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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION**

12 CITY OF ENCINITAS, a municipal corporation,)
13 Plaintiff,)

14 vs.)

15 THE CALIFORNIA DEPARTMENT OF)
16 HOUSING AND COMMUNITY)
17 DEVELOPMENT, and DOES 1-100, inclusive,)
18 Defendants.)

19 _____)
20)
21 PRESERVE PROPOSITION A, an)
22 unincorporated association,)
23 Intervenor.)
24)
25)
26)
27)
28)

Case No. 37-2019-00047963-CU-OR-NC

**DECLARATION OF BRUCE EHLERS IN
SUPPORT OF INTERVENOR'S
OPPOSITION**

Date: June 30, 2021

Time: 2:00 PM

Judge: Hon. Earl. H. Maas, III

Dept.: N-28

First Amended Complaint Filed: March 10, 2020

1 I, BRUCE EHLERS, DECLARE AS FOLLOWS:

2 1. I am a member of Preserve Proposition A. I have personal knowledge of the facts stated
3 herein, except for those matters that are stated on information and belief, and as to those matters I
4 believe them to be true. If called upon, I would competently testify that the facts set forth herein are
5 true and correct.

6 2. Preserve Proposition A is an unincorporated association of Encinitas residents concerned with
7 the preservation of Proposition A, the "Encinitas Right to Vote Amendment."

8 3. I authored the initial draft of Proposition A and was an official proponent of Proposition A. In
9 addition, several other members of Preserve Proposition A were also official proponents of Proposition
10 A.

11 4. I am currently the Chairman of the Planning Commission for the City of Encinitas and have
12 served on the Commission twice, from 2002 to 2004 and again starting in 2017 to the present. I was
13 co-leader of the "No on T" campaign and spokesperson to the media and for debates. The Mayor
14 appointed me to serve on the Mayor's Housing Element Task Force formed immediately after the
15 defeat of Encinitas' 2016 Measure T. There were four members of the Housing Task Force comprised
16 of the Mayor, a Councilmember, a former Planning Commissioner Chairman and me. I was the only
17 member appointed from the group that opposed Measure T. My role on this Task Force was to
18 represent the majority of the electorate that opposed Measure T and prevailed in the election. The
19 Task Force's goal was to craft a better compromise plan with broader community support that might be
20 adopted by the full Council and lead to broader support within the community.

21 5. The intent of the official proponents of Proposition A was to provide the residents of Encinitas
22 with a meaningful way to participate in the land use planning and decision making process for their
23 city.

24 6. Through the efforts of several members of Preserve Proposition A and almost two-hundred
25 volunteers, the official proponents gathered signatures from more than twenty six--percent (where only
26 ten percent was necessary) of Encinitas residents, forcing a special election on the initiative. In the
27 June 2013 special election, voters passed Proposition A. Attached hereto as "Exhibit 1" is a true and
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1 correct copy of a July 10, 2013 staff report to City of Encinitas (“City”) City Council with the results
2 of the special election.

3 7. In June 2016, the City Council adopted an update to the housing element of its General Plan
4 subject to voter approval as required by Proposition A. The City placed this draft housing element on
5 the November 8, 2016 ballot as Measure T. Voters rejected Measure T.

6 8. On July 18, 2018, Measure U, another draft housing element, was placed before City Council
7 for a second reading and adoption. At the July 18, 2018 meeting, City Council adopted Measure U,
8 subject to voter approval. The City placed Measure U on the November 2018 ballot. Voters rejected
9 Measure U.

10 9. I reviewed both Measure T and Measure U. The version of the housing element update under
11 Measure U was remarkably similar to the previously rejected Measure T. Among other things, both
12 Measures used the same maximum zoning of 30 units per acre. Measure U minimally reduced the
13 acreage up zoned by only 4% from 101.5 acres to 97.5 acres. Both measures resulted in significantly
14 more market-rate housing units that would increase population, traffic and housing units by
15 approximately 7 to 8%. Most troubling is that neither measure, if all parcels were developed, resulted
16 in fulfilling the state-mandated units of approximately 1,100 units (Measure T originally required
17 1,093 lower income units but the number rose to 1,141 units at the time of Measure U’s adoption).
18 According to an internal City email from then Director of Development to the City Council, Measure T
19 would only result in 199 affordable units if all parcels were developed. This would fulfill only 18.2%
20 of the mandated affordable units if fully developed. Applying the same calculation to Measure U
21 showed a modest increase to 261 units due to an increase in affordable inclusionary percentage that
22 was championed by me and many of Proposition A supporters. The state requirement at the time of
23 the Measure U election was for 1,141 units and therefore Measure U would only fulfill 22.9% if fully
24 developed. Fundamentally Measure T and U were very similar Measures and it was unreasonable to
25 expect the voters to approve Measure U after rejecting Measure T. I presented these comments to
26 Council during their Measure U Housing Element Update Adoption deliberation on June 20, 2018. In
27 doing so I made it clear the Measure T opposition group was opposing Measure U as drafted unless
28 significant changes were made.

1 10. Members of Preserve Proposition A have expressed concerns to the City Council regarding the
2 direction by HCD to seek judicial relief preempting Proposition A. Members of Preserve Proposition
3 A noted that the City was simply blaming Proposition A for its failure to update its housing element,
4 even though the City’s attempts to do so in Measure T and Measure U lacked any real merit. Members
5 of Preserve Proposition A also expressed their belief that it is possible for the City to comply with the
6 requirements of both Proposition A and state housing law without needing state law to preempt
7 Proposition A.

8 11. Preserve Proposition A believes that the City can simultaneously comply with both Proposition
9 A and state housing law, and that there is no need to invalidate parts of a voter-adopted initiative in
10 order to do so.

11 12. Indeed, members of Preserve Proposition A have repeatedly expressed concerns that the City is
12 not seeking to build truly affordable housing within the City of Encinitas. Following the defeat of
13 Measure T; we, the opponents of Measure T, offered to work with the Council to adopt a Housing
14 Element Update that would meet the state’s statutory requirements and that would be approved by a
15 majority of Encinitas voters. This offer was made to the full City Council at Special Council meeting
16 on February 1, 2017. A key goal we presented was to fulfill the promise of the state mandate by
17 “providing significantly more affordable housing” than Measure T. At multiple City Council and Task
18 Force meetings I explained that our “No on T” campaign had gathered many progressive supporters
19 because Measure T, and later Measure U, provided a fraction of the promised affordable housing while
20 providing an excess of market-rate housing and profits for developers. During both campaigns we
21 found most voters were supportive of affordable housing if the program delivered on the mandated
22 housing while not overwhelming the character of our community.

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1 Many voters, both progressive and conservative, opposed Measures T and U since they produced
2 minimal affordable units and added 6 to 10 times the numbers of market rate units resulting in 7 to 8 %
3 increase in traffic, population and congestion.

4 I declare under penalty of perjury that the above is true and correct to the best of my knowledge.

5 Dated this May 5, 2021 at Encinitas, California.

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8 Bruce Ehlers
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