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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,

Plaintiff and Petitioner,

v.

CITY OF SAUSALITO and DOES 1-20,

Respondents and Defendants.

Case No. CIV-2300652

Filed Under California Environmental Quality Act ("CEQA")

RESPONDENT'S OPPOSITION TO THE OPENING BRIEF SUBMITTED BY PETITIONER YES IN MY BACKYARD

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

[*Filed concurrently with Request for Judicial Notice*]

Action Filed: March 8, 2023
Trial Date: None set

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Respondent and Defendant City of Sausalito ("City") respectfully submits this brief in response to the Opening Brief submitted by Petitioner and Plaintiff Yes In My Back Yard ("Petitioner").

I. INTRODUCTION

Petitioner filed this action on March 8, 2023 to challenge the City's then-operative sixth-cycle housing element (the "Original Housing Element") on the grounds that it violated the California Environmental Quality Act ("CEQA") and the Housing Element Law ("HE Law"), despite findings of the California Department of Housing and Community Development ("HCD") that it complied with HE Law. Since that filing, the City has rescinded the Original Housing Element, certified a full Environmental Impact Report ("EIR"), and adopted an amended sixth-cycle housing element (the "Amended Housing Element"), which HCD also determined is in substantial compliance with HE Law. Under HE Law, HCD's determinations carry a rebuttable presumption of validity. To obtain relief, Petitioner bears the burden of showing that HCD's compliance finding was clearly erroneous or unauthorized.

Despite the new legislation, Petitioner chose not to amend its pleading to bring any specific challenges targeting the Amended Housing Element. That choice carries significant consequences in this litigation. A petition that targets a rescinded legislative act is moot, and the writ and declarative relief remedies that Petitioner seek are forward-looking by design—they are not vehicles for adjudicating grievances about laws no longer in effect. As discussed below, the CEQA cause of action targets the City's 2023 exemption for the Original Housing Element, which was rescinded and no longer exists. Petitioner also alleges that the City failed to follow procedural requirements in adopting the Original Housing Element and failed to implement certain programs included in that version of its housing element. Those claims, too, are moot because they concern a legislative enactment that the City has since repealed. The challenged adoption process and program timelines were tied to the now-rescinded housing element, and Petitioner identifies no present, ministerial duty under current law that the City is violating.

Even under the most generous reading of the Opening Brief, Petitioner advances only one challenge that arguably pertains to the Amended Housing Element: that its Sites Inventory is

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inadequate under HE Law. The Sites Inventory is a list of properties that a city identifies in its housing element as suitable for future residential development in order to meet its assigned regional housing need allocation. Petitioner challenges the Sites Inventory on several related theories, but none comes close to overcoming the presumption of validity that attaches to HCD's compliance finding.

Petitioner first objects to the inclusion of so-called "voter-restricted" sites—parcels that require voter approval before their zoning can be modified. But HE Law expressly contemplates time-bound rezoning programs, and the City's Program 4 includes a scheduled special election—already called for November 4, 2025—well within the statutory three-year window. The program also contains contingency procedures to ensure capacity is maintained "at all times," including through monitoring and replacement-site provisions. Petitioner's speculation about what voters might do in the future is not a basis for invalidating a plan HCD has reviewed and certified as compliant.

Petitioner next argues that the City failed to justify its reliance on non-vacant parcels. But the Amended Housing Element addresses those sites in detail: it identifies existing uses, explains the methodology for estimating redevelopment potential, and makes the required statutory findings—backed by substantial evidence—that existing uses are likely to discontinue during the planning period. That is all the law requires. Petitioner may disagree with how both the City and HCD weighed the evidence, but disagreement is not a basis for writ relief.

Finally, Petitioner challenges the City's unit allocations on the ground that they are not "realistic." But the City calculated capacity based on minimum zoning densities and adjusted those figures to account for real-world development patterns and site-level constraints, consistent with HCD guidance. Where sites are located in overlay or mixed-use zones, the City counted only the portion allowed—or required—to be residential. Additionally, the City considered and incorporated into its program of rezoning densities which will exceed the density requirements deemed adequate under Government Code section 65583.2(c)(3)(B) to accommodate lower income housing. Petitioner's feasibility critiques do not show that the City omitted any required analysis or that HCD's compliance finding was clearly erroneous.

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What is clear is this: HCD—the state agency charged by the Legislature with reviewing local housing elements and determining compliance—has reviewed the Amended Housing Element and found that it substantially complies with HE Law. HCD's compliance determination is presumed valid. Petitioner has not come close to showing it was clearly erroneous or unauthorized—and that is the standard. To obtain a writ, Petitioner must do more than express disagreement with the City's policy choices. It must overcome that presumption by showing that HCD's compliance determination was clearly erroneous or unauthorized—a standard that does not permit courts to reweigh evidence or second-guess policy tradeoffs. Petitioner never meets that burden.

In short, Petitioner brought a challenge to a housing element the City no longer has, and declined to amend its pleading after the City adopted a new housing element and certified an EIR. Petitioner's choice renders most, if not all, of Petitioner's claims moot. The one argument that arguably survives the change in legislation falls well short of the governing standard. Petitioner has not met its burden to obtain the relief it seeks. The Petition should be denied.

II. LEGAL BACKGROUND

A. Housing Element Law

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.[1]) Among these is a "housing element," which is regulated by HE Law. (§ 65302, subd. (c).)

HCD administers HE Law. Housing elements must be updated at least every eight years. (See § 65588.) As part of each update cycle, HCD determines the existing and projected need for housing for each region of the state; this the "regional housing need determination." (§ 65584, subd. (a)(1).)) HCD allocates the anticipated housing needs for the state on a region-by-region basis, at different levels of affordability. (§§ 65584.01, 65588.) Thereafter, each region's council of governments is required to develop a methodology, approved by HCD, that assigns a portion of

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

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the regional housing need to each city and county in the region, this is the "regional housing need allocation" or "RHNA." (§ 65584.04.) After the RHNA allocation is final, each local government is required to embark on the process of updating the housing element of its general plan. At the core of a city's housing element update is the "sites inventory," a listing of existing and potential sites for housing sufficient to accommodate its RHNA allocations in each of four income categories. If needed, the local government must make changes to its land use rules, including by rezoning land, as needed to allow housing production sufficient to meet the RHNA goals. (§§ 65583, subd. (c), 65583.2, subd. (h).)

A city must prepare a draft housing element that includes "several mandatory components." (*Black Property Owners Assn. v. City of Berkeley* (1994) 22 Cal.App.4th 974, 978.) The housing element must include "[a]n inventory of land suitable and available for residential development[.]" (§ 65583, subd. (a)(3).) "[L]and suitable and available for residential development" includes not just vacant sites but also non-vacant sites with realistic "sites throughout the community . . . that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels[.]" (§ 65583.2.)

In preparing a draft housing element, each jurisdiction must identify enough such sites to develop the number of housing units to meet its RHNA. To the extent a city includes non-vacant sites in its inventory the housing element, it must specify the "additional development potential for each site within the planning period" and explain the methodology used to determine such development potential, which must consider specified factors, including "the extent to which existing uses may constitute an impediment to additional residential development," and "market conditions." (§ 65583.2, subd. (g)(1).) Also, where a city relies on non-vacant sites to accommodate 50% or more of its RHNA for lower income households, the methodology used to determine additional development potential must "demonstrate that the existing use [of the site] does not constitute an impediment to additional residential development during the period covered by the housing element." (§ 65583.2, subd. (g)(2).) The existing use is presumed to impede additional residential development "absent findings based on substantial evidence that the

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use is likely to be discontinued during the planning period." (*Ibid*.)

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 before the city adopts it. (§ 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 HE Law. (§ 65585, subd. (d).) The city must then consider HCD's findings. (§ 65585, subd. (e).) If adoption of the draft would result in noncompliance in HCD's judgment, the city must either change the draft, so that it substantially complies with HE Law, or adopt the draft without changes, explaining why the draft substantially complies despite HCD's findings. (§ 65585, subd. (f)(1)-(2).)[2]

Once a city has adopted its housing element, it must submit it to HCD again. (§ 65585, subd. (g).) HCD must then determine whether the housing element substantially complies with HE Law. (§ 65585, subd. (h).) If HCD certifies that a housing element complies with HE Law, that creates a presumption of compliance in a subsequent judicial review proceeding. (§ 65589.3.)

B. CEQA

General plan amendments, such as the adoption of a housing element, are generally discretionary actions and therefore subject to CEQA. (*City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 533-534.) CEQA establishes a three-tier process to ensure that public agencies inform their decisions with environmental considerations. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 74.) If a project falls within a category exempt by administrative regulation (see Pub. Resources Code, §§ 21084, 21085), or "it can be seen with certainty that the activity in question will not have a significant effect on the environment" (14 Cal. Code Regs. ("CEQA Guidelines"), § 757, citing 14 Cal. Code Regs., § 15060), no further agency evaluation is required. If there is a possibility that the project may have a significant effect, the agency undertakes an initial threshold study (CEQA Guidelines § 15080); if that study demonstrates that

[2] Effective January 1, 2025, AB 2667 (2024)—after the Original Housing Element was adopted, Government Code section 65585, subd. (f)(1)(B)—was modified to require that any changes to a housing element in response to HCD's findings under Government Code section 65585, subd. (f) must go through another review cycle under Government Code section 65585, subd. (b), and could no longer be addressed by the city during the course of adoption.

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the project "will not have a significant effect," the agency may so declare in a negative declaration. (CEQA Guidelines § 758.) If the project is one "which may have a significant effect on the environment," an EIR is required. (Pub. Resources Code, §§ 21100, 21151.) Public Resources Code section 21168.9 sets forth the remedies for a violation of CEQA, and typically requires a court to limit any order to "only those mandates which are necessary to achieve compliance with this division and only those specific project activities in noncompliance[.]" (Pub. Resources Code, § 21168.9, subd. (b).)

III. STATEMENT OF FACTS

A. The City's Original 6th Cycle Housing Element

In 2021, the City initiated preparations for its 6th Cycle Housing Element ("Housing Element") to accommodate the City's regional housing need allocation ("RHNA") of 724 housing units. (AR0000161.) During a 15 month period, the City conducted extensive community outreach. (AR0000162.) This included three town halls open to any member of the public, ten Housing Element Advisory Committee meetings, three City Council meetings, two Planning Commission meetings, and two joint Planning Commission and City Council meetings. (*Id.*; AR0008513.) At each of the 20 meetings, members of the public were provided an opportunity to comment. (AR0000162.) On August 17, 2022, the City made the draft Housing Element available for public review until September 16, 2022. (AR0007462) Following this public review, on October 28th, 2022, the City submitted its draft Housing Element for review to HCD. (AR0000162.)

In January 2023, HCD met with the City to discuss preliminary comments about the contents of the draft Housing Element. (AR0000456.) On January 25, 2023, the Planning Commission conducted a properly noticed public meeting, reviewed the Housing Element and all pertinent materials, and provided preliminary recommendations to City staff regarding revisions to the Housing Element. (*Ibid.*) The following day, the City received a letter from HCD providing its findings regarding the draft Housing Element. (AR008535-0008544.) In particular, HCD's requested revisions focused primarily on adequate sites to accommodate the RHNA and programs to facilitate the development of those sites, removal of governmental constraints, and

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affirmatively further fair housing. (*Ibid*.) In response, the City revised the draft Housing Element addressing HCD's requested revisions. (AR0008546-0008564.)

On January 30, 2023, at a joint Planning Commission and City Council meeting, the Planning Commission adopted a resolution making recommendations to the City Council. (AR0008502; AR0000454-0000766.) The City Council considered the Planning Commission's recommendations, approved, and adopted the 6th Cycle Housing Element, which included the revisions requested by HCD. (AR001964.) The City Council also considered recommendations from the Planning Commission and community feedback received throughout the 6th Cycle Housing Element development process. (*Ibid*.) In addition, the City Council revised the Housing Element to address the findings identified by HCD in its January 26th letter, and ultimately, found that the 6th Cycle Housing Element substantially complied with HE Law. (*Ibid*.) During this meeting, the City Council also found the Housing Element exempt from further review under CEQA pursuant to State CEQA Guidelines sections 15061, subd. (b)(3), 15262, and 15283. (AR0008509.)

On February 27, 2023, the City submitted the adopted Housing Element to HCD for a second review. (AUGAR23684) Minor typographical corrections and other non-substantive amendments were received on April 25, 2023, authorized pursuant to the City's Resolution No. 14A-2023. (AUGAR24005.)[3] HCD also considered correspondence from the City received on April 25 and April 27, 2023. (AUGAR24562.) On April 28, 2023, HCD informed the City via letter that the adopted Housing Element was found to be substantially compliant with HE Law. (AUGAR24566.) Further, HCD stated that the adopted Housing Element addressed the statutory requirements described in HCD's January 26, 2023 letter. (*Ibid*.)

On April 5, 2024, HCD wrote the City to inquire about the implementation of the Housing Element's Program 19, a program that amends the City's ODDS for multifamily residential and mixed-used development programs. (Petitioner's Request for Judicial Notice, Exh. B.) On May

[3] Petitioner refers to this as the "Modified Housing Element." (See Op. Br., pp. 16-17.) This terminology confuses the issues since the City only adopted two versions of the Housing Element: the Original Housing Element and the Amended Housing Element (discussed below). The term "Original Housing Element" herein encompasses what Petitioner calls the "Modified Housing Element."

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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. (City's Request for Judicial Notice in Support of Opposition ("City's RJN"), Exh. A; AUGAR20019, 23410-23414 [Responses to HCD].)

B. The City's Amended 6th Cycle Housing Element

Following adoption of the Original Housing Element, and in response to concerns raised regarding potential impacts to the City's certified historic district and subsequent input from City Councilmembers, the City determined to undertake amendments to the Original Housing Element through the drafting of an Amended 6th Cycle Housing Element and associated environmental impact report. (AUGAR15756.)

To begin this process, the City released a Notice of Preparation of a Draft Environmental Impact Report for the Amended Housing Element ("Draft EIR") on July 17, 2024. (AUGAR18081.) The City posted initial drafts of proposed amendments on August 15, 2024. (AUGAR16635.) By September 4, 2024, the City released a Notice of Availability and published the Draft EIR for public review. (AUGAR25277-25280.) To further ensure proper public involvement following certain revisions to the Draft EIR, the City published a Recirculated Draft EIR for public review, beginning on December 13, 2025 and concluding on January 27, 2025. (AUGAR15757.)

By February 14, 2025, the Amended Housing Element's Final EIR ("FEIR") was published for public review. (AUGAR16635.) A few days later, on February 19, 2025, the Planning Commission held a duly advertised public hearing on the proposed Amended Housing Element and associated EIR, whereby the Planning Commission recommended adoption of the Adopted Housing Element and certification the supporting EIR. (AUGAR16636.) Subsequently, the City Council held a duly noticed public hearing, and, after considering the Amended Housing Element, provided feedback and directed certain changes to the Amended Housing Element. (*Ibid*.) In order to correct certain aspects of the Amended Housing Element, the City withdrew the current version from HCD review. (*Ibid*.)

Following further revisions, the City publicly posted the revised Amended Housing

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Element on March 27, 2025. (AUGAR16636.) On April 1, 2025, the City submitted the revised Amended Housing Element to HCD for its review and approval. (*Ibid*.) On May 1, 2025, at HCD's request, HCD met with the City to discuss the Amended Housing Element, whereby HCD requested the City undertake two revisions to its March 27, 2025 submitted Amended Housing Element. (*Ibid*.) The City understood from its discussion with HCD that if the City were to resubmit with such revisions, that HCD staff would be prepared to issue a finding of substantial compliance with HE Law in less than the 60 day clock set by Government Code section 65585 comment period. (AUGAR22293.)

On May 5, 2025, HCD set up a follow-up meeting with the City to discuss finalizing the minor changes requested by HCD. (AUGAR22293.) The following day, on May 6, 2025, the City publicly posted the revised Amended Housing element, and thereafter resubmitted it to HCD. (AUGAR25526.) On May 22, 2025, HCD informed the City via letter that the Amended Housing Element was found to be substantially compliant with HE Law. (*Ibid*.) On May 27, 2025, at its duly noticed public meeting, the City rescinded the 6th Cycle Housing Element, certified the Amended Housing Element EIR, and adopted the Amended Housing Element. (AUGAR16634-17158.) On June 4, 2025, the City submitted the adopted Amended Housing Element to HCD for review, and on July 1, 2025, HCD issued its determination pursuant to Government Code section 65585(h), that the Amended Housing Element, as adopted, was in substantial compliance with HE Law. (AUGAR25871-25874.)

IV. PROCEDURAL HISTORY

A. Petition for Writ of Mandate

Petitioner filed its Petition for Writ of Mandate and Declaratory Relief on March 8, 2023, which it later amended twice. On October 16, 2024, Petitioner filed the operative petition, the Second Amended Petition ("Petition") alleging five causes of action. All causes of action challenged only the Original Housing Element—the Amended Housing Element had not yet been adopted. The causes of action were: (1) Violation of CEQA, alleging that the City abused its discretion by finding the Original Housing Element exempt from further CEQA review (Petition, ¶ 261); (2) Violation of HE Law, alleging that the City "failed to demonstrate realistic

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development capacity for its lower-income need allocation; (*id.*, ¶ 284); (3) Violation of HE Law, alleging that the City failed to implement Programs 4, 8, and 19 (*id.*, ¶¶ 292-295); (4) Failure to Proceed in a Manner Required by Law, alleging that the City failed to provide notice, hold public hearings, and review HCD comments before adopting the Original Housing Element (*id*, ¶ 307); and (5) Declaratory Relief, seeking declarations that the City failed to comply with CEQA and HE Law (*id*., ¶¶ 317- 328).

As noted, HCD certified and the City adopted the Amended Housing Element in May 2025—five months after Petitioner filed the operative Petition. Petitioner was aware of these developments but chose not to dismiss or amend the Petition.

B. Petitioner's Arguments in Opening Brief

On July 18, 2025, Petitioner filed its Opening Brief. Generally, Petitioner argues that the City (1) violated CEQA in adopting the Original Housing Element; (2) failed to proceed in a manner required by law when adopting the Original Housing Element; (3) failed to implement the Original Housing Element; and (4) failed to demonstrate realistic development capacity and that uses on nonvacant sites will be discontinued.

1. CEQA Challenge

Petitioner's sole CEQA claim—in both the Petition and Opening Brief—relates only to the Original Housing Element. Petitioner alleges that, because the Original Housing Element would result in significant and unavoidable impacts on the environment, it was improper for the City, in 2023, to find that the Original Housing Element exempt from environmental review. (Op. Br., p. 25:2-10.) This will be referred to as the "**CEQA Challenge**."

Petitioner makes clear that it is not challenging the Amended Housing Element on CEQA grounds. To the contrary, Petitioner asserts that the EIR certified by the City in 2025 in support of its adoption of the Amended Housing Element "confirms" that the City violated CEQA in 2023 when its approved the Original Housing Element. (Op. Br., p. 25:12-14.) Petitioner contends that the:

> EIR specifically found that developing certain properties at the densities proposed in the Sites Inventory – densities that went into effect immediately upon adoption – will cause significant effects. These significant effects were not properly disclosed to the City

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> Council, or the public, before approval [of the Original Housing Element]. The appropriate remedy, and the remedy required by CEQA, is to set aside the City's approval of the Original Housing Element.

(Op. Br., p. 26:23-27.) Petitioner does not challenge the City's compliance with CEQA as it pertains to the City's certification of the EIR in support of its approval of the Amended Housing Element.

2. Housing Element Challenges

In the Opening Brief, Petitioner presents three arguments challenging the "Housing Element"—often without specifying whether the challenge is to the Original or Amended Housing Element—on non-CEQA grounds.

a. Original HE Challenges

The first and second arguments challenge ***only*** the Original Housing Element. Petitioner argues that the City (1) failed to follow procedures in adopting Original Housing Element (see Op. Br., p.28:22-23; p. 31:1-2;); and (2) failed to implement programs in Original Housing Element (Op. Br., pp. 32:5-6; 33:21-22.) These arguments will be referred to as "**Original HE Challenges**."

b. Sites Inventory Challenges

The third argument challenges the Sites Inventory, apparently as set forth in the Amended Housing Element, although that is not entirely clear because Petitioner drops the "Original," "Modified" and "Amended" labels and just refers to the "housing element" in this section. (See, e.g., Op. Br., p. 38:3-5 ["The City's Sites Inventory fails to demonstrate realistic development capacity, including because the number of lower income units that sites can accommodate is wildly unrealistic and was not adjusted based on the statutory factors."]; but see also p. 10:22-23 ["The City's attempted amendment does not address the fundamental flaws in the City's Sites Inventory list."].) Petitioner contends that the City failed to (a) demonstrate that the sites in its Sites Inventory will be available for residential development at all times, (b) failed to demonstrate that the sites provide realistic capacity to meet its RHNA, and (c) failed to provide substantial evidence that the uses on nonvacant sites are likely to be discontinued and

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redeveloped with residential uses during the current planning cycle. (Op. Br., p. 10.) **These arguments will be referred to as "Sites Inventory Challenges."**

3. Declaratory Relief

It appears that Petitioner has abandoned its declaratory relief claim, as there is no mention of it in the Opening Brief.

V. STANDARD OF REVIEW

A. CEQA Standard of Review

Generally, in CEQA actions the reviewing court determines (1) whether the city followed the procedural requirements of CEQA; and (2) whether the city's factual conclusions are supported by substantial evidence. (See CEQA Guidelines §15384, subd. (a).) If a CEQA violation is found, the permitted remedies are limited by statute to: (1) setting aside the challenged decision in whole or in part, (2) suspending specific project activities, and/or (3) remanding to the city for corrective CEQA action—each remedy ordered by a court is to be tailored to the violation, and be no broader than necessary to cure the CEQA error; the court may not direct the agency to exercise its discretion in any particular way. (Pub. Resources Code, § 21168.9, subds. (a)(1)–(3), (b), (c).) As discussed below, the allowed remedies operate prospectively on an existing approval or activity. (See *ibid*.)

B. Housing Element Standard of Review

An interested person may bring an action to challenge a local government's housing element pursuant to Code of Civil Procedure section 1085 (traditional mandate). (§ 65587, subd. (b).) To succeed on a writ of mandate claim under Code of Civil Procedure section 1085, "[t]here are two essential requirements": "(1) a clear, present and usually ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right on the part of the petitioner to the performance of that duty." (*California Assn. for Health Services at Home v. State Dept. of Health Services* (2007) 148 Cal.App.4th 696, 704.)

A court's review of a housing element is narrow and "shall extend to whether the housing element or portion thereof or revision thereto substantially complies with the requirements of this article." (§ 65587, subd. (b).) Such review "does not involve an examination of the merits of the

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element or of the wisdom of the municipality's determination of policy." (*Fonseca v. City of Gilroy* (*Fonseca*) (2007) 148 Cal.App.4th 1174, 1185, quoting *Black Property Owners Assn. v. City of Berkeley,* supra*,* 22 Cal.App.4th at p. 980.) Instead, "the court's role in determining a mandamus challenge to a locality's housing element is simply to determine whether the locality has satisfied statutory requirements. It is not to reach the merits of the element or to interfere with the exercise of the locality's discretion in making substantive determinations and conclusions about local housing issues, needs, and concerns." (*Fonseca,* at p. 1185; accord *Martinez v. City of Clovis* (*Clovis*) (2023) 90 Cal.App.5th 193, 237.) In short, to determine whether a housing element is substantially compliant with HE Law, the Court asks "whether the housing element at issue contain[s] the elements mandated by the statute." (*Fonseca,* at pp. 1191-1192.) If the answer is yes, the Court "will not interfere with [the city's] legislative action, unless that action was arbitrary, capricious, or entirely lacking in evidentiary support." (*Id.* at p. 1191.)

The "burden is on the challenger to demonstrate that the housing element . . . is inadequate." (*Fonseca,* supra, 148 Cal.App.4th at p. 1191.) Moreover, once HCD has certified the housing element as being in substantial compliance with state law, "[t]here shall be a rebuttable presumption of the validity of the element or amendment." (§ 65589.3, subd. (a).) This means that the petitioner must present evidence to overcome that presumption by showing that HCD's substantial-compliance determination was "***clearly erroneous or unauthorized***." (*Martinez,* supra, 90 Cal.App.5th at p. 243, emphasis added, citations omitted; § 65589.3.)

If a court finds a housing element is not in substantial compliance, the remedy is to issue a writ directing the local government to cure the deficiency within 120 days, submit a revised draft to HCD at least 45 days before adoption, and rezone with 120 days. (§ 65754, subds. (a)–(b).) Nothing in Government Code section 65754 authorizes a challenge to be maintained to a prior, repealed version of a housing element. In addition, in adjudicating a challenge to any mandatory element of a general plan, including a housing element, a court judgment finding a violation "shall include" one or more interim measures until compliance, which may include suspending specified permits, variances, or subdivision approvals, or mandating approval of qualifying residential permits or maps under defined conditions. (§ 65755, subds. (a)(1)–(6), (b).) These

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measures are prospective compliance remedies, and given their significance and interference with the legislative and police powers of local jurisdictions, are remedies that would not be appropriate to apply based on a housing element already rescinded and replaced.

VI. ARGUMENT

A. The CEQA Challenge And Original HE Challenges Are Moot

"It is well settled that the duty of this court . . . is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." (*National Assn. of Wine Bottlers v. Paul* (1969) 268 Cal.App.2d 741, 746; *Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 132.) A case is moot where "an actual controversy did exist but, by the passage of time or a change in circumstances, ceased to exist." (*Wilson & Wilson v. City Council of Redwood City* (*Wilson*) (2011) 191 Cal.App.4th 1559, 1573 [case moot where challenged contract had expired, a new bidding process took place, and the court could not award the contract to disappointed bidder].) The pivotal question in determining if a case is moot is "whether the court can grant the plaintiff any effectual relief." (*Id.* at p. 1574.) If subsequent events have made "such relief impracticable, the controversy has become 'overripe' and is therefore moot." (*Ibid*.) "When events render a case moot, the court, whether trial or appellate, should generally dismiss it." (*Ibid*.; see *Consumer Cause, Inc. v. Johnson & Johnson* (2005) 132 Cal.App.4th 1175, 1179 [trial court should have refused to decide case because it did not present a justiciable controversy].)

In writ proceedings specifically, if the evidence shows the "respondent has complied [or is willing to comply] with the petitioner's demands" the proceeding will be dismissed as moot. (*Bruce v. Gregory* (1967) 65 Cal.2d 666, 671 [the court in mandamus proceedings is required "to apprise itself of facts that arise after pleading which render the dispute moot or make the remedy useless"]; *TransparentGov Novato v. City of Novato* (2019) 34 Cal.App.5th 140, 147 [if the respondent "shows actual compliance, the proceeding will be dismissed as moot"]; *George v. Beaty* (1927) 85 Cal.App. 525, 529 ["Mandamus will not issue to compel the doing of an act which has already been done, or which the respondent is willing to do without coercion,"

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emphasis omitted].) Dismissal of a moot writ claim is proper because courts "will not issue a writ of mandate to enforce an abstract right of no practical benefit to petitioner, or where to issue the writ would be useless, unenforceable, or unavailing." (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 595-596.) "No purpose would be served in directing the doing of that which has already been done." (*Muller v. Municipal Court* (1956) 146 Cal.App.2d 231, 232.)

Cases that become moot are subject to dismissal, unless the issues in the case relate to a matter of public interest and there is a great likelihood that the matter will arise again in the future, in which case courts have discretion to adjudicate the issue. (*Building a Better Redondo, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, 867; *In re William M.* (1970) 3 Cal.3d 16, 23 ["[I]f a pending case poses an issue of broad public interest that is likely to recur, the court may exercise an inherent discretion to resolve that issue even though an event occurring during its pendency would normally render the matter moot"].)

Here, the claims alleged in the Petition are moot because the City rescinded the Original Housing Element that is the subject of the Petition.

1. The CEQA Challenge Is Moot

As noted above, Petitioner's CEQA Challenge targets only the ***Original*** Housing Element pursuant to the determination that the Original Housing Element was exempt from environmental review. Specifically, Petitioner alleges that "[t]he City had a mandatory duty to comply with CEQA prior to adopting its sixth revised housing element" and that the City's "bald assertions that its actions are exempt from CEQA review" are "a prejudicial abuse of discretionary and fail[] to proceed in the manner required by law under CEQA." (Petition, ¶ 261.) Petitioner demands "a writ of mandate directing the City to comply with CEQA." (*Id*., p. 43 ¶ 2.) Petitioner's Opening Brief states: "the appropriate remedy, and the remedy required by CEQA, is to set aside the City's approval of the [January 30, 2023 6th Cycle Housing Element] Original Housing Element." (Op. Br., pp. 26-27.)

But, on May 27, 2025, the City rescinded its Original Housing Element. (AUGAR16636 ["THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAUSALITO: SECTION 1. The City rescinds the 6th Cycle Housing Element adopted on

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January 30, 2023"].) As such, by the passage of time and a change in circumstances, the CEQA controversy alleged by Petitioner has ceased to exist, rendering the First Cause of Action moot. (*Wilson,* supra*,* 191 Cal.App.4th at p. 1573.) Further, not only has the City's rescission mooted the CEQA Challenge, the City has also satisfied the Second Amended Petition's Prayer that the City comply with CEQA, as the City has prepared and, on May 27, 2025, certified, the Amended Housing Element EIR. (AUGAR16635-17158.) Because CEQA authorizes relief only as to an ***operative*** agency decision or ongoing activity, those remedies make no sense where, as here, the Original Housing Element has been rescinded and replaced. There is nothing left to void or suspend, and a remand would address a superseded action—relief CEQA does not authorize. (Pub. Resources Code, § 21168.9, subds. (a)–(c).)

The City's May 27, 2025 actions were guided by the Supreme Court's direction in *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116. There, a lead agency prepared and certified an environmental impact report during the pendency of litigation challenging its earlier approval of an agreement for conveyance and development of property, but it did not rescind that agreement prior to certifying the EIR and taking action on a new agreement. The Supreme Court ruled that the certification of the EIR did not render the CEQA claim moot because the city did not rescind the development agreement and so Court could still grant the petitioner's prayer to order the setting aside of the development agreement. (*Id.* at pp. 126-127, 143.) Here, in contrast, prior to certifying the Amended Housing Element EIR, the City expressly rescinded the Original Housing Element and subsequently adopted the Amended Housing Element. As such, the relief sought under the CEQA Challenge can no longer be granted; the cause of action, consistent with *Save Tara*, is moot.

Should Petitioner argue that, under *Vichy Springs Resort, Inc. v. City of Ukiah* (*Vichy*) (2024) 101 Cal.App.5th 46, its CEQA Challenge is not moot as there are still opportunities to mitigate the Original Housing Element's significant environmental effects, the Record confirms that this is not the case here. In *Vichy*, a court found that construction of the challenged project did not moot a CEQA claim as—much like in Save Tara—the lead agency could still be directed to revoke the project's permits and certificate of occupancy pending a comprehensive CEQA

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review and order the implementation of additional mitigation and/or remedial actions. (*Id.* at pp. 55-56.) But here, unlike *Vichy*, the Petition does not outline any mitigation or remedial actions that could be taken with regard to the significant environmental impacts of the now-rescinded Original Housing Element. Further, also unlike *Vichy*, the City cannot be directed to rescind the Original Housing Element as it has already done so.

As well, should Petitioner argue that its CEQA Challenge is not moot because the City's May 27, 2025 rescission of the Original Housing Element somehow did not rescind the Notice of Exemption, this claim too must be rejected. CEQA Guidelines section 15062 "unambiguously require notices of exemption to be filed after the project has been approved." (*Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408, 423 [notice of exemption filed before an agency decision is improper].) Here, it is beyond dispute that the Original Housing Element has been rescinded, such that, as a matter of law, the February 1, 2023 Notice of Exemption regarding the now-rescinded January 30, 2023 Original Housing Element is of no legal significance.

Finally, should Petitioner present any arguments to this Court now, or in the future, regarding the certified Amended Housing Element EIR's compliance with CEQA, such claims are jurisdictionally barred. A challenge to an action under CEQA must be brought within 30 days of when a notice of determination is filed. (Pub. Resources Code, § 21167, subd. (e); *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 38-39.) The Notice of Determination for the City's approval of the Amended Housing Element pursuant to the certified Amended Housing Element EIR was filed and posted on May 28, 2025, and, as such, any challenge to the City's compliance with CEQA with regard to approval of the Amended Housing Element must have been filed by June 29, 2025. (AUGAR15749-15751.) Here, Petitioner did not seek leave to amend the Petition to timely add a cause of action to challenge the EIR, in fact, Petitioner voluntarily stipulated that it would not do so. Additionally, Petitioner has not filed a timely new Petition challenging the EIR. Furthermore, nothing indicates that Petitioner has complied with exhaustion prerequisites in Public Resources Code section 21177 with respect to the EIR. Accordingly, Petitioner cannot challenge the EIR for the Amended Housing Element.

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The Court cannot grant Petitioner "any effectual relief" as to its CEQA Challenge because doing so is contrary to the kinds of relief that can be awarded under Public Resources Code § 21168.9. As noted above, under CEQA, the court can only order that the Original Housing Element be voided, or order particular mitigation measures, or direct the City to take a specific action to further its compliance with CEQA. With the rescission of the Original Housing Element, none of those remedies are available for the court to order. (See Pub. Resources Code, § 21168.9, subds. (b): "Any order pursuant to subdivision (a) shall include only those mandates which are necessary to achieve compliance with this division and only those specific project activities in noncompliance with this division." (c) "Nothing in this section authorizes a court to direct any public agency to exercise its discretion in any particular way."]; see also *McCann v. City of San Diego* (2023) 94 Cal.App. 5th 284, 290-291 [trial court improperly retained jurisdiction of a CEQA challenge after the City of San Diego filed a return to the peremptory writ of mandate confirming that it had rescinded the project approvals and thereby satisfied the terms of the writ].) In short, any writ issued by the Court directing the City to comply with CEQA "would be useless, unenforceable, or unavailing" and therefore moot. (*County of San Diego*, supra, 164 Cal.App.4th at pp. 595-596.) The CEQA Challenge is moot and should be dismissed. (See *Wilson*, supra, 191 Cal.App.4th at p. 1574; see *Consumer Cause, Inc. v. Johnson & Johnson,* supra*,* 132 Cal.App.4th at p. 1179 [trial court should have refused to decide case because it did not present a justiciable controversy].)

2. The Original HE Challenges Are Moot

Petitioner makes clear in its Opening Brief that two of its three Housing Element challenges target only the ***Original*** Housing Element. ***First***, Petitioner contends that: "The City clearly failed to follow the procedures required by the Planning and Zoning Law when it approved the Original Housing Element" and "[a]s a result, the Original Housing Element is void and must be set aside." (Op. Br. pp. 28:22-23; 31:1-2.) ***Second***, Petitioner contends that: "The City has clearly not implemented the Original Housing Element programs and as a result, the Court must find that the City has not been in compliance with the Housing Element Law." (Op. Br., pp. 33:21-22; 32:5-6.) The Original HE Challenges fail as a matter of law.

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As a preliminary matter, none of these arguments would entitle Petitioner to writ relief even if they were not moot—which they are. As to the argument that the City failed to follow procedures by failing to provide timely notice (Op. Br., p. 28:22-28) and make the draft Original Housing Element available for public review (*Id.,* p. 29:12-15), the argument fails because "[u]nder the Planning and Zoning Law, a court may not set aside the actions of a legislative body based on an error or omission in a notice of public hearing, unless the court finds the error was prejudicial, the complaining party suffered substantial injury, and a different result was probable had the error not occurred." (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 919.) "Neither prejudice, substantial injury, nor the probability of a different result may be presumed based on a showing of error alone." (*Ibid*.) Petitioner has not presented any evidence showing that it suffered prejudice, substantial injury, or that there would have been a different result had the City proceeded differently. Nor can Petitioner credibly show such harm, particularly given that the Original Housing Element has now been rescinded and Petitioner has not alleged the same claim as to the Amended Housing Element adoption process.

As to Petitioner's challenges to Program 19, which is designed to streamline the City's development review procedures, including developing Objective Design and Development Standards ("ODDS")—Petitioner would not be entitled to a writ because the program is not required by HE Law. Traditional mandamus lies only to compel a "clear, present, and ministerial" duty, not to direct discretionary policy choices or accelerate self-imposed timelines. (Code Civ. Proc., § 1085; *California High-Speed Rail Auth. v. Superior Court* (2014) 228 Cal.App.4th 676, 707; *Fonseca,* supra*,* 148 Cal.App.4th at p. 1185.) Nothing in HE Law imposes a ministerial, date-certain duty to adopt ODDS; Program 19 is a voluntarily assumed commitment, and which the City lawfully revised in the Amended Housing Element. (AUGAR16937-16940.) Mandamus does not issue to enforce plan "promises" that are not commanded by statute. (See *High-Speed Rail*, at p. 707; *Fonseca*, supra, 148 Cal.App.4th at p. 1185.)

The Original HE Challenges also fail because they are moot. As noted, a traditional writ of mandate may issue only if Petitioner shows that the City has (1) a clear, ***present*** ministerial

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duty to act, and Petitioner has a clear, ***present*** and beneficial right to the performance of that duty. (*California Assn. for Health Services,* supra, 148 Cal.App.4th at p. 704.) As a matter of law, Petitioner cannot show that the City has a present duty with respect to the rescinded Original Housing Element. "It is settled law that the rights of the parties in an action in equity will be determined on the basis of the law as it exists at the time of the determination, rather than at the time the complaint was filed . . . ." (*Davis v. Superior Court* (*Davis*) (1985) 169 Cal.App.3d 1054, 1058 [citing *City of Whittier v. Walnut Properties, Inc.* (1983) 149 Cal.App.3d 633, 640].) Thus, when a petition challenges a housing element that is later amended before the writ hearing, "[t]he housing element in force at the time of the hearing should be examined with reference to the original or amended claims of invalidity or insufficiency. If those objections have been remedied, the issues will then be moot." (*Id.* at p. 1061.) Dismissal of such moot claims is proper because "[a]ny decision reached on the consistency of the earlier plan and housing element would be of no use to petitioner if that legislation is no longer in existence." (*Id.* at p. 1058, fn. 3.)

Here, there can be no question that the alleged procedural defects in the adoption of the Original Housing Element were remedied by the subsequent adoption of the Amended Housing Element. (See *Hackethal v. California Medical Assn.* (1982) 138 Cal.App.3d 435, 445 [trial court did not decide if the action to expel was substantively correct]; *Giles v. Horn* (2002) 100 Cal.App.4th 206, 228 [violation of County Chapter provisions deemed moot because contracts were fulfilled and expired].) Petitioner does not argue that the adoption of the Amended Housing Element was procedurally improper. To the contrary, Petitioner acknowledges that the adoption of the Amended Housing Element involved "precisely the type of public debate that the procedural requirements of state law are meant to facilitate before legislative action is taken." (Op. Br., p. 30:22-24.) Indeed, Petitioner concedes that these alleged defects were cured by the Amended Housing Element: "[T]he City was out of compliance with the Housing Element Law until at least July 1, 2025, when the City's amendments to the Original Housing Element were accepted by the state." (Op. Br., p. 10:19-21.) A court ruling that the City failed to follow proper procedure in adopting a now-rescinded housing element "can have no practical impact or cannot

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provide the parties with effective relief." (*Simi Corp. v. Garamendi* (2003) 109 Cal.App.4th 1496, 1503; *Panoche Energy Center, LLC v. Pacific Gas & Electric Co.* (2016) 1 Cal.App.5th 68, 95-96 [availability of "effectual relief" is the "pivotal question" in mootness analysis].)

Petitioner's claim that the City failed to timely implement certain programs in the Original Housing Element is likewise moot because the Amended Housing Element revised those programs and the coinciding deadlines. Thus, a Court ruling that the City failed to implement the outdated programs in compliance with outdated deadlines would have no practical effect. The writ remedy mandates a governmental entity to discharge a mandatory duty, it does not punish past wrongs. (See, e.g., *Daily Journal Corp. v. County of Los Angeles* (2009) 172 Cal.App.4th 1550, 1557 [case moot where challenged contract had expired, a new bidding process took place, and court could not award the contract to disappointed bidder]; *Jennings v. Strathmore Public Utility Dist.* (1951) 102 Cal.App.2d 548, 549 [appeal, in action to enjoin and declare invalid a public utility district contract after the contract had been awarded and work was fully completed, was moot]; *Sierra Club v. Board of Supervisors* (1981) 126 Cal.App.3d 698, 704-706 [challenge to zoning ordinance based on inconsistency with general plan became moot when, during pendency of appeal, a new general plan was adopted with which the ordinance was consistent].)

As noted above, the remedies available in a housing-element challenge are prospective: a judgment on substantial compliance and, if noncompliance is found, an order directing the locality to cure going forward. (§ 65587, subd. (d); Code Civ. Proc., § 1085.) Here, this Court cannot grant Petitioner any effectual relief since the City already rescinded its Original Housing Element. (AUGAR16636; *Wilson*, supra, 191 Cal.App.4th at p. 1574; *TransparentGov Novato*, supra, 34 Cal.App.5th at p. 147.) No purpose would be served in directing the City to do what has already been done. (*Ibid*.) These Original HE Challenges are therefore moot.

3. Petitioner's Declaratory Relief Claim Is Moot

As noted, it appears Petitioner abandoned its declaratory relief claim as it is not addressed in the Opening Brief. (Op. Br., pp. 3-4.) If Petitioner intended to pursue this claim, it too would be moot because the Court cannot grant Petitioner any effectual declaratory relief. (*Wilson*, supra, 191 Cal.App.4th, at p. 1574.) Like writ relief, "[d]eclaratory relief operates prospectively,

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serving to set controversies at rest before obligations are repudiated, rights are invaded or wrongs are committed. Thus the remedy is to be used to advance preventative justice, to declare rather than execute rights. [Citation.]" (*Kirkwood v. California State Automobile Assn. Inter-Ins. Bureau* (2011) 193 Cal.App.4th 49, 59; *Canova v. Trustees of Imperial Irrigation Dist. Employee Pension Plan* (2007) 150 Cal.App.4th 1487, 1497.) Here, Petitioner seeks declaratory relief that is duplicative of the CEQA Challenge and Original HE Challenges. (Petition, ¶¶ 317- 328.) Thus, it is moot for the same reasons. (*Wilson*, supra, at p. 1573.)

4. No Exceptions to the Mootness Doctrine Apply

There are three discretionary exceptions to the mootness doctrine: "(1) when the case presents an issue of broad public interest that is likely to recur; (2) when there may be a recurrence of the controversy between the parties; and (3) when a material question remains for the court's determination." (*Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473, 479-480, internal citations omitted.)[4] None of these exceptions apply here.

a. The CEQA Challenge and Original HE Challenges do not present an issue of broad public interest that are likely to recur.

A court has discretion to resolve a moot issue "if a pending case poses an issue of broad public interest that is likely to recur." (*MHC Operating Ltd. Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 214-215.) However, California courts have repeatedly held that this exception does not apply where the questions at issue are "fact-specific." (*Id.* at p. 215; *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1628 [in CEQA action, court declined "invitation to render an advisory opinion because the future disputes between [the parties] . . . are likely to be factually distinct"]; *Giles v. Horn,* supra*,* 100 Cal.App.4th at p. 228 ["Because plaintiffs' claim is a particularly factual determination that must be resolved on a case-by-case basis, dependent upon the specific facts of a given situation, it is not one on which we would exercise our discretion to address on the merits, despite the fact that it is moot."]; *Giraldo v. Dept. of Corr. & Rehab.* (2008) 168 Cal.App.4th 231, 259 ["the issues plaintiff presents are

[4] The first two exceptions overlap significantly; thus, the City addresses them together below.

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essentially factual, a recognized basis to refuse to decide a moot case"].)

Here, the CEQA Challenge and Original HE Challenges do not pose an issue that is likely to recur because these claims are fact-specific—i.e., specific to the processing and terms of the Original Housing Element, a legislation that no longer exists. (AUGAR16636; see, e.g., Petition, ¶¶ 8, 11, 12.) ***First***, CEQA requires that a lead agency must assess and report on the impact of a proposed plan on the existing environment. (*Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354 [EIR on proposed new general plan must address existing level of physical development as baseline for impact analysis].) Here, the processing and the provisions of a previous housing element, like the Original Housing Element, are unique as it is based on then-current population, environmental and property data. (*Davis,* supra*,* 169 Cal.App.3d at p. 1054, fn. 3.) As such, the environmental review conducted for the Original Housing Element (resulting in the determination of an exemption from CEQA that is challenged in the Petition) is not relevant and has been entirely superseded by the CEQA review conducted for the now operative Amended Housing Element (the certified Amended Housing Element EIR). Therefore, Petitioner's CEQA Challenge to the City's 2023 finding that the Original Housing Element was exempt from CEQA, could never occur again.

The City has now, via its May 27, 2025 certification of the Amended Housing Element EIR, and in contrast to its CEQA findings in January of 2023, found that, based on its analysis of existing conditions, the Amended Housing Element will result in significant and unavoidable impacts. (AUGAR16749-16754.) The Amended Housing Element EIR concerns the potential impacts of the Amended Housing Element, not those of the rescinded Original Element. As such, even if Petitioner contends that their claim regarding the CEQA review of the Original Housing Element is a matter of a broad public interest, Petitioner cannot proceed with its CEQA claim under this exemption to the mootness doctrine because claims regarding the Original Housing Element will never reoccur, and there is no plausible likelihood that the City would want to readopt the Original Housing Element.

Second, the Original HE Challenges do not pose issues that are likely to reoccur because they, too, are fact specific. Those arguments concern the particular notice and public-review

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steps taken for that now-withdrawn action. Courts treat such process challenges as poor candidates for the "public interest" exception because any reenactment would employ different procedures, rendering prior disputes academic. (*Downtown Palo Alto Comm. for Fair Assessment v. City Council* (1986) 180 Cal.App.3d 384, 391-392 [challenge to notice for an ordinance mooted by dissolution; even if reenacted, the city would "very likely pursue a different notice procedure"].) A successful challenge to procedures followed in the past would not establish the invalidity of any procedures followed in the future. The court therefore could provide no effective relief, and resolving the question whether these procedural violations occurred, and constituted substantial noncompliance, would be an abstract or academic exercise.

Finally, the Original HE program-timing allegations are uniquely tied to the language, dates, and commitments of that specific document. Each housing element is a distinct legislative enactment grounded in then-current population, market, and environmental conditions; when the City rescinds and readopts, the content, programs, and timelines change. (*Davis,* supra*,* 169 Cal.App.3d at p. 1058, fn. 3.) The Amended Housing Element is not merely a reenactment of the Original Housing Element; it is a different plan with different data, programs, and schedules. Because Petitioner's grievances are fact-bound to a superseded enactment that will not recur in the same form, the "public interest" exception does not apply, and the CEQA claim and Original HE challenges should be dismissed as moot.

b. No material question remains for the Court's determination.

The remaining exception to the mootness doctrine—i.e., where a "material question remains for the court's determination"—does not apply here. This exception arises, if at all, in the appellate context, where reviewing courts sometimes retain discretion to reach issues despite mootness—for example, where a ruling might affect fees, future rights, or the scope of appellate preclusion. (See, e.g., *Motown Record Corp. v. Brockert* (1984) 160 Cal.App.3d 123, 128 [a material question exists when the judgment, if left unreversed, would preclude a party from litigating its liability on an issue still in controversy].) This consideration has no application here, where the trial court is being asked to decide in the first instance whether it can still grant effectual relief. The relevant question at this stage is whether a live controversy remains at all.

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For the reasons discussed above, it does not. Petitioner has not identified any concrete legal or practical consequence that would follow from a ruling on these moot claims. There is no collateral order or fee award at issue. No pending proceeding would be affected by preclusion. And the petition does not plead a forward-looking declaratory-relief claim that would govern the parties' future legal relations. A ruling on these issues would serve no purpose other than to adjudicate past conduct in the abstract—which California law does not permit. (See, e.g., *Newsom v. Superior Court* (2021) 63 Cal.App.5th 1099, 1113 [trial court erred in issuing declaratory relief about a rescinded executive order].)

In sum, because there are no exceptions to the mootness doctrine that apply to the Original HE Challenges and CEQA claims, they should be denied and dismissed as moot.

B. Petitioner Is Not Entitled To A Writ of Mandate On Its Sites Inventory Challenge

In its Opening Brief, Petitioner argues that the "City's Sites Inventory fails to comply with the Housing Element Law because its housing element does not ensure that the Inventory will be sufficient to meet its RHNA at all times throughout the planning period and does not include a program that requires rezoning by the applicable deadline." (Op. Br., p. 34:25-28.) It is not clear whether Petitioner is challenging the Sites Inventory in the Original Housing Element or Amended Housing Element; in some instances, Petitioner cites to both. (See Op. Br., p. 35:1.) To the extent that Petitioner is challenging the Original Housing Element's Sites Inventory, that argument is moot for the same reasons as the Original HE Challenges are moot. The City focuses the remainder of this brief on the Sites Inventory in the Amended Housing Element.

Petitioner argues that the Sites Inventory is noncompliant with HE Law for three reasons. ***First***, Petitioner argues that the housing element cannot "ensure" adequate capacity "at all times" because the inventory relies on parcels whose development potential depends on future voter approval. (Op. Br., pp. 34:28–37:2 [citing AUGAR 22303–04; Gov. Code §§ 65583(c)(1), 65583(c)(3), 65584.08, 65863.]) ***Second***, Petitioner argues that the City failed to perform the required multi-factor analysis for non-vacant sites, and failed to make findings that existing uses are likely to end. (*Id.* at pp. 38:1–21; 40:1–55; 41:12–21, 55–62.) ***Third***, Petitioner argues that

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the Housing Element's capacity and affordability allocations are not "realistic" as required by Government Code § 65583.2. (*Id.* at pp. 38:3–5; 39:1–29; 40:37–45 [citing AUGAR17013–15; AR 615, 630, 9458, 9473–74, 9461, 9471, 9469; Gov. Code § 65583.2(c)].)

Petitioner has not met its burden to justify writ relief. This failure may be due to Petitioner's misunderstanding of its burden. Although Petitioner acknowledges that HCD certified the Amended Housing Element and this means that the Amended Housing Element must be presumed valid, it attempts to downplay the significance of this presumption by arguing that this "***merely*** shifts the burden of proof to show the presumption is not correct." (Op. Br., p. 36:1, emphasis added.) That mischaracterizes the law. To prevail on its challenge to the presumptively valid Sites Inventory, Petitioner must prove that HCD's determination of substantial compliance is "***clearly erroneous or unauthorized***." (*Martinez*, supra, 90 Cal.App.5th at p. 243, emphasis added.) Petitioner does not make this showing. Instead, Petitioner presents arguments that are speculative, improperly seeks judicial intervention in legislative discretion (including interfering with the already called November 4, 2025 special election called by the City to seek voter approval of rezoning), and improperly try to shift Petitioner's burden of proof to the City.

As discussed above, the court's role is to determine whether the statutorily required elements are present, and the court will not interfere with a city's legislative action unless that action was arbitrary, capricious, or entirely lacking in evidentiary support. (*Hoffmaster v. City of San Diego* (1997) 55 Cal.App.4th 1098, 1105-1106.) It is not the court's function to reach the "merits of the element" or to interfere with the exercise of the locality's discretion in making substantive determinations and conclusions about local housing issues, needs, and concerns. (*Id.* at p. 1106; *Camp v. Board of Supervisors* (1981) 123 Cal.App.3d 334, 348; *Buena Vista Garden Apartments Assn. v. City of San Diego* (1985) 175 Cal.App.3d 289, 297 [judicial review does not delve into the "wisdom or merits" of a housing element]; *Haro v. City of Solana Beach* (2011) 195 Cal.App.4th 542, 549-550.) To do so "would involve the court in the writing of the plan. That issue is one for determination by the political process and not by the judicial process." (*Buena Vista,* at p. 296.) Petitioner fails to prove a violation of HE Law—much less that HCD's approval of the City's Sites Inventory was clearly erroneous or unauthorized.

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1. Petitioner Has Not Proven That "Voter-Restricted Sites" Make The Sites Inventory Non-Compliant With HE Law

Petitioner argues the Sites Inventory "relies heavily" on parcels with development standards that require voter approval and therefore the City "cannot possibly" demonstrate present sufficiency or compliance with the statutory rezoning requirement. (Op. Br., pp. 33:25–35:5 [citing Gov. Code § 65583.2(c)].) Petitioner further speculates that, "if a vote fails," the City will miss the deadline and instead "request an opinion from the Attorney General" or "seek declaratory relief," which Petitioner derides as uncertainty rather than compliance. (Op. Br., p. 35:10–13; AUGAR16931–16932.) These assertions do not support writ relief.

First, HE Law does not require that every inventory parcel be immediately available at the identified density upon adoption. Instead, it requires "[a]n inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period," and the adoption of programs to accommodate any shortfall. (§ 65583, subds. (a)(3), (c)(1).) Where rezoning is needed, the Legislature provides a fixed window to complete it—three years from adoption (or 90 days after HCD's comments, whichever is earlier). (§ 65583, subd. (c)(1)(A).) The HE Law also provides explicit tools to maintain sufficiency over time—including replacement-site procedures under § 65583.2, subd. (h), (i) and the "No Net Loss" framework. (§§ 65583.2, subds. (h), (i); 65863.) Nothing in these provisions bars listing a site because a lawful, time-bound voter action is part of the rezoning pathway.

Second, the Amended Housing Element uses the statutory framework exactly as designed. Program 4 identifies the voter-restricted parcels, sets milestones, and schedules a November 4, 2025 special election to remove voter-imposed constraints—well within the statutory rezoning window that closes January 30, 2026. (AUGAR22303–22304; § 65583, subd. (c)(1)(A).) Program 4 also includes monitoring and replacement-site procedures to address any shortfall if one arises, as the statute contemplates. (AUGAR22310; §§ 65583.2, subds. (h), (i); 65863.) And the City's rezoning program is not limited to voter-restricted parcels: the Amended Housing Element includes numerous sites that do not require a vote and can proceed under adopted

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standards and overlays. (AUGAR22303–22304.) Petitioner's premise—that the Sites Inventory is per se noncompliant unless every voter-restricted site is rezoned before adoption—misstates the statutory sequence, which separates (1) identifying realistic potential over the planning period from (2) implementing rezoning within the allowed window. (§ 65583, subd. (a)(3), (c)(1)(A)–(B).)

Third, Petitioner's suggestion that the City should have secured voter approval before listing these parcels is not supported by HE Law. The law requires a program to "address and, where appropriate and legally possible, remove governmental and nongovernmental constraints." (§ 65583, subd. (c)(3).) It does not compel a city to remove every constraint as a precondition to adoption, especially where the constraint is lawfully removable only by the electorate. Here, Ordinance 1022 (Fair Traffic Initiative) limits zoning map changes and imposes floor-area ratio and height limits in commercial/industrial districts, and Ordinance 1128 governs disposition of certain City-owned property; both require voter approval to modify. (AR0012265-0012282; AR0012283-0012285.) Program 4 therefore provides the legally required pathway—an election—to remove those constraints, with voter education/outreach and contingency steps if a shortfall appears. (AUGAR22303–22304, 22310.)

Fourth, the burden and standard of review foreclose Petitioner's theory. HCD has determined that the Amended Housing Element, including Program 4, substantially complies. (AUGAR25526.) That determination carries a presumption of validity; it is Petitioner's burden to show that HCD's compliance determination is "clearly erroneous or unauthorized," not the City's burden to pre-prove the outcome of a lawfully scheduled election or to "confirm" future performance. (§ 65589.3; *Martinez*, supra, 90 Cal.App.5th at pp. 243, 251-252.) *Martinez* is instructive: the challenger there claimed the housing element was noncompliant because it lacked a discussion of certain sites' development potential; the Court rejected the challenge because the cited discussion was not mandated by statute and HCD's determination was supported by the record. (*Id.* at pp. 249-252.) The same logic applies here. Petitioner's position effectively adds a non-existent requirement to pre-remove voter-imposed constraints before adoption, and it invites the Court to reweigh policy judgments already vetted by HCD. *Martinez* confirms that is not the

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task; the question is whether HCD's compliance determination was clearly wrong or unauthorized, and Petitioner has not made that showing. (*Id.* at pp. 243, 251-252.)

Finally, even under Petitioner's hypothetical "vote fails" scenario, the remedy would not be to invalidate the Housing Element. The statute provides targeted, prospective relief—to compel completion of required rezoning or adoption of additional measures to maintain capacity—not to unwind an otherwise compliant element. (§ 65587, subd. (d); §§ 65583.2, subds. (h), (i); 65863.) Until the statutory window closes, a claim predicated on predicted nonperformance is not ripe. Petitioner's speculation about what the City "will" do if a vote fails cannot substitute for the showing the law requires here, particularly in light of HCD's compliance determination and Program 4's built-in contingency pathways. (Op. Br., p. 35:10–13; AUGAR16931–16932, 22310, 25526.)

2. Petitioner Has Not Proven That The Amended Housing Element Fails To Comply With Section 65583.2(g); The City Made The Required Showings Regarding Non-Vacant Sites

Petitioner has not met its burden to prove that the City's Sites Inventory does not demonstrate realistic development capacity on non-vacant parcels or to make the "likely to discontinue" findings for existing uses. (Op. Br., p. 37:11–12.) HE Law requires that a housing element list sites with specified, objective information and—where a site is non-vacant—describe the existing use, specify additional development potential within the planning period, and explain the methodology used to determine that potential. (§ 65583.2, subds. (b)(2), (b)(3), (b)(4)–(5), (b)(7), (g)(1).) When more than 50% of lower-income capacity is assigned to non-vacant sites, the element must also adopt findings, supported by substantial evidence, that the existing uses are likely to discontinue during the planning period. (§ 65583.2, subd. (g)(2).)

The Amended Housing Element does exactly that. The Amended Housing Element and its appendix supply the required content and methodology for non-vacant parcels, including existing uses, redevelopment potential by income level, and the factors that the statute and HCD identify as probative: leases and other occupancy constraints, underutilization/land-to-improvement ratios, age and condition of improvements, local market conditions and development trends, and incentives or standards that encourage residential reuse (e.g., overlays

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allowing 100% residential and minimum residential shares). (AUGAR22321–22326 [non-vacant methodology and factors]; AUGAR25526 [HCD compliance determination].)

Again, because HCD concluded the Amended Housing Element substantially complies, these showings are presumed valid. Petitioner has not proven that HCD's determination is "clearly erroneous or unauthorized." (§ 65589.3; *Martinez*, supra, 90 Cal.App.5th at pp. 243, 251–252.) Petitioner does not identify a statutory requirement the City failed to include or analyze. Instead, Petitioner quarrels with how the City weighed the Section 65583.2, subdivision (g)(1) factors on a handful of sites (e.g., the placement of very-low-income units, the financial feasibility assumptions, the treatment of leases, and the weight given to private pipeline activity at 1755 Bridgeway, 2015 Bridgeway, and 409 Napa). (Op. Br., pp. 38:5–6, 38:19–25, 39:15–17, 40:20–21.) This does not support writ relief. The question is whether the Amended Housing Element contains the required analysis and is supported by substantial evidence, not whether Petitioner's consultant would assign different weights. (*Martinez*, at pp. 251–252 [rejecting challenge premised on a non-required showing and reweighing of HCD-approved evidence]; see also *Fonseca,* supra*,* 148 Cal.App.4th at p. 1185 [mandamus review asks whether the locality satisfied statutory requirements, not the "merits" of its policy choices].)

Several additional points defeat Petitioner's Sites Inventory Challenge.

First, in adopting its housing element, the local government is required to consider the advisory guidelines adopted by HCD (§ 65585, subd. (a))—and HCD's Sites Inventory Guidebook specifically instructs jurisdictions to (1) base capacity on adopted minimum densities (which "the department shall accept"), (2) adjust to "realistic capacity" using typical built/approved densities at similar affordability levels and cumulative site standards, (3) count mixed-use/overlay sites for lower-income capacity where 100% residential is allowed or a minimum residential share is required, and (4) for non-vacant sites, document leases, trends, incentives, and other factors and adopt § 65583.2, subdivision (g)(2) discontinuance findings when applicable. (City's RJN, Exh. B [HCD, Housing Element Sites Inventory Guidebook (May 2020), Part C–D].) The Amended Housing Element follows these guidelines, which HCD confirmed by finding it substantially compliant. (AUGAR22321–22326; AUGAR25526.) Since

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the Legislature has charged HCD with reviewing housing elements and issuing guidance, its interpretations warrant weight—particularly when the City implemented them and HCD approved them. (§§ 65583.2, 65585, 65589.3; *Hoffmaster*, supra, 55 Cal.App.4th at p. 1113 [interpretation of agency charged with enforcing, implementing and interpreting the statutory scheme is entitled to great weight].)

Second, Section 65583.2, subdivision (g)(2) asks whether existing uses are likely to discontinue "during the planning period," not whether they will cease in the near term or on a fixed timetable. The City's findings rely on multi-factor evidence of turnover and redevelopment pressure over the 2023–2031 horizon—owner intent and applications in the pipeline, expiring/short-term tenancies, obsolete improvements, and corridor-wide intensification—precisely the evidence the statute and HCD identify. (AUGAR22321–22326.)

Third, Petitioner's reliance on the timing of individual applications misreads the statute. Pending or recently approved submittals (e.g., 409 Napa) evidence owner interest and market movement, which substantiates both the (g)(1) methodology and (g)(2) discontinuance findings over the planning period. The law does not require each site to convert immediately or guarantee project issuance; it requires a realistic, evidence-based showing across the inventory.

Fourth, to maintain adequacy "at all times," the Amended Housing Element includes monitoring and replacement-site/rezoning procedures under Program 4 and the adequate-sites statutes. (AUGAR22310; §§ 65583.2, subd. (h), (i); 65863.) Those commitments address Petitioner's suggestion that non-vacant yields must be proven to a certainty now; the Legislature instead requires a realistic showing plus ongoing correction if needed.

In short, the Amended Housing Element provides the non-vacant site content and findings that § 65583.2, subdivisions (b), (g)(1)–(2) require; HCD agreed; and Petitioner has not carried its burden to show that HCD's determination was "clearly erroneous or unauthorized," as *Martinez* demands. (AUGAR22321–22326; AUGAR25526; *Martinez,* supra, 90 Cal.App.5th at pp. 243, 251–252.)

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VII. CONCLUSION

For the foregoing reasons, the Court should deny the relief Petitioner requests and dismiss the case in its entirety.

Dated: August 29, 2025

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PROOF OF SERVICE

I, Houda Matar, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 300 S. Grand Avenue, 25th Floor, Los Angeles, California 90071. On August 29, 2025, I served a copy of the within document(s):

RESPONDENT'S OPPOSITION TO THE OPENING BRIEF SUBMITTED BY PETITIONER YES IN MY BACKYARD

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

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

☐ by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.

☐ 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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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

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

Executed on August 29, 2025, at Los Angeles, California.



Houda Matar

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