PATTERSON & O'NEILL, PC

235 Montgomery Street, Suite 950
San Francisco, CA 94104
Telephone: (415) 907-9110
Facsimile: (415) 907-7704
www.pattersononeill.com

Kristina Estudillo, Principal Planner
City of San Rafael Planning Division
1400 Fifth Ave.
San Rafael, CA 94901

April 24, 2026

VIA E-MAIL

Re: Notice of Course of Conduct (Gov. Code § 65589.5(h)(6)(E)
Dominican Valley, LLC Housing Development Project
Magnolia Avenue and Deer Park Avenue, City of San Rafael (APN 015-163-03)
File No: CDR23-002, ED23-062, TS23-001 (PLAN23-081) and (PLAN 24-048)

Dear Ms. Estudillo:

As you are aware, our office represents Dominican Valley, LLC, the applicant for a housing development project located at Magnolia Avenue and Deer Park Avenue (APN 015-163-03) in the City of San Rafael ("City"). The proposed Project is for the construction of 50 primary residential units, with 14 accessory dwelling units, with twenty percent of units reserved for low-income households that is protected by the builder's remedy provisions of the Housing Accountability Act ("HAA"). This letter is to provide notice that the City's actions, which have caused unnecessary delay and have needlessly increased the cost of the Project, must immediately cease.

PLEASE TAKE NOTICE that the City has undertaken a course of conduct that effectively disapproves the proposed housing development without taking final administrative action, as explained in more detail below. (Gov. Code § 65589.5(h)(6)(D).)

At each stage since the Project's initial submittal on June 12, 2023, the City has refused to comply with its obligations under the HAA and applicable state laws to timely process the application. The City first unlawfully refused to accept the application as complete; then failed to recognize the Project has been deemed consistent with all applicable standards; and still has failed to recognize the Project's rights as a builder's remedy project. The City has continued to delay through an abuse of the California Environmental Quality Act (CEQA) process to punish the Project on the basis of its builder's remedy status; has refused to evaluate the Project for applicable CEQA streamlining and exemptions; and has charged exorbitant fees far beyond what is reasonable.

Please be advised that the City has five working days of receipt of this written notice to post the notice on the City's website, provide the notice to any person who has made a written request for notices pursuant to subdivision (f) of Section 21167 of the Public Resources Code, and file the

notice with the County Clerk. (Gov. Code § 65589.5(h)(6)(D)(ii).) Further, the City has 90 days of this written notice to cease the challenged conduct, or else the City bears the burden to establish its course of conduct does not constitute a disapproval of the housing development project. (Gov. Code § 65589.5(h)(6)(D)(v).)

I. Project Background

The City's deadline to have a certified housing element was January 31, 2023. The applicant submitted a preliminary application for the Project on June 13, 2023, before HCD certified the City's housing element as substantially compliant on June 22, 2023. (See **Exhibit A**.) The applicant submitted a development application for the Project on December 6, 2023, within 180 days of the preliminary application. The Project, which reserves twenty percent of units for low-income households, meets the definition of "housing for very low, low-, or moderate-income households" and therefore qualifies as a builder's remedy project under the HAA. (Gov. Code § 65589.5(h)(3).)

II. The City Unlawfully Refused to Accept the Application as Complete

The City issued an incompleteness letter on January 4, 2024. (See **Exhibit B**.) The applicant then resubmitted a project application on March 29, 2024. (See **Exhibit C** for the March 29, 2024, cover letter for the resubmittal.) The City issued a second incompleteness letter on April 26, 2024, which included demands for general plan amendment and rezoning applications due to purported "project inconsistencies" – even though builder's remedy projects must be approved *regardless* of any inconsistencies. (See **Exhibit D**.) The applicant then resubmitted a project application on July 24, 2025. (See **Exhibit E**).

The City issued a *third* incompleteness letter on August 23, 2024, still demanding a general plan amendment and rezoning that the applicant did not request or need. (See **Exhibit F**.) The applicant had no choice but to appeal the City's unlawful incompleteness determination. (See **Exhibit G**.) The City also forced the applicant to withdraw its Density Bonus Law application – even though builder's remedy project are clearly entitled to Density Bonus Law protections. (Gov. Code § 65589.5(f)(1).) The City eventually conceded that the application submittal *was* complete on October 8, 2024, and the next day the applicant dropped the appeal. (See **Exhibit H**.)

This conduct was just the beginning of the City's refusal to recognize the Project's builder's remedy rights, unnecessarily delay processing the application, and needlessly increasing costs. The City's refusal to accept a thorough, complete application resulted in a delay of seven months. All the while the City charged the applicant for the staff time it time violating state housing law.

III. The City Unlawfully Stalls Environmental Review

In May 2025, nearly eight months after the complete application was submitted, the City finally began CEQA review when it issued a Request For Proposals ("RFP") to solicit environmental review services for the Project. Pursuant to CEQA, a lead agency is required to conduct an initial study within 30 days. (CEQA Guidelines § 15101.) At most, if a full scope EIR is required,

environmental review is supposed to conclude within one year. (CEQA Guidelines § 15108.) The City took eight months just to begin the process.

The RFP explicitly stated that the Project was inconsistent with City code and, in part on that basis, the City had determined that the Project required a full scope environmental impact review (EIR). (See **Exhibit I**.)

The applicant responded to the RFP to demand that the City include an analysis of whether environmental review could be streamlined. (See **Exhibit J**.) The City responded that the environmental consultant, when retained, would evaluate potential streamlining options. (See **Exhibit K**.) This is again inconsistent with the 30-day deadline to conduct a preliminary review to determine the necessary level of CEQA review. (CEQA Guidelines § 15101.) On October 6, 2025, almost a year to the day after the City accepted the application as complete, the City Council finally authorized an agreement for environmental consulting services to *begin* CEQA review.

The agreement was with Environmental Science Associates (ESA) for an amount of $675,221 – far more than would be expected for a fairly modest 64-unit housing project. (See **Exhibit L**.) In September 2025, the City billed the applicant $742,743 for the entirety of the cost of ESA's services, which included a full scope EIR, subject to a 10 percent administrative charge. (See **Exhibit M**.)

The agreement and invoice was entirely inconsistent with the City's statement that the environmental consultant would evaluate potential streamlining options when retained. The City has refused to proceed with processing the application or evaluating statutory streamlining options until three-quarters of a million is paid in full.

IV. The City Fails to Recognize the Project as Code Consistent

The HAA sets strict timelines for local agencies to determine whether a proposed housing development project is inconsistent, not in compliance, or not in conformity with any applicable plan, program, policy, ordinance, standard, or other requirement. (Gov. Code § 65589.5(j)(2).) The HAA states that a local agency must provide written documentation identifying and explaining any inconsistencies "[w]ithin 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units." (Gov. Code § 65589.5(j)(2)(A).)

The term "deemed" establishes an absolute requirement and numerous courts have concluded a "deemed" fact shall have the *same legal effect* as an "actual" fact. (*Irwin v. Pickwick Stages System, Inc.* (1933) 134 Cal. App. 443, 448 [emph. added].) A trial court has confirmed that this "deemed" fact analysis undoubtedly applies to the HAA. The court explained that even though the applicant admitted its project was inconsistent with the city code, the project was nonetheless deemed consistent because the local agency had not identified the inconsistency within the timeframes required by the HAA. (*Park 7, LLC et. al. v. City of Fresno, et. al.*, Sup. Ct. of Fresno (Case No. 24CECG04298).) (See **Exhibit N**.) The court ruled that "[t]o then deny the project for being non-compliant . . . runs afoul of the law."

The City issued an inconsistency determination on July 2, 2025—267 days after the application was deemed complete—claiming that the Project was inconsistent with various City standards. (See **Exhibit O**.) The Project contains fewer than 150 units, and therefore the City had 30 days to make a written compliance determination (i.e., by November 7, 2024). The City failed to make a timely consistency determination, and thus the Project has been deemed consistent with all applicable City plans, programs, policies, ordinances, standards, requirements, and other similar provisions. The letter also stated that the City "takes no position on the applicability of the builder's remedy to the proposed project at this time" – despite the fact that the builder's remedy clearly applies.

The applicant formally demanded that the City rescind its inconsistency determination and recognize the Project's deemed consistent status, but the City refused to budge from its position and has yet to issue a correction. (See **Exhibit P**.)

The City's refusal to recognize the project's consistency status since November of 2024 constitutes unnecessary delay and needlessly increases the cost of the Project in a manner that effectively disapproves the Project. Furthermore, the City understands its refusal to deem the application as consistent is improper. At the San Rafael City Council meeting on October 6, 2025, speaking to the inconsistency determinations the City transmitted to the applicant, Principal Planner Kristina Estudillo stated that "the City does not have an ability to force the applicant to change their project to comply."

This statement is a clear acknowledgment of the rights to which the applicant is entitled, yet the City persists in its unwillingness to deem the Project consistent with applicable planning standards, needlessly delaying the Project in violation of the HAA.

The Project is deemed consistent as a matter of law. Refusal to recognize the Project as deemed consistent is a violation of the HAA. Therefore, the City must rescind its incorrectly issued inconsistency determinations and must recognize the Project's consistency with all applicable standards.

V. The City Fails to Recognize the Project's Builder's Remedy Status

A. The Project is a Builder's Remedy Project

Known as the builder's remedy, a local government cannot deny or conditionally approve a housing development project with the requisite percentage of affordable housing *even if* the project is inconsistent with the jurisdiction's zoning and general plan, unless the local agency can make one of the specifically enumerated written findings in Gov. Code § 65589.5(d) based upon a preponderance of the evidence in the record. One of those findings is to have adopted a housing element in substantial compliance with the Housing Element Law when the preliminary application was submitted. (*Id*. subd. (d)(5).) The HAA defines "condition approval" to include "imposing on the housing development project, *or attempting to subject it to*, development standards, conditions, or policies." (*Id*. subd. (h)(12) [emph. added].)

HCD has made clear that if an applicant submits a complete preliminary application before an agency achieves substantial compliance with the Housing Element Law, a project remains

eligible for the builder's remedy throughout the entitlement process, even if an agency subsequently achieves substantial compliance. (See **Exhibit R**.) The Legislature also recently enacted AB 1893, effective January 1, 2025, which confirms that builder's remedy applications submitted at a time when a local government is not in substantial compliance with the Housing Element Law are entitled to the builder's remedy protections throughout the application process. (Stats. 2024, ch. 268, § 1 (g).)

The applicant submitted a preliminary application for the Project on June 13, 2023, during the period in which the City was not in substantial compliance with the housing element because the City did not received certification from HCD until June 22, 2023. The Project provides the requisite percentage of affordable housing under the HAA. (Gov. Code § 65589.5(h)(3).) The applicant subsequently submitted a complete development application, and therefore the Project is vested in the City's noncompliant status. In other words, the Project is protected by the builder's remedy and *must* be processed as a builder's remedy project.

B. The City Violated the HAA by Refusing to Recognize the Project as a Builder's Remedy Project

AB 1893 states unequivocally that builder's remedy projects "***shall not*** be required to apply for, ***or receive approval of***, a general plan amendment, specific plan amendment, rezoning, or other legislative approval." (Gov. Code § 65589.5(f)(6)(D) [emph. added].) This makes sense, particularly because the Legislature has now commanded that builder's remedy projects "shall be deemed consistent" with all applicable standards "***for all purposes***, and shall not be considered or treated as a nonconforming lot, use, or structure ***for any purpose***." (*Id*. [emph. added].)

In addition, the HAA defines "disapprove" to mean any time a local agency determines that the applicant has "lost its vested rights under the preliminary application *for any reason* other than those described in subdivisions (c) and (d) of Section 65941.1." (*Id*. subd. (h)(6)(H).) The HAA makes clear that *any* attempt to extinguish a project's vesting rights is a violation. The HAA states that a local agency has committed a violation any time the agency "required *or attempted to require* a housing development project to comply with an ordinance, policy, or standard not adopted and in effect when a preliminary application was submitted." (*Id*. subd. (k)(1)(A)(i)(III) [emph. added].)

The City's belated inconsistency determination "takes no final position on the applicability of the builder's remedy to the proposed project at this time[,]" and as a result the City is attempting to process the Project as inconsistent with standards that were not in effect when the applicant's preliminary application was submitted such as the City's General Plan height and density standards, and the City's Hillside Development Overlay District standards. This clearly violates the HAA because it ignores the Project's builder's remedy status. (*See id*. subd. (k)(1)(A)(i)(III).) Further, the City's inconsistency determination is clearly "attempting to subject [the Project] to, development standards, conditions, or policies" in a manner that would render the Project infeasible by suggesting that the proposed residential uses are not allowed, the density must be lowered, more parking must be provided, the units must be significantly reduced in mass and size, and more. (*See id*. subd. (h)(12).)

The City's failure to recognize the Project's deemed consistent builder's remedy status has fueled opposition to the Project from members of the community. The lead opponent of the Project is the Save Dominican Valley group, which sends out "community emails" to keep supporters updated. The group's September 2nd email highlighted the language from the City's inconsistency determination that the Project was inconsistent with the City's General Plan and Zoning Code, and "takes no final position on the applicability of the builder's remedy to the proposed project at this time" – framing this as a clear win for opponents of the Project. (See **Exhibit S**.)

VI. The City Has Abused CEQA to Delay and Increase Costs

AB 1893 unambigiously prohibits local agencies from punishing projects on the basis of a builder's remedy status. This is consistent with the Legislature's finding that "current land use permitting practices continue to hinder the state's statutory housing objectives in increasing housing supply to meet demand." (Stats. 2024, ch. 268, § 1(g).) The HAA prohibits a local agency from imposing "any requirement, process, practice, or procedure or undertak[ing] any course of conduct, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely *or partially* on the basis that the project is a builder's remedy project." (Gov. Code § 65589.5(f)(6)(E) [emph. added].)

The City is imposing unnecessary CEQA review and applying increased fees expressly on the basis that the Project is a Builder's remedy project. The City's express intent to punish the Project for utilizing the builder's remedy is evidenced by the communications made to and by the City in the RFP process.

A. The City is Punishing the Project with Excessive Environmental Review on the Basis of its Builder's Remedy Status

The RFP response explicitly states that "City staff have elected to prepare an EIR for this project *in part due to the nature of the proposed project as a Builder's Remedy project* and its initially identified inconsistencies with City policies." (See **Exhibit T**.) Furthermore, the RFP response calls for "special attention…to determine if a potential physical environmental impact could occur because of any inconsistency" precisely because "*as a Builder's Remedy project*, the proposed project may not be consistent with every regulation within existing plans and policies."

These statements clearly show the City is imposing a full scope EIR, charging the applicant over $800,000 in consultant costs and refusing to process the Project until receiving full payment, *based on* the Project's builder's remedy status – in direct violation of the HAA.

a. The City's RFP Misrepresented the Project to Consultants, Resulting in an Inaccurate Scope of Work and Costs

The City's RFP calls for a major environmental impact review in part based on unlawful assertions that the Project is inconsistent with applicable local standards, and in part based on mischaracterizations of the Project site history and prior land use designations.

The City drove RFP applicants to propose excessive scopes of work when it inaccurately represented that the Project is inconsistent with applicable local standards. As explained above, there *are no project inconsistencies*, not only due to the City's failure to timely identify any such inconsistency, but also because builder's remedy projects are deemed consistent ***for all purposes*** – including environmental review. Yet the City repeatedly expressed in its RFP that the Project will require significant environmental review on the basis that it will deviate from local standards. The inaccuracies advanced by the City's RFP resulted in a scope of work representing duplicative, costly review borne entirely by the applicant.

The City drove RFP applicants to propose excessive scopes of work by knowingly supplying inaccurate and incomplete information about the Project site. The City's RFP describes the current zoning at the site as *solely* allowing the construction and operation of a temporary "simulated outdoor nursery" and other "limited and temporary site improvements to the property" related to a plant nursery serving Dominican University. (See **Exhibit I**.) This depiction neglects anticipated residential development of the site in the City's General Plan and 4th and 5th Cycle Housing Elements. In at least two consecutive Housing Elements – including the 5th Cycle housing element that was in effect when the preliminary application for this Project was submitted – the City designated the Dominican Valley parcel in its site inventory as a location suitable for a future affordable multifamily housing, anticipating a minimum of 32 new housing units on the site. (See **Exhibit U**.) And in its current General Plan, the Neighborhood Element discusses the property as having "the potential for housing, including student housing and faculty/staff housing, which is a significant local and community need." (See **Exhibit V**.)

The City's RFP conspicuously omits any mention of the Project site's designation for housing development under its current zoning, General Plan, or Housing Elements. Indeed, the City's selected consultant ESA confirms their understanding of the Project comports precisely with the City's misrepresentations. ESA describes the Project site as zoned to allow development of a campus agricultural research facility, and the Project as not meeting "the applicable maximum height and density limit set by the General Plan, nor . . . the intended uses of the zoning designation." (See **Exhibit T**.)

b. The City Selected a Firm that Held Itself Out as Capable of being Exceptionally Obstructive to the Project

In its RFP response, ESA repeatedly characterized the Project in a negative light and expressed willingness to circumvent housing laws. ESA repeatedly labeled the project as "controversial," "sensitive," and "complex." (See **Exhibit T**.) The RFP response discussed the firm's experience dealing with builder's remedy projects, characterizing builder's remedy projects as a "free-for-all" until the Legislature enacted AB 1893 to permit local agencies to exercise greater control over these projects with proper knowledge of the law. (See **Exhibit T**.) This characterization stands diametrically opposite the Legislature's declaration in AB 1893 that the bill "should not be interpreted as constraints on or impediments to processing current "builder's remedy" project applications deemed complete." (Stats. 2024, ch. 268, § 1(i).) This legal commentary is not only completely inappropriate, but completely irrelevant to an environmental consultant's role.

The *only* purpose of environmental review is to identify potential environmental effects of a project. The purported "controversial" nature of a project has nothing to do with those potential impacts. The RFP response makes clear that ESA is hostile to builder's remedy projects and intends to weaponize CEQA to reign in what it antagonistically describes as a free-for-all – and to charge the applicant as much as possible to fight their own project.

B. The City's Approach to Environmental Review Caused Unnecessary Delay and Needlessly Increases the Cost of the Project

In abusing CEQA for its express purpose of punishing the Project on the basis of its builder's remedy status, the City has taken a course of conduct that effectively disapproves the Project. The City conceded in the RFP process that it opted for a full scope EIR in part because the Project is a builder's remedy project in violation of the HAA. The City misrepresented the Project's consistency status to induce a protracted and costly environmental review process. Finally, the City sought out consultant services that manifestly aim to obstruct, rather than fairly review, the environmental impacts of Project. These actions have culminated in months of additional delay and nearly $1 million in additional costs to the Project in fees alone.

VII. The City Refuses to Streamline Environmental Review

The City has ignored the environmental review streamlining provision in Pub. Res. Code § 21083.3 for "Projects Consistent With Development Density Established By Existing Zoning, General Plan, Or Community Plan." The Consistent Projects exemption "mandates" that projects consistent with the development density of existing zoning and general plan policies for which an EIR was certified "shall not require additional environmental review," except to determine whether there are project-specific significant effects. (Cal. Code Regs. Tit. 14, § 15183(a).)

When an EIR has been prepared for a general plan and a project is consistent with the general plan, CEQA *requires* a project to undergo additional environmental review only to the extent "there are project-specific significant effects which are peculiar to the project or its site." (Cal. Code Regs. Tit. 14, § 15183; Pub. Res. Code § 21083.3; *Hilltop Group, Inc., et al v. County of San Diego, et al.* (2024) 99 Cal.App.5th 890.) HCD has confirmed that a builder's remedy project's consistency status with all local standards applies for the purposes of determining the application of CEQA to a project. (see **Exhibit W**; Gov. Code § 65589.5(h)(11).)

The City has already prepared an EIR for its General Plan 2040 update, as well as an addendum for its 2023 Housing and Safety Elements Update. As a matter of law, the Project is deemed consistent with the City's standards, *including* the General Plan and Housing and Safety Elements Update for which an EIR was already certified. Further, under CEQA a lead agency is required to determine whether a project is subject to any statutory exemption and whether an EIR is going to be required within 30 days after an application is accepted as complete. (Cal. Code Regs. Tit. 14, §§ 15102; 15060.)

The Project application was deemed complete on October 8, 2024. More than a year has passed, and the City is no closer to completing CEQA review. The City is aware of its obligations under the law to consider streamlining or tiering but persists in demanding that the applicant pay nearly

$800,000 for an unnecessary full scope EIR before determining whether streamlining is applicable. (See **Exhibit K**; **Exhibit M**.)

While the applicant awaits the City's proper evaluation of CEQA streamlining, the City continues to cast the Project in a negative light to the public under the threat of its excessive environmental review cost. The Director of the Community Development and Economic Development Department, Micah Hinkle, commented to the Marin Independent Journal on February 5, 2026 that the City will not evaluate the project under CEQA until the applicant pays the entire amount, noting "we are approaching 6-months [sic] of inactivity." (See **Exhibit X**.) The City's characterization of the Project as inactive due to the Applicant's inactivity, rather than its own refusal to lawfully evaluate the Project, has generated requests from the community that the City deem the application withdrawn. (See **Exhibit Y**.)

Failure to recognize the Project as consistent for purposes of CEQA and insistence that the Project be subject to unnecessary, excessively costly environmental review is a direct violation of the HAA. The City must evaluate CEQA streamlining opportunities for the Project and proceed to evaluate the application accordingly.

VIII. The City Has Refused to Process the Project Ministerially

The Housing Element Law provides several pathways to ensure that sites designated as suitable for residential development are considered ministerially without any discretionary review. Importantly, ministerial projects are not subject to CEQA at all. (Cal. Code Regs. Tit. 14, § 15268.) In violation of the Housing Element Law, the City has refused to consider ministerial approval pathways.

A. The Project is Subject to Ministerial Approval Because the City Failed to Rezone the Project Site

The Housing Element Law contains mandatory deadlines for local government's to rezone sites that are designated as suitable for residential development in a housing element site inventory. If a local government fails to complete the rezoning, "a local government *may not disapprove a housing development project, nor require a conditional use permit, planned unit development permit, or other locally imposed discretionary permit, or impose a condition that would render the project infeasible*" if the development project is on the site inventory and complies with applicable, objective standards. (Gov Code § 65583(g).)

As described above, the Project site was designated in the City's 4th and 5th housing element cycle as suitable for residential development, and as such the City was required to rezone the site for residential uses permitting a minimum of 32 new housing units on the site. The City has admitted that it failed to rezone the site according to this designation, stating in its inconsistency notice that the "project site is zoned PD (Planned Development) and subject to Ordinance No. 1884, which sets development standards for the site" and that "proposed residential uses are not associated with Dominican University ***and are not any of the five uses allowed by Ordinance No. 1884 and are therefore not permitted on the site.***" In other words, the City has conceded that it failed to rezone the site to permit 32 residential units on the site as it committed to do in its

housing element. Further, as described above, the Project is deemed consistent with all applicable standards. As such, the City may not disapprove the Project, require a conditional use permit, planned unit development permit, or *any other locally imposed discretionary permit*." (Gov Code § 65583(g).) In other words, the City must approve the Project ministerially.

B. The Project is Subject to Ministerial Approval As a Carry-Through Housing Element Site

A vacant site designated for lower income households in two or more consecutive Housing Element site inventories must be subject to program allowing by right approval of housing developments providing sufficient affordable units. (§ 65583.2 (c).) This provision was brought about by AB 1397 to target sites repeatedly recycled by local agencies across multiple Housing Element cycles without taking steps to actually see affordable housing development through on those sites. (Housing and Community Development Com., Assem. Floor Analysis of Assem. Bill No. 1397 (2017-208 Reg. Sess.) Sept. 15, 2017, p. 4).)

The Housing Element Law states that a local government shall "allow residential use by right" where "housing developments in which at least 20 percent of the units are affordable to lower income households" are proposed on vacant sites that have been included in two or more consecutive housing element cycles. (Gov. Code § 65583.2 (c).) The law defines "use by right" to mean a local government shall not require any "conditional use permit, planning unit development permit, or other discretionary local government review or approval that would constitute a 'project' for the purposes of [CEQA]." (Gov. Code § 65583.2(i).)

The Project site is vacant, was included in two consecutive housing element site inventories, and proposes a housing development in which at least 20 percent of the units are affordable to lower income households. The City carried the Project site through both the 4th and 5th Cycle Housing Elements, both times designating the site for multifamily housing. (See **Exhibit U** for the 5th Cycle Housing Element, which re-adopted all 4th Cycle Housing Element Sites, including the Project site).

Because the site qualifies as a carry-through site and provides the requisite 20% of housing units dedicated to low-income households, the Project is entitled to ministerial use by right approval and is not subject to environmental review at all. The City must proceed to process the project without discretionary review and recognize the Project does not constitute a "project" for the purposes of CEQA as required by the Housing Element Law. Failure to approve the project ministerially and without the application of CEQA requirements pursuant to Government Code section 65583.2 needlessly delays the project and increases project costs.

IX. Conclusion

The HAA mandates that local agencies approve certain housing projects like the Dominican Valley Project because of the critical problem of a lack of housing, which has resulted in significant consequences for Californians. (Gov. Code § 65585.5(a)(1)(A-D)).

The City's imposition of unnecessary delays and needless cost increases on this Project as detailed above represents exactly the course of conduct that the HAA is designed to prohibit. The City has even refused to meet with the applicant's team to discuss the processing of this Project in good faith unless the applicant pays nearly a million dollars in unlawful fees. The City's pattern of promulgating falsities and mischaracterizations to the public and reviewing consultants has clearly demonstrated the City's hostility toward the Project and inability to evaluate the Project fairly. We demand the City immediately cease its course of conduct and approve this deemed consistent Project ministerially as required by law. Otherwise, the applicant will have no choice but to bring legal action to ensure compliance where the City will bear the burden to demonstrate how it has complied with the requirements of the HAA.

We look forward to the City's prompt response to this important matter.

Very Truly Yours,

PATTERSON & O'NEILL, PC

Brian O'Neill
Attorneys for Dominican Valley, LLC

cc: Andrea Visveshwara, Chief Assistant City Attorney
Greg Minor, Deputy Director of Community and Economic Development
Nira Doherty, Burke, Williams & Sorensen, LLP