FINAL 01.05.2024

SETTLEMENT AGREEMENT

This Settlement Agreement ("AGREEMENT") is entered into this 5th day of January 2024 ("EFFECTIVE DATE") by and among TNHC Canyon Oaks LLC, a Delaware limited liability company ("TNHC") and the Building Industry Association of Southern California, Inc. ("BIASC") (collectively, "PETITIONERS"), on the one hand, and the City of Calabasas, California ("CITY") by and through the lawful action of its duly elected City Council ("CITY COUNCIL"), on the other. The foregoing parties are collectively referred to as the "PARTIES" and each are referred to as a "PARTY."

RECITALS:

A. This AGREEMENT relates to the development of certain real property within the jurisdiction of the CITY located at the corner of Las Virgenes Road and Agoura Road (the "SITE"). On May 26, 2021, the CITY COUNCIL disapproved TNHC's application for the construction of a 180-unit housing development project at the SITE, including 18 units for very-low-income households (the "WEST VILLAGE PROJECT").

B. As a result, on June 4, 2021 TNHC filed a verified petition for writ of mandate and complaint before the Superior Court of the State of California, in and for the County of Los Angeles, Case No. 21STCP01819 (the "TNHC ACTION"). On August 20, 2021, BIASC filed a separate verified petition for writ of mandate and complaint before the same court, Case No. 21STCP02726 (the "BIASC ACTION"). The TNHC ACTION and the BIASC ACTION are hereinafter collectively referred to as the "ACTIONS." In addition to seeking administrative mandamus, the TNHC ACTION includes claims for declaratory relief and inverse condemnation and prays for an award of in excess of $58 million monetary damages against the CITY. The BIASC ACTION similarly includes a claim for declaratory relief. The declaratory relief, inverse condemnation and damages claims are hereinafter referred to as the "NON-WRIT CLAIMS."

C. On September 16, 2021, the TNHC ACTION and BIASC ACTION were deemed related and assigned to Department 82. On November 4, 2021, by stipulation, the Court consolidated both ACTIONS and designated the TNHC ACTION as the lead case. The Court stayed TNHC's inverse condemnation cause of action pending resolution of PETITIONERS' writ relief claims.

D. On August 31, 2023, after the record had been prepared and received by the Court and the consolidated writ relief claims had been fully briefed, the Court issued its tentative ruling and held a hearing on the consolidated ACTIONS. Following the August 31, 2023 hearing, the Court then took the matter under submission.

E. On November 27, 2023, the Court issued its Ruling on Petition for Writ of Mandate ("RULING"). A true and correct copy of the RULING is attached hereto as Exhibit 1. In addition to granting the writ relief sought by TNHC and BIASC, the Court stated its intent to issue a judgment directing the CITY to approve the WEST VILLAGE PROJECT. The RULING did not

adjudicate the NON-WRIT CLAIMS, concluding instead "upon resolution of the causes of action for writ relief, the Court will transfer the consolidated petitions to Department 1 for reassignment to an independent calendar department for resolution of the remaining causes of action."

F. The Court has scheduled a status conference for January 25, 2024 to discuss what, if anything, remains in dispute and must be resolved, and has directed the PARTIES to file a joint status report by January 19, 2024.

G. The PARTIES now desire to settle and resolve all of their disputes involved in or related to the CITY's disapproval of the WEST VILLAGE PROJECT and the consolidated ACTIONS.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which are mutually acknowledged, TNHC and BIASC, on the one hand, and the CITY and CITY COUNCIL, on the other hand, agree as follows:

1. Definitions. As used in this AGREEMENT, the following terms have the following meanings:

1.1 "AMENDED FINAL EIR" shall mean the Amended Final EIR for the Project, submitted to the CITY COUNCIL for approval on May 26, 2021.

1.2 "ORIGINAL PROJECT" shall refer to the 180-unit WEST VILLAGE PROJECT, including 18 units for very-low-income households, as described in the AMENDED FINAL EIR and the staff reports regarding the WEST VILLAGE PROJECT for the May 12, 17, and 26, 2021 meetings of the City Council.

1.3 "REVISED PROJECT" shall refer to a residential development project designed by TNHC consisting of either, at TNHC's election: (a) 76 market rate housing units (or such lesser amount as is determined by TNHC in its discretion), comprised of either detached condominiums or single family homes, or any combination thereof, together with payment of the City's affordable housing in-lieu fee and other applicable development project fees, subject to the fee credits provided for in Section 8 of this AGREEMENT; or (b) 76 housing units (or such lesser amount as is determined by TNHC in its discretion), with 4 units (or, if the REVISED PROJECT as submitted contains fewer than 76 housing units, at least five percent of the number of proposed housing units) reserved for very low income households (as defined in Section 50105 of the California Health & Safety Code), ("AFFORDABLE UNITS") with the remaining units being market rate units consisting of either detached condominiums or single family homes, or any combination thereof, and the AFFORDABLE UNITS consisting of two duplex or one fourplex structure to be operated as rental homes or sold as condominium units; together with payment of the applicable development project fees, subject to the fee credits provided for in Section 8 of this AGREEMENT. Any such AFFORDABLE UNITS shall be subject to a recorded covenant restricting occupancy as set forth

herein for at least 55 years pursuant to Section 17.22.030(F) of the City's zoning code. The REVISED PROJECT will utilize the same remedial grading area of approximately 25 acres analyzed in the AMENDED FINAL EIR with respect to the ORIGINAL PROJECT, and the same approximately 36 acres of total grading area analyzed in the AMENDED FINAL EIR with respect to the ORIGINAL PROJECT. The structures, roads, and common area amenities shall be located within an approximately 13.6-acre development footprint similar to the area shown as the Development Footprint in Table 2-4 of the AMENDED FINAL EIR. The PARTIES agree that the REVISED PROJECT is consistent with the land use, density and intensity requirements of the Calabasas General Plan and Zoning Code. The PARTIES agree that the CITY COUNCIL may impose standard and reasonable conditions of approval on the REVISED PROJECT substantially similar to those conditions as were proposed to be imposed on the ORIGINAL PROJECT that were set forth in the draft City Council Resolution No. 2021-1733, to the extent applicable to, and that do not undermine the feasible development of, the REVISED PROJECT. The PARTIES further agree that if the REVISED PROJECT includes at least five percent (4 units for a 76-unit Project) of AFFORDABLE UNITS reserved for very low income households, the REVISED PROJECT qualifies for waivers under the state Density Bonus Law (Section 65915 of the California Government Code) and Calabasas Municipal Code section 17.22.030 from development standards that would physically preclude development of the REVISED PROJECT, including by way of example, but not limited to, waivers from: (i) otherwise applicable building height standards, and thereby allow the REVISED PROJECT to include three-story residential structures measured from finished grade elevations to a maximum 40' height; (ii) otherwise applicable standards for walls, and thereby allow retaining wall designs which are higher, extend for longer horizontal lengths, and do not include breaks in horizontal lengths; and (iii) such other deviations from otherwise applicable building standards as necessary to prevent physically precluding the development of the REVISED PROJECT, including without limitation building siting and setback or separation requirements. No retaining wall for the REVISED PROJECT shall be taller than the height of any of the tallest walls proposed in the ORIGINAL PROJECT and TNHC agrees that it shall use commercially reasonable efforts to cause retaining walls along the property boundary with the adjacent Colony development on Estrella Drive and the property boundary along Las Virgenes Road, to meet all applicable Calabasas Municipal Code height standards to the extent feasible to complete the REVISED PROJECT. The REVISED PROJECT may contain certain non-legislative requests for development standard modifications within the REVISED PROJECT application, which may be requested pursuant to one or more entitlement pathways allowed under applicable provisions of state law and the Calabasas Municipal Code, including, without limitation, the establishment of Planned Development standards, requests for variances from applicable zoning requirements or modifications allowed under local ordinance or otherwise granted (e.g. pursuant to the State Density Bonus Law,

Gov. Code § 65915), as applicable, or other requests, waivers, incentives, and modifications within the City's non-legislative, quasi-adjudicative discretion.

1.4 "STIPULATED JUDGMENT" shall refer to the stipulated judgment attached hereto as Exhibit 2. The PARTIES hereby mutually agree, acknowledge and represent to one another they have independently determined, after consulting with their respective legal counsel, that the STIPULATED JUDGMENT is fully consistent with, and implements, the RULING. As such, per the RULING, the STIPULATED JUDGMENT *inter alia*, directs CITY and CITY COUNCIL to approve the ORIGINAL PROJECT.

1.5 "PROPOSED WRIT" shall refer to the PROPOSED WRIT attached hereto as Exhibit 3. The PARTIES likewise mutually agree, acknowledge and represent to one another they have independently determined, after consulting with their respective legal counsel, that the PROPOSED WRIT is fully consistent with, and implements, the RULING.

1.6 "Expiration of any pertinent statutes of limitations" means all of the following events have occurred: (1) 90 days shall have passed from CITY's approval of the REVISED PROJECT, (2) TNHC shall have agreed that a Notice of Determination or Notice of Exemption has properly posted in a manner sufficient to trigger an applicable 30-day or 35-day statute of limitations provided in Section 21167 of the Public Resources Code, or in the event TNHC has not so agreed, that 180 days shall have passed from the CITY's approval of the REVISED PROJECT; (3) 180 days shall have passed since the execution of this AGREEMENT; and (4) no litigation has been served or filed seeking to challenge the CITY's approval of the REVISED PROJECT or approval of this AGREEMENT, within either of the foregoing time periods, as applicable.

1.7 "THIRD-PARTY OPPOSITION" means any court action or any other legal or constitutional proceeding or other step filed or undertaken by any person or entity to appeal, rescind, or otherwise challenge the full implementation of this AGREEMENT, the approval of the REVISED PROJECT, or the certification of the AMENDED FINAL EIR.

2. Development Approval Process. This AGREEMENT does not constitute an approval of the REVISED PROJECT. By this AGREEMENT, the PARTIES agree that:

2.1.1 The CITY will apply the standards, timing and applicable law identified in this AGREEMENT to its consideration of a REVISED PROJECT application.

2.1.2 The CITY will consider in good faith a REVISED PROJECT, providing all necessary and appropriate process and reserving all discretion under applicable law and the CITY COUNCIL's police powers.

2.1.3 Only if this AGREEMENT is approved and executed, and the conditions precedent identified in Section 3 occur, will PETITIONERS be required to provide the dismissals described in Section 3.

2.2 The CITY makes no representation and provides no assurance that the REVISED PROJECT will be approved or that the AMENDED FINAL EIR will be certified.

3. Resolution of ACTIONS. The CITY agrees not to contest the RULING in any manner. The CITY shall not seek any type of appellate review of any issue decided in the RULING, whether directly or indirectly, and shall not, *inter alia*, file any writ petition in the Court of Appeal, or file any notice of appeal of the Court's RULING or any other future orders or judgments such as the STIPULATED JUDGMENT that implement, effectuate, or incorporate such RULING. The City shall not file any request for a new trial, motion for reconsideration, motion to vacate judgment or any other comparable act requesting that the Court reconsider or consider modifying any aspect of the RULING.

3.2 In exchange, PETITIONERS shall dismiss the ACTIONS, including both the TNHC ACTION and the BIASC ACTION in full, with all still pending NON-WRIT CLAIMS, and TNHC's inverse condemnation claim, with prejudice, and agree not to seek to recover attorneys' fees and costs as to any claim, subject to the provisions set forth in Sections 9 and 24 of this AGREEMENT, only when all of the following events occur:

3.2.1 The AMENDED FINAL EIR is certified on or before January 10, 2024, as provided in Section 5;

3.2.2 The REVISED PROJECT entitlement is approved within 90 days of TNHC submitting a REVISED PROJECT application to the City's Community Development Department;

3.2.3 The CITY has issued building permits for the entirety of the REVISED PROJECT reflecting the full amount of credit against applicable fees provided in Section 8; and

3.2.4 The expiration of any pertinent statutes of limitations has occurred, and, if applicable, any THIRD-PARTY OPPOSITION has been resolved such that the REVISED PROJECT can be completed and the final terms of this AGREEMENT can be fully effectuated.

4. Ex Parte Application. Following their mutual execution of this AGREEMENT, the PARTIES agree their respective legal counsel will immediately file the *ex parte* application attached hereto as Exhibit 4 ("EX PARTE APPLICATION") with the Court.

5. Consideration of Certification of the AMENDED FINAL EIR. At the January 10, 2024 CITY COUNCIL meeting, the CITY agrees to consider and take action on a resolution recommending certification of the AMENDED FINAL EIR, but take no further action at that time

to approve or disapprove the ORIGINAL PROJECT. The CITY, by and through the CITY COUNCIL, agrees to consider certification of the AMENDED FINAL EIR in good faith, reserving all discretion under applicable law and the CITY COUNCIL's police powers. Notwithstanding such reservation of power, the CITY COUNCIL's certification of the AMENDED FINAL EIR no later than January 10, 2024 is and shall remain a condition precedent to all of PETITIONERS' performance obligations herein (but not to the effectiveness of this AGREEMENT). The PARTIES further mutually agree time is of the essence with respect to these and other timing requirements provided in Section 22. If the AMENDED FINAL EIR is not certified, PETITIONERS may immediately submit the STIPULATED JUDGMENT and PROPOSED WRIT to the Court by *ex parte* application and, in so doing, inform the Court the CITY has stipulated to the form of the STIPULATED JUDGMENT and PROPOSED WRIT, and thereafter proceed to prosecute the consolidated ACTIONS according to the existing and future orders of the Court.

6. REVISED PROJECT Application. If, in accordance with Section 5, CITY COUNCIL has certified the AMENDED FINAL EIR on or before January 10, 2024, then TNHC agrees to submit an application for the REVISED PROJECT, expressly agreeing to apply for no more than 76 housing units as part of such REVISED PROJECT.

7. Expedited Consideration of Revised Project Application. The CITY agrees that the CITY will bring the REVISED PROJECT to a hearing of the CITY COUNCIL for consideration of approval within 90 days from submission of TNHC's REVISED PROJECT application. The CITY agrees to exercise its police powers to effectuate the terms of this AGREEMENT by expediting the processing of the REVISED PROJECT submittal, inclusive of CEQA compliance for project changes only (including findings, checklist and/or initial study) in compliance with Section 21166 of the Public Resources Code. The CITY agrees to waive story pole procedures and other public hearings, including community development forums, the Development Review Committee, the Architectural Review Panel, and the Planning Commission for the Revised Project. The City will provide for public and CITY COUNCIL review and consideration of the Revised Project as an Action Item at a regularly scheduled CITY COUNCIL meeting at which public comments and testimony will be accepted.

8. Standards Applicable to Revised Project.

8.1 Pursuant to Gov. Code § 65589.5, subd. (o), the ORIGINAL PROJECT is vested against, and only subject to, those applicable "ordinances, policies and standards," as defined in Gov. Code § 65589.5, subd. (o), specifically including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees and other exactions, that were in effect at the time a complete application for the ORIGINAL PROJECT was submitted in September 2017. Accordingly, CITY agrees that the REVISED PROJECT shall, as well, only be subject to such "ordinances, policies and standards," as defined in Gov. Code § 65589.5, subd. (o), that were in effect in September 2017, unless TNHC consents to the application of any later-adopted ordinances, policies and standards.

8.2 If the REVISED PROJECT does not include sufficient on-site affordable housing to satisfy the requirements of the CITY's inclusionary housing ordinance, such that

an affordable housing in-lieu payment requirement is applicable to the REVISED PROJECT, a credit of $3.25 million shall be provided to offset such in-lieu fees, up to and including such fees charged at the time of issuance of all building permits for the REVISED PROJECT, in consideration for PETITIONERS' agreement to dismiss their claims for attorneys' fees and for inverse condemnation as provided by Section 3.

8.3 If the REVISED PROJECT does include sufficient on-site affordable housing to satisfy the requirements of the CITY's inclusionary housing ordinance, such that an affordable housing in-lieu payment requirement is not applicable to the REVISED PROJECT, a credit of up to $3.25 million shall be provided to offset planning fees, development impact fees, entitlement fees and other costs charged by the CITY in connection with the REVISED PROJECT, up to and including those fees charged at the time of issuance of all building permits for the REVISED PROJECT in consideration for PETITIONERS' agreement to dismiss PETITIONERS' claim for attorneys' fees and for inverse condemnation as provided by Section 3.

8.4 The PARTIES agree that fee credits provided for in Section 8.3 shall not apply against any portion of the CITY's standard Building and Safety Plan Check fees that CITY pays a third-party contractor to provide.

8.5 The PARTIES agree that such fee credits provided for in Section 8.3 shall apply only for CITY-imposed fees, as specified herein, because the CITY lacks the power to adjust fees imposed by other government agencies under applicable law.

9. Revival and Approval of Original Project.

9.1 PETITIONERS, by *ex parte* application, may at any time, but are not obligated to, immediately submit to the Court the PROPOSED JUDGMENT and PROPOSED WRIT, and in so doing, inform the Court the CITY has stipulated to the form of the PROPOSED JUDGMENT and PROPOSED WRIT, PETITIONERS may pursue their NON-WRIT CLAIMS and seek their attorneys' fees and costs as prevailing parties under the RULING and PETITIONERS may thereafter proceed to prosecute the consolidated ACTIONS according to the existing and future orders of the Court, if any of the following occur:

9.1.1 The conditions precedent to PETITIONERS' obligations as specified in Section 5 are not satisfied on or before January 10, 2024, or

9.1.2 The CITY violates its obligations in Section 3.1, including, but not limited to, taking any action to contest, appeal or seek reconsideration of the RULING, or

9.1.3 The CITY COUNCIL fails to approve the REVISED PROJECT within 90 days after TNHC submits an application therefor or otherwise violates Section 7, or

9.1.4 365 days have passed from the commencement, filing or other initiation of a THIRD-PARTY OPPOSITION and such THIRD-PARTY OPPOSITION either remains pending or has resulted in the rescission, reversal, or otherwise caused to be rendered invalid or unenforceable the CITY's approval of the REVISED PROJECT, certification of the AMENDED FINAL EIR, or approval of this AGREEMENT, or

9.1.5 The CITY takes any other action in breach of this AGREEMENT, including but not limited to failing to defend this AGREEMENT or the REVISED PROJECT in the event of any third party challenges to the validity or enforcement of this AGREEMENT in any court action or other proceeding.

9.2 If any THIRD-PARTY OPPOSITION is commenced, then, during the 365-day period from the commencement, filing, or other initiation of such THIRD-PARTY OPPOSITION referred to in Section 9.1.4, PETITIONERS shall:

9.2.1 Cooperate in good faith with CITY to persuade the REVISED PROJECT opponent to cease, withdraw, dismiss or otherwise end with prejudice the lawsuit or other proceeding undertaken to oppose, modify or delay the REVISED PROJECT and thereby allow the REVISED PROJECT to be completed and the terms of this AGREEMENT to be fully effectuated;

9.2.2 Cooperate in good faith with CITY on commercially reasonable terms to reach a settlement agreement with the REVISED PROJECT opponent that results in the withdrawal, dismissal with prejudice, or other cessation of the THIRD-PARTY OPPOSITION; for purposes of this provision, a "commercially reasonable" terms do not include modifications to the REVISED PROJECT;

9.2.3 Take actions jointly with CITY, including but not limited to filing joint motions to oppose, reject, dismiss with prejudice, or otherwise cause the cessation of the THIRD-PARTY OPPOSITION, and thereby allow the REVISED PROJECT to be completed and the final terms of this AGREEMENT to be fully effectuated.

9.3 In the event that PETITIONERS file an *ex parte* application pursuant to Section 9.1, CITY agrees not to file any objection to, or appeal of, the PROPOSED JUDGMENT and/or PROPOSED WRIT, provided that PETITIONERS have

complied with their obligations to submit an application for the REVISED PROJECT pursuant to Section 6, as applicable.

10. Post-Entitlement Processing. Irrespective of whether the CITY ultimately approves the ORIGINAL PROJECT or the REVISED PROJECT, the CITY shall expedite the processing of all post-entitlement permits required for any such project that may be ultimately approved, including but not limited to all grading and building permits. The CITY shall act promptly upon any such post-entitlement permits, shall process them on the basis of solely objective, non-discretionary criteria established by applicable legal requirements, and shall provide a dedicated, single-point-of-contact inspector to assist in expediting such processing at no additional cost to TNHC. The CITY shall expeditiously cooperate in any and all efforts by TNHC to seek and obtain permits or other approvals for the REVISED PROJECT or the ORIGINAL PROJECT that may be required from other federal, state, local, regional or similar public agencies. The PARTIES agree to mutually request the Court to retain continuing jurisdiction to enforce this and all other terms of this AGREEMENT pursuant to Section 664.6 of the California Code of Civil Procedure. PETITIONERS reserve their rights to maintain that any failure by CITY officials to comply with this provision could demonstrate "bad faith" on the part of the CITY and could subject the CITY to applicable penalties.

11. Evidence Code Section 1152. The terms of this AGREEMENT, and all communications and drafts related to this AGREEMENT, are subject to Evidence Code section 1152, and shall not be admissible as evidence in the consolidated ACTIONS for the purpose of proving the fact or extent of any PARTY's liability, but may be admissible for other purposes including the AGREEMENT's enforcement.

12. No Admission of Liability. Nothing contained herein shall be construed as an admission or acknowledgment of any fact, legal issue, claim or defense on the part of any PARTY. The PARTIES agree any such interpretation of this AGREEMENT is hereby expressly disclaimed.

13. Execution in Counterparts. This AGREEMENT may be executed in one or more original, facsimile, photocopied or emailed counterparts, each of which shall be deemed valid, binding and admissible, as though an original, but which together will constitute one and the same instrument. The PARTIES may sign by electronic signatures as defined in the Uniform Electronic Signatures Act, specifically Civil Code section 1633.2, subd. (h).

14. Authority to Execute. Each PARTY hereby warrants and represents to the other(s), with the intent the other(s) might conclusively rely thereon, that the person(s) signing this AGREEMENT on behalf of such PARTY has/have full and complete authority to do so as the PARTY's duly authorized agent(s), and that the execution and delivery of this AGREEMENT does not and will not cause such PARTY to be in breach or violation of any agreement, covenant or legal duty by which such PARTY or any of their respective agents or affiliates are bound.

15. Headings. The heading titles for each section of this AGREEMENT are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the AGREEMENT.

16. Each Party's Role in Drafting the Agreement. Each PARTY has had an opportunity to review the AGREEMENT, confer with legal counsel regarding the meaning of the AGREEMENT, and negotiate revisions to the AGREEMENT. Accordingly, no PARTY shall have the right to rely on Civil Code section 1654, or related common law principles, to interpret any purported or actual uncertainty in the AGREEMENT's meaning.

17. Governing Law; Venue. This AGREEMENT shall be governed by the laws of the State of California. Any suit, claim or legal proceeding of any kind related to this AGREEMENT shall be heard and filed in a court of competent jurisdiction in the County of Los Angeles.

18. Integration and Modifications. This AGREEMENT and its exhibits contain all the representations and the entire agreement and understanding among the PARTIES with respect to the subject matter hereof, and supersedes all prior understandings, agreements (whether written, verbal, implied or otherwise) and communications with respect thereto. None of the terms hereof shall be amended, waived, or otherwise modified except pursuant to a written instrument duly executed by all the PARTIES.

19. Successors and Assigns; Waiver. The PARTIES acknowledge and agree that because the SITE is located in the CITY, the CITY's obligations hereunder are specific to the CITY and cannot be assigned without prior written consent of TNHC. Subject to the preceding sentence, this AGREEMENT, and the transactions contemplated hereunder, shall be binding upon and inure to the benefit of the PARTIES hereto and their beneficiaries, legal representatives, successors and assigns in and to the SITE that is the subject hereof. Without limiting the foregoing, TNHC agrees to notify potential purchasers of the SITE of the existence of this AGREEMENT, including without limitation the provisions of section 6 and section 9 hereof. No failure or delay of any party in exercising any right or remedy hereunder shall operate as a waiver thereof.

20. No Third Party Beneficiaries. Nothing in this AGREEMENT, whether express or implied, is intended (i) to confer any rights, benefits or remedies under or by reason of this AGREEMENT onany person or entity other than the PARTIES and their respective successors and permitted assigns, (ii) to relieve, terminate or discharge any obligation or liability of any person or entity not a party to this AGREEMENT to any PARTY hereto, or (iii) to give any third person or entity any right ofsubrogation or action against any PARTY.

21. Cooperation in Challenge to Settlement Agreement. The PARTIES shall mutually cooperate with each other in any litigation, administrative action, or other proceeding brought by a third party or parties challenging this AGREEMENT or the REVISED PROJECT. No PARTY shall induce, recommend or otherwise make any comment or statement to any person or entity to encourage a challenge to this AGREEMENT or to the acts identified herein.

22. Time Is of The Essence. The PARTIES acknowledge and agree that TIME IS OF THE ESSENCE for the performance of all actions required or permitted to be taken under this AGREEMENT. Failure to timely perform any of the terms, conditions, obligations, or provisions hereof by either PARTY shall constitute a material breach of the AGREEMENT by the PARTY so failing to perform, or, as applicable, shall constitute the non-occurrence of a condition precedent to the other party's performance obligations.

23. Cooperation of The Parties. Each of the PARTIES agree to execute and deliver to the other PARTIES all additional documents, instruments and ensuing agreements, and to take such additional actions as may from time to time be necessary or appropriate to implement the terms and conditions of this AGREEMENT. The PARTIES pledge to use their best efforts, in good faith to ensure the timely and complete implementation of the undertakings in this AGREEMENT and specifically to ensure the prompt and successful implementation of either the ORIGINAL PROJECT or REVISED PROJECT, as applicable.

24. Enforcement. The PARTIES agree that remedies at law may be inadequate to protect against any actual or threatened breach of this AGREEMENT and that, without limiting any other rights and remedies otherwise available, injunctive relief, specific performance, or other equitable relief shall be available in the event of any actual or threatened breach of this AGREEMENT. The PARTIES agree that no bond need be posted to obtain injunctive or equitable relief, but if required by law or the court, the PARTIES consent to a bond in the lowest amount permitted by law. The PARTIES further agree that if legal enforcement of this AGREEMENT becomes necessary, the PARTY or PARTIES who prevail in either seeking or resisting such enforcement shall be entitled to an award of their actual legal and/or expert fees and related costs against the non-prevailing PARTY or PARTIES.

25. Notices. All notices required or contemplated to be given related to this AGREEMENT shall be made as follows via both email and U.S. mail as follows:

If to PETITIONERS, or any of them:

Miek Harbur
Executive Vice President, General Counsel
New Home Co.
15231 Laguna Canyon Rd., Suite 250
Irvine, CA 92618,
mharbur@NewHomeCo.com

Daniel Golub, Partner
Holland & Knight LLP
560 Mission Street, 19th Floor
San Francisco, CA 94105
Daniel.Golub@hklaw.com

If to CITY or CITY COUNCIL, or any of them:	Kindon Meik City Manager, City of Calabasas 100 Civic Center Way Calabasas CA 91302 kmeik@cityofcalabasas.com Matthew T. Summers City Attorney, City of Calabasas Colantuono, Highsmith & Whatley, PC 790 E Colorado Blvd Suite 850 Pasadena CA 91101 msummers@chwlaw.us

SIGNATURES

The Parties have executed this Agreement by their respective signatures below.

FOR PETITIONERS:

DATED: January 5, 2023

Matthew R. Zaist, Chief Executive Officer

Authorized Signatory for TNHC Canyon Oaks LLC

DATED: _____

Craig Foster, Executive Vice President/COO

Authorized Signatory for Building Industry of Southern California, Inc.

Approved as to form and content:

HOLLAND & KNIGHT LLP

By: _____
Daniel R. Golub

SIGNATURES

The Parties have executed this Agreement by their respective signatures below.

FOR PETITIONERS:

DATED: _____

_____
Matthew R. Zaist, Chief Executive Officer

Authorized Signatory for TNHC Canyon Oaks LLC

DATED:_____

Craig Foster
_____
Craig Foster, Executive Vice President/COO

Authorized Signatory for Building Industry of Southern California, Inc.

Approved as to form and content:

HOLLAND & KNIGHT LLP

By: _____
Daniel R. Golub

FOR THE CITY:

DATED: 1/5/2024

Alicia Weintraub

Alicia Weintraub, Mayor and Authorized Signatory for City Council of the City of Calabasas

DATED: 1/5/2024

Kindon Meik, City Manager of, and Authorized Signatory for, City of Calabasas

ATTEST:

Maricela Hernandez, MMC
City Clerk
City of Calabasas

Approved as to form and content:

COLANTUONO, HIGHSMITH & WHATLEY, PC

By: Matthew Summers

Matthew T. Summers
City Attorney, Calabasas

EXHIBIT 1

Superior Court of California
County of Los Angeles

TNHC CANYON OAKS LLC, Petitioner, vs. CITY OF CALABASAS, *et al.*, Respondents.	Case No. 21STCP01819 (consolidated with 21STCP02726) **RULING ON PETITION FOR WRIT OF MANDATE** Dept. 82 (Hon. Curtis A. Kin)

In two separate petitions for writ of mandate, petitioners TNHC Canyon Oaks LLC and Building Industry Association of Southern California seek an order directing respondent City Council of the City of Calabasas ("City Council") to set aside its denial of the residential and commercial development located in respondent City of Calabasas ("City").

I. Factual Background

This proceeding concerns the West Village Project ("Project"), located at the corner of Las Virgenes Road and Agoura Road in Calabasas. (AR 1223.) The Project, proposed by petitioner TNHC Canyon Oaks LLC ("TNHC"), would involve the development of a 77-acre vacant site. (AR 1223.) Under the Project, multi-family residences, a park, a public trail easement, and retail would occupy 11 acres of the site. (AR 1223.) The remaining 66 acres would be permanently dedicated as open space. (AR 1223.)

With respect to the City's open space requirements, the 2030 General Plan designated approximately 16 acres of the Project site for multi-family residential and planned development, with the remaining 61 acres designated as open space. (AR 367, 7853, 8035, 18560.) In 2005, the voters in Calabasas passed Measure D, which required two-thirds voter approval for any amendment to the General Plan that would redesignate open space for non-open space uses. (AR 7500, 7511.) Measure D

was scheduled to automatically expire in 2030. (AR 7501, 7512.) In 2015, the voters passed Measure O, which made Measure D permanent. (AR 7522, 7535-37.)

On October 17, 2016, TNHC applied for approval of the Project from the City of Calabasas ("City"). (AR 363.) The Project originally consisted of 205 multi-family residences (195 apartments and 10 townhomes), 18 of which were designated as affordable for low-income households, as well as 150,000 square feet of commercial space. (AR 363.) After review and comments by the City's Development Review Committee and staff, TNHC reduced the number of multi-family residences to 180, 27 of which were designated as affordable income units. (AR 4, 363.) The application was deemed complete on September 1, 2017. (AR 363, 7602.)

The City recognized that the Project "would require a significant amount of remedial grading to stabilize a landslide hazard area on the southern portion of the site." (AR 1223; *see also* AR 7901 [Environmental Impact Report stating "The proposed grading would involve re-contouring of the existing hillsides and filling of the existing canyon feature to create a series of building pads.... In order to remediate an existing landslide feature on the project site, the project would involve approximately 2,403,418 cy [cubic yards] of cut and an estimated 2,406,971 cy of fill"].) City staff recognized that a significant portion of the impacts of the Project were temporary and would be mitigated or would be attributed to the "necessary permanent remediation of the landslide feature." (AR 1909.)

On November 8, 2018, the Woolsey Fire burned in Los Angeles and Ventura Counties. (AR 7133.) "No single fire had ever occurred in the mountains or the Malibu area that did not receive massive quantities of fire engines in time, but the Woolsey Fire was different." (AR 7133.) During the fire, more than 250,000 people, including in Calabasas, were successfully evacuated. (AR 7133, 7168, 7189.) After the fire, a report that the County of Los Angeles had prepared recommended "ongoing public policy discussion regarding significant development in Very High or High Fire Hazard Severity areas." (AR 7133.)

Pursuant to the California Environmental Quality Act ("CEQA"), the Draft Environmental Impact Report ("EIR") was conducted. (AR 13557, 14437.) The County of Los Angeles Fire Department reviewed the Project on four occasions. (AR 35717.) The City's Initial Study determined that "[a]lthough the project would potentially be subject to existing wildfire hazards...the project would not exacerbate the potential for wildfire hazards." (AR 6731.)

The City's EIR determined that, during a wildfire, residents and employees at the Project would be able to quickly access US-101, the primary evacuation route, from the Project site, which was 0.25 miles from the highway. (AR 13570.) As part of the Project, a third northbound lane would be added on Las Virgenes Road, and a sidewalk would be added along the same road. (AR 13570.) According to the EIR, "[t]he additional lane and sidewalk connections would improve vehicle and

pedestrian circulation, which would benefit emergency access and the function of the evacuation route on Las Virgenes Road." (AR 13570.)

In July 2019, City staff presented an analysis of the Project to the Planning Commission. (AR 365-474.) Staff asserted that the Project was "consistent with 140 different individual policies of the General Plan." (AR 355.) Staff noted that the Project "meets the General Plan's stated housing density for this property, and proposes significantly less (96% less) commercial intensity than the General Plan allows (5,867 square feet compared to 155,000 square feet)." (AR 355.)

Staff prepared a resolution recommending approval of the Project. (AR 478-540.) Staff found that all environmental factors other than aesthetics would be less than significant with mitigation factors. (AR 481.) Staff also found that the Project conformed to the General Plan. (AR 484.) Staff determined that the Project's design and proposed improvements "are not likely to cause substantial environmental damage" or "serious public health problems." (AR 486.)

Three days of public hearings for the Project were held on July 10, 11, and 18, 2019. (AR 3051.) The Planning Commission voted to recommend that the City Council not certify the EIR and to deny the proposed resolution. (AR 3051.) The Planning Commission recommended that TNHC explore a project alternative described as viable in the Original Final EIR, which did not require grading to remediate the landslide area. (AR 3051.)

Pursuant to the Planning Commission's recommendation, TNHC hired a geotechnical consultant to make recommendations on the feasibility of project alternatives. (AR 1225.) TNHC also provided a "post-Woolsey Fire oak tree assessment documenting the updated conditions of on-site oak trees," "updated traffic impact analysis," and an "updated biological assessment of the current on-site biological conditions." (AR 1225-26.) An Amended Draft EIR resulted from the new information. (AR 1225.)

TNHC's geotechnical consultant concluded that the "risks to life and property from gross, seismic, and surficial instability were too high for Alternative 4 (or any variation that did not implement slope stabilization measures) to be feasible." (AR 3052.) Staff recommended that "the Planning Commission re-evaluate its prior decision in light of the new geotechnical findings, and recommend approval of the project as proposed because it is fully consistent with the General Plan, including providing all of the housing specified in the City's 2014 – 2021 Housing Element for this site, and fully mitigates all significant environmental impacts to the greatest feasible extent." (AR 1259.)

On April 21, 2021, the Planning Commission voted 3-2 to recommend that the City Council approve the Project with a reduction of housing units from 180 to 135 and certify the Amended Final EIR. (AR 1890, 3054.) The Planning Commission

recognized that "remediation of the landslide was an unfortunate, yet necessary element of any project that was to be built on the project site...." (AR 3054.)

In preparation for the City Council meeting, the City's CEQA consultant prepared a supplemental memorandum analyzing the Project's impact on the environment with respect to wildfire. (SAR 38432-37.) The memorandum was revised at least three times. (SAR 38433-37, 38510-14, 39793-98; AR 6730-33.) The version of the memorandum, dated May 13, 2021, set forth reasons why "there [was] not substantial evidence suggesting that the project would exacerbate the potential for or severity of wildfires." (SAR 39797.) The consultant clarified that its conclusion did "not mean that the project could not be subject to wildfires, but merely that the project would not increase the potential for wildfires to occur." (SAR 39797.) The conclusion was deleted from the final version of the memorandum dated May 14, 2021. (*Compare* SAR 39797 *with* AR 6730-33.)

On May 26, 2021, the City Council declined to certify the Amended Final EIR and denied the Project. (AR 7600-23.) The City Council found that "[t]he proposed project violated Calabasas Municipal Code and General Plan prohibitions on development and non-open space uses of General Plan designated open space," in that "permanent, remedial grading for a residential and commercial development project constitutes conversion of General Plan designated open space land for non-open space uses." (AR 7605.) In addition, noting that the Project site was part of a designated "Very High Fire Hazard Severity Zone," the City Council also found that "the project site's vicinity has inadequate evacuation routes to safely accommodate the proposed, estimated 495 new residents within the project, nor to safely allow the evacuation of the surrounding community along Las Virgenes Road...." (AR 7606.)

II. Procedural History

On June 4, 2021, TNHC Canyon Oaks LLC ("TNHC") filed a Verified Petition for Writ of Mandate and Complaint in Case No. 21STCP01819. On September 14, 2021, respondents City of Calabasas and City Council of the City of Calabasas filed an Answer to TNHC's petition.

On August 20, 2021, Building Industry Association of Southern California ("BIASC") filed a Verified Petition for Writ of Mandate and Complaint in Case No. 21STCP02726. On September 14, 2021, respondents City of Calabasas and City Council of the City of Calabasas filed an Answer to BIASC's petition.

On August 20, 2021, BIASC filed a notice seeking to relate its petition to TNHC's petition. On September 16, 2021, the Court (Hon. Mary H. Strobel) deemed the matters related and reassigned BIASC's petition to Department 82, where TNHC's petition was also assigned.

On November 4, 2021, pursuant to a stipulation by the parties, the Court consolidated the petitions of TNHC and BIASC and designated TNHC's petition as the lead case. The Court reaffirmed that the non-writ causes of action were stayed pending resolution of the writ causes of action by the Court.

On July 3, 2023, petitioners TNHC and BIASC filed a joint opening brief. On August 1, 2023, respondents City of Calabasas and City Council of the City of Calabasas filed an opposition. On August 16, 2023, petitioners filed a reply. The Court has received an electronic copy of the administrative record (comprised of the West Village Administrative Record, the West Village Supplemental Record, and the Canyon Oaks partial record), an amended electronic copy of the administrative record, and a hard copy of the joint appendix.

On August 31, 2023, the Court issued a tentative ruling and held a hearing on the consolidated petitions. The Court then took the matter under submission.

III. Standard of Review

Under CCP § 1094.5(b), the pertinent issues are whether the respondent has proceeded without jurisdiction, whether there was a fair trial, and whether there was a prejudicial abuse of discretion. An abuse of discretion is established if the agency has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. (CCP § 1094.5(b).)

In administrative mandate proceedings, the trial court reviews land use decisions for substantial evidence. (*See Toigo v. Town of Ross* (1998) 70 Cal.App.4th 309, 317.) Substantial evidence is "relevant evidence that a reasonable mind might accept as adequate to support a conclusion" (*California Youth Authority v. State Personnel Board* (2002) 104 Cal.App.4th 575, 584-85), or evidence of ponderable legal significance which is reasonable, credible and of solid value (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633). "Courts may reverse an [administrative] decision only if, based on the evidence...a reasonable person could not reach the conclusion reached by the agency." (*Sierra Club v. California Coastal Com.* (1993) 12 Cal.App.4th 602, 610.)

However, "'[o]n questions of law arising in mandate proceedings, [the court] exercise[s] independent judgment.' .... Interpretation of a statute or regulation is a question of law." (*Christensen v. Lightbourne* (2017) 15 Cal.App.5th 1239, 1251.)

An agency is presumed to have regularly performed its official duties. (Evid. Code § 664.) A reviewing court "will not act as counsel for either party to an appeal and will not assume the task of initiating and prosecuting a search of the record for any purpose of discovering errors not pointed out in the briefs." (*Fox v. Erickson* (1950) 99 Cal.App.2d 740, 742.) When an appellant challenges "'the sufficiency of the evidence, all material evidence on the point must be set forth and not merely their own evidence. Failure to do so amounts to waiver of the alleged error and we may

presume that the record contains evidence to sustain every finding of fact." (*Toigo,* 70 Cal.App.4th at 317, citations omitted.)

Generally, the petitioner seeking administrative mandamus has the burden of proof to demonstrate where the proceedings were unfair, exceeded jurisdiction, or demonstrated prejudicial abuse of discretion. (*See Alford v. Pierno* (1972) 27 Cal.App.3d 682, 691.) However, in an action such as this to enforce the Housing Accountability Act ("HAA"), the burden of proof is reversed. Here, in this challenge to the validity of the city's decision to disapprove the project, the City bears the burden of proof that its decision has conformed to all of the conditions specified in Section 65589.5. (Gov. Code § 65589.6; *see California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 837 ["As the public entity that disapproved the project, the City bears the burden of proof that its decision conformed to the HAA. (§ 65589.6)"].)

IV. Requests for Judicial Notice

All requests for judicial notice are DENIED as "unnecessary to the resolution" of the issues before the Court. (*Martinez v. San Diego County Credit Union* (2020) 50 Cal.App.5th 1048, 1075.)

V. Analysis

A. The Housing Accountability Act

"The HAA was enacted in 1982 in an effort to address the state's shortfall in building housing approximating regional needs, and the Legislature has amended the law repeatedly in an increasing effort to compel cities and counties to approve more housing." (*Save Lafayette v. City of Lafayette* (2022) 85 Cal.App.5th 842, 850.) "Still dissatisfied with the dearth of housing in this state, the Legislature in 2017 passed further amendments to the HAA, supported by detailed findings. The Legislature added a provision requiring that an applicant receive timely written notice and an explanation if an agency considers a proposed housing development inconsistent with applicable standards. (§ 65589.5, subd. (j)(1); Stats. 2017, ch. 378, § 1.5.) It heightened fines for bad faith disapproval of a project. (§ 65589.5, subd. (l); Stats. 2017, ch. 378, § 1.5.) And it increased the burden of proof required for a finding of adverse effect on public health or safety. (§ 655589.5, subd. (j)(1); Stats. 2017, ch. 378, § 1.5.)." (*California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 836 [hereafter "CARLA"].)

As relevant to this writ petition, "the HAA provides that when a proposed housing development complies with objective general-plan, zoning, and subdivision standards and criteria in effect *at the time the application is deemed complete,* the local agency may disapprove the project or require lower density only if it finds the development would have specific adverse effects on public health or safety that cannot feasibly be mitigated." (*Save Lafayette,* 85 Cal.App.5th at 850, emphasis in

original; *see* Gov. Code § 65589.5(j)(1).)[1] Thus, stated differently, a city may deny a land use application without making the findings required by the HAA if the proposed housing development does not comply "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." (Gov. Code § 65589.5(j)(1); *CARLA*, 68 Cal.App.5th at 838.)

Section 65589.5(f)(4)[2] also states the following: "For purposes of this section, a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity."

In an action under the HAA, "instead of asking, as is common in administrative mandamus actions, 'whether the City's findings are supported by substantial evidence' [citation], we inquire whether there is 'substantial evidence that would allow a reasonable person to conclude that the housing development project' complies with pertinent standards. (§ 655589.5, subd. (f)(4).) As the public

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1 Gov. Code § 65589.5(j)(1) states:

> 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...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.

2 Statutory references are to the Government Code, unless otherwise stated.

entity that disapproved the project, the City bears the burden of proof that its decision conformed to the HAA. (§ 65589.6.)" (*CARLA*, 68 Cal.App.5th at 837.)

Finally, the HAA states that "[i]t 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." (§ 65589.5(a)(2)(L).)

B. Compliance with Applicable, Objective Standards

1. Timeliness of Written Determination of Inconsistency with Applicable Standards

Petitioners contend that the Project is deemed to comply with applicable standards because City failed to make a timely written determination to the contrary. Petitioners contend that section § 65589.5(j)(2)(A), which was enacted with Senate Bill 167 ("SB 167") and went into effect on January 1, 2018 (Stats. 2017, ch. 368, § 1.5), should be construed to apply to the Project application, which was complete on September 1, 2017. (AR 363, 7602.) Petitioners raise an issue of retroactive application of the statute.

Section 65589.5(j)(2) provides in relevant part:

> (2)(A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:
>
> ....[¶]
>
> (ii) Within 60 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains more than 150 units.
>
> (B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

Assuming the Project will contain 180 residential units,[3] section 65589.5(j)(2) mandates notice of the inconsistency, noncompliance, or nonconformity from the local agency "within 60 days of the date that the application for the housing development project is determined to be complete." The parties agree that the Project application was deemed complete for purposes of the HAA by September 1, 2017. (OB 20:12; Opp. at 16:27-17:1; *see also Save Lafayette*, 85 Cal.App.5th at 850 and § 65943(b) [agency must determine completeness of application within 30 days of receipt].) Section 65589.5(j)(2) was not effective until January 1, 2018, after the 60-day window for giving notice. Thus, petitioners seek a retroactive application of the statute.

"'Generally, statutes operate prospectively only.' [Citations.] '[T]he presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly.... For that reason, the 'principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal.' [Citations]....[¶] ... [A] statute that interferes with antecedent rights will not operate retroactively unless such retroactivity be 'the unequivocal and inflexible import of the terms, and the manifest intention of the legislature.' [Citations.] '[A] statute may be applied retroactively only if it contains express language of retroactivity or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application.'" (*McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 475.)

Petitioners have not identified any express language of retroactivity in the HAA or SB 167 relevant to section 65589.5(j)(2). Instead, petitioners argue that the 60-day deadline began running on January 1, 2018, because the imposition of the deadline did not interfere with vested rights, impose new liabilities, or substantially affect existing obligations and rights. (*Quarry v. Doe I* (2012) 53 Cal.4th 945, 956, internal quotations omitted ["In general, a law has a retroactive effect when it functions to "change[ ] the legal consequences of past conduct by imposing new or different liabilities based upon such conduct" that is, when it "substantially affect[s] existing rights and obligations[.]"].) The Court disagrees. Imposition of a 60-day deadline would have dramatically altered the time City had to prepare a statement

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[3] In the "Factual Background" section of the opening brief, petitioners noted that the Planning Commission recommended approval of the Project at a reduced density. (AR 1890 [180 units to 135 units].) Petitioners do not expressly dispute the Planning Commission's recommendation. However, in arguing that the City Council's determination that the Project was inconsistent with the General Plan was untimely, petitioners apply the 60-day timeframe for housing developments containing more than 150 units. Accordingly, the Court addresses petitioners' contention based on the assumption that the proposed Project has 180 residential units.

finding inconsistency with the General Plan, when such deadline was not effective at the time the application became complete. In other words, application of a 60-day deadline would have substantially altered the obligations of the City Council. Indeed, applying a 60-day deadline under section 65589.5(j)(2) does not make particular sense here, given that a 60-day period for the subject application had already lapsed by January 1, 2018.

Petitioners contend that "any question about whether SB 167 applies to pending applications must be resolved in favor of the interpretation that furthers housing approvals and provides certainty to stakeholders about which standards apply." (Reply at 8:22-24; *see CARLA*, 68 Cal.App.5th at 845, citing § 65589.5(a)(2)(L) ["[T]he Legislature has declared the HAA must be interpreted and implemented to 'afford the fullest possible weight' to the approval of housing [citation]"].) Section 65589(a)(2)(L) does not provide "a clear and unavoidable implication" that the Legislature intended the notice requirement of section 65589.5(j)(2) to operate retroactively to a Project application that was complete prior to January 1, 2018. While section 65589.5(a)(2)(L) suggests the Legislature intended for the HAA to be interpreted in a manner that promotes the approval of housing, that instruction concerns prospective enforcement of the statute. If the Legislature intended to make the notice provision under section 65589.5(j)(2) retroactive, it would have declared that the provision applies to applications that were deemed complete prior to January 1, 2018.

The notice and "deemed consistent" provisions of section 65589.5(j)(2)(A) and (B) do not apply to the Project. The Project is thus not deemed consistent with City's objective standards pursuant to that provision of the HAA.

2. Objectiveness of Development Standards Upon Which City Council Relied in Denying Approval of Project

Respondents contend that the Project does not comply 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." (§ 65589.5(j)(2)(A).)

"Objective" means "involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official." (§ 65589.5(h).) "[A] standard that cannot be applied without personal interpretation or subjective judgment is not 'objective' under the HAA." (*CARLA*, 68 Cal.App.5th at 840.) Whether a standard is objective is a question of law. (*Id.* at 839.)

In its resolution denying the Project ("Denial Resolution"), the City Council cited Calabasas Municipal Code ("CMC") § 17.16.030(A)(1), which was a codification

of Measures D and O. (AR 7605.) The statute requires two-thirds voter approval for any "amendment to the General Plan or any specific plan that would redesignate for non-open space use of any property in the city designated OS-R or OS-RP" in the 2008 General Plan. (AR 18680.) This statute does not support a denial of the Project because neither TNHC nor City proposed any amendment to the General Plan for the Project. Nor does any party suggest that the open space at the Project site be designated for non-open space uses. Accordingly, two-thirds voter approval was not required for the Project.

The Denial Resolution also cited CMC § 17.20.150 for the proposition that "all grading and project design conform to the City's grading ordinance and must adapt to the natural hillside topography and maximize view opportunities to and from a development." (AR 7607; *see also* AR 18683-84.) CMC § 17.20.150(B)(3) is not objective, however, because it requires personal interpretation to determine whether the grading and project design "adapts" to the natural hillside topography and "maximizes" view opportunities.

The Denial Resolution also cited CMC § 17.20.055(A)(6) and (A)(9). (AR 7606, 7608, 7610.) The City Council contended that CMC § 17.20.055(A)(9) "prohibits manufactured slopes as a final feature in open space areas." (AR 7610-12; *see* AR 18681 ["The open space set aside calculation should not include lawns, landscaping, manufactured slopes, or other artificially landscaped features but may include habitat restoration areas"].) The Denial Resolution purported to quote CMC § 17.20.055(A)(6), but it instead quotes CMC § 17.20.055(A)(5), which states: "Where an average slope for a project exceeds twenty (20) percent, dwelling units should be clustered together on the more level portions of a site and steeper areas should be preserved in a natural state."[4] (AR 7606, 18681.) The City Council contended that the Project "does not preserve the neighboring hillsides in a natural state; instead engaging in excessive grading." (AR 7606-07.) However, CMC § 17.20.055, including subdivisions (A)(5) and (A)(9), pertain to HM and RR zones, which are not contained in the Project site. (AR 7601 [section 2, paragraph 3 of Denial Resolution, listing PD, RM (2), and OS-DR zones], 7853 [PD, R-MF, and OS-RP zones].)

The Denial Resolution also cites various General Plan policies. (*See, e.g.,* AR 7605 [citing General Plan Policy III-2, which provides that City will limit "the permitted intensity of development within lands designated as open space to that which is consistent with the community's environmental values and that will avoid significant impacts to sensitive environmental features..."]; AR 7606 [citing General Plan Policy VII-14, which requires City to "[dliscourage development and encourage sensitive siting of structures within hazardous fire areas as higher priorities than attempting to implement fuel modification techniques that would adversely affect significant biological resources"].) However, the General Plan policies cite policy

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[4] CMC § 17.20.055(A)(6) states: "At least fifty (50) percent of the subdivision shall be preserved as permanent open space." (AR 18681.)

goals, as opposed to standards that leave no room for subjective judgment. (*See* OB at 22, fn. 13 [General Plan policies cited in Denial Resolution].)

Respondents contend that objective statutes in the Calabasas Municipal Code prohibit grading at the Project site. (*See, e.g.,* Opp. at 20:28-21:2 [CMC §§ 17.18.040, 17.20.070, 17.13.020, 17.20.050].) Respondents may not rely on statutes not cited in the Denial Resolution to support its denial. (*Southern California Edison Co. v. Public Utilities Com'n* (2000) 85 Cal.App.4th 1086, 1111, citing *Securities Comm'n v. Chenery Corp.* (1943) 318 U.S. 80, 94; *Motor Vehicle Mfrs. Assn. v. State Farm Mut.* (1983) 463 U.S. 29, 50 ["We may not affirm an agency's action on a basis not embraced by the agency itself"]; *Motor Vehicle Mfrs.,* 463 U.S. at 50 ["[C]ourts may not accept appellate counsel's *post hoc* rationalizations for agency action. [Citation.] It is well-established that an agency's action must be upheld, if at all, on the basis articulated by the agency itself"].)

Even if the Court were to consider respondents' *post hoc* rationalizations, the Court would still find that they fail to justify the denial of the Project with any objective standard. Respondents cite CMC § 17.90.020, which defines "development" as "any grading or construction activity or alteration of the land, its terrain contour or vegetation, including the addition to, erection, expansion, or alteration of existing structures." (SAR 38100.) Respondents then cite CMC § 17.02.010(A), which states that no development shall occur, and no new land use shall be allowed, unless the use is listed under the zoning district at issue in Table 2-2, the Land Use Table. (SAR 37756; *see also* AR 37759 [CMC § 17.03.010(D) states, "If a proposed use of land is not specifically listed in Table 2-2 - Land Use Table of Chapter 17.11, the use is prohibited except as allowed by Section 17.11.020"].) In turn, Table 2-2 only lists temporary "Location Filming" as an authorized use of OS-DR land. (SAR 37777.) Respondents thus argue that grading is not one of the land uses that are exempt from Table 2-2 under CMC § 17.02.020. (SAR 37756-58.) Respondents contend that the uses authorized by Table 2-2 are objective standards.

As a preliminary matter, CMC § 17.02.020 lists exemptions from land use *permit* requirements, which are not at issue in the instant petition. Regardless, as petitioners persuasively explain, grading is not set forth in Table 2-2 for *any* zoning district. (SAR 37766-77.) If Table 2-2 listed the only permissible uses of land in City, this would mean that grading, including grading for remediation purposes, is not permitted citywide. Statutes must be interpreted to avoid absurd results. (*Starbucks Corp. v. Superior Court* (2008) 168 Cal.App.4th 1436, 1449.) The land uses set forth in Table 2-2 refer to the ultimate use of land, *e.g.*, agricultural, residential, commercial, etc., and not intermediary activities that allow the land to accommodate the ultimate use. (SAR 37764-65.) For the foregoing reasons, respondents' reliance on Table 2-2 is unavailing.

For the foregoing reasons, with respect to whether the Project complied with applicable, objective standards and criteria, respondents have not met their burden

to demonstrate that the denial conformed to the conditions set forth in Section 65589.5. (§ 65589.6.)

C. Specific, Adverse Impact on Public Health or Safety

Respondents contend that the denial of the Project was justified due to the increased risk the Project purportedly poses in the event of a wildfire.

When a proposed housing development project complies with applicable, objective standards, the local agency seeking to disapprove of the project must base its decision upon written findings supported by a preponderance of the evidence that: (1) the project would have a "specific, adverse impact upon the public health or safety" absent disapproval; and (2) there is "no feasible method to satisfactorily mitigate or avoid the adverse impact" other than disapproval of the project. (§ 65589.5(j)(1)(A-B).) 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." (§ 65589.5(j)(1)(A).)

In denying the Project, the City Council asserted that the Project site is located along the Las Virgenes Canyon Corridor, an "area with a historically high proportion of fire ignitions." (AR 7616.) The City Council maintained that the addition of 495 new residents would adversely impact evacuation of the residents of the Project, as well as surrounding communities near the Project site. (AR 7616-17.)

Arguably, the addition of 495 new residents in an area prone to wildfires could quantifiably, directly, and unavoidably impact the evacuation of residents at the Project and surrounding areas during a wildfire. However, respondents fail to identify any objective, written public health or safety standards, policies, or conditions upon which any such purported impact is based.

The Denial Resolution stated that the area where the Project would be located has an approximately 5% chance of burning in any given year, meaning that the site is expected to burn once every 20 years. (AR 7616.) However, the pages of the administrative record to which respondents cite do not contain any support for this contention. (*See* AR 35636, 35787 [statement that 20 years of growth would be required before there could be a fire like Woolsey Fire].)

The Denial Resolution also references the 30,000 vehicles per day that Las Virgenes Road carries. (AR 7616.) Respondents cite a Draft Traffic and Circulation Study that states that the US-101 southbound ramps at Las Virgenes Road operate at "LOS E" during afternoon peak hour, which exceed City's LOS D standard for interchanges. (AR 108.) Notably, the report is only a draft and still under review. (AR 112 [comment that the "numbers do not seem to add up"].) In contrast, the final EIR shows that the same interchange operates at an acceptable LOS D. (AR 13912.)

The final EIR concluded that the Project would have a "less than significant" impact on congestion at intersections with mitigation. (AR 13925-40.)

The Denial Resolution also states that the Project is within a Very High Fire Hazard Severity Zone ("VHFHSZ"). (AR 7616.) Respondents reference a map from the Santa Monica Mountains Community Wildfire Protection Plan which shows the area where the Project site is located to have a relatively high ignition probability. (AR 7402.) However, these conditions are not unique to the Project; rather, they undisputedly apply to the entire area. (*See* AR 7606 [Las Virgenes Road Corridor is within VHFHSZ]; AR 7402 [other areas of City also have high ignition probability].) In enacting the HAA, the Legislature stated that it was its intent that "the conditions that would have a specific, adverse impact upon the public health and safety, as described in...paragraph (1) of subdivision (j), arise infrequently." (§ 65589.5(a)(3).) It cannot be said that a condition in existence beyond the Project site is infrequent. The HAA must "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." (*Id.* § 65589.5(a)(2)(L).) The Court cannot interpret section 65589.5(j)(1)(A) in such a manner that would result in restricting housing from being built throughout the entire City.

Respondents also fail to show that a preponderance of the evidence supports its finding of the adverse impact that the Project would have on public health and safety. Respondents contest the assertion in the EIR that an additional northbound lane on Las Virgenes Road and additional sidewalk connections "would improve vehicle and pedestrian circulation" during an evacuation (AR 13570, 14590-91) by arguing that the additional lane is only a quarter mile in length (AR 35797:25-35798:10). Respondents also point out that the City's transportation consultant stated during the City Council meeting that he only considered the evacuation of the residents at the project, not the surrounding communities on Las Virgenes Road. (AR 35799:5-19.)

Respondents also attempt to rebut the EIR's contention that Project residents and employees would be able to quickly access the US-101 highway by referencing City residents' comments that escape routes were closed off or gridlocked during the Woolsey Fire. (AR 35558:20-25; SAR39852-3; AR 35306:7-9.) Respondents further reference councilmembers' skepticism that the additional northbound lane would be effective during an evacuation. (AR 35379:2-7.) However, "mere argument, speculation, and unsubstantiated opinion...is not substantial evidence for a fair argument." (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.) Residents' accounts during past fires are not sufficient to overcome the experts' conclusion that the additional lane would benefit emergency access and the evacuation capacity of Las Virgenes Road. (AR 1873. 1875, 3069, 3083, 5815, 13570; SAR 37701-07; *Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 894 ["Although they present their numbers as scientific fact, we find appellants' calculations are essentially opinions rendered by nonexperts, which do not amount to

substantial evidence"].) Indeed, the expert conclusion regarding the ease of evacuation of Project residents and employees was reached upon consideration of the Woolsey Fire. (AR 13569-71.) Given the EIR's conclusion that "project-related traffic would incrementally increase congestion on Las Virgenes Road," respondents fail to demonstrate that the impact on evacuation from the Project would be significant. (AR 13570.)

Because respondents fail to adequately dispute the experts' opinion regarding the benefit that the additional northbound lane would have during an evacuation, respondents fail to show that there is no feasible method to satisfactorily mitigate or avoid the increased congestion during a wildfire that would result from the Project.

For the foregoing reasons, respondents fail to meet their burden that the denial of the Project conformed with section 65589.5.

D. California Environmental Quality Act

The Denial Resolution stated that the level of grading to be done for the Project is "excessive and that the proposed economic, social, and other benefits of the project do not outweigh the harm caused by the project's significant, unavoidable environmental impact on the site's visual character." (AR 7604.) As a result, the City Council purportedly could not make the findings set forth in Public Resources Code § 21081 to approve the Project. (*See* Pub. Res. Code § 21081(b) [public agency must find that specific economic, legal, social, technological, or other benefit outweighs significant effect on environment].)

However, respondents cannot use their discretion in determining whether a benefit outweighs a significant effect on the environment to shield themselves from the obligations of the HAA. "CEQA applies only to 'discretionary projects proposed to be carried out or approved by public agencies....'" (*McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80, 89, quoting Pub. Res. Code § 21080.) "The exercise of discretionary powers for environmental protection shall be consistent with express or implied limitations provided by other laws." (14 C.C.R. § 15040(e).)

In *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, the Court of Appeal found that a city council did not abuse its discretion in rejecting a decreased density alternative for a housing development because the city found that no specific, adverse impact to public health or safety would result from the higher density alternative. (*Sequoyah Hills,* 23 Cal.App.4th at 715, citing § 65589.5(j)(1).) Accordingly, the HAA required the city council to approve the higher density alternative. (*Id.* at 716; *see also Tiburon Open Space Committee v. County of Marin* (2022) 78 Cal.App.5th 700, 732 ["CEQA ... recognizes that an agency's discretion is limited by its own legal obligations. Accordingly, where a legal

obligation limits an agency's discretion, the scope of environmental review likewise is limited"].)

Here, because respondents fail to show that the Project does not comply with applicable, objective standards, that the Project would have a specific, adverse impact upon public health or safety, or that there is no feasible method to mitigate or avoid the adverse impact, the HAA requires that respondents set aside the decision to deny the Project.

E. Whether Respondents Acted in Bad Faith

In an action to enforce the HAA, if the Court finds that the "the local agency, in violation of subdivision (j), disapproved a housing development project complying with applicable, objective general plan and zoning standards and criteria...without making the findings required by [the HAA] or without making findings supported by a preponderance of the evidence," the Court may "issue an order or judgment directing the local agency to approve the housing development project or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved...the housing development...in violation of" the HAA. (§ 65589.5(k)(1)(A)(i), (ii).) "[B]ad faith includes, but is not limited to, an action that is frivolous or otherwise entirely without merit." (§ 65589.5(l).)

For the following reasons, the Court finds that the City's acted in bad faith when it denied approval of the Project:

The Denial Resolution cited inapplicable municipal code sections and subjective General Plan policies. (*See* Section V.B.2.) A councilmember acknowledged that the Project "appears to be within the General Plan guidelines" (AR 35821 [Councilmember Shapiro begins speaking], 35824), only to later vote against the Project (AR 7623 [Councilmember Shapiro voted to approve Denial Resolution]).

In the Denial Resolution, the City Council asserted that the remedial grading and drainage required by the Project violated CMC § 17.16.030(A)(1), which was a codification of Measures D and O. (AR 7605.) The City Council found that "permanent, remedial grading for a residential and commercial project" and "installation of permanent, concrete, drainage ditches and related drainage infrastructure" "constitutes conversion of General Plan designated open space land for non-open space uses." (AR 7605.) However, as stated above, CMC § 17.16.030(A)(1) required two-thirds voter approval for amendments to the General Plan or redesignation from open space to non-open space use. None of these situations applied. (*See* Section V.B.2.) Moreover, the staff and Planning Commission found that grading was a necessary mitigation method according to three geotechnical experts, but the City Council did not attempt to reconcile their objection to the grading with the staff's recommendation. (AR 1909.)

As stated above, the Court having found that respondents had not met their burden to demonstrate that the Project did not comply with applicable, objective standards and criteria, respondents then had the burden to demonstrate a "quantifiable" impact or "written" public health or safety standard. (*See* Section V.C.) However, respondents did not identify any objective, written public health or safety standards, policies, or conditions upon which any impact is based, as the HAA requires. (§ 65589.5(j)(1)(A).)

Moreover, respondents failed to adequately show that there was no feasible method to satisfactorily mitigate any increased traffic congestion from the Project, as required by section 65589.5(j)(1)(B). Although the City's EIR found that the additional lane and sidewalk connections would "benefit emergency access and the function of the evacuation route" (AR 13570) and the staff concluded that the Project "would not exacerbate the potential for wildfire or significantly affect emergency evacuation in the event of a wildfire" (AR 6732), the City Council relied on speculation to dispute the findings. (*See* Section V.C.)

The City's CEQA consultant concluded that "there [was] not substantial evidence suggesting that the project would exacerbate the potential for or severity of wildfires." (SAR 39797.) However, the City withheld the conclusion from the materials presented to the City Council. (*Compare* SAR 39797 *with* AR 6730-33.)

In reviewing a draft of the Denial Resolution, Mayor Bozajian stated that he wanted "the part that says notwithstanding the staff's recommendation otherwise to be taken out." (AR 35906.) Because the City Council's decision was already made, the staff's recommendation was "irrelevant," according to Mayor Bozajian. (AR 35906.) However, the staff's recommendation to approve the Project was directly relevant to whether there was substantial evidence that would allow a reasonable person to find that the Project complied with pertinent standards. (§ 655589.5, subd. (f)(4).)

Further, City staff and the Department of Housing and Community Development ("HCD") advised the City Council on the requirements of the HAA. (AR 3391-92, 3850-56.) Mayor Bozajian "discount[ed] and discredit[ed]" HCD and determined that the agency had "absolutely no credibility and validity" in the City. (AR 35827.) HCD is the state agency with "primary responsibility for development and implementation of housing policy." (Health & Saf. Code § 50152.)

Based on the foregoing, the Court finds that respondents acted in bad faith when they disapproved the Project. The disapproval was entirely without merit. (*See* § 65589.5(l).) Considering Mayor Bozajian's expressed disdain for the recommendations of staff or the HCD, the City Council's citation to inapplicable municipal code sections and subjective General Plan policies, and the City Council's reliance on speculation in dismissing the staff's recommendations, respondents' actions do not inspire confidence that they would attempt to comply with the HAA in good faith on remand.

Having found that respondents acted in bad faith, the Court will issue a judgment directing respondents to approve the Project.

F. Housing Element Law

With respect to TNHC's second cause of action, Government Code § 65863(b) prohibits City from reducing the housing needed to meet its current share of the regional housing need unless it makes written findings supported by substantial evidence that the reduction is consistent with the adopted general plan and the remaining sites identified in its housing element are adequate to meet regional housing need. (*See* § 65583 ["The housing element shall identify adequate sites for housing...and shall make adequate provision for the existing and projected needs of all economic segments of the community"].)

TNHC demonstrates how the remaining sites identified in the housing element are not adequate to meet regional housing needs. TNHC persuasively argues that there is no reason to believe that the City Council will allow development at other sites when such housing may also add traffic to the US-101 highway, which the City Council believes is inadequate to accommodate evacuations. (AR 7618, 18614 [housing element sites near U.S. 101 highway].)

However, TNHC fails to demonstrate how City failed to comply with its General Plan. While TNHC argues how the standards upon which the City Council relies in denying the Project are not objective (OB at 21:19-24:5), TNHC does not demonstrate how denial of the Project is not consistent with the General Plan. An argument unsupported by substantive argument is waived. (*Holden v. City of San Diego* (2019) 43 Cal.App.5th 404, 418-19 [finding appellant did not adequately discuss Government Code § 65863 issue in trial court].)

Accordingly, TNHC does not demonstrate how it is entitled to relief under the Housing Element Law.

G. Density Bonus Law

With respect to TNHC's third cause of action, TNHC maintains that it is entitled to incentives and waivers for which it applied under the Density Bonus Law. (§ 65915; AR 3392, 7653.) City can deny the incentives and waivers under limited exceptions, including, as pertinent here, based on a written finding supported by substantial evidence that the incentive or waiver would have a specific, adverse impact as defined in the HAA that cannot feasibly be mitigated. (§ 65915(d)(1)(B); *see also Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 770.)

City bears the burden of proof when a requested incentive or waiver is denied. (§ 65915(d)(4).) For the reasons set forth above with respect to the HAA, City fails to

meet its burden to justify the denial of TNHC's requested incentives and waivers. TNHC is entitled to writ relief with respect to its requested incentives and waivers.

In the tentative ruling issued on August 31, 2023, the Court requested clarification on what incentives and waivers TNHC requested. In TNHC's petition, TNHC seeks the following incentives and waivers: "(a) that the Project's building height limits may exceed the otherwise applicable 35-foot height maximum; (b) the Project's retaining wall heights may exceed otherwise applicable limits; and (c) the Project's parking density may exceed otherwise applicable limits." (Pet. ¶ 77.) However, in the final Planning Commission Staff Report, staff reported the concessions as "1) building heights exceeding the 35-foot maximum allowable limit; 2) retaining wall heights exceeding the maximum allowable limit; and 3) a statutory reduced parking allowance." (AR 3392.) The Court requested clarification regarding whether TNHC seeks a reduced or increased parking allowance.

During oral argument, TNHC clarified that it seeks a reduced parking allowance. Accordingly, the Court will issue a judgment finding that THNC is entitled to a reduced parking allowance.

H. Declaratory Judgment

Petitioners request a declaratory judgment indicating that "the City disapproved the Project unlawfully and in bad faith, that the Project is entitled to approval under the HAA, and that the City may not take any further unlawful action to preclude the Project." (OB at 30:22-31:2.)

Pursuant to the local rules, which designate that Department 82 is a specialized Writs and Receivers department and not a general civil department, only a cause of action for writ of mandate is properly assigned to this department. (LASC Local Rules 2.8(d) and 2.9.) Local Rules 2.8(d) and 2.9 do not include a claim for declaratory relief as a special proceeding assigned to the writs departments.

On November 4, 2021, the Court reaffirmed that the non-writ causes of action are stayed pending resolution of the writ causes of action. In the tentative ruling issued on August 31, 2023, the Court requested the parties to address whether the Court's ruling on the writ causes of action would fully resolve the cause of action for declaratory relief. TNHC noted that it asserted an inverse condemnation cause of action. (THNC Petition ¶¶ 80-85.) Accordingly, upon resolution of the causes of action for writ relief, the Court will transfer the consolidated petitions to Department 1 for reassignment to an independent calendar department for resolution of the remaining causes of action.

VI. Conclusion

The petitions are GRANTED. The Court hereby schedules a Status Conference for January 25, 2024, at 1:30 p.m., in Department 82 (Stanley Mosk

Courthouse), for the parties to discuss what, if anything, remains in dispute and must be resolved in these consolidated actions, in light of the Court's rulings herein. In advance of the hearing, the parties shall meet and confer and file with the Court a Joint Status Report by no later than January 19, 2024.

Date: November 27, 2023

HON. CURTIS A. KIN

EXHIBIT 2

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

TNHC CANYON OAKS LLC, A DELAWARE LIMITED LIABILITY COMPANY,

Petitioner and Plaintiff,

v.

CITY OF CALABASAS; CITY COUNCIL OF THE CITY OF CALABASAS; and DOES 1 through 100, inclusive,

Respondents and Defendants.

Case No. 21STCP01819

[PROPOSED] STIPULATED JUDGMENT

Hon. Curtis A. Kin

Action Filed: June 4, 2021
Trial Date: August 31, 2023

Dept.: 82

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STIPULATION

WHEREAS, on June 4, 2021, petitioner and plaintiff TNHC Canyon Oaks LLC, a Delaware limited liability company ("TNHC") filed its verified petition for writ of mandate and complaint in this consolidated action as Case No. 21STCP01819 and, on August 20, 2021, petitioner and plaintiff Building Industry Association of Southern California ("BIASC") BIASC filed its verified petition for writ of mandate and complaint as Case No. 21STCP02726.

WHEREAS, on November 4, 2021, the Court consolidated both petitions, designated Case No. 21STCP01819 as the lead case and stayed TNHC's and BIASC's non-writ claims including, but not limited to, TNHC's inverse condemnation cause of action pending resolution of TNHC's and BIASC's writ of mandate claims.

WHEREAS, respondents and defendants City of Calabasas and the City Council of the City of Calabasas (collectively, "CITY") opposed TNHC's and BIASC's writ of mandate claims.

WHEREAS, on November 27, 2023, after receipt of the record, a full briefing and argument by counsel, the Court issued its Ruling on TNHC's and BIASC's writ of mandate claims granting the petitions of TNHC and BIASC.

WHEREAS, following receipt of the Court's Ruling, the Parties entered into the written settlement agreement ("AGREEMENT") attached hereto as Exhibit 1.

WHEREAS, pursuant to the terms of the AGREEMENT, the Parties respectfully ask the Court to (1) retain jurisdiction to enforce the AGREEMENT pursuant to Code of Civil Procedure section 664.6, (2) enter Judgment in the form attached hereto as Exhibit 2 and (3) take such other action as necessary or convenient to now restore TNHC's and BIASC's non-writ claims to the Court's active civil calendar for trial and disposition.

DATED: January 5, 2023

Daniel R. Golub

Counsel for Petitioners and Plaintiffs TNHC Canyon Oaks LLC and Building Und

DATED: January 5, 2024

Matthew Summers

Matthew Summers

Counsel for Respondents and Defendants City of Calabasas and Calabasas City Council

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Based on the stipulation of the parties, the Court HEREBY ENTERS JUDGMENT AS FOLLOWS:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. For the reasons set forth in this Court's November 27, 2023 Ruling on Petition for Writ of Mandate, Judgment is entered in favor of petitioners and plaintiffs TNHC Canyon Oaks LLC and Building Industry of Southern California (collectively, "PETITIONERS"), and against respondents and defendants City of Calabasas and the Calabasas City Council (collectively, "RESPONDENTS") on PETITIONERS' joint petitions for writ of mandate.

2. The Clerk of Court shall issue the accompanying Peremptory Writ of Mandate ("WRIT") commanding RESPONDENTS to take the following actions:

a. Set aside the Calabasas City Council's adoption of Resolution No. 2021-1731 and all aspects of the Council's decision of May 26, 2021 to disapprove the West Village Project that was the subject of that resolution and decision ("PROJECT"), or confirm that RESPONDENTS understand the Ruling to have had the legal effect of setting aside the Calabasas City Council's adoption of Resolution No. 2021-1731 and all aspects of the Council's decision of May 26, 2021 to disapprove the PROJECT.

b. Take action to approve the PROJECT, including the PROJECT's requested incentives, waivers and parking reductions for: 1) building heights exceeding the 35-foot maximum allowable limit; 2) retaining wall heights exceeding the maximum allowable limit; and 3) a statutory reduced parking allowance, to which the PROJECT is entitled pursuant to Gov. Code § 65915.

3. As required by Gov. Code § 65589.5(k)-(*l*), the Court retains jurisdiction to ensure that its order is carried out and to determine whether to order remedies for any noncompliance with the WRIT under applicable law. The Court orders Respondents to file with the Court and serve on all parties a return to the WRIT not later than 60 days from the date RESPONDENTS are served with this WRIT, in which return RESPONDENTS shall demonstrate that they have complied with the WRIT.

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4. Per the PARTIES' joint request and Code of Civil Procedure section 664.6, the Court further retains jurisdiction to enforce the terms of the Parties written settlement agreement ("AGREEMENT") attached hereto as Exhibit 1.

5. As prevailing parties, PETITIONERS are entitled to recover costs of suit, and the Court retains jurisdiction over any motions regarding costs and attorney's fees, subject to Cal. Rules of Court, Rules 3.1700 and 3.1702.

DATED: _____

_____
CURTIS A. KIN
JUDGE OF THE SUPERIOR COURT

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EXHIBIT 3

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

TNHC CANYON OAKS LLC, A DELAWARE LIMITED LIABILITY COMPANY,

Petitioner and Plaintiff,

v.

CITY OF CALABASAS; CITY COUNCIL OF THE CITY OF CALABASAS; and DOES 1 through 100, inclusive,

Respondents and Defendants.

Case No. 21STCP01819

[PROPOSED] PEREMPTORY WRIT OF MANDATE

Hon. Curtis A. Kin

Action Filed: June 4, 2021
Trial Date: August 31, 2023

Dept.: 82

Whereas a ruling was entered on November 27, 2023, ordering that a peremptory writ of mandate issue;

Whereas, in accordance with the November 27 ruling the following Writ is hereby issued to the City of Calabasas and the City Council of Calabasas (collectively, "Respondents"):

YOU ARE HEREBY COMMANDED TO: Take the following actions not later than 60 days from the date you are served with the Writ:

1. To set aside the Calabasas City Council's adoption of Resolution No. 2021-1731 and all aspects of the Council's decision of May 26, 2021 to disapprove the West Village Project ("Project") that was the subject of that resolution and decision, or confirm that Respondents understand the Ruling to have had the legal effect of setting aside the Calabasas City Council's adoption of Resolution No. 2021-1731 and all aspects of the Council's decision of May 26, 2021 to disapprove the West Village Project.

2. To take action to approve the Project, including the Project's requested incentives, waivers and parking reductions for: 1) building heights exceeding the 35-foot maximum allowable limit; 2) retaining wall heights exceeding the maximum allowable limit; and 3) a statutory reduced parking allowance, to which the Project is entitled pursuant to Gov. Code § 65915.

YOU ARE FURTHER COMMANDED to make a return to this Writ within 60 days of its receipt, setting forth what you have done to comply.

As required by Gov. Code § 65589.5(k)-(*l*), the Court shall retain jurisdiction to ensure that its order is carried out and to determine whether to order remedies for any noncompliance with this Writ under applicable law. The Court orders Respondents to file with the Court and serve on all parties a return to this Writ not later than 60 days from the date Respondents are served with this Writ, in which return Respondents shall demonstrate that they have complied with this Writ.

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Pursuant to Section 1096 of the Code of Civil Procedure, the Court orders that electronic service of the Writ upon Respondents' counsel of record constitutes personal service of the Writ upon all named Respondents for all purposes, including but not limited to for purposes of Sections 1096 and 1097 of the Code of Civil Procedure.

[SEAL]

CLERK OF THE SUPERIOR COURT

_____
Deputy Clerk

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EXHIBIT 4

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[Exempt From Filing Fee Government Code § 6103]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

TNHC CANYON OAKS LLC, A DELAWARE LIMITED LIABILITY COMPANY,

Petitioner and Plaintiff,

v.

CITY OF CALABASAS; CITY COUNCIL OF THE CITY OF CALABASAS; and DOES 1 through 100, inclusive,

Respondents and Defendants.

Case No. 21STCP01819

[PROPOSED] ORDER FOLLOWING EX PARTE HEARING ON ISSUES

Hon. Curtis A. Kin

Action Filed: June 4, 2021
Trial Date: August 31, 2023

Hearing Date: January 8, 2024
Time: 8:30 a.m.
Dept.: 82

On January 8, 2024 at 8:30 a.m. in Department 82 of the above-entitled Court, located at 111 N. Hill Street, Los Angeles, CA 90012, Petitioner and Plaintiff TNHC Canyon Oaks LLC ("TNHC"), Petitioner and Plaintiff Building Industry Association of Southern California ("BIASC") (TNHC and BIASC collectively, "Petitioners"), and Respondents and Defendants City of Calabasas and Calabasas City Council ("Respondents" or "City") (Petitioners and Respondents collectively, the "Parties") applied ex parte for an order: (a) continuing the January 25, 2024 status conference; (b) for the Court to retain jurisdiction to enforce the parties' settlement agreement pursuant to, *inter alia*, Code of Civil Procedure section 664.6; and (c) to stay the action , pending completion of the settlement terms, provided, however, that Petitioners may file with the Court the Stipulated Judgment and Proposed Writ, and request that both immediately enter, if the applicable conditions or events described in the Settlement Agreement occur or fail to occur before the stay otherwise expires.

Having considered the Application, the fully executed Settlement Agreement, the supporting Memorandum of Points and Authorities, the Declaration of Meghan A. Wharton and Stipulation Regarding Settlement, as well as the papers, records, and files of this action,

THE JOINT EX PARTE APPLICATION IS GRANTED:

IT IS HEREBY ORDERED THAT the Court retains jurisdiction to enforce the Parties' Settlement Agreement pursuant to, *inter alia*, Code of Civil Procedure section 664.6;

IT IS FURTHER ORDERED THAT the January 25, 2024 status conference is continued to _____ at _____;

IT IS FURTHER ORDERED THAT the status conference report is due six court days before the rescheduled status conference;

IT IS FURTHER ORDERED THAT this action is hereby STAYED until the date of the rescheduled status conference, provided, however, that Petitioners retain the right to file a further *ex parte* application seeking the immediate entry of the Stipulated Judgment and Proposed Writ, and request that both immediately enter, if the applicable conditions or events described in the Settlement Agreement occur or fail to occur before the stay otherwise expires.

SO ORDERED.

DATED: _____

_____
CURTIS A. KIN
JUDGE OF THE SUPERIOR COURT

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[Exempt From Filing Fee Government Code § 6103]

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

TNHC CANYON OAKS LLC, A DELAWARE LIMITED LIABILITY COMPANY, Petitioner and Plaintiff, v. CITY OF CALABASAS; CITY COUNCIL OF THE CITY OF CALABASAS; and DOES 1 through 100, inclusive, Respondents and Defendants.	Case No. 21STCP01819 **JOINT EX PARTE APPLICATION TO CONTINUE STATUS CONFERENCE; FOR RETENTION OF JURISDICTION; AND STAY PENDING COMPLETION OF SETTLEMENT; MEMORANDUM; AND ATTORNEY DECLARATION** Hon. Curtis A. Kin Dept.: 82 Hearing Date: January 8, 2024 Time: 8:30 a.m. Action Filed: June 4, 2021

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT ON January 8, 2024 at 8:30 a.m. or as soon thereafter as this matter may be heard, in Department 82 of the above-entitled Court, located at 111 N. Hill Street, Los Angeles, CA 90012, Petitioner and Plaintiff TNHC Canyon Oaks LLC ("TNHC"), Petitioner and Plaintiff Building Industry Association of Southern California ("BIASC") (TNHC and BIASC collectively, "Petitioners"), and Respondents and Defendants City of Calabasas and Calabasas City Council ("Respondents" or "City") (Petitioners and Respondents collectively, the "Parties") will and hereby do jointly apply ex parte for an order: (a) continuing the January 25, 2024 status conference; (b) for the Court to retain jurisdiction to enforce the parties' settlement agreement pursuant, *inter alia*, to Code of Civil Procedure section 664.6; and (c) to stay the action pending completion of the settlement terms as set forth accompanying Stipulation Regarding Settlement and [Proposed] Order Following Ex Parte Hearing on Issues, provided, however, that Petitioners may file with the Court the Stipulated Judgment and Proposed Writ, and request that both immediately enter, if the applicable conditions or events described in the Settlement Agreement occur or fail to occur before the stay otherwise expires.

Ex parte relief is necessary due to impending deadlines for entry of judgment and for appellate relief and the impending deadlines in the Parties' Settlement Agreement. (Wharton Dec., ¶ 3; Cal. Rules of Court, rule 3.1202(c).)

The contact information for the Parties is as follows (Cal. Rules of Court, rule 3.1202(a)):

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This Application is based on this Notice; the Memorandum of Points and Authorities; the

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Declaration of Meghan A. Wharton; the concurrently filed Stipulation Regarding Settlement, as well as the papers, records, and files of this action, and any argument and evidence the Court may permit at the hearing.

As required by the Rules of Court, the City discloses it previously sought *ex parte* relief in this action in December 8, 2023, when it applied for an extension for deadline to file a writ with the Court of Appeal under Government Code section 65589.5, subdivision (m). (Cal Rules of Court, rule 3.1202(b).) The unopposed application was granted on December 11, 2023.

DATED: January ___, 2024

HOLLAND & KNIGHT LLP

JENNIFER L. HERNANDEZ
DANIEL R. GOLUB
DEBORAH BRUNDY
Attorneys for Petitioners and Plaintiffs
TNHC CANYON OAKS LLC and BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA

DATED: January ___, 2024

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MEMORANDUM

I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

On November 27, 2023, this Court filed and served the Parties, via US Mail, with the November 27 Order attaching the November 27, 2023 Ruling in the above-captioned action. That same day, Petitioners electronically served the City with Notice of Entry of the November 27 Order, and the next day Petitioners served Notice of Entry of the November 27 Ruling.

The Parties have since engaged in settlement negotiations and have agreed to settlement terms set forth in the Settlement Agreement (attached as Exhibit 1 to the accompanying Stipulation Regarding Settlement) over which they ask this Court to retain jurisdiction for the purposes of enforcement pursuant to Code of Civil Procedure section 664.6, as set forth in the following Stipulation Regarding Settlement and the accompanying proposed ex parte order. The Parties also ask the Court to continue the January 25, 2024 status conference. The Parties further ask that the Court exercise its discretion to stay this action, pending fulfillment of the Settlement Agreement's terms, provided, however, that Petitioners may file with the Court the Stipulated Judgment and Proposed Writ, and request that both immediately enter, if the applicable conditions or events described in the Settlement Agreement occur or fail to occur before the stay otherwise expires. As set forth herein, good cause exists to grant this *ex parte* application.[1]

II. COURT OVERSIGHT TO ENFORCE THE SETTLEMENT IS AUTHORIZED

Code of Civil Procedure section 664.6 allows the Parties to request the court retain jurisdiction to enforce the terms of the Settlement Agreement until performance in full by the Parties. (Code Civ. Proc., § 664.6; *Wackeen v. Malis* (2002) 97 Cal.App.4th 429, 439–441; *Ironridge Global IV, Ltd. v. ScripsAmerica, Inc.* (2015) 238 Cal.App.4th 259, 267.) Such a request for the trial court must be made (1) during the pendency of the case and (2) in a writing signed by the parties or their attorneys). (Code Civ. Proc., § 664.6, subd. (a, b).) The request must also be

[1] "What constitutes 'good cause' depends largely upon the circumstances of each case." (*Bartlett Hayward Co. v. Industrial Acc. Commission* (1928) 203 Cal. 522, 532; see also *Hernandez-Valenzuela v. Superior Court* (2022) 75 Cal.App.5th 1108, 1124.)

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express, clear, and unambiguous. (*Wackeen*, *supra*, 97 Cal.App.4th at p. 440)

The accompanying Settlement Agreement meets these requirements. The Settlement Agreement calls for future performance and the satisfaction of various conditions. In addition, the Settlement Agreement provides for the immediate entry of a [proposed] Stipulated Judgment and Proposed Writ should certain triggering events occur. Thus, the Court's continued ability to monitor the Settlement Agreement's performance and determine the satisfaction or non-satisfaction of such conditions and events is both mutually desirable and practically necessary. The Court's retention of enforcement authority is expressly authorized under Section 664.6, subdivision (a), which provides:

> If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

(Code Civ. Proc., § 664.6, subd. (a); see, *Critzer v. Enos* (2010) 187 Cal.App.4th 1242, 1252 [appellate court amended judge's order granting motion to enforce to make it an appealable judgment].)

III. THE PARTIES REQUEST A STAY OF THE ACTION

To allow the Parties adequate time to determine whether certain terms of the Settlement Agreement will be effectuated, the Parties respectfully ask this Court to: (a) continue the January 25, 2024 status conference to a date on or after July 1, 2024; (b) set the due date for the status conference report for at least six days before the rescheduled status conference; and (c) stay the action until the new status conference date, provided, however, that Petitioners may file with the Court the Stipulated Judgment and Proposed Writ, and request that both immediately enter, if the applicable conditions or events described in the Settlement Agreement occur or fail to occur before the stay otherwise expires. This Court has inherent authority to continue the status conference, set related deadlines, and stay the case:

> '[A] court ordinarily has inherent power, in its discretion, to stay proceedings when such a stay will accommodate the ends of justice.'

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> (*People v. Bell* (1984) 159 Cal.App.3d 323, 329, 205 Cal.Rptr. 568.) As the court in *Landis v. North American Co.* (1936) 299 U.S. 248, 254, 57 S.Ct. 163, 81 L.Ed. 153 explained, 'the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.'

(*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 141; see, Cal. Const., art. VI, § 1 [granting California courts broad inherent power "not confined by or dependent on statute."]; *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967 [inherent powers of the courts include "fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation."]; see also, *Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155 Cal.App.4th 736, 758.)

Here the ends of justice will be met by a continuance and stay because that will allow the Parties the time to fulfill the Settlement Agreement terms. Completion of the Settlement Agreement terms will result in a resolution on all causes of action. Such resolution will be highly beneficial to the Parties and the Court. (See, *Fisher v. Superior Court* (1980) 103 Cal.App.3d 434, 440 ["The encouragement of settlements has always been part of the strong public policy of our state."].)

IV. EX PARTE RELIEF IS PROPER HERE

Ex parte relief is warranted because the Parties require certainty regarding litigation timelines so they may implement the Settlement Agreement terms. [Wharton Dec., ¶ 3.] Due to the backlog in the Courts, it sometimes takes over three-weeks for stipulations to be signed by the Court. [*Id*.] Here the Court's retention of jurisdiction to enforce the Parties' settlement agreement is an essential settlement term. [*Id*.] Therefore, the Parties require the certainty of knowing that their Stipulation Regarding Settlement has been approved by the Court and that the Parties have sufficient time to implement the Settlement Agreement's terms. (*Newsom v. Superior Court of Sutter County* (2020) 51 Cal.App.5th 1093, 1097 [*ex parte* proceedings are "designed to afford relief on an essentially emergency basis" in the "plainest and most certain of cases"].) The Parties will be severely prejudiced absent the requested Order.

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V. CONCLUSION

Therefore, the Parties request that the Court enter the [Proposed] Order Following Ex Parte Hearing on Issues submitted with this application allowing for this Court's retention of jurisdiction to enforce the Parties' Settlement Agreement and exercise its discretion to continue the January 25, 2024 status conference and to stay this action as provided herein.

DATED: January ___, 2024

HOLLAND & KNIGHT LLP

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DANIEL R. GOLUB
DEBORAH BRUNDY
Attorneys for Petitioners and Plaintiffs
TNHC CANYON OAKS LLC and BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA

DATED: January ___, 2024

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DECLARATION OF MEGHAN A. WHARTON

I, Meghan A. Wharton, declare as follows:

1. I am an attorney licensed to practice law in the State of California and before this Court. I am a Senior Counsel with the law firm Colantuono, Highsmith & Whatley PC, attorneys of record for City of Calabasas and City Council for City of Calabasas.

2. I submit this declaration in support of the Parties Joint Ex Parte Application to Continue Status Conference; for Retention of Jurisdiction; and Stay Pending Completion of Settlement. I have personal knowledge of the matters set forth herein and if called upon as a witness, I could competently testify thereto.

3. *Ex parte* relief is warranted because the Parties require certainty regarding litigation timelines so they may implement the Settlement Agreement terms. Due to the backlog in the Courts, it sometimes takes over three-weeks for stipulations to be signed by the Court. Here the Court's retention of jurisdiction to enforce the parties' settlement agreement is an essential settlement term.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this _____ day of January, 2024, at Nevada City, California.

Meghan A. Wharton

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

TNHC CANYON OAKS LLC, A DELAWARE LIMITED LIABILITY COMPANY,

Petitioner and Plaintiff,

v.

CITY OF CALABASAS; CITY COUNCIL OF THE CITY OF CALABASAS; and DOES 1 through 100, inclusive,

Respondents and Defendants.

Case No. 21STCP01819

STIPULATION REGARDING SETTLEMENT

Hon. Curtis A. Kin

Action Filed: June 4, 2021
Trial Date: August 31, 2023

Dept.: 82

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STIPULATION

WHEREAS, on November 27, 2023, the Court issued its Ruling on Petition for Writ of Mandate ("RULING") following a full briefing and hearing on petitioners and plaintiffs TNHC Canyon Oaks LLC, a Delaware limited liability company and Building Industry Association of Southern California's (collectively, "PETITIONERS") consolidated writ of mandate petitions.

WHEREAS, in the same RULING the Court scheduled a January 25, 2024 status conference to address what, if anything, remains in dispute and must be resolved, and directed PETITIONERS and respondents and defendants City of Calabasas and the City Council of the City of Calabasas (collectively, the "PARTIES") to prepare and file a joint status report to this effect by January 19, 2024.

WHEREAS, the PARTIES have now entered into the written settlement agreement ("AGREEMENT") attached hereto as Exhibit 1.

WHEREAS, by means of the AGREEMENT the PARTIES hope to finally settle and resolve all of their disputes involved in or related to these consolidated actions.

WHEREAS, the AGREEMENT provides for a number of actions to be taken by the PARTIES in good faith, some of which are to occur before the January 25, 2024 status conference, but the remainder will take more time to accomplish and certain conditions set forth in the AGREEMENT being met.

WHEREAS, under certain circumstances, including but not limited to a failure by Respondents City of Calabasas, et al. to timely take defined actions towards processing an alternative development proposal for the project site, the AGREEMENT provides for the immediate entry of a stipulated judgment ("STIPULATED JUDGMENT") and writ of mandate ("WRIT") consistent with the terms of the Court's RULING.

WHEREAS, to effectuate the PARTIES' mutual desire to avoid further litigation, the PARTIES agree all further proceedings in these consolidated actions should be stayed pending the occurrence or non-occurrence of such conditions or events described in the AGREEMENT.

NOW THEREFORE, the PARTIES, by and thorough their respective counsel of record, mutually request that the Court issue an order as follows:

1. Continuing the January 25, 2024 status conference until at least July 1, 2024, and the January 19, 2024 status conference report deadline to a date at least 6 days before the rescheduled status conference;

2. Staying these consolidated actions for a like period with the caveat PETITIONERS may, in accordance with the terms of the AGREEMENT, file an *ex parte* application asking the Court to enter the STIPULATED JUDGMENT and WRIT if the applicable conditions or events described in the AGREEMENT occur or fail to occur before the stay otherwise expires;

3. Otherwise reserving the Court's continuing jurisdiction to enforce the AGREEMENT pursuant to, *inter alia*, Code of Civil Procedure section 664.6; and

4. This Stipulation shall be given effect by *ex parte* order of the Court.

DATED: _____ _____
Daniel R. Golub

Counsel for Petitioners and Plaintiffs TNHC Canyon Oaks LLC and Building Industry Association of Southern California

DATED: _____ _____
Matthew Summers

Counsel for Respondents and Defendants City of Calabasas and Calabasas City Council

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