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EXEMPT FROM FILING FEES PURSUANT TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

YES IN MY BACK YARD, a California nonprofit public benefit corporation,

Petitioner-Plaintiff,

v.

CITY OF SAUSALITO and DOES 1-20,

Respondents-Defendants.

Case No. CIV-2300652

Filed Under California Environmental Quality Act ("CEQA")

RESPONDENT/DEFENDANT CITY OF SAUSALITO'S NOTICE OF DEMURRER AND DEMURRER TO VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER; DECLARATION OF A. PATRICIA URSEA COMPLIANCE WITH MEET-AND-CONFER OBLIGATIONS (CCP §430.41);

Date:
Time:
Dept: H

Assigned for All Purposes to Hon. Judge Sheila Lichtblau, Dept. H

[*Filed concurrently with Respondent's Request for Judicial Notice; Proposed Order*]

Action Filed: March 8, 2023
Trial Date: Not Set

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NOTICE OF DEMURRER TO VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF

TO PETITIONER YES IN MY BACK YARD AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on _____ __, 2024, at ____ _.m., or as soon thereafter as the matter may be heard in Department H of the above-entitled court located at 3501 Civic Center Drive, San Rafael, California 94903, Respondent-Defendant, City of Sausalito (the "City"), will move this court for an order sustaining its Demurrer to the second and third causes of action set forth in the Verified First Amended Petition for Writ of Mandate and Complaint of Declaratory Relief ("Petition") filed by Petitioner-Plaintiff, Yes In My Back Yard ("Petitioner").

This Demurrer is brought pursuant to Code of Civil Procedure section 430.10 (a) and (e) on the grounds that the Petition's second and third causes of action do not constitute valid causes of action. As to the second cause of action, Petitioner failed to allege facts sufficient to rebut the presumption that the 6th Cycle Housing Element is valid. For the third cause of action, Petitioner's claim is unripe and therefore fails as a matter of law.

This Demurrer is based upon this Notice, the Demurrer, the attached Memorandum of Points and Authorities, the Declaration of A. Patricia Ursea re Good Faith Meet and Confer and the Request for Judicial Notice filed concurrently with this Demurrer, the pleadings and records on file herein, and upon such other and further oral and documentary evidence as the court may consider at or prior to the hearing on this matter.

Dated: July 2, 2024

BEST BEST & KRIEGER LLP

By: A. Patricia Ursea

SARAH E. OWSOWITZ
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DEMURRER TO VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF

Respondent-Defendant City of Sausalito ("City") hereby generally demurs to Petitioner-Plaintiff Yes In My Back Yard's Verified First Amended Petition for Writ of Mandate and Complaint of Declaratory Relief ("Petition") as follows:

Second Cause of Action

Housing Element Law – Against All Respondents-Defendants

(Gov. Code §§ 65587, 65751; Code Civ. Proc. § 1085)

This cause of action fails to state facts upon which relief may be granted under Code of Civil Procedure section 430.10, subdivision (e) because Petitioner failed to allege facts sufficient to rebut the presumption that the 6th Cycle Housing Element is valid.

Third Cause of Action

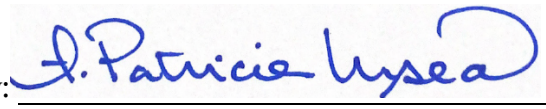
Failure to Implement Housing Element Programs – Against All Respondents-Defendants

(Gov. Code §§ 65583, 65877(d)(2); CCP § 1085)

This cause of action fails to state facts upon which relief may be granted under Code of Civil Procedure section 430.10, subdivision (e) because Petitioner's claim is unripe and therefore fails as a matter of law.

Dated: July 2, 2024

BEST BEST & KRIEGER LLP

By: 

SARAH E. OWSOWITZ
PATRICIA URSEA
MEGAN KILMER
Attorneys for Respondent-Defendant
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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER

I. INTRODUCTION

Respondent-Defendant City of Sausalito ("City") recently prepared an update to its Housing Element of the City's General Plan ("6th Cycle Housing Element") to meet the future housing needs of the City for the planning period from 2023 through 2031. (Request for Judicial Notice in Support of Demurrer ["RJN"], Ex. A.) Petitioner-Plaintiff Yes In My Back Yard ("Petitioner") brings this amended action for writ of mandate against the City challenging its 6th Cycle Housing Element ("Petition").[1] In its Second Cause of Action, Petitioner alleges the City's 6th Housing Element fails to demonstrate realistic development capacity for the locality's lower-income regional housing number allocation ("RHNA") and fails to remove certain governmental constraints on the development of housing ("Housing Element Claim"). (First Amended Petition ["Petition"], ¶¶ 281-282.) However, the California Department of Housing and Community Development ("HCD") disagrees. HCD found the City's 6th Cycle Housing Element compliant with the Housing Element Law (Gov. Code §§ 65580 et seq.), affording this housing element a rebuttable presumption of validity. (Gov. Code § 65589.3.)

For this Housing Element claim to withstand demurrer, Petitioner must plead facts in the Petition sufficient to rebut the 6th Cycle Housing Element's presumption of validity. (*See e.g.*, *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 682 (*"Foley"*); *Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 86, fn. 4 (*"Knapp").*) To state a valid cause of action, Petitioner must demonstrate that HCD's determination is clearly erroneous or unauthorized. (*Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 243 ("*Martinez"*).)

The Second Cause of Action cannot withstand demurrer. Petitioner primarily focuses its claims on the City's noncompliance with the Housing Element Law, particularly its alleged failure to demonstrate capacity for its lower-income RHNA or remove governmental constraints. This focus is misplaced. Since HCD found the 6th Cycle Housing Element compliant with the Housing Element Law, Petitioner is required to demonstrate that this determination is clearly

[1] Petitioner also allege a violation of the California Environmental Quality Act ("CEQA"). The City disputes the merits of the CEQA claim but limits this demurrer to the Housing Element Claim.

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erroneous or unauthorized. However, Petitioner fails to plead sufficient facts challenging HCD's determination. Petitioner thus fails to state a valid cause of action.

In its Third Cause of Action, Petitioner alleges that the City failed to implement the 6th Cycle Housing Element's Program 19, a program that amends the City's Objective Design and Development Standards ("ODDS") for multifamily residential and mixed-use development programs ("Program 19"). This argument is flawed. Pursuant to Housing Element Law and further detailed below, the City has until **January 30, 2026** to implement Program 19. Consequently, Petitioner's Third Cause of Action for Failure to Implement Program 19 is unripe and premature as plead, and therefore fails as a matter of law.

Accordingly, the City's demurrer to the Second and Third Causes of Action should be sustained without leave to amend.

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II. LEGAL AND FACTUAL BACKGROUND

A. Housing Element and Remedies for Non-Compliance

Every city is required to adopt "a comprehensive, long-term general plan for the physical development of the . . . city," commonly referred to as a General Plan, which must include certain statutory "elements," which are sections or chapters of the written General Plan. (*See* Gov. Code § 65300.[2]) Among these is a "Housing Element," which is regulated by the Housing Element Law. (*Id.*, § 65302, subd. (c).) The provisions of the Housing Element Law relevant here are briefly summarized below.

A city must prepare a draft Housing Element that must include "several mandatory components." (*Black Property Owners Assn. v. City of Berkeley* (1994) 22 Cal.App.4th 974, 978.) The Housing Element Law requires the state to calculate each city's share of Regional Housing Needs Allocation ("RHNA"), which is the number of market rate and below market rate housing units that the State determines necessary to build. (*See* §§ 65583.2, subd. (a), 65584.) Based on what a city identifies as land suitable for redevelopment, it may be required to rezone and the city is required to include in its housing element a specific "rezoning program" explaining how it intends to satisfy its obligation to rezone. (*See* §§ 65583, subd. (c)(1)(A), 65583.2, subd.

[2] All statutory references are to the Government Code unless otherwise stated.

(c).) After a city prepares a draft of its Housing Element, the city's planning agency must submit the draft Housing Element to HCD for review in advance of the city adopting the Housing Element. (Gov. Code, § 65585, subd. (b)(1).)

During the review of a draft element, HCD must make a finding as to whether the draft substantially complies with the requirements of the Housing Element Law. (*Id.*, § 65585, subd. (d).) The city must then consider HCD's findings. (*Id.*, § 65585, subd. (e).) If the findings reflect noncompliance in HCD's judgment, the city must either change the draft, so that it substantially complies with the Housing Element Law, or adopt the draft without changes, explaining why the draft substantially complies despite HCD's findings. (*Id.*, § 65585, subd. (f)(1)-(2).)

Once the city adopts the new or amended Housing Element, the city must again submit the element to HCD for review. (Gov. Code, § 65585, subd. (g).) HCD will then determine whether the element is in substantial compliance with state law. (*Id.*, § 65585, subd. (h).) If HCD has found that the Housing Element substantially complies with the law, there is a rebuttable presumption of the Housing Element's validity in any court action. (*Id.*, § 65589.3.) Should a city adopt their Housing Element before its statutory deadline pursuant to § 65585(f) and HCD finds the Housing Element in substantial compliance, the City shall have three years after either the date the housing element is adopted or the date that is 90 days after receipt of comments from HCD, whichever is earlier, to complete its rezoning program. (§ 65583, subd. (c)(1)(A).)

B. <u>Factual Background</u>

On August 17th, 2022, the City made the draft 6th Cycle Housing Element available for public review. (RJN, Ex. B.) This public review period concluded on September 16, 2022. (*Id.*) Following this public review, on October 28th, 2022, the City submitted its draft 6th Cycle Housing Element for review to HCD. (*Id.*) The City's submission included a clean version of the draft 6th Cycle Housing Element and a version of the draft 6th Cycle Housing Element with track changes to assist the reader in identifying revisions made to the draft released for public review. (*Id.*) In its submission, the City noted that Appendix A of the draft 6th Cycle Housing Element included a summary of public comments and responses to those comments. (*Id.*)

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On January 26, 2023, HCD stated in a letter that, while the draft 6th Cycle Housing Element addressed many statutory requirements, revisions were necessary to comply with Housing Element Law. (RJN, Ex. C.) In particular, HCD's requested revisions focused primarily on adequate sites to accommodate the Regional Housing Needs allocation and programs to facilitate the development of those sites, removal of governmental constraints, and affirmatively further fair housing. (*Id.*) In response, the City revised the draft 6th Cycle Housing Element addressing HCD's requested revisions. (RJN, Ex. E.)

On January 30th, 2023, the City Council approved and adopted the 6th Cycle Housing Element, which included the revisions requested by HCD. (RJN, Ex. E.) The City Council also considered recommendations from the Planning Commission and community feedback received throughout the 6th Cycle Housing Element development process. (*Id.*) In addition, the City found that the 6th Cycle Housing Element substantially complied with Housing Element Law and revised to address the findings identified by HCD in its January 26th letter. (*Id.*)

On February 27, 2023, the City submitted the adopted 6th Cycle Housing Element to HCD for a second review. (RJN, Ex. F.) Minor amendments were received on April 25, 2023, authorized pursuant to the City's Resolution NO. 14A-2023. (*Id.*) HCD also considered correspondence from the City received on April 25 and April 27, 2023. (*Id.*) On April 28, 2023, HCD informed the City via letter that the adopted 6th Cycle Housing Element was found to be substantially compliant with the Housing Element Law. (*Id.*) Further, HCD stated that the adopted 6th Cycle Housing Element addressed the statutory requirements described in HCD's January 26, 2023 letter. (*Id.*)

On April 5, 2024, HCD wrote the City to inquire about the implementation of the 6th Cycle Housing Element's Program 19, a program that amends the City's ODDS for multifamily residential and mixed-used development programs. (RJN, Ex. G.) On May 9, 2024, the City responded to HCD, explaining that part of Program 19 has already been implemented and provided the City's plan to address implementation for the remaining portions of Program 19. (RJN, Ex. H.)

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C. Petitioner's Lawsuit

Petitioner filed this amended Petition on March 8, 2023. In its Second Cause of Action, Petitioner alleges that: (1) the 6th Cycle Housing Element is noncompliant because it "failed to demonstrate realistic development capacity for its lower-income need allocation" and HCD's findings on this matter were erroneous, lacked any evidentiary support, and are contrary to law; and (2) the City "failed to remove its constraints on the development of housing as required by subdivision (c)(3) of Section 65583 of the Government Code." (Petition, ¶¶ 297-316.) In its Third Cause of Action, Petitioner alleges that the City failed to implement Program 19. (Petition, ¶ 321.)

III. STANDARD OF REVIEW

A demurrer challenges defects that appear either on the face of the pleading or from any matter that is judicially noticeable. (Code Civ. Proc., § 430.30, subd. (a); *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) In considering a demurrer, this Court generally must accept as true all properly pled facts in the complaint. (*Ibid.*) However, the court is not required to accept either factual or legal conclusions expressed in the complaint. (*Ibid*.) Review is limited to matters that appear on the face of the pleading or that are subject to judicial notice. (*James v. Superior Court In and For City and County of San Francisco* (1968) 261 Cal.App.2d 415, 416 (*James").*) The "face" of the pleading includes matters shown in exhibits attached to the complaint and incorporated by reference. (*Barnett v. Fireman's Fund Ins. Co*. (2001) 90 Cal.App.4th 500, 505 ["[W]e rely on and accept as true the contents of the exhibits and treat as surplusage the pleader's allegations as to the legal effect of the exhibits"].) Further, this Court is entitled to take into consideration additional matters that are properly subject to judicial notice. (*See James, supra*, 261 Cal.App.2d at 416.) This Court may reject allegations by a plaintiff that are contrary to facts that this Court may judicially notice. (*City of Chula Vista v. County of San Diego* (1994) 23 Cal.App.4th 1713, 1719.) Leave to amend should be granted only if the complaint is capable of being amended to state a viable claim. The burden is on plaintiff to prove that the complaint could be amended to state a valid cause of action. (*Ibid*.)

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IV. ARGUMENT

A. Petitioner Does Not Allege Sufficient Facts To Show HCD's Determination Is Clearly Erroneous or Unauthorized

Housing Element Law provides two different times at which HCD can approve a Housing Element. (Gov. Code, § 65585.) Under Government Code sections 65585(b)-(d), HCD can make a determination that a draft Housing Element complies with the Housing Element Law before the element is adopted by the local legislative body. Under Government Code section 65585(b), HCD has a second opportunity to make findings regarding the sufficiency of a Housing Element after its adoption by the local legislative body. If HCD ultimately finds that the Housing Element substantially complies with the Housing Element Law, the local legislative body's housing element has a rebuttable presumption of validity. (*Id.*, § 65589.3)

Where a rebuttable presumption applies to a cause of action, the plaintiff must plead facts in the complaint sufficient to rebut that presumption. (See e.g., *Foley, supra*, 47 Cal.3d at 682; *Knapp, supra,*123 Cal.App.4th at 86, fn. 4.) Courts generally will not depart from the HCD's determination unless "it is clearly erroneous or unauthorized." (*Martinez, supra*, 90 Cal.App.5th at 243 [finding a rebuttable presumption shifts the burden of proof to the challenger to show the presumption is not correct].) In other words, it is not enough for a plaintiff to simply plead facts showing that a Housing Element fails to satisfy Housing Element Law. To state a valid cause of action, the plaintiff must plead facts to show why HCD's determination is clearly erroneous or unauthorized.

1. Petitioner is required to demonstrate HCD's determination is clearly erroneous or unauthorized

On April 28, 2023, HCD found the 6th Cycle Housing Element substantially compliant with Housing Element Law. (RJN, Ex. F.) Specifically, HCD stated that "[t]he adopted element addresses the statutory requirements described in HCD's January 26, 2023 review . . . HCD's finding was based on, among other things, adequate sites to accommodate the Regional Housing Needs Allocation (RHNA) and programs to facilitate the development of those sites, remove governmental constraints, and affirmatively further fair housing (AFFH)." (*Id.*) Based on HCD's

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determination, the 6th Cycle Housing Element enjoys a rebuttable presumption of validity. To rebut this presumption, Petitioner must plead sufficient facts in their Petition showing HCD's determination is clearly erroneous or unauthorized. The Petition, however, fails to allege *any* facts regarding HCD's determination.

a. Petitioner does not allege facts showing HCD's determination regarding lower-income accommodations is clearly erroneous or unauthorized

Petitioner first alleges that the City failed to demonstrate realistic development capacity for its lower-income need allocation, rendering the 6th Cycle Housing Element noncompliant with Housing Element Law. (Petition, ¶¶ 100-228, 281.) This is false.

In its determination, HCD found the 6th Cycle Housing Element's inclusion of Program 4, particularly its ability to ensure inventory to accommodate the lower-income need, substantially compliant with the Housing Element Law. (RJN, Ex. F.) Program 4 (Ensure Inventory of Sites Accommodates RHNA throughout the Planning Period) identifies adequate sites to accommodate the shortfall of 463 units at all income levels by committing to rezone 17 acres at densities ranging from 43 to 70 units per acre by January 30, 2026. (*Id.*) For sites expected to accommodate the lower-income need, Program 4 commits permit owner-occupied and rental multifamily uses by-right for developments in which 20 percent or more of the units are affordable to lower-income households. (*Id.*) Based on HCD's determination, the 6th Cycle Housing Element, specifically its inclusion of Program 4, enjoys a rebuttable presumption that its development capacity for its lower-income need allocation is valid.

To rebut this presumption, Petitioner must demonstrate that HCD's determination, particularly in regard to Program 4's site accommodations is clearly erroneous or unauthorized. For example, in *Martinez v. City of Clovis*, a petitioner challenged a city's Housing Element and its adoption of a new overlay zone district. (*Martinez, supra,* 90 Cal.App.5th at 238-239.) There, petitioner effectively argued HCD's determination was erroneous by describing how and it what manner that the new overlay zone did not satisfy the plain meaning of state housing law. (*Id.* at 243.) Despite HCD finding the City's new overlay zone district compliant, the court held that Petitioner's interpretation of state housing law rebutted HCD's presumption of validity as HCD's

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finding was clearly erroneous. (*Ibid.*)

Conversely here, the Petition is completely void of any facts demonstrating that HCD's approval of Program 4 is clearly erroneous or unauthorized, rendering the 6th Cycle Housing Element invalid. In fact, the Petition merely states: "To the degree that HCD found that the City's Housing Element did demonstrate realistic capacity, those findings were erroneous, lacked any evidentiary support, and are contrary to law." (Petition, ¶312.) This conclusory statement does not convey which of HCD's extensive findings were erroneous, lacked evidentiary support or contrary to law. (See *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126 [courts treat a demurrer as admitting all material facts properly pleaded, "but not contentions, deductions or conclusions of fact or law"].) Offering no further explanation as to why HCD's findings were erroneous or unauthorized, Petitioner fails to plead facts sufficient to rebut the presumption that the 6th Cycle Housing Element's is valid.

b. Petitioner does not allege facts showing HCD's determination regarding governmental constraints is clearly erroneous or unauthorized

Petitioner also alleges that the City failed to remove its constraints on development of housing, specifically Ordinances 1022 and 1128, as required by Government Code § 65583 subd. (c)(3). (Petition, ¶ 313.) Again, the Petition does allege facts to overcome the presumption of validity afforded to HCD's determination as to the City's alleged governmental constraints.

As a preliminary matter, Government Code § 65583(c)(3) does not require the removal of all governmental constraints prior to approval of a Housing Element. Rather, Government Code § 65583(c)(3) states that a public agency must "address and, *where appropriate and legally possible*, remove governmental and nongovernmental constraints" to the development of housing. (emphasis added.) A plain reading of Government Code § 65583(c)(3) suggests that the City is not required to remove *every* constraint, but make an effort to do so. The City did just that.

Ordinance 1022 implements the Fair Traffic Initiative, passed by Sausalito voters in 1985 to limit changes to the Zoning Map and dos not allow for increases in flor area ratio in the commercial and industrial zones. (RJN, Ex. A.) Ordinance 1128 regulates the sale, lease, or other disposition of certain City-owned properties. (*Id.*) To legally remove these governmental

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restraints, voter-approval is required. In compliance with Government Code § 65583(c)(3), the 6th Cycle Housing Element provides that Program 4 ensures the City initiates and fully funds an election to remove constraints associated with Ordinance 1022 and 1128, and will conduct outreach in advance of the election to inform voters about the intent of the election, need to accommodate the RHNA, and the types of development that could occur. (*Id.*, RJN, Ex. A.) HCD's determination found Program 4, particularly its intent to remove these governmental constraints, in substantial compliance with the Housing Element Law and therefore enjoys a rebuttable presumption of validity. (RJN, Ex. F.)

Again, to rebut this presumption, Petitioner must demonstrate that HCD's determination, particularly in regard to Program 4's site accommodations, is clearly erroneous or unauthorized. The recent decision *Martinez v. City of Clovis* is again instructive. (*Martinez, supra*, 90 Cal.App.5th 193.) There, the petitioner highlighted that a city's Housing Element was noncompliant with the Housing Element Law, despite HCD's finding of compliance, since the Housing Element lacked an alleged required discussion regarding certain sites' development potential. (*Id*. at pp. 249-251.) However, the court was not persuaded since this discussion was in fact not required by the Housing Element Law. (*Id.* at p. 252.) Rather, the court reasoned that Petitioner's highlight failed to rebut HCD's finding of compliance because: 1) Petitioner could not show how this missing information was essential to the Housing Element's objectives given the fact that it was not a statutorily required analysis; and 2) the record adequately supports HCD's determination that information provided substantially complied with the statutory requirements. (*Id*. at p. 251.)

Similarly here, Petitioner fails to plead facts demonstrating that Government Code § 65583(c)(3) is essential to the Housing Element's objectives since it is not a requirement. Nor does Petitioner plead facts to demonstrate HCD's determination, highlighted above, is clearly erroneous or unauthorized in light of the record. Rather, Petitioner's facts solely pertain to the City's alleged failure to remove these constraints in the first draft of the 6th Cycle Housing Element reviewed by HCD. (Petition, ¶ 313.) In doing so, Petitioner fails to plead facts sufficient to rebut the 6th Cycle Housing Element's presumption of validity for its removal of

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governmental constraints.

In short, Petitioner fails to demonstrate that the HCD's determination is clearly erroneous or unauthorized, particularly in regard to the lower-income accommodations and governmental constraints. Petitioner therefore fails to plead facts sufficient in its Petition to rebut the presumption that HCD's determination of the 6th Cycle Housing Element's substantial compliance is valid. Thus, Petitioner's challenge to the City's 6th Cycle Housing Element, on this front, does not state a valid cause of action.

B. <u>The Third Cause of Action Fails As a Matter of Law Because It Is Not Ripe</u>

Petitioner's Third Cause of Action seeks to compel the City to implement Program 19. Petitioner is under the impression that the City's 6th Cycle Housing Element required the City to implement this *entire* program by November 2023. (Petition, ¶ 321.) This is erroneous. This cause of action is not ripe because, by statute, the City has until **January 30, 2026**, to complete implementation of Program 19. (*See* § 65583(c)(1)(A).)

1. The Ripeness Doctrine Prohibits Courts From Issuing Advisory Opinions

"California courts will decide only justiciable controversies. [Citation] The concept of justiciability is a tenet of common law jurisprudence and embodies '[t]he principle that courts will not entertain an action which is not founded on an actual controversy....' [Citation] Justiciability thus 'involves the intertwined criteria of ripeness and standing. 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.' [Citation]" (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573.)

To determine if a controversy is ripe, courts employ a two-prong test. They evaluate: (1) whether the dispute is sufficiently concrete so that any ruling from the court would not be an advisory opinion; and (2) whether withholding judicial consideration will result in hardship to the parties. (*Pacific Legal Foundation v. California Coastal Commission* (1982) 33 Cal.3d 158, 171-173 (*"Pacific Legal"*).)

Under the first prong, courts will decline to adjudicate disputes that ask them to speculate

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on the resolution of the hypothetical situations. For example, in *Selby Realty Co. v. City of Buenaventura* (1973) 10 Cal.3d 110, 118, the California Supreme Court **upheld** a demurrer to a claim of declaratory relief because the petitioner had not yet been affected by the City's proposed general plan, which was tentative and subject to change (emphasis added). Under the second prong set forth in *Farm Sanctuary Inc.*, Petitioner must show that there is "an imminent and significant hardship inherent in further delay." (*Farm Sanctuary Inc. v. Dept. of Food and Agriculture* (1998) 63 Cal.App.4th 496, 502.)

2. The Dispute is Not Sufficiently Concrete for Resolution Because The City Has Until January 2026 to Implement Program 19

Should a city adopt their Housing Element before its statutory deadline (here, January 31, 2023) pursuant to § 65585(f) and HCD finds the Housing Element in substantial compliance, the city shall have three years after either the date the housing element is adopted or the date that is 90 days after receipt of comments from HCD, whichever is earlier, to complete its rezoning program. (§ 65583(c)(1)(A).) Here, the City adopted its 6th Cycle Housing Element on January 30, 2023, a day before its statutory deadline to do so. (RJN, Ex. E.) Since the City adopted its Housing Element before its statutory deadline and HCD found it in substantial compliance on April 28, 2023, by statute, the City has until January 30, 2026 to complete implementation of Program 19 in its entirety.

Here, Petitioner cherry picks a deadline date, specifically November 2023, from one of Program 19's schedule of actions in an attempt to discredit the City's efforts. (Petition, ¶ 321.) This is misleading. In Bullet Point 1 of Program 19, it states that the City shall "Within 1 year of Housing Element adoption, and no later than November 2023, develop procedures to address the streamlining requirements of SB 35 and objective design requirements of SB 330 . . ." (RJN, Ex. A.) To accomplish this goal, the City has developed tools and procedures to address streamlining requirements and other state laws requiring streamlining or ministerial approval, and has identified existing objective standards contained in city zoning codes, and is currently managing projects subject to these streamlining requirements. (RJN, Ex. H.) Accordingly, the City has already complied with the part of Program 19 that the City has committed to complete within 1

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year of the 6th Cycle Housing Element adoption. The City also notes that the deadline that the City envisioned in its Housing Element to complete the preparation and adopt the more comprehensive ODDS is governed by Bullet Point No. 2 of Program 19, which provides that the City will meet this benchmark ***no later than May 2025***. (RJN, Ex. A.) Thus, the City is still actively implementing Program 19 to meet these various deadlines and has not failed to implement this program in its entirety.

Regardless of the timeline above, the City, by statute, has until January 30, 2026 to complete implementation of Program 19 pursuant to § 65583(c)(1)(A). Until this deadline has passed, this matter is not ripe. The only order the Court can issue here is an advisory opinion. If the statutory deadline passes and the City fails to fully implement Program 19 by that time, then can Petitioner bring this challenge.

3. Petitioner Will Not Suffer Hardship If This Claim Is Dismissed

As to the second prong of the ripeness issue, there is no hardship to Petitioner if the Third Cause of Action is not decided now. In fact, Petitioner fails to plead that there is any sort imminent and significant hardship inherent in further delay in addressing implementation of Program 19. (*See* Petition, ¶¶ 317-325.) Rather, Petitioner focuses on unfounded allegations that the "City will continue to refuse said duties and continue to violate the law," and vague claims that "Yes In My Back Yard and others will be injured as a result." (Petition, ¶ 324.) Such baseless assertions do not demonstrate such hardship required to satisfy this prong.

Thus, the Third Cause of Action is not ripe. Additionally, Petitioner cannot cure this defect with leave to amend; therefore, the City requests that the Court sustain the demurrer without leave to amend.

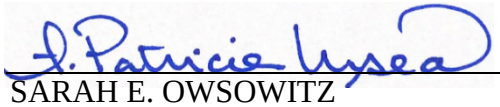
V. CONCLUSION

For the reasons set forth above, the City respectfully ask this Court to sustain its Demurrer without leave to amend and dismiss the Second and Third Causes of Action with prejudice.

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Dated: July 2, 2024

BEST BEST & KRIEGER LLP

By: 

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PATRICIA URSEA
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CITY OF SAUSALITO

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DECLARATION OF COMPLIANCE WITH MEET-AND-CONFER OBLIGATIONS (CODE OF CIVIL PROCEDURE SECTION 430.41)

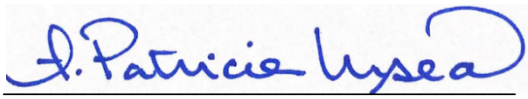
I, A. Patricia Ursea, declare as follows:

1. I am an attorney duly licensed to appear before all courts in the State of California. I am an attorney with Best Best & Krieger LLP, counsel of record for Respondent-Defendant City of Sausalito ("City") in the above-captioned matter. I have personal knowledge of the facts set forth in this declaration and could and would competently testify thereto.

2. Pursuant to California Code of Civil Procedure section 430.41, on June 25, 2024, I met and conferred by video conference with attorneys for Petitioner-Plaintiff Yes In My Back Yard concerning the City's anticipated demurrer.

3. Counsel for the Parties were unable to resolve the issues raised in the accompanying demurrer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 2nd day of July, 2024 at Los Angeles, California.



A. PATRICIA URSEA

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PROOF OF SERVICE

I, Sylvia Perez, declare:

I am a citizen of the United States and employed in Riverside County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 3390 University Avenue, 5th Floor, Riverside, California 92501. On July 2, 2024, I served a copy of the within document(s):

RESPONDENT/DEFENDANT CITY OF SAUSALITO'S NOTICE OF DEMURRER AND DEMURRER TO VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER; DECLARATION OF A. PATRICIA URSEA COMPLIANCE WITH MEET-AND-CONFER OBLIGATIONS (CCP §430.41)

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Riverside, California addressed as set forth below.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☒ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

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Attorneys for Petitioner-Plaintiff
YES IN MY BACKYARD

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

Executed on July 2, 2024, at Perris, California.

/s/ Sylvia Perez
Sylvia Perez