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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN DIEGO

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12
13 **CITY OF ENCINITAS,**

14 Plaintiff,

15 v.

16
17 **THE CALIFORNIA DEPARTMENT OF**
HOUSING AND COMMUNITY
18 **DEVELOPMENT, AND DOES 1-100,**
INCLUSIVE,

19 Defendants,

20 v.

21 **PRESERVE PROPOSITION A,**

22 Intervenor-Defendant.
23
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25
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27
28

Case No. 37-19-00047963-CU-OR-NC

**CALIFORNIA DEPARTMENT OF
HOUSING AND COMMUNITY
DEVELOPMENT'S BRIEF IN
RESPONSE TO OPENING BRIEF OF
PLAINTIFF CITY OF ENCINITAS**

Date: June 3, 2021, 2:00 p. m.

Dept. : N-28

Judge: Hon. Earl H. Maas, III

Action Filed: September 6, 2019

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15
16
17
18
19
20
21
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23
24
25
26
27
28

TABLE OF CONTENTS

| | Page |
|---|-------------|
| INTRODUCTION | 5 |
| ARGUMENT | 5 |
| I. Proposition A Impedes the Development of Affordable Housing, Prevents Encinitas From Complying with State Law, and Creates Other Significant Adverse Impacts..... | 5 |
| A. Proposition A Has Prevented Encinitas from Complying with State Law..... | 6 |
| B. Proposition A Imposes Significant Costs on Encinitas..... | 8 |
| C. With Proposition A in Effect, Encinitas Has Indicated It Will Take Active Measures to Avoid Rezoning for New Housing Density, Thereby Deterring the Development of Housing..... | 9 |
| II. Proposition A Will Inevitably Conflict with Encinitas’s Obligations Under No Net Loss Law | 10 |
| III. Encinitas Has No Recourse Other Than Legal Action for Declaratory Relief | 12 |
| A. Declaratory Relief is the Appropriate Remedy for Encinitas | 13 |
| B. In Pursuing Declaratory Relief, Encinitas Is Helping to Further the State’s Housing Goal | 15 |
| CONCLUSION | 15 |

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

CASES

Anderson v. City of San Jose
(2019) 42 Cal.App.5th 683 *passim*

Bess v. Parks
(1955) 132 Cal.App.2d 49..... 13

Bruce v. City of Alameda
(1985) 166 Cal.App.3d 18..... 6, 7

Building Industry Assn. v. City of Oceanside
(1994) 27 Cal.App.4th 744 5, 8, 12

California Building Assn. v. Bay Area Air Quality Management Dist.
(2016) 2 Cal.App.5th 1067 13

California Building Industry Assn v. City of San Jose
(2015) 61 Cal.4th 435 7, 12

Committee of Seven Thousand v. Superior Court
(1988) 45 Cal.3d 491 7

DeVita v. County of Napa
(1995) 9 Cal.4th 763 6

Great Western Shows, Inc. v. County of Los Angeles
(2002) 27 Cal.4th 853 7

Pacific Legal Foundation v. California Coastal Com.
(1982) 33 Cal.3d 158, 170 13

Riverside v. Inland Empire Patients Health & Wellness Cr., Inc.
(2013) 56 Cal.4th 8

Ruegg & Ellsworth v. City of Berkeley, et al.
(Apr. 20, 2021, A159218) __ Cal.App.5th __ [p. 42]..... 7

San Francisco Apartment Assn. v. City and County of San Francisco
(2016) 3 Cal.App.5th 563 6

Sherwin-Williams Co. v. City of Los Angeles
(1993) 4 Cal.4th 893 12

TABLE OF AUTHORITIES
(continued)

| | | <u>Page</u> |
|----|--|-------------|
| 1 | | |
| 2 | | |
| 3 | <i>Suter v. City of Lafayette</i> | |
| 4 | (1997) 57 Cal.App.4th 1109 | 7 |
| 5 | <i>T-Mobile West LLC v. City and County of San Francisco</i> | |
| 6 | (2019) 6 Cal.5th 1107 | 8 |
| 7 | <i>Urban Habitat Program v. City of Pleasanton</i> | |
| 8 | (2008) 164 Cal.App.4th 1561 [<i>Urban Habitat</i>] | 8, 13, 14 |
| 9 | <i>Venice Town Council, Inc. v. City of Los Angeles</i> | |
| 10 | (1996) 47 Cal.App.4th 1547 | 14 |
| 11 | STATUTES | |
| 12 | Government Code, | |
| 13 | § 65580, subd. (b) | 7 |
| 14 | § 65583, subd. (a)(5) | 8 |
| 15 | § 65583, subd. (c)(3) | 8 |
| 16 | § 65583, subd. (c)(9) | 9 |
| 17 | § 65583.2, subd. (c)(3)(B)(iv) | 11 |
| 18 | § 65584 | 7 |
| 19 | § 65584, subd. (a)(2) | 8, 10 |
| 20 | § 65584.04, subd. (g) | 8 |
| 21 | § 65585, subd. (e) | 9 |
| 22 | § 65585, subd. (f) | 6 |
| 23 | § 65585, subd. (i) | 12, 15 |
| 24 | § 65585, subd. (j) | 12, 15 |
| 25 | § 65585, subd. (l) | 15 |
| 26 | § 65585, subd. (l)(3)(B) | 9 |
| 27 | § 65585, subd. (n) | 12, 15 |
| 28 | § 65589, subd. (d) | 6, 7, 15 |
| | § 65589.5, subd. (a)(1) | 14 |
| | § 65589.5, subd. (a)(2)(A) | 14 |
| | § 65589.5, subd. (a)(2)(J) | 7 |
| | § 65850.01 | 10 |
| | § 65863, subd. (a) | 12 |
| | § 65863, subd. (c)(2) | 11 |
| | § 65915 | 10 |
| | § 65917 | 10 |
| | Health & Safety Code, | |
| | § 50003, subd. (a) | 14 |

1 **INTRODUCTION**

2 California is in a housing crisis, specifically a housing shortage created in part by the
3 failure of local governments to supply affordable housing to meet the needs of all Californians.
4 Encinitas’s opening submittal shows how its local growth control measures—collectively referred
5 to herein as Proposition A—have contributed to that shortage, harming the public and itself.
6 Housing Element Law preempts Proposition A because Proposition A impedes the development
7 of affordable housing and prevents Encinitas from complying with its duty to accommodate its
8 regional housing need allocation. The electorate of Encinitas lacks the authority to veto local
9 legislation that is necessary to implement state law.

10 Now that Proposition A is back in effect, Encinitas’s efforts to avoid triggering it hinge on
11 avoiding any rezoning. To that end, it has projected that numerous sites could be developed with
12 exclusively affordable housing, which is something that Encinitas has never approved, that the
13 market alone is unlikely to support, and that current applications do not propose. For that reason,
14 No Net Loss Law will likely soon require Encinitas to rezone to accommodate new housing
15 density, thereby triggering Proposition A’s referendum procedure. In short, unless it is set aside,
16 Proposition A will again impede Encinitas’s compliance with state law, frustrating the
17 Legislature’s purpose in adopting Housing Element Law.

18 Accordingly, Proposition A will continue to unduly burden Encinitas’s efforts to comply
19 with state law unless the Court acts. As Encinitas has shown, it has no other recourse but to
20 pursue an action for declaratory relief. Under these circumstances, this Court should declare
21 Proposition A invalid to the extent it conflicts with Housing Element Law and No Net Loss Law.

22 **ARGUMENT**

23 **I. PROPOSITION A IMPEDES THE DEVELOPMENT OF AFFORDABLE HOUSING,**
24 **PREVENTS ENCINITAS FROM COMPLYING WITH STATE LAW, AND CREATES OTHER**
SIGNIFICANT ADVERSE IMPACTS

25 As Encinitas’s submission demonstrates, Proposition A has prevented its compliance with
26 state law, illicitly impeding the development of affordable housing. (See *Building Industry Assn.*
27 *v. City of Oceanside* (1994) 27 Cal.App.4th 744, 770 [*Oceanside*].) Encinitas, moreover,
28 acknowledges that its obligations under Housing Element Law may be incompatible with

1 referenda procedures like Proposition A’s. (Pl. Op. Br. at pp. 15-16 [citing *DeVita v. County of*
2 *Napa* (1995) 9 Cal.4th 763, 790-791 [*DeVita*].) As the California Supreme Court noted, Housing
3 Element Law is different from other legislative schemes governing local land use, as it is subject
4 to a comprehensive set of legislative mandates. (See *DeVita, supra*, 9 Cal.4th at p. 793, n.11.)
5 Although Encinitas correctly argues that it cannot reliably or efficiently comply with Housing
6 Element Law as long as Proposition A is in effect (Pl. Op. Br. at p. 17 [citing *San Francisco*
7 *Apartment Assn. v. City and County of San Francisco* (2016) 3 Cal.App.5th 563, 475]),
8 Encinitas’s submission also underscores how Proposition A will continue to impose significant
9 adverse effects on the public beyond Encinitas.¹

10 **A. Proposition A Has Prevented Encinitas from Complying with State Law**

11 The Legislature has directed courts to interpret Housing Element Law to promote “the
12 statewide goal of a sufficient supply of decent housing to meet the needs of all Californians.”
13 (Gov. Code, § 65589, subd. (d).)² Housing Element Law requires Encinitas’s legislative body to
14 adopt regularly updated housing elements for each planning cycle. (§ 65585, subd. (f).) It
15 prescribes a detailed process, with defined players and timelines. Encinitas’s opening brief and
16 supporting materials demonstrate why Housing Element Law cannot accommodate local
17 electorates using their referendum power in the housing element adoption and implementation
18 process. (See § 65589, subd. (d).) In frustrating the goal of Housing Element Law, growth control
19 measures like Proposition A have helped to fuel the statewide housing crisis.

20 The “*unrestricted* development of low cost housing is a matter of vital state concern.”
21 (*Bruce v. City of Alameda* (1985) 166 Cal.App.3d 18, 22, emphasis added [*Bruce*].) The
22 widespread failure of local governments to accommodate the development of lower-income
23 housing has created a crisis-level housing shortage. (See *Anderson v. City of San Jose* (2019) 42
24 Cal.App.5th 683, 711 [*Anderson*].) In amending the Housing Accountability Act in 2017, the
25 Legislature found that “California’s housing picture has reached a crisis of historic proportions

26 _____
27 ¹ Encinitas claims that Proposition A is valid to the extent it does not conflict with
28 Housing Element Law or No Net Loss Law. But Proposition A’s consistency with other laws is
not at issue. Encinitas also declines to identify any discernable benefits to Proposition A.

² Subsequent code citations are to the Government Code unless otherwise indicated.

1 despite the fact that, for decades, the Legislature has enacted numerous statutes intended to
2 significantly increase the approval, development, and affordability of housing for all income
3 levels.” (§ 65589.5, subd. (a)(2)(J).) Courts have also “recognized the statewide dimension of the
4 affordable housing shortage in relation to various impositions by the state into the realm of local
5 affairs.” (*Anderson, supra*, 42 Cal.App.5th at pp. 709-710.)

6 Chief among these statewide impositions is Housing Element Law. (*Id.* at p. 709 [citing
7 *California Building Industry Assn v. City of San Jose* (2015) 61 Cal.4th 435, 444-445 [*California*
8 *Building*]].) Recently, the Court of Appeal held that the “statewide nature of the issue is reflected
9 in the manner by which the Legislature has attempted to address it[,]” including through the
10 adoption of Housing Element Law.³ (*Ruegg & Ellsworth v. City of Berkeley, et al.* (Apr. 20, 2021,
11 A159218) __ Cal.App.5th __ [p. 42].) The statewide nature of this crisis leaves limited room for
12 local discretion, as every local government must do its part “to accommodate the housing needs
13 of Californians of all economic levels.” (§ 65580, subd. (b).)

14 To meet this goal, Encinitas must partake in a regionally coordinated, intergovernmental
15 process. (§ 65584 et seq.) It cannot confer veto authority to its electorate and still meaningfully
16 participate in this process. As Housing Element Law states, a local government’s regional

17 ³ The statewide dimension of Housing Element Law is, of course, indicative of the
18 Legislature’s intent to preempt the use of referenda, as argued in HCD’s opening brief. (See
19 *Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 502.) In addition, it
20 indicates that the Legislature intended to preempt all local law that imposes any additional
21 procedural hurdles on the adoption and implementation of housing elements. (See *Great Western*
22 *Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853, 862 [holding that implied
23 preemption is found when “the subject matter has been partially covered by general law couched
24 in such terms as to indicate clearly that a paramount state concern will not tolerate further or
25 additional local action” or when “the subject matter has been partially covered by general law,
26 and the subject is of such a nature that the adverse effect of a local ordinance on the transient
27 citizens of the state outweighs the possible benefit to the locality”], internal citations and
28 quotations omitted.) Although the Legislature may not have intended to occupy the entire field of
housing, it may still preempt local legislation in a narrower area of a larger field. (See *Suter v.*
City of Lafayette (1997) 57 Cal.App.4th 1109, 1124-1125.) The statewide dimensions at issue
here suggest that the Legislature impliedly intended to preempt all local law imposing additional
procedural constraints on the adoption and implementation of housing elements, which is
precisely how Proposition A operates when employed in the housing element adoption and
implementation process. Such narrow field preemption would be in keeping with the directive
that courts interpret Housing Element Law to promote “the statewide goal of a sufficient supply
of decent housing to meet the needs of all Californians.” (§ 65589, subd. (d).) It would also be
consistent with precedent, which has held that the Legislature preempted the field of mandatory
referenda on low-income housing development. (See *Bruce, supra*, 166 Cal.App. 3d at p. 22.)

1 housing needs allocation (RHNA) cannot be reduced to accommodate a growth control measure.
2 (§ 65584.04, subd. (g).) Rather, Encinitas must take necessary action to accommodate its RHNA.⁴
3 (§ 65584, subd. (a)(2).) Encinitas cannot forfeit this duty at the behest of its local electorate. Yet
4 as Encinitas shows, its prior adherence to Proposition A prevented it from accommodating its
5 RHNA, at great cost to both Encinitas and to the people of California. (See *Urban Habitat*
6 *Program v. City of Pleasanton* (2008) 164 Cal.App.4th 1561, 1580 [*Urban Habitat*] [holding that
7 a city’s failure to provide ample affordable housing harms the public].)

8 Impediments to affordable housing development, moreover, conflict with “an important
9 state policy to promote the construction of low income housing and to remove impediments to the
10 same.” (*Oceanside, supra*, 27 Cal.App.4th at p. 770.) That state policy is codified in Housing
11 Element Law. (See § 65583, subds. (a)(5), (c)(3).) Yet Encinitas did not accommodate its RHNA
12 until after Proposition A was temporarily set aside, and its delay in doing so likely contributed to
13 its failure to realize its projected housing development during that planning period, as Encinitas
14 acknowledges. (RJN Ex. S, Encinitas’ 2021-2029 Housing Element (Housing Element),
15 Appendix B: Housing Profile Report (Appendix B) at pp. B-69, B-78; Huntley Decl., ¶ 3.) In
16 short, Proposition A has impeded the development of affordable housing in Encinitas, has
17 conflicted with the goal of Housing Element Law in the process, and as a result, it “cannot
18 survive such a conflict.” (*Oceanside, supra*, 27 Cal.App.4th at p. 770; see also *T-Mobile West*
19 *LLC v. City and County of San Francisco* (2019) 6 Cal.5th 1107, 1123 [stating that “cities are
20 prohibited from using their powers to frustrate the larger intent” of specific statute]; *Riverside v.*
21 *Inland Empire Patients Health & Wellness Cr., Inc.* (2013) 56 Cal.4th 729, 764 [Liu, J.,
22 concurring, arguing that state law recognized the concept of obstacle preemption].)

23 **B. Proposition A Imposes Significant Costs on Encinitas**

24 Proposition A has impaired Encinitas’s attempts at compliance with state law, causing it
25 to incur substantial costs. As Encinitas acknowledges, it twice conditioned its adoption of
26 mandatory housing policies on a referendum vote pursuant to Proposition A, and the electorate

27 _____
28 ⁴ To accommodate RHNA is to have sufficient sites zoned at adequate density so that
RHNA can met. To meet or satisfy RHNA is to develop the units. (See § 66584, subd. (a)(2).)

1 twice rejected it. (Pl. Op. Br. at pp. 9-11.) Encinitas details the substantial fiscal impacts of
2 Proposition A in its brief. (Pl. Op. Br. at pp. 17, 19.)

3 In addition to those impacts, Proposition A, if left in effect, could ultimately threaten the
4 local electorate’s ability to meaningfully participate in the housing element adoption process.
5 Housing Element Law provides a vehicle for public input. The local planning agency must solicit
6 public comments and provide them to each member of the local legislative body.⁵ (§ 65585, subd.
7 (e).) This apprises the legislative body of the public’s views on local housing policies during
8 preparation of the housing element, and it helps “achieve public participation of all economic
9 segments of the community in the development of the housing element,” as required under
10 Housing Element Law. (§ 65583, subd. (c)(9).) But an ultimate remedy for failure to adopt a
11 compliant housing element is a court-appointed agent who would decide a noncompliant local
12 government’s housing policies for it. (§ 65585, subd. (l)(3)(B).) Unlike the local legislative body,
13 a court-appointed agent is not directly accountable to the local electorate and may be less attuned
14 to its concerns. Thus, by taking Encinitas out of substantial compliance with Housing Element
15 Lwa, a Proposition A referendum could mean the loss of meaningful public participation that
16 Housing Element Law otherwise contemplates. (See *ibid.*)

17 **C. With Proposition A in Effect, Encinitas Has Indicated It Will Take Active**
18 **Measures to Avoid Rezoning for New Housing Density, Thereby Deterring**
19 **the Development of Housing**

20 Proposition A will likely have a chilling effect on housing development in Encinitas as long
21 as it remains in effect. Because rezoning decisions require a referendum under Proposition A,
22 Encinitas’s sixth-cycle housing element includes a policy of seeking to avoid Proposition A’s
23 referendum vote by encouraging developers to adopt affordability levels that are higher than
24 presently required by the City’s Inclusionary Ordinance. (Huntley Decl., Ex. S, Appendix B at p.
25 B-144 [“The City will continue its efforts to encourage owners to provide more lower income
26 housing than required, *so that there will be no need to up zone sites during the planning period.*”],

27 ⁵ This requirement should put to rest any argument that the Legislature intended for
28 “legislative body” to mean anything other than a city council or county board of supervisors. The
planning agency cannot be expected to solicit public comments and provide them to each member
of the local electorate.

1 emphasis added.) This indicates that, as long as Proposition A is in effect, Encinitas will take
2 active measures to accommodate an identified constraint on the development of lower-income
3 housing, rather than taking all necessary actions to accommodate housing growth, as
4 contemplated by Housing Element Law. (See § 65584, subd. (a)(2).)

5 Incentivizing developers to provide higher percentages of affordable housing sounds
6 reasonable and is, on its own, in keeping with the spirit of Housing Element Law. But market
7 conditions will not support higher affordability levels forever, and the Legislature has recognized
8 that, at some point, inclusionary demands on their own may not always lead to the development
9 of affordable housing. (See § 65850.01 [requiring a feasibility study before cities adopt
10 inclusionary ordinances under certain circumstances]; see also § 65917 [expressing a legislative
11 intent for density bonuses and other incentives to make the development of affordable housing
12 more economically feasible].) Thus, merely encouraging owners to supply higher levels of
13 affordable housing without substantial incentives, like public financing, a municipal land
14 donation, or the incentives required under the Density Bonus Law (see § 65915), is unlikely to
15 make the development of affordable housing economically feasible. Indeed, Encinitas’ efforts do
16 not appear to be inducing production of affordable housing. (See, e.g., Huntley Decl., ¶ 3.)
17 Regardless, Encinitas admits that its purpose in encouraging project developers to increase their
18 affordability percentages is to avoid triggering Proposition A. With Proposition A in effect,
19 Encinitas will have an incentive to do whatever it can to avoid triggering its mandatory
20 referendum, as doing so would impose substantial fiscal costs and expose Encinitas to potential
21 liability, as Encinitas stresses throughout its opening brief. But without Proposition A, that
22 incentive would disappear, and Encinitas could rezone to accommodate housing needs without
23 going through Proposition A’s mandatory referendum.

24 **II. PROPOSITION A WILL INEVITABLY CONFLICT WITH ENCINITAS’S OBLIGATIONS**
25 **UNDER NO NET LOSS LAW**

26 As Encinitas itself indicates, there is another looming conflict between Proposition A and
27 state law, one that if left unresolved will result in a substantial hardship on Encinitas. Under No
28 Net Loss Law, if approving a project “results in fewer units by income category than identified in

1 the jurisdiction’s housing element for that parcel and the jurisdiction does not find that the
2 remaining sites in the housing element are adequate to accommodate the jurisdiction’s share of
3 the regional housing need by income level, the jurisdiction shall within 180 days identify and
4 make available additional adequate sites to accommodate” the RHNA for each income level.
5 (§ 65863, subd. (c)(2).) Encinitas may not disapprove a project simply because it would require
6 compliance with No Net Loss Law. (*Ibid.*)

7 According to Encinitas, “sites suitable for lower income housing must be zoned to allow
8 30 units per acre.” (Pl. Op. Br. at p. 18 [citing § 65583.2, subd. (c)(3)(B)(iv)].) “The only sites
9 zoned at this density are those designated in the Housing Element as suitable for lower income
10 housing.” (*Ibid.*) If approved projects do not meet the number of lower income units projected in
11 its housing element, Encinitas will have 180 days to rezone other sites to accommodate 30 units
12 per acre. (Pl. Op. Br., pp. 18-19.) And Proposition A would require a referendum each time if left
13 in full effect.

14 Encinitas will likely have to rezone to comply with No Net Loss Law in this cycle. To
15 accommodate its RHNA for the last cycle, Encinitas created a zone that set the maximum density
16 at 30 units per acre, which the Legislature has decided is “appropriate to accommodate housing
17 for lower income households” in metropolitan communities like Encinitas. (§ 65583.2, subd.
18 (c)(3)(B)(iv).) Encinitas adopted its housing element for the current cycle on April 7, 2021, and in
19 doing so, it relied on the projected development of affordable housing in that zone to
20 accommodate its RHNA. (Huntley Decl., ¶¶ 4, 12-15.) But that projected development will, as it
21 stands, likely fall short of its RHNA. (Huntley Decl., ¶ 19.) None of the applicants for
22 development in that zone have submitted exclusively affordable projects. (Huntley Decl., ¶¶ 12-
23 14, Ex. T, Housing Element, Appendix C: Adequate Sites Analysis, Part 1 at pp. C-8 to C-9.)
24 Encinitas will thus likely need to rezone to accommodate its RHNA. (See § 65863, subd. (c)(2).)

25 Under Proposition A, Encinitas would have to hold a referendum vote on every occasion
26 Encinitas must rezone to ensure it has adequate sites available. As Encinitas demonstrates, that
27 would severely tax its compliance with state law and its implementation of its own housing
28 element, which includes a program for streamlined rezoning to comply with No Net Loss Law.

1 (See Huntley Decl., Ex. R, Section 1 at p 1-22.) According to Encinitas, the cost of holding each
2 special election would be \$500,000. (Pl. Op. Br. at p. 19.) Even then, either the electorate
3 approves the rezoning after Encinitas incurs substantial monetary costs for going through the
4 trouble of pretending that its voters may reject a rezoning that is required under state law; or, the
5 electorate rejects the rezoning, as it has a demonstrated history of doing, thereby forcing Encinitas
6 to fall out of compliance with state law.⁶

7 This is unsustainable. State law requires Encinitas to provide ample sites for lower-income
8 housing throughout the planning period. (See § 65863, subd. (a).) Encinitas must in turn “use its
9 powers to facilitate development of housing that makes adequate provision for all economic
10 segments of the community,” without exception. (*California Building, supra*, 61 Cal.4th at pp.
11 446-447.) Allowing its local electorate to thwart Encinitas’s duty to ensure an adequate supply of
12 sites available for lower-income housing throughout the planning period will make the housing
13 crisis all the worse, as the lack of such sites is the key driver of the housing crisis. (See *Anderson,*
14 *supra*, 42 Cal.App.5th at pp. 710-711.)

15 **III. ENCINITAS HAS NO RECOURSE OTHER THAN LEGAL ACTION FOR DECLARATORY** 16 **RELIEF**

17 This case is unusual, as it features a city seeking to invalidate its own growth-control
18 measure, but Encinitas has demonstrated that Proposition A has imposed significant hardships on
19 its ability to comply with state law, exacerbating the statewide shortage in affordable housing to
20 the detriment of the public. As shown above, Proposition A has illicitly impeded affordable
21 housing development. (See *Oceanside, supra*, 27 Cal.App.4th at p. 770.) Complying with
22 Proposition A has proven unduly burdensome, and Encinitas is not in a position to address it
23 through ordinary legislative means. Rather, the only way Encinitas can permanently settle this
24 issue is through the courts.

25 ⁶ State law preempts local law when local law “directly requires what the state statute
26 forbids or prohibits what the state enactment demands.” (*Sherwin-Williams Co. v. City of Los*
27 *Angeles* (1993) 4 Cal.4th 893, 898.) But preemption also happens when a local law is merely
28 duplicative or coextensive with state law. (*Id.* at p. 897.) If voters approve a rezoning required by
state law, they are merely ratifying what state law already requires. If they reject one, they are
acting in defiance of state law. The exercise is either redundant or void. From a legal perspective,
it is always pointless. Any a failure to accommodate its RHNA will expose Encinitas to liability.
(See § 65585, subd. (i), (j), (n).)

1 **A. Declaratory Relief is the Appropriate Remedy for Encinitas**

2 “The purpose of a declaratory judgment is to serve some practical end in quieting or
3 stabilizing an uncertain or disputed jural relation.” (*Bess v. Parks* (1955) 132 Cal.App.2d 49, 52,
4 internal citations and quotation marks omitted.) “Another purpose is to liquidate doubts with
5 respect to uncertainties or controversies which might otherwise result in subsequent litigation.”
6 (*Ibid.*) Courts use two factors to determine whether a matter is ripe for declaratory relief. (*Urban*
7 *Habitat, supra*, 164 Cal.App.4th at p. 1580.) The first is whether a matter is sufficiently concrete
8 for judicial review. (*Ibid.*) The second is whether withholding judicial consideration will impose
9 any substantial hardship. (*Ibid.*)

10 With respect to the first factor, this case is clearly fit for judicial resolution now. Courts
11 should resolve disputes “if the consequence of a deferred decision will be lingering uncertainty in
12 the law, especially where there is widespread public interest in the answer to a particular legal
13 question.” (*California Building Assn. v. Bay Area Air Quality Management Dist.* (2016) 2
14 Cal.App.5th 1067, 1089 [quoting *Pacific Legal Foundation v. California Coastal Com.* (1982) 33
15 Cal.3d 158, 170].) Here, Proposition A is no longer suspended. Accordingly, Encinitas’s
16 compliance with Housing Element Law rests precariously on its prediction that projects will be
17 developed with 100% affordable housing, which would be unprecedented and is unlikely. At
18 some point, Proposition A will be triggered whenever Encinitas needs to rezone to comply with
19 its obligations under either Housing Element Law or No Net Loss Law.

20 In the meantime, the lingering uncertainty about the operation and effect of Proposition A
21 is distorting the regulatory behavior of Encinitas, potentially deterring the development of
22 housing. The prospect of conflicting obligations influences how Encinitas implements its housing
23 element, given its stated intent to seek to avoid triggering Proposition A. Far better to settle the
24 issue now, in light of the significant statewide public interest to ensure that Encinitas is in a
25 position to accommodate its RHNA throughout the current and future planning cycles. (See
26 *Anderson, supra*, 42 Cal.App.5th at p. 711.) Settling this now would also recognize the severity
27 of the housing crisis, as “the consequences of failing to effectively and aggressively confront this
28 crisis are hurting millions of Californians, robbing future generations of the chance to call

1 California home, stifling economic opportunities for workers and businesses, worsening poverty
2 and homelessness, and undermining the state’s environmental and climate objectives.”
3 (§ 65589.5, subd. (a)(2)(A).)

4 Moreover, “judicial economy strongly favors the use of declaratory relief to avoid a
5 multiplicity of actions to challenge” local policies. (*Venice Town Council, Inc. v. City of Los*
6 *Angeles* (1996) 47 Cal.App.4th 1547, 1566.) Compared to piecemeal review of specific actions
7 taken pursuant to local policy, declaratory relief concerning Encinitas’s conflicting obligations
8 under state and local law is “singularly economical.” (*Id.* at p. 1567.) It is the appropriate vehicle
9 to resolve a “fundamental misunderstanding” of Encinitas’s responsibilities under state law in
10 order to “avoid continued violations or nonenforcement in the future.” (*Id.* at p. 1566.)

11 With respect to the second factor, Encinitas and the general public will experience
12 significant hardship if this case is not resolved. A city’s “failure to provide affordable housing
13 without question harms the parties and the general public.” (*Urban Habitat, supra*, 14
14 Cal.App.4th at p. 1580.) If anything, Encinitas understates the material harms inflicted by
15 Proposition A, as it focuses on fiscal harms that it has incurred through litigation and failed
16 special elections. But its failure to provide housing, and especially affordable housing, itself
17 imposes a hardship, as it interferes with the public’s vested interest in an adequate supply of
18 housing for all income levels. (See *ibid.*) This failure poses a direct threat to the economic health
19 and wellbeing of the state. (See § 65589.5, subd. (a)(1) [stating that the shortage “of affordable
20 housing is a critical problem which threatens the economic, environmental and social quality of
21 life in California”].) The Legislature has provided solutions, and local governments must accept
22 them, lest the crisis continue to spiral out of control. (See *Anderson, supra*, 42 Cal.App.5th at pp.
23 709-711.) Housing scarcity imposes other legislatively recognized hardships too, like inflating
24 housing costs, decreasing “the relative affordability of the state’s housing supply for all”
25 Californians (Health & Saf. Code, § 50003, subd. (a)), and creating “adverse environmental
26 effects in the form of increased greenhouse gas emissions.” (*Anderson, supra*, 42 Cal.App.5th at
27 p. 711; see also Housing Crisis Act, Stats. 2019, ch. 654, § 2 [legislative findings of housing
28 crisis and related substantial economic, social, and environmental harms].) The problems created

1 by Proposition A’s return are real and its threat to housing development pervasive. It is—as
2 Encinitas states—time for a permanent settlement of the issue.

3 **B. In Pursuing Declaratory Relief, Encinitas Is Helping to Further the State’s**
4 **Housing Goal**

5 To advance the goal of Housing Element Law, cities like Encinitas should be encouraged
6 to address constraints on housing development before those constraints give HCD cause to initiate
7 enforcement actions. (See § 65585, subds. (j), (l), (n).) A locality’s authority to pursue declaratory
8 relief in this situation would be parallel with HCD’s enforcement authority, which provides for
9 reference of Housing Element Law violations to the Attorney General. (§ 65585, subd. (j).) The
10 Attorney General “may seek all remedies available under law,” which would include declaratory
11 relief. (§ 65585, subd. (n).) If a locality is out of substantial compliance with state law because of
12 its adherence to a governmental constraint on housing, or if it has failed to identify or otherwise
13 address the constraint, then the Attorney General could seek to invalidate the constraint through
14 an action for declaratory relief or mandamus. (§ 65585, subds. (i), (j), (n); see § 65589, subd. (d).)
15 There is no reason why cities should not pursue such actions on their own initiative.⁷

16 **CONCLUSION**

17 As Encinitas states, the time has come for a permanent judicial resolution of the conflicts
18 created by Proposition A. Housing Element Law supplies the resolution. HCD respectfully
19 requests that this Court issue a declaration that Housing Element Law preempts Proposition A’s
20 application to the adoption and implementation of Encinitas’ housing element, as Proposition A
21 impermissibly conflicts with state law.

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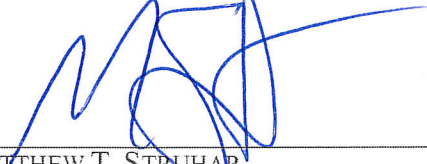
⁷ A local jurisdiction should not sue HCD in doing so, as part of HCD’s mission is to
eliminate constraints on housing development, not defend them.

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Dated: May 6, 2021

Respectfully Submitted,

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DECLARATION OF SERVICE BY E-MAIL ONLY

Case Name: *City of Encinitas v. CA Dept. of Housing and Community Development, et al.*

Case No.: **37-19-00047963-CU-OR-NC**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General regarding the electronic service of documents. In accordance with that practice, on May 6, 2021, I served the attached **CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT'S BRIEF IN RESPONSE TO OPENING BRIEF OF PLAINTIFF CITY OF ENCINITAS** by transmitting a true copy via electronic mail addressed as follows:

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on May 6, 2021, at Sacramento, California.

Leticia Aguirre
Declarant

/s/ Leticia Aguirre
Signature