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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

SONJA TRAUSS, and SAN FRANCISCO BAY AREA RENTERS FEDERATION ,

Petitioners,

vs.

CITY OF LAFAYETTE, A MUNICIPAL COMMUNITY, and DOES 1-25,

Respondents.

O'BRIEN LAND COMPANY, LLC and ANNA MARIA DETTMER, AS TRUSTEE OF THE AMD FAMILY TRUST,

Real Parties in Interest,

Case No. MSN 15-2077

REAL PARTIES IN INTEREST'S OPPOSITION TO PETITIONERS SONJA TRAUSS AND SAN FRANCISCO BAY AREA RENTERS FEDERATION'S PETITION FOR WRIT OF ADMINISTRATIVE MANDATE

ASSIGNED FOR ALL PURPOSES TO: JUDGE JUDITH CRADDICK, DEPT. 9

Action Filed:	December 8, 2015
Trial Date:	None Set
Hearing Date:	January 25, 2017
Time:	9:00 a.m.
Dept.:	9

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I. INTRODUCTION

In this case, Petitioners are seeking to create new law and turn the Housing Accountability Act ("HAA") on its head. The HAA (Government Code Sec. 65589.5[1]) applies where a *local agency* disapproves a developer's project, or approves it at a lower density than proposed by the developer without making required findings justifying such actions. Here, neither of those events occurred.

Here, the *developer*, after initially considering one project, *voluntarily* chose to suspend that project *prior to any decision by the City*, and, instead, the developer pursued a different project that the City then approved at the proposed density. Under these facts, the HAA has no application. The HAA was not adopted to limit a developer's discretion on what project to pursue on its property, however that is precisely the aim of Petitioners' suit.

Petitioners claim that the City of Lafayette ("City") violated the HAA by approving a project as ultimately proposed by the developer, i.e., Real Parties in Interest O'Brien Land Company, LLC and Anna Maria Dettmer (collectively, "Real Parties"). Through this suit, Petitioners are attempting to require the City to approve, and the Real Parties to build, a project that the Real Parties shelved over two years ago and are no longer pursuing. The HAA does not go so far.

The HAA clearly is not applicable. The City never disapproved any project proposed by Real Parties, nor did it approve a project at a lower density than sought in the relevant development application. As is commonplace in development projects, the project proponent decided to pursue a different project than one initially contemplated. The City approved the one and only project that Real Parties put to a vote of the City Council.

Petitioners don't like this outcome. They prefer that Real Parties build a different project. In support of their HAA claim, they rely on unsubstantiated claims of "extortion" by the City and ask this Court to make new law by finding that a city's approval of a project sought by applicant should be considered a formal disapproval of the earlier project that Real Parties were no longer

[1] Unless specified otherwise, all section references herein are to the California Government Code.

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pursuing. Neither the HAA, nor any case interpreting the HAA, supports this contention. Petitioners petition for a writ of mandate under the HAA should be denied.

II. STATEMENT OF FACTS

The Statement of Facts can be divided into four parts: (i) the Real Parties' initial applications for an apartment project (the "Terraces Project"), (ii) a tolling agreement between Real Parties and the City; (iii) the Alternative Process Agreement between the Real Parties and the City; and (iv) the Real Parties' application for, and the City's approval of, the Homes at Deer Hill Project (the "Deer Hill Project").

A. Terraces Project

On March 21, 2011, Real Parties submitted applications to develop a 315-unit apartment project called the Terraces of Lafayette. At the time, the project site had a general plan and zoning designation of Administrative Professional Office, allowing professional office buildings, and (with a use permit) multi-family apartments.[2] (Administrative Record ("AR") 7, 20.) The Terraces Project was proposed to be restricted to moderate-income households. (AR 2, 62, 486.)

The City prepared an environmental impact report ("EIR") for the Terraces Project pursuant to the California Environmental Quality Act (Public Resources Code § 21000 *et seq.*) ("CEQA") and certified it on August 12, 2013. (AR 5399.) The EIR identified 13 significant and unavoidable impacts resulting from the Terraces Project. (AR 153, 169, 5399.) The City did not vote on, consider, or take any action, regarding the merits of the Terraces Project. (AR 116 [Mayor clarified that action before the Council was certification of the EIR only, and City was not taking any action on the project], 137 [motion states that Council made "no decision on the underlying entitlement"].)

B. Tolling Agreement

Real Parties voluntarily proposed and the City agreed to enter into a "tolling agreement" on September 9 and 23, 2013, to preserve the parties' rights regarding the EIR pending the City's

[2] In other words, a purely non-residential, office project could have been pursued on the site under the general plan and zoning designation.

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future consideration of the Terraces Project. (AR 486, 5399.)

C. Process Agreement

On January 22, 2014, after three public hearings, the Real Parties and the City entered into an Alternative Process Agreement ("Process Agreement") to suspend the processing of the Terraces Project, in order for the Real Parties to instead pursue a different project: the Homes at Deer Hill ("Deer Hill Project"). (AR 486.) The Deer Hill Project, rather than consisting only of housing, would feature two components: (1) a 44 to 45 single-family residential subdivision, and (2) a community component consisting of public parkland, paths and bike trails, a soccer/lacrosse field, a playground, dog park, ADA accessible walkway, public restrooms, and a parking lot. (AR 487-488.)

The Process Agreement specifically states as follows:

> By this Agreement, the intent of the Parties is to: (i) set forth a process for the consideration of the [Deer Hill Project]; (ii) "suspend" the [Terraces] Project pending the consideration of the [Deer Hill] Project; and (iii) preserve all of the rights and defenses of the [Real Parties] and City with regard to the [Terraces] Project until the City Council makes a determination on the [Deer Hill Project.] (AR 486 [at Recital E].)

The Process Agreement was not challenged by Petitioners at the time of its approval. The Petitioners did not appear or comment at any public hearing regarding the adoption of the Process Agreement. (AR 180-249, 270-468, 502-681.) Their first appearance at any public hearing regarding these issues was in August 2015, approximately 19 months *after* the Process Agreement was adopted. (AR 4740.) No parties appeared at the public hearings for the Tolling Agreement and Process Agreement and claimed the City had "forced," "strong-armed" or coerced Real Parties into suspending the Terraces Project and pursuing the Deer Hill Project. Such claims have only been made by Petitioners in after-the-fact pleadings.

D. Real Parties' Applications for the Deer Hill Project.

Real Parties submitted a development application for the Deer Hill Project on March 19, 2014 (AR 971-1021), including a general plan amendment, rezoning, subdivision map, and hillside development permit. (AR 974.) A general plan amendment was needed to change the then-existing designation of Administrative/Professional Office/Multifamily Residential, to Low

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Density Single Family (AR 975) as well as a conforming zoning amendment from Administrative Professional Office to Planned District. (AR 975.) Since the Deer Hill Project differed significantly from the previously proposed Terraces Project, a Supplemental EIR ("SEIR") was prepared to address the specific impacts of the new, Deer Hill Project. (AR 1234.) The SEIR identified two significant and unavoidable impacts of the Deer Hill Project. (AR 1234.) The SEIR was certified by the City Council on August 10, 2015. (AR 5396.)

The City held over 10 hearings/meetings regarding impacts and/or merits of the Deer Hill Project. In addition, the Planning Commission, Parks, Trails, and Recreation Commission, Design Review Commission, and Circulation Commission each met multiple times to consider aspects of the Deer Hill Project under their respective purview. (AR 5540-5542, 6190-6191.) Until the August 2015 hearings on the general plan amendment, the Petitioners had never appeared at any public hearing or submitted any comments regarding development plans for the site. (AR 4740-4741, 4770-4771.)

On August 10, 2015, by Resolution No. 2015-51, the City Council approved the general plan amendment for the Deer Hill Project. (AR 5539-5545.) The general plan amendment became effective 30 days later on September 9, 2015. (AR 5543.) Representatives of the Real Parties confirmed on the record that Real Parties were "voluntarily processing" and "voluntarily working with the City" on the Deer Hill Project. (AR 5386.) The City approved the rezoning by Ordinance No. 641, along with the tentative subdivision map and hillside development permit for the Deer Hill Project on September 14, 2015. (AR 6183, 6188-6209.)

The Petitioners filed the present action on December 8, 2015, and served it on the City on December 9, 2015 (91 days after the general plan amendment became effective). (Request for Judicial Notice ("RJN"), Ex. 4 [docket entry showing service on the City on December 9, 2015].)

In summary: (i) the City Council never held a vote, considered or made a decision on the Terraces Project; (ii) the Real Parties voluntarily proposed the tolling agreement and voluntarily entered into the Process Agreement in which they decided to suspend the processing of the Terraces Project; and (iii) thereafter, the Real Parties voluntarily proposed – and the City approved

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– the Deer Hill Project, including the general plan amendment and related applications with the residential density proposed by Real Parties.

III. ARGUMENT

A. Standard Of Review

Actions to enforce the HAA must be brought as administrative mandamus actions pursuant to Code of Civil Procedure Section 1094.5. (Gov. Code § 65589.5(m); *Honchariw v. County of Stanislaus* (2011) 200 Cal.App.4th 1066, 1072.) Section 1094.5(b) pertains to judicial review of administrative decisions and states:

> The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

The court's review is limited to the Administrative Record, and the issue is limited to whether there is substantial evidence in the record to support the city's decision. The substantial evidence standard is deferential and provides that the agency's decision will be upheld if there is substantial evidence to support it. (*People v. Semaan* (2007) 42 Cal.4th 79, 88.) Substantial evidence means evidence that is "reasonable . . . , credible, and of solid value . . . ." (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633 (quoting, *Estate of Teed* (1952) 112 Cal.App.2d 638, 644).) In considering the sufficiency of the evidence, the court does not re-weigh the evidence, it only examines whether there is substantial evidence to support the agency's decision. (*Crail v. Blakely* (1973) 8 Cal.3d 744, 750; *Rubin v. Los Angeles Federal Savings & Loan Assn.* (1984) 159 Cal.App.3d 292, 298.) In making the determination whether substantial evidence supports the agency's findings, the reviewing court must resolve reasonable doubts in favor of the administrative findings and decision. (*Topanga Assn. for a Scenic Community v. City of Los Angeles* (1974) 11 Cal.3d 506, 514.)

Here, Petitioners claim that the burden of proof is on the City, under Government Code § 65589.6. However, Section 65589.5 merely states the City bears the burden of proof that "its decision has conformed to all the conditions specified" in the HAA in any action challenging "the

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validity of a decision" by a city "to disapprove a project or approve a project upon the condition that it be developed at a lower density." Here, there was no "decision" by the City to disapprove any project, nor was any project approved upon the condition that it be developed at a lower density. In other words, the issue is not whether the City conformed to the HAA's provisions, but whether the HAA applies at all. Ample substantial evidence and case law supports the conclusion that the HAA does not apply.

As explained herein, it is undisputed that the City never voted on the Terraces Project – never voted to disapprove it, or approve it upon the condition that it be developed at a lower density. Instead, Real Parties opted to suspend the processing of the Terraces Project before it reached a vote, and pursue an entirely different project – the Deer Hill Project – which the City approved without any reduction in density.

By contrast, Petitioners, without any evidentiary support, assert that the City used "extortion" to force Real Parties to enter the Process Agreement (entered more than 19 months *before* Petitioners first commented on development at this site) and to suspend the Terraces Project and pursue the Deer Hill Project instead. In making this extraordinary accusation, Petitioners do not cite to the Administrative Record, to California codes, or to any appellate case law. Petitioners alternatively argue that approval of the Deer Hill Project was actually an "approval" of the Terraces Project conditioned upon a reduced density or a de facto denial of the Terraces Project. As explained, neither argument withstands scrutiny or is supported by any substantial evidence or applicable legal authority.

B. The City's Actions Did Not Violate The Housing Accountability Act

1. Petitioners Conflate Two Separate Provisions of the HAA

Petitioners improperly merge and confuse Sections 65589.5(d) and (j). Sections 65589.5(d) and (j) are separate and independent sections, intended to apply in wholly different circumstances. Section (d) applies solely to cases where a city has made a *formal vote and decision* on an *affordable housing project*. Here, the City never held a vote and never made such decision on the Terraces Project. Section (j), by contrast, applies to *any residential housing project*. It too requires a formal decision to disapprove a project (or approve on the condition that

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it be developed at a lower density), but its application is strictly limited to those narrow cases where the City has determined that *the housing project being proposed is consistent with the city's "applicable objective general plan and zoning standards."* Here, the City did not disapprove, or even vote on, the Terraces Project, nor did it ever determine that it was consistent with the City's "applicable objective general plan and zoning standards." Instead, the City approved the Deer Hill Project at the density proposed by Real Parties.

When properly considered, it is clear that neither Section 65589.5(d) or (j) applies here.

2. Section 65589.5 (d) Applies Only Where the City Has Made a Formal Decision on an Affordable Housing Project.

Pursuant to section 65589.5 (d), a city shall not "disapprove" a housing development project for "very low, low or moderate income households" without making one of several findings.

> A local agency shall not disapprove a housing development project . . . for very low, low, or moderate income households, or condition approval in a manner that makes the project infeasible for development . . . unless it makes written findings . . . based upon substantial evidence in the record…

The HAA specifically defines "disapproval" of a housing project as including "any instance in which a local agency does either of the following:

> (A) *Votes on a proposed housing development project application and the application is disapproved.*
>
> (B) Fails to comply with the time periods specified in [Gov. Code § 65950(a)(1)].

(Gov. Code § 65589.5(h)(5)(A-B).)[3]

Though the Terraces Project was proposed as an moderate income housing project (AR 2, 62, 486), the Administrative Record clearly shows that the City never voted on, or considered the merits of the Terraces Project. (AR 116, 137 [City made no decision on Terraces Project] , 486 [Process Agreement suspending processing of Terraces Project], 489.) As such, the City did not

[3] Section (5)(B) references the Permit Streamlining Act and is discussed at Section III.C.4, below.

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"disapprove," or "conditionally approve" the Terraces Project. Instead, pursuant to the Process Agreement, Real Parties voluntarily suspended the Terraces Project, and pursued the Deer Hill Project, which did not qualify as affordable housing project, and as such, was not subject to Section 65589.5(d). (AR 486-489.)

As noted above, the HAA requires that challenges be brought via a writ of mandate under Code of Civil Procedure section 1094.5. (Gov. Code § 65589.5(m).) A writ of mandamus may only be issued to review an administrative decision that is final. (Code Civ. Proc. § 1094.5(a),(b); *California Administrative Mandamus* § 3.19 (CEB 2015) ("Under CCP 1094.5(a), a writ of administrative mandamus may be issued to review an administrative writ only if it is final.") The administrative writ procedure is the exclusive remedy for challenging *the final adjudicative decision* of a state or local agencies. (*California Administrative Mandamus* at §1.8) Such procedure applies to all zoning and land use decisions. (See *Fort Mohave Indian Tribe v. California Dept. of Health Serv.* (1995) 38 Cal.App.4th 1574.)

For the HAA to apply to the Terraces Project, the City would have had to make a formal vote to disapprove or conditionally approve the Terraces Project. (*Schellinger Brothers v. City of Sebastopol* (2009) 179 Cal.App.4th 1245, 1262 [the HAA "specifically pegs its applicability to the *approval, denial or conditional approval* of a 'housing development project' (emphasis added)].) The City of Lafayette, like most California cities, acts through its City Council as the authority on all legislative approvals (general plan amendments and rezonings), and through its Planning Commission regarding quasi-judicial approvals (use permits, tentative maps, development plans), with administrative appeal rights to the City Council. (See *Curtin's California Land Use and Planning Law* (2013) Ch. 1, pp. 6-7.) The City does make project-level decisions to deny/approve development projects through its city manager.

The Petitioners' own pleadings confirm that the City, through its City Council and/or Planning Commission, never made a decision on the Terraces Project, or voted on it, and indeed never even considered the Terraces Project for formal approval or disapproval.

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> On December 9, 2013 – 2 ¾ years after the initial application *and no closer to approval than when the [Terraces] Project was submitted*—Steven Falk, Lafayette City Manager, made a presentation before Lafayette City Council [regarding the Deer Hill Project]." (Second Amended Petition ¶ 6 [emphasis added].)

As noted above, the City never held project-level hearings for approval or disapproval of the Terraces Project. Instead, Real Parties agreed, pursuant to the Process Agreement, to "suspend" the Terraces Project and place it on hold, and to file new applications and process the Deer Hill Project with its mix of residential and community uses. (AR 486-489.)

No members of the public appeared at the hearings on the Process Agreement and submitted any evidence to suggest that the City was "strong-arming" Real Parties to suspend the Apartment Project. Indeed, the Administrative Record shows *just the opposite*: citizens were concerned that the Real Parties and its attorneys might have been pressuring the City into approving the Deer Hill Project. (AR 159 [citizen comment seeking assurances that the City is not being bullied into this agreement by Real Parties].)

Following execution of the Process Agreement, the Real Parties filed new applications for the Deer Hill Project. (AR 971-1021.) All separate applications for the Deer Hill Project were ultimately approved by the City as proposed by Real Parties. (AR 5539-5545, 6188-6209.)

Petitioners claim that, as part of the Process Agreement, the City must have "strong-armed" Real Parties by presenting them with a choice: either proceed with the Terraces Project, face certain disapproval and endure significant, costly litigation, or (ii) accede to the City's lower density project and *thereby avoid all litigation*. (Pets' Op. Br. at 8:5-8.) Again, this is Petitioners' central claim – yet Petitioners cite to no evidence in the Administrative Record.[4]

Instead, the Administrative Record shows *this supposition is patently untrue*. The City did not "strong arm" Real Parties by convincing Real Parties that they could avoid litigation by pursuing the Deer Hill Project. The City and Real Parties were well aware that many citizens

[4] Petitioners in administrative mandamus actions must support all recitations of fact with support by citations to the record and addresses evidence in their brief that supports, as well as contradicts, the agency's action. Failure to do so is fatal. (See e.g., *Jacobson v. County of Los Angeles* (1977) 69 Cal.App.3d 374, 388.)

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objected to any development on the site and would likely – and ultimately did – file litigation against the Deer Hill Project. (See e.g., AR 6116-6117 [opposition letter from Save Lafayette organization].) Indeed, citizens opposing the Deer Hill Project twice filed suit: *Save Lafayette v. City/Real Parties in Interest* (Contra Costa County Superior Court Case No. MSN15-1522 [challenging Supplemental EIR for Deer Hill Project (case dismissed on January 29, 2016)]; *Save Lafayette v. City of Lafayette* (Contra Costa County Superior Court Case No. MSN16-0390 [concerning City denial of referendum signatures against Deer Hill Project; City decision upheld by Judge Spanos on July 5, 2016; appeal pending in Court of Appeal].) Petitioners' claim that pursuing the Deer Hill Project allowed the City and Real Parties to "avoid litigation" is false.

Petitioners claim, again without citation, that the definition of "disapproval" set forth in section 65589.5(h)(5) applies to situations where the developer suspends one application, and thereafter submits another, separate application. (Pets' Op. Br. at 12:17 n.7.) The plain language of the statute does not support Petitioners' strained interpretation. Where an applicant suspends processing of a project, and a city only votes on a different project, there is no disapproval of the suspended project since it is no longer being processed by the applicant or considered by the city. Petitioners' reading would result in an absurdity and result in lawsuits by housing advocates whenever a developer withdraws, revises or amends an application for any reason.

On its face, the "plain meaning" of section 65589.5(d) is clear: (i) a city shall not disapprove, or conditionally approve, a proposed affordable housing project, without making certain findings required by the HAA; and (ii) the city's disapproval/conditional approval of the proposed affordable housing project must be a city decision, made by vote. Such section, on its face, does not include the developers' voluntary suspension of one project, and its decision to apply for and pursue of a different project that is later approved at the density sought in the developer's relevant application.

When statutory language, standing alone, is clear and unambiguous, that is, has only one reasonable construction, courts adopt the plain or literal meaning of that language. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 775.). The plain meaning of the words of a statute may be disregarded only when the application of their literal meaning would inevitably

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produce absurd consequences, or frustrate the manifest purposes which appear from the face of the legislation when considered as a whole. (*Faria v. san Jacinto Unified School Dist.* (1996) 50 Cal.App.4th 1939, 1945).

Nothing in the HAA purports to force a developer to stick with its initial application or restrict it from pursuing a different project midstream. The HAA was enacted to require a city to make findings when it makes a "decision" to disapprove a housing project. (See Sections 65589.5(a)(4), (d).) Section 65589.5(d) clearly requires that when a decision to disapprove an affordable project is made by formal vote, then, and only then, are certain findings required.

The California Supreme Court clearly defined the relationship between formal "decisions" by local agencies, and required "findings" to support the formal decisions. The leading case on decisions and findings is *Topanga Association For A Scenic Community et al v. County of Los Angeles* (1989) 214 Cal.App.3d 1348. The Supreme Court confirmed that findings are necessary to form a bridge between the evidence in the administrative record, and the public agency's formal "decision."

> It is enough if the findings form an analytic bridge between the *evidence* and the agency's *decision* . . .
>
> '[W]here reference to the administrative record informs the parties and reviewing courts of the theory on which the agency has arrived at its ultimate *finding and decision* it has long been recognized that the *decision* should be upheld....' [citation omitted] (*Topanga*, 214 Cal.App.3d at 1356.)

Here, at the time the Real Parties voluntarily suspended the Terraces Project, the City had not made any "decision" to approve or disapprove that project. There is absolutely nothing in the HAA, or any appellate case interpreting the HAA, that would require the City to make findings where it was not voting on an application before it.

Petitioners cite language by the Real Parties and the City Manager, while the Terraces Project was being proposed, referencing the potential application of the HAA. Petitioners cite such language as "proof" that the HAA must apply to this case. Such cites are taken entirely out of context. Both the Real Parties and the City were aware of the HAA and its *potential* application by Real Parties (1) had Real Parties proceeded with the Terraces Project to a formal approval vote

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by the City, *and* (2) the City had voted to disapprove the Terraces Project or approved it on the condition that it be developed at a lower density. (AR 153 [City Manager explaining a potential developer lawsuit if City denies Terraces Project].) The cited comments were made prospectively, in anticipation of a possible HAA action by Real Parties if the City disapproved the Terraces Project.

Real Parties, of course, never filed an action under the HAA because they voluntarily suspended the Terraces Project (meaning the City never voted on that project), and, instead, submitted separate applications for the Deer Hill Project, including the general plan amendment, rezoning and other separate land use approvals. (AR 486-487, 971-1021.)

Under Petitioners' theory, the Petitioners would have rights under the HAA beyond those of the property owner and developer. Had the Real Parties brought an HAA suit on the Terraces Project prior to the City making a decision denying/approving the Terraces Project, such suit would have been summarily dismissed by the court as premature. (Civ. Proc. Code § 1094.5(a) [requiring a final administrative decision].) Petitioners, however, claim the right to bring an HAA action without any decision by the City on the Terraces Project, and without Real Parties even having an active application on the Terraces Project pending with the City.

3. Section 65589.5(j) Applies Only Where a City Determines the Proposed Housing Project Complies with Applicable Objective General Plan and Zoning Criteria.

Subsection 65589.5(j), unlike (d), is not limited to affordable housing projects. Section 65589.5(j) applies to *all* housing development projects:

> When a proposed housing development project *complies with applicable objective general plan and zoning standards and criteria , including design review standards, in effect at the time that the housing development application is determined to be complete,* but the local agency proposes to disapprove the project or to approve it upon the condition that the project is developed at a lower density, the local agency *shall base its decision* regarding the proposed development project jupon written findings supported by substantial evidence that both of the following conditions exist.
>
> (i) The housing development project would have a specific, adverse impact upon the public health or safety . . .
>
> (ii) There is no feasible method to satisfactorily mitigate or avoid the adverse impact . . .(Emphasis added.)

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Subsection (j) was contained in the original legislation adopted in 1982, and is not limited only to affordable housing projects like subsection (d). (*Honchariw. v. County of Stanislaus* (2011) 200 Cal.App.4th 1066.) Because subsection (j) applies to all housing projects, its application is narrower: it applies only where: *(i) a City makes a decision on a housing project; and (ii) the project application is consistent with the City's objective general plan and zoning standards in effect when the application was determined to be complete.*

> Section 65589.5(j) directs that a *decision* to disapprove a *project that complies with general plan and zoning standards* must be based on written findings supported by substantial evidence that (i) the project would have an adverse impact on the public health or safety, and (2) that there is no feasible method to satisfactorily mitigate or avoid this adverse impact.
>
> *Under § 65589.5(j), the City must determine whether the proposed project complies with the general plan and zoning standards.*

(*North Pacifica, LLC. v. City of Pacifica* (N.D. Cal. 2002) 2343 F.Supp.2d 1053, 1059 [disapproved on other grounds in *North Pacifica LLC v. City of Pacifica* (9th Cir. 2008) 526 F.3d 478].). Here, the City never made a decision to disapprove the Terraces Project, and never made a determination that the Terraces Project complies with applicable general plan and zoning standards. Those determinations would have been made, if at all, at the time when the City Council held project-level decision hearings on the Terraces Project. Here, there were no such hearings since Real Parties suspended processing of the Terraces Project in order to pursue the Deer Hill Project.

In *Honchariw*, cited by Petitioners, the County of Stanislaus – unlike the present situation – formally took a vote and made a decision to deny the project application. (*Honchariw*, 200 Cal.App.4th at 1079 n.8.) The County claimed the project it denied did not comply with applicable, objective general plan zoning standards, but the court found the County lacked substantial evidence to support that finding. (*Id.* at 1081.) Under such facts, Section 65589.5(j) is implicated. Here, however, the Terraces Project never came before the City Council for a vote. It was voluntarily put on hold by Real Parties. As such, there was no decision made to approve or disapprove the Terraces Project, nor was there a determination by the City as to whether the Terraces Project complied with all objective general plan and zoning standards.

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No appellate case supports application of Section 65589.5(j) when a City does not make a decision on the project. Each case cited by Petitioners in support of their claim reference a local agency's decision (i.e., denial) of an application by formal vote. (See e.g., *Honchariw*, 200 Cal.App.4th at 1079 n.8 [county denied project by a 5-0 vote].) While the statute references when an agency "proposes" to make a decision, the same sentence requires a findings based upon the actual "decision" by the agency.

Moreover, the legislative history of the HAA supports this conclusion. Documents comprising the HAA's legislative history clearly demonstrate that subsection (j) only applies where a local government makes a decision on a housing project. The Senate Republican Caucus analysis of the HAA (proposed in 1982 as SB 2011) demonstrates that the HAA was only to apply in the context where a local agency makes a decision on a proposed housing development. The analysis notes the bill "[r]equires a local agency to base its *approval or disapproval* of a proposed housing development on written findings, as specified." (RJN Ex. 1 at p. 1 [emphasis added].)

Further, the Legislative Analyst report on SB 2011 concluded "[t]his bill specifies the bases on which a local agency may decide to *disapprove, or conditionally approve* a proposed housing development that otherwise complies with the effective local general plan, zoning, and development policies." (RJN Ex. 2 at p.1(emphasis added)]; see also *Schellinger Brothers,* 179 Cal.App.4th at 1262 [HAA "specifically pegs its applicability to the approval, denial or conditional approval of a 'housing development project.'"].)

C. Petitioners' Remaining Claims Are Invalid And Unsupported By The Evidence In The Administrative Record

1. Petitioners May Not Rely on Extra-Record Evidence

The HAA requires any challenge to enforce its provisions be brought under the administrative writ provisions of Code of Civil Procedure section 1094.5. (Gov. Code §65589.5(m).) Section 1094.5 requires challenges to be based solely on evidence in the administrative record. (Code of Civ. Proc. § 1094.5(c), (e); *Western States Petroleum Ass'n v. Superior Court* (1995) 9 Cal.4th 559, 578; *City of Fairfield v. Superior Court* (1975) 14 Cal.3d 768, 771.) Here the record was prepared, certified and submitted by the City in January 2016.

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Real Parties object to any attempt by Petitioners to rely on evidence outside the administrative record, including portions of the declaration of Denise Pinkston, Sonja Trauss and Michael Henn which purport to add testimony or documents to the record. Code of Civil Procedure section 1094.5(e) expressly limits judicial review to the evidence in the record except when (1) the evidence could not with due diligence have been produced during the administrative proceedings, or (2) the administrative body improperly excluded the evidence. (*Western States*, 9 Cal.4th at 578.) Here, Petitioners make no showing that any new evidence or testimony could not have been produced during the proceedings, or that a particular piece of evidence was offered, but improperly excluded. As such, no exception to the rule against extra-record evidence applies and Petitioners' attempt to augment the record should be denied.[5]

2. The City Did Not Extort Real Parties; No Evidence Supports Such an Assertion.

Petitioners' central claim is that the City used "extortion" against the Real Parties to force them to suspend the Terraces Project and pursue the Deer Hill Project. Without any evidentiary support, Petitioners assert that the Process Agreement (entered over 19 months *before* Petitioners first commented on development at this site) was a result of "extortion" by the City.

> Let us all be clear: Developer did not voluntarily initiate an alternative to the Apartment Project; it succumbed to [the City's] extortion. (Pets' Op. Br. at 8:16-17.)

This bold claim is the key to Petitioners' entire case – and patently untrue. In making this extraordinary accusation, Petitioners do not cite to the Administrative Record, to California codes, or to any appellate case law.[6] By contrast, ample substantial evidence shows that Real Parties

[5] Real Parties expressly join in the City's Opposition to Petitioners' Motion to Augment the Administrative Record, as well as the City's Objections to the Declaration of Amicus Curiae Denise Pinkston.

[6] Extortion is a felony under California Penal Code section 518. It requires the use of force or threat to compel another person into providing money or property. Extortion is a specific intent crime requiring establishment of several specific elements, none of which are referenced by Petitioners or set forth anywhere in the Administrative Record.

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voluntarily entered the Process Agreement and voluntarily chose to suspend the Terraces Project in order to instead pursue the Deer Hill Project.

> The Parties desire to consider a project alternative to the [Terraces] Project that consists of 44-45 single-family detached homes and public parkland and parking amenities ...
>
> By this Agreement, the intent of the Parties is to: (i) set forth a process for consideration of the [Deer Hill Project]; . . . (ii) suspend the [Terraces] Project pending the consideration of the [Deer Hill Project]. (AR 486.)

The Process Agreement states that each party to it

> relied wholly on his, her or its own respective judgment, belief, knowledge, investigation, independent legal advice and research and that he, she or it has not been influenced to any extent whatsoever in making this Agreement by any representations or statements regarding the same by any other party or by any person or persons representing or acting for any other party. (AR 491.)

The Process Agreement could be terminated by the Real Parties "at any time" in their "*sole and absolute discretion*" and opted to move ahead with the Terraces Project. (AR 487 [emphasis added].) There is absolutely no evidence whatsoever that the Real Parties were extorted. Petitioners don't like the Process Agreement simply because it represents a shift by the Real Parties to pursue a different project than one initially proposed. Petitioners claim the Process Agreement must have been a "sham," and that "behind the scenes" the City must have extorted the Real Parties. Nothing supports this allegation. (See Evid. Code § 622 [recitals in written instruments conclusively presumed to be true].)

The Process Agreement was the subject of three public hearings. The minutes of these meetings confirm that Real Parties' entry into the Process Agreement was voluntary. On December 9, 2013, the Council held a hearing to initiate discussion of the Process Agreement and the Deer Hill Project was first introduced as a potential alternative to the Terraces Project. (AR 141-174.) The Mayor, speaking on behalf of the City, confirmed that no decision had been made, or would be made, regarding the Terraces or Deer Hill Projects. (AR 152 [Council not making any decision about any project].) The Deer Hill project was outlined, councilmembers and the public could ask questions and comment, and the Real Parties could respond. The City sought

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public input on whether that alternative should even move forward. (*Id.*) Real Parties stated that they believed the Deer Hill Project was a great alternative and looked forward to working with the City and public on the project plans. (AR 158.)

On January 13, 2014, the City held a second public hearing to review the potential terms of the Process Agreement. (AR 250-269.) The Mayor stated that these hearings were not an approval or denial of any project, and were to provide direction to staff on how to proceed, and whether to move forward with the Real Parties in the Process Agreement. (AR 252.) Real Parties appeared, and again confirmed agreement with the City's presentation regarding the Deer Hill Project, and with moving ahead with the Process Agreement. (AR 255.)

On January 22, 2014, the City Council held a third public hearing and considered the actual terms of the draft Process Agreement. (AR 469-485.) After all testimony, the Mayor emphasized that entering into the Process Agreement does not reject or deny any project, and indeed does not lock the City or Real Parties into any position. (AR 484.) The City and Real Parties then formally entered the Process Agreement. (AR 486-500; 5386 [Real Parties voluntarily proposed Deer Hill Project and voluntarily were working with the City].)

Petitioners claim that all of these hearings, public process, and statements in support by Real Parties were a "sham," and that the City was "extorting" the Real Parties. Petitioners' claims are absolutely baseless, and Petitioners' cite no substantial evidence in the Administrative Record.

As cited above, the only evidence in the Administrative Record clearly shows that both the City and Real Parties voluntarily, and with full public input, entered into the Process Agreement for the Deer Hill Project, and the Process Agreement did not lock the City into any decision regarding approval of the Terraces Project or the Deer Hill Project. On this basis, the City and the Real Parties voluntarily, and on a consensual basis, moved forward with the processing of the Deer Hill Project. The Administrative Record shows that there was no "extortion," but rather a thoughtful and collaborative public process.

Nothing in the HAA prohibits such a procedure. In fact, the HAA itself contemplates such actions and defers to a developers' decision to work with the local agency. The remedies contained in the HAA set out a procedure whereby, if a court finds the HAA applies, the court can

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direct certain action by agency after judgment "*unless the applicant consents to a different decision or action by the local agency.*" (Gov. Code 65589.5(k) [emphasis added].) Thus, even in situations where the HAA actually applies (unlike here), the HAA itself allows an applicant to consent to a different decision or action by the local agency. Nothing about the City and Real Parties' approval of the Process Agreement violates the HAA.

3. Terraces Project and the Deer Hill Project Are Not the "Same Project."

Realizing that the facts of this case do not fit within the HAA, Petitioners argue that the approval of the Deer Hill Project is merely a conditional approval of at a lower density of the Terraces Project – resulting in "unaffordable" housing. (Plfs' Op. Br. at 11:8-9.) Not only is this an inaccurate characterization of what occurred, nothing in the HAA forces an applicant to proceed with its initial project submittal, or to propose any affordable housing. The HAA only applies when a project is disapproved, or the local agency's approval of a the proposed project is conditioned on it being built at a lower density.[7] Here, the applicant put one project on hold, and proposed a new project (with a different type of housing and more community benefits), and that new project was approved at the density proposed by the applicate – and was not approved on the condition that it be developed at a lower density.

At any rate, the Administrative Record shows that the Deer Hill Project is a completely separate project than the Terraces Project, with new applications, including a general plan amendment and rezone, new development plans, additional environmental review, and was the only project actually considered and voted on by the City. (AR 486-500 [Process Agreement], 971-1048 [plan set], 3691-3711 [staff report], 4098-4123 [staff report], 4308-4314 [staff report], 5399-5495 [supplemental EIR certification], 5539-5545 [general plan amendment], 6188-6209 [zoning amendment and other approvals].) The Terraces Project proposed 315-unit multifamily apartments aimed at moderate income households. (AR 2, 62.) The Deer Hill Project application

[7] As mentioned herein, Government Code section 65589.5(j) also only applies when a project has determined to be in compliance with "applicable, objective general plan and zoning standards" (the Terraces Project was not been shown to be in such compliance) and that project is disapproved.

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(submitted three years after the Terraces) proposed 44-45 homes on 4,500 square foot lots, along with substantial community amenities including open space, a community park with a sports field, bike and walking paths, a playground, public restrooms, and ADA-complaint walkway, a dog park and public parking. (AR 153-156, 971-1048.) This provision of open space helped address public concerns and meet the demand for such space. (AR 153, 169, 289-290, 1234.) The Deer Hill Project also included additional land beyond that proposed for the Terraces Project. (AR 6246-6253 [Deer Hill Project includes land north and south of Deer Hill Road].) Steps were taken to reduce the project's visibility and ingress and egress were changed to reduce conflicts with freeway on-ramps and off-ramps that are often backed up with traffic during commute hours. (AR 155.) Whereas the Terraces Project was anticipated to result in 13 significant and unavoidable environmental impacts, the Deer Hill Project involved only two such impacts. (AR 169, 1234, 5399-5495.)

Real Parties submitted separate applications for the Deer Hill Project and voluntarily suspended the Terraces Project before it was considered by the City. (AR 2, 293-294, 486-488, 971-1021, 5386.) Real Parties' applications for a general plan amendment, rezone, and related approvals for the Deer Hill Project were subsequently approved by the City without any reduction in the density proposed by Real Parties in those applications. (AR 5539-5545, 6188-6209.)[8]

Petitioners' only basis to claim that the two projects were really a "single" project is the City's preparation of a Supplemental EIR for the Deer Hill Project, rather than an entirely new EIR. (Pets' Op. Br. at 12, citing Pub. Res. Code § 21166 (setting forth circumstances under CEQA for use of a subsequent or supplemental EIR is required).[9] A Supplemental EIR is required when "substantial changes are proposed" to a project or "substantial changes occur with respect to the circumstances under which the project is being undertaken." (Pub. Res. Code § 21166.)

[8] In no way did the City determine that the approval of the Deer Hill Project was actually a conditional approval of the Terraces Project at a lower density. The application for the Terraces Project remained on hold by the Real Parties.

[9] The City's compliance with CEQA and use of a Supplemental EIR is not challenged in this suit.

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Here, Petitioners improperly conflate the meaning and usage of "project" between CEQA and the HAA. The HAA only concerns "housing development projects" and contains a specific definition of that term. (Gov. Code § 65589.5(h)(2).) CEQA's definition of "project" is far more expansive and includes an activity that may cause a direct physical environmental change and involves the issuance by a public agency of some form of entitlement. (Pub. Res. Code § 21065; 14 Cal. Code Regs § 15378.)

When an EIR has been prepared for a CEQA "project," and that project substantially changes, then a subsequent or supplemental EIR may be used to analyze the potential impacts of the changed project, while relying on earlier analysis contained in an earlier EIR. (14 Cal. Code Regs. §§ 15006, 15153, 15150.) Under CEQA, changes in project components, and even changes in the proposed location, may be treated as an application for a project modification, rather than as an application for a new project. (See e.g., *Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1400-1402.) This is the case even where a new application for approval is filed after prior environmental review for an earlier project. (*Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467, 1475-1477; *Fund for Environmental Defense v. City of Orange* (1988) 204 Cal.App.3d 1538, 1542-1548.)

Real Parties submitted extensive applications for the Deer Hill Project which differed substantially from the Terraces Project and involved different impacts. (AR 1099; 5399-5495.) As such, the City was required to comply with CEQA, and the use of a Supplemental EIR to consider new impacts not previously considered in the EIR was legally appropriate.[10]

Without support, Petitioners claim that Real Parties could have simply changed "315" to "44" in the Terraces Application. (Pets' Op. Br. at 12.) This did not occur, and ignores the vast differences between the two projects, as well as the critical fact that it was the Real Parties who *voluntarily submitted a new application for a different project*, not the City conditioning approval of a project that it approved at a lower density. As noted above, in addition to a different number

[10] Of course, if the Deer Hill Project were the same project as the Terraces Project, then no further applications would have been needed, and no further environmental review would have been necessary.

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of housing units, the Deer Hill Project included a different type of housing along with numerous community benefits and amenities, as well as design changes to reduce potential environmental impacts. (AR 2, 153-156, 289-290, 1022-1048.) The Deer Hill Project also required a general plan and zoning amendment in addition to other approval unique from the Terraces Project. (AR 2-3, 974, 5539-5545, 6188-6187.) For these host of reasons, the two projects are not the "same" for purposes of the HAA.

4. The Permit Streamlining Act Does Not Apply.

Petitioners claim that two projects cannot be approved for the same site and that even if the Terraces Project was not formally disapproved, the City still "disapproved the development project" in violation of the HAA by "failing to comply with the time periods specified in subdivision (a) of Section 65950." (Pets' Br. at 12-13, citing Gov. Code § 65589.5(H)(B).) Petitioners are incorrect.

First, two projects were not concurrently approved for the same site; only one project was considered, and approved – the Deer Hill Project. (AR 6183, 6209.) The City never voted on or considered the merits of the Terraces Project, rather it simply prepared an EIR before Real Parties suspended the application for that project. (AR 26, 29.)

Petitioners are further incorrect when they claim that the City voted to "disapprove" the Terraces Project when it approved the Deer Hill Project. (Pets' Op. Br. at 12.) Petitioners claim, without support, that an application can be disapproved if a different application is voted on. (*Id.* at 12 n.7.) This makes no sense and also ignores the facts here. Real Parties put one application on hold and ultimately pursued one project: the Deer Hill Project. The City approved that project and never took any vote to disapprove the Terraces Project. As such, it did not "disapprove" the Terraces Project under Section 65589.5(h)(5)(A). Nor did the City disapprove the Terraces Project pursuant to Section 65589.5(h)(5)(B) by violating the time periods of the Permit Streamlining Act ("PSA"). The PSA provides that, where an EIR is certified, a public agency shall "approve or disapprove" the project within 180 days. (Gov. Code § 65950(a)(1).) Here, the City certified the EIR for the Terraces Project on August 12, 2013 (AR 153), and approved the Process Agreement less than 180 days later on January 22, 2014. (AR 485.) Real Parties then

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voluntarily suspended the Terraces Project and acknowledged that no violation of the Permit Streamlining Act had occurred. (See AR 490.) The City went on to approve the Deer Hill Project and the Terraces application was never processed further by Real Parties. As such, there was no violation of the PSA or any disapproval per Section 65589.5(h)(5)(B).

IV. PETITIONERS' CLAIMS FAIL UNDER STATUTES OF LIMITATIONS

Under the facts of this case, the HAA does not apply since Real Parties voluntarily suspended the Terraces Project before the City made any decision to "disapprove or conditionally approve" it, and instead processed a different project (Deer Hill Project) that the City approved as proposed. However, even if the HAA did apply, Petitioners claims are barred by the statute of limitations contained at Government Code section 65009(c).

Petitioners allege the City violated the HAA by extorting the Real Parties into suspending the Apartment Project by virtue of the Process Agreement; and by amending the general plan amendment for the site to a single-family designation. (Second Amended Petition ¶¶ 41-44, 48.)

Government Code section 65009(c)(1) provides that actions challenging a general plan amendment, or any proceedings, acts, or determinations taken, done or made prior to such action, be filed and served within 90 days of the decision. (Gov. Code § 65009(c)(1)(A), (F); *Honig v. San Francisco Planning Department* (2005) 127 Cal.App.4th 520, 526). "If the challenge is to the facial validity of a land use regulation, the statute of limitations runs from the date the statute becomes effective." (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 22)). "Upon expiration of the time limits provided for in this section, all persons are barred from any further action or proceeding. (Gov. Code § 65009(e).) In order to achieve the goal of certainty for property owners and local governments, the short statute of limitations to challenge a general plan amendment, including the service deadline, is critical and mandatory. Given the strict statutory mandate, *even a one-day delay in service requires dismissal under section 650009(c)(1)).* (*Wagner v. City of Pasadena* (2000) 78 Cal.App. 4th 943, 950).

A. Process Agreement

The Process Agreement was adopted on January 22, 2014. (AR 485, 486.) Pursuant to the Process Agreement, the Real Parties and City formally agreed that Real Parties would suspend the

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Terraces Project and pursue the Deer Hill Project, which included a general plan amendment. Petitioners claim the Process Agreement was the result of "extortion" by the City and led to a violation of the HAA. However, any challenge to the Process Agreement (an action made prior to the general plan amendment and other Deer Hill Project approvals) would have had to have been filed and served within 90 days of its adoption, i.e., by April 22, 2014, pursuant to Government Code section 65009(c)(1)(F) (concerning challenges to "proceedings, acts or determinations taken, done, or made prior to any decisions" to amend a general plan).

Petitioners did not file any action within the required time period to challenge the Process Agreement. Moreover, Petitioners never even appeared at any public hearing regarding the adoption of the Process Agreement to allege that it violated the HAA prior to its adoption, thereby failing to exhaust their administrative remedies as required by Government Code section 65009(b)(1). As such, Petitioners are barred from challenging the Process Agreement.

B. General Plan Amendment for the Deer Hill Project

Petitioners also claim that the City violated the HAA by its adoption of the general plan amendment (GPA) that changed the property's land use designation to single-family low density from administrative professional office. Here too, the statute of limitations bars Petitioners' claim. The City approved the GPA on August 10, 2015, and the GPA became effective 30 days later, on September 9, 2016. (AR 5543.) Any challenge was required to be filed and served within 90 days, i.e., by December 8, 2015. (Gov. Code § 65009(c)(1)(A).) This suit was filed on December 8, 2015, but Petitioners did not serve it on the City until December 9, 2016 – 91 days after the GPA became effective. (RJN, Ex. 4 [court docket showing proof of service on City of December 9, 2016].) Under *Wagner* and Section 65009(c)(1)(A), this one-day delay is fatal.

No exception applies to extend the 90-day limitations period since this case is not brought with respect to the City's adoption or revision of its housing element. (Gov. Code § 65009(d)(1)(B).) An earlier version of section 65009(d)(1) included challenges under the HAA within such exceptions, but amendments adopted in 2013 (by AB 325) specifically removed HAA challenges from the Section 65009(d)(1) exceptions. Analysis of AB 325 made clear that actions challenging compliance with the HAA were expressly removed from the ambit of 65009(d)

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because such challenges are "project-specific actions," not challenges to a housing element. (RJN, Ex. 3 [Assembly Floor Analysis at p. 2].)

Petitioners claim, despite failing to timely challenge the GPA, that their action is timely filed to challenge later project approvals (e.g., the zoning amendment). Petitioners are wrong. First, the City's August 10, 2015 approval of the GPA to a single-family designation is final. State law considers the general plan as the "constitution" for all future land use approvals. (*Lesher Communications, Inc. v. City of Walnut Creek* (1995) 52 Cal.3d 531, 540.) State law absolutely prohibits approval of zoning amendments that are inconsistent with a general plan designation. (Gov. Code § 65860.) All land use decisions, including the later decision attacked here (e.g., the rezoning) must be consistent with the general plan. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 570).

Petitioners claim that the City violated the HAA on September 14, 2015, by not approving the Terraces Project. However, the City had earlier approved the GPA which became final on September 9, 2015. After that time, including when the City approved the Deer Hill Project on September 14, 2015, the City could not approve the Terraces Project given the new general plan designation of single-family residential that was in place. (*Lesher*, 52 Cal. 3d at 541 [zoning ordinance inconsistent with general plan would be invalid when passed]; *deBottari v. City Council* (1985) 171 Cal.App.3d 1204, 1212 [proper to reject referendum that would have created an inconsistency with the general plan].)

As noted in *Honig*, it is the substantive nature of the action that is paramount, not the form of the action. (*Honig*, 127 Cal.App.4th at 528).[11] Here, Petitioners purport to challenge the September 14, 2015 adoption of the zoning amendments, but the gravamen of the action (the alleged rejection of the Terraces Project in violation of the HAA) occurred by virtue of the Process Agreement and the GPA. By the time Petitioners challenged the later approvals, the statute of

[11] See also *Hensler*, 8 Cal.4th at 22-23 (because the gravamen of the action was a challenge to the adoption and application of a land use ordinance, the plaintiff's takings claim was subject to the short statutes of limitations in Government code section 65009 . . . the five year limitations period for takings claims did not apply.

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limitations on the Process Agreement and GPA had expired. The City's approvals on September 14, 2015, rested on the GPA which as not timely challenged by Petitioners. A challenge to undo the zoning amendment could not proceed since it would result in an impermissible conflict with the GPA. (See *deBottari*, 171 Cal.App.3d at 1212.)

V. CONCLUSION

Petitioners seek to make new law by expanding the HAA well beyond its statutory limits to prohibit a developer from choosing to pursue a different project than one initially contemplated. Nothing in the HAA prohibits such a choice, and Petitioners' bald claims of "extortion" by the City are unsupported by any record evidence. Moreover, Petitioners' claims are untimely. For the reasons stated, as well as those contained in the City's opposition brief, Petitioners' Petition for Writ of Administrative Mandamus should be denied.

DATED: December 22, 2016

WENDEL, ROSEN, BLACK & DEAN LLP

By: _____

Allan C. Moore
Attorneys for Real Party in Interest O'Brien Land Company, LLC and Anna Maria Dettmer, As Trustee Of The AMD Family Trust

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Alameda, State of California. My business address is 1111 Broadway, 24th Floor, Oakland, CA 94607-4036.

On December 22, 2016, I served true copies of the following document(s) described as

REAL PARTIES IN INTEREST'S OPPOSITION TO PETITIONERS SONJA TRAUSS AND SAN FRANCISCO BAY AREA RENTERS FEDERATION'S PETITION FOR WRIT OF ADMINISTRATIVE MANDATE; and

REAL PARTIES IN INTEREST'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO WRIT OF MANDATE

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Wendel, Rosen, Black & Dean LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Oakland, California.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address cbagshawe@wendel.com / tawilliams@wendel.com to the persons at the e-mail addresses listed in the Service List. The document(s) were transmitted before close of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 22, 2016, at Oakland, California.

Carol A. Bagshawe

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SERVICE LIST
Trauss v. City of Lafayette
Contra Costa County Superior Court, Case No. MSN15-2077

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