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May 7, 2021

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VIA EMAIL

Mayor James R. Bozajian
and Members of City Council
City of Calabasas
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Re: West Village at Calabasas: File No. 160003152

Dear Mayor Bozajian and Members of the City Council,

This office represents The New Home Company ("TNHC") with respect to all matters pertaining to the above-referenced project ("Project") located at 4790 Las Virgenes Road at the eastern terminus of Agoura Road in the City of Calabasas ("City"). TNHC respectfully presents the Project for your approval and requests that the City Council adopt the draft resolution approving the Project as presented in the permit application.

1. INTRODUCTION AND PROJECT BACKGROUND.

Before the City Council is a housing project that is not only consistent with the City's Zoning Code and the City of Calabasas General Plan ("General Plan"), but is actually ***enshrined*** in the General Plan and highlighted for 180 residential units necessary to comply with the state-mandated Regional Housing Needs Allocation ("RHNA"). Because a 180-unit residential project (with 155,000 square feet of commercial space) is featured in the General Plan, the City Council already approved this Project -- in concept -- when it adopted the General Plan Housing Element ("Housing Element"). Moreover, the General Plan was subject to an "extensive public process," which included a full Environmental Impact Report (SCH # 2008041030 Dec. 2008) ("General Plan EIR"). (See Housing Element, pp. V-7-8, V-22.)

The Project site consists of approximately 77.2 acres of vacant land. The Project proposes: (a) 180 condominium/townhouse housing units, with 18 units (ten percent) restricted to be affordable to very low-income families, within fifteen three-story buildings; (b) a 5,867 square-foot, commercial retail center within two one-story buildings; (c) a .36-acre community green space (park); (d) two storm water detention/debris basins; (e) a public trail dedication; and (f) dedication of 66 acres (86 percent of the site) of permanent open space.

The Project permits include: (a) Vesting Tentative Tract Map (for land division and condominium purposes); (b) Development Plan; (c) Conditional Use Permit, Site Plan Review; (4) Oak Tree Permit; and (5) Scenic Corridor Permit. The Project site is zoned as follows: (a) ten acres is zoned Planned Development (PD); (b) six acres is zoned Residential-Multifamily (RMF-20); and (c) 61 acres is zoned Open Space-Development Restricted (OS-DR). The Project is partially located within the Scenic Corridor (SC) overlay zone. For this Project, the City's Zoning Code mandates a factor of safety of 1.5 against shear slope failure. (See City of Calabasas Municipal Code ("CMC"), § 17.20.130.A.6.) To achieve that factor of safety, remedial grading is required to stabilize the adjacent landslide hazard area on the southern portion of the site.

A robust environmental impact report for the Project (Rincon, June 2019) ("Project EIR") was prepared and circulated for public review and comment from December 21, 2018, to February 19, 2019. The Planning Commission held three meetings on the Project on July 10, 2019, July 11, 2019, and July 18, 2019. At the July 18, 2019, meeting, the Planning Commission adopted a motion to deny the Project and directed the City staff to return with a denial resolution and further information on a new alternative and/or the feasibility of "Alternative 4" in the Project EIR. Alternative 4 presents a variant of the Project that leaves the landslide in an unremediated state. (See Project EIR, chapter 6, "Alternatives.")

After the Planning Commission's 2019 hearings, TNHC informed staff that it would further examine Alternative 4, or a variant of it, from a geotechnical perspective, pursuant to the Planning Commission's direction. TNHC hired an independent geotechnical consultant, Leighton and Associates, Inc., to review and analyze all geotechnical information gathered to date and make recommendations on feasibility of project alternatives. TNHC also had its project oak tree specialist re-survey the oak trees on the property to document the post-Woolsey Fire conditions. Furthermore, due to the time delay resulting from the Planning Commission's direction to explore other alternatives, staff required TNHC to update both the traffic impact analysis (including performing a Vehicle Miles Traveled [VMT] analysis) and to update on-site biological conditions. TNHC objected to the delays, but sought to comply with the City's directions to facilitate a cooperative spirit with the City and to communicate its good will. At all relevant times, TNHC reserved its rights under the Housing Accountability Act, the State Density Bonus Law and the Housing Crisis Act of 2019 (described and defined below).

In May 2020, LGC Valley, Inc. prepared a Geotechnical Peer Review of the geotechnical reports contained in Appendix D of the Project EIR, as well as Leighton and Associates, Inc.'s Geotechnical Third Party Review of the feasibility of Alternative 4. All the geotechnical experts who analyzed the Project site achieved consensus that any version of the Project that left the landslide in place would be infeasible, as it would not achieve the required factor of safety of 1.5. (LGC Valley, Inc., 2020; Leighton and Associates, Inc., 2020). An Amended Environmental Impact Report was prepared and circulated for public comment from September 22, 2020, to November 13, 2020, ("Amended Project EIR"). The Amended Project EIR deleted Alternative 4 as a feasible alternative and added a new alternative -- Alternative 5 -- which presented a smaller, 146-unit version of the Project, with full landslide remediation. It also included revisions to three sections of the Project EIR including Section 3, Environmental Setting, Section 4.10, Traffic and Circulation, and Section 6, Alternatives.

The Project came back to the Planning Commission on April 15, 2021. At that hearing, the Planning Commission heard extensive and thorough reports from staff and TNHC and its consultants, and heard extensive public comment. The Planning Commission moved to

continue the hearing to April 21, 2021. By that time, the City had already exceeded the five-hearing maximum allowed by Government Code section 65905.5 subdivision (a), as amended by the Housing Crisis Act of 2019 (described and defined below). At the conclusion of the April 21, 2021, meeting, and after further public comment and deliberations from the dais, the Planning Commission voted 3-2 to adopt a motion of recommendation to the City Council -- the final decision-maker on this Project – to reduce the proposed density by 25 percent (from 180 to 135 units).

A. The City's 2030 General Plan Features a Housing Project Like this One.

The General Plan Housing Element -- approved and adopted by the City Council -- contemplates the West Village area to assist in the gradual transition of the Agoura Road corridor from commercially based uses to a mix of office, retail and residential uses. (Housing Element, p. V-8.) The General Plan notes the West Village area (where the Project Site is located) can accommodate up to 229 multi-family units. (*Ibid.*) The General Plan Housing Element expressly calls out the Project site to assist the City in meeting its critical RHNA allotment, claiming it as an "underutilized Residential Site." (*Id.*, at pp. V-7-8.) The site is designated as #3 on the City's RNHA inventory. Six acres of the site are labeled as multi-family residential while another ten are designated as planned development with a combined total of 180-units multi-family units and 155,000 square feet of commercial space. (*Id.*, V-7.)

Importantly, the City analyzed the potential environmental impacts a 160-unit residential project with 175,000 square feet of commercial space would have at the Project site through General Plan EIR.[1] Taking into consideration any and all potential environmental impacts, possible alternatives, and mitigation measures, the City Council adopted the General Plan in December 2008, certified the General Plan EIR, and thereby approved -- in concept -- a 180-unit project at the site in the process.

To establish horizontal consistency with the General Plan, the City ensured that Title 17 of the City's Municipal Code ("Zoning Code") was in compliance with the General Plan's new policies. (See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570; *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807; Gov. Code § 65860, subd. (a).) The planned development designation is meant to encourage innovative land use planning on larger parcels while the multi-family residential zoning designation contemplates a higher density project. TNHC has specifically planned the current Project to meet the requirements of both the General Plan and the Zoning Code.

B. Prior to this Project, the City Approved the Originally Planned Canyon Oaks Project.

In January 2014, TNHC first submitted an application for the Canyon Oaks project at the Project site (File NO. 140000011) ("Prior Project"). The Prior Project, as originally proposed, consisted of 141 single-family homes, eight affordable condominium units, commercial uses over three acres and a four-story hotel. Over time and in response to public comments and staff input, the Prior Project went through several design iterations, each significantly reducing the residential density. The final version of the Prior Project consisted of only 67 single-family residential units and four affordable housing units within two duplex structures (16.9 percent of

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[1] The General Plan EIR identifies 160 units for the Project site, with 175,000 square feet of commercial uses. (General Plan EIR, Table 2-3, p. 2-15.) The General Plan itself identifies 180 units for the Project site, with 155,000 square feet of commercial space. (Housing Element, Table V-2, pp. V-6, V-7.)

the site), commercial uses including a three-story hotel occupying 2.91 acres (3.8 percent of the site); and preservation of 61 acres (79.3 percent of the site) as permanent open space. Because of the hotel component, the Prior Project required a zone change and General Plan amendment.

On May 31, 2016, the City Council approved the reduced version of the Prior Project through Resolution No. 2016-1507, ***certifying the full and final EIR for the Prior Project*** in the process. (See City Council Resolution No. 2016-1507). With regard to the Prior Project (the Canyon Oaks Project), the City Council found the following:

(1) "The impact upon aesthetics is acknowledged, but the environmental, economic, social, and neighborhood compatibility benefits of the proposed project to the community override that consideration." (Resolution 2066-1507, p. 4.)

(2) "The Initial Study for the proposed project acknowledges that the entire City of Calabasas, including the project site, is located within the Los Angeles County Consolidated Fire District's Very High Fire Hazard Severity Zone in Section VIII (Appendix A page 18)."

On October 17, 2016, TNHC submitted an alternate project for the Canyon Oaks (Prior Project) site with 205 units -- consistent with the General Plan and a by-right density bonus -- and 150,000 square feet of commercial space. They requested that the new submittal be processed independently from the application approved by the City Council. In the meantime, the Prior Project approvals fell to a November 16, 2016, referendum on the General Plan amendment and zone change. Taking heed of the public's disfavor of certain project features, TNHC moved forward with the alternative plan, a General Plan-consistent project. That is the Project before you now.

2. THE PROPOSED PROJECT.

The Project is sited on eleven acres, as opposed to the 16 acres contemplated in the General Plan. (See, e.g., General Plan, Table V-2, p. V-6.) As noted above, the residential component consists of 180 units with ten percent (18 units) designed as "very low" affordable income units, within fifteen (15) three-story buildings consistent with general plan and zoning requirements. A .36-acre community park would also be included. Ancillary features include construction of two detention/debris basins, site access and internal roadway system with sidewalks and parkways, retaining walls, landscaping, common recreation areas, and lighting. Based on public comment and staff suggestions, TNHC revised and significantly reduced the commercial portion to consist of a 5,867 square-foot retail commercial space in two one-story buildings. The vast majority and remainder of the Project site (approximately 66 acres, or 86 percent) will be permanently dedicated as open space.

The Project is fully consistent with the General Plan, Las Virgenes Gateway Master Plan, and Las Virgenes Road Corridor Design Plan. (See Amended Project EIR, Tables 4.7-4-6, pp. 263-279; April 15, 2021 Planning Commission Staff Report, p. 19.) The Project meets the State's definition of a housing project because the residential component encompasses over two-thirds of the project area within a mixed-use development.

The Project also meets all development standards set forth in Title 17 of the CMC with only three exceptions: (1) the building height limits exceed the 35-foot height maximum; (2) some of the retaining wall heights exceed a maximum allowable limit; and (3) a statutory reduced parking allowance. (April 15, 2021 Planning Commission Staff Report, p. 19.) These

exceptions are statutorily required concessions by the City pursuant to the State's Density Bonus Law for TNHC's set aside of ten percent of the affordable units (see discussion on the State Density Bonus Law, Part 3.B, *infra*.)

The development of this Project requires grading to establish building pads to support the retail center and associated parking lot, multi-family residential dwellings, the park, interior circulation, landscaping, drainage improvements, and a new private road extending Agoura Road eastward from its current terminus at Las Virgenes Road. (Amended Project EIR, p. 1.) The building pads are necessary for any proposed building on the Project site and are in compliance with the Zoning Code. (*Ibid.*) As noted above, the Project must also stabilize the landslide hazard area on the southern portion of the site. Remediation of the landslide is required for health and safety reasons. As noted above, Zoning Code mandates that new development achieve a 1.5 factor of safety level against shear slope failure and a 1.1 factor of safety against seismically induced slope failure. (CMC, § 17.20.130.A.6.) Due to the proximity of the development to the landslide, large scale mass movement of the landslide is expected to result in damage to structures and infrastructure, threatening occupant safety. (Amended Project EIR, Appendix H, p. 2.) The Project's remedial grading removes unstable soil layers, as well as the unconsolidated and compressible material underneath the proposed project footprint. (*Id.*, p. 2.) This mitigation measure proposes to terrace the slope, stabilizing the landslide hazard area to maintain the 1.5 factor of safety necessary to build on the Project site. (*Ibid.*) The determination to mitigate the landslide was based upon the multiple geotechnical reports prepared and updated over the years for the Project site. (*Id.*, Appendix D.)

Leighton and Associates, Inc., a well-respected geotechnical firm in the region with specific expertise in the City, reviewed all geotechnical information gathered to date and made recommendations on the feasibility of project alternatives. Leighton and Associates determined the original geotechnical findings in 2017 to be accurate and that full landslide remediation was necessary for development of the site. (Amended Project EIR, Appendix H, p. 9.) Leighton and Associate's Geotechnical Report (Amended Project EIR, Appendix H) concluded that Alternative 4 presents a "significant risk of damage to property and occupants that would compromise the development from the results of gross or surficial slope failure associated with this alternative should landslide stabilization measures not be implemented." (Amended Project EIR, Appendix H, p. 2; see also April 15, 2021, and April 21, 2021 Planning Commission Staff Report, pp. 7-8.) As a result, City staff struck Alternative 4 from the Amended Project EIR determining that no project -- let alone Alternative 4 -- can be built to a safety factor of 1.5 without complete remediation of the landslide as it threatens the health, safety, and welfare of the City's occupants. (*Id.*, at p. 8.)

Leighton and Associates then analyzed a modified Alternative 4 design utilizing 454 drilled caisson shafts to shore up the portion of the hill susceptible to gross and seismic instability. (April 15, 2021, and April 21, 2021, Planning Commission Staff Report, at p. 9.) Utilizing the Alternative 4 footprint, Leighton and Associates devised a conceptual plan whereby the caissons would be placed into rows throughout the landslide area. This would require grading access roads for construction purposes. The total grading for the caisson installation was estimated at 127,055 cubic yards with approximately 70,000 of those being restored and re-landscaped upon completion. (*Ibid.*) The cost to install the caisson system was estimated at approximately $113.7 million, twelve times the estimated cost of $9.32 million for the currently proposed design to excavate-re-engineer, re-compact, and contour-grade the landslide area. (*Ibid.*, emphasis added.) The $113.7 million price tag renders the partial stabilization design of

Alternative 4 design infeasible. Even if the caisson system were installed, it would not resolve the surficial stability issues the landslide area presents and the system would require perpetual maintenance obligations. (*Ibid.*)

3. APPLICABLE LAW.

A. The City Council Has De Novo Review Authority.

The City Council's review of the Project is de novo as the Planning Commission's review and determination on the Project was a recommendation only. (*See, e.g., Lagrutta v. City Council* (1970) 9 Cal.App.3d 890, 895.) De novo review means that the City Council is not bound by the Planning Commission's scope of review or its findings to approve the Project with a reduced density. (*Ibid.*) The City Council can therefore hear fresh evidence and new information in its deliberations. (*Ibid.*)

B. The City Is Subject to the Urgent and Pointed Admonitions of the State Legislature Regarding Housing.

In 2019, the State Legislature enacted the Housing Crisis Act of 2019 (SB 330) ("HCA"). The keystone of the HCA is a legislatively declared, statewide housing crisis -- a housing crisis of "historic proportions." The HCA features a number urgent declarations. The following are especially relevant here:

(1) "The lack of housing, including emergency shelters, is a ***critical problem*** that threatens the economic, environmental, and social quality of life in California."

(2) "The excessive cost of the state's housing supply is partially caused by activities and policies of ***many local governments that limit the approval of housing***, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing."

(3) "Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects."

(4) "The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives."

(5) The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.

(6) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.

(7) California's housing picture has reached a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels, including this section.

(SB 330, § 2, subd. (a), emphasis added.) Of further relevance are the Legislatures statements of intent:

(1) "The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was to ***significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects*** … ."

(2) "It is the policy of the state that this section ***be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing***."

The above legislative admonitions are directed squarely at cities like Calabasas. They served as the impetus for several provisions adding additional teeth to the Housing Accountability Act (Gov. Code, § 65589.5) ("HAA"), including provisions intended to prevent delays in processing permits for housing projects and to lower the barriers to approval of housing projects. The purpose of the HAA is to limit the ability of local governments to "reject or make infeasible housing developments ... without a thorough analysis of the economic, social, and environmental effects of the action...." (*Id.*, subd. (b).) Subdivision (j) of the statute provides that

> When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete, but the local agency proposes to disapprove the project or ***to impose a condition that the project be developed at a lower density***, the local agency ***shall*** base its decision regarding the proposed housing development project upon written findings supported by ***a preponderance of the evidence on the record*** that both of the following conditions exist:
>
> (A) The housing development project would have ***a specific, adverse impact*** upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, 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***.
>
> (B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(Gov. Code, § 65589.5, subd. (j), emphasis added.) The Legislature went further to declare

> It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety, as described in paragraph (2) of subdivision (d) and paragraph (1) of subdivision (j), ***arise infrequently***.

(*Id.*, § 65589.5, subd. (a)(3), emphasis added.)

The State Density Bonus Law (Gov. Code, §§ 65915 – 65918) ("SDBL") also applies here. It was enacted to encourage developers to incorporate affordable units within a residential project in exchange for density bonuses and relief from other base development standards. It mandates density bonuses and project "incentives" or "waivers" that provide relief from existing development standards, if the project incorporates a qualifying percentage of affordable units. (See, e.g., *id.*, § 65915, subd. (d)(1).) A developer who meets the requirements of the SDBL is entitled to receive the density bonus and other benefits ***as a matter of right***. Recently AB 2345 amended the SBDL to expand and enhance the scale of the density bonus and development incentives in the face of the extreme housing crisis. (See 2020 Assembly Bill 2345.) The Project qualifies for the SBDL density bonus and incentives as it will set aside ten percent of the units as very low-income affordable housing in accordance with the SBDL program. (See Gov. Code, § 65915, subds. (b) and (c).) This entitles TNHC to utilize two concessions on Project's requirements including the reduction in height for both the residential buildings and the retaining walls. (*Id.*, § 65915, subd. (d)(2).)

4. THE DRAFT RESOLUTION OF DENIAL DOES NOT CLEAR THE HIGH THRESHOLD OF THE HOUSING ACCOUNTABILITY ACT.

As discussed above, the Project is already enshrined in the City's Housing Element. The Housing Element identifies the Project site as "Las Virgenes" ("Site #3 in Multi-family Sites Inventory in Appendix B") and slates it for 180 units and 155,000 square feet of commercial uses. (Housing Element, p. V-8.) It further identifies the site -- and its allotted unit counts -- as a means of achieving the State of California's RHNA requirements for the City. This allocation for the Project site was achieved after an "extensive public process," which included a full environmental impact report. (See, *id.*, pp. V-7-8, V-22.)

Once a local government sets aside a site for housing for a specified density in its housing element, it cannot simply change its mind when an actual project is proposed to realize the Housing Element's vision. Put another way, the scope of discretion that normally applies to a land use project is no longer present. It is tightly circumscribed by the HAA and other relevant housing laws. In this case, the findings of the draft resolution of denial do not come close to clearing the high threshold for denial of a General Plan-consistent project pursuant to the HAA.

A. The Denial Resolution's CEQA Findings Do Not Come Close to Meeting the Criteria of the State Housing Laws.

As the General Plan itself establishes, the Housing Element was subject to an "extensive public process," which included CEQA review through the General Plan EIR. (See, General Plan, pp. V-7-8, V-22.) The General Plan EIR reviewed a much larger project envelope than the proposed project; it analyzed the impacts not just of 160 residential units, but also 175,000 square feet of commercial space -- all on a larger, 16-acre development site. (General Plan EIR, p. 2-27.) The General Plan EIR concluded that no significant aesthetic impacts would result from that larger project envelope, in part because 60 acres would be rezoned from Business-Retail (B-R) and Rural Residential (RR) designations to an Open Space-Resource

Protection (OS-RP) to allow for remediation of the adjacent landslide. (*Id.*, at p. 4.1-15 – 4.1-16.) The General Plan EIR observed:

> Possible development on the Las Virgenes 2 site would alter the visual character of this portion of the Las Virgenes Road corridor. However, development would be concentrated along the flatter portions of the Messenger property, adjacent to the roadway, while more steeply sloped portions of the property have been re-designated to Open Space-Resource Protection (OS-RP). The development intensity on the Las Virgenes 2 site would generally be compatible with that of adjacent development to the south and with that of commercial development on the west side of Las Virgenes Road. Moreover, because Las Virgenes 2 site development would be concentrated in the lower portions of the Messenger property, it would not be expected to block views of ridgelines or other identified scenic resources. Therefore, impacts would be less than significant. It should also be recognized that the 2030 General Plan would redesignate about 60 acres of the Messenger property to OS-RP, thereby substantially reducing the potential for view alteration as compared to the current (1995) General Plan.

(*Id.*, at p. 4.1-16.)

More importantly, the Denial Resolutions findings regarding aesthetic impacts fall far short of what is required to justify denial of the Project. The HAA, as amended by the HCA, mandates written findings -- supported by a preponderance of the evidence on the record -- that the Project "would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density." (Gov. Code, § 65589.5, sub. (j)(1)(A).) 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." (*Ibid.*)

Given their inherent subjectivity, as well as their usual lack of any threat posed to health and safety, an aesthetic impact, whether significant or not, cannot rise to the level of finding mandated under the HAA. As noted above, the State Legislature made clear that the kind of impacts to health and safety envisioned by the HAA would be "infrequent":

> It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety, as described in paragraph (2) of subdivision (d) and paragraph (1) of subdivision (j), arise infrequently.

(*Id.*, § 65589.5, subd. (a)(3).) If aesthetic impacts could be invoked to support a denial or reduction in density for a qualifying housing project, the mandates of the HAA could be too easily sidestepped in favor of a lower threshold for denial. Given the above, it is manifest that CEQA Guidelines section 15042 (14 CCR §15042), which the Denial Resolution invokes to justify its conclusion that an aesthetic impact is sufficient to deny the Project, is superseded by the HAA. A conclusion to the contrary would render the HAA a dead letter.

Moreover, any evidence in the record that may be used to support such an impact is overshadowed by the conclusions of the General Plan EIR, which was certified by the City of Calabasas City Council in December 2008. An aesthetic impact cannot qualify as a "specific, adverse impact upon the public health or safety" under the HAA.

B. The Proposed Finding that Project Is Not Consistent with the General Plan Is Refuted by the City's General Plan and Otherwise Is Misplaced.

The Denial Resolution cites several General Plan policies and cherry picks certain provisions from the Zoning Code in support of a contention that remedial grading of the adjacent landslide is inconsistent with the General Plan and otherwise prohibited. If that contention were true, why would the fully vetted and studied General Plan designate 16 acres for 180 residential units and 155,000 square feet of commercial uses when the site is adjacent to an acknowledged and well studied landslide?

A city's general plan is the constitution for all future land use, and subsidiary enactments, including zoning ordinances, must be interpreted in a manner that is consistent with the general plan. (*City of Morgan Hill v. Bushey* (2018) 5 Cal.5th 1068, 1079; *Orange Citizens for Parks & Recreation v. Superior Court* (2016) 2 Cal.5th 141, 153.) Moreover, all of the provisions of the general plan itself must interpreted in a manner that harmonizes, internally, with all its other provisions. (*Ibid.*) The Denial Resolution turns these established principles upside-down. It carefully curates provisions of the City's General Plan and contorts them to achieve a conclusion-driven contradiction in the General Plan itself. The law cannot support such an exercise.

In fact, the General Plan makes clear that grading in open space is allowed where necessary to preserve "basic property rights." (General Plan, Policy III-12, p. III-13.) The General Plan policies cited in the Denial Resolution otherwise only propound policies for "maximizing" the amount of hillside in a natural state and "minimizing" alteration of landforms. ***They do not outright prohibit grading in open space***. To assert otherwise is to re-write the General Plan and erase out of the plan its manifest vision for this Project site.

The Denial Resolution invokes General Plan Policy III-18 for the argument that no "development" can occur in areas where slopes are greater than 50 percent, but ignores the exception for cases (like this one) where "development is required for safety reasons." (*Id.*, Policy III-18, p. III-14.) It cites Policy III-16 as prohibiting "mass graded 'mega-pads' for development," but no such grading pads are proposed anywhere in this Project, let alone in open space. The Denial Resolution also relies on Zoning Code section 17.20.055.A.9 for the contention that the "final manufactured slope" cannot become a feature of Open Space. That section, by its own terms, applies only to clustering development in the HM and RR zones. The Project site is located in the PD, R-MF and OS zones, not the HM or RR zones. Section 17.20.055.A.9 therefore does not apply. Finally, the Denial Resolution cites General Plan Policy III-15, which states a policy favoring natural drainages rather than concrete box drains. The Project does not feature concrete box drains or v-ditches. It proposes underground drainage conveyances which will not be visible.

In fact, the grading targeted by the Denial Resolution is critical to achieve a 1.5 factor of safety for the General Plan's housing allotments at the Project site. That factor of safety is mandated by the Zoning Code, which requires development to "1) achieve a factor of safety of 1.5 against shear failure; and 2) achieve a factor of safety of 1.1 against seismically induced slope failure." (CMC, § 17.20.130.A.6.) Accordingly, landslide remediation is mandated by the

City's Zoning Code, and even a landslide avoidance alternative would require mitigation through such stabilization features as caissons, which would also require extensive grading and soils export in the OS.

If there were any doubt about the above conclusion, it is dispelled by the General Plan EIR. The General Plan EIR makes clear that the Project site (referred to as "Las Virgenes 2") is adjacent to a landslide identified by the U.S. geological Survey (USGS) and the State of California Department of Conservation, Division of Mines and Geology (1998). It acknowledges that "[a]ny development within identified landslide hazard zones would have the potential for landslide-related damage." (General Plan EIR, Impact GEO-3, p. 4.5-21.) The General Plan references an amendment to the General Plan land use map to reduce the potential development area for the Project site "from about 77 acres to roughly 16 acres, with the more steeply sloped portions of the property re-designated as Open Space-Resource Protection (OS-RP)." (*Id.*, at p. 4.5-21.) The General Plan expressly identifies the need for landslide mitigation in that area, including "geotechnical engineering of any landslide":

> Slope instability may result in landslides, slumps, mudslides, or debris flows that can cause substantial damage and disruption to buildings and infrastructure. ***Impacts from these types of soil hazards are generally reduced to less than significant levels by the standard development review process. Standard building and grading procedures would mitigate most soil hazards. Geotechnical engineering of any landslide areas would be necessary to ensure that slopes would not become destabilized during grading activities***. Onsite soil investigations identify local hazard conditions, which are then mitigated through implementation of appropriate engineering designs and construction techniques and through proper site improvements.

(*Ibid.*, emphasis added.) The landslide engineering measure is anticipated to result in extensive grading, even ***complete removal of the landslide area***, as the General Plan EIR observes,

> [i]n general, the primary remedial measure to be employed during grading ***is the removal of the slump or debris slide from the top to the toe***. … Based on review and approval by the City, remedial measures may be designed and implemented based on sound and demonstrated engineering principles to mitigate potential hazards to the site and off-site properties. Where practical, the design should be incorporated into the site land plan and development so as to minimize overall permanent impacts.

(*Ibid.*, emphasis added.) Consistent with the above allowance for grading in Open Space, the General Plan EIR concludes "[t]he OS-RP designation applies to lands whose primary purpose is the ***protection of public health and safety***, preservation of sensitive environmental resources, or resource management." (General Plan EIR, Table 2-3, p. 2-16, emphasis added.) The General Plan Public Health and Safety chapter expressly identifies on purpose of Open Space, especially OS-RP to "[m]aintain open space for adequate protection of lives and properties against natural and man-made hazards." (General Plan, § 9.04, Table II-1, p. II-15; Table III-1, p. III-2; General Plan EIR, Table 2-3, p. 2-16.)

The Denial Resolution's final contention, that the Project cannot be approved without voter ratification of the Project pursuant to CMC section 17.16.030(A), fails because (1) section 17.16.030 applies only in the context of a General Plan amendment, which is not before the City Council; and (2) the contention hinges on the above flawed conclusions of inconsistency with the General Plan. Because the Denial Resolution's tentative map denial findings rest entirely on the City's flawed inconsistency findings, the Tentative Map findings similarly collapse. The Resolution's recommendation to have the City Council interpret "development" to include permanent grading in support of residential development is unlawful and any action pursuant to that recommendation would be void *ab initio*, as it conflicts with numerous provisions of the General Plan that allow such remedial landform alteration, as well as the General Plan EIR, which expressly anticipates grading in the OS areas to stabilize the landslide area for the Project.

C. The Denial Resolution's Housing Accountability Act Findings Fail.

The Denial Resolution next contends that the Project gives rise to a "specific adverse impact on health or safety" under the HAA because it is located within a designated "Very High Fire Hazard Severity Zone" and was burned in the November 2018 Woolsey Fire. The Denial Resolution goes on to state that the City "experienced significant evacuation delays," during that fire in part due to closure of the 101 Freeway. The Denial Resolution concludes that the Project's addition of approximately 495 new residents would cause a "significant adverse impact on public safety" under the HAA.

The Denial Resolution's fire risk findings present no new information and cannot clear the HAA's high threshold for denying a housing project like this. It is important to note that any "specific adverse impact" finding under the HAA

> … 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, subd. (j).) Furthermore, any such showing must be based on a ***preponderance of the evidence***. (*Ibid.*) In this case, the General Plan EIR, the Canyon Oaks EIR and the Project EIR each reviewed a residential project at this site "based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" and each concluded, that a residential project at this site would not give rise to significant health and safety impacts. (General Plan EIR, Impact PS-1, p. 4.11-9 – 4.11-10; Canyon Oaks Project EIR, § 8, p. 433.) The County of Los Angeles Fire Code and the City's own General Plan notes that the ***entire*** City of Calabasas is located in a "very high fire severity zone." (See, e.g., County of Los Angeles Fire Code, Appendix P – Local Agency Very High Fire Hazard Severity Zones, P 102.2.; General Plan, p. VII-10.) The fire risk and evacuation routes were studied in the General Plan EIR (see General Plan EIR, Impact PS-1, p. 4.11-9 – 4.11-10 [analyzing effects of build-out of 6.4 million square feet of development on fire protection services].) As for the Project, the County of Los Angeles Fire Department Fire Prevention Division issued an official recommendation of approval the Project. (See County of Los Angeles Fire Department Fire Prevention Land Development Unit Recommendation of Clearance of TTM 75021 (July 3, 2019).) The City of Calabasas Traffic and Transportation Commission approved the Project traffic study on February 26, 2019. (See City of Calabasas Traffic and Transportation Commission Meeting Minutes (Feb. 26, 2019).) The Project EIR was released to the public after the Woolsey Fire; the Amended Project EIR

was released for recirculation in September 2020, almost two years later. In other words, the Project was fully studied, vetted and approved by both fire and traffic experts. The Woolsey Fire presented no new information that did not already inform the analyses presented in the Project EIR. That EIR found no significant impacts in the category of safety, hazards or traffic.

The collective body of evidence in the administrative record overwhelms the sparse findings of the Denial Resolution on this issue. That evidence includes the three EIRs examining a residential project at the site, with their technical appendices, as well as the statements of Chief Drew Smith at the April 21, 2021, Planning Commission hearing, relating to the inability to accurately predict evacuation routes for any potential future wildfire, the minor impact of the Project on preparedness and evacuation protocols and the remote chance of another such fire occurring in the area for 25 years due to loss of sufficient fuel. Evidence was adduced that current building codes and fuel modification zones are very effective at mitigating fire damage.

In the end, the City's proposed fire risk finding "proves too much," as every RHNA unit allotment in the General Plan would be subject to the same fire risk category since they are all located in the Very High Fire Severity Zone. If the City can deny a General Plan-consistent housing project on such fire risk findings, the City cannot approve any remaining RHNA unit allotments in the City. A finding of specific, adverse safety impacts on these grounds would upend the General Plan's Housing Element and therefore be void *ab initio*.

D. The Denial Resolution's "No Net Loss" Findings Cannot Support a Project Denial.

The City mistakenly relies on Government Code section 65863 for its second HAA finding. That section does not apply to outright denials of general plan-consistent housing developments. It only applies to approvals of such projects at lower densities than allowed by the zoning code. Moreover, section 65863 "shall be in addition to any other law that may restrict or limit the reduction of residential density." (Gov. Code, § 65863, subd. (d).) That means the higher standards of the HAA apply for a denial of the Project. As the next section demonstrates, those high standards also are required for an approval of a housing project at a lower density than envisioned by a local government's general plan. (*Id.*, § 65589.5, subd. (j).)

5. THE DENSITY REDUCTION RECOMMENDED BY THE PLANNING COMMISSION VIOLATES THE STATE HOUSING LAWS.

At the April 21, 2021, Planning Commission, a 3-2 vote was taken to recommend a 25 percent reduction in density from the Project. Such a reduction would arbitrarily eliminate 45 units from the Project, reducing it from 180 to 135 units. The recommendation to eliminate 45 units was purportedly intended to mitigate view impacts and any purported impacts relating to the Project's location in a high fire severity zone and proximity to Las Virgenes Road and the 101 Freeway. No evidence was presented to support the 25 percent density reduction. No view impact analysis was prepared, nor were any studies advanced to demonstrate that such a reduction would have any demonstrable effect on fire evacuation efforts or protocols. In fact, as noted by Commissioner Mueller, the evidence presented to underpin the Project EIR's conclusions was "uncontroverted."

As noted above, a local government must clear the same high hurdles under the HAA and the Housing Accountability Act for approving a project with a density reduction as it does for a wholesale project denial:

> When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete, but the local agency proposes to disapprove the project or ***to impose a condition that the project be developed at a lower density***, the local agency ***shall*** base its decision regarding the proposed housing development project upon written findings supported by ***a preponderance of the evidence on the record*** that both of the following conditions exist:
>
> (C) The housing development project would have ***a specific, adverse impact*** upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, 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***.
>
> (D) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

No evidence, substantial or otherwise, was presented to justify a 25 percent reduction in density. Nor was any evidence presented that purported impacts could not be mitigated short of a forced reduction density. For the above reasons, the Planning Commission's recommendation does not comply with the HAA or the HCA.

6. CONCLUSION.

For the foregoing reasons, we respectfully request that the City Council adopt the draft resolution approving the Project as presented in the permit application. Representatives of TNHC will be on hand at the May 12, 2021, hearing to answer questions.

Very truly yours,

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