Richards Ranch, LLC v. County of Santa Barbara, et al. 26CV01654 (on calendar)

Californians for Homeowners, Inc. v. County of Santa Barbara 25CV03039 (related)

Richard Ranch, LLC v. County of Santa Barbara, et al. 25CV02774 (related)

Proposed Tentative

A) Introduction

California unquestionably is in the throes of a housing crisis, and recent iterations of the Permit Streamlining Act (Gov. Code,§ 65920, et seq.) (PSA), coupled with new codifications allowing for expedited judicial review via mandamus per Code of Civil Procedure section, 1094.9, effective January 1, 2026, have changed how courts approach and resolve housing disputes. The issue before the court is whether the long-standing jurisdictional rules associated with exhaustion of administrative remedies, coupled with its cognate rule of finality, apply to the issue raised by petitioner in the current petition. If they do, petitioner's claims are barred (unless an exception to exhaustion applies). If they do not, the matter can move forward for judicial resolution utilizing the new expedited procedures. The court raised the issue of exhaustion sua sponte in its last order, which is incorporated here fully, and directed the parties to file supplemental briefing to address the issue under the raiment of a nonstatutory motion for judgment on the pleadings, which the court itself placed on today's calendar. The court's briefing directive has been followed.

The court is willing to accept the proposition that recent provisions of the PSA, which govern how a public agency must process applications for a housing development project, obviate the need for exhaustion and finality ***as to certain issues*** (i.e., certain public agency transgressions). For example, as relevant for our purposes and pursuant to Government Code[1] section 65943, subdivisions (a) and (b), a public agency has 30 calendar days after receipt of an application for a housing 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 by operation of law. There is little utility in conditioning judicial review on exhaustion when the public agency ***clearly and unmistakably*** fails to act within the 30-day deadline, for the Legislature has dictated the appropriate remedy in that circumstance as a matter of law. The issue in that scenario is unadorned, and the result preordained as a matter of law.

But not all issues contemplated by the PSA are subject to this treatment, for the PSA itself expressly provides that some issues must follow the more traditional administrative appeal process, thereby implicating exhaustion and finality as jurisdictional prerequisites before judicial review can be secured. For example, the PSA expressly provides that if a public agency determines a housing development application, along with the submitted materials, is incomplete (i.e., within the initial 30-day period), "the public agency shall provide a process for the

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

applicant to appeal that decision in writing to the governing body of the agency . . . .” (§65943, subd. (c).) In this circumstance, an administrative appeal is required, and it follows that exhaustion and finality are mandated before judicial review can be secured.

It is perhaps unsurprising that petitioner attempts to portray the issue before the court (as outlined in the current petition) as a failure to comply with the 30-day rule with the remedy prescribed as a matter of law, arguing that exhaustion is not required. It certainly is true that this court may ultimately conclude that petitioner’s submission was timely by operation of law because the County’s incompleteness determination was made outside the required 30 calendar day period. But petitioner’s argument fails to detail the entire story. Critical is the fact respondent County found petitioner’s application ***incomplete***, and it ***arguably*** did so within the required 30-day period (i.e., that is, if respondent’s arguments concerning when an application is received over a holiday are to be believed).

The actual issue to be resolved by the court thus goes beyond a determination of any failure to act within the initial 30-days, but involves an exploration of a more detailed predicate – what the Legislature meant by the word “receipt,” when the Legislature deemed an application received or submitted, and how the court must calculate the 30-days as contemplated by section 65943, subdivision (a) and (b).This intermediate issue involves a far more nuanced assessment, and seems so intertwined with respondent’s incompleteness determination that the issue falls within the ambit of section 65943, subdivision (c), with exhaustion and finality as ultimate jurisdictional requirements before judicial review can be obtained.

The court acknowledges that this (intermediate) issue defies easy classification, and it may at times be difficult to determine where it fits along the statutory continuum. After much thought, however, the court views the real substance of petitioner’s claim as presented as one that implicates section 65943, subdivision (c), for its core rests with (and actually cannot be divorced from) the County’s incompleteness determination. This means petitioner was required to pursue an administrative appeal, and ultimately satisfy rules attendant to exhaustion and finality. Put another way, the issue to be decided, as opposed to an assessment of the consequences that flow from issue decision, involves compliance with the administrative review requirements of 65943, subdivision (c).

Accordingly, given the nature of the intermediate issue advanced by petitioner, as recounted above; and given the confluence of section 65943, subdivision (c), the historic rules associated with exhaustion and finality and their policies, the fact Code of Civil Procedure section 1094.9 itself requires finality, and the uncontested fact that petitioner relies on new evidence or fresh arguments to advance its claim (evidence or arguments never presented to the Board as contemplated by *Sierra Club v. San Joaquin Local Agency Formation Com*. (1999) 21 Cal.4th 489), the court finds petitioner was required to exhaust all administrative remedies before it could utilize the expedited procedures in Code of Civil Procedure section 1094.9, and it did not do so. Further, as petitioner has failed to demonstrate in its supplemental briefing that there is a reasonable possibility it can meaningfully allege an exception to the exhaustion and finality requirements, the court grants the nonstatutory motion for judgment on the pleadings, without leave to amend, for reasons detailed in greater depth below.

B) The Court's Earlier Modified Order (Background)

The court incorporates by reference all previous orders issued in all related matters, most notably its modified order dated May 14, 2026.

As noted in the court's order therein, there is a single cause of action in the "Verified Petition for Writ of Mandate" in the present case, although with various subparts. The central premise of the petition, raised via administrative mandamus per Code of Civil Procedure section 1094.9, involves a claim that County has failed to acknowledge the fact it missed the deadline for determining whether petitioner's application was complete, as it had only 30 days after petitioner's submission to make that determination. The application was submitted on January 20, 2025, a holiday (Martin Luther King Day), and if that day is determinative, the incompleteness determination had to be made by February 19, 2025; it was not, as it was made on February 20, 2025, one day late. Because it was late, opines petitioner, the application should be deemed complete by operation of law pursuant to section 65943, subdivision (b).

As also noted in the court's earlier order, critical to petitioner's argument is a letter, dated August 25, 2025, written by the California Department of Housing and Community Development Division of Housing Policy Development (HDC), addressed to Lisa Plowman, Director of Planning & Development Department of Santa Barbara County, explaining why the County's determination (made on April 8, 2025) about timeliness is wrong.[2] Petitioner has detailed the consequences of County's failure to acknowledge the timeliness of the January 20, 2025 application (i.e., by finding the April 8, 2025 appeal hearing date as the date the application was complete), as follows: 1) on February 27, 2025, the County found that petitioner has forfeited its vested rights (including the Builder's Remedy); 2) on May 8, 2025, "the County issued a belated Notice of Intent to Prepare and EIR," even though the deadline to send the letter was March 21, 2025 – 30 days from February 19, 2025; and 3) on June 6, 2025, the planning staff "sent a letter that purports to be a written consistency determination under Government Code section 65589.5 [subdivision (j)(2((A)(ii)[[3]] (Consistency Determination), identifying the

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[2] As noted in the court's earlier order, the author of the August 25, 2025 letter acknowledged the disagreement "between the County and the applicant" about "when the 30-day period began for the second resubmittal" on Martin Luther King Jr. Day, January 20, 2025. HDC "understands" the County kept its "web-based application submittal system" open and received the application on January 20, 2025. "The applicant operated under the assumption that the date of submittal was recorded on that date and did not receive notification to the contrary from the County during the assumed 30-day period," as the "County's website contains an applicant-facing interface that stated the date of application receipt as of January 20, 2025." According to the HDC, after examining Code of Civil Procedure section 12, Civil Code section 10, section 6800, and California Rules of Court, rule 1.10, it is the HDC's view that the application was "received" on January 20, 2025; the 30-day clock began to run on January 21, 2025, not January 22, 2025, as the County maintains (they argue it did not receive the application until beginning of business day on January 21, 2025, when the office was open), and "[a]s a result, the 30-day period ended on February 19, but the County issued an incompleteness determination on February 20, 2025, a day late."

[3] This provision provides that "if the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard requirement or other similar provisions as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the

alleged inconsistencies between the Project and County polices." As further observed by petitioner: "However, the deadline" for that determination expired in April 2025 (60 days after the application was deemed complete as a matter of law), from the February 19, 2025 determination. "The County continues to refuse to acknowledge this fact and continues to assert that its June 2025 Consistency Determination is valid." Petitioner contends that all of this was described in a December 17, 2025, letter from Director Lisa Plowman to petitioner, in which County 1) disagreed that the application should have been deemed complete on February 19, 2025, indicating that it received the application on January 21, 2025, which is the day the office was open, meaning the February 20, 2025 determination was timely; and 2) all other determinations were timely as a result. Distilled to its essence, petitioner insists this December 17, 2025, letter reflects "new violations" that triggered date for the 90-day filing requirement pursuant to Code of Civil Procedure section 1094.9, which was satisfied when petitioner filed the present petitioner on March 4, 2026. Petitioner reinforced the importance of the December 17, 2025 letter at the May 5, 2026, hearing.

The court was concerned about the efficacy and viability of the expedited procedures per Code of Civil Procedure section 1094.9, as requested by petitioner, following the contention that the December 17, 2025 letter involved "new" violations. The court sua sponte identified two problems with this assertion – one more significant than the other. Initially, the court noted that Code of Civil Procedure section 1094.9, absent a clear, contrary indication of legislative intent, would be applied prospectively only. (*Winston v. County of Los Angeles* (2024) 107 Cal.App.5th 402, 408.) Despite this well-known legal proposition, the court was willing to accept petitioner's argument that the 90-day rule contained in Code of Civil Procedure section 1094.9 could be satisfied under the continuous accrual doctrine. (See generally *Gilkyson v. Disney Enterprises, Inc.* (2016) 244 Cal. App.4th 611, 614 [under the continuous accrual doctrine, each breach of a recurring obligation is independently actionable].)

The real problem involved the second issue. Petitioner, in reliance on the HDC's August 25, 2025, letter, issued to the County, noted the HDC disagreed with the County that its February 2025, incompleteness determination was timely. (See fn. 2 *ante.*) Petitioner also observed that County "failed to substantively respond" to the August 25, 2025 letter in any meaningful way. It again pointed to the December 17, 2025 letter, in which the County indicated that it had not changed its view and (irrespective of the HDC's letter) continued to find its determination that petitioner's application was incomplete, made on February 20, 2025, was nevertheless timely made. As previously noted, Code of Civil Procedure section 1094.9 requires an administrative mandamus petition to be filed within 90 days from the later of the effective date of decision of the local agency imposing conditions on, disapproving, or any other "***final*** action" on a housing development project. There was nothing from the face of the petition (or through judicially noticed documents) to indicate petitioner with regard to these "new violations" had exhausted

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housing development to be inconsistent, not in compliance, or not in conformity, as follows: . . (ii) Within 60 days of the date the application for the housing project is determined to be complete, if the housing development project contains more than 150 units."

administrative remedies for purposes of finality, a jurisdictional perquisite for judicial review. The court directed the parties to examine the issue through the prism of a nonstatutory motion for judgment on the pleadings (and placed that motion on calendar for June 16, 2026), thereafter directing the parties to file supplemental briefing on the impact of the exhaustion of administrative remedies doctrine. The parties have complied with the court's directive, and all briefing has been reviewed.

C) *Supplemental Briefing*

On May 22, 2026, County filed its supplemental brief. It claims initially that petitioner is improperly seeking to relitigate the same claim raised in Case No. 25CV02774. (Supp. Briefing, p. 9.) According to County, "[t]he identical question of whether the application was deemed complete[] on February 19, 2025 as a matter of law under the [(PSA)] is raised in [both petitions], arising from the Board's final decision [on April 8, 2025.]" According to County, the Board's decision "on the merits was final on April 8, 2025 and Petitioner was on notice and had 90 days to file litigation . . . ." County goes on: "Nothing supports that this specific PSA claim may be revived by a separate administrative process under a different Act of the Government Code. [Citation]." Alternatively, County argues that to the extent the claims raised in the current petition are "new" (as a result of the December 17, 2025 letter) petitioner has failed to exhaust administrative remedies, noting that initially the County staff had no ability to alter the Board's April 8, 2025 timeliness determination without going back to the Board; it claims ultimately that given the new arguments and evidence following the April 8, 2025 hearing, were required per *Sierra Club v. San Joaquin Local Agency Formation Com.* (1999) 21 Cal.4th 489 to be submitted to the Board for rehearing, but were not (meaning petitioner has failed to exhaust to finality all administrative remedies). Finally, County contends that petitioner has pleaded no exceptions to the exhaustion requirements, and none is applicable.

Petitioner filed its supplemental briefing on June 8, 2026. Petitioner argues that the exhaustion of administrative remedies doctrine is inapplicable under the PSA because County failed to act with 30 days pursuant to section 65943, subdivision (a) and (b). That is, according to petitioner, because no administrative "determination" was legally made by February 19, 2025, and because the remedy is to deem the application complete as a matter of law, "administrative exhaustion" is not mandated. Petitioner looks to *Orsi v. City Council* (1990) 219 Cal.App.3d 1576 (and progeny), which observed that the time limits under the PSA "create a mandatory duty on the part of the lead agency" – and specifically, where the public agency's "failure to notify plaintiffs withing 30 days that their application was incomplete resulted in the application being deemed complete." (*Id.* at pp. 1584-1585.)[4] According to petitioner, because there was an

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[4] In *Orsi*, plaintiffs sought a writ of mandate to compel the City Council of the City of Salinas to issue a planned unit development permit (PUD). The facts show that plaintiff on May 27, 1986 applied for a PUD permit. On September 17, 1986, the Planning Commission considered plaintiffs' application, and recommended to the City Council that it be denied. (*Id*. at p. 1580.) Thereafter, the City Council, on October 28, 1986 approved the PUD permit, and directed the planning commission prepare it. (*Id*. at p. 1581.) The Planning Commission, after a full

ongoing, continuous violation, and because the County has a "ministerial duty" to deem the application complete as a matter of law as of February 19, 2026, exhaustion of administrative remedies is inapplicable. Petitioner argues in the alternative that even if exhaustion were required, it can allege two exceptions to the exhaustion – the County lacks jurisdiction to act and futility.

D) Merits

The court recognizes the unusual posture of the petition in this matter, following the recent codification of Code of Civil Procedure section 1094.9. The provision was not operative at the time the Board granted petitioner's appeal (at least in part) but ultimately determined the application was complete on April 8, 2025. Petitioner understandably desires the benefit of the expedited procedure. At the same time, the court recognizes that the issue here seems to be the same or at least similar to one raised in 25CV02774, thus giving some credence to County's argument that petitioner is attempting to "improperly relitigate the same decisions," given the genuine specter of duplicative litigation. The court, in the end, is nevertheless willing to afford petitioner the opportunity to show that there were "new violations" following the December 17, 2025 letter, and that the expedited judicial review would be appropriate because exhaustion is not required (or an exception thereto can be pleaded).

The court starts its analysis with Code of Civil Procedure section 1094.9. Subdivision (d)(4) provides in relevant part that a petitioner who elects to bring an action pursuant to this section shall file and serve the petitioner on the response 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, (2) the effective date of the denial of a permit for a housing development project, or (3) any other action by which respondent disapproves the housing development project." (Emphasis added.) The highlighted language clearly contemplates "finality" of an administrative decision as the starting point of the 90-day

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hearing on remand, "decided to again recommend denying the amended PUD permit," and on January 6, 1987, the matter was again considered by the City Council, at which time plaintiffs were required to produce an environmental impact report (EIR). The Planning Commission thereafter reviewed, considered, and recommended denial of plaintiff's application for a subdivision map on January 21, 1987; the City Council called a special meeting on February 25, 1987, and which time it denied the PUD permit. Three weeks later, on March 17, 1987, the City Council denied the request for a tentative subdivision map. (*Id*. at p. 1582.) Petitioner filed his writ of mandate in the superior court on May 22, 1987. (*Ibid*.) On appeal, plaintiffs argued that the application was deemed complete on June 26, 1986, when the City filed to object to its contents, and as a result their development project was approved by operation of law six months later, on December 26, 1986, as the City failed to act within the prescribed time limits. (*Id*. at p. 1583.)

The *Orsi* agreed. "When council failed to approve or disapprove plaintiff's project by December 26, 1986, it was approved by operation of law. Subsequent acts of the City culminating in the eventual 'denial' of plaintiff's application were to no effect. In view of this holding, we need not reach the issue of whether the City expressly approved the project at its October 28, 1986, meeting." (*Id.* at p. 1588.) The writ was granted. Petitioner attempts to draw parallels between the issues raised in *Orsi* and the issues raised here.

filing rule. The court is hard-pressed to see on its face how the December 17, 2025, letter from Director Plowman involves a "final action" as that term is used in this provision, as it at best seems entirely intermediate or interlocutory (made by a Director).

The court has also examined the relevant provisions of the Santa Barbara County Land Use and Development Code (SBCLUD). As noted, petitioner relies on the December 17, 2025, letter authored by Lisa Plowman, Director of Planning and Development, as the trigger for the 90-day deadline per Code of Civil Procedure section 1094.9.[5] Pursuant to SBCLUD section 35.102.40, an applicant can appeal the decision by the Director to the Commission. More significantly, perhaps, is SBCLUD section 35.102.50, which provides that any decision by the Commission may be appealed to the Board of Supervisors as long as the procedural requirements of SBCLUD section 35.102.20 are satisfied.[6] This procedure indicates that a "new violation" requires a new administrative appeal.

Further, the rules for exhaustion of administrative remedies are well-settled. It is a long-standing rule in California that finality is regarded as an aspect of the exhaustion mosaic. (*Hongsathavij v, Queen of Angels Etc. Medical Center* (1998) 62 Cal.App.4th 1123, 1135; see also *Environmental Council v. Board of Supervisors* (1982) 135 Cal.App.3d 428, 438 [only when the decision-making body of a public agency adopts the findings prepared by staff does it adopt the findings of the preparers].) As observed in the May 14, 2026 order, the August 25, 2025, letter from the HDC, which petitioner relies on to undermine the Borad's April 8, 2025 determination (see fn. 2, *ante*), coupled with a host of additional facts that occurred ***after*** the April 8, 2025, determination, represents new evidence or fresh arguments or changed circumstances that required a ***new*** appeal (in compliance with the jurisdictional exhaustion requirement). (See, e.g., *Plantier v. Ramona Municipal Water Dist.* (2019) 7 Cal.5th 372, 383

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5 Petitioner clearly went to Director Lisa Plowman and the Planning and Development Committee in the hope of altering the April 8, 2025 date of completion in light of the August 25, 2025 letter, and the response in the December 17, 2025, letter was a rejection of that effort. There is no explanation about how Lisa Plowman or the Planning and Development Committee could have altered the Board of Supervisor's April 8, 2025, date of completion decision even if she or it wanted to, at least without going back to the Board of Supervisors and seeking its acquiescence/approval. And if going back to the Board was required for that purpose, it is not unreasonable to require application of the exhaustion of administrative remedies doctrine as a condition to filing an administrative writ of mandate .

6 Petitioner contends that the "County's procedures only allow for a Petition for Reconsideration '[w]ithin five (5) calendar days of the final action by the Board . . . ." Petitioner cites to a 1991 resolution 91-333 from the Board, which contains "VIII. Reconsideration," and which provides as follows: "Within five (5) calendar days of final action by the Board of Supervisors, any party may file a Petition for Reconsideration with the Clerk of the Board. . . ." "A request for reconsideration shall only be approved by 4/5 vote, and only if the Board finds that the request is required to correct a procedural defect in its earlier decision." Petitioner reliance on this is misplaced, as it fails to account for the critical *Sierra Club* gloss. Petitioner in any event seems to assume that the word "reconsideration" as used under these rules has the same meaning as the word as used in *Sierra Club*, although that does not appear the case. *Sierra Club* equated "reconsideration" with "rehearing," using the terms interchangeably, determining exhaustion is required (for either term) when new evidence or new legal arguments are at play. When an applicant is required to return to the Board to present new evidence or new arguments, as required under *Sierra Club,* the appeal procedures in SBCLUC sections 35.102.40 and 35.102.50 are more logically implicated, not the far more limited "reconsideration" rules cited by petitioner here.

[unless circumstances warrant judicial involvement, allowing a court to intervene before an agency has "fully resolved the matter" would constitute an interference with the jurisdiction of another tribunal].) Much occurred after April 8, 2025 determination, and there is no indication that an appeal would have been duplicative of earlier efforts. (*Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1080 [an administrative remedy is exhausted only upon termination of all available, nonduplicative administrative review procedures]; see *Jonathan Neil & Assoc., Inc. v. Jones* (2004) 33 Cal.4th 917, 933 [exhaustion requires agency decision of " 'entire controversy' "]; *People v. Beaumont Investment, Ltd.* (2003) 111 Cal.App.4th 102 [administrative process must " ' "run its course" ' "]; *Bleeck v. State Board of Optometry* (1971) 18 Cal.App.3d 415, 432 [exhaustion requires "a full presentation to the administrative agency upon *all* issues of the case and at all prescribed stages of the administrative proceedings"].)

Sierra Club v. San Joaquin Local Agency Formation Com. (1999) 21 Cal.4th 489, 510, and the observations made therein, seem particularly apt here. In *Sierra Club*, our high court modified the rule in *Alexander v. State Personnel Bd.* (1943) 22 Cal.2d 198, which had held that before an administrative tribunal "may" seek reconsideration or rehearing of an adverse decision of that tribunal, "the petitioner always must seek reconsideration in order to exhaust his or her administrative remedies prior to seeking recourse in the courts." (*Id.* at p. 493.)[7] *Sierra Club* found that *Alexander* "serves little practical purpose and is inconsistent with procedural in parallel contexts," and thus "we hereby abandon it." *Sierra Club* made it clear that despite the new rule reconsideration of agency decisions remains generally required as a condition to judicial review. "We simply see no necessity that parties file pro forma requests for reconsideration raising issues already fully argued before the agency . . . ." (*Id.* at p. 494.) The *Sierra Club* developed this more fully as follows:

> "We emphasize this conclusion does not mean failure to request reconsideration or rehearing may never serve as a bar to judicial review. Such a petition remains necessary, for example, to introduce evidence or legal arguments before the administrative body that were not brought to its attention as part of the original decision-making process. [Citation.] Our reasoning here is not addressed to new evidence, changed circumstances, fresh legal arguments, filings by newcomers to the proceedings and the like. Likewise, a rehearing petition is necessary to call to the agency's attention errors or omission of fact or law in the administrative decision itself that were not previously addressed in the briefing, or in order to give the agency the opportunity to correct its own mistakes before errors or omissions are presented to the court. The general exhaustion rule remains valid: Administrative agencies must be given the opportunity to reach a reasoned and final conclusion on each and every issue upon which they have jurisdiction to act before those

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[7] Our high court made it clear in *Sierra Club* that the terms "reconsideration" and "rehearing" were used interchangeably; perceiving "no fundamental difference between the two terms for purposes of this case, we will do the same here." (*Sierra Club, supra*, 21 Cal.4th at p. 493, fn. 1.)

> issues are raised in a judicial forum. Our decision is limited to the narrow situation where one would be required, after a final decision by an agency, to raise for a second time the same evidence and legal arguments one has previously raised solely to exhaust administrative remedies under *Alexander*." (*Id.* at p. 510.)

This language appears dispositive in the present context. Exhaustion of administrative remedies remains the general rule – that is, affording the Board here an opportunity to correct any alleged errors in the first instance before allowing judicial review. Of course, *Sierra Club* recognized that the exhaustion doctrine should not elevate form over substance – if the ***same*** evidence and ***same*** legal arguments are to be advanced a second time (under the guise of reconsideration), the reasons for the exhaustion doctrine itself loses its vitality, efficacy, and necessity. *Sierra Club* made it clear that the new rule in place of the one in *Alexander* was a "narrow circumstance" – not present here. (See, e.g., *Williams v. Housing Authority of Los Angeles* (2004) 121 Cal.App.4th 708, 735 ["The same reasons for abandoning the *Alexander* rule, however, do not exist in the factual context before us"].) Nothing in *Sierra Club* abrogates the well-settled principle that where an administrative remedy is available, even if couched in permissible language, it must be exhausted before turning to the courts. (*Ibid*.)

As noted in the May 14, 2026 modified order, the HDC's August 25, 2025, letter, coupled with the post-April 8, 2025 facts, represent new evidence and fresh legal arguments that could ***not*** have been advanced to the Board before its April 8, 2025 decision. Petitioner, under these circumstances (and in light of its claim that the expedited petition involves "new violations"), in order to exhaust, was required to appeal this to the Board (following the December 17, 2025 rejection letter, which petitioner claims is the triggering event for the 90-day period under Code of Civil Procedure section 1094.9). This is not a situation in which duplication would have occurred, or that the same legal arguments were going to be advanced in some rote, mechanistic fashion in a pro forma manner.

Put another way, the first lawsuit (Case No. 25CV02774) involves judicial review following the Board's April 8, 2025 determination. The petition in this case, by contrast, is predicated on post-April 8, 2025 events – allegedly "new violations" – most notably involving an August 25, 2025 letter from HDC, as well as numerous post-April 8, 2025 events, all detailed in the December 17, 2025 letter referenced above. The confluence of Code of Civil Procedure section 1094.9, the existing appeal procedures in SBCLUD, the advent of section 65943, subdivision (c), coupled with the rules for exhaustion outlined in *Sierra Club* and progeny, required petitioner to exhaust his administrative remedies, based on alleged "new violation" detailed in the December 17, 2025 letter. From the face of the petition as well as all judicially noticed documents, petitioner did not make that application, and therefore failed to exhaust administrative remedies, a jurisdictional prerequisite to judicial intervention to secure relief pursuant Code of Civil Procedure section 1094.9.

The court is not persuaded by petitioner's arguments that exhaustion is inapplicable under the circumstances. Initially, petitioner's argument seems rest in part on an assumption that the continuous accrual doctrine, in association with section 65943, subdivision (b), obviates the need for exhaustion. (*Gilkyson, supra.,* 244 Cal.App.4th at p. 1341.) The continuous accrual doctrine is an exception to a statute of limitations bar, which in this case would satisfy the 90-day rule requirements under Code of Civil Procedure section 1094.9. It is not an exception to the exhaustion requirement.

Petitioner's reliance on *Orsi v. City of Council* is also misplaced. It is true that the *Orsi* court ultimately granted a writ because under the PSA the City has failed to approve or deny the application within the prescribed time frame required, meaning the application was therefore deemed complete by operation of law on December 26, 2026. *Orsi,* however, never discussed or examined the exhaustion of administrative remedies or finality doctrine, and certainly did not explore the appropriate rules when the public agency actually makes a determination, arguably within the allotted time frame, that the application was incomplete, the situation presented here.[8] It is axiomatic that cases are not authority for propositions not considered. (*Howard Jarvis Taxpayers Assn. v. Newsom* (2019) 39 Cal.App.5th 158, 169.)

Nor is the court persuaded by petitioner's contention that because section 65943, subdivisions (a) and (b) are silent about an administrative remedy or the need to exhaust when there is a claimed violation of the 30-day determination rule, exhaustion is not required. Petitioner concedes in footnote 2 of its supplemental brief as follows: "Yes, the PSA requires an administrative appeal process (which must occur within 60 days) if an applicant disagrees with an agency's timely determination that its application is incomplete, but that process does not apply here. To preserve claims and remedies, [petitioner] file an administrative appeal regarding the County's tardy February 20, 2025 letter. The Board of Supervisors granted that appeal, agreeing that the February 20, 2025 letter included improper items and declaring the application complete as of April 8, 2025. The 2025 Petition [i.e., in Case No. 25CV02774] challenges the administrative action under [Code of Civil Procedure section 1094.5]. This Petition is founded in a completely different PSA mechanism which occurs by operation of law and is not subject to administrative appeal . . . ."

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8 More specifically, in *Orsi*, it was uncontested that the City determined plaintiff's application was incomplete long after window for action had closed – indeed, the application was made on May 27, 1986, and the City determined the application was incomplete on July 7, 1986. Here, the issue is different – according to County, the application was received on a holiday, meaning it was not submitted until the next day during business hours, meaning the February 21, 2025 letter of incompleteness was timely; petitioner disagrees. The need for exhaustion – and the ability for the County to correct any interpretation on that point – seems governed by section 65943, subdivision (c), which is a distinct situation than that addressed in *Orsi.* Petitioner's reliance on *Ciani v. San Diego Trust & Savings Bank* (1991) 233 Cal.App.4th 1604 seems misplaced for the same reason.

There are a number of flaws with this argument. First, while it is true that the petition in Case No. 25CV02774 follows the more traditional path of administrative/traditional mandamus (outside the expedited procedures contained in Code of Civil Procedure section 1094.9), one of the issues raised there also rests on an alleged violation of 30-day rule contained in section 65943, subdivision (b) (as contained in the first cause of action, for example). It would be anomalous to conclude that the procedural mechanism chosen is the crucial yardstick in determining whether exhaustion is required. The court is simply not convinced that exhaustion/finality does not have to be sought in this case while it does in Case No. 25CV02774. Nothing in the legislative scheme suggests such disparate treatment on such a well-settled and universal issue.[9] As noted in Civil Code section 3511, "[w]hen the reason is the same, the rule should be same." Quite so. (See, e.g., *Highland Plastics, Inc. v. Enders* (1980) 109 Cal.App.3d Supp. 1, 10 [applying this maxim, "we conclude that the Legislature intended the same rule to apply to substituted service under section 1162"].)There is no reason for different exhaustion rules between the two cases.

More significantly, petitioner's arguments overlook the import of section 65943, subdivision (c), which is ***<u>not silent</u>*** about the need for an administrative appeal after a public agency's determination that an application is incomplete. Pursuant to section 65943, subdivision (c), if a determination is made that the application was incomplete, "the public agency shall provide a process for applicant to appeal that decision in writing to the governing body of the agency . . . ." The thrust of petitioner's argument in its supplemental briefing seems to be that the issue before the court (as outlined in the petitioner) involves the same type of issues presented in *Orsi* – that the public agency clearly and unmistakably made a determination beyond the time frame mandated by statute, and as a result the remedy by operation of law is that the February 19, 2025 application must be deemed timely, obviating the need for exhaustion. But this portrayal is too simplistic, for the actual issue before the court is far more nuanced. It is true the court may ultimately find County's interpretation of the 30-day rule unreasonable – and that ***<u>as a consequence</u>*** the February 19, 2025 will be found to be timely as of that date. But to make this determination, the court must first resolve a critical intermediate issue – the statutory meaning of "receipt" and how to calculate the 30-days under section 65943, subdivisions (a) and (b). This intermediate determination in turn must account for the fact that County arguably made this determination as an essential part of its determination that the petitioner's application was incomplete. The two issues (the intermediate issue concerning the meaning of "receipt" and the possible consequence that stems from this determination) are so intertwined (and cannot be divorced) that the rules in section 65943, subdivision (c) are implicated, meaning petitioner was required to file an administrative appeal and ultimately comply with the exhaustion and finality rules before seeking judicial review as a predicate for seeking the expedited procedures per Code of Civil Procedure section 1094.9.

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9 At times in its supplemental briefing petitioner contends that the administrative appeal as the backdrop to Case No. 25CV02774 was "arguably unnecessary" in light of the arguments advanced in the present forum. While the court does not need to make that determination, the argument fails for the same reasons discussed in this order.

Petitioner also overlooks the impact of the ***plain*** language of Code of Civil Procedure section 1094.9, as discussed above. The Legislature was pellucid – in order to get the benefit of the expedited procedures of this provision, petitioner must submit the writ petition within 90 days following the date on which a decision becomes ***final.*** Finality is a term of art for purposes of exhaustion, and the Legislature is presumed to have known its meaning when it used that term in the statute. (See, e.g., *People v. Borynack* (2015) 238 Cal.App.4th 958, 965 ["When the Legislature uses a term of art, it is presumed to be aware of its established meaning and 'a court construing that use must assume that the Legislature was aware of the ramifications of its choice of language"'].) "Finality" denotes a public agency decision that cannot be reconsidered or reheard, and until that public agency make a final decision, judicial review is not ripe. (*California Water Impact Network, supra,* 161 Cal.App.4th at p. 1485.) The Legislature contemplated a final decision by the public agency as to the completeness of the application, with all new evidence and fresh arguments required to be submitted to the Board.[10] That was not accomplished.

The court's position can be summarized as follows. The court would agree that the exhaustion of administrative remedies doctrine would ***not*** apply under the PSA ***if*** the issue before the court were the public agency's ***unquestioned*** failure to act within the initial 30-day period, meaning petitioner's application would be deemed complete by operation of law. That is a ministerial decision, and judicial review should be immediate (i.e., without need for exhaustion). In that circumstance it seems pointless to require finality, for the Legislature has preordained the outcome (indeed, there is no intermediate issue to determine). This seems to be the situation in *Orsi.* But the PSA itself (through the advent of section 65943, subdivision (c)) is more nuanced, expressly requiring an administrative appeal (and thus application of the exhaustion of administrative remedies and finality doctrine) when other issues are at play – for example, as relevant for our purposes, when the public agency fines the initial application is incomplete. That is arguably what occurred here. The court acknowledges that the issue before the court does not squarely fit neatly with a rigid categorization; still, the court is asked to decide whether the public agency's incompleteness determination was in fact timely made, requiring the court to determine precisely when an application is received for purposes of the 30-calendar day rule. A consequence of this determination may require the court to determine that the County's incompleteness determination was untimely, meaning petitioner's application will in fact be deemed complete by operation of law. But the need to determine the intermediate issue(the intricacies of the 30-day rule) distinguishes this case from those situations in which exhaustion may not be required (because the public agency clearly and unequivocally failed to act during the

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[10] To be clear, the court is distinguishing between a situation in which the public agency failed to act at all – or acted clearly outside the appropriate period, such as that present in *Orsi* and progeny – from a situation in which the public agency arguably made a determination within the 30-day period. In the former situation exhaustion may not be required. The latter situation (the situation presented here) must follow the requirements of section 65943, subdivision (c), mandating exhaustion and finality.

appropriate period, with the Legislature providing the answer and deeming the application complete as a matter of law, obviating the need for finality and exhaustion). The intermediate issue at play is so intertwined with the County's incompleteness determination that the two cannot be divorced from each other, meaning resolution is governed by section 65943, subdivision (c), requiring an administrative appeal and necessitating exhaustion and finality. The policy behind the exhaustion rules supports this determination, as it affords the public agency a fair opportunity to determine the appropriate meaning of the 30-day rule without need for immediate judicial intervention. In the end, the nature of the issue to be resolved, coupled with the language in Code of Civil Procedure section 1094.9, the scope of the review rules under SBCLUD, the nature of section the appeal rules within 65943, subdivision (c), and the general rules for exhaustion discussed in *Sierra Club*, support the conclusion that petitioner had to exhaust administrative remedies in order to trigger the expediate review procedures at issue here. Exhaustion has not been pleaded, and petitioner concedes in its supplemental briefing that it cannot.

E) Exceptions to Exhaustion

Petitioner argues in the alternative that even if it had to exhaust, two exceptions apply – the County lacked jurisdiction to act and any appeal to the Board would be futile. The court is aware of case law that expressly indicates a demurrer or motion for judgment on the pleadings is appropriate when there is failure to adequately plead exhaustion of administrative remedies or any exception. (*Tejon Real Estate, LLC v. City of Los Angeles* (2014) 223 Cal.App.4th 149, 156.) Of course, petitioner has not pleaded exhaustion or any exceptions in the petition, so the issue for the court to determine (as part of the nonstatutory motion for judgment on the pleadings) is whether there is a reasonable possibility that either exception can be pleaded (based on the showing petitioner makes in its supplemental briefing). (*Foster v. Sexton* (2021) 61 Cal.App.5th 998, 1024 [leave to amend should be granted if there is a reasonable possibil8ity the defect can be cured by amendment].)

One exception to exhaustion exists when the County lacks authority, statutory or otherwise, to resolve the underlying dispute between the parties. (*Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd., supra*, 35 Cal.4th at pp. 1081-1082.) In deciding whether to entertain a claim that an agency lacks jurisdiction before the agency proceedings have run their course, a court considers three factors: the injury or burden that exhaustion will impose, the strength of the legal argument that the agency lacks jurisdiction, and the extent to which administrative expertise may aid in resolving the jurisdictional issue. (*Id.* at p. 1082.)

Petitioner has failed to show a reasonable possibility that it will suffer irreparable injury under the first factor if it were required to resubmit the issue to the Board. Petitioner relies on

Save Lafayette v. City of Lafayette (2022) 85 Cal.App.5th 842, which observed that under the Housing Accountability Act (HAA), the Legislature has found that California has a "housing supply and affordability crisis of historic proportions" and that millions of Californians are hurt by the "consequences of failing to effectively and aggressively confront this crisis." (§ 65589.5, subd. (a)(2)(A).) The Legislative intended in adopting and subsequently expanding the HAA "to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects." (§ 65589. 5 subd. (a)(2)(K).)" (*Id.* at p. 855.) No doubt this is true, but the issue is not the completeness of the application (or whether the project is moving forward or not, for it is), but the date the application is considered complete. Petitioner is not burdened by a requirement that it must present new arguments to the Board as a precondition for judicial review on that subject. A remedy is not inadequate "merely because additional time and effort would be consumed by its being pursued through the ordinary course of the law." (*Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1269, cited with approval in *Coachella, supra*, 35 Cal.4th at p. 1082.) This factor does not weigh in favor of excusing exhaustion.

Nor has petitioner satisfied the second element – the strength of the legal argument that the agency lacks jurisdiction. Petitioner argues that the legal issue is "strong" – the application was deemed complete as a matter of law on February 19, 2025. But as discussed above the real issue (as an intermediate determination) is whether the County received petitioner's application for a housing development project on a holiday (Martin Luther King Jr. Day), meaning that was the day that triggered the 30-day rule. There is absolutely no reason why this court should determine the Board lacked jurisdiction to reconsider this issue (notably in light of the new letter authored August 25, 2025 and other post-April 8, 2025 events). This is the type of issue the Board would and should have jurisdiction to consider. This factor also does not weigh in favor of excusing exhaustion.

The third factor leaves the court more in equipoise than disinclination. Administrative expertise about how applications are processed would likely aid the court in resolving the jurisdictional issue. While no doubt the issues to be resolved are legal (including an interpretation of statutory language), the issues are not entirely legal – the court would be aided by a developed factual record concerning past practices, current attitudes, an exploration of software used by the County in the past, how applications have been processed in the past over holidays and during regular business hours, and other such matters.

Having considered the three *Coachella* factors, the court concludes, on balance, that petitioner has not shown it is exempt from the exhaustion requirements based on lack of jurisdiction before resorting to judicial review, and there is no reasonable possibility it can plead this exception.

This leaves petitioner's second exception to the exhaustion requirement – futility. The "futility" exception does not apply " ' "unless the petitioner *can positively state* that the [administrative body] has declared *what its ruling will be in a particular case.*" ' " (*Sea & Sage Audubon Society, Inc. v. Planning Com.* (1983) 34 Cal.3d 412, 418; see also *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 89; *Jonathan Neil & Assoc., Inc. v. Jones* (2004) 33 Cal.4th 917, 936.)

Petitioner in its supplemental briefing relies on cases finding futility adequately pleaded when the public entity's denial was "virtually certain" to occur because the entity had previously denied claims or other applicants based on the same grounds advanced by petitioner. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 90.) Petitioner attempts to reinforce this argument by observing that on April 8, 2025, the Board expressly rejected "the precise claim [advanced] here." Petitioner also attempts to bolster its argument by contending the Board – not just staff – has refused to follow the recommendations contained in the August 25, 2025 letter. It cites to the following documents in support 1) AROO8288 (from the administrative mandamus record), which is a single page from the County's reply to its demurrer in Case No. 25CV02774, filed on September 5, 2025, in which Deputy Attorney Monroe, on behalf of Board, argued that the August 25, 2025 letter "serves no legitimate government purpose"; 2) and according to petitioner, the Board "has specifically considered this lawsuit multiple times in closed sessions after HCD's August 25, 2025 guidance, but [has] refused to change course." Petitioner cites to Board minutes on October 7, 2025 (which contains an agenda item mentioning the present lawsuit and conference with legal counsel in closed session); on January 13, 2026 (same); and then claims the "Board has been directing this litigation and could direct staff at any time to change its position, yet both staff and the Board have not done so . . . ."

This showing is insufficient to demonstrate a reasonable possibility that petitioner can properly allege futility as an exception to exhaustion. Petitioner has not positively shown what the Board's ruling would be if presented with new evidence or fresh authority involving the August 25, 2025 letter. Petitioner's reliance on *County of San Diego v. State of California, supra*, is misplaced, because the issue here involves a rehearing required under *Sierra Club,* which by necessity involves an earlier determination by the public agency. The issue is whether the presentation of ***<u>the new evidence or fresh arguments</u>*** would have been futile. The evidence actually before the court indicates plaintiff cannot state positively what the Board's ruling would be in this respect. For example, the Board was presented with an April 7, 2025 letter from the HDC (the very same entity that authored the critical August 25, 2025 letter), this time authored by Housing Accountability Unit Chief Shannon West, who "urge[d] the Board of Supervisors to consider these determinations and direct staff to process the housing development project application" (i.e., to determine the application was complete). The April 7, 2025 letter was silent about issues of timeliness of any previous incompleteness determination. The Board on April 8, 2025 did exactly what Ms. West had suggested – it deemed the application complete and directed the staff to process petitioner's housing development application, despite recommendations from staff to the contrary. It cannot be said positively what the Board would have decided on the issue of timeliness if it had been presented with the August 25, 2025 letter, given the fact it had followed the recommendations of HDC in an earlier April 7, 2025 letter, despite contrary advice by staff.

Nor is the court persuaded by petitioner's claim that the Board is presently "directing" the present litigation, as reflected in the minutes for the Board of Supervisor's meetings (at least to the point that it has taken an adamantine position that preordains the outcome no matter what). The mere fact that agency staff has recommended a particular course of action does not mean that the same result would necessarily follow a public hearing by the Board. (*Public Employee's Retirement System v. Santa Clara Valley Transportation Authority* (2018) 23 Cal.App.5th 1040, 1048.) Without a showing that the public agency "mechanically follows the recommendations of its staff," a court cannot determine that an appeal would have been an "idle act." (*Ibid*.) The fact County Counsel has advanced a particular position in reply falls far short of showing the Board would make the same decision following fresh arguments from the HDC, particularly given Board's previous decision from earlier recommendations by the HDC (again over staff recommendations). The Board if anything is likely to make its own determination, notwithstanding staff recommendations. Further, nothing in the Board's minutes demonstrates intransigence about the issue. The minute orders that have been identified simply show the litigation at issue was discussed with staff as an agenda item. Nothing shows that if the new evidence here had actually been presented to the Board, the same result would inexorably follow. (See, e.g., *Casa Blanca Beach Estates Owners' Assn v. County of Santa Barbara* (2024) 102 Cal.App.5th 1303, 1310 [petitioner's belief that the public agency would agree with its staff "adverse decision" is insufficient and unavailing to show futility].) Petitioner has failed to present any solid, objective evidence to show futility. What the court is left with in the end is petitioner's own subjective feelings that the outcome is preordained, and its belief that the ultimate resolution is likely to be unfavorable. That is not enough. (*Bollengier v. Doctors Medical Center* (1990) 222 Ca.App.3d 1115, 1130; *Bennett v, Borden, Inc.* (1976) 56 Cal.App.3d 706, 710 ["preconception of the futility of administrative action did not permit [plaintiff] to bypass the administrative remedy"].) Petitioner has not shown any reasonable possibility that it can plead futility as an exception to the exhaustion and finality requirements.

<u>Summary:</u>

For the following reasons, the court grants the nonstatutory motion for judgment on the pleadings, *without leave to amend*, for failure to exhaust administrative remedies as to the so-called "new violations." Respondents are directed to provide a proposed order and judgment for signature. The court's determination obviates the need to address the pending motion to strike portions of the administrative record.