Richards Ranch, LLC v. County Santa Barbara, et al. 25CV02774 (this matter)
Californians for Homeownership, Inc. v. County of Santa Barbara 25CV0309 (related)
Richards Ranch, LLC v. County of Santa Barbara, et al. 26CV01654 (related)
Hearing Date: June 23, 2026
3 Motions (Demurrer, Motion to Strike, Motion for Protective Order)

PROPOSED TENTATIVE

The court has written extensively about the nature and background of the housing development project at issue in this matter in two other lawsuits involving (for the most part) the same protagonists: *Californians for Homeownership, Inc. v. County of Santa Barbara*, Case No. 25CV0309, and *Richards Ranch, LLC v. County of Santa Barbar, et al*., Case No. 26CV01654. The court will not recount the background of the dispute given this extensive discussion; the court incorporates into this order each written order in those matters. This order will focus on the substance of Case No. 25CV02774, although it will reference the substance of earlier orders if they have direct bearing on the matters at issue here.

On May 25, 2025, in this matter, plaintiff/petitioner Richards Ranch, LLC (Richards Ranch or petitioner) filed a 236-page verified petition/complaint for both traditional and administrative mandamus (in the alternative), against defendants/respondents County of Santa Barbara and Santa Barbara County Board of Supervisors (hereafter, County or respondents), advancing seven (7) causes of action (the first six are advanced as administrative and traditional mandamus in the alternative), based on violations of the Permit Streamlining Act (Gov. Code, § 65280, et seq.) (PSA) and the Housing Accountability Act (§ 65589, et seq.) (HAA), amongst others, as follows:

- 1) County violated Government Code[1] section 65943, subdivision (b) when it deemed petitioner's January 20, 2025, a "Second Resubmittal Application," as incomplete on February 20, 2025 (County's "Third Incomplete Determination"), for the latter determination was made outside the 30-days mandated by statute, meaning the January 20, 2025 application should be deemed complete as a matter of law;
- 2) County improperly determined that the date of completeness occurred on April 8, 2025, for, according to petitioner, nothing in "the PSA specifies that Respondent may select its preferred deemed complete date under section 65943 (a) as part of the appeal process";
- 3) County in making its determinations about the completeness of the "Second Supplemental Application" has denied petitioner key statutory protections (and vested rights), such as section 65589.5, subdivisions (j)(2)(A) and (B) [County must timely provide written documentation about a housing development project's inconsistency within 60 days of a completeness determination, and if not the housing development project will be deemed consistent with the applicable plan]; section 65905.5, subdivision (a)'s limit of five hearings on the housing development project after application is deemed complete]; and Public Resources section 15102 [agency must determine within

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

30 days after accepting an application as complete whether it intends to prepare an Environmental Impact Report under California Environmental quality Act (CEQA)]. Petitioner claims County did this all with "bad faith" in order "to assert control over the Project and cause unnecessary delay of the Project in contravention of Petitioner's legal rights." (¶ 133.)

- 4) County improperly issued the "Third Incompleteness Determination and Email Determinations" "based on information requested in violation of the PSA and incomplete items contradicted by evidence in the Second Resubmittal, in an intentional effort to harass and obstruct Petitioner, unnecessarily delay the Project, and needlessly increase the costs of the Project." County's conduct thus amounts to "bad faith." (¶¶ 145, 148 ["Respondents' conduct – which was frivolous, pretextual, intended to cause unnecessary delay, or entirely without merit – further amounts to 'bad faith.'"].)
- 5) On "February 27, 2025, [County] issued Email Determinations that the Project lost rights available under Petitioner SB 330 Preliminary Application" (i.e., vested rights) based on a claimed change by more than 20 percent of the construction square footage of the project; County issued this determination "without warning or consultation with Petitioner, and in violation of the HAA (§§ 65589.5, subd. (i) and 65589.5). Petitioner alleges: "Respondents' Email Determinations, which have not been rescinded, constitute 'disapproval' of the Project because Respondents have made 'a written determination that a preliminary application described in subdivision (a) of Section 65941 has expired or that the application has other lost its vested rights under the preliminary application for any reasons other than those described in subdivision (c) and (d) of Section 65941.1' in bad faith . . . ," pursuant to section 65589.5, subdivision (h)(6)(H). (¶ 166.)
- 6) County "failed to make the required written findings under the [HAA], denying the project by refusing to affirm that the Project retained its SB Preliminary Application versing and protections under the HAA (including the Builder's Remedy) in bad faith." (¶ 171.)
- 7) Declaratory relief as to each of the six previous causes of action. (¶ 182.)

There are three motions on calendar, all filed by County: 1) a motion to strike portions of the operative pleading; 2) a demurrer to all seven (7) causes of action; and 3) a protective order requesting the court to preclude depositions of numerated deponents and to preclude any response to a number of propounded discovery requests by petitioner.

Each motion will be examined in seriatim.

A) ***<u>Motion to Strike</u>***

County asks the court to strike four types of allegations from the operative pleading, as follows: 1) all references to traditional mandamus pursuant to Code of Civil Procedure section 1085, because, according to County, the sole remedy at play "arises from" administrative mandamus pursuant to Code of Civil Procedure section 1094.6; 2) all allegations regarding petitioner's "unrelated, concurrent application for annexation into the City of Santa Maria, the City's Proceeding, and Related Local Agency Formation Commission (LAFCO) as "irrelevant to the narrow issues presented" (these are paragraphs 78 to 89 and 98 of the operative pleading); 3) paragraphs 90 to 95 regarding the "county housing element process," as the allegations are "unrelated" and "immaterial" to the present operative pleading; and 4) paragraphs 99 and 101, which focus on statements made by one Supervisor – Supervisor Nelson; according to County, these are inappropriate and "outside the current proceedings." Petitioner objects to each argument advanced by the County. County has filed a reply. All briefing has been examined.

The court finds no real basis to strike paragraphs 78 to 89, 90 to 95, and 98. The court will give plaintiff the benefit of any doubt about the relevance of the allegations in these paragraphs, as we are at the pleading stage. County in reply contends that the paragraphs involving annexation, the housing element, and other prior proceedings are unrelated proceedings to the writ proceedings here, and admission would violate the "closed record rule," and thus should be excluded for this reason. It is true generally that on administrative mandamus review the court normally is restricted to considering evidence in the administrative record – i.e., the closed record rule. (Code Civ. Proc., § 1094.5, subd. (e).) This is an ***evidentiary*** limitation (*Toyota of Visalia, Inc. v. New Motor Vehicle Rd*. (1987) 188 Cal.App.3d 872, 881), and the court can find no authority to suggest it is also a rule of pleading. In any event, County overlooks the well settled rule that in administrative mandamus proceedings, a trial court has discretion to consider evidence outside the administrative record (extra-record evidence, unencumbered by the closed record rule) that did not exist at the time of the administrative hearing (or could not have been produced during the administrative hearing before the public agency in the exercise of reasonable diligence). (*Metropolitan Water Dist. of Southern California v. Winograd* (2018) 24 Cal.App.5th 881, 897; *Fort Mojave Indian Tribe v. Department of Health Services* (1995) 38 Cal.App.4th 1574, 1594-1595; see Code of Civ. Proc., § 1094.5, subd. (e); see also Asimow et al., Cal. Practice Guide: Administrative Law (The Rutter Group 2025) ¶ 20:105, p. 18.) At this stage these are issues of fact that cannot be resolved on a motion to strike. County additionally undermines its arguments in reply by insisting that the allegations in these paragraphs do not support "bad faith" or "alleged bias." Allegations in a pleading are not considered evidence, and thus cannot be stricken for that reason. (See *Paulus v. Bob Lynch Ford, Inc*. (2006) 139 Cal.App.4th 659, 672-673 [allegations in a complaint are not evidence].) Finally, County's claim is not a basis to strike the allegations simply because they do not support "bad faith" or any "alleged bias." Even if this were true it offers no basis to render them otherwise irrelevant.

This leaves County's request to strike all references to Code of Civil Procedure, section 1085, which involves traditional mandamus. The court is not persuaded. We start with basic principles that frame the inquiry. "The appropriate type of mandate is determined by the nature of the administrative action or decision under review. In general, 'quasi-judicial' or 'adjudicative acts,' that is, acts that involve the actual application of a rule to a specific set of existing facts are reviewed by administrative mandamus under Code of Civil Procedure section 1094.5. [Citation.] [¶] More specifically, a petition for administrative mandamus under Code of Civil Procedure section 1094.5 is appropriate when the party seeks review of a final 'determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency . . . .' " (*California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1482.) A petition for traditional mandamus, by contrast, is appropriate in actions brought to attack, review, set aside, or void a quasi-legislative or ministerial determination, or decision of a public agency. The trial court reviews an administrative action pursuant to Code of Civil Procedure section 1085 to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires. (*California Water, supra*, 161 Cal.App.4th at p. 1483, fn. omitted.) "The determination of whether Code of Civil Procedure section 1094.5 or 1085 applies does not depend on whether the agency is required by statute to hold an evidentiary hearing in the matter, but instead turns on the nature of the challenged action." (*California Water*, *supra*, 161 Cal.App.4th at p. 1483, fn. 19; *Southern California Cement Masons Joint Apprenticeship Committee v. California Apprenticeship Council* (2013) 213 Cal.App.4th 1531, 1541.) Traditional mandamus under Code of Civil Procedure section 1085 "may be employed to compel the performance of a duty which is purely ministerial in character; it cannot be applied to control discretion as to a matter lawfully entrusted to the Commission." (*State v. Superior Court* (1974) 12 Cal.3d 237, 247 [referring to former California Coastal Zone Conservation Commission].)

A declaratory relief cause of action cannot be joined with a petition for writ of administrative mandamus. (*City of Pasadena v. Cohen* (2014) 228 Cal.App.4th 1461, 1467.) But that is ***not*** true for traditional mandamus. A declaratory relief can be joined with a traditional mandate cause of action. (*Environmental Protection Information Center, Inc., supra*, 4 Cal.App.4th at p. 1380 [a petition for writ of mandate may sometimes be properly joined with complaint for declaratory relief]; *Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1566; see also *Clovis v. United School District v. Change* (2010) 188 Cal.App.4th 794, 807-809 [concluding declaratory relief and traditional writ of mandate were appropriate raised in the alternative when challenging an underground regulation (i.e., defendants overarching, qual0legislative policy].) To underscore the point, some courts have concluded in these situations that a complaint for declaratory relief can be regarded as petition for writ of mandate. (*Citizens for Beach Rights v. City of San Diego* (2017) 17 Cal.App.5th 230, 244)

With this background, it is possible for petitioner to allege as to the first six causes of action relief in both administrative ***and*** traditional mandamus, at least in the alternative (at least at the pleading stage). Central to each of the six causes of action is petitioner's contention that County was under a clear, specific, and mandatory duty to determine that petitioner's January 20, 2025 application was complete, because the County's incompleteness determination was untimely made at a matter of law. There was no discretion in that regard, thus implicating the County's ministerial duty to act, a challenge that can be advanced via traditional mandamus. A ministerial act is one that a public functionary is required to perform in a prescribed manner in obedience to the mandate of legal authority without regard to his or her own judgment or opinion the concerning the propriety of such act. (*Herron v. San Diego Unified Port. Dist*. (2025) 109 Cal.App.5th 1, 10.) Case law allows alternative pleading (administrative or traditional) when arguably either applies, as seems to be the case here. (See, e.g., *Van Wagner Communications, Inc. v. City of Los Angeles* (2000) 84 Cal.App.4th 499, 505, fn. 5 [it is often difficult to decide which type of mandamus to use].) As this lawsuit progresses there no doubt will be more clarity about which procedural avenue is more appropriate. But that determination cannot be made at the pretrial pleading stage given these allegations.

Notably, County fails to cite to any authority that indicates a motion to strike is appropriate under these circumstances. It cites to *County of Los Angeles v. State Water Resources Control Bd*. (2006) 143 Cal.App.4th 985, but that case provides simply that when a remedy has been designated by the Legislature to review an administrative action, declaratory relief is unavailable. (*Id.* at p. 1002.) This case aligns with the rule stated above that declaratory relief cannot be joined with administrative mandamus. The case is otherwise silent on the issue here – whether petitioner can plead traditional and administrative mandamus in the alternative when either could arguably apply.

The court denies County's motion to strike.

B) <u>Demurrer</u>

County has demurred to each of the seven (7) causes of action, asking the court to take judicial notice of certain documents (all supported with a declaration from Christie Monroe, Deputy County Counsel). Petitioner has filed a detailed opposition, supported by a declaration from attorney Beth Collins, also with a request for judicial notice. County has filed reply and opposition to the request for judicial notice. All briefing has been examined.

The court will first address the requests for judicial notice. It will then examine the impact its determinations from earlier orders have on the viability of enumerated causes of action here. It will then explore the merits of the demurrer with regard to any remaining causes of action.

1) Judicial Notice

County asks the court to take judicial notice of the following documents: 1) certain provisions of the Santa Barbara County's Land Use and Development Code (attached as Exhibit A to Monroe's Dec.); 2) the April 8, 2025 Board of Supervisor's (Board's) Minutes (Exhibit B to Monroe's Dec.); 3) the April 15, 2025 Board Action Letter notifying petitioner of the Board's April 8, 2025 decision (Exhibit C to Monroe's Dec.)); 4) the June 6, 2025 letter affirming confirmation of the vesting of petitioner's application and rescinding the contents of February 27, 2025 letter (Exhibit D to Monroe's Dec.); and 5) County's September 2011 Engineering Design Standards (Exhibit E to Monroe's Dec). Petitioner has not filed opposition to the request. The request is granted.

Petitioner in opposition asks the court to take judicial notice of the following documents: 1) the August 25, 2205 letter from David Zisser, the Assistant Deputy Director of the California Department of Housing and Community Division of Housing Policy Development (HCD), to Lisa Plowman, Director of Planning & Development with the County of Santa Barbara (hereafter the August 25, 2025 HDC letter), including attachments, explaining that in the HCD's view the County's determination about when the 30-day rule is triggered is erroneous (Exhibit A attached to Collins' Dec.); 2) an October 23, 2024 letter from Lisa Plowman, Director of Planning and Development, to petitioner's counsel, indicating that County reviewed the "submittal/resubmittal for a Tentative Tract Map, Final Development Plan, and Conditional Use Tract Map Protect and found it to be incomplete," including attachments, and detailing the information that had to be provided (Exhibit B attached to Collins' Dec).; 3) and screenshot copy of the County of Santa Barbara's Development Review website, accessible at https://www.countofsb.org/4485/Devopment-Review, taken on August 25, 2025. In reply (in its heading), County claims it objects to petitioner's judicial notice request. But the reply is actually silent about petitioner's judicial notice request (addressing only its own unopposed request). As petitioner's request is actually unopposed, it is also granted.

2) *Determinations Made in Earlier Court Orders That Impact the Continued Viability of the Second, Third, Fourth, Fifth, and Sixth Causes of Action in This Matter*

The court is not addressing the merits of County's demurrer on a clean slate. The court has in fact made a number of determinations in *Californians for Homeowners, Inc. v. County of Santa Barbara (RPI Richards Ranch, LLC)*, Case No. 25CV03039 that have direct impact on the continued viability of the second, third, fourth, fifth, and sixth causes of action advanced here (examined under the auspices of County's demurrer).

In Case No. 25CV03039, petitioner and real-party-in-interest (Richards Ranch, LLC), as to the first cause of action advanced in the writ petition, contended that County on February 27, 2024, had determined Richards Ranch" had "otherwise lost its vested rights" attendant to its preliminary application, including but not limited to the Builder's Remedy, meaning (as far as petitioner was concerned) the Board had disapproved the housing development project within the meaning of section 65589.5, subdivision (h)(6)(I). Nevertheless, the undisputed evidence indicated the issue was now moot, because on June 6, 2025, petitioner had received all that it was seeking in the matter, as the County expressly determined that petitioner had not forfeited and thus did not lose ***any*** vested rights. As a result the court determined there was no longer an actual controversy (the issue was moot), and, further, the public interest exception (which permits the court to examine the issue despite mootness) did not apply. The court therefore sustained County's demurrer to the first cause of action without leave to amend.

As to the second cause of action in Case No. 24CV03039, petitioner claimed the Board on April 8, 2025, although determining Richard Ranch's application was complete, improperly found it was complete as of April 8, 2025, and not the date of the initial submission (or at least by February 20, 2025). Petitioner claimed that under the PSA the Board was required to apply the completeness determination retroactively to the earlier dates. The court in Case No. 25CV03039 rejected these argument, finding under an objective reading of the statutory scheme that section 65589.5, subdivision (h), relied upon by petitioner, expressly references the administrative appeal procedures in section 65943, subdivisions (c), and ultimately concluding that there was nothing in the scheme that precluded the Board from "deem[ing] complete" the application as of April 8, 2025. This proposition was bolstered by other statutory provisions, such as section 65941.1, subdivision (a)(2); the fact section 65943 itself contemplates a completeness determination that can be made along differing points of a temporal continuum; and the fact the administrative appeal procedures in the Santa Barbara County Land Use and Development Code permit new evidence and de novo review. The court rejected any contention that the Board was required as a matter of law to apply the date of completeness retroactively.

The court went further, however, observing that what petitioner was in reality arguing, pursuant to section 65589.5, subdivision (h)(6)(E), was the claim that the County's action involved 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 was willing to accept the general proposition that retroactivity might be an appropriate remedy ***if*** such untoward conduct as contemplated under this provision could be demonstrated. Petitioner's problem in advancing such a claim involved the rule of exhaustion of administrative remedies, a jurisdictional perquisite before judicial review can be secured. To satisfy the exhaustion requirement, this "***exact*** issue, not merely generally statements, must be raised" to the Board during the appeal process. (*Monterey Coastkeeper v. State Water Resources Control B.* (2018) 28 Cal.App.5th 342, 359, emphasis added.) As explained in the prior order, nothing in the record (through the judicially noticed documents) indicated that this exact issue – i.e., County engaged in an improper purpose, such as harassment, unnecessary delay or needless increase in the costs of the proposed housing development – was raised or advanced to the Board. Petitioner bore the burden of showing these issues were in fact raised at the administrative level (*ibid.*) (a burden that was not met), and a complaint is vulnerable to a demurrer on this ground if such application was not made. The court out of an abundance of caution sustained the demurrer with leave to amend, affording petitioner an opportunity to plead exhaustion if possible (although it seemed most unlikely it could be done). On June 4, 2026, petitioner filed a partial dismissal of the second cause of action, meaning the lawsuit has now been concluded.

These determinations impact the second and third causes of action advanced in the current petition. Critical to the second cause of action here is petitioner's claim that County's determination – that the application was complete on April 8, 2025 – required it to determine completeness was effective retroactively as of February 20, 2025, under the same statutory scheme advanced in Case No.25CV03039. As the court sustained the demurrer without leave to amend as to the exact issue raised here, it must do so here.

The third cause of action us subject to the same fate. Central to the claim here is petitioner's contention, in paragraph 132, that the Board had no authority to deem the application complete as of April 8, 2025, which implicates the same determination in Case No. 25CV03039. Additionally, as to the third cause of action here, petitioner contends that County deprived it of the statutory vested rights associated with its initial application. But as the court determined in Case No. 25CV0309 that this issue is moot following the June 6, 2025, letter, meaning petitioner received all that is being sought in this matter, the same conclusion applies here. Finally, to the extent petitioner claims other vested rights are being advanced here that were not at issue Case No. 25CV03039, the lynchpin of this cause of action is petitioner's contention that County at all times acted with "bad faith to assert more control over the Project and cause unnecessary delay of the Project . . . ." This implicates the court's earlier observations in Case No. 25CV03039 as to any "bad faith" determination pursuant to section 65589.5, subdivision (h)(6)(E); as the issue was not presented to the Board, the issue cannot be raised here under the exhaustion of administrative remedies doctrine. As it did in Case No. 25CV03039, the court will sustain the demurrer to the third cause of action here.

The fourth cause of action follows the same trajectory. Petitioner as to this cause of action alleges that it was forced into an "unlawful appeal procedure," essentially duplicating the claims advanced in the first and third causes of action involving vested rights. Petitioner admits in opposition (see p. 15 of Opposition) that central to the fourth cause of action is its claim that County forced it to engage in a "multi-issue appeal process," even though the Board's partial grant of the appeal on April 8, 2025 "admits that the February 20 incomplete letter was incorrect and yet fails to unwind any of the other state law violations at issue" in the case. This issue seems associated with the first cause of action, and thus appears largely duplicative. In any event, more significantly, petitioner makes clear in opposition (p. 14 of Opposition, per paragraph 148 of the operative pleading), that County's conduct was "frivolous, pretexual, intended to cause unnecessary delay, or entirely without merit," amounting to bad faith. This allegation (also central to the fourth cause of action) implicates the court's previous determination in Case No. 25CV0309 that similar issues of "bad faith" were not advanced to the Board as part of petitioner's obligation to exhaust administrative remedies, meaning judicial review is precluded here. The court will therefore sustain the demurrer to the fourth cause of action as well.

As to the fifth cause of action, petitioner claims that on February 27, 2025, County determined that petitioner lost its vested rights by alleging petitioner made a "change of 20 percent or more of the construction square footage of the Project . . . ." This issue is moot, as discussed in Case No. 25CV0309, because (as discussed) the County's June 6, 2025 letter, under the heading SB 330 Vesting, the County, rescinded the import of its February 27, 2025, letter, explaining it accepted petitioner's explanation that any error was clerical, and thus concluding petitioner had not lost any vested rights that had been earlier deemed forfeited. The same conclusion applies here. Also, to the extent petitioner predicates this claim on County's alleged "bad faith" within the meaning of the section 65589.5, subdivision (h)(6)(H), it fails for failure to exhaust administrative remedies, as also discussed in Case No.25CV03039, as "bad faith" was not raised as an issue to the Board during the appeal. The court will therefore sustain the demurrer to the fifth cause of action as well.

Finally, as to the sixth cause of action, petitioner relies on section 65589.5, subdivision (d), part of the HAA, which provides in relevant part that "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 evidence in the records" as to one of five enumerate categories, with subparts. Petitioner acknowledges the Board ultimately approved the housing development project, but claims County's liability is nevertheless governed by section 65589.5, subdivision (k)(1)(A)(ii), because it ***in effect*** disapproved the housing development project by requiring in bad faith to proceed as it did, as follows: ". . . . the court may issue an order or judgment directing the local agency to approve the housing development project or emergency shelter ***if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section*** . . . ." Petitioner notes that "bad faith" is defined in section 65589.5, subdivision (l) as follows: "For purposes of this section, 'bad faith' includes, but is not limited to, an action or inaction that is frivolous, pretextual, intended to cause unnecessary delay, or entirely without merit."

The court sustains the County's demurrer to the sixth cause of action because petitioner has manifestly failed to show in the operative pleading why County's actions in ultimately approving the housing project on April 8, 2025 rendered the project otherwise "infeasible" as contemplated by section 65589.5, subdivision (d).[2] There is significant merit (at least viscerally) to County's claim in opposition that it did not produce written findings for disapproval because it actually approved the project. In any event, the court's previous determination that County was authorized through the administrative appeal process to deem the matter complete on April 8, 2025 (i.e., without retroactivity) in Case No. 25CV03039 goes a long way in undermining the cause of action here. Additionally, to the extent petitioner appears to argue that "denial" of the housing project occurred because County failed to affirm petitioner's right to retain its vesting and statutory protections (and for that reason made the project "infeasible"), the court has already decided in Case No. 25CV03039 that the vesting issue is moot. Finally, and perhaps most critically, petitioner clearly predicates County's alleged liability here exclusively on the County's "bad faith," relying on the same "bad faith" allegations alleged in other causes of action in the petition, as discussed above. (P. 16 of Opposition.) Resolution thus follows the ground previously tilled. There is no indication that petitioner raised the issue of bad faith to the Board at any time – even if examined under section 65589.5, subdivision (l) as frivolous, pretextual, or intended to cause unnecessarily delay -- meaning the cause of action is also barred

[2] Petitioner fails to cite to any cases in opposition that allow this cause of action to go forward when the public agency actually approves a housing development project. The court will nevertheless assume, arguendo, that "disapproval" under the statute includes a "conditional approval" when such approval involves impermissible delay, additional unnecessary costs, and/or untoward conduct similar in scope and nature to that contemplated by section 65589.5, subdivision (h)(6)(E).

by the exhaustion of administrative remedies doctrine and its jurisdictional prerequisites.[3] The court will sustain the demurrer to the sixth cause of action as a result.

Unless petitioner can convince the court there is a reasonable possibility of overcoming these significant pleading impediments as identified as to each cause of action detailed above, which seems unlikely, the court will sustain the demurrer without leave to amend as to the second, third, fourth, fifth, and sixth causes of action without leave to amend.

3) First and Seventh Causes of Action

This leaves the first and seventh causes of action.

In the first cause of action, petitioner alleges that it submitted its "Second Resubmittal Application" on January 20, 2025, which was a holiday (Martin Luther King Jr. Day). Section 65943, subdivisions (a) and (b) provide that a public agency has "30 calendar days after" "it has received an application for development project" to determine in writing whether the application is complete. "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." Petitioner contends that 30 calendar days from the January 20, 2025, date of receipt, is February 19, 2025, meaning that was the last day the County had to make an incompleteness determination. According to petitioner, County sent a letter deeming the "Second Resubmittal Application" was incomplete on February 20, 2025, which is 31 days after date of receipt. Petitioner observes the remedy is clear: "If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, *the application shall be deemed complete for purposes of this chapter. . . .*" (*See, e.g., LT-WR, L.L.C. v. California Coastal Com.* (2007) 151 Cal.App.4th 427, 787, italics added) Petitioner contends County therefor violated the PSA and the court should designate the "Second Resubmittal Application" as timely at least based on the February 20, 2025 date, not April 8, 2025, and impose on the County all attendant consequences that follow from this determination.

County demurs, claiming the term "receipt" as used in sections 65943 subdivision (a) and (b) means "receipt" of the materials -- not when they were submitted through the "Accella software," which it uses for submissions after hours and over holidays; they were "received" during normal working hours, which occurred on January 21, 2025, meaning the February 20, 2025 letter was timely. According to County, the "Legislature would not have added the additional phrase 'after receipt of' if it intended the time to commence upon the submittal of the materials [electronically, after hours.] The side-by-side terms demonstrate the distinction between submitting materials at the close on a non-business day, and the receipt of the materials by County Staff on the business day thereafter." County also observes that the statutory scheme as a whole distinguishes between submission and receipt, citing to section 65941.1 (part of the

[3] The court is not persuaded by any possible argument that because the statute allows the trial court to find "bad faith" pursuant to section 65589.5, subdivision (k)(1)(A)(ii), petitioner is not required to satisfy the exhaustion of administrative remedies doctrine as to that issue. Nothing in the HAA – and specifically section 65589.5, as cited by petitioner – supports that proposition.

HAA), which provides in subdivision (b)(1) that a "development proponent that ***submits*** a preliminary application providing the information required by subdivision (a) may include in its preliminary application a request for a preliminary fee and exaction estimate, which the city, county, or city and county shall provide within 30 business days of the submission of the preliminary application." County insists that while it allows electronic submissions during weekends and holidays, looks to California Rule of Court, rule 1.20, which provides as follows: "Unless otherwise provided, a document is deemed filed on the date it is received by the court clerk."

Petitioner responds in opposition as follows: "The term 'receipt' in [] section 65943(a) refers to the date the materials are resubmitted to the agency's designated system, not when staff choose to process them. [Citations.] The County's online portal constitutes the agency's mechanism for receiving applications, and submissions are received upon upload, regardless of holidays [or] business hours." It muses that "the County's online portal, according to petitioner, constitutes the agency's mechanism for receiving applications, and submissions are received upon upload, regardless of holidays o[r] business hours." Petitioner also cites to section 6800 (as well as Code of Civil Procedure section 12), both of which provide that the "time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, then it is also excluded." It claims that the use of "calendar days" rather than "business days" bolsters its conclusion. Petitioner urges the court to adopt and apply the rules associated with electronic filing in the judicial system, meaning (as a result of the portal software) that its submission occurred when the portal accepted the documents. Petitioner relies on the August 25, 2025 letter from the state of HCD (referenced above), in which the agency determined that under section 65943, subdivision (a), the word "receipt" includes a holiday. Specifically, the HCD observed that pursuant to Code of Civil Procedure section 12, Civil Code section 10, section 6800, and California Rules of Court, rule 1.20, the 30-calendar days are computed "by excluding the first day, including the last, unless that last day is a holiday, and then it is also excluded. [fn. Omitted.] That would mean that the holiday is only excluded if it falls on the final day of the 30-day period. However, in this case, the holiday fell on the day of submission, January 20, meaning the first calendar day of the 30-day period fell on January 21, not on January 22, as the County asserts. As a result, the 30-day period ended February 19, but the County issued an incompleteness determination on February 20, a day late. Therefore, a determination was not issued by the County within the 30-day period, and the application must be deemed complete."

No doubt the law distinguishes between filing and receipt. That is certainly true in California Rules of Court, rule 1.20, as relied upon by County, which focuses on when a document is received. And the following is also true under relevant authority: "Accordingly, we conclude that 'filing' for purposes of compliance with the time limits of Labor Code section 1160.8 means what it does in all other contexts: actual delivery of the petition to the clerk *at his place of business* **during office hours.**" (See *People v. Slobodion* (1947) 30 Cal.2d 362, 367; *Hallett v. Slaughter* (1943) 22 Cal.2d 552 [])" (*United Farm Workers of America v. Agricultural Labor Relations Bd.* (1985) 37 Cal.3d 912, 918, emphasis added.) This is also true under California Rules of Court 2.253 and progeny, which play a prominent role in petitioner's arguments. They discuss "electronic filing." So does Code of Civil Procedure section 1016.6, subdivision (a)(1)(D), which defines "electronic filing" as "the electronic transmission to a court of a document presented for filing in electronic form." And as indicated in California Rules of Court, rule 2.259(a)(1), when a "court receives an electronically submitted document, the court must promptly send the electronic filer confirmation of the court's receipt of the document, indicating the date and time of receipt. A document is considered received at the date and time the confirmation of receipt is created." California Rules of Court, rule 2.259((a) also makes it clear that the time of filing is a critical date, ***not the day of receipt***. Indeed, when documents are filed electronically with the court, the Rules of Court provide that "[i]n the absence of the court's confirmation of receipt and filing, there is no presumption that the court received and filed the document. The electronic filer is responsible for verifying that the court received and filed any document that the filer submitted to the court electronically." (Cal. Rules of Court, rule 2.259(a)(4).) Pursuant to Code of Civil Procedure section 1016.6, subdivision (e)(3), any document received electronically by the court between 12:00 a.m. and 11:59:50 p.m. on a court day shall be deemed filed on that court day. Any document that is received electronically on noncourt day shall be deemed filed on the next court day.

In light of these distinctions, there may be merit to the County's claim that the Legislature utilized the term "receipt," not the word "filing" or "submission" in section 65943, and thus "receipt" references documents received during normal business hours. Electronic filing did not exist at the time the relevant statutory provision was originally codified, of course, and the term "receipt" has been used and unaltered in all versions of the statute. Indeed, the Legislature has amended the provision a number of times – 1989, 2020, 2022, and 2025 – and not once did it deviate from or dilute the term "receipt" as used in the original version of the statute. This may suggest that the Legislature intended the word "receipt" to mean as County argues -– received by the County during normal business hours. And it may ultimately be true, as County argues, that the use of its electronic portal is for convenience only -- allowing submissions at any time -- and that fact does not alter what the Legislature meant by the 30-day deadline in the statute when the public agency determines completeness.

The court, however, is not prepared definitively to rule on any of these issues at the pleading stage. Petitioner's interpretation is certainly not unreasonable, a point bolstered by the HCD's interpretation outlined above. Courts are required to give great weight to an administrative agency's interpretation of a statute that falls within its administrative jurisdiction because the agency may have special familiarity with satellite legal and regulatory issues leading to expertise in its interpretation. (*Pacific Gas & Electric Co. v. Public Utilities Com*. (2015) 237 Cal.App.4th 812, 839; see *Capen v. Shewry* (2007) 155 Cal.App.4th 378, 392 [an agency's interpretation of a statute receives lesser judicial deference than an interpretation of quasi-legislative rules].) HCD's interpretation is not clearly erroneous, and as a result affords judicial caution at the pleading stage. Of course, the ultimate determination of the meaning of statutory language rests with the courts. Still, at this stage, the court is required to interpret petitioner's allegations in its favor. (*Id.* at p. 840.)

Other points bolster this conclusion. The court finds that there may be an issue of fact that falls outside the scope of a demurrer. As observed in the August 25, 2025 letter by the HCD, the agency observed that the "County's website contains an applicant-facing interface that dated the date of application receipt as of January 20, 2025." Did petitioner reasonably rely on this representation that the date of "receipt" was January 20, 2025, not January 21, 2025, meaning the County may well be equitably estopped from claiming otherwise? (*Citizens for a Responsible Caltrans Decision v. Department of Transportation* (2020) 46 Cal.App.5th 1103, 1128-1129 [equitable estoppel is usually an issue of fact, and a demurrer is only appropriate when the complaint pleads undisputed facts establishing that equitable estoppel does not apply]; *Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496-497 [equitable estoppel may apply to a government entity in the same manner as a private party].) This point weighs against determining the issue at the demurrer stage.

Finally, as observed with regard to County's motion to strike, it seems petitioner has adequately advanced a traditional mandate cause of action based on claims that County failed in its ministerial duty to determine petitioner's application was complete within the 30-calendar day window. And (as also noted above) a declaratory relief cause of action can be joined with traditional mandamus.[4] It is well established that a plaintiff who seeks declaratory relief is entitled to a formal declaration even if it appears from the pleading that it is probably not entitled to a favorable judgment. (5 Witkin, Cal. Proc. (6th ed. 2026), § 875 [the rule today in California is that the defendant cannot, on demurrer, attack the merits of the plaintiff's claim. The complaint is sufficient if it shows an actual controversy; it need not show that the plaintiff is in the right]; see also *Lockheed Martin Corp. v. Continental Ins. Co.* (2005) 134 Cal.App.4th 187, 221 [to be entitled to declaratory relief the party need not be establish a right to a favorable declaration].) To the extent the court will allow the first cause of action to be advanced through a declaratory relief prism, a demurrer would be inappropriate.

The court will overrule the demurrer to the first and seventh causes of action (with the latter limited to the issue raised in the first cause of action).

C) Protective Order

County asks the court to grant its motion for a protective order, precluding petitioner from taking depositions of the Board (Laura Capps, Bob Nelson, Joan Hartmann, Roy Lee, and Steve Lavagnino); the current members of the County's Planning Commission (Laura Bridley, Chair, Roy Reed Vice Chair, Vincent Martinez, commissioner, John Parke, commissioner, Micheal Cooney, commissioner); Wade Norton (Assistant County Executive Officer), Aaron Hanke (Chief of Staff to Bob Nelson), Cory Bantilan (Chief of Staff to Steve Lavagnino), Lisa

[4] The sole basis for the County's demurrer as to the seventh cause of action for declaratory relief is its contention, supported by case authority, that declaratory relief is unavailable when administrative mandamus is sought. This is true. County, however, overlooks other case authority that indicates declaratory relief can be joined with ***traditional*** mandamus, as detailed above, and this court has already determined that it is possible for petitioner to advance a traditional mandamus cause of action against the County.

Plowman (Director of County's Planning and Development Department), Tavis Seawards (Deputy Director of Development Review Division of County's Planning and Development Department), Gwendolyn Beveler (supervising planner in County's Planning and Development Department), and Alia Vosburg (planner in County's Planning and Development Department). According to County, the number and scope of the depositions is inappropriate because 1) information will not led to admissible evidence; 2) the evidence is limited by the "closed record rule"; 3) as a general rule, according to County, a deposition of Supervisors, Commissioners, Chiefs of Staff, Executive Officers, and Directors are not subject to depositions under the apex doctrine "absent compelling reasons" (*Westly v. Superior Court* (2004) 125 Cal.App.4th 907, 910 [the general rule in California is that agency heads and other top governmental official are not subject to deposition absent compelling reasons under the apex rule]; and 4) there is no "compelling reason" for the depositions pursuant to Code of Civil Procedure section 1095, subdivision (e) or otherwise. Alternatively, the County seeks to limit the scope and use of discovery to the Builder's Remedy; to the County and Board's actions (excluding discovery as to personal activities, views, and participation in the public process outside official County actions); and to preclude dissemination outside this litigation.

County also asks the court to preclude the following propounded written discovery (and thus grant a motion to quash) as to the following: 1) first set of special interrogatories; 2) first set of form interrogatories; 3) first set of requests for admission; and 4) first set of requests for production of documents, as the matter is limited to the administrative mandamus, and thus the discovery is immaterial. County makes the additional contentions to justify these limitations: 1) 25 of the 28 special interrogatories are contention interrogatories that inquire into the reasoning for the County's decision; 2) 67 Requests for Admissions relate to supervisor communications to petitioner, and are "broader than the appeal considered by the Board on April 8, 2025"; 3) Form Interrogatories Nos. 15.1 and 17.1 seek "premature information of the County's affirmative defenses, and [their factual basis, witnesses and documents); and 4) 75 Requests for Production of Documents include requests for telephone billing records, documents, and communications on matters beyond the issues in the Petition

Petitioner in opposition makes the following wholesale ripostes. First, it claims that it should be permitted to explore the issues raised in the petition (all seven causes of action). Second, it claims that the "closed record rule" does not foreclose the request for discovery, and County's claim of irrelevance is not a basis to warrant a blanket protective order. It insists that its discovery requests are not unduly burdensome, abusive or designed to harass; that no privilege or immunity allows a blanket protective order; and that the apex rule does not bar depositions of Chiefs of Staff and Planners. Petitioner concludes with a claim that a non-dissemination order is superfluous.

The court agrees generally, in line with the rulings made above, that traditional mandamus remains an available option to petitioner as a basis to proceed (with appropriate discovery associated with that rule permitted); and that the closed record rule per Code of Civil

Procedure section 1094, subdivision (e) is not by itself a basis to preclude the discovery requested, as it is a rule of admissibility, not a rule of discovery, and the court has discretion to allow extra-record evidence. Further, the court agrees with petitioner that County's relevance argument alone does not support a blanket protective order. At the same time, the court agrees with County, at least on an abstract level, that County officials can under the "deliberative process privilege" invoke a qualified, limited privilege not to disclose or be examined concerning not only the mental processes by which a given decision was reached, but the substance of conversations, discussions, debates, deliberations and the like materials reflective advice, opinions, and recommendations by which government policy is processed and formulated. (*Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 305.) It is settled, however, that not every disclosure which hampers the deliberative process implicates the deliberative process privilege, and the burden is on the County that invokes the privilege to show its application to a specific communication. (*Id.* at p. 306.) On this record, County has failed to establish with the required precision that the conditions for creation of the privilege bar every single challenged discovery item (*id.* at p. 307), meaning this privilege cannot support a wholesale blanket protective order as presented. Nuance, rather than wholesale universality, will be the watchword. Finally, the parties seem to agree that the Board, members of the County's Planning Commission, and heads or assistant heads of Departments are protected from depositions under the apex rule, absent compelling reasons, but seem to disagree on whether Chiefs of Staff and Planners are equally protected (meaning compelling reasons are required). The court does not agree with petitioner that Chiefs of Staff are not "highly placed public officers," meaning they are similarly treated to the other protected members. On the other hand, the agrees with petitioner that Planners fall outside the protection.

Despite these general observations, the court finds it does not have to definitively rule at this time on the appropriate nature, scope, and breadth of the disputed discovery requests, and more specifically the viability or efficacy of each discovery item raised in County's protective order. Given the court's rulings above, the nature and scope of this lawsuit has been fundamentally circumscribed, limited to the first cause of action (involving the interpretation and practicality of the 30-day rule), coupled with a declaratory relief cause of action limited accordingly (with the need to develop facts concerning past actions by the County involving how it has treated submissions after hours and/or holidays in the past based on the portal utilized). The court finds little utility in making wholesale determinations about discovery that are no longer relevant to this lawsuit. As a result, the court directs the parties, following the court's rulings today, to meet and confer and thus to determine what limited discovery remains appropriate. The court expects petitioner to limit the scope of discovery in light of the court's rulings; it also expects the County to be more realistic about what evidence should be discovered for these limited purposes (for both traditional and administrative mandamus). Good faith is required. If specific discovery disputes remain after meaningful meet and confer efforts, a discovery motion can be filed, focusing with precision on specific requests/responses (including a privilege log), and the court will appoint Judge Staffel as a discovery referee to manage the more circumspect discovery disputes that may arise.

Based on the court's inherent authority to manage litigation with the aim of protecting the parties' rights and the court's ability to function, ***lead counsel for each side will be directed to appear for any future discovery motion matters*** (*D.D. v. Pitcher* (2022) 79 Cal.App.5th 1047, 1056.) Subordinate attorneys will not do. Additionally, we are at a critical stage of this lawsuit. The court directs the parties to be prepared to discuss trial dates for this year at the hearing.

Summary of Conclusions:

- The court grants all requests for judicial notice.
- The court overrules County's motion to strike.
- The court sustains County's demurrer to the second, third, fourth, fifth, and sixth causes of action. Unless petitioner can convince the court it is reasonably possible to cure/overcome the identified impediments to these causes of action as discussed in this order, which seems most unlikely, the court will sustain the demurrer as to these causes of action without leave to amend.
- The court overrules County's demurrer to the first and seventh causes of action (limiting the seventh cause of action to the ground advanced in the first cause of action).
- County is directed to file an answer within 30 days from the hearing date.
- The court can make some observations in the present context about appropriate discovery parameters, as outlined in this order. That being said, the court finds it unnecessary at this time to rule definitively on any particular discovery item that comes within the scope of County's omnibus motion for a protective order, as the court's rulings on the substantive motions (the motion to strike and notably the demurrer) significantly limit the scope and nature of this lawsuit, thus acting as a natural filtering device for what discovery remains appropriate. The parties are directed to meet and confer after today's hearing in order to discuss what limited discovery should be disclosed. If future discovery issues arise, the parties can file appropriate motions, with a privilege log (keeping in mind nuance and not universality is the new watchword), and the court will appoint Judge Staffel as a discovery referee to rule on any lingering discovery dispute. The parties are hereby put on notice that it will direct the appearance of the parties' lead trial counsel at any future discovery hearing to resolve future discovery disputes. Subordinate attorneys will not suffice.
- The parties should be prepared at the hearing to discuss a trial date ***for this year.*** The court wants to try this matter expeditiously if possible.