

Unclean Hands

A party seeking equitable relief must have "clean hands" and inequitable conduct by the party seeking relief is a complete defense. (*Dickson, Carlson & Campillo v. Pole* (2000) 83 Cal.App.4th 436, 446; *Salas v. Sierra Chem. Co.* (2014) 59 Cal.4th 407, 432.) The plaintiff must "come into court with clean hands, and keep them clean," or the plaintiff "will be denied relief, regardless of the merits of his claim." (*Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978.) For the doctrine to apply, "there must be a direct relationship between the misconduct and the claimed injuries." (*Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820, 846, citation omitted.)

Respondents contend "the only reasonable inference to draw [from the opposition evidence] is that on the eve of final review and approval of the Housing Element containing the Site Inventory, 600 Foothill's principal was running around town attempting to manipulate owners to 'decline' inclusion on the inventory and derail the process." (Opposition to 600 Foothill 14:2-5.) The court has reviewed all of the evidence cited by Respondents. (Koleda Decl. ¶¶ 46-51; Hernandez Decl. ¶¶ 4, 5; AR 7081-7085, 5233; Sheridan Decl. Exh. DD.) Respondents' assertion

[27] Section 65583.2, subdivision (h) provides in pertinent part: "At least 50 percent of the very low and low-income housing need shall be accommodated on sites designated for residential use and for which nonresidential uses or mixed uses are not permitted, except that a city or county may accommodate all of the very low and low-income housing need on sites designated for mixed use if those sites allow 100 percent residential use and require that residential use occupy 50 percent of the total floor area of a mixed-use project."

that Garret Weyand, one of 600 Foothill's principals, engaged in "deliberate attempts to manipulate the Site Inventory" is speculative and not supported by the evidence. (Opposition to 600 Foothill 10:22.) To the contrary, the court finds Weyand's public advocacy in support of the Project is not evidence of inequitable conduct. (See Reply Weyand Decl.) Respondents have not demonstrated, by a preponderance of the evidence, 600 Foothill or any of its principals, including Weyand and Jon Curtis, engaged in inequitable conduct that has a direct relationship to any cause of action in 600 Foothill's petition. Respondents failed to meet their burden of demonstrating unclean hands and their entitlement to the defense.[28]

Ripeness, Exhaustion, and Piecemeal Litigation

" 'A decision attains the requisite administrative finality when the agency has exhausted its jurisdiction and possesses 'no further power to reconsider or rehear the claim.' . . . Until a public agency makes a 'final' decision, the matter is not ripe for judicial review." (*California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1485.) Relatedly, "[t]he exhaustion doctrine precludes review of an intermediate or interlocutory action of an administrative agency. A party must proceed through the full administrative process 'to a final decision on the merits.' " (*Id.* at 1489.) There are exceptions to the exhaustion requirement, including "when the aggrieved party can positively state what the administrative agency's decision in his particular case would be." (*Edgren v. Regents of University of California* (1984) 158 Cal.App.3d 515, 520.)

Respondents do not show any lack of finality or any further administrative remedy to exhaust as to the May 1, 2023 Decision. The May 1, 2023 Decision of the City Council is final because there is no further avenue for administrative appeal. As discussed, the City disapproved (within the meaning of the HAA) the Project. Nothing in the HAA requires Petitioners to complete CEQA review before suing to enforce the HAA.

Respondents argue 600 Foothill did not sufficiently raise issues pursued in this proceeding, including that the City failed to rezone, the housing element does not meet its affirmatively further fair housing obligation, as well as the site inventory issues. The court concludes Petitioners sufficiently raised and preserved their contentions during the administrative proceedings. (See AR 6284-6286, 6307-6317.) Many of the issues in these petitions were also raised by HCD in letters to the City at the administrative level, including a notice of violation. (AR 7170-7175.)

Respondents argue "[n]o express 'disapproval' of the entire project occurred here . . . ." (Opposition to CHDF 16:25.) While not entirely clear, Respondents seemingly suggest 600 Foothill should *redesign the Project* to avoid reliance on the Builder's Remedy. Respondents do not develop an argument 600 Foothill has any legal obligation, under the circumstances here, to redesign the Project "as a standard, nonbuilder's remedy project." (AR 7103.). Respondents

[28] This defense only applies to 600 Foothill. Respondents do not develop any argument the HAA claims of CHDF or Intervenors are subject to the defense.

also do not show that any further administrative action, including appeal of the City's June 24, 2023 letter describing inconsistency between the Project and the City's general plan and zoning ordinances (see AR 7176), could remedy the harm suffered by 600 Foothill when the City Council determined the Builder's Remedy does not apply to the Project.

Moreover, Petitioners can positively state what the City's decision is with respect to 600 Foothill's application to develop the Builder's Remedy Project. In its May 1, 2023 Decision, the City Council made clear any required land use approvals or entitlements would not be issued for the Project as a Builder's Remedy project. Based on its review of the administrative record and the parties' declarations, the court finds no reasonable possibility Respondents, including the City Council, will change their position and process 600 Foothill's Project as a Builder's Remedy under the HAA. Accordingly, even if some additional appeal or administrative process were available, the futility exception to exhaustion applies under these facts. (See, e.g., *Felkay v. City of Santa Barbara* (2021) 62 Cal.App.5th 30, 40-41 [futility exception, which is a question of fact, applied where city "made plain" it would not permit the proposed development]; *Ogo Associates v. City of Torrance* (1974) 37 Cal.App.3d 830, 832-34 [futility exception applied where it was "inconceivable the city council would grant a variance for the very project whose prospective existence brought about the enactment of the rezoning" that necessitated the variance in the first place].)

Respondents do not demonstrate (1) the HAA claims in the petitions are unripe, (2) Petitioners failed to exhaust their administrative remedies, or (3) Petitioners have violated rules designed to prevent piecemeal litigation. Further, even if Petitioners have additional administrative remedies (such as an appeal of the June 24, 2023 inconsistency letter), the court finds exhaustion of such remedies is futile under the circumstances presented here.

CHDF's Claims of Bad Faith and Discrimination Based on Race and Income

CHDF contends:

> La Cañada Flintridge officials *clearly* acquiesced to the biases and prejudices of city residents when they revised the draft Housing Element's sites inventory and rezoning program to eliminate multiple 'low-income' sites south of Foothill Boulevard. This was a blatant violation of California and Federal fair housing laws alike. (See Gov. Code, § 65008, subd. (b)(1)(C) . . . ; Cal. Code Regs, tit. 2, § 12161, subd. (c) . . . ; *Mhany Management, Inc., supra*, 819 F.3d 581 . . . .) (CHDF Opening Brief 17:13-21.)

As acknowledged in reply, CHDF did not plead a cause of action in its petition alleging the City violated the Fair Housing Act or state or federal discrimination laws. (CHDF Reply 10:15-20.) CHDF also did not move to amend its petition or request leave to amend its petition. (See *Simmons v. Ware* (2013) 213 Cal.App.4th 1035, 1048. ["The pleadings are supposed to define the issues to be tried."])

In reply, CHDF argues the "City's discriminatory site-selection practices demonstrates the City did not substantially comply with the Housing Element Law's requirements to affirmatively further fair housing." (CHDF Reply 10:18-19.) However, CHDF failed to plead that claim in its petition. (See CHDF Reply 10:20-21 [citing CHDF Pet. ¶¶ 22, 26, 29-30 (generalized allegations the City "did not affirmatively further fair housing or provide an assessment of fair housing")].)

On the merits of CHDF's claim, even if the affirmatively further fair housing allegations in the petition are interpreted to encompass CHDF's arguments about race and income discrimination (a difficult task), the court finds Respondents' opposition persuasive. (Opposition to CHDF 13:5-15:21.) There is insufficient evidence the City Council "acquiesced" to or acted based on public comments at the August and September 2022 public hearings highlighted in CHDF's briefs. (See e.g., AR 2602-2603 ["different value system and much more high crime . . . the value system is different than people that move here"], 3491-3494 [similar comments from same individual at AR 2602-2603], 3539-3541, 3543-3545 ["dust off my shotgun" "likelihood of being some bad apples"], 3493 [additional similar comments from commenter at AR 2602-2603 and AR 3491-3494], 5107-5110 [crime and will become dangerous community], 5112 ["fear poor or homeless people will move into La Canada and bring crime"].)

While some of the public comments were quite unfortunate, CHDF cites statements of councilmembers out of context and does not show those councilmembers "agreed" with the public comments highlighted by Petitioners. (CHDF Opening Brief 10:13-11:6.) Even if the councilmembers could have stated their disagreement with certain public comments, but did not, there is insufficient evidence to support an inference the City Council took any action on the housing element based on the unfortunate public comments and discrimination.[29]

Other Contentions Related to the HAA Causes of Action

Several other contentions are not necessary to the court's ruling on the HAA claims. For completeness, the court briefly addresses them.

The court agrees with Intervenors that the City did not have authority under the HAA or Housing Element Law to backdate its housing element and "self-certify" or declare its housing element to be in substantial compliance with state law as of October 2022. (Intervenors Opening Brief 14:3-15:24.) Respondents appear to concede the point. (See Opposition to Intervenors 19:18-21:7 [asserting City did not back date or self-certify].)

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[29] During argument, 600 Foothill provided a series of acts undertaken by Respondents that it believed demonstrated bad faith. Many of those acts, however, flowed from the City's belief it properly adopted the October 2022 Housing Element or the City's violation of the Permit Streamlining Act (PSA) discussed *infra*. Based on all of the evidence before the court, the evidence is insufficient to establish the City acted with bad faith and "will continue to use all means to obstruct" as suggested by CDHF during argument.

As argued by 600 Foothill, when HCD found the October 2022 Housing Element did not substantially comply with the law, section 65585, subdivision (f) required City to take "one" of the following actions: "(1) Change the draft element or draft amendment to substantially comply with this article; [or] (2) Adopt the draft element or draft amendment without changes [, but with] written findings which explain the reasons the legislative body believes that the draft . . . substantially complies with this article despite the findings of the department." (600 Foothill Opening Brief 14:16-19.) The court agrees the "City unlawfully blended these approaches by making some changes in response to HCD's comments, adopting the February 2023 Housing Element with written findings explaining why the October 2022 Housing Element was sufficient, and then resubmitting its revised draft to HCD." (600 Foothill Opening Brief 14:19-22.)

If the City believed its October 2022 Housing Element substantially complied with the Housing Element Law, it should have taken the action set forth in section 65585, subdivision (f)(2). Thereafter, the City could have sued for a judicial declaration that its October 2022 Housing Element substantially complied with state law. The City did not do so here.

The court finds 600 Foothill's arguments based on section 65589.5, subdivisions (j) and (o) are not ripe at this time. Once ripe, the claims are subject to exhaustion. (See 600 Foothill Opening Brief 9:12-10:21; Pet. ¶¶ 134-162.) Upon the remand ordered here, the City is required to process the application as a Builder's Remedy project and in accordance with the HAA, including sections 65589.5, subdivisions (j) and (o). Thus, it is premature to adjudicate today whether the City has complied with those provisions of the HAA.

Relatedly, since the court concludes the City is required by law to process the application pursuant to the Builder's Remedy provision of the HAA, the court need not address the financial infeasibility of a redesigned project. (600 Foothill Opening Brief 8:21-9:3 and 10, fn. 6.)

Summary of HAA Causes of Action and Scope of Writ Relief

The court finds the City Council prejudicially abused its discretion with its finding in its May 1, 2023 Decision that the Builder's Remedy does not apply to the Project. As a remedy, the court grants 600 Foothill's petition and will issue a writ directing Respondents to set aside the May 1, 2023 City Council decision finding 600 Foothill's Project does not qualify as Builder's Remedy and compelling the City to process the application in accordance with the HAA and state law. That remedy is consistent with section 65589.5, subdivision (k)(1)(A)(ii) of the HAA (compliance required in 60 days) and Code of Civil Procedure section 1094.5, subdivision (f).

CHDF argues the court should order the Project "approved" due to the City's alleged bad faith and unlawful discrimination. (CHDF Opening Brief 23:18-24:24.) For the reasons discussed, the court finds evidence the City Council "acquiesced" to or acted based on the public comments from the August and September 2022 public hearings highlighted in CHDF's briefs insufficient. (See e.g., AR 2602-2603, 3491-3494, 3539-3541, 3543-3545, 3493, 5107-5110, 5112.) CHDF has

not met its burden of demonstrating Respondents acted in bad faith in connection with those public comments.

CHDF also argues "[w]hen 600 Foothill subsequently proposed a project under the HAA's builder's remedy, the City Council concocted a bizarre scheme to evade judicial review of their decision to disapprove that project, ..." (CHDF Opening Brief 24:15-18.) 600 Foothill contends the court should order Respondents to approve the Project on similar grounds. (600 Foothill Reply 18:13-19:8.) While the court finds the City prejudicially abused its discretion with its May 1, 2023 Decision finding the Builder's Remedy inapplicable to the Project, the court does not find sufficient evidence to conclude the City Council acted in bad faith when it made its legally incorrect decision.

Further, even if it could be argued the City Council lacked a good faith reason to find the Project did not qualify as a Builder's Remedy, Petitioners do not show it would be equitable for the court to compel the City to approve the Project. Among other reasons, CEQA review is specifically preserved by the HAA. (See § 65589.5, subds. (e) and (o)(6); *Schellinger, supra,* 179 Cal.App.4th at 1245.) In the exercise of the court's discretion, the court finds a writ compelling Respondents to approve the Project, without CEQA review, would not be an equitable or proportionate remedy for the violations of the HAA at issue. Respondents should be permitted on remand to process 600 Foothill's application, as a Builder's Remedy, in conformance with state law, including the HAA and CEQA.

Based on the foregoing, the HAA causes of action are GRANTED IN PART.

<u>600 Foothill's First Cause of Action – Violation of Housing Element Law</u>

600 Foothill prays for a writ of mandate "compelling Respondents to adopt a revised housing element pursuant to Government Code Section 65754. 2" and "to complete the required rezoning consistent with an HCD-approved housing element." (Pet. Prayer ¶¶ 1-2.) 600 Foothill filed its petition on July 21, 2023. The petition alleged the City had not substantially complied with the Housing Element Law at that time. (Pet. ¶ 91.)

As discussed, the City completed the required rezoning in September through November 2023, after 600 Foothill filed its petition. On November 17, 2023, HCD sent a letter to the City finding the City had "completed actions to address requirements described in HCD's April 24, 2023 review letter" and was in substantial compliance with the Housing Element Law. (See Coy Decl. ¶ 12, Exh. D.)

600 Foothill has not pleaded in the petition, or argued in its briefing, there is any deficiency in the February 2023 Housing Element that HCD found to be substantially compliant with the Housing Element Law in November 2023, after the City completed its rezoning. Accordingly, the first cause of action is moot. (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573 ["A case is considered moot when 'the question addressed was at one time a live issue in the case,' but has been deprived of life 'because of events occurring after

the judicial process was initiated.' . . . . 'The pivotal question in determining if a case is moot is therefore whether the court can grant the plaintiff any effectual relief.'"])

600 Foothill's first cause of action is DENIED as moot.

600 Foothill's Second Cause of Action – Affirmatively Furthering Fair Housing

600 Foothill prays for a writ "compelling Respondents to comply with their statutory obligation to Affirmatively Further Fair Housing." (Pet. Prayer ¶ 9.) 600 Foothill's writ briefing, however, only challenges the City's compliance with affirmatively further fair housing obligations as to the October 2022 Housing Element and required rezoning. (See 600 Foothill Opening Brief 21:10-12; Pet. ¶¶ 106-108.) 600 Foothill does not develop any argument the City's February 2023 housing element, after completion of the required rezoning, does not comply with the City's affirmatively further fair housing obligations. Accordingly, the second cause of action is moot. (*Wilson & Wilson, supra,* 191 Cal.App.4th at 1573.) Alternatively, to the extent 600 Foothill contends in the petition the City remains out of compliance with its affirmatively further fair housing obligations (see Pet. ¶ 105), 600 Foothill has not sufficiently supported its position with evidence and legal analysis.

600 Foothill's second cause of action is DENIED as moot.

600 Foothill's Sixth Cause of Action – Violation of the PSA

600 Foothill contends the City violated the PSA in several ways with its incompleteness determinations and the City Council's May 1, 2023 Decision. (600 Foothill Opening Brief 19:14-20-25; Pet. ¶¶ 163-175.) 600 Foothill prays for a writ "compelling Respondents review and process applications pursuant to the Permit Streamlining Act's provisions, including refraining from refusing to process development applications based on erroneous assertions of incompleteness." (Pet. Prayer ¶ 4.)

600 Foothill has demonstrated Respondents violated the PSA in at least two respects. Specifically, section 65943, subdivision (a) provides "[i]f the application is determined to be incomplete, the lead agency shall provide the applicant with **an exhaustive list** of items that were not complete." (Emphasis added.) In addition, the list "**shall** be limited to those items actually required on the lead agency's submittal requirement checklist." (*Ibid.* [Emphasis added].) "**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**." (*Ibid.* [Emphasis added].)

While neither party has cited any published authority interpreting these provisions, the plain language of section 65943, subdivision (a) is clear. The PSA required the City to provide 600 Foothill with an "exhaustive list" of incomplete items in its First Incompleteness Determination; incomplete items are limited to items on the City's "submittal requirement checklist"; and the City could not later request new information it omitted from the initial list. Respondents

provide no alternative interpretation of the statutory language. (Opposition to 600 Foothill 20:5-21:8.) Director Koleda reports "it is **a common practice** for the City to provide information to a developer in the early stages of the application review regarding ways that the development does not meet applicable development standards." (Koleda Decl. ¶ 42 [emphasis added].) Even if true, the City's common practice does not supersede the statutory requirements of the PSA.

In violation of these provisions of the PSA, the Second Incompleteness Determination found the Project was inconsistent with City's zoning and general plan standards because the Project did not qualify as a Builder's Remedy. (AR 6280-6281.) However, that issue was not raised in the First Incomplete Determination and was also not included on the City's submittal requirement checklist. (See AR 5276-5279, 6280-6281; see also Koleda Decl. ¶ 42.) Accordingly, the City violated section 65943, subdivision (a).[30]

Respondents suggest 600 Foothill was not prejudiced by the violations of the PSA because the application was deemed complete on May 26, 2023. (Oppo. to 600 Foothill 22:19-21 [citing AR 7169].) Respondents do not cite any authority for the proposition that PSA violations are excused by a purported lack of prejudice. Moreover, 600 Foothill was prejudiced when Respondents made a legally unauthorized incompleteness determination.

600 Foothill does not cite a statute or published authority suggesting the appropriate remedy for these types of violations of the PSA is an order compelling the City to approve the project. As discussed for the HAA causes of action, the court will grant a writ directing Respondents to set aside the City Council's May 1, 2023 Decision and process 600 Foothill's application in accordance with the HAA. The violations of the PSA proven by 600 Foothill provide additional support for that remedy. 600 Foothill does not demonstrate any additional relief is justified under the PSA.

To the extent 600 Foothill prays for a writ directing the City to comply with the PSA in the future or with respect to development applications of non-parties (see Prayer ¶ 4), 600 Foothill

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[30] 600 Foothill also contends "Respondents' Second Incompleteness Determination was issued on March 1, 2023 (AR 6280-81) more than 30 days after Petitioner submitted the Project application on January 13, 2023." (600 Foothill Opening Brief 20:22-24.) 600 Foothill did not pay the fees for the application until January 31, 2023, which was less 30 days before March 1, 2023. (AR 7161-7162.) When submitting its application, the City advised 600 Foothill "the 30-day time limit to determine completeness of a development application per Government Code Section 65943 does not begin until all invoiced fees have been paid." (AR 7161-7162) Section 65943 is ambiguous as to whether the 30-day period begins running when the application is submitted/received or when the fees are paid. While 600 Foothill has a colorable argument the 30-day period began when City "received" the application on January 13, 2023, Respondents' alternative interpretation is also reasonable. 600 Foothill has not submitted any legislative history to support its interpretation. Accordingly, the court is not persuaded 600 Foothill met its burden as to it complaint about timeliness under the PSA.

does not sufficiently support such a prayer in its briefing. Specifically, 600 Foothill does not explain how it has standing to enforce the PSA on behalf of non-parties, or how any claim with respect to the City's future compliance with the PSA is ripe for judicial review.

600 Foothill's sixth cause of action is GRANTED IN PART. The court finds the City violated the PSA in the manner it processed 600 Foothill's application. As a remedy, the May 1, 2023 Decision finding that the application was incomplete because the Project does not qualify as a Builder's Remedy must be set aside. In all others respect, the sixth cause of action is DENIED.

600 Foothill's Seventh and Eighth Causes of Action – State Density Bonus Law and Subdivision Map Act

600 Foothill argues the City Council's May 1, 2023 Decision effectively denied 600 Foothill's requests for a density bonus and concessions or incentives under the State Density Bonus Law, and "necessarily constituted a disapproval" under the Subdivision Map Act. (600 Foothill Opening Brief 21:25-22:12; see Pet. ¶¶ 176-197.)

The court's analysis of the seventh and eighth causes of action is similar to that set forth earlier with 600 Foothill's claims under section 65589.5, subdivisions (j) and (o). Upon remand, the City will be required to process 600 Foothill's application as a Builder's Remedy and in accordance with the HAA and other state housing laws, including the State Density Bonus Law and the Subdivision Map Act. It is premature at this time to adjudicate whether the City has complied with those statutes. 600 Foothill has been informed that the City's review process under the State Density Bonus Law and the Subdivision Map Act is ongoing. (See AR 7176-7178, 7169.) Accordingly, 600 Foothill does not prove its seventh and eighth causes of action are ripe for judicial review or that the issues have been exhausted. Further, to the extent 600 Foothill seeks a writ directing the City to "approve" the Project in full, it does not demonstrate it is entitled to that remedy, as discussed earlier.

600 Foothill's seventh and eighth causes of action are DENIED.

600 Foothill's Ninth Cause of Action is Stayed

Respondents specially moved to strike 600 Foothill's ninth cause of action (right to fair hearing) pursuant to Code of Civil Procedure section 425.16. The court denied the motion, and Respondents appealed. Given the appeal, the ninth cause of action is stayed. (See Code Civ. Proc., §§ 425.16, subd. (i), 916, subd. (a); *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 195.)[31]

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[31] Respondents conceded at the time the court heard the special motion to strike that an appeal would stay only the ninth cause of action.

Causes of Action for Declaratory Relief by All Petitioners

Issuance of a declaratory judgment is discretionary. (Code Civ. Proc., § 1060.) Further, "it is settled that declaratory relief is not an appropriate method for judicial review of administrative decisions." (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 127; accord *Sheetz v. County of El Dorado* (2022) 84 Cal.App.5th 394, 414 ["administrative mandamus is 'the proper and sole remedy' to challenge a local agency's application of the law (e.g., application of a zoning ordinance to a particular property)"].)

Although the petitions include various requests for declaratory relief, all such requests pertain to the validity of City Council's May 1, 2023 Decision, including the City Council's determination the October 2022 Housing Element substantially complied with state law and the Project did not qualify as a Builder's Remedy. None of the Petitioners have developed a legal argument that declaratory relief is an appropriate, *or necessary*, form of judicial review of the administrative decisions at issue. Accordingly, Petitioners have not demonstrated they are entitled to declaratory relief.

600 Foothill's eleventh cause of action for declaratory relief, CHDF's second cause of action for declaratory relief, and Intervenors' second cause of action for declaratory relief are DENIED as unnecessary given the court's decision on the HAA causes of action.

Retention of Jurisdiction

The court found Respondents, "in violation of subdivision (d), disapproved a housing development project . . . without making findings supported by a preponderance of the evidence."[32] (§ 65589.5, subd. (k)(1)(A)(i).) Accordingly, the court is required to "retain jurisdiction to ensure that its . . . judgment is carried out . . . ." (*Id.* at subd. (k)(1)(A)(ii).)

CONCLUSION

The petitions of 600 Foothill, CHDF, and Intervenors to enforce the HAA are GRANTED IN PART. The court finds the City Council prejudicially abused its discretion when it found in its May 1, 2023 Decision that the Builder's Remedy does not apply to the Project. The court will grant a writ directing Respondents to set aside the City Council's decision, dated May 1, 2023, finding 600 Foothill's application does not qualify as a Builder's Remedy and to process the application in accordance with the HAA and state law. The HAA claims are denied in all other respects. 600 Foothill's first, second, seventh, and eighth causes of action are DENIED.

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[32] The City's finding its October 2022 Housing Element was in substantial compliance with the Housing Element Law was not supported by substantial evidence. As discussed *supra*, HCD had advised the City why the October 2022 Housing Element was not in substantial compliance. Moreover, Director Koleda on January 11, 12 and February 9, 2023 appeared to accept HCD's evaluation that the City could not achieve substantial compliance with the Housing Element Law without "additional changes" and "clarifications." (AR 12894, 13011.)

600 Foothill's sixth cause of action is GRANTED IN PART. The court finds the City violated the PSA in the manner it processed 600 Foothill's application and, as a remedy, the May 1, 2023 Decision finding the application was incomplete because the Project does not qualify as a Builder's Remedy must be set aside. In all others respect, the sixth cause of action is DENIED.

600 Foothill's ninth cause of action is stayed pending Respondents' appeal of denial of its anti-SLAPP motion. (See Code Civ. Proc. §§ 425.16, subd. (i), 916, subd. (a).)

600 Foothill's eleventh cause of action for declaratory relief, CHDF's second cause of action for declaratory relief, and Intervenors' second cause of action for declaratory relief are DENIED.

As to Case No. 23STCP02614 brought by CDHF, the court will enter judgment on the first cause of action in favor of CDHF and Intervenors on the first cause of action.

As to Case No. 23STPC02575 brought by 600 Foothill, the court does not enter judgment at this time given the pending appeal on 600 Foothill's ninth cause of action and Respondents' special motion to strike. The matter is continued to December 4, 2024 at 9:30 a.m. for a hearing on the status of Respondents' appeal.

The court will retain jurisdiction over this matter (in both cases) as required by section 65589.5, subd. (k)(1)(A)(ii).

IT IS SO ORDERED.

March 4, 2024

Hon. Mitchell Beckloff
Judge of the Superior Court

Los Gatos-Saratoga
UNION HIGH SCHOOL DISTRICT

Governing Board
Theresa Bond
Steve Chen
Dr. Misty Davies
Shawn Mortensen
Katherine Tseng

Acting Superintendent
Heath Rocha

May 8, 2025

Re: Public Comment for proposed 30-condo unit development at 151 & 141 Main Street

Dear Los Gatos Town Council,

On behalf of the Los Gatos-Saratoga Union High School District, we write to you united—as Acting Superintendent, Principal of Los Gatos High School, and representatives of the Board of Trustees—to express our shared concerns regarding the proposed 30-unit condominium development across the street from Los Gatos High School at 151 & 143 Main Street.

As active members of the Los Gatos community, we are not opposed to new housing. In fact, we recognize the importance of thoughtful development that adds value to our Town. However, thoughtful growth must never come at the expense of student safety. This is not just another routine proposed development—this is an upcoming construction site and future 4-story building proposed directly adjacent to a campus of over 2,000 children who cross, bike, skate, walk, and drive through that area every single day. Many are new drivers. Some have disabilities. All are vulnerable, especially during peak traffic times.

Our district has a long history of working collaboratively with developers to ensure student well-being remains the top priority when a project affects one of our schools. A recent example is our partnership with SummerHill Homes at the Los Gatos Lodge location to create a new emergency access point for the back of Los Gatos High School. That partnership works because both parties are committed to safety-first solutions.

This proposed development, however, raises urgent and unresolved questions:

- What benefit will this project bring to our students?
- What specific safety mitigations are planned—during and after construction?
- How can we make this development a partner to the school, not a risk?

This year alone, we've already experienced two student-involved traffic incidents near campus in that area. With the rise in e-bikes and fast-moving scooters, the margin for error is shrinking. We are gravely concerned that adding 50 to 60 more vehicles to an already congested zone—at the very time students are arriving or leaving campus—will only increase the risk of harm.

We respectfully urge the Council to act now by:

- **Mandating that construction not take place during robust traffic time: 7:30AM - 9:00AM and 2:00PM - 4:00PM.** After speaking during public comment at your last meeting, Principal Dave Poetzinger had the opportunity to invite the project's architect to the Los Gatos HS campus to observe morning drop-off firsthand. Ironically, it turned out to be what we would consider a *light* day—fewer students, fewer cars. But even then, the architect was visibly stunned by the level of congestion and activity on the streets surrounding the school at this time.

- **Requiring the developer to invest in safety enhancements**, such as signage, speed bumps, beacons, barriers, and crossing guards around the development on Church Street, High School Court, and Main Street.

- **Ensuring the parking garage doors include audible and visual exit alerts**, especially to aid students with visual impairments.

- **Requiring that any exit to the parking garage be on Main Street**, not Church Street due to wider lanes and greater visibility.

- **Conducting a full analysis of sight line obstructions** caused by the height and placement of the structure, which may hinder visibility for both drivers and pedestrians.

As stewards of our students' safety and advocates for their future, we urge you to hold this project to the highest standards of planning and accountability.

Let's move forward—but let's do so with caution, collaboration, and care.

Thank you for your time and commitment to our shared community.

Sincerely,

Steve Chen	Heath Rocha	Dave Poetzinger
Board President	Superintendent	Los Gatos HS Principal
on behalf of the		
Board of Trustees		

From: Dana Juncker [redacted]
Sent: Thursday, May 8, 2025 10:54 AM
To: Council <Council@losgatosca.gov>
Subject: Condo Development, Cafe Dio location

[EXTERNAL SENDER]

Good morning,

I am writing to express my concern with the condo development at the Cafe Dio location near the high school.

Has there been a traffic safety study done? There is already traffic issues around the high school. Parking issues and limitations on parking that make it almost impossible to do business, grocery shop in Los Gatos anymore. I'm also very concerned about emergency response times to the high school.

If the planned developments actually go in at the Cafe Dio and Los Gatos Lodge locations, there needs to be some serious traffic and emergency response planning for the area. The town council cannot just green light development projects without infostructure planning. And planning for the worst-case scenario at the school and how the emergency response is going to get there. How about another road that runs through the Los Gatos Lodge property direct to the highschool? Cutting off the need to go around on Los Gatos Blvd/N Santa Cruz Avenues to reach the highschool.

Someone needs to be on the side of the town and the kid's safety. Not just Governor Newsom's pawn. The Council is doing a disservice to the people and the businesses by greenlighting these projects and not letting the town know how it will all function cleanly, safely and respectfully.

Where's the plan?

Thank you,

Dana Juncker

[redacted]

[redacted]

"Come to the woods, for here is rest" ~ John Muir

LAW OFFICES OF
BRENT N. VENTURA
Inactive
[redacted]
LOS GATOS, CA 95032
[redacted]

May 12, 2025

Mayor Matthew Hudes and
Honorable Town Council Members
Town of Los Gatos
110 E. Main St.
Los Gatos, CA 95030

Re: Every SB330 Builders Remedy Projects Currently Pending Approval in Los Gatos:

101 S Santa Cruz Ave.
14288 Capri Dr.
15300- 15330 Los Gatos Blvd.
14849 Los Gatos Blvd.
15459-16392 Los Gatos Blvd.
15349-15367 Los Gatos Blvd.
15171 Los Gatos Blvd
14917-14925 Los Gatos Blvd
101 Blossom Hill Rd.
16492 Los Gatos Blvd.
143-151 E. Main St.
16250-16270 Burton Road
980 University Ave.
101 S. Santa Cruz Ave.
178 Twin Oaks Rd.
14789 Oka Rd.

Dear Mayor Hudes and Honorable Council Members,

Please accept this communication as a respectful plea to the Council to adopt a much more aggressive posture in reviewing all of these SB 330 applications. The current cautious and conservative review process, will fail to fully inform yourselves as decision makers of all the impacts on health and safety risks that these projects will impose on our community, especially when evaluated cumulatively.

The Town should insist that an EIR be conducted to identify all the impacts posed by these projects, rather than reviewing each individual application, especially the more massive developments. Or at a minimum, preparation of an EIR to

review the cumulative impacts all these projects will impose on a community such as ours with very limited resources.

Some of the impacts that are not being reviewed in any depth at all, during the current review process, include: the impacts on the Town's ability to fight urban wildfire, wildfire evacuation ability, building beyond the capacity of our urban waters supply system (to sustain fire fighting against wildfire), building beyond the capacity of our sewage system, building in known flood zones, cumulative impacts on our the capacities and service levels that can be sustained by our educational, roadway, emergency responders, and capital improvement systems.

These items address Health and Safety issues directly affecting current residents and the Town as a whole. Health and Safety issues should be a Town wide objective review standard. These are not issues affecting design or building standards. Health and Safety issues are protected review issues under the language of SB330. That statutory language recited protects the Town in taking action to gain information to promote public health and safety through the environmental review process.

SB 330 does not preclude a California jurisdiction from requiring EIRs for builder remedy projects. I have completed some research and I am unaware of any subsequent legislation that has been adopted by the State that specifically prevents jurisdictions from requiring Environmental Impact Reports on any SB 330 development application. If I am misinformed here, I apologize. But what I have heard is that the Governor's Emergency Declaration relating solely to the affected LA wildfire area, somehow, now prohibits agencies demanding EIRs be prepared for any Builders Remedy Projects. I strongly disagree. I believe the legal representatives of these applicants are attempting to intimidate and threaten our elected officials by claiming legal rights that have not yet been granted.

So unless there is specific legislation changing the original scope and rights specified in SB 330, this Council should and must proceed to demand EIRs to protect public health and safety. I firmly believe whatever financial risks you fear, will be acceptable to your constituents. The people of this community want to protect our unique quality of life and ensure the ongoing health and safety of all residents. The very people you represent would rather the Town fight these projects undermining public health and safety, then have its elected leaders throw its hand into the air and say, "There is nothing we can do."

It is a time for strong leadership and accepting some risks for the future well being of all. Courage not fear. The people of this community will rally behind you!

Respectfully submitted,

BRENT N. VENTURA

From: Brent Ventura [redacted]
Sent: Monday, May 19, 2025 2:57 PM
To: Council <Council@losgatosca.gov>
Subject: Attached Letter on need for Town to Consider adopting New Fire Building Code for projects exceeding 35; and 55'

[EXTERNAL SENDER]
Different code requirements depending upon building height and proximity to wildfire severity zone as determined by CalFire earlier this year.

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Law Offices of BRENT N. VENTURA
[redacted]

LAW OFFICES OF
BRENT N. VENTURA
Inactive
[redacted]

May 13, 2025

Mayor Matthew Hudes and
Honorable Town Council Members
Town of Los Gatos
110 E. Main St.
Los Gatos, CA 95030

Re: Every SB 330 Builders Remedy Projects Currently Pending Approval in Los Gatos:

101 S Santa Cruz Ave.
14288 Capri Dr.
15300- 15330 Los Gatos Blvd.
14849 Los Gatos Blvd.
5459-16392 Los Gatos Blvd
15349-15367 Los Gatos Blvd
15171 Los Gatos Blvd

14917-14925 Los Gatos Blvd
101 Blossom Hill Rd.
16492 Los Gatos Blvd.
143-151 E. Main St.
16250-16270 Burton Road
980 University Ave.
101 S. Santa Cruz Ave.
178 Twin Oaks Rd.
14789 Oka Rd.

Dear Mayor Hudes and Honorable Council Members,

Since the filing period for SB 330 projects has expired and the review process has first of which was two urban wildfires in the Los Angeles metropolitan area that manifested current fire codes and standards that identified inadequacies for emergency responders to save life and property. Firefighting resources proved woefully inadequate and the urban/municipal water supply was exhausted briefly after the conflagration commenced.The extreme risk of wildfire spreading in wildfire risk zones can be seen in the rapid spread of wildfire in the urbanized and densely populated areas that occurred in quarter-mile leaps by windblown embers.These areas, once thought completely safe from the threat, helped with the

consideration of community development by illustrating entirely new threats to health and safety issues.

The second critical change after 1/1/25 that occurred was when CALFIRE finalized its zone maps, identifying Los Gatos zones to be at severe wildfire risk. As you are well aware, the land area of Los Gatos indicated to be at risk for severe wildfire has greatly increased from what previous analysis had predicted. There are some SB 330 projects proposed that are either within, adjacent to, or within a half mile of a severe wildfire risk zone. The idea of greatly intensifying residential densities in areas identified as subject to severe wildfire risk is objective grounds to question the health and safety of proceeding with these projects. commenced, there have been two critically significant changes to the health and safety and the sustainability of residential habitation in identified portions of Los Gatos. Both of these critically significant public health and safety changes occurred after January 1, 2025.

Whether these facts alone give the Town valid legal grounds to deny these projects is an open legal question, but it does seem prudent for the Town to make inquiry and require the State and/or HCD to issue clear guidance to jurisdictions reviewing these projects. It must be brought into question and consideration whether public health and safety is protected and satisfied by allowing the construction of high density residential towers immediately adjacent to or within a half mile of severe wildfire risk zones.

If the State mandates these projects despite the patent and severe risks, then the Town should be indemnified from liability at least. The State should immunize jurisdictions for compelling them to approve high-density residential projects under SB 330 when doing so clearly raises very significant health and safety risks to both current and future residents of the community.

Regardless, Los Gatos as an independent government entity in California can proceed independently, without any prior authorization, to act on an Emergency basis and immediately protect the health and safety of its current residents by enacting a new Fire Building Code.

My legal research indicates that the Town, as its own independent legal government entity in California, has the right to enact and adopt its own specific Fire Building Codes that reflect the specific risks- geography, climate, and topography- of our jurisdiction. Los Gatos is not obligated to adopt and implement any national or Statewide Fire Code. The Town has the legal authority to draft, adopt, and implement its own Fire Code reflecting the very specific firefighting risks facing a hillside community with 3 different severe wildfire risk zones within its borders.

The Town is currently endangering the health and safety of its citizens, to whom they have a sworn duty to protect, by delegating the Building Fire Permit authority to a Central Fire Clerk working with an outdated Fire Code that was drafted and implemented without absolutely any consideration of the health and safety issues pertaining to:

- The severe wildfire risk zones coming down from the hillsides directly into Downtown Los Gatos;

- The LA wildfires that showed the urban water supply system failure, leaving firefighters without sufficient water pressure and adequate water supply to fight the wildfire;

-The emergency evacuation Notice failure and first responders being unsuccessful in evacuating the region exposed to fire, thus resulting in extremely high deaths and injuries;

- That the Los Angeles conflagration spread, burning areas up to a half a mile away that were uninvolved in the initial firestorm by windblown burning embers, which firefighters had no ability to contain;

- That building very high density high rise residential towers within, adjacent to, or within a half mile of severe wildfire risk zones presents an imminent, clear and present danger to public health and safety.

Los Gatos needs to immediately adopt a new Fire Building Code that incorporates and mitigates the harsh realities and lessons from the tragic LA wildfires. It must also account for the large area of the community identified to be located within a severe wildfire risk zone.

If Los Gatos does not act independently and immediately, it will take years for the administrative process to collaborate and develop a new statewide Firefighting Building Code to incorporate the recent lessons learned. Los Gatos needs to immediately take the leash of this beast on an emergency basis. In light of the imminent, clear, and present threat to public health and safety, Los Gatos should adopt a new Fire Building Code that all new construction projects in Los Gatos must satisfy in order to obtain necessary permits before any construction can commence.

From my review of some of the revised development plans submitted for some of the taller projects that are 6-13 story towers, they indicate that the supply of water is only to that tower's fire suppression needs and will significantly lower the water pressure available to the surrounding neighborhood. The plans also indicate the specifics on their Fire Suppression Plans will be "deferred" until the time of submission of the permits. This appears to be an obfuscation and is misleading the Town and Central Fire of the wildfire and firefighting risks addressed in this correspondence.

There is no need or requirement under state law that existing homeowners and neighborhoods should have their emergency water pressure reduced in order to facilitate these SB 330 projects. In fact, the underlying guidance in SB 330 is that these projects should proceed only where consistent with insuring the general health and safety of current residents.

While these residential towers, with their sprinkler fire suppression systems and metal facades may be less prone to wildfire risks, they compromise the water pressure and water supply available for firefighters to suppress fire in the surrounding neighborhoods.

I urge the Town Council to immediately address this issue. From my limited research and without any specific expertise, I can advise that the following measures must be incorporated into Los Gatos' new Fire Building Code:

• Every new construction over 35' in height, located within a half mile of any severe risk wildfire zone must have an independent water supply system on site. Its fire suppression system must be independent of the existing urban water system and will not affect either the available water supply or water pressure to any of the surrounding area. Such on-site water supply system shall include dual gravity fed tanks and dual mechanically supplied water for its internal firefighting needs sufficient to suppress fire for 2 hours.

• Every new construction over 55' in height, more than a half mile away from any severe wildfire risk zone must have an independent water supply system on site, such that its fire suppression system is independent of the existing urban water system and will not affect either the available water supply or water pressure to any of the surrounding area. Such on site water supply system shall include dual gravity fed tanks and dual mechanically supplied water for its internal firefighting needs sufficient to suppress fire for 2 hours.

Thank you for your courteous consideration of this matter.

Respectfully submitted,

BRENT N. VENTURA

BNV/bt