Caveat CEQA: Postscript to a Landmark Appellate Win for California's Housing Accountability Act

INTRODUCTION

The California State Legislature anticipated the current, legally-recognized housing crisis in 1982 when it found that "lack of housing . . . threatens the economic, environmental, and social quality of life in California."[1] So begins the text of the Housing Accountability Act (HAA), which was intended to ease the process of building housing and make it harder to stop housing from being built.[2] Good intentions notwithstanding, the HAA was ignored for decades after its enactment until the legislature saw its potential anew and enacted a series of amendments and supporting legislation with the intention of providing additional enforcement power.[3] The newly bolstered HAA passed its first test to much acclaim[4] when California's First District Court of Appeal upheld the law's constitutionality in *California Renters Legal Advocacy & Education Fund v. City of San Mateo*.[5]

In *California Renters*, the Court of Appeal reversed a trial court decision, ordering the trial court to issue a writ of mandate that compelled the City of San Mateo to approve an application to build a four-story, ten-unit apartment building. Petitioner California Renters Legal Advocacy and Education Fund (CaRLA), a housing advocacy organization subsequently renamed California Housing Defense Fund, was joined by intervenors, including the California Attorney General's Office, in its prayer for relief under the HAA. The City issued

DOI: https://doi.org/10.15779/Z386688K8M

1. CAL. GOV'T CODE § 65589.5(a)(1)(A). In 2019, California's Housing Crisis Act recognized the affordable housing shortage as a statewide emergency. *See generally* Housing Crisis Act of 2019, Senate Bill 330, 2019–2020 Leg., Reg. Sess. (Cal. 2020).

2. GOV'T § 65589.5(b).

3. See Christopher S. Elmendorf & Timothy Duncheon, *When Super-Statutes Collide: CEQA, the Housing Accountability Act, and Tectonic Change in Land Use Law*, 49 ECOLOGY L. Q. 655, 669–70 (2022) (chronicling the strengthening of the HAA from its weak initial state).

4. *See, e.g.*, *Attorney Gen. Bonta Hails Appellate Court Ruling Upholding Key Cal. Affordable Housing Law*, OFF. OF ATTORNEY GEN. (Sept. 13, 2021), https://oag.ca.gov/news/press-releases/attorney-general-bonta-hails-appellate-court-ruling-upholding-key-california.

5. Cal. Renters Legal Advoc. & Educ. Fund v. City of San Mateo, 68 Cal. App. 5th 820, 851 (2021).

the necessary permits, allowing the development to proceed, rather than opting for a costly appeal.[6]

Housing advocates' success in that case shows that recent legislative efforts to strengthen pro-housing laws, especially the HAA, are improving the ability of developers and advocacy groups to force cities to allow housing development. However, it remains to be seen whether the HAA can stand up to the delays, cost overruns, and outright project denials caused by California's environmental review process under the California Environmental Quality Act (CEQA).[7] A recent San Francisco Superior Court order[8] cautions that even fortified state housing laws remain vulnerable to the resource-extinguishing delays associated with CEQA compliance, leaving room for further reform.[9]

I. OVERVIEW OF CALIFORNIA RENTERS

A. Policy Background

The HAA is popularly termed the "anti-NIMBY law," referencing the acronym for "Not In My Back Yard."[10] The term NIMBY refers to people who categorically oppose housing development near where they live; a YIMBY movement arose in response, made up of people saying "Yes In My Back Yard" to the same developments.[11] The HAA attempts to counteract NIMBYism by prohibiting cities and counties from denying or making infeasible[12] "housing

6. *City to Settle Lawsuit Over Housing Accountability Act*, CITY OF SAN MATEO (Oct. 14, 2021), https://www.cityofsanmateo.org/DocumentCenter/View/86251/City-Reaches-Settlement-Agreement-in-CARLA-Housing-Lawsuit—-101421.

7. *See generally* Elmendorf & Duncheon, *supra* note 3. This piece posits that two California land use statutes stand out as "super-statutes": the Housing Accountability Act (HAA) and the California Environmental Quality Act (CEQA). The authors analyze statute differences, in part stemming from the different times in which they were enacted or substantially amended. The piece interprets the two statutes in direct conflict and proposes a series of "solutions" for them to coexist more effectively.

8. Yes in My Backyard v. City and Cnty. of San Francisco, No. CPF-22-517661 (Cal. Super. Ct., Oct. 21, 2022) (order responding to demurrer).

9. Christopher Elmendorf, *How San Francisco's Infamous 469 Stevenson Project Just Helped Gut California's Housing Laws*, S.F. CHRON. (Nov. 2, 2022), https://www.sfchronicle.com/opinion/openforum/article/california-469-stevenson-court-ceqa-housing-17550982.php.

10. *See, e.g.*, Katy Murphy, *Housing Crisis: Will California Force its Cities to OK More Building?*, MERCURY NEWS (Aug. 12, 2017, 6:00 AM), https://www.mercurynews.com/2017/08/12/housing-crisis-will-california-force-its-cities-to-ok-more-building; Ben Adler, *California Will Strengthen "Anti-NIMBY Act" As Part of Housing Package*, CAL. PUB. RADIO (Sept. 28, 2017), https://www.capradio.org/articles/2017/09/28/california-will-strengthen-anti-nimby-act-as-part-of-housing-package-being-signed-friday/.

11. Christine Mai-DucFollow, *Yimby Movement Goes Mainstream in Response to High Housing Costs*, WALL ST. J. (Apr. 20, 2022), https://www.wsj.com/articles/yimby-movement-goes-mainstream-in-response-to-high-housing-costs-11650373200.

12. "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors. CAL. GOV'T CODE § 65589.5(g)(1).

development projects,"[13] emergency shelters, or farmworker housing projects that comply with "objective" development standards, unless they find that a project would have a "specific, adverse impact upon public health or safety" that is unavoidable and impossible to mitigate.[14]

The HAA establishes an environmental case, not only a human case, for increasing dense housing production, finding that impeding housing production leads to, among other things, "urban sprawl, excessive commuting, and air quality deterioration."[15] In turn, these consequences frustrate California's efforts to decarbonize and fight climate change.[16] California's Legislative Analyst's Office has determined that building communities more densely, by placing housing in job centers and close to public transit and other amenities, decreases residents' car dependence and thus lowers their carbon footprint.[17] Data analysis from the *New York Times*, among others, supports the Office's findings.[18] The Office also argues that strategically placed, dense housing can allow growth "without having to resort to building in locations that are at the highest risk for climate change impacts such as wildfires and extreme heat."[19] There is a growing, although not yet universal, consensus that YIMBY housing policy is also climate policy.[20]

13. "Housing development project" means a use consisting of any of the following: (A) Residential units only; (B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use; (C) Transitional housing or supportive housing. CAL. GOV'T CODE § 65589.5(g)(2).

14. CAL. GOV'T CODE § 65589.5(j)(1); *see also* Cal. Renters Legal Advoc. & Educ. Fund v. City of San Mateo, 68 Cal. App. 5th 820, 835 (2021).

15. CAL. GOV'T CODE § 65589.5(a)(1)(C).

16. *See generally* CAL. DEP'T OF HOUSING AND CMTY. DEV., HOUSING AND CLIMATE CHANGE (Sept. 2013), https://www.hcd.ca.gov/policy-research/plans-reports/docs/pb04housing_climate_change0214.pdf; NATHANIEL DECKER ET AL., RIGHT TIME, RIGHT PLACE: ASSESSING THE ENVIRONMENTAL AND ECONOMIC IMPACTS OF INFILL RESIDENTIAL DEVELOPMENT THROUGH 2030 27–29 (Terner Ctr. for Housing Innovation, 2018).

17. LEGIS. ANALYST'S OFF., CLIMATE CHANGE IMPACTS ACROSS CALIFORNIA – HOUSING 2 (Apr. 5, 2022), https://lao.ca.gov/reports/2022/4584/Climate-Change-Impacts-Housing-040522.pdf.

18. Nadja Popovich et al., *The Climate Impact of Your Neighborhood, Mapped*, N.Y. TIMES (Dec. 13, 2022), https://www.nytimes.com/interactive/2022/12/13/climate/climate-footprint-map-neighborhood.html.

19. *Id.*

20. Scott Wiener & Daniel Kammen, *Why Housing Policy Is Climate Policy*, N.Y. TIMES (Mar. 25, 2019), https://www.nytimes.com/2019/03/25/opinion/california-home-prices-climate.html; Anna Caballero & Michael DeLapa, *How to House People and Achieve California's Climate Goals*, CAL MATTERS (Apr. 6, 2021), https://calmatters.org/housing/2021/04/how-to-house-people-and-achieve-californias-climate-goals/; Nathanael Johnson, *Enviros and Developers: A Love Story*, GRIST (Oct. 30, 2017), https://grist.org/article/san-francisco-environmentalists-housing-development-fight/; Dustin Gardiner, *YIMBYs and Environmentalists Have Been at Odds on Housing. Now They're Teaming Up to Fight Sprawl*, S.F. CHRON., https://www.sfchronicle.com/politics/article/california-bill-housing-subdivisions-17842215.php (last updated Mar. 17, 2023).

B. Legal Background

The *California Renters* court chronicled the evolution of the HAA, summarizing:

> As the Legislature has steadily strengthened the statute's requirements, it has made increasingly clear that those mandates are to be taken seriously and that local agencies and courts should interpret them with a view to giving "the fullest possible weight to the interest of, and the approval and provision of, housing."[21]

Four key amendments to the HAA contributed to the petitioner's success. First, CaRLA had standing to sue from the outset due to a 2016 amendment that allows a "housing organization" to bring an action enforcing the HAA.[22] Next, in 2017, the Legislature raised the stakes for agencies that want to reject affordable housing developments. Senate Bill 167 (SB 167) required additional documentation and raised the standard of proof necessary for a local agency to justify its rejection of a low-to-moderate-income housing development project.[23] Courts must also fine local agencies that fail to legally defend such denials $10,000 or more per unit.[24]

Third, and perhaps most crucially, in 2018, Assembly Bill 1515 (AB 1515) added the so-called "reasonable person standard" for determining compliance with land use requirements.[25] Under that standard, a "project is deemed to comply if 'substantial evidence . . . would allow a reasonable person to conclude' that it does."[26] As the court explained, the standard "is intentionally deferential to housing development" and "an excellent backstop to ensure that the standards a municipality [is] applying are indeed objective."[27] AB 1515 also increased fines for bad faith disapproval of a project[28] and elevated the burden of proof required for a finding of adverse effect on public health or safety.[29]

Finally, in 2019, Senate Bill 330 (SB 330) clarified the definition of "objective standards," if only on a temporary basis:[30] "Until January 1, 2030, 'objective' means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform

---

21. Cal. Renters Legal Advoc. & Educ. Fund v. City of San Mateo, 68 Cal. App. 5th 820, 854 (2021) (internal citations omitted).

22. CAL. GOV'T CODE § 65589.5(k)(1)(A)(i).

23. *See* CAL. DEP'T OF HOUSING AND CMTY. DEV., HOUSING ACCOUNTABILITY ACT TECHNICAL ASSISTANCE ADVISORY (GOVERNMENT CODE SECTION 65589.5) 1 (SEPT. 15, 2020), https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/HCD-Memo-on-HAA-final-Sept2020.pdf.

24. *Id.*

25. CAL. GOV'T CODE § 65589.5(f)(4).

26. *Cal. Renters Legal Advoc. & Educ.*, 68 Cal. App. 5th at 831.

27. *Id.* at 845.

28. CAL. GOV'T CODE § 65589.5(l).

29. CAL. GOV'T CODE § 65589.5(j)(1).

30. Sen. Bill 8, 2021–2022 Leg., Reg. Sess., stat. 2021 ch. 161 (extending the Housing Crisis temporary emergency, originally declared by Senate Bill 330, through January 1, 2030).

benchmark or criterion available and knowable by both the development applicant or proponent and the public official."[31] Together, these amendments set the stage for robust challenges to denials of housing development projects like the one in *California Renters*.

C. Case Background

The housing developer in *California Renters* first applied for permits to build a four-story, ten-unit apartment building in 2015. Individuals in the neighborhood opposed the project, starting a six-year drama. The developer had designed the project to comply with existing city regulations: the city's general plan and zoning code designated the site for high-density multifamily dwellings.[32] Although the City's Planning Department staff initially recommended approval, the Planning Commission nonetheless voted otherwise.[33] At the Commission's direction, staff prepared findings to support its rejection, citing design guidelines regarding building height and stepbacks (areas where the portion of a building above a certain height is set back towards the center of the property).[34] The City Council upheld the Commission's decision, denying the application without prejudice.[35] In response, CaRLA sued to compel the city to approve the project, arguing that the denial violated the HAA.[36]

The trial court denied the petition, upholding the city's denial of the project based on its alleged inconsistency with city design guidelines. Its comprehensive opinion appeared to challenge the constitutionality of the HAA, finding "that, to the extent the HAA required the City to ignore its own guidelines, it was an unconstitutional infringement on the City's right to home rule and an unconstitutional delegation of municipal powers."[37] The trial court denied CaRLA's request for a new trial.[38] Then Attorney General Xavier Becerra announced his decision to intervene when CaRLA appealed.[39]

1. Constitutionality of the HAA

The Court of Appeal resoundingly rejected the trial court's finding that the HAA violates the California Constitution.[40] It held that "[t]he HAA is today

31. CAL. GOV'T CODE § 65589.5(h)(5).
32. Cal. Renters Legal Advoc. & Educ. Fund, 68 Cal. App. 5th at 832.
33. *Id.*
34. *Id.*
35. *Id.* at 832–33.
36. *Id.* at 833 (internal citation omitted).
37. *Id.* at 831.
38. *Id.* at 833.
39. Alexei Koseff, *California Tries to Save Law it Calls Crucial Tool in Housing Crisis*, S.F. CHRON. (Jan. 13, 2020), https://www.sfchronicle.com/politics/article/California-intervenes-to-try-to-force-San-Mateo-14972675.php.
40. Cal. Renters Legal Advoc. & Educ. Fund, 68 Cal. App. 5th at 831.

strong medicine precisely because the Legislature has diagnosed a sick patient. We see no inconsistency between the provisions of the HAA and the California Constitution."[41]

To assess whether the "Legislature may exert control over the actions of a charter city despite its right to home rule,"[42] the appellate court applied a four-part test. First, it "determine[d] whether the city ordinance at issue regulates an activity that can be characterized as a 'municipal affair.'"[43] The Court found that planning and zoning are indeed municipal concerns.[44] Second, it found that the "case presents an actual conflict between [local and state law]," regarding the applicability of design standards.[45] Third, it held that the state law at issue, the HAA, addresses a matter of "statewide concern," noting that the statute's purpose is to address a statewide housing shortage by compelling local governments to permit housing.[46] Finally, it held that the HAA is "'reasonably related to . . . resolution' of that concern [] and 'narrowly tailored' to avoid unnecessary interference in local governance []"[47] "because the HAA checks municipal authority only as necessary to further the statewide interest in new housing development."[48]

Importantly, the appellate court also rejected the trial court's finding that the "reasonable person standard" from AB 1515 was an impermissible delegation of municipal functions, because it does not "divest the [City] of its final decision-making authority."[49] The court explained that "nothing in the HAA prevents cities from establishing and enforcing objective land use and design standards that are consistent with their other obligations" since "[a]lthough subdivision (f)(4) of the HAA lowers the burden to show a project is consistent with applicable objective standards, the statute cedes municipal authority to no private person."[50] Accordingly, there was no violation of the municipal nondelegation doctrine, which is a principle of administrative law that holds that a body may not delegate its legislative powers to other entities. The court also rejected the trial court's finding of a due process violation, finding that "[s]ubdivision (f)(4) may affect which arguments will carry the day, but it does not deprive a project's opponents of a meaningful opportunity to be heard."[51]

41. *Id.* at 854.
42. *Id.* at 847.
43. *Id.*
44. *Id.*
45. *Id.* at 848.
46. *Id.* at 835.
47. *Id.* at 847.
48. *Id.* at 831.
49. *Id.* at 852.
50. *Id.*
51. *Id.* at 854.

2. Violation of the HAA

Apart from the constitutional questions, the court also addressed the direct challenge of whether the design guidelines in question violated the HAA. "The HAA restricts the ability of local governments to deny an application to build housing if the proposed project complies with general plan, zoning, and design review standards that are 'objective.'"[52] Under the HAA, an agency cannot deny permits to a project compliant with objective standards unless there are issues with health and safety.[53] Given this, the court asked whether the height standards in the guidelines in question qualified as "applicable" and "objective" under the HAA such that the city could disapprove the project if they were not satisfied.[54]

The court identified this as a question of law, finding that the guidelines were not objective, given the definition of the word "objective" that the Housing Crisis Act temporarily added to the HAA.[55] The height guidelines that the city's denial had focused on are not objective because they rely on "personal opinion and subjective judgment" to apply them.[56]

The court restated the mandate of the HAA's subdivision (a)(2)(L): "[I]t is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing."[57]

Next, the court addressed whether the project was consistent with all objective standards, a question of fact to which it applied the "reasonable person" standard of review. Under that standard, a housing development project is understood to comply with development standards if "substantial evidence . . . would allow a reasonable person to conclude" that it does.[58] The application of that standard marks a shift from "the deferential 'substantial evidence' standard of typical administrative mandamus petitions to a more demanding standard where the City bears the burden of proof."[59]

Under the reasonable person standard, the court determined that the project did comply with all objective standards and ordered the trial court to issue a writ of mandate for the city to comply with HAA. The city opted not to seek Supreme Court review.[60]

---

52. *Id.* at 831.
53. CAL. GOV'T CODE § 65589.5(d)(2).
54. Cal. Renters Legal Advoc. & Educ. Fund, 68 Cal. App. 5th at 839.
55. CAL. GOV'T CODE § 65589.5(h)(8).
56. Cal. Renters Legal Advoc. & Educ. Fund, 68 Cal. App. 5th at 840.
57. CAL. GOV'T CODE § 65589.5(a)(2)(L).
58. *Cal. Renters Legal Advoc. & Educ. Fund*, 68 Cal. App. 5th at 831.
59. *Id.* at 837.
60. The City of San Mateo settled the lawsuit for $450,000 in attorneys' fees and costs to petitioners, including CaRLA. San Mateo agreed not to seek review by the State Supreme Court. *City to Settle Lawsuit Over Housing Accountability Act*, *supra* note 6.

II. ANALYSIS

As discussed below, *California Renters* has proved an important precedent at the appellate level for its interpretation of the HAA. However, at least one district court opinion indicates that the HAA may not be as powerful as *California Renters* suggests. CEQA remains an obstacle to fulfilling the promise of the HAA.[61]

A. Setting Precedent

California Renters was widely trumpeted as a big win for the HAA and for housing in general. Attorney General Rob Bonta called the decision "a major victory for all Californians," and Governor Gavin Newsom weighed in, warning that "[t]he court's decision protects our ability to hold local governments to account and ensures that families throughout California won't suffer when those same local leaders refuse to do their part to approve new housing."[62] The decision stands as a leading published authority of the HAA and has since been cited in at least three other significant appellate-level pro-housing decisions: *Bankers Hill 150 v. City of San Diego*[63] (*Bankers Hill*), *Save Lafayette v. City of Lafayette*[64] (*Save Lafayette*), and *Save Livermore Downtown v. City Of Livermore* (*Save Livermore*).[65] Each of these decisions concerned community group challenges to city approvals of housing development projects and involved interpreting the HAA in relation to another major state housing law.

In *Save Lafayette*, the First District found that the Permit Streamlining Act must not be interpreted in a "vacuum," but rather in relation to the HAA and its mandate that the act be interpreted with a bias toward creating more housing.[66] In justifying this approach, the court approvingly cited its own interpretation of the HAA from *California Renters*, which takes literally the Legislature's instruction that the Act "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing."[67] The California Supreme Court declined to hear the appeal.[68]

In *Bankers Hill*, the Fourth District Court of Appeal extensively quoted *California Renters* in justifying its standard of review, despite the primary focus

61. Dan Walters, *How Environmental Law is Misused to Stop Housing*, CAL MATTERS (Jan. 8, 2023), https://calmatters.org/commentary/2023/01/how-environmental-law-is-misused-to-stop-housing/.

62. OFF. OF ATTORNEY GEN., *supra* note 4.

63. 74 Cal. App. 5th 755, 776–78 (2022), *appeal denied* (May 11, 2022).

64. 301 Cal. Rptr. 3d 773, 777 (2022), *as modified on denial of reh'g* (Dec. 16, 2022), *appeal denied* (Mar. 15, 2023).

65. 87 Cal. App. 5th 1116, 1125 (2022), *appeal denied* (Apr. 19, 2023).

66. See Daniel R. Golub & Melanie Chaewsky, *Court Affirms Housing Applicants' Ability to Be Vested Against Downzonings*, HOLLAND & KNIGHT (Dec. 20, 2022), https://www.hklaw.com/en/insights/publications/2022/12/court-affirms-housing-applicants-ability-to-be-vested.

67. *Save Lafayette*, 301 Cal. Rptr. 3d at 780; *see also* CAL. GOV'T CODE § 65589.5(a)(2)(L).

68. Danielle Echeverria, *Epic Battle Over a Bay Area Housing Projected Lasted 12 Years. Now, it's Finally Getting Built*, S.F. CHRON. (Mar. 16, 2023), https://www.sfchronicle.com/realestate/article/lafayette-housing-project-court-17844162.php.

of the case on State Density Bonus Law, codified at California Government Code Sections 65915–65918.[69] The court noted that, while the *Bankers Hill* respondent, the City of San Diego, called for "significant deference to an agency's finding that a project is consistent with its own general plan it adopted," *California Renters* illustrates that "when a court reviews an agency's decision on a housing development project" the (f)(4) "reasonable person" standard "requires a more stringent review."[70] In *Bankers Hill*, a community association challenged the city's approval of a housing development project. Despite its "more stringent review" the court found that the city had not abused its discretion. The court further cited the *California Renters* analysis of the meaning of objective standards, noting that the decision "clarified that under the HAA, an agency may deny approval of a housing development project on the basis that it is inconsistent with development standards *only* if those standards are 'objective.'"[71]

In contrast, the *Bankers Hill* court found that the community association's argument erroneously relied on "several development standards that appear entirely subjective,"[72] including "standards suggesting a new building should 'sensitively and adequately transition to adjacent lower height buildings,' 'complement' the natural environment, and include design features that 'enhance' views."[73] *Bankers Hill* helped *California Renters'* interpretation of the reasonable person standard and the definition of objective standards be accepted as law across appeals courts.

The *Save Livermore* court cited both *California Renters* and *Bankers Hill* to justify again a robust interpretation of the HAA with regard to determining objective standards and setting the standard review.[74] The *Save Livermore* petitioner challenged both the project's compliance with city development standards as well as CEQA, arguing that further review of the project's environmental impacts was necessary. The argument failed on both counts; the court upheld the trial court decision that "[t]his is not a close case," that "[t]he CEQA arguments are almost utterly without merit," and that substantial evidence supported the city's conclusion that the project was consistent with the development standards.[75] Despite this favorable outcome for housing advocates, CEQA remains the most formidable obstacle to robust application of the HAA.[76]

As evidenced by these cases, the newly-formulated HAA is likely to be upheld as good law, but still interacts with other laws in unpredictable, and at times frustrating, ways.

---

69. CAL. GOV'T CODE § 65915–65918.

70. Cal. Renters Legal Advoc. & Educ. Fund v. City of San Mateo, 68 Cal. App. 5th 820, 776–77 (2021).

71. *Id.* at 777.

72. *Id.* at 778.

73. *Id.* at 778–79.

74. *Save Livermore*, 87 Cal. App. 5th 1116, 1125–26 (2022), *appeal denied* (Apr. 19, 2023).

75. *Id.* at 1121–22.

76. *See generally* Elmendorf & Duncheon, *supra* note 3.

B. Caveat CEQA

CEQA could still be the HAA's Achilles heel, as a recent superior court case illustrated.[77] A housing advocacy group, YIMBY Law, filed the lawsuit in question, *Yes In My Back Yard, A California Nonprofit vs. City and County of San Francisco* (*Yes In My Back Yard*) to force San Francisco to approve a housing development at 469 Stevenson Street.[78] YIMBY Law argued that the City and County of San Francisco had failed to approve the proposed development without making written findings pursuant to the HAA that the development did not comply with objective development standards or create health and safety risks.[79]

The proposed development contemplated a twenty-seven-story tower with 495 units, 100 of which would be below market rate, in a vacant lot currently used for valet parking for a nearby department store.[80] In October 2021, the San Francisco Board of Supervisors voted 8-3 not to approve the project, instead upholding an appeal questioning the project's compliance with CEQA.[81] Specifically, the Board overturned the certification of the project's environmental impact report by the Planning Department.[82] YIMBY Law filed suit claiming that the vote followed "four years of planning and approval by the Planning Department" and was "based on vague claims of 'inadequate analysis' in the CEQA review rather than on documented findings as required by law."[83] The trial court sustained a demurrer, as it concerned the specific Stevenson project.[84] YIMBY Law had effectively asked the court to nullify the Board's vote and to recertify the environmental impact report, which the trial court ultimately said exceeded its authority.[85] The court found support from the 2009 First District case, *Schellinger Bros. v. City of Sebastapol* (*Schellinger*),[86] in

77. Yes in My Back Yard v. City & Cnty. of San Francisco (*Yes in My Back Yard*), No. CPF-22-517661 (Cal. Super. Ct., Oct. 21, 2022) (order responding to demurrer).

78. *See generally 469 Stevenson, San Francisco, CA*, YIMBY LAW, https://www.yimbylaw.org/469-stevenson (last updated Nov. 21, 2022).

79. *Yes in My Back Yard*, No. CPF-22-517661, 7 (Cal. Super. Ct., Oct. 21, 2022) (order responding to demurrer). The lawsuit also addressed violations of the Housing Crisis Act and Permit Streamlining Act, which are not discussed here.

80. J.K. Dineen, *Why the Nordstrom Parking Lot That Could Have Been Housing Remains a 'Poster Child for the Insanity' in S.F.*, S.F. CHRON. (Oct. 25, 2022), https://www.sfchronicle.com/bayarea/article/nordstrom-parking-lot-housing-17531933.php.

81. J.K. Dineen, *Why did S.F. Supervisors Vote Against a Project to Turn a Parking Lot into 500 Housing Units?*, S.F. CHRON. (Oct. 27, 2021), https://www.sfchronicle.com/sf/article/Why-did-S-F-supervisors-vote-against-a-project-16569809.php.

82. *Id.*

83. Lauren Hernandez, *Housing Advocacy Group Sues S.F. Over Supes' Rejection of 500-Unit Housing Tower*, S.F. CHRON. (Jan. 20, 2022), https://www.sfchronicle.com/bayarea/article/Housing-advocacy-group-sues-S-F-over-supes-16792753.php.

84. *Yes in My Back Yard*, No. CPF-22-517661 at 2.

85. *Id.* at 6.

86. 179 Cal. App. 4th 1245, 1260 (2009).

which the First District had held that "CEQA 'contains no automatic approval provisions and its time limits are directory rather than mandatory.'"[87]

Again citing *Schellinger*, the trial court found that until CEQA review is entirely complete, the rules of the HAA do not apply. Given that the environmental impact report was not certified, the court held that the HAA complaint was not ripe.[88] The order did not immediately kill the case. The court left a window of opportunity by granting YIMBY's "request to amend the cause of action to allege facts supporting their claim that the City has a policy of violating state law."[89]

The controversy sparked by the court's order sustaining the demurrer matched that spurred by the Supervisors' vote.[90] State Senator Scott Weiner tweeted: "This CEQA ruling on the Stevenson St. housing project is every bit as outrageous as the UC Berkeley 'students are pollution' CEQA ruling. We must clarify CEQA doesn't give cities the power to ignore state housing law. Better yet, let's remove infill housing from CEQA entirely."[91] Law professor and housing law expert Christopher Elmendorf criticized the decision in an opinion piece, provocatively titled *How San Francisco's infamous 469 Stevenson project just helped gut California's housing laws*.[92] Elmendorf argued that "[t]he judge mechanically applied old CEQA precedents without considering whether the spate of housing laws or the outlandish facts of this case warrant a new approach."[93]

In the same article, Elmendorf struck a hopeful note by proposing two action items: He recommended reviving Assembly Bill 2656 (AB 2656), which would "have remedied unlawful CEQA delays."[94] Under the bill's framework, a project sponsor could "call the question" of an environmental review's adequacy once the CEQA deadline has passed.[95] The city would then have three months to certify or reject the environmental study.[96] If the environmental study were legally sufficient but the city had refused to certify it, a court could order the project approved.[97] In addition, Elmendorf recommended that the State "streamline and simplify CEQA review by updating the official CEQA

87. *Yes in My Backyard*, No. CPF-22-517661 at 5.
88. *Id.* at 6.
89. *Id*. at 11.
90. J.K. Dineen, *supra* note 81.
91. Scott Wiener, TWITTER (Oct 30, 2022), https://twitter.com/Scott_Wiener/status/1586836637748633600?s=20&t=PxW_KHEHxRwz25QzgFPTJw.
92. Christopher Elmendorf, *How San Francisco's infamous 469 Stevenson Project Just Helped Gut California's Housing Laws*, S.F. CHRON. (Nov. 2, 2022), https://www.sfchronicle.com/opinion/openforum/article/california-469-stevenson-court-ceqa-housing-17550982.php.
93. *Id.*
94. *Id.*
95. *Id.*
96. Christopher Elmendorf, *How San Francisco's Infamous 469 Stevenson Project Just Helped Gut California's Housing Laws*, S.F. CHRON. (Nov. 2, 2022), https://www.sfchronicle.com/opinion/openforum/article/california-469-stevenson-court-ceqa-housing-17550982.php.
97. *Id.*

guidelines on infill housing and issuing new guidelines on the relationship between CEQA and the Housing Accountability Act."[98] He notes that, "[t]raditionally, the CEQA guidelines have been used to codify judicial rulings, but the state could just as easily use them for policymaking, too."[99]

Following the superior court's judgment of dismissal after its order sustaining a demurrer, YIMBY Law appealed the case to the First District. The appeal will test the First District's commitment to the HAA as reflected in its *California Renters*, *Save Livermore*, and *Save Lafayette* decisions.

CONCLUSION

California Renters remains the gold standard for interpreting the HAA with its strict "reasonable person" standard and pro-housing bias. It provides legal support to housing developers looking to build in the areas most likely to resist new projects, which are typically areas with the most neighbors and most regulations, and tend to be fairly dense, urban environments. *California Renters* also provides cover to agencies representing such locales and looking to justify their own pro-housing decisions against NIMBY opposition. When infill housing cannot be built within existing urban environments, developers and housing seekers often turn to lower density areas, including exurban or previously undeveloped areas like greenfield sites. Such developments can interfere with habitat and can also be more prone to natural disasters.[100] Infill housing is crucial not just for the sake of meeting housing goals, but also for densifying the urban environment in a way that increases walkability, bikeability, and transit accessibility, thereby reducing the community's vehicle miles traveled and carbon footprint.[101]

In order to maintain its course of strengthening housing development efforts and the HAA, California's state legislature must clarify the implementation of the HAA relative to CEQA or reform CEQA. Ideally, it will do both.

Laura Tepper

98. *Id.*

99. *Id.*

100. Brian Hanlon, *The Next Phase of California Housing Reforms? Climate-Safe Homeownership*, CAL MATTERS (Jan. 4, 2023), https://calmatters.org/commentary/2023/01/housing-climate-wildfire-risk-homeownership/.

101. LEGIS. ANALYST'S OFF., *supra* note 17, at 7.