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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

FIBER FIRST LOS ANGELES, MOTHERS OF EAST LA, UNION BINACIONAL DE ORGANIZACIONES DE TRABAJADORES MEXICANOS EXBRACEROS 1942-1964, BOYLE HEIGHTS COMMUNITY PARTNERS, UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA, CALIFORNIA FIRES & FIREFIGHTERS, MALIBU FOR SAFE TECH, EMF SAFETY NETWORK, CALIFORNIANS FOR SAFE TECHNOLOGY, 5G FREE CALIFORNIA, and CHILDREN'S HEALTH DEFENSE,

Petitioners and Plaintiffs,

v.

COUNTY OF LOS ANGELES, COUNTY OF LOS ANGELES BOARD OF SUPERVISORS, COUNTY OF LOS ANGELES REGIONAL PLANNING COMMISSION, COUNTY OF LOS ANGELES DEPARTMENT OF REGIONAL PLANNING, COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS, and DOES 1-10, inclusive,

Defendants, Respondents, and Real Parties in Interest.

CASE NO.: 23STCP00750

PETITIONERS' OPPOSITION TO RESPONDENTS' MOTION FOR JUDGMENT ON THE PLEADINGS

[Filed concurrently with Petitioners' Request for Judicial Notice in Support of the Opposition and Petitioners' Evidentiary Objections to Respondents' Motion for Judgment]

Petition Filed: March 7, 2023

Trial Date: March 12, 2024
Time: 1:30 p.m.

Motion for Judgment on the Pleadings
Date: February 13, 2024
Time: 9:30 a.m.

Assigned for all purposes to the Honorable James C. Chalfant, Department 85

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Rules

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION[1]

Petitioners – a broad coalition of 11 grassroot community groups, non-profit organizations, and a Cherokee tribe ("Petitioners") – oppose the Motion for Judgment on the Pleadings ("MJOP") of Respondents County of Los Angeles *et al*. ("County") on both procedural and substantive grounds. The MJOP challenges Causes of Action Three to Eight of Petitioners' First Amended Petition ("FAP") for failure to "state facts sufficient to constitute a cause of action" under Code of Civil Procedure ("CCP") § 438(c)(1)(B)(ii). It is akin to a common law MJOP inquiring as to whether "the Plaintiff's complaint state facts sufficient to constitute a cause of action against the defendant." (*Smiley v. Citibank (S.D.), N.A.* (1995) 11 Cal.4th 138, 145-146 (*"Smiley"*).) While called a "pure question of law," such challenge "is in fact a mixed question of law and fact that is predominantly legal." (*Id.* at 145.)

Procedurally, the MJOP is improper, as it challenges the *veracity* of Petitioners' pleadings rather than their *legal sufficiency*. It relies on cases unrelated to *pleading* challenges. As such, the MJOP is an improper attempt to litigate the same causes on the merits twice and gain a page-increase advantage.

Substantively, the MJOP fails as it conflates various issues, laws, and concepts. It ignores the favorable standard of review to Petitioners, requiring the court to assume the truth of all factual allegations and to view those in the light most favorable to Petitioners. (*Wise v. Pacific Gas & Electric Co.* (2005) 132 Cal.App.4th. 725, 738 ("*Wise*"); *Edwards v. Centex Real Estate Corp.* (1997) 53 Cal.App.4th 15, 28 ("*Edwards*").) Instead, the MJOP improperly disputes Petitioners' factual allegations as speculative. The MJOP improperly raises a question of fact, including for preemption and ripeness defenses, which cannot be properly decided on an MJOP without the administrative record.

Lastly, the MJOP rests on a flawed premise that the challenged approvals are quasi-legislative and hence require a higher burden of proof under CCP section 1085 that Petitioner fails to meet. Yet, there is little practical difference between CCP sections 1085 and 1094.5. Also, the burden of proof is not a proper pleading challenge. (*Stanson v. Brown* (1975) 49 Cal.App.3d 812, 814 ("*Stanson*").)

The County's MJOP fails to show any legal insufficiency in the pleadings and must be denied.

II. STANDARD OF REVIEW

The County's MJOP is a challenge under CCP section 438(c)(1)(B)(ii) for failure to *state facts* sufficient to constitute a cause of action. (MJOP, 1:20-23.) That challenge is akin to a *common law* MJOP, which involves a: "mixed question of law and fact that is predominantly legal: does the plaintiff's complaint state facts sufficient to constitute a cause of action against the defendant? [Cit. omit.] In so doing, the trial court generally confines itself to the complaint and accepts as true all material facts alleged therein… A common law motion for judgment on the pleadings 'ha[s] the purpose and effect of a general demurrer.' [Cit. omit.]" (*Smiley, supra,* 11 Cal.4th at 145-146.)

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[1]Petitioners file this brief in compliance with CRC Rule 2.108(1), allowing lines to "be one and one-half spaced." (*Tiffany v. State Farm Mut. Auto. Ins. Co.* (1993) 14 Cal.App.4th 1763, 1767-1768 [37 lines].) Petitioners greatly appreciate the Court's review of the extensive record citations and many legal issues.

An MJOP "performs the same function as a general demurrer, and hence attacks *only* defects disclosed on the *face* of the pleadings or by matters that can be judicially noticed." (*Burnett v. Chimney Sweep* (2004) 123 Cal.App.4th 1057, 1064, emphs. added.) An MJOP is reviewed *de novo*. (*People ex rel. Harris v. Pac Anchor Transportation, Inc.* (2014) 59 Cal.4th 772, 777.)

With an MJOP, all "pleaded material facts are deemed to be true, as well as all facts that may be implied or inferred from those expressly alleged." (*Fire Ins. Exchange v. Superior Court* (2004) 116 Cal.App.4th 446, 452 (*"Fire Ins. Exchange"*).) The court "liberally" construes the allegations (CCP, § 452) and draws inferences favorable to plaintiff. (*Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1238 (*Perez*); *Wise,* 132 Cal.App.4th. at 738; *Edwards,* 53 Cal.App.4th at 28.)

As a general demurrer, an MJOP for failure to state a cause of action does not lie as to a portion of a cause of action. (*Fire Ins. Exchange, supra,* 116 Cal.App.4th at 452.) The question of proof of allegations cannot be resolved on a demurrer or MJOP, even though "their proof appears unlikely." (*Stanson v. Brown* (1975) 49 Cal.App.3d 812, 814 ("*Stanson*"); *Bach v. McNelis* (1989) 207 Cal.App.3d 852, 866 (*"Bach"*).) An MJOP challenges the *legal* sufficiency of allegations, not their *veracity*. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994 ("*Donabedian*").) Similarly, leave to amend should be granted if there is any reasonable possibility the plaintiff can state a good cause of action. (*Gami v. Mullikin Medical Ctr.* (1993) 18 Cal.App.4th 870, 876.)

Generally, a pleading "is sufficient if it alleges ultimate rather than evidentiary facts." (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550.) Less specificity is required to plead matters of which defendant has superior knowledge. (*Foster v. Sexton* (2021) 61 Cal.App.5th 998, 1027-1028.)

Federal preemption is an affirmative defense and cannot be a pleading challenge where, as here, it is factually disputed. (*Cellphone Termination Fee Cases* (2011) 193 Cal.App.4th 298, 316-318 ("*Cellphone*").) In fact, there is a strong presumption against federal preemption and the party claiming preemption has the burden to show that specific state law claims are preempted. (*Id*. at 318-319.)

Lastly, there is little practical difference between the standard of review or burden of proof under CCP sections 1085 and 1094.5. (*Del Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal.App.4th 712, 725–726.) They both require review of factual findings for substantial evidence and legal issues, including statutory interpretations, *de novo*. (*Martis Camp Community Assn. v. Cnty. of Placer* (2020) 53 Cal.App.5th 569, 593-596; *Bunnett v. Regents of U. of Cal.* (1995) 35 Cal.App.4th 843, 849 [subtle differences]; *Sacramentans for Fair Planning v. City of Sacramento* (2019) 37 Cal.App.5th 698, 707 [no material difference]; *Cal. Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 637 [no practical difference]; *Balch Enterprises, Inc. v. New Haven Unified School Dist.* (1990) 219 Cal.App.3d 783, 792 [same].)

III. FACTUAL BACKGROUND AND PETITIONERS' FACTUAL ALLEGATIONS

A. The Project.

As the County acknowledges, Petitioners challenge the County's approved Wireless Ordinance 2023-0001, which establishes permitting processes for the installation and modification of wireless

facilities in the County ("Ordinance" or "Project"). (MJOP, 13-19.) Petitioners challenge both the Ordinance and its adoption process for violations of due process and state laws. (FAP, ¶¶ 10 [list of challenges]; 39-74 [California Environmental Quality Act ("CEQA")]; 75-83 [Planning & Zoning Law & County Code re General Plan Consistency]; 84-86 [state law on colocation]; 87-95 [County Code on Ordinance Adopting Process]; 96-101 [unlawful ministerial designation, including under CEQA]; 102-106 [Constitutional procedural due process]; 107-118 [unlawful delegation of legislative power].)

The Ordinance amends Title 16 (Highways) and Title 22 (Planning and Zoning) of the County Code and establishes largely *ministerial* processes for permitting: (1) small cell facilities ("SCF") extending up to 50 feet high or up to 10% above the adjacent structures, whichever is greater; (2) eligible facilities requests ("EFR") for modifications of existing towers and bases to install wireless facilities thereon; (3) wireless facilities on private lands; (4) temporary wireless facilities of up to 200 feet high and for up to six months or longer; and (5) large macro-wireless facilities. (Petitioners' Request for Judicial Notice ("Pet. RJN"), **Exhibit A**, AR[2] 19-21, 33-36 [Ordinance].) The permitted facilities may reach up to 75 feet in Industrial, Rural, Agricultural, Open Space, Resort-Recreation, and Watershed Zones, or 35 feet in the Residential zone, with the only distance limitation of "five feet from any common property line shared with adjoining lots" in Residential zones. (Pet. RJN Exhibit A, AR 49-51.) As the record will show, the noted height maximums may change with EFRs.

Modifications to an existing macro facility may be eligible for a Ministerial Site Plan Review ("MSPR") upon certain conditions. (Pet. RJN Exhibit A, AR 47, 54.) Similarly, a Revised Exhibit "A" application under Section 22.184 is required to *collocate* a facility on an existing base station or tower with an approved and unexpired discretionary permit that hosts another macro facility, to modify an existing facility with an approved and unexpired discretionary permit, where Section 22.184.020 provides for *ministerial* review. (Pet. RJN Exhibit A, AR 48, 55; Pet. RJN **Exhibit B** [County Code, § 22.184].) A non-ministerial Conditional Use Permit ("CUP") applies when macro facility modifications need a waiver from standards listed in Section 22.140.760(E). (Pet. RJN Exhibit A, AR 48, 54-55.)

The Ordinance applies to all highways and private property in the unincorporated areas of the County (Pet. RJN, Exhibit A, AR 16-18), except if within a specific plan zone, community standards district, or local implementation program, where those specific standards take precedence. (Pet. RJN, Exhibit A, AR 43, 45.) As the County concedes, it defines "highway" as "any public highway, public street, public way or public place in the unincorporated territory of the county, either owned by the county or dedicated to the public for the purpose of travel" (MJOP, 6:27-28). This judicial admission "is a conclusive concession of the truth of a matter which has the effect of removing it from the issues." (Witkin, Cal. Evidence (2d ed. 1966) §§ 501, 505, pp. 472, 475-476, and see authority there collected; *Smith v. Walter E. Heller & Co.* (1978) 82 Cal.App.3d 259, 269 ("*Smith*").)

Further, as the County concedes (MJOP, 9:10-12), the Ordinance does not provide any estimate

[2] Citations to the Administrative Record ("AR") certified in this case. Petitioners judicially notice the bates-stamped copy of the Ordinance, since the County's respective RJN Exhibit A is not paginated.

or limitation on the number or concentration of SCFs or macro towers throughout the County or at any location, including in a highway designated as a Scenic Highway in the County General Plan or within the boundaries of a Significant Ecological Area, Significant Ridgeline, or Coastal Zone. (Pet. RJN Exhibit A, AR 18-59, esp. 24 & 40 [ministerial, except for facilities in the Specific Plan Zone within a local coastal program].) The Ordinance allows new towers and support structures to be installed on the grounds of listed or eligible California *historical resources,* but makes historic resource assessments *optional* at the Director's discretion, and requires no mitigation. (Pet. RJN Exhibit A, AR 50.)

Lastly, the Ordinance leaves critical permitting details to be covered by design standards checklists, to be developed and/or modified by non-elected Road Commissioner ("Commissioner") and Director (defined in 22.14.040-D). (MJOP 10:16-18; Pet. RJN Exhibit A, AR 22-23 & 48-49.) The Commissioner's action on a permit application is the County's final action. (Pet. RJN Exh. A, AR 23.)

B. Petitioners' Factual Allegations Must Be Admitted as True.

Fire, Hazards and Other Impacts: The "wireless facilities will *endanger* the *air*, *water*, *flora*, *fauna*, and *objects* of *historic* or *aesthetic* significance. The wireless facilities are *not designed* to *withstand earthquakes* or *floods* and will *create new risks* of *fire*." (FAP ¶ 9, emphs. added.)

Petitioner California Fires & Firefighters' "mission is to … *safeguard* the *health* of California *firefighters* whose *fire stations* were the first *targets* of *cell towers* beginning in the 1990s, … and to protect the *land* and the *people* of California through educating their local elected leaders regarding the increasing *threat* of telecommunications equipment-initiated *fires*." (FAP ¶ 16, emphs. added.)

"Because there is *no* limitation to the amount or number of facilities that can be built within the same location, a *conglomerate* or *cluster* of such facilities may result in a single area. The operation of *multiple* wireless facilities in the same location over time may cause substantial *adverse* environmental impacts to *aesthetics* and *safety* by increasing the risk for *fire* hazards to the *people* and *wildlife* in the area and exposing *sensitive species* to RF/EMF *radiation*." (FAP ¶ 175, emphs. added.)

Procedural Due Process: A "wireless project can often so *sicken* local residents that it constructively *evicts* whole families who can no longer tolerate continuous *exposure* to non-ionizing *radiation* emitted from small cell and macro cell towers. This situation is especially tragic for *poor* and *minority* families who are holding on desperately to affordable housing and lack any financial means of escape. *Basic justice demands* that these families, who are *represented* in *this* case by *several petitioners* and plaintiffs, be given *adequate prior notice* and a *fair hearing* before their voices are silenced, their *property* is *taken* or devalued, or their *lives* are put at risk." (FAP ¶ 8, emphs. added.)

"In light of *numerous disadvantaged* low-income communities in the County, the Ordinance and its proposed *ministerial permitting* process will … raise significant environmental justice issues for such communities, without any *possibility* or *procedure* for *recourse* or *change*." (FAP ¶ 7, emphs. added.)

"Based on the three factors in *Mathews*, the *private interest* that will be affected by the Ordinance or its enabled permit approvals is *significant*, involving both *deprivation* of *property* rights and also significant *risks* to human *life* and *health*. The *risk* of an erroneous deprivation of Petitioners'

private interests is also *significant* since Petitioners will have *neither notice* nor *opportunity* to be heard before any permits are approved near their properties. And the *Government's interest*, including the function involved and administrative burdens that the additional or substitute procedural requirements would entail are not significant to provide adequate notice and an opportunity for a public review to the public ... such notice and opportunity … is mandated by various state laws, including CEQA, California Planning and Zoning Law, and *environmental justice* principles at issue." (FAP ¶ 236, emphs. added.)

General Plan Policies: Petitioners list, detail, and analyze specific policies in the General Plan that the Ordinance is not consistent with: (1) the protection and enhancement of scenic, historical, cultural resources and rural areas; (2) protection of ridgelines from incompatible development that diminishes their scenic value; and, (3) mitigation of "all impacts from new development on or adjacent to historic, cultural, and paleontological resources to the greatest extent feasible." (FAP ¶¶ 190-195.)

IV. ARGUMENT

A. The Constitutional Due Process Claim Is Both Properly Pleaded and Supported.

The County takes issue with the FAP's allegations that: "[p]lacement of telecommunications devices near [private] individual properties may or will affect and interfere with individual property rights" (FAP ¶ 232); the Ordinance "does not provide any notice of or any opportunity for a hearing" (FAP ¶ 230); the Ordinance "is overbroad as it blanketly allows most, if not all, permit applications to be treated and processed as ministerial," but "fails to provide guarantees and safeguards to guard against arbitrary actions" (FAP ¶¶ 233-234); and the "Ordinance allows a Commissioner or Planning Director to develop or modify [a] design checklist" but "provides for no due process for the public to review and shape such design checklist" (FAP ¶ 231). The County raises three challenges, all of which fail.

First, the County summarizes Petitioners' procedural due process challenge as a *facial* challenge and claims that, for such a *facial* challenge, "Petitioners must *allege* facts to show that the Ordinance cannot, under *any set* of conceivable circumstances, adequately safeguard an individual's protected property interest." (MJOP 9:5-7, emphs. added.) In support, however, the County cites to *United States v. Salerno* (1987) 481 U.S. 739, 745 ("*Salerno*"). However, *Salerno* is inapposite. Specifically, it does not involve an MJOP or pleading challenge, as here. Also, contrary to the County's above-quoted claim that to prevail on a facial challenge, "Petitioners must *allege* facts" (MJOP 9:5-7), *Salerno* requires to *"*establish*"* such facts on the merits. (*Salerno, supra,* 481 U.S. at 745 ["the challenger must establish"].)

Also, despite its general proposition requiring petitioners to *establish* facts on the merits, *Salerno* distinguishes *two* types of due process challenges: substantive and procedural. (*Salerno,* at 746.) As relevant here, *Salerno* points to *procedural* due process, noting that "[w]hen government action depriving a person of life, liberty, or property *survives* substantive due process scrutiny, it must *still* be implemented in a *fair* manner. *Mathews* v. *Eldridge* (1976) 424 U.S. 319, 335." (*Salerno,* at 746, emphs. added.) Critically, *Salerno* does not take procedural due process lightly. Instead, it notes the "extensive safeguards" in the challenged Act: (1) the Act narrowly applies and allows to detain "only [] individuals who have been arrested for a specific category of extremely serious offenses"; (2) the Act is not "a

scattershot attempt to incapacitate those who are merely suspected of these serious crimes"; (3) "[t]he Government must first of all demonstrate *probable cause* to believe that the charged crime has *been* committed by the arrestee"; (4) "[i]n a *full-blown adversary hearing*, the Government must *convince* a *neutral decisionmaker* by *clear* and *convincing evidence* that *no conditions* of release can *reasonably assure* the *safety* of the community or any person[.]" (*Salerno, supra,* at 750, emphs. added.)

The Court further notes *additional* safeguards: (1) "the procedures by which a judicial officer evaluates the likelihood of future dangerousness are specifically designed to further the accuracy of that determination; (2) detainees have a right to counsel at the detention hearing; (3) they may testify in their own behalf, present information by proffer or otherwise, and cross-examine witnesses who appear at the hearing; (4) the judicial officer responsible for determining the appropriateness of detention is guided by statutorily enumerated factors, which include the nature and the circumstances of the charges, the weight of the evidence, the history and characteristics of the putative offender, and the danger to the community; (5) the Government must prove its case by clear and convincing evidence; (6) finally, the judicial officer must include written findings of fact and a written statement of reasons for a decision to detain; (7) the Act's review provisions provide for immediate appellate review of the detention decision. (*Salerno,* at 751-752.) Lastly, the Court in *Salerno* balances those extensive safeguards with the "the legitimate and compelling regulatory purpose of the Act and the procedural protections it offers" to conclude the Act is not facially invalid. (*Salerno,* at 752.) The County provides no similar safeguards.

Moreover, *Salerno's* reasoning on and analysis of the facial challenge or procedural due process shows that, even on the merits – not at issue in the MJOP – the Ordinance falls short. As alleged and will be shown on the record, the Ordinance allows hazardous wireless facilities of various sizes and unlimited numbers to be placed as close as *five* feet from private properties. (*See* Section III.A-B.) As a result, permitting of such wireless facilities ministerially, i.e., without any public notice, hearing, or right to contest, will result in unfair taking of property and human lives. (FAP ¶ 236.) Unlike *Salerno,* the County has no safeguards in place to protect the public from such unconstitutional taking.

The County's passing reference to *William Jefferson & Co. v. Bd. of Assessment & Appeals No. 3* (9th Cir. 2012) 695 F.3d 960, 963 ("*William*") for applying *Salerno'*s general proposition, is similarly unavailing – *William* does not involve an MJOP and makes no analysis of due process whatsoever.

The County's reliance on *City of Los Angeles v. Superior Court* (2002) 29 Cal.4th 1, 10-11 (*"City of LA"*) is also unavailing. (MJOP, 9:10-15.) While *City of LA* notes the general presumption of constitutionality of statutes and the heavy burden to overcome it, the issue is manifestly the ***likelihood*** of proof, which cannot be raised as an MJOP challenge here. (*Stanson, supra,* 49 Cal.App.3d at 814; *Bach, supra,* 207 Cal.App.3d at 866.) Moreover, the holding in *City of LA* finding no fundamental principle of justice is limited to the different facts of that case as to whether there is "a statutory right to disclosure of citizen complaints of police misconduct that occurred 'more than five years before' the charged crime." (*City of LA, supra,* 29 Cal.4th at 11.) Those facts or issues are not remotely similar to the *taking* pleaded here, where: (1) an unlimited number of hazardous facilities will be placed at/near private properties or

public places (e.g., schools), in disadvantaged community areas, without any notice, hearing, or appeal process; and (2) non-elected officials will have unbridled discretion to act. (*See* Section III.A, *supra.*)

The County's reliance on *Cooper v. Equity Gen. Ins.* (1990) 219 Cal.App.3d 1252, 1263-1264 ("*Cooper*") is similarly misplaced. *Cooper* involved no constitutional due process issue and sustained the demurrer where the plaintiff failed to meet the heightened pleading standard for its *fraud* claim.

Tobe v. City of Santa Ana (1995) 9 Cal.4th 1069 (*"Tobe"*) is also inapposite. Unlike the *procedural* due process challenge here to the Ordinance threatening people's lives and private properties without due process, *Tobe* involved a facial *substantive* constitutionality challenge to ordinances "banning 'camping' and storage of personal property, including camping equipment, in designated public areas." (*Tobe, supra,* 9 Cal.4th at 1080.) The Court held that an individual's constitutional right to travel or remain in a chosen location "does not confer immunity against local trespass laws and does not create a right to remain" on a public or (someone else's) privately owned property. (*Tobe,* at 1103.)

None of the County's cited cases support its position. (*Acosta v. SI Corp.* (2005) 129 Cal.App.4th 1370, 1379 ("*Acosta*") [cases are not authority for propositions not considered].)

Moreover, the Ordinance is unconstitutionally *vague* and *overbroad* under *United States v. Inzunza* (9th Cir. 2011) 638 F.3d 1006, 1019 because, under all conceivable circumstances, the Ordinance allows unlimited hazardous wireless facilities to be ministerially placed at or near private properties or public places without any further distance limitations other than five feet away from common property lines and further empowers non-elected officials to make or amend design standards to adjudicate permits – all without any safeguards to curb abuses or allow to contest agency actions.

Second, the County engages in semantic games and argues that since Petitioners alleged that wireless facilities may be placed "immediately next" to individual residents' houses and thereby will substantially affect private property interests, then Petitioners' constitutional challenge fails because such facilities may not *always* be placed *immediately* next to individuals' houses and may not *always* result in substantial loss. (MJOP 10:6-15.) The County improperly asks the Court to draw narrow inferences from Petitioners' pleadings, contrary to the well-settled *liberal* construction here mandated by law. (*Wise,* at 738; *Edwards,* at 28; *Perez, supra,* 209 Cal.App.4th at 1238.) The County's claim is also logically fallacious as it inverts Petitioners' allegation to suggest that what Petitioners provided as merely an *example* was nonetheless the *only* instance where the due process claim is triggered. Neither do Petitioners have to wait until the wireless facilities are actually placed at or near certain properties and take people's properties or lives before they can challenge the Ordinance. (*See* Section IV.F, *infra.*)

Moreover, the County's reliance on *Robinson v. City & Cnty. of San Francisco* (2012) 208 Cal.App.4th 950, 963 (*"Robinson"*) to claim that "as a matter of law, affixing small equipment boxes to an existing utility pole" does not result in "significant" or "substantial" deprivation of property rights is misplaced – it disregards the whole nature and scope of the Project here. *Robinson* did not involve an *Ordinance,* but a specific permit application. Also, unlike the unlimited hazardous wireless structures or other actions enabled under the Ordinance, the project in *Robinson* was about the installation of 40 small

structures on "existing utility poles at locations 'distributed throughout the city and … not concentrated in one particular area.'" (*Robinson, supra,* 208 Cal.App.4th at 953-954.)

Third, as to only a *part* of the procedural due process challenge to the Ordinance for allowing development and modification of design standards checklists by non-elected professionals, the County argues that the claim fails because due process applies only to *adjudicative* decisions, whereas issuing of design checklists is quasi-legislative. (MJOP 10:16-23.) In support, the County cites to *Hobbs v. City of Pac. Grove* (2022) 85 Cal.App.5th 311, 322 ("*Hobbs*"). But *Hobbs* does not stand for the categorical proposition that *no* legislative action may be constitutionally challenged. (*Hobbs, supra,* 85 Cal.App.5th at 322.) Rather, it lists instances where courts "infer a hearing right," or a hearing right is expressly foreclosed, and distinguishes actions where, as here, officials make *discretionary* decisions. *(Id*.)

Hobbs is also factually distinguishable. It found no procedural challenge, since the "*random* selection process under Ordinance No. 18-005 [for licenses that would not be renewed beyond their existing term] involved no exercise of discretion or judgment." (*Id.* at 322.) Unlike the random selection ordinance in *Hobbs,* the Ordinance here provides *discretion* to non-elected officials to shape and amend design standards checklists to, in turn, adjudicate permits. Notably, the County's reliance on *Hobbs* to avoid Petitioners' constitutional challenge to the Ordinance as a quasi-legislative action ignores the cases the County cited, where *legislative* actions were constitutionally challenged. (See *Salerno, Tobe,* etc.) The County's claim is also inconsistent with *Horn v. County of Ventura* (1979) 24 Cal.3d 605 ("*Horn*"), to which *Hobbs* cited and which rejected a similar *legislative* defense in a zoning case, where, as here, resolution of issues "involves the exercise of judgment, and the careful balancing of conflicting interests, the hallmark of the adjudicative process." (*Horn, supra,* 24 Cal.3d at 614-615.)

Fourth and lastly, the County argues Petitioners' constitutional challenge to the Ordinance is not ripe, citing to *Witt v. Dept. of Air Force* (9th Cir. 2008) 527 F.3d 806, 812-813 ("*Witt*"). But *Witt* itself defines ripeness as a claim which "rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." (*Witt, supra,* 527 F.3d at 812.) Unlike the facts in *Witt*, where petitioner challenged the process of issuing honorable discharge papers which would reflect the reasons for that discharge and thereby result in a stigma, but where no such discharge papers were yet issued to ascertain what those reasons and their effect would be – there is no such contingency here. The Ordinance sets a process to permit an unlimited number of hazardous wireless structures at or near private and public properties, within five feet from the common property lines, and empowers non-elected officials to issue and amend design standards checklists to adjudicate such permits – all without due process.

A "controversy is 'ripe' when it has reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made." (*Pacific Legal Foundation v. Cal. Coastal Com.* (1982) 33 Cal.3d 158, 170 ("*Pacific Legal"*).) The facts here meet both ripeness prongs under *Pacific Legal*: (1) the dispute is sufficiently concrete that declaratory relief is appropriate; and (2) withholding judicial consideration will result in the parties suffering hardship. (*Pacific Legal, supra,* 33 Cal.3d at 171-173). Should, as the County suggests, Petitioners wait for the

unlimited hazardous wireless devices to be placed ministerially or design checklists to be issued by a non-elected official at his/her unbridled discretion before challenging such actions, the controversy would not just *reach*, but *pass* the point, affecting the environment and the disadvantaged communities.

In sum, Petitioners have *alleged* sufficient facts to support their constitutional due process claim.

B. The Unlawful Categorical Ministerial Designation Is Properly Pleaded and Supported.

The County takes issue with the FAP allegations at paragraphs 208-216, where Petitioners specify provisions calling for discretionary review of permit applications and yet designating such permits as ministerial or subject to MSPR. (MJOP 10:25-28.) Petitioners challenged that designation as inconsistent with CEQA's definition of ministerial, as well as CEQA's prohibition of pre-commitment. (FAP ¶¶ 208, 217-221.) The County calls those "novel" claims unsupported by facts or law. Not so.

Our California Supreme Court in *Protecting Our Water & Environmental Resources v. Cnty. of Stanislaus* (2020) 10 Cal.5th 479, 497 (*"Protecting Our Water"*) is on point. There, Stanislaus County issued well construction permits under an ordinance that incorporated state well construction standards and categorically classified a *subset* of those projects as ministerial. (*Protecting Our Water,* 10 Cal.5th at 487.) Finding that at least *some* of such well permits may involve discretionary judgment, the Court granted declaratory relief, holding that "classifying all issuances as ministerial violates CEQA." (*Id.*) The Court denied *injunctive* relief only because plaintiffs "have not demonstrated that *all* permit decisions covered by the classification practice are discretionary." (*Id.*) Under *Protecting Our Water,* Petitioners here are entitled to both declaratory and injunctive relief since they alleged – and also established – that certain provisions in the Ordinance involve discretionary judgment. (FAP ¶¶ 208-216.)

Horn, supra, 24 Cal.3d 605 is also instructive. There, the Court refused to treat the subdivision approvals *ministerially*, noting that they require resolution of environmental, topography, density, public health and access rights, or community land use plans which **"**involves the exercise of judgment, and the careful balancing of conflicting interests, the hallmark of the adjudicative process." (*Id.* at 614-615.) The permits enabled under the Ordinance and their adjudication involve a similar adjudicative process.

Second, the County claims "neither the Highways Code Amendments or Zoning Code Amendments 'label' any particular process 'ministerial.'" (MJOP 11:1-3.) This is a dispute of facts, improper for an MJOP. (See *Wise,* at 738; *Edwards,* at 28; *Perez,* at 1238.) Also, while great specificity is not required for a pleading, Petitioners specify at least two provisions where the County designated an EFR and a macro facility permit as eligible for a Ministerial Site Plan Review. (FAP ¶¶ 216-217.)

To the extent the County disputes that the MSPR designation is not the same as *ministerial* or challenges Petitioners' use of the word "label" to reference ministerial *designation,* these are purely semantic challenges that elevate form over substance and cannot be a basis for an MJOP. Finally, the County's dismissal of Petitioners' claims as speculative are improper for an MJOP as it disputes facts.

As the record shows, the County designated many actions as subject to MSRP, i.e., ministerial review, and only a few permits or actions as subject to CUP, i.e., discretionary conditional use permit. (Pet. RJN, Exhibit A, AR 47-48.) And, as Petitioners allege, adjudication of all permits necessarily

involves discretionary judgment and hence cannot be deemed ministerial. (FAP ¶¶ 209-216.)

Petitioners' challenge to unlawful ministerial designation of permits is well-pleaded.

C. The Planning and Zoning Law and General Plan Inconsistency Claim Is Adequately Pleaded and Supported by Law.

The County's challenge to Petitioners' general plan consistency and California Planning and Zoning violation allegations (FAP ¶¶ 189-196) claims is based on an erroneous legal standard and misses the point. The County basically tries to evade the Planning and Zoning Law's clear mandate to ensure that its approval be consistent with *all* General Plan policies under Government Code section 65860(a)(2) and focuses only on *one* policy regarding wireless facilities, which the County claims is the only relevant one. Not so. *Nowhere* does Section 65860(a)(2) limit consistency requirement to only a single or select policy – it requires the assurance that "various land uses authorized by the ordinance are compatible with the *objectives*, *policies*, *general* land uses, and *programs* specified in the plan."

As alleged by Petitioners (FAP ¶ 83), a project's inconsistency with even *one* basic and clear General Plan policy is enough to scuttle a project. (*Families Unafraid to Uphold Rural etc. Cnty. v. Bd. of Supervisors* (1998) 62 Cal.App.4th 1332, 1341-1342 ("*FUTURE*").) That consistency with all the General Plan policies is required is further confirmed by Gov. Code section 65300.5, requiring *internal* consistency between various policies and elements in the General Plan. That internal consistency cannot be achieved if the Ordinance is consistent with only one policy, as the County suggests. (FAP ¶ 77.)

Further, the County's reliance on an agency's presumption of regularity to withstand consistency challenges is misplaced – such presumption is insufficient. (*FUTURE,* 62 Cal.App.4th at 1338.)

Lastly, the County's preemption challenge to Petitioners' General Plan consistency claim based on the Telecommunication Act ("TCA") fails. The County claims its Ordinance shall not prohibit or have the effect of prohibiting the provision of personal wireless services under 47 U.S.C. section 332(c)(7)(B)(i)(II)). (MJOP 12:7-9.) Yet, it ignores the fact that 47 U.S.C. section 332(c)(7)(A) specifically retains the County's authority, as here, to make *zoning regulations*. It also inherently presumes that Petitioners' identified policies *prohibit* the provision of wireless services. Nothing on the face of the FAP or Ordinance shows that Petitioners' identified General Plan policies conflict with TCA.

In sum, Petitioners' General Plan consistency claims are properly pleaded and supported.

D. The Unlawful Delegation Claim Is Adequately Pleaded and Supported by Law and Facts.

The County takes issue with the FAP's *allegations* at ¶¶ 240-249 related to unlawful delegation of legislative power to non-elected officials, claiming that Petitioners failed their "burden" to show that the County left the resolution of "fundamental policy" to others or to show "total abdication of [legislative] power." (MJOP 12:20-23.) On its face, the County disputes the *veracity* of Petitioners' allegations or likelihood of proof, improper for an MJOP. (*Stanson, supra,* 49 Cal.App.3d at 814; *Bach, supra,* 207 Cal.App.3d at 866.) An MJOP challenges the *legal* sufficiency of allegations, not their *veracity*. (*Donabedian, supra,* 116 Cal.App.4th at 994.) The County also asserts that a design standards checklist is not a fundamental policy and thereby raises an improper factual dispute for an MJOP. (*Id*.)

Notably, none of the County's cited cases involves a pleading challenge or is on point. Thus, in

Kugler v. Yocum (1968) 69 Cal.2d 371, 375 (*"Kugler"*) – where the City Council of Alhambra enacted an ordinance "fixing the Los Angeles rates as the minimum for Alhambra firemen's salaries" and allowed the City of Los Angeles to set those rates – the Court found no unlawful delegation because there were adequate safeguards against abuses, i.e., Los Angeles is an employer just as Alhambra and "will be motivated to avoid the incurrence of an excessive wage scale; the interplay of competitive economic forces and bargaining power will tend to settle the wages at a realistic level." (*Kugler, supra,* 69 Cal.2nd at 380-383.)

As the Court in *Kugler* noted, the prohibition against delegation of legislative power "rests upon the premise that the legislative body must itself effectively resolve the truly fundamental issues. It cannot escape responsibility by explicitly delegating that function to others or by failing to establish an effective mechanism to assure the proper implementation of its policy decisions." (*Kugler,* at 376-377.)

Similarly, *Carson Mobilehome Park Owners' Ass'n v. City of Carson* (1983) 35 Cal.3d 184 ("*Carson*") does not involve a pleading challenge; it is also factually distinguishable. In *Carson* – where the City of Carson set the maximum rent that can be charged but delegated the issue of allowable rent increases to the Mobilehome Park Rental Review Board ("Board") while providing that Board a non-exclusive list of 12 factors to consider to ensure that such rent increases are "just, fair and reasonable" – the Court did not dispute that rent increases are a fundamental issue. (*Carson, supra,* 35 Cal.3d at 187-188.) Rather, the "first" issue the Court considered was "whether the ordinance is unconstitutional because it lacks sufficient standards to govern its administration." (*Id.* at 189.) The Court noted: "[b]y stating its purpose [of ensuring just, fair and reasonable rent increases] and providing a nonexclusive illustrative list of relevant factors to be considered, the [ordinance] provides constitutionally sufficient legislative guidance to the Board for its determination of petitions for adjustments of maximum rents." (*Id.* at 190-191.) As such, while in both *Kugler* and *Carson,* the Court noted the general standard of requiring a fundamental policy or total abdication of legislative power, those issues were not what the Court considered to support the County's claims here. (*Acosta, supra,* 129 Cal.App.4th at 1379.)

Here, while the County disputes Petitioners' allegations on both prongs of the broad proposition in *Kugler* and *Carson,* it fails to support its arguments with a coherent argument. It argues: (1) in the Ordinance, "neither official is authorized to decide a fundamental policy issue," and (2) "[s]uch policy issues were decided by the Board of Supervisors in adopting the Ordinance," citing to *Sacramentans for Fair Planning v. City of Sacramento* (2019) 37 Cal.App.5th 698, 716 (*"Sacramentans"*). (MJOP 12:24-26.) The County's first point is forfeited for lack of analysis. (*In re Steiner* (1955) 134 Cal.App.2d 391, 399 ["A point which is merely suggested by appellant's counsel, with no supporting argument or authority, is deemed to be without foundation and requires no discussion"].)

The County's second point is not supported by *Sacramentans*, as it is inapposite – it did not involve a countywide ordinance enabling ministerial permitting of unlimited hazardous wireless facilities and empowering non-elected officials to make design standards to adjudicate such permits, all without any public hearing or right to contest such actions. *Sacramentans* involved an approval of a

single project, which, despite its noncompliance with the city's height and floor-area limitations, was nonetheless approved according to the General Plan provision LU 1.1.10 giving the city the authority to approve such non-conforming projects if they provide significant public benefits. (*Sacramentans, supra,* 37 Cal.App.5th at 705.) Finding no improper delegation, the Court noted: (1) the planning staff did not decide a *fundamental policy* issue – that issue was decided by *city council* upon adopting LU 1.1.10 as part of the *general plan*; and (2) general welfare in the LU 1.1.10 is "sufficient guideline to enable an agency to act constitutionally." (*Sacramentans,* at 716-717.) Critically, in *Sacramentans,* the planning staff's approval of the project was not final, but appealed to the city council. (*Id*. at 705-706.) As such, *Sacramentans* involved the *implementation* rather than *making* of the fundamental policy, unlike here.

Relying on *Sacramentans,* the County also claims that both Title 16 and 22 under the Ordinance contain "legislative direction and define the relevant 'development standards,' which are '*sufficient* guideline[s] to enable an agency to act constitutionally'." (MJOP 12:26-28 & 13:1-2, emph. added.) The claim fails. As noted prior, *Sacramentans* is factually inapposite as it involved an elected body *city council's* approval of a specific development project of a 15-story mixed-use condominium building (*id.* at 704) – not an approval of a *countywide* Ordinance here, setting, *inter alia*, *ministerial* permitting of hazardous unlimited wireless facilities. Second, whether the Ordinance contains *all* the required development standards and whether those are "sufficient" is a question of fact that cannot be decided on an MJOP or on the face of the Ordinance. The court "liberally" construes the allegations (CCP, § 452) and draws inferences favorable to plaintiff (*Perez,* at 1238 (*Perez*); *Wise,* at 738; *Edwards,* at 28). An MJOP challenges the *legal* sufficiency of allegations, not their *veracity*. (*Donabedian, supra,* at 994.)

Moreover, unlike *Sacramentans,* the Ordinance here left out critical details in development standards, such as the distance of wireless facilities from private or public places. (See Section III.A, *supra*.) It left such details to the unbridled and unsupervised discretion of non-elected officials, while also failing to provide any process or safeguards for non-elected officials to issue or amend design standards checklists, CEQA review, or hearing or an appeal process to challenge said checklists. (*Id.*)

In sum, Petitioners' unlawful delegation claim is well-pleaded and supported.

E. <u>The Unlawful Colocation Claim Is Properly Pleaded and Supported by Law.</u>

The County challenges Petitioners' pleadings as to the unlawful colocation claim in the Ordinance. (FAP ¶¶ 84-86 & 184-187.) First, the County appears to challenge Petitioners' claim *partially.* As such, the claim fails since an MJOP does not lie as to a portion of the pleadings. (*Fire Ins. Exchange, supra,* at 452.) The County also generally relies on federal preemption as an affirmative defense. However, the County fails to show federal law expressly preempts state law. Neither can it.

First, the County engages in semantic games, claiming that state law at Gov. Code section 65850.6 merely sets forth certain requirements that must be satisfied (*unless preempted* by federal law) when an application is made for a '*wireless telecommunications colocation facility'*." (MJOP 13:13-14.) It then claims: "The Ordinance does not refer to '*wireless* telecommunications colocation facility,' or 'collocated facility' much less adopt special procedures for processing applications for such facilities.

Nor does it use the phrase 'collocated *wireless* facilities,' which Petitioners attribute to it." (MJOP 13:27-28, emph. added.) The County's arguments ignore the relevant context and the fact that: (1) despite semantic differences in state and federal law definitions, both state and federal law's colocation refer to the same *end result* whereby a new facility is placed on an existing one. (*See* Gov. Code § 65850.6 (d); 47 C.F.R. § 1.6100 (b)(2); Pet. RJN Exhibit A, AR 20, 32); and (2) federal law does not expressly or in any way preempt the Ordinance or colocation provision under it. Notably, apart from claiming that federal law "uniquely defines" colocation (MJOP 14:1-2), the County points no essential or practical difference between the state and federal colocation definitions besides pointing that the federal definition does not contain the word "wireless" for the existing facility.

Second, the County concedes that both EFRs and SCFs may involve colocation, to which state law applies, but then claims that "EFRs and SCFs *do not always* have to involve colocation, however defined." (MJOP, 14:3-5, emph. Added.) To the extent the County here raises a *partial* challenge to Petitioners' colocation claim, it is procedurally improper here. (See *Fire Ins. Exchange, supra,* at 452.)

Further, as to *EFRs,* the County claims "the County is *duty bound* to apply the *federal* rules in its Ordinance, *not state* law which is *preempted,*" citing to 47 U.S.C. section 1455(a)(1). (MJOP 14:5-8.) The County misses the point. Section 1455(a)(1) does not preempt the Ordinance here, since the Ordinance *neither* approves *nor* denies EFRs. To wit, Section 1455(a)(1) provides: "a State or local government may not *deny*, and *shall approve*, any *eligible facilities request* for a *modification* of an existing *wireless tower* or *base station* that does not *substantially* change the physical dimensions of such tower or base station." (47 U.S.C. § 1455(a)(1), emphs. added.) In contrast, the Ordinance here merely sets conditions that the County should require from an operator *before* it can decide *whether* to approve or deny an EFR. In turn, Gov. Code section 65850.6(a)-(b) sets such a condition whereby a pre-existing colocation facility for which an EFR is proposed must have been subject to a third-tier CEQA review – i.e., an EIR, Mitigated Negative Declaration ("MND"), Negative Declaration ("ND") – and must have an existing permit issued on or after January 1, 2007. The County *can* implement this state law requirement without any conflict with the federal law by requiring that, *prior* to applying for an EFR, the applicant: (1) ascertain whether the existing colocation facility has been subject to an EIR, MND or ND and whether it has an existing permit issued on or after January 1, 2007; and (2) prepare and present a CEQA clearance *as part* of the application package. Conversely, should the applicant fail to meet those conditions, its application will be incomplete, rather than denied.

Third, the County raises a *partial* challenge to SCFs, improper for the MJOP. (*Fire Ins. Exchange,* at 452.) It claims that, as to SCFs, the state colocation requirements *may not* necessarily apply due to the semantic differences in the federal and state law. (MJOP 14:20-25.) The County claims that an "SCF 'collocation' under federal law cannot be a 'colocation facility' under state law" because collocation under federal law applies to SCFs placed on pre-existing structures *without* wireless on them, while colocation under state law *only* applies to wireless facilities placed on pre-existing structures *with* wireless on them. (*Id*.) But the federal definition of collocation does not expressly

exclude structures *without* wireless on them: "(2) *Collocation.* The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes." (47 C.F.R. § 1.6100(b)(2).) The Ordinance here similarly *broadly* defines collocation without such limitation: "Collocation. As defined in Title 47 of the Code of Federal Regulations, section 1.6002(g)(1) and (2), or any successor provision, is the (1) mounting or installing an antenna facility on a pre-existing structure, and/or (2) modifying a pre-existing structure for the purpose of mounting or installing an antenna facility on that structure." (Pet. RJN, Exhibit A, AR 32.) Hence, state colocation mandates *will* apply if the request is for "the placement or installation of wireless facilities, including antennas, and related equipment, on, or immediately adjacent to, a wireless telecommunications colocation facility." (Gov. Code, § 65850.6(d).) As the County concedes: "[A]n application for a SCF *might* be colocated on a pre-existing structure *without* any wireless facility on it or it *might* be deployed on a new structure." (MJOP 14:21-23, emphs. added) Indeed, the Ordinance does not limit collocation to SCFs. (Pet. RJN, Exhibit A, AR 32, 47-48 [macro].)

Fourth, the County's preemption claim fails since federal preemption is an affirmative defense and cannot be a pleading challenge where, as here, it is factually disputed. (*Cellphone, supra,* 193 Cal.App.4th at 316-318.) This is especially the case here, in light of the strong presumption against federal preemption and the County's burden to prove preemption, which it failed. (*Id*. at 318-319.)

Lastly, the County's ripeness defense as to Petitioners' unlawful colocation claim is unavailing. As the County's own protestations show, there is an actual controversy as to: (1) whether federal law indeed preempts state law colocation requirements; and (2) whether the County's Ordinance complies with state law mandates, including for a prior CEQA review, where it categorically designated all SCFs and EFRs as ministerial and subject to MSPR. Should Petitioners wait until the County approves colocations ministerially without complying with state laws to challenge such approvals, the controversy would not reach, but pass the critical point. (*Pacific Legal,* at 170.)

In sum, Petitioners' unlawful colocation claim under state law is well-pleaded and supported.

F. Petitioners' Declaratory Relief Claims Are Properly Pleaded and Supported.

The County challenges Petitioners' request for declaratory relief as to several claims, contending that those claims do not allege actual controversies. (MJOP 15:15-17; FAP ¶ 226.) For all the reasons stated above, all of Petitioners' claims are ripe and raise several actual controversies.

The County also contends that the "declaratory relief claims fail because it [*sic.*] is duplicative of writ relief, and derivative of other causes of action." (MJOP 15:17-18.) However, it is not improper to allege a separate claim for declaratory relief. CCP section 1060 authorizes a declaratory relief cause of action for a declaration by the court of the rights and duties of the parties to a "written instrument…or under a contract…including a determination of any question of construction or validity arising under the instrument or contract." Section 1060 does not disallow joining declaratory relief with other claims.

Critically, the remedy of declarative relief is cumulative and does not restrict any other remedy. (CCP, § 1062.). Thus, the fact that "another remedy is available is an insufficient ground for refusing

declaratory relief." (*Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 433.) "Declaratory relief is designed in large part as a practical means of resolving controversies, so that parties can conform their conduct to the law and prevent future litigation." (*Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 648.) Also, "judicial economy strongly supports the use of declaratory relief to avoid duplicative actions to challenge [a party's] statutory interpretation or alleged policies." (*In re Claudia E.* (2008) 163 Cal.App.4th 627, 633; *Bess v. Park* (1955) 132 Cal.App.2d 49, 53 [declaratory relief is proper where the controversy "was a recurring one involving the interpretation of a statute" and the alternative remedy "would involve a multiplicity of actions going to the same point"].)

The County's cited cases do not support its *duplicative* claim argument either. Thus, *City of Pasadena v. Cohen* (2014) 228 Cal.App.4th 1461 (*"Pasadena"*) did not categorically prohibit joining declaratory relief with *any* other writ claims, but rather joining declaratory relief "with a writ of mandate reviewing an *administrative* determination." (*Id.* at 1467.) As the County contends (MJOP 9:5-15, 10:16-23), the Ordinance here is not an administrative approval of a specific project, but rather a quasi-legislative act. Similarly, *Guilbert v. Regents of U. of Cal.* (1979) 93 Cal.App.3d 233, 244 (*"Guilbert"*), to which *Pasadena* cites, stands for the same proposition that a declaratory relief is not proper for an *administrative* determination. But it also notes the court's discretion in granting declaratory relief: "'[whether] a determination is proper in an action for declaratory relief is a matter committed to the *discretion* of the trial court, and the exercise of that *discretion* will not be *disturbed* on appeal unless a clear abuse thereof is shown.' (Cit. omit.) Where the court believes that *more effective* relief can be granted through another procedure, it will be *justified* in refusing a request for declaratory relief. (Cit. omit.)" (*Guilbert, supra,* 93 Ca.App.3d at 245, emphs added.) As a discretionary issue, declaratory relief is not a question of law to be raised on the MJOP.

Lastly, the County's reliance on *Ball v. FleetBoston Financial Corp.* (2008) 164 Cal.App.4th 794, 800 (*"Ball"*) is misplaced. *Ball* did not involve duplicative claims, but rather a merits claim that failed and therefore its "derivative" declaratory relief claim also failed. (*Id.*) Yet, as shown above, none of Petitioners' claims fails on its merits. (*See* Sections IV.A-E.) Hence, declaratory relief is also proper.

In sum, Petitioners' declaratory relief claims are well-pleaded and supported.

V. CONCLUSION

For all of the above-noted reasons, Petitioners respectfully request that the Court deny the County's MJOP as it is procedurally improper and legally or factually unsupported.

Respectfully submitted,

DATED: January 30, 2024

MITCHELL M. TSAI LAW FIRM

By: _____

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PROOF OF SERVICE

I, Steven Thong, declare that:

I am a citizen of the United States and work in Los Angeles County, California. I am over the age of 18 years and am not a party to the within-entitled action. My business address is 139 South Hudson Avenue, Suite 200, Pasadena, California 91101. I served this list of persons with the following document on January 30, 2024:

PETITIONERS' OPPOSITION TO RESPONDENTS' MOTION FOR JUDGMENT ON THE PLEADINGS

The document was served on:

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X by electronic service, via either electronic transmission or notification consistent with California Code of Civil Procedure 1010.6.

I declare under penalty of perjury, according to the laws of the State of California, that the foregoing is true and correct. Executed on January 30, 2024, in Pasadena, California.

Steven Thong