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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF SANTA CLARA**

14 CALIFORNIANS FOR  
15 HOMEOWNERSHIP, INC., a  
16 California nonprofit public benefit  
17 corporation,

18 Petitioner,

19 v.

20 COUNTY OF SANTA CLARA,

21 Respondent.

Case No. 23CV410822

**VERIFIED PETITION FOR  
WRIT OF MANDATE**

[C.C.P. § 1085; Gov. Code §§ 65587, 65751]

22 Petitioner Californians for Homeownership (“Californians”) alleges as follows:

23 1. California is in the midst of a “housing supply and affordability crisis of  
24 historic proportions.” Gov. Code 65589.5(a)(2). That crisis is driven in major part by  
25 “activities and policies of many local governments that limit the approval of  
26 housing . . . .” Gov. Code § 65589.5(a)(1)(B).

27 2. As part of the Legislature’s effort to address this crisis, the law required  
28 localities in the Bay area to adopt updated housing elements by January 31, 2023.

3. Santa Clara County did not meet this deadline.

4. On behalf of the important public interest in the availability of housing,  
Californians seeks a writ compelling the County to adopt an updated housing element.

**PARTIES**

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2 5. Petitioner Californians for Homeownership, Inc. (“Californians”) is a  
3 California nonprofit public benefit corporation and 501(c)(3) public charity. Its  
4 mission is to address California’s housing crisis through litigation in support of the  
5 production and availability of housing affordable to families at all income levels.

6 6. Respondent Santa Clara County is a municipality of the State of  
7 California.

**JURISDICTION AND VENUE**

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9 7. The Court has general subject matter jurisdiction over this action  
10 pursuant to Government Code Sections 65587 and 65751 and Code of Civil Procedure  
11 Section 1085.

12 8. The Court has personal jurisdiction over the County of Santa Clara  
13 pursuant to Code of Civil Procedure Section 410.10.

14 9. Venue for this action properly lies with this Court pursuant to Code of  
15 Civil Procedure Section 394.

**STATUTORY BACKGROUND**

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17 10. In recent years, the California Legislature has sought to address what it  
18 has described as a “housing supply and affordability crisis of historic proportions.”  
19 Gov. Code 65589.5(a)(2). “The consequences of failing to effectively and  
20 aggressively confront this crisis are hurting millions of Californians, robbing future  
21 generations of the chance to call California home, stifling economic opportunities for  
22 workers and businesses, worsening poverty and homelessness, and undermining the  
23 state’s environmental and climate objectives. While the causes of this crisis are  
24 multiple and complex, the absence of meaningful and effective policy reforms to  
25 significantly enhance the approval and supply of housing affordable to Californians of  
26 all income levels is a key factor.” *Id.* (subdivision numbers omitted).

27 11. As a result of the housing crisis, younger Californians are being denied  
28 the opportunities for housing security and homeownership that were afforded to

1 previous generations. Families across economic strata are being forced to rent rather  
2 than experience the wealth-building benefits of homeownership.<sup>1</sup> Many middle and  
3 lower income families devote more than half of their take-home pay to rent, leaving  
4 little money to pay for transportation, food, healthcare and other necessities.<sup>2</sup> Unable  
5 to set aside money for savings, these families are also at risk of losing their housing in  
6 the event of a personal financial setback. Indeed, housing insecurity in California has  
7 led to a mounting homelessness crisis.<sup>3</sup>

8 12. Beyond the human toll, California’s housing crisis harms the  
9 environment. “[W]hen Californians seeking affordable housing are forced to drive  
10 longer distances to work, an increased amount of greenhouse gases and other  
11 pollutants is released and puts in jeopardy the achievement of the state’s climate  
12 goals.” Gov. Code § 65584.

13 13. At the core of California’s affordable housing crisis is a failure to build  
14 enough housing to meet demand. California’s Legislative Analyst’s Office estimates  
15 that the state should have been building approximately 210,000 units a year in major  
16 metropolitan areas from 1980 to 2010 to meet housing demand. Instead, it built  
17 approximately 120,000 units per year.<sup>4</sup> Today, California ranks 49th out of the 50  
18 states in existing housing units per capita.<sup>5</sup>

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20 <sup>1</sup> California Department of Housing and Community Development, *California’s*  
21 *Housing Future: Challenges and Opportunities: Final Statewide Housing Assessment*  
22 *2025* (2018), available at [http://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA\\_Final\\_Combined.pdf](http://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA_Final_Combined.pdf), at 18-19.

23 <sup>2</sup> *Id.* at 27.

24 <sup>3</sup> *Id.* at 3, 48-50.

25 <sup>4</sup> Legislative Analyst’s Office, *California’s High Housing Costs: Causes and*  
26 *Consequences* (2015), available at <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>, at 21.

27 <sup>5</sup> McKinsey & Company, *A Tool Kit to Close California’s Housing Gap: 3.5*  
28 *Million Homes By 2025* (2016), available at [https://www.mckinsey.com/~media/mckinsey/featured\\_insights/Urbanization/Closing\\_Californias\\_housing\\_gap/Closing-Californias-housing-gap-Full-report.ashx](https://www.mckinsey.com/~media/mckinsey/featured_insights/Urbanization/Closing_Californias_housing_gap/Closing-Californias-housing-gap-Full-report.ashx), at document page 6.

1 14. California’s housing crisis has been building for decades. The  
2 Legislature has recognized that the crisis is driven, in part, “by activities and policies  
3 of many local governments that limit the approval of housing, increase the cost of  
4 land for housing, and require that high fees and exactions be paid by producers of  
5 housing.” Gov. Code § 65589.5(a)(1)(B).

6 15. Over the last five decades, the Legislature has increasingly sought to  
7 address the power imbalance at play in local housing policy. The most important state  
8 policy addressing the housing crisis is the Regional Housing Needs Allocation  
9 (“RHNA”) and housing element system.

10 16. The RHNA system is a process for assessing and allocating housing  
11 targets on a periodic basis, generally every eight years. Gov. Code § 65588. It starts  
12 with an assessment of statewide housing needs by the California Department of  
13 Housing and Community Development (“HCD”). The Department allocates the  
14 state’s anticipated housing needs on a region-by-region basis, at different levels of  
15 affordability, based on established criteria. Gov. Code §§ 65584.01, 65588. This need  
16 is then usually meted out to individual localities by a regional council of governments,  
17 as is the case in the Bay Area. Gov. Code § 65584.05.

18 17. Once the allocations are final, each locality is tasked with developing an  
19 action plan (the housing element) to enact land use policies that will produce enough  
20 housing to meet its RHNA goals. Gov. Code §§ 65583, 65583.2. The housing  
21 element must provide an inventory of sites available for residential development and  
22 assess constraints and market realities that affect the likely development activity at  
23 those sites, including local land use regulations. Localities must make changes to  
24 their land use rules, including by rezoning land, if needed to enable housing sufficient  
25 to meet their RHNA goals. Gov. Code § 65583(c), 65583.2(h).

26 18. At least 90 days before adopting its housing element update, each  
27 locality must submit a draft of its Housing Element to HCD for review. Gov. Code §  
28 65585(b)(1). HCD then has up to the 90 days to provide the locality with written

1 findings and make a determination whether the draft housing element “substantially  
2 complies” with the statutory requirements. Gov. Code §§ 65585(b)(3), (d).

3 19. Prior to adoption of a housing element update, a locality must consider  
4 HCD’s findings and, if HCD has determined that the draft does not “substantially  
5 comply” with statutory requirements, the locality must either amend its housing  
6 element accordingly or provide findings of its own as to why it believes the housing  
7 element is compliant despite HCD’s determination. Gov. Code §§ 65585(e), (f).

8 20. California is currently in the midst of the sixth statewide housing element  
9 update cycle. For localities in the Bay Area, including the County, the sixth cycle  
10 covers an eight-year planning period starting January 31, 2023, and these localities  
11 were required to update their housing elements by that date. Gov. Code  
12 § 65588(e)(3).

13 21. A locality without a compliant updated housing element is prohibited  
14 from using its general plan and zoning standards to reject certain housing  
15 development projects. *See* Gov. Code § 65589.5(d).

16 22. A locality that does not adopt a compliant updated housing element  
17 within 120 days of the due date is subject to accelerated rezoning under the housing  
18 element, once adopted. Gov. Code §§ 65583(c)(1)(A), 65583.2(c), 65588(e)(4)(C).

19 23. An interested party may bring an action under Code of Civil Procedure  
20 Section 1085 to determine whether a housing element conforms to the statutory  
21 requirements and to compel a locality to adopt a compliant housing element. Gov.  
22 Code §§ 65587, 65751.

23 24. If a locality’s housing element does not substantially comply with state  
24 law, a reviewing court must order the locality to bring it into compliance within 120  
25 days. Gov. Code § 65754(a). After adopting a housing element subject to such an  
26 order, the locality must subsequently rezone to obtain consistency with the housing  
27 element within 120 days. Gov. Code § 65754(b).

28 25. Additionally, the court must subject the locality to penalties, which can

1 include a suspension of all non-residential permitting and judicial approval of housing  
2 development projects. Gov. Code § 65755(a)(1), (4). The court can also grant this  
3 relief on an interim basis during the pendency of litigation. Gov. Code § 65757.

4 **FACTS**

5 26. The statutory deadline for the County to adopt a sixth cycle updated  
6 Housing Element was January 31, 2023.

7 27. The County has not adopted a sixth cycle updated housing element.

8 28. Californians is a non-profit organization that aims to address California's  
9 housing crisis, generally through impact litigation to support the development of and  
10 access to housing for families at all income levels.

11 29. Californians is currently engaged in a statewide effort to enforce both the  
12 substantive requirements and the deadlines in state housing element law, for the sixth  
13 housing element update cycle. As part of this effort, it has contacted approximately 80  
14 localities to address concerns about their compliance with the law. Since April 2022,  
15 Californians has filed over a dozen lawsuits to enforce housing element law.

16 30. For localities that did not timely submit an initial draft sixth cycle  
17 housing element update to HCD, Californians' approach involves contacting each  
18 locality along with other pro-housing non-profit groups. Each locality is offered a  
19 compromise whereby the non-profit groups agree to delay litigation in exchange for  
20 an acknowledgment by the locality of certain state law penalties that apply due to the  
21 failure to timely adopt an updated housing element.

22 31. On December 16, 2022, along with other non-profit groups, Californians  
23 contacted Jeffrey Smith, the County Executive Officer, to threaten litigation and offer  
24 this compromise. The County did not respond to accept the compromise.

25 **FIRST CAUSE OF ACTION**

26 **Writ of Mandate to Compel Compliance with Housing Element Law**  
27 **(Gov. Code §§ 65587, 65751; C.C.P. § 1085)**

28 32. Californians incorporates and realleges all of the foregoing paragraphs.

1 33. Under Government Code Section 65587, any interested party may bring  
2 an action to determine whether all or part of a Housing Element conforms to the  
3 statutory requirements.

4 34. Pursuant to Government Code Sections 65587 and 65751, an action to  
5 challenge the legal adequacy of a housing element or compliance with housing  
6 element deadlines shall be brought under Code of Civil Procedure Section 1085.

7 35. Californians is an interested party for the purposes of these statutes.

8 36. The County’s deadline to adopt a sixth cycle updated housing element  
9 was January 31, 2023.

10 37. Because the County missed this deadline, its housing element does not  
11 substantially comply with state law and it is subject to an action under Government  
12 Code Sections 65587 and 65751.

13 38. Californians has no available administrative remedies.

14 39. Californians has no plain, speedy, or adequate remedy at law.

15 40. Accordingly, Californians is entitled to a writ of mandate.

16 **PRAYER**

17 WHEREFORE, Petitioner prays for relief as follows:

18 1. A writ of mandate directing the County to adopt a sixth cycle updated  
19 housing element pursuant to the schedule set forth in Government Code Section  
20 65754.

21 2. An injunction or other order under Government Code Section 65755.

22 3. A declaration that:

23 a. From January 31, 2023 until the County complies with the Court’s  
24 writ of mandate through the adoption of a housing element that  
25 substantially complies with state law, the County has not had a  
26 housing element that was revised in accordance with Government  
27 Code Section 65588 and the County’s housing element has not  
28 substantially complied with state law;

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b. The County is not permitted to use the provisions in subdivision (d)(1) or (d)(5) of Government Code Section 65589.5 to disapprove a housing development project that qualifies for approval under subdivision (d) of that section—that is, a project in which either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Health and Safety Code Section 50079.5, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Health and Safety Code Section 50093, or persons and families of middle income, as defined in Government Code Section 65008—or to condition the approval of such a project in a manner that renders it infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards.

- 4. Costs of suit;
- 5. Attorneys’ fees under Code of Civil Procedure Section 1021.5 and as otherwise allowed by law;
- 6. Such other and further relief as the Court deems just and proper.

Dated: February 3, 2023

Respectfully Submitted,  
CALIFORNIANS FOR HOMEOWNERSHIP, INC.

By   
Matthew P. Gelfand

Attorneys for Petitioner,  
Californians for Homeownership, Inc.



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**VERIFICATION**

I, Matthew P. Gelfand, declare:

1. I am employed by and hold the position of Counsel at Petitioner Californians for Homeownership, Inc., 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 3, 2023 at Los Angeles, California.



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Matthew P. Gelfand