

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**

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

**SHORT TITLE:** California Renters Legal Advocacy and Educational Fund vs. City of Huntington Beach**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC  
SERVICE****CASE NUMBER:  
30-2020-01140855-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.

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Clerk of the Court, by: Schallie 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 12:33:11 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: Schallie 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: 10:18:00 AM

DEPT: C21

JUDICIAL OFFICER PRESIDING: Deborah Servino

CLERK: Schallie Valencia

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: None

CASE NO: 30-2020-01140855-CU-WM-CJC CASE INIT.DATE: 05/26/2020

CASE TITLE: California Renters Legal Advocacy and Educational Fund vs. City of  
Huntington Beach

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

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EVENT ID/DOCUMENT ID: 73620123

EVENT TYPE: Chambers Work

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**APPEARANCES**

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There are no appearances by any party.

Proposed Statement of Decision is attached and incorporated herein.

Court orders Clerk to give notice.

FILED

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

OCT 04 2021

DAVID H. YAMASAKI, Clerk of the Court

BY:                      DEPUTY

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE

5	California Renters Legal Advocacy and	)	Case No.: 30-2020-01140855
6	Education Fund, a California nonprofit public	)	[PROPOSED] STATEMENT OF DECISION
7	benefit corporation, and THDT Investment,	)	
8	Inc., a California corporation,	)	
9	Petitioners,	)	
10	v.	)	
11	City of Huntington Beach,	)	
12	Respondent.	)	

14                   Petitioners California Renters Legal Advocacy and Education Fund and THDT  
15 Investment, Inc. ("THDT Investment") filed a motion to issue writ of mandate. At the June 4,  
16 2021 hearing on the motion, Petitioners requested a statement of decision. The general rule is  
17 that the trial court is not required to issue a written statement of decision following a motion,  
18 even if the motion involves extensive evidentiary hearings and the resulting order is appealable.  
19 (*Gruendl v. Oewel Partnership, Inc.* (1997) 55 Cal.App.4th 654, 660.) There are no material  
20 factual disputes for this Court to decide. (Code Civ. Proc., § 632; Cal. Rules of Court, rule  
21 3.1590.) The Court's review of an administrative adjudicatory decision under Code of Civil  
22 Procedure section 1094.5 is ordinarily confined to the administrative record. (Code Civ. Proc., §  
23 1094.5, subd. (a); see *Moore v. City of Los Angeles* (2007) 156 Cal.App.4th 373, 382.) The  
24 FAP presents only legal issues. Although exceptions have been judicially-created to this rule,  
25 Petitioners have given no authority requiring a written statement of decision in this situation.

1 Out of an abundance of caution, however, this Court provides this Statement of Decision on the  
2 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 Petitioners' 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  
26

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, subs. (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, subs. (b), (c), & (d); *Mangini v. R.J. Reynolds Tobacco*  
9 *Co.* (1994) 7 Cal.4th 1057, 1063.)

10 The Court grants Petitioners' 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, through its agent MCG Architecture/Jeff  
15 Herbst submitted a planning application (no. 17-205). (Administrative Record ["AR"] at 3061-  
16 3063 [ROA 69].) Notifications of filing status that indicated that the application was incomplete  
17 because information and/or corrections were requested before the application would be deemed  
18 complete. (AR at 3069-3160, 3234-3388 [ROA 69].) In a notification of filing status dated April  
19 1, 2019, the application was deemed complete. However, the notification noted that there were  
20 still outstanding items. (AR at 343-3462 [ROA 69].) A public hearing before the planning  
21 commission on May 28, 2019 was noticed. (AR at 3465-3507 [ROA 69].) The notice of the  
22 hearing indicated that the request for the conditional use permit was "[t]o demolish an existing  
23 liquor store, residence, and portion of a former car wash to permit a one-lot subdivision and  
24 development of a four-story mixed-use building including 48 new condominium residences with  
25 891 square feet of commercial space and three levels of subterranean parking" at the location  
26

1 of "8041 Ellis Avenue Beach Boulevard (North side of Ellis Ave., between Beach Blvd. and  
2 Patterson Ln.)". (AR 3465-3507 [ROA 69].)

3 The Huntington Beach Planning Commission held a public hearing on the proposed  
4 project on May 28, 2019. (AR 3465-3507 [Notice; ROA 69.]; AR 1526-1535 [Minutes; ROA 58];  
5 AR 1536-1653 [Transcript; ROA 58].) 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 58].) 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 58]; AR 3508 [Notice of Action, ROA 69].)  
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 58]; AR 1881-1885 [Notice of Action with Findings, ROA 58].)

17 THDT Investment filed a notice of appeal with the Huntington Beach City Council. (AR  
18 1886-1913 [ROA 58].) 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 60].) At the September 3, 2019 hearing, the  
21 City Council upheld the Planning Commission's denial. (AR 2288-2289, 2346-2347 [ROA 61].)

22 On October 28, 2019, Californians for Homeownership filed a verified petition for writ of  
23 mandate, in the related case (Orange County Superior Court case no. 30-2019-01107760). In a  
24 letter dated November 14, 2019, THDT Investment requested the Huntington Beach City  
25 Council reconsider its decision. (AR 2403-2404 [ROA 63].) THDT Investment requested a  
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1 rehearing, which was scheduled for February 18, 2020. (See AR 2365-2366, 2368 [ROA 61].)  
2 At the February 18, 2020 hearing, the City Council voted to deny the Tentative Tract Map No.  
3 18157 and Conditional Use Permit No. 17-042 with findings. (AR 3016-3017, 3049-3051 [ROA  
4 67].) A notice of action was issued with findings. Respondent found that the project's design  
5 was not consistent with the General Plan and the Beach and Edinger Corridors Specific Plan  
6 ("BECSP") in that it failed to further a number of land use and circulation goals and policies  
7 contained in the General Plan and the BECSP. Respondent also found that the project did not  
8 comply with the provisions of the Huntington Beach Zoning and Subdivision Code, in that it did  
9 not further the vision of the Town Center Neighborhood Segment of the BECSP. Respondent  
10 also found that the project would have a negative impact to health and safety reasons due to  
11 unsafe ingress/egress conditions caused by the project, and there was no feasible method to  
12 satisfactorily mitigate the adverse impact. (AR 2774-2780 [ROA 64].)

13 On May 26, 2020, Petitioners filed the Verified Petition for Writ of Mandate, pursuant to  
14 Code of Civil Procedure section 1094.5 and Government Code section 65589.5. (ROA 2; see  
15 Govt. Code, § 65589.5, subd. (m) [requires an action to enforce the HAA to be brought as a  
16 petition for writ of administrative mandate, pursuant to Code of Civil Procedure section 1094.5].)  
17 On August 12, 2020, they filed a First Amended Verified Petition for Writ of Mandate ("FAP").  
18 (ROA 21.) Respondent filed an Answer to the FAP. (ROA 31.) Respondent also filed the  
19 administrative record. (ROA 52, 53, 55, 56, 58, 60, 61, 63, 64, 66, 67, 69.) After a notice of  
20 related case was filed, the Court took notice that the instant matter was related to Californians  
21 for Homeownership of City of Huntington Beach (Orange County Superior Court case no. 30-  
22 2019-01107760). (7/8/2020 Minute Order.) At the February 26, 2021 status conference, the  
23 Court instructed the parties to proceed by way of a motion for issuance of writ of mandate and  
24 gave a briefing schedule. Because counsel had agreed to avoid duplication, the Court  
25 permitted the parties to use the same joint briefs in the related cases. (2/26/2021 Minute Order.)  
26

1 On August 4, 2021, the Court denied the motion to issue writ of mandate. Judgment  
2 was filed on August 11, 2021. On August 19, 2021, Petitioners filed notice of intention to move  
3 to vacate judgment and to move for new trial. On October 4, 2021, the Court granted the  
4 motion to vacate judgment.

5 III. Merits

6 The FAP alleged that Respondent's findings of denial did not meet its burden of proof  
7 under the Housing Accountability Act ("HAA"; Govt. Code, § 65589.5). (FAP, at pp. 12-13.)  
8 The FAP seeks a writ of mandate directing the City to approve the 8041 Ellis Avenue project, or  
9 in the alternative a writ of mandate voiding the city's decision of February 18, 2020 to reject the  
10 project and directing Respondent to reconsider the project in a manner that conforms to the  
11 requirements of the HAA. (FAP, at p. 14.)

12 IV. Applicable Law for Administrative Mandamus

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

18 "In reviewing an agency's decision under Code of Civil Procedure section 1094.5, the  
19 trial court determines whether (1) the agency proceeded without, or in excess of, jurisdiction; (2)  
20 there was a fair hearing; and (3) the agency abused its discretion.'" (*West Chandler Boulevard*  
21 *Neighborhood Assn. v. City of Los Angeles* (2011) 198 Cal.App.4th 1506, 1517-1518 [quoting  
22 *McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 921]; see Code Civ. Proc., §  
23 1094.5, subd. (b).) "Abuse of discretion is established if the respondent has not proceeded in  
24 the manner required by law, the order or decision is not supported by the findings, or the  
25 findings are not supported by the evidence." (Code Civ. Proc., § 1094.5, subd. (b).) The public  
26



1 entity that disapproved the project bears the burden of proof that its decision conformed to the  
2 HAA. (Govt. Code, § 65589.6.)

3 V. The HAA

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

16 Generally, statutes operate prospectively only. (*McClung v. Employment Development*  
17 *Dept.* (2004) 34 Cal.4th 467, 475.) Because Respondent's findings were issued in February  
18 2020, all references to the HAA are to the version that was in effect at that time. Amendments  
19 to the HAA, have since been enacted and effective as of September 24, 2020. (Stats. 2020, ch.  
20 165, § 5.)

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

22 (j)(1) When a proposed housing development project complies with applicable, objective  
23 general plan, zoning, and subdivision standards and criteria, including design review  
24 standards, in effect at the time that the application was deemed complete, but the local  
25 agency proposes to disapprove the project or to impose a condition that the project be  
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1 developed at a lower density, the local agency shall base its decision regarding the  
2 proposed housing development project upon written findings supported by a  
3 preponderance of the evidence on the record that both of the following conditions exist:  
4 (A) The housing development project would have a specific, adverse impact upon the  
5 public health or safety unless the project is disapproved or approved upon the condition  
6 that the project be developed at a lower density. As used in this paragraph, a "specific,  
7 adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based  
8 on objective, identified written public health or safety standards, policies, or conditions as  
9 they existed on the date the application was deemed complete.

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

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

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

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

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

8 (Govt. Code, § 65589.5, subd. (j).)

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

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

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

18 VI. Constitutionality of the HAA

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

24 (Answer, at p. 5.) Respondent contends the HAA is unconstitutional and violates the home rule  
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1 doctrine. (Opp. at pp. 16-25.) Respondent argues that application of Government Code section  
2 65589.5, subdivision (f)(4) violates the California Constitution. (Opp., at pp. 20-26.)

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

7 The home rule doctrine “represents an ‘affirmative constitutional grant to charter cities of ‘all  
8 powers appropriate for a municipality to possess . . . ‘ and [includes] the important corollary that  
9 ‘so far as “municipal affairs” are concerned,’ charter cities are ‘supreme and beyond the reach of  
10 legislative enactment.’” (*State Building & Construction Trades Council of California v. City of  
11 Vista* (2012) 54 Cal.4th 547, 556.) “The home rule doctrine enshrines charter cities’ sovereignty  
12 over ‘municipal affairs.’” (*Anderson v. City of San Jose* (2019) 42 Cal.App.5th 683, 698.) The  
13 doctrine “also implicitly recognizes state legislative supremacy over matters not within the ambit  
14 of that phrase [municipal affairs].” (*California Fed. Savings & Loan Assn. v. City of Los Angeles*  
15 (1991) 54 Cal.3d 1, 13.) Home rule authority “does not mean charter cities can never be subject  
16 to state laws that concern or regulate municipal affairs.” (*City of Huntington Beach v. Becerra*  
17 (2020) 44 Cal.App.5th 243, 254.)

18 The California Supreme Court has developed a four-part analytical framework to  
19 determine whether a state law unconstitutionally infringes the home rule authority of charter  
20 cities granted by article XI, section 5 of the California Constitution. First, the court determines  
21 whether the local law at issue regulates an activity that can be characterized as a municipal  
22 affair. Second, the court determines whether there is an actual conflict between state law and  
23 the local law. If no conflict exists, the analysis is complete and there is no need to go to the next  
24 step. Third, the court decides whether the state law addresses a matter of statewide concern.  
25 Finally, the court determines whether the state law is reasonably related to resolution of the  
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1 identified statewide concern and is narrowly tailored to avoid unnecessary interference in local  
2 governance. (*Construction Trades Council of California v. City of Vista*, *supra*, 54 Cal.4th at p.  
3 556.)

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

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

10 Petitioners argue that because Respondent did not timely make written findings under  
11 subdivision (j)(2), the project was deemed consistent with all applicable standards on May 2,  
12 2019. (Mot. at p. 24.) Petitioners do not provide any authority to support their interpretation of  
13 subdivision (j)(2)(B). The Court does not agree with Petitioners' interpretation of subdivision  
14 (j)(2). Subdivision (j)(2)(B) provides that if the local agency "fails to provide the required  
15 documentation pursuant to subparagraph (A), the housing development project shall be deemed  
16 consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance,  
17 standard, requirement, or other similar provision." (Govt. Code, § 65589.5, subd. (j)(2)(B).) The  
18 documentation required in subparagraph (A) is: "written documentation identifying the provision  
19 or provisions [to which the project is inconsistent, not in compliance, or not in conformity], and  
20 an explanation of the reason or reasons it considers the housing development to be  
21 inconsistent, not in compliance, or not in conformity". (Govt. Code, § 65589.5, subd. (j)(2)(A).)  
22 Subdivision (j)(2)(B) does not make reference to the timing set forth in subdivisions (j)(2)(A)(i) or  
23 (j)(2)(A)(ii). Here, the planning application was deemed complete on April 1, 2019. (AR 3430-  
24 3462 [ROA 60].) With its denial of the application, Respondent provided its findings. The  
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1 findings identified the applicable provisions and an explanation of the reasons it considered the  
2 project to be inconsistent, not in compliance, or no in conformity. (AR 2774-2780 [ROA 64].)

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

4 A. Standard of Review

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

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

22 In applying the HAA, the Court must determine whether Respondent required the project  
23 to comply with applicable, objective general plan, zoning, and subdivision standards and criteria,  
24 including design review standards, in effect at the time that the application was deemed  
25 complete, which would allow Respondent to disapprove the project if they were not satisfied.  
26

1 (California Renters Legal Advocacy and Education Fund v. City of San Mateo, supra, \_\_\_  
2 Cal.App.5th at p. \_\_\_ [2021 D.A.R. at p. 9578]; Govt. Code, § 65589.5, subd. (j)(1).) Petitioners  
3 contend that the standards with which Respondent required the project to comply, were not  
4 objective, as defined by subdivision (h)(8). (Mot., at pp. 24-26.) Subdivision (h)(8) defines  
5 “objective” as “involving no personal or subjective judgment by a public official and being  
6 uniformly verifiable by reference to an external and uniform benchmark or criterion available and  
7 knowable by both the development applicant or proponent and the public official.” (Govt. Code,  
8 § 65589.5, subd. (h)(8).) Whether the land use, circulation, and zoning standards are objective  
9 for the purposes of the HAA is a question of law. (California Renters Legal Advocacy and  
10 Education Fund v. City of San Mateo, supra, \_\_\_ Cal.App.5th at p. \_\_\_ [2021 D.A.R. at p.  
11 9579].)

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

17 Land Use Element

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

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

23 Goal LU-3: Ensure that future development and reuse projects are consistent  
24 with the Land Use Map to provide connections between existing neighborhoods and city  
25 attractions.  
26

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

2                    Circulation Element

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

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

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

14 (AR 2778 [ROA 64].)

15                    Respondent also found that the project did not comply with the provisions of the  
16 Huntington Beach Zoning and Subdivision Code, in that it did not further the vision of the Town  
17 Center Neighborhood Segment of the BECSP (Titles 20 through 25). (AR 2777-2780 [ROA  
18 64].) It appears that Titles 20 through 25 encompass the entire zoning code. (See  
19 [www.qcode.us/codes/huntingtonbeach/](http://www.qcode.us/codes/huntingtonbeach/).) Respondent did not specify the particular zoning  
20 codes with which the project was not in compliance. The only reason given, on its face,  
21 requires interpretation and subjective judgment.

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

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

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

14 For much of the same reasons that the standards were not objective, there was  
15 substantial evidence that the project was consistent, compliant, or in conformity with such  
16 standards. The Planning Commission Staff Report determined that the project met all  
17 applicable land use standards and were consistent with the goals and policies of the General  
18 Plan, including land use goals and policies and circulation goals, and the zoning. (AR 1409-  
19 1414 [ROA 58].) Specifically, the report stated: "The General Plan Land Use Map designation  
20 on the subject property is Mixed Use - Specific Plan Overlay. The proposed project is  
21 consistent with this designation and the goals and policies of the City's General Plan . . ." (AR  
22 1409 [ROA 58].) With regards to the goals and policies of land use, the report stated:

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

12 (AR 1409 [ROA 58].)

13 With regards to circulation, the report stated:

14 Although the site is relatively narrow, the proposed streetscape will create continuity with  
15 new and existing development along the Beach Boulevard corridor by providing a  
16 sidewalk with new landscaping to buffer pedestrians from the vehicular thoroughfare.

17 Pedestrian connectivity is improved with landscaping and architectural elements through  
18 the proposed public open space and wider sidewalks. The project is serviced by an  
19 existing bus stop at the intersection of Beach Blvd. and Ellis Ave. and also provides  
20 bicycle parking in the underground parking structure to accommodate alternative  
21 methods of transportation.

22 (AR 1410 [ROA 58].)

23 Finally, as to zoning, the report's table showed "an overview of the project's  
24 conformance to the significant development standards of the BECSP." (AR 1411; see AR  
25 1411-1414 [ROA 58].) The report again noted: "As discussed under the Zoning Conformance  
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1 section of this report, the project complies with the BECSP development code and does not  
2 include any requests to deviate from the development standards.” (AR 1414 [ROA 58].) The  
3 plausibility of the views of the Planning Commission Staff and Respondent demonstrates that  
4 the standards are not objective and that a reasonable person could conclude the project  
5 satisfies them. (*California Renters Legal Advocacy and Education Fund v. City of San Mateo*,  
6 *supra*, \_\_\_ Cal.App.5th at p. \_\_\_ [2021 D.A.R. at p. 9582].) Given the detailed explanation  
7 that was reasonable in nature in the Planning Commission Staff Report, there was substantial  
8 evidence that would allow a reasonable person to conclude that the project was consistent,  
9 compliant, or in conformity with an applicable plan, program, policy, ordinance, standard,  
10 requirement or other similar provision.

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

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

22 In the absence of health and safety findings, a local agency may not disapprove a  
23 project that complies with applicable, objective general plan, zoning, and subdivision standards  
24 and criteria. (Govt. Code, § 65589.5, subd. (j)(1).) Respondent bears the burden to show that  
25 its decision to deny of approval of the project was based upon written findings supported by a  
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1 preponderance of the evidence on the record that both the project would have a specific,  
2 adverse impact upon the public health or safety and there was no feasible method to  
3 satisfactorily mitigate or avoid the adverse impact identified other than the disapproval of the  
4 project. A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable  
5 impact, based on objective, identified written public health or safety standards, policies, or  
6 conditions as they existed on the date the application was deemed complete." (Govt. Code, §  
7 65589.5, subd. (j)(1)(A).)

8 Here, Respondent found that the project had a negative impact to health and safety "due  
9 to unsafe ingress/egress conditions caused by the project." Respondent relied upon the reports  
10 of Traffic Expert Mark Miller and fire Code/Life Safety Expert James McMullen. (AR 2776 [ROA  
11 58].) Both reports referred to issues with the "porkchop" raised island which was not in the  
12 original proposed project. Rather, the porkchop design was proposed by THDT Investment in  
13 response to concerns raised by the planning commission. (See AR 2304-2306 [ROA 61]; AR  
14 2380 [ROA 61]; AR 2391 [ROA 63].) Miller's report referred to no objective, identified written  
15 public health or safety standards, policies or conditions. (See AR 2376-2386 [ROA 61].)  
16 McMullen's report referred to issues that "should be resolved prior to approval of the project,"  
17 therefore could be mitigated. (AR 2389 [ROA 63].) The only objective, identified written public  
18 health or safety standard was City Specification No. 401, which was only as to the alternative  
19 porkchop design. (AR 2391 [ROA 63].) Since this safety standard was as to an alternative  
20 design, there was a feasible method to mitigate it. THDT Investment could simply use the  
21 original design. Accordingly, Respondent failed to meet its burden that its denial of approval of  
22 the project was based upon written findings supported by a preponderance of the evidence on  
23 the record that both the project would have a specific, adverse impact upon the public health or  
24 safety and there was no feasible method to satisfactorily mitigate or avoid the adverse impact  
25 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 Petitioners filed their memorandum of points and authorities  
9 for their 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 Petitioners 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 Petitioners to serve the proposed writ of mandate and  
21 proposed judgment upon the parties pursuant to the Code of Civil Procedure. Petitioners 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

  
6 Deborah C. Servino  
7 Judge of the Superior Court  
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