PROPOSED TENTATIVE

On May 14, 2025, petitioner Californians For Homeownership, Inc., (petitioner) filed a first verified writ administrative mandamus, pursuant to Code of Civil Procedure section 1094.5, against respondent County of Santa Barbara (County), advancing two causes of action based on violations of the Housing Accountability Act (HAA) per Government Code section 65589.5. Real Party in Interest is Richards Ranch, LLC (Richards Ranch). According to the pleading, petitioner is a California nonprofit public benefit corporation whose mission is to address California's housing crisis. Richards Ranch is the developer of 750 housing unit development project (156 units of which are proposed to be deed-restricted low-income units), on approximately 44 acres of property. It is a mixed-use development, consisting of residential and nonresidential uses with at least two-thirds of square footage designated for residential use. Richards Ranch submitted a preliminary application, and because at that time County did not have a compliant housing element, the development project was subject to what is known as the "Builder's Remedy."[1] This lawsuit stems from the County's initial determination that the preliminary applications filed by Richards Ranch were incomplete, a determination that was administratively appealed and ultimately reversed by the Board of Supervisors, which concluded the application was complete on April 8, 2025, not earlier. Petitioner contends a number of statutory violations in this process.

More specifically, petitioner observes in its petition that the Permit Streaming Act (PSA), the 2019 Housing Crisis Act (HCA), and provisions of the HAA contain strict rules governing submission and processing of housing development project applications by local authorities that help frame aspects of the "Builder's Remedy." As background, petitioner cites to a number of Government Code statutory provisions (all further statutory references are to the Government Code unless otherwise indicated), which involves a thicket of interlocking, statutory directives,[2] as follows (the court has placed them in the order in which they are outlined Government Code, highlighting the relevant critical language that will be revisited later in this order):

- **Section 65589.5, subdivision (d):** "(d) For a housing development project for very low, low-, or moderate-income households, or an emergency shelter, a local agency shall not disapprove the housing development project or emergency shelter, or condition approval in a manner that renders the housing development project or emergency shelter infeasible, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following [listing 6 conditions, with subparts])

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[1] The "Builder's Remedy" is part of the HAA, and requires local agencies to approve affordable housing development projects where the local agency has failed to adopt a housing element that was in substantial compliance with state law at the time the application was submitted and "deemed complete," even where the project is inconsistent with both the County's zoning ordinance and general plan land use designation as specified in an any element of the general plan. (Gov. Code, § 66589.5, sudd. (d)(5; see generally Miller & Starr Cal. Real Estate (4th ed., 2025 Update), Land Use, Planning, and Zoning Law, § 21:12 [discussing Builder's Remedy under HAA].)

[2] The court is detailing these statutory provisions only as background to help frame the issues raised and from which the court will draw when it analyzes their merits.

- **Section 65589.**5, **subdivision (h)(5)**: "Notwithstanding any other law, 'deemed complete' means that the applicant has submitted a preliminary application pursuant to Section 65941.1 ***or, if the applicant has not submitted a preliminary application, has submitted a complete application pursuant to Section 65943***. The local agency shall bear the burden of proof in establishing that the application is not complete . . . ."
- **Section 65589.5, subdivisions (h)(6)(A), (F) and (I)**[3]**:** "(h)The following definitions apply for purposes of this section: . . . (6) 'Disapprove the housing development project' Includes any instance in which a local agency does any of the following:
  - (A) Votes or takes "***final administrative action*** on 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"
  - "(F) Fails to comply with Section 65905.5 [see below]. For purposes of this subparagraph, a builder's remedy project shall be deemed to comply with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete"[4]'
  - "(I) "Makes a written determination that a preliminary application is incomplete described under Section 65941.1 has expired or that the applicant has otherwise lost its vested rights under the preliminary application for any reason other than those described in subdivisions (d) and (e) of Section 65941.1 [discussed below] ."
- **Section 65589.5, subdivision (j)(1):** *"*When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist [list two conditions, (A) and (B)."
- **Section 65589.5, subdivision (k)(1) and (2)**: "(k)(1)(A)(i) The applicant, a person who would be eligible to apply for residency in the housing

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[3] Plaintiff cites to subpart (H) in both the petition and briefing, but the current version of the statute with this language is contained in Subpart (I). This point will be discussed later.

[4] Petitioner cites to section 65589.5, subdivision (h)(6(E), which reads as follows: "Fails to cease a course of conduct undertaken for an improper purpose, such as to harass or to cause unnecessary delay or needless increases in the cost of the proposed housing development project, that effectively disapproves the proposed housing development without taking final administrative action if all of the following conditions are met [listing six conditions]." Petitioner's focus is on Subpart (F), as discussed later in this order. .

development project or emergency shelter, or a housing organization may bring an action to enforce this section. If, in any action brought to enforce this section, a court finds that any of the following are met, the court shall issue an order pursuant to clause (ii)"; (k)(2): ". . . A housing organization may only file an action pursuant to this section to challenge the disapproval of a housing development by a local agency. A housing organization shall be entitled to reasonable attorney's fees and costs if it is the prevailing party in an action to enforce this section."

- **Section 65589.5, subdivision (m)(1): "**Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure. . . . A petition to enforce the provisions of this section shall be filed and served no later than 90 days from the later of (1) the effective date of a decision of the local agency imposing conditions on, disapproving, or any other final action on a housing development project or (2) the expiration of the time periods specified in subparagraph (B) of paragraph (5) of subdivision (h). . . ."
- **Section 65589.5, subdivision (o)(1):** "(o)(1) Subject to paragraphs (2), (6), and (7), and subdivision (d) of Section 65941.1, a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application including all of the information required by subdivision (a) of Section 65941.1 was submitted."
- **Section 65589.6: "**In any action taken to challenge the validity of a decision by a city, county, or city and county to disapprove a project ***or approve a project upon the condition that it be developed at a lower density pursuant to Section 65589.5,*** the city, county, or city and county shall bear the burden of proof that its decision has conformed to all of the conditions specified in Section 65589.5."[5]
- **Section 65905.5, subdivision (a):** "(a) Notwithstanding any other law, if a proposed housing development project complies with the applicable, objective general plan and zoning standards ***in effect at the time an application is deemed complete***, ***after the application is deemed complete,*** a city, county, or city and county shall not conduct more than five hearings pursuant to Section 65905, or any other law, ordinance, or regulation requiring a public hearing in connection with the approval of that housing development project. If the city, county, or city and county continues a hearing subject to this section to another date, the continued hearing shall count as one of the five hearings allowed under this section. The city, county, or city and county shall consider and either approve or disapprove the application at any of the five hearings

[5] Petitioner in the verified petition quotes from this this provision, but uses ellipsis and omits recitation of critical language relevant to the court's analysis, as discussed later in this order.

allowed under this section consistent with the applicable timelines under the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

- **Section 65905.5, subdivision (b)(1): "**'Deemed complete**'** means that the application has met all of the requirements specified in the relevant list complied pursuant to Section 65940 that was available at the time when the application was submitted."
- **Section 65940:"(a)(1)** Each public agency shall compile one or more lists that shall specify in detail the information that will be required from any applicant for a development project. Each public agency shall revise the list of information required from an applicant to include a certification of compliance with Section 65962.5, and the statement of application required by Section 65943. Copies of the information, including the statement of application required by Section 65943, shall be made available to all applicants for development projects and to any person who requests the information."
- **Section 65941, subdivision (a)** : "(a) The information compiled pursuant to Section 65940 shall also include the criteria which the agency will apply in order to determine the completeness of any application submitted to it for a development project."
- **Section 65941.1:** "(a) An applicant for a housing development project . . . shall be deemed to have submitted a preliminary application upon providing all of the following information [listing 17 items with subparts] about the proposed project . . from which approval for the project is being sought . . . ."
- **Section 65941.1(d), (e)(2);**
    - "(d) After submittal of all of the information required by subdivision (a), if the development proponent revises the project such that the number of residential units or square footage of construction changes by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision, the housing development project shall not be deemed to have submitted a preliminary application that satisfies this section until the development proponent resubmits the information required by subdivision (a) so that it reflects the revisions. For purposes of this subdivision, 'square footage of construction' means the building area, as defined by the California Building Standards Code (Title 24 of the California Code of Regulations).
    - "(e)(2) If the public agency determines that the application for the development project is not complete pursuant to Section 65943, the development proponent shall submit the specific information needed to complete the application within 90 days of receiving the

agency's written identification of the necessary information. If the development proponent does not submit this information within the 90-day period, then the preliminary application shall expire and have no further force or effect.

- **Section 65943, subdivision (a***):* "(a) Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. If the application is determined to be incomplete, the lead agency shall provide the applicant with an exhaustive list of items that were not complete. . . . In any subsequent review of the application determined to be incomplete, the local agency shall not request the applicant that was not stated in the initial list of items that were not complete . . . ."
- **Section 65950, subdivision (a)(1):** "(a) A public agency that is the lead agency for a development project shall approve or disapprove the projection within whichever of the following periods is applicable: [¶] (1) One hundred eighty days from the date of certification by the lead agency of the environmental impact report, if an environmental impact reports is prepared . . . for the development project."

With this statutory background, the court will first address the respondent's request for judicial notice. It will then examine the merits of the demurer, initially as to the first cause of action based on vested rights, and then to the second cause of action involving the Board of Supervisor's authority to determine when the application can be deemed complete. The court will conclude with a summary of its conclusions.

A) Judicial Notice (and Beyond)

The court grants respondent's unopposed motion to take judicial notice of the following documents: 1) the relevant portions of Santa Barbara County's Land Use and Development Code (LUDC), attached as Exhibit A to Ms. Monroe's declaration; 2) the April 8, 2025 Santa Barbara County Board of Supervisor's "Minute Order" from the April 8, 2025 hearing (attached as Exhibit B); 3) the June 6, 2025 letter from Director Lisa Plowman, Director of Planning and Development to real party in interest Richards Ranch, indicating (among other things) that the Board at the April 8, 2024 hearing had not determined whether the "Builder's Remedy" applied (and thus whether it had lost its vested rights therein). According to the letter, once the Board determined "the application was complete, Planning and Development continued to process the application during the time it concluded to evaluate the forfeiture issue. P& D accepts the Applicant's explanation and concludes that it was a clerical error where the written sum of the square footage was identified differently between the preliminary application and full application. P & D considers the application vested to its Builder's Remedy status and continues to process this application consistent with the Board's completeness determination. This determination supersedes the statements regarding forfeiture in the February 27, 2025, email. . . . ."

The court on its own motion will take judicial notice of the courts documents in Case Nos. 25CV02774 and 26CV01654, also on calendar today. These court records are more complete and give a more robust and clearer picture to the court of what occurred and what arguments were made, useful in helping the court resolve the issues before it here. The court, of course, has not taken judicial notice of the truth of the statements in the court documents.

B) First Cause of Action: Vested Rights

Petitioner contends that respondent, on February 27, 2024, determined "the applicant has otherwise lost its vested rights," namely that it denied the project as a Builder's Remedy project (see fn. 1, *ante*). It raised the issue in its administrative appeal (see the March 31, 2025 letter to the Board of Supervisors (Board) admitted as judicially noticed document), although it appears the Board did not rule on the issue, meaning, according to petitioner, that the Board disapproved of the housing development project within the meaning of section 65589.5, subdivision (h)(6)(H) [actually, the provision relied upon by petitioner is subdivision (h)(6***(I)*** in its current form].[6]

Respondent in its demurrer contends initially that the present application is not ripe (i.e., premature for purposes of exhaustion) because the Board did not actually determine that petitioner had lost his vested rights – the issue was still left for continuing review. (*AIDS Healthcare Foundation v. State Dept. of Health Care Services* (2015) 241 Cal.App.4th 1327, 1338, citing *California Water Impact Network County Water Dist.* (2008) 161 Cal.App.4th 1464, 1485 [" 'Until a public agency makes a final decision, the matter is not ripe for judicial review.' "].) Respondent cites to the June 6, 2025, letter (also judicially noticed), in which petitioner/real party in interest were informed that no decision had been made. Second, respondent separately demurs under the doctrine of mootness, observing that the County's Planning and Development Department had granted the relief petitioner now seeks (as the issue was not determined by the Board on April 8, 2025) – vesting of the Builder's Remedy. (See, e.g., *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 454 [a case becomes moot when a court ruling can have no practical effort or cannot provide the parties with effective relief].)

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[6] This provision (as will be remembered) provides that the meaning of "disapprove the housing development project" includes any instance in which a local agency does "any of the following: "(I) Makes a written determination that a preliminary application described in subdivision (a) of Section 65941.1 has expired or that the applicant has otherwise lost its vested rights under the preliminary application for any reason other than those described in subdivisions (d) and (e) of Section 65941.1." Subdivision (d) of section 65941.1 provides that a preliminary application shall not be deemed to have been submitted (and thus vested rights can be lost) if the applicant revises the project by changing the number of residential units or square footage of construction changes by 20 percent or more. Subdivision (e)(2) provides that if the public agency determines that the application for the development project is not complete pursuant to section 65943, "the development proponent shall submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information. If the development proponent does not submit this information within the 90-day period, then the preliminary application shall expire and have no further force or effect."

Petitioner in opposition claims that the issue ***is*** ripe for review (and thus it has exhausted all administrative remedies) because the Board, on April 8, 2025, "disapproved the project" within the meaning of section 65589, subdivision (h)(6)(I), following the County's email dated February 27, 2025, which was a "written determination" that it had "otherwise lost" its vested rights, and there is no indication that County complied with sections 65841.1, subdivision (d) or (e). Petitioner then contends that the issue is not moot "because [petitioner] remains entitled to a writ of mandate to begin the application of the HAA's escalating penalties provisions." That is, according to petitioner, pursuant to section 65589.5, subdivision (k), the HAA authorizes a trial court, after a finding of a violation of the statute with respect to approval of a project (imposing conditions) to compel compliance and to retain jurisdiction to ensure enforcement of its order and impose fines for noncompliance. (See, e.g., *Ruegg & Ellsworth v. City of Berkeley* (2023) 89 Cal.App.5th 258, 272.) Alternatively, petitioner asks the court to exercise its discretion to consider the matter irrespective of whether it is moot (under the public interest exception) because the issue is one of "broad public interest that is likely to recur." (*Steiner v. Superior Court* (2013) 220 Cal.App.4th 1479, 1485; see generally *People ex rel. Alameda County Taxpayer's Assn., Inc. v. Brown* (2025) 114 Cal.App.5th 919, 932.)

The court does not have to determine whether the issue is ripe (and more specifically, whether petitioner secured a final disposition on the forfeiture of the vested interest issue), because the court finds the issue as presented is moot (meaning there is no actual controversy), and further, the public interest exception is inapplicable. On June 6, 2025, petitioner received all that is being sought in this matter when County determined that petitioner had not forfeited (and thus had not lost) any vested rights pursuant to the Builder's Remedy. At that moment petitioner received all a writ could provide, meaning there is no longer an actual controversy.[7]

Petitioner asks the court nevertheless to address the merits – and more specifically, the way in which County determined the vesting issue – as a matter of public interest. While the court acknowledges the public generally has a significant interest in the approval or disapproval of housing development projects in the community, the issue (and the error) at play appears "*sui generis*" (of its own kind, unique), unlikely to recur as a result of any systemic violation, pervasive error, or erroneously repetitive procedure if left unexamined. As noted in the County's June 6, 2025 letter, the reasons for a determination of initial forfeiture of vested rights was a

[7] Petitioner's reliance on the fact the "HAA authorizes a trial court that finds a violation of the statute with respect to approval of the project or conditions imposed on it to compel compliance, retain jurisdiction to ensure enforcement of its orders, and impose fines for noncompliance," as a basis to overcome the mootness doctrine under the circumstances presented is misplaced. In *Ruegg,* a case cited by petitioner for this proposition, the trial court issued a writ of mandate finding an HAA violation; with that, respondent argued that granting the writ rendered all other issues moot. *Ruegg* disagreed, based on the statutory provisions in the HAA imbuing the trial court with jurisdiction when it "finds a violation of the statute. . . ." Because the mootness issue here involves the essential predicate determination of whether a violation of the HAA occurred, rather than the attendant remedial consequences stemming from such a determination, *Ruegg* offers no solace to petitioner. Petitioner cannot divorce statutory remedies from the essential predicate violation determination, which would amount to nothing more than an impermissible advisory opinion if done.

result of what appears to be scrivener error by the real party in interest, as follows: "[Planning & Development] accepts the Applicant's explanation and concludes that it was a clerical error where the written sum of the square footage was identified differently between the preliminary application and full application . . . ." The court finds under these circumstances that a decision to assess the merits of petitioner's claims would amount to an impermissible advisory opinion, arising from an unusual set of facts, without a practical, tangible impact on the process or the parties. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1492 [issues that raise only academic or abstract questions of law, with practical, tangible impact on the parties, are inappropriately addressed by the court]; see *Ebensteiner Co. Inc. v. Chadmar Group* (2006) 143 Cal.App.4th 1174, 1178–1179; see also *Giles v. Horn* (2002) 100 Cal.App.4th 206, 226–228.) The public interest exception does not apply.

The court sustains the demurrer to the first cause of action without leave to amend.

C) *Second Cause of Action: Date of Completeness*

On April 8, 2025, the Board reversed the Planning Commission's determination and found that petitioner's "Preliminary Application," submitted on January 19, 2025, was complete. Petitioner, however, challenges the Board decision to find the application complete as of April 8, 2025 (the date the Board made the decision), rather than the date the real party in interest's preliminary application would have been deemed complete on February 19, 2025. Petitioner insists that the Board's determination conflicts with statutory mandates in section 65589.5, subdivision (h)(5), recounted above, which provide that for purposes of this section, notwithstanding any other law, the term " 'deemed complete' means that the applicant has submitted a preliminary application pursuant to Section 65941.1 ***or, if the applicant has not submitted a preliminary application, has submitted a complete application pursuant to Section 65943***. The local agency shall bear the burden of proof in establishing that the application is not complete." (Emphasis added.) According to petitioner, as Richards Ranch submitted a "preliminary application" pursuant to section 65941, the Board was required to deem the application complete retroactively to February 19, 2025. Petitioner bolsters this claim by looking to section 65905.5, subdivision (b)(1), which reads in full as follows: "(1) 'Deemed complete' means[8] that the application has met all the requirements specified in the relevant list compiled pursuant to Section 65940[9] that was available at the time when the application was submitted."

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8 This provision defines this term as it is used in section 65905.5, subdivision (a), which provides in relevant part as follows: "(a) Notwithstanding any other law, if a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect ***at the time the application is deemed complete***, a city, county, or city and county shall not conduct more than five hearings pursuant to Section 65905, or any other law, ordinance, or regulation requiring a public hearing in connection with the approval of that housing development project . . . ."

9 Subdivision (a)(1) of this provision provides in relevant part that each public agency "shall compile one or more lists that shall specify in detail the information that will be required form any applicant for a development project . . . ."

On the merits, the court observes that section 65589.5, subdivision (h)(5) ***expressly*** references section 65943 (the court has highlighted the relevant language above to underscore the point). Petitioner oddly ignores this critical language by use of ellipsis. In any event it is beyond cavil that section 65943, subdivisions (b) and (c) govern the administrative appeal process following an incomplete preliminary application determination. These provisions read in seriatim as follows:

> "(b) Not later than 30 calendar days after receipt of the submitted materials described in subdivision (a), the public agency shall determine in writing whether the application as supplemented or amended by the submitted materials is complete and shall immediately transmit that determination to the applicant. In making this determination, the public agency is limited to determining whether the application as supplemented or amended includes the information required by the list and a thorough description of the specific information needed to complete the application required by subdivision (a). If the written determination is not made within that 30-day period, the application together with the submitted materials shall be deemed complete for purposes of this chapter.
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> (c) ***If the application together with the submitted materials are determined not to be complete pursuant to subdivision (b), the public agency shall provide a process for the applicant to appeal that decision in writing to the governing body of the agency or***, if there is no governing body, to the director of the agency, as provided by that agency. A city or county shall provide that the right of appeal is to the governing body or, at their option, the planning commission, or both.
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> There shall be a final written determination by the agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. The fact that an appeal is permitted to both the planning commission and to the governing body does not extend the 60-day period. Notwithstanding a decision pursuant to subdivision (b) that the application and submitted materials are not complete, if the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall be deemed complete for the purposes of this chapter."

A clear meaning can be discerned from this statutory language -- the Legislature, by expressly referencing section 65943 in section 65589.5, subdivision (h)(5) as a measure to determine when an application is "deemed complete," has incorporated the appeal procedures and process into the completeness determination. It seems anomalous to conclude that the same language means two things at once -- a separate and distinct determination concerning completeness made by the appeal authority that may be separate and distinct from the initial application, while at the same time meaning a completeness determination (following reversal of the initial incompleteness determination) must retroactively reference the date of preliminary application should be deemed complete. The Legislature makes no reference to retroactively in

the statute – and the date of completeness per section 65943, subdivision (c) seems appropriately determined on the date the final decision is made.[10]

This proposition is supported by ***other*** statutory provisions that also expressly reference section 65943. For example in section 65941.1, subdivision (e)(2), when discussing exceptions to when a preliminary application is complete, the Legislature indicated as follows: "(e)(2) If the public agency determines that the application for the development project ***is not complete pursuant to Section 65943,*** the development proponent shall submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information. If the development proponent does not submit this information within the 90-day period, then the preliminary application shall expire and have no further force or effect." (Emphasis added.) Again, the Legislature seems to have contemplated that a local agency can determine whether an application is complete ***after*** initial submission, based on ***subsequent*** corrective efforts by the developer, without requiring retroactive application.

The court acknowledges that a facial reading of the statutory language (at least at first blush), based on language in section 65589.5, subdivision (h)(5)) as outlined before the conjunction "or," may suggest that a completeness determination on appeal can be different only when the developer has not submitted a "preliminary application," and it is undisputed that Richards Ranch did submit a preliminary application. But a fair reading of language, in light of the statutory scheme as a whole, suggests it applies only when the developer submits a "completed" preliminary application pursuant to section 65941.5, determined without resort to appeal following a preliminary incompleteness determination. That is, a fair reading of section 65589.5, subdivision (h)(5) means that a complete application can occur preliminarily (at the time of the initial submission) *or* later, on appeal, as permitted by section 65943. Each determination remains separate and distinct.

Put another way, a review of section 65943 itself seems to acknowledge that a completeness determination may occur at different points along a circumscribed temporal continuum, a point at odds with petitioner's narrow interpretation. For example, the statute provides that a preliminary application may be approved within the first 30 days of application (subd. (a)), thus triggering the first independent sentence of section 65589.5, subdivision (h)(5). Significantly, however, if the agency fails to act within 30 days, "application together with the submitted materials shall be deemed complete for purposes of this chapter" after expiration of the 30 days. Contrast this with the statutory language that requires the final authority on appeal to issue a "final written determination not later than 60 calendar days" after the appeal application and written materials for the appeal have been submitted; if no final written decision

[10] Any other determination would treat those who fully comply with the requirements of a preliminary application the same as those who do not, a point overlooked by petitioner (and something the Legislature unlikely intended).

has been made after 60 days (and irrespective of whether the initial application was incomplete), the application "shall be deemed complete for purposes of this chapter." This would be a different date, and there is no indication that the determination must be retroactive. The statutory language, when examined overall, seems to contemplate different dates of completion. Nothing in this language even remotely suggests that the Legislature intended a completeness determination to be retroactive to a single date (either after expiration of the 30 days for the preliminary application or after 60 days on appeal). If the Legislature had intended such retroactive gymnastics, it would have expressly indicated as much. But it did not. In fact, as noted, the contrary seems true. At a minimum such legislative silence or inaction is far too attenuated to support petitioner's argument. (*Pieri v. City and County of San Francisco* (2006) 137 Cal.App.4th 886, 892 [in interpreting statutory language, a court must not insert what has been omitted or omit what has been inserted]; *California Capital Ins. Co. v. Hoehn* (2024) 17 Cal.5th 207, 222 [a reasonable inference from legislative silence, and the one we find the most plausible, is that the Legislature took no position on the rule's validity; as we have longed recognized, legislative inaction supplies only a weak reed upon which to lean in inferring legislative intent].)[11]

The court's interpretation is bolstered by the nature and scope of the appeal authorized and contemplated by Santa Barbara County, as outlined in Santa Barbara County Land Use and Development Code (LUDC), section 35.102.020, which governs appeals generally. Subpart (C)(d) provides as follows:

> "If it is claimed that there was an error or abuse of discretion on the part of the review authority, or other officer or authorized employee, or that there was a lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration leading to the making of the decision or determination that is being appealed, ***or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made, then these grounds shall be specifically stated***." (Emphasis added.)

Further, LUDC section 35.102.050 (C) could not be clearer: "The hearing on the appeal [to the Board] ***shall be de novo***." (Emphasis added.) The term "de novo" is well settled. (See, e.g., *Tahoe Vista Concerned Citizens v. County of Placer* (2000) 81 Cal.App.4th 577, [when the

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[11] Petitioner in opposition contends that because the statutory terms "are used only for matters related to timing," it "would make no sense for the Legislature to have defined these terms so specifically and use them only for matters related to timing, but then to ignore these definitions when making determinations related to timing." Petitioner's argument fails to account for the full universe of timing calculations contemplated within the statutory scheme itself. As discussed above, the Legislature contemplated different 'completeness" determinations following a local authority's failure to act with regard to the initial 30 days following a preliminary application, or failure to issue a final decision within 60 days on appeal. In light of this taxonomy, coupled with the de novo determination on appeal which appears readily assimilated into the statutory scheme, as discussed later in this order, it appears the Legislature intended the local authority to make a more fact-based completeness determination on appeal unmoored to the date of the original preliminary application, contrary to petitioner's arguments.

Board of Supervisor's review is de novo, the hearing is conducted over again, meaning new evidence may be considered]; see generally *Post v. Palo/Haklar & Associates* (2000) 23 Cal.4th 942, 947-948 [a hearing de novo literally means a new hearing, that is, a new trial, which may include entirely new facts]; *Schneider v. California Coastal Com.* (2006) 140 Cal.App.4th 1339, 1344 [" On appeal, the Coastal Commission reviews the matter de novo and may take additional evidence"].) These procedures, involving de novo review and the admission of new evidence, clearly lend themselves to completeness date different from the date associated with the preliminary application. It would be odd (again) to suggest new evidence would lend itself to a determination only with retroactive application.[12]

Petitioner argues that this procedure and determination is inconsistent with the terms of the PSA and the HAA. Not so, as petitioner's argument is at odds with other parts of the statutory scheme, as discussed above. As noted, section 65589.5, subdivision (h)(5) expressly incorporates into it the broad language in 65943, placing only circumscribed limits on the appeal process (such as its existence and the timing of any final decision). This broad authorization is commensurate with, and effectuated by, the local agency's authority on appeal to determine when the application is complete. It seems anomalous on one hand to recognize the Legislature's broad authorization to determine an appeal in section 65943, including the standard of review and the propriety of new evidence (something petitioner does not challenge), and at the same time mandate retroactive application of any completeness determination despite any new evidence presented. This seems true even if the court recognizes that the HAA should be "interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision, of housing." (§ 65589.5, subd. (a)(2)(L).) This does not mean that local control (or more specifically local control provisions) are never relevant. (See, e.g., *Snowball West Investments, L.P. v. City of Los Angeles* (2023) 96 Cal.App.5th 1054, 1086 [local control has not been abrogated by the HAA].)[13] The court's interpretation is based on an

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[12] This is not a transient observation for our immediate purposes. In Case No. 25CV02774, also on calendar today, the record of the administrative appeal is far more robust than the record here. Attached to the petition/complaint in that matter are Exhibits 1 and 2 (former Exhibits A and B), which include the appeal package submitted to the Board as part of its ultimate April 8, 2025 decision. It includes a 24-page February 28, 2025 letter; a March 17, 2025 supplement letter; letters from the Department of Housing and Community Development Division of Housing Policy Department, to the City of Beverly Hills, the City of Fillmore, City of Gilroy, the City of Los Gatos; a March 28, 2025 stipulation between Californians for Homeownership (petitioner here) and the City of Beverly Hills concerning the correction of technical assistance; and a written court order in *Janet Jha v City of Los Angeles,* et al., 23STCP03499, granting in part and denying in part a mandamus petition involving similar issues. Under the de novo standard, the Board examined this evidence that apparently was not part of the preliminary application.

[13] Petitioner argues in opposition that the appeal process contemplated by LUDC, as detailed above, is "largely irrelevant" because under the HAA and PSA, local agencies are not entitled to' "traditional forms of deference in disputes over their compliance with state housing law," citing to *California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 844 and *Ruegg & Ellsworth, supra*, 63 Cal.App.5th at p. 301. (Opp. at p. 11, fn. 2.) It is true that both these courts noted that the HAA was intended to curb the capability of local governments to deny, reduce the density for, or render infeasible housing development projects. (*California Renters Legal Advocacy, supra*, at p. 883, citing § 65589.5, subd. (a0(2)(K))].) "Deference" in

objective interpretation of the relevant statutory language, underscored by an examination of general policy and legislative intent behind the HCC, the HCA, and the PSA [14]

Further, nothing in section 65905.5, subdivision (b)(1) supports petitioner's retroactivity contention. A close examination of section 65905.5, subdivision (a) indicates that the five hearings limitation applies only "***after*** the application is deemed complete," with such a determination made by the local authority anytime along the appropriate yet circumscribed time continuum; subdivision (b)(1) dictates what substantive standard the local agency must apply in order for the application to be complete (i.e., anywhere along the continuum as impacted by section 65905.5, subdivision (b)(1)), rather than involving or directing retroactive application. It dictates the standard to apply, not when the completeness determination is to be made. Simply put, in the court's view, subdivision (b) is not a timing provision (that is the province of subdivision (a)), but a provision that dictates what standard the local agency must apply to determine completeness. (See, e.g., *Durkin v. City and County of San Francisco* (2023) 90 Cal.App.4th 643, 649 [§ 65905.5 provides that when a project complies with all applicable, objective general plan and zoning in effect at the time an application is deemed complete, a local agency shall not conduct more than five hearings].) This reading harmonizes other provisions in the same statutory scheme – retroactivity is not implicated.

California Renters Legal Advocacy involved the local agency's interpretation of its " general plan and its Multi-Family Design Guidelines (the 'Guidelines'.)" (*Id.* at p. 884.) The appellate court found that under the HAA it is "inappropriate for us to defer to the City's interpretation of the Guidelines," requiring the court to engage in a more rigorous independent review in order to prevent the City from circumventing what was intended to be strict limitation on its authority." (*Id.* at p. 844.) It concluded that the more rigorous inquiry required an objective examination of the appropriate language in the Guidelines, unfettered by "adding an after-the-fact interpretative gloss" as offered by the local agency. (*Ibid.*) The court's analysis in the body of this order is entirely commensurate with this case, based on its objective reading of the legislative scheme, unencumbered by any "after-the-fact interpretative gloss."

Ruegg is equally distinguishable, although for other reasons. There, the issue was whether "the deferential standard of review applied by the trial court is inappropriate here because it effectively nullifies the legislative intent in section 65913.4 by insulating from review the factfindng underlying an agency's determination whether its ministerial duty to approve a project is triggered. We find this argument compelling . . ." (*Ruegg, supra*, at pp. 298-299.) The *Ruegg* court went on to conclude that "the City was not given discretion to impose conditions and then determine whether they were satisfied; it was required to approve the development project if the conditions specified by the Legislature were met." (*Id.* at p. 301.) Conditions for approval are not at issue here, only the procedures utilized by the agency for a completeness determination on appeal. Nothing in *Ruegg* undermines or contradicts the court's analysis or conclusions on this point.

[14] Petitioner places great reliance on the phrase "Notwithstanding any other law" as contained in section 65589.5 subdivision (h)(5). No doubt it is comprehensive phrase, and can provides direction and resolution when there is otherwise a conflict between alternative statutory schemes. (*People v. Espinoza* (2014) 226 Cal.App.635, 639-640.) Its utility is nevertheless limited to situations involving a genuine or irreconcilable conflict between statutory provisions. Here, there is no irreconcilable conflict. As noted above, the provisions in toto can be harmonized, maintaining their integrity without running afoul of any in particular. (*Newark Unified School Dist. v. Superior Court* (2015) 245 Cal.App.4th 887, 907–908 [by harmonizing statutes the court is able to " ' "maintain the integrity of both statutes," ' thereby honoring the presumed intent of the Legislature"].) Not to belabor the point, but there is no other law "notwithstanding."

Petitioner relies on the following equitable argument to support its contention that the Board should have determined the application was complete 30 days after submission (February 19, 2024), and no later. "Had the County correctly determined that the Formal Application was complete upon submission of all of the items on the County's completely checklist, it would have proceeded to other forms of review of the Project. The Legislature did not intend to allow the County to force Real Party through an unnecessary appeal of the County's completeness determination, and then reward the County for its misconduct by granting the County extra time to review the Project and the right to hold even more hearings on the Project. . . ." This argument proves too much, for petitioner seems to suggest that ***every*** appeal (and thus the appeal process itself) is unnecessary and permits the County to reward itself with such desultory conduct by delaying the completeness determination. The premise upon which the argument rests is unsound – the court cannot condemn the appeal process generally or this appeal specifically following naked claims that the appeal was "unnecessary" and done for the purpose of "rewarding" the County "for misconduct by granting extra time . . . ." While the HAA was intended to curtail abuse, the appeal process itself is not evidence that abuse occurred. This unadorned argument does not support retroactively.

The argument that petitioner actually seems to be advancing is not one that can be determined as a matter of law (despite petitioner's exhortations to the contrary), but is one that requires a properly framed allegation, supported with sufficient facts, requiring petitioner to satisfy both administrative exhaustion requirements and a subsequent pleading obligation. Although not cited by petitioner, the court is willing to assume arguendo that petitioner can seek a judicial determination that a retroactive completeness determination is appropriate via administrative mandamus per section 65589.5, subdivision (h)(6)(E). This section permits a developer to challenge a local agency's determination when the local agency fails "to cease a course of conduct undertaken ***for an improper purpose, such as to harass or to cause unnecessary delay or needless increases in the cost of the proposed housing development project, that effectively disapproves the posed housing development without taking final administrative action."*** The court is willing to accept that if the County purposely and unnecessarily denied the preliminary application based on improper purposes, rather than good faith error, the court has the authority (as a remedy) to determine the preliminary application should be deemed timely upon the close of the initial 30 days on a retroactive basis.

Even with this, two points prove fatal to advancing such a claim in this forum at this time. First, petitioner has not pleaded this ground in the petition. There is only the vaguest reference to section 65589.5, subdivision (h)(6)(E) in the petitioner, and the provision is cited simply for the proposition of a five-hearing rule, and nothing more. (¶ 28.) There is no mention of untoward misconduct, improper purpose, delay or needless increase of costs.

A more fatal problem, however, is the rule of exhaustion of administrative remedies, a jurisdictional prerequisite to resort to the courts. (*Thomas v. Shewry* (2009) 170 Cal.App.4th 1480, 1485.) There is no indication either in the petition or in the judicially noticed record before the court that real party in interest actually asked the Board to make any conclusion about misconduct or untoward purpose as contemplated under section 65589.5, subdivision (h)(6)(E), as part of the April 8, 2025 appeal determination. (See Exhibit B, Board of Supervisors' Minute Order for April 8, 2024, Exhibit B of Judicial Notice request.) The court has examined the March 31, 2025 letter authored by counsel for Richards Ranch, delineating the issues to be determined on appeal, and there is no request for the Board to determine that earlier incompleteness determinations were based on improper motives, such as simple delay.[15] The rule is settled: where an administrative remedy is provided by statute, as would be the case here, final relief must be sought from the administrative body before courts will act. (See, e.g., *Monterey Coastkeeper v. Stat Water Resources Control B*. (2018) 28 Cal.App.5th 342, 359.) To advance the purposes of the exhaustion doctrine, "***the exact issue***, not merely generalized statements, must be raised." (*Ibid,* emphasis added*; Evans v. City of San Jose* (2018) 128 Cal.App.4th 1123, 1130 [issues not raised before the administrative agency are not preserved for by the courts]; see *Golder Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 552-553.) Nothing in the judicially noticed documents indicate petitioner (or real party in interest) actually advanced this exact issue – i.e., "to cease a course of conduct ***undertaken for an improper purpose, such as to harass or to cause unnecessary delay or needless increases in the cost of the proposed housing development project,*** that effectively disapproves the posed housing

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[15] In the March 31, 2025 letter attached to the petition in Case No. 25CV02774, authored by Richards Ranch and sent to the Board for purposes of defining the issues on the administrative appeal, there was no claim that County engaged in misconduct as contemplated by section 65589.5, subdivision (h)(6)(E). The letter begins with the four issues that were asked to be determined, including the untimeliness of the incompleteness determination on February 20, 2025; two claims that the County improperly determined Richards Ranch lost its vesting rights; and a claim that the County improperly found the "Resubmittal Application" was incomplete because it was based on items not contained in the first incomplete letter, amongst other errors. All errors rest on County personnel's allegedly mistaken interpretations of the statutory scheme, not on any ill-conceived motive – that is, the County engaged in the course of conduct "for an improper purpose, such as to harass or to cause unnecessary delay or needless increases in the costs," as opposed to the simple error. On page 17 of the March 31, 2025 appeal letter, petitioner does claim that it "appears politics is intervening and causing the County to illegally deny this affordable housing project important protections under state law," punctuated with a contention that "this Project is being treated differently from all other housing projects in the County," with exhortations that the Board reject "politics and personal animus to interfere with fair and legal processing. . . . ." But the appeal claims in the end are exclusively based on asserted legal interpretations and an abuse of discretion, and the Board was never asked to determine whether County personnel improperly denied the preliminary application because of a desire to delay or other untoward motives. There is a large gap between simple error and intent to injure. The court sees nothing more than generalized allegations offered to support claims of legal error. Although petitioner notes in the March 31, 2025 letter that a court can find an agency acted in "bad faith" – there was no request that the Board make that determination. This point was made crystal clear in the "Conclusion" portion of the letter, in which petitioner asked the Board to approve the appeal on four points only (that the "Resubmittal Application" was complete as a matter of law on February 19, 2025; that petitioner did not lose its vesting rights (second and third points); and that the incompletely doctrine is invalid because County relied on items either not listed in the first incomplete letter and/or items that were actually provided to the County).This omission is fatal for purposes of determining whether a misconduct determination here would support a retroactively determination.

development . . . ." Petitioner bears the burden of demonstrating that these issues were raised at the administrative level (*Monterey Coastkeeper, supra,* at p. 359), and a complaint is vulnerable to demurrer when the pleader fails to plead exhaustion or a valid excuse for not exhausting, which is clearly the case here. (*Ventura29, LLC v. City of Buenaventura* (2023) 87 Cal.App.5th 1028, 1037 [a demurrer may properly be granted based on the failure to adequately plead an exhaustion of administrative remedies].)

No exception to the rule of exhaustion seems readily apparent on this pleading or from this record. (See, e.g., *Foster v. Sexton* (2021) 61 Cal.App.5th 998, 1025 [exceptions are when subject matter of controversy lies outside administrative agency's jurisdiction; pursuit of an administrative remedy would result in irreparable harm; the administrative remedy is inadequate or unavailable; or the remedy is futile].) The futility exception is a very narrow one, requiring the party that invokes it to positively state that an agency had declared what its ruling will be on a particular case. (*Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1080-1081.) That seems unlikely given the Board's decision to grant relief. Nevertheless, petitioner at the hearing will be afforded an opportunity to show a reasonable possibility exists that exhaustion or an exception thereto can be pleaded. (*Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 711 [an abuse of discretion for the trial court to sustain a demurrer without leave to amend if there is a reasonable possibility the plaintiff can amend the complaint to allege any cause of action].) It seems most unlikely that petitioner can satisfy that standard, but the court remains open to argument.

Summary:

- Petitioner/Real Party in Interest is directed to file a notice of related case in both this matter and Case No. 26CV01654 (irrespective of the outcome here). This will facilitate resolution of matters in the remaining cases.
- The court grants respondent's unopposed request for judicial notice. The court on its own motion will take judicial notice of all court documents in Case Nos. 25CV02774 and 26CV01654.
- The court sustains the demurrer to the first cause of action without leave to amend. The court need not decide whether the issue is ripe (and thus whether petitioner exhausted administrative remedies), because the issue is moot, and the public interest exception is inapplicable.
- The court sustains the demurrer to the second cause of action without leave to amend, ***unless*** petitioner orally at the hearing can convince the court that it can plead a cause of action predicated on section 65589.5, subdivision (h)(6)(E) that overcomes the exhaustion of administrative remedies doctrine. This seems unlikely, as the record before the court shows petitioner did not raise before the

Board the exact issue contemplated by this provision – i.e., misconduct for purposes of delay or some other untoward reason. No exception to the doctrine seems apparent or evident. Petitioner, however, will be afforded an opportunity demonstrate reasonable possibility exists that an amendment can be made.