Communication from Public

Name:	Doug Haines
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Comments for Public Posting:	Please place the attached final judgement of Aids Heathcare Foundation v. City of Los Angeles (Case No. 34-2020-8003462) into council file 21-0383-S1.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

HRG DATE / TIME **JUDGE**	**April 8, 2022 / 1:30 p.m.** **James P. Arguelles**	**DEPT. NO.** **CLERK**	**32** **Ward**

AIDS HEALTHCARE FOUNDATION, a California corporation, **Petitioner,** **v.** **CITY OF LOS ANGELES, a municipal corporation; the CITY OF LOS ANGELES CITY COUNCIL;[1] and DOES 1 through 10, inclusive,** **Respondents.** **CRA/LA, a designated local authority operating as successor agency to the former Community Redevelopment Agency of the City of Los Angeles; the CRA/LA GOVERNING BOARD; the CRA/LA OVERSIGHT BOARD; and ROES 1 through 10, inclusive,** **Real Parties in Interest.**	**Case No.: 34-2020-80003462**

Nature of Proceedings:	**Combined Final Ruling, after *Sua Sponte* Reconsideration, on (1) the Verified First Amended Petition for Writ of Mandamus and Complaint for Declaratory/Injunctive Relief; and (2) the Demurrer for Failure to State a Valid Cause of Action**

The Combined Final Ruling dated February 9, 2022 is VACATED and REPLACED with the following order:[2]

[1] In its opposition brief, Respondent City of Los Angeles indicates that its City Council is not a separate legal entity. The parties have not briefed the issue whether the City Council is a proper party. Except where otherwise indicated in this ruling, references to "the City" include the City Council.

[2] In an order dated February 28, 2022, the court informed the parties that it was considering vacating the portion of the original Combined Final Ruling granting declaratory relief on Petitioner's third cause of action. (See *Le Francois v. Goel* (2005) 35 Cal.4th 1094.) The parties filed supplemental briefs, which

On the first cause of action, the request for a writ of mandate is DENIED.

On the second cause of action, the requests for a writ of mandate and injunctive relief are DENIED. The court, however, will issue a declaration that Respondent City's Transfer Resolution and Ordinance transferred all land use related plans and land use related functions of the former Community Redevelopment Agency of the City of Los Angeles (Former Agency) in compliance with Health and Safety Code Section 34173, subdivision (i).[3]

On the third cause of action, the request for a declaration pertaining to an alleged illegal pattern and practice of misapplying the City's Transit Oriented Communities (TOC) Guidelines is DISMISSED. On the further request for declaratory relief pertaining to an illegal pattern and practice of misapplying the conditional use permit (CUP) provisions in Section 12.24 of the Los Angeles Municipal Code (LAMC), the court will declare that (1) for projects within the Hollywood Project Area, as described in the 2003 Hollywood Redevelopment Plan, LAMC Section 11.5.14.B.2 subordinates the density incentive provisions in LAMC Section 12.24 to the housing incentive limits in the Hollywood Redevelopment Plan; and (2) the City's practice of granting density bonuses within the Hollywood Project Area (a) that exceed those required by the Density Bonus Law (DBL) in Government Code Section 65915 *et sequitur* and (b) without complying with the Hollywood Redevelopment Plan's own provisions governing deviations from the Hollywood Redevelopment Plan's density limits violates LAMC Section 11.5.14.B.2 and is unlawful. The request for injunctive relief is DENIED.

The parties' requests for judicial notice are GRANTED.

The court also takes judicial notice of the definition of "floor area ratio" in LAMC Section 12.03.

The parties' evidentiary objections are OVERRULED.

The demurrer for failure to state a valid a cause of action is DROPPED as moot.

Background

Beginning in 2012, California undertook to dissolve existing redevelopment agencies and redistribute the tax revenues such agencies had received. A key component of the so-called Dissolution Law was the creation of successor agencies charged with administering former redevelopment agencies' enforceable obligations and otherwise winding down the latters' affairs. Except to the extent the Dissolution Law repealed or revised the Community Redevelopment Law, successor agencies succeeded to powers of former redevelopment agencies. (See § 34173(b).)

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the court has reviewed. In the instant, revised Combined Final Ruling, the court has modified its original ruling on the third cause of action.

[3] Undesignated statutory citations shall be to the Health and Safety Code.

In most cases, municipalities or joint powers authorities that had created redevelopment agencies became the successors. Pursuant to Section 34173, subd. (d), however, such entities could elect not to serve as successors. In such cases, the Governor appointed a local board to oversee a "designated local authority," which served as the successor agency. (See § 34173(d)(3).) Because the City elected not to succeed the Former Agency, Real Party CRA/LA was formed along with fellow Real Parties CRA/LA Governing Board and CRA/LA Oversight Board (collectively "CRA/LA" or "CRA/LA-DLA").

Despite the formation of CRA/LA, the City remained entitled to request and take for itself all of the Former Agency's land use related plans and land use related functions. (See § 34173(i).) Beginning in 2012, the City began considering enactments to accomplish this. In February 2018, CRA/LA's Chief Executive Officer advised that CRA/LA lacked sufficient staff to perform land use functions and implored the City to complete such a transfer. (See COLA-25209.) In September 2019, the City adopted a resolution requesting the transfer of land use related plans and land use related functions (Resolution).

When the City passed the Resolution, it also enacted Ordinance No. 186325 (Ordinance) to amend the LAMC in order to effectuate the transfer of land use related plans and functions. Under a heading "REDEVELOPMENT PLAN PROCEDURES, the Ordinance provides:

> The objectives of this section are to establish uniform citywide procedures, standards, and criteria for reviewing and processing Redevelopment Plan Projects ... Project Compliance, Project Modification, Project Adjustments, and Redevelopment Plan Amendments in accordance with applicable provisions of the [City] Charter, this Code, City Ordinances, state law, and any applicable specific plan, supplemental use district, or other land use regulation adopted by the City.

(COLA-00033.) The Ordinance authorizes the City to amend any redevelopment plan pursuant to a post-transfer ordinance. (See COLA-00035.) Elsewhere the Ordinance provides that "[t]he City Council, the City Planning Commission or the Director of Planning may initiate consideration of an amendment to any Redevelopment Plan, subject to the requirements and limitations of the [City] Charter and state law." (COLA-00047.) Where redevelopment plan provisions and design for development guidelines conflict with relevant City ordinances, the plan provisions and guidelines prevail. (See COLA-00033-00034.)

When the City passed the Resolution and Ordinance, it adopted Negative Declaration No. ENV-2019-4121-ND (Negative Declaration) and, after considering an initial environmental study, made other environmental findings about the enactments. The City took these actions in an effort to comply with the California Environmental Quality Act (CEQA).

In 2016 – before the City acquired its Former Agency's land use related plans and functions – City voters approved Measure JJJ. Measure JJJ amended the LAMC to authorize the TOC Affordable Housing Incentive Program. The TOC Program authorizes developers to construct housing in densities greater than the City otherwise allows, provided that construction includes

some affordable housing units. The TOC Program's "base incentives" include increases in the number of dwelling units otherwise authorized under zoning rules, as well as increases in floor area ratio.[4] (See COLA-06043-06044.) The TOC Program is limited to areas within one-half mile of a "Major Transit Stop." (See COLA-06038.)

In June 2018 – again, before the City acquired the Former Agency's land use related plans and functions – CRA/LA issued a memorandum opining that Measure JJJ did not supersede density limits in active redevelopment plans. CRA/LA identified six plans, including the Hollywood Redevelopment Plan and the City Center Redevelopment Plan, whose density limits potentially conflicted with Measure JJJ. Petitioner Aids Healthcare Foundation (AHF) owns or leases real property within these plans' project areas.

In response to CRA/LA's memorandum, City Councilmember Mitch O'Farrell moved the City Council to instruct the Department of City Planning ("City Planning" or "Department") to report the memorandum's impact on TOC projects. In the motion, dated October 30, 2018, Councilmember O'Farrell asserted that at least 25 TOC projects were then underway in redevelopment areas, and that CRA/LA's memorandum "potentially detrimentally" affected these projects, which encompassed 214 units of affordable housing. (See COLA-04135.)

In April 2019, City Planning filed a report with the City Council's Planning and Land Use Management Committee (Committee), which at that time was considering the Resolution and Ordinance. City Planning indicated that only three redevelopment plans, including the Hollywood Redevelopment Plan, contained density limitations potentially conflicting with the TOC Program. City Planning wrote:

> A total of sixteen TOC projects have been filed within these three plan areas and are awaiting approval from the Department of City Planning and/or the Department of Building and Safety. All but two of those projects required a discretionary entitlement. [...]
>
> The Department issued its own advisory memorandum on January 9, 2019 (Attachment 2) to provide guidance on the issue and direct applicants to consult with Department staff for compliance options. **For TOC cases that were previously accepted and are now in the entitlement pipeline, Department staff has contacted all sixteen applicants to provide them with this memorandum and provide alternative entitlement options, which generally involve a conversion of the TOC case into a Density Bonus request** (either on-menu or off-menu) **with a Conditional Use entitlement** (LAMC 12.24 U.26). There may be other exceptions, conditional uses and public benefit entitlements that apply. [...]

[4] Section 12.03 of the LAMC defines floor are ratio to mean "[a] ratio establishing relationship between a property and the amount of development permitted for that property, and is expressed as a percentage or a ratio of the Buildable Area or Lot size (example: '3 times the Buildable Area' or '3:1')."

(COLA-03903-03904, emphasis added.) The "Density Bonus request" and "Conditional Use entitlement" cited by City Planning refer to ordinances codified elsewhere in the LAMC. Pursuant to LAMC Section 12.22, the City authorizes "density bonus requests" to conform to the DBL. The DBL requires municipalities to authorize "density bonus" housing units where the developer agrees to provide a specified percentage of affordable housing units. The DBL exempts density bonus projects from otherwise applicable zoning regulations, and it also prohibits application of "any development standard" that would physically preclude construction pursuant to its increased density provisions. (Gov't Code § 65915(e)(1).)

LAMC Section 12.24 authorizes CUPs for density bonuses in excess of the DBL, again tethered to certain affordable housing requirements.

In December 2018, City Planning forwarded the draft Resolution and Ordinance to the City Planning Commission (CPC). City Planning asked CPC to recommend the City Council's adoption of the Resolution and the Ordinance as well as the City Council's determination that these enactments did not require an environmental impact report (EIR). City Planning explained:

> While both the State and City have passed new legislation to encourage affordable housing production, some Redevelopment Plans may have outdated language which is not aligned with current policy goals. On June 27, 2018, an advisory memo was released by the CRA/LA-DLA discussing a potential conflict of the Redevelopment Plans with local law. Transfer of land use authority from CRA/LA-DLA to the City will allow the City to holistically analyze and interpret the goal/intent of the unexpired Redevelopment Plans and determine steps necessary to maintain consistency with State and local laws.
>
> The CRA/LA-DLA no longer has the staff nor does it prioritize aligning its Redevelopment Plans with current local and State policy, in some instances creating conflict and confusion for developers and communities. Absent CRA/LA-DLA's ability to operate at full capacity, the City would be better equipped to ensure that implementation of the Redevelopment Plans continue to align with recent and future State laws and local ordinances to minimize conflict and confusion for developers and communities where Redevelopment Plans exist. Therefore, the transfer of land use authority is also necessary to further the development goals of Redevelopment Plans, and maintain clarity and certainty for development in Redevelopment Project Areas. [¶]
>
> The transition of authority to the City centralizes the land use planning functions that has been housed between the two government agencies. During the tenure of the CRA/LA, there was an often duplicative development review process between the two agencies. By consolidating responsibility for the remaining unexpired Redevelopment Plans with a single entity, a streamlined development review process will be established in Redevelopment Project Areas, assuring protection to communities,

> providing certitude for the development community and providing a more efficient development review process. [...]

(COLA-00833-00834.)

The initial study contained similar language. (See COLA-00237.) However, the initial study indicated that the transfer of land use authority was "not expected to induce development or otherwise alter existing development or development patterns." (COLA-00236.) The initial study further provided:

> Any future policy development in response to any existing land use conflict between the existing Redevelopment Plans and City or State policies would be addressed in a separate legislative action in accordance with the applicable State Redevelopment Law and CEQA guidelines. Therefore, since no changes are proposed to the Redevelopment Plans, policies and interpretations, less than significant impacts would occur, no further analysis is needed.

(COLA-00238.)

In its First Amended Verified Petition and Complaint (FAP), AHF alleges that the Resolution and Ordinance impermissibly transferred only *some* of the land use related plans and functions that the Former Agency had administered. According to AHF, the City sanctioned the incomplete transfer because CRA/LA refused to authorize high density housing projects that the City desired but which controverted density limits in redevelopment plans. In addition, AHF alleges that the City failed to comply with CEQA. Finally, AHF alleges that the City has an unlawful pattern and practice of using its TOC Program and CUPs to disregard density limits within operative redevelopment plans. AHF prays for writ relief as well as declaratory and injunctive relief.

In September 2020, the City demurred to the FAP. The court overruled the demurrer for uncertainty and continued the demurrer for failure to state a cause for a hearing concurrent with the merits hearing.

The Merits of the FAP

Standards of Review

A litigant raising a facial challenge to an ordinance may proceed by way of traditional writ of mandate or declaratory relief action. (See Code of Civ. Proc. §§ 1085, 1060; *Zubarau v. City of Palmdale* (2011) 192 Cal.App.4th 289, 300.) "If the underlying act involves the exercise of discretionary legislative power, the courts will interfere by mandamus only if the action taken 'is "so palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law."'" (*United Assn. of Journeymen v. City & County of San Francisco* (1995) 32 Cal.App.4th 751, 759.)

Unless a CEQA determination was made after an evidentiary hearing required by law, judicial inquiry into the validity of determination is limited to whether there was a prejudicial abuse of discretion. (See Pub. Res. Code §§ 21668, 21668.5.) "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (*Id.*, § 21668.5.)

Whether a given activity constitutes a CEQA "project" presents a legal question subject to the court's independent review based on undisputed facts in the record. (See *Union of Med. Marijuana Patients, Inc. v. City of San Diego* [*UMMP*] (2019) 7 Cal.5th 1171, 1198.) Whether a project has been improperly piecemealed presents a question of law as well. (See *Paulek v. Department of Water Resources* (2014) 231 Cal.App.4th 35, 46.)

"Declaratory relief generally operates prospectively to declare future rights, rather than to redress past wrongs. [Citations.] It serves to set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs. In short, the remedy is to be used in the interests of preventive justice, to declare rights rather than execute them. [Citation.]" (*Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 909.)

"'There is a general rule against enjoining public officers or agencies from performing their duties. [Citations.] This rule would not preclude a court from enjoining unconstitutional or void acts, but to support a request for such relief the plaintiff must make a significant showing of irreparable injury.'" (*Midway Venture LLC v. County of San Diego* (2021) 60 Cal.App.5th 58, 77.)

Discussion

The Second Cause of Action: The City's Compliance with Section 34173, Subdivision (i)

In its second cause of action, AHF argues that the Resolution should be set aside because it purported to request only a subset of land use related plans and functions. The Resolution contains limiting definitions for the terms "land use related plans" and "land use related functions." Moreover, the Resolution enumerates discrete provisions in redevelopment plans that are "include[d]" within the transfer. In AHF's view, these limiting definitions and enumeration of included provisions can only be interpreted to exclude some land use related functions. AHF argues that such exclusions controvert Section 34173, subd. (i), which authorizes municipal entities to request the transfer of "all" land use related functions.

The court interprets ordinances and municipal resolutions according to the same canons governing statutes and regulations. The court begins with the text, striving to give meaning to each word and phrase, and to harmonize the enactment's various provisions. (See *Tower Lane Properties v. City of Los Angeles* (2014) 224 Cal.App.4th 262, 268, 269.) If the text if clear, then there is nothing to construe, and the court goes no further. (See *id.*, p. 269.) Where ambiguity exists, then the court considers extrinsic aids. (See *id.*) The court accords great weight to the municipality's interpretation unless that interpretation is clearly erroneous or unauthorized. (See *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1193.)

Section 2 of the Resolution contains a request for the transfer of "all land use related plans and functions," subject to definitions in subsections (2)(A) and (2)(B). Subsection (2)(A) defines "land use related plans" to mean "Land Use Provisions," which are "only those provisions of the Redevelopment Plans and Guidelines that govern land use or development[.]" (COLA-00061.) The Resolution's recitals define "Redevelopment Plans" to mean "the 19 active redevelopment plans" previously adopted by ordinance and "described" in subsequent sections of the Resolution. The recitals further define "Guidelines" to mean "various design guidelines, development guidelines, and other rules, regulations, and similar guidelines governing signs, open space, streets, utilities, land use, and development that were adopted by the Former Agency pursuant to the Redevelopment Plans." (COLA-00060.)

Subsection (2)(B) defines "land use related functions" to mean "only functions, which ... allows [sic] the City to apply the Land Use Provisions to the Project Areas; and undertake related activities as necessary." The recitals define "Project Areas" to mean the 19 project areas that are the subjects of the Redevelopment Plans. Subsection (2)(B) goes on to qualify that nothing in the Resolution bars the City from updating Land Use Provisions and Guidelines or promulgating new administrative guidelines interpreting and implementing Land Use Provisions. (COLA-00061.)

AHF argues that the definitions in Section 2 of the Resolution failed to transfer some land use related functions. The court disagrees. Despite their inclusion of the word "only," the definitions cover land use related plans and functions of all 19 redevelopment plans then in existence as well as "related activities as necessary." Moreover, it is evident from the Resolution's recitals that the Resolution was only intended to exclude certain *other* obligations that CRA/LA necessarily retained: "[W]hile ... Section 34713(i) provides for the transfer of land use related plans and functions of the Former Agency to the City, ... Section 34173(g) provides that liabilities of the Former Agency shall not be transferred, and ... Section 34177(a) and 34177(c) provide that CRA/LA-DLA is required to make payment due for any enforceable obligation... ." (COLA-00060.) Hence, any limiting language in Section 2 need not be construed, and should not be construed, to exclude land use related plans or functions subject to transfer pursuant to Section 34173, subd. (i). Indeed, the City interprets the Resolution's definitions to distinguish between land use related plans and functions, on the one hand, and enforceable obligations, on the other – not between some land use related plans and functions and other such plans and functions. Because this interpretation is not clearly erroneous or unauthorized, it is entitled to great weight, and the court adopts it.

Next, AHF focuses on the Resolution's citation to some, but not all, sections within the redevelopment plans. The sections that the Resolution enumerates are those appearing under each plan's heading "LAND USES PERMITTED IN THE PROJECT AREA." Relying on the maxim *inclusio unius est exclusio alterius* (the expression of one thing is the exclusion of another), AHF argues that the Resolution excludes all sections not expressly enumerated and, therefore, controverts Section 34173, subd. (i). This maxim raises an inference of an intent to exclude things unexpressed, but the inference can give way to other, contrary indications of legislative intent. (See generally *Long Beach Police Officers Ass'n v. City of Long Beach* (1988) 46 Cal.3d

736 [reversing Court of Appeal's determination that nonexhaustive statutory list was meant to exclude rather than illustrate].)

The City counters that the Resolution does not designate the enumerated sections as the "only" sections in redevelopment plans that contain land use related functions. (See, e.g., Resolution, § 3 ["The transfer set forth in section 2, above, includes Section 500 of the Land Use Provisions set forth in the Adelante Eastside Redevelopment Plan..."].) Given the absence of the word "only" in these citations, the City argues that the enumerated sections cannot be construed to exclude land use provision elsewhere in the plans.

Given that the Resolution's definitions already appear to encompass all land use functions in the redevelopment plans, the subsequent enumeration of only a subset of provisions containing land use related functions is arguably ambiguous. A review of the Resolution's legislative history, however, eliminates any ambiguity.

As noted above, City Planning drafted the Resolution and forwarded it to CPC with a staff report containing analysis and recommendations. In its analysis, City Planning explained the purpose behind enumerating specific sections of active redevelopment plans:

> The proposed resolution authorizes the transfer of land use authority of the CRA/LA-DLA to the City of Los Angeles. In accordance with AB 1484, only the land use related plans and functions are to be transferred to the City, all other functions and enforceable obligations remain with the Successor Agency, CRA/LA-DLA. [...]
>
> **The proposed resolution lists the individual unexpired Redevelopment Plans and identifies the land use sections of each Redevelopment Plan to further clarify that the City is only transferring the land use related plans and functions of the former redevelopment agency.** Through this action, the City intends to implement only the land use related plans and functions to the extent that it is authorized by AB 1484 and the City Charter, and not to an extent that would violate law.

(COLA-00828, emphasis added.) In other words, because the cited sections appear under headings "LAND USES PERMITTED IN THE PROJECT AREA," City Planning construed these sections as "land use sections" and listed them in the Resolution to "clarify that the City is only transferring the land use related plans and functions" of the Former Agency. Even if City Planning misconstrued the enumerated sections as the only ones containing "land use related functions," as that term is used in Section 34173, subd. (i), the intent nonetheless was to distinguish between transferable functions and other, non-land use related functions that needed to remain with CRA/LA.

CPC forwarded the proposed Resolution and City Planning's staff report to the City Council and recommended that the City Council adopt the Resolution. (COLA-00907-00908.) When the Committee received the Resolution for consideration, it also received City Planning's staff report. (See COLA-00058-00059.) At a public meeting where the Resolution was discussed, one

Committee member asked which CRA/LA duties the Resolution would not transfer. (See COLA-01560.) A City Planning staff person answered that the transfer would not include the administration of enforceable obligations. (See COLA-01561.) The Committee subsequently recommended that the full City Council pass the Resolution.[5]

Setting aside the textual and extrinsic indications that the Resolution was intended to transfer all land use related plans and functions pursuant to Section 34173, subd. (i), AHF's contrary interpretation would render the Resolution unlawful. The court, however, must endeavor to give the Resolution a lawful interpretation. (See *Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 334 ["[I]t is the duty of a court to so interpret an ordinance as to render the legislative intent valid and operable"].) Because the interpretation that renders the Resolution lawful is a reasonable one, it must be adopted.

Finally, the court rejects AHF's arguments that transfer resolutions proposed and rejected before the Resolution passed, and that legislation proposed by the City after AHF filed this action, constitute admissions against interest or otherwise betray the City's understanding that the Resolution transferred less than all land use related functions. Any post-FAP legislation that the City proposed to moot this litigation is insufficient to overcome the other, clear indications that the Resolution was meant to effect a complete transfer in compliance with Section 34173, subd. (i). The same may be said of unsuccessful, pre-Resolution attempts to request a transfer.

AHF also argues that the City's contemporaneously adopted Ordinance runs afoul of Section 34173, subd. (i). To the extent AHF argues that the Ordinance necessarily falls because it is closely intertwined with the Resolution, the argument fails. For reasons just explained, the Resolution is valid and does not doom the Ordinance by association.

AHF also assails the Ordinance as an invalid attempt to disregard controlling state law. AHF writes:

> Nothing in § 34173(i) or the CRL authorizes the City to enact a local law purporting to confer upon itself through its Municipal Code the power to administer a redevelopment plan, or amend/repeal it - all outside of the CRL's State-law required studies (§ 33457.1 citing § 33367), special notice to property owners in the plan area (§ 33452), and plan amendment processes (§§ 33450-33458).

(Opening Brf. at 21:3-7.)

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[5] The Committee's first public meeting on the Resolution, described in the text above, took place in March 2019. At the conclusion of the meeting, the Committee proposed to ask the City Attorney "to prepare and present the ordinance, and to review the resolution, and to also ask the city attorney to report on any legal issues." (COLA-01576.) At a subsequent meeting in September 2019, the Committee passed a motion to recommend the full City Council's approval of the Resolution.

The City counters that the state-law procedures that AHF tenders as controlling only ever applied to former redevelopment agencies and, therefore, were nullified by the Dissolution Law. The City contends that its own municipal rules necessarily govern the administration of transferred land use related plans and functions.

The parties' dispute over the legal rules governing the City's administration of land use related functions is beyond the scope of the second cause of action. The second cause of action is limited to the question whether the City *transferred* all land use related plans and functions pursuant to Section 34173, subd. (i). There are no allegations identifying particular statutory provisions that purportedly preempt provisions in the Ordinance. The FAP's prayer does not reflect a theory of preemption either. Yet, any determination about the preemptive effect of state law would require a careful comparison of purportedly conflicting legal provisions. (See *California Veterinary Med. Assn. v. City of West Hollywood* (2007) 152 Cal.App.4th 536, 565.) Tellingly, AHF's only full-throated preemption argument intended to support the second cause of action appears in its reply brief. Consequently, the court will not reach this preemption argument or set aside the transfer of land use related plans and functions on a theory of preemption.

Because the Resolution effected a lawful transfer of all land use related plans and functions, the prayer for a writ of mandate pursuant to AHF's second cause of action is denied. Pursuant to AHF's alternate request, the court will declare the transfer compliant with Section 34173, subd. (i), such that the City has now administers all active land use related plans and functions formerly administered by the Former Agency.

The First Cause of Action: CEQA

> CEQA review procedures can be viewed as a "'three-tiered process.'" [Citation.] The first tier requires an agency to conduct a preliminary review to determine whether CEQA applies to a proposed project. [Citation.] If CEQA applies, the agency must proceed to the second tier of the process by conducting an initial study of the project. [Citation.] Among the purposes of the initial study is to help "to inform the choice between a negative declaration and an environmental impact report (EIR)." [Citation.] If there is "no substantial evidence that the project or any of its aspects may cause a significant effect on the environment," the agency prepares a negative declaration. [Citation.] [...] Finally, if the initial study uncovers "substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment" [citation], the agency must proceed to the third tier of the review process and prepare a full EIR (environmental impact report). [Citation.]

(*Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal.App.4th 694, 704-705.) "CEQA 'creates a low threshold requirement for initial preparation of an EIR and reflects a preference for resolving doubts in favor of environmental review[.]'" (*Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* [*Taxpayers*] (2013) 215 Cal.App.4th 1013, 1034.)

The court notes at the outset that Section 34173, subd. (i) predicates a transfer of land use related plans and functions upon nothing but the appropriate municipality's request. Consequently, the court doubts whether the City was required to perform any environmental analysis before adopting the Resolution. Given that the City adopted the Ordinance when it made its request, however, the court assumes that the new rules governing the City's new authority had the potential to fall within CEQA's ambit.

Before the Resolution and Ordinance were adopted, City Planning performed its initial study of the two enactments. (See COLA-00172-00264.) City Planning concluded that the enactments could not have a significant effect on the environment and therefore prepared a negative declaration. It also determined that the enactments were exempt from CEQA, and that they did not amount to "project" within the meaning of CEQA. The City adopted all of these conclusions when it approved the Resolution and Ordinance.

AHF argues that the City violated CEQA in several respects. First, AHF contends that the City was not entitled to issue a negative declaration and concurrently treat the enactments as exempt and as something other than a "project." In AHF's view, each determination precluded the other two. The law is otherwise. (See *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 700-701 [lead agency may argue that activity is not a project and is exempt notwithstanding issuance of a negative declaration], disapproved on another point in *UMMP, supra,* p. 1194, fn. 10.) The court thus rejects AHF's first argument.

Next, the court disposes of AHF's argument about "piecemealing." Piecemealing is the impermissible chopping of a project into smaller components in order to understate environmental effects which, were the project taken as a whole, could be significant. (See, e.g., *Aptos Council v. County of Santa Cruz* (2017) 10 Cal.App.5th 266, 277-278.) If the City engaged in piecemealing, then any CEQA clearance it tendered is suspect.

Piecemealing can occur when "'the purpose of the reviewed project is to be the first step toward future development,'" or "'when the reviewed project legally compels or practically presumes completion of another project.'" (*Id.*, pp. 279-280.) Accordingly, environmental review "'must include an analysis of the effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. Absent these two circumstances, the future expansion need not be considered in the EIR for the proposed project.'" (*Id.*, p. 279.) There is no piecemealing when "'projects have different proponents, serve different purposes, or can be implemented independently.'" (*Id.*, p. 280, footnote omitted.)

AHF argues that the City piecemealed the true project, which AHF characterizes as the "future amending and/or relaxing the redevelopment plans to loosen their development standards and protections." (Opening Brf. at 33:22-23.) To illustrate this amending and/or loosening, AHF tenders the proposed Hollywood Community Plan Update (HCPU). The record includes City Planning's draft EIR for the HCPU. The project description in the draft EIR reads:

> The Hollywood Community Plan Update (Project) would guide development for the Hollywood CPA through 2040 and includes amending both the text and the land use map of the Hollywood Community Plan. The Proposed Project would also adopt several resolutions and zoning ordinances to implement the updates to the Community Plan, including changes for certain portions of the Hollywood CPA to allow specific uses and changes to development standards (including height, floor area ratio (FAR), and density). These zoning ordinances would take a number of different forms, including amendments to the Zoning Map for zone and height district changes under Los Angeles Municipal Code (LAMC) Section 12.32, amendments to an existing specific plan (Vermont/Western Transit Oriented District Specific Plan), and adoption of a Hollywood Community Plan Implementation Overlay (CPIO) District. Also, to ensure consistency between the updated Community _Plan and other City plans and ordinances, the Proposed Project includes amendments to the Framework and Mobility Elements of the General Plan, and other elements as necessary.

AHF focuses on Appendix "M" to the HCPU, which is entitled "Inventory of Mitigation Measures." (See COLA-27397.) This exhibit identifies numerous mitigation measures in the existing Hollywood Redevelopment Plan and calls for their elimination or revision for various reasons, including that the measures are infeasible or unnecessary in light of the other legal rules. Some of the mitigation measures slated for elimination or revision are density limitations.

Insofar as AHF argues that environmental review of the Resolution and Ordinance should have included review of the mitigation measures identified in the HCPU draft EIR, the court disagrees. By its terms, the Hollywood Redevelopment Plan subordinates its land use limitations to applicable community plans "as they now exist or are hereafter amended[.]" Consequently, amendments that the HCPU would work on the Hollywood Redevelopment Plan in no way depend on the Resolution or Ordinance and, therefore, are not a reasonably foreseeable consequence of these enactments. (See *Aptos Council*, *supra*, p. 282 [regulatory reforms that operate independently and can be implemented separately are not reasonably foreseeable consequences of each other].)

To the extent AHF argues more generally that the City's initial environmental study should have defined the project to include "amending and/or relaxing the redevelopment plans to loosen their development standards and protections," the court rejects the argument. The Resolution and Ordinance only provide the City with land use authority and rules for exercising that authority. As the HCPU demonstrates, it is not clear whether or the extent to which the City might rely on its new authority to amend land use provisions in redevelopment plans. The City possesses other tools to authorize housing with densities exceeding density limits in redevelopment plans. Nor is clear how or when the amending, relaxing or loosening of development standards would occur. Indications in the record that the Resolution and Ordinance could serve to "align" redevelopment plans with its other housing goals at some unknown time does not trigger reasonable foreseeability. (Cf. *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1362 [contemplation of a long range

goal for development is not enough to transform the goal into a reasonably foreseeable consequence of a project].) Although details about future development are not necessarily a prerequisite to reasonable foreseeability, (see, e.g., *City of Antioch v, City Council* (1986) 187 Cal.App.3d 1325, 1335-1336), the facts in this case present too attenuated a nexus to support a writ based on piecemealing. (Cf. *Rio Vista Farm Bureau Ctr. v. County of Solano* (1992) 5 Cal.App.4th 351, 372 [adoption of hazardous waste management plan that applied siting criteria to various locations for potential suitability for development was not improperly piecemealed from anticipated future projects because plan made no commitment to future facilities].)

Having concluded that the City did not engage in piecemealing, the court further concludes that the Resolution and Ordinance did not constitute a "project" subject to CEQA. CEQA defines the term "project" to mean "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment," including "[a]n activity directly undertaken by any public agency." (See Pub. Res. Code § 21065.) "A 'reasonably foreseeable' indirect physical change is one that the activity is capable, at least in theory, of causing." (*UMMP*, p. 1197.) "Conversely, an indirect effect is not reasonably foreseeable if there is no causal connection between the proposed activity and the suggested environmental change or if the postulated causal mechanism connecting the activity and the effect is so attenuated as to be 'speculative.'" (*Id.*) "'Whether an activity constitutes a project subject to CEQA is a categorical question respecting whether the activity is of a general kind with which CEQA is concerned, without regard to whether the activity will actually have environmental impact.'" (*Id.*, pp. 1195-1196.)

AHF has not established that the Resolution and Ordinance may cause a direct physical change in the environment. These two enactments transfer land use related authority and provide rules for administering that authority. They cannot change the physical environment in themselves.

AHF argues that the Resolution and Ordinance may cause a reasonably foreseeable indirect change in the environment. AHF points to portions of the initial study indicating that the enactments would "remove procedural barriers" for the City to "attract investment" and "attract desirable new development ... in parts of the City that have historically received less economic development." (See Opening Brf. at 22:5-8, citing COLA-04193 and -04096.) AHF characterizes this and similar language in the record as evidence that the Resolution and Ordinance will be catalysts for development like the zoning ordinance in *UMMP*. The court does not agree.

UMMP involve an ordinance "authorizing the establishment of medical marijuana dispensaries and regulating their locations and operation." (7 Cal.5th at 1180.) "The central provisions of this ordinance amended various City zoning regulations to specify where the newly established dispensaries [could] be located." (*Id.*; see also *id.*, p. 1181 ["Dispensaries were added to the list of permitted uses in two of the City's six categories of commercial zones and two of the four categories of industrial zones [... and] were also added to the list of permitted uses in certain

planned districts of the City"].) The California Supreme Court concluded that the ordinance constituted a project because it authorized the operation of businesses not previously authorized in the jurisdiction. (See *id.*, p. 1199.) The high court reasoned, "[a]t a minimum, such a policy change could foreseeably result in new retail construction to accommodate the businesses[...and] the establishment of new stores could cause a city wide change in patterns of vehicle traffic[.]" (*Id.*)

The Resolution and Ordinance in the instance case do not constitute a similar change in land use policy. AHF argues that the enactments do constitute a change in policy because they were meant to overcome CRA/LA's interpretation of Measure JJJ as subordinate to lower density provisions in redevelopment plans. But neither the Resolution nor the Ordinance purport to subordinate provisions in redevelopment plans to Measure JJJ.

AHF also argues that the City intends to increase density within redevelopment project areas by amending redevelopment plans. AHF provides little analysis about exactly how the Ordinance makes it easier to amend redevelopment plans than before.[6] But even if the Ordinance does make it easier to amend redevelopment plans, that is not enough to make environmental impacts reasonably foreseeable. The Ordinance is not a policy document steering development in a particular direction. (See *City of Livermore v. Local Agency Formation Com.* (1986) 184 Cal.App.3d 531, 535-537 [where local agency formation commission altered *substantive* guidelines influencing determinations about spheres of influence belonging to municipal agencies, alterations were a project].) Whether any amendment could lead to a change in the environment would depend on the nature of the amendment. Accordingly, the causal nexus between the power to amend and environmental change is too attenuated to support a conclusion that the former is itself a project under CEQA.

In a tentative merits ruling, the court invited counsel to address whether the City's enactment of the Ordinance constituted an "approval" within the meaning of CEQA and implementing regulations in Title 14 of the Code of Regulations ("the Guidelines"). Even if there is a "project" otherwise subject to CEQA, no CEQA review is required until the project is approved. (See *Taxpayers*, p. 1063.) The Guidelines define "approval" to mean "the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person." (14 C.C.R. § 15352, subd. (a); see also *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 139 ["An agency cannot be deemed to have approved a project ... unless the proposal before it is well enough defined 'to provide meaningful information for environmental assessment'"].)

Taxpayers addressed whether a school board resolution exempting several high school projects from municipal zoning and land use rules was the approval of a project. The Court of Appeal concluded that the resolution was not a "project" because the projects at each school were the

[6] To the contrary, AHF argues that the Ordinance's provisions governing plan amendments run afoul of applicable state law. If that is true, then the Ordinance does nothing to facilitate the amendment of redevelopment plans, and amendments are not the foreseeable consequences of the Ordinance.

only activities that could cause physical changes in the environment. (See 215 Cal.App.4th, p. 1064.) Further, the exemption resolution was not an "approval" because it did not commit to any definite course of action in regard to a project. (See *id.* ["By adopting the exemption resolution, the Board did not commit ... to any of the 12 proposed projects or foreclose alternatives to those projects"].)

The Resolution and Ordinance in the instant case likewise did not commit to any definite course of action or foreclose alternatives. Nor do their contents provide meaningful information for environmental assessment. Consequently, these enactments were not "approvals" for purposes of CEQA.

Because the Resolution and Ordinance were not a CEQA project, and because their enactments were not CEQA approvals, the court need not evaluate the City's determinations that the enactments were exempt from CEQA and were otherwise subject to a negative declaration.

The Third Cause of Action: Illegal Pattern and Practice of Permitting Residential Unit Density of Projects to Exceed Limits in Redevelopment Plans

In the FAP, AHF alleges that the City "has demonstrated a pattern and practice that constitutes an overarching, quasi-legislative policy ... to use unlawful T[OC] ... Guidelines and C[UP] ... density bonus requests to evade and ignore applicable redevelopment plan limits on residential unit density and floor area ratios." (FAP, ¶ 58.) AHF seeks a judicial declaration that this pattern and practice is unlawful, and it requests an accompanying injunction. (*Id.*, p. 20, ¶¶ 5-6.) AHF does not seek declaratory relief in connection with any past application of TOC Guidelines or CUP density requests, nor could it: declaratory relief is prospective only and is not available solely to redress past wrongs. (See *Osseous Technologies of America, Inc. v. DiscoveryOrtho Partners LLC* (2010) 191 Cal.App.4th 357, 366; see also *Californians for Native Salmon Etc. Ass'n v. Dep't of Forestry* (1990) 221 Cal.App.3d 1419, 1428-1429 ["Generally, a specific decision or order of an administrative agency can only be reviewed by a petition for administrative mandamus"].)

Despite the FAP's description of a pattern and practice that involves the TOC Guidelines, AHF has not demonstrated any ongoing pattern or practice of using the TOC Guidelines to provide densities greater than those allowed in redevelopment plans. AHF's evidence demonstrates only that, since CRA/LA opined that the density and floor-area-ratio incentives in the TOC Guidelines were subordinate to lower densities and FARs in redevelopment plans, the City has steered developers to DBL requests and CUPs as alternatives. (See Opening Brf., Part VI-A.) Consequently, the portion of the third cause of action predicated on a conflict between the TOC Guidelines and redevelopment plans shall be dismissed for failing to constitute an actual present controversy. (See *Osseous Technologies of America*, p. 365.)

Although AHF alleges an illegal pattern and practice of using CUPs to evade density limits in redevelopment plans generally, AHF's evidence only establishes a City practice of applying the

CUP provisions in LAMC Section 12.24 to projects in the Hollywood Project Area.[7] The Hollywood Redevelopment Plan limits residential units per gross acre for densities ranging from low to very high. (See COLA-23162.) It then authorizes incentive units that may not exceed 30 percent of the underlying base density. (See COLA-23164.) In addition, the Hollywood Redevelopment Plan caps the total number of incentive units at 3,000. (See *id.*)

In compliance with the DBL, LAMC Section 12.22 authorizes density bonuses up to 35 percent greater than densities allowed under the applicable zoning ordinance or specific plan. (See City's RJN, Exh. 2, p. 6.)[8] The CUP provisions in LAMC Section 12.24 authorize *further* density increases that range from 1 percent to 2.5 percent for each 1-percent increase of the project's affordable housing units, i.e., very low, low or moderate income units. (See *id.*, Exh. 3, p. 21.) There is no cap on these further increases. The City admitted during discovery that it has authorized CUP density increases that exceed density limits in the Hollywood Redevelopment Plan. The court thus turns to lawfulness of this practice.

As the City points out in its opposition brief, the Ordinance specifies that:

> Whenever the Redevelopment Regulations conflict with provisions contained in Chapter 1 of this Code or any other relevant City ordinances, the Redevelopment Regulations shall supersede those provisions, unless the applicable Redevelopment Regulations specifically provide otherwise or are amended.

(LAMC, § 11.5.14.B.2.) "Redevelopment Regulations" are defined to include "all the land use provisions of the Redevelopment Plans[.]" (*Id.*, § 11.5.14.C.) It follows that density limitations in the Hollywood Redevelopment Plan prevail over greater density bonuses available in LAMC Section 12.24. The City, however, argues that the DBL subordinates density caps in the Hollywood Redevelopment Plan to the uncapped CUP provisions in LAMC Section 12.24. The City's argument is not persuasive.

The DBL provisions in Government Code Section 65915, subdivision (n) read, "[i]f permitted by local ordinance, nothing in this section shall be construed to prohibit a city ... from granting a density bonus greater than what is described in this section for development that meets the requirements of this section[.]" The City argues that this provision authorizes the heightened density bonuses in LAMC Section 12.24 notwithstanding provisions elsewhere in the LAMC that

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[7] In a footnote to a supplemental brief filed after the court indicated that it would reconsider the declaratory relief component of third cause of action, the City purports to object for the first time to some of the evidence submitted with AHF's reply brief. By failing to object at or before the original merits hearing, the City waived the right to object to this evidence. Nor did the court grant leave to raise new objections. As a result, the court will not reconsider the admissibility of evidence submitted with AHF's reply brief.

[8] As of January 1, 2021, the DBL authorizes density bonuses up to 50 percent greater than otherwise applicable caps on density. The City is not required to revise Section 12.22 of the LAMC to reflect this new cap. (See Gov't Code § 65915(a), (s).)

subordinate Section 12.24 to density limits in redevelopment plans. The court rejects this argument.

In an attempt to support its argument, the City cites distinguishable cases. *Latinos Unidos Del Valle De Napa Y Solano v. County of Napa* (2013) 217 Cal.App.4th 1160 involved an ordinance ostensibly enacted to implement the DBL. In fact, the ordinance conditioned density bonuses on the provision of more lower-income units than the DBL required. (217 Cal.App.4th at 1165-1166.) Because the ordinance conflicted with the DBL in a way that would have reduced the available density bonuses, the conflict was unauthorized, and the conflicting municipal criteria were invalid.

Schreiber v. City of Los Angeles (2021) 69 Cal.App.5th 549 involved an ordinance predicating DBL bonuses upon evidence of the project's economic feasibility. Because the feasibility requirement conflicted with the DBL, the requirement was preempted. (See 69 Cal.App.4th at 555.)

In *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, the question was whether the DBL placed a cap on the density bonuses a city could offer. The Court of Appeal answered "no" based in part on Government Code Section 65915, subdivision (n). The Court of Appeal further held that a city could offer additional density bonuses even without an ordinance, and that municipal caps on density that were lower than those in the DBL were preempted. (See 154 Cal.App.4th at 826, 830.)

Nothing in these or the City's other cases prevents a city from limiting application of its own density bonus rules where the rules authorize densities greater than those in the DBL. Consistent with Government Code Section 65915(n), the CUP provisions in LAMC Section 12.24 authorize such greater densities. But the Ordinance limits application of those greater densities where they conflict with the Hollywood Redevelopment Plan's provisions. Because the DBL does not preclude the City from circumscribing its own density provisions in this way, the Ordinance's provisions resolving conflicts between redevelopment plans and other municipal rules in favor of the former must be given effect, and CUP density bonuses remain subordinate to density limits in the Hollywood Redevelopment Plan.

The City asks the court to ignore the Ordinance's provisions resolving conflicts in favor of redevelopment plans on the ground that it does not interpret these provisions according to their plain terms. The City notes that courts must defer to a municipality's contemporaneous construction of its own enactments unless such a construction is clearly erroneous. Notwithstanding the City's entitlement to deference, the court may not ignore the plain meaning of the Ordinance and sanction density bonuses that exceed DBL requirements and conflict with the Hollywood Redevelopment Plan. The City's contrary position is clearly erroneous.

At oral argument, counsel for the City suggested that density limits in the Hollywood Redevelopment Plan do not actually conflict with a practice of granting density bonuses above

those required by the DBL. He noted that the Hollywood Redevelopment Plan refers to variances and CUPs. Counsel for the City argued that these references imply the availability of heightened CUP density bonuses in the Hollywood Project Area.

The Hollywood Redevelopment Plan says the following about variances, CUPs, and other deviations from the Plan's requirements:

> **No** zoning **variance, conditional use permit**, building permit, demolition permit or other land development entitlement **shall be issued** in the Project Area from the date of adoption of this Plan unless and until the application therefor has been reviewed by the Agency and determined to be **in conformance with the Plan** and any applicable Design for Development. The Agency shall develop procedures for the expedited review of said applications. (Emphasis added.)

(COLA-23161.)

> **Under exceptional circumstances, the Agency is authorized to permit a variation form** [sic] **the limits, restrictions and controls established by this Plan including variations in permitted density** or use. In order to permit such variation, the Agency must determine that:
>
> 1) The application of certain provisions of the Plan would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the Plan.
>
> 2) There are exceptional circumstances or conditions applicable to the property or to the intended development of the property which do not apply generally to other properties having the same standards, restrictions, and controls.
>
> 3) Permitting a variation will not be materially detrimental to the public welfare or injurious to property or improvements in the area.
>
> 4) **Permitting a variation will not be contrary to the objectives of this Plan.**
>
> 5) Permitting a variation will be in conformance with the objectives of the Community Plan.
>
> In permitting any such variation, the Agency shall impose such conditions as are necessary to protect the public health, safety, or welfare, and to assure compliance with the purpose of this Plan.
>
> Any variation to the densities permitted in this Plan, in excess of 15% of the F.A.R. permitted by this Plan or for a building in excess of 250,000 square feet, whichever is less, shall be approved by the Planning Commission, subject to appeal to the City Council.

(COLA-23181, -23182.) These criteria differ from criteria governing CUPs pursuant to LAMC Section 12.24. (See AHF's RJN, Exh. 6.)

Moreover, the City's own evidence establishes that the City's practice is to grant CUPs without regard for the Hollywood Redevelopment Plan's criteria governing deviations from its

provisions. Lisa Weber, who is the Deputy Director of the Project Planning Bureau for the City's Department of City Planning, asserts the following in her declaration:

> Beginning no later than January 9, 2019, the Planning Department has interpreted **and applied** LAMC §§ 12.24.E and U.26 (CUP Density Bonus) in the City's Zoning Code to allow the City, **subject to meeting the requirements of those sections, to approve density in excess of the density provisions in the City's Active Redevelopment Plans.** This is **notwithstanding LAMC § 11.5.14B.2**, above. (Emphasis added.)
>
> Project Planning interprets and **applies CUP Density Bonus to supersede density limits in the Active Redevelopment Plans, notwithstanding LAMC § 11.5.14B.2, based upon state density bonus law** which I understand: (I) preempts any local ordinance which precludes its benefits and considers otherwise applicable zoning regulations not applicable to density bonus projects; (2) authorizes a local ordinance such as the City's CUP Density Bonus ordinance providing for density bonus in excess of the state density bonus minimum requirements. [...] (Emphasis added.)

(Weber Decl., ¶¶ 8-9, numbering omitted.) It is clear from Ms. Weber's declaration that the City has been operating under the mistaken belief that discretionary determinations supporting a deviation pursuant to the Hollywood Redevelopment Plan are always unnecessary in light of the DBL. Consequently, the fact that the Hollywood Redevelopment Plan contemplates deviations from its provisions does not negate a conclusion that the City's practice of granting CUPs in the Hollywood Redevelopment Area is unlawful.

The City further argues, however, that another section of the Hollywood Redevelopment Plan, Section 502, incorporates by reference the CUP provisions in LAMC Section 12.24. Based on this premise, the City argues that LAMC Section 12.24 does not conflict with the Hollywood Redevelopment Plan. The City thus concludes that the express density limits in the Hollywood Redevelopment Plan do not bar greater densities.

Section 502 of the Hollywood Redevelopment Plan is headed "Map." (See AR 23160.) The paragraph immediately beneath this heading provides, "[t]he Redevelopment Plan Map, 'Exhibit A.1,' attached hereto and incorporated herein shows ... the proposed land uses to be permitted in the Project Area... ." (*Id.*) A second paragraph then reads:

> ~~The Agency is authorized to permit the Land Uses shown on Amended Exhibit A.1.~~ Notwithstanding anything to the contrary in this Plan, the **land uses permitted in the Project Area shall be those permitted by the General Plan, the applicable Community Plan, and any applicable City zoning ordinance, all as they now exist or are hereafter amended and/or supplemented** from time to time. [...] In the event the General Plan, the applicable Community Plan, and/or any applicable City zoning ordinance is amended and/or supplemented with regard to any land use in the Project Area, the land use provisions of this Plan, including, without limitation, all Exhibits attached

> hereto, shall be automatically modified accordingly without the need for any formal plan amendment process. [...]

(COLA-23160, -23161, emphasis added, interlineation in original.) Based on this language, the City argues that LAMC Section 12.24 is an "applicable zoning ordinance," and that the heightened densities it can authorize are "land uses permitted in the Project Area." Hence, the City reasons, there is no conflict between LAMC Section 12.24 and lower densities described elsewhere in the Hollywood Redevelopment Plan.

The court rejects the City's argument because it is inconsistent with the City's admissions in discovery that as of 2019, it has authorized projects with densities greater than those "provided for" in Hollywood Redevelopment Plan. (See Wright Decl., Exh. G.) If the "land uses permitted in the Project Area" provided for heightened densities pursuant to LAMC Section 12.24, then the City's admissions would be unwarranted. As its admissions (and the Weber Declaration) show, the City historically has interpreted the Hollywood Redevelopment Plan not to incorporate LAMC Section 12.24. For this reason, the court does not treat LAMC Section 12.24 as an "applicable zoning ordinance" within the meaning of Section 502 of the Hollywood Redevelopment Plan.

For its part, AHF asks the court to go further and declare the Hollywood Redevelopment Plan preemptive of LAMC Section 12.24 on the ground that the Hollywood Redevelopment Plan was established pursuant to the Community Redevelopment Law (CRL) and amounts to state law. AHF's request is denied. A declaration that applicable provisions in the Hollywood Redevelopment Plan and the LAMC reveal an unlawful pattern and practice suffices to resolve the controversy presented. The further declaration that AHF seeks is not necessary and, therefore, not appropriate under the circumstances. (See Code Civ. Proc. § 1061.)

Finally, AHF briefly mentions an injunction to prohibit the City from misapplying the TOC Guidelines and CUP density incentives. As previously noted, the evidence does not establish ongoing misuse of the TOC Guidelines. Furthermore, AHF has not addressed the significant irreparable harm that must be shown before a court may enjoin public officials. Accordingly, although the court declares the City's use of CUPs in the Hollywood Project Area to be unlawful, it will not enter an accompanying injunction at this time.

The Demurrer

The City's demurrer for failure to state a valid cause of action is DROPPED as moot in light of the ruling on the merits, above.

Disposition

On the first cause of action, AHF's request for a writ of mandate is denied.

On the second cause of action, the court will make the following declaration: The Resolution and Ordinance transferred to the City, in compliance with Section 34173, subdivision (i), all of the Former Agency's land use related plans and land use related functions.

On the third cause of action, the court will make the following declarations: (1) Under LAMC Section 11.5.14.B.2, the density incentive provisions in LAMC Section 12.24 are subordinate, for projects within the Hollywood Project Area, to the housing incentive limits in the Hollywood Redevelopment Plan; and (2) the City's practice of granting density bonuses within the Hollywood Project Area (a) that exceed those required by the DBL and (b) without complying with the Hollywood Redevelopment Plan's own provisions governing deviations from the Hollywood Redevelopment Plan's density limits violates LAMC Section 11.5.14.B.2 and is unlawful. AHF's request for injunctive relief is denied, and its request for a declaration about the City's use of the TOC Guidelines is dismissed.

The court will enter a judgment to which this ruling is attached as an exhibit. The court does not designate any prevailing party at this time.

Unless otherwise ordered, any administrative record, exhibit, deposition, or other original document offered in evidence or otherwise presented at trial, will be returned at the conclusion of the matter to the custody of the offering party. The custodial party must maintain the administrative record and all exhibits and other materials in the same condition as received from the clerk until 60 days after a final judgment or dismissal of the entire case is entered.

SO ORDERED.

Dated: April 11, 2022

Hon. James P. Arguelles
California Superior Court Judge,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING

(C.C.P. Sec. 1013a(4))

I, the Clerk of the Superior Court of California, County of Sacramento, by depositing true copies thereof **Combined Final Ruling, after *Sua Sponte* Reconsideration, on (1) the Verified First Amended Petition for Writ of Mandamus and Complaint for Declaratory/Injunctive Relief; and (2) the Demurrer for Failure to State a Valid Cause of Action**, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at 720 9th Street, Sacramento, California, 95814 each of which envelopes was addressed respectively to the persons and addresses shown below:

ROBERT P. SILVERSTEIN
DANIEL E. WRIGHT
THE SILVERSTEIN LAW FIRM, APC
215 NORTH MARENGO AVENUE, 3RD FLOOR
PASADENA, CA 91101-1504

MICHAEL N. FEUER, CITY ATTORNEY
STEVEN BLAU, ASST. CITY ATTORNEY
KATHRYN PHELAN, DEPUTY CITY ATTORNEY
YONGDAN LI, DEPUTY CITY ATTORNEY LEONARD ASLANIAN, DEPUTY CITY ATTORNEY LOS ANGELES CITY ATTORNEY'S OFFICE
800 CITY HALL EAST
200 N. MAIN STREET
LOS ANGELES, CA 90012

SCOTT HEIL, ESQ.
VARNER & BRANDT LLP
3750 UNIVERSITY AVE., 6TH FLOOR RIVERSIDE, CA 92501

THOMAS H. WEBBER, ESQ.
RYE P. MURPHY, ESQ.
CELIA W. LEE, ESQ.
GOLDFARB LIPMAN LLP
550 SOUTH HOPE STREET, SUITE 2685 LOS ANGELES, CA 90071

I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: April 12, 2022

Superior Court of California, County of Sacramento

By: D. Ward,
Deputy Clerk