

August 11, 2023

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**VIA EMAIL: [LUCAS.SEIBERT@OJAI.CA.GOV](mailto: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.<sup>1</sup>

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.

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<sup>1</sup> 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<sup>2</sup>. 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,<sup>3</sup> 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

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<sup>2</sup> As stated in the Planning Commission Staff Report for June 1, 2016.

<sup>3</sup> 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),<sup>4</sup> 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.

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<sup>4</sup> 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.”<sup>5</sup>
- 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.”

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<sup>5</sup> See Ojai, Planning Commission Staff Report, Attachment B, March 27, 2019 available <https://drive.google.com/file/d/1NZgIIDSGKj950BdMIOA51rf8HSvGkiAE/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.<sup>6</sup> 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.<sup>7</sup> 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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<sup>6</sup> 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.

<sup>7</sup> 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](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.<sup>8</sup> The City's special counsel was further selected based on a recommendation by the attorney representing Simply Ojai in the lawsuit.<sup>9</sup> Mayor Stix further disclosed attorney-client privileged correspondence from the City Attorney to the attorney representing Simply Ojai prior to the lawsuit.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup> Our clients simply cannot trust this City to move forward fairly as a partner under the Development Agreement in light of these recent actions.<sup>13</sup>

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<sup>8</sup> Ojai Valley News, City Releases Invoices for 'Minner Memo' Costs (May 10, 2023) available at [https://www.ojavalleynews.com/news/government/city-releases-invoices-for-minner-memo-costs/article\\_39a09fde-eea6-11ed-a2a7-e7273765f253.html](https://www.ojavalleynews.com/news/government/city-releases-invoices-for-minner-memo-costs/article_39a09fde-eea6-11ed-a2a7-e7273765f253.html).

<sup>9</sup> Ojai Valley News, Mayor Pro Tem Responds to Mayor Forwarding Emails (Jan. 31, 2023) available at [https://www.ojavalleynews.com/news/mayor-pro-tem-responds-to-mayor-forwarding-emails/article\\_971530b6-a1bd-11ed-9bcf-773193c33bfb.html](https://www.ojavalleynews.com/news/mayor-pro-tem-responds-to-mayor-forwarding-emails/article_971530b6-a1bd-11ed-9bcf-773193c33bfb.html).

<sup>10</sup> Ojai Valley News, City Council closed session laid bare (Jan. 27, 2023) available at [https://www.ojavalleynews.com/news/city-council-closed-sessions-laid-bare/article\\_3bc14788-9e19-11ed-b4e2-bba73b30c0b4.html](https://www.ojavalleynews.com/news/city-council-closed-sessions-laid-bare/article_3bc14788-9e19-11ed-b4e2-bba73b30c0b4.html).

<sup>11</sup> Ojai Valley News, Ojai Mayor Stix apologizes for forwarding privileged emails (Jul. 27, 2023) available at [https://www.ojavalleynews.com/news/government/ojai-mayor-stix-apologizes-for-forwarding-privileged-emails/article\\_effde374-2d06-11ee-af0d-53ecad41ad68.html](https://www.ojavalleynews.com/news/government/ojai-mayor-stix-apologizes-for-forwarding-privileged-emails/article_effde374-2d06-11ee-af0d-53ecad41ad68.html).

<sup>12</sup> Ojai Valley News, 49-unit affordable-housing proposal in Ojai meets headwinds (Aug. 10, 2023) available at [https://www.ojavalleynews.com/news/49-unit-affordable-housing-proposal-in-ojai-meets-headwinds/article\\_ffab558e-37b2-11ee-b968-c7310fa1c7f0.html](https://www.ojavalleynews.com/news/49-unit-affordable-housing-proposal-in-ojai-meets-headwinds/article_ffab558e-37b2-11ee-b968-c7310fa1c7f0.html).

<sup>13</sup> Ojai Valley News, 49-unit affordable housing on council's closed-session agenda referencing litigation (Aug. 8, 2023) <https://www.ojavalleynews.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.<sup>14</sup> In all, the projects, as currently proposed on these five properties (absent the

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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).

<sup>14</sup> 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).

	<b>Units</b>	<b>Deed Restricted Affordable</b>
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
<b>TOTAL</b>	<b><u>78 total units</u></b>	<b><u>30 total affordable units</u></b> <b>21 moderate</b> <b>7 low</b> <b>2 very low</b>

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.<sup>15</sup> 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 is incorrect. The 2013 Ordinance does not apply to the DRP extension applications for the reasons below.

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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.

<sup>15</sup> 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).<sup>16</sup> (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,<sup>17</sup> 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.<sup>18</sup>

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<sup>16</sup> 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.)

<sup>17</sup> 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.

<sup>18</sup> 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]).<sup>19</sup> 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

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<sup>19</sup> 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).<sup>20</sup> (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 it 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).)<sup>21</sup> 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.<sup>22</sup> (Gov. Code § 65589.5(j)(1).)

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<sup>20</sup> 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).

<sup>21</sup> 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).)

<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> 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

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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).)

<sup>23</sup> 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."

<sup>24</sup> 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.”]

- Turner 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://turnercenter.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%20LIH%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](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