EFS-020

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ATTORNEY FOR (*name*): City of Cupertino

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara
STREET ADDRESS: 161 North First Street
MAILING ADDRESS: 191 N orth First Street
CITY AND ZIP CODE: San Jose 95113
BRANCH NAME: Old Courthouse

CASE NUMBER: 23CV410817

PLAINTIFF/PETITIONER: CA Housing Defense Fund, Yes In My Back Yard
DEFENDANT/RESPONDENT: City of Cupertino
OTHER:

JUDICIAL OFFICER: Hon. Mary Arand

PROPOSED ORDER (COVER SHEET)

DEPT: 18

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
   City of Cupertino, California Housing Defense Fund, Yes In My Back Yard

2. Title of the proposed order:
   [Proposed] Stipulated Judgment

3. The proceeding to which the proposed order relates is:
   a. Description of proceeding: N/A - this is for settlement of the entire action
   b. Date and time:
   c. Place:

4. The proposed order was served on the other parties in the case.



Celia W. Lee
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Form Adopted for Mandatory Use
Judicial Council of California
EFS-020 [Rev. February 1, 2017]

PROPOSED ORDER (COVER SHEET)
(Electronic Filing)

Cal. Rules of Court,
rules 2.252, 3.1312
www.courts.ca.gov

CASE NAME:	CASE NUMBER:
California Housing Defense Fund, Yes In My Backyard v. City of Cupertino	23CV410817

PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER

1. I am at least 18 years old and **not a party to this action.**

   a. My residence or business address is *(specify):*
   1300 Clay Street, Floor 11, Oakland, CA 94612

   b. My electronic service address is *(specify):* sshimizu@goldfarblipman.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

   a. On *(name of person served) (If the person served is an attorney, the party or parties represented should also be stated.):*
   Kevin E. Diggs, Yes In My Back Yard; Dylan Casey and Nicholas Eckenwiler, California Housing Defense Fund

   b. To *(electronic service address of person served):* keith@yimbylaw.org; dylan@calhdf.org, nicholas@calhdf.org

   c. On *(date):* 1/2/2024

[x] Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

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

Date: 1/2/2024



Season A. Shimizu
(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

Filed
January 8, 2024
Clerk of the Court
Superior Court of CA
County of Santa Clara
23CV410817
By: jsilveira

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

CALIFORNIA HOUSING DEFENSE FUND, a California nonprofit public benefit corporation; and YES IN MY BACK YARD, a California nonprofit public benefit corporation; and Petitioners, v. CITY OF CUPERTINO, Respondent.	Case No.: 23CV410817 ~~[PROPOSED]~~ **STIPULATED JUDGMENT** Assigned for all purposes to: Dept 18, Hon. Mary Arand Action Filed: February 3, 2023

Pursuant to the Stipulation for Entry of Judgment submitted by Petitioners CALIFORNIA HOUSING DEFENSE FUND ("CalHDF") and YES IN MY BACK YARD ("YIMBY") and Respondent CITY OF CUPERTINO ("City"), and pursuant to the Court's power under Code of Civil Procedure Section 664.6:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of Petitioner and against Respondent based on the following findings:

1. The City did not adopt the sixth cycle update to its housing element ("Housing Element Revision") by the January 31, 2023 statutory deadline for doing so;

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2. Due to the significant undertaking of time and effort required to prepare the Housing Element Revision compared to City staff available to work on such preparation, the City was required to find and employ a planning consultant for assistance, and due in part to the timing of the due date for sixth cycle revisions for Southern California cities, the City had significant difficulty in locating an available consultant to assist;

3. After securing the services of a consultant in October 2021, and finding performance of such consultant inadequate, the City was forced to seek and engage the services of a different, second consultant to assist with its Housing Element Revision preparation, with such second consultant not being engaged until November 2022 for limited purposes then in March 2023 for the broader purpose of completing the Housing Element Revision for the City;

4. On February 3, 2023, the City submitted a draft Housing Element Revision to the California Department of Housing and Community Development ("HCD"), commencing the 90-day review period mandated by Government Code Section 65585(b). After receiving comments from HCD, the City revised its draft Housing Element Revision and submitted a second draft to HCD on October 16, 2023;

5. Government Code Section 65759, subdivision (a), provides that the California Environmental Quality Act does not apply to any action necessary to bring a city's housing element into compliance with a court order or judgment rendered under Article 14 of Chapter 3 of Division 1 of Title 7 of the Government Code;

6. Government Code Section 65754, subdivision (b), requires any judgment in favor of a petitioner which finds that the housing element does not substantially comply with the requirements of state law, must order the local jurisdiction to bring its housing element into compliance with those requirements within 120 days and bring its zoning ordinance into consistency with the updated housing element within 120 days thereafter;

7. Government Code Section 65759, subdivision (b), provides that, upon good cause shown, the court can extend the time required for a local jurisdiction to bring its housing element into compliance by way of two extensions of time, not to exceed a total of 240 days;

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8. The parties acknowledge that good cause may exist to grant the City additional time to meet the requirements of Government Code Section 65754, which additional time may be necessary to allow the City to develop a draft Housing Element Revision that is likely to be determined to be in substantial compliance by HCD, and that Petitioners would not oppose a request for an extension of time under Government Code Section 65754, provided that the City acts in good faith to meet its obligations under Section 1 of this Stipulated Judgment, below; and;

9. The parties have agreed to the entry of this judgment because they wish to avoid the time and expense of litigation, so as to avoid wasting taxpayer money on unnecessary litigation.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that:

1. The City shall adopt a Housing Element Revision in substantial conformance with the Housing Element Law (Government Code Sections 65580 *et seq.*) and abide by the following schedule with respect to its Housing Element Revision:

a. With respect to the City's second draft Housing Element Revision, submitted to HCD on October 16, 2023:

i. In the event that HCD determines that the second draft Housing Element Revision substantially complies with the Housing Element Law, or conditionally determines that the second draft Housing Element Revision will substantially comply with the Housing Element Law upon changes agreed to by the City and communicated to Petitioners by the City, the City may adopt such second draft Housing Element Revision (and any pertinent changes referred to in this paragraph), but only after the 60-day review period pursuant to Government Code Section 65585(b)(3) has passed. Upon such adoption, the City will then be considered in substantial compliance with the Housing Element Law.

ii. In the event that HCD fails to review the second draft Housing Element Revision within 60 days, the City may adopt it, but only after the 60-day

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review period pursuant to Government Code Section 65585(b)(3) has passed.

b. If HCD finds that the City's second draft Housing Element Revision does not comply with the Housing Element Law, the City will submit a revised, third draft Housing Element Revision within 75 days after HCD's determination, notifying HCD that the draft is subject to the review procedure set forth under Government Code Section 65754. Subsections (i) and (ii) of Sections 1(a) above regarding the second draft Housing Element Revision shall also apply to any third draft Housing Element Revision submitted to HCD; provided, however, that the HCD review period shall be 45 days pursuant to Government Code Section 65754(a). However, if HCD finds that the City's third draft Housing Element Revision does not comply with the Housing Element Law, then the City may elect either to submit a revised, fourth draft Housing Element Revision within 45 days after HCD's determination, subject to the review procedure set forth in Section 1(a) and this subsection 1(b), or to adopt the Housing Element Revision as permitted by Government Code Section 65585(f). The procedures set forth in Section 1(a) and this subsection 1(b) will apply to any further submittals of the Housing Element Revision to HCD.

c. If the City elects to adopt the Housing Element Revision as permitted by Government Code Section 65585(f), then in the event that HCD determines that the adopted Housing Element Revision substantially complies with the Housing Element Law, or conditionally determines that the adopted Housing Element Revision will substantially comply with the Housing Element Law upon non-substantial changes agreed to by the City and communicated to Petitioners by the City, the City will then be considered in substantial compliance with the Housing Element Law. However, in the event that HCD determines that the adopted Housing Element Revision does not substantially comply with the Housing

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Element Law, then Petitioners may, after objecting to such draft within the time allowed for HCD review, challenge the validity of the adopted housing element within 60 days of adoption.

d. In accordance with Section 65755 of the Government Code, the Court will, with the entry of this Stipulated Judgment, mandate the approval of all final subdivision maps for residential housing projects as provided in Section 65755(a)(5).

e. All applications for building permits, development permits pursuant to Government Code Section 65940, or tentative or final subdivision maps, related to new residential units proposed to be constructed are currently available on the City's website. The City will ensure that all such applications will continue to be available to the public on the City's website.

f. The City will conform its zoning ordinance to any adopted Housing Element Revision within 120 days of the adoption of such Housing Element Revision.

g. Pursuant to Government Code Section 65759, the adoption of the City's Housing Element Revision, as well as those rezonings to which the Housing Element Revision commits, and which are required for an adequate housing element pursuant to Government Code Sections 65588(e)(4)(C) and 65587(d)(1), are exempt from the California Environmental Quality Act ("CEQA").

2. Until the date that the City adopts a Housing Element Revision that is in substantial compliance with Housing Element Law, the City shall not use the provisions in subdivision (d)(1) or (d)(5) of Government Code Section 65589.5 to disapprove a housing development project for very low, low-, or moderate impact households, as defined in Government Code Section 65589.5(h)(3), or an emergency shelter, or to condition the approval of such a project in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards. If the housing development project

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or emergency shelter has filed a preliminary application under Government Code Section 65941.1 between February 1, 2023, and the date the City adopts a substantially compliant Housing Element Revision, the City agrees to comply with all of the provisions of Government Code Sections 65589.5(o) and 65941.1 in reviewing the housing development project or emergency shelter.

3. Regarding any preliminary application to develop "housing for very low, low, or moderate income households" pursuant to Government Code Section 65589.5(h)(3) that it has received or will receive from February 1, 2023 until the date the City adopts a Housing Element Revision following a determination of substantial compliance by HCD: if the City charges a processing fee for such preliminary application, it shall cite the ordinance or resolution expressly establishing such fee. If no such ordinance or resolution expressly establishes a processing fee for preliminary applications, then the City shall not charge a fee for processing a preliminary application submitted before such time as an ordinance or resolution expressly authorizing such fee is duly adopted.

4. In the event that any party believes the opposing party is in breach of any of the terms of this judgment, they shall give written notice to the opposing party of the breach, which notice shall set forth with reasonable particularity the alleged breach and the action that the notifying party believes is required to remedy the alleged breach. The parties shall meet, confer, and attempt to resolve the alleged breach within forty-five (45) calendar days of such notice. If the parties cannot resolve the alleged breach within such time, any party may seek judicial enforcement.

5. The City agrees to pay YIMBY a total of $6,000 and CalHDF a total of $9,000 as a compromise resolution for petitioners' claims for costs and fees.

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6. The Court shall retain jurisdiction over this action and the parties thereto until the terms of this Judgment are fulfilled.

DATED: January 8, 2024, ~~2023~~

Mary S. Orlando
JUDGE OF THE SUPERIOR COURT

Respectfully submitted (with signatures in counterpart),

CALIFORNIA HOUSING DEFENSE FUND

By: _____
DYLAN CASEY
Attorney for Petitioner
CALIFORNIA HOUSING DEFENSE FUND

YIMBY LAW

By: _____
KEITH E. DIGGS
Attorneys for Petitioner
YES IN MY BACK YARD

GOLDFARB & LIPMAN LLP

By: _____
CELIA W. LEE
Attorney for Respondent
CITY OF CUPERTINO

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