

Office of the Los Angeles City Attorney
Hydee Feldstein Soto

REPORT NO. R 25 - 0185
APR 14 2025

REPORT RE:

**COURT-ISSUED WRIT COMMANDING CITY COUNCIL TO SET ASIDE, VACATE,
AND ANNUL CITY COUNCIL'S JANUARY 30, 2024 ACTION DENYING THE
APPEAL FILED BY MAMBA 24 LLC, AND SUSTAINING THE DETERMINATION OF
INCOMPLETENESS BY THE DEPARTMENT OF CITY PLANNING UNDER THE
PERMIT STREAMLINING ACT FOR THE PROPERTY LOCATED AT 10898, 10898½,
10900 WEST OLINDA STREET
(COUNCIL DISTRICT 6)**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 23-1387

Honorable Members:

This Office presents to you for your consideration and action a court-issued Writ of Mandate (Writ) and court judgment (Judgment) issued in the case entitled *Yes In My Back Yard v. City of Los Angeles*, Los Angeles Superior Court Case No. 24STCP00524 (Litigation). The Writ and Judgment with the ruling are attached hereto as Exhibits 1 and 2, respectively.

The Writ and Judgment require the City Council to "Set aside the City Council's January 30, 2024 action (C.F. 23-1387) finding Mamba 24 LLC's (Applicant) application to be incomplete, which the Court found constituted a disapproval of the project" at 10898, 10898 ½, 10900 West Olinda Street (Council District 6 - Padilla). The Project is a 100 percent affordable, 78-unit housing development (Project).

Background

On December 12, 2022, Mayor Karen Bass declared a State of Emergency to confront the City's housing and homeless crisis. On December 16, 2022, the Mayor issued Executive Directive 1 (Original ED1) titled: Expedition of Permits and Clearances for Temporary Shelters and Affordable Housing Types.

On March 21, 2023, Applicant submitted a Housing Crisis Act vesting Preliminary Application for the Project, and on June 21, 2023, Applicant filed a main Project application under case number ADM-2023-4205-DB-ED1-VHCA (Application). The Project is located on a parcel in the R1-1, or single-family zone, with a land use designation of Low Residential.

On June 12, 2023, the Mayor clarified the scope of the Original ED1 (Clarified ED1). Clarified ED1 expressly explained that projects located in single-family or more restrictive zones were excluded.

On July 6, 2023, the Department of City Planning (DCP) sent Applicant a letter explaining that, pursuant to the Clarified ED1, projects located in single-family or more restrictive zones cannot use Original ED1, but that there were other entitlement options available for Applicant's Project.

On July 10, 2023, DCP issued a letter outlining why the Application was incomplete.

On December 1, 2023, Applicant appealed the City's incompleteness determination without attempting to supply the missing items for its Application.

On January 30, 2024, the City Council heard the appeal. The City Council denied the appeal and sustained DCP's determination of incompleteness under the Permit Streamlining Act, California Government Code Section 65943(c), and adopted the recommendation, rationale, and responses, contained in the DCP staff reports dated January 11 and 22, 2024. This decision did not deny the Project; the decision merely required that Applicant submit a complete application to the City.

On February 20, 2024, the Applicant, along with Yes In My Backyard and Sonja Trauss, commenced the Litigation under the Housing Accountability Act (HAA), the Permit Streamlining Act (PSA), and the Housing Crisis Act (HCA). The Litigation proceeded to trial on October 30, 2024. The Court held that Original ED1 provided vesting rights under the HAA, the City's finding that the Application was incomplete constituted a disapproval under the HAA, and the Applicant's vesting rights had not expired under the PSA. (Ex. 2. Judgment and Ruling.) The Clerk of the Court subsequently issued the Writ commanding the City to, among other things, set aside, vacate, and annul the City Council's January 30, 2024 action adopting the Planning and Land Use Management Committee's report denying the appeal.

Therefore, to comply with the Writ, the City Council must place the matter on its agenda to set aside, vacate, and annul its January 30, 2024 action denying the appeal and finding the Application incomplete.

The City must provide a status report to the Court of any steps taken to comply with the Writ by April 14, 2025. Another status report to the Court will be filed after City Council acts consistent with the Writ and Judgment.


Recommendation

We request your action consistent with the Writ and Judgment. The City Council will thus need to place on its agenda a proposed action to set aside, vacate, and annul its January 30, 2024 action denying the appeal filed and sustaining the determination of incompleteness by the DCP under the Permit Streamlining Act for the property located at 10898 ½, 10900 West Olinda Street.

If you have any questions regarding this matter, please contact Deputy City Attorney K. Lucy Atwood at (213) 978-8248. A member of this Office will be present when you consider this matter to answer questions you may have.

Sincerely,

HYDEE FELDSTEIN SOTO, City Attorney

By 
JOHN W. HEATH
Chief Assistant City Attorney

JWH:KLA:jr
Exhibits

EXHIBIT 1

EXHIBIT 1

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Attorneys for Petitioner and Plaintiff
MAMBA 24 LLC

SUPERIOR COURT – STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – UNLIMITED CIVIL JURISDICTION

YES IN MY BACK YARD, a California
nonprofit corporation; SONJA TRAUSS, an
individual; and MAMBA 24 LLC, a
California limited liability company;

Petitioners/Plaintiffs,

v.

CITY OF LOS ANGELES; CITY COUNCIL
OF THE CITY OF LOS ANGELES; and
DOES 1-25,

Respondents.

Case No. 24STCP00524

[PROPOSED] WRIT

Judge:	Hon. Stephen I. Goorvitch
Department:	82
Hearing Date:	October 18, 2024
Time:	9:30 am

FILED
CITY CLERK'S OFFICE
2025 FEB 13 PM 12:09
BY [Signature] CITY CLERK

RECEIVED

FEB 18 2025

City Attorney
Land Use/Real Property

1 This Court, having heard and decided Petitioners Yes In My Back Yard, Sonja Trauss,
2 and Mamba 24 LLC's claims for relief in their Verified Petition for Writ of Mandate and
3 Complaint for Declaratory Relief, and decided in favor of Petitioners against Respondents City
4 of Los Angeles and the City Council of the City of Los Angeles ("Respondents"), a
5 peremptory writ of mandate shall be issued under seal of this Court regarding the proposed
6 housing development project at 10898, 10898 1/2, and 10900 West Olinda Street (the
7 "Project").

8 **IT IS HEREBY ORDERED AT**, upon receipt of this writ Respondents shall:

- 9 a. Set aside the City Council's January 30, 2024 action (Council File 23-1387)
10 finding Mamba's application to be incomplete, which the Court found constituted a
11 disapproval of the Project; and
12 b. Set aside, vacate, and annul the Planning Department's July 6, 2023 "Notice of
13 Ineligibility," regarding the Project's eligibility for ministerial processing pursuant to
14 the December 16, 2022 version of Executive Directive 1;
15 c. Determine that the Project's March 21, 2023 preliminary application remains
16 valid and in effect in compliance with this Court's Ruling; and
17 d. Review and process Mamba 24 LLC's June 21, 2023 application materials, as
18 modified by the supplemental application materials submitted, for the Project in
19 accordance with ordinances, policies and standards in effect on February 27, 2023,
20 including the December 16, 2022 version of Executive Directive 1 and the
21 Implementation Guidelines for Executive Directive 1: Expedition of Permits and
22 Clearances for Temporary Shelters and Affordable Housing Types dated February 9,
23 2023, which did not exclude 100 percent affordable housing projects from single-
24 family housing zones;
25 f. Review and process the Project pursuant to the PSA and the HAA, as
26 interpreted in the Court's Ruling;
27 g. File an initial return to this writ no later than 60 days after service of the writ of
28 mandate on the City Clerk stating what Respondents have done to comply;

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h. By way of a return to this writ, this Court shall retain jurisdiction until this Court has determined that Respondents have fully complied with the writ;

i. Nothing in this writ shall limit or control any discretion legally vested in Respondents, including but not limited to, submitting requests for the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application as permitted by Gov. Code § 65944.

IT IS SO ORDERED.

Dated: 02/07/2025



David W. Slayton, Executive Officer / Clerk of Court

K. Encinas

Clerk of the Superior Court

EXHIBIT 2

EXHIBIT 2

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JAN 28 2025

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21 **SUPERIOR COURT – STATE OF CALIFORNIA**

22 **COUNTY OF LOS ANGELES – UNLIMITED CIVIL JURISDICTION**

23 YES IN MY BACK YARD, a California
24 nonprofit corporation; SONJA TRAUSS, an
25 individual; and MAMBA 24 LLC, a
26 California limited liability company;

27 Petitioners/Plaintiffs,
28 v.

CITY OF LOS ANGELES; CITY COUNCIL
OF THE CITY OF LOS ANGELES; and
DOES 1-25,

Respondents.

Case No. 24STCP00524

**~~PROPOSED~~ JUDGMENT GRANTING
PETITION**

Judge: Hon. Stephen I. Goorvitch
Department: 82
Hearing Date: October 18, 2024
Time: 9:30 am

~~PROPOSED~~ JUDGMENT GRANTING PETITION

1 **WHEREAS**, on February 20, 2024, Petitioners Yes In My Back Yard, Sonja Trauss,
2 and Mamba 24 LLC filed a Verified Petition for Writ of Mandate and Complaint for
3 Declaratory Relief (the "Petition") against Respondents City of Los Angeles and the City
4 Council of the City of Los Angeles ("Respondents") alleging causes of action under the Permit
5 Streamlining Act ("PSA"), Housing Crisis Act ("HCA"), and the Housing Accountability Act
6 ("HAA") arising out of the action this Court found constituted a disapproval by Respondents of
7 Mamba 24's application for a proposed housing development project at 10898, 10898 1/2, and
8 10900 West Olinda Street as described in the June 21, 2023 application materials, as modified
9 by the supplemental application materials submitted on September 27, 2023 (the "Project");

10 **WHEREAS**, the Petition came for trial on October 30, 2024, in Department 82 of this
11 Court. Petitioners Yes In My Back Yard and Sonja Trauss appeared through counsel, Ryan J.
12 Patterson and Brian O'Neill of Patterson & O'Neill, PC; Petitioners Mamba 24 LLC appeared
13 through counsel, Daniel Freedman and Matthew Hinks of Jeffer Mangels Butler & Mitchell
14 LLP; and Respondents appeared through counsel, K. Lucy Atwood and Donna Wong of the
15 Office of the Los Angeles City Attorney;

16 **WHEREAS**, the Court, having read the submissions of the parties to this action,
17 including the Petition, briefs, and matters judicially noticed, and having read and considered
18 the administrative record and the arguments of counsel, took the matter under submission and
19 subsequently adopted a ruling on November 12, 2024, regarding the Petition (the "Court's
20 Ruling");

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

22 1. Judgment is entered in favor of Petitioners for the reasons set forth in the
23 Court's Ruling, attached hereto as **Exhibit 1**, and grants the Petition on the first and second
24 causes of action. However, the Court declines to issue a declaratory judgment because
25 Petitioners have an adequate remedy in the writ causes of action.

26 2. A writ of mandate shall issue as follows:

27 a. Respondents must set aside City Council's January 30, 2024 action (Council File
28 23-1387) finding Mamba's application to be incomplete, which the Court found

1 constituted a disapproval of the project, and must reconsider that action in light of this
2 Court's Ruling; and

3 b. Respondents must set aside, vacate, and annul the Planning Department's July
4 6, 2023 "Notice of Ineligibility," regarding the Project's eligibility for ministerial
5 processing pursuant to the December 16, 2022 version of Executive Directive 1;

6 c. Respondents must recognize that the Project's March 21, 2023 preliminary
7 application, remains valid and in effect; and;

8 d. Respondents must process Mamba 24 LLC's June 21, 2023 application
9 materials, as modified by the supplemental application materials submitted, for the
10 Project in accordance with ordinances, policies and standards in effect on February 27,
11 2023, including the December 16, 2022 version of Executive Directive 1 and the
12 Implementation Guidelines for Executive Directive 1: Expedition of Permits and
13 Clearances for Temporary Shelters and Affordable Housing Types dated February 9,
14 2023, which did not exclude 100 percent affordable housing projects from single-
15 family housing zones; and

16 e. Respondents must review and process the application pursuant to the PSA; and

17 f. Respondents must comply with HAA and the Court's Ruling within 60 days.

18 3. This matter shall be remanded for further proceedings in compliance with the writ of
19 mandate.

20 4. Similarly situated parties shall take nothing by this action.

21 5. Nothing in this judgment shall limit or control any discretion legally vested in
22 Respondents, including but not limited to, submitting requests for the applicant to clarify,
23 amplify, correct, or otherwise supplement the information required for the application as
24 permitted by Gov. Code § 65944.

25 6. As the prevailing party, Petitioners shall recover their costs of suit from Respondents
26 pursuant to applicable law. Nothing in this judgment shall foreclose Petitioners from bringing a
27 motion for attorneys' fees under applicable law.

28 7. The Court hereby retains jurisdiction in this action until there has been full compliance

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with the writ.

IT IS SO ORDERED.

Dated: 01/16/2025



A handwritten signature in black ink, appearing to read "Stephen I. Goorvitch".

Stephen I. Goorvitch / Judge

Hon. Stephen I. Goorvitch
Judge of the Superior Court

EXHIBIT 1

FILED
Superior Court of California
County of Los Angeles

NOV 12 2024

David W. Stanyon, Executive Officer/Clerk of Court
By: R. Mendoza, Deputy

Yes In My Back Yard, et al.

Case No. 24STCP00524

v.

Hearing: October 30, 2024

Location: Stanley Mosk Courthouse

Department: 82

Judge: Stephen I. Goorvitch

City of Los Angeles, et al.

Order Granting Petition for Writ of Mandate

INTRODUCTION

In December 2022, Mayor Karen Bass declared a local emergency in response to the ongoing housing and homelessness crisis. As authorized by the City Charter, the Mayor issued Executive Directive No. 1 (“ED1”), which created a streamlined ministerial approval process for 100 percent affordable housing projects throughout the City. Petitioner Mamba 24 LLC (“Mamba”) applied to build a 100 percent affordable housing project in a single-family residential zone. The City initially found that the project was eligible for the ED1 process and that Mamba’s application was complete. Then, the Mayor amended ED1 to exclude projects in single-family zones. The City informed Mamba that its project no longer qualified for ministerial review under ED1 and that the project would be subject to discretionary review. The City deemed Mamba’s application incomplete after Mamba did not submit application materials and pay the fees required for a discretionary project. Mamba appealed the decision, and the City Council voted to uphold the City’s incompleteness determination.

Petitioners Yes In My Back Yard, Sonja Trauss, and Mamba (collectively, “Petitioners”) now petition for a writ of mandate directing Respondents City of Los Angeles and the City Council (collectively, the “City” or “Respondents”) to, among other things, set aside the denial of Mamba’s appeal under the Permit Streamlining Act (“PSA”) and to process Mamba’s development application for an affordable housing project pursuant to the Housing Accountability Act (“HAA”). Because Mamba filed a preliminary application that included all information required by state law, the project was vested by operation of law in the ED1 ministerial review process. Accordingly, the City Council violated the PSA and HAA when it denied Mamba’s appeal and upheld the City’s incompleteness determination. The petition for writ of mandate is granted, but the court does not find bad faith on the part of Respondents.

BACKGROUND

A. The Mayor’s Emergency Declaration and Executive Directive 1

On December 12, 2022, Mayor Karen Bass issued a Declaration of Local Emergency (the “Declaration”), pursuant to City Charter section 231(i) and Los Angeles Administrative Code (“LAAC”) section 8.27, in response to the City’s ongoing housing and homelessness crisis. (Petitioner’s Request for Judicial Notice (“RJN”) Exh. A.) The Declaration states that “the continuing state of emergency shall be regularly evaluated, in coordination with City Council.”

continuing state of emergency shall be regularly evaluated, in coordination with City Council.” (*Ibid.*) The Declaration of Local Emergency remains operative, nearly two years later, and has been ratified by the City Council. (*See* RJN Exh. H.)

On December 16, 2022, Mayor Bass issued Executive Directive No. 1 (“ED1”) ordering the “Expedition of Permits and Clearances for Temporary Shelters and Affordable Housing Types.” (AR 713.) In ED1, the Mayor ordered that:

Applications for 100% affordable housing projects, or for Shelter as defined in Section 12.03 of the Los Angeles Municipal Code (LAMC) (hereinafter referred to as Shelter), shall be, and hereby are deemed exempt from discretionary review processes otherwise required by either the zoning provisions of Chapter 1 of the LAMC or other Project Review including Site Plan Review as described in LAMC Section 16.05 and LAMC Section 13B.2.4, as long as such plans do not require any zoning change, variance, or General Plan amendment. All City departments are directed to process all plans for such 100 percent affordable housing projects or Shelter using the streamlined ministerial review process currently used for projects eligible under Government Code section 65913.4, State Density Bonus law.

(AR 713 at ¶ 1.)

On February 9, 2023, the City issued implementation guidelines for ED1 (the “Guidelines”) that outlined the eligibility criteria and procedures for projects seeking ministerial approval under ED1. (RJN Exh. B.) In relevant part, the Guidelines state:

An ED 1 project may qualify for vesting of City ordinances policies and standards through either the submittal of plans sufficient for a complete plan check to LADBS, consistent with LAMC §12.26-A.3 or the submittal of a complete Housing Crisis Act (HCA) Vesting Preliminary Application prior to case filing.

(*Id.* at 11.) The Guidelines also state: “Most housing projects qualify to submit an optional HCA Vesting Preliminary Application, which ‘locks in’ local planning and zoning rules at the time the complete application is submitted.” (*Id.* at 14.)

B. Mamba Submitted a Preliminary Application under ED1

On March 21, 2023, Mamba submitted a Housing Crisis Act (“HCA”) preliminary application for an affordable housing project at 10898, 10898 1/2, and 10900 West Olinda Street, in the City of Los Angeles (the “Olinda Project” or the “Project”). (AR 137-47.) In their opposition, Respondents have not disputed that the Olinda Project qualifies as a “100 percent affordable housing project” within the meaning of ED1.

In the application, Mamba proposed to replace two existing single-family dwellings, which are to be demolished, with a three-story affordable housing development with 78 new affordable rental units. (AR 138-139.) On March 23, 2023, a City planning staff person signed the preliminary application, verified a “submittal completion date” of March 21, 2023, and

checked the box identifying the project as “ED1 eligible.” (AR 137.) The City assigned the application an “administrative review” case number (Case No. ADM-2023-4205). (*Ibid.*)

Mamba also submitted an Affordable Housing Referral Form (“AHRF”) to the City’s Affordable Housing Services Section (“AHSS”). (AR 171.) On May 9, 2023, AHSS staff signed the form and assigned it an ED1 case number (Case No. FAR-2023-2458-AHRF-ED1). (*Ibid.*)

On June 6, 2023, Mamba submitted a formal Department of City Planning application for the Project. (AR 184-190.) By June 21, 2023, Mamba had paid \$2,926.98 for a building permit and a certificate of occupancy and \$4,892.94 for administrative review and other application fees (AR 107, 229).

C. The Mayor Amended ED1

On June 21, 2023, Mayor Bass issued an amended version of ED1 (“Amended ED1”). Amended ED1 was largely the same as ED1 except that it excluded projects that would be “located in a single family or more restrictive zone.” (AR 764.) At the hearing, the parties indicated that there were only four completed applications for 100 percent affordable housing projects in single family zones between December 12, 2022, and June 21, 2023: (1) The instant project; (2) The Ethel Project (discussed below); (3) The project on Winnetka Avenue in Canoga Park, which was at issue in Case Number 24STCP00524; and (4) A project at issue in a case pending in Department 86 (Kin, J.)

D. The City Deemed the Project Ineligible under ED1

On July 6, 2023, the City sent Mamba a letter referring to Amended ED1 and stating that “the proposed project located at 10893, 10898 1/2, and 10900 West Olinda Street is in the R1-1-CUGU [single-family] zone and is not eligible for ED1 processing.” (AR 296.) On July 10, 2023, City Planning informed Mamba that its application was incomplete. City Planning identified the following items for correction: (1) There was no Environmental Assessment Form (“EAF”); (2) The AHRF was inconsistent with Project plans with regard to the number of Very Low Income Units; (3) There were no Landscape Plans as part of the Project Plan submission; and (4) The entitlement number needed conversion from an administrative review case number (starting with “ADM”) to a different case number for City Planning Commission (“CPC”) review (Case No. CPC-2023-4205-DB-PHP-VHCA). (AR 1125-1127.) City Planning also invoiced Mamba for more than \$35,000 in additional fees in connection with the conversion of the application from “ADM” to “CPC” review. (AR 300-301.)

On August 4, 2023, City Planning sent Mamba a Second Status of Project Review explaining that the Project did not qualify for ED1 processing and was converted to a regular entitlement process under the new “CPC” case number. (AR 1128.) City Planning also referred to the prior incompleteness determination, including the need to provide the EAF materials required for discretionary review under the California Environmental Quality Act (“CEQA”). (AR 1129.)

In July and August 2023, Mamba's representative asked the staff to explain why the Project would be subject to Amended ED1. (AR 806-809.) It appears that City staff did not respond to that request in July or August 2023. (*Ibid.*) On September 27, 2023, Mamba provided a response to the City's incompleteness letter of July 10, 2023. (AR 815, 821, 852.) Mamba indicated that the EAF materials were not required because the Project is exempt from CEQA pursuant to ED1, and that Mamba would appeal "under SB330 vesting" the City's determination to convert the Project from "ADM" to "CPC" processing. With respect to items two and four in the City's incompleteness letter, Mamba provided revised plans, indicated that the AHRF was correct with respect to the number of Very Low Income Units, and provided landscape plans. (AR 852.)

On November 22, 2023, City Planning sent Mamba a letter of non-compliance pursuant to California Government Code section 65589.5(j)(2) explaining that the Project was inconsistent and not in compliance with the City's Zoning Code with regard to density/use, residential floor area, setbacks/encroachment plane, vehicular parking, bicycle parking, and open space/landscape. (AR 1026-30.) The City identified missing information and requested a response within 30 days. (AR 1030, 1133-37.) Specifically, the City requested the EAF for environmental analysis, supplemental documents to accompany the EAF, and payment of outstanding fees. (AR 1030.)

E. Mamba Appealed the City's Incompleteness Determination

On December 1, 2023, Mamba filed an administrative appeal of the City's incompleteness determination. (AR 979-993.) Mamba argued that "as a matter of State law the HCA Preliminary Application filed for the Project grants vesting protections that require the City's continued ED 1 processing of the Case Filing, as the Project became vested prior to the issuance of the Revised ED 1." (AR 981.) Mamba analyzed the HAA, as follows:

[T]he HAA specifically, intentionally and very broadly defines "ordinances, policies, and standards" to include "general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, *and any other rules, regulations, requirements, and policies of a local agency.*" Given this statutory provision, any attempt by the City to claim that ED 1 - a formal regulation promulgated pursuant to the Mayor's authority under the City's Administrative Code - cannot be vested against because it is not an ordinance directly contradicts the plain statutory language and crystal clear intent of both the HCA and HAA.

(AR 991, emphasis in original.)

F. The City Council Granted Vesting Rights to a Similarly-Situated Project

City Planning also deemed a different affordable housing project, located at 5511 North Ethel Avenue ("Ethel Project"), ineligible for ED1 and the applicant appealed. On September 14, 2023, the State, through its Department of Housing and Community Development ("HCD"), sent the City Council a Letter of Technical Assistance sharing HCD's views with respect to the Ethel appeal. (RJN Exh. C.) HCD's letter stated: "The central question between the City and the

Applicant is as follows: Is an executive directive one of the rules, regulations, requirements, and policies that vest upon submission of a complete Preliminary Application? The answer is ‘yes.’” (RJN Exh. C.) HCD’s letter further explained that “ED1 is not excluded from the expansive HAA definition of ‘ordinances, policies, and standards’” and is therefore eligible for vesting. (*Ibid.*)

At the City Council meeting on September 26, 2023, some City Council members recognized the precedential nature of the Ethel appeal. For example, Councilmember Rodriguez stated, “the process is gonna be delineated here today by this action for all future projects.” (RJN Exh. E at 34.) Similarly, Councilmember Yaroslavsky stated:

So I'm going to be voting yes today in support of the appeal, and I want to say why. My vote is largely centered on the fact that if we deny this appeal today, we are very likely going to lose in court on this project and the other projects that are in a similar position, and it's gonna cost taxpayers millions of dollars we cannot afford to lose. As we discussed earlier, the state of California Housing and Community Development -- Housing Accountability Unit has made their position clear on this matter, that ED-1 does constitute a policy under which these projects are vested, and our own planning department initially said so as well.

(*Id.* at 39-40.) After deliberation, the City Council voted 8 to 5 to grant the Ethel Project appeal and determine that the Ethel Project could vest in ED1’s ministerial process, even though the Ethel Project was located in a single-family residential zone. (*Id.* at 64; RJN Exh. F.)

G. The City Council Denied Mamba’s Appeal of the Incompleteness Determination

On January 11, 2024, City Planning issued an Appeal Recommendation Report recommending that the City Council deny Mamba’s appeal of the incompleteness determination. (AR 410-423.) In summary, City Planning opined that “ED1 is not a standard, ordinance or policy that is subject to the vesting rules in” the HAA or the HCA. (AR 413; *see also* AR 419-422.) At its meeting on January 30, 2024, the City Council considered Mamba’s appeal. (AR 1150, 1165.) The City Council unanimously denied the appeal. (AR 1150.) The meeting transcripts do not include any express findings or deliberation of the City Council with respect to Mamba’s appeal. (*See* AR 1151-1246.) However, the motion approved by the City Council adopted the reasoning of the City Planning’s appeal report dated January 11, 2024. (AR 1149-1150.)

STANDARD OF REVIEW

This is an action to enforce the Housing Accountability Act (the “HAA”). Although Petitioners also plead a cause of action under the Permit Streamlining Act (the “PSA”), the “completeness” of Mamba’s application under the PSA is, fundamentally, a question of whether ED1 granted vesting rights to the Project under the HAA. Accordingly, the standard of review from the HAA governs that issue.

The HAA requires that “[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. . . .” (Gov. Code § 65589.5(m)(1).) 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, citations and internal quotations omitted.) The City “bear[s] the burden of proof that its decision has conformed to all of the conditions specified in Section 65589.5.” (Gov. Code § 65589.6.)¹

The court exercises independent judgment on questions of law arising in mandate proceedings, such as the interpretation of a statute or regulation. (See *Christensen v. Lightbourne* (2017) 15 Cal.App.5th 1239, 1251.) To the extent “purely legal issues involve the interpretation of a statute [or regulation] an administrative agency is responsible for enforcing, [the court] exercise[s] [its] independent judgment, taking into account and respecting the agency’s interpretation of its meaning.” (*Housing Partners I, Inc. v. Duncan* (2012) 206 Cal.App.4th 1335, 1343, citations and internal quotations omitted; see also *Yamaha Corp. of America v. State Bd. Of Equalization* (1998) 19 Cal.4th 1, 11.) How much weight to accord an agency’s construction is “situational,” and depends on the circumstances. (See *American Coatings Assn. v. South Coast Air Quality Management Dist.* (2012) 54 Cal.4th 446, 461-462.)

EVIDENTIARY ISSUES

Petitioners seek judicial notice of Exhibit A through Exhibit J. Respondent does not oppose the request. Consistent with section 1094.5(e), the court may consider these exhibits for purposes of statutory construction. Therefore, the request is granted. However, the court would reach the same result on the petition even without considering these materials.

Petitioners also seek judicial notice of a decision by another Superior Court Judge. Although Respondent does not oppose the request, it is denied. Trial court decisions—especially tentative ones—are not precedent. (See *B.F. v. Superior Court* (2012) 207 Cal.App.4th 621, 627; see also Cal. Rules of Court, Rule 8.1115(a).)

¹ To the extent the petition raises PSA issues that are governed by traditional mandate, Code of Civil Procedure section 1085, the court “must ask whether the public agency’s action was arbitrary, capricious, or entirely lacking in evidentiary support, or whether the agency failed to follow the procedure and give the notices the law requires.” (*County of Los Angeles v. City of Los Angeles* (2013) 214 Cal.App.4th 643, 654.)

DISCUSSION

A. ED1 Is Subject to the Vesting Provisions of the HCA and HAA

In denying Mamba's appeal, the City Council adopted the City Planning appeal report, which concluded that "ED1 is not a standard, ordinance or policy that is subject to the vesting rules in" the HAA or the HCA. (AR 413, 419-422, 1149-1150.) Petitioners contend that the City Council erred in its interpretation of the HAA. (Opening Brief ("OB") 13-16.)

The rules governing statutory construction are well settled. We begin with the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent. To determine legislative intent, we turn first to the words of the statute, giving them their usual and ordinary meaning. When the language of a statute is clear, we need go no further. However, when the language is susceptible of more than one reasonable interpretation, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.

(*Nolan v. City of Anaheim* (2004) 33 Cal.4th 335, 340 [internal citations omitted].)

In 2019, the Legislature enacted the HCA and added a new "preliminary application" process designed to "stop[] [local governments] from changing the rules on builders who are in the midst of going through the approval process." (RJN Exh. G at 7; see also Gov. Code § 65941.1(a).) Under the HAA, a housing developer that submits a preliminary application that contains all the information required by section 65941.1(a) "shall be subject only to the ordinances, policies, and standards" in effect at the time the preliminary application is submitted. (§ 65589.5(o)(1).) The HAA defines "ordinances, policies, and standards" broadly to include "general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, **and any other rules, regulations, requirements, and policies of a local agency** ... including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions." (Gov. Code § 65589.5(o)(4), emphasis added.)

Here, ED1 orders that "[a]pplications for 100% affordable housing projects . . . shall be, and hereby are deemed exempt from discretionary review processes otherwise required by either the zoning provisions of Chapter 1 of the LAMC or other Project Review including Site Plan Review" (AR 713.) It is undisputed that the Project is a "100% affordable housing project" within the meaning of ED1 and that Mamba submitted a preliminary application that contained all the information required by section 65941.1(a). (See AR 137-47.) Thus, the court need only determine whether ED1 fits within the HAA's definition of "ordinances, policies, and standards."

ED1 was issued by the Mayor pursuant to section 231(i) and (j) of the City Charter. Section 231(i) of the City Charter states that the Mayor "shall have the power and duty to: ... declare a local emergency" Section 231(j) states that the Mayor has the power and duty to

issue “executive directives, which, in the absence of conflicting provisions in the Charter or ordinance, and *until revised* or rescinded by the Mayor, *shall be binding on all departments, commissions, appointed officers and employees of the City.*” (RJN Exh. C at 3, emphasis added.) Respondents do not argue that ED1 conflicted with the Charter or City ordinances in any way. Thus, because ED1 sets forth a “binding” development rule, it falls within the HAA’s broad definition of “ordinances, policies, and standards.”

The City concluded that an emergency directive, like ED1, “does not carry with it the legislative intent of process, procedures, and development regulations expected to be vested under Government Code Sections 65589.5 and 65941.1.” (AR 421.) However, the plain language of the statute shows that the Legislature intended the HAA’s vesting provision to apply to more than just legislatively enacted development standards. Section 65589.5 broadly defines the items eligible for vesting to include “any other rules, regulations, requirements, and policies of a local agency.” (Gov. Code § 65589.5(o).) By contrast, the provision that requires a local agency to identify project inconsistencies is only applicable to “general plan, zoning, and subdivision standards and criteria, including design review standards.” (Gov. Code § 65589.5(j)(1).) The provision that allows for the disapproval of affordable housing projects is narrower still and limited to instances of inconsistency with a “jurisdiction’s zoning ordinance and general plan land use designation.” (Gov. Code § 65589.5(d)(5).) When interpreting a statute, “significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose.” (*People v. McCart* (1982) 32 Cal.3d 338, 342-343.) The HAA also instructs that “[i]t is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.” (Gov. Code § 65589.5(a)(2)(L).) Accordingly, the phrase “any other rules, regulations, requirements, and policies” in section 65589.5(o)(4) is reasonably interpreted to include housing development rules or policies of a local agency created by an emergency directive of the local agency’s mayor and that are binding on the City during the declared emergency.

Respondents contend that ED1 did not fall within the scope of the HAA’s vesting provision because “an emergency declaration is limited in duration” and the HAA “is intended to vest projects against changes in long-term substantive requirements, not the temporary emergency processing schedules referenced in Original ED1.” (Oppo. 14, citing City Charter § 231(i) and LAAC §§ 8.27, 8.29, and 8.31.) This argument conflicts with the Legislature’s purpose in enacting the HCA and HAA provisions at issue. The Legislature acknowledged that all local development rules are limited in duration and can be amended at any time, and the vesting rule was added to stop local governments “from changing the rules on builders who are in the midst of going through the approval process.” (RJN Exh. G at 7.) The fact that ED1 could be changed at any time *supports* applying the vesting rule, as affordable housing developers like Mamba relied on the original version of ED1 when deciding to pursue a project. (*See* AR 905.) Further, the City Charter and LAAC do not impose any specific time limit on how long an

emergency declaration may last.² Indeed, the City's declared housing emergency has been ongoing for nearly two years and was ratified by the City Council. (RJN Exh. H.)

The City is not entitled to deference in its interpretation of the HAA and HCA vesting rules, which are state law, not local ordinances. Further, as Petitioners argue, the City's position with respect to the vesting rules has not been consistent. (See Reply 5:19-25.) As examples, the ED1 Guidelines inform applicants that a preliminary application "locks in" existing standards. (RJN Exh. B at 14.) The "Implementation Guidelines" for ED1 state that an ED1 project may qualify for vesting. (RJN Exh. C at 11.) The City Council granted the Ethel Project appeal and determined that the Ethel Project could vest in ED1's ministerial process, even though the Ethel Project was located in a single-family residential zone. (RJN Exh. E at 64; RJN Exh. F.)

In contrast, HCD has been consistent in its interpretation of the HAA vesting rules as applied to ED1. (See RJN Exh. C.) Respondents do not show otherwise. Further, HCD's interpretation is well-reasoned and supported by the plain language of the HAA. "The amount of deference given to the administrative construction depends upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." (*Hoechst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal.4th 508, 524.) Based on these factors, HCD's interpretation of the HAA vesting rules as applied to ED1 is entitled to some weight, while the City's interpretation is not.

In sum, the City Council prejudicially abused its discretion when it concluded that an emergency directive, like ED1, does not qualify for vesting under section 65589.5(o) of the HAA. (AR 413, 419-422, 1149-1150.) To the contrary, the court finds that Petitioner's project vested under the original version of ED1.

B. ED1 Applied to Projects in Single-Family Zones

Respondents contend that the original ED1 was meant to apply to multi-family zones, not single-family zones, and that the court should defer to the City's interpretation of ED1. (OB 15-16.) City Planning and the City Council did not deny Mamba's appeal on this basis. (See AR 413, 419-422, 1149-1150.) City Planning acknowledged in the appeal report that "the Mayor's [original] ED1 was not express about disqualifying multiunit projects in R1 and more restrictive zones," and City Planning did not opine in the appeal report that the original ED1 should be interpreted to apply only to multi-family zones. (AR 413.) Generally, courts do not accept *post hoc* rationalization for agency action. (See *Motor Vehicle Mfrs. Assn. v. State Farm Mut.* (1983) 463 U.S. 29, 50; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 81.)

Regardless, the original ED1 applies to *all* "[a]pplications for 100% affordable housing projects . . . as long as such plans do not require any zoning change, variance, or General Plan amendment." (AR 713.) ED1 did not restrict projects to multi-family zones, and it was later

² Section 8.31 states, in part, that "[u]pon the announcement by the Council of the City of Los Angeles of the termination of the existence of the local emergency by operation of law, such rules, regulations, orders and directives shall terminate and be of no further force or effect."

amended to add this restriction. (AR 713-715 and 764-67.) If the original ED1 had prohibited projects in single-family zones, there would have been no need to amend it. (See *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1337 [“Where changes have been introduced to a statute by amendment it must be assumed the changes have a purpose....”].)

Moreover, the City is not entitled to deference in its interpretation of the original ED1. (See Oppo. 15.) The City’s interpretation conflicts with the plain language of the original ED1. Further, The City’s interpretation has not been consistent. Notably, the City’s own planning department confirmed that projects in single-family zones were eligible for ED1. (See e.g., AR 137, 171, 296.) The City assigned the application an “administrative review” case number (Case No. ADM-2023-4205), which the City would not have done if the Project was not ED1 eligible. (*Ibid.*; see AR 296-299, 1029-30.) The City also has interpreted ED1 inconsistently, as evidenced by its approval of the Ethel Project and its denial of the Olinda Project even though both are located in single-family zones. Deference is only afforded to “consistent” and “long standing” interpretations, which is not the case here. (*Mason v. Retirement Board* (2003) 111 Cal.App.4th 1221, 1228.)

C. Estoppel Does Not Apply

Respondents argue that the City “cannot be estopped from applying its zoning laws” based on its initial “error” in accepting Mamba’s application with an “administrative review” case number. (Oppo. 16-17.) Respondents misapprehend Petitioner’s argument. Petitioners do not argue that the City is estopped, by its prior statements or actions, from applying its zoning laws. Rather, Petitioners contend that the Project vested under the development rules set forth in ED1—by operation of law—when Mamba filed its HCA preliminary application. As discussed, the City did not err in its initial determinations that the Project was “ED1 eligible” and that it should be assigned an administrative review case number. (See AR 137, 296-299, 1029-30.) Estoppel does not apply in these circumstances and Respondents’ arguments based on estoppel are irrelevant.

The City’s reference to its status as a charter city is also irrelevant. (See Oppo. 17-18.) The HAA explicitly applies to charter cities, and the Court of Appeal has confirmed the HAA does not violate a charter city’s municipal authority. (See *California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 835, 847-853.)

D. Mamba Complied with the PSA and its Appeal Was Not Moot

Respondents raise arguments concerning the completeness of Mamba’s preliminary application and compliance with deadlines specified in the Permit Streamlining Act (“PSA”). Respondents contend that the City Council properly denied Mamba’s appeal because “the Project Application was factually incomplete” and “[t]he City has no ministerial duty to accept an incomplete application.” (Oppo. 19.) Respondents’ arguments under the PSA are not persuasive because they are based on Amended ED1, which does not apply to Petitioner’s application, as discussed.

On March 21, 2023, Mamba submitted a HCA preliminary application for the Project. (AR 137-47.) It is undisputed that the Project is a “100% affordable housing project” within the meaning of ED1 and that the application contained all the information required by section 65941.1(a). (See AR 137-47.) The staff deemed the application “ED1 eligible” under the original version of ED1. (AR 137, 171.) Therefore, Petitioner’s ministerial application was “complete” within the meaning of the PSA as of March 21, 2023.

E. The City Violated the HAA By Failing to Recognize Vesting Rights under ED1

Petitioners contend that the City’s failure to recognize vesting rights is a violation of the HAA. (OB 16-17.) Respondents do not argue otherwise. (*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”].) The HAA states that a local agency violates the HAA if it “required or attempted to require a housing development project to comply with an ordinance, policy, or standard not adopted and in effect when a preliminary application was submitted.” (Gov. Code § 65589.5(k)(1)(A)(i)(III).) As shown by the analysis above, this is exactly what the City did. (See AR 296-299, 302-303, 413-422, 1149-1150.)

F. The City Violated the HAA by Disapproving the Project

Petitioners contend that the City Council violated the HAA when it denied Mamba’s administrative appeal and thereby “disapproved” of the ministerial Project for which Mamba applied. (OB 17.) It is undisputed that the Project qualifies as a “housing development project” and “housing for very low, low-, or moderate-income households” under the HAA. (Gov. Code § 65589.5(h)(2) and (3).) The HAA prohibits a local government from disapproving of such housing projects unless it makes written findings based on a preponderance of the evidence in the record as to one of five specifically enumerated findings. (Gov. Code § 65589.5(d).) As Respondents acknowledge, the City has not made such findings. (See Oppo. 20-21.) Thus, the legal issue is whether the City “disapproved” the Project within the meaning of the HAA.

The HAA states, in relevant part, that the phrase “disapprove the housing development project” includes “any instance in which a local agency . . . [v]otes on a proposed housing development project application and the application is disapproved, **including any required land use approvals or entitlements necessary for the issuance of a building permit....**” (Gov. Code § 65589.5(h)(6), emphasis added.) 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.” (Gov. Code § 65589.5(a)(2)(L).) 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.)

The City Council’s decision to deny Mamba’s appeal of the incompleteness determination falls within the broad definition of “disapprove” under the HAA. As discussed, the Project is a “100% affordable housing project” that qualifies for ministerial processing under ED1. (See AR 137-47.) Despite this, City Planning converted the Project from ministerial to discretionary through the incompleteness determination. (See AR 296-299, 302-303.) City

Planning's conversion of the ministerial application to a discretionary one was the equivalent of a disapproval of the application based on a substantive determination that the Project was no longer eligible for ED1. In other words, the staff determined that Mamba could not obtain the "required land use approvals or entitlements necessary for the issuance of a building permit" for the ministerial project for which Mamba applied. Accordingly, when the City Council voted to uphold that determination, it "disapproved" of the ministerial project for which Mamba applied. (Gov. Code § 65589.5(h)(6).)

Respondents assert that "[t]here is no text in the HAA or the PSA that equates a decision on a PSA incompleteness appeal with a disapproval of the merits of a development application subject to the HAA." (Oppo. 21.) Respondents' argument is unpersuasive because it is based on the premise that a local agency can convert a ministerial project to a discretionary one and then claim "incompleteness" when the applicant does not submit materials only required for a discretionary project. Respondents do not cite any legal authority in support of that position. Because the Project vested under the original version of ED1 and Mamba's application was complete, there was no legal basis to impose a discretionary review process in the first place.

In sum, the court finds that the City Council "disapproved" of the Project within the meaning of the HAA when it voted to deny Mamba's appeal of the incompleteness determination. The City did not make written findings based on a preponderance of the evidence in the record as to one of the five findings required by the HAA to disapprove of a housing development project.

G. The Court Does Not Find that the City Acted in Bad Faith

Petitioners contend that the City Council acted in bad faith when it disapproved the Project. Under the HAA, "[t]he court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section." (Gov. Code § 65589.5(k)(1)(A)(ii).) The HAA states that "'bad faith' includes, but is not limited to, an action that is frivolous or otherwise entirely without merit." (Gov. Code § 65589.5(l).) A claim may be "frivolous" if it is "not well grounded in fact" or "not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." (*Guillemin v. Stein* (2002) 104 Cal.App.4th 156, 167.) Bad faith may also be established if actions are taken for an improper purpose. (*Trujillo v. City of Los Angeles* (1969) 276 Cal. App. 2d 333, 338; *Smith v. Selma Community Hosp.* (2010) 188 Cal. App. 4th 1, 34.)

The court does not find that the City acted in bad faith. The primary issue in this case is whether ED1 was intended to create vesting rights within the meaning of section 65589.5(o). There are no published appellate decisions on this issue. Nor was there any decision from a Superior Court Judge at the relevant time. The City Council's prior decision that ED1 affords vesting rights does not evidence bad faith; it was merely an interpretation of law. Different interpretations of law—even by the same agency (or court)—do not evidence bad faith. Petitioners' argument that the City's decisions were politically-motivated is based on conjecture and lacks sufficient evidence. Therefore, the court does not find that the City acted in bad faith.

11447474

CONCLUSION AND ORDER

IT IS SO ORDERED

Stephen I. Goorvitch
Superior Court Judge

(TYPE OR PRINT NAME OF	<input checked="" type="checkbox"/>	ATTORNEY	<input type="checkbox"/>	PARTY WITHOUT ATTORNEY)
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(SIGNATURE)

PLAINTIFF/PETITIONER: Yes In My Back Yard; Sonja Trauss
 DEFENDANT/RESPONDENT: City of Los Angeles; City Council of the City of Los Angeles

CASE NUMBER:
 24STCP00524

**PROOF OF SERVICE BY FIRST-CLASS MAIL
 NOTICE OF ENTRY OF JUDGMENT OR ORDER**

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify)*:

235 Montgomery Street, Suite 950
 San Francisco, CA 94104

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and *(check one)*:

- a. ☐ deposited the sealed envelope with the United States Postal Service.
 b. ☒ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:

- a. on *(date)*: January 16, 2025
 b. from *(city and state)*: San Francisco, CA

4. The envelope was addressed and mailed as follows:

- | | |
|---|---|
| <p>a. Name of person served:
 Donna Lee Wong Email: donna.wong@lacity.org
 Street address: 200 North Main St, City Hall East, Rm. 701
 City: Los Angeles
 State and zip code: CA 90012</p> | <p>c. Name of person served:
 Street address:
 City:
 State and zip code:</p> |
| <p>b. Name of person served:
 Lucy Atwood Email: lucy.atwood@lacity.org
 Street address: 200 North Main St, City Hall East, Rm. 701
 City: Los Angeles
 State and zip code: CA 90012</p> | <p>d. Name of person served:
 Street address:
 City:
 State and zip code:</p> |

☐ Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

5. Number of pages attached 18.

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

Date: January 16, 2025

Devon J. Bolla

(TYPE OR PRINT NAME OF DECLARANT)



Devon J. Bolla

(SIGNATURE OF DECLARANT)