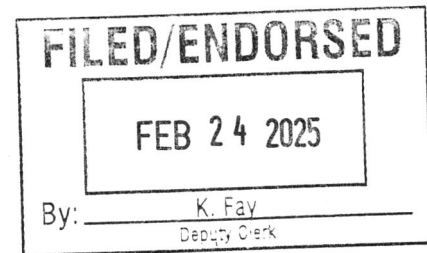


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14 **EXEMPT FROM FILING**
15 **FEE [GOV. CODE §6103]**

16 **SUPERIOR COURT OF CALIFORNIA**
17 **COUNTY OF SACRAMENTO**

18 TEHACHAPI-CUMMINGS COUNTY
19 WATER DISTRICT, a California water
20 district,

21 Petitioner,

22 vs.

23 CITY OF TEHACHAPI, a California
24 municipal corporation; and DOES 1 through
25 20, inclusive,

26 Respondent.

27 GREENBRIAR CAPITAL CORPORATION,
28 a British Columbia corporation;
GREENBRIAR CAPITAL HOLDCO, INC.,
a Delaware corporation;
GREENBRIAR CAPITAL (U.S.), LLC, a
Delaware limited liability company;
JEFFREY CIACHURSKI, an individual; and
DOES 21 through 40, inclusive

Real Parties in Interest.

CASE NO.: 34-2022-80003892-CU-WM-GDS

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF PETITIONER TEHACHAPI-
CUMMINGS COUNTY WATER
DISTRICT'S OPPOSITION TO
RESPONDENT CITY OF TEHACHAPI'S
DEMURRER AND MOTION TO STRIKE**

DATE: March 7, 2025

TIME: 1:30 p.m.

DEPT.: 36

JUDGE: Hon. Stephen Acquisto

Date Action Filed: September 16, 2021

1 Pursuant to Evidence Code sections 451, 452 and 453, Petitioner TEHACHAPI-
2 CUMMINGS COUNTY WATER DISTRICT (“District”) hereby respectfully request the Court
3 take judicial notice of the following items, including the existence, contents, and legally operative
4 effects of the below referenced documents in support of its Opposition to Respondent CITY OF
5 TEHACHAPI’s Demurrer to Fourth Cause of Action and Motion to Strike.

6 I. INTRODUCTION

7 Specifically, the District requests the Court to take judicial notice of fourteen (14) items
8 (“Items”) which are summarized as follows:

9 **Items No. 1-10, 12, and 13** consist of official documents published by Respondent,
10 including environmental studies intended to satisfy the requirements of the California
11 Environmental Quality Act (“CEQA”); comment letters submitted by the District to Respondent
12 regarding its official review of discretionary development and land use projects; and the official
13 agenda packets and minutes prepared by Respondent, which document Respondents approvals
14 and/or decisions regarding such projects.

15 Each of these Items subject to judicial notice under Evidence Code sections 452(c),
16 452(h), and 453.¹ A court may take judicial notice of agenda packets, minutes, and CEQA
17 documents published by state and local agencies as “[o]fficial acts” of the legislative and
18 executive departments of any state of the United States. (Evid. Code, § 452(c); *Banning Ranch*
19 *Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1225 fn. 6 [judicial notice
20 taken of “a staff report, hearing transcript, draft minutes, and notice of determination”]; *San*
21 *Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 732
22 fn. 9 [judicial notice taken of draft EIR prepared for project and the county’s approval of the EIR
23 was granted]; *Social Services Union v. City* (1991) 234 Cal.App.3d 1093, 1098 fn. 3 [“official
24 minutes of the [county] Commission meeting itself are clearly a matter of which we can take
25 judicial notice”]; *Julian Volunteer Fire Co. Assn. v. Julian-Cuyamaca Fire Protection Dist.*

26
27 ¹ / Evidence Code section 453 requires a court to take judicial notice of any matter
28 specified in section 452 if a party requests it, and if it gives the adverse party sufficient notice of
the request and furnishes the court with sufficient information to enable it to take judicial notice
of the matter.

1 (2021) 62 Cal.App.5th 583, 599-600 [“the court did not err in taking judicial notice of the
2 documents prepared by LAFCO, [San Diego] County, and the [Julian-Cuyamaca Fire Protection]
3 District, including the dates and the legal effect of the statements contained in the documents”].)²
4 Likewise, official public comment letters submitted by one public agency to another are also
5 official acts subject to judicial notice. (*Ibid.*; see also *People v. Castillo* (2010) 49 Cal.4th 145,
6 157 fn. 14 [“[w]e properly may take notice of official letters sent by a county entity . . . action
7 taken pursuant to a customary practice of [] agency constitutes an ‘official act’ of which judicial
8 notice may be taken”].) Regarding certain facts and propositions, these official, publicly
9 available documents are “sources of reasonably indisputable accuracy” that allow for their
10 immediate and accurate determination. (Evid. Code, § 452(c), (h).) These facts, such as the date
11 an agency approved a certain project or whether it prepared a CEQA document, are therefore
12 subject to judicial notice along with their legally operative effects. (*Ibid.*)

13 **Item No. 11** is this Court’s Ruling on Submitted Matter – Petition for Writ of Mandate in
14 the above captioned case, which the Court filed on June 18, 2024 (“Ruling”). The Court must
15 take judicial notice of its Ruling, as it is decisional law of “this state.” (Evid. Code, § 451(a).) It
16 is also subject to judicial notice as an official act of any judicial department of “any State of the
17 United States” and a record of any court of this state. (*Id.* at § 452(c), (d).)

18 **Item No. 14** is the certified transcript of this Court’s proceedings in the above captioned
19 case on May 3, 2024, wherein the Court held a merits hearing on the District’s Petition for Writ
20 of Mandate (“Transcript”). The Transcript may subject to judicial notice as a record of the Court.
21 (Evid. Code, § 452(d); *Cuenca v. Safeway San Francisco Employees Fed. Credit Union* (1986)
22 180 Cal.App.3d 985, 997 [trial court properly took judicial notice trial transcript].)

23 Where judicial notice is requested of a legally operative document, like Respondent’s
24 approval of a development project or the Ruling, “the court may take [judicial] notice not only of
25 the fact of the document and its recording or publication, but also facts that clearly derive from its

26
27 ^{2/} *Julian Volunteer Fire Co. Assn. v. Julian-Cuyamaca Fire Protection Dist.*, *supra*, 62
28 Cal.App.5th at pp. 602-603 is distinguishable on the merits because the District’s Second
Amended Complaint (“SAC”) is not barred by laches. Rather than unreasonably delay this
litigation or acquiesce to the City’s pattern and practice, the District promptly filed this litigation
after the City approved the Sage Ranch project and refused to change its *de facto* practice.

1 *legal effect*” if “there is no genuine dispute regarding the document’s authenticity.” (*Scott v.*
2 *JPMorgan Case Bank, N.A.* (2013) 214 Cal.App.4th 743, 754-55 [italics in original].)³ Finally,
3 contrary to what Respondents may argue, the contents of the Items are not inadmissible hearsay.
4 (Evid. Code, §§ 1220 [admission of party], 1221 [adoptive admission], 1222 [authorized
5 admission], 1270-1271 [business records]; 1280 [record by public employee].)

6 II. ITEMS OF WHICH JUDICIAL NOTICE IS REQUESTED

7 The District respectfully requests the Court to take judicial notice of the following Items:

8 **Item 1** – The documents attached to the Declaration of Christian P. Smit in Support of
9 Petitioner Tehachapi-Cummings County Water District’s Request for Judicial Notice in Support
10 of Opposition to Demurrer and Motion to Strike (“Smit Declaration”) as **Exhibit A**, which
11 contains a true and correct copy of the following documents related to Respondent’s
12 environmental review and approval of Tentative Tract Map No. 7363 and Planned Development
13 No. 2019-02 (the “Address”):

- 14 1. Excerpted portions of the draft Initial Study/Mitigated Negative Declaration published
15 by Respondent in June 2020 to evaluate the environmental impacts of the Address;
- 16 2. A comment letter submitted by the District to Respondent in response to the draft
17 Initial Study/Mitigated Negative Declaration dated July 8, 2020, wherein the District
18 objected to the project based upon Respondent’s inadequate water supply analysis;
- 19 3. Excerpted portions of the agenda packet published by Respondent for its November
20 16, 2020, City Council meeting at which Respondent approved the Address and the
21 subject Initial Study/Mitigated Negative Declaration; and
- 22 4. Respondent’s published minutes documenting Respondent’s approval of the Address
23 at its November 16, 2020, City Council meeting.

24 **Item 2** – The documents attached to the Smit Declaration as **Exhibit B**, which contains a
25

26 ³ / In *Scott v. JPMorgan*, the Court of Appeal sustained a demurrer to plaintiff’s second
27 amended complaint because the legal effect of documents subject to judicial notice indisputably
28 rebutted all causes of action. (*Id.* at pp.752-67.) In contrast, Respondent did not request judicial
notice of any documents in support of its Demurrer because none exist. Instead, the District’s
Request for Judicial Notice demonstrates the ongoing nature of Respondent’s pattern and practice
of violating CEQA.

1 true and correct copy of the following documents related to Respondent's environmental review
2 and approval of the Alta Estates Tract Map No. 6216 residential subdivision project:

- 3 1. Excerpted portions of the agenda packet published by Respondent for its September 13,
4 2021, Planning Commission meeting at which Respondent approved the development of
5 55 lots in reliance on a Negative Declaration dated December 10, 2003; and
- 6 2. Respondent's published minutes documenting Respondent's approval of this project at its
7 September 13, 2021, Planning Commission meeting.

8 **Item 3** – The document attached to the Smit Declaration as **Exhibit C**, which contains a
9 true and correct copy a comment letter submitted by the District to Respondent on September 30,
10 2021, regarding Respondent's environmental review of the Dennison and Cummings Valley
11 Roads Vesting Tentative Tract Map project.

12 **Item 4** – The documents attached to the Smit Declaration as **Exhibit D**, which contains a
13 true and correct copy of the following documents related to Respondent's environmental review
14 and approval of the Sherwood Condos project:

- 15 1. Excerpted portions of the agenda packet published by Respondent for its December 13,
16 2021, Planning Commission meeting at which Respondent, in reliance on an unspecified
17 approval from 1987, approved the development of a 32-unit condominium project without
18 performing any CEQA review; and
- 19 2. Respondent's published minutes documenting Respondent's approval of this project its
20 December 13, 2021, Planning Commission meeting.

21 **Item 5** – The documents attached to the Smit Declaration as **Exhibit E**, which contains a
22 true and correct copy of the following documents related to Respondent's environmental review
23 and approval of the Capital Hills Commercial Retail Center project ("Capital Hills"):

- 24 1. Excerpted portions of the draft Initial Study/Mitigated Negative Declaration published by
25 Respondent in September 2021 to study the impacts of this project;
- 26 2. A comment letter submitted by the District to Respondent on November 9, 2021, which
27 presented the District's objections to the Capital Hills project based upon Respondent's
28 inadequate water supply analysis;

3. Excerpted portions of the agenda packet published by Respondent for its March 14, 2022, Planning Commission meeting at which Respondent approved the Capital Hills project and subject Initial Study/Mitigated Negative Declaration; and
4. Respondent's published minutes documenting Respondent's approvals regarding this project at its March 14, 2022, Planning Commission meeting.

Item 6 – The documents attached to the Smit Declaration as **Exhibit F**, which contains a true and correct copy of the following documents related to Respondent's environmental review and approval of the 25-Acre Mini Storage / RV Travel Park ("RV") project:

1. Excerpted portions of the Negative Declaration published by Respondent in January 2022 to study the impacts of this project;
2. Excerpted portions of the agenda packet published by Respondent for its March 14, 2022, Planning Commission meeting at which Respondent approved the RV project and subject Negative Declaration; and
3. Respondent's published minutes documenting Respondent's approvals regarding this project at its March 14, 2022, Planning Commission meeting.

Item 7 – The documents attached to the Smit Declaration as **Exhibit G**, which contains a true and correct copy of the following documents related to Respondent's environmental review and approval of the Pinon Curry Condominiums project:

1. A comment letter submitted by the District to Respondent on September 15, 2021, regarding this 37-unit condominium project, where the District expressed its opposition to the project based on its unidentified source of a water supply;
2. Excerpted portions of the agenda packet published by Respondent for its April 11, 2022, Planning Commission meeting at which Respondent approved this project and a Notice of Exemption from CEQA without identifying the source of the project's water supply.
3. Respondent's published minutes documenting Respondent's approvals regarding this project at its April 11, 2022, Planning Commission meeting.

Item 8 – The documents attached to the Smit Declaration as **Exhibit H**, which contains a true and correct copy of the following documents related to Respondent's environmental review

1 and approval of the Tentative Tract Map 6714 residential subdivision project:

- 2 1. The record regarding this project (State Clearing House No. 2006071072) published by
3 the Governor's Office of Land Use & Climate Innovation (formerly the Office of Planning
4 and Research) and that is publicly available at <https://ceqanet.opr.ca.gov/2006071072>,
5 which shows Respondent approved a Negative Declaration for this 75-unit project in
6 2006.
- 7 2. Excerpted portions of the agenda packet published by Respondent for its January 17,
8 2023, City Council meeting at which Respondent approved the development of 74 new
9 residential units pursuant to this project.
- 10 3. Respondent's published minutes documenting Respondent's approval of this project at its
11 January 17, 2023, City Council meeting.

12 **Item 9** – The documents attached to the Smit Declaration as **Exhibit I**, which contains a
13 true and correct copy of the following documents related to Respondent's environmental review
14 and approval of the Tentative Tract Map 6248 residential subdivision project:

- 15 1. Excerpted portions of the agenda packet published by Respondent for its March 18, 2024,
16 City Council meeting at which Respondent approved this 30-lot residential project based
17 on a 2003 approval without any additional CEQA analysis or identification of the
18 project's water source.
- 19 2. Respondent's published minutes documenting Respondent's approvals related to this
20 project at its March 18, 2024, City Council meeting.

21 **Item 10** – The documents attached to the Smit Declaration as **Exhibit J**, which contains a true
22 and correct copy of the following documents related to Respondent's environmental review and
23 approval of the Tentative Tract Map 6668 residential subdivision project:

- 24 1. Excerpted portions of the agenda packet published by Respondent for its April 8, 2024,
25 Planning Commission meeting at which Respondent approved this 18-unit residential
26 project based on a 2006 approval without any additional CEQA analysis or identification
27 of the project's water source.

2. Respondent's published minutes documenting Respondent's approvals related to this project at its April 8, 2024, Planning Commission meeting.

Item 11 – The Court's "Ruling on Submitted Matter – Petition for Writ of Mandate" filed on June 18, 2024, in the above-captioned case number (the "Ruling").

Item 12 – The documents attached to the Smit Declaration as **Exhibit K**, which contains a true and correct copy of the following documents related to Respondent's environmental review of the Tehachapi Reclaimed Water project:

1. Excerpted portions of the draft Initial Study/Mitigated Negative Declaration published by Respondent in September 2024 to study the impacts of this project.
2. The Notice of Completion prepared for and signed by Respondent on September 25, 2024, which Respondent submitted to the State Clearinghouse and is publicly available at: <https://ceqanet.opr.ca.gov/2024091126>.
3. The District's comment letter submitted to Respondent on October 28, 2024, wherein the District expressed its concerns regarding Initial Study/Mitigated Negative Declaration's failure to analyze the project's impacts on water supply and water quality.
4. A letter dated January 10, 2025, from the District to Respondent regarding the status of this project following the District's comment letter.

Item 13 – The documents attached to the Smit Declaration as **Exhibit L**, which contains a true and correct copy of the following documents related to Respondent's environmental review of the Tentative Parcel Map No. 12565 project:

1. Excerpted portions of the agenda packet published by Respondent for its November 12, 2024, Planning Commission meeting at which Respondent recommended approval of this project and a Notice of Exemption from CEQA under the "Common Sense Exemption."
2. Excerpted portions of the agenda packet published by Respondent for its December 2, 2024, City Council meeting at which Respondent, which contained City staff's recommendation to approve the project, a proposed resolution to approve Tentative Parcel Map. No. 12565, and a Notice of Exemption signed by Jay Schlosser, Respondent's Development Services Director.

- 1 3. A comment letter submitted by the District to Respondent prior to the City Council
2 meeting on December 2, 2024, wherein the District opposed Respondent's approval of the
3 project as categorically exempt based on Respondent's failure to analyze the project's
4 impacts on hydrology and water supply.
- 5 4. Respondent's published minutes documenting Respondent's decision to "table[]" Agenda
6 Item No. 7 at its December 2, 2024, City Council meeting, rather than "adopt a resolution
7 approving Tentative Parcel Map. No. 12565 and Conditions of Approval and find that a
8 Notice of Exemption satisfies the California Environmental Quality Act" as recommended
9 by City staff and its Planning Commission.

10 **Item 14** – The document attached to the Smit Declaration as **Exhibit M**, which contains a
11 true a correct copy of the certified Transcript of Proceedings on May 3, 2024, in the above
12 captioned matter, which was reported by Tina Tavalero, Certified Shorthand Reporter (CSR
13 Certificate No. 8923) of Huseby Global Litigation and certified on June 28, 2024.

14 DATE: February 24, 2025

PIONEER LAW GROUP, LLP

15
16 By: 

17 ANDREA A. MATARAZZO

DANIEL A. KING

18 CHRISTIAN P. SMIT

19 Attorneys for Petitioner TEHACHAPI-

20 CUMMINGS COUNTY WATER DISTRICT
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