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FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
STREET ADDRESS: 111 North Hill Street
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CITY AND ZIP CODE: Los Angeles, CA 90012
BRANCH NAME: Stanley Mosk Courthouse

PLAINTIFF/PETITIONER: District Square, LLC

DEFENDANT/RESPONDENT: City of Los Angeles

NOTICE OF ENTRY OF JUDGMENT OR ORDER

CASE NUMBER:
20STCP00654

(Check one): ☒ **UNLIMITED CASE** (Amount demanded exceeded $25,000) ☐ **LIMITED CASE** (Amount demanded was $25,000 or less)

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on *(date)*: October 20, 2020

2. A copy of the judgment, decree, or order is attached to this notice.

Date: November 6, 2020

Matthew D. Hinks
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

▶ _____
(SIGNATURE)

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ATTACHMENT

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Attorneys for Petitioner DISTRICT SQUARE, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DISTRICT SQUARE, LLC, a Delaware limited liability company,

Petitioner,

v.

CITY OF LOS ANGELES, a municipal corporation, and DOES 1 through 25, inclusive,

Defendants and Respondents

Case No. 20STCP00654

[Assigned for all purposes to James C. Chalfant, Department 85]

~~[PROPOSED]~~ JUDGMENT GRANTING PEREMPTORY WRIT OF MANDATE

Petition Filed: Feb. 14, 2020
Trial Date: September 24, 2020

WHEREAS, on February 14, 2020, Petitioner District Square, LLC ("Petitioner") filed against Respondent City of Los Angeles ("Respondent") a Verified Petition for Writ of Mandate and Complaint for Declaratory Relief (the "Petition") alleging causes of action arising out the disapproval by Respondent of Petitioner's proposed housing development project (the "Project") processed by Respondent under Case Nos. DIR-2018-3204-SPR-SPP-1A and ENV-2018-3205-SE;

WHEREAS, on September 23, 2020, the Court issued a ruling tentatively granting the Petition;

WHEREAS, the Petition came on for trial on September 24, 2020, in Department 85 of this Court. Petitioner appeared through its counsel, Matthew D. Hinks and Seena Samimi of Jeffer, Mangels, Butler & Mitchell LLP; Respondent appeared through its counsel, Ernesto Velazquez of the Office of the Los Angeles City Attorney;

WHEREAS, upon the conclusion of the trial, the Court adopted its tentative ruling as the final ruling (the "Final Ruling") of the Court;

WHEREAS, the Court, having read the submissions of the parties to this action, including the Petition, briefs, and matters judicially noticed, and having read and considered the administrative record, and the arguments of counsel;

THE COURT DOES HEREBY ORDER, ADJUDGE AND DECREE, as follows:

1. Judgment is entered in favor of Petitioner on the First and Second Causes of Action alleged in the Petition for the reasons set forth in the Final Ruling, attached hereto as Exhibit 1.
2. The Court finds that (1) Respondent acted in bad faith within the meaning of Government Code § 65589.5(k)(1)(A)(ii) in connection with its disapproval of the Project; and (2) in light of the finding of bad faith, a writ of mandate shall issue directing Respondent to approve the Project.
3. A writ of mandate shall issue ordering Respondent to:
    a. Set aside, vacate and annul the determination of the South Los Angeles Area Planning Commission at its meeting on November 19, 2019, granting the appeals from the decision of the Director of Planning and disapproving the Project; and
    b. Approve the Project within 45 days of the issuance of the writ of mandate
4. This matter shall be remanded for further proceedings in compliance with the writ of mandate.

5. Petitioner shall recover its costs of suit from Respondent.

6. Petitioner shall recover its attorney's fees from Respondent pursuant to a motion to determine the reasonableness of the amount.

7. The Court hereby reserves jurisdiction in this action until there has been full compliance with the writ.

DATED: 10/20/2020

James C. Chalfant / Judge

Honorable James C. Chalfant
Judge of the Superior Court

Respectfully submitted this 16th day of October, 2020 by

JEFFER MANGELS BUTLER & MITCHELL LLP

By: _____
MATTHEW D. HINKS
Attorneys for Petitioner DISTRICT SQUARE, LLC

JMBM | Jeffer Mangels Butler & Mitchell LLP

EXHIBIT 1

District Square, LLC v. City of Los Angeles, 20STCP00654

~~Tentative~~ decision on: (1) motion to strike: granted; (2) petition for writ of mandate: granted

Petitioner District Square, LLC ("District Square") seeks a writ of mandate directing Respondent City of Los Angeles ("City") to set aside its decision denying Petitioner's proposal to construct a housing development project ("Project"). Petitioner separately moves to strike the Letter of Determination ("LOD") from the Administrative Record found at AR 628-38.

The court has read and considered the moving papers, oppositions, and replies, and renders the following tentative decision.

A. Statement of the Case

Petitioner District Square commenced this proceeding on February 14, 2020. The Petition alleges in pertinent part as follows.

Petitioner proposed to construct the Project, consisting of 577 housing units in a mixed-use building at 3650-3700 South Crenshaw Boulevard and 3450-3500 Obama Boulevard (the "Property"). The Project is consistent with all of the development regulations of both the Crenshaw Corridor Community Plan ("Specific Plan") and the Los Angeles Municipal Code ("LAMC"). The Project does not benefit from any legally permitted development incentives or density bonuses under either the State Density Bonus Law or the City's Transit Oriented Communities ("TOC") Program. The proposed 577 units fall considerably below the allowable base density (722 units) permitted by the underlying zoning and the maximum development potential under the TOC Program (1,302 units). Petitioner voluntarily agreed to restrict 11% of the Project units (63 units) for workforce housing at deed-restricted reduced rent levels for a 30-year covenant period.

The Director of Planning ("Director") approved the Project on June 28, 2019. The Project approval was appealed by a group of development opponents, who successfully convinced the South Los Angeles Area Planning Commission ("APC") to reverse the Director's approval.

The APC violated the Housing Accountability Act ("HAA") when it granted the appeal and denied the Project. The APC—over the objections of its Planning staff and the advice of the Deputy City Attorney—ignored the mandate of the HAA restraining the ability of local governments to deny housing development projects. The HAA demands approval when a proposed housing development project complies with applicable objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete. The APC did not attempt to justify its decision under the HAA, did not make a single public health and safety finding—a necessary HAA predicate for denying a code-compliant housing development—and issued no written findings at all.

The APC abused its discretion by granting the appeal because it failed to proceed in the manner required by law, its decision is not supported by a preponderance of the evidence, no findings were made to support the decision reached, and it applied an erroneous standard by failing to articulate how the preponderance of the evidence (as required by the HAA) supported its

decision.

B. Standard of Review

CCP section 1094.5 is the administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. Topanga Association for a Scenic Community v. County of Los Angeles, ("Topanga") (1974) 11 Cal.3d 506, 514-15. The pertinent issues under section 1094.5 are (1) whether the respondent has proceeded without jurisdiction, (2) whether there was a fair trial, and (3) whether there was a prejudicial abuse of discretion. CCP §1094.5(b). An abuse of discretion is established if the respondent 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. CCP §1094.5(c).

CCP section 1094.5 does not in its face specify which cases are subject to independent review of evidentiary findings. Fukuda v. City of Angels, (1999) 20 Cal.4th 805, 811. Instead, that issue was left to the courts. In cases other than those requiring the court to exercise its independent judgment, the substantial evidence test applies. CCP §1094.5(c). Land use decisions do not typically involve vested rights requiring independent review. *See* PMI Mortgage Insurance Co. v. City of Pacific Grove, (1981) 128 Cal.App.3d 724, 729. The granting of a permit or variance does not infringe on the fundamental vested rights of adjoining property owners. Bakman v. Dept. of Transportation, (1979) 99 Cal.App.3d 665, 689-90. A landowner does not have either an easement for air and light in the absence of an express covenant (Katcher v. Home Savings & Loan Assn, (1966) 245 Cal.App.2d 425, 429), and there is no vested right in the enforcement of a zoning ordinance. Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach, (2001) 86 Cal.App.4th 534, 552.

"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, 585) 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. The trial court considers all evidence in the administrative record, including evidence that detracts from evidence supporting the agency's decision. California Youth Authority, *supra*, 104 Cal.App.4th at 585.

An agency is presumed to have regularly performed its official duties (Evid. Code §664), and the petitioner seeking administrative mandamus therefore has the burden of proof. Steele v. Los Angeles County Civil Service Commission, (1958) 166 Cal.App.2d 129, 137; Afford v. Pierno, (1972) 27 Cal.App.3d 682, 691 ("[T]he burden of proof falls upon the party attacking the administrative decision to demonstrate wherein the proceedings were unfair, in excess of jurisdiction or showed prejudicial abuse of discretion).

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

C. Governing Law

1. Housing Accountability Act

The Legislature adopted the HAA in 1982 to "significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters." Gov't Code[1] §65589.5(a)(2)(K).

The Legislature significantly amended the HAA, effective January 1, 2018, to strengthen its provisions, expand its applicability, and increase local governments' liability for violations. The HAA found that California is in the midst of a housing crisis that is "partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing," §65589.5(a)(1)(B). The HAA should be "interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." §65589.5(a)(2)(L).

Nothing in the HAA relieves the local agency from complying with, *inter alia*, the California Environmental Quality Act ("CEQA"). §65589.5(e).

A housing development project "shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity." §65589.5(f)(1)(4).

Section 65589.5(j)(1) provides:

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

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

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

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

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

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

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

2. SB 743 CEQA Exemption

The SB 743 statutory CEQA exemption applies to residential and mixed-use projects that are: (1) proposed within a transit priority area; (2) undertaken to implement and is consistent with a specific plan for which an environmental impact report has been certified; and (3) consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy for which the State Air Resources Board has accepted a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emissions reduction targets. Pub. Res. Code §21155.4.

D. Statement of Facts[2]

1. The Project

Petitioner District Square owns the Property, which is currently vacant. AR 229. The Property is adjacent to major transit stops and within 500 feet of the Metro Expo Line's Crenshaw Station and across Obama Boulevard from the planned location of a new station along the Metro

[2] Both Petitioner and the City request judicial notice of (1) LAMC section 11.5.7 (Exs. 1, A), (2) LAMC section 16.05 (Exs. 2, B). Petitioner also requests judicial notice of City Charter section 245 (Ex. 3). The City also requests judicial notice of the Southern California Association of Governments' 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (Ex. C). The requests are granted. Evid. Code §452(b), (c).

Crenshaw/LAX light rail line currently under construction. AR 423, 428. The Property is zoned C2-2D-SP, designated for Regional Commercial uses, and located within Subarea A of the Specific Plan (the West Adams-Baldwin Hills-Leimert Community Plan), a designated TOD area. AR 423. The Property is surrounded by a mix of commercial and residential uses. AR 423.

On June 4, 2018, Petitioner submitted an application for approval of a Project Permit Compliance Review under LAMC section 11.5.7 and Site Plan Review under LAMC section 16.05 to permit the construction of the Project. AR 127.

On January 2, 2019, the City formally deemed the Project application to be complete, stating that the next major milestone would be completion of CEQA environmental review after the City determined the appropriate environmental analysis for the Project. AR 227.

Petitioner filed a revised application in February 2019, making adjustments to the amount of proposed square footage and units to be built. AR 229. As revised, the Project consisted of an approximately 648,157 square foot mixed-use Project containing 577 residential units and 93,016 square feet of commercial floor area in a 75-foot tall, six-story building with 934 parking spaces in one subterranean level and one ground level. AR 229.

2. The Director's Decision

On June 28, 2019, the Director approved the Project Permit Compliance and a Site Plan Review for the Project. AR 473.

The Director found the Project to be statutorily exempt from CEQA pursuant to the SB 743 Statutory Exemption. Pub. Res. Code §21155.4. AR 473. The Project is located in a transit priority area, is consistent with the Specific Plan, and is consistent with the Southern California Association of Governments' 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy ("RTP/SCS"). AR 428.

For Project Permit Compliance, the Director found that the Project substantially complies with the applicable regulations, findings, standards, and provisions of the Specific Plan. AR 424-27.

For the Site Plan Review, the Director found that the Project meets the requirements for Site Plan Review in that (a) it is in substantial conformance with the purposes, intent and provisions of the General Plan, applicable community plan, and any applicable Specific Plan (AR 429-34), (b) consists of an arrangement of buildings and structures that will be compatible with existing and future development on adjacent and neighboring properties (AR 435-36), and (c) provides recreational and service amenities to improve habitability for its residents and minimize impacts on neighboring properties. AR 437.

3. The Appeals

On July 12, 2019, two appeals were filed challenging the Director's approval of the Project. One appeal was filed by Damien Goodmon and the Crenshaw Subway Coalition ("Goodmon") (AR 621-27), and a second appeal was filed by Lori Higgins ("Higgins"). AR 617-20.

Goodmon's appeal asserted that the Project fails to meet the requirements for Site Plan Review and Project Plan Review compliance and also violates, among other things, the Specific Plan, the General Plan, CEQA, SB 743, and the Specific Plan. AR 625. Goodmon contended that the Project is part of a pattern and practice on behalf of the City to intentionally displace and discriminate against low-income minority residents. AR 625.

Higgins' appeal stated that she had not received any notification of the changes to the site plan, which she alleged were significant. AR 620. The changes would negatively affect Higgins and other residences of the area and they should have been notified of the changes at the time they were submitted. AR 620.

Petitioner District Square's counsel responded in a letter dated November 13, 2019, explaining why the HAA compels the approval of the Project. AR 594-98. The letter noted that the HAA provides for private enforcement, a court may order a city to approve a project if it acts in bad faith to disapprove the project, and that the plaintiff would be awarded attorney's fees except in an unusual circumstance. AR 596-97.

The Project received support from community organizations. AR 550, 561, 562, 565, 568, 570, 572, 589.

The Planning Department issued a staff report addressing the appeal issues, recommending that the APC deny the appeals and sustain the Director's Determination. AR 600-16. The report reiterated the Director's previous findings that the Project meets Site Plan Review and Project Permit Compliance requirements, including substantial compliance with the General Plan and the Specific Plan. AR 607-09. The Project also meets the requirements for the SB 743 CEQA exemption. AR 610-12.

4. The APC Hearings

a. September 17, 2019

The APC heard the Goodmon and Higgins appeals on September 17, 2019. AR 1164-89. Albert Lord ("Lord"), a deputy to City Council President Herb Wesson, spoke on behalf of Goodmon, expressing concern that the Project was a six-story development of 577 luxury apartment units and would be unaffordable to the neighborhood's current residents and result in increased rent prices and displacement. AR 1169-72. He advocated that the neighborhood needs retail stores, not residential development that will push existing tenants out. AR 1171.

Higgins also spoke, expressing her concern about the Project's height and parking adequacy, which was literally in her backyard. AR 1179. She also argued that local homeowners should have been given input and the Project "tears into the fabric of the distinctly historical Leimert Parking Community". AR 1181. She advocated for issues of permitted parking, a sound barrier, traffic mitigation and construction mitigation. AR 1182.

Planning Department staff presented the findings and conclusions that the Director relied upon in issuing his approval of the Project. AR 1172-78. He noted that the Project complies with the Specific Plan and substantially complies with the Site Plan Review process, neither of which required a public hearing. AR 1176. The Project's 577 units would not cause direct displacement and did not seek any development incentives by the zoning and Specific Plan requirements; therefore, no affordable units were covenanted. AR 1177. He further noted that the Project was exempt under SB 743. AR 1177.

With District Square's consent, the hearing was continued to November 19, 2019. AR 1187-88.

b. November 19, 2019

On November 19, 2019, Planning Department staff, with legal assistance from the Deputy City Attorney, spoke in favor of the Project, summarizing the staff' report and recommending

denial of the appeals. AR 1196-1205. The Deputy City Attorney explained the SB 743 exemption, including that a qualifying project is covered by the EIR analysis of the Specific Plan as a matter of law. AR 1204. He further explained that the Project meets the Southern California Association of Government's ("SCAGs") planning document criteria (RTP/SCS) because it is within the zoning and Special Plan and the developer was not asking for any exceptions or variances. AR 1204-05.

Goodmon argued that the Project developer was literally on trial for bribing a public official. AR 1205. He contended that the Project does not meet the RTP/SCS criteria because people from low-income communities may face displacement because gentrification places market pressure on people to relocate. AR 1206. This would lead to transit dependent people moving away from the very transit facilities that are built for them. AR 1206-07. The RTP/SCS recommends that agencies be sensitive to the possibility of gentrification and employ strategies to mitigate potential negative impacts and are encouraged to pursue the production of permanent affordable housing by deed restrictions. AR 1207. Goodmon contended that the Project violated the RTP/SCS and this alone was legal justification for the appeal. AR 1207, 1239.

Goodmon further argue that the Project should not be found to be statutorily exempt from CEQA pursuant to the SB 743 Statutory Exemption because the City did not have any published SB 743 policies. AR 1208. There are multiple Special Plan policies violated by the Project, including LU 11 and LU 63-8. The Project area is an area identified by the City as an area at a high risk for displacement. AR 1208. An income of over $120,000 per year is required to afford a market rate apartment unit like those proposed by the Project, while the median household income in the area is approximately $37,000-$44,000. AR 1209. There is a connection between indirect displacement from projects of this scale and the surrounding area. AR 1238-39. There are other violations such as inadequate infrastructure. AR 1210. 1237-39.

Lord read a document from City Council President Wesson advocating that luxury apartments are designed to strengthen the economy and neighborhoods, but too many of these developments are being built in neighborhoods that have suffered disinvestment for reasons of "discrimination and racism in the banking and real estate industry." AR 1211. Development projects should help build an area in need of economic investment and not force out longtime residents. AR 1211. The area needs affordable housing, not this Project. AR 1212.

Higgins testified that the Project was egregious, has doubled in size, is in her backyard, and is a behemoth. AR 1213.

Several other members of the public testified that the Project's lack of affordable housing would cause displacement of residents currently living in the area. AR 1224-29, 1231-35. Housing developments like the Project cause residents to leave their communities because they can no longer afford the rent in that particular area (AR 1226), people in the Project area do not earn incomes needed to afford market-rate rent (AR 1227, 1229), affordable housing is needed to avoid displacement (AR 1233), and the Project area is suffering from homelessness (AR 1235).

District Square's representative spoke, summarizing the key features of the Project, noting that the Project site is vacant and the Project conforms with each development standard and design guideline of the Specific Plan. AR 1215. The Project provides for commercial retail spaces, open space, and residential units in five distinct building block pattern. AR 1216. With respect to the RTP/SCS, he noted that its policies promote transit-oriented development and the Project provides new housing directly across from a rail station and meets those policies. AR 1218. He noted that

no affordable housing is required for the Project under the Specific Plan, the LAMC, or any law. AR 1219. Notwithstanding, the applicant is voluntarily offering to restrict 11% of the units (63) to workforce housing, which would ensure that rents for those units would be fixed for an extended period and subject to City oversight. AR 1219. He also warned that the HAA prevented it from denying Project approval unless it made written findings of a direct and unavoidable impact on public health or safety and the APC had no evidence to make such findings. AR 1221.

The Deputy City Attorney explained to the commissioners that the Project could only be denied if the Commission found, based upon a preponderance of evidence in the record, that the Project would entail significant health or safety impacts that could not be mitigated other than by denying the Project. AR 1242-48. He indicated that the existing record would not support a claim that homelessness, gentrification, and displacement meets the HAA requirement of an adverse health or safety impact because it is too vague, and the APC should seek a continuance if it wanted to obtain information on that subject. AR 1244. He explained that the HAA limtis the ability of local governments to reject housing developments without making written findings and warned the APC that a violation of the HAA could result in attorney's fees and penalties. AR 1246-47. He advised the APC to give staff an opportunity to develop more information, but the applicant would have to agree. AR 1247-48. The applicant declined a continuance. AR 1249.

Planning staff reiterated that the Project is consistent with all applicable zoning and General Plan criteria as set forth in the Planning Director's determination. AR 1250-51. The Project seeks no incentives and staff cannot make findings arbitrarily and require affordable housing. AR 1250-51. Gentrification and displacement are looked at for the particular project and this Project is vacant and involves no direct displacement. AR 1252.

The deliberations commenced with Commissioner Willis:

> "I believe, due to the fact that this Project is a mixed-use project, it will not benefit our community due to the fact that it does not have any affordable housing for our residents. Therefore, the Project is not congruent to the South Los Angeles plan. It will weaken our community economically. Now the applicant mentioned that affordable housing is not a prerequisite or a requirement. I think that it should be a strong consideration for the residents in our community economically." AR 1252 (emphasis added).

Commissioner Anderson stated that she "agree[d] with" Commissioner Willis "no matter what the laws that are written, you have to be about the people. I see no empathy in the applicant at all. It's all about the policies that are written. And so we need to go back and look at and see what gentrification is doing. AR 1253.

Commissioner Stern concluded that the Project was not compatible with the Specific Plan's policies to create "a compatible and harmonious relationship between residential and commercial development" and "quality of life for the City's existing and future residents." AR 1255.

The Deputy City Attorney attempted to intervene and suggested that the APC take a break so that he and the commissioners could discuss how "to articulate how you can satisfy both of these findings and mak[e] sure that we can identify the information that we do have available to support the direction you're trying to go." AR 1255-56.

The APC did not do so. Instead, Commissioner Anderson then made a motion to "grant the appeal and overturn the Planning Director's determination, because it doesn't provide affordable housing for residents, therefore there is no economic growth in our community." AR 1256. The motion was seconded by Commissioner Willis and unanimously approved. AR 1256.

The APC's minutes, signed by the commissioners on or about November 19, 2019, reflect that the APC granted the appeals and overturned the Director's approvals of the Project Permit Compliance and Site Plan Review. AR 1194.

5. The LOD

On May 15, 2020, the APC issued the LOD[3] discussing denial of the Project. AR 628-38. The LOD summarized the testimony given at the hearing and included findings for the Project's non-compliance with the General Plan, the Specific Plan, and the RTP/SCS. AR 631-36. The LOD also found that, because the Project did not sufficiently account for concerns of gentrification and displacement, it did not comply with the goals and policies of the Specific Plan and did not qualify for the requirements for the SB 743 CEQA exemption. AR 631-36.

E. Petitioner's Motion to Strike

Petitioner District Square moves to strike the LOD (AR 628-38) from the Administrative Record, asserting that it is a fabrication created after-the-fact to justify the APC's decision and cannot be considered a "final decision" for the purposes of CCP section 1094.6(c). Petitioner argues there is no evidence the APC ever adopted the LOD, which does not reflect the APC's findings. Mot. at 5, 7. Petitioner also asserts that the APC lost jurisdiction over the appeal by the time the LOD was mailed. Mot. at 6.

The administrative record in a mandamus case shall include the transcript of the proceedings, all pleadings, all notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the local agency or its commission, board, officer, or agent, all written evidence, and any other papers in the case. CCP §1094.6(c).

The court shall (a) strike out any irrelevant, false, or improper matter inserted in any pleading; and (b) strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. CCP §436.

1. The LOD Is Not the APC's Findings

Petitioner contends that the APC was the decision-maker for the appeal and the LOD must be stricken because there is no evidence that the APC approved it. Mot. at 5-6; Reply at 4-5. Petitioner notes (Mot. at 6; Reply at 4-5) that the LOD is not signed by any of the APC commissioners and only bears the signature of an Executive Assistant. AR 630. A single planner apparently drafted the LOD to bolster the APC decision and there is no indication that it was ever reviewed or discussed by the APC. Samimi Decl., ¶¶ 4-6, Exs. 2-3.

Petitioner also asserts that the LOD does not actually reflect the findings made by the APC at the November 19, 2019 hearing, and it also includes findings that the APC did not consider.

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[3] As discussed *post*, Petitioner's motion to strike the LOD from the Administrative Record is granted and the LOD is only included for completeness of the discussion.

The most egregious example is that the LOD states that the APC determined that the Project is not exempt under CEQA (AR 633), but the APC never even mentioned CEQA or CEQA issues. AR 1252-56. Mot. at 7-8; Reply at 2-4. While the APC commissioners overturned the Project's approval based on their concerns about gentrification, the transcript of the proceedings reflects that they never rejected the Director's adoption of the CEQA exemption. *See* AR 1196-1258. The commissioners similarly did not reference the specific provisions of the General and Specific Plans identified in the LOD. AR 1252-56.

An agency's quasi-judicial land use decision is subject to the Topanga rule. *See* City of Rancho Palos Verdes v. City Council, (1976) 59 Cal.App.3d 869, 885. The APC's decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. Topanga, *supra,* 11 Cal.3d at 15. Less formality is required for the findings in land use cases, which are sufficient if they inform the parties and the court whether the decision is based on lawful principles. Id. at 514-16. A transcript of taped oral remarks by the decision-maker at a public hearing when rendering a decision can be considered. City of Carmel-by-the-Sea, *supra,* 71 Cal.App.3d at 92. The agency's oral findings need not be stated with the precision required in judicial proceedings. Where reference to the administrative record informs the parties and reviewing courts of the theory upon which an agency has arrived at its ultimate finding and decision, it has long been recognized that the decision should be upheld if the agency in truth found those facts which as a matter of law are essential to sustain its decision. Craik v. County of Santa Cruz, (2000) 81 Cal.App.4th 880, 884-85.

A city council need not make express findings of its own in reach a decision and may incorporate by reference a staff report as its implied findings on the matter. McMillan v. American General Financial Corp., (1976) 60 Cal.App.3d 175, 183-85. Also, the adoption of a subordinate entity's findings may obviate the need for separate findings from the reviewing agency. Carmel Valley View, Ltd. v. Board of Supervisors, (1976) 58 Cal.App.3d 817, 823. However, a mere recitation of statutory language, terse statements, and boilerplate findings do not contain sufficient details to bridge the analytic gap. Glendale Memorial Hospital & Health Center v. State Dept of Mental health, (2001) 91 Cal.App.4th 129; City of Carmel-by-the-Sea v. Board of Supervisors, (1977) 71 Cal.App.3d 84, 91.

The City argues that the LOD simply memorializes the APC's findings. The City contends that the commissioners' comments at the November 19, 2019 hearing sufficiently bridge the analytical gap between the testimony of the appellants and commenters and the APC's findings. The commissioners were not required to orally name the specific provisions implicated by their findings and their general statements that the Project did not comply due to concerns about gentrification and displacement suffice to support the LOD's more detailed analysis. Opp. at 12-14.

The court need not address the consistency between the witness testimony at the November 19, 2019 hearing and the commissioner's comments because the issue in the instant motion is whether the LOD constitutes the APC's findings. The City does not address Petitioner's contention that the APC never saw or adopted the LOD. The City makes a conclusory statement that the LOD constitutes the APC's final decision under CCP section 1094.6(b), but it cites no evidence contradicting Petitioner's assertion that the APC never saw or approved the LOD. Opp. at 9-10. This means that the LOD is merely a staffer's opinion of the findings that would support the APC's decision, which is insufficient to make it the APC's decision.

2. The APC Lost Jurisdiction

Petitioner argues that the APC's jurisdiction over the appeal had long been terminated by the May 15, 2020 date the LOD was mailed. Mot. at 6-7; Reply at 5-6.

The APC shall act on an appeal from the Director's Permit Compliance Review decision whether a project conforms to the requirements of a specific plan within 75 days of the expiration of the appeal period or any additional period mutually agreed upon by the applicant and the APC. LAMC §11.5.7C.6(c). The APC's failure to act within this time period shall be deemed a denial of the appeal. Id. The APC shall make the same findings for the Permit Compliance Review that are required to be made by the Director, the findings shall be supported by the record, and they shall indicate why the Director erred in determining the project's compliance with the specific plan. LAMC §11.5.7C.6(d)

The APC shall render its decision from an appeal of the Director's Site Plan Review in writing within 15 days after completion of the hearing. LAMC §16.05H.4. If the APC fails to act within the time specified, the Director's action shall be final. Id. The decision shall be in writing, based upon the evidence in the record, and be supported by findings that the project (1) is in substantial conformance with the General Plan, applicable community plan, and any applicable specific plan, (2) consists of an arrangement of buildings and structures (including height, bulk and esetbacks0, off-street parking facilities, loading areas, light, landscaping trash collection and other pertinent improvements that is or will be compatible with existing and future neighboring developments, and (3) provides recreational and service amenities to improve habitability for its residents and minimize impact on neighboring properties. LAMC §§ 16.05F, 16.05.H.4.

The City issued the LOD on May 15, 2020, approximately six months after the November 19, 2019 hearing. The City states that the "time specified" by LAMC section 16.05 H.4 is 75 days of the filing of the appeal as set forth in LAMC section 16.05 H.3. The City notes that all parties agreed to the November 19, 2019 hearing date and the APC cannot be deemed to have failed to timely hear the appeals. AR 1183-88. Opp. at 10-11. The City also argues that the delay in issuing the LOD after the hearing is irrelevant because the time limit requirements are directory rather than mandatory unless a contrary jurisdictional intent is clearly expressed. Edwards v. Steele, (1979) 25 Cal.3d 406, 410. The City contends that no such directory requirement exists for LAMC sections 11.5.7C.6(c) and 16.05 H.4. Opp. at 11.

Putting aside the fact that both LAMC sections 11.5.7C.6(c) and 16.05 H.4 clearly require a written decision within a specific number of days (15 days after the hearing for LAMC section 16.05 H.4 and 75 days after the appeal is filed or any mutually agreed extension for 11.5.7C.6(c)), and both provide a consequence of appeal denial for failure to adhere to the deadline, the City misses the point. In this motion, Petitioner is not arguing that the Director's decisions should be deemed approved because the APC's written decision was untimely (although it makes that argument in its mandamus papers). Rather, Petitioner is arguing that the LOD issued after the LAMC deadlines cannot constitute the APC's decision.[4]

The court agrees. The APC had no jurisdiction to make a final decision six months after

[4] As Petitioner notes, the LOD states that the APC's decision is final upon the mailing date of the LOD. AR 630. Reply at 6. This is a tacit admission that the APC failed to act within the requisite deadlines.

the hearing and the LOD cannot constitute its final decision.[5]

3. Conclusion

The unrefuted evidence is that the APC did not review or approve the LOD. While the City argues that the LOD memorializes the APC's decision, it is merely a staffer's opinion of what the APC did and therefore is irrelevant. Petitioner also has demonstrated that the LOD cannot constitute the APC's final decision because the APC had no jurisdiction to act by the time the LOD was issued.

The motion to strike is granted. The LPD is an irrelevant post-approval document that should not be part of the Administrative Record. *See* Wagner Farms, Inc. v. Modesto Irrigation District, (2006) 145 Cal.App.4th 765, 778 (map and enlargement of aerial photograph created after agency decision did not reflect agency proceedings and not part of CEQA record of proceedings); El Morro Community Association v. California Department of Parks & Recreation, (2004) 122 Cal.App.4th 1341, 1359 (news letter and release showing post-decision changes to project and list of EIRs for projects near project site were not before agency excluded from CEQA record).

F. Petition for Writ of Mandate

Petitioner District Square argues that the APC erred because the HAA required approval of the Project, which was exempt from CEQA.

1. The Project Is a "Housing Development Project"

The HAA applies to "housing development projects," defined, *inter alia*, as "[m]ixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use." §65589.5(h)(2)(B). The Project consists of 577 residential units and 93,016 sf of non-residential uses in a 648,157 square foot building (*i.e.*, less than 15% non-residential uses). AR 229, 243, 418, 600. The Project is a "housing development project" under the HAA, and the City does not dispute this fact.

2. The Project Complies with All Applicable General Plan and Zoning Standards

Absent public health or safety findings and if a project complies with CEQA, section 65589.5(j) requires approval of a housing development projects which "complies with applicable, objective general plan, zoning, and subdivision standards and criteria…". §65589.5(j)(1).

The Project is deemed compliant with the City's applicable objective standards and criteria as a matter of law since (1) the Project application was deemed complete on January 2, 2019 and (2) the City gave no written notice of non-compliance explaining the inconsistencies within 60 days. §65589.5(j)(2)(A)(ii). In these circumstances, the HAA provides that the Project "shall be deemed consistent, compliant and in conformity" with all applicable plans, programs, policies, ordinances, standards, requirements, and other similar provisions. §65589.5(j)(2)(B).[6]

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[5] The APC presumably could have adopted additional findings six months after making a final written decision, but it did not purport to do so.

[6] Under the HAA, a project is deemed consistent with applicable standards and policies "if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity."

3. The City Cannot Establish by a Preponderance of the Evidence that the Project has a Specific Adverse Impact on Public Health or Safety

Under the HAA, the exception to a local agency's compelled approval of a housing development project that is compliant with all relevant objective zoning standards takes place where a local government makes written findings, based on a preponderance of the evidence, that the project would have an unavoidable adverse impact on public health or safety that cannot be feasibly mitigated in any way other than rejecting the project or reducing its size. §65589.5(j)(1).

As District Square argues, the City abused its discretion when it denied the Project because (1) its findings do not support its decision and (2) there is no evidence of a potential health or safety impact justifying a denial. Pet. Op. Br. at 15.

a. The APC's Findings Are Inadequate

The APC's decision to deny the Project was based on a single point: "it doesn't provide affordable housing for residents, therefore, there's no economic growth in our community." AR 1256. In their comments at the November 19, 2019 hearing, the commissioners focused upon a desire for affordable housing and concerns over gentrification, residential amenities, the nature of the proposed commercial tenants, and their perceptions of compatibility and harmony between the residential and commercial development and quality of life. AR 1252-55.

District Square first argues that the APC failed to make its finding in writing as required by section 65589.5(j)(1). Pet. Op. Br. at 17.

There is a transcript and the three APC commissioners signed the APC minutes. At least the signed minutes qualify as a writing under section 65589.5(j)(1). However, the minutes, even when coupled with the transcript, are inadequate under LAMC section 11.5.7C.6(c), which requires the APC to make the same findings for Project Compliance Review as the Director is required to make, they must be supported by the record, and they must indicate why the Director erred in determining the project's compliance with the specific plan. They also are inadequate under LAMC section 16.05H.4, which requires the Site Plan Review to in writing, based on the record, and supported by findings from LAMC section 16.05F (concerning (a) conformance with the General Plan, (b) height, bulk, and setback requirements, and parking, and (c) recreational and service amenities). Even taken collectively, the transcript and minutes did not purport to make the required findings. While an "Executive Assistant" signed the LOD long after the APC's deadline to act (AR 630), this document was never approved by the APC and is not part of the Administrative Record.[7]

In fact, the APC's single issue finding addresses a subjective socioeconomic issue and does

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§65589.5(f)(1)(4). There is substantial evidence in the record that the Project complies with the all use, density, height, story, floor area ratio, parking, open space and other requirements of the LAMC and governing land use plans. AR 418, 423, 424-37, 1216. The Director confirmed as much in the Director's Determination (AR 418-39), as did Planning Department staff and the Deputy City Attorney at the November 19, 2019 hearing. AR 1196-1205.

[7] Because the APC failed to comply with the deadlines under LAMC sections 11.5.7C.6(c) and 16.05H.4, those provisions require that the appeals from the Director's Project Compliance Review and Site Plan Review be deemed denied.

not even purport to address "public health or safety" concerns that are "significant, quantifiable, direct, and unavoidable." §65589.5(j)(1)(A). As the Court of Appeal explained, section 65589.5(j) prevents local agencies from using a subjective development policy as a basis to deny a qualifying housing development. *See* Honchariw, *supra,* 200 Cal. App. 4th at 1076-77, 1079 (finding that project site was not "physically suited for development" does not amount to health or safety impact under section 65589.5(j)). The simple fact is that market rate housing developments are entitled to the same section 65589.5(j) protections as affordable housing developments. Id. at 1074-75.[8] Pet. Op. Br. at 16.

b. There Is No Evidence of Health or Safety Impacts

The City has the burden of proof to show public health or safety impacts. §65589.6. As District Square argues, the City must show by a preponderance of the evidence (1) an impact to health or safety; (2) that is "significant, quantifiable, direct, and unavoidable"; (3) "based on objective, identified written public health or safety standards, policies, or conditions"; (4) that cannot be mitigated or avoided absent denial of the Project. §65589.5(j)(1)(A)-(B). Pet. Op. Br. at 17.

The Administrative Record contains no evidence that the APC's socioeconomic concerns about gentrification and displacement have any bearing on public health and safety, let alone a significant, quantifiable direct and unavoidable impact based on objective and written health and safety standards. *See* §65589.5(j)(1)(A).

4. The City's Attempt to Support the APC Decision

Based on the HAA, the APC was required under section 65589.5(j)(1) to approve the Project as a housing development project that complies with all applicable General Plan and zoning standards and criteria because there is no evidence or finding of public health and safety impact unless the Project is non-compliant with CEQA.

The City's opposition notes that it need only make one of the three necessary findings – CEQA environmental clearance, Project Permit Compliance, and Site Plan Review – in the negative to deny approval. *See* Levi Family Partnership, L.P. v. City of Los Angeles, (2015) 241 Cal.App.4th 123, 130. Opp. at 9. The City seizes upon CEQA as a life raft in an attempt to save the APC's decision.

a. The Timing of CEQA Analysis Does Not Require Denial of the Entitlements

The City notes that the HAA does not relieve a local government from complying with CEQA (§65589.5(e)) and that completion of environmental review under CEQA is required before a project can be approved. Guidelines[9] §15004(a). Opp. at 12. . The City argues that HAA

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[8] Since the APC made no unavoidable public health or safety impact finding, it necessarily made no finding that "there is no feasible method to satisfactorily mitigate or avoid the adverse impact … other than the disapproval of the housing development project." §65589.5(j)(1)(B).

[9] As an aid to carrying out the CEQA statute, the State Resources Agency has issued regulations called "Guidelines for the California Environmental Quality Act" ("Guidelines"), contained in Code of Regulations, Title 14, Division 6, Chapter 3, beginning at section 15000.

findings can be made only after the City is satisfied with the "adequacy of its environmental documents." Guidelines §15020. Hence, the specific adverse public health or safety impact findings required by section 65589.5(j) cannot be made until adequate environmental review under CEQA is complete. The City relies on Schellinger Brothers v. City of Sebastopol, ("Schellinger Brothers") (2009) 179 Cal.App.4th 1245 and argues that it was unable to find the Project exempt from CEQA pursuant to the SB 743 statutory exemption. AR 1252-55. The City concludes that, without completion of the necessary CEQA review, it could not violate the HAA by wrongly disapproving Petitioner's housing development project. Opp. at 12-13.

The City's argument depends entirely upon a premise that the APC rejected the Director's determination that the Project is exempt from CEQA under SB 743 Pub. Res. Code section 21155.4. This premise is false. The APC made no CEQA findings at all in the transcript of the APC's proceedings (AR 1196-258) or the APC minutes. AR 1194. The premise of the City's opposition simply fails.

District Square also points out (Reply at 3-4) that the City misapprehends the CEQA process. An agency's review of project entitlements is designed to run concurrently with its CEQA review, not consecutively:

> "The Legislature further finds and declares that it is the policy of the state that ... [l]ocal agencies integrate the requirements of this division with planning and environmental review procedures otherwise required by law or by local practice **so** that all those procedures, to the maximum feasible extent, run concurrently, rather than consecutively. Pub. Res. Code § 21003 (emphasis added).[10]

See also Guidelines §15004(c) ("The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively."); Bakersfield Citizens for Local Control v. City of Bakersfield, (2004) 124 Cal. App. 4th 1184, 1200 ("environmental review is not supposed to be segregated from project approval"); California Clean Energy Comm. v. City of San Jose, (2013) 220 Cal. App. 4th 1325, 1341 (allowing an agency to "segregat[e] environmental review ... from the project approval" would "skirt the purpose of CEQA"). Indeed, consideration of project entitlements must initially occur concurrently with the CEQA process because the agency must determine whether the project is even subject to CEQA, which requires consideration of whether the entitlements confer the agency with discretionary authority over the project. Pub. Res Code §21080(a), (b)(1); Guidelines §15002(i). Reply at 4-5.

District Square is correct that, even if *arugendo* the APC had rejected the SB 743 statutory exemption, it was not compelled to reject the Project entitlements and cease processing the Project application. Instead, the City would be required to determine whether the Project was statutorily or categorically exempt from CEQA on other bases (Guidelines §§ 15260-333), and, if not, prepare

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[10] District Square correctly notes that, while Pub. Res. Code section 21003 does not compel concurrent CEQA and project entitlement review, it suffices to rebut the City's argument that CEQA review must be conducted prior to consideration of the Project's entitlements. Reply at 4, n.1.

an initial study, negative or mitigated negative declaration, or EIR. Guidelines §15002(k). The APC could not reject the Project outright. Reply at 6.

The City's reliance on Schellinger Brothers, *supra,* 179 Cal.App.4th at 1245, is misplaced. There, a developer claimed that a city violated the HAA in failing to approve its housing development project and sought mandamus to compel the city to certify a long-delayed EIR after the city council decided that the draft EIR required recirculation to address new issues. Id. at 1250, 1253. The appellate court held that it could not order the local agency to certify the EIR, noting that the HAA "specifically pegs its applicability to the approval, denial or conditional approval, of a 'housing development'" project which is something that can only occur until after the EIR is certified." Id. at 1262.

Schellinger Brothers did not hold that a city may deny project entitlements that are consistent with the HAA by declining to certify an environmental document. It only held that the HAA does not compel any outcome for environmental review. Id. at 1262 ("the [HAA] has no provision automatically approving EIRs if local action is not completed within a specified period"). Reply at 5. Therefore, the timing of the City's evaluation of entitlements is not dependent upon an earlier determination of environmental review. The City must defer project approval, but it may not deny entitlements, when the environmental review is not complete.

b. The Record Does Not Contain Substantial Evidence to Support a Finding That the Project is Not Statutorily Exempt

Apart from the lack of CEQA findings, the Administrative Record lacks substantial evidence to support a determination that the Project does not qualify for a SB 743 statutory exemption.

The City notes that it has discretion to select the mode of CEQA analysis and to determine whether an exemption applies. Guidelines §15061. Opp. at 14. The SB 743 exemption is intended to exempt from CEQA mixed-use development projects that meet certain criteria. Public Resources Code section 21155.4 exempts a housing development project from CEQA if "[t]he project is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in [] a sustainable communities strategy." The relevant sustainable communities strategy for the Project area is the RTP/SCS. The SB 743 statutory exemption requires a finding of consistency with the RTP/SCS's applicable policies specified for the project area. Pub. Res. Code § 21155.4. Opp. at 13.

The City notes that the intent of the RTP/SCS is, among other things, to meet the goals of reducing greenhouse gas emissions as set forth by Senate Bill (SB) 375 and by Assembly Bill (AB) 32. RJN Exh. C, pp. 15, 17, 40, 137, 184, 185, 194. According to the City, the RTP/SCS sets forth how gentrification and displacement can undermine these goals. The RTP/SCS "Land Use Strategies" section titled "Combating Gentrification and Displacement" directs jurisdictions in the SCAG region "to continue to be sensitive to the possibility of gentrification and work to employ strategies to mitigate its potential negative community impacts." The RTP/SCS further states: "Affordability is becoming a significant issue in many communities, particularly in urban areas after the implementation of a new rail line, transit station, or other major public investment. Housing unaffordability can undermine the overall goals of the RTP/SCS because it can contribute to suburban sprawl, longer job commutes, and higher greenhouse gas emissions." Opp. at 13-14.

The City contends that the record contains substantial evidence that the Project is not

consistent with the RTP/SCS policies regarding gentrification and displacement, and cites AR 1206-09, 1225-29, 1231-35, 1237-39, 1252-55. Opp. at 13-14.

The purported gentrification and displacement policies of the RTP/SCS cited by the City are irrelevant because the Project must be deemed consistent with all RTP/SCS policies as a matter of law pursuant to section 65589.5(j)(2)(B). If the City felt the Project was inconsistent with an "applicable plan, program, policy, ordinance, standard, requirement, or other similar provision," it was required to provide timely written notice explaining its reasoning. §65589.5(j)(2)(A). Absent timely notice, the Project must be deemed consistent the RTP/SCS's policies. §65589.5(j)(2)(B). The City provided no such notice for the cited TRP/SCS policies. Reply at 7-8. Moreover, the RTP/SCS policies cited by the City are subjective, not objective, and cannot not provide grounds to deny the Project under section 65589.5(j)(1).

Additionally, the record does not contain substantial evidence that the Project is inconsistent with the cited RTP/SCS subjective policies. The City admits that the purpose of the RTP/SCS is to reduce greenhouse gas emissions and argues that the Project is inconsistent with this goal because it would not combat gentrification and displacement. In support of this conclusion, the City cites only to statements made by local residents and a political operative who were dissatisfied with the Project's lack of affordable housing and who contended that the Project will lead to displacement and gentrification because local residents would be "priced out" of the neighborhood. AR 1206-09, 1225-29, 1231-35, 1237-39, 1252-55.

The subjective policies of RTP/SCS cannot be presented by local residents and political subordinates. Plainly, it is impossible for the development of 577 new housing units on vacant lots, including 11% deed restricted and devoted to workforce housing, to have a direct impact of displacement. No one would be directly displaced from their home by the Project.

There remains the relatively new social engineering concept of indirect displacement. Theoretically, a market rent project – wrongly described by the local residents as "luxury housing" – could have an incremental impact on the neighborhood's property values. That incremental impact could have a cumulative impact with other market rate housing projects to raise property values in the neighborhood. In turn, those increased property values could result in increased overall rents and price out existing local residents from the neighborhood.

District Square argues that logic dictates that the Project will result in an increase in the supply of neighborhood housing which will lead to lower rents. Reply at 8. While the court does not agree that this conclusion necessarily follows from the development of market rent housing, the concept of indirect displacement ignores a component of market rate housing. A market rent housing project will attract tenants who can afford to pay that market rent. Presumably, those tenants will have more money to spend than neighborhood tenants residing in affordable housing. Those market rent tenants will spend some of that money at local businesses in the neighborhood, including small businesses owned by local residents. Thus, the economics of adding market rent housing to a poor neighborhood well may be good economically for all residents. These economic issues are not self-evident and must be presented by experts, of which there were none at the APC hearing.

Moreover, social displacement is only relevant to RTP/SCS policies if it would lead to increased greenhouse gas emissions. The City apparently assumes that the persons indirectly displaced by the Project's market rate housing will be replaced by wealthier persons who do not use public transportation or who would commute longer distances. As District Square notes, there

is no such evidence in the record. Reply at 8.[11]

5. The Declaratory Relief Claim

Petitioner's declaratory relief cause of action seeks a declaration that (a) the City failed to issue written findings consistent with the dictates of the HAA, (b) the deadlines for the City to act under the LAMC have all expired, (c) the APC appeals are deemed denied under LAMC sections 11.5.7.C.6.c-d and 16.05.H.4, and City Charter section 245, and (d) the City acted in bad faith in denying the Project such that Petitioner is entitled to a judgment and order under section 65589.5(k). Pet. Op. Br. at 19.

The City correctly argues that Petitioner is not entitled to declaratory relief because an action for a declaratory judgment is not appropriate to review the validity of an administrative decision. Selby Realty Co. v. City of San Buenaventura, (1973) 10 Cal.3d 110, 127. Administrative mandamus is the exclusive means of challenging an administrative determination involving the application of a law to a specific property. City of Santee v. Superior Court of San Diego County, (1991) 228 Cal.App.3d 713, 718. The HAA also states that any action brought to enforce its provisions shall be brought pursuant to CCP section 1094.5. §65589.5(m). The APC's decision may not be challenged through declaratory relief, and the declaratory relief cause of action is subsumed within the mandamus claim and is ordered to be dismissed. Opp. at 18.

District Square notes that no case stands for the rule that an action for declaratory relief can never be joined in a mandamus case. District Square contends that its declaratory relief claim does not challenge the APC's actions, but rather seeks an adjudication of its rights in light of the APC's actions, including declarations that (1) the deadlines for the City to act under the LAMC have expired and the APC appeals are deemed denied under LAMC sections 11.5.7.C.6.c-d and 16.05.H.4, and City Charter section 245; and (2) the City acted in bad faith in denying the Project.

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[11] The City contends that its denial of the Site Plan Review was justified because the APC found that the Project (1) conflicts with General Plan policies to "provide cultural facilities or other community-oriented facilities" and did not "propose professional offices or other high-quality job-generating uses", (2) is inconsistent with the Specific Plan's "neighborhood character" policies and is not "contextually sensitive", and (3) does not "create a compatible and harmonious relationship between residential and commercial development." Opp. at 16.

The City notes that the Project Permit Compliance findings must include a finding that "the project incorporates mitigation measures, monitoring measures when necessary, or alternatives identified in the environmental review which would mitigate the negative environmental effects of the project, to the extent physically feasible." LAMC §11.5.7C.2(b). The City argues that the APC did not have the adequate CEQA analysis necessary to make the Project Permit Compliance finding because it found the Project was not statutorily exempt and the Director made no mitigation findings for the APC to evaluate. Opp. at 14-15.

As discussed *ante*, the APC did not deny the SB 743 statutory exemption and did not address the findings required by LAMC sections 11.5.7C.2(b) and 16.05H.4. Even if *arguendo* the APC made findings for the Site Plan Review and Project Permit Compliance, those findings would violate the HAA because the Project is deemed consistent with all of these policies as a matter of law. §65589.5(j)(2)(B). Reply at 8-9.

All of this is subsumed within the administrative mandamus claim. *See post.*

6. The City's Bad Faith Actions Compel a Decision That the City Must Approve the Project

The HAA provides that, if a local agency acts in bad faith in disapproving a housing development project in violation of its provisions, in violation of the HAA, the court is empowered to enter an "order or judgment directing the local agency to approve the housing development project." §65589.5(k)(1)(A)(ii). "Bad faith" is defined as including, but not limited to, "an action that is frivolous or otherwise entirely without merit." § 65589.5(l).

District Square notes that the word "frivolous" means "clearly insufficient on its face"[12] or "lacking in any arguable basis or merit in either law or fact".[13] *See also* Peake v. Underwood, 227 Cal. App. 4th 428, 440 (2014) (Under CCP section 128.7, "[a] claim is factually frivolous if it is 'not well grounded in fact' and it is legally frivolous if it is 'not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.'"). Pet. Op. Br. at 18.

The City adds that case law establishes more than one standard for the term "frivolous." Burkle v. Burkle, (2006) 144 Cal.App.4th 387, 401 ("frivolous" means conduct that is "objectively unreasonable"); Millennium Corporate Solutions v. Peckinpaugh, (2005) 126 Cal.App.4th 352, 360 ("frivolous" means done "for an improper motive" or "indisputably has no merit"). Opp. at 17. The City argues that the APC's decision was not frivolous because it was not "objectively unreasonable," not done "for an improper motive," and does not indisputably lack merit. The APC's decision was based on CEQA, on the objectives and policies in the General Plan Framework Element and Specific Plan, and on genuine concern for the welfare of the community. Opp. at 17.

In this case, the Project was virtually a "by right" project in which District Square was asking for no special incentives or variance. The only possible bases for the APC not to approve the Project were the SB 743 categorical exemption and the HAA's public health or safety exception. City staff twice explained this in detail to the APC.

On September 17, 2019, Planning Department staff informed the APC that the Project complies with the Specific Plan and substantially complies with the Site Plan Review process, the Project did not seek any development incentives and therefore no affordable units were required, and the Project was exempt under SB 743. AR 1177. The Deputy City Attorney explained the SB 743 exemption, including that a qualifying project is covered by the EIR analysis of the Specific Plan as a matter of law. AR 1204. He further explained that the Project meets the RTP/SCS planning criteria because it is within the zoning and Special Plan and the developer was not asking for any exceptions or variances. AR 1204-05.

On November 19, 2019, Planning Department staff again recommended denial of the appeals. AR 1196-1205. Staff reiterated that the Project is consistent with all applicable zoning and General Plan criteria. AR 1250-51. The Project seeks no incentives and staff cannot make findings arbitrarily and require affordable housing. AR 1250-51. Staff looks at gentrification and displacement for a particular project and this Project is vacant and involves no direct displacement. AR 1252.

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[12] Black's Law Dictionary, https://blacks_law.enacademic.com/11624/frivolous

[13] The Law Dictionary, https://law.enacademic.com/1524/frivolous

The Deputy City Attorney reiterated that the Project meets RTP/SCS criteria because it is within the zoning and Special Plan and the developer was not asking for any exceptions or variances. AR 1204-05. The Deputy City Attorney added that the Project could only be denied if the Commission found, based upon a preponderance of evidence in the record, that it would entail significant health or safety impacts that could not be mitigated other than by denying the Project. AR 1242-48. He indicated that the existing record would not support a claim that homelessness, gentrification, and displacement met the HAA requirement of an adverse health or safety impact because it is too vague. AR 1244. He explained that the HAA limits the ability of local governments to reject housing developments without making written findings and warned the APC that a violation of the HAA could result in attorney's fees and penalties. AR 1246-47.

Despite this advice and in the face of these warnings, the APC granted the appeals and denied the Project approval solely because "it doesn't provide affordable housing for residents, therefore there is no economic growth in our community." AR 1256. The individual commissioners ignored the Project's "by right" lack of affordable housing and the HAA's requirements that the Project must be deemed to comply with all local standards: (1) "Now the applicant mentioned that affordable housing is not a prerequisite or a requirement. I think that it should be a strong consideration for the residents in our community economically." AR 1252 (Commissioner Willis); (2) "[N]o matter what the laws that are written, you have to be about the people.... [S]o we need to go back and look at and see what gentrification is doing. AR 1253 (Commissioner Anderson); (3) the Project is not compatible with the Specific Plan's policies to create "a compatible and harmonious relationship between residential and commercial development" and "quality of life for the City's existing and future residents." AR 1255 (Commissioner Stern).

The APC clearly acted in bad faith and acted on its own frolic and detour, egged on by a political liaison and the testifying residents to impose its own view of appropriate public policy – *i.e.*, to take a stand against gentrification. It matters not that the APC believed it was acting in the community's best interest. The APC does not set policy and it does not create law; its obligation is to apply existing law to evaluation of a project. The Legislature concluded in the HAA that local governments are impeding housing development by imposing subjective policies that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing. §65589.5(a)(1)(B). That is exactly what the APC did by imposing its own views that gentrification is bad, displacement (even indirect displacement) must be accounted for, and the need for affordable housing trumps all. That is not the law, and there can be no legitimate dispute that the APC acted knowingly and deliberately to violate the law.

Compounding this deliberate violation, District Square notes that -- after it filed suit in February 2020 and knowing that the APC had violated the law -- the City attempted to mask the APC's intentional violation by issuing the LOD six months after-the-fact, which made false representations intended to bolster the APC's decision. Pet. Op. Br. at 18. The City's mandamus opposition is based entirely on the false LOD findings, in particular seizing upon the LOD's "phony CEQA finding" to make a specious argument that CEQA somehow compels the denial of the Project. Pet. Op. Br. at 18.

The City's bad faith justifies an "order or judgment directing the local agency to approve the housing development project" and District Square's entitlement to an award of reasonable

attorney's fees and costs of suit. §65589.5(k)(1)(A)(ii). Pet. Op. Br. at 18.

G. Conclusion

The Petition is granted. The City is directed to approve the Project within 45 days of the writ's issuance. §65589.5(k)(1)(A)(ii). District Square is entitled to an award of attorney's fees pursuant to a motion to determine the reasonableness of the amount. *See* id. The court will retain jurisdiction to ensure that the judgment is carried out. Id.

Petitioner District Square's counsel is ordered to prepare a proposed judgment and writ of mandate, serve them on counsel for the opposing parties for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment and writ along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for October 20, 2020 at 1:30 p.m.

PROOF OF SERVICE

DISTRICT SQUARE LLC vs. CITY OF LOS ANGELES

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1900 Avenue of the Stars, 7th Floor, Los Angeles, CA 90067-4308.

On October 16, 2020, I served true copies of the following document(s) described as **[PROPOSED] JUDGMENT GRANTING PEREMPTORY WRIT OF MANDATE** as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Jeffer Mangels Butler & Mitchell LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Los Angeles, California.

BY E-MAIL: I caused a copy of the document(s) to be sent from e-mail address sjimenez@jmbm.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed October 16, 2020, at Los Angeles, California.

Sheila Jimenez

JMBM | Jeffer Mangels Butler & Mitchell LLP

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PROOF OF SERVICE

DISTRICT SQUARE LLC vs. CITY OF LOS ANGELES

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1900 Avenue of the Stars, 7th Floor, Los Angeles, CA 90067-4308.

On November 6, 2020, I served true copies of the following document(s) described as **NOTICE OF ENTRY OF JUDGMENT OR ORDER** as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Jeffer Mangels Butler & Mitchell LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Los Angeles, California.

BY E-MAIL: I caused a copy of the document(s) to be sent from e-mail address sjimenez@jmbm.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed November 6, 2020, at Los Angeles, California.

Sheila Jimenez

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