

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: Californians for Homeownership, Inc. vs. City of Huntington Beach

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE**

CASE NUMBER:
30-2019-01107760-CU-WM-CJC

I certify that I am not a party to this cause. I certify that a true copy of the above Minute Order dated 10/04/21 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Santa Ana, California on 10/4/21. Following standard court practice the mailing will occur at Santa Ana, California on 10/4/21.

CALIFORNIANS FOR HOMEOWNERSHIP, INC.
525 S. VIRGIL AVENUE
LOS ANGELES, CALIFORNIA 90020

MILLER STARR REGALIA
1331 N. CALIFORNIA BLVD., FIFTH FLOOR
WALNUT CREEK, CALIFORNIA 94596

OFFICE OF THE CITY ATTORNEY OF
HUNTINGTON BEACH
2000 MAIN STREET, P.O. BOX 190
HUNTINGTON BEACH, CA 92648

Clerk of the Court, by: *Echallie Valencia*, Deputy

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 10/04/21, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on October 4, 2021, at 12:24:49 PM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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Clerk of the Court, by: *Echallie Valencia*, Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 10/04/2021

TIME: 10:40:00 AM

DEPT: C21

JUDICIAL OFFICER PRESIDING: Deborah Servino

CLERK: Schallie Valencia

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2019-01107760-CU-WM-CJC** CASE INIT.DATE: 10/28/2019

CASE TITLE: **Californians for Homeownership, Inc. vs. City of Huntington Beach**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT ID/DOCUMENT ID: 73620200

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

Proposed Statement of Decision is attached and incorporated herein.

Court orders Clerk to give notice.

OCT 04 2021

DAVID H. YAMASAKI, Clerk of the Court

BY  DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

Californians for Homeownership, a California)	Case No.: 30-2019-01107760
nonprofit public benefit corporation,)	
)	[PROPOSED] STATEMENT OF DECISION
Petitioner,)	
)	
v.)	
)	
City of Huntington Beach,)	
)	
Respondent.)	
)	
)	
THDT Investment, Inc.,)	
)	
Real Party in Interest.)	

Petitioner Californians for Homeownership, Inc. filed a motion to issue writ of mandate. At the June 4, 2021 hearing on the motion, Petitioner requested a statement of decision. The general rule is that the trial court is not required to issue a written statement of decision following a motion, even if the motion involves extensive evidentiary hearings and the resulting order is appealable. (*Gruendl v. Oewel Partnership, Inc.* (1997) 55 Cal.App.4th 654, 660.) There are no material factual disputes for this Court to decide. (Code Civ. Proc., § 632; Cal. Rules of Court, rule 3.1590.) The Court's review of an administrative adjudicatory decision under Code of Civil Procedure section 1094.5 is ordinarily confined to the administrative record. (Code Civ. Proc., § 1094.5, subd. (a); see *Moore v. City of Los Angeles* (2007) 156 Cal.App.4th 373, 382.) The FAP presents only legal issues. Although exceptions have been judicially-created to this rule, Petitioner has given no authority requiring a written statement of decision in

1 this situation. Out of an abundance of caution, however, this Court provides this Statement of
2 Decision on the ruling.

3 The Court hereby finds the principal controverted issues on this motion to issue writ of
4 mandate are: (1) whether the Housing Accountability Act ("HAA"; Govt. Code, § 65589.5) is
5 unconstitutional and violates the home rule doctrine; (2) whether Respondent City of Huntington
6 Beach proceeded in a manner required by law in denying approval of the project; (3) whether
7 pursuant to Government Code section 65589.5, subdivision (j)(2)(B), the project was to be
8 deemed consistent, compliant, and in conformity with the applicable plan, program, policy,
9 ordinance, standard, requirement, or other similar provision; (4) whether Respondent required
10 the project to comply with applicable, objective general plan, zoning, and subdivision standards
11 and criteria, including design review standards, in effect at the time that the application was
12 deemed complete; (5) whether there was substantial evidence that would allow a reasonable
13 person to conclude that the project was consistent, compliant, or in conformity with an
14 applicable plan, program, policy, ordinance, standard, requirement or other similar provision; (6)
15 whether Respondent's denial of approval of the project was based upon written findings
16 supported by a preponderance of the evidence on the record that both the project would have a
17 specific, adverse impact upon the public health or safety and there was no feasible method to
18 satisfactorily mitigate or avoid the adverse impact identified other than the disapproval of the
19 project; and (7) whether Respondent acted in bad faith when it disapproved the project.

20 I. Requests for Judicial Notice

21 The Court grants Petitioner's request for judicial notice of: (1) an excerpt of Beach and
22 Edinger Corridors Specific Plan, as amended in June 2105 [cover page through Section 2.1
23 (Development Standards)]; (2) Assembly Committee on Housing and Community Development
24 Report on AB 1515 for April 26, 2017 meeting; (3) Assembly Committee on Housing and
25 Community Development Report on SB 167 for June 28, 2017 meeting; and (4) Senate
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1 Committee on Transportation and Housing Committee Report on AB 3194 for June 19, 2018
2 meeting. (4/5/2021 Request for Judicial Notice, Exhs. A-D; Evid. Code, § 452, subds. (b) & (c).)

3 The Court grants Respondent's request for judicial notice of: (1) Huntington Beach City
4 Charter; and (2) Huntington Beach Zoning and Subdivision Code sections 241, 248, and 250.

5 The Court denies Respondent's request for judicial notice of the Order filed on November 7,
6 2019 in San Francisco Bay Area Renters Federal, et al. v. City of San Mateo, et al. (San Mateo
7 Superior Court case no. 18-CIV-02105) as irrelevant. (5/2/2021 Request for Judicial Notice,
8 Exhs. A-C; Evid. Code, §§ 451, 452, subds. (b), (c), & (d); *Mangini v. R.J. Reynolds Tobacco*
9 *Co.* (1994) 7 Cal.4th 1057, 1063.)

10 The Court grants Petitioner's request for judicial notice of 2019 California Fire Code,
11 California Code of Regulations, title 24, section 1.11.2.4. (5/14/2021 Request for Judicial
12 Notice, Exh. E; Evid. Code, 452, subd. (b).)

13 II. Relevant Background

14 On November 1, 2017, THDT Investment, Inc. ("THDT Investment"), through its agent
15 MCG Architecture/Jeff Herbst submitted a planning application (no. 17-205). (Administrative
16 Record ["AR"] at 3061-3063 [ROA 81].) Notifications of filing status that indicated that the
17 application was incomplete because information and/or corrections were requested before the
18 application would be deemed complete. (AR at 3069-3160, 3234-3388 [ROA 81].) In a
19 notification of filing status dated April 1, 2019, the application was deemed complete. However,
20 the notification noted that there were still outstanding items. (AR at 343-3462 [ROA 81].) A
21 public hearing before the planning commission on May 28, 2019 was noticed. (AR at 3465-
22 3507 [ROA 81].) The notice of the hearing indicated that the request for the conditional use
23 permit was "[t]o demolish an existing liquor store, residence, and portion of a former car wash to
24 permit a one-lot subdivision and development of a four-story mixed-use building including 48
25 new condominium residences with 891 square feet of commercial space and three levels of
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1 subterranean parking" at the location of "8041 Ellis Avenue Beach Boulevard (North side of Ellis
2 Ave., between Beach Blvd. and Patterson Ln.)". (AR 3465-3507 [ROA 81].)

3 The Huntington Beach Planning Commission held a public hearing on the proposed
4 project on May 28, 2019. (AR 3465-3507 [Notice; ROA 81.]; AR 1526-1535 [Minutes; ROA 70];
5 AR 1536-1653 [Transcript; ROA 70].) The staff report recommended that the Planning
6 Commission find the proposed project exempt from the California Environmental Quality Act and
7 approve Tentative Tract Map No. 18157 and Conditional Use Permit No. 17-042 with suggested
8 findings and conditions of approval. The staff report also provided two alternative actions: (1)
9 continue Tentative Tract Map No. 18157 and Conditional Use Permit No. 17-042 and direct staff
10 to return with findings for denial; or (2) continue Tentative Tract Map No. 18157 and Conditional
11 Use Permit No. 17-04 and direct staff accordingly. (AR 1403 [ROA 70].) The Planning
12 Commission voted to direct staff to return to the June 11, 2019 Planning Commission meeting
13 with findings for denial. (AR 1533, 1633-1635 [ROA 70]; AR 3508 [Notice of Action, ROA 81].)
14 At the June 11, 2019 public hearing, the Planning Commission voted to deny the tentative tract
15 map and conditional use permit with modified findings for denial. (AR 1687-1688, 1710-1712
16 [ROA 70]; AR 1881-1885 [Notice of Action with Findings, ROA 70].)

17 THDT Investment filed a notice of appeal with the Huntington Beach City Council. (AR
18 1886-1913 [ROA 70].) The City Council continued hearing the appeal from August 19, 2019 to
19 September 3, 2019. But, on August 19, 2019, the City Council held a public hearing on August
20 19, 2019 to hear comments. (AR 1968-1994 [ROA 72].) At the September 3, 2019 hearing, the
21 City Council upheld the Planning Commission's denial. (AR 2288-2289, 2346-2347 [ROA 73].)

22 On October 28, 2019, Petitioner filed the Verified Petition for Writ of Mandate pursuant to
23 Code of Civil Procedure section 1094.5 and Government Code section 65589.5. (ROA 2; see
24 Govt. Code, § 65589.5, subd. (m) [requires an action to enforce the HAA to be brought as a
25 petition for writ of administrative mandate, pursuant to Code of Civil Procedure section 1094.5].)
26

1 In a letter dated November 14, 2019, THDT Investment requested the Huntington Beach City
2 Council reconsider its decision. (AR 2403-2404 [ROA 75].) THDT Investment requested a
3 rehearing, which was scheduled for February 18, 2020. (See AR 2365-2366, 2368 [ROA 73].)
4 At the February 18, 2020 hearing, the City Council voted to deny the Tentative Tract Map No.
5 18157 and Conditional Use Permit No. 17-042 with findings. (AR 3016-3017, 3049-3051 [ROA
6 79].) A notice of action was issued with findings. (AR 2774-2780 [ROA 76].) On April 6, 2020,
7 Petitioner filed a Verified Amended Petition for Writ of Mandate ("FAP"). (ROA 37.)
8 Respondent filed an Answer to the FAP. (ROA 44.) Respondent also filed the administrative
9 record. (ROA 64, 65, 67, 68, 70, 72, 73, 75, 76, 78, 79, 81.)

10 On May 26, 2020, California Renters Legal Advocacy and Education Fund and THDT
11 Investment filed a verified petition for writ of mandate, in the related case (Orange County
12 Superior Court case no. 30-2020-01140855). On August 12, 2020, they filed a first amended
13 verified petition for writ of mandate. After a notice of related case was filed, the Court took
14 notice that the instant matter was related to California Renters Legal Advocacy and Education
15 Fund, et al. v. City of Huntington Beach (Orange County Superior Court case no. 30-2020-
16 01140855). (See 2/26/2021 Minute Order.) At the February 26, 2021 status conference, the
17 Court instructed the parties to proceed by way of a motion for issuance of writ of mandate and
18 gave a briefing schedule. Because counsel had agreed to avoid duplication, the Court
19 permitted the parties to use the same joint briefs in the related cases. (2/26/2021 Minute Order.)

20 On August 4, 2021, the Court denied the motion to issue writ of mandate. Judgment
21 was filed on August 10, 2021. An amended judgment was filed on August 12, 2021. On August
22 19, 2021, Petitioner filed notice of intention to move to vacate judgment and to move for new
23 trial. On October 4, 2021, the Court granted the motion to vacate judgment.

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1 III. Merits

2 The FAP alleged that Respondent's findings of denial did not meet its burden of proof
3 under the Housing Accountability Act ("HAA"; Govt. Code, § 65589.5). (FAP, at pp. 10-11.)

4 The FAP seeks a writ of mandate directing the City to approve the 8041 Ellis Avenue project, or
5 in the alternative a writ of mandate voiding the city's decision of February 18, 2020 to reject the
6 project and directing Respondent to reconsider the project in a manner that conforms to the
7 requirements of the HAA. (FAP, at p. 12.)

8 IV. Applicable Law for Administrative Mandamus

9 Code of Civil Procedure section 1094.5 makes administrative mandamus available for
10 review of "the validity of any final administrative order or decision made as the result of a
11 proceeding in which by law a hearing is required to be given, evidence is required to be taken,
12 and discretion in the determination of facts is vested in the inferior tribunal, corporation, board,
13 or officer." (Code Civ. Proc., § 1094.5, subd. (a).)

14 " 'In reviewing an agency's decision under Code of Civil Procedure section 1094.5, the
15 trial court determines whether (1) the agency proceeded without, or in excess of, jurisdiction; (2)
16 there was a fair hearing; and (3) the agency abused its discretion.' " (*West Chandler Boulevard*
17 *Neighborhood Assn. v. City of Los Angeles* (2011) 198 Cal.App.4th 1506, 1517-1518 [quoting
18 *McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 921]; see Code Civ. Proc., §
19 1094.5, subd. (b).) "Abuse of discretion is established if the respondent has not proceeded in
20 the manner required by law, the order or decision is not supported by the findings, or the
21 findings are not supported by the evidence." (Code Civ. Proc., § 1094.5, subd. (b).) The public
22 entity that disapproved the project bears the burden of proof that its decision conformed to the
23 HAA. (Govt. Code, § 65589.6.)

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1 V. The HAA

2 The HAA is one of the measures that the Legislature adopted to address the housing
3 crisis in the state. The Legislature found that the lack of housing “is a critical problem that
4 threatens the economic, environmental, and social quality of life in California.” (Govt. Code, §
5 65589.5, subd. (a)(1)(A).) It is the State’s policy that a local government “not reject or make
6 infeasible housing development projects . . . without a thorough analysis of the economic,
7 social, and environmental effects of the action” (Govt. Code, § 65589.5, subd. (b).) By
8 amending and expanding the HAA several times since its enactment in 1982, the Legislature
9 intended “to significantly increase the approval and construction of new housing for all economic
10 segments of California’s communities by meaningfully and effectively curbing the capability of
11 local governments to deny, reduce the density for, or render infeasible housing development
12 projects and emergency shelters. That intent has not been fulfilled.” (Govt. Code, § 65589.5,
13 subd. (a)(2)(K).)

14 Generally, statutes operate prospectively only. (*McClung v. Employment Development*
15 *Dept.* (2004) 34 Cal.4th 467, 475.) Because Respondent’s findings were issued in February
16 2020, all references to the HAA are to the version that was in effect at that time. Amendments
17 to the HAA, have since been enacted and effective as of September 24, 2020. (Stats. 2020, ch.
18 165, § 5.)

19 Subdivision (j) of the statute provides in relevant part:

20 (j)(1) When a proposed housing development project complies with applicable, objective
21 general plan, zoning, and subdivision standards and criteria, including design review
22 standards, in effect at the time that the application was deemed complete, but the local
23 agency proposes to disapprove the project or to impose a condition that the project be
24 developed at a lower density, the local agency shall base its decision regarding the
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1 proposed housing development project upon written findings supported by a
2 preponderance of the evidence on the record that both of the following conditions exist:

3 (A) The housing development project would have a specific, adverse impact upon the
4 public health or safety unless the project is disapproved or approved upon the condition
5 that the project be developed at a lower density. As used in this paragraph, a "specific,
6 adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based
7 on objective, identified written public health or safety standards, policies, or conditions as
8 they existed on the date the application was deemed complete.

9 (B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact
10 identified pursuant to paragraph (1), other than the disapproval of the housing
11 development project or the approval of the project upon the condition that it be
12 developed at a lower density.

13 (2)(A) If the local agency considers a proposed housing development project to be
14 inconsistent, not in compliance, or not in conformity with an applicable plan, program,
15 policy, ordinance, standard, requirement, or other similar provision as specified in this
16 subdivision, it shall provide the applicant with written documentation identifying the
17 provision or provisions, and an explanation of the reason or reasons it considers the
18 housing development to be inconsistent, not in compliance, or not in conformity as
19 follows:

20 (i) Within 30 days of the date that the application for the housing development
21 project is determined to be complete, if the housing development project contains 150 or
22 fewer housing units.

23 (ii) Within 60 days of the date that the application for the housing development
24 project is determined to be complete, if the housing development project contains more
25 than 150 units.

1 (B) If the local agency fails to provide the required documentation pursuant to
2 subparagraph (A), the housing development project shall be deemed consistent,
3 compliant, and in conformity with the applicable plan, program, policy, ordinance,
4 standard, requirement, or other similar provision.

5 (Govt. Code, § 65589.5, subd. (j).)

6 Subdivision (f)(4) provides: "For purposes of this section, a housing development project
7 . . . shall be deemed consistent, compliant, and in conformity with an applicable plan, program,
8 policy, ordinance, standard, requirement, or other similar provision if there is substantial
9 evidence that would allow a reasonable person to conclude that the housing development
10 project . . . is consistent, compliant, or in conformity." (Govt. Code., § 65589.5, subd. (f)(4).)

11 The HAA defines "objective" as "involving no personal or subjective judgment by a public official
12 and being uniformly verifiable by reference to an external and uniform benchmark or criterion
13 available and knowable by both the development applicant or proponent and the public official."

14 (Govt. Code, § 65589.5, subd. (h)(8).)

15 VI. Constitutionality of the HAA

16 The HAA states: "This section shall be applicable to charter cities because the
17 Legislature finds that the lack of housing, including emergency shelter, is a critical statewide
18 problem." (Govt. Code, § 65589.5, subd. (g).) Legislative declarations of intent to preempt local
19 law are not determinative. (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 783.) Respondent's
20 fifth affirmative defense was the HAA does not apply to charter cities, like Respondent.

21 (Answer, at p. 7.) Respondent contends the HAA is unconstitutional and violates the home rule
22 doctrine. (Opp. at pp. 16-25.) Respondent argues that application of Government Code section
23 65589.5, subdivision (f)(4) violates the California Constitution. (Opp., at pp. 20-26.)

24 Article XI, section 5, subdivision (a) of the California Constitution provides that a city
25 governed by charter "may make and enforce all ordinances and regulations in respect to
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1 municipal affairs, . . . and in respect to other matters they shall be subject to general laws. City
2 charters . . . with respect to municipal affairs shall supersede all laws inconsistent therewith.”

3 The home rule doctrine “represents an ‘affirmative constitutional grant to charter cities of ‘all
4 powers appropriate for a municipality to possess . . . ‘ and [includes] the important corollary that
5 ‘so far as “municipal affairs” are concerned,’ charter cities are ‘supreme and beyond the reach of
6 legislative enactment.’” (*State Building & Construction Trades Council of California v. City of*
7 *Vista* (2012) 54 Cal.4th 547, 556.) “The home rule doctrine enshrines charter cities’ sovereignty
8 over ‘municipal affairs.’” (*Anderson v. City of San Jose* (2019) 42 Cal.App.5th 683, 698.) The
9 doctrine “also implicitly recognizes state legislative supremacy over matters not within the ambit
10 of that phrase [municipal affairs].” (*California Fed. Savings & Loan Assn. v. City of Los Angeles*
11 (1991) 54 Cal.3d 1, 13.) Home rule authority “does not mean charter cities can never be subject
12 to state laws that concern or regulate municipal affairs.” (*City of Huntington Beach v. Becerra*
13 (2020) 44 Cal.App.5th 243, 254.)

14 The California Supreme Court has developed a four-part analytical framework to
15 determine whether a state law unconstitutionally infringes the home rule authority of charter
16 cities granted by article XI, section 5 of the California Constitution. First, the court determines
17 whether the local law at issue regulates an activity that can be characterized as a municipal
18 affair. Second, the court determines whether there is an actual conflict between state law and
19 the local law. If no conflict exists, the analysis is complete and there is no need to go to the next
20 step. Third, the court decides whether the state law addresses a matter of statewide concern.
21 Finally, the court determines whether the state law is reasonably related to resolution of the
22 identified statewide concern and is narrowly tailored to avoid unnecessary interference in local
23 governance. (*Construction Trades Council of California v. City of Vista, supra*, 54 Cal.4th at p.
24 556.)

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1 In *California Renters Legal Advocacy and Education Fund v. City of San Mateo* (Sept.
2 10, 2021, A159320 & A159658) ___ Cal.App.5th ___ [2021 D.A.R. 9574], the court held that the
3 HAA in general and subdivision (f)(4) in particular do not violate the home rule doctrine for
4 charter cities and do not violate the prohibition on delegation of municipal functions. (*Id.*, at pp.
5 ___ - ___ [2021 D.A.R. at pp. 9582-9586].)

6 VII. Government Code Section 65589.5, Subdivision (j)(2)(B)

7 Petitioner argues that because Respondent did not timely make written findings under
8 subdivision (j)(2), the project was deemed consistent with all applicable standards on May 2,
9 2019. (Mot. at p. 24.) Petitioner does not provide any authority to support their interpretation of
10 subdivision (j)(2)(B). The Court does not agree with Petitioner's interpretation of subdivision
11 (j)(2). Subdivision (j)(2)(B) provides that if the local agency "fails to provide the required
12 documentation pursuant to subparagraph (A), the housing development project shall be deemed
13 consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance,
14 standard, requirement, or other similar provision." (Govt. Code, § 65589.5, subd. (j)(2)(B).) The
15 documentation required in subparagraph (A) is: "written documentation identifying the provision
16 or provisions [to which the project is inconsistent, not in compliance, or not in conformity], and
17 an explanation of the reason or reasons it considers the housing development to be
18 inconsistent, not in compliance, or not in conformity". (Govt. Code, § 65589.5, subd. (j)(2)(A).)
19 Subdivision (j)(2)(B) does not make reference to the timing set forth in subdivisions (j)(2)(A)(i) or
20 (j)(2)(A)(ii). Here, the planning application was deemed complete on April 1, 2019. (AR 3430-
21 3462 [ROA 81].) With its denial of the application, Respondent provided its findings. The
22 findings identified the applicable provisions and an explanation of the reasons it considered the
23 project to be inconsistent, not in compliance, or no in conformity. (AR 2774-2780 [ROA 76].)

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1 VIII. Respondent's Rejection of the Project Violated the HAA

2 A. Standard of Review

3 To the extent this decision rests on factual issues, the Court examines the findings of the
4 public entity itself and the relevant materials in the administrative record to determine whether
5 the decision should be upheld, reviewing the City's action. "[I]nstead of asking, as is common in
6 administrative mandamus actions, 'whether the City's findings are supported by substantial
7 evidence'," the Court inquires, "whether there is 'substantial evidence that would allow a
8 reasonable person to conclude that the housing development project' complies with pertinent
9 standards." (*California Renters Legal Advocacy and Education Fund v. City of San Mateo*,
10 *supra*, __ Cal.App.5th at p. __ [2021 D.A.R. at p. 9578].) Substantial evidence has been
11 defined as evidence of " 'ponderable legal significance . . . reasonable in nature, credible, and of
12 solid value [, and] . . . relevant evidence that a reasonable mind might accept as adequate to
13 support a conclusion'" (*Young v. Gannon* (2002) 97 Cal.App.4th 209, 225 [quoting
14 *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335].) Questions of law,
15 including the proper interpretation of a statute, are reviewed independently. However, the Court
16 may take into account an agency's interpretation of its own rules in appropriate circumstances.
17 (*Ibid.*)

18 B. The Standards With Which Respondent Required the Project to Comply, Were
19 not Objective as Defined by Subdivision (h)(8)

20 In applying the HAA, the Court must determine whether Respondent required the project
21 to comply with applicable, objective general plan, zoning, and subdivision standards and criteria,
22 including design review standards, in effect at the time that the application was deemed
23 complete, which would allow Respondent to disapprove the project if they were not satisfied.
24 (*California Renters Legal Advocacy and Education Fund v. City of San Mateo, supra*, __
25 Cal.App.5th at p. __ [2021 D.A.R. at p. 9578]; Govt. Code, § 65589.5, subd. (j)(1).) Petitioner
26

1 contends that the standards with which Respondent required the project to comply, were not
2 objective, as defined by subdivision (h)(8). (Mot., at pp. 24-26.) Subdivision (h)(8) defines
3 "objective" as "involving no personal or subjective judgment by a public official and being
4 uniformly verifiable by reference to an external and uniform benchmark or criterion available and
5 knowable by both the development applicant or proponent and the public official." (Govt. Code,
6 § 65589.5, subd. (h)(8).) Whether the land use, circulation, and zoning standards are objective
7 for the purposes of the HAA is a question of law. (*California Renters Legal Advocacy and*
8 *Education Fund v. City of San Mateo, supra*, ___ Cal.App.5th at p. ___ [2021 D.A.R. at p.
9 9579].)

10 In denying approval of the project, Respondent found that the project's design was not
11 consistent with the General Plan and the BECSP in that it failed to further a number of land use
12 and circulation goals and policies contained in the General Plan and the BECSP (Goal LU-1,
13 Policy LU-1D, Goal LU-3, Policy LU-3A, Policy LU-3C, Goal CIRC-1c, Policy CIRC-1F, and
14 Policy CIRC-1G). These standards provided in relevant part:

15 Land Use Element

16 Goal LU-1: New commercial, industrial, and residential development is
17 coordinated to ensure that the land use pattern is consistent with the overall goals and
18 needs of the community.

19 Policy LU-1D: Ensure that new development projects are of compatible
20 proportion, scale and character to complement adjoining uses.

21 Goal LU-3: Ensure that future development and reuse projects are consistent
22 with the Land Use Map to provide connections between existing neighborhoods and city
23 attractions.

24 Policy LU-3C: Ensure connections are well maintained and safe for users.

25 Circulation Element

1 Goal CIRC-1c: Through ongoing evaluation of jurisdiction, efficient transportation
2 management provides the highest level of safety, service and resources.

3 Policy CIRC-1F: Require development projects to provide circulation
4 improvements to achieve stated City goals and to mitigate to the maximum extent
5 feasible traffic impacts to adjacent land uses and neighborhoods as well as vehicular
6 conflicts related to the project.

7 Policy CIRC-1G: Limit driveway access points, required driveways to be wide
8 enough to accommodate traffic flow from and to arterial roadways, and establish
9 mechanisms to consolidate driveways where feasible and necessary to minimize
10 impacts to the smooth, efficient, and controlled flow of vehicles, bicycles, and
11 pedestrians.

12 (AR 2778 [ROA 76].)

13 Respondent also found that the project did not comply with the provisions of the
14 Huntington Beach Zoning and Subdivision Code, in that it did not further the vision of the Town
15 Center Neighborhood Segment of the BECSP (Titles 20 through 25). (AR 2777-2780 [ROA
16 76].) It appears that Titles 20 through 25 encompass the entire zoning code. (See
17 www.qcode.us/codes/huntingtonbeach/.) Respondent did not specify the particular zoning
18 codes with which the project was not in compliance. The only reason given, on its face,
19 requires interpretation and subjective judgment.

20 As the court noted in *California Renters Legal Advocacy and Education Fund v. City of*
21 *San Mateo, supra*, ___ Cal.App.5th at p. ___ [2021 D.A.R. at p. 9582], the HAA does not
22 prevent local agencies from establishing and enforcing appropriate design review standards.
23 Also, even if the standards are not objective, the HAA does not bar local agencies from
24 imposing conditions of approval; rather, it prohibits conditions of approval “that the project be
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1 developed at a lower density,” unless public health or safety findings are made. (*Ibid.*,
2 emphasis in original [citing Govt. Code, § 65589.5, subd. (j)(1)].)

3 C. There was Substantial Evidence That Would Allow a Reasonable Person to
4 Conclude That the Project was Consistent, Compliant, or in Conformity With Such Standards

5 Whether the project is consistent with those standards is one of fact to be evaluated under the
6 standards of subdivision (f)(4). (*California Renters Legal Advocacy and Education Fund v. City*
7 *of San Mateo, supra*, ___ Cal.App.5th at p. ___ [2021 D.A.R. at p. 9579].) Subdivision (f)(4)
8 provides: “For purposes of this section, a housing development project . . . shall be deemed
9 consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance,
10 standard, requirement, or other similar provision if there is substantial evidence that would allow
11 a reasonable person to conclude that the housing development project . . . is consistent,
12 compliant, or in conformity.” (Govt. Code, § 65589.5, subd. (f)(4).)

13 For much of the same reasons that the standards were not objective, there was
14 substantial evidence that the project was consistent, compliant, or in conformity with such
15 standards. The Planning Commission Staff Report determined that the project met all
16 applicable land use standards and were consistent with the goals and policies of the General
17 Plan, including land use goals and policies and circulation goals, and the zoning. (AR 1409-
18 1414 [ROA 70].) Specifically, the report stated: “The General Plan Land Use Map designation
19 on the subject property is Mixed Use - Specific Plan Overlay. The proposed project is
20 consistent with this designation and the goals and policies of the City’s General Plan . . .” (AR
21 1409 [ROA 70].) With regards to the goals and policies of land use, the report stated:

22 The proposed mixed-use development is consistent with the Beach and Edinger
23 Corridors Specific Plan which encourages building to orient towards streets, wider
24 walkways, and larger open space areas to enhance the pedestrian and public
25 experience. Approximately 2,703 sq. ft. of public open space will be provided in a plaza
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1 accessible from Ellis Avenue. This area will be designed with enhanced landscaping,
2 seating areas, and visually appealing amenities. The architecture of the building is
3 contemporary, incorporating notches, major façade composition changes to break up the
4 massing of the building at street frontages. Brick veneer is applied along the base of the
5 building with canopies at entrances to cater to the pedestrian scale. The façade skyline
6 is then capped with parapets and articulating rooflines. Additionally, this mixed-use
7 development will provide an on-site commercial component and is proposed within close
8 proximity of new and existing commercial uses thus reducing the need for automobile
9 use. By permitting a mix of land uses closer together, greater interaction will occur
10 between developments and further the vision and viability of the BECSP.

11 (AR 1409 [ROA 70].)

12 With regards to circulation, the report stated:

13 Although the site is relatively narrow, the proposed streetscape will create continuity with
14 new and existing development along the Beach Boulevard corridor by providing a
15 sidewalk with new landscaping to buffer pedestrians from the vehicular thoroughfare.
16 Pedestrian connectivity is improved with landscaping and architectural elements through
17 the proposed public open space and wider sidewalks. The project is serviced by an
18 existing bus stop at the intersection of Beach Blvd. and Ellis Ave. and also provides
19 bicycle parking in the underground parking structure to accommodate alternative
20 methods of transportation.

21 (AR 1410 [ROA 70].)

22 Finally, as to zoning, the report's table showed "an overview of the project's
23 conformance to the significant development standards of the BECSP." (AR 1411; see AR
24 1411-1414 [ROA 70].) The report again noted: "As discussed under the Zoning Conformance
25 section of this report, the project complies with the BECSP development code and does not
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1 include any requests to deviate from the development standards.” (AR 1414 [ROA 70].) The
2 plausibility of the views of the Planning Commission Staff and Respondent demonstrates that
3 the standards are not objective and that a reasonable person could conclude the project
4 satisfies them. (*California Renters Legal Advocacy and Education Fund v. City of San Mateo*,
5 *supra*, ___ Cal.App.5th at p. ___ [2021 D.A.R. at p. 9582].) Given the detailed explanation
6 that was reasonable in nature in the Planning Commission Staff Report, there was substantial
7 evidence that would allow a reasonable person to conclude that the project was consistent,
8 compliant, or in conformity with an applicable plan, program, policy, ordinance, standard,
9 requirement or other similar provision.

10 Respondent argues that staff approval cannot substitute the discretion provided to the
11 Planning Commission and City Council. (Opp. at p. 11.) This argument was rejected in
12 *California Renters Legal Advocacy and Education Fund v. City of San Mateo, supra*, ___
13 Cal.App.5th at p. ___ [2021 D.A.R. at p. 9585]. That court reasoned that because there must
14 be substantial evidence that would allow a reasonable person to conclude the project was
15 compliant, “[t]here is thus no basis for concern that subdivision (f)(4) would require project
16 approval based solely on the unsupported opinion of a single person, or on evidence that a
17 reasonable person would not find credible and persuasive.” (*Ibid.*)

18 D. There was not a Preponderance of the Evidence on the Record That the Project
19 Would Have a Specific, Adverse Impact Upon the Public Health or Safety and There was no
20 Feasible Method to Satisfactorily Mitigate or Avoid the Adverse Impact

21 In the absence of health and safety findings, a local agency may not disapprove a
22 project that complies with applicable, objective general plan, zoning, and subdivision standards
23 and criteria. (Govt. Code, § 65589.5, subd. (j)(1).) Respondent bears the burden to show that
24 its decision to deny of approval of the project was based upon written findings supported by a
25 preponderance of the evidence on the record that both the project would have a specific,
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1 adverse impact upon the public health or safety and there was no feasible method to
2 satisfactorily mitigate or avoid the adverse impact identified other than the disapproval of the
3 project. A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable
4 impact, based on objective, identified written public health or safety standards, policies, or
5 conditions as they existed on the date the application was deemed complete." (Govt. Code, §
6 65589.5, subd. (j)(1)(A).)

7 Here, Respondent found that the project had a negative impact to health and safety "due
8 to unsafe ingress/egress conditions caused by the project." Respondent relied upon the reports
9 of Traffic Expert Mark Miller and fire Code/Life Safety Expert James McMullen. (AR 2776 [ROA
10 76].) Both reports referred to issues with the "porkchop" raised island which was not in the
11 original proposed project. Rather, the porkchop design was proposed by THDT Investment in
12 response to concerns raised by the planning commission. (See AR 2304-2306 [ROA 73]; AR
13 2380 [ROA 73]; AR 2391 [ROA 75].) Miller's report referred to no objective, identified written
14 public health or safety standards, policies or conditions. (See AR 2376-2386 [ROA 73].)
15 McMullen's report referred to issues that "should be resolved prior to approval of the project,"
16 therefore could be mitigated. (AR 2389 [ROA 75].) The only objective, identified written public
17 health or safety standard was City Specification No. 401, which was only as to the alternative
18 porkchop design. (AR 2391 [ROA 75].) Since this safety standard was as to an alternative
19 design, there was a feasible method to mitigate it. THDT Investment could simply use the
20 original design. Accordingly, Respondent failed to meet its burden that its denial of approval of
21 the project was based upon written findings supported by a preponderance of the evidence on
22 the record that both the project would have a specific, adverse impact upon the public health or
23 safety and there was no feasible method to satisfactorily mitigate or avoid the adverse impact
24 identified other than the disapproval of the project.

1 Thus, Respondent did not proceed in the manner required by law in denying approval of
2 the project.

3 IX. Respondent did not act in bad Faith When it Disapproved the Project

4 Finally, the Court finds that Respondent did not act in bad faith when it disapproved the
5 project. The HAA has been amended multiple times by the Legislature. But Respondent did
6 not have the benefit of any cases interpreting the key provisions of the HAA applicable to this
7 case. Indeed, until *California Renters Legal Advocacy and Education Fund v. City of San*
8 *Mateo*, which was published after Petitioner filed its memorandum of points and authorities for
9 its motions to vacate the judgment and for new trial, there was no case even deciding the
10 constitutionality of the HAA's application to charter cities.

11 X. Conclusion


12 In conclusion, the motion to issue the writ of mandate is granted. The Court will issue a
13 writ of mandate ordering Respondent to comply with the HAA. This order is not intended to
14 preclude Respondent from reviewing the project's compliance with objective standards in effect
15 at the time the application was deemed complete. (See *California Renters Legal Advocacy and*
16 *Education Fund v. City of San Mateo, supra*, ___ Cal.App.5th at p. ___ [2021 D.A.R. at p.
17 9586].)

18 Upon the filing of the statement of decision, the Court will order Petitioner to submit a
19 proposed writ of mandate and a proposed judgment in conformity with the statement of
20 decision. The Court will also order Petitioner to serve the proposed writ of mandate and
21 proposed judgment upon the parties pursuant to the Code of Civil Procedure. Petitioner will
22 also be ordered to pay the fee for issuance of the writ of mandate. (Govt. Code, § 70626, subd.
23 (a)(1).) The writ of mandate will not be issued without the fee being paid.

24 The Court declines to award any attorney's fees at this time, subject to any timely-filed
25 motion for attorney's fees.

1 The Clerk is ordered to file this this proposed statement of decision and serve it upon all
2 parties.

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5 Dated: 10/4/2021


Deborah C. Servino
Judge of the Superior Court