COX CASTLE NICHOLSON

Cox, Castle & Nicholson LLP
2029 Century Park East, Suite 2100
Los Angeles, California 90067-3284
P: 310.284.2200 **F**: 310.284.2100

Alexander M. DeGood
310.284.2205
ADeGood@coxcastle.com

File No. 74177

September 28, 2021

VIA E-MAIL

Alhambra City Council
111 South First Street
Alhambra, CA 91801
via email to: lmyles@cityofalhambra.org

Re: The Villages at The Alhambra - Compliance with Housing Accountability Act and Housing Crisis Act

Dear Mayor Lee and Honorable Members of the City Council:

This office represents ELITE-TRC Alhambra Community LLC, Elite-TRC North Parcel LLC, and the Corner Company, LLC (collectively, the "Applicant") in regard to the proposed residential project at 1000 South Fremont Avenue (the "Project") in the City of Alhambra (the "City").

In accordance with the Project's proposed Development Agreement, the Project proposes to construct a maximum total of 790 dwelling units on an approximately 38.93-acre infill site located within the City. Though not required to provide any affordable housing, consistent with the proposed Development Agreement, the Project would voluntarily set aside approximately 15% of the Project's rental units for Low-Income and Moderate-Income tenants. Notably, the Project's units would count towards the City's 2021-2029 Regional Housing Needs Allocation ("RHNA"), for which the City is required to plan for an additional 6,825 total units across various levels of affordability.[1]

Further, the Development Agreement proposes to provide numerous public benefits to the City, including a potential Community Benefit Payment; a requirement to ensure that local sales and use taxes for the Project are allocated to the City; approximately 16 acres of open space and a half-acre park accessible to the public; and the implementation of various traffic assessment and management measures, including street intersection and pedestrian improvements.

The benefits to the City from the Project are substantial. Despite this, recent comments by some City Council members evince a misunderstanding of the factual record before the City and the mandates of state law, as members have expressed an opinion that the City can deny the

[1] *See, e.g.*, the Southern California Association of Government's Local Housing Data for the City updated in April 2021: https://scag.ca.gov/sites/main/files/file-attachments/alhambra-he-0421.pdf?1620802130.

Project. It cannot. As detailed in previous correspondence, the Housing Accountability Act ("HAA") compels approval of the Project. Further, even in the absence of the HAA, there is no evidence in the administrative record, let alone substantial evidence, that would support denial findings for the Project's entitlements. As more fully set forth below, the City's responsibilities are clear. It must approve the Project.

A. <u>The HAA Substantially Limits Local Governments' Authority to Deny Housing Development Projects.</u>

The HAA serves to limit a local government's ability "to deny, reduce the density for, or render infeasible housing development projects…" Gov. Code Section 65589.5(a)(2)(K). Notably, the HAA lays blame for the state's housing crisis on the "…activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing." Gov. Code Section 65589.5(a)(1)(B). The legislature has repeatedly amended the HAA in recent years to strengthen the limitations on such local governments.[2]

The HAA states that "[w]hen a housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time the application was deemed complete but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density," such denial can only occur if the local agency can make two findings that cannot be made here. Gov. Code Section 65589.5(j)(1). As a threshold matter, a housing development project shall be deemed compliant with applicable standards "if there is substantial evidence that would allow a reasonable person to conclude that the housing development project…is consistent, compliant, or in conformity." (Gov. Code Section 65589.5(f)(4).)

The two findings required for a project denial pose a high burden on local governments. First, the local government must find that "[t]he 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. Gov. Code Section 65589.5(j)(1)(A). The HAA further states that a "'specific, adverse impact' means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." Gov. Code Section 65589.5(j)(1)(A). The HAA "thus imposes mandatory conditions limiting [a city's] discretion" to deny permits. *North Pacifica, LLC v. City of Pacifica* (2002) 234 F.Supp.2d 1053, 1059.

Second, the local government must also find that "[t]here is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to [the above-discussed finding in Section 65589.5(j)(1)(A)], other than the disapproval of the housing development

[2] *See, e.g.*, Senate Bill 167 of 2017, Assembly Bill 1515 of 2017, Assembly Bill 3194 of 2018, and SB-330 of 2019.

project or the approval of the project upon the condition that it be developed at a lower density." Gov. Code Section 65589.5(j)(1)(B). Further serving to limit the authority of local governments, the HAA requires that both of such findings be "supported by a preponderance of the evidence on the record…" Gov. Code Section 65589.5(j)(1).

B. <u>The HAA Applies to the Project Because the Project Complies with Applicable, Objective General Plan, Zoning, and Subdivision Standards and Criteria, Including Design Review Standards.</u>

As detailed most recently in our letter to City Council dated May 17, 2021, there is no dispute regarding the Project's consistency with the applicable general plan, zoning, subdivision standards and criteria in effect at the time the application was deemed complete.

To summarize, the site's zoning is "PO" (Professional Office), which is consistent with the site's general plan designation of "Office Professional." The Project would comply with all standards and criteria applicable under the General Plan regarding sites designated "Office Professional" and the City's Zoning Code regarding sites zoned "PO," as well as all the subdivision standards and criteria applicable to the Project's Vesting Tentative Tract Map entitlement.[3] This conclusion is further supported throughout the Environmental Impact Report ("EIR") prepared for the Project.[4]

Further, by operation of law under the HAA, the City may no longer assert that the Project is not compliant with applicable, objective general plan, zoning, and subdivision standards and criteria as the HAA provides a strict 60-day timeline for the City to raise any objections regarding such a determination.

> "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…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: … **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.**" (Gov. Code Section 65589.5(j)(2)(A); emphasis added.)[5]

---

[3] The City previously asserted that the Project did not comply with the City's purportedly objective parking standards, a position the City has now appeared to concede was incorrect, as City code provides for a range of staff-approved parking reductions and therefore does not establish standards that are "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." Gov. Code Section 65589.5(h)(8).

[4] *See, e.g.*, Draft EIR, Page IV.J-16: "As shown in Table IV.J-3, the Project would be substantially consistent with the applicable policies of the recently updated General Plan and, therefore, the Project's impacts would be less than significant." *See also*, Draft EIR, Page IV.J-20: "As such, the Project would be substantially consistent with the City's Zoning Code, and the Project's impacts would be less than significant."

[5] The 60-day timeline applies regardless of whether a project application was deemed complete prior to the September 25, 2020 effective date of section 65589.5(j)(2)(A). Nothing in the operative amendments to the HAA states that the newly adopted provisions apply only prospectively to applications filed after the effective date of the

The HAA states the consequences of the City failing to provide applicants with such required documentation is that "the project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision." Gov. Code Section 65589.5(j)(2)(B).

As the City never provided the Applicant with a written determination detailing any alleged Project inconsistency within the prescribed time limits, by operation of law, the Project is deemed consistent with any applicable plans, programs, policies, ordinances, standards, requirements, or other similar provisions. Gov. Code Section 65589.5(j)(2)(B). Such conclusion is further consistent with the HAA, which requires that its provisions "…be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." Gov. Code Section 65589.5(a)(2)(L).

Notwithstanding this presumption, the Applicant has repeatedly supplemented the record with "substantial evidence that would allow a reasonable person to conclude that the housing development project…is consistent, compliant, or in conformity" with the applicable standards. Gov. Code Section 65589.5(f)(4).) Accordingly, since the City cannot demonstrate that the Project does not comply with "applicable, objective general plan and zoning standards and criteria, including design review standards," the City may not deny the Project without making the findings required by Gov. Code Section 65589.5(j). *Honchariw v. County of Stanislaus* (2011) 200 Cal.App.4th 1066, 1081 (County failed to make required findings or otherwise demonstrate how the proposed project failed to comply with applicable, objective general plan and zoning standards and criteria, including design review standards).

As discussed below, the City cannot make either of the required findings for denial of the Project.

C. <u>The City Cannot Make Either of the Findings Required under the HAA in Order to Deny the Project.</u>

Since the HAA applies to the Project, City Council can only deny the Project if it finds that the Project "would have a specific, adverse impact upon the public health or safety" and "[t]here is no feasible method to satisfactorily mitigate or avoid the adverse impact identified…other than the disapproval of the housing development project…" Gov. Code Section 65589.5(j)(1). Further, both findings must be based on the "preponderance of the evidence on the record." Gov. Code Section 65589.5(j)(1). A "preponderance of the evidence" poses a high bar for the City, requiring that the evidence in favor of the finding has more convincing force than that opposed to it. *People v. Miller* (1916) 171 Cal. 649, 652. The City cannot meet this high bar.

---

revised statute, nor, given the entire purpose of the HAA, would it make sense to do so. As such, the 60-day time frame applies equally to all pending development applications, and the City had 60 days to inform the Applicant of any alleged inconsistencies with objective standards.

As noted previously, the term "specific, adverse impact upon the public health or safety" means "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." Gov. Code Section 65589.5(j)(1)(A). The legislature has expressly stated that such "specific, adverse impact" may only be found in extraordinary cases, stating that "[i]t is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety [as used in Gov. Code Section 65589.5(j)(1)] **arise infrequently."**[6] Gov. Code Section 65589.5(a)(3); emphasis added.

While the "specific, adverse impact" language in Government Code Section 65589.5(j)(1) does not directly implicate "significant impacts" as that term is used within the context of the California Environmental Quality Act, the Project's EIR and supplemental reports did analyze the Project's impact on air quality, hazards and hazardous materials, and noise, among other topics. Consistent with this analysis, the EIR concluded that the Project would have either a "less than significant impact" or "no impact" on the environment with respect to all the analyzed topics.

Of note, the EIR specifically analyzed whether the Project "would create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment."[7] Based upon an impact analysis of polychlorinated biphenyls, asbestos-containing materials and lead based paint, storage tanks and containers, and soil contamination, the EIR concluded that the Project "…would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment" and that "[t]herefore, impacts related to upset and accident conditions involving the release of hazardous materials into the environment would be **less than significant**."[8]

Regarding the issue of soil contamination, there is no evidence in the record to support a finding that the Project "would have a specific, adverse impact upon the public health or safety." On June 19, 2017, the Los Angeles Regional Water Quality Control Board (the "Water Board") issued a No Further Requirements ("NFR") letter with respect to soils at the Project site.[9] As noted within the Water Board's correspondence to Councilmember Perez dated July 9, 2021, "[t]he NFR letters [for the Project site] were issued in 2017 based on the appropriate State of California regulations and guidelines, including the guidance for vapor intrusion risk evaluation, in use at the time." Furthermore, on July 1, 2021, the state Office of the Environmental Health Hazard Assessment confirmed the validity of the October 2011 Vapor Intrusion Guidance used

[6] *See also*, AB-3194's Assembly on Housing and Community Development Analysis for Hearing Dated April 25, 2018: "This bill would declare that it is the Legislature's intent to establish a 'very high threshold' for the conditions to deny a project for health and safety concerns and that these conditions rarely arise."
[7] See Draft EIR Page IV.H-16.
[8] See Draft EIR Page IV.H-18; emphasis in original.
[9] The Water Board also issued August 8, 2013 NFR letter with respect to soils at the portion of the property located at 2215 West Mission Road. The June 19, 2017 NFR letter pertained to the remainder of the Project site.

by the environmental consultant Equipoise in its 2016 Soil Closure Risk Evaluation. Therefore, as a threshold matter, the Project has complied with the "objective, identified written public health or safety standards, policies, or conditions **as they existed on the date the application was deemed complete.**" Gov. Code Section 65589.5(j)(1)(A); emphasis added. Accordingly, the Project may not be denied based on unsubstantiated claims that the Project's review of soil contamination did not account for additional standards, policies, or conditions not in existence when the Project was deemed complete.

Even though there is no legal requirement to do so, the Applicant has voluntarily agreed to perform additional soil testing consistent with CalEPA's *draft* Supplemental Guidance for Screening and Evaluating Vapor Intrusion (the "Supplemental Guidance"). On September 3, 2021, the Water Board approved the work plan for such additional testing consistent with the *draft* Supplemental Guidance. However, to be clear, such *draft* Supplemental Guidance was not in effect on the date the Project was deemed complete. The City cannot construe the Applicant's voluntary, additional testing as a basis on which to deny the Project, and in any event, to the extent under the draft Supplemental Guidance additional mitigation of the site may be appropriate, the Applicant will implement such mitigation.

To be clear, *there is no evidence* in the record to support a finding that the Project "would have a specific, adverse impact upon the public health or safety," much less enough evidence to meet the high bar of a "preponderance of the evidence on the record" required to support such a finding. Gov. Code Section 65589.5(j)(1). If the City cannot make such a finding, then it may not deny the Project. *Sequoyah Hills Homeowners Association v. City of Oakland* (1993) 23 Cal.App.4th 704, 716 ("Thus, the only way appellant can avoid the impact of section 65589.5, subdivision (j)(1), is by establishing that the project, at the approved density, will have a 'specific, adverse impact upon the public health or safety.' This they cannot do. There is no evidence to support such a conclusion, and the city specifically found that no such impact would result from the project.").

Even assuming that the City could find that the Project had a specific, adverse impact upon the public health or safety (which it cannot), the City could not find, by a preponderance of the evidence, that "[t]here is no feasible method to satisfactorily mitigate or avoid the adverse impact identified…other than the disapproval" of the Project. Gov. Code Section 65589.5(j)(1). To date, the City has made no effort with respect to this required finding for a denial of the Project and has certainly not produced the "preponderance of the evidence" necessary to support such finding.

Since the City has not, and cannot, make either of the required findings *based on a preponderance of the evidence*, the HAA prohibits the City from denying the Project.

D. <u>The HAA Precludes the City from Denying the Project Based on Pretextual Claims That Findings for the Project's Entitlements Cannot Be Made.</u>

At the City Council meeting dated August 10, 2021, City Councilmember Adele Andrade-Stadler made unsupported comments positing that the City Council could make the necessary findings to support a denial:

> "I think we really need to look at this project on its merit and it fails. It fails to keep our community safe right now. It fails to the transportation…the transportation portion of it fails. There are certain denials that we need to and findings we need to find. We've got them all over, so there, I am not in favor of continuing this any further. We owe it to our community to make a decision about this project."[10]

As we understand these dubious comments, Councilmember Andrade-Stadler appears to indicate that the City can deny the Project on the basis of the City's subjective entitlement findings. Not so.

To be clear, the HAA precludes the City Council from pretextually relying on the City's subjective entitlement findings in order to deny or reduce the density of the Project. In fact, the HAA is intended to specifically prohibit local jurisdictions such as the City from relying on the subjective standards underlying its entitlement findings as the purported rationale for denying housing development projects.

As a threshold matter, we note that mere unsubstantiated opinions and conclusions, which lack any basis in the record before the City, clearly do not meet the high "preponderance of the evidence" burden required by the City under the HAA.

While vague assertions made against the Project have been debunked at length as evidenced in the record, we nonetheless wish to reiterate the following points:

- First, as made clear by the final EIR and the supplemental technical analyses provided to the City, the Project would not have a significant impact on the environment. While the original project described in the EIR would have had a significant impact on both air quality and transportation, the number of residential units were subsequently reduced. Based upon an updated technical analysis, the reduced Project was found to not have a significant impact on air quality. With respect to transportation, the Project similarly provided an updated VMT analysis, consistent with SB 743, for which the Project was determined to have a less than significant impact on transportation. The technical analyses supporting such conclusions are available in the City's files for the Project.[11]

[10] City Council Special Meeting Dated August 10, 2021, at approximately 0:19:00.
[11] Available at https://www.cityofalhambra.org/296/The-Villages-at-The-Alhambra.

- In addition, the Project's transportation consultant Kimley Horn also prepared a supplementary transportation study concluding that the Project would be compliant with the General Plan. Dudek, an independent consultant, further performed a peer review of such transportation study and concurred with its methodology and findings.[12]

- Second, with respect to the soil and groundwater, as detailed above, the Project site underwent extensive analysis and characterization and received clearance from the applicable regulatory agencies.

Even if it is assumed, *arguendo*, that the HAA does not apply to the Project, unsubstantiated opinions and conclusions do not constitute substantial evidence that would support the City's findings for a denial. Substantial evidence is not synonymous with any evidence; rather it is defined as evidence of "ponderable legal significance…reasonable in nature, credible, and of solid value [, and] relevant evidence that a reasonable mind might accept as adequate to support a conclusion…" *Young v. Gannon* (2002) 97 Cal.App.4th 209, 225. On review, a court considers all relevant evidence in the administrative record including evidence that fairly detracts from the evidence supporting the agency's decision. *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335.

Here, there is no evidence supporting denial findings, let alone substantial evidence of a nature that would be upheld by a court. The Project causes no impacts under CEQA, is consistent with zoning and the General Plan, and will provide housing required under the City's share of regional housing needs. The fact that the Project will generate traffic, as every project does, is not substantial evidence supporting a denial, as such a position would permit the City to deny any project at any time. The law does not invest the City with such unfettered discretion.

In addition, the site's zoning permits *significantly more density* than the Project proposes. The City as a policy matter already determined in its zoning code the appropriate maximum development permitted on the site. It cannot now claim that a smaller development somehow causes negative impacts or is not consistent with the City's expressed development preferences.

E. <u>If the City Denies the Project, a Court May Issue a Writ Compelling the City to Approve the Project.</u>

Should the City deny or reduce the density of the Project, the HAA permits the Applicant to bring a writ of mandate action pursuant to Code of Civil Procedure Section 1094.5. Gov. Code Section 65589.5(m). If the court finds that the "[t]he local agency…disapproved a housing development project complying with applicable, objective general plan and zoning standards and

[12] Available at https://www.cityofalhambra.org/DocumentCenter/View/2076/Updated-VMT-Peer-Review-Memo-and-Analysis-PDF.

criteria, or imposed a condition that the project be developed at a lower density, without making the findings required [by the HAA] or without making findings supported by a preponderance of the evidence" in "bad faith," then the court may issue an order compelling the local agency to approve the housing development Project. Gov. Code Section 65589.5(k)(1)(A).

Further, the court "*shall* award reasonable attorney's fees and costs of suit to the plaintiff or petitioner, *except under extraordinary circumstances* in which the court finds that awarding fees would not further the purposes of [the HAA]." Gov. Code Section 65589.5(k)(1)(A)(ii) (emphasis added.)

Courts routinely find that local agencies have violated the HAA. Notable recent examples include:

- *California Renters Legal Advocacy and Education Fund v. City of San Mateo*[13]: On September 10, 2021, the Court of Appeal held that the City of San Mateo had impermissibly denied a 10-unit housing development project based on subjective building scale standards and further upheld the HAA against various constitutional claims.

- *District Square, LLC v. City of Los Angeles*[14]: In 2020, the Los Angeles Superior Court issued a writ of mandate directing the City of Los Angeles to approve a 577-unit housing development project, finding that the city "acted in bad faith" in denying the project without making the necessary findings under the HAA's "preponderance of the evidence" standard.

- *Eden Housing, Inc. v. Town of Los Gatos*[15]: In its 2017 decision and judgment granting a writ of mandamus setting aside the town's denial, the Santa Clara Superior Court found that the town failed to identify any objective standards the 320-unit housing development project failed to meet, and that the town denied the project without making the necessary findings under the HAA. The court also found that the town improperly relied on subjective criteria and policies to deny the project, in violation of the HAA.

- *San Francisco Bay Area Rents Federation v. City of Berkeley*[16]: The Alameda County Superior Court found in 2016 that the City of Berkeley failed to identify any objective standards that a 3-unit housing project failed to meet, and yet denied the project without making the necessary findings under the HAA. The Berkeley City Council ultimately

[13] California Renters Legal Advocacy and Education Fund, *supra*, 2021 WL 4129452.
[14] Los Angeles County Superior Court Case No. 20STCP00654.
[15] Santa Clara County Superior Court Case No. 16CV300733.
[16] Alameda County Superior Court Case No. RG16834448.

voted to settle the lawsuit, reimburse the petitioner for its attorney's fees and costs, and approve the project.

Further, on August 26, 2021 the Building Industry Association of Southern California (a "housing organization" that is entitled to enforce the HAA pursuant to Gov. Code Section 65589.5(k)(1)(A)(i), (k)(2)) announced that it filed an action under the HAA against the City of Calabasas.[17] The petition for writ of mandate and complaint alleges that the city willingly failed to comply with the HAA by relying on subjective criteria to deny a 180-unit project, without making the findings required by the HAA or supporting such findings with a "preponderance of the evidence in the record."

F. The City Has Not Complied with SB-330's Five Hearing Rule.

As detailed extensively in our prior correspondence to the City dated September 8, 2020, the City has also not complied with SB-330's limit on hearings. SB-330 aims to address a critical issue faced by project proponents: local jurisdictions frequently delay housing development projects through numerous hearings and continuances.

In relevant part, SB-330 provides the following mandate:

> "Notwithstanding any other law, if a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete, after the application is deemed complete, **a city, county, or city and county shall not conduct more than five hearings pursuant to Section 65905, or any other law, ordinance, or regulation requiring a public hearing in connection with the approval of that housing development project.** If the city, county, or city and county continues a hearing subject to this section to another date, the continued hearing shall count as one of the five hearings allowed under this section." (Gov. Code Section 65905.5(a); emphasis added.)

For purposes of SB-330, a "hearing"[18] is defined broadly as:

> "…any public hearing, workshop or similar meeting conducted by the city or the county with respect to the housing development project, whether by the legislative body of the city or county, the planning agency established pursuant to Section 65100, or any other agency, department, board, commission, or any other designated hearing officer or body of the city or county, or any committee or subcommittee thereof." (Gov. Code Section 65905.5(b)(2).)

The City has vastly exceeded the five hearing requirement in SB-330, having held **21 hearings** on the following dates[19]: October 9, 2017, January 28, 2020; July 20, 2020; August 17,

[17] See https://www.prnewswire.com/news-releases/building-industry-association-of-southern-california-files-litigation-against-city-of-calabasas-for-violation-of-californias-housing-accountability-act-301363083.html.
[18] As noted in our correspondence dated September 8, 2020, while a "hearing" does not include "a hearing to review a legislative approval **required** for a proposed housing development project…," since the Development Agreement for the Project is not *required*, any hearings on the Development Agreement continue to count towards SB-330's five hearing limit. (Gov. Code Section 65905.5(b)(2).)
[19] The list of hearings and their respective dates is available at https://www.cityofalhambra.org/296/The-Villages-at-The-Alhambra.

2020; August 31, 2020; September 8, 2020; September 21, 2020; October 5, 2020; October 19, 2020; November 2, 2020; November 16, 2020; January 11, 2021; January 27, 2021; February 4, 2021; March 22, 2021; April 13, 2021; May 18, 2021; June 10, 2021; June 17, 2021; July 6, 2021; and August 10, 2021.

Because SB-330 applies to the Project, the City must take immediate action to either approve or deny the Project, bearing in mind that a denial of the Project must comply with the HAA's strict mandates.

G. <u>The Project Would Provide Numerous Benefits to the City.</u>

Notwithstanding the City's legal obligations to comply with the HAA and SB-330, the City's approval of the Project would provide the City the opportunity to shape the Project and provide additional benefits for the City. In particular, approval of the Project would:

- **Help the City Meet its Housing Requirements Under RHNA.** Based on the Southern California Association of Government's 6th Cycle Final RHNA Allocation, adopted March 2021, the City is required to plan for a total of 6,825 new units of housing. Of such 6,825 units, 1,036 units must be planned for Low Income households; 1,079 units must be planned for Moderate Income households; and 2,936 units must be planned for Above Moderate Income households.[20] All of such units must be planned during the 2021-2029 cycle. The Project would help the City meet these RHNA goals by providing up to 790 units, of which the Project would voluntarily set aside approximately 15% of its rental units for Low-Income and Moderate-Income tenants.[21]

- **Provide the City with Substantial Public Benefits Through the Negotiated Development Agreement that the City Could Otherwise Not Legally Require.** Both the City and the Applicant have worked in good faith to negotiate a Development Agreement that helps ensure the viability of the Project and provides numerous public benefits that the City could otherwise not legally require. In particular, the Development Agreement requires the Applicant to (1) set aside affordable housing within the Project and potentially provide a Community Benefit Payment; (2) provide numerous traffic and pedestrian improvements in the vicinity of the Project; (3) provide approximately 16 acres of open space and a half-acre park accessible to all City residents; and (4) assist the

[20] See SCAG Local Housing Data for the City (April 2021): https://scag.ca.gov/sites/main/files/file-attachments/alhambra-he-0421.pdf?1620802130.

[21] Indeed, the City is already using the Project to its benefit with respect to the City's RHNA allocation. In August 2021 the City released for public review a draft of its 2021- 2029 Housing Element, in which it specifically identifies the Project on a list of projects that "have a very high likelihood of being developed over the planning period." Draft Housing Element, p. 168 (Fig. 92).

City in efforts to ensure local sales and use taxes are allocated to the City for the construction of the Project.

In light of the foregoing, we urge the City Council to consider the mandates of the HAA and ensure the Project's approval is not delayed any further consistent with SB-330.

We appreciate and look forward to your future consideration of the Project, and respectfully request your timely approval of the Project's entitlements.

Sincerely,

Alexander M. DeGood

AMD
cc: Joseph M. Montes, City Attorney
Jessica Binnquist, City Manager
Andrew Ho, Director of Community Development
Paul Lam, Principal Planner