

SUPERIOR COURT - MARTINEZ  
COUNTY OF CONTRA COSTA  
MARTINEZ, CA 94553  
(925) 608-1000

CLERK'S CERTIFICATE OF MAILING

CASE TITLE:  TRAUSS VS. CITY OF LAFAYETTE

CASE NUMBER: MSN15-2077 - CIVIL

THIS NOTICE/DOCUMENT HAS BEEN SENT TO THE FOLLOWING ATTORNEYS/PARTIES:

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I am a Clerk of the Court indicated below and am not a party to this cause. On the date below indicated, I served a copy of the attached document(s) by depositing a true copy in the mail in a sealed envelope with postage prepaid, at MARTINEZ, California addressed as above indicated.

TITLE OF DOCUMENT SERVED:  ORDER FROM SUBMISSION

DATE MAILED:  04/03/17

CLERK OF THE COURT

BY: \_\_\_\_\_  
C. FORFANG  
Deputy Clerk of the Court

1                   **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,**  
2                   **IN AND FOR THE COUNTY OF CONTRA COSTA**

3  
4   SONJA TRAUSS,

5                   Petitioner,

NO. N15-2077

6                   Vs.

**ORDER**

7   CITY OF LAFAYETTE.

8                   Respondent



9  
10           The Petition for Writ of Mandate came on for hearing on February 22, 2017. Having read and  
11 considered the papers submitted in support of and in opposition to the Petition and having heard oral  
12 argument, the court took the matter under submission, and now rules as follows:

13           **IT IS, THEREFORE, ORDERED,**

14           The Petition filed by Petitioners Sonja Trauss and San Francisco Bay Area Renters Federation  
15 (collectively "Petitioners") seeking a determination that Respondent, the City of Lafayette (the "City")  
16 violated the Housing Accountability Act, Government Code section 65589.5 ("HAA") is denied.

17           The instant Petition arises out of a protracted dispute regarding the development of certain  
18 property on Deer Park Hill in Lafayette. The following relevant facts are not in dispute: in brief, Real  
19 Parties in Interest, O'Brien Land Company, LLC and Anna Maria Dettmer, as Trustee of the AMD  
20 Family Trust, (collectively "Real Parties" or "Developer") submitted an application for a multi-family  
21 residential project including approximately 315 housing units marketed to moderate-income individuals  
22 known as the Terraces of Lafayette (the "Terraces"). More than two years after the application was  
23 deemed complete, the City directed City staff to participate in conversations with the Developer to  
24 determine if there was an alternative plan that would be acceptable to all parties including the  
25 Developer, community members and the City. Following these discussions, Real Parties and the City

1 entered into a Process Agreement providing that Real Parties would suspend the Terraces application  
2 and move forward with a 44-45 single family home project known as the Homes at Deer Hill ("Deer  
3 Hill"). The Deer Hill project was approved by the City on September 14, 2015.

4 The central factual dispute here involves the "voluntariness" of Developer's decision to suspend  
5 the Terraces application and move forward with Deer Hill. Put differently, Developer contends that after  
6 initially considering one project, they "*voluntarily* chose to suspend that project *prior to any decision by*  
7 *the City,*" and, instead pursued a different project that the City approved at the proposed density. (Real  
8 Parties' Opposition at p. 1(emphasis in original)). Petitioner contends that the City exerted economic and  
9 time pressures on the Developer and that the "Developer caved in and agreed to a significantly-reduced  
10 density, abandoning the original project if Lafayette approved the modified one." (Petitioners' Reply at  
11 p. 15). At oral argument, Petitioners' counsel maintained that had the City not exerted pressure on the  
12 developer, the developer would not have, in the normal course of business, changed the project to any  
13 material degree. According to Petitioners, the developer "only did what it did" because of conduct by the  
14 City. Counsel for Real Parties represented that the developer made a decision based on everything in its  
15 "purview" including legal and market issues and decided to put the Terraces on hold. Counsel for Real  
16 Parties also requested that the Court "take at face value" that the developer wants to build the 44-unit  
17 project, not to build 315 units.

18 Petitioners frame the central legal issue before this Court as a challenge to the City's "decision  
19 which resulted in the Developer being given permission to build a project some 85% less dense than  
20 originally planned". (Reply at p. 11). Petitioners claim that the City violated the HAA by convincing  
21 Real Parties to submit an application for a lower-density project.

22 According to Real Parties, the issue is not whether the City complied with the HAA, but rather,  
23 whether the HAA is applicable at all. Real Parties and Respondent argue that Petitioners impermissibly  
24 seek an Order from this Court requiring the City to approve, and the Real Parties to build a project that  
25 the Real Parties voluntarily shelved over two years ago.

1 Housing Accountability Act

2 The following provisions of the HAA frame the Court's analysis: "A local agency shall not  
3 disapprove a housing development project [ ] for very low, low-, or moderate-income households, or an  
4 emergency shelter, or condition approval in a manner that renders the project infeasible for development  
5 for the use of very low, low-, or moderate-income households, or an emergency shelter, including  
6 through the use of design review standards, unless it makes written findings, based upon substantial  
7 evidence in the record," regarding certain statutorily identified criteria. Gov. Code § 65589.5(d). The  
8 HAA defines "[d]isapprove the development project" to include any instance in which a local agency  
9 votes on a proposed housing development project application and the application is disapproved. Gov.  
10 Code § 65589.5(h)(5)(A).

11 The Petition also concerns section 65589.5(j), which provides "[w]hen a proposed housing  
12 development project complies with applicable, objective general plan and zoning standards and criteria,  
13 including design review standards, in effect at the time that the housing development project's  
14 application is determined to be complete, but the local agency proposes to disapprove the project or to  
15 approve it upon the condition that the project be developed at a lower density, the local agency shall  
16 base its decision regarding the proposed housing development project upon written findings supported  
17 by substantial evidence on the record that" certain statutorily required conditions exist. Cal. Gov't Code  
18 § 65589.5(j).

19 Petitioners contend that the City violated the HAA because a "formal" decision on the Terraces  
20 project is not required to subject the City to liability under the HAA, specifically section 65589.5(d).  
21 Rather, Petitioners claim that the express language of the HAA provides that the City's action approving  
22 the Deer Hill project operated as a de facto disapproval of the Terraces project thereby violating the  
23 HAA.

24 ////

25 ////

## Analysis

The fundamental rule of statutory construction is to ascertain the Legislature's intent in order to give effect to the purpose of the law. To accomplish this, the Court must first examine the words of the statute and try to give effect to the usual, ordinary import of the language while not rendering any language surplusage. The words must be construed in context and in light of the statute's obvious nature and purpose. The terms of the statute must be given a reasonable and commonsense interpretation that is consistent with the Legislature's apparent purpose and intention. The interpretation should be practical, not technical, and should also result in wise policy, not mischief or absurdity. *Kalnel Gardens, LLC v. City of Los Angeles*, 3 Cal. App. 5th 927, 938 (2016), *review denied* (Dec. 14, 2016)(internal citations omitted).

Interpretation is not in isolation. Instead, courts analyze every statute with reference to the entire scheme of law of which it is a part in order to harmonize the whole. "If the statutory language is clear, we should not change it to accomplish a purpose that does not appear on the face of the statute or from its legislative history. If there is more than one reasonable interpretation of a statute, then it is ambiguous. If so, we turn to secondary rules of construction, including maxims of construction, the legislative history, and the wider historical circumstances of a statute's enactment." *Id.* (internal citations omitted).

Petitioners argue at length that their paradigm of construction comports with the liberal construction given remedial statutes to promote their purpose. While the Court recognizes the critical issues the HAA aims to address, the Court may not interpret subsections, sentences or words in the HAA in isolation or strain a reasonable and commonsense interpretation beyond its meaning to fit Petitioners' paradigm.

## "Disapprove the Development Project"

Statutory interpretation is required to resolve whether a "formal" decision or vote is required on the Terraces project or whether an approval of the Deer Hill project operates as the legal equivalent of a

1 disapproval of the Terraces project sufficient to trigger the protections of the HAA subsection (d). Such  
2 analysis requires the Court to evaluate “[d]isapprove the development project”. Specifically, what is  
3 meant by a local agency votes on a proposed housing development project application and the  
4 application is disapproved. Gov. Code § 65589.5(h)(5)(A)(emphasis added).

5 Petitioner’s proposed construction of subsection (h)(5)(A) is that “the application” refers to the  
6 one being championed by the HAA and “a proposed housing development project application” could be  
7 any application, the approval of which operates de facto to eliminate the former HAA championed  
8 project. (Reply at pp. 3-4). This construction is not a reasonable interpretation of the statute. Rather than  
9 relying on basic rules of statutory construction, Petitioners seek to apply their version of the facts here to  
10 interpret the language of the statute. This construction does not find support when extended to its logical  
11 conclusions and applied generally. Put differently, Petitioners may not use the factual circumstances  
12 here as a framework for interpretation. The interpretation of the HAA must follow the basic principles of  
13 statutory construction and then be applied to the facts of this action.

14 Respondent and Real Parties’ proposed interpretation is supported by the ordinary and usual usage of  
15 language. “The ordinary and usual usage of ‘and’ is as a conjunctive, meaning an additional thing, also  
16 or plus.” *In re C.H.*, 53 Cal. 4th 94, 101–02 (2011)(internal quotations and citations omitted). Section  
17 (h)(5)(A) is thus best understood as applying to situations where the project that is voted on is also the  
18 project that is disapproved. The only reasonable interpretation of the entire sentence in (h)(5)(A) is that  
19 it is referring to an application that is voted on and disapproved.

20 Put differently, Petitioner’s interpretation creates a causal relationship rather than a conjunctive  
21 one and strains the statute beyond meaning. The language is not susceptible to the interpretation that a  
22 vote on one project, such as Deer Hill, even if located on the same property as a previously proposed  
23 affordable housing project, such as the Terraces, necessarily amounts to the *legal equivalent* of a  
24 disapproval under subsection (d). While there is a practical appeal to Petitioners’ argument that logic  
25

1 compels the determination that approving Deer Hill necessarily disapproves the Terraces, logic is  
2 insufficient alone to establish the legal equivalence of disapproval as defined under the HAA.  
3 Respondent and Real Parties proposed interpretation is further supported by the location of “the” in the  
4 subsection at issue. “‘The’ refers to a specific person or thing.” *Honchariw v. County of Stanislaus*, 218  
5 Cal. App. 4<sup>th</sup> 1019, 1034 (2013)(internal quotations and citations omitted). The use of “a” – general  
6 reference - preceding the use of “the” – specific reference - supports the interpretation that section  
7 (h)(5)(A) is referencing a single project that is voted on and disapproved. The specific “the” refers to the  
8 project that was voted on.

9 **CCP § 1094.5**

10 The incorporation of section 1094.5 into the HAA also supports Respondent and Real Parties’  
11 interpretation. “Subdivision (m) of section 65589.5 provides that any action brought to enforce the  
12 provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure....”.  
13 Established precedent provides that “[s]ection 1094.5 of the Code of Civil Procedure specifies the  
14 procedure to be followed upon inquiry into *the validity of any final administrative order* or decision  
15 made as the result of a proceeding in which by law a hearing is required to be given, evidence is  
16 required to be taken and discretion in the determination of facts is vested in the inferior tribunal,  
17 corporation, board or officer.” *Temescal Water Co. v. Dep’t of Publ Works*, 44 al. 2d 90, 100  
18 (1955)(internal quotations omitted)(emphasis added)

19 Subdivision (b) of Code of Civil Procedure section 1094.5 pertains to judicial review of  
20 administrative decisions and states: The inquiry in such a case shall extend to the questions whether the  
21 respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and  
22 whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the  
23 respondent has not proceeded in the manner required by law, the order or decision is not supported by  
24 the findings, or the findings are not supported by the evidence.” *Honchariw v. Cty. of Stanislaus*, 200  
25 Cal. App. 4<sup>th</sup> 1066, 1072 (2011)(internal quotations and citations omitted).

1 Detailed findings are essential to actions reviewed under CCP § 1094.5. The findings  
2 requirement is implicitly codified in § 1094.5 itself, i.e., a court should grant the writ if “the order or  
3 decision is not supported by the findings, or the findings are not supported by the evidence.” California  
4 Practice Guide: Administrative Law Ch. 13-C. “Section 1094.5 clearly contemplates that at minimum,  
5 the reviewing court must determine both whether substantial evidence supports the administrative  
6 agency’s findings and whether the findings support the agency’s decision... We further conclude that  
7 implicit in section 1094.5 is a requirement that the agency which renders the challenged decision must  
8 set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.”  
9 *Topanga Assn. for a Scenic Cmty. v. Cty. of Los Angeles*, 11 Cal. 3d 506, 514–15 (1974)(internal  
10 quotations and citations omitted).

11 Here, if the Court were to accept Petitioner’s interpretation of subsection (h)(5)(A), there are no  
12 findings to assess nor analytic gap bridged. At oral argument, Petitioners’ counsel argued that the  
13 inquiry under section 1094.5 is whether the City proceeded in the manner required by law such that the  
14 City must demonstrate the voluntariness of developer’s decision to suspend the Terraces application and  
15 proceed with Deer Hill. This position is not supported by either the HAA or section 1094.5. Specifically,  
16 by incorporating section 1094.5 into the HAA, the disapproval or conditional approval to be evaluated  
17 by the Court must be one that occurs not by a de facto disapproval, but rather, by findings bridging the  
18 analytic gap between raw evidence and the ultimate decision or order.

19 Such a construction is also demonstrated by the HAA’s explanation regarding the burden of  
20 proof, “the burden of proof shall be on the local legislative body to show that its decision is consistent  
21 with the findings as described in subdivision (d) and that the findings are supported by substantial  
22 evidence in the record.” Cal. Gov’t Code § 65589.5(i). A disapproval or conditional approval cannot be  
23 “de facto” and subject to meaningful review under section 1094.5 or subsection (i).

24 The Court also notes that on the record before it, there is insufficient evidence to conduct an  
25 analysis to determine whether, if the Terraces is not an affordable housing project protected under (d) -



1 an issue which the Court does not reach here – the Terraces would have fallen under (j) as having  
2 complied with applicable, objective general plan and zoning standards and criteria, including design  
3 review standards, in effect at the time the application is determined to be complete.

4 The Court recognizes the liberal construction required of remedial statutes, but accepting  
5 Petitioners' proposed interpretation strains the HAA beyond its plain meaning.

#### 6 **Voluntary Withdrawal**

7 Petitioners admit that in circumstances where a developer voluntarily withdraws a project, no  
8 violation of the HAA occurs. (Reply at p. 4). However, Petitioners argue that “Lafayette encouraged  
9 (strong armed) Developer to submit to a reduced-density version of the Apartment Project – nothing in  
10 the record indicates that Developer would have done so on its own and this is evidenced by the fact that  
11 the Developer retained its HAA rights and the right to seek approval of the original Apartment Project if  
12 need be.” (Writ at p. 12).

13 Here, the Administrative Record demonstrates that the City was fully aware of litigation  
14 potential specific to the HAA (AR 635); City staff goals included reducing the number of units on the  
15 property (AR 176); and, the City Council directed staff to participate in conversations with the developer  
16 to determine if there was an alternative plan that would be acceptable to all parties (AR 153). This  
17 evidence does not rise to the level of a “strong-arm” negotiation by Lafayette, nor, as Petitioners  
18 characterized the City’s position as a plan to “basically gut the project in violation of the HAA”. (Reply  
19 at p. 7). Petitioners argued at the hearing that the City’s initiation of the conversation with the developer  
20 amounts to a violation of the HAA. Under the HAA, an inquiry into the reasons behind a developer’s  
21 decision impermissibly inserts the Court into the day-to-day workings of local governments and  
22 developers in the absence of any standard of review. Real Parties repeatedly represented and continue to  
23 represent that the Process Agreement was a voluntary shift by Real Parties to pursue a different project  
24 than the one initially proposed and that nothing in the HAA forces an applicant to proceed with its initial  
25 project submittal, or to propose any affordable housing at all.

1 Petitioners suggest that Developer was deterred from proceeding with the Terraces given the  
2 near inevitable prospect of litigation. This contention is belied by Real Parties' participation in the  
3 instant action, among others, and by the fact that the HAA provides for recovery of "reasonable  
4 attorney's fees and costs of suit to the plaintiff or petitioner who proposed the housing development or  
5 emergency shelter, except under extraordinary circumstances in which the court finds that awarding fees  
6 would not further the purposes of this section." Gov. Code § 65589.5(k)(1).

7 The Court remains mindful of the critical issues aimed to be addressed by the HAA and the  
8 policy sought to be advanced by Petitioners. But, as currently enacted, the express language of  
9 subsection (h)(5)(A), the incorporation of 1094.5 and the fact that the Developer has maintained that the  
10 decision to suspend the Terraces and move forward with Deer Hill was voluntary, the Petition is denied.

11 **Evidentiary Rulings**

12 Respondent's Request for Judicial Notice is granted. The Court may take judicial notice of the  
13 records of the courts of the State of California.

14 Real Parties' Request for Judicial Notice is granted. The Court may take judicial notice of  
15 legislative history and records of the courts of the State of California.

16 Objections to Pinkston Declaration: The Court is mindful of the limited scope of review in CCP  
17 1094.5 hearings, and gives limited weight and consideration to the Pinkston Declaration as support for  
18 the accompanying amicus brief.

19 Request to augment the Administrative Record: Granted as to the Trauss Declaration; denied as to  
20 the Henn Declaration.

21  
22 DATED: April 3, 2017

23   
24 JUDGE OF THE SUPERIOR COURT  
25

SUPERIOR COURT - MARTINEZ  
COUNTY OF CONTRA COSTA  
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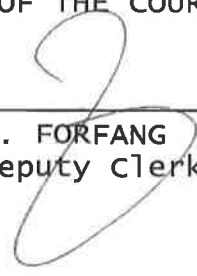
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