

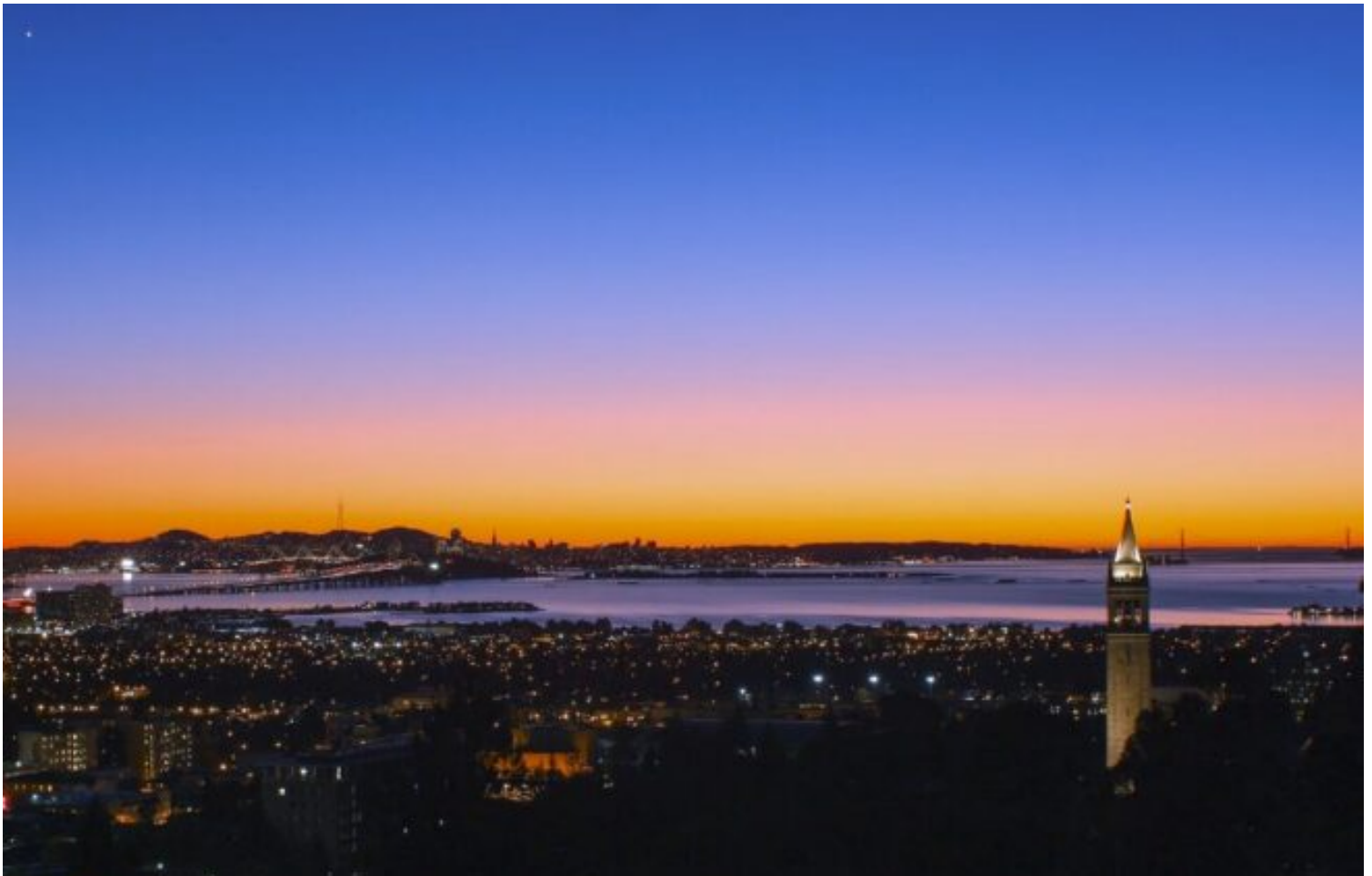
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March 31, 2023

Denial of Affordable Housing Project Violated Both Streamlining Statute and Housing Accountability Act



A trial court had jurisdiction to find that a denial of a permit application violated the Housing Accountability Act (HAA) on remand, even though the Court of Appeal did not expressly instruct the trial court to address the HAA issue. *Ruegg & Ellsworth v. City of Berkeley*, No. 2487258 (1st Dist., March 14, 2023).



Plaintiff applied for ministerial approval of a mixed-use development pursuant to the streamlined approval process for affordable housing projects outlined in Government Code section 65913.4. Plaintiff challenged the City's denial of the permit, alleging that the City violated both the streamlining statute and the HAA, which prohibits local agencies from disapproving affordable housing development projects without making specified written findings.

The trial court originally found that the City did not err in denying the ministerial permit and did not reach the HAA issue. The Court of Appeal reversed and remanded to the trial court with directions to grant the writ petition, stating that it was "unnecessary" for the appellate court to address whether the City's denial also violated the HAA. On remand, plaintiff argued that the trial court should decide the outstanding HAA issue in addition to granting its writ petition, and the trial court did so.

The Court of Appeal agreed that trial court had jurisdiction to decide the HAA issue because doing so was necessary to fully resolve whether the plaintiff was entitled to the relief sought by the petition. The Court of Appeal's statement that it was unnecessary to address the HAA issue did not mean that the HAA issue was outside the trial court's jurisdiction on remand—it left that issue open for determination by the trial court. In addition, plaintiff was not required to seek rehearing of the appellate court's decision and seek modification of the remand instructions to include further proceedings on the HAA claims — the appellate disposition, read together with the opinion as a whole, gave no indication that the HAA issues were not to be resolved. The trial court's issuance of the writ requiring the City to grant the ministerial permit also did not moot the HAA claim because determining the HAA claim allowed the trial court to provide further relief, including retaining jurisdiction to ensure enforcement of its orders and imposing fines for noncompliance.

Authors