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VIA EMAIL TO: SHAWN.DANINO@HCD.CA.GOV

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RE: City of Ojai Draft 2021-2029 Housing Element

Dear Mr. Danino:

This letter is submitted regarding the City of Ojai's ("City") revised draft 2021-2029 Housing Element ("Housing Element") submitted to HCD on or about May 24, 2023 and recently reviewed by the California Department of Housing and Community Development ("HCD"). On July 13, 2023, HCD issued a letter indicating that HCD intends to find the City's Housing Element substantially compliant with State Housing Element Law after the City adopts it in accordance with public participation requirements. **While we recognize HCD for its tireless efforts reviewing the City's Housing Element, we respectfully disagree with HCD's July 13, 2023 preliminary determination letter based on evidence and experience detailed below of which HCD staff may not be aware.**

We represent clients with five pending housing development projects before the City. For years the City has sought to delay or thwart our clients' housing projects. By way of example, since October 2021, the City has continually asserted that it has adopted a compliant Housing Element, despite numerous rejections from HCD outlining all the ways the Housing Element is deficient.[1] HCD recognized in its February 13, 2023 letter that "additional revisions are necessary to fully comply with State Housing Element Law." The letter goes on to state that

> [a]s a reminder, the City's 6th cycle housing element was due October 15, 2021. As of today, the City has not completed the housing element process for the 6th cycle. The City's 5th cycle housing element no longer satisfies statutory requirements. HCD encourages the City to revise the element as described above, adopt and submit HCD to regain housing element compliance.

[1] See HCD response letters dated January 11, 2022 and February 13, 2023.

Nonetheless, the City has repeatedly represented that to our client and other affordable housing developers that "[a]lthough the City's 6th Cycle Housing Element has not yet been certified by the Department of Housing and Community Development, the City vigorously disputes any contention that either of [sic] its originally adopted and its currently in-effect adopted revised Housing Element do not substantially comply with applicable state law."[2] In fact, the City has gone even farther in a recent letter to a developer of a 100 percent affordable housing project, saying: "**HCD's certification of the City's Housing Element, though, is <u>irrelevant</u>** to whether a cities' housing element substantially complies with state-law, as substantial compliance is a legal question resolvable solely by a court of competent jurisdiction, not a regulatory determination to be made by HCD. **The City is confident that its Housing Element meets all statutory requirements and further expects HCD to certify its Housing Element** …. As a result, this application cannot be processed under any so-called 'Builders Remedy' per Government Code 65589.5…."[3] The City maintains this position even though the July 13, 2023 letter clearly indicates the City must still follow the procedural requirements in Government Code Section 65585 and other applicable law in order for HCD to certify its Housing Element, which as detailed further below, the City has not yet done.

We submitted three SB 330 Preapplications on the morning of December 13, 2022 when the applicable Housing Element version was from October 12, 2021, yet the City claims these affordable housing development project applications, submitted under Government Code Section 65589.5(d), do not qualify for the so-called "Builder's Remedy," despite admissions by the City that its Housing Element was out of compliance at the time. As an example, the City Manager at the May 23, 2023 City Council meeting stated: "[w]e are out of compliance on our housing element as we talked about last time. So every day we postpone this we are out of compliance longer."[4]

Given this context, and for the reasons detailed here, we believe that despite the City's—and their consultant's—best efforts, the revised draft Housing Element, dated April 2023 and submitted after Council's May 23 2023 hearing, continues to be deficient.

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[2] See Exhibit 1, Jan. 11, 2023 Letter from City regarding 510 E. Ojai Ave. affordable housing project; see also Exhibit 2, July 28, 2023 Letter from City regarding Cabrillo Economic Development Corp.'s 100 percent affordable housing project (same language on p. 2).

[3] Exhibit 2, p. 2 [emphasis added).

[4] See City, May 23, 2023 Ojai City Council Regular Meeting, starting at 4:31:51, available at https://www.youtube.com/watch?v=7kvgDNL8ld4. See also City, Revisions to City Council Adopted 2021-2029 Housing Element (6th Cycle Housing Element) in Response to Additional Comments Received by the California Department of Housing and Community Development (HCD), p. 5-6 (May 23, 2023) available at https://drive.google.com/file/d/1GMu1S9rAoa0u6ZG_mIFdvvfyb6johkGy/view ("[I]n February 2023, the City of Ojai received additional notice from HCD stating that they were not certifying the City's housing element".)

1) The items in HCD's February 2023 Letter have not been adequately addressed.

The City hurried approval of the Housing Element to avoid a threat of litigation by Californians for Homeownership, a non-profit organization, that works to address California's housing crisis by enforcing state housing law and fighting unlawful policies that limit access to housing affordable to families at all income levels. On March 29, 2023, Californians for Homeownership submitted a letter threatening a lawsuit if the City did not adopt a revised and legally adequate housing element by May 29, 2023. (See Exhibit 3.) Rather than make an earnest effort to adopt a "revised and legally adequate housing element" through a public process, the City rushed submittal of the revised Housing Element to HCD, straining HCD staff resources with another fruitless review, in a misguided attempt to avoid litigation.

The City expressly acknowledged that it rushed to adopt a revised Housing Element that it does not believe complies with Housing Element Law. The City Manager and City's Attorney statements at the City Council May 23, 2023 hearing make clear that its submittal was not expected to be certified. Specifically, that the City Manager stated that he had had a conversation with HCD that very same day and was encouraged to submit the Housing Element as soon as possible in order to obtain HCD's technical assistance on how to revise the Housing Element to be in compliance. The City's Attorney stated "it won't be the last time" the City Council would see this, and that Council would have another opportunity to review the Housing Element. HCD and the City apparently also met twice to discuss the revised Housing Element submitted to HCD, but those discussions and any resulting revisions have not been made available to the public.[5]

Thus, we urge HCD to closely review the City's adopted Housing Element upon resubmittal. A close review will demonstrate that the City's Housing Element still contains many significant flaws.

2) The Housing Element Overstates the City's Pending and Approved Projects.

Housing Element Law requires the City to quantify its existing and projected capacity to meet its regional housing needs allocation ("RHNA") for four different income categories.[6] The Housing Element currently overstates its existing capacity for new housing, discussed further below, and improperly seeks credit for existing projects that may not be built during the planning period. We also want to inform HCD of a significant change to a pending project in the Housing Element that requires correction before HCD provides final certification of the Housing Element.

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[5] HCD, City of Ojai's 6th Cycle (2021-2029) Revised Draft Housing Element (July 13, 2023).
[6] Gov. Code, § 65583(a)(1); HCD, Building Blocks, Projected Housing Needs – Regional Housing Needs Allocation https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/projected-housing-needs-regional-housing-needs-allocation.

First, the City's Housing Element was most significantly revised to tout discussion of a development agreement between the City and our client to create a 67-unit multi-family development project on four separate sites ("Development Agreement"). Notwithstanding that this Development Agreement is subject to a California Environmental Quality Act ("CEQA") lawsuit, a referendum on the ballot in March 2024, and active undermining by members of the City Council, the Housing Element relies on this Development Agreement to meet the City's regional housing needs obligation and as evidence of its support for affordable housing. The Housing Element takes credit for the 67 units in the Development Agreement, even though this "approval" is suspended until the March 2024 referendum vote and resolution of the subsequent CEQA lawsuit. Thus, even if the Development Agreement survives both the referendum and CEQA lawsuit with an adverse City Council, the applicant would likely not be able to begin construction until 2026 or 2027, making it unlikely the Development Agreement would deliver these units during the planning period.

Separately, we recently informed the City that our client has withdrawn the Development Agreement and requested that the City consider its existing applications and separate projects. (See Exhibit 4.) For the reasons outlined in the attached letter, the City has not demonstrated itself to be a reasonable partner in the development of affordable housing. Our client feels obligated to walk away from its substantial investment in the Development Agreement, for a variety of reasons including:

- City Council's decision expend significant funds to hire outside legal counsel to evaluate the "opportunities" to rescind the Development Agreement instead of spending those funds to schedule an earlier election on the referendum (Council deferred the vote over a year to March 2024);[7]

- The Mayor collaborated with the attorney suing the City and my clients to overturn the Development Agreement and forwarded privileged attorney-client communications to that attorney;[8]

[7] Ojai, Staff Report, Attachment B, p. 7 (May 17, 2023) available at https://ojai.granicus.com/MetaViewer.php?view_id=1&clip_id=1042&meta_id=35817 ("[T]he memo and oral advice from Ms. Minner discussed in closed session considered the Simply Ojai lawsuit, *how the lawsuit could be mooted via the referendum if the Council rescinded the ordinance approving the development agreement, and possible consequences and opportunities of exercising that option*." (Emphasis added)).

[8] Ojai Valley News, City Council closed session laid bare (Jan. 27, 2023) available at https://www.ojaivalleynews.com/news/city-council-closed-sessions-laid-bare/article_3bc14788-9e19-11ed-b4e2-bba73b30c0b4.html; Ojai Valley News, Ojai Mayor Stix apologizes for forwarding privileged emails (Jul. 27, 2023) available at https://www.ojaivalleynews.com/news/government/ojai-mayor-stix-apologizes-for-forwarding-privileged-emails/article_effde374-2d06-11ee-af0d-53ecad41ad68.html.

- City Council waffled on its commitment to comply with the Brown Act notwithstanding alleged violations of the Brown Act associated with closed sessions on the Development Agreement, aimed at discussing undermining the Development Agreement.[9]

- City Council's multiple meetings to discuss removal of a Planning Commissioner that has expressed pro-affordable housing views.[10]

- The City has a long pattern of delaying housing projects (including projects my clients have been trying to develop for many years) which appears to be continuing, as recently evidenced by the City's treatment of a 49-unit affordable housing project proposed by Cabrillo Economic Development Corporation, including the City's apparent use of a closed session in violation of the Brown Act (again) when no litigation was actually filed or threatened.[11]

To avoid these significant issues with the City, our client is proceeding instead with the projects using protections existing in State Housing law (including the Housing Accountability Act). Specifically, our client intends to proceed with four housing projects on properties that were subject to the Development Agreement and one additional project. In total these projects, as they are currently proposed, would add or rehabilitate 78 units within the City, including 30 affordable deed-restricted units (21 moderate, 7 low and 2 very low). These separate projects, located at 412 Mallory Way ("Mallory"), 312 W. Aliso Street ("Cottages"), 107 N. Ventura ("World University"), 304 S. Montgomery ("Montgomery"), and 510 E. Ojai, generally align with the housing proposed in the Development Agreement and are consistent with the proposed development in the City's Housing Element.

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[9] Ojai Valley News, City Attorney says 'let the past lie'; Mayor bucks advice (Jun. 29, 2023) https://www.ojaivalleynews.com/news/government/city-attorney-says-let-the-past-lie-mayor-bucks-advice/article_e561ce5a-1706-11ee-821e-539bee3b69f5.html; see also Ojai Valley News, 49-unit affordable housing on council's closed-session agenda referencing litigation (Aug. 8, 2023) https://www.ojaivalleynews.com/news/49-unit-affordable-housing-on-councils-closed-session-agenda-referencing-litigation/article_8ef5160c-356b-11ee-a57b-d3bce3878dc4.html (describing a closed session on an affordable housing project under threat of litigation despite no actual threat by the applicant).

[10] Ojai Valley News, Special meeting to discuss Starkweather (Aug. 10, 2023) https://www.ojaivalleynews.com/news/49-unit-affordable-housing-on-councils-closed-session-agenda-referencing-litigation/article_8ef5160c-356b-11ee-a57b-d3bce3878dc4.html.

[11] Ojai Valley News, 49-unit affordable-housing proposal in Ojai meets headwinds (Aug. 10, 2023) https://www.ojaivalleynews.com/news/49-unit-affordable-housing-proposal-in-ojai-meets-headwinds/article_ffab558e-37b2-11ee-b968-c7310fa1c7f0.html?utm_medium=social&utm_source=email&utm_campaign=user-share (quoting Barbara Macri-Ortiz: "'Just to set the record straight, my (Aug. 2) letter (to Community Development Director Lucas Seibert) was not in any way a 'claim pursuant to the Tort Claims Act or other written communication threatening litigation," Macri-Ortiz told the Ojai Valley News. "I made no threats, whatsoever. My letter merely explains relevant housing laws. … The real purpose of my letter was to educate the Community Development director and his staff on the housing laws as they exist today.'"].)

However, unless and until the City approves these projects, the Housing Element should not count these projects toward meeting its RHNA allocation in Tables V-1 and IV-2.

Second, the City takes credit for an "underway" project despite the fact that it is not pending, approved, permitted or built. The City has recently entered into a Letter of Engagement with Habitat for Humanity on a parcel on North Montgomery Street which may ultimately provide between 4 and 8 units.[12] The project is still in its very early stages, despite having been initially considered in 2019 and has previously stalled out[13] as well the city has a past of inability to follow through with other projects initially given Council go-ahead. Specifically, in 2015, People's Self Help Housing expressed interest in providing housing on a 2-acre site behind Libbey Park. This project never moved forward in part due to lack of political support and public outcry over the use of public property for housing.

Accordingly, the City cannot, and should not, seek to take credit for speculative projects or the no longer pending Development Agreement project. Such an approach artificially reduces the City's housing needs and subverts its need to analyze and provide adequate sites for affordable housing in its Housing Element. The City should instead revise its Housing Element to more accurately describe our client's pending affordable housing project applications as described in Exhibit 4.

3) The City's Housing Element Fails to Evaluate Special Housing Overlay Requirements as a Constraint on Housing.

The City's Housing Element relies almost exclusively on its special housing overlay ("SPL Overlay") for the construction of multi-family development to meet the City's RHNA obligations. The Housing Element, however, fails to evaluate whether development under the SPL Overlay is realistic. For example, the City's Housing Element claims the SPL Overlay creates a ministerial approval process, but recent experience of various projects seems to undermine those claims.

HCD's response letters, dated September 17, 2021 and January 11, 2022, requested a program-by-program review of the 2014-2021 Housing Element to compare the results of those programs to "the objectives projected or planned … and provide a description of how the objectives and programs of the updated element incorporate changes resulting from the evaluation."[14] Yet, the City still has not included this analysis in its Housing Element.[15]

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[12] City, 408 North Montgomery Street Affordable Housing Partnership with Habitat for Humanity (May 9, 2023) https://drive.google.com/file/d/1WgViNb9RhBwz2_dfuLhtr-Hzm4LSZlHo/view.

[13] As stated in the City staff report for May 9, 2023 hearing, the City prepared a concept proposal in 2019 that stalled out "due to potential partners on the project requiring a significant funding contribution from the City."

[14] See HCD, September 17, 2021 Response Letter Appendix, p. 1; HCD, January 11, 2022 Response Letter Appendix, p. 1; Gov. Code, § 65588(a), (b).

[15] Notably, the City further seemingly takes credit for activities occurring after the 2014-2021 Housing Element planning period by highlighting activities occurring in 2022 and 2023.

Table A-1 provides a cursory overview of the City's prior housing element programs, but it provides no analysis of how those programs compare to the City's objectives. This absence of analysis is particularly stark given that the City reports making zero progress toward meeting its 2014-2021 objectives for extremely low, very low and low income units and only 11% of its goal for moderate income units.[16] Absent a thorough analysis of how the City's prior housing element programs failed to meet its objectives, the Housing Element cannot evaluate the appropriate changes to its programs to promote affordable housing. As such, the Housing Element fails to meet the requirements of Government Code Section 65588, and respond to HCD's prior letters.

Further, as identified in the HCD's February 13, 2023 response letter, the Housing Element fails to evaluate the effect of land use controls and local processing and permit procedures on the maintenance, improvement, and development of housing.[17] The revised Housing Element maintains this same defect and fails to even evaluate the SPL Overlay requirements as a constraint on housing development. Even the July 13, 2023 letter only finds the City's Housing Element as potentially compliant based on its commitments in Program 1 and Program 15.[18] However, these commitments have not been made available for public review and it is unclear whether—absent an evaluation of the 2014-2021 Housing Element Programs—that the City's commitments to change Program 1 and 15 will repeat the City's existing deficiencies, especially given that the City has previously failed to do so.

The following examples illustrate the deficiencies associated with the current SPL Overlay.

a. Contrary to the Housing Element's Assertions, the City's SPL Overlay Does Not Provide For Ministerial or By Right Approval of Affordable Housing Projects.

In HCD's February 13, 2023 letter, it identified that the City "may need to revise policies and programs (e.g., Program 1 – Adequate Sites for RHNA) to ensure the SPL overlay is being applied pursuant to ministerial design review permit process."[19] This is particularly important for nonvacant sites that were identified in the City's 2014-2021 Housing Element because these sites must be zoned to allow residential "use by right" for housing developments in which 20 percent of the units are affordable to lower income households.[20] The City's Housing Element currently relies on three such sites, Site Nos. 6, 7, and 21 in its site inventory. In response, the City revised its Housing Element to state:

> The City process for proposed projects within the SPL overlay includes ministerial review of those proposed projects, which includes ministerial

[16] See Housing Element, Table A-2, p. A-13.
[17] HCD, February 13, 2023 Response Letter Appendix, p. 3; Gov. Code, § 65583(a)(5).
[18] HCD, City of Ojai's 6th Cycle (2021-2029) Revised Draft Housing Element (July 13, 2023).
[19] HCD, February 13, 2023 Response Letter Appendix, p. 2.
[20] Gov. Code, § 65583.2(c), (h).

> review through the design review permit as subjective standards for affordable housing within the subject overlay would not be applied.[21]

The Housing Element also states that the SPL Overlay "allows multi-family development by-right at a density of 20+ units/acre."[22] However, in practice, the City's SPL Overlay, described in Section 10-2.704 of the Ojai Municipal Code ("OMC"), continues to subject project applicants to discretionary review and fails to clarify the City's process ensuring such projects are not reviewed with subjective standards. The City's discretionary review process for SPL overlay sites thus fails to authorize residential development as a "use by right" and must be addressed before HCD certifies the City's Housing Element.[23]

OMC Section 10-2.704(f)(1) states that "[a]ll affordable housing projects shall be subject to Design Review as specified in Article 20 of this chapter" and "for compliance with site-specific design parameters set for in Table 2-10." Each of these requirements allows exercise of significant discretion by City staff and decision-makers over a project application in contravention of the requirement to authorize residential development "by right" and through a "ministerial" approval process.

i. Discretionary Design Review Permit Requirements

Although the SPL Overlay purports to allow processing by a zoning clearance, OMC section 10-2704(f)(1) and (i) clearly state an applicant must obtain a Design Review Permit. OMC Article 20 outlines the discretionary process to obtain a Design Review Permit. In general, OMC Article 20 specifies that the Planning Commission, rather than City staff, approves a Design Review Permit absent the City Community Development Director finding "in his or her opinion" that the project is "minor in nature."[24] Given that the OMC does not specify that SPL Overlay applications are "minor in nature" or otherwise not subject them to Planning Commission review, the City has discretion to require Planning Commission consideration of each SPL Overlay project.[25] In addition, as all actions of the Planning Commission are appealable to the City Council, the process is very much a discretionary process.

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[21] City, Housing Element, p. 103 https://drive.google.com/file/d/11XpcDmznwvhK6_A69t1BJr0hBeCCSLpZ/view. Note it is unclear to what extent the Housing Element has been further revised to address HCD concerns based on the conversations with HCD identified in its July 13, 2023 letter.

[22] Housing Element, p. B-1.

[23] See Gov. Code, § 65583.2(c) (requiring rezoning to authorize residential development as a "use by right" within one year of the deadline to adopt the City's Housing Element, which has already passed); see *id*. subd. (i) (defining "use by right" to preclude discretionary review).

[24] OMC § 10-2.003(b).

[25] See OMC § 10-2.2003(a) (describing the scope of the Commission's review as encompassing any likely SPL Overlay project); see also OMC § 10-2.3002(d) (allowing for appeals to the City Council).

OMC Section 10-2.2004 further outlines numerous subjective standards that decisionmakers would apply to a SPL Overlay project. For example, these standards include, among others, requirements that buildings are "compatible with the architectural character and form of surrounding buildings;" the building design should be "high quality" and "avoid monotonous building elevations and create architectural interest;" the project must preserve "physical components of Ojai's small town character;" and the project must have "compatibility with the majority of existing surrounding uses."[26] None of these aforementioned standards meets the State's definition of an "objective" standard, which means a standard "involving no personal or subjective judgment" and "being uniformly verifiable by reference to an external or uniform benchmark."[27] As such, applying these standards to any project, especially a SPL Overlay project, necessarily means that the decisions is not ministerial as the decisionmaker must inherently exercise judgment in its review.[28] Moreover, even if the City only applied objective standards, an applicant has no certainty over whether and how the City will implement these requirements in accordance with state law and the Housing Element.

The findings of approval also demonstrate that a Design Review Permit is a discretionary decision applying non-objective standards, including but not limited to:

> (a) All basic provisions of these Zoning Regulations are *complied with*;
>
> (b) The following are so designed and arranged that traffic congestion is avoided, pedestrian and vehicular safety and welfare are provided and *no adverse effect of any type on surrounding property will result*:
>
> (1) Buildings, structures and improvements,
>
> (2) Vehicular ingress, egress and internal circulation,
>
> (3) Setbacks,
>
> (4) Height of buildings,
>
> (5) Location of services,

[26] See, e.g., OMC § 10-2.2004.
[27] Gov. Code, § 65589.5(h)(8).
[28] See Cal. Code Regs., tit. 14, § 15369 (defining "ministerial" as "a governmental decision involving *little or no personal judgment by the public official* as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. *A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment* in deciding whether or how the project should be carried out." (Emphasis added).)

(6) Walls and fences, and

(7) Landscaping;

(c) The proposed lighting is so arranged as to be *directed away from* adjoining properties;

(d) The proposed signs shall not, by size, location, color or lighting, *interfere with* traffic, limit visibility or be so directed as *to adversely affect surrounding properties* or be in conflict with any provision of these Zoning Regulations; and …[29]

In addition, OMC Section 10-2.2009(a), which requires findings that "[a]ll basic provisions of the [City's] zoning regulations are complied with" incorporates all discretionary standards within the City's Zoning Regulations. With this incorporation by reference, the City cannot reasonably implement the SPL Overlay through a ministerial process, especially in light of the subjective, discretionary requirements intertwined throughout the City's regulations.

The SPL Overlay also requires consistency with all City General Plan policies, Zoning Ordinance requirements, SPL design-development standards, and standard development conditions to "the reasonable satisfaction" of the Community Development Director.[30] This catch-all provision allows the Community Development Director, and other decision making bodies on appeal, to interject their discretion over a proposed SPL Overlay project in a manner wholly inconsistent with ministerial review.

Furthermore, the requirement to obtain a discretionary Design Review Permit means the SPL Overlay does not permit residential development as a use by right as required by Housing Element Law.[31] As discussed further below, the SPL Overlay requires all residential projects to contain a minimum of 30% of the units as affordable to lower income households, but it does not allow those developments as a use by right. Housing Element Law states that "use by right" means that a city's review of a multifamily residential use may not require "other discretionary local government review or approval."[32] Although a "use by right" project is not exempt from design review, the foregoing demonstrates that the City's Design Review Permit process exceeds the scope of traditional design review by allowing decision-makers to broadly consider any discretionary provision of the City's Zoning Regulations.

[29] OMC § 10-2.2009
[30] OMC § 10-2.704(f)(3).
[31] Gov. Code, § 65583.2(c).
[32] Gov. Code, § 65583.2(i).

Although the OMC Section 10-2.704(i) suggests that this section will be implemented consistent with the Housing Accountability Act (Gov. Code, § 65589.5), this provision is inadequate in light of the lack of objective standards in the City's General Plan and Zoning Ordinance, the permeating discretion granted decisionmakers, and the City's pattern and practice of flouting its regulations to delay, deny, and unreasonably condition housing projects.

Accordingly, the SPL Overlay does not comply with the express requirements of Housing Element Law to allow residential development as a use by right and provide for ministerial review of said residential projects. Although the City may have committed to revising Program 1 to address these deficiencies, the City previously failed to do so as part of its 2014-2021 Housing Element Program and offer no analysis or basis for why it failed to do so. As such, HCD should closely scrutinize whether the Housing Element provides a meaningful commitment to address the previously identified deficiencies.

ii. Subjective Standards in Table 2-10

OMC Section 10-2.704, Table 2-10 also sets forth clearly discretionary standards for certain sites supposedly in the SPL Overlay and supposedly subject to ministerial review. For example, Table 2-10 state that for Sites 6, 9, 10, 11 and 23 the "[b]uilding mass and scale must be integrated with surrounding predominately one- and two-story construction." The OMC Section 10-2.704, however, provides no objective standards for "building mass and scale" nor how that mass and scale be "integrated" with surrounding construction. As such, the City staff reviewing an SPL Overlay project has unbridled discretion to make this determination, which is appealable to the Planning Commission and City Council for review. Absent clear, objective standards in Table 2-10, the SPL Overlay vests discretionary review authority in the City and cannot be considered a ministerial approval process.

In light of the above, the City's SPL Overlay is not implemented through a ministerial review process. The City thus must revise its Housing Element to acknowledge its discretionary authority over SPL Overlay projects, evaluate this discretion as a constraint on development, and propose programs and policy to ensure its SPL Overlay complies with Housing Element Law. If the City has revised its Housing Element to do so, this analysis must be fully vetted by the community and should have specific objectives and milestones to ensure that the City continues to apply only objective, ministerial standards to SPL Overlay projects.

b. <u>The Housing Element Fails to Evaluate Whether the SPL Overlay Requirements Constrain Housing Development.</u>

As noted above, the City did not construct any lower income affordable units during the 2014-2021 planning period despite having the SPL Overlay in place. Although the City's SPL Overlay was adopted

in 2013 and was last amended in 2014, it has failed to produce affordable units.[33] As such, the Housing Element's assertion that the SPL Overlay sites "are available for development" and there are "not constraints that would prevent development of housing on these sites during the 6th Cycle Housing Element planning period" are conclusory and unsupportable.[34] See e.g., Exhibit 1 and 2 [incomplete letters for two affordable housing projects in the SPL Overlay (for Sites No. 7 and 17 in the Housing Element) where City asserts General Plan Amendments and zone changes are required and enclosing a 'fee agreement' asserting that environmental review will cost approximately $100,000 per project, and processing will take over 300 hours of staff time, 90 hours of environmental assessment, and 111 hours of City Attorney time]; see also Exhibit 2 [attorney response letter explaining that "the City has totally ignored important state housing laws.]."

An additional constraint on the viability of the SPL Overlay to produce housing is its affordability requirements.[35] OMC Section 10-2.704(g) requires any SPL Overlay housing project to provide 15% of total units for very low income households, 15% of the total units for low income households, and 5% of the total units for moderate income households unless the City Council grants a discretionary exception.[36] This establishes a base affordability requirement of 35% for projects within the SPL Overlay, which is significantly higher than the requirement in most California jurisdictions.[37] Moreover, when the City enforces its Residential Growth Management Ordinance, these affordability requirements apply to all residential projects within the City.[38]

In practice, however, these affordability requirements impose much higher—and likely financially infeasible—standards on most development within the SPL Overlay. For example, the table below shows the impact of these affordability requirements on these SPL Overlay Sites in the Housing Element:

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[33] See City, Housing Element, p. B-2 https://drive.google.com/file/d/11XpcDmznwvhK6_A69t1BJr0hBeCCSLpZ/view. Note that the City's objectives were 44 extremely low, 43 very low and 59 low income units over this planning period.
[34] City, Housing Element, p. 101 https://drive.google.com/file/d/11XpcDmznwvhK6_A69t1BJr0hBeCCSLpZ/view.
[35] See HCD, Rental Inclusionary Housing, p. 4 (Oct. 21, 2019) ("The element must also address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing. As an inclusionary ordinance falls under this requirement, the Housing Element must include a description and analysis of the inclusionary housing ordinance framework, which would then be subject to HCD review.") https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/ab_1505_final.pdf.
[36] This section also likely conflicts with provisions of Density Bonus Law. (Gov. Code, § 65915.)
[37] Local Government Commission, Meeting California's Housing Needs: Best Practices for Inclusionary Housing, p. 3 (Nov. 2018) https://wclp.org/wp-content/uploads/2018/12/inclusionary-factsheet_v2.pdf (stating most California cities have inclusionary requirements between 10-20% with 15% being the most common).
[38] OMC § 10-6.401(e).

SPL Overlay Site No.	Maximum Units Cited in Housing Element	Affordable Units / Percent of Total[39]	Potential Units Cited in Housing Element	Affordable Units / Percent of Total
6	53	19 (36%) (VL 8 [15%], L 8 [15%], M 3 [6%])	37	14 (38%) (VL 6 [16%], L 6 [16%], M 2 [5%])
7	13	5 (38%) (VL 2 [15%], L 2 [15%], M 1 [8%])	9	5 (56%) (VL 2 [22%], L 2 [22%], M 1 [11%])
17	40	14 (35%) (VL 6 [15%], L 6 [15%], M 2 [5%])	28	12 (43%) (VL 5 [18%], L 5 [18%], M 2 [7%])
21	26	10 (38%) (VL 4 [15%], L 4 [15%], M 2 [8%])	18	7 (39%) (VL 3 [17%], L 3 [17%], M 1 [6%])
23	4	3 (75%) (VL 1 [25%], L 1 [25%], M 1 [25%])	3	3 (100%) (VL 1 [33%], L 1 [33%], M 1 [33%])

As presently constituted, requiring units in three income categories in the SPL Overlay imposes a significant burden on the site owners to construct the City's entire share of affordable multi-family housing, and smaller parcels are burdened with far beyond the 35% requirement in the statute.

With the City's requirement that 35% of the units are affordable, with a break down of 15 percent moderate, 15 percent low, and 5 percent very low, the rounding up required by the code leads to actual density percentages that are much higher. For example, Site No. 7, which is .62 acres is described as having a maximum units of 13, but potential units of 9. With 9 units, the entire project would have to be 56 percent affordable with 2 very low, 2 low, and 1 moderate.

Additionally, although two of the five properties are owned by public entities, these affordability requirements exceed those required for public agencies to dispose of surplus land. For the three

[39] For the purposes of this table, "VL" refers to very low income units, "L" refers to lower income units, and "M" refers to moderate income units.

private property owners, the City provides no meaningful analysis as to whether there is a realistic probability for these owners can reasonably be expected to finance or develop such small residential projects with affordable unit obligations at or above 35%. The City's Housing Element must evaluate the SPL Overlay affordability requirements and their impacts as a potential constraint on the development of housing for all income levels, including the options for compliance and incentives offered to encourage compliance.

The SPL Overlay identifies sites in which residential use is an allowable use at less than a minimum density of 20 units per acre.[40] The recent California appellate decision in *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193 found that while overlays can be used in a rezone, when the base zone allows residential development, both the base zone and the overlay zone must comply with the minimum density requirements of Government Code section 65583.2(h).[41] Given that Table A-2 reports that the City did not construct any affordable units during the prior planning period, it is unclear that the City made "available adequate sites" to accommodate its portion of the RHNA for the prior period and the City's Housing Element must propose a program to rezone adequate sites to meet its carryover and current RHNA allocation consistent with the law.[42] The City should analyze how this decision may impact its current rezone strategy using the SPL Overlay and may need to adjust accordingly, especially given that the SPL Overlay identifies the potential development of only 95 lower income units and the City failed to achieve any of its 146 lower income unit objective during the prior planning period.

4) The City Inexplicably Relies on Accessory Dwelling Units to Meet its Housing Obligations Without Any Actions to Ensure These Units Are Affordable or Affirmatively Further Fair Housing.

The Housing Element is relying on accessory dwelling units and junior accessory dwelling units ("ADUs/JADUs") to provide 120 units RHNA obligations assuming the construction of 15 ADUs/JADUs per year.[43] The Housing Element, however, does not present consistent information about the number of ADUs/JADUs to support this assumption. For example, the Housing Element states that only 60 ADUs/JADUs have been constructed within the last 5 years for an average of 12 units per year.[44]

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[40] See Housing Element, p. B-6, Tab. B-3 identifying sites where caretaker residences are allowed and one site designated with R-2 underlying zoning.

[41] OMC Section 10-2.702(e)(1) states that "SPL sites may be developed with Affordable Housing up to a *maximum* of twenty (20) units per acre pursuant to a zoning clearance issued in accordance with Article 19 of this chapter." (Emphasis added.) However, Government Code section 65583.2(h) specifies that projects must be developed at a *minimum* of 20 units per acre.

[42] Gov. Code, §§ 65583.2(h), 65584.09, 65863(a).

[43] Housing Element, p. B-1.

[44] Housing Element, pp. 50, 62.

Further, Housing Element contains no analysis of whether these ADUs/JADUs generate new, generally readily available units. A recent study found that 49% of homeowners reported that they were not renting out their ADU/JADU to the open market.[45] Furthermore, Housing Element's assumptions for ADUs/JADUs seemingly rely on the City continuing to legalize existing ADUs/JADUs at similar rate without any evidence of the number of potential illegal units still within the City.[46] Given that the City relies almost exclusively on ADUs/JADUs to meet its RHNA obligations,[47] the Housing Element must substantiate its ADU/JADU estimates to ensure that these units are constructed and made available as housing.[48]

Importantly, the Housing Element also makes significant assumptions about the affordability of ADUs/JADUs and fails to show how ADUs/JADUs are sufficient to affirmatively further fair housing within the City.

First, the Housing Element assumes the ADUs/JADUs will have an affordability distributions of 15% for extremely lower, 0% for very low, 30.9% low, 32% moderate and 33% above moderate income households based on a 2020 Southern California Association of Governments ("SCAG") study, which are approved by HCD.[49] The Housing Element relies solely on this study to support this affordability distribution, but fails to mention that the study expressly states:

> *ADUs and data on ADUs do not exist uniformly across the region, thus we encourage jurisdictions to refer to the raw data (included in Appendix A) to help gauge how representative this sample is to their ADU program.* Jurisdictions may determine that the geographic distribution, age of structures, number of bedrooms, and square footage of the units surveyed in this analysis do not reflect the ADUs being built in their community and pursue their own analysis.[50]

The Housing Element performs no analysis of the SCAG's study in the Housing Element. In fact, Appendix A of the 2020 SCAG study only identifies 7 units surveyed in or near Ojai with rents ranging from $1,350 to $2,500 per month.[51] As such, only one of the surveyed ADUs/JADUs was rented as

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[45] UC Berkley Center for Community Innovation, Implementing the Backyard Revolution: Perspectives of California's ADU Owners, pp. 14, https://www.aducalifornia.org/wp-content/uploads/2021/04/Implementing-the-Backyard-Revolution.pdf.
[46] Moreover, taking credit for legalizing previously constructed illegal units does not increase the number of available housing units and suggests that the City's policies precluded the development of legal units until only recently.
[47] Housing Element, p. 55, Tab. IV-2.
[48] See Gov. Code, § 65583(c)(1); HCD, September 17, 2021 Response Letter Appendix, p. 7.
[49] Housing Element, p. B-1.
[50] SCAG, SCAG Regional Accessory Dwelling Unit Affordability Analysis, p. 2, https://scag.ca.gov/sites/main/files/file-attachments/adu_affordability_analysis_120120v2.pdf?1606868527 (emphasis added).
[51] SCAG, SCAG Regional Accessory Dwelling Unit Affordability Analysis, p. 17, https://scag.ca.gov/sites/main/files/file-attachments/adu_affordability_analysis_120120v2.pdf?1606868527 (emphasis added).

affordable to lower income households and the remaining units were rented to moderate or above moderate income households based on HCD's 2023 affordable rent rate data.[52] ADUs/JADUs within the City thus are not "affordable by design" especially to extremely low and low income households.[53] Accordingly, the Housing Element fails to adequately analyze the affordability of ADUs/JADUs to support its land inventory assumptions.[54] Without an adequate analysis of the number and types of ADUs/JADUs, HCD cannot evaluate whether the Housing Element identifies sufficient sites with a realistic capacity for redevelopment nor analyze the sufficiency of the Housing Element's programs to meet its RHNA obligations.

Program 4 of the Housing Element does not contain any actions to ensure that ADUs/JADUs will be rented at affordable levels, available to accommodate special needs groups, or affirmatively further fair housing.[55] In other jurisdictions, HCD has acknowledged the need for a mix of housing units because ADUs/JADUs are insufficient "to overcome patterns of segregation and foster inclusive communities" and thus failed to affirmatively further fair housing.[56] Recently, the San Mateo County Civil Grand Jury identified similar policy concerns that jurisdictions were over-reliant on ADUs/JADUs to meet their RHNA obligations, had no means to monitor and ensure the affordability of the units, and reliance on ADUs/JADUs may promote existing patterns of segregation.[57] With respect to segregation, the Grand Jury noted that owners often rent ADUs/JADUs to friends and family in a manner that exacerbates patterns of segregation and exclusion, which aligns with statewide research that found ADUs not result in family-sized rental units, few ADUs provide senior citizen housing and many are units exclusively for friends and family of the owner.[58] As such, Program 4 does not affirmatively further fair housing and the City should revise its Housing Element to take meaningful actions to address housing disparities within the City rather than rely almost exclusively on ADUs/JADUs to meet its RHNA obligations.[59]

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[52] See, e.g., HCD, 2023 MTSP Rent Limts, gross rent including utility allowance, p. 39 https://www.hcd.ca.gov/sites/default/files/docs/grants-and-funding/2023-mtsp-regular-limits.pdf.

[53] Seven ADUs/JADUs is hardly a representative sample, but even so one of seven ADUs/JADUs being affordable to lower income households suggests that only 14% of ADUs/JADUs would be affordable to lower income households during the planning period.

[54] Gov. Code, § 65583(a)(3).

[55] Housing Element, pp. 62-63.

[56] See Department of Housing and Community Development, City of Santa Monica's 6th Cycle (2021-2029) Adopted Housing Element (Feb. 8, 2022) available at https://drive.google.com/file/d/1P5C5dCa0NY7lxKD9MMssnAQwrUzhxqaZ/view.

[57] San Mateo County Civil Grand Jury, Accessory Dwelling Units: Affordable Housings Panacea or Prevarication? (June 12, 2023) https://www.sanmateocourt.org/documents/grand_jury/2022/2022adu.pdf.

[58] UC Berkley Center for Community Innovation, Implementing the Backyard Revolution: Perspectives of California's ADU Owners, pp. 3-4, 14, https://www.aducalifornia.org/wp-content/uploads/2021/04/Implementing-the-Backyard-Revolution.pdf.

[59] Gov. Code, §§ 8899.50, 65583(c)(5); HCD, February 13, 2023 Response Letter Appendix, p. 3; HCD, January 11, 2022 Response Letter Appendix, p. 1.

5) The City Continues Its Long History of Findings Ways to Delay, Undermine and Frustrate Housing Development with New Proposed Regulations on Affordable Housing Developments.

The Housing Element further states that "[l]imited residential development activities have occurred in the City in recent years due primarily to significant market and locational constraints beyond the City's control, such as limited available land, high land prices, and the City's relatively remote, semi-rural location."[60] The City offers no support for these assertions. It further stands in stark contrast to our experience within the City where staff and the City Council have sought to delay housing projects by imposing new requirements on approved projects, adding new hurdles, and refusing to process perfunctory extensions to existing applications.[61]

Most recently, the Mayor unilaterally proposed an "Ojai New Development Rental Rate Disclosure Ordinance" ("Rental Rate Disclosure Ordinance").[62] The proposal seeks to require developers to make certain written or verbal disclosures about a new housing project with affordable units because of the alleged "dissimilar legal definition of 'affordable'" to a "commonly understood definition of 'affordable'[.]"[63] However, it is entirely unclear what constitutes a "commonly understood definition of affordable" will mean in this context, and the Mayor has evinced a clear intent that her interpretation of what constitutes "affordable" does not align with the affordable requirements established by HCD and the United States Department of Housing and Urban Development.[64]

Although the Rental Rate Disclosure Ordinance has yet to take shape, the First Amendment Coalition has already raised concerns that it may conflict with the First Amendment.[65] From a practical perspective, the Rental Rate Disclosure Ordinance seems likely to compel speech by a project applicant about the number, type and rent of affordable units in a new development project in order to garner public opposition against any private or nonprofit project as not providing sufficient "affordable" units. Further, the City may endeavor to seek to require public disclosure about the

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[60] Housing Element, p. 50.
[61] See Section 2 and Exhibit 4 of this letter for examples.
[62] See City, Request from Mayor Stix for a New Development Rental Rate Disclosure Ordinance (Apr. 19, 2023), available at https://drive.google.com/file/d/1DNbu7jGj0ixlGG5CtM2Z-kpYDHUeYfDJ/view.
[63] City, Request from Mayor Stix for a New Development Rental Rate Disclosure Ordinance, p. 3 (Apr. 19, 2023), available at https://drive.google.com/file/d/1DNbu7jGj0ixlGG5CtM2Z-kpYDHUeYfDJ/view.
[64] See HCD, State and Federal Income, Rent, and Loan/Value Limits https://www.hcd.ca.gov/grants-and-funding/income-limits/state-and-federal-income-rent-and-loan-value-limits (accessed on July 3, 2023).
[65] Ojai Valley News, Council will review ordinance on restricting speech about housing development (Jun. 29, 2023) https://www.ojaivalleynews.com/news/government/council-will-review-ordinance-on-restricting-speech-about-housing-developments/article_b79c9f8c-1700-11ee-9ded-e7a6d3e37be5.html.

market rate rental information about a project, which is generally unknowable at the time of approval of the entitlement and may impact a project's ability to obtain financing for construction.[66]

Should the City Council move forward with this Rental Rate Disclosure Ordinance, HCD must require the City to include discussion in the Housing Element analyzing it as a potential constraint on new development of housing for all income levels.[67]

6) The City's Housing Element Revision Failed to Follow the Open, Transparent Process Required by State Law and HCD Should Ensure that the City Does So When It Adopts Its Revised Housing Element.

HCD must consider the City's public participation process to adopt its revised Housing Element.[68] Housing Element Law requires the City to engage in a "diligent effort … to achieve public participation of all economic segments of the community in development of the Housing Element" and describe this effort.[69] Notwithstanding, the City's latest hurried effort to adopt a revised Housing Element ignored public participation requirement in an effort to avoid threatened litigation by housing advocates seeking to engage with the City. Recognizing the importance of public participation, the July 13, 2023 letter highlights that public participation is "essential to effective housing planning" and directs the City to adopt a revised Housing Element consistent with Government Code Section 65585. Yet the City has not done that.

As a component of the General Plan, adoption of the Draft Housing Element must comply with both the processes outlined in state Housing Element Law[70] and General Plan Law.[71] Government Code Section 65585(b)(1) requires the City to post the draft revision to its website and email a link to all individuals and organizations that have previously requested notices related to the Housing Element at least seven days before submitting the draft to HCD. We received no such notice. Further, the City must compile comments regarding the Draft Housing Element and provide these comments to the City Council before adoption.[72]

Importantly, the City's Planning Commission also must review and recommend action on "proposed amendments to the general plan" and hold at least one public hearing before approving a

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[66] See Terner Center for Housing Innovation, Making It Pencil: the Math Behind Housing Development (Aug. 2019) https://ternercenter.berkeley.edu/wp-content/uploads/2020/08/Making_It_Pencil_The_Math_Behind_Housing_Development.pdf.
[67] Gov. Code, § 65583(a)(5).
[68] See HCD, Building Blocks, Public Participation, https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/public-participation (accessed on June 21, 2023).
[69] Gov. Code, § 65583(c)(9).
[70] Gov. Code, § 65580 et seq.
[71] Gov. Code, §§ 65350-65362.
[72] Gov. Code, § 65585(b)(2).

recommendation on an amendment to the general plan.[73] This Planning Commission hearing also has specific notice requirements.[74]

Based on our review of the City Council's revised Housing Element adoption hearing on May 23, 2023, the City has not complied with these procedural requirements. Although the Planning Commission recently considered a progress report on the City's Housing Element, the City's agenda website does not appear to identify any recent Planning Commission public hearings on the Housing Element, nor prior iterations of the Housing Element. As a further illustration of the lack of public notice, the Housing Element section of the website does not link to the most recently submitted version.[75]

Given that the City has significantly revised the Draft Housing Element since its initial adoption in 2021 and the City may have revised the Housing Element further based on conversations with HCD, the Planning Commission (and the public) must have an opportunity to review the Housing Element prior to the City Council's adoption. Otherwise, the City will have failed to meet the basic procedural requirements to adopt a Housing Element under state law and not engaged in a "diligent effort" to achieve public participation on a document that will guide housing development within the City.

In sum, the City's latest draft Housing Element, and all previous drafts, still contains inadequate assumptions and insufficient programs and policies that will not result in any meaningful contribution to meeting the RHNA needs and therefore fails to meet the intent of the Housing Element Law. Accordingly, we respectfully submit that HCD cannot find the City's Housing Element substantially compliant once it adopts the revised Housing Element. As such, the City should remain out of compliance with Housing Element Law and subject to the Builder's Remedy, among the other penalties in Housing Element Law.

Sincerely,

Beth A. Collins

Cc: Paul McDougal, Senior Program Manager, HCD
Lucas Seibert, Community Development Director, City of Ojai

[73] Gov. Code, § 65353(a).
[74] Gov. Code, § 65353(a).
[75] City, Housing Element (Dec. 11, 2023) https://drive.google.com/file/d/1XqRRLrBrsErpRARnjTaN3huNXmkfO8Wl/view.

Exhibits:

- Exhibit 1, Jan. 11, 2023 Incomplete Letter from City regarding 510 E. Ojai Ave. affordable housing project
- Exhibit 2, July 28, 2023 Incomplete Letter from City regarding Cabrillo Economic Development Corp.'s 100 percent affordable housing project
- Exhibit 3, March 29, 2023 Californians for Homeownership letter threatening a lawsuit if the City did not adopt a revised and legally adequate housing element by May 29, 2023
- Exhibit 4, August 11, 2023 letter to City re Withdrawal of Development Agreement Application (DA 21-037) and Request to Calendar Cottages and Mallory Time Extension Applications DRP 05-01 RV01, Tract 5587, and T 07-22 "Cottages"; DRP 11-10, TTM 11-01 and T 11-30412 "Mallory"

EXHIBIT 1

Jan. 11, 2023 Incomplete Letter from City regarding 510 E. Ojai Ave. affordable housing project

CITY OF OJAI

Community Development Department
401 South Ventura Street · Ojai · California · 93023
Main (805) 646-5581 · Inspection (805) 646-5581 x 127
www.ojai.ca.gov

January 11, 2023 **Transmittal Via Email**

Willem and Bethalyn Jonker
40 South Ash Street
Ventura, CA 93023
jbecker@beckergrp.com

RE: **RESPONSE LETTER** (CASE NO. MISC 22-058) | Preliminary Application Pursuant to SB330, the Housing Crisis Act of 2019 – Regarding a preliminary proposal which includes an addition of approximately 4,000 square feet of commercial space and outdoor patio space, and exterior design modifications to the existing vacant commercial building; two new two-story residential structures totaling approximately 11,160 square feet and 14 residential units (3 affordable housing units at a low affordable rate) located at 510 East Ojai Avenue. The zoning for the site is Commercial (C-1) with an overlay of Special Housing Overlay (SPL)

Dear Willem and Bethalyn Jonker,

The City of Ojai has received your December 13, 2022 submittal of a preliminary application which includes residential and commercial development as a mixed-use project through the SB330 process, pursuant to California Government Code 65589.5. Upon receipt of the preliminary application staff has ***30 calendar days*** to notify the applicant, in writing, of the preliminary applications status. Staff has concluded review of the information submitted within the 30-day window and determined the preliminary application to be **complete pursuant to California Government Code 65589.5**. As the applicant, you have 180 days from December 13, 2022 to submit a full application or the preliminary application expires.

The required information for a full application for a mixed-use development project is attached. This list is not intended to be exhaustive. The required information for a complete and full application for a mixed-use development project will be provided by City staff at the time the full application is due.

The project is not consistent with the general plan and zoning for the site. Specifically, the zoning for the site is C-1 and a general plan designation of General Commercial with an Special Housing Overlay

(SPL), and is identified within the 6th cycle housing element as Site No. 7. As the "builders remedy" does not apply to the City and the proposed multi-family residential land use is not a permitted use within the existing zoning and General Plan land use designation your full application include an application for a rezoning and a General Plan land use designation amendment to accommodate the proposed new land uses or alternatively demonstrate the proposed project complies with the requirements for an SPL overlay zone project.

Although the City's 6th Cycle Housing Element has not yet been certified by the Department of Housing and Community Development, the City vigorously disputes any contention that either of its originally adopted and its currently in-effect adopted revised Housing Element do not substantially comply with applicable state law. The Department of Housing and Community Development's certification is irrelevant to whether a cities' housing element substantially complies with state law, as substantial compliance is a legal question resolvable by the City, not a regulatory determination to be made by the Department of Housing and Community Development.

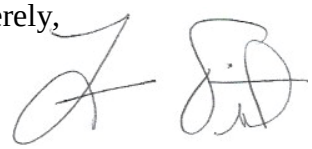
The City is confident that its Housing Element meets all statutory requirements and further expects the Department of Housing and Community Development to certify its Housing Element as well. As a result, this application cannot proceed under the "Builders Remedy" and instead would need to be processed as a standard land use entitlements application for the proposed project, subject to all applicable City requirements.

An Initial Study will be required for this project to determine environmental issues (if any) associated with this mixed-use development preliminary proposal. The Initial Study will require the City to circulate a request for proposals (RFP) for environmental services, and from those proposals submitted enter into a contract with a California Environmental Quality Act (CEQA) consultant; at the expense of the applicant.

An estimated cost to process this RFP environmental document is unknown and will be further identified through the proposal once formally submitted. Additional technical documents may be necessary and identified through this RFP process. Staff time and cost recovery is independent of the cost to process the environmental document. Of these technical documents necessary, a Historic Resources Report may be needed.

If you have any questions regarding the information above or processing of the project in general, please contact me at (805) 646-5581 x113 or via e-mail at Lucas.Seibert@ojai.ca.gov.

Sincerely,



Lucas Seibert
Community Development Director

EXHIBIT 2

July 28, 2023 Incomplete Letter from City regarding Cabrillo Economic Development Corp.'s 100 percent affordable housing project

CITY OF OJAI

Community Development Department
401 South Ventura Street · Ojai · California · 93023
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July 28, 2023

Transmittal:
Email & United States Postal Service

Cabrillo Economic Development Corporation
Attn: Mr. William Hughes
702 County Square Drive, Suite No. 200
Ventura, CA 93003
whughes@cabrilloedc.org

RE: **SECOND RESPONSE LETTER OF INCOMPLETENESS** (CASE NO's. ZCL 23-051, T 23-033, & DRP 23-008) | Preliminary Application Pursuant to SB330, the Housing Crisis Act of 2019 – Regarding a preliminary proposal which includes the proposed construction of 49 affordable housing units and one manager's unit (market rate) through a density bonus, incorporated within two separate buildings on approximately two acres, and within a two- and three-story project, located at 320 Bryant Street. The zoning for the site is Industrial Light Manufacturing (M-1) with a Special Housing Overlay (SPL); General plan land use designation for the site is Commercial Manufacturing.

Dear Mr. Hughes,

The City of Ojai has received your June 29, 2023 submittal of application which includes multi-family residential development as a three-story multi-family affordable housing project through the SB330 process, pursuant to California Government Code 65589.5, and density bonus. Upon receipt of the application staff has ***30 calendar days*** to notify the applicant, in writing, of the applications status. Staff has concluded review of the information submitted for the preliminary application to be **incomplete pursuant to California Government Code 65589.5**.

GENERAL INCOMPLETENESS

As mentioned in the City letter dated June 6, 2023, the proposed project is not consistent with the City of Ojai's General Plan and objective Zoning Standards for the site. Specifically, the zoning for the site is M-1 and has a general plan designation of General Commercial; including a Special housing overlay (SPL) district, and is identified within the 6th cycle housing element as Site No. 17. The project is

inconsistent with the General Plan's Land Use Element Policies, including LU-2 (low profile form of development), LU-10 (density), LU-11 (intensity and congestion), and LU-15 (traffic flow & traffic congestion).

The proposed project is inconsistent with the objective standards of the SPL overlay zoning district, including density (maximum = 20-units per acre; proposal 25-units per acre), parking (120-onsite parking required, 75 covered; preliminary proposal 95-onsite parking, none covered), height (30-foot maximum; preliminary proposal approximately 43-feet in height), and number of stories (two-story maximum; preliminary proposal three-stories).

Although the City's 6th Cycle Housing Element has not yet been certified by the Department of Housing and Community Development (HCD), the City vigorously disputes any contention that either of its originally adopted and its currently in-effect adopted revised Housing Element do not substantially comply with applicable state law. Recently, HCD identified in writing that no further comments are required of the City and that the *minor* revisions to the City Council adopted Housing Element required by HCD in its last round of comments have been made. HCD noted their pleasure to find the minor revisions to our most recent submittal to HCD meet the statutory requirements of State Housing Element Law (Government Code 65580 et seq). "HCD is pleased to find the revised draft housing element meets the statutory requirements of State Housing Element Law (Gov. Code, § 65580 et seq)." (HCD Letter of June 13, 2023.) The City is confident HCD will soon certify the City's Housing Element, consistent with these statements.

HCD's certification of the City's Housing Element, though, is irrelevant to whether a cities' housing element substantially complies with state-law, as substantial compliance is a legal question resolvable solely by a court of competent jurisdiction, not a regulatory determination to be made by HCD.

The City is confident that its Housing Element meets all statutory requirements and further expects the HCD to certify its Housing Element, as referenced in the most recent written correspondence identified in HCD's June 13, 2023 letter, which is attached to this letter. As a result, this application cannot proceed under any so-called "Builders Remedy" per Government Code section 65589.5 and instead would need to be processed as a standard land use entitlements application for the proposed project within the SPL overlay, subject to all applicable City requirements. The applicant will either need to apply for the necessary changes to the General Plan and zoning code to accommodate the project, subject to any applicable state law requirements, or else adjust the project's scope and scale to meet the objective requirements of the City's General Plan and zoning code, including the specific, objective standards for the site under the SPL overlay zone.

ENVIRONMENTAL |

An Initial Study is required for this project to determine whether there are environmental issues (if any) associated with this affordable housing development project. The Initial Study will require the City to circulate a request for proposals (RFP) for environmental services, and from those proposals submitted enter into a contract with a California Environmental Quality Act (CEQA) consultant; at the expense of the applicant.

The estimated cost to process this RFP environmental document is $96,500. An initial deposit of $30,000 to continue work on processing this proposed project must be included with the submittal of the supporting information through the application process. Additional technical documents may be necessary and identified through this RFP process. Staff and attorney, and any other consultants, time and cost recovery is independent of the cost to process the Initial Study.

PROJECT PLANS INCOMPLETE ITEMS |

1. Revise Title Sheet T1.01 as follows:

    a. Revise Project Description to maintain project consistency. Under the heading "The Project Includes" it includes two separate bullet points, "50 UNITS AFFORDABLE DEVELOPMENT" and "1 THREE-BEDROOM MANAGER'S APARTMENT." However, the paragraph above notes 49 affordable units and one unit which will house an on-site property manager. Please revise so the two statements are consistent with the proposed project description and clarify the exact number and type of proposed units, including size and affordability characteristics, in the proposed project.

2. Include call-outs for all proposed fencing onsite, including fencing to secure the outdoor gated toddler play area (Area 6 on A0.01 as listed on the updated legend), other outdoors active spaces for children and adults (Area 7 on A0.01 as listed on the updated legend), Dog Area (Area 8 on A0.01 as listed on the updated legend). Pursuant to Section 10-2.805 (Fences, walls, hedges, and screening) the maximum height of such fences, walls, and screening ranges between 3-feet and 6-feet depending on location.

3. Provide the call-out for the height with the dashed line titled "Zoning Ordinance Allowed Height;" per Plan Sheet A2.02. The call-out is referenced in each of the elevations and needs to provide the allowed height, as an objective standard.

4. Thank you for the letter and additional information from Casitas Municipal Water District. The "Will-Serve" Letter from Casitas Municipal Water District, and any other needed verification that all necessary utilities exist as needed to service the project, will be a condition of the proposed project.

5. Revise the Site Lighting and Perimeter Fencing Plan Section No. 3. The section notes the maximum height of a perimeter fence to be 8'-0". However, Section 10-2.805 (Fences, walls, hedges, and screening) of the Ojai Municipal Code limits the heights of walls outside of the front yard setback to 6'-0" and limits the heights of walls and fences to 4'-0" within the front yard area. Revise the project plans to reflect consistency with this section of the code; including Sheet LT.00.

6. Provide a lighting plan which identifies all new lighting proposed for the exterior portions of the hotel site. All lighting is required to be compliant with Section 10-2.16.5 (Exterior Lighting Standards) of the Ojai Municipal Code. Further, project plan sheet LT-3.0 must include full height lighting standards with specific height call-out to confirm compliance with the Ojai Municipal Code.

7. Provide a site plan and/or technical study(s), catalog cut sheets and other visuals to demonstrate compliance with the National Pollution Discharge Elimination System (NPDES) permit requirements, including on-site retention of the Stormwater quality design volume from: (a) the 0.75-inch, 24-hour storm event; and, (b) the 85th percentile 24-hour rain event, as determined from Ventura County Isohyetal map, whichever is greater, subject to review and approval by the Public Works Director or designee. The information provided in the Civil Design Studio report prepared by Robert Winslow, PE on page two of three under the heading Water Quality Compliance (fourth paragraph) references "Brand Street" which should read "Bryant Street."

   Additionally, preliminary visuals (catalog cut sheets, site plans, sectional elevations, and materials) within the project plans must be included to ensure compliance with these standards. Last, as discussed before, a General Plan amendment and zoning code as referenced above. Applications for these are enclosed.

If you have any questions regarding the information above or processing of the project in general, please contact me at (805) 646-5581 x113 or via e-mail at Lucas.Seibert@ojai.ca.gov.

Sincerely,

Lucas Seibert
Community Development Director

Enclosures: General Plan Amendment Application
Zoning Code Amendment Application
Fee Agreement

City of Ojai
Community Development Department

Project _____
Received_____
Date _____

PLANNING COMMISSION/ CITY COUNCIL

☐ Concept Review ☐ Design Review Permit ☐ Conditional Use Permit ☐ Sign/Sign Plan ☐ Lot Line Adjustment
☐ Tentative Parcel/Tract Map ☑ Text Amendment ☐ Zone Change ☐ Variance ☑ Other General Plan Amendment

OWNER INFORMATION:

Project Address: _____PROJECT I.D. #_____

Assessor Parcel Number: _____ Zone:_____

DESCRIPTION: _____

Property Owner: _____

Address: _____

Phone: _____Cell: _____ e-mail: _____

APPLICANT:

Name: _____

Address: _____

Phone: _____Cell: _____e-mail: _____

REPRESENTATIVE:

Name:_____

Address: _____

Phone: _____Cell: _____e-mail: _____

AFFIDAVIT:

I declare that I am the owner / representative (indicate one) of the property involved in this application and that the information submitted herein is true and correct. I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I further declare I understand that prior to determining the project hearing date; the City has 30 days to deem the application complete or incomplete. I acknowledge and agree that the City of Ojai is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the City may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits, including but not limited to any litigation costs. I will be notified of the meeting date(s) set for the above matter and that I am to appear, either personally or by my representative, at such meetings(s).

_____

Signature of Property Owner **Date**

Applicant's signature authorizes City staff to enter the property described above for the purposes of inspection.

City of Ojai
Community Development Department

GENERAL PLAN AMENDMENT APPLICATION

MINIMUM SUBMITTAL REQUIREMENTS:

- ☐ Completed Application Form Signed by Property Owner or letter-authorizing Representative to sign
- ☐ Filing Fee – (Text) Base Fee $450 + $225 per hour
- ☐ Filing Fee – (Map) Base Fee $450 + $225 per hour
- ☐ Assessor's Parcel Map with the area of the proposed Amendment clearly outlined
- ☐ List of Assessor Parcel Numbers (If Amendment area includes portions of parcels, please indicate)
- ☐ A Completed Environmental Assessment Worksheet (attached)
- ☐ Property Owner (300-foot radius) mailing labels generated by Ventura County GIS Department

Services Available to Property:

- ☐ Sewer
- ☐ Water
- ☐ Electricity
- ☐ Gas

Intended Access Road to Proposal: _____

Present General Plan Category or Designation(s):_____

Element for Which Amendment is Requested:

- ☐ Circulation
- ☐ Housing
- ☐ Land Use
- ☐ Noise
- ☐ Open Space
- ☐ Conservation
- ☐ Recreation
- ☐ Scenic Highways
- ☐ Seismic
- ☐ Seismic/Safety
- ☐ Ag
- ☐ Other

Proposed General Plan Category or Designation(s): _____

Reason for Requesting Amendment: _____

_____

Proposed Land Use of Property: _____

Anticipated Land Use Permit Request (e.g. Zone Change, Subdivision, Conditional Use Permit, etc.):_____

_____

Describe Any Other Land Use Permit Application Previously made on this Property:_____

_____

ENVIRONMENTAL ASSESSMENT WORKSHEET

A. Project Description

A detailed description of the proposed project is necessary so the Planning Division may assess its environmental effects. It is possible that more information will be required. To assess the environmental impact for land divisions and subdivisions it should be assumed dwellings will be constructed on each lot unless the contrary is definitely known. If a question is not applicable to your project, simply note N/A.

1. Size of site (square feet or acres): _____

2. For subdivision or land division size of each lot or parcel:_____

3. Proposed Use:_____

4. Number of occupants, residents, or employees:
   a) present_____ b) new_____

5. Number of units (if residential):_____

6. Size of building: Total floor space: _____

   No. of floors:_____; No. of on-site parking spaces:_____

7. Describe proposed commercial, industrial or agricultural process or operation:_____

_____

_____

8. Expected sale price or rental price of units or building:_____

9. Number of vehicles expected daily; changes in circulation pattern expected:_____

_____

10. Percentage of site to be covered by buildings:_____

11. Percentage of site to be covered by pavement (and area):_____

12. Utilities and public service facilities to be added (include outside lighting):_____

_____

13. Toxic and chemical wastes to be discharged and amount:_____

14. Expected amount of daily water usage:_____gallons

15. Expected amount of daily electrical usage:_____Kw.

16. Expected amount of daily gas usage:_____cu. ft. hr.

17. Source, type and amount of air pollutant emission (smoke, odors, steam, gasses, water vapor , dust, chemicals):

_____

18. Type of noise to be generated from both indoor and outdoor sources:_____

_____

19. Provisions for: a) rain and irrigation water run-off:_____

b) sewage (note sewer hook-up or septic tank):_____

20. Changes in land form proposed, as a result of grading for buildings, roads, or other uses:

_____

21. Cubic yardage/and location of grading proposed:_____

22. Proposed disposition of excavated material:_____

23. Project plans needed for assessment when requested by the Planning Division:

- ☐ Floor Plans
- ☐ Grading Plan (or specific site elevations)
- ☐ Landscape Plan or plan showing existing vegetation
- ☐ Soils and Geologic Report

B. Environmental Description

1. Present land use of site:_____

2. Surrounding Land Use:
   North:_____
   South:_____
   East:_____
   West:_____
3. Surrounding Zoning:
   North:_____
   South:_____
   East:_____
   West:_____

4. Condition of ground (e.g. paved, ploughed, grass-covered, tree and/or bush-covered):_____

_____

5. Slope of ground at site:_____

6. Geologic description of site:
   Location in relation to known earthquake faults:_____
   Type of bedrock and soils:_____
   Soil Stability:_____

7. Direction of drainage; History of flooding in area; Nearest watercourse and its condition:

_____

8. Existing plant and animal life:_____

9. Type of land use adjacent to the site (residential, commercial, other):_____

10. Traffic patterns in area (e.g. residential only, business, industrial, through street):_____

_____

11. Proximity to major traffic route:_____

12. Public facilities in area (parks, libraries, schools, other):_____

_____

13. Structures presently on site:_____

14. Characteristics of scenic or aesthetic interest at and near site:
   (Note on plan, all sycamore and oak trees and indicate all barrancas or streams)

_____

15. Noise character of area (include significant existing sources):_____

I hereby declare, that to the best of my knowledge and ability, the above information accurately describes the environmental conditions existing on the site of the proposed project and the probable effects of the project upon the environmental of the site and of the total community.

Prepared by:_____

Date:_____

City of Ojai
Community Development Department

Project _____
Received_____
Date _____

PLANNING COMMISSION/ CITY COUNCIL

☐ Concept Review ☐ Design Review Permit ☐ Conditional Use Permit ☐ Sign/Sign Plan ☐ Lot Line Adjustment
☐ Tentative Parcel/Tract Map ☑ Text Amendment ☐ Zone Change ☐ Variance ☐ Other

OWNER INFORMATION:

Project Address: _____PROJECT I.D. #_____

Assessor Parcel Number: _____ Zone:_____

DESCRIPTION: _____

Property Owner: _____

Address: _____

Phone: _____Cell: _____ e-mail: _____

APPLICANT:

Name: _____

Address: _____

Phone: _____Cell: _____e-mail: _____

REPRESENTATIVE:

Name:_____

Address: _____

Phone: _____Cell: _____e-mail: _____

AFFIDAVIT:

I declare that I am the owner / representative (indicate one) of the property involved in this application and that the information submitted herein is true and correct. I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I further declare I understand that prior to determining the project hearing date; the City has 30 days to deem the application complete or incomplete. I acknowledge and agree that the City of Ojai is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the City may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits, including but not limited to any litigation costs. I will be notified of the meeting date(s) set for the above matter and that I am to appear, either personally or by my representative, at such meetings(s).

_____

Signature of Property Owner **Date**

Applicant's signature authorizes City staff to enter the property described above for the purposes of inspection.

City of Ojai
Community Development Department

ZONE CHANGE

MINIMUM SUBMITTAL REQUIREMENTS:

- ☐ Completed Application Form Signed by Property Owner or letter-authorizing Representative to sign
- ☐ Map and/or Text Amendment Filing Base Fee $450 + $225 per hour
- ☐ Letter from property owner requesting Zone Change
- ☐ Design Review Permit Application
- ☐ Assessor's parcel map of site
- ☐ Property Owner (300-foot radius) mailing labels generated by Ventura County GIS Department
- ☐ Environmental Study - Base Fee $450 + $225 per hour

1. List

Existing Zone(s)	Size	Proposed Zone(s)	Size
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

2. Indicate approximate amount of square feet or acres of property under existing zoning within vicinity of proposed Zone Change.

_____

_____

3. General Plan designation / Conformance of Zone Change proposal.

_____

_____

4. Text Amendment / Proposed new language in Zoning Ordinance.

_____

_____

Fee agreement for the City of Ojai's (herein referred to as "City") review of the Preliminary Application for the proposed multi-family project located at 318/320 Bryant Street and related environmental review (Case No's. DRP 23-008 and MISC 23-051) and Assessor Parcel Number (APN 023-0-172-065).

Cabrillo Economic Development Corporation (collectively referred herein as "Applicant") agrees to pay all costs incurred by the City associated with the review and processing of the Proposed Multi-Family Project ("Project"). For projects such as this, there is no fixed development review fee. Instead, the City charges actual costs of review to the Applicant. Staff review, research, analysis, report preparation, and attendance at Commission and City Council meetings through the completion of the review process will be billed at $225 per hour. Any City Attorney or private environmental or other consultant costs will be billed to the Applicant at actual cost to the City incurred in processing and reviewing your Application and in the City's consideration of your Project. Project costs also include the cost of any defense if the Project is approved, and litigation against the Project is initiated, as will be required as part of the Project's conditions is approved. Project costs also include any costs incurred by the City in defending any legal challenge filed against the City before Project approval but related to the Project, except for any challenge filed by the Applicant. Thus far, Applicant has paid an initial deposit for the Project of $787.

In estimating the cost of reviewing and processing your project, the Community Development Department has assumed one Planning Commission hearing and environmental consideration through an initial study review which could result in a negative declaration, Mitigated Negative Declaration, or environmental impact report depending on the Initial Study check provided by the environmental consultant. The estimated time to process the proposed Project equates to approximately 305 hours for staff time review, an estimate of 90 hours for the environmental assessment, and an estimate of 111 hours for City Attorney time. The Community Development Department has determined the estimated cost of staff time, environment assessment, other consultants, and attorney time to be approximately $96,500. An initial deposit of $30,000 to continue processing the proposed Project must be included with the submittal of the supporting information.

Applicant's fees to process the Project may exceed the estimated cost of review as specified above. The City will advise the Applicant in writing before final disposition of your Project that a supplemental amount or amounts are due as needed to pay for additional City cost incurred in processing your Project, which could be because:

1. More public meetings are required than the total number estimated above; or
2. Additional items arise that require staff review and/or environmental or other consultant consideration; or
3. The scope of your Project changed; or
4. Lawsuits or other legal challenges to the Project are filed, requiring City response at your expense.

In the event that the City advises the Applicant that a supplemental amount is due, the supplemental amount must be paid within 14 calendar days after the date of the written notice of the amount due. Failure to do so will be grounds for denial or a pause in the processing of Applicant's proposed Project, subject to applicable law.

The above-estimated cost of review does not include the costs of the City's review of the building or grading permits that may be required as conditions of approval of the project. The Applicant will be notified of these costs before building permits or other final entitlements are issued.

Any unused portion of deposit(s) remaining after City has completed its review will be refunded to the Applicant. If costs associated with the City's review of any of the above applications exceed the paid deposit amounts, the City will notify Applicant that additional deposits are required. If, when the City completes its review, the review costs are less than the deposits paid, the difference will be refunded to the Applicant.

For more information regarding the City's estimated costs for reviewing Applicant's Project, City has attached a detailed summary of estimated costs.

The City has determined that the City, its employees, agents and officials should, to the fullest extent permitted by law, be fully protected from any loss, injury, damage, claim, lawsuit, expense, attorney fees, litigation expenses, court costs or any other costs arising out of or in any way related to the City's processing of this Project's Application, and, if approved, the granting of the necessary land use entitlements and permits approving the Project, and all activities conducted under such land use entitlements. Accordingly, to the fullest extent permitted by law, the Applicant – Cabrillo Economic Development Corporation, and its representative(s), or its successors shall defend, indemnify and hold harmless the City, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, the City's processing of this Project's Application, and, if approved, the issuance of the Project's land use entitlements, or the activities conducted pursuant to these land use entitlements. The Applicant – Cabrillo Economic Development Corporation, and its representative(s), or its successors shall pay such obligations as they are incurred by City, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the City reasonably determines necessary to protect the City from exposure to fees, costs or liability with respect to such claim or lawsuit.

The undersigned accepts the terms set forth in this fee agreement. (An agent signing on behalf of the Applicant warrants authorization by Applicant to do so.)

CABRILLO ECONOMIC DEVELOPMENT CORPORATION – WILLIAM HUGHES

Printed Name: _____

Signed Name: _____ Date: _____

Title: _____

EXHIBIT 3

March 29, 2023 Californians for Homeownership letter threatening a lawsuit if the City did not adopt a revised and legally adequate housing element by May 29, 2023

CALIFORNIANS FOR HOMEOWNERSHIP

MATTHEW GELFAND, COUNSEL
MATT@CAFORHOMES.ORG
TEL: (213) 739-8206

March 29, 2023

VIA EMAIL AND PRIORITY MAIL

Office of the City Clerk
City of Ojai
401 S. Ventura St.
Ojai, CA 93023
Email: cityclerk@ojai.ca.gov

RE: Gov. Code § 65009(d) Notice Regarding Housing Element.

To the City Clerk:

PLEASE TAKE NOTICE pursuant to Government Code Section 65009(d)(3)(A) that the housing element of the City's general plan is inadequate and does not substantially comply with the requirements of Article 10.6 (Section 65580 et seq.) of the Government Code and that Californians for Homeownership, Inc. may initiate litigation against the City if it does not adopt a revised and legally adequate housing element by May 29, 2023.

The specific deficiencies in the City's housing element are identified in the September 17, 2021, January 11, 2022, and February 13, 2023 letters sent to the City by the California Department of Housing and Community Development, which we have attached to this letter as Exhibits A, B, an C respectively and which we incorporate here by reference, in their entirety.

Sincerely,

Matthew Gelfand

cc: City of Ojai
Matthew Summers, Esq., City Attorney (by email to msummers@chwlaw.us)
City Council (by email to betsy.stix@ojai.ca.gov; leslie.rule@ojai.ca.gov; rachel.lang@ojai.ca.gov; andrew.whitman@ojai.ca.gov; suza.francina@ojai.ca.gov)

California Department of Housing and Community Development
Shawn Danino (by email to shawn.danino@hcd.ca.gov)

525 S. Virgil Avenue
Los Angeles, CA 90020

EXHIBIT A

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

September 17, 2021

Lucas Seibert, Community Development Director
Community Development Department
City of Ojai
401 S. Ventura Street
Ojai, CA 93023

Dear Lucas Seibert:

RE: Review of the City of Ojai's 6th Cycle (2021-2029) Draft Housing Element

Thank you for submitting the City of Ojai's (City) draft housing element received for review on July 20, 2021. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by a telephone conversation on September 14, 2021 with you, James Vega, and consultants Jamie Power and Veronica Tam.

The draft element addresses many statutory requirements; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code). The enclosed Appendix describes revisions needed to comply with State Housing Element Law.

To remain on an eight-year planning cycle, the City must adopt its housing element within 120 calendar days from the statutory due date of October 15, 2021 for Southern California Association of Governments (SCAG) localities. If adopted after this date, Government Code section 65588, subdivision (e)(4), requires the housing element be revised every four years until adopting at least two consecutive revisions by the statutory deadline. For more information on housing element adoption requirements, please visit HCD's website at: http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb375_final100413.pdf.

Pursuant to Government Code section 65583.3, the City must submit an electronic, true-and-correct copy of the housing element site inventory when it submits its adopted housing element to HCD for review. The City must utilize standards, forms, and definitions adopted by HCD. The City can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the City to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: http://opr.ca.gov/docs/OPR_Appendix_C_final.pdf and http://opr.ca.gov/docs/Final_6.26.15.pdf.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City meets housing element requirements for these and other funding sources.

HCD is committed to assisting the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Molivann Phlong, of our staff, at (916) 776-7569 or molivann.phlong@hcd.ca.gov.

Sincerely,

Shannan West
Land Use & Planning Unit Chief

Enclosure

APPENDIX
CITY OF OJAI

The following changes are necessary to bring the City's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on HCD's website at http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks),* available at http://www.hcd.ca.gov/community-development/building-blocks/index.shtml and includes the Government Code addressing State Housing Element Law and other resources.

A. Review and Revision

Review the previous element to evaluate the appropriateness, effectiveness, and progress in implementation, and reflect the results of this review in the revised element. (Gov. Code, § 65588 (a) and (b).)

A thorough program-by-program review is necessary to evaluate City's performance in addressing housing goals. As part of this analysis, the element should describe the actual results of the prior element's programs, compare those results to the objectives projected or planned, and based on an evaluation of any differences between what was planned versus achieved, provide a description of how the objectives and programs of the updated element incorporate changes resulting from the evaluation. This information and analysis provide the basis for developing a more effective housing program. This should include a description of how the goals, policies, and programs of the updated element incorporated what has been learned from the results of the previous element.

As part of the evaluation of programs in the past cycle, the element must provide an explanation of the effectiveness of goals, policies, and related actions in meeting the housing needs of special needs populations (e.g., elderly, persons with disabilities, large households, female-headed households, farmworkers and persons experiencing homelessness).

B. Housing Needs, Resources, and Constraints

1. *Affirmatively further[ing] fair housing (AFFH) in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2…shall include an assessment of fair housing in the jurisdiction (Gov. Code, § 65583, subd. (c)(10)(A))*

   Access to Opportunity: The element provides information (p. D-1) on the access to opportunity but must include an analysis on persons with disabilities. An analysis of disparities in access to opportunities must specifically address the housing and community development needs of persons with disabilities. A complete analysis should include the locally and regional disparities of the educational, environmental, and economic scores through local, federal, and/or state data. Please refer to page

36 of the AFFH guidebook (link: https://www.hcd.ca.gov/community-development/affh/index.shtml#guidance) for specific factors that should be considered when analyzing access to opportunities as they pertain to persons with disabilities, and any factors that are unique to Ojai.

Sites Inventory AFFH Analysis: The element includes maps with the sites inventory and states that the proposed sites meet lower-income regional housing needs allocation (RHNA) (Appendix D). However, the accompanying analysis shall also be reflective of housing development at all income-levels and evaluate the sites relative to socio-economic patterns. The sites inventory analysis should address how the sites are identified to improve conditions (or if sites exacerbate conditions, how a program can mitigate the impact), whether the sites are isolated by income group and should be supported by local data and knowledge.

To AFFH, sites must be identified and evaluated relative to the full scope of the assessment of fair housing (e.g., segregation and integration, racially and ethnically concentrated areas of poverty and affluence, access to opportunity, etc.), include specific actions to address upgrades to the aging housing stock/substandard rental housing conditions in the City, and address displacement risk of low-income residents. For more information, please see HCD's guidance at https://www.hcd.ca.gov/community-development/affh/index.shtml#guidancev.

2. *Include an analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected needs for all income levels, including extremely low-income households. (Gov. Code, § 65583, subd. (a)(1).)*

   The element includes a table with the household income distribution (p. 9). However, the element must quantify existing extremely low-income (ELI) households for renters and homeowners and analyze their housing needs. For additional information, see the Building Blocks at http://www.hcd.ca.gov/community-development/building-blocks/housing-needs/extremely-low-income-housing-needs.shtml.

3. *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 to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

   Sites Inventory: The element contains a sites inventory (p. B-3) listed with existing uses, assessor parcel numbers, parcel size, zoning. However, the list of sites must also include each property's general plan designation and sites broken down into income categories. For additional information and sample sites inventory, see the Building Blocks at http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/inventory-of-land-suitable.shtml.

   Please note, in the review of the Table B2: SPL Overlay Sites, HCD did not consider Sites 1-5 which are not currently zoned with the Special Housing Overlay

(SPL) when evaluating the inventory and analysis for compliance with housing element requirements. If revisions to the housing element require reliance on these sites to accommodate the RHNA, further analysis may be needed to determine the suitability of these sites to accommodate residential development.

Realistic Capacity: While the element provides assumptions of units for sites included in the inventory (p. B-3), it must also provide support for these assumptions. For example, the element should demonstrate what specific trends, factors, and other evidence led to the assumptions. The estimate of the number of units for each site must be adjusted as necessary, based on the land-use controls and site improvements, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction, and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities. The element also needs to analyze the likelihood that the identified units will be developed as noted in the inventory in zones that allow nonresidential uses (e.g., mixed-use). This analysis should consider the likelihood of nonresidential development, performance standards, and development trends supporting residential development. For additional information, see the Building Blocks at http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/analysis-of-sites-and-zoning.shtml#zoning.

Site 6 Ojai Unified School District (OUSD) School and Skate Park Site: The element states that the site owned by the OUSD has a concept review that was submitted to the City. To demonstrate the feasibility of this site, the element should detail the proposed development of the site including who submitted the concept design, proposals for affordable housing on the site, and any other details that demonstrate the feasibility of development within the planning period. In addition, the element should indicate whether the site has been identified by the school district as "surplus" and assess any impediments to the development within the planning period.

Suitability and Availability of Infrastructure: While the element identifies water, wastewater, and transportation infrastructure (p. 41) capacity to accommodate the City's regional housing need, it must also demonstrate sufficient existing or planned dry utilities supply capacity (Gov. Code, § 65583.2, subd. (b).) For additional information, see the Building Blocks at http://www.hcd.ca.gov/community-development/building-blocks/site-inventory-analysis/analysis-of-sites-and-zoning.shtml#environmental.

Small Sites: The element identifies one site at less than a half-acre. However, it is unclear whether the City is relying on this site to accommodate a portion of it lower-income housing need. Sites less than a half-acre are not eligible absent a demonstration that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower-income housing units as projected for the site or unless other evidence is provided.

Zoning for a Variety of Housing Types:

- *Emergency Shelters:* While the element notes that the Business Professional Commercial (BP) zone allows emergency shelters (p. 26), the element must demonstrate the City still has sufficient capacity to accommodate the identified housing need for emergency shelters and evaluate the available acreage for characteristics like parcel size or potential redevelopment or reuse opportunities, proximity to services and describe development standards. In addition, the element identifies that a conditional use permit is required when accommodating more than 27 beds on site. While housing element law does allow a jurisdiction to limit the number of beds or persons permitted to be served nightly by a facility, standards must be designed to encourage and facilitate the development of, or conversion to, an emergency shelter. The element should analyze the 27-bed limit and conditional approval to ensure that the standard does not unduly constrain the development of emergency shelters.

- *Single-Room Occupancy (SRO) Units:* The element generally describes how housing types are permitted by zone, but must address all housing types, such as SRO units. Specifically, the analysis must address the location of where SRO units are allowed.

- *Accessory Dwelling Units (ADUs):* The element indicates (p. 52) that ADUs created on the second floor of a residential dwelling requires a Design Review Permit. Under Government Code section 65852.2, subdivision (a)(4), a permit application for an ADU or junior accessory dwelling unit (JADU) shall be considered and approved ministerially without discretionary review or a hearing. In addition, the City's adopted ADU ordinance limits the square footage for conversions of existing space into ADUs. State ADU Law does not allow for the limitation of square footage of ADUs that are converted. (Gov. Code, § 65852.2 subd. (e)(1)(A)(i).).

4. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Government Code section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7). Transitional housing and supportive housing shall be considered a residential use of property and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone. (Gov. Code, § 65583, subd. (a)(5).)*

Land-Use Controls: The analysis must evaluate the cumulative impacts of land-use controls on the cost and supply of housing, including the ability to achieve maximum densities and the capacity assumed in the housing element sites inventory. In particular, the element should analyze the two-story limitation on height and parking standards for their impact as a potential constraint on housing.

The element includes a description of the City's Growth Management Ordinance (GMO) (p. 36) and recognizes the GMO has been suspended until 2025 pursuant to SB 330 (Chapter 654, Statutes of 2019). As the City may be aware, SB 8 (Statutes of 2021) was passed by the legislature and signed into law by the Governor on September 16, 2021. SB 8 extends these provisions of SB 330 until 2030. The element should be updated to reflect this extension of the suspension through the planning period.

Fees and Exaction: The element generally explains the cost of construction for a single-family and multifamily residence (p. 40). However, the element should also further analyze the cumulative impact or total fees on the development costs of a typical single-family and multifamily development within the jurisdiction, with local and regional data. Additionally, the element must clarify its compliance with new transparency requirements for posting fees and inclusionary requirements on the jurisdiction's website.

Local Processing and Permit Procedures: The element provides a general overview of the City's processing and permit procedures for residential developments (p. 38). However, the element should provide the average processing times for single-family and multifamily developments, and analyze the level of governmental review, processing projects under the SPL, typical processing timeframes, typical findings for approval, review criteria, and the applicable design review criteria, for potential impact on development approval certainty, timing, and cost of development.. Additionally, the element must clarify compliance and include further analysis with a streamlined ministerial approval process pursuant to Government Code section 65913.4 (Senate Bill 35; Chapter 366, Statutes of 2017).

Constraints on Housing for Persons with Disabilities: While the element makes reference to reasonable accommodation for persons with disabilities, it does not provide any information on the City's reasonable accommodation procedure. The element should describe the City's reasonable accommodation procedure, including how requests are made and processed, and any approval findings. In addition, the element details that residential care facilities serving six or fewer persons are permitted in all residential zones. However, residential care facilities serving seven or more persons require a Conditional Use Permit (CUP). The element should analyze the process as a potential constraint on housing for persons with disabilities and add or modify programs as appropriate to ensure zoning permits group homes objectively with approval certainty.

5. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, the cost of construction, the*

requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality's share of the regional housing need in accordance with Government Code section 65584. The analysis shall also demonstrate local efforts to remove nongovernmental constraints that create a gap between the locality's planning for the development of housing for all income levels and the construction of that housing. (Gov. Code, § 65583, subd. (a)(6).)

The element must include analysis regarding local efforts to address nongovernmental constraints that create a gap in the jurisdiction's ability to meet RHNA by income category and an identification and analysis of requests to develop at densities below the density identified in the site inventory, and a description of the length of time between project approval and request for building permit that hinders the jurisdiction's ability to accommodate RHNA by income category. For example, the City can look at recent developments in the jurisdiction and identify any nongovernmental constraints.

6. *Analyze any special housing needs such as elderly; persons with disabilities, including a developmental disability; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter. (Gov. Code, § 65583, subd. (a)(7).)*

   While the element quantifies the City's special needs populations, it must also analyze their special housing needs. The element does not include analysis of available resources nor draw any conclusions on housing need that would lead towards programs. For a complete analysis of each population group, the element should discuss challenges faced by the population, the existing resources to meet those needs (e.g., availability senior housing units, number of large units, number of deed restricted units, etc.), an assessment of any gaps in resources, and proposed policies, programs, and funding to help address those gaps.

C. Housing Programs

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions. (Gov. Code, § 65583, subd. (c).)*

   To address the program requirements of Government Code section 65583, subdivision (c)(1-6), and to facilitate implementation, programs should include: (1) a

description of the City's specific role in implementation; (2) definitive implementation timelines; (3) objectives, quantified where appropriate; and (4) identification of responsible agencies and officials. Programs to be revised include the following:

- Program 1 (Adequate Sites for RHNA and Monitoring of No Net Loss): Provide a definitive implementation timeline.
- Program 13 (Resource Constraints): Provide objectives and a definitive implementation timeline.
- Program 18 (Fair Housing): Provide a definitive implementation timeline.

2. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, SRO units, emergency shelters, and transitional housing.*
*(*Gov. Code, § *65583, subd. (c)(1).)*

   As noted in Finding B1, the element does not include a complete site analysis. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types.

   Program 4 (Increase the Supply of ADUs): The monitoring program should also monitor affordability. Additional actions, if necessary, should be taken in a timely manner (e.g., within 6 months). If necessary, the degree of additional actions should be in stride with the degree of the gap in production and affordability. For example, if actual production and affordability of ADUs is far from anticipated trends, then rezoning or similar actions would be an appropriate action. If the actual production and affordability is near the anticipated trends, then it would be appropriate to include measures like outreach and marketing.

3. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)*

   As noted in Findings B4 and B5, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints.

Program 12 (Ojai Municipal Code Growth Management Ordinance): The program should be updated to reflect the new sunset provision for SB 330 that extends to 2030.

4. *Promote AFFH opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics protected by the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), Section 65008, and any other state and federal fair housing and planning law. (Gov. Code, § 65583, subd. (c)(5).)*

   As noted in Finding B1, the element must include a complete analysis of AFFH. Based on the outcomes of that analysis, the element must add or modify programs. For example, given that most of the City is considered a high and highest resource community, the element could focus on programs that enhance housing mobility, encourage development of more housing choices and affordable housing and provide displacement protections for low-income residents. Programs also need to be based on identified contributing factors, be significant and meaningful. For more information, please see HCD's guidance at https://www.hcd.ca.gov/community-development/affh/index.shtml#guidancev.

E. Public Participation

Local governments shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the element shall describe this effort. (Gov. Code, § 65583, subd.(c)(8).)

While the element includes a general summary of the public participation process, the element should include additional efforts to include a broad spectrum of individuals and representative organizations and consider language access barriers. The element should describe the efforts to circulate the housing element among low- and moderate-income households and organizations that represent them and to involve such groups and persons in the element throughout the process. In addition, the element must summarize the public comments and describe how they were considered and incorporated into the element.

EXHIBIT B

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

January 11, 2022

James Vega, City Manager
City of Ojai
401 South Ventura Street
Ojai, California, 93023

Dear James Vega:

RE: City of Ojai's 6th Cycle (2021-2029) Adopted Housing Element

Thank you for submitting the City of Ojai's (City) housing element adopted October 12, 2021 and received for review on October 13, 2021. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review.

The adopted housing element addresses many of the statutory requirements described in HCD's September 17, 2021 letter; however, additional revisions are necessary to fully comply with State Housing Element Law (Article 10.6 of the Gov. Code). See enclosed Appendix.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (October 15, 2021), then any rezoning to accommodate the regional housing needs allocation (RHNA), including for lower-income households, shall be completed no later than one year from the statutory deadline. Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i).

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City will meet housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the City to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: http://opr.ca.gov/docs/OPR_Appendix_C_final.pdf and http://opr.ca.gov/docs/Final_6.26.15.pdf.

HCD appreciates the assistance that Lucas Seibert, Community Development Director, and consultant Veronica Tam, provided throughout the course of the housing element review. HCD would be happy to arrange a meeting to review these findings or provide any assistance needed to facilitate your efforts to address all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Shawn Danino, of our staff, at shawn.danino@hcd.ca.gov.

Sincerely,

Paul McDougall
Senior Program Manager

Enclosure

APPENDIX
CITY OF OJAI

The following changes are necessary to bring the City's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on HCD's website at http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks),* available at http://www.hcd.ca.gov/community-development/building-blocks/index.shtml and includes the Government Code addressing State Housing Element Law and other resources.

A. Review and Revision

Review the previous element to evaluate the appropriateness, effectiveness, and progressin implementation, and reflect the results of this review in the revised element. (Gov. Code,§ 65588 (a) and (b).)

The element did not address this requirement. While the element was revised to describe one potential project and added a few phrases addressing persons with disabilities, the element still must provide an explanation of the effectiveness of goals, policies, and related actions in meeting the housing needs of special needs populations (e.g., elderly, persons with disabilities, largehouseholds, female-headed households, farmworkers and persons experiencing homelessness).

B. Housing Needs, Resources, and Constraints

1. *Affirmatively further[ing] fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2…shall include an assessment of fair housing in the jurisdiction (Gov. Code, § 65583, subd. (c)(10)(A))*

   Disparities in Access to Opportunity: The element was not revised to address this requirement. It provides information (p. D-1) on the access to opportunity but must include an analysis on persons with disabilities. An analysis of disparities in access to opportunities must specifically address the housing and community development needs of persons with disabilities. A complete analysis should include the locally and regional disparities of the educational, environmental, and economic scores through local, federal, and/or state data. Please refer to p36 of the affirmatively furthering fair housing (AFFH) guidebook (link: https://www.hcd.ca.gov/community-development/affh/index.shtml#guidance) for specific factors that should be considered when analyzing access to opportunities as they pertain to persons with

disabilities, and any factors that are unique to Ojai.

Sites Inventory AFFH Analysis: While the element was revised to describe the use of a housing overlay to accommodate its lower-income regional housing needs allocation (RHNA) (p. D-40), it does not include a full assessment of fair housing of sites in the inventory. The sites inventory analysis should address how the sites are identified to improve conditions (or if sites exacerbate conditions, how a program can mitigate the impact), whether the sites are isolated by income group and should be supported by local data and knowledge.

To AFFH, sites must be identified and evaluated relative to the full scope of the assessment of fair housing (e.g., segregation and integration, racially and ethnically concentrated areas of poverty and affluence, access to opportunity, etc.), include specific actions to address upgrades to the aging housing stock/substandard rental housing conditions in the City, and address displacement risk of low-income residents. For more information, please see HCD's guidance at https://www.hcd.ca.gov/community-development/affh/index.shtml#guidancev.

2. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land usecontrols, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Government Code section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7). Transitional housing and supportive housing shall be considered a residential use of property and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone. (Gov. Code, § 65583, subd. (a)(5).)*

   Land Use Controls: While the element was revised to describe the rules surrounding new or remodeled buildings that may be as high as 35-feet (p. 43), it does not analyze this development standard as a possible constraint. Additionally, the element does not address the parking standards as a possible constraint. The analysis must also evaluate the cumulative impacts of land use controls on the cost and supply of housing, including the ability to achieve maximum densities and the capacity assumed in the housing element sites inventory.

   Fees and Exaction: The element was revised to update its fee table for various housing development projects. However, the analysis still does not tabulate the cumulative fees for single family units versus multifamily development nor analyze the impact of the fees on development costs. Additionally, several fees only apply to multifamily units and other fees are significantly higher for multifamily units versus

single family homes. For example, Table II-5 seems to indicate special building plan review fees for multifamily units that are not applied to single family development. Placing higher fees on multifamily units raise their total cost and may constrain the development of multifamily housing. Based on the outcome of the analysis, the element must add or modify programs as appropriate.

Local Processing and Permit Procedures: The element was revised to describe some residential permit processes (pp. 52 and 53) and clarify that the development application process is outlined on the City's website. The element states that projects are reviewed on the basis of design principles including architectural design that must be "high quality" and maintaining "a human scale at the street and an appropriate height transition to adjacent properties. These and similar decision-making standards are subjective and may pose a constraint to the development of housing. The element should describe the criteria used to make these findings and analyze the impact of these criteria on for impacts on the cost and supply of housing, including approval certainty. Additionally, the element should be revised to describe each step involved in obtaining approval permits for new housing.

Constraints on Housing for Persons with Disabilities: While the element was revised to describe general updates to the Reasonable Accommodation Process, it does not provide any information on how requests are made or approval findings needed. In addition, the element details that residential care facilities serving six or fewer persons are permitted in all residential zones. However, residential care facilities serving seven or more persons require a Conditional Use Permit (CUP). The element should analyze the process as a potential constraint on housing for persons with disabilities and add or modify programs as appropriate to ensure zoning permits group homes objectively with approval certainty.

3. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, the cost of construction, the requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2, and the length of time between receiving approval for a housing development and submittal of an application for building permits for that housing development that hinder the construction of a locality's share of the regional housing need in accordance with Government Code section 65584. The analysis shall also demonstrate local efforts to remove nongovernmental constraints that create a gap between the locality's planning for the development of housing for all income levels and the construction of that housing. (Gov. Code, § 65583, subd. (a)(6).)*

   The element was not revised to address this requirement. Please see HCD's prior review.

C. Housing Programs

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions. (Gov. Code, § 65583, subd. (c).)*

   Program 13 (Resource Constraints): The program was revised to include a sentence about the Ventura River Watershed (pp. 94 and 95), but still must provide objectives and a definitive implementation timeline.

2. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and developmentof housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)*

   As noted in Findings B2 and B3, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and address and remove or mitigate any identified constraints.

3. *Promote AFFH opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics protected by the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), Section 65008, and any other state and federal fair housing and planning law. (Gov. Code, § 65583, subd. (c)(5).)*

   As noted in Finding B1, the element must include a complete analysis of AFFH. Based on the outcomes of that analysis, the element must add or modify programs. For example, given that most of the City is considered a high and highest resource community, the element could focus on programs that enhance housing mobility, encourage development of more housing choices and affordable housing and provide displacement protections for low-income residents. Programs also need to be based on identified contributing factors, be significant and meaningful. For more information, please see HCD's guidance at https://www.hcd.ca.gov/community-development/affh/index.shtml#guidance.

EXHIBIT C

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
2020 W. El Camino Avenue, Suite 500
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February 13, 2023

James Vega, City Manager
City of Ojai
401 South Ventura Street
Ojai, California, 93023

Dear James Vega:

RE: City of Ojai's 6th Cycle (2021-2029) Adopted Housing Element

Thank you for submitting the City of Ojai's (City) housing element that was adopted December 13, 2022 and received for review on December 15, 2022. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review. In addition, HCD considered comments from several members of the community, pursuant to Government Code section 65585, subdivision (c).

The adopted housing element addresses some of the statutory requirements described in HCD's January 11, 2022 review; however, additional revisions are necessary to fully comply with State Housing Element Law (Article 10.6 of the Gov. Code). See enclosed Appendix.

As a reminder, the City's 6th cycle housing element was due October 15, 2021. As of today, the City has not completed the housing element process for the 6th cycle. The City's 5th cycle housing element no longer satisfies statutory requirements. HCD encourages the City to revise the element as described above, adopt, and submit to HCD to regain housing element compliance.

Pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), a jurisdiction that failed to adopt a compliant housing element within one year from the statutory deadline cannot be found in compliance until rezones to make prior identified sites available or accommodate a shortfall of sites pursuant to Government Code section 65583, subdivision (c)(1)(A) and Government Code section 65583.2, subdivision (c) are completed. As this year has passed, the housing element is out of compliance and will remain out of compliance until all necessary rezonings have been completed.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's

Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City will meet housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the County to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: https://www.opr.ca.gov/planning/general-plan/guidelines.html.

HCD appreciates the assistance Lucas Seibert, Community Development Director, and consultant Veronica Tam, provided throughout the housing element update and review. HCD would be happy to arrange a meeting to review these findings or provide any assistance needed to facilitate your efforts to address all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Shawn Danino, of our staff, at shawn.danino@hcd.ca.gov.

Sincerely,

Paul McDougall
Senior Program Manager

Enclosure

APPENDIX
CITY OF OJAI

The following changes are necessary to bring the City's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on HCD's website at https://www.hcd.ca.gov/planning-and-community-development/hcd-memos. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks),* available at https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks and includes the Government Code addressing State Housing Element Law and other resources.

A. Housing Needs, Resources, and Constraints

1. *Affirmatively further[ing] fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2…shall include an assessment of fair housing in the jurisdiction. (Gov. Code, § 65583, subd. (c)(10)(A).)*

   Disparities in Access to Opportunity: The element was revised to analyze access to opportunity for persons with disabilities (p. D-24), but it should also include the locally and regional disparities of the educational, environmental, and economic scores through local, federal, and/or state data.

   Sites Inventory and Affirmatively Furthering Fair Housing (AFFH): While the element was revised to provide some information related to sites relative to cost burden and displacement it must still analyze sites relative to access to opportunity. In addition, as noted in the element over 70 percent of the City's lower-income Regional Housing Need Allocation (RHNA) in a sensitive community at risk of displacement. The element should analyze this concentration and describe how programs will mitigate potential displacement.

2. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land usecontrols… …and local processing and permit procedures... (Gov. Code, § 65583, subd. (a)(5).)*

   Land Use Controls: The element was not revised to address this requirement. Please see HCD's prior review for additional information.

   Local Processing and Permit Procedures: The element was revised to include some of the approval findings for Conditional Use Permits (CUPs) (pp. 34-35). However, some

of these findings appear subjective and may pose a constraint to the development of housing. some residential permit processes (pp. 52 and 53) and clarify that the development application process is outlined on the City's website. In addition, as stated in the prior review, criteria requiring that architectural design must be "high quality" and maintain "a human scale at the street and an appropriate height transition to adjacent properties" should be analyzed as a constraint. These and similar decision-making standards are subjective and may pose a constraint to the development of housing. The element should describe the criteria used to make these findings and analyze the impact of these criteria on housing supply (number of units), cost, feasibility, timing and approval certainty. Additionally, as previously stated, the element should be revised to describe each step involved in obtaining approval permits for new housing.

Finally, HCD received public comments regarding approval delays for projects submitting an SB-330 application at 304 S. Montgomery Street, 510 E. Ojai Avenue (listed as Site # 7 in the SPL Overlay), and 107 N. Ventura Street. The City should confirm how these projects are being considered and will be approved per procedures for the SPL overlay. In addition, pursuant to public comments, the City should explain its policies and programs to promote housing production on 318 Bryant Street (listed as Site # 17 in the SPL Overlay). Finally, the City may need to revise policies and programs (e.g., Program 1 – Adequate Sites for RHNA) to ensure the SPL overlay is being applied pursuant to ministerial design review permit process.

Constraints on Housing for Persons with Disabilities: While the element was revised to modify Program 11 to ensure that residential care facilities of seven or more persons will be permitted with objective conditions for approval "that provide for clarity in outcomes" (p. 62), it should also commit that these facilities are permitted similar to other residential uses in respective zones and in a manner that does not act as a constraint on housing for persons with disabilities. For more information please see HCD's Group Home memo https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/group-home-technical-advisory-2022.pdf.

3. *An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including… …requests to develop housing at densities below those anticipated in the analysis required by subdivision (c) of Government Code section 65583.2… ...that hinder the construction of a locality's share of the regional housing need in accordance with Government Code section 65584... (Gov. Code, § 65583, subd. (a)(6).)*

   The element was revised to address timing of building permit submittals; however, the element still must analyze efforts to develop below the densities outlined in the housing. Please see HCD's prior review for additional information.

B. Housing Programs

1. *Include a program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are*

ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element... (Gov. Code, § 65583, subd. (c).)

Program 14 (Resource Constraints): The element was not revised to address this requirement. Please see HCD's prior review for additional information.

2. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and developmentof housing, including housing for all income levels and housing for persons with disabilities... (Gov. Code, § 65583, subd. (c)(3).)*

   As noted in Findings A2 and A3, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs and addressand remove or mitigate any identified constraints.

   In addition, the City should revise Program 13 to confirm that the Growth Management Ordinance will not be applied until at least 2030, pursuant to the Housing Crisis Act (Gov. Cod § 66300), as confirmed on the January 23, 2023 call.

3. *Promote AFFH opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics... (Gov. Code, § 65583, subd. (c)(5).)*

   As noted in Finding A1, the element must include a complete analysis of AFFH. Based on the outcomes of that analysis, the element must add or modify programs. In addition, given that most of the City is considered a high and highest resource community, the element must include programs that specifically enhance housing mobility, encourage development of more housing choices and affordable housing (beyond the RHNA) and provide displacement protections for lower-income residents including addressing upgrades to the aging housing stock/substandard rental housing conditions in the City. As a reminder, programs must be significant and meaningful enough to overcome identified patterns and trends and have specific commitments, metrics and milestones, and geographic targeting, as appropriate.

EXHIBIT 4

August 11, 2023 letter to City re Withdrawal of Development Agreement Application (DA 21-037) and Request to Calendar Cottages and Mallory Time Extension Applications DRP 05-01 RV01, Tract 5587, and T 07-22 “Cottages”; DRP 11-10, TTM 11-01 and T 11-30412 “Mallory”

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August 11, 2023

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VIA EMAIL: LUCAS.SEIBERT@OJAI.CA.GOV

City of Ojai
Community Development Department
Attn: Mr. Lucas Seibert, Director
401 S. Ventura Street
Ojai, CA 93023

RE: Withdrawal of Development Agreement Application (DA 21-037) and Request to Calendar Cottages and Mallory Time Extension Applications DRP 05-01 RV01, Tract 5587, and T 07-22 "Cottages"; DRP 11-10, TTM 11-01 and T 11-30412 "Mallory")

Dear Mr. Seibert:

As you know, we represent Ojai Bungalows LP and Greenhawk LLC (collectively, "Ojai Bungalows"), the parties to the development agreement approved by the City of Ojai ("City") on October 25, 2022 ("Development Agreement") through City Ordinance No. 934 and owners of the four properties subject to the Development Agreement.[1]

In an effort to avoid the significant costs associated with the pending referendum and litigation over Ordinance No. 934, and amongst other reasons outlined herein, we respectfully submit this letter as a withdrawal of the Development Agreement.

In the absence of the Development Agreement, Ojai Bungalows is the owner of the properties at 312 W. Aliso Street ("Cottages Project") and 412 Mallory Way ("Mallory Project") (together referred to as "Projects"). By this letter, we are also requesting that the City calendar action on the pending time extension applications as soon as practical.

[1] City Ordinance No. 934 included the following approvals (1) a Development Agreement between the City of Ojai and Ojai Bungalows, LP and Greenhawk, LLC for Multi-Family Housing and Affordable Housing Totaling 67 Units (with 20 Units Deed-Restricted for 55 Years at a Moderate Income Level, 6 Units Deed-Restricted for 55 Years at a Low Income Level, and 1 Unit Deed-Restricted for 55 Years at a Very-Low Income Level) at 4 sites at 312 West Aliso Street, 107 North Ventura Street, 304 South Montgomery Street, and 412 Mallory Way, with a Residential Relocation and Assistance Plan; (2) a Zoning Map Amendment changing the zoning from Public (P-L) to Village Mixed-Use for 107 North Ventura Street; and (3) a California Environmental Quality Act Determination of Exemptions.

I. History of Extension Applications and Associated Development Agreement

On September 27, 2022, the members of the Ojai City Council were set to vote on extension applications for the Projects. At that hearing we asked this Council to postpone the hearing for one month. Our firm had just been brought into the case and we were getting up to speed on the extensive history related to the applications. The Council agreed to put off the hearing for 30 days if our clients would reopen negotiations related to a Development Agreement between the City and Ojai Bungalows. Our clients agreed. Insofar as the time extensions were tolled during the consideration and subsequent approval of the Development Agreement, these time extensions are still pending applications absent the Development Agreement.

a. Cottages Among the Flowers Project Background

The City Council approved the Cottages Project, a 10-unit air-space condominium project, on Nov. 27, 2007, adopting a Mitigated Negative Declaration under California Environmental Quality Act ("CEQA"). The final parcel map for the project was recorded on Oct. 19, 2010[2]. Our client acquired the project in 2014, with advice from the City's Planning Director that the project was fully entitled. Since that time, our client has diligently pursued building permits to start construction; however, significant delays associated with City staffing changes delayed building permit issuance,[3] requiring our client to apply to extend the project's planning approvals. Historically such extensions were issued proforma. In fact, from 2007 to 2019, the City approved numerous extensions to the project's approvals.

b. Mallory Way Bungalows Project Background

On June 12, 2012, our client received approvals for its Mallory Project which proposes to redevelop 25 market-rate units into 23 market-rate and 7 deed-restricted affordable units (1 low-income, 6 moderate-income; 30 units total). The City certified an Environmental Impact Report for the Mallory Project at its June 26, 2012 Council Hearing. Again, our client experienced significant delays in the issuance of building permits. The client submitted a timely extension request on May 15, 2017, which was not considered until Planning Commission approved it at its February 20, 2019 hearing. The approval history for this project is outlined in various City Staff Reports including for the Planning Commission hearing of February 20, 2019.

c. Appeals of Extension Applications

On April 9, 2019, two members of the City Council appealed the Planning Commission's extension approvals for the Projects. The City took months to decide to retroactively apply the Replacement

[2] As stated in the Planning Commission Staff Report for June 1, 2016.
[3] The status of the entitlements is well documented in various City Staff Reports including but not limited to Planning Commission Staff Reports for the February 17, 2016 and June 1, 2016 public hearings.

Housing Ordinance (2013 Ordinance),[4] which took effect on July 11, 2013 through Ordinance No. 828, to the Mallory Project.

In its April 9, 2019 appeal of the Planning Commission's approval of a the Cottages and Mallory Project extension applications, Council stated that the City should assess whether to retroactively apply the City's 2013 Ordinance to the Projects. The City took months doing that assessment despite the fact that the plain language of the Ojai Municipal Code ("OMC" or "Code") makes it clear that the 2013 Ordinance does not apply; plus no prior City extension approvals from 2013 and 2019 indicated the 2013 Ordinance was applicable to these Projects. For these reasons, and those described further below, the 2013 Ordinance does not apply, and cannot be applied to the Projects through the City Council's action on the extension applications.

d. Development Agreement Background

Our clients did not consult an attorney in 2019 when the City Council determined that it would retroactively apply the 2013 Ordinance to the Projects. Because our clients wanted to work with the City and they believe in providing affordable housing in the City, they agreed to pause processing of the time extension applications for the Projects and talk with the City about a larger housing package. Redesign of the Cottages and Mallory Projects was infeasible—since the original Project plans did not and could not have contemplated compliance with the later-enacted 2013 Ordinance—but they agreed to propose additional housing (including affordable units) on two other properties.

After years of negotiations with an Ad Hoc Committee consisting of two Councilmembers appointed by the City Council, the City and Ojai Bungalows finally agreed to terms on a mutually beneficial Development Agreement. In the Summer of 2022, that Development Agreement was brought to the City Council for consideration. Unfortunately, due to significant misinformation in the community about the background and terms of the Development Agreement, many community members attending the hearing opposed the Development Agreement. This led to the Council postponing a vote and asking Ojai Bungalows to return to settlement negotiations. When the parties did so, however, discussions broke down and Ojai Bungalows asked the City to calendar the appeal of the time extension applications at the City Council for consideration. That is when our firm became involved—days before the September 22, 2022 hearing.

At that hearing, our clients agreed to return to settlement negotiations, this time with counsel. Renewed negotiations resulted in some additional revisions to a Development Agreement. The final Development Agreement permitted 67 units (27 deed-restricted affordable) on four properties (Cottages Among the Flowers and Mallory Bungalows plus World University (redevelopment of former office space) and Montgomery (a vacant site)). The Development Agreement also included numerous additional tenant protections, including phased construction of the new housing units first, to facilitate tenant relocation and funds to help tenants move.

[4] Codified as Ojai Municipal Code (OMC), § 10-2.904.

Again, significant misinformation led to confusion about the terms of the Development Agreement. Specifically, opponents of the Development Agreement—led by Simply Ojai—suggested that the Development Agreement provided fewer affordable housing units than would otherwise would be required by claiming that the Cottages and Mallory Projects have 33 current low income tenants under the assumption that the extension applications are subject to the City's 2013 Ordinance. For reasons explained further below, that information is incorrect. In fact, no replacement housing is required for either the Cottages or Mallory Projects. The City has acknowledged as much multiple times through its grant of numerous extensions after adoption of the Replacement Housing Ordinance and until 2019. By way of example:

- June 15, 2016 Planning Commission Resolution for the Cottages Project "WHEREAS after taking public testimony and hearing evidence from the City staff and the applicant, the Planning Commission finds, pursuant to the findings attached to this resolution and subject to the project's Conditions of Approval attached to this resolution, that the requested modifications to Design Review Permit (DRP 05-03) and the time extension, are consistent with the City's General Plan and The City of Ojai's Municipal Code."
- June 15, 2016 Planning Commission Resolution for the Cottages Project Section 3 "After taking public testimony and hearing evidence from the City staff and the applicant, the Commission finds that pursuant to the findings and conditions in Attachment "B", that the proposed time extension and DRP modification is consistent with the Ojai City Code and General Plan.
- Planning Commission found on August 17, 2016 in their Resolution approving a modification of the approval for the Cottages Project: "After taking public testimony and hearing evidence from the City staff and the applicant, the Commission finds that pursuant to the findings and conditions contained wherein, that the proposed Design Review Permit modifications are consistent with the Ojai City Code and General Plan."[5]
- February 20, 2019 Planning Commission Administrative Report on the Time Extension for Mallory Project, "Given that the project is located in an area of town that has not been subject to changes in zoning or land use designation, the project continues to conform to the OMC and policies of the General Plan."
- April 3, 2019 Planning Commission Administrative Report for the Time Extension for the Cottages Project "After taking public testimony and hearing evidence from the City staff and the applicant, the Commission finds that pursuant to the findings and conditions contained wherein, that the proposed time extension for Design Review Permit are consistent with the Ojai City Code and General Plan."

[5] See Ojai, Planning Commission Staff Report, Attachment B, March 27, 2019 available https://drive.google.com/file/d/1NZglIDSGKj950BdMlOA51rf8HSvGkiAE/view (accessed on July 11, 2023).

Additionally, Simply Ojai incorrectly asserted that the infill and redevelopment housing projects would result in various environmental impacts. Evidence presented by both the City and Ojai Bungalows debunked those claims.[6] Ultimately, after over at least 10 hours of hearings during which the City and Ojai Bungalows carefully laid out the terms and pros and cons of the Agreement, public sentiment significantly shifted. On October 18 and October 25, 2023, the final Development Agreement was approved by the Council by a 4-1 vote.

Simply Ojai subsequently filed a lawsuit against the City and our clients challenging the Development Agreement approval on CEQA and other theories. Simply Ojai further circulated a referendum petition to overturn the City's Development Agreement approval relying, among other things, on the misinformation debunked during the hearing process.

Four seats on the City Council changed in a November 2023 election, and since that time the Council has treated the Development Agreement very differently from the initial 4-1 support. My clients have worked in good faith for over four years to partner with the City on a Development Agreement, but the new Council has demonstrated no interest in this continued partnership. Instead, this Council has repeatedly taken actions to undermine the Development Agreement and block the housing projects (including affordable housing) that will result.

By way of example, the City spent over 2 hours on each of its two January 2023 hearings discussing the referendum on the Development Agreement, ultimately refusing to schedule a vote of the people on the referendum until March 2024—approximately a year and a half after the City Council initially voted to approve the Development Agreement by a 4-1 vote, citing that it could not spend the $8,000-$13,000 on a special election that would have occurred significantly sooner. Even if the electorate rejects the referendum, the City and our clients will need to litigate the Simply Ojai lawsuit before proceeding with the Projects. Thus, housing development on these sites pursuant to the Development Agreement will be impossible for some time, likely years.

It has also come to light that the City Council allegedly violated the Brown Act and hired outside counsel to advise them in closed session on how to get out of the commitments the City made in the Development Agreement as part of deliberations on the City's response to the Simply Ojai lawsuit.[7] Instead of meeting in closed session to discuss the litigation strategy to defend their approval of affordable housing, the City spent approximately $30,000 on advice regarding ways the City could

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[6] See Notices of Exemption accompanying the Development Agreement, Mallory Way EIR (SCH 2008071083) and Cottages Mitigated Negative Declaration, along with applicant-provided technical studies and letter dated October 18, 2022.

[7] Ojai, Staff Report, Attachment B, p. 7 (May 17, 2023) available at https://ojai.granicus.com/MetaViewer.php?view_id=1&clip_id=1042&meta_id=35817 ("[T]he memo and oral advice from Ms. Minner discussed in closed session considered the Simply Ojai lawsuit, *how the lawsuit could be mooted via the referendum if the Council rescinded the ordinance approving the development agreement*, and *possible* consequences and *opportunities of exercising that option*." (Emphasis added).)

unwind the Development Agreement.[8] The City's special counsel was further selected based on a recommendation by the attorney representing Simply Ojai in the lawsuit.[9] Mayor Stix further disclosed attorney-client privileged correspondence from the City Attorney to the attorney representing Simply Ojai prior to the lawsuit.[10]

As reported in the Ojai Valley News January 27, 2023:

> According to emails obtained by the Ojai Valley News from the city of Ojai through a Public Records Act request, Stix, on multiple occasions, forwarded emails related to the Ojai Bungalows/Green Hawk Development Agreement she'd received in her capacity as mayor to Leslie Hess, Tom Francis and their attorney, Venskus. Hess serves on the board of Simply Ojai, according to documents filed with the state. Venskus is the attorney for Simply Ojai in its litigation against the city.

Again on July 27, 2023, the Ojai Valley News reported that Mayor Stix forwarded eight pages of confidential emails regarding the Cottages and Mallory Projects to representatives of Simply Ojai, including their legal counsel, on July 18, 2022 and October 27, 2022, which the City Attorney deemed privileged.[11] Mayor Stix further continues to "stand behind [her] actions to protect the community and defend our city" notwithstanding Simply Ojai subsequently sued the City over the Development Agreement.

The City's opposition to affordable housing also does not seem to stop with the Development Agreement projects. The City seems to be trying to frustrate the development of an 100 percent affordable project proposed by a nonprofit developer.[12] Our clients simply cannot trust this City to move forward fairly as a partner under the Development Agreement in light of these recent actions.[13]

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[8] Ojai Valley News, City Releases Invoices for 'Minner Memo' Costs (May 10, 2023) available at https://www.ojaivalleynews.com/news/government/city-releases-invoices-for-minner-memo-costs/article_39a09fde-eea6-11ed-a2a7-e7273765f253.html.

[9] Ojai Valley News, Mayor Pro Tem Responds to Mayor Forwarding Emails (Jan. 31, 2023) available at https://www.ojaivalleynews.com/news/mayor-pro-tem-responds-to-mayor-forwarding-emails/article_971530b6-a1bd-11ed-9bcf-773193c33bfb.html.

[10] Ojai Valley News, City Council closed session laid bare (Jan. 27, 2023) available at https://www.ojaivalleynews.com/news/city-council-closed-sessions-laid-bare/article_3bc14788-9e19-11ed-b4e2-bba73b30c0b4.html.

[11] Ojai Valley News, Ojai Mayor Stix apologizes for forwarding privileged emails (Jul. 27, 2023) available at https://www.ojaivalleynews.com/news/government/ojai-mayor-stix-apologizes-for-forwarding-privileged-emails/article_effde374-2d06-11ee-af0d-53ecad41ad68.html.

[12] Ojai Valley News, 49-unit affordable-housing proposal in Ojai meets headwinds (Aug. 10, 2023) available at https://www.ojaivalleynews.com/news/49-unit-affordable-housing-proposal-in-ojai-meets-headwinds/article_ffab558e-37b2-11ee-b968-c7310fa1c7f0.html.

[13] Ojai Valley News, 49-unit affordable housing on council's closed-session agenda referencing litigation (Aug. 8, 2023) https://www.ojaivalleynews.com/news/49-unit-affordable-housing-on-councils-closed-session-agenda-referencing-

Our clients have owned Cottages since 2014 and Mallory since 1999 and has been seeking to revitalize the aging housing on these Project sites since that time. These efforts are well documented in the City's staff reports recommending approval of various time extensions. Ojai Bungalows support the development of more affordable housing in Ojai and had agreed to redesign the Cottages projects post-entitlement and provide one additional very low and one low affordable units onsite. Mallory was not proposed to be changed through the Development Agreement (Mallory as approved includes 6 moderate and 1 low deed restricted units). Additionally, during negotiations for the Development Agreement, Ojai Bungalows acquired two other properties and proposed to develop affordable units on those properties as a part of the Development Agreement. **Since the Development Agreement is being actively blocked by this Council, along with the pending referendum and pending CEQA lawsuit led by Simply Ojai, Ojai Bungalows withdraws its application for a Development Agreement.**

e. Now Proposing Housing Projects on Five Properties Without the Development Agreement

Ojai Bungalows now is independently pursuing housing developments of the four properties covered by the Development Agreement plus an affordable housing development on one additional property. Specifically, Ojai Bungalows is seeking approval of the time extensions of the Cottages and Mallory Projects. At the same time, Ojai Bungalows has applications pending on three other properties.[14] In all, the projects, as currently proposed on these five properties (absent the

litigation/article_8ef5160c-356b-11ee-a57b-d3bce3878dc4.html (describing a closed session on an affordable housing project under threat of litigation despite no actual threat by the applicant).

[14] Our client submitted three SB 330 Preliminary Applications for projects qualifying as housing development projects "for very-low, low- or moderate income households" (Gov. Code, § 65589.5(h)(3)) on December 13, 2022 (prior to the City Council's adoption of a "minor modification" to its adopted Housing Element that same day). Since then, correspondence from HCD has confirmed that the City's Housing Element was out of compliance at that time and remains out of compliance today until the City adopts and resubmits its Housing Element in accordance with Government Code Section 65585 and applicable state law. Because the development proposed in the Development Agreement for the World University and Montgomery sites does not conform with existing zoning, our clients are seeking to build these two projects using the Builder's Remedy (with the same development envelope previously approved in the Development Agreement) to avoid the legal and political uncertainty of the stalled Development Agreement. (Gov. Code, § 65589.5(d)(5).)

- 107 North Ventura Street or "World University" (Formerly Approved with Development Agreement). The SB 330 Preliminary Application proposes a 10-unit project that constitutes mostly of interior modifications to an existing one-story office building. The design is identical to the project described in the Development Agreement—but with 2 low income affordable units and 1 moderate income affordable units (20% lower income project plus a moderate income unit).
- 304 South Montgomery Street or "Montgomery" (Formerly Approved with Development Agreement). The SB 330 Preliminary Application proposes a 15-unit project—with an identical design to the project described in the DA approved by the City Council—but with 3 low income affordable units and 12 moderate income affordable units (100% moderate project with 3 low income units).
- 510 E. Ojai (New Project). This property is included within the City's Housing Element as Site 7 in the a special housing overlay (SPL). Similar to above, the client submitted an SB 330 Preliminary Application proposing a 13 unit

Development Agreement), will provide 78 units, including 30 deed restricted affordable units (21 moderate, 7 low and 2 very low).

	Units	**Deed Restricted Affordable**
Cottages	10	0
Mallory	30	6 moderate 1 low
World University	10	1 moderate 2 low
Montgomery	15	12 moderate 3 low
510 E. Ojai	13	1 moderate 2 low 2 very low
TOTAL	**78 total units**	**30 total affordable units** **21 moderate** **7 low** **2 very low**

Ojai Bungalows' proposed housing would provide the first privately-developed deed-restricted units within the City. Further, these housing projects would contribute to meeting the City's regional housing need allocation ("RHNA") obligation to provide 13 very-low, 9 low, 10 moderate and 21 above-moderate units during the planning period.[15] Specifically, the proposed projects would provide the following percentages of the City's RHNA obligation: 15% very low, 78% low and 210% moderate units. The addition of these would be a significant step toward the City showing its commitment to affordable housing.

II. The City Must Approve Our Time Extension Applications

The stated purpose for Council's appeal of the Planning Commission-approved time extension in April 2019 was to determine whether the 2013 Replacement Housing Ordinance applied to the Projects, but the City's determination to retroactively apply the 2013 Ordinance to these Projects in incorrect. The 2013 Ordinance does not apply to the DRP extension applications for the reasons below.

project with 2 very-low, 2 low-income and 1 moderate income affordable units (more than 20% lower income project plus a moderate income unit) and consistent with the City's SPL Overlay affordability requirements.

[15] City, Housing Element, Tab. II-29, p. 30.

a. The City's Code Makes Clear That the 2013 Ordinance Cannot Be Applied to the Cottages or Mallory Project Extension Applications

The City action to apply the 2013 Ordinance to the Cottages Project and Mallory Project are inconsistent with the plain language of the City's Code. For example, the 2013 Ordinance provides that "the conversion or demolition of existing residential dwelling units **inhabited** by persons and families of very low, lower or moderate income shall not be authorized unless provisions have been made for the replacement of those dwelling units with affordable units…" (OMC § 10-2.904.) The Code defines "inhabited" as "[a] dwelling unit that serves as a place of permanent or customary and usual abode of a person or household who, **at the time application is filed with the City for a land use permit** subject to the provisions of this article, lawfully occupied the premises. (OMC § 10-2.902(b) [emphasis added].) The City's Code does not define "land use permit" as including applications for extensions to existing entitlements. (OMC § 10-2.3602(l)(1).) The applications for Cottages and Mallory projects were filed well before 2013 since the approvals were issued in 2007 and 2012 yet the City seeks to apply the 2013 Ordinance as a condition of a simple DRP extension (related to the physical attributes of the projects, not occupancy and use).[16] (OMC § 10-2.2002(d)(1).) The language in Section 10-2.902(b) and 10-2.904—which limits application of the 2013 Ordinance to tenants at the time the application was filed—further supports the interpretation that the 2013 Ordinance was only intended to be applied prospectively to new housing development applications for land use permits, not extension such as those requested for the Cottage and Mallory Projects. Under the 2013 Ordinance's language, it would only apply to units on the Cottages and Mallory Way sites that were occupied by qualifying tenants as of the date of the applications in 2007 and 2012, respectively, under then-current income thresholds.

Further, the Cottages Project also has a recorded condominium map that converted these rental units into individual condominium units,[17] meaning the City's asserted trigger for the 2013 Ordinance does not apply. (OMC § 10-2.904(a)(1) [exempting single family residential].) This conclusion is underscored by the City's own draft Housing Element which makes clear that the 2013 Ordinance does not apply to housing units on individual lots.[18]

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[16] The purpose of a DRP is the "maintenance of architectural standards" and as such outlines specific "architectural" and "design" standards for a proposed development, rather than criteria related to the use of the development. (OMC §§ 10-2.2001, 10-2.2004.)

[17] As stated in the October 2022 Staff Report and proposed Resolution, the City Council approved the conversion to condominium with the final map on December 8, 2009, which was recorded on October 8, 2010. Even if the City denies the DRP extension, Becker retains the right to move forward with the sale of each existing condominium, as-is, without approval by the City. Therefore, the City's Affordable Housing policies cited in the staff report as basis to deny the DRP extension do not apply to the Cottages Project because the map has already been recorded, the housing on that parcel was already converted to separate legal lots and each lot may be separately sold as a condominium in accordance with state law and the Code as of the time of map recordation.

[18] City, Housing Element, p. D-46 ("The City implements a replacement housing requirement for the demolition, removal or conversion of housing that is occupied by and affordable to target income households *with the following exceptions: (i) exempt the removal/demolition of single-family homes on a single parcel of record*…")

Of course, the map (which was approved in 2007 and recorded in 2010, before the 2013 Ordinance was enacted), also does not include the necessary language required to apply 2013 Ordinance. (OMC § 10-2.904(e); see also *City of West Hollywood v. Beverly Towers, Inc.* (1991) 52 Cal.3d 1184, 1191 [holding City could not apply later enacted ordinances to a condominium projects with a recorded final map]).[19] Section 10-2.904(e) specifies that "[e]very entitlement for a residential project that is subject to the provisions of this section *shall contain a condition detailing the method of compliance*" and "[e]very final and parcel *map shall bear a note indicating whether compliance with the requirements of this section must be met prior to the issuance of a building permit*." (Emphasis Added.) The Cottages Project and recorded map do not contain either of these requirements. As such, the 2013 Ordinance does not apply to the project.

As outlined above, the City has taken many actions that underscore its interpretation that the 2013 Ordinance does not apply to the Projects. For example, the City's Planning Commission considered the Cottages Project at no fewer than 7 public hearings in 2016 (February 17, March 2, March 16, June 1, June 15, and August 17) and once again in October 2017 and never applied the 2013 Ordinance to the Project. The Planning Commission resolution in approving the 2017 time extension (Resolution No. 17-18) found "that pursuant to the findings and conditions contained wherein that the proposed time extension for Design Review Permit ("DRP") are consistent with the Ojai City Code and General Plan." This language is mimicked in the 2016 time extension and modification approvals. Similarly, the Planning Commission recommended approval of the time extension for Mallory Project at its February 20 2019 asserting that "the project continues to conform to the OMC and policies of the General Plan."

Furthermore, the City Council improperly seeks to impose new use conditions on a DRP, which applies solely to physical or architectural attributes of a development project. (OMC § 10-2.2001.) Other permits, such as planned development permits and conditional use permits—that are not relevant to the time extension request because of the final map—are required in addition to a DRP when applicable to a project. Section 10-2.2002 makes clear that the scope of a DRP relates only the "physical attributes of [the] project" **not use, occupancy or other considerations**. (See OMC § 10-2.2002 ["The basis for approving, conditionally approving or denying a design review permit is expressly limited to physical attributes of a project as opposed to use, occupancy or considerations

[19] In September 2022, the Staff Report and proposed Resolution, the substantive basis proposed for denial of the extensions is that, based on changes to the General Plan and Zoning Code, the City Council cannot approve the entitlement as it would be "injurious to the public convenience, health, safety, or general welfare" as it would "convert" affordable housing units. (OMC § 10-2.3203(a)(5).) Not so. The recording of the Cottages final map in 2010, before the City's 2013 Ordinance was adopted, converted these units into "condominiums," not the extension of the DRP. The DRP simply seeks to reconstruct or rehabilitate these units to improve their safety by addressing fire life safety items, such as fire sprinkler installation, upgrades to plumbing and electrical (both inside and outside the units), storm drainage improvements, structural upgrades, and general update of the units to modern building code standards. As such, the City Council has no basis to find that the DRP, which would improve the condition of existing units, injures the public convenience, health, safety, or general welfare. Furthermore, the Council later approved the Development Agreement, finding development of the Cottages and Mallory sites to be in the public interest.

other than compliance with the standards set forth in Sections 10-2.2004 and 10-2.2009."].) Therefore, the City Council cannot improperly expand the scope of review for the DRP to include aspects of the Project's use; rather the City Council must make its findings on the DRP extensions solely on the basis of design.

b. Applying the 2013 Ordinance to the Cottages or Mallory Project Extension Applications Violates the Housing Accountability Act

Any attempt by the City to claim that the 2013 Ordinance apply to these Projects violates the Housing Accountability Act ("HAA"). The HAA supersedes the City's Code to the extent in conflict. (Gov. Code § 65589.5; see, e.g., OMC § 10-2.704(i) [acknowledging HAA supersedes conflicting City Code provisions].)

Logically, the City cannot apply new zoning code requirements after projects are deemed complete—let alone after the projects are approved (Cottages Project was approved on Nov. 27, 2007 and Mallory Project was approved on June 12, 2012, well before the 2013 Ordinance).[20] (See Gov. Code § 65589.5(j); *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 777, review denied May 11, 2022 [The HAA requires local government "to proceed by way of clear rules adopted in advance, rather than by ad hoc decisions to accept or reject proposed housing."].)

Second, even if the 2013 Ordinance applied to the extension applications—which is does not since extensions are not an application for a land use permit under the OMC Section 10-2.902(b)—the City failed to provide our client with notice within 30 days of the complete extension applications, so the applications were deemed consistent with applicable City standards. (Gov. Code § 65589.5(j)(2).)[21] Third, the City has not and cannot make the findings required to otherwise deny the Projects based on an unmitigable, specific, adverse impact to public health and safety.[22] (Gov. Code § 65589.5(j)(1).)

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[20] The HAA applies to all votes on land use approvals or entitlements necessary for issuance of a building permit. (Gov. Code § 65589.5(h)(6); HCD, Housing Accountability Act Technical Assistance Advisory (Government Code Section 65589.5), p. 9 (Sep. 15, 2020).

[21] Our client submitted a complete extension application on March 15, 2019 for the Cottages Project; thus the City had until April 15, 2019 (30 days) to provide them written notice of the applicable standards under the HAA. Instead, the Planning Commission approved the extension on April 3, 2019, which two City Council members appealed on April 9, 2019. It was not until the May 14, 2019 City Council meeting that the City took a written the position that the 2013 Ordinance applied—well after the April 15, 2019 date required by the HAA. (Gov. Code § 65589.5(j)(2), (3).) For the Mallory Project, our client submitted an extension application on May 15, 2017, even conservatively assuming this extension application was not deemed complete as a matter of law on June 14, 2017 (Gov. Code § 65943), the City must have deemed it complete prior to the February 20, 2019 Planning Commission meeting where it was approved. Even using this conservative estimate, the City was required to provide written notice of its position as to the purported applicability of the 2013 Ordinance on or before March 22, 2019. It did not do so until May 14, 2019. Thus, the Projects' extension applications are both deemed consistent with the 2013 Ordinance as a matter of law, and the City cannot retroactively apply them to the Projects now. (Gov. Code § 65589.5(j)(2), (3).)

[22] Under the HAA, "a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, *based on objective, identified written public health or safety standards*, policies, or conditions *as they existed on the date the application was deemed complete.*" (Gov. Code § 65589.5(j)(1)(A) (Emphasis added).) Moreover, the Legislature has

Finally, retroactively applying the City's 2013 Ordinance provisions to 2007 and 2012 project approvals does not make sense. Developers need to understand the applicable rules when designing and permitting housing projects—that is a cornerstone of the HAA. (Gov. Code § 65589.5(a) & (j)(1); see also *Id*. §§ 65943, 65905.5.) Allowing retroactive application of new standards to long-approved housing projects improperly blocks housing development.

Therefore, it is improper for the City to now assert that the 2013 Ordinance applies to the Projects' extension applications. Denying the extension applications would be arbitrary and capricious, a violation of the City's Code, and a violation of the HAA. Should the City decide to deny the extension applications, Ojai Bungalows will have to pursue litigation against the City for the reasons detailed in this letter. This will expose the City to significant attorneys' fees, not only from costs of hiring the City's own counsel, but if Ojai Bungalows prevails in the litigation, the City could be liable for Ojai Bungalows' attorneys' fees. (See Gov. Code 65589.5(k)(1)(A)(ii) [Court "shall" award attorneys' fees except under extraordinary circumstances where it finds that awarding fees would not further the purposes of the HAA]; Gov. Code 65589.5(l) [if the court finds the City denied the Project in bad faith, the fine shall be multiplied by a factor of five].) To avoid this risk, and for the reasons detailed above, we ask that the City grant the extension applications.

III. Approving the Extension Applications Is Right for the Environment

Claims that the Cottages and Mallory Projects, along with our clients other housing development projects, will negatively impact the environment are unsupported.[23] It may seem counterintuitive, but redevelopment of the City's antiquated housing stock is the best way for the City to meet its climate goals. Infill redevelopment on unused and underutilized land within existing areas is critical to accommodate growth and to redesign cities to be more sustainable.[24] Plus, it will help ensure Ojai provides sufficient humane, affordable housing for its residents. That is because the City's old housing stock was constructed under old building codes, but the proposed new and refurbished units must comply with updated building codes. This will result in enormous water savings per unit and increased energy efficiency for every unit, and it will significantly decrease fire, flood, and earthquake risk for the residents. New and updated housing units further will permit more members of the Ojai workforce to live within City limits thereby reducing commutes and vehicle miles traveled. This has been analyzed by numerous experts, such as:

- Sierra Club, Guidance For Smart Growth And the Urban Infill Policy (Aug. 2021) available at https://drive.google.com/file/d/11R80kTpPMYZ9XWbQrGdh4KuhNORKf8LG/view ["If we begin to rebuild our existing neighborhoods and regional infrastructure around properly tailored

declared that "the conditions that would have a specific, adverse impact upon the public health and safety … arise infrequently." (Gov. Code § 65589.5(a)(3).)

[23] See also letter from B. Collins to City of Ojai dated October 18, 2023 re "Response Regarding Various Environmental Comments; Becker Development Agreement October 18, 2023 Council Hearing."

[24] California Governor's Office of Planning and Research, Infill Development https://opr.ca.gov/planning/land-use/infill-development/ (accessed on Oct. 24, 2022).

Smart Growth design, instead of continuing to build new sprawling development, we can save vast amounts of land. We can also dramatically cut our climate emissions while creating more convenient and equitable neighborhoods and regions. In addition to better environmental and social outcomes this strategy can also better serve the economic needs of our society."]

- Terner Center for Housing Innovation, University of California, Berkeley, Right Type, Right Place: Assessing the Environmental and Economic Impacts of Residential Development Through 2030 (Apr. 10, 2017) available at https://ternercenter.berkeley.edu/research-and-policy/right-type-right-place/ ["Residents in the largest coastal cities in California encounter some of the most unaffordable homes in the nation, caused in large part by a thriving economy and a multi-decade-long undersupply of housing relative to population and job growth. In addition to the income squeeze of unaffordable homes and long commutes, the housing shortage creates environmental challenges. Most prominently, building more auto-dependent housing far from job centers generates more traffic and air pollution while destroying open space and agricultural lands. . . . Of the three housing production scenarios analyzed, the Centers found that the *infill-focused housing growth scenario provides the best outcomes for meeting the state's climate goals while also producing economic benefits. This scenario could help avert at least 1.79 million metric tons of greenhouse gases annually compared to the business-as-usual scenario, based on reduced driving miles and household energy usage alone*."(Emphasis added).]

- Smith Group, DC, Low-Impact Infill Housing, Combat the Climate Challenge, the Housing Crisis & Disrupt Development (Sept. 2021) available at https://www.smithgroup.com/sites/default/files/2021-09/2021%20LIIH%20DIY%20Guide%20%281%29.pdf ["Cool Climate Network found that urban infill held the greatest opportunity to reduce GHG (greenhouse gases), making low-impact, infill housing the lowest hanging fruit with the highest return that is accessible to a wide range of stakeholders."]

- Tyler Adams, Encourage Infill Development, Sustainable Development Code, available at https://sustainablecitycode.org/brief/encourage-infill-development-5/ ["[I]nfill development helps combat sprawl, which is often comprised of low density development and the separation of uses, thus increasing a community's reliance on automobiles. " (Citations omitted).] (accessed on Oct. 24, 2022).

- State of California, Urban Strategy For California (April 18, 1979) available at https://opr.ca.gov/docs/20190325-urban_strategy-ocr.pdf [The report establishes a goal to "improve existing housing and encourage new urban development" and acknowledges that to accomplish the states goal of a society in harmony with the land "California must commit itself to more compact urban areas, to the revitalization of its existing cities and suburbs, to the continued protection of its best agricultural lands."]

Thus, this Project will result in a safer, more resilient, and climate friendly Ojai.

IV. The City Should Approve the Extensions to Promote Housing Development with the City.

Our clients have sought to work cooperatively with the City to revitalize the Ojai's housing stock and build the first privately developed affordable housing within the City in decades. However, Ojai Bungalows no longer feels they can partner with the City to promote affordable housing through the Development Agreement due to City Council's lack of support, and in many cases, outright opposition to the Development Agreement. Thus, Ojai Bungalows feels compelled to walk away from the Development Agreement to pursue development of the Cottages and Mallory Projects as well as the development of three other affordable housing projects within the City consistent with their legal rights under the City's Code and applicable state housing laws.

Ojai Bungalows does not take this position lightly and remains committed to housing projects within the City that provide meaningful new affordable housing within the City. We hope that the City Council will review our clients' applications consistent with applicable law and recognize Ojai Bungalows' projects as an opportunity for the City to meet its RHNA obligations and provide significant new housing opportunities for City residents from all income categories. Approving Ojai Bungalows' five projects as currently proposed will provide 78 units, including 30 deed restricted affordable units (21 moderate, 7 low and 2 very low) and demonstrate the City Council's interest in affirmatively further fair housing.

As a first step toward showing the City's commitment to revitalizing and providing new, modern housing within the City, we respectfully request that staff make the right decision for the City of Ojai and its residents and calendar and recommend approval of the Extension Applications.

Sincerely,

Beth A. Collins

Cc: Matthew Summers, City Attorney