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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF MARIN**

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

14 Petitioner-Plaintiff,

15 v.

16 CITY OF SAUSALITO and DOES 1–20,

17 Respondents-Defendants.

Case No.:

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY RELIEF**

(Code Civ. Proc. §§ 1060, 1085, 1094.5; Gov.
Code §§ 65587, 65751; Pub. Resources Code
§§ 21167, 21168)

18 Petitioner-Plaintiff YES IN MY BACK YARD alleges as follows:

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

22 2. “Solving the climate crisis is the greatest and most complex challenge that [humans] have ever
23 faced. The main solution, however, is so simple that even a small child can understand it. We have to
24 stop our emissions of greenhouse gases.” (Thunberg, *The 1975* in Notes on a Conditional Form (The
25 1975 edits., 2020) [audio recording at <https://youtu.be/4fwEG8XK1uU>].)

26 3. “[Z]ero-emission vehicles . . . are not enough to solve the climate crisis.” To achieve carbon
27 neutrality, Californians must reduce their “total vehicle miles driven” by 30 percent by 2045. (Cal. Air
28 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.

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

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

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

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

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

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

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

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

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

19 **PARTIES**

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

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

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

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

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

1 **JURISDICTION AND VENUE**

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

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

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

8 **STATEMENT OF FACTS**

9 22. Every person needs to live somewhere.

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

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

12 25. A “housing element” is a mandatory element of a city’s general plan. (*Id.* § 65302, subd. (c).)

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

14 **Project History Overview**

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

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

18 29. In its rush to adopt, the City cast aside the recommendations of its own Housing Element
19 Advisory Committee (“HEAC”), which convened ten or more times between October 2021 and January
20 2023 to advise on the substance of the City’s sixth revised housing element.

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

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

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

1 33. On January 26, 2023, HCD wrote a letter to the City finding that the project, as planned *before*
2 removing capacity, would *not* substantially comply with the Housing Element Law. (Gov. Code
3 § 65585, subd. (d).)

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

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

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

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

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

11 **Housing Element Law Overview**

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

14 40. HCD is the State agency that administers the Housing Element Law. (See Health & Saf. Code
15 §§ 50400, 50459.)

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

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

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

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

23 45. HCD allocates this RHNA to a regional council of governments, as applicable. (See *id.*
24 §§ 65584–65584.02.)

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

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

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

4 49. According to the Association of Bay Area Governments, there are more jobs in Sausalito
5 than there are households. (Ass’n of Bay Area Gov’ts & Metro. Transp. Comm’n, *J3 Jobs-Housing*
6 *Balance*, https://abag.ca.gov/sites/default/files/factor_j3_jobs-housing_balance_v2.pdf.)

7 50. A jurisdiction’s RHNA is the number of homes for which it must “identify adequate sites.” (*Id.*
8 § 65583; see *id.* subd. (a)(3) [requiring “inventory of land”]; § 65583.2 [detailed requirements]; Dep’t of
9 Hous. & Cmty. Dev., *Housing Element Site Inventory Guidebook* (2020), [https://www.hcd.ca.gov/
10 community-development/housing-element/docs/sites_inventory_memo_final06102020.pdf](https://www.hcd.ca.gov/community-development/housing-element/docs/sites_inventory_memo_final06102020.pdf).)

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

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

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

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

22 55. The City’s RHNA is 724 homes.

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

24 **2021–2023: The City’s HEAC Plans the Project**

25 57. The City knew about its January 31, 2023 project deadline years in advance. (See, *e.g.*, Dep’t of
26 Hous. & Cmty. Dev., *Housing Element Update Schedule* (last updated Sept. 23, 2022), [https://
28 www.hcd.ca.gov/sites/default/files/docs/planning-and-community/housing-element/6th-web-he-
duedate.pdf](https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/housing-element/6th-web-he-
27 duedate.pdf) [sixth cycle commenced in Calaveras County on June 15, 2019]; City of Sausalito,

1 *Important Information Regarding Sausalito’s 2015–2023 Housing Element Update* (Oct. 1, 2014),
2 http://sausalito.granicus.com/MetaViewer.php?view_id=2&clip_id=175&meta_id=20983 [noting
3 requirement to update housing element for 2015–2023 cycle starting January 31, 2015].)

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

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

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

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

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

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

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

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

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

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

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

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

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

28 //

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

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

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

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

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

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

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

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

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

21 **January 12: The City “Decouple[s]” the Project from CEQA**

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

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

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

28 //

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

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

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

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

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

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

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

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

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

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

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

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

1 95. After hearing staff’s presentation on January 12, the City Council directed staff to “decouple
2 [the] EIR” from the project.

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

5 97. A pending statutory deadline provides no excuse for violating CEQA. (*San Franciscans for*
6 *Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 74 [“[t]he only
7 reason we can infer for the [agency’s] failure to consider and analyze this group of projects was that it
8 was more expedient to ignore them. However, expediency should play no part in an agency’s efforts to
9 comply with CEQA”].)

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

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

13 **January 25: The City Schemes to Beat Its Deadline**

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

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

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

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

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

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

25 **January 26: HCD Finds the Project Noncompliant**

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

28 //

1 107. HCD found that the City’s draft needed to analyze the “environmental” impact of the City’s
2 “[a]ccess to [o]ppportunity” and “substandard housing.”

3 108. HCD found that the City’s draft needed to “demonstrate the availability of [listed sites for
4 residential development] within the planning period” and “demonstrate the[ir] affordability.”

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

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

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

14 112. HCD found that the City’s draft “identifie[d] several parcels” that violate statutory
15 requirements for lower-income opportunity sites.

16 113. HCD found that the City’s draft needed to “include additional discussion,” including “any
17 known conditions that preclude . . . development,” on “each of the publicly-owned sites identified to
18 accommodate the RHNA.”

19 114. HCD found that the City’s draft projected capacity for accessory dwelling unit (“ADU”)
20 production that was “inconsistent with HCD records.”

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

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

27 117. HCD found that the City’s draft “appears to exclude group homes . . . from most residential
28 zones.”

1 118. HCD found that the City’s proposed home rehabilitation, condominium conversion, ADU,
2 public property conversion, liveaboard housing, affordable housing development assistance, affordable
3 housing partnerships, and homebuyer assistance programs “should be amended to include more specific
4 and measurable actions.”

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

7 120. HCD found that the City’s draft needed to “detail the steps and timeframes for initiating
8 voter approval” to remove constraints associated with Ordinances 1022 and 1128.

9 121. HCD advised the City that certain State laws’ preemptive effect on City ordinances “should
10 not be considered a substitute for [re]zoning.”

11 **January 29: The City Publishes a Subsequent Draft**

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

14 123. This working group draft presented “two options” to achieve the City’s RHNA.

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

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

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



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

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

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

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

10 **January 30: The City Adopts a Different Draft**

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

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

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

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

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

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

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

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

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

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

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

6 142. Petitioner-Plaintiff’s counsel provided written and oral comment criticizing the City for
7 rushing to adopt an uncertified housing element that had been available to the public for only one day,
8 and about whose contents the Council was manifestly unsure. (Cf. Gov. Code § 65585, subd. (b)(1)
9 [requiring subsequent drafts to be posted “at least seven days before submitting” to HCD].)

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

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

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

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

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

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

21 **January 31: Legal Implications of Housing Element Deadline**

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

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

26 151. Specifically, the builder’s remedy provides that a city “shall not disapprove a housing
27 development project,” meeting specified affordability requirements, if the city has not adopted a revised
28 housing element in substantial compliance with the Housing Element Law (*id.*, subds. (d)(5), (h)(3).)

1 152. The builder’s remedy can thus be triggered by *either* nonadoption *or* noncompliance.

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

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

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

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

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

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

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

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

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

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

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

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

28 //

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

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

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

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

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

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

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

16 **February 1: The City Declares the Project Exempt from CEQA**

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

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

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

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

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

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

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

3 179. Alternatively, the NOE invokes a statutory CEQA exemption applicable to “*regional housing*
4 *needs determinations* made by [HCD], a council of governments, or a city.” (14 Cal. Code Regs.
5 § 15283 [italics added]; see Gov. Code § 65584, subd. (g).)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 197. Such deferment will preclude “tiering” under CEQA. (See 14 Cal. Code Regs. § 15152.)

26 **February 27: The City Submits the Project to HCD**

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

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

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

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

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

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

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

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

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

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

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

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

26 210. The real estate investment firm further commented that site 75 is the “City Corp Yard,”
27 raising questions about where the corporation yard would go, that “[s]taff are severely constrained,” that
28

1 the site had “environmental . . . concern[s], [as] corp yards often have some degree of contamination,”
2 and that the site “[m]ay need to be cleaned up” in order to develop.

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

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

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

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

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

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

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

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

23 219. The real estate investment firm further commented that site 201 was a small site whose
24 “[u]nit yield and mix doesn’t make sense.”

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

27 221. The real estate investment firm further commented that site 202 would require “[a]ssemblage
28 in the middle of multi million dollar single family homes,” that the “[e]xisting uses are viable –

1 [u]nlikely to develop,” that it was encumbered by “[e]xisting leases [un]til 2028,” and that it had a
2 “[h]uge negative land value.”

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

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

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

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

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

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

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

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

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

27 **Environmental Consequences of Displaced Development**

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

1 232. San Francisco has been an urban center for 175 years.

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

3 234. California courts have recognized “displaced development” as a potential environmental
4 impact of failing to plan for housing in urban centers.

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

7 236. Sausalito is nearer to San Francisco’s Civic Center than is South San Francisco.

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

10 238. Additionally, Sausalito itself has “an imbalance between jobs and housing.” (See Gov. Code
11 § 65584.1, subd. (b)(1)(G); above ¶ 49.)

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

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

17 **BENEFICIAL INTEREST**

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

20 242. “The availability of housing is of vital statewide importance” (§ 65580, subd. (a).)

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

23 244. Legalizing “the development of housing” is “essential” to achieving this goal. (*Id.*, subd. (f).)

24 245. The Legislature intends that housing elements “move toward” this goal. (§ 65581, subd. (b).)

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

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

28 248. The writ of mandate is sought in this action to enforce the City’s public duties.

1 **FIRST CAUSE OF ACTION**

2 **California Environmental Quality Act – Against All Respondents-Defendants**

3 **(Pub. Resources Code §§ 21167, 21168; Code Civ. Proc. §§ 1085, 1094.5)**

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

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

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

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

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

19 254. CEQA and its informational requirements are designed to ensure that the lead agency
20 identifies all potentially significant environmental impacts of a proposed project, adequately discloses
21 those impacts to the public, and implements all feasible alternatives or mitigation measures necessary to
22 avoid or substantially lessen those impacts. (Pub. Resources Code, §§ 21002, 21100; CEQA Guidelines
23 §§ 15126.6, 15370.)

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

27 256. Conversely, CEQA forbids piecemealing—*i.e.*, “chopping a large project into many little
28 ones—each with a minimal potential impact on the environment—which cumulatively may have

1 disastrous consequences.” (*Laurel Heights Improvement Assn. v. Regents of University of California*
2 (1988) 47 Cal.3d 376, 396.)

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

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

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

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

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

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

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

28 //

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

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

6 **SECOND CAUSE OF ACTION**

7 **Housing Element Law – Against All Respondents-Defendants**

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

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

10 267. Section 65587 of the Government Code, subdivision (b), provides that “any interested party”
11 may bring an action “to review the [City’s] conformity with the [Housing Element Law].”

12 268. Yes In My Back Yard is “an[] interested party” under the Housing Element Law. (*Ibid.*)

13 269. Section 65587, together with Section 65751, provides that such an action “shall be brought
14 pursuant to Section 1085 of the Code of Civil Procedure.” (*Ibid.*)

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

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

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

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

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

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

1 276. Here, the City’s adopted housing element allocates over 50 percent of its lower-income
2 housing need to nonvacant sites.

3 277. The Housing Element Law disfavors “nonvacant sites.” (See Gov. Code § 65583.2, subds.
4 (b)(3), (g).)

5 278. Localities must explain why they have listed “each [nonvacant] site,” and consider “existing
6 uses,” the locality’s “past experience with converting [such] uses to higher density residential
7 development,” “market demand for the existing use,” “existing leases or other contracts that would
8 perpetuate the existing use or prevent . . . additional residential development,” and other factors. (*Id.*,
9 subd. (g)(1).)

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

14 280. A housing element’s failure to demonstrate “realistic development capacity” for the locality’s
15 lower-income RHNA renders the draft noncompliant. (*Id.*, subd. (c)(2); see § 65583, subd. (a)(3).)

16 281. Here, the City has failed to demonstrate realistic development capacity for its lower-income
17 need allocation. (See above ¶¶ 100–228.)

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

20 283. Yes In My Back Yard has no available administrative remedies.

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

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

24 **THIRD CAUSE OF ACTION**

25 **Declaratory Relief – Against All Respondents-Defendants**

26 **(Code Civ. Proc. § 1060)**

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

28 //

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

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

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

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

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

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

16 293. Petitioner-Plaintiff is further informed and believes that HCD, as the State agency
17 responsible for administering the Housing Element Law, has found that the City’s prior draft housing
18 element does not substantially comply with the Housing Element Law, and further contends that the
19 City’s adopted draft fails to make the changes needed to substantially comply as specified in HCD’s
20 determination letter.

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

23 295. The outcome of the controversy regarding the City’s substantial compliance with the
24 Housing Element Law further determines whether the Housing Accountability Act (“HAA,” Gov. Code
25 § 65589.5) preempts the City’s general plan and zoning standards as applied to certain affordable
26 housing development projects that may wish to rely on the HAA as specified herein.

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

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

3 **DEMAND FOR JUDGMENT**

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

- 6 1. A writ of mandate invalidating the City's sixth revised housing element;
- 7 2. A writ of mandate directing the City to comply with CEQA and all other applicable state and
8 local laws and regulations;
- 9 3. A writ of mandate directing the City to make adequate provision for its lower-income housing
10 need in accordance with state law in its eventual CEQA-compliant revised housing element;
- 11 4. An injunction or order providing relief under Section 65755;
- 12 5. A declaration that the City is, and has been, out of compliance with the Housing Element Law
13 from February 1, 2023, until the City lawfully adopts a sixth revised housing element that the Court
14 finds in substantial compliance with both CEQA and the Housing Element Law;
- 15 6. A declaration that Ordinances 1022 and 1128 are preempted as necessary to make adequate
16 provision for housing as required by the Housing Element Law;
- 17 7. A declaration that the City may not rely on paragraphs (1) or (5) of subdivision (d) of Section
18 65589.5 of the Government Code, also known as the Housing Accountability Act or "HAA," to
19 disapprove a housing development project—or condition approval in a manner that renders such project
20 infeasible—so long as such project meets the affordability requirements described in paragraph (3) of
21 subdivision (h) of the HAA and complies with CEQA;
- 22 8. Costs of suit;
- 23 9. Attorney's fees under Section 1021.5 and as otherwise allowed by law; and
- 24 10. Such further relief as the Court deems just and proper.

25 Dated: March 8, 2023.

YIMBY LAW

26
27
28

By: Keith E. Diggs
Attorney for Petitioner-Plaintiff Yes In My Back Yard

VERIFICATION

I, Sonja K. Trauss, declare:

1. I am the Executive Director of Yes In My Back Yard, the Petitioner-Plaintiff in this action.

2. I have read the foregoing Petition and Complaint, and know its contents to be true of my own knowledge, 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 penalty of perjury that the foregoing is true and correct.

Executed on March 8, 2023 at Oakland, California.

By: Sonja K. Trauss
Executive Director, Yes In My Back Yard