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YES IN MY BACK YARD

ELECTRONICALLY FILED
Superior Court of California
County of Marin
05/30/2024
James M. Kim, Clerk of the Court
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN - UNLIMITED CIVIL JURISDICTION

YES IN MY BACK YARD, a California nonprofit corporation,

Petitioners and Plaintiffs,

v.

CITY OF SAUSALITO; and DOES 1-20,

Respondents and Defendants.

Case Number: CIV2300652

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

Department H

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1. This petition seeks a writ of mandate compelling Respondent-Defendant City of Sausalito to follow the California Environmental Quality Act ("CEQA," Pub. Res. Code §§ 21000 et seq.) and the Housing Element Law (Gov. Code §§ 65580 et seq.).

2. "Solving the climate crisis is the greatest and most complex challenge that [humans] have ever faced. The main solution, however, is so simple that even a small child can understand it. We have to stop our emissions of greenhouse gases." (Thunberg, The 1975 in Notes on a Conditional Form (The 1975 edits., 2020) [audio recording at https://youtu.be/4fwEG8XK1uU].)

3. "[Z]ero-emission vehicles . . . are not enough to solve the climate crisis." To achieve carbon neutrality, Californians must reduce their "total vehicle miles driven" by 30 percent by 2045. (Cal. Air Resources Bd., 2022 Scoping Plan, app. E at pp. 4–5, https://ww2.arb.ca.gov/sites/default/files/2022-11/2022-sp-appendix-e-sustainable-and-equitable-communities.pdf.)

4. Simply put, people must live near where they work, shop, and play—including in Sausalito.

5. Complicating this goal of reducing vehicle miles traveled, "California has a housing supply and affordability crisis of historic proportions." (Gov. Code § 65589.5, subd. (a)(2)(A).)

6. Solving the climate crisis requires ending the housing shortage.

7. Housing elements are a critical step for California cities to address their fair share of the housing shortage (and thereby reduce greenhouse gas emissions).

8. In a rush to stall the application of a statutory "builder's remedy" (*id*., subd. (d)(5)), the City of Sausalito willfully "decouple[d]" the sixth revision of its housing element from CEQA review.

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9. The City's decision to "decouple" its housing element from CEQA review—relying on CEQA's "common sense exemption" (14 Cal. Code Regs. § 15061, subd. (b)(3))—violated CEQA.

10. This failure to conduct CEQA review robs affordable housing developers of an environmental baseline off of which they could otherwise "tier" their much-needed housing projects. (*Id.* § 15152.)

11. Moreover, the sixth revision of the City's housing element fails to "identify adequate sites," and thus violates the Housing Element Law. (Gov. Code § 65583; *see also id.* § 65583.2.)

12. The housing element also fails to adequately "remove" two identified ordinances that constrain the conversion of commercial, industrial, and government sites into housing. (*Id.* § 65583, subd. (c)(3).)

13. The City is therefore subject to the builder's remedy. Sausalito "shall not disapprove a housing development project" that meets the environmental requirements of CEQA and the affordability requirements of the Housing Accountability Act. (*See id.* § 65589.5, subds. (d)(5), (e), (h)(3).)

PARTIES

14. Petitioner-Plaintiff Yes In My Back Yard is a California nonprofit public benefit corporation.

15. Yes In My Back Yard litigates on behalf the public interest in ending the housing shortage in accordance with California law, including the adoption of housing elements in compliance with CEQA and the Housing Element Law, and files this proceeding on its own behalf as well as that of its members and the public who will be affected by the adoption of the City's sixth revised housing element.

16. Respondent-Defendant City of Sausalito is a general law city in Marin County, California.

17. Respondent-Defendant City is the "lead agency" (Pub. Resources Code § 21067) that adopted the sixth revised housing element at issue in this proceeding.

18. Respondents-Defendants Does 1–20 are as-yet unknown agents or employees of the City.

JURISDICTION AND VENUE

19. The Court has subject matter jurisdiction under Sections 1060, 1085, and 1094.5 of the Code of Civil Procedure, Sections 65587 and 65751 of the Government Code, and Sections 21167 and 21168 of the Public Resources Code.

20. The Court has personal jurisdiction over Respondents-Defendants consistent with Section 410.10 of the Code of Civil Procedure.

21. Venue is proper under Sections 394–395 of the Code of Civil Procedure.

STATEMENT OF FACTS

22. Every person needs to live somewhere.

23. Where people live has a significant effect on the environment.

24. The Housing Element Law asks cities to plan where people can live. (*See* Gov. Code § 65583.)

25. A "housing element" is a mandatory element of a city's general plan. (*Id.* § 65302, subd. (c).)

26. A general plan element is a "project" under CEQA. (14 Cal. Code Regs. § 15378, subd. (a)(1).)

Project History Overview

27. The City's deadline to adopt the sixth revision of its housing element was January 31, 2023.

28. As alleged herein, this proceeding seeks to hold the Respondent-Defendant City accountable for violating both CEQA and the Housing Element Law, in a rush to adopt something before this deadline.

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29. In its rush to adopt, the City cast aside the recommendations of its own Housing Element Advisory Committee ("HEAC"), which convened ten or more times between October 2021 and January 2023 to advise on the substance of the City's sixth revised housing element.

30. The City also ignored the efforts of its community development director and outside consultant to scope a CEQA environmental impact report ("EIR") for the project.

31. On January 12, 2023, in a joint meeting of the City Council and Planning Commission, the City abruptly rejected its staff's recommendation to prepare the project EIR, and directed staff instead to "decouple" the project from CEQA review, so as to meet the January 31 deadline.

32. On January 25, 2023—before receiving "written findings" on the project (Gov. Code § 65585) from the Department of Housing and Community Development ("HCD")—the Planning Commission recommended the City remove capacity for dozens of lower-income homes from the project.

33. On January 26, 2023, HCD wrote a letter to the City finding that the project, as planned before removing capacity, would not substantially comply with the Housing Element Law. (Gov. Code § 65585, subd. (d).)

34. On January 29, 2023, the City published a subsequent draft project for public comment.

35. On January 30, 2023, the City adopted the sixth revision of its housing element.

36. The City filed a CEQA Notice of Exemption ("NOE") for the project on February 1, 2023. (*See* Pub. Resources Code § 21152, subd. (b).)

37. On February 27, 2023, the City submitted the project to HCD for new written findings. (See Gov. Code § 65585, subds. (b)(3), (h).)

38. "The Project is an update to the Housing Element of the City of Sausalito General Plan." (NOE.)

Housing Element Law Overview

39. The Housing Element Law (Gov. Code §§ 65580 et seq.) requires every city to plan for its fair share of the missing homes the State needs to end its housing crisis.

40. HCD is the State agency that administers the Housing Element Law. (See Health & Saf. Code §§ 50400, 50459.)

41. The driving mechanism of the Housing Element Law is known as the "regional housing need allocation" or "RHNA." (Gov. Code §§ 65584.03, subd. (d); 65584.04, subd. (g)(2); 65584.05, subd. (e)(1); 65584.06, subd. (f); 65584.07, subd. (b)(1); 65584.08, subd. (a)(4)–(5); 65584.09, subd. (a).)

42. Housing elements are required to be revised on a cyclical basis. (*See id.* § 65588.)

43. Bay Area governments are now entering their sixth cycle of housing-element revisisons.

44. Each cycle, HCD "determine[s] the existing and projected need for housing in each region" in the State. (*Id.* §§ 65584, subd. (a)(1); 65584.01.)

45. HCD allocates this RHNA to a regional council of governments, as applicable. (*See id.* §§ 65584–65584.02.)

46. Each regional council of governments then distributes its RHNA among its local governments. (*See id.* §§ 65584.04–.05.)

47. With its share of the RHNA assigned, a locality must revise its housing element to "make adequate provision for the [housing] needs of all economic segments of the community." (*Id.* § 65583.)

48. Among other goals, the Legislature intends the RHNA system to improve the "balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction." (Gov. Code § 65584, subd. (d)(3).)

49. According to the Association of Bay Area Governments, there are more jobs in Sausalito than there are households. (Ass'n of Bay Area Gov'ts & Metro. Transp. Comm'n, J3

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Jobs-Housing Balance, https://abag.ca.gov/sites/default/files/factor_j3_jobs-housing_balance_v2.pdf.)

50. A jurisdiction's RHNA is the number of homes for which it must "identify adequate sites." (*Id.* § 65583; *see id*. subd. (a)(3) [requiring "inventory of land"]; § 65583.2 [detailed requirements]; Dep't of Hous. & Cmty. Dev., *Housing Element Site Inventory Guidebook* (2020), https://www.hcd.ca.gov/community-development/housing-element/docs/sites_inventory_memo_final06102020.pdf.)

51. Every locality must inventory, or else commit to rezone, enough land with capacity "to meet [its] housing need for [every] designated income level." (Gov. Code § 65583, subd. (a)(3).)

52. This inventory must meet detailed and justiciable statutory requirements. (*See id.* § 65583.2.)

53. Because adequate sites must "be available at all times throughout the . . . planning period," during which "land use decisions or development [can] result[] in a shortfall of sufficient sites to accommodate its remaining housing need," HCD recommends each jurisdiction "create a buffer in [its] housing element inventory of at least 15 to 30 percent more capacity than required, especially for capacity to accommodate the lower income RHNA." (Site Inventory Guidebook, above, at p. 22.)

54. Independent of its site-inventory requirements, the Housing Element Law also requires every city to "[a]ddress and, where appropriate and legally possible, remove governmental . . . constraints to the . . . development of housing, including housing for all income levels." (*Id.*, subd. (c)(3).)

55. The City's RHNA is 724 homes.

56. The City's lower-income RHNA is 315 lower-income homes.

2021–2023: The City's HEAC Plans the Project

57. The City knew about its January 31, 2023 project deadline years in advance. (See, e.g., Dep't of Hous. & Cmty. Dev., *Housing Element Update Schedule* (last updated Sept.

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23, 2022), https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/housing-element/6th-web-he-duedate.pdf [sixth cycle commenced in Calaveras County on June 15, 2019]; City of Sausalito, *Important Information Regarding Sausalito's 2015–2023 Housing Element Update* (Oct. 1, 2014), http://sausalito.granicus.com/MetaViewer.php?view_id=2&clip_id=175&meta_id=20983 [noting requirement to update housing element for 2015–2023 cycle starting January 31, 2015].)

58. The City's HEAC convened for the first time on October 21, 2021.

59. The HEAC consisted of two City councilmembers, two planning commissioners, five community members, and one alternate community member.

60. The HEAC worked with City staff and an outside consultant to plan the project.

61. On August 12, 2022, the City released a draft housing element for 40-day public comment and consideration as required by subdivision (b)(1) of Section 65585 of the Government Code.

62. The public comment draft claimed capacity for 508 lower-income homes.

63. The public comment draft noted that 320 of these 508 lower-income homes would depend on removing constraints associated with Ordinances 1022 and 1128.

64. Ordinance 1022, adopted by City voters in 1985, limits floor area ratios and densities in commercial and industrial zones.

65. Ordinance 1128, enacted by the City council in lieu of a voter initiative in 1997, limits the sale, lease, or other disposition of City-owned lands, as a constraint to the development of housing.

66. To address the constraints imposed by these voter-initiated ordinances, the public comment draft proposed to have the City fund an election to remove the constraints, advising voters that doing so is necessary to achieve the City's RHNA.

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67. Should this first election fail to remove these constraints, the public comment draft proposed to have the City engage the community to identify adequate sites that could achieve voter consensus, presumably in a second election, to legalize any still-needed housing.

68. Should a second election still fail to remove these constraints, the public comment draft proposed to have the City Council seek the Attorney General's opinion on "how to proceed."

69. On information and belief, no law would have prohibited the City from putting such remedial measures on its 2022 ballot.

70. The City put no such remedial measures on its 2022 ballot.

71. On information and belief, the City could have sought technical assistance from HCD advising that a new statutory requirement to "affirmatively further fair housing" (Gov. Code § 65583, subd. (c)(10)) preempts local laws impeding realization of a city's lower-income RHNA.

72. The City of Alameda sought (and received) such technical assistance.

73. On information and belief, the City of Sausalito sought no such technical assistance.

74. On September 16, 2022, Petitioner-Plaintiff wrote the City that its public comment draft wrongly prioritized "design" over "[p]roduction," needed a better plan for removing constraints associated with Ordinances 1022 and 1128, and failed to fund or legalize the boat homes that the public review draft identified as "a source of affordable housing." (See below ¶¶ 222–227 [showing State law constraints on liveaboard housing in Richardson Bay].)

75. On October 22, 2022, the City submitted a reconsidered draft housing element for 90-day HCD review as required by subdivision (b)(1) of Section 65585 of the Government Code.

76. The HCD review draft claimed capacity for 455 lower-income homes.

77. The HCD review draft still allocated 320 lower-income homes to sites that would depend on removing constraints associated with Ordinances 1022 and 1128.

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78. The HCD review draft listed "community opposition" as a constraint in response to Petitioner-Plaintiff's earlier comments (see above ¶ 74), but offered no new program to overcome such opposition.

79. Among other environmental concerns, the HCD review draft noted public comment that "[i]t is not good for the environment to prohibit housing here [in Sausalito] and require workers to commute in from Vallejo and Napa."

January 12: The City "Decouple[s]" the Project from CEQA

80. Before January 12, 2023, the City had maintained that it would meaningfully evaluate the project's potential for significant environmental impact. (See above ¶ 31.)

81. For the City's fifth revised housing element, the City prepared an Initial Study to determine with certainty whether that update would have a potential significant environmental impact.

82. The City's Initial Study for its fifth revised housing element resulted in the City's adoption of a Negative Declaration.

83. On information and belief, the City also prepared an Initial Study/Negative Declaration for its housing element updates prior to the 5th RHNA Cycle update.

84. On February 10, 2021, the City asserted in its general plan EIR that "[t]he Housing Element . . . will be evaluated in a separate CEQA document . . . no later than January 2023."

85. On January 19, 2022, the City published a project timeline planning a project EIR between March 2022 and January 2023.

86. On February 10, 2022, the City promised at a town hall meeting that a project EIR would be available "by October 2022" for "45-day public review."

87. In Appendix A of its HCD review draft on October 22, 2022, the City repeatedly responded to public comments raising environmental concerns by referring to the EIR that the City would prepare.

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88. The City filed a CEQA Notice of Preparation ("NOP") for the project on December 21, 2022. (*See* 14 Cal. Code Regs. § 15082, subd. (a).)

89. The NOP anticipated that the EIR would "analyze [the project's] potentially significant impacts" on "aesthetic[s]," "air quality," "biological resources," "historic, archaeological, and tribal cultural resources," "geological features," "greenhouse gas emissions," "hazardous material activities," "storm drainage, water quality, groundwater resources, and the potential for flooding," "land use plans," "noise," "population growth or displac[ement]," "public services," "transportation," "[u]tilities," and "wildfire-related risks."

90. The only environmental concerns for which the NOP identified substantial evidence of "no [project] impact" were "agriculture and forestry resources" and "mineral resources."

91. On January 3, 2023, the City conducted a "scoping meeting" for the project EIR. (14 Cal. Code Regs. § 15082, subd. (c)(1); *see also id.* § 15206, subd. (b)(1) [general plan elements typically "of statewide, regional, or areawide significance"].)

92. The City Council and Planning Commission heard an update on the project in a joint meeting on January 12, 2023.

93. The staff report for this meeting indicated that a project EIR would undergo public review in "March/April 2023."

94. The staff report scheduled the City to adopt the project, with an EIR, in "May/June 2023."

95. After hearing staff's presentation on January 12, the City Council directed staff to "decouple [the] EIR" from the project.

96. On information and belief, the City's motivation for "decoupl[ing]" the EIR from the project was to adopt the sixth revision of its housing element before the January 31 deadline.

97. A pending statutory deadline provides no excuse for violating CEQA. (*San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d

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61, 74 ["[t]he only reason we can infer for the [agency's] failure to consider and analyze this group of projects was that it was more expedient to ignore them. However, expediency should play no part in an agency's efforts to comply with CEQA"].)

98. The City Council convened a working group of two councilmembers to see the project to completion by January 31.

99. On January 23, 2023, the City withdrew its NOP.

January 25: The City Schemes to Beat Its Deadline

100. On January 25, 2023, the Planning Commission recommended the City remove capacity for dozens of lower-income homes from the project. (See above ¶ 32.)

101. More than one of these sites were removed despite the City's prior acknowledgment of owner interest in development.

102. Petitioner-Plaintiff's counsel commented at the January 25 hearing that the City should not remove housing capacity from its housing element.

103. Multiple commenters at the meeting addressed the City's need for more senior housing.

104. At least one commenter noted regret that sites with owner interest had been removed from the City's proposed site inventory.

105. At least one commenter noted that he had heard from multiple property owners, with listed sites, who had not been contacted by the City regarding the potential for development on those sites.

January 26: HCD Finds the Project Noncompliant

106. On January 26, 2023, HCD found that the City's HCD review draft would not substantially comply with the Housing Element Law. (Gov. Code § 65585, subd. (d); *see above* ¶ 33.)

107. HCD found that the City's draft needed to analyze the "environmental" impact of the City's "[a]ccess to [o]pportunity" and "substandard housing."

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108. HCD found that the City's draft needed to "demonstrate the availability of [listed sites for residential development] within the planning period" and "demonstrate the[ir] affordability."

109. HCD found that the City's draft needed to analyze "existing uses, incentives, and past experiences the City has in converting underutilized sites to higher density residential development."

110. HCD found that "the City should consider sites that have the greatest potential for development within the planning period including those with developer interest."

111. HCD found that the City's draft needed to "demonstrate existing uses are not an impediment to additional residential development and will likely discontinue in the planning period." (See Gov. Code § 65583.2, subd. (g)(2) ["An existing use shall be presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued during the planning period."].)

112. HCD found that the City's draft "identifie[d] several parcels" that violate statutory requirements for lower-income opportunity sites.

113. HCD found that the City's draft needed to "include additional discussion," including "any known conditions that preclude . . . development," on "each of the publicly-owned sites identified to accommodate the RHNA."

114. HCD found that the City's draft projected capacity for accessory dwelling unit ("ADU") production that was "inconsistent with HCD records."

115. HCD found that the City's draft needed to "analyze all relevant land use controls impacts as potential constraints on a variety of housing types" and "include programs to address identified constraints."

116. HCD found that the City's draft needed to "analyze [its design review procedures] for impacts on timing, cost, supply, and approval certainty and include programs to address identified constraints, as appropriate."

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117. HCD found that the City's draft "appears to exclude group homes . . . from most residential zones."

118. HCD found that the City's proposed home rehabilitation, condominium conversion, ADU, public property conversion, liveaboard housing, affordable housing development assistance, affordable housing partnerships, and homebuyer assistance programs "should be amended to include more specific and measurable actions."

119. HCD found that the City's draft "d[id] not include a complete site analysis" and would therefore still need "to address a shortfall of sites."

120. HCD found that the City's draft needed to "detail the steps and timeframes for initiating voter approval" to remove constraints associated with Ordinances 1022 and 1128.

121. HCD advised the City that certain State laws' preemptive effect on City ordinances "should not be considered a substitute for [re]zoning."

January 29: The City Publishes a Subsequent Draft

122. On the afternoon of January 29, 2023—a Sunday—the City published a subsequent draft housing element authored by a working group of the City Council. (See above ¶ 34.)

123. This working group draft presented "two options" to achieve the City's RHNA.

124. The first option, recommended by the planning commission, would claim capacity for 354 lower-income homes.

125. The second option, recommended by the working group, would claim capacity for 376 lower-income homes.

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126. The working group draft proposed allocating 28 lower-income homes to new site 302, an underwater patch of eelgrass offshore Dunphy Park:



127. Site 302, and its 28 lower-income homes that the City had not otherwise allocated, would become the subject of much debate at the City's adoption hearing the next day.

128. The working group draft further anticipated that 208 of its 354–378 lower-income homes would depend on removing constraints associated with Ordinances 1022 and 1128.

129. The working group draft proposed no new program to overcome community opposition. (*See above* ¶¶ 74–78.)

130. Without a definite plan for allocating its housing need, the working group draft demurred that "[t]hese numbers [see above ¶ 124–125] w[ould] be updated to reflect City Council direction from January 30, 2023."

January 30: The City Adopts a Different Draft

131. On January 30, 2023—after the working group draft had been available to the public for only one day—the City voted to adopt the sixth revision of its housing element. (*See above* ¶ 35.)

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132. This adoption vote took place after back-to-back hearings, in the same marathon evening session, of the Planning Commission and City Council.

133. These back-to-back hearings revealed rampant confusion among the public, the City staff, the Planning Commission, and the City Council as to what the City was voting to do.

134. The staff report contained the Planning Commission's written recommendations going into the January 30 meeting.

135. During the meeting, however, the Planning Commission substantially and orally amended its recommendations to the City Council.

136. On information and belief, the Planning Commission never made a final "written recommendation" to the City Council as required by Section 65354 of the Government Code.

137. For its part, the City Council fretted about the lack of a definite plan on the eve of adoption and repeatedly sought assurances from its outside consultant that the plan would be certified by HCD.

138. One City Councilmember noted concern about "sites that were added in the last seven days that people found out about at the last minute."

139. A professional real estate investment firm submitted written comment analyzing 12 sites in the City's plan, concluding that "NONE are feasible for development under current market conditions."

140. The real estate investment firm further commented that they were unable to "further refine th[eir] analysis" because the City's "draft was only published yesterday, which is not sufficient for adequate review."

141. Another written comment urged the City that the project "would seem to merit review in an Environmental Impact Report."

142. Petitioner-Plaintiff's counsel provided written and oral comment criticizing the City for rushing to adopt an uncertified housing element that had been available to the public

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for only one day, and about whose contents the Council was manifestly unsure. (Cf. Gov. Code § 65585, subd. (b)(1) [requiring subsequent drafts to be posted "at least seven days before submitting" to HCD].)

143. More than one commenter expressed interest in development on sites whose owners wanted to develop housing, but had nonetheless been removed from the City's inventory.

144. At least one commenter expressed that other listed sites' owners had not been contacted by the City, and did not plan to develop housing.

145. The City Council debated site 302—the underwater patch of eelgrass—at length, ultimately deciding not to include it in the final adopted housing element.

146. The City Council was unable, however, to finalize a plan for allocating the lower-income homes it needed to ensure an adequate buffer at all times between 2023–2031.

147. The City Council voted instead to delegate this task of allocation, after adoption, to staff.

148. The January 30 meeting minutes reflect that the Council "direct[ed] staff to add to its program, increasing opportunity for water-based housing including at Site 301 and elsewhere."

January 31: Legal Implications of Housing Element Deadline

149. On information and belief, the City's rush to adopt was motivated in part by a desire to avoid the Housing Element Law's so-called "builder's remedy." (*See* Gov. Code § 65589.5, subd. (d)(5).)

150. When applicable, the builder's remedy preempts "the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan." (*See ibid*.)

151. Specifically, the builder's remedy provides that a city "shall not disapprove a housing development project," meeting specified affordability requirements, if the city has not

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adopted a revised housing element in substantial compliance with the Housing Element Law (*id*., subds. (d)(5), (h)(3).)

152. The builder's remedy can thus be triggered by either nonadoption or noncompliance.

153. In practice, the condition of nonadoption is easier to ascertain than that of noncompliance.

154. From an affordable housing developer's perspective, a jurisdiction that has not adopted a revised housing element by its deadline is certainly subject to the builder's remedy.

155. in jurisdictions that have adopted a revised housing element, however, the builder's remedy is only available if the housing element does not substantially comply with the Housing Element Law.

156. Substantial compliance is a question of law. (*Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1191.)

157. In the sixth cycle, some local governments—including the City—have elected to follow a statutory procedure that authorizes the adoption of housing elements that may not be compliant.

158. Because substantial compliance is a question of law, affordable housing developers may need to litigate in order to use the builder's remedy in jurisdictions that adopt under this procedure.

159. The State assigned far higher RHNAs for the sixth cycle than it did for the fifth.

160. With these higher RHNAs in effect, HCD has rejected nearly every first draft housing element that Bay Area jurisdictions—including the City—submitted for the sixth cycle.

161. Jurisdictions whose draft housing elements are rejected by HCD face a choice under the Housing Element Law. (*See* Gov. Code § 65585, subd. (f).)

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162. Such jurisdictions may either "[c]hange the draft element" in response to HCD's written findings, or else "[a]dopt the draft element . . . without changes," including "written findings" in the latter instance contesting HCD's determination of noncompliance. (Ibid.)

163. Petitioner-Plaintiff's counsel informed the City at its January 30 hearing that many of its peer jurisdictions chose not to rush to adopt in response to HCD's determinations of noncompliance.

164. Albany, Brentwood, Brisbane, Calistoga, Campbell, Concord, Corte Madera, Dixon, East Palo Alto, El Cerrito, Foster City, Gilroy, Hayward, Hercules, Hillsborough, Livermore, Mountain View, Mill Valley, Millbrae, Oakley, Petaluma, Portola Valley, San Jose, San Pablo, Santa Rosa, Saratoga, St. Helena, Suisun City, Sunnyvale, Tiburon, Union City, Vacaville, Yountville, Windsor, and Woodside all declined to adopt their rejected draft housing elements before January 31.

165. These 35 jurisdictions thus tacitly signaled to developers that they would allow by-right affordable housing under the builder's remedy.

166. In addition to these 35 jurisdictions, Redwood City—whose draft HCD certified—chose not to adopt its housing element before the January 31 deadline.

167. An additional 33 Bay Area jurisdictions failed to submit a draft housing element to HCD 90 days before January 31, legally preventing them from adopting a revised housing element before the deadline. (*See* Gov. Code § 65585, subd. (b)(1).)

168. All told, the majority of Bay Area jurisdictions accepted that the builder's remedy would apply in their territory.

169. Multiple written comments submitted for the January 30 meeting warned the City that "[p]remature adoption of the Housing Element will not protect Sausalito from the Builder's Remedy."

170. By adopting an uncertified housing element, however, the City of Sausalito ensured that litigation would be necessary for an affordable housing developer to rely on the builder's remedy there.

171. Finally, regarding CEQA: a housing development project's reliance on the builder's remedy does not, by itself, excuse the project from complying with CEQA. (*Id.*, subd. (e).)

February 1: The City Declares the Project Exempt from CEQA

172. The City filed its NOE with the Marin County Clerk on February 1, 2023. (*See* Pub. Resources Code § 21152, subd. (b); above ¶ 36.)

173. On information and belief, the City never posted this NOE to its website. (Contra Pub. Resources Code § 21092.2.)

174. In declaring the project exempt from CEQA, the City primarily relied on the CEQA Guidelines' "common sense exemption." (14 Cal. Code Regs. § 15061, subd. (b)(3).)

175. To qualify for this exemption, "it [must] be seen with certainty that there is no possibility that the [project] . . . may have a significant effect on the environment." (Ibid. [italics added].)

176. The NOE does not claim to be "certain[]" there is "no possibility" that the project may have a significant effect on the environment, including any cumulative and growth-inducing impacts.

177. The NOE cites no evidence that the City considered whether or how the project may have a significant impact on the environment.

178. Instead, the NOE asserts "there is no substantial evidence that the [project] may have a significant effect on the environment," which is the wrong standard for the common sense exemption.

179. Alternatively, the NOE invokes a statutory CEQA exemption applicable to "regional housing needs determinations made by [HCD], a council of governments, or a city." (14 Cal. Code Regs. § 15283 [italics added]; *see* Gov. Code § 65584, subd. (g).)

180. The project is a revision to a housing element, not a regional housing needs determination.

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181. The regional housing needs determination for the City occurred before the project, when the City was assigned its RHNA of 724 homes including 315 lower-income homes.

182. In fact, the City administratively appealed this regional housing needs determination to the Association of Bay Area Governments before commencing the project of revising its housing element. (*See* City of Sausalito, *6th Cycle Regional Housing Needs Allocation (RHNA) Appeal* (July 9, 2021), https://www.sausalito.gov/home/showpublisheddocument/30378/637619458956000000.)

183. In connection with its administrative appeal, the City cited "significant physical and environmental barriers to housing production" that the City contended would "render [its] allocation unrealistic, particularly in the creation of housing." (City of Sausalito, *City Appeals Regional Housing Allocation* (July 16, 2021), https://www.sausalito.gov/Home/Components/News/News/5794/457.)

184. Specifically, the City contended in its administrative appeal that "the City c[ould] realistically accommodate 123 units during the 6th Cycle," and that any allocation "higher [than 306 units through 2050] represents unrealistic assumptions that do not meet the methodology standards of [the Housing Element Law]," including factors such as "the availability of land suitable for urban development or for conversion to residential use." (RHNA Appeal, above, at p.34.)

185. The Association of Bay Area Governments denied the City's administrative appeal, along with those of every other Bay Area jurisdiction except for Contra Costa County. (See Ass'n of Bay Area Gov'ts, *2023–2031 RHNA Appeals Process* (last updated Dec. 17, 2021), https://abag.ca.gov/our-work/housing/rhna-regional-housing-needs-allocation/2023-2031-rhna-appeals-process.)

186. The Association's denial of the City's administrative appeal was not judicially reviewable. (*See City of Coronado v. San Diego Ass'n of Gov'ts* (2022) 80 Cal.App.5th 21; *City of Irvine v. S. Cal. Ass'n of Gov'ts* (2009) 175 Cal.App.4th 506.)

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187. By its own text, the City's adopted housing element continues to distinguish itself from the City's regional housing needs determination, contending that "ABAG's 6th Cycle RHNA neglected to review [City]-specific conditions and constraints" on development. (Program 30, at p.HP-44.)

188. The City may therefore not rely on the regional housing needs determination exemption to exempt the housing element from CEQA.

189. Finally, the NOE invokes a statutory CEQA exemption applicable to "feasibility or planning studies for possible future actions." (14 Cal. Code Regs. § 15262; see Pub. Resources Code § 21150.)

190. This feasibility-studies exemption "does not apply to the adoption of a plan that will have a legally binding effect on later activities." (14 Cal. Code Regs § 15262.)

191. Among other legally binding effects, the project will, by law, prohibit the city from "disapprov[ing] or conditionally approv[ing] a housing development project" on sites that the project identifies as "suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element." (Gov. Code § 65589.5, subd. (d)(5)(A).)

192. The project will also, by law, commit the City to rezone enough sites to accommodate its regional housing need. (*See id*. § 65583, subd. (c)(1)(A).)

193. The actions described in paragraphs 191–192 are reasonably foreseeable.

194. On information and belief, the project will have other "legally binding effect[s]." (14 Cal. Code Regs. § 15262.)

195. If the City were correct that the project has no "legally binding effect" *(ibid*.), then the project would evade the Housing Element Law's purpose of requiring cities to "make adequate provision for the housing needs of all economic segments of the community." (Gov. Code § 65580, subd. (d).)

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196. In claiming that the project is exempt, the City's NOE defers all "appropriate CEQA analysis" for "project-level review" of "future programs" and "future development projects."

197. Such deferment will preclude "tiering" under CEQA. (*See* 14 Cal. Code Regs. § 15152.)

February 27: The City Submits the Project to HCD

198. Despite voting to adopt the sixth revision of its housing element on January 30, the City did not publish its adopted housing element in writing for several more weeks.

199. On information and belief, the City Council did not have a written housing element on January 30 when it voted to adopt. (See above ¶¶ 146–148.)

200. According to HCD's website, the City submitted the sixth revision of its housing element for review on February 27, 2023.

201. On information and belief, the City posted the written, adopted housing element to its website for the first time during the week of February 27.

202. The adopted housing element claims capacity for 391 lower-income homes.

203. The adopted housing element still allocates some 194 lower-income homes to sites that would depend on removing constraints associated with Ordinances 1022 and 1128.

204. The City's adopted housing element also allocates lower-income housing to several sites that public commenters had identified as unrealistic for development between 2023–2031.

205. Site 72, at 2656 Bridgeway, was allocated 46 lower-income homes despite a real estate investment firm's comment that the site has a "-$10.0M residual land value."

206. The real estate investment firm further commented that site 72 was "not [developable] at existing densities," that its owner "ha[d] requested 20% affordable" (lower than the City's allocation), and that "50% affordable" (still lower than the City's allocation) "does not pencil."

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207. Site 73, at 636 Nevada, was allocated 23 lower-income homes despite the real estate investment firm's comment that the site has a "-$10.7M residual land value."

208. The real estate investment firm further commented that site 73 is on school premises, that the proposed "densities and levels of affordability do not pencil," that the school board may not have voted to allow development, that development on school land is "likely subject to increased union labor cost," that the site is "adjacent to school utilities," and that maintaining parking there "likely means a more expensive Type 5 [construction] over Type 1."

209. Site 75, on Tomales Street, was allocated 27 lower-income homes despite the real estate investment firm's comment that the site has a "-$6.9M residual land value."

210. The real estate investment firm further commented that site 75 is the "City Corp Yard," raising questions about where the corporation yard would go, that "[s]taff are severely constrained," that the site had "environmental . . . concern[s], [as] corp yards often have some degree of contamination," and that the site "[m]ay need to be cleaned up" in order to develop.

211. Site 84, at 100 Ebbtide, was allocated 74 lower-income homes despite the real estate investment firm's comment that the site has a "-$35.2M residual land value."

212. The real estate investment firm further commented that site 84 was a school site, raising questions about where the residential units would go, that the site was "largely constrained due to it[]s existing uses," that the City had a "structural deficit" that would render financing difficult, and that the site was "over 10 acres" in violation of a statutory limit on the size of lower-income opportunity sites.

213. The City writes about its "structural deficit" in the March 3, 2023 issue of its newsletter Sausalito Currents, the same issue in which it noted submission of its housing element to HCD.

214. Site 85, a CalTrans right-of-way that the adopted housing element describes as "not a parcel," was allocated 21 lower-income homes despite the real estate investment firm's comment that the site has a "-$6.8M residual land value."

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215. The real estate investment firm further commented that site 85 was a state site that "requires disposition," and questioned whether the State had "said they will develop."

216. Site 86, at 330 Ebbtide, was allocated 23 lower-income homes despite the real estate investment firm's comment that the site has a "-$8.5M residual land value."

217. The real estate investment firm further commented that site 86 was on a "[s]teep" hillside, that it had "[e]xisting single family homes," that it had "[l]imited [a]ccess from [B]ridgeway – no turn off," and "limited space for required parking."

218. Site 201, at 611 Bridgeway, was allocated 17 lower-income homes despite the real estate investment firm's comment that the site has a "-$5.6M residual land value."

219. The real estate investment firm further commented that site 201 was a small site whose "[u]nit yield and mix doesn't make sense."

220. Site 202, at 125 Bulkley, was allocated 57 lower-income homes despite the real estate investment firm's comment that the site has a "-$14.4M residual land value."

221. The real estate investment firm further commented that site 202 would require "[a]ssemblage in the middle of multi million dollar single family homes," that the "[e]xisting uses are viable – [u]nlikely to develop," that it was encumbered by "[e]xisting leases [un]til 2028," and that it had a "[h]uge negative land value."

222. Site 301, in the marina, was allocated 30 lower-income homes despite comments in the record that "[h]ouseboats are prohibited by established BCDC [Bay Area Conservation and Development Commission] policy."

223. Under Recreation Policy 3c of BCDC's San Francisco Bay Plan, liveaboard boat homes are allowed in recreational marinas "only if . . . [t]he number would not exceed ten percent of the total authorized boat berths" in the marina. (S.F. Bay Conserv. & Dev. Comm'n, *San Francisco Bay Plan, Recreation Policy 3c*, https://www.bcdc.ca.gov/plans/sfbay_plan.html; *see* Gov. Code §§ 66600 et seq. [McAteer-Petris Act, governing BCDC].)

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224. Under Other Uses Policy 4 of this same plan, "existing law" imposes stringent requirements before BCDC can "allow new houseboat marinas." (Id., Other Uses of the Bay and Shoreline Policy 4.)

225. On information and belief, the marina is a recreational marina, not a houseboat marina.

226. On information and belief, existing liveaboard boat homes in the marina account for almost all of the marina berths, in violation of BCDC policy.

227. On information and belief, the City is unlikely to satisfy BCDC that it can legally accommodate 30 new lower-income homes in the marina.

228. On information and belief, all of the just-described sites (above ¶¶ 204–227) lack "realistic and demonstrated potential for redevelopment during the planning period." (Gov. Code § 65583, subd. (a)(3).)

229. Regarding the City's obligation to remove constraints "where appropriate and legally possible," Program 4 in the adopted housing element continues to depend on two successive elections to remove the constraints followed by a request for an opinion from the "State Attorney General's Office as to [the] City's options." (*See above* ¶¶ 64–74, 78.)

230. As written, Program 4 proposes to initiate both the second election and the request for an Attorney General Opinion before the first election to remove the constraints will be conducted.

April 25: The City Submits a Revised Housing Element

231. Due to the rush to adopt a Housing Element, the City Council's resolution authorized the Economic and Community Development Director in coordination with the City Council Working Group to make modifications to address HCD comments without Council approval, so long as the modifications would not exceed the total amount of development accommodated by the adopted Housing Element and would not result in new actions that would require a General Fund commitment of $75,000 or greater.

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232. On April 25, 2023, a new version of the Housing Element was submitted to HCD.

233. On information and belief, these modifications were not disclosed to the public before the revised Housing Element was submitted to HCD.

234. The revised Housing Element included modifications that committed the City to meet quarterly with Sausalito Marin City School District ("SMCSD"), provide incentives for development, and assist SMCSD in the planning and application process to make Site 73 available for affordable housing.

235. The revised Housing Element also stated that if SMCSD did not make a commitment to make the site available for affordable housing by March 2025, the City committed to identify a replacement site.

236. Site 73 was allocated 27 units, including 15 very-low-income and 8 low-income units.

237. The revised Housing Element included modifications that committed the City to meet quarterly with Caltrans to identify the process to declare Site 85 as excess land and to initiate the disposition process, provide incentives for development, assist Caltrans in the planning and application process to dispose of Site 85, and to coordinate with affordable and special needs housing developers regarding acquisition of the site, identifying assistance available from the City for development and funding of housing.

238. The revised Housing Element also stated that if Caltrans did not make a commitment to make the site available for affordable housing by January 2026, the City committed to identify a replacement site and rezone the site by January 2026.

236. Site 85 was allocated 25 units, including 14 very-low-income and 7 low-income units.

237. On information and belief, the modifications were never adopted by the City Council.

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238. On information and belief, the Economic and Community Development Director has never disclosed the amount of General Fund commitment required for the City to meet quarterly with two different agencies, provide planning and application assistance, provide financial incentives, expedite the disposition process, coordinate with affordable and special needs housing developers, and identify and rezone alternative sites.

239. On information and belief, the Economic and Community Development Director has never disclosed why these modifications were made, or whether HCD informed the City that HCD believed these modifications were necessary for Housing Element compliance.

April 26: HCD Certifies the Revised Housing Element

240. Just three days after the Economic and Community Development Director submitted the never-before-seen modified Housing Element, HCD sent a letter stating that its review of the modified Housing Element was "facilitated by conversations on April 21, 2023, and April 25, 2023, with you, [City Attorney] Sergio Rudin, and [Planning Consultant] Beth Thompson."

241. The conversations between HCD and City staff were not public, and the substance of these conversations has not been disclosed.

242. HCD's letter found that the modified Housing Element was in substantial compliance with the Housing Element Law.

243. HCD's letter, however, explained that HCD did not count the anticipated capacity from new liveaboard berths in its review of whether the Housing Element identified adequate sites. HCD explained that because new liveaboard berths required the City "to work with BCDC to expand berth capacity," HCD described these sites as "aspirational" and therefore discounted these sites from the sites inventory.

244. HCD did not explain why Sites 73 and 85, both of which require the City to work with outside agencies toward making the sites available for housing (tacitly

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acknowledging that the sites are not *currently* available for housing), were not similarly discounted from the site inventory as "aspirational."

245. HCD also did not explain why the parcels that were subject to a vote of the electorate, which are not currently available for housing and make up nearly half of the City's anticipated housing capacity, were not similarly discounted from the site inventory as "aspirational."

246. Although HCD did not provide a thorough explanation of its reasoning, on information and belief, HCD rejected utilizing expanded berths that required BCDC approval toward its determination of whether the Housing Element identified adequate sites to meet its RHNA because the Housing Element requires that sites "be available *at all times* throughout the housing planning period . . . ." (Gov. Code § 65584.08.)

247. If the expanded berths cannot be counted towards the site inventory because those sites are "aspirational" and not presently available, Sites 73 and 85, in addition to all sites subject to a vote of the electorate, also cannot be counted towards the City's site inventory.

248. HCD's letter also did not address the public comments and substantial evidence in the record demonstrating that many other sites had negative residential land value and are therefore not realistic sites for housing.

249. HCD's letter also acknowledged that it has "received public comments expressing concern about sites and the timing of the housing element adoption in relation to public noticing and outreach." HCD noted that its review was limited to determining substantial compliance with the Housing Element Law, and "HCD expresses no opinion as to whether the City has complied with, or is excused from, any other provisions of the Government Code governing the preparation, adoption, and amendment of the City's general plan."

January 25, 2024: The City Publishes a Draft EIR

250. Almost one year after the Housing Element was adopted, the City released a Draft EIR to evaluate "Housing Element programs . . . whose implementation could result in a

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physical change to the environment . . . .” (City of Sausalito, *Housing Elements Program EIR*, p. ES-4, available at https://www.sausalito.gov/home/showpublisheddocument/33030/638400618572070000.)

251. Among the four programs the Draft EIR identified as potentially having a physical change to the environment was the rezoning to accommodate RHNA in Program 4, as well as Program 19, which the Draft EIR stated “would result in the development and publication of Objective Design and Development Standards (ODDS) to address multifamily development at densities envisioned by the General Plan, Zoning Code, and Program 4.” (*Id*.)

252. The Draft EIR further explained that “[t]o implement the first bullet of Program 19, the City would adopt ODDS to address proposed multifamily residential *on the opportunity sites at densities envisioned by the General Plan, the Zoning Ordinance, and Program 4.*” (*Id*. p. ES-8.)

253. The City’s Housing Element committed the City to completing Program 19 by January 2024, the same time the City’s Draft EIR was published to evaluate the potential environmental effects of implementing Program 19. Four months after the Draft EIR was released, the City has yet to adopt or take any action on the Draft EIR.

April 5, 2024: HCD Sends the City a Letter of Technical Assistance

254. On April 4, 2024, HCD sent a letter of technical assistance to the City. Among other things, the letter stated that “the City must timely and effectively implement all programs, including Program 19. HCD is aware that the City has yet to adopt and implement this program.”

255. HCD’s letter explained that “Housing Element Program 19 (Development Review Procedures) commits the City to adopt ODDS that would accommodate the maximum densities proposed to meet its RHNA and streamline the approval process for housing developments.” This is precisely how the City’s Draft EIR described the implementation of Program 19.

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256. HCD's letter requested that the City provide a written response by May 6, 2024, including a specific timeline with public hearing dates to implement Program 19.

257. HCD's letter also warned the City that a failure to implement Housing Element programs is a violation of state law that could result in decertification of the Housing Element.

May 9, 2024: The City Responds to HCD's Letter of Technical Assistance

258. In response to HCD's letter, the City completely reversed course on the requirements of Program 19.

259. Despite the Draft EIR acknowledging that implementing Program 19 could have environmental effects because the program required the City to adopt ODDS for "the opportunity sites at densities envisioned by the General Plan, the Zoning Ordinance, and Program 4," the City's response now stated that Program 19 does not require the City to adopt anything at all.

260. The City's response stated that it had *already* accomplished Program 19 when "the City adopted Resolution No. 6059 on July 13th, 2021, identifying existing objective standards contained within existing zoning codes that are generally applicable throughout the jurisdiction." In other words, the City's new theory was that Program 19 only committed the City to identify existing standards, not create new ones to accommodate more housing, and the City had already completed Program 19 eighteen months *before* the Housing Element was even adopted.

261. Said another way, the City's position is that Program 19 required the City to do nothing (despite the fact that the City also believed that implementing Program 19 could have environmental effects).

Environmental Consequences of Displaced Development

262. Today, some 8 million people live and work in the Bay Area.

263. San Francisco has been an urban center for 175 years.

264. Having survived for so long, San Francisco is very likely to remain an urban center.

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265. California courts have recognized "displaced development" as a potential environmental impact of failing to plan for housing in urban centers.

266. When urban centers don't allow enough homes for their workforce, then workers must either quit or else demand sprawl. (*See above* ¶ 79.)

267. Sausalito is nearer to San Francisco's Civic Center than is South San Francisco.

268. With such close proximity to an established urban center, Sausalito is an environmentally sensible place for people to live and work.

269. Additionally, Sausalito itself has "an imbalance between jobs and housing." (*See* Gov. Code § 65584.1, subd. (b)(1)(G); *above* ¶ 49.)

270. This imbalance between jobs and housing forces Sausalito's workers to commute from afar, rather than live in Sausalito where they can travel to where they live, work, and play with minimal greenhouse gas emissions. (*See above* ¶ 79.)

271. Failing to plan for housing in Sausalito is thus planning for sprawl and other growth-inducing impacts to the Bay Area.

BENEFICIAL INTEREST

272. Yes In My Back Yard litigates for housing through its project YIMBY Law, whose mission is to end the housing shortage and achieve affordable, sustainable, and equitable housing for all.

273. "The availability of housing is of vital statewide importance" (§ 65580, subd. (a).)

274. The Legislature has declared that the City has a "responsibility" to "make adequate provision for the housing needs of all economic segments of the community." (*Id*., subd. (d).)

275. Legalizing "the development of housing" is "essential" to achieving this goal. (*Id*., subd. (f).)

276. The Legislature intends that housing elements "move toward" this goal. (§ 65581, subd. (b).)

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277. Yes In My Back Yard also has a beneficial interest in ensuring the City's compliance with CEQA by studying the potential environmental effects of a project before its execution.

278. More housing in—and less sprawl around—Sausalito will benefit the public at large.

279. The writ of mandate is sought in this action to enforce the City's public duties.

FIRST CAUSE OF ACTION

California Environmental Quality Act – Against All Respondents-Defendants

(Pub. Res. Code §§ 21167, 21168; Code Civ. Proc. §§ 1085, 1094.5)

280. Yes In My Back Yard incorporates and realleges all of the foregoing paragraphs.

281. CEQA, enacted in 1970, is a statewide law intended to inform government decisionmakers and the public about the potential environmental effects of projects and to prevent significant, avoidable environmental damage resulting therefrom.

282. CEQA prohibits public agencies from approving public or private projects that may have adverse environmental effects without first undergoing environmental review and avoiding or reducing the significant environmental effects of those projects whenever feasible.

283. A "project" under CEQA is "the whole of an action" directly undertaken, supported, or authorized by a public agency "which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Pub. Resources Code § 21065; 14 Cal. Code Regs. ("CEQA Guidelines") §§ 15378(a), 15064(d).)

284. CEQA requires that environmental factors be considered at the earliest possible stage, before the project gains irreversible momentum and "at a point in the planning process where genuine flexibility remains." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 282.)

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285. CEQA and its informational requirements are designed to ensure that the lead agency identifies all potentially significant environmental impacts of a proposed project, adequately discloses those impacts to the public, and implements all feasible alternatives or mitigation measures necessary to avoid or substantially lessen those impacts. (Pub. Resources Code, §§ 21002, 21100; CEQA Guidelines §§ 15126.6, 15370.)

286. The lead agency must also evaluate any impacts of the project that may be "cumulatively considerable," and address the project's incremental effects when combined with the effects of past, current, and probable future projects. (CEQA Guidelines §§ 15064(h)(1), 15130(a), 15355.)

287. Conversely, CEQA forbids piecemealing—i.e., "chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396.)

288. Noncompliance with the requirements outlined above constitutes a prejudicial abuse of discretion under Public Resources Code §§ 21168 and 21168.5, regardless of whether a different outcome would have resulted if the lead agency had complied with those requirements in the first place. (Pub. Resources Code § 21005.) Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the agency's determination or decision is not supported by substantial evidence in the administrative record. (Pub. Resources Code §§ 21168, 21168.5.)

289. The City had a mandatory duty to comply with CEQA prior to adopting its sixth revised housing element. In adopting its sixth revised housing element without meaningful CEQA review, and instead relying on its bald assertions that its actions are exempt from CEQA review, the City engaged in a prejudicial abuse of discretion and failed to proceed in the manner required by law under CEQA. (*See above* ¶¶ 79–99, 172–195, 231–240.)

290. Yes In My Back Yard participated in the administrative proceedings culminating in the City's adoption of its sixth revised housing element on January 30, 2023.

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291. Interested parties submitted timely written and/or oral comments on the CEQA issues raised in this Petition, including that none of the three CEQA exemptions being relied on by the City applied to the City's adoption of its sixth revised housing element.

292. The issues raised here were properly exhausted administratively, even though the public was not provided an opportunity to object meaningfully given the City's sudden abandonment of its promised EIR for the sixth revised housing element.

293. Prior to filing this petition, Yes In My Back Yard served the City with its notice of intent to commence CEQA proceedings in connection with the City's adoption of its sixth revised housing element. By serving that notice, Yes In My Back Yard has complied with Section 21167.5 of the Public Resources Code.

294. Yes In My Back Yard will serve a copy of this petition on the California Attorney General as required by law.

295. Yes In My Back Yard has no plain, speedy or adequate remedy available in the ordinary course of law to redress, at a minimum, the CEQA claims alleged herein because Yes In My Back Yard, and the public, will be irreparably harmed by the City's violations of CEQA and the potentially ensuing environmental damage.

296. Yes In My Back Yard is thus entitled to a writ of mandate.

SECOND CAUSE OF ACTION

Housing Element Law – Against All Respondents-Defendants

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

297. Yes In My Back Yard incorporates and realleges all of the foregoing paragraphs.

298. Cities have a mandatory duty to implement the programs in their Housing Element. Gov. Code § 65583(h) provides that an action to enforce the program actions in the Housing Element shall be brought pursuant to § 1085 of the Code of Civil Procedure. Section 65587 of the Government Code, subdivision (b), provides that "any interested party" may bring an action "to review the [City's] conformity with the [Housing Element Law]."

299. Yes In My Back Yard is "an[] interested party" under the Housing Element Law. (*Ibid*.)

300. Section 65587, together with Section 65751, provides that such an action "shall be brought pursuant to Section 1085 of the Code of Civil Procedure." (*Ibid*.)

301. "[I]f the court" in such a proceeding enters "final judgment in favor of the . . . petitioner," then the locality must "bring its . . . [housing] element . . . into compliance . . . within 120 days." (Gov. Code § 65754.)

302. "The court shall include" in such a judgment "one or more" additional specified provisions, including suspension of nonresidential building permits and mandatory approval of residential building permits, "until the [locality] has substantially complied." (*Id*. § 65755, subds. (a)(1), (a)(4).)

303. "[T]he court may, upon a showing of probable success on the merits, grant the relief provided in Section 65755 as temporary relief." (*Id.* § 65757.)

304. "Notwithstanding . . . Section 65585," a locality subject to a writ of mandate must submit a draft revision of its housing element to HCD "at least 45 days prior to . . . adoption." (*Id*., subd. (a).)

305. The locality must then conform its zoning ordinance within 120 days of adoption. (*Id.*, subd. (b).)

306. "In any action" to compel compliance with subdivisions (c)(1) or (c)(3) of Section 65583 of the Government Code, "the city . . . shall bear the burden of proof." (*Id*. § 65587, subd. (d)(2).)

307. Here, the City's adopted housing element allocates over 50 percent of its lower-income housing need to nonvacant sites.

308. The Housing Element Law disfavors "nonvacant sites." (*See* Gov. Code § 65583.2, subds. (b)(3), (g).)

309. Localities must explain why they have listed "each [nonvacant] site," and consider "existing uses," the locality's "past experience with converting [such] uses to higher

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density residential development," "market demand for the existing use," "existing leases or other contracts that would perpetuate the existing use or prevent . . . additional residential development," and other factors. (*Id*., subd. (g)(1).)

310. When a locality designates "50 percent or more" of its lower-income RHNA to nonvacant sites, the existing use is "presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued" in the next eight years. (*Id*., subd. (g)(2).)

311. A housing element's failure to demonstrate "realistic development capacity" for the locality's lower-income RHNA renders the draft noncompliant. (*Id*., subd. (c)(2); *see* § 65583, subd. (a)(3).)

312. Here, the City has failed to demonstrate realistic development capacity for its lower-income need allocation. (*See above* ¶¶ 100–228.) To the degree that HCD found that the City's Housing Element did demonstrate realistic capacity, those findings were erroneous, lacked any evidentiary support, and are contrary to law. (*See above* ¶¶ 100–228.)

313. The City has also failed to remove its constraints on the development of housing as required by subdivision (c)(3) of Section 65583 of the Government Code.

314. Yes In My Back Yard has no available administrative remedies.

315. Yes In My Back Yard has no plain, speedy, or adequate remedy in the ordinary course of law, other than those sought herein.

316. Yes In My Back Yard is thus entitled to a writ of mandate.

THIRD CAUSE OF ACTION

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

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

317. Yes In My Back Yard incorporates and realleges all of the foregoing paragraphs.

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318. Any person can bring an action to compel the compliance with the deadlines and requirements of Government Code § 65583(c)(1)(2) and (3). (Gov. Code § 65587(d)(2).) If such an action is brought, the City has the burden of proof. (*Id*.)

319. Gov. Code § 65583 (c) requires each Housing Element to include a program with a schedule of actions, each with a timeline for implementation that the local government will undertake to implement the goals and objectives of the Housing Element and that will result in beneficial impacts of the programs in the planning period.

320. The City has failed to implement Housing Element Program 19, which according to the City's own statement requires the City to "adopt ODDS to address proposed multifamily residential on the opportunity sites at densities envisioned by the General Plan, the Zoning Ordinance, and Program 4." (Housing Element Implementation Draft EIR, p. ES-8.)

321. The City committed to implementing Program 19 by November 2023, but thus far has failed to do so.

322. Yes In My Back Yard is directly and beneficially interested in having respondents comply with all applicable provisions of law and their legal duties, as set forth herein.

323. Respondents have a mandatory duty to comply with Housing Element Law and implement the programs in their Housing Element. Respondents have had the ability to perform the duties set forth herein at all times relevant to this action, and they have failed and refused to perform their legal duties. Respondents have acted arbitrarily and capriciously in refusing to carry out or discharge their mandatory duties.

324. Unless compelled by this Court to perform those duties, and to refrain from acts as required by law, Respondents have indicated that the City will continue to refuse said duties and continue to violate the law, and Yes In My Back Yard and others will be injured as a result.

325. Yes In My Back Yard has no plain, speedy, or adequate remedy, other than the relief sought herein.

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FOURTH CAUSE OF ACTION

Failure to Proceed in a Manner Required By Law – Against All Respondents-Defendants

(Gov. Code § 6530 et seq., Gov. Code § 65585; Code Civ. Proc. §§ 1094.5 and/or § 1085)

326. Yes In My Back Yard incorporates and realleges all of the foregoing paragraphs.

327. Gov. Code § 6530 et seq. requires that cities "prepare, adopt, and amend general plans and elements of those general plans in the manner provided in this article."

328. Among other requirements, a city planning commission must hold at least one public hearing before approving a recommendation on the amendment of a general plan and must provide public notice a minimum of ten days prior to the hearing. (Gov. Code § 65353.) The public notice must provide a description, "in text or by diagram, of the location of the real property, if any, that is the subject of the hearing." (Gov. Code § 65094.)

329. A planning commission must then make a written recommendation on the amendment of a general plan. (Gov. Code § 65353.) The law specifically allows planning commission hearings on proposed zoning ordinances and amendments to be held at the same time as hearings on general plan amendments. (*Id.*)

330. A city's legislative body must then "approve, modify, or disapprove the recommendation of the planning commission," though "any substantial modification proposed by the legislative body not previously considered by the commission during its hearings, shall first be referred to the planning commission for its recommendation." (Gov. Code § 65356.)

331. In addition to these requirements, the Housing Element Law provides more specific procedures for the adoption of Housing Element amendments. Specifically, the Housing Element Law requires the local government to post "draft revisions" on its website and email a link to all interested parties "at least seven days before submitting the draft revision to [HCD]." (Gov. Code § 65585(b).)

332. The Housing Element Law also states that "[p]rior to the adoption of its draft element or draft amendment, the legislative body shall consider the findings made by [HCD]." (Gov. Code § 65585(e).)

333. The Housing Element Law only provides two options for a local government if HCD finds a draft does not substantially comply with the law: "(1) Change the *draft* element or *draft* amendment to substantially comply with this article. 2) Adopt the draft element or draft amendment without changes." (Gov. Code § 65585(f).)

334. The City failed to proceed in a manner required by law because the Planning Commission did not hold a public hearing and make a written recommendation on the Housing Element *before* the City Council held a hearing to adopt the Housing Element.

335. In addition, the Housing Element was substantially modified by the Planning Commission and City Council at a joint hearing, and the law requires that the Planning Commission consider substantial modifications at a new noticed public hearing.

336. The City also failed to consider HCD's findings prior to adopting the draft Housing Element (published just three days prior to the hearing where the draft was adopted), including because the draft was *never submitted to HCD for review* prior to adoption.

337. The City's public notice was also inadequate to apprise the public of the location of the real property that was the subject of the hearing, including because the draft identifying the properties that would be rezoned was not released until three days before the hearing and the effected properties were substantially modified at the hearing itself.

338. City staff also administratively modified the Housing Element *after* it was adopted. The modifications were made on the same day the modified Housing Element was submitted to HCD. The public was not apprised of these modifications, and these modifications were never adopted by the City Council.

339. Although the City describes these modifications as "minor," the modifications were made as a result of closed-door meetings between City staff and HCD staff regarding whether the City's Housing Element complied with state law. On information and belief, these

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modifications were significant enough that both parties believed the modifications were necessary to comply with state law.

340. The City's adoption process deprived interested members of the public, including Yes In My Back Yard, of a meaningful opportunity to participate in the Housing Element adoption process.

341. Yes In My Back Yard has no available administrative remedies.

342. Yes In My Back Yard has no plain, speedy, or adequate remedy in the ordinary course of law, other than those sought herein.

343. Yes In My Back Yard is thus entitled to a writ of mandate.

FIFTH CAUSE OF ACTION

Declaratory Relief – Against All Respondents-Defendants

(Code Civ. Proc. § 1060)

344. Yes In My Back Yard incorporates and realleges all of the foregoing paragraphs.

345. An actual controversy has arisen and now exists between Petitioner-Plaintiff and Respondents-Defendants concerning their respective rights and duties under CEQA and the Housing Element Law.

346. Respondent-Defendant City has contended, in its Notice of Exemption, that its project—adopting its sixth revised housing element—is exempt from CEQA.

347. Petitioner-Plaintiff Yes In My Back Yard disputes this contention, and contends instead that the City must conduct meaningful environmental review under CEQA before adopting the project, and that the project must be set aside while such meaningful environmental review is completed.

348. Respondent-Defendant City has further contended, in its adopting resolution and elsewhere, that its adopted housing element substantially complies with the Housing Element Law.

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349. Petitioner-Plaintiff disputes this contention, and contends instead that the City's adopted housing element fails to make adequate provision for the housing needs of all economic segments of the community.

350. Petitioner-Plaintiff further contends, if the City cannot make adequate provision for its housing needs with Ordinances 1022 and 1128 in effect, that those ordinances are preempted.

351. Petitioner-Plaintiff is further informed and believes that HCD, as the State agency responsible for administering the Housing Element Law, has found that the City's prior draft housing element does not substantially comply with the Housing Element Law, and further contends that the City's adopted draft fails to make the changes needed to substantially comply with the Housing Element Law.

352. Petitioner-Plaintiff and other interested parties have exhaustively raised these issues with the City in the proceedings culminating in the City's adoption of its sixth revised housing element.

353. The outcome of the controversy regarding the City's substantial compliance with the Housing Element Law further determines whether the Housing Accountability Act ("HAA," Gov. Code § 65589.5) preempts the City's general plan and zoning standards as applied to certain affordable housing development projects that may wish to rely on the HAA as specified herein.

354. Petitioner-Plaintiff has no adequate and speedy remedy to resolve the parties' dispute other than by a declaratory judgment from this Court.

355. It is appropriate for the Court to resolve this dispute by issuing a judicial declaration determining the parties' rights and duties with respect to the City's sixth revised housing element.

DEMAND FOR JUDGMENT

WHEREFORE, Petitioner-Plaintiff demands judgment against Respondent(s)-Defendant(s) as follows:

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;

6. A declaration that Ordinances 1022 and 1128 are preempted as necessary to make adequate provision for housing as required by the Housing Element Law;

7. 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;

8. Costs of suit;

9. Attorney's fees under Section 1021.5 and as otherwise allowed by law; and

10. Such further relief as the Court deems just and proper.

Dated: May 30, 2024

PATTERSON & O'NEILL, P.C.

By: Brian O'Neill
Attorneys for Yes In My Back Yard

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VERIFICATION

I, Sonja Trauss, declare as follows:

1. I am a natural person and a resident of the State of California. I am the Executive Director of petitioner Yes in MY Back Yard ("YIMBY"). I am authorized to verify this VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF on behalf of YIMBY.

2. I have read the foregoing VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF and know its contents. The matters stated in the VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF are true of my own knowledge from having reviewed the City of Sausalito's records regarding its adoption of the 6th Cycle 2023-2031 Housing Element, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true..

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

Executed on May 30, 2024.

Sonja Trauss