No. A171983

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION THREE

THE COMMITTEE FOR TIBURON LLC,
Plaintiff and Respondent,
v.
TOWN OF TIBURON,
Defendant and Appellant,

SIERRA PINES GROUP, LLC.,
Real Party in Interest.

On Appeal from the County Superior Court of Marin County
Case No. CV0000086

AMICUS CURIAE BRIEF OF THE CALIFORNIA ATTORNEY GENERAL AND THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT; APPLICATION FOR LEAVE TO FILE

ROB BONTA (SBN 202668)
Attorney General of California
DANIEL A. OLIVAS (SBN 130405)
Senior Assistant Attorney General
DAVID PAI (SBN 227058)
Supervising Deputy Attorney General

NATHANIEL HYMAN (SBN 356730)
*JOHN M. NATALIZIO (SBN 311482)
Deputy Attorneys General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230
Telephone: (213) 269-6597
John.Natalizio@doj.ca.gov
Attorneys for Amicus Curie California Attorney General and California Department of Housing and Community Development

August 22, 2025

TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL FIRST **APPELLATE DISTRICT, DIVISION** THREE	COURT OF APPEAL CASE NUMBER: A171983
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 311482 NAME: John M. Natalizio FIRM NAME: California Department of Justice STREET ADDRESS: 300 South Spring Street, Suite 1702 CITY: Los Angeles STATE: CA ZIP CODE: 90013-1230 TELEPHONE NO.: (213) 269-6597 FAX NO.: E-MAIL ADDRESS: John.Natalizio@doj.ca.gov ATTORNEY FOR (*name*): Amici Cal. Atty. Gen. and Cal. Dept. of Housing and Community. Dev.	SUPERIOR COURT CASE NUMBER: CV0000086
APPELLANT/ PETITIONER: Town of Tiburon RESPONDENT/ REAL PARTY IN INTEREST: The Committee for Tiburon, LLC. / Sierra Pines Group, LLC.	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): Cal. Atty. Gen. & Cal. Dept. of Housing and Comm. Dev.

2. a. [X] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	**Nature of interest *(Explain):***
(1)		
(2)		
(3)		
(4)		
(5)		

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: August 22, 2025

John M. Natalizio
(TYPE OR PRINT NAME)

John Natalizio
(SIGNATURE OF APPELLANT OR ATTORNEY)

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

TO THE HONORABLE PRESIDING JUSTICE ALISON M. TUCHER:

The California Department of Housing and Community Development (HCD) respectfully requests permission to file the accompanying brief as amicus curiae, to assist this Court as it considers issues regarding the intersection of the California Environmental Quality Act (CEQA) with the Housing Element Law (Gov. Code § 65580 et seq.), the resolution of which could severely affect the efficacy of either statute. The proposed brief is jointly filed with the Attorney General of California, who is also submitting the accompanying brief in his independent capacity.[1]

HCD's statutory mission is to preserve and expand safe and affordable housing and promote strong communities for all Californians.[2] In addition to administering programs to provide safe affordable housing, HCD develops policies to increase the supply of affordable housing and conducts research and analysis of California's housing markets and needs.[3] In accordance with

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[1] See Rules of Court, Rule 8.882, subd. (d)(5), permitting the filing of amicus curiae briefs, submitted on the Attorney General's own behalf, without leave of court.

[2] See generally Gov. Code § 65585 [requiring HCD to adopt guidelines and issue findings regarding Housing Element Law compliance], and A Home for Every Californian: 2022 Statewide Housing Plan, at pg. 6, < https://www.hcd.ca.gov/docs/statewide-housing-plan.pdf> (as of August 5, 2025).

[3] *Ibid.*, and HCD's Policy and Research webpage, <https://www.hcd.ca.gov/policy-and-research> (as of August 5, 2025.

state law, HCD also oversees local land-use planning in an effort to ensure that those local governments provide adequate opportunities to develop housing sufficient for every income level.[4] It issues guidelines and offers technical assistance to local governments and developers regarding the broad statutory scheme addressing housing needs in the State, the hallmark of which is to review and certify all 540 housing elements for substantial compliance under the Housing Element Law.

The amicus brief of the Attorney General and HCD addresses the Superior Court's understanding that CEQA requires site-specific environmental review of a site that is merely identified in the Town of Tiburon's housing element as suitable for residential development at a programmatic level. CEQA does not require that type of review; instead, it permits "tiering" of further environmental review that is more appropriately analyzed when specific projects are being reviewed on the proposed site. Nor is the trial court's interpretation consistent with the Housing Element Law, which requires localities to update their housing elements on a strict timeline and to timely implement their housing programs to ensure that their housing elements remain certified by HCD as substantially compliant.

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[4] HCD's Housing Element online portal, <https://www.hcd.ca.gov/planning-and-community-development/housing-elements> (as of August 5, 2025).

Respectfully submitted,

ROB BONTA
Attorney General of California
DANIEL A. OLIVAS
Senior Assistant Attorney General
DAVID PAI
Supervising Deputy Attorney General

JOHN M. NATALIZIO
NATHANIEL HYMAN
Deputy Attorneys General

Attorneys for Amicus Curie California Attorney General and California Department of Housing and Community Development

INTRODUCTION AND STATEMENT OF INTEREST

The Attorney General has a strong interest in ensuring the appropriate construction of California laws. (Cal. Const., art. V, § 13; Gov. Code § 12511.) This interest is specifically baked into CEQA. (Gov. Code, §§ 12600-12612; Pub. Resources Code, §§ 21167.7 [requiring all CEQA pleadings to be served on the Attorney General's Office]; § 21177, subd. (d) [facilitating the Attorney General's participation in CEQA lawsuits].) Similarly, the Attorney General has an equally strong interest in enforcing the State's housing laws. The Legislature has declared that "[t]he availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian ... is a priority of the highest order." (Gov. Code, § 65580, subd. (a).) And, together with HCD, the Attorney General has a statutory obligation to enforce over 27 specific state housing laws related to planning and zoning, including the Housing Element Law. (Gov. Code §§ 65585, subd. (j), (n); 65585.01.) The Attorney General submits this brief, jointly with HCD, to assist the Court in interpreting CEQA's tiering protocols as it relates to the Housing Element Law, and to ensure the efficacy of both laws.

While CEQA requires lead agencies to analyze, to the extent feasible, the reasonably foreseeable environmental effects of any given project, the level of detail of environmental review need not be greater than that of the project being analyzed. (Cal. Code Regs., tit. 14, §§ 15152, 15364.) When adopting policies or plans like a housing element, CEQA allows lead agencies to prepare a programmatic Environmental Impact Report (EIR) covering more

general effects, followed by conducting "narrower or site-specific" analysis of effects not analyzed in the programmatic EIR for subsequent, more specific projects. (*Ibid.*; Pub. Resources Code, § 21068.5.) The Legislature enacted tiering to "promote construction of needed housing and other development projects" by streamlining regulatory procedures, and by limiting review to "issues ripe for decision" at each tier. (Pub. Resources Code, § 21093, subd. (a).) The trial court's ruling, if upheld, would blur the distinction between a first and second tier EIR, thereby impeding the use of tiering when it comes to planning for more housing.

Amici seek to assist the Court in clarifying the responsibilities of local governments that are drafting program EIRs pursuant to housing element updates. Specifically, this brief will explain that the scope of an EIR for a housing element should be on the environmental impacts arising from the housing element update itself; i.e., the EIR's focus should be on program-wide secondary impacts rather than on a site-specific level of detail that an EIR for a future development project on a particular site might later require. This is true even if the updated housing element includes a description of environmental constraints regarding the feasibility of development in a local government's site inventory, as it must under the Housing Element Law. In other words, evaluating whether a site may theoretically support housing is necessary to determine whether a local government has a viable plan to fulfill its housing needs, but specific impacts arising from a particular development on

such a site remain theoretical, and best assessed only when a development on that site is actually proposed. This reading is consistent with both CEQA and the Housing Element Law, with neither statutory scheme demanding more, or less, of the other as local governments grapple with both statewide housing and environmental priorities. Additionally, amici will discuss the troubling practical impacts arising from the lower court's decision to set aside a local government's housing element site inventory, which, if upheld, stands to undermine the Legislature's clear intent to alleviate the State's housing shortage, and needlessly places the Town at risk of housing element decertification.

FACTUAL BACKGROUND AND PERTINENT LEGISLATIVE FINDINGS

I. THE STATE'S HOUSING CRISIS

California is in the midst of a well-documented housing crisis, caused by a stark mismatch between California's housing needs and its housing production.[5] This is so even after the Legislature found and declared, as far back as 1980, that "the availability of housing is of vital statewide importance … requir[ing] the cooperative participation of government and the private sector to expand housing opportunities and accommodate the housing needs of Californians of all economic levels." (Gov. Code § 65580, subds. (a), (b).) Further, the Legislature recognized

[5] From 1990 to 2019, California's population rose by nearly 10 million people. However, over this time the state has added only 3.4 million new housing units. More information can be found in HCD's Housing Assessment report, available at https://www.hcd.ca.gov/policy-research/plans-reports/docs/sha_final_combined.pdf (as of August 5, 2025).

that "each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan and to cooperate with other local governments and the state in addressing regional housing needs." (*Id.*, subds. (c), (e).)

Five decades later, in imposing more specific requirements to ascertain a housing element's site inventory, the Legislature added another finding: "Designating and maintaining a supply of land and adequate sites suitable, feasible, and available for the development of housing sufficient to meet the locality's housing need for all income levels is essential to achieving the state's housing goals and the purposes of this article." (Gov. Code, § 65580, subd. (f.); see Assem. Bill No. 1397 (2017-2018 Reg. Sess.) § 1.) During that same session, the Legislature also amended other sections within the Housing Element Law, including the Housing Accountability Act, finding that amendments were necessary because California suffers from a "housing supply and affordability crisis of historic proportions." (Gov. Code, § 65589.5, subd. (a)(2)(A); see Assem. Bill No. 1515 (2017-2018 Reg. Sess.), §§ 1, 1.5.) The Legislature continued: "The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives." (*Ibid.*)

Significantly increasing the approval and construction of new housing is, therefore, essential to encouraging infill development, which can alleviate the harmful environmental impacts of urban sprawl, excessive commuting, air quality deterioration, and significant increases in greenhouse gas emissions and other pollutants. Further, ensuring an adequate supply of housing at all income levels avoids the displacement of Californians to states that do less to reduce climate pollution. (Gov. Code, §§ 65589.5, subd. (a)(1)(C), 65584, subd. (a)(3); see also Assem. Bill No. 1086 (2017-2018 Reg. Sess.), § 1 [amending § 65584].)

Accordingly, the Legislature imposed a rebuttable presumption in favor of housing elements determined by HCD to be substantially compliant with the law. (Gov. Code, § 65589.3; see also Assem. Bill No. 2023 (2023-2024 Reg. Sess.), § 6 [creating rebuttable presumption of invalidity where (1) HCD determines a local government's action or failure to act does not substantially comply with its adopted housing element or the Housing Element Law and (2) HCD determines a housing element or amendment does not substantially comply with the Housing Element Law].) This is consistent with other Legislative mandates that the provisions of the state's housing laws must be "interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." (Gov. Code, § 65589.5, subd. (a)(2)(L); see also *id.*, § 65913.4, subd. (u) [streamlining approvals of urban, multi-family housing

development projects meeting certain criteria] and *id.*, § 65915, subd. (r) [Density Bonus Law].)

A. The General Plan and Its Housing Element Are Broad Policy Documents that Are Essential to Alleviating the State's Housing Crisis

To effectuate the development of more housing throughout the state and alleviate the housing crisis, the Legislature adopted numerous laws and policies aimed at streamlining housing production, eliminating delays and excessive costs, and reducing local constraints. One of the key tools developed by the Legislature is the statewide review and certification of local housing elements, which looms large in this appeal.

State law requires each city and county to adopt a comprehensive, long-term general plan for the physical development of the jurisdiction. (Gov. Code § 65300.) The general plan functions as the local government's constitution for future development located at the top of the hierarchy of local government law regulating land use. (*San Franciscans for Livable Neighborhoods v. City and County of San Francisco* (2018) 26 Cal.App.5th 596, 609.) A general plan, by its very nature, represents a conceptual proposal that can evolve dependent upon the community's changing needs. (See *Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612, 625.) The general plan consists of mandatory elements, which, in relevant part, include a housing element. (Gov. Code §65302.)

The purpose of the housing element is to assure that cities and counties recognize their responsibilities in contributing to the attainment of the state housing goals. (Gov. Code, §§ 65580, subd.

(c); 65581, subd. (a).) A housing element comprises many components, programs, and policies. One of its most powerful tools to combat the housing crisis is the assessment of housing needs, which requires local governments to plan and account for how they intend to meet their existing and projected housing needs for all income levels, including the locality's proportionate share of regional housing needs for each income level. (*Id.*, § 65583, subd. (a)(1) [requiring local governments to assess existing needs based on local demographic and economic trends, offsetting projected needs based on new units approved/permitted since the start of the planning period, and, among other descriptive analyses of specific needs and resources, demonstrating how it intends to meet the remainder of its Regional Housing Needs Allocation ("RHNA")].)[6] The projected regional housing needs for a planning period are determined by HCD in consultation with the regional councils of government. (*Id.*, §§ 65584, subd. (a), (b); 65584.01; 65588, subd. (e)(3).) Based upon the regional housing needs determination, each regional council of governments adopts a final regional housing needs plan that allocates a share of the needs among the cities and counties within its region. (*Id.*, § 65584, subd. (b).) A local government's RHNA is the centerpiece of a housing element's assessment of housing needs. (*Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 223.)

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[6] For more information on what a comprehensive housing element entails, HCD's guidance is available here: https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks (as of August 5, 2025).

After receiving its RHNA, a local government must update its housing element to identify specific sites for development within the planning period—typically for most localities, and for the Town, an eight-year cycle—that are sufficient to accommodate its RHNA for all income levels (very low, low, moderate, and above moderate). (Gov. Code, §§ 65584, subd. (f); 65583.2, subd. (a).) Because the Legislature imposed strict deadlines for local governments to then update their housing elements to accommodate those RHNA allocations within each applicable planning period, courts have held that the Legislature clearly, though not expressly, barred RHNA allocations from judicial review. (*City of Coronado v. San Diego Ass'n of Governments* (2022) 80 Cal.App.5th 21, 44-45; *City of Irvine v. So. Cal. Assn. of Governments* (2009) 175 Cal.App.4th 506, 518.)

The revised housing element must include an inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).) Land suitable for residential development is categorized by the type of zoning for each site and includes (1) vacant sites zoned for residential use, (2) vacant sites zoned for nonresidential use that allow residential development, (3) residentially zoned sites capable of being developed at a higher density, and (4) sites zoned for nonresidential use that can be redeveloped for residential use,

provided they meet certain statutory standards. (*Id.*, § 65583.2, subd. (a).)

The site inventory in a revised housing element is a listing of properties that contains information specified by statute. The mandatory information includes the size, general plan designation, and zoning of each property, a map showing the property's location, a general description of any environmental constraints to the development of housing, and a description of existing or planned utilities, including availability of and access to distribution facilities. (Gov. Code, § 65583.2, subds. (b)(2), (4), (5), (7).) The general description of environmental constraints need not be identified on a site-specific basis. (*Id.*, § 65583.2, subd. (b)(4).)

For nonvacant sites, the site inventory must describe the existing use of each property. (Gov. Code, § 65583.2, subd. (b)(3).) The local government must specify the additional development potential for each site within the planning period and must provide an explanation of the methodology used to determine the development potential. (*Id.*, § 65583.2, subd. (g)(1).) After a local government has assessed its housing needs and compiled its site inventory, it must prepare programs and policies to effectuate its needs. If the available sites do not accommodate the local government's RHNA for each income level, the program must identify actions that will accommodate those needs, including rezoning. (*Id.*, § 65583, subd. (c)(1).) If the local government later wishes to reduce the residential density of a site identified in the housing element, and there are inadequate sites remaining to

accommodate the RHNA for that income level, a "no net loss" provision obligates the local government to quickly rezone additional sites to make up the difference. (*Id.*, § 65863, subd. (c).)

ARGUMENT

I. PROGRAMMATIC EIRS AND TIERING ARE ESSENTIAL TO COMPLIANCE WITH THE HOUSING ELEMENT LAW AND ALLEVIATING THE STATE'S HOUSING CRISIS

A. Tiering is Appropriate for EIRs Tied to Housing Element Updates and Requisite Rezoning.

CEQA allows for different types of EIRs depending on the nature of the underlying project. For example, where the approval of a single apartment building would require a "project EIR" that analyzes environmental impacts at the highest level of site-specificity, a more large-scale policy project, such as a general plan or housing element update, requires a "program EIR." (Cal. Code Regs., tit. 14, §§ 15146 [discussing degree of specificity for an EIR], 15161 [defining a "Project EIR"], 15168 [defining a "Program EIR"].) Program EIRs evaluate the broad environmental impacts of a plan, but do not "examine the potential site-specific impacts of the many individual projects that may be proposed in the future consistent with the plan." (*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1047.) Because the degree of specificity required by a program EIR hinges on feasibility and foreseeability, it varies based on the nature of the CEQA project it is analyzing.

Courts strive to avoid attaching too much significance to titles, stating that "[d]esignating an EIR as a program EIR . . .

does not by itself decrease the level of analysis otherwise required in the EIR." (*Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 533.) Instead, "the level of specificity of an EIR is determined by the nature of the project, and the 'rule of reason' rather than any semantic label accorded to the EIR." (*Al Larson Boat Shop, Inc. v. Bd. of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 741742.) One factor that courts consider when determining the necessary degree of specificity is the extent to which such analysis would rely on speculation. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 395.)

The purpose of distinguishing between project and program EIRs is to allow for "tiering," which refers to the process of covering more general matters in the programmatic—or first tier—EIR, and then incorporating them by reference into a subsequent project—or second tier—EIR. (Cal. Code Regs., tit. 14, § 15152.) The level of detail contained in a first-tier EIR "need not be greater than that of the program, plan, policy, or ordinance being analyzed." (*Ibid.*) The CEQA guidelines explicitly encourage agencies to tier from general plans because doing so eliminates repetitive discussions on the same issues, limits the scope of analysis to issues that are ripe for review, and allows for the deferral of site-specific analysis until more information is available at later stages. (*Ibid.*) Though site-specific analysis may be held off to occur later, agencies drafting a program EIR must still adequately analyze "reasonably foreseeable significant

environmental effects" that are "reasonably feasible" to address. (*Ibid*; *Citizens for a Sustainable Treasure Island*, *supra*, 227 Cal. App.4th at p. 1051.)

Courts have repeatedly applied these principles to allow agencies to analyze environmental effects in general terms in a program EIR, while holding off on site-specific analyses to the second-tier project EIR. For instance, in *In re Bay-Delta, etc.* (2008) 43 Cal.4th 1143 (*Bay-Delta*), the Supreme Court upheld a program EIR prepared for a long-term comprehensive plan to restore the Bay-Delta ecological system, rejecting the petitioners' argument that the EIR improperly lacked a site-specific analysis of potential water sources. (*Id.* at p. 1161, 1171-1173.) Similarly, in *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, the court upheld a program EIR for a county hazardous waste management plan, rejecting the challenger's argument that site-specific project descriptions for prospective hazardous waste facilities were required (*Id.* at p. 371.) *Rio Vista Farm* acknowledged that while additional hazardous waste facility sites may be a foreseeable consequence of the plan, that does not alter the nature or scope of the program considered in the challenged EIR, which functions more as a general planning device. (*Id.* at pp. 381-382.) So too, here, with respect to housing element updates and rezonings for housing element implementation – there is no development to analyze.

This is because a housing element update is purely a planning document; i.e., an element is not a development. It does not mandate what type of development must go on each site.

Instead, it is designed to require local governments to identify sites suitable for housing development. A local government must analyze its site inventory's development constraints by assuming each site's allowable maximum density, in part to ensure that a Housing Element at least theoretically can accommodate the full scope of that locality's housing needs. But common sense and economic realities dictate that not all sites do end up being developed. This is why HCD recommends a 15-30% buffer for more capacity in its site inventory guidebook, in part to avoid inadvertent shortfalls when projects are later approved at lower densities—or no project is proposed at all.[7] In short, while identification of constraints to development at maximum densities for planning purposes is consistent with a planning-level EIR, detailed analysis of the impacts particular development on a site is appropriately left to such time when a concrete and specific development is proposed.

Finally, to the extent Respondent contends that the Town's EIR is inadequate because it also failed to conduct an environmental review for rezoning Site H, that is now a distinction without a difference. Consistent with current law, an EIR studying the environmental impacts of a site rezoned for housing element compliance does not require further study beyond analyzing the adopted housing element's environmental

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[7] See HCD's Memorandum to All Planning Directors re Housing Element Site Inventory Guidebook, dated June 10, 2020, pg. 22, <https://www.hcd.ca.gov/community-development/housing- element/docs/sites_inventory_memo_final06102020.pdf> (as of August 5, 2025).

impacts. (Pub. Resources Code, § 21080.085, subd. (a) [added by Sen. Bill No. 131 (2024-2025 Reg. Sess.), a budget trailer bill that took effect on June 30, 2025].) Specifically, Section 21080.85 states: "This division does not apply to a rezoning that implements the schedule of actions contained in an approved housing element pursuant to subdivision (c) of Section 65583 of the Government Code." (*Ibid.*) Thus, if this Court agrees that the Town's EIR is sufficient for purposes of its housing element update, the same should apply for the Town's decision to rezone Site H. (See *Make UC a Good Neighbor v. Regents of University of California* (2024) 16 Cal.5th 43, 65 [holding that recent legislation amending CEQA in the university's favor does not merely moot the case; it determines who prevails.].)[8]

B. Housing Element Program EIRs Should Focus on The Secondary Impacts of Designated Sites, Even if Site-Specific Constraints are Identified in the Housing Element.

The CEQA Guidelines instruct agencies preparing program EIRs for large-scale planning documents, like a housing element, to focus on "secondary effects," which are defined as "indirect," being caused "later in time or farther removed in distance." (Cal. Code Regs., tit.14, §§ 15152, subd. (c), 15146, subd. (b), 15358, subd. (a)(2). Examples of secondary effects include "growth-

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[8] Even if this Court were to determine that the Town should have conducted a second programmatic EIR in conjunction with rezoning Site H, an order declaring that rezoning invalid would serve no purpose nor afford petitioners any effective relief, since the Town could simply rezone the site again, without any environmental analysis, pursuant to Sen. Bill No. 131's amendment of CEQA.

inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems." (Cal. Code Regs., tit. 14, § 15358, subd. (a)(2).) In contrast, the same guideline defines "direct or primary effects" in opposition to secondary effects as being "caused by the project and occur[ing] at the same time and place." (*Id.* at § 15358, subd. (a)(1).) As one court has explained, "the difficulty of assessing future impacts of a zoning ordinance does not excuse preparation of an EIR," but it does "reduce[] the level of specificity required and shift[] the focus to the secondary effects." (*City of Carmel-by-the-Sea v. Bd. of Supervisors* (1986) 183 Cal.App.3d 229, 249-250.)

The focus on secondary effects for program EIRs is a sensible one, since EIR requirements must be sufficiently flexible to encompass vastly different projects with varying levels of specificity. (*City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1337.) And, just as the Town has done here, best practices suggest that, when analyzing for secondary effects, a housing element program EIR should assume the maximum-buildout scenario to properly assess locality-wide effects and not overlook any cumulative impacts. (See Cal. Code Regs., tit. 14, § 15378, subd. (a) and (c) [defining a "project" under CEQA to encompass the "whole of an action"].) But this assumption does not mean a Town is precluded from tiering. To the contrary, a housing element program EIR, which implements jurisdiction-wide programs and policies, is focused on a jurisdiction-wide

perspective, rather than analyzing environmental impacts of every individual parcel identified in its site inventory. This environmental analysis is in line with the purpose of the "project" being analyzed under CEQA (i.e., the housing element), and the basic principles behind tiering off site-specific environmental analyses.

To be clear, tiering does not relieve a lead agency from adequately addressing reasonably foreseeable significant environmental effects. (Cal. Code Regs., tit. 14, § 15152.) And in forecasting the foreseeable, best efforts must be used to find out and disclose significant environmental impacts. (*Id.* at § 15144.) Nor do amici disagree with Respondent's position that CEQA is a "full disclosure" statute. But these requirements do not mandate that housing element program EIRs must then include site-specific impact analysis, particularly when such site-specific impacts are not reasonably foreseeable in the absence of a site-specific development proposal. Ultimately, the degree to which a local government can feasibly analyze, on a program level, site-specific environmental impacts without knowing any details as to what housing development project will specifically be proposed on that site, is inherently fact specific and entitled to substantial evidence review. It should not matter that the Housing Element Law required the Town to look at development constraints, including environmental ones, for site suitability purposes and to describe those constraints in general terms in its housing element. Meeting the compliance standards of one law should not change the sufficiency standards of another.

Under the Housing Element Law, the general description of environmental constraints for purposes of inventorying potential housing sites need not be site-specific. (Gov. Code § 65583.2, subd. (b)(4).) Nor does available information regarding site-specific environmental conditions, analyzed for the purpose of determining a site's development *potential*, trigger any requirements for extensive, site-specific environmental review. Similarly, under CEQA, the level of detail in a program EIR need not be greater than that of the program being analyzed. (Cal. Code Regs., tit. 14, § 15152, subd. (b).) And the degree of specificity in a program EIR need not be as detailed as an EIR on the specific construction projects that might follow (*Id.*, at § 15146, subd. (a) and (b).) Following these laws—analyzing development constraints in the underlying program, studying broader environmental impacts within the housing element program EIR, and finding that site-specific impacts should be tiered to a second-level project-based EIR—is not "sweeping disagreements under the rug," as Respondent suggests. (See Respondent's brief, pg. 51.)

II. THE DISTINCTION BETWEEN A HOUSING DEVELOPMENT PROJECT AND A LOCAL GOVERNMENT'S HOUSING ELEMENT SITE INVENTORY IS UNMISTAKABLY CLEAR

No reasonable person can dispute the obvious distinction between an actual housing development project and a housing element site inventory. A housing development project is defined as a project proposing residential use of some kind, be it for multi-family, mixed-use (upon certain conditions being met), transitional or supportive, or farmworker housing. (Gov. Code

§65589.5, subd. (h)(2).) Put simply, a housing development project is a proposed residential project on a specific site. Project-specific EIRs, therefore, should be prepared if and when a housing project is actually proposed.[9] On the other hand, a housing element, including its site inventory, is not proposing the development of any actual housing project. It is, as discussed above, a concept of where and how housing should fit in a local government's general plan. Put simply, it is purely a planning document. A site inventory, even if it contains a general description of environmental constraints for purposes of evaluating a site's development potential, remains distinct from an actual housing development project. That same distinction between project and planning can and should inform courts of the requisite scope of an EIR.

A. The Trial Court Blurred the Distinction Between a Housing Element Program EIR and a Site-Specific, Project EIR.

The trial court's analysis blurred the distinction between a program EIR for a general plan amendment and an EIR for an actual housing development project. Specifically, the trial court

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[9] Respondent contends that environmental review of any development at Site H will never occur. (Respondent's brief, pg. 70.) But nothing in the record suggests the Town intends to evade site-specific review, or that the Town will be legally excused from preparing one. Without a project application, it is premature to assume that site-specific impacts will never be adequately addressed, or if a proposed project on Site H would meet any criteria for a CEQA exemption. The possibility that a future housing project proposal may qualify for a CEQA exemption does not, by itself, make site-specific impacts more feasible to analyze at the housing element stage.

misapplied *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* ("*Vineyard*") (2007) 40 Cal.4th 412 and *Stanislaus Natural Heritage Project v. County of Stanislaus* ("*Stanislaus*") (1996) 48 Cal.App.4th 182, 205-206. In so doing, the trial court conflated broad, policy-based program EIRs with multi-phased project EIRs.

The trial court relied upon *Vineyard* and *Stanislaus* for the proposition that "[a]n EIR evaluating a planned land use project must assume that all phases of the project will eventually be built." (*Vineyard Area Citizens, supra,* 40 Cal.4th at p. 431; quoting *Stanislaus, supra,* 48 Cal.App.4th at p. 206.) The trial court interpreted these cases as requiring that a housing element's redesignation of a parcel be treated effectively the same as a proposed development project proposal at the maximum allowable density. But, as noted by the Supreme Court one year later in *In re Bay-Delta, etc.*, those cases are factually distinguishable from broad, general, multi-objective, policy-setting, geographically dispersed policy programs. (*supra,* 43 Cal.4th at pp. 1171, 1173, fn. 10.) Indeed, *Vineyard* and *Stanislaus* both involved approvals for specific multi-phased development projects. (See *Vineyard Area Citizens, supra,* 40 Cal.4th at pp. 422-423 [Program EIR for a large mixed-use development project deemed insufficient]; and *Stanislaus Natural Heritage Project, supra,* 48 Cal.App.4th at p. 186 [Program EIR for a 5,000-unit resort and residential community].)

CEQA defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Pub. Resources Code, § 21061.1 and Cal. Code Regs., tit. 14, § 15152.) Although the trial court found that a site-specific analysis was feasible (3 JA 761-764), it never discussed any of the listed factors that constrain feasibility. Instead, the court relied on *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019 for the proposition that a "significant environmental impact is ripe for evaluation in a first-tier EIR when it is a reasonably foreseeable consequence of the action proposed for approval and the agency has 'sufficient reliable data to permit preparation of a meaningful and accurate report on the impact.'" (*Id.* at p. 1028.) But the trial court's reliance on *Los Angeles Unified* was misplaced. That case expresses the CEQA standard for cumulative impacts and the feasibility of mitigating effects of secondary impacts, none of which are at issue here. (See *id.* at pp. 1024, 1028-1029.)

In the context of the Town's decision to tier, what is feasible and reasonably foreseeable to study regarding site-specific impacts—particularly pertaining to Site H—should be informed by the unknown variables inherent in any broad-based plans for housing development. A decision reviewing a university's large-scale expansion plan, where the issues centered on student and faculty housing, is on point. (*City of Hayward v. Trustees of Cal. State University* (2015) 242 Cal.App.4th 833, 850.) In *City of Hayward*, the court upheld the university's decision to defer

analysis of site-specific cumulative impacts related to traffic. (*Ibid.*) The court reasoned that doing so was prudent because there are many variables to be considered on a project-specific level, such as the location of entrances and parking spaces, that could not be meaningfully evaluated at the program level. (*Ibid.*) And, contrary to Respondent's implication, the court's rationale made no distinction between a "committed" site or potential site alternatives. (Respondent's Brief, pg. 65.) Tiering, in short, was proper. Nor is tiering under these circumstances a novel approach. (See *Env. Protection Information Center v. Cal. Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 503 [noting that no purpose can be served by requiring an EIR to engage in sheer speculation as to future environmental consequences not yet certain]; *Planning and Conservation League v. Dept. of Water Resources* (2024) 98 Cal.App.5th 726, 756 [holding that CEQA does not require the state to consider environmental impacts of all potential projects under the State Water Project, particularly those not yet funded]; *Schaeffer Land Trust, supra,* 215 Cal.App.3d at p. 631 [holding that the City properly deferred review of cumulative impacts related to traffic issues upon a general plan update, and that, as a practical matter, a study of actual cumulative impacts has more utility than a study of conceptual cumulative impacts].)

B. The Trial Court Blurred the Distinction Between the Housing Element Law's Development Constraints Analysis With the Feasibility of Analyzing Reasonably Foreseeable Environmental Impacts Under CEQA.

In support of its decision, the trial court points to the Town's previous analysis of Site H from 2019 annexation proceedings and its amended housing element, which includes a page and a half of development capacity analysis (prepared after EIR certification). (3 JA 761-765.) In doing so, the trial court appears to have attributed information derived from HCD's request for further analysis of potential development constraints as proof that reasonably foreseeable environmental impacts could be feasibly studied.

CEQA requires an EIR to focus on impacts to the existing environment, not hypothetical situations. (*San Franciscans for Livable Neighborhoods, supra,* 26 Cal.App.5th at p. 614.) The sufficiency of an EIR, regardless of tiering, is "reviewed in light of what is reasonably feasible," and courts look "not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." (*In re Bay-Delta, etc., supra*, 43 Cal.4th at p. 1175; Cal. Code Regs., tit. 14, § 15151.)

The supplemental analysis HCD requested was not an environmental analysis, but a much narrower survey of whether issues relating to water availability, emergency service access, and ephemeral streams would constrain the development of Site H. (2 AR 4601-4602.) As noted above, this constraints analysis is a tool to assess whether a local government has in fact identified sites that realistically, if still theoretically, collectively

accommodate the housing needs of its population. It ensures a local government has not identified sites for development that cannot feasibly be developed at higher densities. In seeking additional constraints-related information, HCD was not demanding that the Town address how Site H, at its maximum development, would impact the environment, and how those impacts could be mitigated. Information regarding development constraints, even if related to habitat and wetlands constraints, provides no insight into whether a future, actual development project at the site would satisfy the separate and more rigorous standards of a CEQA project-specific analysis. Nor should it. Providing additional site-suitability analysis, for the purpose of obtaining certification of a housing element from HCD, does not automatically convert the information provided into the reasonably foreseeable, feasibly analyzed impacts that CEQA requires lead agencies to analyze. Site-suitability analysis, therefore, does not impose a greater burden on local governments to conduct additional site-specific environmental review and otherwise be precluded from tiering.

III. IF UPHELD, THE TRIAL COURT'S REASONING MAY HAVE PERVERSE EFFECTS ON HOUSING ELEMENT PLANNING STATEWIDE

Should the trial court's ruling be upheld, local governments, in preparing its housing element program EIRs, would be dissuaded from tiering off potential site-specific environmental impacts that are better suited to be later studied at the project-level. Housing Element Law implementation, accordingly, may be adversely impacted. This is because a local government with its

housing element site inventory set aside, even momentarily, means it has a housing element that cannot meet its RHNA allocation, putting it at risk of housing element decertification. Three other practical consequences arising from the trial court's ruling warrants consideration.

First, even though HCD is neither a responsible agency or a trustee agency under CEQA, the trial court's decision would inadvertently impose some CEQA responsibility onto HCD. If the decision stands, it would cause confusion among fact finders because, as discussed above, the trial court conflated Housing Element site suitability standards with the more specific site-specific environmental analyses required under CEQA. HCD would, in effect, become a proxy for environmental challenges to housing elements, which is what happened in this action below. The Respondents submitted documentation to HCD *after* the EIR was certified, and then used HCD's request for further information regarding development constraints as proof that significant environmental impacts were revealed and not studied. Yet, perhaps to evade the presumption of validity afforded to HCD's determination in certifying housing elements, Respondents did not seek to challenge Site H's inclusion head on, despite vociferously raising site suitability concerns over Site H to HCD. (Gov. Code § 65589.3, subd. (a); see 2 AR 4021, 4022, 4360-4376, 4580-4587, 4594-4596.) To later recast site suitability concerns made to HCD as a record of potential significant environmental impacts that are "reasonably foreseeable," thus requiring further CEQA review, flies in the face of Respondent's

acknowledgement that HCD's focus on site suitability is different than CEQA. (See Respondent's Brief, pg. 75: "HCD has a different focus than CEQA....").

Second, mandating site-specific environmental analysis in the housing element program EIR would invite prospective litigants to engage in gamesmanship. It would tempt those opposed to housing developments to file a series of CEQA challenges against a local government, in particular localities with larger site inventories. Instead of challenging a site inventory through the provisions provided for under the Housing Element Law, advocacy groups could misuse CEQA to stall the housing element's certification by perpetually challenging the local government's failure to analyze site-specific environmental impacts of a hypothetical project *for each site* listed in the housing element inventory, effectively holding up a certified housing element from being implemented.[10] Whether such litigation strategy prevails on the merits is not the point. (See *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 576 ["[W]e caution that rules regulating the protection of the environment must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development and advancement."]; *Tiburon Open Space Committee v. County of Marin* (2022) 78 Cal.App.5th 700, 782

[10] A proper challenge of a housing element site is, by its nature, a challenge to the housing element itself. The standards and procedure for doing so are set forth under provisions of Housing Element Law. (Gov. Code, §§ 65587, subd. (b); 65583, subd. (h).)

["CEQA was meant to serve noble purposes, but it can be manipulated to be a formidable tool of obstruction, particularly against proposed projects that will increase housing density."].)

Perversely, the trial court ruling also provides a roadmap to impede certified housing elements from going into effect, exposing well-meaning local governments to the "builder's remedy," a law more suitably invoked against local governments that refuse to plan for their fair share of regional housing needs. The builder's remedy, in general, is a provision in the Housing Accountability Act that allows developers to bypass local zoning ordinances and build housing projects in cities and counties that do not have a substantially compliant housing element. (See Gov. Code, § 65589.5, subd. (h)(11).) Advocates for the builder's remedy, or those unhappy about a local government's site inventory, will be incentivized to bring CEQA challenges, potentially leaving housing element implementation in limbo.

Third, requiring a housing element program EIR to include additional site-specific CEQA analysis for every site identified in the site inventory will significantly increase the costs and burden on local governments. Again, housing elements are comprehensive planning documents that require extensive analysis and review by HCD. The analysis required under the Housing Element Law already imposes a series of obligations to obtain certification from HCD, with the process sometimes taking years to complete. If each local government now must analyze environmental impacts at a site-specific level for every site identified in its housing element inventory, the costs and burden

to perform this analysis would significantly delay the housing element's preparation, adoption, and certification. To impose that obligation onto local governments would be impractical and unnecessary, putting the EIR cart before the proverbial development permit application horse.

CONCLUSION

For the foregoing reasons, the Court should vacate the trial court's order and remand for reconsideration consistent with the requirements of CEQA and the Housing Element Law.

Respectfully submitted,

ROB BONTA
Attorney General of California
DANIEL A. OLIVAS
Senior Assistant Attorney General
DAVID PAI
Supervising Deputy Attorney General

JOHN M. NATALIZIO
NATHANIEL HYMAN
Deputy Attorneys General

Attorneys for Amicus Curie California Attorney General and California Department of Housing and Community Development

August 22, 2025

CERTIFICATE OF COMPLIANCE

I certify that the attached "Amicus Curiae Brief of the California Attorney General and the California Department of Housing and Community Development" uses a 13-point Century Schoolbook font and contains 6,889 words.

ROB BONTA
Attorney General of California

JOHN M. NATALIZIO
Deputy Attorney General
Attorneys for Amicus Curie California Attorney General and California Department of Housing and Community Development

August 22, 2025

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DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **The Committee for Tiburon v. Town of Tiburon**
Case No.: **A171983**

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 for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On August 22, 2025, I electronically served the attached **AMICUS CURIAE BRIEF OF THE CALIFORNIA ATTORNEY GENERAL AND THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT; APPLICATION FOR LEAVE TO FILE** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on August 22, 2025, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230, addressed as follows:

SEE ATTACHED SERVICE LIST

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 August 22, 2025, at Los Angeles, California.

Dyan Serzo	D. Serzo
Declarant	Signature

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **The Committee for Tiburon v. Town of Tiburon**
Case No.: **A171983**

SERVICE LIST

Via TrueFiling
Barbara E. Kautz, Esq.
Dolores Bastian Dalton, Esq.
GOLDFARB & LIPMAN LLP
1300 Clay Street, Eleventh Floor
Oakland, CA 94612
bkautz@goldfarblipman.com; ddalton@goldfarblipman.com
Attorneys for Real Party in Interest Sierra Pines Group, LLC

Peter Prows, Esq.
Anthony Lee Francois, Esq.
BRISCOE IVESTER & BAZEL LLP
235 Montgomery Street, Suite 935
San Francisco, CA 94104
pprows@briscoelaw.net; tfrancois@briscoelaw.net
Attorneys for Petitioner The Committee for Tiburon, LLC

Anna C. Shimko, Esq.
Benjamin L. Stock, Esq.
Hina Gupta, Esq.
BURKE, WILLIAMS & SORENSEN, LLP
1 California Street, Suite 3050
San Francisco, CA 94111-5432
ashimko@bwslaw.com; bstock@bwslaw.com; hgupta@bwslaw.com
Attorneys for Defendant and Appellant Town of Tiburon

Via U.S. Mail
Judge Shiela Lichtblau
Civic Center, Hall of Justice
Room 113, Courtroom H
San Rafael, CA 94903