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Case #23CV410817
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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SANTA CLARA**

15 CALIFORNIA HOUSING DEFENSE FUND, a
16 California nonprofit public benefit corporation;
17 and YES IN MY BACK YARD, a California
18 nonprofit public benefit corporation;

18 Petitioners,

19 v.

20 CITY OF CUPERTINO,

21 Respondent.

Case No.: 23CV410817

**VERIFIED PETITION FOR WRIT OF
MANDATE**

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

22 Petitioners CALIFORNIA HOUSING DEFENSE FUND and YES IN MY BACK YARD allege as
23 follows:

24 1. “California has a housing supply and affordability crisis of historic proportions.” (Gov. Code
25 § 65589.5, subd. (a)(2).)¹

26 2. To address this crisis, the State’s Housing Element Law (Gov. Code §§ 65580 *et seq.*) required
27 Bay Area cities and counties to adopt the sixth revisions of their housing elements by January 31, 2023.
28

¹ Subsequent references are to the Government Code unless otherwise specified.

1 3. The City of Cupertino did not meet this deadline.

2 4. On behalf of the public interest in alleviating the housing crisis, the California Housing Defense
3 Fund and Yes In My Back Yard petition the Court for a writ of mandate compelling the City to adopt a
4 revised housing element.

5 **PARTIES**

6 5. Petitioner California Housing Defense Fund (“CalHDF”) is a California nonprofit public benefit
7 corporation.

8 6. CalHDF’s mission is to promote housing growth and affordability in California through
9 education and legal advocacy. As part of this mission CalHDF monitors local government policies
10 related to the availability and growth of housing.

11 7. Petitioner Yes In My Back Yard is a California nonprofit public benefit corporation.

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

14 9. Respondent City of Cupertino (“the City”) is an incorporated city in Santa Clara County.

15 **JURISDICTION AND VENUE**

16 10. The Court has subject matter jurisdiction under Sections 65587 and 65751 of the Government
17 Code and Section 1085 of the Code of Civil Procedure.

18 11. The Court has personal jurisdiction over the City consistent with Section 410.10 of the Code of
19 Civil Procedure.

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

21 **STATUTORY BACKGROUND**

22 13. California’s Housing Element Law (Gov. Code §§ 65580 *et seq.*) is the State’s main policy for
23 addressing the housing crisis.

24 14. A “housing element” is a mandatory element of a county’s or city’s general plan. (§ 65302, subd.
25 (c).)

26 15. “Notwithstanding subdivision (a)” of Section 65700, *all* the provisions of the Housing Element
27 Law apply to general-law and charter cities alike. (§ 65700, subd. (b).)

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1 16. The Department of Housing and Community Development (“HCD”) is the State agency that
2 administers the Housing Element Law. (See Health & Saf. Code §§ 50400, 50459.)

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

6 18. Housing elements are updated on a cyclical basis. (See § 65588.)

7 19. Bay Area governments are now entering their sixth cycle of housing-element revisions.

8 20. Each cycle, HCD “determine[s] the existing and projected need for housing for each region” in
9 the State. (§§ 65584, subd. (a)(1); 65584.01.)

10 21. HCD allocates this RHNA to the regional council of governments, as applicable. (See §§ 65584–
11 65584.02.)

12 22. The regional council of governments then distributes its RHNA among its local governments.
13 (See §§ 65584.04–.05.)

14 23. HCD distributes the RHNA among local governments where no council exists. (§ 65584.06.)

15 24. With its share of the RHNA assigned, a locality must revise its housing element with a plan to
16 “make adequate provision for the [housing] needs of all economic segments of the community.”
17 (§ 65583.)

18 25. A housing element must provide “[a]n inventory of land” with zoned capacity “to meet the
19 locality’s housing need for [each] designated income level” by the end of the cycle. (§§ 65583, subd.
20 (a)(3).)

21 26. The site inventory must meet detailed and justiciable statutory requirements. (See § 65583.2.)

22 27. Where existing zoned capacity is insufficient to meet the RHNA, the locality must rezone for
23 sufficient capacity within three years (if timely and adequately revised) or one year (if not). (§ 65583,
24 subd. (c)(1)(A).)

25 28. A housing element must, in its site inventory and otherwise, “affirmatively further fair housing.”
26 (§§ 65583, subs. (a)(3), (b), (c)(1), (c)(5), (c)(10)(A); 65583.2, subd. (c); see § 8899.50 [definition].)

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1 29. A housing element must also “remove governmental . . . constraints to the maintenance,
2 improvement, and development of housing . . . for all income levels” where “appropriate and legally
3 possible.” (§ 65583, subd. (c)(3).)

4 30. A revision to a housing element must be prepared long before its adoption.

5 31. Housing Element Law spells out detailed requirements for public and administrative review.

6 32. “[T]he first draft revision of a housing element” must be made “available for public comment for
7 at least 30 days.” (§ 65585, subd. (b)(1).)

8 33. “[I]f any comments are received, the local government shall take at least 10 business days after
9 the . . . public comment period to consider and incorporate public comments into the draft.” (*Ibid.*)

10 34. “At least 90 days prior to adoption of a revision of its housing element,” the locality must submit
11 the draft to HCD for administrative review. (*Ibid.*)

12 35. HCD then makes “written findings” as to whether the draft “substantially complies” with the
13 Housing Element Law. (*Id.*, subd. (d).)

14 36. Only after HCD has had time to review a draft may the locality adopt it.

15 37. If HCD finds that a draft “does not substantially comply,” the locality can either “[c]hange” its
16 draft to comply or “[a]dopt” with “written findings” rebutting HCD’s findings. (*Id.*, subd. (f).)

17 38. Housing Element Law specifies consequences for failure to substantially comply.

18 39. A locality without a “revised housing element . . . in substantial compliance” is prohibited from
19 using its general plan and zoning standards to “disapprove” or “render[] . . . infeasible” any housing
20 development project meeting certain affordability requirements. (§ 65589.5, subs. (d)(5), (h)(3).)

21 40. As described above, a locality that fails to obtain HCD’s finding of substantial compliance
22 within 120 days of the statutory deadline must complete all required rezoning within one rather than
23 three years. (§ 65583, subd. (c)(1)(A); see above ¶ 27.)

24 41. “[A]ny interested party” may petition for a writ of mandate compelling “compliance with the
25 provisions” of the Housing Element Law. (§ 65587, subd. (b); see also § 65751.)

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

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1 43. “The court shall include” in such a judgment “one or more” additional specified provisions,
2 including suspension of nonresidential building permits and mandatory approval of residential building
3 permits, “until the [locality] has substantially complied.” (§ 65755, subs. (a)(1), (a)(4).)

4 44. “[T]he court may, upon a showing of probable success on the merits, grant the relief provided in
5 Section 65755 as temporary relief.” (§ 65757.)

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

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

9 47. “[A]ny action necessary” to comply with the writ is statutorily exempt from the California
10 Environmental Quality Act. (§ 65759, subd. (a); see also Pub. Res. Code §§ 21000 *et seq.*)

11 **STATEMENT OF FACTS**

12 48. Bay Area governments, including the City, were due to adopt the sixth revision of their housing
13 elements on January 31, 2023. (See HCD, *Housing Element Update Schedule*, [https://www.hcd.ca.gov/
14 community-development/housing-element/docs/6th-web-he-duedate.pdf](https://www.hcd.ca.gov/community-development/housing-element/docs/6th-web-he-duedate.pdf), p.5.)

15 49. “At least 90 days prior” to this statutory deadline (Gov. Code § 65585, subd. (b); see above
16 ¶¶ 31–36), the City had not submitted a draft revision of its housing element to HCD.

17 50. The City has not adopted a sixth revision of its housing element.

18 51. Together with another housing organization, Petitioners contacted the City about its failure and
19 inability to comply with Housing Element Law.

20 52. In their letter to the City, Petitioners offered to “forgo immediate litigation” against the City if
21 the City would acknowledge in writing that it would:

- 22 a. “not be in substantial compliance” by the statutory deadline;
- 23 b. “be prohibited from rejecting any [affordable] housing development project based on
24 subdivision (d)(1) or (d)(5) of the Housing Accountability Act (HAA), Government Code
25 Section 65589.5,” from February 1, 2023, until such time as the City adopts a
26 substantially compliant housing element; and

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1 c. “be estopped” from invoking those subdivisions in any litigation arising from “any such
2 project that is the subject of an application or preliminary application submitted” during
3 that same period of time.

4 53. This letter was sent by email on December 16, 2022, to the City’s manager, community
5 development director, attorney, and council.

6 54. The City’s attorney responded and engaged Petitioners’ counsel in settlement discussions, but
7 the parties did not reach an agreement.

8 **BENEFICIAL INTEREST**

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

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

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

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

14 59. The writ of mandate is sought in this action to enforce the City’s public duty.

15 **FIRST CAUSE OF ACTION**

16 **Writ of Mandate to Compel Compliance with Housing Element Law**

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

18 60. Petitioners incorporate and reallege all of the foregoing paragraphs.

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

21 62. Petitioners are “interested part[ies]” under the Housing Element Law. (*Ibid.*)

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

24 64. Because the City has not adopted a sixth revision of its housing element, and its statutory
25 deadline has passed, the City is out of compliance with the Housing Element Law.

26 65. Petitioners have no available administrative remedies.

27 66. Petitioners have no plain, speedy, or adequate remedy in the ordinary course of law, other than
28 those sought herein.

1 67. Petitioners are thus entitled to a writ of mandate.

2 **DEMAND FOR JUDGMENT**

3 WHEREFORE, Petitioners demand judgment against Respondent as follows:

4 1. A writ of mandate directing the City to adopt a sixth revised housing element according to the
5 schedule in Section 65754.

6 2. An injunction or order providing relief under Section 65755.

7 3. A declaration that:

8 a. the City is out of compliance with the Housing Element Law from February 1, 2023, until
9 the City lawfully adopts a sixth revision of its housing element that substantially
10 complies with the Housing Element Law;

11 b. the City must rezone as necessary to execute such sixth revision of its housing element by
12 the deadlines set forth in Articles 10.6 and 14 of Chapter 3 of Division 1 of Title 7 of the
13 Government Code;

14 c. the City may not rely on paragraphs (1) or (5) of subdivision (d) of Section 65589.5 of
15 the Government Code, also known as the Housing Accountability Act or “HAA,” to
16 disapprove a housing development project—or condition approval in a manner that
17 renders such project infeasible—so long as such project meets the affordability
18 requirements described in paragraph (3) of subdivision (h) of the HAA;

19 4. Costs of suit;

20 5. Attorneys’ fees under Code Civ. Proc. § 1021.5 and as otherwise allowed by law; and


21 6. Such further relief as the Court deems just and proper.

22
23 Dated: February 2, 2023.

CALIFORNIA HOUSING
DEFENSE FUND

YIMBY LAW

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27 By: Dylan Casey
*Attorney for Petitioner California
Housing Defense Fund*

28 By: Keith E. Diggs
*Attorney for Petitioner Yes In My
Back Yard*

VERIFICATION

I, Dylan S. Casey, declare:

1. I am an employee of and hold the position of Executive Director at Petitioner California Housing Defense Fund, and am familiar with the matters discussed in the foregoing Petition.
2. I have read the Petition and know the contents thereof. The statements of fact therein are true and correct of my own knowledge.

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

Executed on February 2, 2023 at Alameda, California.



Dylan S. Casey

VERIFICATION

I, Sonja K. Trauss, declare:

1. I am the Executive Director of Yes In My Back Yard, the Petitioner in this action.
2. I have read the foregoing Petition, and know the stated facts to be true of my own knowledge.

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

Executed on February 2, 2023 at Oakland, California.



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

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