FILED
Superior Court of California
County of Marin
02/05/2026
James M. Kim, Clerk of the Court
A. Andres, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

YES IN MY BACKYARD,

Petitioner

v.

CITY OF SAUSALITO

Respondent.

CASE NO.: CIV2300652

ORDER

Petitioner Yes in My Back Yard, a California nonprofit corporation's ("Petitioner") Petition for Writ of Mandate came on for hearing on December 8, 2025. Ryan Patterson and Brian Oneill appeared on behalf of Petitioner. Sarah Owsowitz and Megan Kilmer appeared on behalf of Respondent City of Sausalito ("Respondent"). Following oral argument, the court took the matter under submission. After consideration of the parties' arguments, and all pleadings in this matter, the Petition is DENIED. The court adopts the tentative ruling as modified, and set forth below:

BACKGROUND

The Housing Element Law and the Housing Element Adoption Process

Each city and county in California is required to periodically prepare "a comprehensive, long-term general plan for the physical development of the county or city." (Gov. Code, § 65300.)

Every general plan must include a housing element. (Gov. Code, § 65302, subd. (i).) Government Code, section 65580 *et seq.* (the "Housing Element Law") sets forth the requirements for these housing elements. One of the fundamental requirements of a housing element is that it "identify adequate sites for housing . . . and . . . make adequate provision for the existing and projected needs of all economic segments of the community." (Gov. Code, § 65583.)

The California Department of Housing and Community Development ("HCD") administers the Housing Element Law. Housing elements are renewed cyclically. (See Gov. Code, § 65588.) Each renewal cycle, HCD determines the existing and projected need for housing for each region of the state ("regional housing need allocation" or "RHNA"). (Gov. Code, § 65584, subd. (a)(1).) A region's RHNA is then divided up among the localities in the region. Every locality's RHNA is divided up by income level. For example, a city might have an RHNA of 400 homes, of which 100 must be developed to serve the housing needs of "very low income" persons, 100 for "lower income" persons, 100 for "moderate income" persons, and 100 for "above moderate income" persons. (See Gov. Code, §§ 65584, subds. (a)(1), (f).)

A housing element must include "[a]n inventory of land suitable and available for residential development[.]" (Gov. Code, § 65583, subd. (a)(3).) "[L]and suitable and available for residential development" includes not just vacant land, but nonvacant sites with "realistic and demonstrated potential for redevelopment" for housing purposes. (*Ibid.*; see also Gov. Code, § 65583.2, subd. (a)(3)-(4).) Each locality is to use this inventory of land to "identify 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[.]" (Gov. Code, § 65583.2.) Each jurisdiction must identify enough such sites to develop the number of homes specified in its RHNA.

To the extent a city includes nonvacant sites in its inventory, the housing element 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 (but not limited to) "the extent to which existing uses may constitute

an impediment to additional residential development," "existing . . . contracts that would . . . prevent redevelopment," and "market conditions." (Gov. Code, § 65583.2, subd. (g)(1).) Additionally, where a city relies on nonvacant 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." (Gov. Code, § 65583.2, subd. (g)(2).) The existing use is presumed to impede additional residential development "absent findings based on substantial evidence that the use is likely to be discontinued during the planning period." (*Ibid.*)

When a city has finished drafting its housing element, its planning agency must submit the draft to HCD for review before the city adopts it. (Gov. Code, § 65585, subd. (b)(1).) HCD is to determine whether the draft substantially complies with the Housing Element Law. (Gov. Code, § 65585, subd. (d).) If HCD determines that the draft is not substantially compliant, the city must either change the draft to make it substantially compliant or adopt the draft without changes, but with an accompanying explanation of why the city believes the draft in fact complies with the Housing Element Law. (Gov. Code, § 65585, subd. (f).)

Once the city adopts its housing element, it must submit it to HCD again. (Gov. Code, § 65585, subd. (g).) HCD will then review the adopted housing element a second time. (Gov. Code, § 65585, subd. (h).) If HCD finds the housing element substantially compliant with the Housing Element Law, it is rebuttably presumed to be valid in any court action taken to challenge its validity. (Gov. Code, § 65589.3.)

The Petition

The Original Petition in this matter was filed on March 8, 2023. An Amended Petition was filed on May 30, 2024. After Respondent demurred to the Amended Petition and that demurrer was sustained with leave to amend as to the Second Cause of Action, the now operative Second Amended Petition ("SAP") was filed on October 16, 2024.

The SAP alleges that respondent the City of Sausalito's ("Respondent" or "the City") RHNA is 724 homes, of which 315 must be lower-income homes. (SAP, ¶ 48.) Around August

2022, the City released a draft housing element for public comment. (*Id.*, at ¶ 51.) The draft stated that the City could accommodate development of 508 lower-income homes, but the ability to develop 320 of the 508 would depend on removing certain constraints associated with two City ordinances, Ordinance 1022 and Ordinance 1128 (the "Ordinances"). (*Id.*, at ¶¶ 52-53.) The draft proposed to have the City fund an election to determine whether the constraints would be removed. (*Id.*, at ¶ 55.) On October 22, 2022, the City submitted a revised draft housing element to HCD for review. (*Id.*, ¶ 62.)

On January 26, 2023, HCD found that the draft housing element the City had submitted to HCD would not substantially comply with the Housing Element Law. (*Id.*, ¶ 89.) Three days later, on January 29, the City published a new draft housing element. (*Id.*, at ¶ 101.) This draft presented "two options" to achieve the City's RHNA, which differed in the number of lower-income homes the City would state it had capacity to develop. (*Id.*, at ¶¶ 102-103.) It also acknowledged that 208 of the lower-income homes needed to satisfy the City's RHNA could not be developed unless the Ordinances were changed, and it made no proposals for addressing community opposition that stood as a barrier to changing the Ordinances by a vote. (*Id.*, at ¶ 105.)

The day after the City made this most recent draft available to the public, it voted to adopt the draft as its housing element. (*Id.*, ¶ 107.) The City published the written, adopted housing element to the public for the first time during the week of February 27, 2023. (*Id.*, at ¶ 160.) The housing element claims capacity for 391 lower-income homes, 194 of which it allocates to sites that can only be used for such development if the Ordinances are changed. (*Id.*, at ¶¶ 161-162.) It also allocates lower-income housing to sites that have been identified by public commenters as unrealistic for housing development during the period covered by the housing element. (*Id.*, at ¶ 163.)

On April 25, 2023, the City submitted a revised version of the newly adopted housing element to HCD. (*Id.*, ¶ 198.) Days later, HCD advised the City that the modified housing element was in substantial compliance with the Housing Element Law. (*Id.*, at ¶¶ 209-211.)

Petitioner concludes that the City violated the Housing Element Law while rushing to develop its Sixth Cycle Housing Element before the January 31, 2023 deadline by failing to identify adequate sites and failing to implement the programs necessary for identified sites to become buildable, failing to proceed in the manner required by law by providing inadequate notice, and violating CEQA by decoupling the sixth revision of its housing element from CEQA review to avoid the same deadline. (SAP, ¶¶ 8, 11-12, 26-27, 122.)

Petitioner states causes of action for violation of California Environmental Quality Act ("CEQA"), violation of Housing Element Law, failure to implement Housing Element Programs, failure to proceed in a Manner Required by Law, and Declaratory Relief.

The SAP seeks:

1. A writ of mandate invalidating the City's sixth revised housing element;
2. A writ of mandate directing the City to comply with CEQA and all other applicable state and Local laws and regulations;
3. A writ of mandate directing the City to make adequate provision for its lower income housing need in accordance with state law in its eventual CEQA-compliant revised housing element;
4. An injunction or order providing relief under Section 65755;
5. A declaration that the City is, and has been, out of compliance with the Housing Element Law from February 1, 2023, until the City lawfully adopts a sixth revised housing element that the Court finds in substantial compliance with both CEQA and the Housing Element Law; and
6. A declaration that the City may not rely on paragraphs (1) or (5) of subdivision (d) of Section 65589.5 of the Government Code, also known as the Housing Accountability Act or "HAA," to disapprove a housing development project—or condition approval In A Manner That Renders Such Project Infeasible—So Long As Such Project Meets The affordability requirements described in paragraph (3) of subdivision (h) of the HAA and complies with CEQA;

Along with fees, costs, and other relief the Court deems necessary. (SAP, Demand, ¶¶ 1-9.)

REQUESTS FOR JUDICIAL NOTICE

Petitioner's unopposed Requests for Judicial Notice in Support of Opening Brief Nos. 1-9 are GRANTED. (Evid. Code, §§ 452, subd. (c), 453.)

Respondent's unopposed Requests for Judicial Notice in Support of Opposition Nos. 1-2 are GRANTED. (Evid. Code, §§ 452, subd. (c), 453.)

Petitioner's Requests for Judicial Notice in Support of Reply Brief Nos. 1-8 are GRANTED. (Evid. Code, § 452, subds. (b), (h).) However Judicial Notice is granted only as to the existence of the documents (and their filing dates, if applicable) not as to the truth of the statements contained therein.

OBJECTIONS TO EVIDENCE

Respondent's Evidentiary Objections to Petitioner's Request for Judicial Notice in Support of Reply Brief Nos. 1-8 are OVERRULED.

Objections 1-6 are made with regards to the Requests for Judicial Notice of preliminary applications. While Respondent's arguments would normally be well taken, Judicial Notice of these applications was appropriate in light of the mootness argument raised in the Opposition. As discussed above, Judicial Notice was granted as to the existence of the documents and their dates, but not of any of the statements contained therein.

LEGAL STANDARD

Petioner's CEQA and Failure to Proceed in the Manner Required by Law causes of action are brought under both Code of Civil Procedure sections 1085 and 1094.5, while the House Element Law causes of action are brought solely under 1085.

1085

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is

unlawfully precluded by such inferior tribunal, corporation, board, or person." (Code Civ. Proc., § 1085(a).)

There are two essential requirements to the issuance of an ordinary writ of mandate under Code of Civil Procedure section 1085: (1) a clear, present and 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 Ass'n for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 704.) "An action in ordinary mandamus is proper where ... the claim is that an agency has failed to act as required by law." (*Id.*, at 705.) Petitioner "bears the burden of proof in a mandate proceeding brought under Code of Civil Procedure section 1085." (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1154.)

"An ordinary mandamus action under Code of Civil Procedure section 1085 permits judicial review of ministerial duties as well as quasi-legislative acts of public agencies.... Mandamus may issue to correct the exercise of discretionary legislative power, but only if the action taken is so palpably unreasonable and arbitrary as to show an abuse of discretion as a matter of law. This is a highly deferential test." (*Carrancho v. California Air Resources Board* (2003) 111 Cal.App.4th 1255, 1264-65.) "A court must ask whether the public agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, or whether the agency failed to follow the procedure and give the notices the law requires." (*County of Los Angeles v. City of Los Angeles* (2013) 214 Cal.App.4th 643, 654.)

"'On questions of law arising in mandate proceedings, [the court] exercise[s] independent judgment.' .... Interpretation of a statute or regulation is a question of law." (*Christensen v. Lightbourne* (2017) 15 Cal.App.5th 1239, 1251.)

1094.5

Section 1094.5 is the administrative mandamus provision providing the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. (*Topanga Ass'n for a Scenic Community v. County of Los Angeles*, (1974) 11 Cal.3d 506, 514-15.) Section 1094.5(a) states, in pertinent part, that "[w]here the writ is issued for the purpose of inquiring

into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury."

Under section 1094.5(b), the pertinent issues are: (1) whether the respondent has proceeded without jurisdiction; (2) whether there was a fair trial; and (3) whether there was a prejudicial abuse of discretion. An abuse of discretion is established if the respondent has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. (Code Civ. Proc., § 1094.5(b).)

In general, an agency is presumed to have regularly performed its official duties. (Evid. Code, § 664.) Therefore, the petitioner seeking administrative mandamus has the burden of proof. (*Steele v. Los Angeles County Civil Service Commission*, (1958) 166 Cal.App.2d 129, 137; see also *Afford v. Pierno*, (1972) 27 Cal.App.3d 682, 691 ["[T]he burden of proof falls upon the party attacking the administrative decision to demonstrate wherein the proceedings were unfair, in excess of jurisdiction or showed prejudicial abuse of discretion."].)

To determine what standard of review to apply, courts examine whether the administrative decision "substantially affect[s] vested, fundamental rights." (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 143.) "If the decision of an administrative agency will substantially affect such a right, the trial court not only examines the administrative record for errors of law but also exercises its independent judgment upon the evidence disclosed in a limited trial de novo." (*Id.*, at 142.) "If the administrative decision does not involve, or substantially affect, any fundamental vested right, the trial court must still review the entire administrative record to determine whether the findings are supported by substantial evidence and whether the agency committed any errors of law, but the trial court need not look beyond that whole record of the administrative proceedings." (*Id.*, at 144.) "The courts must decide on a case-by-case basis whether an administrative decision or class of decisions substantially affects fundamental vested rights and thus requires independent judgment review," (*Id.*, at 144.)

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DISCUSSION

I. Respondent Argues All Challenges to Original Housing Element are Waived/Moot Since an Amended Housing Element was Adopted Post Petition

As an initial matter, when Petitioner filed this action, it challenged the City's then-operative sixth revised housing element (the "Original Housing Element") on the grounds that it violated the CEQA and the Housing Element Law. Since that filing, the City has rescinded the Original Housing Element, certified a full Environmental Impact Report ("EIR"), and adopted an amended sixth revised housing element (the "Amended Housing Element"), which HCD determined is in substantial compliance with Housing Element Law. (Augmented Administrative Record "AUGAR" 25871-25874.) Despite the new legislation, Petitioner did not to amend its petition to bring any specific challenges targeting the Amended Housing Element and did not argue any of the challenges raised in the SAP apply to the Amended Housing Element in the opening brief, with the exception of the Site Inventory challenge, to be discussed in more detail below.

Respondent argues that this choice carries significant consequences in this litigation.

<u>The Amended Housing Element</u>

The Amended Housing Element and associated environmental impact report process consisted of the following (AUGAR15756):

- A Notice of Preparation of a Draft Environmental Impact Report for the Amended Housing Element ("Draft EIR") on July 17, 2024. (AUGAR16635.)
- The posting of initial drafts of proposed amendments on August 15, 2024. (*Ibid.*)
- Release of Notice of Availability and published the Draft EIR for public review by September 4, 2024. (AUGAR25277-25280.)
- A published Recirculated Draft EIR for public review, beginning on December 13, 2024 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 public hearing on the proposed Amended Housing Element and associated EIR, whereby the Planning Commission recommended adoption of the Adopted Housing Element and certification of the supporting EIR. (AUGAR16636.)
- Subsequently, the City Council held a 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 Element on March 27, 2025. (*Ibid.*)
- 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. (AUGAR22293.)
- On May 5, 2025, HCD set up a follow-up meeting with the City to discuss finalizing the changes requested by HCD. (*Ibid.*)
- The following day, on May 6, 2025, the City publicly posted the revised Amended Housing element, and thereafter resubmitted it to HCD. (AUGAR22293, 25526.)
- On May 22, 2025, HCD informed the City via letter that the Amended Housing Element was found to be substantially compliant with Housing Element Law. (AUGAR25526.)
- On May 27, 2025, at a noticed public meeting, the City rescinded the Original 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 Housing Element Law. (AUGAR25871-25874.)

Courts generally refrain from issuing purely advisory opinions, and instead only decide a controversy "by a judgment which can be carried into effect." (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573.) The pivotal question to determine whether a case is moot is "whether the court can grant the plaintiff any effectual relief." (*Id.*, at p. 1574; *Vichy Springs Resort, Inc. v. City of Ukiah* (2024) 101 Cal.App.5th 46, 55, *review denied* (July 10, 2024).)

While a change in the applicable law may moot a matter, "[t]here are special circumstances under which a court may address the allegations of a complaint as they relate to the *prior* legislation. Where parts of a statute are reenacted in toto in subsequent legislation, the original challenge is not moot. [Citation.] Similarly, the merits of the prior controversy may be examined if they embrace "a matter of general public interest and there is a likelihood of recurrence of the controversy between ... others similarly situated.'" *(Davis v. Superior Court* (1985) 169 Cal.App.3d 1054, 1058.)

A. <u>The SAP and Opening Brief Fail to Challenge the Amended Housing Element for the Most Part</u>

The Amended Housing Element was adopted May 27, 2025. The Opening Brief was filed on July 18, 2025. Despite this, Petitioner focused its Opening Brief on the Original Housing Element. (See Opening Brief ("OB") pp. 1-16.) Indeed, the Amended Housing Element is not discussed until page 16. (*Id.*, at pp. 16-19.)

i. CEQA

Petitioner's arguments in the OB are that Respondent violated CEQA by "decoupling" adoption of the Original Housing Element from the EIR (*Id.*, at p. 24), by filing a deficient NOE for the Original Housing Element (*Id.*, at p. 25.), and that the EIR done for the Amended Housing Element "confirms" the approval of the Original Housing Element would have "significant and unavoidable impacts" (*Ibid.*). Based on these arguments, Petitioner concludes

"[t]here can be no question that the City violated CEQA" and asks the Court to set side approval of the *Original Housing Element*." (*Id.*, at pp. 25, 26. Emphasis added.)

In terms of relief demanded under CEQA, the SAP seeks a "writ of mandate invalidating the City's sixth revised housing element" and a writ of mandate "directing the City to comply with CEQA." (SAP, Demand, ¶¶ 1, 2.) The SAP is clear that the "sixth revised housing element" refers to what has been defined herein as the Original Housing Element. (See SAP, ¶¶, 160 262.)

The relief requested, setting aside/invalidating the Original Housing Element, is now moot since the Original Housing Element has been rescinded. (AUGAR16636.) Although Petitioner implies characterization of the Original Housing Element as being "rescinded" is semantics or word games, this is the actual language used in the City Council's May 27, 2025 resolution. (AUGAR16634, 16636 ["NOW, 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 January 30, 2023"].) *McCann v. City of San Diego* (2023) 94 Cal.App.5th 284, establishes that rescinding project approvals is one way to satisfy a writ directing a city to void project approvals. (*Id.*, at p. 295.) This confirms that the requested relief ("invalidating" or "setting aside" the Original Housing Element) is moot in light of the recission of that same housing element.

Petitioner's reliance on *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116 is misplaced. *Save Tara* held that the belated preparation of an EIR did not render an appeal moot. Here it is not argued that the belated adoption of an EIR renders the CEQA challenge to the *Original* Housing Element moot. Rather, it is the recission of that same housing element and the adoption of new one that renders claims made only against the Original Housing Element and not raised against the Amended Housing Element waived/moot.

The Court need not and does not address whether Petitioner could have argued its CEQA challenges (as stated in the SAP) against the Amended Housing Element in its OB since the OB did not purport to do so. Instead, Petitioner continued to challenge the Original Housing

Element. To the extent that Petitioner could have applied the CEQA challenge to the operative Amended Housing Element, Petitioner waived those arguments by failing to make them.

ii. Housing Element

The relief sought in demands 2-4 is also waived/moot for these same reasons. (SAP, Demand, ¶¶ 2-4 [seeking "writ of mandate directing the City to comply with CEQA and all other applicable state and Local laws and regulations," a "writ of mandate directing the City to make adequate provision for its lower income housing need in accordance with state law in its eventual CEQA-compliant revised housing element," and an "injunction or order providing relief under Section 65755"].)

For example, Petitioner argues that the City "clearly failed to follow the procedures required by the Planning and Zoning Law when it approved the Original Housing Element." (OB., at p. 28:22-23.) Petitioner then concludes the City prejudicially abused its discretion by failing to proceed in the manner required by law when the City's rush to adopt something by the statutory deadline prevented meaningful public review; HCD never reviewed the version adopted (aka the Original Housing Element) by the City Council at a public hearing; and the City Council never adopted the Original Housing Element that HCD found in substantial compliance with the Housing Element Law. As a result, the Original Housing Element is void and must be set aside. (OB 30:25-28; 31;1-2.) Petitioner's next argument is that "The City Failed to Implement its Original Housing Element." (OB, p. 31:3; 32:4-28.)

To the extent these arguments are made against the non-operative Original Housing Element and not against the Amended Housing Element, they are moot/waived for the reasons discussed above.

The only argument in the Opening Brief that is not specifically limited to the Original Housing Element is that the City's Housing Element site inventory is legally inadequate. (OB, p. 34:1-43:9.) The Court shall address that argument later in this opinion.

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a. Petitioner's Claim of Pending Applications Does Not Create a Justiciable Controversy

At oral argument—and to a much lesser extent in its reply—Petitioner asserted that a justiciable controversy exists because building applications were pending. Even if the court were to entertain this late argument, it does not affect this court's finding of mootness as to the challenge to the Original Housing Element and Petitioner's request that Respondent comply with CEQA. No evidence was presented that Respondent has taken action yet on these applications or that they have done so based on the Original Housing Element, such that a controversy has been created. The court may not decide a matter based on a conjectural controversy, or to obtain an advisory opinion from the court. (*Brownfield v. Daniel Freeman Marina Hospital* (1989) 208 Cal.App.3d 405, 410.)

b. To the Extent Claims are Moot, the Public Interest Exception Does Not Save Them

The public interest exception to mootness is a discretionary exception that allows a court to decide an otherwise moot issue when the case presents an issue of broad public interest. (*City of Morgan Hill v. Brown* (1999) 71 Cal.App.4th 1114, 1121 fn. 5.)

Here, the CEQA and Housing Law challenges to the Original Housing Element are fact-specific to the rescinded law. The environmental review conducted for the Original Housing Element has been entirely superseded by the CEQA review conducted for the now operative Amended Housing Element (the certified Amended Housing Element EIR). Likewise, the Housing Element Law arguments concern the notice and public-review steps taken for that rescinded action. It is unlikely these fact specific patterns will reoccur.

To the extent Petitioner's claims are moot, the Court declines to address them under the public interest exception to mootness.

iii. Declaratory Relief

The Declaratory Relief Petitioner seeks in the SAP is *not* moot. (SAP, Demand, ¶¶ 5-6.) For example, Petitioner seeks a "declaration that the City is, and has been, out of compliance with the Housing Element Law from February 1, 2023, until the City lawfully adopts a sixth revised

housing element that the Court finds in substantial compliance with both CEQA and the Housing Element Law; and …[a] declaration that the City may not rely on paragraphs (1) or (5) of subdivision (d) of Section 65589.5 of the Government Code, also known as the Housing Accountability Act or "HAA," to disapprove a housing development project—or condition approval in a manner that renders such project infeasible—so long as such project meets the affordability requirements described in paragraph (3) of subdivision (h) of the HAA and complies with CEQA." (*Ibid.*)

As demonstrated by Petitioner's Requests for Judicial Notice Nos. 1-6, these demands remain at issue, even in light of the rescinded Original Housing Element and newly adopted Amended Housing Element. For example, if the City was out of compliance with the Housing Element Law from February 1, 2023 until the adoption of the Amended Housing Element on May 27, 2025, then applications submitted during this time period may be subject to the "Builder's Remedy" under Government Code section 65589.5, etc.

While the Declaratory Relief claims may not be moot, they were abandoned/waived when Petitioner failed to brief them in their OB. Respondent identified this waiver in the opposition (Oppo. pp. 20:3-5; 29:25-26) and Petitioner did not argue otherwise in the reply.[1]

II. Site Inventory Adequacy

Site Inventory adequacy is the one argument clearly raised in the OB against the Amended Housing Element in the OB. (See OB p. 39:3-5; 43:15-16 [the City's Amended Housing Element did not fix the fundamental flaws of the City's Site Inventory].)

The determination of the merits of the Site Inventory challenge to the Amended Housing Element is properly before this Court. (See *Davis v. Superior Ct., supra,* 169 Cal.App.3d at p. 1061.)

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[1] Petitioner's waiver does not prevent an applicant from seeking redress pursuant to subsection (m)(1) of section 65589.5 of the Government Code following any future adverse decision on their application.

A. Petitioner Bears the Burden

On May 27, 2025, at a noticed public meeting, the City rescinded the Original 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 Housing Element Law. (AUGAR25871-25874.)

Although the Housing Element Law establishes a rebuttable presumption of validity for certified housing elements (Gov. Code, § 65589.3), a rebuttable presumption "merely shifts the burden of proof to show the presumption is not correct." (*Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 243, review denied (July 19, 2023), citing *West Washington Properties, LLC v. Department of Transportation* (2012) 210 Cal.App.4th 1136, 1143–1144.) "Put another way, courts generally will not depart from the HCD's determination unless 'it is clearly erroneous or unauthorized.'" (*Martinez,* supra, at p. 243.)

A. Non-Vacant Site Rules

A recent Court of Appeal case provides a helpful overview of the requirements related to Non-Vacant Sites. (See *New Commune DTLA LLC v. City of Redondo Beach* (2025) Cal.Rptr.3d __, No. B336042, 2025 WL 2886322 (Cal. Ct. App. Oct. 10, 2025 ("*New Commune*").) It states:

> Housing elements must contain an "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 to meet the locality's housing need for a designated income level ...." (§ 65583, subd. (a)(3).) HCD's guidelines define "vacant site" as "a site without any houses, offices, buildings, or other significant improvements on it." Development of the land or the addition of permanent structures on the property constitute improvements. In identifying sites, cities must consider "the extent to which existing uses may constitute an impediment to additional residential development" and "any existing

leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development." (§ 65583.2, subd. (g)(1).) When a city uses nonvacant sites to satisfy more than 50 percent of the lower income housing need, cities must "demonstrate that the existing use ... does not constitute an impediment to additional residential development during the period covered by the housing element." (*Id.*, subd. (g)(2).) An existing use is presumed to impede additional residential development, "absent findings based on substantial evidence that the use is likely to be discontinued during the planning period." (*Ibid.*) Substantial evidence is reasonable, relevant, and credible evidence of solid value which "a reasonable mind might accept as adequate to support a conclusion." (*California Youth Authority v. State Personnel Bd.* (2002) 104 Cal.App.4th 575, 584–585, 128 Cal.Rptr.2d 514.)

In *New Commune*, the City sought to accommodate more than half of the lower income housing needed using nonvacant sites. Petitioner challenged two specific sites.

In challenging the first site, petitioner faulted the City for not having confirmed with the property owners that the site was free from any lease requirements and that the property owners would agree to the development of housing on their properties. In support of these assertions, New Commune refers to the City housing element's statement that the City "will engage" with its economic development agency to "facilitate direct and targeted communications with property owners" concerning redevelopment. The court held that New Commune failed to show that development of lower income housing on the site was physically or financially infeasible, citing to the facts that the housing element stated that residential development on the site would not require displacement of existing uses, the City retained an expert who assessed the feasibility of developing 486 units of very low-income housing on the site and the expert determined the development was physically and financially feasible. The court held that in light of the HCD determination that the City's housing element was valid, there was a presumption of validity that New Commune bore the burden to rebut, and that it had failed to do so.

With respect to the second site, the City cited to a letter from the property owner indicating that it would welcome development of high-density residential housing on the site. The property owner also provided examples of other properties where it has incorporated residential housing into commercial property. New Commune, however, demonstrated that limitations on the site impeded the development of housing. According to the lease between the property owner and Vons, the "Common Area" includes the parking areas within the "Zone of Control." The lease restricts the landlord from changing the Common Area without Vons's written consent; Vons has "sole and absolute discretion" to withhold consent. In other words, Vons has the absolute right to veto the development of housing on the site. Since the City otherwise presented no evidence that Vons would consent to the development of housing in the Zone of Control, or that the land outside the Zone of Control could accommodate the number of units claimed by the City in its housing element, the City did not present substantial evidence that Vons would discontinue its existing use on the Inglewood Avenue site or that this use will not impede the development of housing.

i. Petitioner's Arguments

a. Sites Requiring Future Voter Approval

In this case, 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].)

The Amended Housing Element identifies the voter-restricted parcels, sets milestones, and scheduled a November 4, 2025 special election to remove voter-imposed constraints.[2] (AUGAR22303–22304, 22310.) This appears on track to be within the rezoning window that closes January 30, 2026. (AUGAR22303–22304; § 65583, subd. (c)(1)(A).) The Amended Housing Element also includes monitoring and replacement-site procedures to address any shortfall if one arises. (AUGAR22310.)

[2] The Court notes that the two measures at issue were indeed on the November 4, 2025 ballot.

The Court finds Petitioner has not met its burden to show that the HCD's determination of compliance is clearly erroneous on this ground.

b. Required Analysis for Non-Vacant Sites

.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 be discontinued. (*Id.*, at pp. 38:1–21; 40:1–55; 41:12–21, 55–62.)

Housing Element 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 methodology used to determine additional development potential shall demonstrate that the existing use does not constitute an impediment to additional residential development during the period covered by the housing element. (§ 65583.2, subd. (g)(2).) An existing use is presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued during the planning period. (*Ibid.)*

Respondent argues they performed the requisite analysis and that HCD's certification gives presumptive validity to their methodology. (AUGAR22321–22326 [non-vacant methodology and factors].) In Reply, Petitioner argues that Respondent has not complied with section 65583.2(g)(2) specifically.

However, the Amended Housing Element States:

"City-owned sites with existing uses have been reviewed for their development potential and have the *capacity for additional uses in underdeveloped portions of the site…*

The City's Housing Element team, including City staff and consultants, has conducted outreach to all property owners of *underutilized sites* identified in Appendix D1 as part of the Housing Element Update process. This process has included providing residents and property owners an opportunity for input

through sending letters a mailer to each property owner, encouraging property owner input through a mailer, a property owner survey, and project notices, and responding to property owner inquiries to gauge the property owners' interest in accommodating residential uses at these sites. No property owner that is included in Appendix D has indicated that the anticipated residential capacity identified for their site is unrealistic to achieve during the planning period. Sites with a property owner that indicated a lack of interest in new residential development were removed from the inventory. Adjacent parcels under common or related ownership are treated as a single site. *The City is not aware of any existing leases, contracts, or other conditions that would impede the residential development accommodated by the Inventory and Opportunity Sites during the 6th Cycle*. Sites where the property owner identified interest in residential or mixed use development were anticipated to be likely to redevelop."

(AUGAR22323-4. Emphasis added.)

The language regarding the non-vacant sites – "*capacity for additional uses in underdeveloped* portions of the site" and "*underutilized sites*" makes it clear that the City is referring to development which does not require discontinuation of the current uses. The City also states that it is unaware of any existing leases, contracts or other conditions that would impede the residential development allocated. (AUGAR22323.) In contrast to *New Commune,* Petitioner has provided no evidence of any impediments to development. It was only because Vons had a lease which gave it ultimate veto power over a portion of the site which had been identified for development, that the *New Commune* court found the lack of showing that Vons' use would be discontinued was relevant. That rationale does not apply in this case.

For these reasons, Petitioner has also failed to demonstrate that HCD's determination of compliance was clearly erroneous on this ground.

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c. Capacity and Affordability Allocations

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

In determining whether there has been substantial compliance with Housing Element Law, the court does not examine the merits of the element or the municipality's underlying wisdom in determining policy. (*Hoffmaster v. City of San Diego* (1997) 55 Cal.App.4th 1098, 1099.) Rather, if the municipality has substantially complied with the statutory requirements, the court will not interfere with the municipality's legislative action in updating or amending the elements of its general plan, unless the action was arbitrary or capricious or entirely lacking in evidentiary support. (*Ibid.*)

Petitioner has not identified any missing elements of statutory analysis. Rather, Petitioner challenges the conclusions drawn by the City's analysis. To the extent Petitioner challenges the methodology used by the City, Petitioner has failed to overcome their burden of showing the City's methods were clearly erroneous. (See AUGAR 16929, et seq.; 17013-16.)

Accordingly, this argument also fails.

For these reasons, the Petition is DENIED in its entirety.

Date: February 5, 2026

Sheila Shah Lichtblau,
Judge of the Superior Court

Superior Court of the State of California County of Marin 3501 Civic Center Dr PO Box 4988 San Rafael, CA 94913-4988	*FOR COURT USE ONLY* **ELECTRONICALLY FILED** Superior Court of California County of Marin **02/05/2026** James M. Kim, Clerk of the Court A. Andres, Deputy
YES IN MY BACK YARD VS CITY OF SAUSALITO	
Proof – Service	**Case Number:** CIV2300652

I am over the age of 18 years and not a party to the above action. My business address is 3501 Civic Center Dr, San Rafael, CA 94913. On February 5, 2026, I served the following document(s):

- **Order - Petition for Writ of Mandate**

On the interested parties in said action, by sending the above document(s) to the addresses indicated below:

Brian James O'Neill brian@pattersononeill.com	Electronically Served CCP1013(g)
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I declare under penalty of perjury, that the foregoing is true and correct.

James M. Kim
Clerk of the Court and Executive Officer
Superior Court of the State of California

Executed at San Rafael, California

County of Marin
By: A. Andres, Deputy Clerk

On: February 5, 2026