

PROPOSED TENTATIVE

On March 24, 2025, petitioner Edward St. George (petitioner) filed a verified first amended petition for a writ of mandate (petition), advancing two causes of action against respondent City of Solvang (Solvang) and Rafael Catillo (Community Development Director for Solvang) (Castillo) (collectively, respondents) for writ of mandate and declaratory relief. Petitioner alleges that respondents issued building permits to construct a hotel at 1704 Mission Drive, Solvang, on November 19, 2024, and construction thereafter commenced. During construction, according to petitioner, objections to “style and architecture” of the hotel were made by the public to both the Solvang Planning Commissioners and the Solvang City Council. According to the petition: “. . . [A]s a result of public outcry that arose after approval of the Project and after construction had commenced along with opposition to Petitioner’s political beliefs, various employees and/or officials with the City of Solvang began a campaign both publicly through news media and social media outlets and in private conversations of discrediting Petitioner with false or inaccurate statements about Petitioner and/or the Project” On August 14, 2025, Mr. Castillo, in his capacity as Community Development Director for Solvang, issued a “Stop Work Order” (SWO), ordering petitioner to cease all construction. According to the operative pleading, the SWO identified seven (7) grounds for cessation (i.e., failure to provide disability and ADA compliant access, four failures to follow the approved site plan requirements, a claim that the stormwater control plan had been eliminated, and a claim that there was change of material on the windmill portion of the project). (¶ 14(a) to (g).) Petitioner claims that the “conditions under which Respondents issued the SWO in effect created a Catch-22 situation for Petitioner. By ordering Petitioner to stop work on the Project, before the work was even completed, on the faulty basis that the uncompleted work was incomplete and did not comply with the plans, there is no way for Petitioner to make the Project comply with the plans because additional work is required to do so. Instead of allowing Petitioner to complete the Project in a manner consistent with the plans, Respondents instead ordered Petitioner to ‘revise’ the existing plans. Upon information and belief, this was demanded of Petitioner so that the approved Project would be re-opened to review and scrutiny at the various governmental agencies of Solvang so that additional changes to the previously approved plans and entitlements could be made by the applicable Solvang agencies.”

In the first cause of action for writ of mandate, petitioner claims the SWO order was improper pursuant to California Building Code section 115, (Cal. Code Regs., tit. 24, § 113.1),¹ adopted by Solvang, because none of the conditions identified by Solvang in the SWO was “present at the Project at the time of the issuance Accordingly, petitioner has a vested right to continue construction of the Project until its completion,” as the issuance of the SWO was

¹ This provision provides in relevant part that “[w]here the building official finds any work regulated by this code being performed in a manner contrary to the provisions of this code or in a dangerous or unsafe manner, the building official is authorized to issue a stop work order.”

arbitrary, capricious, and lacked any factual support. In the second cause of action for declaratory relief, petitioner contends this is an ongoing controversy and requires judicial determination.

Solvang demurs to both causes of action, claiming petitioner has failed to adequately plead exhaustion of administrative remedies or any exception – namely, futility. Solvang asks the court to take judicial notice of California Building Code, section 1 113.1, 113.2, 113.3, and 113.4, governing appeals; and 2) City of Solvang Municipal Code sections 1-3-6; 1-6-1; 10-1-1 to 10-1-4. Petitioner does not object to the request. The request is granted. Plaintiff has filed opposition, and on July 7 2026, respondents filed a reply. All briefing has been reviewed.

The court agrees that plaintiff has failed to allege that it actually exhausted administrative remedies to finality. (See, e.g., *McKee v. Bell-Carter Olive Co.* (1986) 186 Cal.App.3d 1230, 1234[“Foundationally, it is beyond question that in California an adequate and available administrative remedy must be exhausted, barring certain exceptions, before plaintiff will be permitted to seek judicial redress of his grievance of injury”].) A complaint is vulnerable to demurrer on administrative exhaustion grounds when it fails to plead either that administrative remedies were exhausted or that a valid excuse exists for exhausting. (*Parthemore v. Cal* (2013) 221 Cal.App.4th 1372, 1379.)

The court disagrees, however, that plaintiff has not adequately alleged futility as an exception to exhaustion requirement. As our high court has explained, failure to exhaust administrative remedies is excused if it is clear that exhaustion would be futile. (*Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1080.) The futility exception requires that the party invoking the exception can positively state that the agency has declared what its ruling will be on a particular case. (*Ibid.*) For the futility exception to apply, explains our high court, “it is not sufficient that a party can show what the agency’s ruling would be on a particular issue or defense. . . . Rather, the party must show what the agency’s ruling would be ‘on a particular case.’” (*Ibid.*; see also *Casa Blanca Beach Estates Owners. Assn. v. County of Santa Barbara* (2024) 102 Cal.App.5th 1303, 1310.) Plaintiff must create issues of fact about whether the defendant declared what its ruling would be in this case. A party’s preconception of the futility of administrative action alone does not permit the party to bypass the administrative remedy. (*Bennett v. Borden, Inc.* (1976) 56 Cal.App.3d 706, 710.)

Petitioner could have done a better job of pleading futility. The relevant allegations, however, are encapsulated in a run-on sentence in paragraph 34 of the petition, as follows: “Against this background of facts, along with multiple members of the City Council’s stated distaste for Petitioner’s political [beliefs] and what he is attempting to accomplish at the Project, plus Council Orona’s conflict of interest with the Project and her history of not recusing herself

from issues before the City Council of which she has a conflict of interest, along with the fact that the City staff had indicated that Petitioner and the Project had been singled out by the City Council and would continue to be singled out and treated improperly and differently than other residents and developers in the City because of the City Council members' bias toward Petitioner and the Project, Petitioner believed that appealing the Stop Work Order to the City Council would have been futile as it was that a majority of the City Council would have denied the appeal of the Stop Work Order and any other issue brought by Petitioner before the City Council with respect to the Project." In paragraphs 27 and 28 of the petition, petitioner details Councilmember Orona's past behavior, and contends (most notably) that "City Staff indicated [at the time the SWO was issued] that they did not agree with the decisions and . . . that the Project and Petitioner has been singled out and treated poorly by the City in a fashion that they had never seen before. They stated they had been given orders from above [elected City Council members] since they were the only superiors who could have ordered such."

The court overrules the demurrer based on these contentions. Courts are required to accept plaintiff's allegations as true and give them a liberal construction. (*Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1431.) Petitioner alleges essentially what the City Council would have done if an appeal had been made, as the members of the City Council were allegedly themselves involved in the initial SWO process itself. If true, it is not a leap of logic to conclude that the appeal outcome was preordained (a "fait accompli"), and thus futile. (*Sea & sage Audubon Society, Inc. v. Planning Com.* (1983) 34 Cal.3d 412, 419.) This is an issue of fact that cannot be resolved on demurrer.

The court finds respondent's reliance on *Economic Empowerment Foundation v. Quackenbush* (1997) 57 Cal.App.4th 677 to be misplaced under the circumstances. There, plaintiff claimed "the futility exception applies . . . because the Commissioner is biased against it and other interveners seeking compensation." (*Id.* at p. 690.) Nothing else was alleged. The appellate court, in light of this unadorned claim, observed as follows: "But while the bias allegations are troubling, [plaintiff] does not and cannot assert that the Commissioner's decision on [plaintiff's] fee claim in this particular proceeding is *certain* to be adverse." (*Id.* at pp. 690-691, italics in original.) "The fact that the Commissioner may have treated [plaintiff] and other interveners unfairly in other proceedings does not establish that he is bound to do so in this one. . . Accordingly, we conclude that the futility exception does not apply to [plaintiff's] claim." (*Id.* at p. 691.) Here, there is little doubt that plaintiff relies on bias based on actions taken in other, unrelated matters, as was done in *Economic Empowerment Foundation*. (See, e.g. ¶ 27 [Councilmember Orona has received warning letters in other matters, including the Horzes Entertainment's application].) But, unlike *Economic Empowerment Foundation*, more than bias has pleaded. Petitioner alleges in paragraph 28 that City Staff expressly indicated petitioner had been singled out for unfair treatment and that they "were given orders from above" to act in this fashion, with "from above" meaning City Council members. This is more than bias. If petitioner

can show that that City Council members had directly ordered City Staff to issue the SWO in the first instance, it can reasonably be argued that the appeal result was preordained under the futility doctrine. Petitioner here, unlike the plaintiff in *Economic Empowerment Foundation*, can therefore positively state under these circumstances that the administrative agency has declared what its ruling will be (again based on a liberal interpretation of the allegations). (*Doe v. Albany Unified School Dist.* (2010) 190 Cal.App.4th 668, 686; see, e.g., *Casa Blanca Estates Owners' Assn., supra*,) 102 Cal.App.5th at p. 1310 [futility exception does not apply if nothing in the record supports an assertion that the agency's decision is bound to be adverse; there must be more than a subjective belief the agency would render an adverse decision].) The court is certainly not saying that what has been alleged will be true – but the allegations if proven true support the application of the futility for pleading purposes, as they go beyond the speculative, subjective feelings about the matter by petitioner. (*Ibid*; see also *Baollengier v. Doctors Medical Center* (1990) 22 Cal.App.3d 1115, 1130.)

The court finds *Doster v. County of San Diego* (1988) 203 Cal.App.3d 257, while not squarely on all fours, supportive of the court's decision (at least for pleading purposes). The *Doster* court found futility because the same administrator would be reviewing the same records for decision reached on the same evidence previously introduced in another proceeding predating the challenged employment action. As the *Doster* court noted: "Administrative review to challenge a decision made earlier by the final decisionmaker where the decisionmaker will not be called upon to consider different evidence on the ultimately issue is truly a waste of time." (*Id.* at p. 262; see also *Farahani v. San Diego Community College Dist.* (2009) 175 Cal.App.4th 1486, 1497 [futility exists if the agency has already rejected the claim or announced its position "or made clear it would not consider the plaintiff's evidence"].) The same rationale applies in this distinct factual scenario. If it is true that City Council members ordered the SWO in the first place (i.e., by putting pressure on the City Staff), and they are at the same time the same ones who will be the final decisionmaker about the propriety of the SWO, involving the same evidence, the outcome is arguably "a fait accompli," meaning futility has been adequately alleged. Again, whether petitioner will be able to demonstrate this at trial is an entirely different matter; but the allegations as made are sufficient to withstand demurrer.

The court overrules the demurrer. Respondent has 20 days to file an answer.