

Brianda Negrete Public Comment - YIMBY Law #3



From: Keith Diggs <keith@yesinmybackyard.org>
Sent: Friday, January 20, 2023 1:00 PM
To: Frapwell, Jeff
Cc: PAD; de Bruin, Adriana; sbcob
Subject: Failure to Timely Engage in the Sixth Cycle Housing Element Process
Attachments: 230120 Legal Coalition Letter to Santa Barbara County.pdf

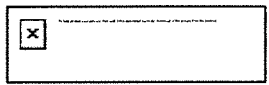
Follow Up Flag: Follow up
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Hello:

YIMBY Law and the California Housing Defense Fund offer an alternative to litigation. Please see attached.

Keith Diggs 
Legal Manager
703-409-5198





January 20, 2023

Jeff Frapwell
Assistant County Executive Officer, County of Santa Barbara
Via Email: jFrapwell@countyofsb.org

RE: Failure to Timely Engage in the Sixth Cycle Housing Element Process

Dear Mr. Frapwell:

YIMBY Law and the California Housing Defense Fund are 501(c)(3) organizations devoted to using impact litigation and other legal tools to address California's housing crisis. We are writing to express serious concerns about the County's failure to timely engage in the process of developing its revised housing element. Because the County cannot legally meet the deadline for adopting its sixth cycle housing element update, we may initiate litigation against the County on or shortly after February 16, 2023 to compel the County to comply with housing element law.

We want to ensure that the County understands its obligations under state law. The County is required to adopt its sixth cycle housing element update by February 15, 2023.¹ The County must also submit an initial draft to the Department of Housing and Community Development (HCD) "at least 90 days prior to adoption."² Thus, in order to timely adopt a sixth cycle housing element, the County was required to submit a draft housing element to HCD by November 17, 2022. It did not do so.

Because the County will not be able to lawfully adopt a sixth cycle housing element update by February 15, 2023, it will be immediately subject to litigation under Government Code Section 65750 *et seq.* Housing element litigation is given near-complete priority in the court system.³ If we are forced to litigate, in addition to being ordered to adopt a housing element on a short timeline,⁴ the County could also face a number of serious penalties. For example, the court could suspend permitting in the County,⁵ and it could judicially approve housing development projects within the County.⁶ The court could impose these penalties while the litigation is pending, even before reaching a final decision.⁷ And a successful plaintiff can obtain attorneys' fees under Code of Civil Procedure Section 1021.5.

Each of our organizations has a long track record of successful litigation against local agencies that violate state housing laws. We intend to seek strict enforcement of the deadlines for

¹ Gov. Code § 65588(e)(3)(A).

² Gov. Code § 65585(b)(1).

³ Gov. Code § 65752.

⁴ Gov. Code § 65754.

⁵ Gov. Code § 65755(a)(1).

⁶ Gov. Code § 65755(a)(4).

⁷ Gov. Code § 65757.

housing element adoption, including through litigation if necessary. We assure you: this is not an empty threat.

But we are writing to offer the County an alternative to litigation. Our organizations will forego immediate litigation against the County if the County signs the acknowledgement provided below, without modification. If the County would like to take advantage of this compromise offer, please send the signed acknowledgement to housingelements@yimbylaw.org by February 14, 2023. Please do not respond with a summary of the reasons the County's housing element will be tardy; we are familiar with the full range of explanations. If the County would like to avoid litigation, it can do so by providing a signed acknowledgement, not a letter explaining why its process has taken so long.

If you have any questions, please do not hesitate to reach out to us by sending an email to keith@yimbylaw.org and dylan@calhdf.org.

Sincerely,



Keith Diggs
YIMBY Law



Dylan Casey
*California Housing
Defense Fund*

cc: Lisa Plowman, Dir. of Planning & Dev. (by email to pad@countyofsb.org)
Rachel Van Mullem, Esq., County Counsel (by email to adebruin@co.santa-barbara.ca.us, as listed today at <https://www.countyofsb.org/2063/County-Counsel>)
County Board of Supervisors (by email to sbcob@countyofsb.org)

ACKNOWLEDGMENT

The County of Santa Barbara hereby acknowledges that it cannot timely adopt a sixth cycle revised housing element of its general plan within the deadline set forth in Government Code Section 65588, and that its housing element will therefore not be in substantial compliance with Article 10.6 of Chapter 3 of Division 1 of Title 7 of the Government Code, starting on February 16, 2023.

As a result, the County acknowledges that, starting February 16, 2023 and until such time as the County adopts a housing element that is substantially compliant with Article 10.6, it will be prohibited from rejecting any housing development project based on subdivision (d)(1) or (d)(5) of the Housing Accountability Act (HAA), Government Code Section 65589.5. The County acknowledges that this means that, unless another exception within subdivision (d) applies, the County is prohibited from using its general plan and zoning standards to reject an application that meets the affordability requirements described in subdivision (h)(3) of the HAA.

The public, including without limitation any applicant to develop any project involving residential units, may rely on this Acknowledgment as the County’s binding commitment to comply with the provisions of state law described above. The County agrees that, should litigation arise regarding the County’s decision on any such project that is the subject of an application or preliminary application submitted between February 16, 2023 and the County’s adoption of a substantially compliant housing element, the County will be estopped from relying on subdivision (d)(1) or (d)(5) of the HAA.

DATED: _____, 2023

COUNTY OF SANTA BARBARA

By: _____
[Signature]

[Name]

Its: _____
[Title]