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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

THE TOWN OF LOS GATOS, a California municipal corporation,

Plaintiff

v.

ARYA PROPERTIES, LLC; LOS GATOS BOULEVARD PROPERTIES, LLC; and DOES 1-100, inclusive,

Defendants

ARYA PROPERTIES, LLC; LOS GATOS BOULEVARD PROPERTIES, LLC,

Cross-Complainants

Case No. 25CV462276

Assigned for all purposes to
Hon. Helen E. Williams, Dept. 14

NOTICE OF EX PARTE APPLICATION AND EX PARTE APPLICATION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANTS AND CROSS-COMPLAINANTS

Date:	September 5, 2025
Time:	8:15 a.m.
Dept:	14
Action Filed:	March 28, 2025

v.

THE TOWN OF LOS GATOS; THE TOWN OF LOS GATOS COMMUNITY DEVELOPMENT DEPARTMENT; TOWN OF LOS GATOS PLANNING DIVISION; and ROES 1-10, inclusive,

Cross-Defendants

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 5, 2025 at 8:15 a.m. or as soon thereafter as the matter may be heard in Department 14 of the Superior Court for the County of Santa Clara, located at the Downtown Superior Court, 191 North First Street, San Jose, California 95113, the California Housing Defense Fund, Californians for Homeownership, and Yes In My Back Yard (collectively, "proposed amici") will and hereby do apply for an order granting leave to file an amicus curiae brief, lodged herewith, in support of Defendants and Cross-Complainants' opposition to Plaintiffs' and Cross-Defendants' Motion for Summary Judgment in this matter.

Counsel for the parties in this matter are as follows:

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Counsel for Plaintiff and Cross-Defendants

The application is based on this application, the accompanying Memorandum of Points and Authorities, the Declaration of Nicholas Eckenwiler, the [Proposed] Amicus Curiae Brief, the [Proposed] Order, and all pleadings, papers, and records in this action.

DATED: September 4, 2025

CALIFORNIA HOUSING DEFENSE FUND

Nicholas Eckenwiler

Nicholas Eckenwiler
Attorneys for Amicus Curiae California Housing Defense Fund

CALIFORNIANS FOR HOMEOWNERSHIP, INC.

/s/ Matthew P. Gelfand

Matthew P. Gelfand
Attorneys for Amicus Curiae Californians for Homeownership, Inc.

PATTERSON & O'NEILL, PC

Brian O'Neill
Attorneys for Amicus Curiae Yes In My Back Yard

MEMORANDUM OF POINTS AND AUTHORITIES

The California Housing Defense Fund ("CalHDF"), Californians for Homeownership ("CFH"), and Yes In My Back Yard ("YIMBY Law") (collectively, "proposed amici") seek leave to file an amicus curiae brief in this matter.[1] The Court should grant leave for proposed amici to file an amicus curiae brief for two reasons. First, if not for the strange posture of this case, proposed amici would have had a legal right to sue the Town of Los Gatos to resolve the legal question at issue. Second, proposed amici are non-profit organizations that monitor local governments' actions under state housing laws across California and are thus uniquely positioned to offer the Court a broader perspective on why this case arrives in the posture that it does and the stakes it carries for state housing law

ARGUMENT

This Court has inherent powers that derive from the California Constitution, Article 6, Section 1, that are not limited by or dependent on any statute. (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 266-267.) As the Supreme Court acknowledges, this includes the power to grant leave for non-parties to file amicus curiae briefs. (*Jersey Maid Milk Products Co. v. Brock* (1939) 13 Cal.2d 661, 665 ["'If the proposed interveners desire to file a brief as amici curiae in the pending proceedings, application to that end would no doubt receive favorable consideration.' By reference to the record in the main proceeding, being L. A. No. 16986 … and to the opinion rendered therein, it will be noted that the attorneys for the interveners were granted the right to file a brief as amici curiae; that such a brief was filed; and the same was given extended consideration …"].) This Court should exercise its power to permit proposed amici to file a brief in this lawsuit.

I. BUT FOR THIS CASE'S ODD POSTURE, PROPOSED AMICI WOULD BE INVOLVED AS PETITIONERS

This Court should grant proposed amici leave to file an amicus curiae brief because, if not for this case's the strange posture, proposed amici would have a right to participate as full parties. Normally, a case such as this would be brought as an action under the Housing Accountability Act ("HAA"; Gov. Code, § 65589.5). Proposed amici are non-profit "housing organizations" with statutory standing to

[1] Proposed amici ask, in addition, that the Court grant the Town leave to file a response to the proposed amicus curiae brief. (See [Proposed] Order Granting Leave to File Amicus Curiae Brief in Support of Defendants and Cross-Complainants, filed herewith.) Amici suggest that the Town be required to file its response to the proposed amicus curiae brief with its Reply, and that its response be limited to fifteen pages (the length of the proposed amicus curiae brief). (See *id.*)

bring HAA actions. (*Id.* at subd. (k)(1)(A); Declaration of Nicholas Eckenwiler ("Eckenwiler Decl."), filed herewith, ¶ 12.) Proposed amici, in fact, regularly *do* bring (and win) HAA actions and actions under other state housing laws. (Eckenwiler Decl., ¶¶ 17, 23-27.) Proposed amici are currently involved in over twenty lawsuits concerning these laws, including at least four lawsuits that touch on the same legal territory implicated in this action. (*Id.* at ¶ 17.)

Here, however, the Town has prevented proposed amici from filing an HAA action. The Town has accomplished this through two mechanisms. First, to establish standing for an HAA action, proposed amici must file comments with the local government before its action on the proposed housing development projects at issue in this case. (Gov. Code, § 65589.5, subd. (k)(2).) Amici usually do this by filing comments with the local government when it holds a public hearing on proposed housing projects. (Eckenwiler Decl., ¶ 14.) But the Town, as explained more fully in the proposed amicus curiae brief, refused to hold a public hearing on the projects before effectively rejecting them. (*Id.* at ¶ 15.) In this way, the Town cut proposed amici out of the process before they were aware that the Town intended to disapprove the projects. Second, the Town preempted any HAA action by filing a lawsuit for declaratory relief. This is an inappropriate tactical gambit, as explained more fully in the proposed amicus curiae brief, and while the Town's gambit technically leaves open the possibility for an HAA action (Defendants, after all, filed a cross-complaint), it renders any HAA action largely meaningless. This case will be heard and decided long before amici could bring an HAA lawsuit to a decision. Thus, amici have no option but to file an amicus curiae brief, or their rights under the HAA will be nullified by the Town's legal tactics.

II. PROPOSED AMICI OFFER VALUABLE PERSPECTIVE THAT THE PARTIES CANNOT

As the proposed amicus brief explains, this case will have repercussions across the state. Proposed amici monitor anti-housing local governments across the state, and as the Legislature has closed off other avenues for them to disapprove projects, these local governments have turned to strategies along the lines of what the Town is pursuing here. (Eckenwiler Decl., ¶¶ 13, 22.) Proposed amici are aware of at least nine similar lawsuits pending across the state, including four lawsuits where proposed amici are participating as full parties. (*Id.* at ¶¶ 17, 22.) Two of those lawsuits are being heard in this very Department. (*Id.* at ¶ 18.) Proposed amici have also participated in two other lawsuits that address the

legal issue at the center of this case. (*Id.* at ¶¶ 25-26.) The Court's decision in this case will affect the other pending lawsuits and will have a strong influence on anti-housing local governments' decision to follow state housing law—or flout it.

More broadly, proposed amici are experts in state housing law. (*Id.* at ¶¶ 19-27.) Proposed amici are intimately familiar with the history and structure of the particular statute at issue in this case and, more crucially, proposed amici offer the Court an informed perspective on how that statute fits into the larger scheme of state housing law. (*Id.* at ¶¶ 17-27.) Why has the dispute over the Permit Streamlining Act's completeness process not arisen until now? Why has it come to the Court in this particular (and unusual) posture? What are the potential repercussions of resolving the dispute in one direction or another? These are questions that should play an important role in how the Court understands and decides this lawsuit, and proposed amici are uniquely well-positioned to provide answers.

III. AN EX PARTE ORDER IS APPROPRIATE

Ex parte relief is appropriate for two reasons. First, as explained in Section I, *supra*, without leave to file an amicus curiae brief, proposed amici will suffer the irreparable harm of losing their legal right to participate in this dispute. Second, briefing in this case is underway and a hearing has been scheduled for October 15, leaving no time for proposed amici to seek leave by filing an ordinary noticed motion. Proposed amici began drafting their proposed amicus curiae brief as soon as the Town filed its opening brief, and they have worked hard to make sure their brief was ready to file before Defendants' and Cross-Complainants' opposition brief is due. But even this timeline effectively demands that amici seek leave to file an amicus curiae brief via ex parte application rather than a noticed motion.

CONCLUSION

For the foregoing reasons, the Court should grant leave for proposed amici to file an amicus curiae brief.

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DATED: September 4, 2025

CALIFORNIA HOUSING DEFENSE FUND

Nicholas Eckenwiler

Nicholas Eckenwiler
Attorneys for Amicus Curiae California Housing Defense Fund

CALIFORNIANS FOR HOMEOWNERSHIP, INC.

/s/ Matthew P. Gelfand

Matthew P. Gelfand
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

THE TOWN OF LOS GATOS, a California municipal corporation,

Plaintiff

v.

ARYA PROPERTIES, LLC; LOS GATOS BOULEVARD PROPERTIES, LLC; and DOES 1-100, inclusive,

Defendants

ARYA PROPERTIES, LLC; LOS GATOS BOULEVARD PROPERTIES, LLC,

Cross-Complainants

Case No. 25CV462276

Assigned for all purposes to
Hon. Helen E. Williams, Dept. 14

DECLARATION OF NICHOLAS ECKENWILER IN SUPPORT OF EX PARTE APPLICATION AND ATTESTING PROPER EX PARTE NOTICE

Date:	September 5, 2025
Time:	8:15 a.m.
Dept:	14
Action Filed:	March 28, 2025

v.

THE TOWN OF LOS GATOS; THE TOWN OF LOS GATOS COMMUNITY DEVELOPMENT DEPARTMENT; TOWN OF LOS GATOS PLANNING DIVISION; and ROES 1-10, inclusive,

Cross-Defendants

I, NICHOLAS ECKENWILER, DECLARE:

1. I am Counsel for Proposed Amicus Curiae California Housing Defense Fund ("CalHDF").
2. I have personal knowledge of each fact stated in this Declaration. If called as a witness to testify to any matter stated in this Declaration, I could and would competently do so.
3. In my capacity as Counsel for CalHDF, I work closely with Californians for Homeownership ("CFH") and Yes In My Back Yard ("YIMBY Law") (collectively "proposed amici"). I am personally familiar with CFH and YIMBY Law's operations, litigation efforts, objectives, organizational structure, and history.

Proper Notice Was Provided to All Parties under the Ex Parte Rules

4. The addresses and telephone numbers of the attorneys of record for proposed amici are accurately provided in the caption to this Declaration.
5. I gave notice of the time (8:15 a.m.), date (September 5, 2025), and place (Downtown Superior Court, 191 North First Street, San Jose, California 95113, Department 14) where the ex parte application would be made by email to Plaintiff's Counsel Dolores Dalton (ddalton@goldfarblipman.com), Barbara Kautz (bkautz@goldfarblipman.com), and Brandon Stracener (bstracener@goldfarblipman.com) at 8:51 a.m. on September 4, 2025. This email noted that the Local Rules of the Superior Court of Santa Clara County state that ex parte applications will be decided on the papers unless the Court orders otherwise. (Local Civil Rule 7.)
6. This email explained that proposed amici would file an ex parte application seeking an order

granting leave for proposed amici to file an amicus curiae brief in support of Defendants and Cross-Complainants. The email also included a near-final copy of the proposed amicus curiae brief as an attachment. At 9:15 a.m., I forwarded the full email, including the attached near-final proposed amicus brief, to Plaintiff's Counsel Gabrielle Whelan (gwhelan@losgatosca.gov).

7. I sent an email with substantially the same contents (including the time, date, and place where the ex parte application would be made, and that the Court would decide the application on the papers unless it ordered a hearing; a near-final version of the proposed amicus curiae brief was also attached) to Defendant's Counsel Matthew C. Henderson (matthew.henderson@msrlegal.com), Kenneth A. Stahl (ken.stahl@msrlegal.com), and Travis A. Brooks (travis.brooks@msrlegal.com) at 8:43 a.m. on September 4, 2025.
8. I also called Plaintiff's Counsel Dolores Dalton at (510) 836-6336 at 9:30 a.m. and Plaintiff's Counsel Brandon Stracener at 9:32 a.m. Dolores Dalton did not pick up, and I left a message explaining that I represented the California Housing Defense Fund, which, with two other parties, intended to move ex parte for an order granting leave to file an amicus curiae brief in the above-captioned matter. I asked whether the Town of Los Gatos would oppose the ex parte. Brandon Stracener did pick up and stated that he would check with his partners as to whether the Town would oppose the ex parte and get back to me by phone or email.
9. In my emails and phone calls to Counsel for the parties, I attempted to determine whether the party to whom the communication was directed would oppose the ex parte application.
10. Defendant's Counsel, Travis Brooks, responded by email at 9:19 a.m. stating that Defendant would not oppose the ex parte application.
11. Plaintiff's Counsel, Brandon Stracener, informed me by phone at 9:32 a.m. that they would get back to me by phone or email regarding whether the Town would oppose the ex parte application. As of 10:08 a.m. on September 4, 2025, I had not heard back from Plaintiff's Counsel.

The Requirements for Ex Parte Relief Are Present

12. Proposed amici are "housing organizations" as that term is defined in the Housing

Accountability Act ("HAA").

13. Proposed amici monitor local governments throughout California for potential actions that would violate state housing laws. Proposed amici's monitoring efforts focus principally on published agendas for public meetings of local governments' planning commissions and governing bodies.
14. Proposed amici typically establish standing to sue under the HAA by filing public comment with a local government when the local government schedules a public hearing at which it will issue a decision on a proposed housing development project.
15. Proposed amici were unable to establish HAA standing in this dispute because the Town of Los Gatos acted to effectively disapprove the housing development projects at issue without providing public notice or holding a public hearing regarding its actions.
16. Thus, proposed amici have no option to exercise their statutory rights under the HAA to participate in this dispute except to file an amicus curiae brief. If the Court denies leave for proposed amici to file an amicus curiae brief, proposed amici will therefore suffer irreparable harm.
17. Proposed amici regularly file lawsuits to enforce state housing laws against local governments, including lawsuits under the HAA. Proposed amici are currently participating as full parties in over twenty lawsuits concerning state housing laws, including four lawsuits that revolve around similar questions regarding application completeness under the Permit Streamlining Act that are at the center of this case. Those lawsuits are:
    - *California Housing Defense Fund et al. v. City of Beverly Hills*, L.A. County Superior Court Case No. 25STCP01665 (CFH is also a party to this lawsuit);
    - *California Housing Defense Fund et al. v. City of Beverly Hills*, L.A. County Superior Court Case No. 25SMCP00260 (a separate action from the previous bullet point; CFH is also a party to this lawsuit);
    - *Yes In My Back Yard et al. v. City of Cupertino et al.*, Santa Clara County Superior Court Case No. 25CV462924;
    - *Lixen Chen et al. v. City of Cupertino et al.*, Santa Clara County Superior Court Case No.

25CV462857.

18. The Court's decision in this lawsuit has a strong potential to influence the outcome of the lawsuits described in the previous paragraph. In particular, the Court's decision in this lawsuit will undoubtedly affect the outcome of the Cupertino actions described in the previous paragraph since those actions are being heard in the same Department as this lawsuit. If proposed amici are not allowed an opportunity to make their voice heard now, the Court will reach a conclusion on crucial legal issues before proposed amici have an opportunity to fully brief their arguments. In this way, too, denial of leave to file an amicus curiae brief risks irreparable harm to proposed amici.

Proposed Amici Curiae Offer Unique Perspective on This Dispute

19. Because proposed amici monitor local government activities across California, proposed amici are well-positioned to offer perspective on how the legal dispute at the center of this case fits into the larger landscape of state housing law and anti-housing local governments' efforts to evade state housing law.

20. Proposed amici are also well-positioned to offer a broad and informative perspective on this legal dispute because proposed amici, in addition to monitoring local governments' housing-related activities, have expertise in state housing law. Proposed amici, having litigated in this space for years, are deeply familiar with the structure and purpose of state housing law—both its individual parts and as a whole.

21. Proposed amici also work with other actors in California's housing law space, including government agencies, other non-profit and advocacy organizations, lobbying entities, land use attorneys and law firms, and the Legislature. Proposed amici's relationship with this broad range of actors afford proposed amici a unique and holistic understanding of state housing laws' history and intent.

22. Proposed amici are aware of at least nine other pending lawsuits where a local government has attempted to revoke a housing development project's vesting rights or reject a preliminary application for a housing development project based on dubious arguments concerning the

Permit Streamlining Act's completeness process.

23. Proposed amici have been successful in their litigation.

24. Proposed amicus CalHDF successfully litigated the leading precedent on the HAA under its former name, the California Renters Legal Advocacy and Education Fund. (See *California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820.)

25. Proposed amicus CFH successfully litigated *Californians for Homeownership, Inc. v. City of Beverly Hills et al.*, L.A. Superior Court No. 24STCP02082, which raised issues regarding the Permit Streamlining Act's completeness process very close to those at the center of this action.

26. Proposed amicus YIMBY Law successfully litigated *Yes in My Backyard, Trauss, et al. v. City of Los Angeles*, L.A. Superior Court No. 24STCP00070, which raised the same issue regarding the Permit Streamlining Act's completeness process at the center of this action.

27. Proposed amici have won numerous other court victories limiting anti-housing local governments' ability to reject, downsize, or impede much-needed new housing.

28. No party to this litigation has drafted any portion of the proposed amicus curiae brief or provided any financial support for its preparation.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on September 4, 2025 at Oakland, California.

Nicholas Eckenwiler

Nicholas Eckenwiler
Attorney for Proposed Amicus Curiae California Housing Defense Fund

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

THE TOWN OF LOS GATOS, a California municipal corporation,

Plaintiff

v.

ARYA PROPERTIES, LLC; LOS GATOS BOULEVARD PROPERTIES, LLC; and DOES 1-100, inclusive,

Defendants

ARYA PROPERTIES, LLC; LOS GATOS BOULEVARD PROPERTIES, LLC,

Cross-Complainants

Case No. 25CV462276

Assigned for all purposes to
Hon. Helen E. Williams, Dept. 14

[PROPOSED] ORDER GRANTING LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANTS AND CROSS-COMPLAINANTS

Date:	September 5, 2025
Time:	8:15 a.m.
Dept:	14
Action Filed:	March 28, 2025

v.

THE TOWN OF LOS GATOS; THE TOWN OF LOS GATOS COMMUNITY DEVELOPMENT DEPARTMENT; TOWN OF LOS GATOS PLANNING DIVISION; and ROES 1-10, inclusive,

Cross-Defendants

IT IS HEREBY ORDERED that the Ex Parte Application for Leave to File an Amicus Curiae Brief in Support of Defendants and Cross-Complainants filed by CALIFORNIA HOUSING DEFENSE FUND, CALIFORNIANS FOR HOMEOWNERSHIP, and YES IN MY BACK YARD (collectively "amici curiae") on September 4, 2025 is GRANTED.

IT IS FURTHER ORDERED that the amici curiae shall, within five days, file the Amicus Curiae Brief of California Housing Defense Fund, Californians for Homeownership, and Yes In My Back Yard in Support of Defendants and Cross-Complainants that was filed with the Ex Parte Application (the "amicus brief").

IT IS FURTHER ORDERED that Plaintiff and Cross-Defendant Town of Los Gatos may file a brief opposing the amicus brief on or before September 19, 2025. The Town's brief shall not exceed fifteen pages.

IT IS SO ORDERED.

DATED: September __, 2025

_____

Hon. Helen E. Williams
Santa Clara County Superior Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

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Defendants

ARYA PROPERTIES, LLC; LOS GATOS BOULEVARD PROPERTIES, LLC,

Cross-Complainants

Case No. 25CV462276

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Hon. Helen E. Williams, Dept. 14

[PROPOSED] AMICUS CURIAE BRIEF OF CALIFORNIA HOUSING DEFENSE FUND, CALIFORNIANS FOR HOMEOWNERSHIP, AND YES IN MY BACK YARD IN SUPPORT OF DEFENDANTS AND CROSS-COMPLAINANTS

Date:	October 15, 2025
Time:	1:30 p.m.
Dept:	14
Action Filed:	March 28, 2025

v.

THE TOWN OF LOS GATOS; THE TOWN OF LOS GATOS COMMUNITY DEVELOPMENT DEPARTMENT; TOWN OF LOS GATOS PLANNING DIVISION; and ROES 1-10, inclusive,

Cross-Defendants

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INTRODUCTION

This is a strange case. The Town of Los Gatos received two applications to construct new housing projects. The Town claimed the applicants missed a crucial deadline, and as a result, the applications expired. Curiously, the Town did not then reject the applications. Instead, it sued the applicants for declaratory relief, ostensibly to clarify the provision of state housing law that establishes the relevant deadline. The Town filed suit notwithstanding court rulings and legal interpretations from the executive branch that explain the law's meaning. Meanwhile, the Town refused to process the developers' applications, delaying the construction of new housing. Perplexingly, the Town, after filing its lawsuit, approved three projects based on the legal interpretation its lawsuit claims to reject.

What is going on? Certainly more than "a simple and straightforward question of statutory interpretation," as the Town attempts to frame it. (Memorandum in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication ["Town's Brief"], filed August 8, 2025, p. 1, line 2.) If one steps back to assess the Town's choices in the context of state housing law, a more nuanced picture emerges. In that picture, local governments like the Town have produced a devastating statewide crisis by refusing to permit new housing. The Legislature has responded by passing laws that revoke the Town's power to stop housing construction. These laws carry stiff penalties for violations.

The Town, then, was in a bind when it received the applications at issue in this case. It lacked the power to reject the applications, and it knew that trying to do so risked serious consequences. But it wanted to stop the projects. So it came up with a clever strategy. It would not reject the applications outright. It would, instead, solicit law firms for a legal argument it could use to claim the applications had "expired." It would then refuse to process the applications and deny the applicants the right to file an administrative appeal. The final step was to file this action for declaratory relief. This strategy held several tactical advantages. First, it gave the Town plausible deniability against accusations that it is trying to stop new housing. The Town, wide-eyed and earnest, pleads that it *likes* new housing, but—wouldn't you know it!—its hands are tied by procedural technicalities. Second, the Town's strategy left room to muddy the waters about whether it has violated the powerful and punitive legal regime established by the Legislature. The Town "has not denied" the applications; the applications have simply

"expired" through no fault of the Town's. (Town's Brief, 10:1-2.) Third, by filing a preemptive declaratory relief action, the Town could try to evade strict procedural rules and penalties that would apply if the applicants had sued the Town first. Finally, even if the Town loses this lawsuit, it will have wasted months of the applicants' time and cost them a good deal of money.

But as cunning as the Town is—and it is cunning—it is wrong about the law. The defendants' applications have not "expired." The applications remain live, and any reasonable interpretation of the law confirms this conclusion. The courts agree, and so does the state agency charged with interpreting and enforcing state housing law. The Town itself, moreover, has approved housing projects in reliance on that interpretation of the law. This Court should deny the Town's motion for summary judgment.

LEGAL ARGUMENT

I. CALIFORNIA HAS A HOUSING CRISIS, DRIVEN BY LOCAL GOVERNMENTS' REFUSAL TO PERMIT NEW HOUSING

California faces a critical housing shortage. (§ 65589.5, subd. (a)[1]; Stats. 2025, ch. 22, §§ 69, 71.) This "runs counter to the state's environmental goals," including both its climate goals and its clean air goals. (§ 65584, subd. (a)(3).) Just as bad, "the lack of housing … threatens the economic … and social quality of life in California." (§ 65589.5, subd. (a)(1)(A).) This is a "crisis of historic proportions." (*Id.* at subd. (a)(2)(J).) "Only one-half of California's households are able to afford the cost of housing in their local regions." (*Id.* at subd. (a)(2)(E).) The harms go well beyond housing: California's citizens, particularly its most vulnerable, struggle to pay for food and health care, face limited opportunities for economic advancement, and contend with greater wildfire risks—all thanks to the housing crisis. (*Id.* at subds. (a)(2)(F), (a)(2)(H); Stats. 2019, ch. 654, § 2.)

What caused such an enormous crisis? The Legislature tells us: "decades of underproduction of housing of all types." (§ 65584.08, subd. (a)(1).) And what, in turn, caused that? "The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing." (§ 65589.5, subd. (a)(1)(B).) The Town protests that it is not to blame for the housing crisis (Town's Brief, 8:5-12), but the Legislature disagrees. Anti-housing local governments

[1] All unlabeled statutory references are to the Government Code.

deploy a broad arsenal of weapons to stop new housing. They refuse to zone for denser housing. (See, e.g., *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 244.) They layer new restrictions and tight zoning onto proposed residential construction. (See, e.g., *Yes in My Back Yard v. City of Culver City* (2023) 96 Cal.App.5th 1103, 1115[2].) They disapprove applications for new housing (see, e.g., *Reznitskiy v. County of Marin* (2022) 79 Cal.App.5th 1016, 1021) or shunt them into a "temporally indefinite limbo" by refusing to process them (see, e.g., *Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1203). When all else fails, they force projects through multi-decade review under the California Environmental Quality Act ("CEQA"). (*Tiburon Open Space Committee v. County of Marin* (2022) 78 Cal.App.5th 700, 781-783.) As the Court of Appeal put it: "Something is very wrong with this picture." (*Id.* at 783.)

II. THE LEGISLATURE HAS ADDRESSED THE HOUSING CRISIS BY CURBING LOCAL GOVERNMENTS' POWER TO OBSTRUCT AND DISAPPROVE NEW HOUSING

Recognizing that something is rotten in the State of California, the Legislature has moved to curb local governments' ability to obstruct new housing. The backdrop for these efforts is the **Housing Element Law**. (§ 65580 et seq.) The Housing Element Law requires local governments, in the housing element of their general plans, to create zoned capacity to accommodate enough new housing to meet demand. (See § 65583.2.) The Housing Element Law also requires local governments to reduce barriers to new housing (§ 65583, subds. (a)(5)-(6)) and assess shortcomings in existing efforts to produce housing (§ 65588, subds. (a), (b)).

Layered on top of the Housing Element Law is the **Housing Accountability Act** ("HAA"). (§ 65589.5.) The HAA was enacted in the 1980s, and since then "the Legislature has steadily strengthened [its] requirements." (*California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 854[3].) Today, the HAA is a powerful statute with a broad scope. (See, e.g., Elmendorf and Duncheon, When Super-Statutes Collide: CEQA, the Housing Accountability

[2] Amicus Yes In My Back Yard was the petitioner in that case.

[3] Amicus California Housing Defense Fund was the petitioner in that case under its previous name, the California Renters Legal Advocacy and Education Fund. (Declaration of Nicholas Eckenwiler ("Eckenwiler Decl."), filed herewith, ¶ 24.)

Act, and Tectonic Change in Land Use Law (2023) 49 Ecology Law Quarterly 655.) It requires local governments to approve housing projects that comply with the local zoning code and general plan except in narrow circumstances. (§ 65589.5, subds. (d), (j).) This ensures the rezonings prescribed by the Housing Element law produce the housing they are intended to. Furthermore, if a jurisdiction does not timely adopt a housing element that complies with the Housing Element Law, the HAA suspends that jurisdiction's zoning code for housing projects that meet affordability and density requirements. (*Id.* at subds. (d)(6), (h)(11).) This rule, known as the "builder's remedy," has two aims. First, it creates an incentive for local governments to comply with the Housing Element Law. Second, it helps local governments meet their housing targets even if they do not comply. In 2024, the Legislature substantially strengthened the builder's remedy. (Stats. 2024, ch. 268.)

The Legislature, recognizing that anti-housing local governments would try to evade the HAA, has also added procedural safeguards. Chief among these is the "vesting" provision. This provision allows developers to secure their rights to pursue a project under the rules in place at a specific time in the application process. The HAA, as first enacted, set this time at the date the "application is determined to be completed."[4] (Stats. 1982, ch. 1438, § 2.) This ensures applicants know which rules will apply to their projects. It also prevents local governments from changing their zoning code to defeat HAA-eligible projects. (See, e.g., *Save Lafayette v. City of Lafayette* (2022) 85 Cal.App.5th 842, 853-856.)

The Legislature has also worked hard to make litigation under the HAA a difficult proposition for local governments. The government bears the burden of proof in any lawsuit. (§ 65589.6.) The challenger, to prove their project qualifies for HAA protections, need only establish "substantial evidence that would allow a reasonable person" to find the project qualifies. (§ 65589.5, subd. (f)(4).) The HAA, furthermore, must "be interpreted and implemented … to afford the fullest possible weight to

[4] The Town claims that until SB 330 went into effect in 2020, "it was very difficult for a developer to obtain [] vested right[s]." (Town's Brief, 3-4.) It cites *Avco Community Developers, Inc. v. South Coast Regional Comm'n.* (1976) 17 Cal.3d 785 for this claim. But the HAA has included a vesting provision since its inception in 1980, four years after *Avco*, and the California Court of Appeal enforced the HAA's pre-SB 330 vesting provision in *Save Lafayette v. City of Lafayette* (2022) 85 Cal.App.5th 842. There, the Court of Appeal held that a housing project application deemed to be complete in 2011—more than eight years before SB 330—could proceed under the rules in effect in 2011. (*Id.* at 853-856.)

the … approval and provision of" housing. (*Id.* at subd. (a)(2)(L).) HAA violations trigger large penalties, including mandatory attorney's fees in most cases (*id.* at subd. (k)) and fines ranging from $10,000 to over $50,000 per housing unit (*id.* at subds. (k)(1)(B), (*l*)).

In 2019, the Legislature passed the **Housing Crisis Act** (also known as "SB 330"). The Act emphasized the devastating impact of California's ongoing housing crisis (see Stats. 2019, ch. 654, § 2) and specifically blamed "[l]engthy permitting processes and approval times … and other requirements" (*id.* at § 2(a)(10)). To address this, the Act strengthened the HAA's vesting provision. (See *id.* at § 8.) Before the Housing Crisis Act, the HAA fixed vesting at the date the application for a housing development project was determined to be complete. After the Housing Crisis Act, the HAA allowed project applicants to obtain vesting rights by submitting a "preliminary application."[5] (*Id.* at § 3.)

The Legislature designed the preliminary application to be simple. A complete preliminary application requires only seventeen items, most of which are easy to produce. (See § 65941.1, subd. (a).) Making the preliminary application simple was crucial to "prevent[] local governments from … changing the rules on builders who are in the midst of going through the approval process." (Sen. Rules Com., Off. of Sen. Floor Analyses, analysis of Sen. Bill No. 330 (2019-2020 Reg. Sess.) following Assembly amendments as of Sep. 5, 2019, pp. 7-8, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB330[6].) This simplicity, combined with the HAA's new vesting rules, may give the impression of putting local governments in a straitjacket. But that is the point: "The HAA is today strong medicine precisely because the Legislature has diagnosed a sick patient." (*California Renters*, *supra*, 68 Cal.App.5th at 854.) Without such a straitjacket, anti-housing local governments can and do change their zoning standards to stop housing projects before a full application can be deemed complete. (See e.g., California Department of Housing and Community Development ("HCD"), Letter to Brandon Phipps, Nov. 4, 2024 [noting City's attempt to downzone site where housing development proposed], available

[5] The HAA has since been amended to make clear that an applicant obtains vesting rights by submitting *either* a preliminary application or a complete full application. (§ 65589.5, subd. (h)(5).)
[6] Judicial notice of legislative history is appropriate under Evidence Code section 452(c). (*Elsner v. Uveges* (2004), 34 Cal.4th 915, 929, fn. 10.)

at https://hcdpowerbi.blob.core.windows.net/housing-elements/mar-sausalito-draft-out-110424-068cs00000KOQcAAAX.pdf[7].)

The Housing Crisis Act inserted the rules governing preliminary applications into a larger statute, the **Permit Streamlining Act** ("PSA"). (§ 65920 et seq.) The PSA serves the "important state interest" of "[p]reventing governmental delays in processing a permit application for a development project." (Stats. 2006, ch. 888, § 1.) To that end, the PSA imposes strict timelines and clear procedures for processing housing development applications. (§ 65940 et seq.) After submitting a preliminary application, an applicant must submit a full application within 180 days. (§ 65941.1, subd. (e)(1).) The local government must then assess whether the full application is complete within thirty days. (§ 65943, subd. (a).) If the local government determines the application is incomplete, it sends an "incompleteness determination" listing the further information that must be submitted. (*Ibid.*) The applicant must respond with that information within ninety days. (§ 65941.1, subd. (e)(2).) The local government then has thirty days to assess whether the applicant's response is adequate. (§ 65943, subd. (b).) If the local government determines the applicant's response is not adequate, it issues a second incompleteness determination. (*Id.* at subd. (b).) The applicant can then submit further information within ninety days, continuing the iterative process (§ 65941.1, subd. (e)(2)), or appeal the local government's decision (§ 65943, subd. (c)). Crucially, the local government cannot at any point demand information not listed in the first incompleteness determination. (*Id.* at subds. (a), (b).) Thus, the PSA forces local governments to move towards a complete application. After the application and environmental review are complete, the PSA imposes short timelines for the local government to approve the project. (§ 65950, subd. (a).)

The HAA backstops the PSA. First, PSA violations are also HAA violations. (See § 65589.5, subds. (h)(6)(B), (h)(6)(F), (h)(6)(H).) Local governments that violate the PSA risk the HAA's full range of penalties. Second, after an application is determined to be complete, the HAA requires the local government to promptly review the application for consistency with local standards. (*Id.* at subd. (j)(2).)

[7] Judicial notice of official letters issued by HCD is appropriate under Evidence Code section 452(c). (See *Reimel v. Alcoholic Beverage Control Appeals Board* (1967) 254 Cal.App.2d 340, 346, fn. 3 ["Judicial notice may be taken of the official acts of the executive department of this state."]; *Casella v. SouthWest Dealer Services, Inc.* (2007) 157 Cal.App.4th 1127, 1137.)

A local government that fails to do this forfeits its power to apply local standards to the project. (*Id.*) Third, the HAA bars local governments from holding more than five hearings on a proposed project after the application is complete. (§ 65905.5; 65589.5, subd. (h)(6)(E).) Fourth, the HAA establishes short, mandatory timelines for permit issuance after a project is entitled. (§ 65913.3; 65589.5, subd. (h)(6)(C).) Finally, the HAA—thanks to the same bill that recently strengthened the builder's remedy (see Stats. 2024, ch. 268)—broadly prohibits local governments from pursuing any "course of conduct … to harass or to cause unnecessary delay" a proposed housing project (§ 65589.5, subd. (h)(6)(D)).

III. THE TOWN, CONSTRAINED BY THE LEGISLATURE, HAS INVENTED WHAT IT THINKS IS A CLEVER WAY TO EVADE STATE HOUSING LAW

A. State Housing Law Is Meant to Produce the Projects at Issue in This Case

This case is a story of state housing law working as intended to produce new housing while a resentful Town tries to gum up the process. The Town of Los Gatos failed to adopt a legally compliant housing element on time.[8] (See HCD, Letter to Laure Prevetti, Jul. 10, 2024, available at https://hcdpowerbi.blob.core.windows.net/housing-elements/scl-los-gatos-adopt-in-071024.pdf[9].) This left it open to the "builder's remedy" provisions of the HAA. (§ 65589.5, subd. (d)(6).) Two developers—Arya Properties and Los Gatos Boulevard Properties—filed preliminary applications for builder's remedy projects. (Town's Brief, 8-11.) As discussed above, the Legislature made it easy for them to file preliminary applications. (§ 65941.1, subd. (a).) The preliminary applications vested the projects' right to proceed under the builder's remedy—that is, without complying with local zoning standards. (§ 65589.5, subd. (o).) This is crucial because, as the Town notes (underlining the point to emphasize its displeasure), both projects exceed local zoning standards. (Town's Brief, 9-10.)

B. The Town Has No Legal Avenue to Stop the Projects

The Town cannot disapprove the projects outright. The HAA forbids the Town from disapproving builder's remedy projects unless specific, unusual circumstances apply. (§ 65589.5, subd. (d).) For example, the Town would have to find the projects have a "specific, adverse impact upon the public

[8] The Town's Brief protests that the Town has a "strong housing record." (Town's Brief, 6-8.) Conspicuously, the Town omits discussion of whether it timely adopted its most recent housing element.
[9] As noted earlier, fn. 7, judicial notice is appropriate for this official HCD document.

health or safety" that cannot be mitigated and that is defined by pre-existing, written standards. (*Id.* at subd. (d)(2).) If the Town attempted to make findings to justify a disapproval under the HAA, it would run the risk of an HAA lawsuit.[10] As explained above, an HAA lawsuit would be a difficult and risky proposition: the Town would likely lose and be forced to pay large penalties.

The Town cannot change its local rules (for example, by rezoning the parcels at issue) to stop the projects. That is for two reasons. First, the projects are builder's remedy projects, and builder's remedy projects do not have to comply with local rules. (§ 65589.5, subd. (d)(6).) Second, the preliminary applications vested the projects' right to proceed under the local rules that applied at the time of the preliminary applications. (*Id.* at subd. (o).)

The Town cannot slow-walk or refuse to process the projects. The PSA requires the Town to evaluate the applications for completeness under strict deadlines. (§ 65943.) If the Town misses those deadlines, it forfeits its right to reject the applications as incomplete. (*Id.* at subds. (a), (b).) If the Town wrongly finds the applications incomplete, that violates the HAA, exposing the Town to significant legal liability. (§ 65589.5, subd. (h)(6)(F).) Once the applications are complete, the HAA imposes deadlines for assessing the applications against any local rules that might apply (*id.* at subd. (j)(2)) and stops the Town from conducting endless public hearings (*id.* at subd. (h)(6)(E); § 65905.5). Once the applications are approved, the HAA imposes deadlines for issuing permits. (§§ 65913.3; 65589.5, subd. (h)(6)(C).)

Thus, the Town contends it "has not denied" the applications: the Town does not want to admit to disapproving them in violation of the HAA. (Town's Brief, 11:3.) The Town contends that any delay associated with the lawsuit is not the Town's fault: the Town does not want to admit to delaying the applications in violation of the PSA and HAA. (*Id.* at 10-11.) The Town, furthermore, has made no effort to argue that it can apply its local rules to the projects: the Town understands the projects have vested rights to proceed under the builder's remedy. (See generally *id.*)

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[10] Notably, amici would be able to sue the Town directly in such a scenario. (§ 65589.5, subd. (k)(1)(A)(i).) The Town doubtless prefers to avoid that: amici have won numerous court victories against anti-housing jurisdictions, and it is understandable that the Town is intimidated by the prospect of amici's involvement. (Eckenwiler Decl., ¶¶ 23-27.)

C. This Lawsuit Is a Hail-Mary Effort to Stop the Projects

Faced with the reality that it cannot stop the projects by ordinary means, the Town got creative. It solicited private lawyers for a strategy that would allow it to reject the applications in a way that minimized its legal risk. (Plaintiff the Town of Los Gatos's Complaint for Declaratory Relief, filed March 28, 2025, ¶ 25.) The lawyers it hired dutifully produced a memorandum explaining that the applications the Town wished to reject had expired. (Declaration of Joel Paulson in Support of Motion for Summary Judgment or in the Alternative Summary Adjudication, Exh. C.) This memorandum had the intended effects. The Town informed the applicants that it would delay making "a final decision on [the] applications until after receiving the court's opinion." (*Id.)* It also stated that it would only process the applicants' administrative appeals once it had "obtained a judicial opinion." (*Id.)* The lawyers then brought the Town on as a client for this lawsuit.

It is curious that the Town did not reject the applications. That is what one would expect it to do if it believed the interpretation of state law it hired outside lawyers to produce. But there are tactical reasons for the Town's actions. First, as explained above, the Town can pretend it has not violated either the PSA or the HAA. Rejecting the applications would have violated those laws and risked severe consequences. In this posture, by contrast, the Town claims it is acting "in good faith" and disclaims any intent to "delay or 'effectively disapprove'" the applications. (*Id.)* The Town makes these claims even as it refuses to issue a final decision on the projects or hear the applicants' administrative appeals. (*Id.)*

Second, by filing an action for declaratory relief instead of rejecting the projects and inviting an HAA lawsuit, the Town could try to avoid the procedural and substantive rules that the Legislature established to make anti-housing litigation a bad bet for the Town. In an HAA lawsuit, the Court would be obliged to interpret the law "to afford the fullest possible weight to the interest of, and the approval and provision of, housing." (§ 65589.5, subd. (a)(2)(L).) Here, the Town can argue this interpretive principle does not apply. In an HAA lawsuit, the Town would have the burden of showing its actions "conformed to all of the conditions" in the HAA. (§ 65589.6.) Here, the Town, presumably, believes it need not satisfy that standard. In an HAA lawsuit, the applicants would be held to the low evidentiary burden of "substantial evidence that would allow a reasonable person to conclude" the applicants'

projects met relevant legal standards. (§ 65589.5, subd. (f)(4).) That would include the question of whether the applications had not expired. Here, the Town, presumably, believes the applicants must meet a higher burden. In an HAA lawsuit, the Town would be on the hook for the applicants' attorney's fees and costly fines. (*Id.* at subd. (k)(1).) Here, the Town will argue it bears no responsibility for the applicants' attorney's fees and faces no risk of fines.

Perhaps most crucially, in an HAA lawsuit, the Town would be obliged to produce an administrative record. (*Id.* at subd. (m)(1).) The applicants would be able to supplement this record. (*Id.* at subd. (n).) Here, the Town has filed no record. Thus, the Town can hide facts that hurt its case and present only facts that show it in a positive light. It touts its "strong housing record." (Town's Brief, 6.) It says it has approved or is reviewing "applications for 1,615 units" of housing this RHNA cycle. (*Id.* at 8.) It does not inform the Court that *sixteen* of the housing projects it has approved or is reviewing are builder's remedy projects like the ones at issue in this case. (Senator Josh Becker, Press Release, "Legislation Introduced to Protect Cities from Misuse of Builders Remedy and Accelerate Smart Housing Growth," Mar. 24, 2025, available at https://sd13.senate.ca.gov/news/press-release/march-24-2025/legislation-introduced-to-protect-cities-misuse-builders-remedy[11].) These account for well over half of the 1,615 units under Town review. These projects are not a credit to the Town. They are a credit to the Legislature, which created the builder's remedy to ensure recalcitrant jurisdictions like the Town would produce housing. The Town is not even processing many of these projects pending the outcome of this case. (See, e.g., Town of Los Gatos Staff Technical Review of 101 Blossom Hill Road Application, Aug. 6, 2025, available at https://www.losgatosca.gov/DocumentCenter/View/43285/Planning-Comment-Letter-101-BHR-R2-PDF,[12] at p. 1 [stating Town will not issue final decision on application until this lawsuit resolves].)

The Town's goals with this lawsuit are clear. It wants to stop the defendants' projects. It wants to

[11] Judicial notice of public officials' press releases is appropriate under Evidence Code section 452(c). (*Joyce v. Ford Motor Co.* (2011) 198 Cal.App.4th 1478, 1493 [judicially noticing Governor's press release]; *People v. Tanner* (1979) 24 Cal.3d 514, 520 [same].)

[12] Judicial notice of the Town's official documents is appropriate under Evidence Code section 452(c). (*Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383, 405.)

minimize its legal liability in doing so, and it wants to try the case in the posture it favors. It does not want to have to face the consequences the Legislature wanted it to face.

IV. THE TOWN'S DETERMINATION THAT THE PRELIMINARY APPLICATIONS AT ISSUE EXPIRED IS CONTRARY TO LAW AND THE TOWN'S ESTABLISHED PRACTICE

A. The Law Provides an Iterative Completeness Process That Protects Applications' Vesting Rights, and the Town's Contrary Argument Holds No Water

The crux of the Town's claim is that the applications at issue have "expired." (See generally, Town's Brief.) This arguments rests on a misinterpretation of the PSA. As outlined above (see Section II, *supra*), the PSA establishes an iterative process by which a project applicant and the Town must proceed to a complete application. The applicant submits a full application within 180 days of the preliminary application. (§ 65941.1, subd. (e)(1).) The Town has thirty days to review it for completeness. (§ 65943, subd. (a).) After that review, the applicant has ninety days to address any incomplete items flagged by the Town. (§ 65941.1, subd. (e)(2).) The Town again has thirty days to review the application for completeness. (§ 65943, subd. (b).) If that review finds the application incomplete, the applicant can appeal the Town's decision (*id.* at subd. (c)) or continue the iterative process with thirty- and ninety-day deadlines (§ 65941.1, subd. (e)(2)).

The Town contends an applicant gets only one round of completeness review. (See generally, Town's Brief.) If the application is incomplete at that point, it dies.[13] (*Id.* at 12.) The iterative process in section 65943 disappears, supplanted by section 65941.1. (*Id.* at 12-14.) As for section 65941.1's explicit reference to section 65943? In the Town's view, the Legislature should have copy-pasted the "'reset' language" from section 65943 into section 65941.1 instead of providing a statutory cross-reference. (*Id.* at 13-15.) From there, the Town explains that the Legislature's concern in enacting SB 330 was not anti-housing local governments but *developers*. (*Id.* at 17-19.) The Legislature's repeated, emphatic declarations decrying local governments' refusal to permit new housing amount to nothing. (See Sections I-II, *supra*.) The Town cites a few committee reports and comments by the bill's author,

[13] The Town phrases this differently. It says the application "lose[s] vesting." (Town's Brief, 9:13.) This is a softer phrasing, but the effect here is to kill the applications. If the applications lose vesting, the Town will claim they no longer have a right to proceed under the builder's remedy. Because the applications rely on the builder's remedy, this will prevent them from proceeding at all. (*Id.* at 9-10.)

exactly one of which refers to developers.[14] (Town's Brief at 18.)

The Legislature intends the projects at issue here to get built, regardless of whether the Town likes them. Neither the Town's procedural legerdemain nor its turgid argument should get in the way.

B. HCD and the Courts Agree That the PSA Provides an Iterative Completeness Process That Protects Vesting Rights, and the Town Does Too (When It Considers Housing Projects It Likes)

The Town notes the absence of appellate precedent on the question in this case. (Town's Brief, 13-14.) There is a reason for this: until recently, no one doubted applications retained vesting rights through the PSA's iterative completeness process. Only now, after the Legislature has strengthened state law, and local governments lack options to stop disfavored projects, has a dispute arisen.

After anti-housing local governments began pushing an erroneous interpretation of the PSA, HCD, the state agency charged with interpreting and enforcing state housing law, weighed in. Last August, HCD informed Beverly Hills "that [section 65941.1's] 90-day deadline resets after each incompleteness determination," and "[a] project with multiple incompleteness letters and responses may have multiple 90-day periods." (HCD, Letter to Michael Forbes, August 22, 2024, available at https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/beverly-hills-hau-1071-nov-082224.pdf, p. 3[15].) HCD told Santa Barbara County the same. (HCD, Letter to Lisa Plowman, April 7, 2025, available at https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/santabarbara-co-hau-1423-ta-04072025.pdf, pp. 2-3.) HCD, in fact, informed the Town of Los Gatos of the correct reading of the PSA more than a year ago. (HCD, Letter to Jennifer Armer ["August HCD Letter"], August 30, 2024, available at https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/losgatos-hau891-ta-08302024.pdf.) HCD sent the Town a second letter six weeks before the Town filed this case. (HCD,

[14] That comment by the bill's author states that developers should not "go away for 10 years and come back wanting locked rules for their project." (Town's Brief, 18:28.) The Town cites no examples of such behavior. Nor have the applicants in this case engaged in such behavior. Amici concede that a developer who tries to "maintain indefinite vesting … by submitting minor changes reflecting no real thought about the proposal" (*id.* at 16:26-27) might violate an implied duty to operate in good faith under the PSA (cf. *Fassberg Construction Co. v. Housing Authority of City of Los Angeles* (2007) 152 Cal.App.4th 720, 767 [noting courts have read good faith requirement into section of the Code of Civil Procedure]; *California Optometric Assn. v. Lackner* (1976) 60 Cal.App.3d 500, 508).

[15] As explained above, fn. 7, judicial notice is appropriate for this and other official HCD documents.

Letter to Sean Mullin ["February HCD Letter"], February 12, 2025, available at https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/losgatos-hau-1398-nopv-02122025.pdf.) Both letters explained that applicants are entitled to multiple rounds of completeness review. (*Id.* at 2; August HCD Letter at 2-3.) HCD specifically told the Town that the applications at issue here retained their vesting rights. (February HCD Letter, 2.)

All courts to have considered the question agree that the PSA maintains applicants' vesting rights through multiple rounds of completeness review. The Town acknowledges that its position clashes with the ruling in *Jha v. City of Los Angeles*, L.A. Superior Court No. 23TCP03499 (July 24, 2024 Decision on Petition for Writ of Mandate). The Town does not mention there is another ruling against its position: *Yes in My Backyard, Trauss, et al. v. City of Los Angeles*, L.A. Superior Court No. 24STCP00070 (September 26, 2024 Decision on Petition for Mandamus).[16] Since these two rulings, moreover, the Superior Court has weighed in on a similar question. In *Californians for Homeownership, Inc. v. City of Beverly Hills et al.*, L.A. Superior Court No. 24STCP02082 (August 12, 2025 Ruling on Petitions for Writ of Mandate),[17] the court confronted a related argument that a preliminary application had lost vesting rights under section 65941.1. Beverly Hills, the respondent, conceded that it could not strip an application of vesting rights for not having achieved completeness within a single ninety-day period. (*Id.* at 5, 7, fn. 3.) Beverly Hills argued instead that the preliminary application lost vesting rights because the applicant changed certain features of the project after submitting the preliminary application. (*Id.* at 2-6.) The court rejected that argument. (*Id.* at 11-13.) The court noted the Legislature created the SB 330 preliminary application "to prevent local governments from 'chang[ing] the rules once the housing application is submitted.'" (*Id.* at 11.) The court further noted that its ruling aligned with HCD's interpretation. "While the HCD's determinations are not binding on this Court, its views are presumed to be valid, and 'courts generally will not depart from the HCD's determination unless "it is clearly erroneous or unauthorized."'" (*Id.*, quoting *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 243.)

More damning, *the Town itself* agrees with the courts' and HCD's reading of the PSA when it

[16] Amicus Yes In My Back Yard was a petitioner in that case.
[17] Amicus Californians for Homeownership was the petitioner in that case.

comes to projects it likes. On March 4, 2025, the Town Council considered a builder's remedy project at 50 Los Gatos-Saratoga Road. (Town of Los Gatos Town Council Meeting Agenda Packet, Mar. 4, 2025, available at https://mccmeetings.blob.core.usgovcloudapi.net/losgatos-pubu/MEET-Packet-0cde1e25f61a40e2a8209ce3493ae6b6.pdf, at p. 226[18].) Town staff told the Council: "The SB 330 preliminary application … achieved a vesting date of June 30, 2023." (*Id.* at 227.) "On December 20, 2023, the applicant submitted a formal application, within 180-days of the established vesting date as required by state law." (*Id.* at 229.) "[T]he application was deemed complete on May 7, 2024, within the timelines prescribed by state law." (*Id.)* May 7, 2024 is 139 days after December 20, 2023. 139 days is more than ninety days. Yet the Town stated: "The preliminary application for this project achieved a vesting date of June 30, 2023, prior to certification of the Town's Housing Element. Therefore, the project qualifies as a Builder's Remedy project." (*Id.* at 228.)

This is not the only instance where the Town applied the correct interpretation of the PSA. On April 4, 2025, the Town Planning Commission considered a builder's remedy project at 15349-15367 Los Gatos Boulevard. (Town of Los Gatos Planning Commission Agenda Packet, Apr. 23, 2025, available at https://mccmeetings.blob.core.usgovcloudapi.net/losgatos-pubu/MEET-Packet-fd16a2b9d1f24ecaba20c1ca9a3cd1df.pdf, at p. 145.) The project, according to the Town, "achieved a vesting date of April 30, 2024." (*Id.* at 147.) It submitted a formal application "[o]n May 16, 2024." (*Id.* at 149.) "On February 6, 2025,"—266 days later—"the applicant submitted … materials that were deemed complete … within the timelines prescribed by state law." (*Id.*) "The preliminary application for this project achieved a vesting date of April 30, 2024, prior to certification of the Town's Housing Element. Therefore, the project is eligible for the Builder's Remedy." (*Id.* at 148.)

On May 27, 2025, the Town Council considered yet another builder's remedy project. (Town of Los Gatos Town Council Agenda Packet, May 27, 2025, available at https://mccmeetings.blob.core.usgovcloudapi.net/losgatos-pubu/MEET-Packet-d59047b34b99495cb318725b2029a142.pdf, at p. 4.) Vesting date: May 3, 2024. (*Id.* at 6.) Full application submitted: June 18, 2024. (*Ibid.)* Deemed complete: 142 days later, on November 27, 2024.

[18] As noted above, fn. 12, the Court may take judicial notice of the Town's official documents.

(*Id.)* The Town says: "The preliminary application for this project achieved a vesting date of May 3, 2024, prior to state certification of the Town's Housing Element. Therefore, the project qualifies as a Builder's Remedy project." (*Id.*) The Town approved all three projects.

The Town knows its argument is wrong. The courts and HCD confirm the Town's argument is wrong. The Town does not care. It has no other way to stop the projects in this case. This Court should not indulge the Town's petulance. Whatever the Town's feelings about these projects, a higher power—the Legislature—has decreed the applications must move forward.

V. THE TOWN'S ANTI-HOUSING TACTICS REPRESENT A TROUBLING NEW TREND

The Town is not alone in pursuing this new, incorrect interpretation of the PSA. As the Legislature has narrowed anti-housing municipalities' options, those municipalities, like the Town, have scrambled to deny projects. Many of them have decided that the argument at issue here, or something similar, is their best chance. Amici know of at least nine other pending lawsuits where a local government has attempted to revoke vesting rights or reject preliminary applications based on dubious readings of the PSA. (Eckenwiler Decl., ¶ 22.) This Court's decision, consequently, has statewide implications. If it does not reject the Town's tactic, anti-housing jurisdictions across the state will be emboldened. They will refuse to find housing development applications complete and will try to revoke those applications' vesting rights. This will force applicants to file lawsuits, burdening the courts with completeness disputes that should be—and, until now, have been—resolved at the administrative level. That is not an outcome the Legislature wanted, and that is not an outcome this Court should countenance.

CONCLUSION

Amici urge the Court to consider this case in its broader context. In context, it is clear not only that the Town's legal interpretation lacks merit, but also that this lawsuit is disingenuous. The Court should deny the Town's motion for summary judgment.

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DATED: September 4, 2025

Respectfully submitted,

CALIFORNIA HOUSING DEFENSE FUND

Nicholas Eckenwiler

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Attorneys for Amicus Curiae California Housing Defense Fund

CALIFORNIANS FOR HOMEOWNERSHIP, INC.

/s/ Matthew P. Gelfand

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

The Town of Los Gatos v. Arya Properties, LLC et al. Case No. 25CV462276

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Alameda, State of California. My business address is 2201 Broadway, PH1, Oakland, CA 94612.

On September 4, 2025, I served an unsigned copy of this proof of service and the following document(s):

NOTICE OF EX PARTE APPLICATION AND EX PARTE APPLICATION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANTS AND CROSS-COMPLAINANTS

DECLARATION OF NICHOLAS ECKENWILER IN SUPPORT OF EX PARTE APPLICATION AND ATTESTING PROPER EX PARTE NOTICE

[PROPOSED] ORDER GRANTING LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANTS AND CROSS-COMPLAINANTS

[PROPOSED] AMICUS CURIAE BRIEF OF CALIFORNIA HOUSING DEFENSE FUND, CALIFORNIANS FOR HOMEOWNERSHIP, AND YES IN MY BACK YARD IN SUPPORT OF DEFENDANTS AND CROSS-COMPLAINANTS

I served the documents by email or electronic transmission: I caused a copy of the documents to be sent from the email address nick@calhdf.org to the email addresses provided in the service list below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SERVICE LIST: I served the documents on the interested parties in this action as follows:

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Attorneys for Plaintiff and Cross-Defendants

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

Executed September 4, 2025 at Oakland, California.

Nicholas Eckenwiler

Nicholas Eckenwiler