Outlook

Fw: Written Comment and Document Submission — 5670 Camden Avenue Residential Project, File No. H23-040

From City Clerk <[redacted]

Date Tue 4/28/2026 8:22 AM

To Agendadesk <[redacted]

4 attachments (4 MB)

Response to CA Public Records Act Request (4.17.26).pdf; Maintenance yard CEQAItem 6.10.1 Resolution for Union School District (SR402777xD9697).pdf; Fifth Amendment to Mana Camden Exchange Agreement 1228874nhcwvyhm1mzi0izeu0zq3lzj.pdf; Exchange Agreement and Joint Escrow Instructions Mirassou (FINAL) (4088272.1).pdf;

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From: Thomas Hislop <[redacted]
Sent: Tuesday, April 28, 2026 8:05 AM
To: City Clerk <[redacted]
Subject: RE: Written Comment and Document Submission — 5670 Camden Avenue Residential Project, File No. H23-040

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Thomas James Hislop

[redacted]

April 28, 2026

TO: City Clerk, City of San José
CC: City Attorney, City of San José
CC: All City Council Members

RE: Written Comment and Document Submission — 5670 Camden Avenue Residential Project, File No. H23-040

I am a San José resident and constituent submitting this written comment and the enclosed documents for inclusion in the official public record prior to City Council consideration of the above-referenced project.

The project depends on the disposition of public school land by Union School District (“USD”) to Mana Investments under Education Code §17536. That transaction is defective on its face. The board cited §17536 as its sole authority, then approved a contract that removes the only requirement that makes §17536 legal — identification of both properties before the vote. No exchange property was ever identified. The contract defaults to cash. That is not a land exchange. That is a cash sale conducted under the wrong statute.

Additionally, USD’s own board adopted Resolution No. 19-20-11 in December 2019, finding significant environmental conditions at this exact address — 5670 Camden Avenue — including liquefaction, PM 2.5 exceedance above CEQA thresholds, and required mitigation measures for soil, air quality, and hydrology. At the March 25, 2026 Planning Commission hearing, USD’s real estate advisor Scott Sheldon testified that the Phase 1 environmental assessment found “really no issues” with the soil. USD’s own 2019 board resolution directly contradicts that statement.

Finally, I submitted a California Public Records Act request to USD prior to the Planning Commission hearing. Superintendent Andrews responded that she could not produce the documents in time. She did not inform me that every document I requested is publicly available online. I located them independently. They form the basis of this submission.

I respectfully request that Council:

1. Include all enclosed documents in the official public record.
2. Require USD to demonstrate compliance with Education Code §17536 and §17537 before any vote.
3. Require completion of the Phase II Subsurface Investigation before any grading permit is issued.
4. Ask USD to explain how Resolution No. 19-20-11 is consistent with Sheldon’s testimony before the Planning Commission.

Enclosed Documents:

1. USD/Mana Exchange Agreement (full contract)
2. Mirassou/Robson Exchange Agreement (full contract — comparative reference)
3. USD Board Resolution No. 19-20-11 — Mitigated Negative Declaration, 5670 Camden Avenue, December 2019
4. CPRA Request and USD Response — Superintendent Andrews

Respectfully submitted,

Thomas James Hislop
[redacted]

<u>EXCHANGE AGREEMENT AND JOINT ESCROW INSTRUCTIONS</u>

THIS EXCHANGE AGREEMENT AND JOINT ESCROW INSTRUCTIONS ("**Agreemen**t") is entered into this 25th day of August, 2023 ("**Effective Date"**) by and between the UNION SCHOOL DISTRICT, a public school district duly organized and validly existing under the Constitution and the laws of the State of California ("**District**") and ROBSON HOMES, LLC, a California limited liability company ("**Robson Homes**"). District and Robson Homes are sometimes hereinafter referred to individually as a "Party" and collectively as the "**Parties**."

RECITALS

WHEREAS, the District is the owner in fee, of approximately 9.10 acres of land located at 220 Belgatos Road, Los Gatos CA 95032, commonly known as Assessor Parcel Number 527-25-005, and as more particularly described in the legal description attached to this Agreement as **Exhibit A** incorporated herein by reference ("**Mirassou Property**");

WHEREAS, the District is proposing to divide the Mirassou Property into two parcels as illustrated on the attached **EXHIBIT A-1**, to be comprised of (1) an approximately 4.0 acre parcel, subject to Robson Homes' right to expand up to an additional approximately 12,000 square feet (the "**Mirassou A Site**" also hereinafter referred to as the "**District Property**"), and (2) an approximately 5.10 acre parcel, subject to a corresponding reduction in square feet in the event of the increase in the Mirassou A Site above (the "**Mirassou B Site"**). A legal description of the **District Property** shall be developed and shall be attached to this Agreement as set forth in Section 2.6, as **EXHIBIT A-2**, as more particularly set forth below;

WHEREAS, section 17536 of the Education Code authorizes the District's Governing Board ("**Board**") to exchange any of its real property for real property of another person or private business firm upon such terms and conditions as the Parties may agree, and in accordance with the procedural requirements of Education Code section 17536 et seq;

WHEREAS, Robson Homes is a home development company organized in California and headquartered in San Jose, California, that desires to acquire the **District Property** for the development of a residential project (the "**Residential Project**");

WHEREAS, the District desires to exchange the **District Property** for income producing real property to be selected by the District as set forth in this Agreement (the "**Exchange Property**") in accordance with the terms and conditions of this Agreement. Upon selection of the **Exchange Property**, pursuant to the terms of this Agreement, a legal description of the **Exchange Property** shall be attached to this Agreement as **EXHIBIT A-3**). The **District Property** and the **Exchange Property** are sometimes hereinafter referred to collectively as the "Properties" or each a "Property";

WHEREAS, on or about June 21, 2023 the District published a Notice of Solicitation of Qualifications and Proposals for the Exchange of District-Owned Real Property stating its desire to move forward with the exchange of the **District Property**, pursuant to sections 17536 and 17537 of the Education Code; and

WHEREAS, on July 21, 2023, Robson Homes submitted the Mirassou School Site "Mirassou A" Exchange Agreement & Development Opportunity Statement of Qualifications & Proposal ("Statement of Qualifications and Proposal") attached hereto as **Exhibit "A-4"** and incorporated herein by this reference, in response to the District's solicitation.

WHEREAS, on August 14, 2023, the Board adopted Resolution 23-24-01 by Board action at a duly called Board meeting declaring its intent to enter into an exchange agreement with Robson Homes, in accordance with the Statement of Qualifications and Proposal, wherein the District plans to exchange the Mirassou A Site for a fee interest in the **Exchange Property** by two-thirds vote of its members, in accordance with Education Code section 17537, declared the Mirassou Property as excess surplus land within the meaning of Government Code sections 54221(b)(1) and 54221(f)(1)(I),(the, "**Resolution of Intention**").

WHEREAS, the District recognizes and acknowledges the importance of traffic safety for the community located in the vicinity of the Residential Project and the District and Robson Homes hereby agree to work collaboratively together, and with the Town of Los Gatos, to address known traffic safety concerns in the area that may be impacted by vehicular traffic generated from the Residential Project.

AGREEMENT

NOW THEREFORE, in consideration of the covenants and agreements set forth in this Agreement, the Parties agree as follows:

ARTICLE 1
EXCHANGE OF DISTRICT PROPERTY AND EXCHANGE PROPERTY

1.1 Agreement to Exchange. Subject to all the terms, conditions, and provisions of this Agreement, and for the consideration herein set forth, District and Robson Homes agree to exchange the District Property and the Exchange Property, respectively, each including, without limitation, such party's interest in all mineral, oil, gas and other hydrocarbon substances on and under the properties as well as all development rights, air rights, water, water rights and water stock relating to the Properties and any other easements, rights-of-way or appurtenances, used in connection with the beneficial use and enjoyment of the Properties.

1.2 Identification of Exchange Property. During the term of this Agreement, the District shall use good faith efforts to identify the Exchange Property. Within thirty (30) days after the expiration of the Robson Homes Due Diligence Period, Robson Homes shall provide the names of three (3) real estate brokers with extensive experience in commercial/residential income producing properties and with whom Robson Homes has previously transacted business. The District, at its discretion, may utilize the services of all, some or none of the named brokers to identify potential exchange properties. Robson Homes may also identify one or more income producing properties currently owned by Robson Homes (the "Robson Homes Properties" or a "Robson Homes Property") for consideration by the District in accordance with Section 2 of this Agreement. Robson Homes shall provide the District with the Due Diligence Materials for the Robson Homes Properties, if any, and Robson Homes' valuation of the fair market value of the interest to be acquired by the District in the Robson Homes Properties, if any. Although Robson Homes agrees to cooperate with the District in the selection of the Exchange Property, it is the responsibility of the District to identify the Exchange Property pursuant to this Agreement and to determine whether the fair market value of the Exchange Property (including the Robson Homes Properties) is of equal value to the District Property. If the Exchange Property ultimately selected by the District is not a Robson Homes Property, the District, not Robson Homes, shall be solely responsible for contracting directly with the Property Owner of such Exchange Property. Robson Homes does not intend to, and is not required by this Agreement to, ever take title to any Exchange Property. Therefore, Robson Homes shall not have any liability or obligation with respect to any circumstance or condition on any Exchange Property, whether before or after the Close of Escrow. Without limiting the foregoing, Robson Homes shall not have any liability for any act, condition or circumstance that the District or any of its employees, agents, representatives or contractors commits, creates or discovers on or at any Exchange Property, nor any obligation or liability to any Property Owner other than as expressly set forth in this Agreement.

1.3 Consideration. It is the intent of the Parties that the Exchange Property shall be of equal value to the District Property, and the District Property shall be conveyed in consideration for the Exchange Property. The value of the Exchange Property (the "EP Exchange Value") shall not exceed the DP Exchange Value, as defined in Section 1.3.1 below, unless the District determines, in its sole discretion, that it is willing to acquire a property worth more than the DP Exchange Value. In the event the Exchange Property is worth less than the DP Exchange Value, Robson Homes shall pay to the District in cash the difference between the DP Exchange Value and the EP Exchange Value (the "Additional Cash"). In the event the Exchange Property is worth more than the DP Exchange Value, the District shall be responsible for the payment of the difference between the EP Exchange Value and the DP Exchange Value. Notwithstanding the foregoing, in the event that the District has not identified the Exchange Property in sufficient time to permit the simultaneous closing of the Exchange Property with the closing of the District Property by the Outside Closing Date, Robson Homes shall have the right to acquire the District Property for the cash consideration of the DP Exchange Value; provided, however, that the DP Exchange Value shall remain in Escrow after the Closing until such time as the District identifies and acquires the Exchange Property or the District determines, at its absolute sole discretion, that the DP Exchange Value shall be released to the District. The District shall not be subject to any penalty, fine, or additional charge for failure to identify the Exchange Property by the Outside Closing Date. The District's failure to identify the Exchange Property shall not be construed as a breach of this Agreement or a condition to the District's obligation to close on the transfer of the District Property to Robson Homes.

1.3.1 District Property Exchange Value; No Additional Consideration. Robson Homes and the District agree that there is sufficient consideration for the exchange of real property under the terms and conditions in this Agreement, and no further consideration or compensation is required by either Party. The District Property valuation (the "DP Exchange Value") of Twenty-Two Million Dollars, ($22,000,000) assumes that Robson Homes' will receive approval from the Town for 30 residential lots including 24 market rate and 6 below market rate ("BMR") homes. However, if Robson Homes elects to purchase as part of the District Property all or a portion of the additional approximately 12,947 square feet of land illustrated on Exhibit A-1, the DP Exchange Value shall be increased by an amount equal to One Hundred Dollars ($100.00) per square foot of additional land, based on the survey referenced in Section 2.6 below. Therefore, if Robson Homes acquires all of the additional 12,947 square feet, the DP Exchange Value shall be increased by One Million, Two Hundred Ninety-Four Thousand Seven Hundred Dollars ($1,294,700) to a total of Twenty-Three Million Two Hundred Ninety Four Thousand Seven Hundred Dollars ($23,294,700); provided, however, the actual final DP Exchange Value will be based upon the actual final additional square footage that Robson Homes elects to purchase.

1.3.2 District Property Exchange Value Includes School Impact Fees. The Exchange Value for the District Property includes statutory Level 1 Developer Fees in the amount of Three Dollars and Thirty-Five Cents ($3.35) per square feet for each of the thirty (30) residential lots Robson Homes plans to develop on the Exchange Property. The District will not assess Level 2 or Level 3 Developer Fees for the residential development of the District Property.

1.4 Earnest Deposit Schedule.

1.4.1 Execution Consideration. In addition to the Deposits referenced below, within three (3) business days after the Opening of Escrow, Robson Homes shall deposit into Escrow the sum of One Thousand Dollars ($1,000) (the "Execution Consideration"). The Execution Consideration constitutes, in addition to the covenants and conditions contained in this Agreement, consideration for entering into this Agreement with Robson Homes and giving Robson Homes the opportunity to examine the feasibility of acquiring the District Property. In the event of the Close of Escrow, the Parties agree that the Execution Consideration will not apply toward the DP Exchange Value. However, notwithstanding anything to the contrary contained in this Agreement, if this Agreement is terminated for any reason whatsoever, the District shall receive the Execution Consideration.

1.4.2 First Earnest Money Deposit. Within three (3) business days after the Opening of Escrow, Robson Homes shall deposit into Escrow the sum of One Hundred Thousand Dollars ($100,000) (the "Initial Deposit").

1.4.3 Second Earnest Money Deposit. Within one (1) business day after the end of the Due Diligence Period, Robson Homes shall deposit into Escrow the sum of Three Hundred Fifty Thousand Dollars ($350,000).

1.4.4 Third Earnest Money Deposit. Within one (1) business day after the Entitlement Approval Date, Robson Homes shall deposit into Escrow the sum of Five Hundred Thousand Dollars ($500,000). The Entitlement Approval Date is the date that: (i) Robson has received any and all entitlement approvals, including approval of a Tentative Subdivision Map from the Town of Los Gatos ("Town") for the redevelopment of the residential subdivision on the District Property, including a parcel map separating the Mirassou A Site from the Mirassou B Site if permitted by the Town; which approvals do not contain any stipulations or conditions other than those approved in writing by Robson Homes and the District; and (ii) all referendum, objection and appeals periods with respect to the Town's approvals have expired with no objections or appeals or referendums having been filed or served upon Robson Homes and/or the District, or if any objections or appeals or referendums are so filed and served, then all such objections and appeals and referendums shall have been dismissed with prejudice or rejected, so that such approvals are not subject to further appeal.

The earnest money deposits set forth in Section 1.4.2, 1.4.3 and 1.4.4 above shall remain in Escrow until the Entitlement Approval Date (defined in Section 1.4.4 above), at which time such earnest money will be transferred to the Escrow for the Exchange Property as further explained in this Agreement. If the Entitlement Approvals are denied, Robson Homes shall have the right to terminate the Agreement and receive a refund of the above three earnest money deposits and any interest accrued thereon, if any.

ARTICLE 2
INSPECTIONS AND REVIEW

2.1 Delivery of Due Diligence Materials. Within ten (10) days of the Effective Date, the District shall deliver to Robson Homes, without representation or warranty as to the accuracy of the information contained therein, any and all documents, reports, agreements, or other items in its possession or control relating to the Mirassou Property or within its agents' or representatives' possession or control, including but not limited to (collectively, the "Due

Diligence Materials"): (i) all licenses, leases, and permits affecting or relating to the ownership, subdivision, possession or development of the Mirassou Property or the construction of improvements thereon, and all amendments and modifications thereto; (ii) applications and correspondence or other written communications to or from any governmental entity, department or agency other than District regarding any permit, approval, consent or authorization with respect to the development of the Mirassou Property or the construction of improvements thereon as well as community and neighborhood outreach; (iii) the most recent survey, if any, pertaining to the Mirassou Property or any portion thereof; (iv) soils reports, engineering data, environmental reports, development agreements, tract map conditions of approval, grading and engineering studies and plans, impact reports or negative declarations, traffic, noise, and drainage studies, improvements plans, improvement agreements and bonds, if any, and other data or studies pertaining to the Mirassou Property; (v) copies of all documents evidencing interests in or affecting the Mirassou Property that are not shown on a title report, if any; and (vi) all documents regarding the existence, use, application or removal of Hazardous Materials (as defined below) on, from, in and/or under the Mirassou Property. Within ten (10) days after Robson Homes has identified the Robson Homes Properties, Robson Homes shall deliver to the District, without representation or warranty as to the accuracy of the information contained therein, copies of the Due Diligence Materials relating to the Robson Homes Properties. Any Due Diligence Materials shall be provided to the other Party without any recourse or liability of any type or nature. Each Party assumes all risk of any kind with regard to the use of and reliance upon any of the Due Diligence Materials provided by the other Party. Neither Party is relying upon the other Party for any information related to, concerning, or involving the respective properties for this transaction, including, without limitation, the fair market value of the Properties.

2.2 Inspections. The due diligence period shall begin on the date that all Parties have fully executed the Agreement and last until 5:00 pm Pacific Standard Time on the date seventy-five (75) days after the Effective Date (the "Robson Homes Due Diligence Period"). However, if District has not delivered to Robson Homes (a) a copy of the Resolution of Intention, and (b) the written notice of satisfaction of the contingency set forth in Section 4.1.1 of this Agreement, the Due Diligence Period set forth in the first sentence above in this section shall extend day for day that either (a) or (b) above is not delivered, up to a maximum extension of thirty (30) additional days. During the term of the Agreement, including without limitation during the Robson Homes Due Diligence Period, Robson Homes and its representatives, agents, engineers, consultants, contractors, and designees shall have the right to enter onto the District Property, for purposes of examining, inspecting and investigating the District Property and the feasibility of using the District Property for Robson Homes' intended purposes, including the site, soil, subsurface soils, drainage, seismic and other geological and topographical matters, location of asbestos, toxic substances, hazardous materials or wastes, if any, and, at Robson Homes' sole and absolute discretion, determining whether the District Property is acceptable to Robson Homes. During the term of the Agreement, including without limitation during the Robson Homes Due Diligence Period, Robson Homes may, in Robson Homes' sole and absolute discretion and cost, perform without limitation: (i) completion of environmental tests and studies, such as without limitation, a Phase I and Phase II environmental site assessments, and any additional tests, studies and assessments desired by Robson Homes; (ii) engineering evaluations, including geotechnical evaluation, if needed or desired; (iii) compliance with the California Environmental Quality Act ("CEQA") if applicable; (iv) any other surveys, engineering and soils tests and other tests, studies or inspections deemed necessary by Robson Homes in its sole discretion and obtained at Robson Homes' expense; and (v) review of any information and materials provided by the District pursuant to Section 2.1 above or elsewhere in this Agreement. Robson Homes shall provide the District with copies of any third party inspection report prepared pursuant to this section.

If any report prepared on behalf of Robson Homes recommends that certain remedial measures be implemented as part of the land development work, including by way of example only, over-excavation of soils or installation of any type of vapor barrier (each, "Remedial Measures"), then Robson Homes shall notify the District of any such report demonstrating a need for Remedial Measures and provide any related documentation to the District for review. Upon mutual written agreement by the Parties before the expiration of the Due Diligence Period, the Parties may agree the DP Exchange Value shall be reduced by the estimated amount of the Remedial Measures which shall be based on the lowest of three qualified bids for such Remedial Measures. Should the Parties not mutually agree to reduce the DP Exchange Value for such Remedial Measures, Robson Homes shall have the right to terminate this Agreement.

The District shall have the same inspection rights, including a seventy-five (75) day due diligence period (the "District Due Diligence Period"), with respect to the Exchange Property(ies) (including the Properties). If the Exchange Property is Robson Homes Property, the District's review of the physical condition and feasibility of the Exchange Property(ies), may at the District's sole and absolute discretion and cost, include without limitation: (i) completion of environmental tests and studies, such as without limitation, a Phase I and Phase II environmental site assessments, and any additional tests, studies and assessments desired by the District; (ii) engineering evaluations, including geotechnical evaluation, if needed or desired; (iii) compliance with the CEQA if applicable; (iv) any other surveys, engineering and soils tests and other tests, studies or inspections deemed necessary by the District in its sole discretion and obtained at such the District's expense; and (v) review of any information and materials provided by other Parties pursuant to Section 2.5 below or elsewhere in this Agreement. The District Due Diligence Period shall begin on the date the Exchange Property is identified by the District, as confirmed in writing to Robson Homes. The parties acknowledge and agree that the District may conduct due diligence for more than one potential Exchange Property and that the provisions set forth in this Section 2.2 shall apply to each such Exchange Property.

2.2.1 <u>Conditions of Access to District Property and Exchange Property for Inspections.</u> Robson Homes and its agents, representatives and designees shall have the right with respect to the District Property, and the District and its agents, representatives and designees shall have the right with respect to the Exchange Property, if the Exchange Property is a Robson Homes Property, to access such property during the term of this Agreement, including the Due Diligence Periods, in accordance with the following terms and conditions:

2.2.1.1 Such Party shall provide the Party that owns the applicable Property ("**Property Owner**") with written notice of the dates on which the noticing Party or its representatives or designees intend to access the property at least two (2) business days in advance of any access to the Property. Property Owner or its representative may be present for any inspections, tests or studies.

2.2.1.2 Each Party will permit only employees, agents, licensed contractors, consultants or other individuals who have a reasonable reason to be on the Property to enter upon the Property as a result of such Party's actions.

2.2.1.3 Each Party will assume full responsibility for proper characterization, manifesting, storage and disposal of any materials or wastes generated as a result of any sampling conducted by or for such Party, and following written request will provide the Party that owns the Property a copy of documents evidencing these actions.

2.2.1.4 Each Party agrees to comply with all applicable laws, regulations, rules and permits pertaining to its investigations and testing on and of a Property or any part thereof, including, but not limited to, the Occupational Health & Safety Act and all applicable environmental, health and safety laws and regulations, whether federal, state or local. Each inspecting Party shall obtain or cause its consultants to obtain, at inspecting Party's sole cost and expense prior to commencement of any investigative activities on the Property, a policy of commercial general liability insurance covering liability of said Party for claims of personal injury or property damage caused during any of inspecting Party's investigative activities. Such policy of insurance shall be an occurrence policy and shall have liability limits of not less than Two Million Dollars ($2,000,000.00) combined single limit per occurrence for bodily injury, personal injury and property damage liability. Such insurance policy shall name Property Owner as an additional insured. Inspecting Party hereby agrees to indemnify, defend and hold harmless Property Owner from any and all damages, claims, losses, liabilities, causes of action, proceedings, costs and expenses of any kind whatsoever (including, without limitation, attorneys' fees and fees of expert witnesses) for physical damage or personal injury to the extent caused by inspecting Party or its agents, assignees, designees or representatives during their entry on the Property prior to the Close of Escrow; provided, however, the foregoing indemnity shall not apply with respect to any claims arising out of the mere discovery of any adverse condition at the Property, any preexisting conditions at the Property or any acts or omissions of Property Owner, its officers, directors, owners, agents or employees. The foregoing indemnity shall survive the Close of Escrow or the earlier termination of this Agreement.

2.2.1.5 Upon a Party’s completion of any investigations and testing on and of a Property, such Party shall promptly restore the Property to substantially the condition it was in prior to engaging in the work, including the repair or replacement of any and all physical damage to the Property to the extent caused by and during that Party’s access; provided, however, that in no event shall any Party have any obligation pursuant to this Section to remedy any pre-existing condition on or under another Party’s property. Each Party agrees to promptly pay before delinquency for any and all labor and materials expended or used by such Party or its agents, representatives or designees in connection with any and all investigations on a Property. In the event any mechanics’ liens are placed on a Property resulting from work by a Party or its agents, representatives or designees, that Party will take prompt action to remove or bond over such liens at that Party’s sole expense and will indemnify, defend, protect and hold each other Party harmless from and against all such claims.

2.2.2 Extension of Due Diligence Periods. The Parties acknowledge that the activities contemplated during the Robson Homes and District Due Diligence Periods may extend beyond the Robson Homes and District Due Diligence Periods provided for in Section 2.1 above. Therefore, each Party, in its sole discretion, will have one (1) option to extend the Due Diligence Period by providing written notice, delivered on or before the last day of the Due Diligence Period, to the other Parties of its exercise of its option to extend the Due Diligence Period for thirty (30) days. Under no circumstances shall the Due Diligence Period, including all extension rights above, extend beyond one hundred twenty (120) days following their respective Effective Date(s).

2.3 As-Is. Based on the inspection rights set forth in the preceding paragraphs and in reliance on the due diligence of each Party, the District and Robson Homes acknowledge and agree that except for the limited warranties and representations expressly set forth in this Agreement, the exchange of the Properties is made solely on an AS IS WHERE IS BASIS, WITH ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED. But for the foregoing understanding and agreement, the Parties would not have entered into this transaction. Each Party acknowledges that due to the expertise, experience and business acumen of both Parties and their respective consultants, each Party has the ability to conduct a complete and thorough due diligence of the respective Properties and would not close the transaction unless totally satisfied with the respective Property, and has otherwise conducted an exhaustive and complete due diligence which would enable the taking of the respective Property in an AS IS WHERE IS BASIS WITH ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED.

2.4 Termination During Due Diligence Period. If, for any reason, Robson Homes, in its sole and absolute discretion is dissatisfied with the District Property, Robson Homes shall notify District and Escrow Holder in writing ("Robson Homes' Termination Notice") on or before the expiration of the Robson Homes Due Diligence Period of Robson Homes' desire to terminate this Agreement and cancel the Escrow. Robson Homes' failure to deliver Robson Homes' Termination Notice on or before the expiration of the Robson Homes Due Diligence Period shall be conclusively deemed Robson Homes' waiver of its right to terminate pursuant to this provision, provided Robson Homes fails to deliver Robson Homes' Due Diligence Notice within ten (10) days after Robson Homes' receipt of written notice by the District of said failure to deliver Robson Homes' Termination Notice on or before the expiration of the Due Diligence Period. Should Robson Homes elect to terminate the Agreement before or at the conclusion of Robson Homes' Due Diligence Period, then Escrow Holder shall immediately return the $100,000 Initial Deposit to Robson Homes.

District shall notify Robson Homes and Escrow Holder in writing ("District's Due Diligence Notice") on or before the expiration of the District Due Diligence Period of District's approval or disapproval of the Due Diligence Materials applicable to the Exchange Property, the condition of the Exchange Property and District's investigations with respect thereto. District's disapproval of any of said items shall constitute District's election to terminate the Exchange Property Agreement and cancel that Escrow. District's failure to deliver District's Due Diligence Notice on or before the expiration of the District Due Diligence Period shall be conclusively deemed District's approval thereof, provided District fails to deliver District's Due Diligence Notice within ten (10) days after District's receipt of written notice by Robson Homes of said failure to deliver District's Due Diligence Notice on or before the expiration of the Due Diligence Period. In the event the District disapproves of the Exchange Property, the District shall continue to use good faith efforts to identify the Exchange Property in sufficient time to permit the Closing to occur by the Outside Closing Date. However, if the District does not identify or is not prepared to close on the Exchange Property by the Outside Closing Date, the provisions of Section 1.3 of this Agreement shall control.

2.5 Title Review. During each Parties' respective Due Diligence Period, each Party shall obtain a preliminary title report for each respective Property, together with copies of all written instruments creating the exceptions specified therein, and plat maps plotting all easements specified therein (collectively, the "Title Reports"). Robson Homes shall notify District in writing ("Robson Homes' Objection Notice") on or before the expiration of the Robson Homes Due Diligence Period of any objections Robson Homes may have to the title exceptions contained in the Title Report for the District Property. Robson Homes' failure to provide District with a Robson Homes' Objection Notice within said period shall constitute Robson Homes' approval of all exceptions to title shown on the Title Report for the District Property, provided District provides Robson Homes ten (10) days written notice of said failure to deliver Robson Homes' Objection Notice within said period. District shall have a period of ten (10) days after receipt of Robson Homes' Objection Notice in which to deliver written notice to Robson Homes ("District's Notice") of District's election to either (i) agree to remove or cure the objected to items prior to the Close of Escrow, or (ii) decline to remove or cure any such title exceptions. If the District is unable or unwilling to eliminate the Defect (or to commit to do so by Close of Escrow) during such time period, then except with respect to Forbidden Defects, Robson Homes' sole remedy shall be to elect, by written notice to the District and Escrow Agent on or before the date ten (10) business days after the later of the expiration of such 10-day period or the date the District gives Robson Homes and Escrow Agent written notice that the District will not eliminate the Defect on or before the Close of Escrow, to either (a) terminate this Agreement, or (b) waive the Defect. Furthermore, for the purpose of this paragraph, District's cure may include the acquisition by District, at District's expense, of a title insurance endorsement related to the objected to exception reasonably acceptable to Robson Homes. Any extension of the time to review the Title Report for the District Property shall only occur in strict accordance with the following paragraph. Except as otherwise provided in this Agreement, if this Agreement is cancelled pursuant to this paragraph, the earnest money and any interest thereon shall be refunded to Robson Homes, this Agreement shall thereupon be null and void and of no force or effect and Robson Homes and the District shall have no further obligations or liabilities hereunder. Notwithstanding the foregoing, District represents, warrants and agrees with respect to the District Property that as of the Close of Escrow the District Property shall not be subject to any of the following (hereinafter referred to as "Forbidden Defects"): (a) any mortgages, deeds of trust, security agreements, judgments, liens, or claims of lien, except for the lien of current real property taxes not yet due and payable; (b) any options, rights of first refusal or other title matters customarily deemed in the County in which the District Property is located to render real property unmarketable, and (c) any Defects that the District has committed to eliminate on or before the Close of Escrow. In addition, District represents, warrants and agrees that as of the Close of Escrow, the District Property shall not be subject to any leases, rental agreements or other rights of occupancy of any kind, whether oral or written.

Upon the issuance of any amendment or supplement to the Title Report for the District Property which adds additional exceptions, or adds any new requirement, the foregoing right of review and approval shall also apply to said amendment or supplement; provided, however, that Robson Homes' initial period of review and approval or disapproval of any such additional exceptions shall be limited to fifteen (15) business days following Robson Homes' and its counsel's receipt of the instrument(s) creating such additional exceptions. The foregoing extension shall only be allowed for and pertain to the review of the new matter and Robson Homes shall not be entitled to object to any exception that was in a previous title report for which the time for objection has already come and passed.

If the Exchange Property (i.e., the property acquired by the District) is a Robson Property (within the meaning of Section 1.2), then, in reciprocal nature with the foregoing, District shall notify Robson Homes in writing ("District's Objection Notice") on or before the expiration of the Due Diligence Period of any objections District may have to the title exceptions contained in the Title Report for the Robson Property. District's failure to provide Robson Homes with a District's Objection Notice within said period shall constitute District's approval of all exceptions to title shown on the Title Report for the Robson Property, provided Robson Homes provides District ten (10) days written notice of said failure to deliver District's Objection Notice within said period. Robson Homes shall have a period of ten (10) days after receipt of District's Objection Notice in which to deliver written notice to District ("Robson Homes' Notice") of Robson Homes' election to either (i) agree to remove or cure the objected to items prior to the Close of Escrow, or (ii) decline to remove or cure any such title exceptions. If Robson Homes notifies District of its election to decline to remove and cure the objected to items, District shall have the right, by written notice delivered to Robson Homes within ten (10) days after District's receipt of Robson Homes' Notice, to agree to either (i) accept the Robson Property as the Exchange Property subject to the objected to items, in which event District shall take title at the Close of Escrow subject to the objected to items, without any adjustment to or credit against the EP Exchange Value or (ii) to continue to use good faith efforts to identify other Exchange Property for which the condition of title is acceptable to District in sufficient time to permit the Closing to occur by the Closing Date, then Robson Homes may acquire the District Property for cash in accordance with Section 1.3 of this Agreement. Furthermore, for the purpose of this paragraph, Robson Homes' cure may include the acquisition by Robson Homes at Robson Homes' expense a title insurance endorsement related to the objected to exception reasonably acceptable to the District. Any extension of the time to review the Title Report for the Exchange Property shall only occur in strict accordance with the following paragraph.

Upon the issuance of any amendment or supplement to the Title Report for the Exchange Property which adds additional exceptions, or adds any new requirement, the foregoing right of review and approval shall also apply to said amendment or supplement; provided, however, that District's initial period of review and approval or disapproval of any such additional exceptions shall be limited to fifteen (15) business days following District's and its counsel's receipt of the instrument(s) creating such additional exceptions. The foregoing extension shall only be allowed for and pertain to the review of the new matter and District shall not be entitled to object to any previously known exception or requirement for which the time for objection has already come and passed.

2.6 Surveys. Robson Homes shall have the right with respect to the District Property, and the District shall have the right with respect to the Exchange Property, to cause an ALTA/ACSM survey of such Property to be performed by an engineer licensed in the State of California. In addition, as discussed in Section 1.3.1 above, Robson Homes shall have the right to elect to expand the District Property to include all or any portion of the approximately 12,000 square feet illustrated on **Exhibit A-1**. The District shall review the survey and approve the legal description of the District Property within ten (10) business days of receipt from Robson Homes. Once the District has reviewed and given written approval of the legal description of the District Property as set forth in the survey prepared by Robson Homes' engineer it shall then constitute the legal description of the District Property and shall be attached to this Agreement as **Exhibit A-2**; provided however, if during the course of Robson Homes processing the Governmental Permits and Approvals pursuant to Section 2.7, Robson Homes determines to expand the District Property to include all or any portion of the approximately 12,000 square feet illustrated on Exhibit A-1, Robson Homes shall have the right to revise the survey and legal description.

2.7 Governmental Permits and Approvals. The Parties understand and acknowledge that during the Escrow period and prior to the Close of Escrow, Robson Homes, at its expense, intends to obtain such governmental permits and approvals as Robson Homes deems necessary or appropriate in order to separate the District Property from the Mirassou Property as well as subdivide and develop the District Property in the manner desired by Robson Homes. Notwithstanding the foregoing, this District shall pay for the cost of the civil engineering to create the map separating Mirassou A Site from the Mirassou B Site. Without limiting the foregoing, the Parties understand and agree that Robson Homes shall have the right to, and following the Due Diligence Period intends to, seek such entitlements, permits and approvals from the Town as Robson Homes deems necessary or appropriate to permit the development of a residential subdivision on the District Property in the manner desired by Robson Homes, such as without limitation a tentative map (the "**Tentative Map**"). The District agrees to cooperate fully in all such attempts by Robson Homes to obtain such governmental permits and approvals as are necessary for the development of the District Property in the manner desired by Robson Homes, including but not limited to the Tentative Map, and the District agrees to execute, both before and after the Close of Escrow, any and all applications and documents reasonably requested by Robson Homes in order to obtain such permits and approvals as well as support the project as reasonably requested by Robson

Homes; provided, however, that the District shall not, other than as stated above, be required to bear any expense for such subdivision, permits or approvals or take any action that it is not lawfully entitled to take. Immediately prior to the close of escrow on the District Property, Robson Homes shall have the right to record in the official records of the Santa Clara County the parcel map once it has been approved by the Town and the District. The District represents and warrants that there are no existing agreements and the District will not, during the term of this Agreement, enter into any such agreements that prohibit or interfere with the rights of Robson Homes as described in this Section or that require any third party consent to such rights.

2.8 Existing Leases or Contracts on the District Property. After the Effective Date and prior to the Close of Escrow, the District shall, at the District's expense, terminate all leases and rights of occupancy and any other contract on the District Property and all tenants and occupants shall vacate the District Property on or before the date thirty (30) days prior to the date of the close of escrow.

ARTICLE 3
ESCROW

3.1 Opening of Escrow. Within two (2) business days following the execution of this Agreement by District and Robson Homes, the Parties shall open an escrow (the "Escrow") with Chicago Title Insurance Company, National Commercial Services ("Escrow Holder"), at its offices located at 675 First Street, Suite 900, San Jose, CA 95112; Attn: Kiley Demaree by causing an executed copy of this Agreement to be deposited with Escrow Holder. Escrow shall be deemed open on the date that a fully executed copy of this Agreement is delivered to Escrow Holder (the "Opening of Escrow"). Escrow Holder shall provide each of the Parties in Section 7.4 with written confirmation of the date of the Opening of Escrow. Chicago Title Insurance Company (the "Title Company") shall also provide title insurance services related to this Agreement.

3.2 Close of Escrow; Closing Date. Escrow shall close on or prior to the date ninety (90) days after the Entitlement Approval Date (the "Closing Date"), unless mutually extended by the Parties or extended by Robson Homes through the Closing Extensions, as defined below, provided that the conditions to Closing described in Section 4 below have been satisfied. The District at its sole discretion may extend the Closing Date for up to two (2) thirty (30) day periods by providing written notice of such extension to Robson Homes at least ten (10) days prior to the then Closing Date. Robson Homes at its sole discretion, may also extend the Closing Date for up to two (2) thirty (30) day periods by providing written notice of such extension to the District at least ten (10) days prior to the then Closing Date and by also making an additional deposit of Two Hundred Fifty Thousand Dollars ($250,000) for each extension (each a "Closing Date Extension Deposit"). Robson Homes may issue a total of two such Closing Date Extension Deposits to extend the Closing Date to a potential total of sixty (60) days. Any Closing Date Extension Deposit made by Robson Homes shall be applicable to the DP Exchange Value and shall be nonrefundable except in the event of the District's default or termination of the Agreement under Section 2.5. The terms the "Close of Escrow", and/or the "Closing" are used herein to mean the date the Grant Deeds (as the term is defined in Section 3.4 herein) are recorded in the Office of the County Recorder of the County(s) in which the Properties are located. Possession of the District Property shall be delivered to Robson Homes at the Close of Escrow free and clear of all tenancies, lessees, occupants, licensees, and all possessory rights of any kind or nature, except for any Permitted Exceptions, as set forth and defined in Section 4.1.5 herein. At the Close of Escrow, either (i) possession of the Exchange Property (and the Additional Cash Consideration, if applicable) shall be delivered to District free and clear of all tenancies, lessees, occupants, licensees, and all possessory rights of any kind or nature, except for any Permitted Exceptions, as set forth and defined in Section 4.2.4 herein, or (ii) the DP Exchange Value shall be delivered to District or held in Escrow until an Exchange Property is identified and acquired, in the sole and absolute discretion of District, which shall be made evident by appropriate instructions to the Escrow Holder.

3.3 Escrow Instructions. This Agreement, together with any standard instructions of Escrow Holder, shall constitute the joint escrow instructions of District and Robson Homes to Escrow Holder as well as an agreement between District and Robson Homes. In the event of any conflict between the provisions of this Agreement and Escrow Holder's standard instructions, this Agreement shall prevail.

3.4 Deliveries by Robson Homes. No later than 1:00 p.m. on the business day preceding the Closing Date, Robson Homes shall deliver to Escrow Holder:

(a) If the Exchange Property is a Robson Property, a grant deed in the form of Exhibit "B-1" attached to this Agreement (the "Grant Deed") conveying to District fee simple title to the Exchange Property, duly executed and acknowledged by the Property Owner;

(b) If the Exchange Property is a Robson Property, a certificate of non-foreign status in the form attached hereto as Exhibit "D-1" and California Franchise Tax Board Form 590-RE, each executed by the Property Owner;

(c) Any and all other sums and documents required by Escrow Holder to carry out and close the Escrow pursuant to this Agreement, including Robson Homes' portion of prorations, if any. Without limiting the foregoing, if the Exchange Property is not a Robson Property, the balance of the DP Exchange Value (i.e., less the Deposits) and if the Exchange Property is a Robson Property, the Deposits would be refunded to Robson Homes as the Closing.

3.5 Deliveries by District. No later than 1:00 p.m. on the business day preceding the Closing Date, District shall deliver to Escrow Holder:

(a) a grant deed in the form of Exhibit "B-1" attached to this Agreement (the "Grant Deed") conveying to Robson Homes District's fee simple title to the District Property, duly executed and acknowledged by District;

(b) a Public Agency Certificate of Acceptance for the Exchange Property Grant Deed in the form attached hereto as Exhibit "C";

(c) a certificate of non-foreign status in the form attached hereto as Exhibit "D" and California Franchise Tax Board Form 590-RE, each executed by District; and

(d) all other sums and documents required by Escrow Holder to carry out and close the Escrow pursuant to this Agreement, including the Escrow fees and District's portion of prorations, if any.

3.6 Closing, Recording and Disbursements. On or before the Closing Date, and when all of the conditions precedent to the Close of Escrow set forth in Section 4 of this Agreement have been satisfied or waived in writing, Escrow Holder shall take the actions set forth in this Section 3.6.

3.6.1 Recording. Escrow Holder shall cause the Grant Deeds to be recorded in the Official Records of Santa Clara County, California.

3.6.2 Disbursement of Funds. Escrow Holder shall disburse or hold the DP Exchange Value, less prorations chargeable to District, if any, in accordance with the District's instructions.

3.6.3 Title Policy. Escrow Holder shall deliver to both Parties a commitment to issue Title Policies for the respective Properties, as referred to in Section 4.1.5 of this Agreement.

3.6.4 Delivery of Documents to District and Robson Homes. Escrow Holder shall deliver to the respective Parties, a conformed copy of the respective Grant Deeds, and any other documents (or copies thereof) deposited by the other Party with Escrow Holder pursuant to this Agreement. The original of the Grant Deeds shall be returned to the respective Parties after recordation.

3.6.5 Real Property Taxes. All non-delinquent general and special real property taxes and assessments shall be prorated as of the Close of Escrow.

3.6.6 Non-Foreign Certificate. On or before Close of Escrow, each Party will deposit with Escrow Agent certificates in form reasonably satisfactory to Escrow Agent that provides the information required by Section 1445 of the Internal Revenue Code of 1986, as amended, and by Sections 18805 and 26131 of the California Revenue and Taxation Code, for an exemption to the withholding of taxes under those Sections, if and to the extent that such federal and/or state Sections are applicable. If a Party fails to provide any such required certificate, funds may be withheld from it in accordance with those Sections.

3.7 Payment of Costs. Pursuant to Government Code section 27387, the Parties anticipate no recording fees will be payable with respect to the recording of the Exchange Property grant deed. If there are any fees associated with the recordation of the District Property, District agrees to pay the fees. District shall pay all title insurance premiums for the CLTA standard owner's form policy for the District Property, but Robson Homes shall pay all charges associated with the title insurance premium for any additional cost of obtaining any additional coverage requested by Robson Homes, including the difference between a CLTA standard owner's policy and an ALTA extended owner's policy. No documentary transfer tax will be payable for the Exchange Property, pursuant to California Revenue and Taxation Code section 11922. However, Robson Homes shall pay all applicable documentary transfer taxes, including but not limited to, conveyance and transfer taxes, and costs associated with recording the Grant Deed for the District Property. To the extent agreed to by the Property Owner, the Property Owner shall pay all title insurance premiums for the CLTA standard owner's form policy for the Exchange Property, but District shall pay all charges associated with the title insurance premium for any additional cost of obtaining any additional coverage requested by District, including the difference between a CLTA standard owner's policy and an ALTA extended owner's policy. The Parties shall pay the Escrow fees or Escrow Holder's termination fees, in equal shares, unless one Party is solely in default and upon such default the defaulting Party shall be solely liable for all Escrow costs and fees. The Parties shall each be responsible for their respective attorneys' fees. All other costs of Escrow not specifically allocated in this Agreement shall be prorated as of the Close of Escrow, if applicable, and otherwise paid in equal amounts by the Parties.

ARTICLE 4
CONDITIONS PRECEDENT TO CLOSE OF ESCROW

4.1 Conditions to District's Obligations. District's obligation to exchange for the District Property, upon the Close of Escrow, shall be subject to the satisfaction or written waiver by District of each of the conditions precedent set forth in this Section 4.1.

4.1.1 Identity of Exchange Property. Subject to Section 1.2 of this Agreement, the District shall have identified the Exchange Property in sufficient time to permit the Closing to occur by the Closing Date; provided, however that if the District has not identified the Exchange Property in sufficient time to permit the Closing to occur by the Closing Date, or if the condition set forth in Section 4.1.4 is not satisfied by the Closing Date, Robson Homes may acquire the District Property for cash in accordance with Section 1.3 of this Agreement.

4.1.2 Robson Homes' Performance. Robson Homes shall have performed all of the obligations required by the terms of this Agreement to be performed by Robson Homes on or before the Close of Escrow. In the event District alleges that Robson Homes is in default, District shall notify Robson Homes in writing and describe in reasonable detail the alleged default in detail. Robson Homes shall have a reasonable time, but not more than fifteen (15) business days, to cure any alleged default.

4.1.3 Robson Homes Deliveries Made. Robson Homes has deposited with Escrow Holder all documents required of Robson Homes by this Agreement.

4.1.4 Title Policy. The Title Company has committed to issue to District a CLTA standard, or at District's choice, an ALTA extended coverage owner's policy of title insurance ("Title Policy"), with liability in the amount of the Exchange Amount, or greater if required in District's sole discretion, showing fee title to the Exchange Property vested in the District, subject only to:

(a) the standard printed exceptions and exclusions contained in the form of the Title Policy commonly used by Title Company;

(b) title exceptions approved by District pursuant to Section 2.5 of this Agreement;

(c) title exceptions resulting from documents being recorded or delivered through Escrow pursuant to this Agreement; and

(d) any other exceptions approved in writing by District in its sole and absolute discretion.

The terms of sub-sections (a) through (d), inclusive, being herein collectively referred to as the "Permitted Exceptions".

4.1.5 Representations and Warranties. All representations and warranties made by Robson Homes in this Agreement are true and correct as of the Closing as though made at that time.

4.2 Conditions to Robson Homes' Obligations. Robson Homes' obligation to exchange for the District Property, upon the Close of Escrow, shall be subject to the satisfaction or written waiver by Robson Homes of each of the conditions precedent set forth in this Section 4.2.

4.2.1 District's Performance. The District shall have performed all of the obligations required by the terms of this Agreement to be performed by the District on or before the Close of Escrow. In the event Robson Homes alleges that District is in default, Robson Homes shall notify District in writing and describe in reasonable detail the alleged default in detail. District shall have a reasonable time, but not more than fifteen (15) business days, to cure any alleged default.

4.2.3 District Deliveries Made. District has deposited with Escrow Holder all documents required of District by this Agreement.

4.2.4 Title Policy. Title Company has committed to issue to Robson Homes a CLTA standard, or at Robson Homes' choice, an ALTA extended coverage owner's policy of title insurance ("Title Policy"), with liability in the amount of the Exchange Amount, showing fee title to the District Property vested in Robson Homes, subject only to:

(a) the standard printed exceptions and exclusions contained in the form of the Title Policy commonly used by Title Company;

(b) title exceptions approved by Robson Homes pursuant to Section 2.5 of this Agreement;

(c) title exceptions resulting from documents being recorded or delivered through Escrow pursuant to this Agreement; and

(d) any other exceptions approved in writing by Robson Homes in its sole and absolute discretion.

The terms of sub-sections (a) through (d), inclusive, being herein collectively referred to as the "Permitted Exceptions".

4.2.5 Representations and Warranties. All representations and warranties made by District in this Agreement shall be true and correct as of the Closing as though made at that time. All such representations and warranties by the District shall survive the Close of Escrow and recording of the grant deed for a period equal to the statute of limitations that would be applicable to each such representation and warranty.

4.2.6 Existing Leases. On or before the date thirty (30) days prior to the Close of Escrow, the District shall vacate all portions of the District Property and shall terminate all leases, rental agreements and other rights of occupancy encumbering the District Property and shall be ready, willing and able to deliver the District Property to Robson Homes at Close of Escrow free and clear of all leases, agreements, occupancies and occupants.

4.2.7 Exchange Property Owner Obligations. If the Exchange Property has been identified, the Property Owner shall have performed all of the obligations to be performed by the Property Owner pursuant to or required by the terms of this Agreement as well as any other agreement relating to the transfer of the Exchange Property.

4.2.8 Personal Property. Prior to the Close of Escrow, the District shall remove or cause to be removed from the District Property all personal property currently located on the District Property. However, if there is any personal property on the District Property as of the date scheduled for the Close of Escrow, then in addition to all other rights and remedies available to Robson Homes at law or in equity (a) if Robson Homes nevertheless elects to close Escrow, then upon the Close of Escrow, such personal property shall be deemed abandoned by the District and, at the election of Robson Homes, shall be the property of Robson Homes, and (b) upon written demand from Robson Homes, whether before or after the Close of Escrow, the District, at the District's expense, immediately shall remove any such personal property from the District Property.

4.3 Hazardous Materials; Environmental Compliance. As a result of the Parties' respective inspections pursuant to Section 2.2 herein, each Party intends to satisfy itself that the District Property and Exchange Property, as applicable, is not in violation of any federal, state, or local law, ordinance, or regulation relating to Hazardous Materials, industrial hygiene, or to the environmental conditions on, under, or about the respective District Property or Exchange Property, or any portion thereof, including, but not limited to, soil and groundwater conditions ("Environmental Laws"). If, at any time prior to the expiration of the Robson Homes Due Diligence Period, Robson Homes determines that the District Property, or any portion thereof, is in violation of said Environmental Laws, Robson Homes may elect to terminate this Agreement and cancel the Escrow by delivering written notice to that effect to the District and Escrow Holder, thereby rendering this entire Agreement invalid, void, and unenforceable. If at any time prior to the expiration of the District Due Diligence Period, the District determines that the Exchange Property, or any portion thereof, is in violation of said Environmental Laws, the District shall have the right to continue to locate an alternative Exchange Property or, at the District's sole discretion, have the DP Exchange Value retained in escrow at the Closing pursuant to Section 1.3, but in no event shall the District be permitted to terminate this Agreement. The term "Hazardous Materials" when used in this Agreement shall mean any hazardous waste, hazardous substance, hazardous materials or toxic substances as defined, as of the Closing Date, in any federal, state, or local statute, ordinance, rule, or regulation applicable to the Property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395), Hazardous Waste Control Law (Health and Safety Code section 25100-25250.25); the Hazardous Materials Transportation Act, as amended (Title 49 United States Code sections 1801-1819); and any substance defined as "hazardous waste" in Health and Safety Code section 25117 or as a "hazardous substance" in Health and Safety Code section 25316, and in the regulations adopted and publications promulgated under these laws. "Hazardous Materials" shall also include asbestos or asbestos-containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as a hazardous waste or hazardous substance in any such statute, ordinance, rule, or regulation as of the Closing Date.

4.4 Satisfaction of Conditions. Where satisfaction of any of the foregoing conditions requires action by District or Robson Homes, each Party shall use its diligent best efforts, in good faith, and at its own cost, to satisfy such condition. Where satisfaction of any of the foregoing conditions requires the approval of a Party, such approval shall be in such Party's sole and absolute discretion.

4.5 Waiver. District may at any time or times, at its election, waive any of the conditions set forth in Section 4.1 above to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by District and delivered to Robson Homes. Robson Homes may at any time or times, at its election, waive any of the conditions set forth in Section 4.2 above to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by Robson Homes and delivered to District.

4.6 Compliance with California Law. The Close of Escrow shall be conditioned upon compliance with all applicable California laws relating to the acquisition of property.

4.7 Failure of Contingency. No Party shall be obligated to close Escrow pursuant to this Agreement unless and until all contingencies in its favor set forth in this Agreement are satisfied or waived. To the extent that the failure of a contingency in a Party's favor is the result of a breach or default by another Party, the non-defaulting Party(ies) shall have all rights and remedies provided in this Agreement against the defaulting Party.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES-BROKERAGE COMMISSIONS

5.1 District's Representations and Warranties. District hereby makes the following representations and warranties to Robson Homes, each of which (i) is material and relied upon by Robson Homes in making its determination to enter into this Agreement, (ii) is to the actual knowledge of District true in all respects as of the Effective Date and shall be true in all respects on the Closing Date, and (iii) shall survive the Close of Escrow for eighteen (18) months:

(a) The District is a school district duly organized and validly existing under the laws of the State of California, and this Agreement and the execution and delivery thereof by the person designated below have been specifically authorized by the Board. District has full right, power, and authority to enter into this Agreement and to perform District's obligations hereunder. This Agreement and all other documents delivered by District to Robson Homes now or at the Close of Escrow, have been or will be duly executed and delivered by District and are legal, valid, and binding obligations of District, sufficient to convey to Robson Homes good and marketable title to the District Property, are enforceable in accordance with their respective terms, and do not materially violate any provision of any agreement to which District is a party.

(b) There are no pending or known threatened actions, suits, writs, injunctions, decrees, legal proceedings or governmental investigations against or affecting the District Property or relating to the ownership, maintenance, use or operation of the District Property.

(c) The District has not received any written notices nor has any actual knowledge of any violation of any laws, ordinances, rules, regulations or requirements of any governmental agency, body or subdivision affecting or relating to the District Property.

(d) There are no written leases, rights of first refusal, or other agreements relating to the right of possession and/or occupancy and/or use of or otherwise affecting the District Property by any person or entity, except for matters of record approved by Robson Homes pursuant to Section 2.5 above.

(e) District is not actually aware that the District Property, or District, are in violation of any applicable Federal, State or local statute, ordinance, order, requirement, law, or regulation materially adversely affecting the District Property or construction of any improvement thereon. District has received no written notice of any such violation of applicable law. Robson Homes shall make its own independent determination of the feasibility of the use of the District Property for Robson Homes' intended use.

(f) District has not personally caused or knowingly permitted any contamination by Hazardous Materials (as defined in Section 4.3 of this Agreement) to occur on, at, about, or within the District Property, or any portion thereof, or otherwise knows of any such contamination of Hazardous Materials on, at, about, or within the District Property, or any portion thereof.

(g) The District has not received any written notice from any governmental agency or entity of, and has no knowledge of, any pending, threatened or contemplated action of eminent domain or any other public or quasi-public taking in connection with the Mirassou Property.

(h) The District has no knowledge of any existing, pending, threatened or contemplated actions or circumstances that would materially interfere with the development of the District Property for residential purposes, other than as expressly stated in this Agreement.

If District becomes aware of any act or circumstance which would change or render incorrect, in whole or in part, any representation or warranty made by District hereunder, whether as of the Effective Date or any time thereafter through the Closing Date, District will give immediate written notice of such changed fact or circumstance to Robson Homes, but such notice shall not release District of any liabilities or obligations with respect thereto. For the purpose of the foregoing warranties and representations, the knowledge requirement shall be based on actual written notice to District's designated person in a form which would provide actual notice to a person without a duty of inquiry. The District's designated person is solely limited to Carrie Andrews personally and does not include her or any of District's agents, advisors or consultants.

5.2 Robson Homes' Representations and Warranties. Robson Homes hereby makes the following representations and warranties to District, each of which (i) is material and relied upon by District in making its determination to enter into this Agreement, (ii) is to the actual knowledge of Robson Homes true in all respects as of the Effective Date and shall be true in all respects on the Closing Date, and (iii) shall survive the Close of Escrow for eighteen (18) months. With respect to any warranty or representation set forth in Section 5.2(b) through (f), inclusive, related to the "Exchange Property" such representation and warranty shall only apply if the Exchange Property (i.e., the property acquired by the District) is owned by Robson Homes (i.e., one of the Robson Homes Properties as defined in Section 1.2):

(a) Robson Homes has full right, power, and authority to enter into this Agreement and to perform Robson Homes' obligations hereunder. This Agreement and all other documents delivered by Robson Homes to District now or at the Close of Escrow, have been or will be duly executed and delivered by Robson Homes and are legal, valid, and binding obligations of Robson Homes, sufficient to convey to District good and marketable title to the Exchange Property, if it is a Robson Homes Property, are enforceable in accordance with their respective terms, and do not materially violate any provision of any agreement to which Robson Homes is a Party.

(b) There are no pending or known threatened actions, suits, writs, injunctions, decrees, legal proceedings or governmental investigations against or affecting the Exchange Property or relating to the ownership, maintenance, use or operation of the Exchange Property.

(c) Robson Homes has not received any written notices nor has any actual knowledge of any violation of any laws, ordinances, rules, regulations or requirements of any governmental agency, body or subdivision affecting or relating to the Exchange Property.

(d) There are no written leases, rights of first refusal, or other agreements relating to the right of possession and/or occupancy of the Exchange Property by any person or entity, except for matters of record approved by District pursuant to Section 2.5 above.

(e) Robson Homes is not actually aware that the Exchange Property, or Robson Homes, are in violation of any applicable Federal, State or local statute, ordinance, order, requirement, law, or regulation materially adversely affecting the Exchange Property or construction of any improvement thereon. Robson Homes has received no written notice of any such violation of applicable law. District shall make its own independent determination of the feasibility of the use of the Exchange Property for District's intended use.

(f) Robson Homes has not personally caused or knowingly permitted any contamination by Hazardous Materials (as defined in Section 4.3 of this Agreement) to occur on, at, about, or within the Exchange Property, or any portion thereof, or otherwise knows of any such contamination of Hazardous Materials on, at, about, or within the Exchange Property, or any portion thereof.

(g) Robson Homes has not received any written notice from any governmental agency, or entity of, and has no knowledge of, any pending, threatened or contemplated action of eminent domain or any other public or quasi-public taking in connection with the Exchange Property, if the Exchange Property is owned by Robson Homes.

(h) Robson Homes has no knowledge of any existing, pending, threatened or contemplated actions or circumstances that would materially interfere with the District's use of the Exchange Property, if the Exchange Property is owned by Robson Homes, other than as expressly stated in this Agreement.

If Robson Homes becomes aware of any act or circumstance which would change or render incorrect, in whole or in part, any representation or warranty made by Robson Homes hereunder, whether as of the Effective Date or any time thereafter through the Closing Date, Robson Homes will give immediate written notice of such changed fact or circumstance to District, but such notice shall not release Robson Homes of any liabilities or obligations with respect thereto. For the purpose of the foregoing warranties and representations, the knowledge requirement shall be based on actual written notice to Robson Homes' designated person in a form which would provide actual notice to a person without a duty of inquiry. Robson Homes' designated person is solely limited to Mark Robson, personally, and does not include his/her or any of Robson Homes' agents, advisors or consultants.

5.3 Brokerage Commissions. Robson Homes and District, hereby each represent and acknowledge that Chris Twardus and Mark Kuiper of Colliers International have been engaged by Robson Homes as brokers or finders to represent them in connection with this Agreement and Robson Homes will bear the cost of any commission due to Chris Twardus and Mark Kuiper in accordance with the terms of a separate written agreement executed by the Robson Homes. Robson Homes and District hereby indemnify and hold the other free and harmless from and against any and all costs and liabilities including, without limitation attorneys' fees, for causes of action or proceedings which may be instituted by any other broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the indemnifying Party in connection with this Agreement. The foregoing representation and indemnity shall survive the termination of this Agreement.

ARTICLE 6
DEFAULT

6.1 Liquidated Damages. BOTH PARTIES ACKNOWLEDGE AND AGREE THAT DAMAGES THE DISTRICT SHALL SUSTAIN AS A RESULT OF ANY SUCH A DEFAULT WILL BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN. THE PARTIES HEREBY AGREE THAT LIQUIDATED DAMAGES IN THE AMOUNT OF THE DEPOSITS TRANSFERRED TO THE ESCROW FOR THE EXCHANGE PROPERTY (AS SET FORTH IN SECTION 1.4) PLUS ANY INTEREST THEREON, IF ANY, IS THE PARTIES' BEST AND MOST ACCURATE ESTIMATE OF THE DAMAGES THE DISTRICT WOULD SUFFER IN SUCH EVENT AND THAT SUCH ESTIMATE IS REASONABLE UNDER THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT. ACCORDINGLY, IN THE EVENT OF ANY DEFAULT BY ROBSON HOMES AND PROVIDED THAT THERE HAS BEEN NO FAILURE OF SATISFACTION OF A CONDITION PRECEDENT TO CLOSE BENEFITING ROBSON HOMES UNDER THIS AGREEMENT AND ROBSON HOMES HAS FAILIED TO CURE ITS DEFAULT WITHIN THE 15-DAY CURE PERIOD SET FORTH IN SECTION 4.1.3, DISTRICT SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT, AS ITS SOLE AND EXCLUSIVE REMEDY, BY GIVING WRITTEN NOTICE TO ROBSON HOMES AND ESCROW HOLDER. IF THIS AGREEMENT IS TERMINATED AS SET FORTH HEREIN, THE PARTIES SHALL BE RELIEVED OF THEIR OBLIGATIONS HEREUNDER EXCEPT AS EXPRESSLY PROVIDED OTHERWISE HEREIN, AND THE DEPOSITS TRANSFERRED TO THE ESCROW FOR THE EXCHANGE PROPERTY (AS SET FORTH IN SECTION 1.4) PLUS ANY INTEREST THEREON, IF ANY SHALL BE RELEASED TO THE DISTRICT. ROBSON HOMES AND THE DISTRICT AGREE THAT THE DISTRICT'S RIGHT TO RETAIN THE DEPOSITS THAT HAVE BEEN RELEASED TO THE DISTRICT (AS SET FORTH IN SECTION 1.4) PLUS ANY INTEREST THEREON, IF ANY, SHALL BE THE SOLE REMEDY OF THE DISTRICT IN THE EVENT OF SUCH A DEFAULT UNDER THIS AGREEMENT BY ROBSON HOMES. THE PAYMENT OF SUCH AMOUNT IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE §3275 OR §3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE DISTRICT UNDER CALIFORNIA CIVIL CODE §§1671, 1676 AND 1677. THE DISTRICT WAIVES ANY RIGHT TO SPECIFICALLY ENFORCE ROBSON HOMES' OBLIGATION TO PURCHASE THE DISTRICT PROPERTY (INCLUDING WITHOUT LIMITATION THE PROVISIONS OF CIVIL CODE SECTIONS 1680 AND 3389), AND WAIVES ANY RIGHT TO SEEK, CLAIM OR OBTAIN PUNITIVE DAMAGES OR SPECIAL OR CONSEQUENTIAL DAMAGES OR ANY OTHER DAMAGES OR REMEDY FOR SUCH A BREACH BY ROBSON HOMES. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO LIMIT ROBSON HOMES' LIABILITY TO THE DISTRICT UNDER THE INDEMNIFICATION IN SECTION 2.2 ABOVE OR FOR ATTORNEYS' FEES AND COSTS AS PROVIDED IN SECTION 7.3 BELOW. ANY AND ALL BREACHES OR DEFAULTS BY ROBSON HOMES OF ANY NATURE OR KIND SHALL BE SUBJECT TO NOTICE AND RIGHT TO CURE WITHIN THE 15-DAY CURE PERIOD SET FORTH IN SECTION 4.1.3.

DISTRICT'S INITIALS ____ ROBSON HOMES' INITIALS ___

6.2 District's Default. In the event the District shall breach or default under any of the terms and provisions of this Agreement (after any applicable notice and 15-day cure period set forth in Section 4.2.1), Robson Homes shall have the right, but not the obligation, in addition to any other rights or remedies which it may have at law or in equity, to (a) terminate this Agreement and the Escrow created hereby, in which event the Deposits plus all interest thereon, and Robson Homes shall be entitled to the immediate refund of any funds deposited by Robson Homes into Escrow or released to District for or related to the District Property, including all interest earned thereon; and thereafter neither Party will have any further rights or obligations hereunder except those which are expressly stated to survive such termination, or (b) pursue the right of specific performance to obtain the District Property. For clarification, Robson Homes shall have the right to terminate this Agreement and receive a return of the Deposits without prejudice to Robson Homes' claims against the District for the District's breach of this Agreement.

ARTICLE 7
MISCELLANEOUS

7.1 Costs of Inspections. All costs related to the Parties' due diligence inspections and testing, and production of and/or reproduction of the Due Diligence Materials shall be the sole responsibility of the Party expending such costs.

7.2 California Law. This Agreement shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California.

7.3 Attorneys' Fees. If any Party files any action or brings any proceedings against the other(s) arising out of this Agreement, or is made a party to any action or proceeding brought by a third party in connection with this Agreement, then, as between the Parties, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the Party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment.

7.4 Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery, or electronic mail addressed as follows:

To District: Union School District
5175 Union Avenue
San Jose, CA 95124
Attn: Carrie Andrews, Ph.D., Superintendent
[redacted]

With copy to: Dannis Woliver Kelley
200 California Street, Suite 400
San Francisco, CA 94111
Attn: Clarissa R. Canady, Esq.
[redacted]

To Robson: Robson Homes, LLC
2185 The Alameda, Suite 150
San Jose, CA 95126
Attn: Mark Robson
[redacted]

With copy to: Robson Homes, LLC
9532 E. Riggs Road
Sun Lakes, AZ 85284
Attn: Pamela Gulsvig, Legal Department

[redacted]

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) business days after deposit in the United States mail. Copied recipients of notices may be provided their copies via email. If transmitted by email (with a PDF attachment), notice shall be given effective upon confirmation of transmission during normal business hours or, if transmission after normal business hours, then on the following business day.

7.5 Authority. The person(s) executing this Agreement warrant on behalf of the Parties hereto that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

7.6 Execution in Counterpart. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all Parties hereto, notwithstanding that all Parties are not signatories to the original or the same counterpart.

7.7 Assignment. No Party shall, voluntarily or by operation of law, assign, sublease, or otherwise transfer any of its rights or obligations under this Agreement, including, without limitation, transferring ownership of any Property to another Party (except as provided in this Agreement), without obtaining the prior written consent of the other Parties, which consent may be withheld by the other Parties in their sole discretion. The preceding sentence shall not apply to retaining agents, consultants or subcontractors to perform some of a Party's obligations under this Agreement for and on behalf of such Party.

7.8 Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not signatory to this Agreement.

7.9 Binding on Heirs. This Agreement shall be binding upon the Parties hereto and their respective heirs, representatives, transferees, successors, and assigns.

7.10 Time of the Essence. Time is of the essence for each provision of this Agreement in which time is an element.

7.11 Time. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and state or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day that is not a Saturday, Sunday or state or national holiday.

7.12 Cooperation with Further Documents. The Parties each acknowledge that it may be necessary to execute documents other than those specifically referred to in this Agreement to complete the transaction. All Parties hereby agree to cooperate with each other by executing such other documents or taking such other action as may be reasonably necessary to complete this transaction in accordance with the intent of the Parties as evidenced in this Agreement.

7.13 Condemnation. In the event the District Property is taken, in whole or in part, or designated to be taken by condemnation proceedings, or proceedings in lieu thereof, prior to the Close of Escrow, Robson Homes shall have until the close of escrow within which to elect to either cancel this Agreement and receive a refund of Robson Homes' deposit, together with all interest thereon, or to close escrow without reduction in the purchase price, in which event the District shall assign to Robson Homes all rights to condemnation awards.

7.14 Entire Agreement of Parties. This Agreement constitutes the entire Agreement among the parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by the Parties.

7.15 Waiver. No waiver by any Party of any provision of this Agreement shall be considered a waiver of any other provision or of any subsequent breach of the same or any other provision, including the time for performance of any such provision. The exercise by a Party of any remedy provided in this Agreement or at law shall not prevent the exercise by that Party of any other remedy provided in this Agreement or at law or in equity, except as otherwise expressly provided in this Agreement.

7.16 District's Board Approval. The District shall provide written notice to the other Parties and Escrow Agent of the adoption of the Resolution of Intention, along with a true and correct copy of the Resolution of Intention, as soon as reasonably possible following its adoption. Escrow Agent is authorized by the Parties to insert as the Effective Date on the first page hereof the date Escrow Agent receives fully executed counterparts of this Agreement.

7.17 Incorporation of Recitals and Exhibits. The recitals and each attached exhibit are hereby incorporated herein by reference.

7.18 Effect of Recitals. The Recitals above are deemed true and correct, are hereby incorporated into this Section as though fully set forth herein, and the Parties acknowledge and agree that they are each bound by same.

7.19 Section References. Any reference to any section of this Agreement cited without a decimal includes all sections following the cited section. For example, a reference to Section 5 includes 5.1, 5.1(a) et seq.

7.20 Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

7.21 Venue. Any actions or proceedings arising under, growing out of, or in any way related to this Agreement shall be instituted and prosecuted only in courts located in the County of Santa Clara, State of California, and each Party expressly waives its right, under part II, title IV of the California Code of Civil Procedure, to cause any such actions or proceedings to be instituted or prosecuted elsewhere.

7.22 Covenants to Survive Escrow. The covenants and agreements contained in this Agreement shall survive the Close of Escrow.

7.23 Conflicts of Interest. No director, officer, official, representative, agent or employee of District shall have any financial interest, direct or indirect, in this Agreement.

7.24 Nondiscrimination. There shall be no discrimination by the Parties against any person on account of race, color, religion, sex, marital status, national origin, or ancestry in the performance of their respective obligations under this Agreement.

7.25 Rights and Remedies are Cumulative. Except as may be otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of its right or remedies shall not preclude the exercise by it, at the same time or at different times, of any other rights or remedies for the same default or any other default by another Party.

7.26 Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either Party the Agreement shall forthwith be physically amended to make such insertion or correction. The foregoing shall not be read in a manner which works to strike or modify a negotiated term of this Agreement.

7.27 Parties Represented by Counsel. The Parties acknowledge that: (a) no Party is in a significantly disparate bargaining position in relation to any other party; and (b) the District and Robson Homes are each represented by legal counsel in connection with the transactions contemplated by this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers, as of the Effective Date.

DISTRICT:	**ROBSON HOMES:**
UNION SCHOOL DISTRICT	ROBSON HOMES, LLC.
Signed: ____________________________	Signed: ____________________________
Print Name: __________________________	Print Name: __________________________
Print Title: ___________________________	Print Title: ___________________________

EXHIBIT A
Legal Description of Mirassou Property

For APN/Parcel ID(s): 527-25-005

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LOS GATOS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

ALL OF LOT 99, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED, "TRACT NO. 3382 BELWOOD OF LOS GATOS, UNIT NO. 2", WHICH MAP WAS FILED FOR RECORD AUGUST 14, 1963 IN MAP BOOK 165 AT PAGES 6 AND 7, SANTA CLARA COUNTY RECORDS.

EXHIBIT A-1
<u>Visual Depiction of Mirassou Property</u>

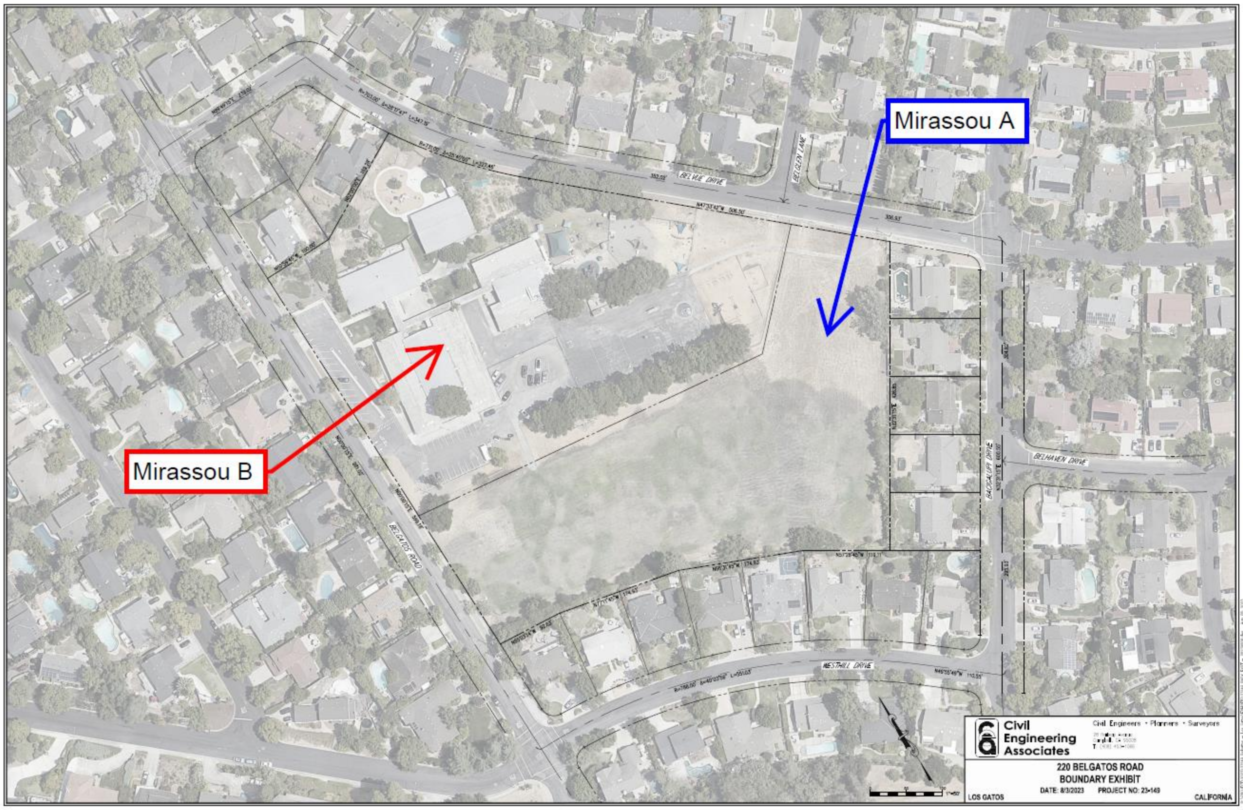

Mirassou A
Mirassou B
Civil Engineering Associates
Civil Engineers • Planners • Surveyors
220 BELGATOS ROAD
BOUNDARY EXHIBIT
DATE: 8/3/2023 PROJECT NO: 23-149
LOS GATOS
CALIFORNIA

EXHIBIT A-1

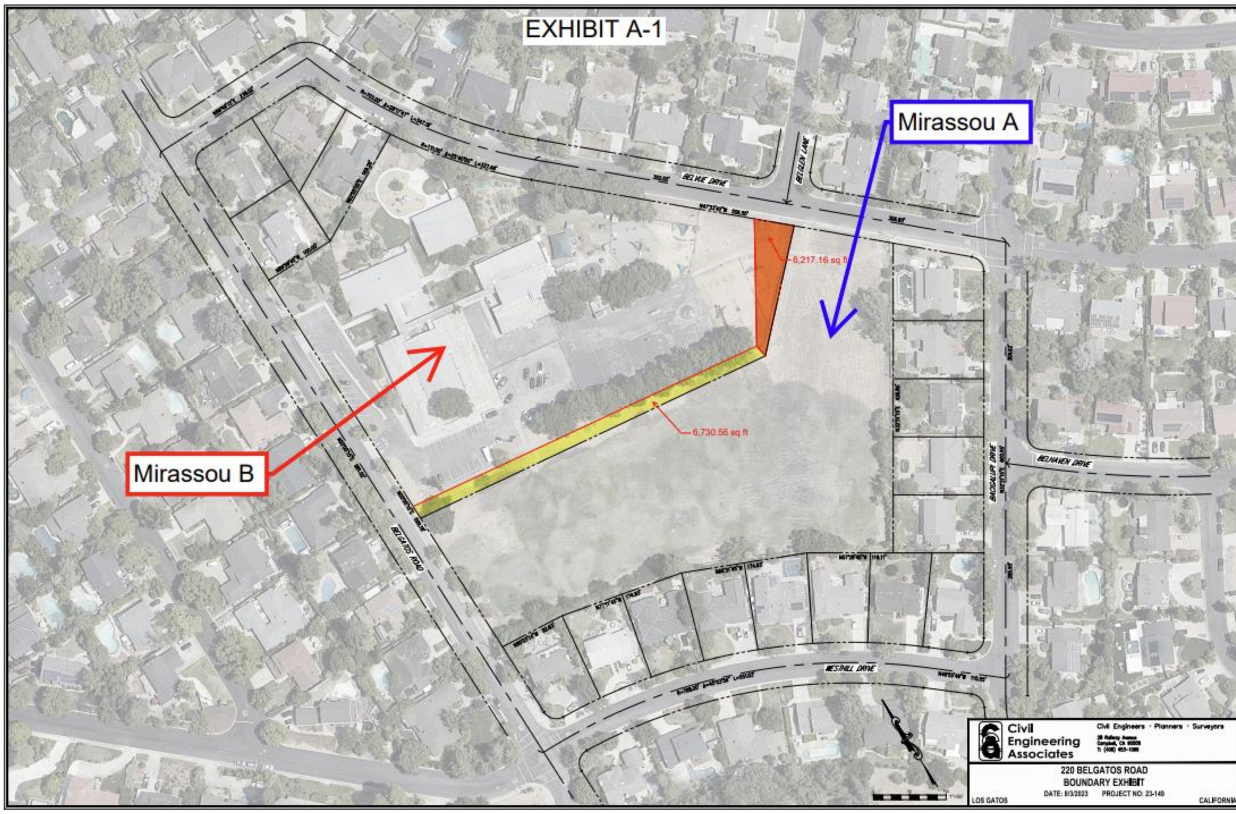


EXHIBIT A-1
Mirassou A
Mirassou B
6,217.16 sq ft
6,730.56 sq ft
BELGATOS ROAD
BELVUE DRIVE
WESTHILL DRIVE
BELHAVEN DRIVE
Civil Engineering Associates
Civil Engineers · Planners · Surveyors
220 BELGATOS ROAD
BOUNDARY EXHIBIT
DATE: 8/3/2023 PROJECT NO: 23-149
LOS GATOS
CALIFORNIA

EXHIBIT A-1

EXHIBIT A-2
Legal Description of District Property

EXHIBIT A-3
Legal Description of Exchange Property

EXHIBIT A-4

<u>Statement of Qualifications and Proposal</u>

ROBSON HOMES

Union School District
Mirassou School Site "Mirassou A"
Exchange Agreement & Development Opportunity
Statement of Qualifications & Proposal

ROBSON HOMES

July 21, 2023

ROBSON HOMES

July 21, 2023

Scott Sheldon
Terra Realty Advisors, Inc.
[redacted]

Re: Union School District
Mirassou School Site (Mirassou A) Development Opportunity RFP

Dear Mr. Sheldon,

Thank you for giving us the opportunity to submit our Qualifications and Proposal to acquire, entitle, and develop the 4-acre Parcel "A" of the Mirassou School Property as described in the Union School District's Request for Statement of Qualifications & Proposal.

Robson Homes is a San Jose based, privately-held homebuilder with over 35 years of residential development experience in the Silicon Valley. We have successfully entitled 68 projects and built over 2,250 homes and apartments in the area. Our team has extensive experience in the Town of Los Gatos and very recent experience working with two local school districts to similarly develop and entitle their land for residential development. We have the team, the experience and financial strength needed to see this project through, ensuring the Union School District generates the funding it needs and creating high quality new homes that the neighborhood and Town will be proud of.

Our proposal for this project is for 30 residential lots utilizing an SB330 application with a Builder's Remedy. After contemplating multiple development approaches, we believe this strategy is the right balance of exchange value and mitigated risk for the District. Pursuing a higher density through the Builder's Remedy in this location will be extremely contentious and it does not fit within the fabric of the neighborhood.

Robson Homes is a small, responsive organization led by President and Founder, Mark Robson. Our team is comprised of professionals with extensive knowledge and experience in the local market and development industry, many of which have been with the company for over 15 years. Our commitment to personalized involvement and community engagement sets us apart. Mark would be the lead and primary contact throughout the entirety of this project, and he would actively participate in all community outreach initiatives and neighborhood meetings. From experience, we know that it is critical to understand the concerns and aspirations of the community, and we are committed to this endeavor from the top down.

Mark Robson has been a resident of Los Gatos for the past 27 years, and has built a strong personal and professional reputation in the community. Robson Homes has completed five residential projects in the Town, the first in 1998. Each was unique and challenging, including "Bella Vista" built on the site of the former Villa Felice Hotel overlooking Vasona Lake and "Bluebird Lane" on Los Gatos Boulevard which included the restoration of the Historic Thrash House. Our experience demonstrates our comfortability navigating the Town and garnering support from a very involved community.

In addition to local experience, our recent experience developing Campbell Union High School District and Cambrian School District properties make us uniquely qualified for the Mirassou School site. We are familiar with the complexities of the land exchange contract, we know the District's legal team, and we are financially poised to pay cash to facilitate this deal as we did for the other two school sites.

The enclosed materials provide detailed information about our company's capabilities and residential development experience. We believe that our consistent dedication to design and quality is evident in our work.

We are excited by this opportunity, and as the schedule outlined in the RFQ/P is tight, we propose beginning Town and neighborhood outreach immediately as well as preparing the ALTA survey, geologic soils studies, and percolation tests (necessary to know the size of your retention basin) upon selection and prior to a contract being executed.

Thank you for your consideration.

Sincerely,

[redacted]

Mark Robson
President, Robson Homes

FIRM INFORMATION

Name: Robson Homes, LLC.

Address: 2185 The Alameda
Suite 150
San Jose, CA 95126

Phone: 408.345.1767

Legal Entity: Robson Homes, LLC

Other Names: Santa Clara Development Company

Robson Homes is a privately held homebuilding company involved in the development, design, construction, marketing and sale of in-fill projects in the Silicon Valley. We are a San Jose based company with in-depth local knowledge and experience. Our portfolio includes award-winning single-family homes, townhouses, condominiums, multi-family housing, mixed-use and retail.

Mark Robson founded the company in 1989, and continues to lead the firm today. Under his leadership, we have built a solid reputation for design excellence and quality in the communities that we do business; being welcomed back by the cities and towns that we build in is one of our proudest accomplishments. Robson Homes is dedicated to outstanding architecture, site and landscape design, superior craftsmanship and authentic detailing. Our ability to design and build uniquely functional and attractive homes has enabled us to successfully market and sell our homes, even in changing markets.

Robson Homes has garnered numerous Gold Nugget Awards for design excellence from the Pacific Coast Builder's Association, including "Home of the Year" and "Best Single-Family Detached Home". The company's Whole Foods Shopping Center in Fremont was recognized with an Award of Merit for "Best Commercial Project" and the restored historic Thrash House in Los Gatos won for "Best Renovated or Restored Single House." According to Mark, "We are building more than just houses; we are building neighborhoods with lasting beauty to be enjoyed for years to come."

FIRM DESCRIPTION & KEY PERSONNEL

Mark Robson is the founder and President of Robson Homes, and remains the company's day to day operational head and visionary. Mark's unwavering focus on design and quality, coupled with his ability to inspire and lead a close knit team, has earned the company a highly regarded reputation in the Silicon Valley. Mark Robson will be the primary contact for all negotiations and will remain actively involved in the project from start to finish.

MARK ROBSON, President
mrobson@robsonhomes.com
408.345-1767
Mark has operated Robson Homes (Santa Clara Development Company) for nearly 35 years, and is responsible for the development and construction of over 68 local projects and over 2,250 residential units. He is a resident of Los Gatos, where he has lived for the past 27 years. Mark earned his Bachelor's degree in Economics from Santa Clara University and his MBA from the University of Southern California. Outside of work, Mark is active in community and civic organizations, and makes it a priority to give back to his community. In 2023, Robson Homes was ranked the 41st most philanthropic company in the Silicon Valley by the Silicon Valley Business Journal, a notable accomplishment for a company of less than 40 employees.

MARY GOURLAY, Forward Planning Project Manager
mgourlay@robsonhomes.com
408.423-7133
Mary Gourlay has over 12 years of experience entitling complex residential and mixed-use projects. She is a LEED, AP and a licensed Landscape Architect with impressive professional experience in Bay Area planning and landscape architecture. Mary has been a part of the Robson Homes' team for over four years, most recently acting as the Project Manager for the Campbell Union High School District and Cambrian School District development projects. Mary holds a Bachelor's degree in Landscape Architecture and a Certificate of Community Planning from Kansas State University and a Master's degree in Landscape Architecture in Urban Design from Harvard University.

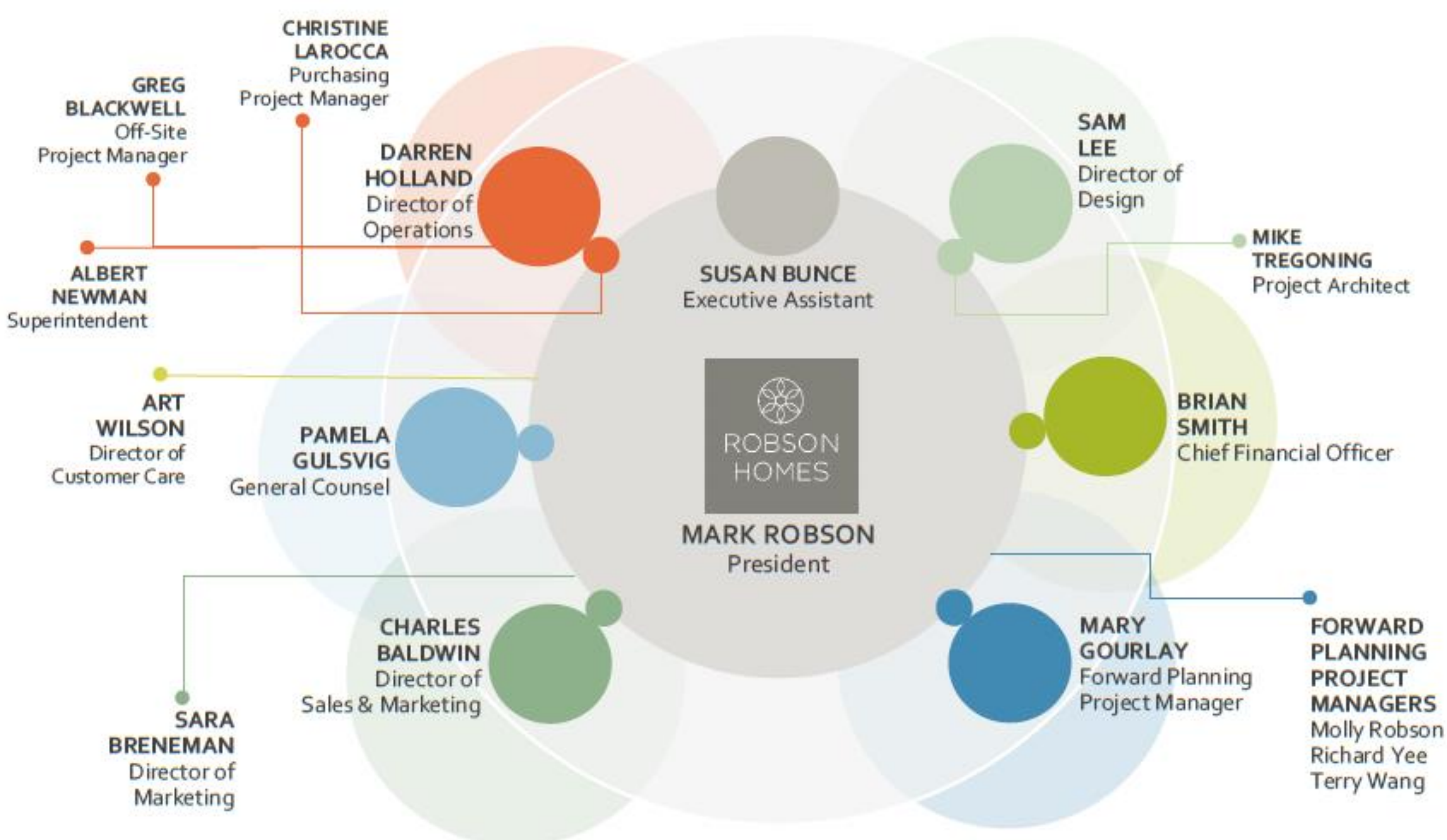
BRIAN SMITH, Chief Financial Officer
Brian Smith runs of all the finance activities of the company. He has been with Robson Homes for nearly 30 years. Brian earned his Bachelor's degree in Finance from the University of Illinois.

SAM LEE, Director of Design
Sam leads site and architectural design. He has been with Robson Homes for 16 years. Sam is a LEED, AP and licensed Architect with a Bachelor's Degree in Architecture from UC Berkeley.

DARREN HOLLAND, Director of Operations
Darren leads the Quality Control, Construction and Purchasing departments. He has been with Robson Homes for 18 years. Darren holds a Bachelor's Degree in Architecture from UC Berkeley and an MS in Construction Engineering Management from Stanford.

EXHIBIT A-4

Organizational Chart



ROBSON HOMES

Housing Capital

3200 BRISTOL ST, STE 800
COSTA MESA, CA 92626
PHONE (714)438-4407

July 12, 2023

Mr. Scott Sheldon
Union School District
c/o Terra Realty Advisors, Inc.
450 Chadbourne Road, Suite G
Fairfield, CA 94534

Dear Mr. Sheldon:

Housing Capital, a division of U.S. Bank, has had a lending relationship with Robson Homes, Mark Robson and Brian Smith since 2009 and has provided financing to them totaling over $350 million to assist in the construction of various residential real estate projects throughout the San Francisco Bay Area. We are interested in looking at financing future projects of Robson Homes.

Please feel free to contact me should you have any questions at naomi.clark@usbank.com or 415-609-6010.

Very truly yours,

U.S. Bank National Association,

[redacted]

Naomi Clark
Its: Vice President

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 7/18/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Lovitt & Touché A Marsh and McLennan Agency, LLC
8605 E. Raintree Drive, Suite 200
Scottsdale AZ 85260

CONTACT NAME: Deb Streeter
PHONE (A/C, No, Ext): 602-956-2250 FAX (A/C, No): 602-956-2258
E-MAIL ADDRESS: dstreeter@lovitt-touche.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Travelers Indemnity Company	25658
INSURER B : Travelers Property Casualty Co of Amer	25674
INSURER C : Amerisure Mutual Insurance Company	23396
INSURER D :	
INSURER E :	
INSURER F :	

INSURED ROBSCOM-C2
Robson Homes, LLC
9532 East Riggs Road
Sun Lakes AZ 85248

COVERAGES **CERTIFICATE NUMBER:** 1610561906 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY			Y630SP600407COF23	1/1/2023	1/1/2024	EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 500,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	X POLICY X PRO-JECT X LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
B	UMBRELLA LIAB X OCCUR			EX0T67515523NF	1/1/2023	1/1/2024	EACH OCCURRENCE	$ 25,000,000
	X EXCESS LIAB CLAIMS-MADE						AGGREGATE	$ 25,000,000
	DED X RETENTION $ 0							$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBEREXCLUDED? (Mandatory in NH) N If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WC20756481302	4/1/2023	4/1/2024	X PER STATUTE OTH-ER	
							E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

Proof of Coverage

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

ROSEWOOD
At Camden Park

2023
San Jose, CA
40 Single-Family Homes

The Campbell Union High School District selected us as their residential development partner in the redevelopment of a parcel of District owned land. We collaborated with the District, the City and the community to ensure compatibility among new land uses and create a plan for 40 new homes and 22 Accessory Dwelling Units (ADUs). A General Plan Amendment was approved to change the land use designation from Public Quasi Public to Residential Neighborhood with an R-1-8 Residential Zoning, a very rare land use change for San Jose. Neighborhood outreach was key to building community support for the new homes, and provided the inspiration for our unique market-rate solution to the housing crisis, ADUs, which are affordable by design.

Land Owners: Campbell Union High School District / Dr. Robert Bravo, Superintendent 408.317.0960
Key Firm Personnel: Mark Robson, Brian Smith, Sam Lee, Mary Gourlay

ROBSON HOMES

Cambrianna

2024
San Jose, CA
21 Single-Family Homes

The Cambrianna School District selected us as their residential development partner for the development of a vacant portion of their Metzler School site. We collaborated with the District to successfully process a General Plan Amendment to change the land use designation from Public Quasi Public to Residential Neighborhood with R-1-8 Residential Zoning. Our community sensitive plan executed through a Planned Development permit with a Density Bonus includes 21 new homes, 14 of which feature Accessory Dwelling Units and four of which are designated Below Market Properties. Neighborhood sensitivity and outreach was key to building community support for the new homes and ultimate project approval.

Land Owners: Cambrian School District / Dr. Carrie Andrews 408.558.4201; Dr. Kristi Schwiebert 408.377.2103 x1101 / Key Firm Personnel: Mark Robson, Brian Smith, Sam Lee, Mary Gourlay

Oak Tree
CIRCLE

2022
Los Gatos, CA
25 Single-Family Homes

Oak Tree Circle is an enclave of 25 single-family homes located within Campbell city limits, but within the USPS limits for Los Gatos. We processed a challenging Planned Development Permit with a density bonus for this development, which included five homes with Accessory Dwelling Units and two Below Market Rate homes. Detailed cottage-style architecture and strong site plan, designed around existing heritage oak trees, created a quaint enclave compatible with the existing neighborhood, with which we had extensive communication and coordination.

Land Owners: Leann Wilson (LH Evans Rentals, LLC) 408.687.9339; Doug Ferrari 408.718.0184
Key Firm Personnel: Mark Robson, Brian Smith, Sam Lee, Richard Yee

ROBSON HOMES

EXHIBIT A-4

HEIRLOOM

2020
Fremont, CA
17 Single-Family Homes
1 Historic Restoration

Tucked away in a residential area of south Fremont, Heirloom is a traditional single-family home neighborhood consisting of 17 new homes and one restored historic home designed along a singular private street. Through careful site and architectural design, we were able to minimize privacy impacts to the neighbors and help integrate the new homes into the existing neighborhood. We improved visibility of the historic 1930s farmhouse and tank house by moving them to the site's main street frontage, which established a better sense of place within the community, and created a gateway landmark to the new development. The new homes' early California and Mission style architecture was influenced by the historic structures.

Land Owner: Pattie Silva Rotondo 408.315.7769
Key Firm Personnel: Mark Robson, Brian Smith, Sam Lee, Terry Wang

ROBSON HOMES

THE ABBEY
at Palmdale Estates

2018
Fremont, CA
79 Single-Family Homes
2 Historic Restorations
45 Senior Living Units

Built on the land of the former Palmdale Estates in the Mission District of Fremont, The Abbey master plan included 79 new single-family homes, two restored and renovated historic homes, 45 new senior living units and the preservation of a 5.4-acre garden. The original property had been in the stewardship of the Sisters of the Holy Family for nearly 70 years when they selected us to work with them in order to build new senior housing for the Sisters and preserve and endow the gardens for public use through the construction of new housing. The result is a wonderful neighborhood of new homes and senior cottages bordered by a garden of sprawling lawns, magnificent trees and two fully restored 1920s mansions.

Land Owners: Sisters of the Holy Family / Sister Gladys Guenther, Congregational President 510.292.9833
Key Firm Personnel: Mark Robson, Brian Smith, Sam Lee, Jake Lavin

ROBSON HOMES

EXHIBIT A-4

AWARDS

Robson Homes has been honored with repeated recognition for excellence from the Pacific Coast Builders' Conference and its sponsors. These coveted Gold Nugget Awards "recognize those who improve our communities through exceptional concepts in design, planning and development."

2017 Gold Nugget Award of Merit
Madison
Campbell, CA
Best Multi-Family Housing Community 18 to 30 du/acre

2014 Gold Nugget Award of Merit
Whole Foods Plaza
Fremont, CA
Best Commercial Project

2014 Gold Nugget Grand Award
Laurel Mews
Los Gatos, CA
Home of the Year

2014 Gold Nugget Grand Award
Laurel Mews
Los Gatos, CA
Best Single-Family Detached Home 3,000 to 3,499 sq. ft.

2012 Gold Nugget Grand Award
Thrash House
Los Gatos, CA
Best Kitchen Design

2012 Gold Nugget Grand Award
Thrash House
Los Gatos CA
Best Custom Home 3,000 to 5,000 sq. ft.

2012 Gold Nugget Award of Merit
Thrash House
Los Gatos, CA
Best Renovated or Restored Single House

2011 Gold Nugget Award of Merit
Mission Estates
Fremont, CA
Best Infill, Re-Development of Rehab Site Plan – 5 Acres or More

2011 Gold Nugget Award of Merit
Hummingbird
Fremont, CA
Best Infill, Re-Development or Rehab Site Plan – up to 5 Acres

2009 Gold Nugget Award of Merit
Bella Vista
Los Gatos, CA
Oustanding Single-Family Detached Home on a Small Lot 3,200 to 4,500 sq. ft.

2009 Gold Nugget Award of Merit
Encanto
San Jose, CA
Outstanding Neighborhood Site Plan up to 20 Acres

2007 Gold Nugget Award of Merit
Encanto
San Jose, CA
Best Single-Family Detached Home under 1,700 sq. ft. on a Compact Lot (under 3,200 sq. ft.)

2006 Gold Nugget Award of Merit
Mayfield
Fremont, CA
Redevelopment Project of the Year / Attached – Suburban

2005 Gold Nugget Grand Award
Canyon Heights
Fremont, CA
Best Adaptive Re-Use Project

2002 Gold Nugget Award of Merit
Boxwood
Fremont, CA
Best Residential Detached Community – over 9 du/acre

2001 Gold Nugget Grand Award
Old School
Fremont, CA
Best Redevelopment, Rehab or Infill Site Plan

1997 Gold Nugget Award of Merit
Heather Heights
South San Francisco, CA
Best Single Family Detached Home 2,001-2,400 sq. ft

1995 Gold Nugget Award of Merit
Mission Harvest
Fremont, CA
Best Single Family Detached Home Over 2,100 sq. ft

ROBSON HOMES

July 21, 2023

Scott Sheldon
Terra Realty Advisors, Inc.
[redacted]

Re: Union School District
Mirassou School Site (Mirassou A) Development Opportunity RFP

Dear Mr. Sheldon,

Thank you for giving us the opportunity to participate in the exchange for the Union School District property. The following is our non-binding Letter of Intent (LOI) to acquire from the Union School District an approximately 4 acre portion of Parcel APN: 527-25-005, located at 220 Belgatos Road, Los Gatos, California ("Mirassou A").

The proposed terms of our offer are:

1. Exchange Agreement	Upon review and acceptance of the general terms and conditions contained herein, Robson Homes, LLC ("RH") and the Union School District ("USD") will enter into an Exchange Agreement ("Agreement") pursuant to which RH will acquire Mirassou A in exchange for the Purchase Price and USD will use the Purchase Price to acquire another property to be selected by USD (the "Exchange Property"). The Agreement will be prepared by USD and will be executed by both parties by August 8, 2023.
2. Purchase Price	$22,000,000 which is $916,666 per market rate residential lot. Based upon the attached conceptual site plan, we anticipate 30 total residential lots (24 market rate lots and 6 below market rate duet lots) on the redevelopment of Mirassou A. Under the Builder's Remedy, an additional lot would require another BMR, which is not feasible. There are two other ways increase our purchase price. First, The School District could sell RH more land (see attached Exhibit A). RH

will pay $100 per square foot for an additional 8,000 to 12,000 sf of land, increasing our purchase price by between $800,000 and $1,200,000. The purpose of the additional land is simply to improve setbacks, orientation and lots sizes. Second, we could change our development strategy and pursue a General Plan Amendment to change the land use and utilize a Density Bonus to create 27 residential lots (25 market rate lots and only two BMRs). If achieved, this would increase the exchange value for the District to $24,000,000. A General Plan Amendment is discretionary and the process is lengthy, perhaps resulting in more BMRs or denial. We do not think the additional risk and uncertainty of this entitlement path is worthwhile.

3. Form of Payment	Cash at the Close of Escrow.
4. Earnest Deposit Schedule	(a) A one hundred thousand dollar ($100,000) initial earnest money deposit (the "Initial Deposit") will be placed into escrow within three (3) business days from the opening of escrow; (b) a second earnest money deposit of three hundred fifty thousand dollars ($350,000) will be placed into escrow on the date that is one (1) business day after the end of the Feasibility Period (defined in Section 5 below); and (c) a third earnest money deposit of five hundred thousand dollars ($500,000) will be deposited into escrow on the Entitlement Approval Date (defined below). All of the above three earnest money deposits shall remain in escrow until the Entitlement Approval Date, as defined below, at which time such earnest money will be transferred to the escrow for the Exchange Property as further explained in the Agreement. Moreover, if any of RH's requested entitlements are denied, RH shall have the right to terminate the Agreement and receive a refund of all of the above three earnest money deposits. In the event of such termination by RH, RH would provide copies of all third party due diligence to USD and grant USD the right to continue to use the site plan for the Mirassou A property.

The "Entitlement Approval Date" is the date that: (i) RH has received any and all entitlement approvals, including Tentative Subdivision Map, from the Town for the redevelopment of the residential subdivision on Mirassou A as described in Section 6 below, including without limitation a parcel map separating Mirassou A from the remainder of the adjacent real property to be retained by the USD, which approvals do not contain any stipulations or conditions other than those approved in writing by RH; and (ii) all referendum, objection and appeal periods with respect to the Town's approvals in (i) above have expired with no objections or appeals or referendums having been filed or served upon RH and/or USD, or if any objections or appeals or referendums are so filed or served, then all such objections and appeals and referendums shall have been dismissed with prejudice or rejected, so that such general plan amendment is not subject to further appeal.

After Entitlement Approval Date, all three of the earnest money deposits will be nonrefundable to RH except under those circumstances under which earnest money is refundable to RH hereunder, such as without limitation a default by USD, and will be applicable to the Purchase Price at the Close of Escrow.

5. Feasibility Period

RH shall have seventy five (75) days from the opening of escrow during which RH can terminate the Agreement and receive a return of the Initial Deposit (the "Feasibility Period").

USD shall provide RH with copies of all leases, rental agreements, tenancies or any other right of occupancy on Mirassou A (the "Leases" and each a "Lease"), soils tests, engineering tests, topographical maps, environmental tests and studies, drawings, surveys, plans, plats, blueprints, and any other tests, studies, and information applicable to Mirassou A. USD shall further cooperate with any and all investigations, tests, or inspections of Mirassou A which RH, or its consultants, desires to perform.

6.Govermental Approvals/Development Strategy

USD understands and acknowledges that during the escrow period and prior to the close of escrow RH, at RH's expense, intends to obtain such governmental permits and approvals as RH deems necessary or appropriate in order to use, subdivide and redevelop Mirassou A as residential. Notwithstanding the foregoing, USD shall pay for the cost of the civil engineering to create the parcel map separating Mirassou A from the remainder of the adjacent real property to be retained by USD. RH will have an initial meeting with Town staff to review the project and submittal within 20 days of opening of escrow. RH will have an initial meeting with Town council members within 60 days of opening of escrow and will have an initial meeting with edge condition neighbors within 90 days of opening escrow. RH will request that USD employees and board members be available to speak in support of the project at public hearings, neighborhood meetings and such other meetings as RH requests.

Our development strategy strikes a careful balance between the value created by the land exchange and neighborhood compatibility. **We will process an SB330 application with a Builder's Remedy** in order to expedite Town approvals and ensure entitlement. Although this approach allows for higher density housing, our plan comprises of 30 two-story homes: 24 single-family detached, nine with Accessory Dwelling Units, and six Below Market Properties, which are duet homes. Our extensive experience with infill development has proven that sites that access through an existing residential neighborhood like this one generate the most scrutiny from the community. We feel strongly that blending with the development pattern of the existing neighborhood is essential to gaining community support and ensuring a less contentious campaign for the District.

Based upon market knowledge gained from our two recent projects, Rosewood in the Cambrian area of San Jose and Oak Tree Circle in Los Gatos, our market rate lot sizes will range from approx. 3,900 to 5,900 sf. This allows for attractive homes and private yards while achieving strong financial performance. Our homes will feature four and five bedrooms and range from approx. 3,000 sf to 3,750 sf.

Our site plan is designed to blend with the existing neighborhood and mitigate potential conflicts with surrounding homeowners, aligning backyards to backyards wherever possible and incorporated greater second-story setbacks and well-positioned windows to prioritize privacy.

Limiting the overall impact to the neighborhood in terms of traffic, neighborhood compatibility, and privacy to adjacent neighbors is our ultimate community benefit and will drive the extensive neighborhood outreach required for this project. For information on neighborhood outreach and strategy, see 'Exhibits'.

7. Close of Escrow	The Close of Escrow shall be ninety (90) days following the Entitlement Approval Date. RH and USD shall have the right to extend the Close of Escrow set forth above up to two (2) times each for a thirty (30) day period by providing written notice of such extension to the other party at least ten (10) business days prior to the then closing date by depositing two hundred and fifty thousand dollars ($250,000) into escrow for each thirty (30) day period. Such amount shall be nonrefundable to RH except under those circumstances under which earnest money is refundable to RH hereunder, such as without limitation a default by USD, and will be applicable to the Purchase Price at the Close of Escrow.
8. Title & Escrow	Upon mutual execution of the Agreement, escrow will be opened with Kiley Demaree with Chicago Title Insurance Company, National Commercial Services ("Escrow Agent") at 675 First Street, Suite 900, San Jose, California 95112. Escrow Agent shall close the transaction and issue all title policies. USD shall pay for an ALTA standard title policy on Mirassou A and the cost of recordation of the grant deed transferring Mirassou A from USD to RH, including any document transfer taxes, if applicable. RH shall pay for an ALTA standard title policy on the Exchange Property and the cost of recordation of the grant deed transferring the Exchange Property to USD, including any document transfer taxes, if applicable. USD and RH will split the escrow fee 50/50. Any other closing costs shall be paid by RH.
9. Tenants	USD shall terminate all leases and all tenants shall have vacated Mirassou A on or before the date thirty (30) days prior to the date of the Close of Escrow.
10. Broker	At Close of Escrow, RH will pay a commission to Colliers International, Chris Twardus and Mark Kuiper.

This letter is intended to be a non-binding proposal, which states the general terms and conditions under which RH proposes to acquire Mirassou A. Neither party shall become legally bound in any manner unless and until a complete and detailed Agreement is signed by both parties.

Sincerely,
Robson Homes, LLC

[redacted]

Mark Robson
President

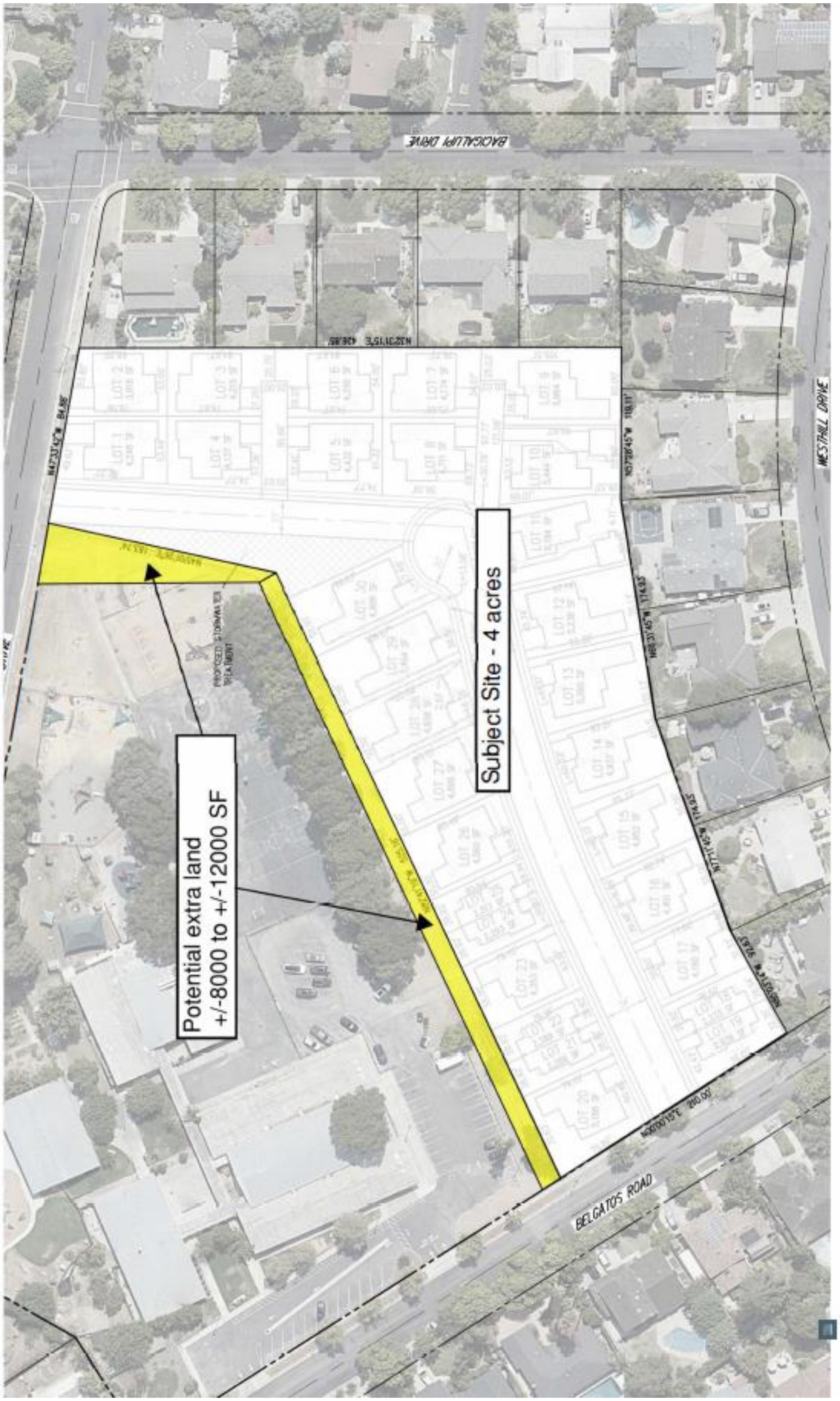


Exhibit A - to LOI

EXHIBIT A-4


Civil Engineering Associates
220 BELGATOS ROAD
LOS GATOS
CALIFORNIA

EXHIBIT A-4

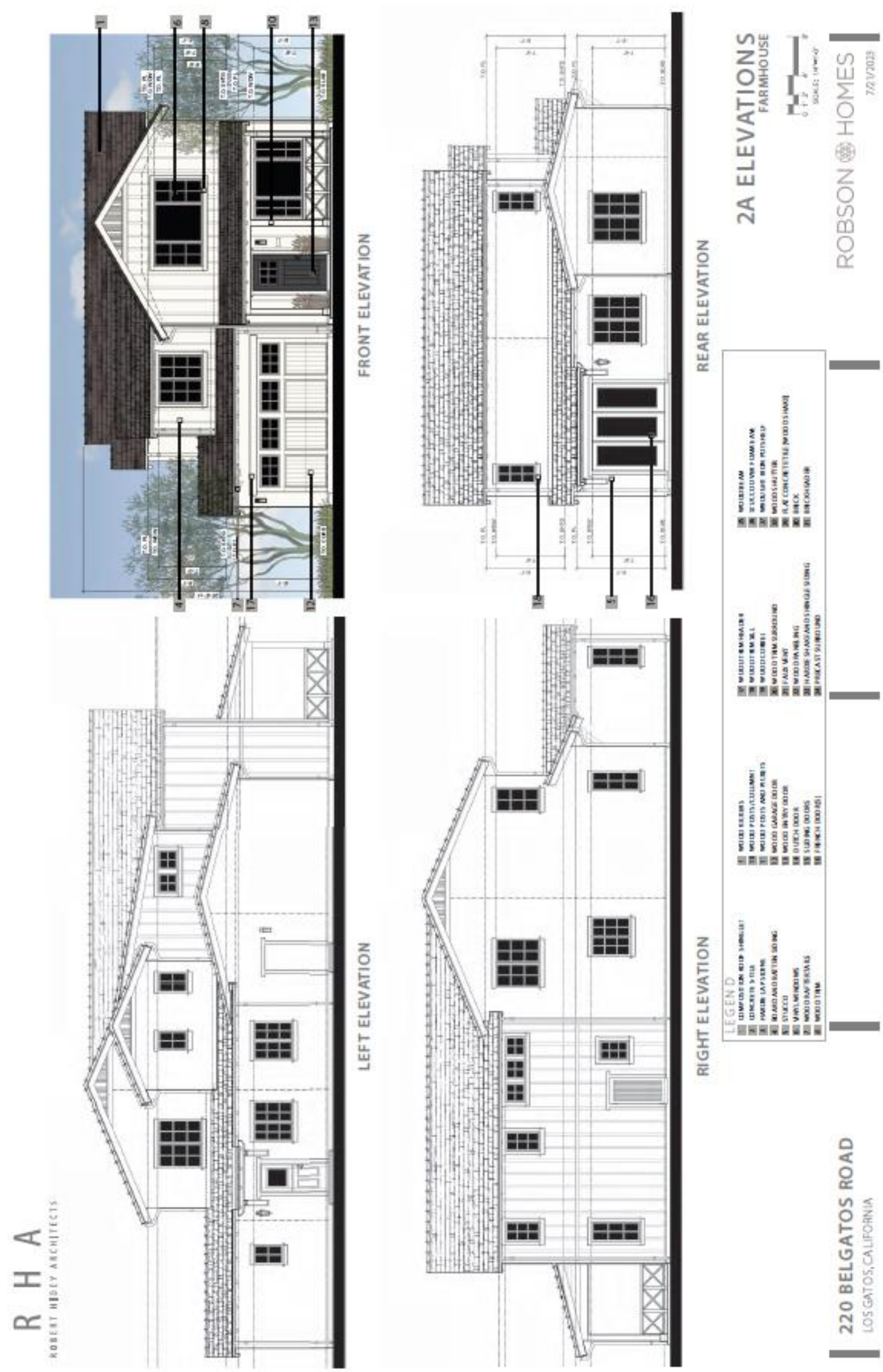

RHA
ROBERT HIDLEY ARCHITECTS
FRONT ELEVATION
LEFT ELEVATION
REAR ELEVATION
RIGHT ELEVATION
LEGEND
2A ELEVATIONS
FARMHOUSE
ROBSON HOMES
220 BELGATOS ROAD
LOS GATOS, CALIFORNIA

EXHIBIT A-4

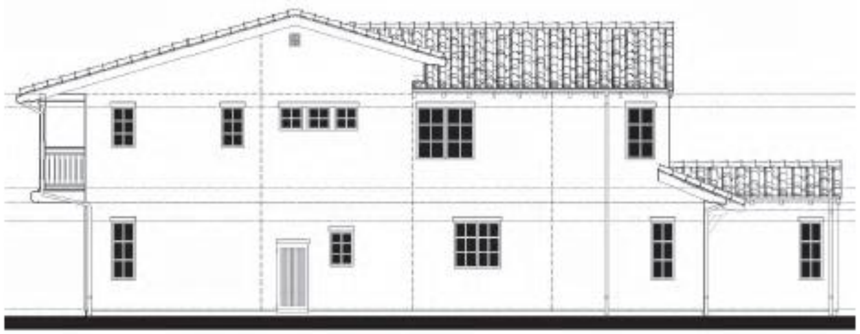
EXHIBIT A-4

R H A

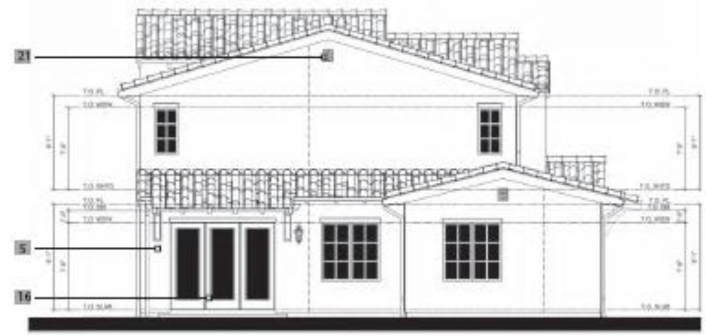
ROBERT HIDEY ARCHITECTS

LEFT ELEVATION

FRONT ELEVATION



RIGHT ELEVATION



REAR ELEVATION

LEGEND

1 COMPOSITION ROOF SHINGLE	12 WOOD GARAGE DOOR	23 HARDIE SHAKE AND SHINGLE SIDING
2 CONCRETE S-TILE	13 WOOD ENTRY DOOR	24 PRECAST SURROUND
3 HARDIE LAP SIDING	14 DUTCH DOOR	25 WOOD BEAM
4 BOARD AND BATTEN SIDING	15 SLIDING DOORS	26 STUCCO OVER FOAM BEAM
5 STUCCO	16 FRENCH DOOR(S)	27 WROUGHT IRON POTSHELF
6 VINYL WINDOWS	17 WOOD TRIM HEADER	28 WOOD SHUTTER
7 WOOD RAFTER TAILS	18 WOOD TRIM SILL	29 FLAT CONCRETE TILE (WOOD SHAKE)
8 WOOD TRIM	19 WOOD CORBEL	30 BRICK
9 WOOD KICKERS	20 WOOD TRIM SURROUND	31 BRICK HEADER
10 WOOD POSTS/COLUMNS	21 FAUX VENT	
11 WOOD POSTS AND PICKETS	22 WOOD PANELING	

2B ELEVATIONS

MONTEREY

SCALE: 1/8"=1'-0"

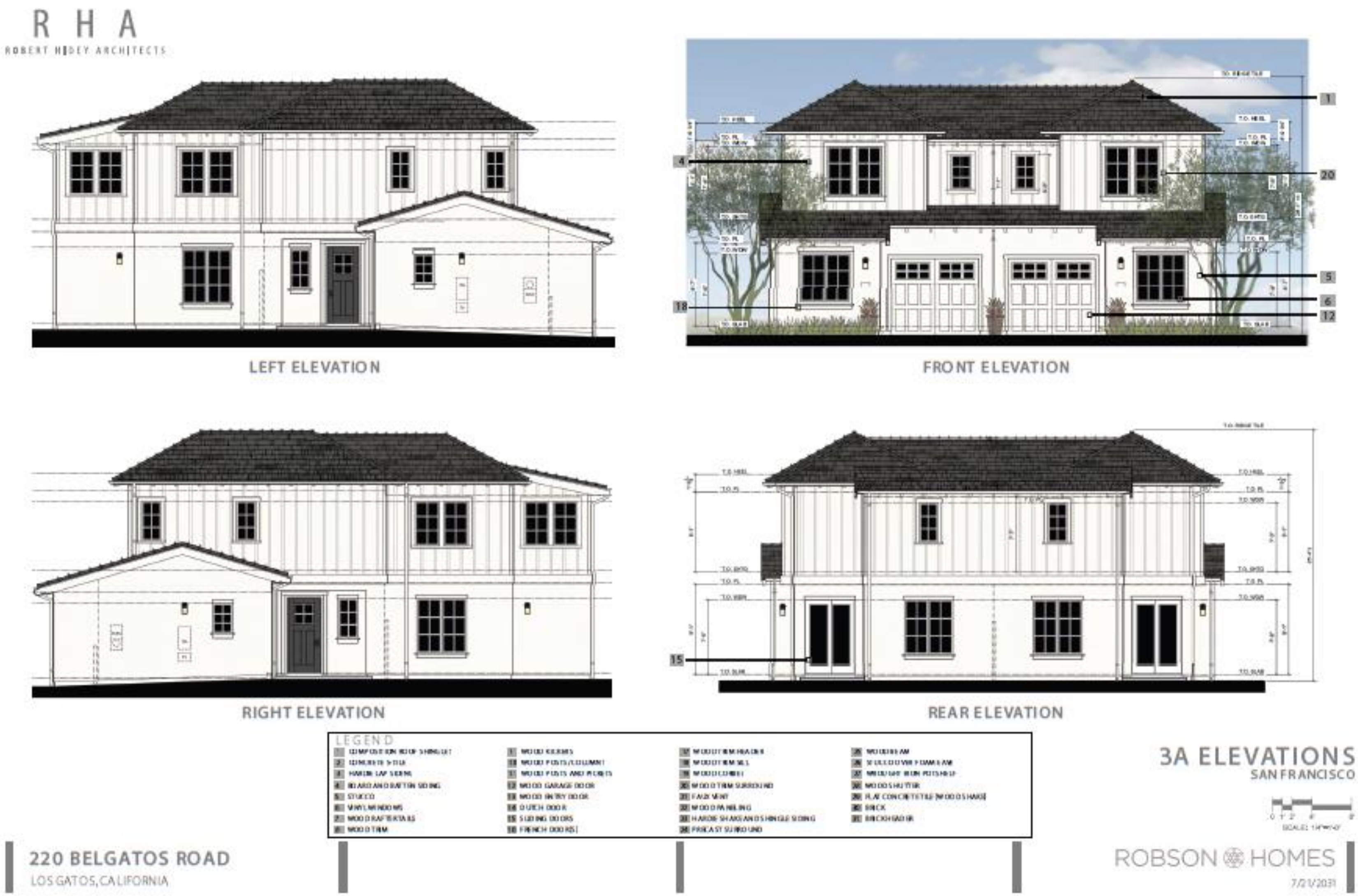
ROBSON HOMES

7/21/2023

220 BELGATOS ROAD

LOS GATOS, CALIFORNIA

EXHIBIT A-4



R H A
ROBERT HIDEY ARCHITECTS
LEFT ELEVATION
FRONT ELEVATION
RIGHT ELEVATION
REAR ELEVATION
LEGEND
STUCCO
DUTCH DOOR
SLIDING DOORS
FRENCH DOOR(S)
BRICK
3A ELEVATIONS
SAN FRANCISCO
220 BELGATOS ROAD
LOS GATOS, CALIFORNIA
ROBSON HOMES

NEIGHBORHOOD OUTREACH AND STRATEGY

We will host an in person meeting with direct neighbors, comprised of a storyboard presentation led by Mark Robson followed by an opportunity for neighbors to ask questions, provide feedback and raise any concerns. Following this meeting, we will meet with neighbors individually.

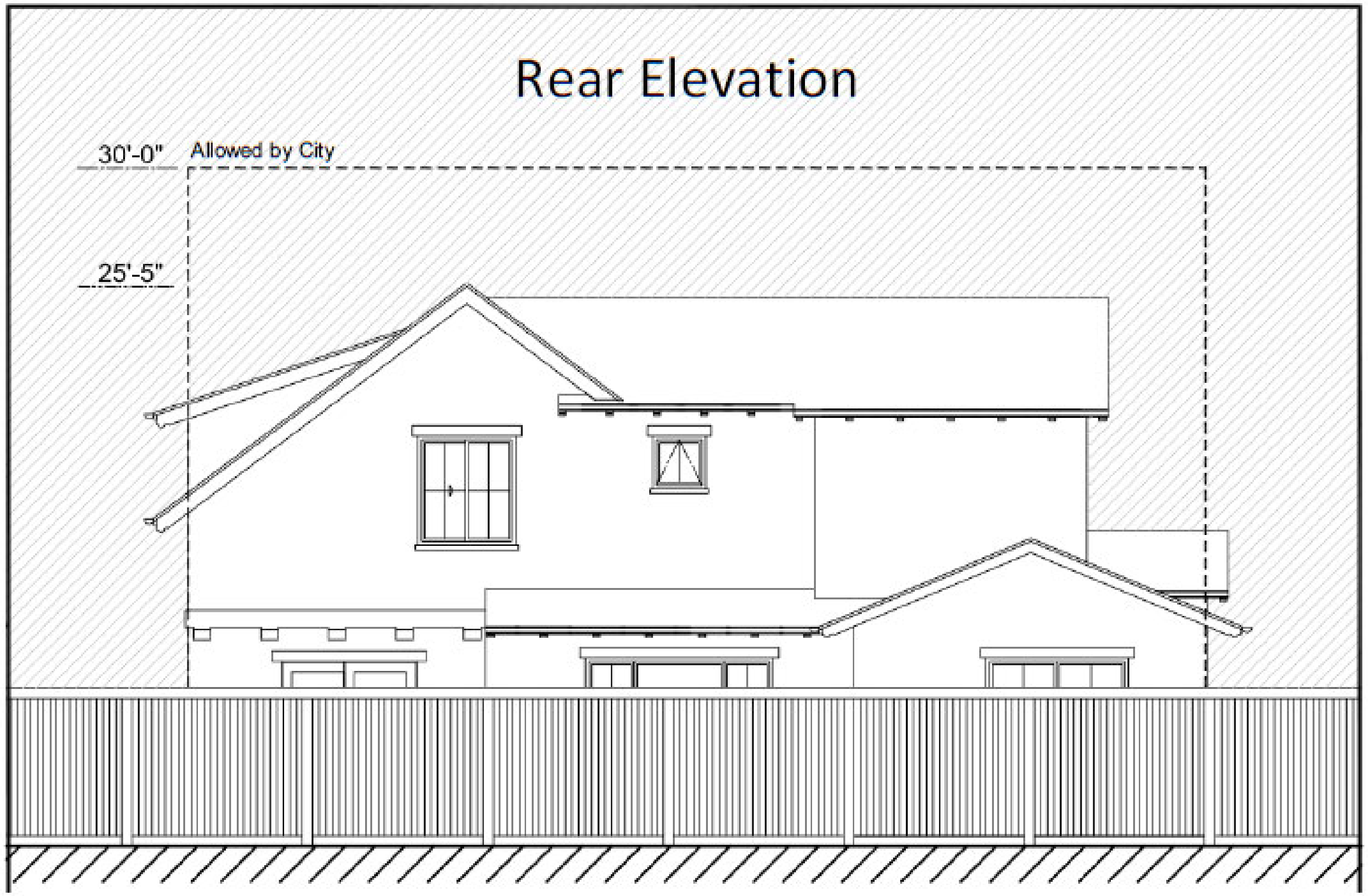
The storyboards will outline the following: a map of the existing site, the proposed site plan, conceptual design, front and rear elevations, privacy exhibits and an exhibit of the rear setbacks between the existing neighborhood and proposed project.

We will also use this as an opportunity to explain the schedule.

The storyboard exhibits will include:

i. Existing Site Conditions
ii. The proposed Site Plan
iii. Conceptual Design
iv. Front Elevations
v. Rear Elevations
vi. Privacy Exhibit
vii. Exhibit of the rear setbacks between existing neighbors and the proposed project

EXHIBIT A-4



Elevation diagram to illustrate compatibility with existing neighbors by reducing second floor building height, massing and windows.

EXHIBIT B
Grant Deed - Exchange Property

RECORDING REQUESTED BY Chicago Title Insurance Company, National Commercial Services **AND WHEN RECORDED MAIL DOCUMENT TO:** Union School District 5175 Union Avenue San Jose, CA 95124	

Space Above This Line for Recorder's Use Only

A.P.N.:	File No.:

GRANT DEED

The Undersigned Grantor(s) Declare(s): **THIS INSTRUMENT IS EXEMPT FROM RECORDING FEES (GOVT. CODE 27383) and THIS INSTRUMENT IS EXEXEMPT FROM DOCUMENTARY TRRANSFER TAX (REV. AND TAXATION CODE 11922)**; CITY CONVEYANCE TAX **None**; CITY TRANSFER TAX**: None;** SURVEY MONUMENT FEE N/A

[	x	]	computed on the consideration or full value of property conveyed, OR
[		]	computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
[		]	unincorporated area: [**X**] City of , and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, to **Robson Homes, LLC, a California limited liability corporation,**

hereby GRANTS to **Union School District of Santa Clara County, a California public school district**

the following described property in the City of ____________, County of **Santa Clara**, State of **California**:

See attached legal description.

Dated:

Robson Homes, LLC, a California limited liability corporation

____
By: Mark Robson
Title: President

California All-Purpose Certificate of Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF ____________)

On ______________________, 20___, before me, _______________________, Notary Public, personally appeared ____________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

____
Signature of Notary

EXHIBIT B

EXHIBIT B-1
Grant Deed – District Property

RECORDING REQUESTED BY Chicago Title Insurance Company, National Commercial Services **MAIL TAX STATEMENT AND WHEN RECORDED MAIL DOCUMENT TO:** Robson Homes, LLC, a California limited liability corporation 2185 The Alameda, Suite 150 San Jose, CA 95126-1432 ATTN: Pamela Gulsvig	

Space Above This Line for Recorder's Use Only

A.P.N.:	File No.:

GRANT DEED

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX $_________; CITY TRANSFER TAX $_______; CITY CONVEYANCE TAX $________SURVEY MONUMENT FEE $

[	x	]	computed on the consideration or full value of property conveyed, OR
[		]	computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
[		]	unincorporated area; [X] Town of Los Gatos , and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, to **Union School District of Santa Clara County, a California public school district**,

hereby GRANTS to **Robson Homes, LLC, a California limited liability corporation,**

the following described property in the Town of Los Gatos, County of **Santa Clara**, State of **California:**

Dated:

Union School District of Santa Clara County, a California public school district,

____
By: Carrie Andrews, Ph.D.
Title: Superintendent

California All-Purpose Certificate of Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

On _______________________, 20____, before me, ________________________, Notary Public, personally appeared ______________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

____
Signature of Notary

EXHIBIT C
Public Agency Certificate of Acceptance – District

ACCEPTANCE AND CONSENT TO RECORDATION

This is to certify that the interest in real property located in the City of ____________, County of Santa Clara, California, conveyed by that certain Exchange Agreement and Joint Escrow Instructions, dated August 21, 2023, and as described more specifically in the Grant Deed from Robson Homes, LLC, to the **Union School District**, a California public school district of Santa Clara County (hereinafter referred to as "School District"), is hereby acknowledged and accepted by said School District pursuant to the action taken by the Board President of said School District per District Resolution No. _______________ approved on _________ __, 20__, and the School District consents to recordation thereof by its duly authorized officer.

School District:
Union School District

Dated: __________________

____
Doug Evans, President, Board of Trustees

Approved as to Form:
District Counsel

____
(Signature)
Clarissa R. Canady
Type/Print Name

Dated: __________ __, 20__

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)

On __________________ before me, ____,
a Notary Public, personally appeared ____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

____
Notary Public

[SEAL]

EXHIBIT D
<u>Non-Foreign Affidavit – Exchange Property</u>

AFFIDAVIT OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code provides that a buyer of a United States real property interest must withhold tax if the seller is a foreign person. To inform Union School District (the "Buyer") that withholding of tax is not required upon the disposition of a United States real property interest owned by Robson Homes, LLC (the "Seller"), the undersigned hereby certifies the following on behalf of the Seller:

1. The Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. The United States employer identification number of the Seller is __-_______.

3. The home office address of the Seller is 2185 The Alameda, Suite 150, San Jose, CA 95126.

It is understood that this certification may be disclosed to the Internal Revenue Service by the Buyer and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Seller.

ROBSON HOMES, LLC

By: ______________________

Name: Mark Robson

Title: President

Date: ______________________

FIFTH AMENDMENT TO EXCHANGE AGREEMENT AND

JOINT ESCROW INSTRUCTIONS

THIS FIFTH AMENDMENT TO EXCHANGE AGREEMENT AND JOINT ESCROW INSTRUCTIONS ("**Fifth Amendment**") is entered into by and between the UNION SCHOOL DISTRICT, a public school district duly organized and validly existing under the Constitution and the laws of the State of California ("**District**") and MANA CAMDEN FUND, LLC ("**Mana**"). District and Mana are sometimes hereinafter referred to individually as a "Party" and collectively as the "**Parties**." The effective date of this Fifth Amendment ("**Effective Date"**) shall be the date on which the last Party executes the Fifth Amendment.

RECITALS

WHEREAS, Mana's predecessor and District entered into that Exchange Agreement and Joint Escrow Instructions effective April 24, 2023 ("**Exchange Agreement**") for a portion of the approximately 10.83 gross acres of land located at 5670 Camden Avenue, San Jose, CA 95124, and as more particularly described in the legal description attached as Exhibit A to the Exchange Agreement and referred to in the Exchange Agreement as the "Cinnabar A Site" or "Cinnabar Site A";

WHEREAS, Mana and District entered into that First Amendment to the Exchange Agreement and Joint Escrow Instructions effective June 13, 2023 ("**First Amendment**");

WHEREAS, Mana and District entered into that Second Amendment to the Exchange Agreement and Joint Escrow Instructions effective September 11, 2023 ("**Second Amendment**");

WHEREAS, Mana and District entered into that Third Amendment to the Exchange Agreement and Joint Escrow Instructions effective February 13, 2024 ("**Third Amendment**");

WHEREAS, Mana and District entered into that Fourth Amendment to the Exchange Agreement and Joint Escrow Instructions effective May 14, 2024 ("**Fourth Amendment**") (collectively the Exchange Agreement, First Amendment, Second Amendment, Third Amendment, and Fourth Amendment are referred to herein as the "**Agreement**"); and

WHEREAS, the development process has been unexpectedly delayed due to the slow processing by Public Works and Department of Transportation, the Parties wish to further amend the Agreement to extend the Closing Date in order to provide Mana with the additional time needed to obtain the necessary Entitlement approvals for the project.

NOW THEREFORE, in consideration of the covenants and agreements set forth in this Fifth Amendment, and the valuable consideration associated therewith, the Parties agree as follows:

AGREEMENT

1. Except as otherwise defined herein, all defined terms in the Agreement shall retain the same definition herein.

2. Pursuant to Section 2.8 of the Agreement (as amended in the Fourth Amendment), the District is obligated to "obtain and deposit with Escrow Agent prior to Close of Escrow estoppel certificates for each Tenant/Little League in a form acceptable to and approved by Mana prior to expiration of the Due Diligence Period." Mana and District hereby agree that the estoppel certificates shall be in the form attached hereto as **Exhibit "A."**

3. The first sentence of Section 3.2 is hereby deleted in its entirety and replaced with the following:

> "3.2 Close of Escrow; Closing Date. Escrow shall close on or prior to the later of: (i) ninety (90) days after the San Jose Approval Date; or (ii) March 31, 2026, if no Mana Legal Action or Third Party Legal Action is commenced; or (iii) ninety (90) days after the Conclusion of the Mana Legal Action or Third Party Legal Action, if a Mana Legal Action or Third Party Legal Action is commenced (the "Closing Date"), unless mutually extended by the Parties or extended by Mana Camden through the Closing Extensions, as defined below, provided that the conditions to Closing described in Section 4 below have been satisfied."

4. Pre-Sale Notice to Employees of the Unified School District. As a courtesy to the District and its employees, Mana agrees to provide advance notice ("Advance Notice")to the District related to the marketing and sale of the first phase of the development so that employees may register on any available presale and/or prequalification lists as well as promptly submit purchase offers. The Advance Notice will be sent to the District at the following address: 5175 Union Avenue San Jose, CA 95124. The Advance Notice shall set forth the marketing information of or related to the first phase of the Development including such information as a site plan, schedule of available units, and estimated purchase prices. The District shall be solely responsible for distributing that information to its employees. Nothing herein shall obligate the Developer to sell to any employee of the District; however, this advance information shall be provided as a courtesy to afford the employees an opportunity to inquire about purchasing a market rate unit. Mana's inadvertent or unintentional failure to give Advance Notice shall not constitute a default under the Agreement.

5. Miscellaneous. Except to the extent expressly modified by this Fifth Amendment, the Agreement is ratified and remains in full force and effect. To the extent of any inconsistency between this Fifth Amendment and the Agreement, the terms and conditions of this Fifth Amendment shall control. This Fifth Amendment may be executed in multiple counterparts, which may be delivered and/or executed by electronic means, all of which, taken together, shall constitute one document.

IN WITNESS WHEREOF, the Parties hereto have caused this Fifth Amendment to be executed by their respective duly authorized officers, as of the Effective Date.

DISTRICT:

UNION SCHOOL DISTRICT

Signed: _________________________

Print Name: Dr. Carrie Andrews

Print Title: Superintendent

Dated: _______________, 2025

MANA CAMDEN:

MANA CAMDEN FUND, LLC,
a Delaware limited liability company

Signed: [redacted]

Print Name: Orville Power

Print Title: Member

Dated: September 11, 2025

EXHIBIT "A"

ESTOPPEL CERTIFICATE

EXHIBIT A TO FIFTH AMENDMENT

FORM OF ESTOPPEL CERTIFICATE

UNION SCHOOL DISTRICT, a public school district duly organized and validly existing under the Constitution and the laws of the State of California ("**District**") is the owner of the land located at 5670 Camden Avenue, San Jose, CA 95124 (the "**Property**").

The District and MANA CAMDEN FUND, LLC ("**Mana**") entered into that Exchange Agreement and Joint Escrow Instructions effective April 24, 2023 ("**Agreement**") whereby Mana may purchase a portion of the Property. Pursuant to Section 2.8 the Agreement, the District shall obtain and deposit with Escrow Agent (as defined in the Agreement) prior to Close of Escrow an estoppel certificate from each tenant (including any users such as Little League) confirming the terms and conditions of such parties rights regarding their occupancy or use of the Property so as to confirm there are in compliance with the Agreement and will vacate the Property in accordance with the Agreement. To that end, and for the benefit of Mana (and its successors and assigns), the undersigned represents, warrants and agrees as follows:

(1) The undersigned is the Lessee or Tenant under a lease agreement between the District, as Lessor, and ________________________________, as Tenant, dated ________________________, _________, covering the premises consisting of approximately _________ square feet of space of the Property (the "Leased Premises") described as follows: ____________________________. A copy of the fully executed lease agreement and all amendments or modifications thereto, if any (collectively, the "Lease"), are attached hereto. There are no other modifications or amendments to the Lease.

(2) There are no unfulfilled written or oral promises, representations or warranties by the Landlord.

(3) There are no subleases of the Leased Premises or any portion thereof.

(4) The term of the Lease shall expire ___________ and Tenant has not right to occupy the Leased Premises after the aforementioned expiration date.

(5) The Lease is in good standing and in full force and effect. Landlord is not in default under the Lease; Tenant agrees to give notice of any Landlord

default to Mana or any successor or assign making written request to Tenant for the same.

(6) Except for rents (if any) which may be due under the Lease for the current month, there are no rents or other charges which have been prepaid to Landlord under the Lease other than the following: ____
____
____
____
__________________.

(7) The amount of security deposit currently posted by Tenant with Landlord is $_____________ in the form of (__) cash, or (__) an irrevocable, unconditional letter of credit issued by _____________________________________ in favor of ______________________, as Landlord, which is still valid.

(8) Tenant acknowledges that the space being leased consists of _____________ rentable square feet, that the improvements to be constructed by Landlord, if any, in the Leased Premises have been satisfactorily completed, that the Leased Premises have been accepted by Tenant, that Tenant now occupies the Leased Premised, and that the commencement date for the term of the Lease was ____________________, ____________.

(9) There are no rentals or other charges under the Lease which are due and unpaid. Rentals are fully paid (if required by the Lease) through the last day of the month in which this Estoppel Certificate has been executed.

(10) Tenant has no known offsets or credits against rentals or other charges under the Lease except as expressly provided by the terms of the Lease. Tenant has no known right of recession of the Lease or any defense to Tenant's future obligations to pay the specified rentals and other charges under the Lease at the times and in accordance with the Lease terms. Tenant has not received any concession (rental or otherwise) or similar compensation not expressed in the Lease.

(11) Tenant has no options or rights of refusal regarding (i) the purchase the Property or (ii) the leasing of the Leased Premises or additional space.

(12) Tenant acknowledges that this Estoppel Certificate and the statements therein may be conclusively relied upon by Landlord and by any prospective purchaser or lien holder of the Leased Premises.

(13) This agreement shall be binding upon and shall inure to the benefit of the Landlord, any present or future mortgagee, any prospective purchaser or master Lessee of the Property, and their successors and assigns.

EXECUTED this _____ day of ______________________, 202__.

____
(Name of Tenant)

By: ____________________________________

Name: __________________________________

Title: ___________________________________

UNION SCHOOL DISTRICT

Resolution No. 19-20-11
Before the Board of Trustees of the
Union School District
Santa Clara County, California

RESOLUTION MAKING FINDINGS REGARDING THE UNION SCHOOL DISTRICT MAINTENANCE AND OPERATIONS BUILDING AND ADOPTING A MITIGATED NEGATIVE DECLARATION AND A MITIGATION MONITORING PROGRAM

WHEREAS, the Board of Trustees ("Board") of the Union School District ("District") has received a Final Initial Study/Mitigated Negative Declaration ("IS/MND") dated October 14, 2019, which is attached as Exhibit A and incorporated herein by reference for the proposed Union School District Maintenance and Operations Building ("Project"); and

WHEREAS, the Project that the District proposes to construct consists of a 6,500 square foot one-story Maintenance and Operations ("M&O") building on the 32,000 square foot lot at 5670 Camden Avenue, San Jose, Santa Clara County. The M&O Building will house 9 employees. The building would contain two approximately 950 square foot shop spaces, about 3,850 square feet of parking/vehicle maintenance space, restrooms, a meeting room, offices, an electrical room, receiving room, reception area, and a breakroom. A new parking lot with 11 car parking spaces would be provided for the building staff plus paving of 8 parking spaces in the existing dirt lot. Construction is estimated to start in May 2020 and be completed by January 2021; and

WHEREAS**,** the public comment period on the IS/MND was duly and lawfully closed on November 16, 2019, following due notice to the public and all applicable public agencies and held a Board of Trustees meeting on October 14, 2019; and

WHEREAS, on December 9, 2019, the District administration held a Board of Trustees meeting to approval the filing of the final IS/MND report ; and

WHEREAS, the Board has independently reviewed and considered the IS/MND and has received no comments, written and oral, from persons who have reviewed the IS/MND; and

WHEREAS, the Board has independently reviewed and considered the mitigation measures identified in the IS/MND and listed in the Mitigation Monitoring Program set forth in Exhibit A; and

WHEREAS, the facts and findings regarding the Project set forth in this Resolution are supported by substantial evidence in the administrative record and by the IS/MND; and

WHEREAS, the IS/MND has identified all significant environmental effects of the Project and has identified all significant and known potentially significant impacts; and

WHEREAS, the IS/MND has described reasonable mitigation measures that will reduce the potentially significant impacts to less than significant; and

WHEREAS**,** the IS/MND reflects the Board's independent judgment and analysis on the potential for environmental impacts from the Project.

NOW, THEREFORE, BE IT RESOLVED that the Board of Trustees of the Union School District hereby finds, determines and orders as follows:

1. The foregoing recitals are true and correct and made a part of this Resolution.

2. CEQA

For every non-exempt public project, the California Environmental Quality Act ("CEQA") generally requires the lead agency to prepare an initial study in order to determine the level of environmental review required for CEQA compliance. If the initial study indicates that the project will not result in significant adverse environmental impacts, the lead agency may adopt a "negative declaration." (Pub. Res. Code § 21080(c).) If the initial study reveals substantial evidence that significant environmental impacts might occur, but also identifies mitigation measures that reduce those impacts to a level of less than significant, the lead agency may satisfy CEQA obligations with a "mitigated negative declaration." (Pub. Res. Code §§ 21064.5 & 21080(d).) If the initial study reveals substantial evidence that significant environmental impacts might occur, and substantial evidence indicates that any identified mitigation measures would not reduce the impact to a level of less than significant, the lead agency must then prepare an "environmental impact report." (Pub. Res. Code §§ 21002.1 & 21061.)

3. District Actions

In compliance with CEQA, the District prepared an initial study ("IS") of the Project. The District held a Board of Trustees meeting for the preparation of the IS on October 14, 2019. Moreover, in preparing the IS, the District consulted with the appropriate responsible and trustee agencies, including County of Santa Clara and Office of Planning and Research. The IS concluded that significant environmental impacts might occur, but also identified mitigation measures that reduced those effects to a point where the Project would have no significant effect on the environment.

Therefore, the District prepared the IS/MND and circulated it for public review. The public review period for the IS/MND began on October 15, 2019 and concluded on November 16, 2019. The District sent notices to all residents within 500 feet of Cinnabar Elementary School, that announced the release of the IS/MND, identified where it was available for review, and described the Project and its location. The notice also specified the date, time, and location of the Board of Trustees meetings regarding the Project and stated the period for submittal of comments on the contents of the IS/MND.

The District distributed the IS/MND to members of the public who requested a copy. Fifteen (15) copies of the IS/MND were provided to the State Clearinghouse at the Office of Planning and Research by overnight mail on October 16, 2019. Copies were also sent to County of Santa Clara. The IS/MND, and other materials pertinent to the Project, were made publicly available at the District office, on the District web site, and at the Santa Clara County Clerk Recorder's Office.

The District received 0 letters of comment on the IS/MND. Further, a Board of Trustees meeting was held after the close of the public comment period on November 18, 2019, to receive additional oral comments on the IS/MND.

For purposes of CEQA and the findings set forth herein, the record of proceedings for the District decision on the Project includes, but is not limited to, the following documents or information:

- The IS/MND prepared for the Project;
- Other public notices in conjunction with the Project;
- All comments submitted by agencies and members of the public during the public comment periods for the IS/MND;
- The Mitigation Monitoring Program for the Project;
- All findings and resolutions previously adopted by the District in connection with the Project, and all documents cited or referred to therein;
- All reports, studies, memoranda (excluding confidential memoranda), maps, and other documents relevant to the Project prepared by the District, the District's consultants, or responsible or trustee agencies with respect to the District's compliance with the requirements of CEQA and with respect to the District's action on the Project;
- All documents submitted to the District by agencies or members of the public in connection with the Project;
- Minutes, tape recordings and/or verbatim transcripts of all information sessions, public meetings, and Board of Trustees meetings held by the District in connection with the Project;
- Any documentary or other evidence submitted to the District at such public meetings and Board of Trustees meetings;
- Staff reports prepared by District staff and consultants relating to the Project; and
- Matters of common knowledge to the District.

The materials in the record are located at and available upon request at the District office.

4. The Board makes the following findings for the Project in accordance with the California Environmental Quality Act ("CEQA"), Public Resources Code section 21081 and CEQA Guidelines, Title 14 of the California Code of Regulations section 15091.

A. Potentially Significant Effects Determined to be Mitigable to a Level of Insignificance. The Board finds that each of the following potential impacts identified in the IS/MND are potentially significant impacts that may feasibly be mitigated to a less than significant impact. The following effects from the implementation of the proposed Project that are identified in the IS/MND are further found to have been mitigated to a level of less than significant effect or no impact upon the existing physical environment. The measures that achieve this level of mitigation are identified below, followed by the findings of significance relevant to effects upon the Project after mitigation implementation.

3. Air Quality (IS/MND, pp. 18-28.)

c) The modeled annual PM 2.5 (particulate matter) concentration from Project construction would be 0.471 μg/$\boldsymbol{m^3}$(micrograms per cubic meter), which substantially exceeds the Project-level CEQA threshold (0.3 μg/$\boldsymbol{m^3}$). Implementation of mitigation measure AQ-1 would assure that annual average PM 2.5 (particulate matter) at the existing adjacent residential receptors due to Project construction would be well below the CEQA PM2.5 threshold (and would substantially reduce cancer risk and chronic hazard, as well). With this mitigation measure, this impact would be reduced to a less-than significant level.

<u>Mitigation Measure AQ-1</u>: The Project construction contractor shall implement the following measures to further reduce construction related diesel particulate exhaust emissions:

All off-road equipment greater than 25 horsepower (hp) and operating for more than 20 total hours over the entire duration of construction activities shall meet the following requirements:

- All engines shall be equipped with at least a CARB Level 2 Verified Diesel Emissions Control Strategy (VDECS) device.

5. Cultural Resources (IS/MND, pp. 32-34.)

b) An intensive archaeological inventory of the project area was conducted, and no cultural resources were encountered. However, it is important to note that surface pedestrian surveys cannot always determine what archaeological resources might be present in subsurface contexts. Such buried resources have the potential to be California Register of Historic Resources (CRHR)-eligible and as such any impacts to them would be considered a potentially significant impact. Mitigation Measures CULT-1 would reduce this **potentially significant** impact to a **less-than-significant** level.

Although no historic or historic-era human remains have been identified within or near the project site, it is possible that presently undocumented human interments may be uncovered during excavation activities. Implementation of Mitigation Measures CULT-2 would reduce this impact to a **less-than-significant** level.

18. Tribal and Cultural Resources (IS/MND, pp. 62-64.)

a) i, ii On July 22, 2019, Ms. Katherine Erolinda Perez emailed Solano Archaeological Services stating that she had no information regarding Native American tribal resources in the project area but asked that the cultural resources report include an inadvertent discovery clause. The clause is incorporated into this Initial Study as Mitigation Measures CULT-1 and CULT-2.

<u>Mitigation Measure CULT-1</u>: Archaeological Deposits. If an inadvertent discovery of cultural materials (e.g. unusual amounts of shell, animal bone, bottle glass, ceramics, structure/building remains, etc.) is made during project-related construction activities, ground disturbances in the area of the find will be halted and a qualified profession archaeologist will be notified regarding the discovery. The archaeologist shall determine whether the resource is potentially significant as per the CRHR and develop appropriate mitigation.

<u>Mitigation Measure CULT-2:</u> Human Remains. In accordance with the California Health and Safety Code, if human remains are uncovered during ground disturbing activities all such activities in the vicinity of the find shall be halted immediately and the District or the District's designated representative shall be notified. The District shall immediately notify the Santa Clara Sheriff/Coroner and a qualified professional archaeologist. The Sheriff/Coroner is required to examine all discoveries of human remains within 48 hours of receiving notice of a discovery on private or state lands (Health and Safety Code Section 7050.5[b]). If the coroner determines that the remains are those of a Native American, he or she must contact the Native American Heritage Commission by phone within 24 hours of making that determination (Health and Safety Code Section 7050 [c]). The responsibilities of the District for acting upon notification of a discovery of Native American human remains are identified in detail for the California Public Resources Code Section 5097.9. The District or their appointed representative and the professional archaeologist will consult with a Most Likely Descendent (MLD) determined by the NAHC regarding the removal or preservation and avoidance of the remains and determine if additional burials could be present in the vicinity.

7. Geology and Soils (IS/MND, pp. 34-38.)

a) ii) The site would be subject to very-strong ground shaking in the event of a major earthquake on any of the regional fault zones. This shaking could damage improperly constructed buildings and cause ground failures that also could affect the structure and infrastructure (these ground failures are discussed below). This impact is *potentially significant* but can be reduced to a *less-than-significant* level with the implementation of Mitigation Measure GEO-1.

iii) Cornerstone Earth Group evaluated the site for liquefaction potential and determined that it could be subject to total settlement of up to 0.75 inches, with differential settlement up to 0.5 inches on the site. Cornerstone evaluated the site for liquefaction potential and determined that it could be subject to total settlement of up to 0.75 inches, with differential settlement up to about 0.5 inches on the site. Cornerstone also evaluated the potential for lateral spreading on the site and determined it to be low.

The impact associated with liquefaction and differential settlement hazards would be reduced to a **less-than-significant** level by implementation of Mitigation Measure GEO-2.

<u>Mitigation Measure GEO-1</u>: The project structures and foundations shall be designed in accordance with the most recent version of the California Building Code. Recommended seismic coefficients provided in the Cornerstone report shall be included in the project design.

<u>Mitigation Measure GEO-2</u>: The project's site clearing, site preparation, subgrade preparation and stabilization, fill, drainage, and foundation systems shall be designed and constructed per the specifications set forth on the project geotechnical report (Cornerstone 2019).

10. Hydrology and Water Quality (IS/MND, pp. 44-49.)

a, c, e) The Project site is relatively flat and mostly covered with crushed gravel and bare earth. Development of the proposed Project would require disturbance and light grading, as described in the Project Description. Minimal topographic changes would occur as a result of the project.

During construction activities, there would be a potential for surface water to carry sediment from on-site erosion and small quantities of pollutants into the City's stormwater system and, ultimately, San Francisco Bay. Soil erosion may occur along Project boundaries during construction in areas where temporary soil storage may be required. Small quantities of pollutants may enter the storm drainage system, potentially degrading water quality. The project would include a storm-water bio-retention system that would filter out most of these pollutants.

Construction of the proposed Project also would require the use of gasoline and diesel-powered heavy equipment. Chemicals such as gasoline, diesel fuel, lubricating oil, hydraulic oil, lubricating grease, automatic transmission fluid, paints, solvents, glues, and other substances would be used during construction. An accidental release of any of these substances could degrade the water quality of the surface water runoff and add additional sources of pollution into the drainage system.

Potentially contaminated runoff from the new impervious areas would occur. Implementation of the Construction General Permit requirements, as well as Mitigation Measures HYD-1 and HYD-2, would reduce the other water quality impacts described above to a **less-than-significant** level.

Mitigation Measure HYD-1: Prior to the issuance of grading permits for the proposed Project, the Project engineers shall prepare a Stormwater Control Plan. The Stormwater Control Plan shall identify pollution prevention measures and practices to prevent polluted runoff from leaving the Project site.

Mitigation Measure HYD-2: The District shall maintain in perpetuity the post-construction BMPS listed in the Stormwater Operations and Management Plan. The District shall make changes and modifications to the Best Management Practices ("BMP") to ensure peak performance. The District shall be responsible for costs incurred in operating, maintaining, repairing, and replacing the BMP. The District shall conduct inspection and maintenance activities and complete annual reports.

13. Noise (IS/MND, pp. 51-56.)

a) Potentially disturbing noise increments associated with development can occur temporarily during project construction and/or permanently after construction if the project would introduce new substantial noise sources to the site or in its vicinity.

To protect existing adjacent residents from substantial Project construction noise intrusions, the following measures shall be implemented as part of the project:

Mitigation Measure NOI-1: The following Best Management Practices shall be incorporated into the construction documents to be implemented by the Project contractor:

- Provide enclosures and noise muffler for stationary equipment, shrouding or shielding for impact tools, and barriers around particularly noisy activity areas on the site.
- Use quietest type of construction equipment whenever possible, particularly air compressors.
- Provide sound-control devices on equipment no less effective than those provided by the manufacturer.
- Locate stationary equipment, material stockpiles, and vehicle staging areas as far as practicable from sensitive receptors.
- Prohibit unnecessary idling of internal combustion engines.
- Require applicable construction-related vehicles and equipment to use designated truck routes when entering/leaving the site.
- Designate a noise disturbance coordinator at the District who shall be responsible for responding to complaints about noise during construction. The telephone number of the noise disturbance coordinator shall be conspicuously posted at the construction site. Copies of the project

purpose, description and construction schedule shall also be distributed to the surrounding residences.

After Project construction is complete, no substantial noise level increase will occur from Project operational sources, in this case exclusively motor vehicle traffic. The noise increment added by the introduction of the motor vehicles from the 1500 square feet of new office/maintenance space to local streets would have minimal noise impact (i.e., a fraction of a dBA).

17. Mandatory Findings of Significance (IS/MND, pp.67.)

c) The proposed Project would not increase long-term air pollutant emissions and greenhouse gasses because it would not add any net new workers – Project workers are currently working at District facilities elsewhere in San Jose. Mitigation measures for emissions from construction emissions would reduce any such emissions to less than significant levels. The project's noise impacts also would be less than significant. The Project's hazards to human health and safety would be less than significant. The impact would be reduced to **less than significant** with mitigation measures identified in this document.

5. The IS/MND for the Project has been completed and is in compliance with the provisions of CEQA, with State and local Guidelines implementing CEQA, and all other applicable laws and regulations.

6. The Board finds and declares that the IS/MND for the Project was presented to the Board and that the Board independently reviewed and considered the information contained in the IS/MND prior to approving the Project, as that Project is defined in the IS/MND.

7. Based upon its review of the IS/MND, the Board finds that the IS/MND for the Project is an adequate assessment of the potentially significant environmental impacts of the Project, as described in the IS/MND.

8. The Board has reviewed the findings regarding the Project, comments regarding the Project, and other relevant Project records. Based on the evidence contained therein, the Board finds and determines that, following implementation of the mitigation measures set forth in the IS/MND, there is no substantial evidence of a significant, unmitigated environmental impact caused by the Project.

9. The Board hereby adopts the IS/MND as complete and adequate under CEQA, and certifies that the IS/MND represents the independent judgment of the Board.

10. The Board hereby adopts the Mitigation Monitoring Program as complete and adequate.

PASSED, APPROVED AND ADOPTED by vote on December ___, 2019, by the Board of Trustees of the Union School District, Santa Clara County, State of California.

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: ______________________________ ______________________________

______________, Superintendent and Secretary to Board of Trustees

______________, President Board of Trustees

Exhibit A – Final Initial Study/Mitigated Negative Declaration and Mitigation Monitoring Program

UNION SCHOOL DISTRICT

5175 Union Avenue, San Jose, CA 95124
Phone: 408-377-8010
www.unionsd.org

SUPERINTENDENT
Carrie Andrews, Ph.D.

April 16, 2026

VIA EMAIL

Thomas James Hislop
[redacted]

Re: Response to April 1, 2026, CA Public Records Act Request – 14 Day Extension

Dear Mr. Hislop:

The Union School District ("District") is in receipt of your April 1, 2026, request for public records pursuant to the California Public Records ("Request"). Your Request seeks the following records:

- ***REQUEST NO. 1 - Terra Realty Advisors - Contracts***
  All contracts, agreements, amendments, purchase orders, invoices, and records of payment between Union School District and Terra Realty Advisors, Inc. (also known as Terra Advisors), and/or Scott Sheldon individually or in any capacity, from January 1, 2019 to present. This includes all compensation paid or owed, fee schedules, scope-ofwork documents, retainer or success-fee arrangements, and any documentation of referral fees, finder's fees, or contingency payments related to the Cinnabar Site or any other District property.

- ***REQUEST NO. 2 - Communications - Superintendent Andrews and Scott Sheldon / Terra Realty Advisors***
  All emails, text messages, letters, memoranda, calendar invitations, meeting notes, and other written communications between Superintendent Carrie Andrews and Scott Sheldon and/or any representative of Terra Realty Advisors, Inc., from January 1, 2018 to present - including any communications predating a formal contractual relationship between the parties and any communications on personal or non-District devices or accounts that concern District business.

- ***REQUEST NO. 3 - Communications - Andrews, Sheldon, and Mana Investments / Orville Power***
  All emails, text messages, letters, memoranda, and other written communications between:

  (a) Superintendent Carrie Andrews and Orville Power and/or any representative of Mana Investments, Inc. or Mana Camden Fund LLC, from January 1, 2019 to present; and

  (b) Scott Sheldon and/or Terra Realty Advisors, Inc. and Orville Power and/or any representative of Mana Investments, Inc. or Mana Camden Fund LLC, related to any Union School District property, from January 1, 2019 to present.

FOUNDATION FOR EXCELLENCE

- ***REQUEST NO. 4 - Prior Developers - lnSite Property Group and ROEM Development Corporation***
  All contracts, exchange agreements, letters of intent, correspondence, communications, board authorizations, and records related to any agreement or proposed agreement between Union School District and lnSite Property Group and/or ROEM Development Corporation concerning the Cinnabar Site - including all records related to the negotiation, execution, and cancellation or termination of those agreements. This request includes any communications between District staff, Board members, or advisors (including Scott Sheldon / Terra Realty Advisors) and representatives of lnSite Property Group or ROEM Development Corporation.

- ***REQUEST NO. 5 - Developer Selection - Cinnabar Site (5670 Camden Avenue)***
  All Request for Qualifications (RFQ) or Request for Proposals (RFP) documents, solicitation records, scoring sheets, evaluation criteria, selection committee notes, meeting minutes, correspondence, and board authorizations related to the consideration and selection of any developer for the Cinnabar Site -including but not limited to lnSite Property Group, ROEM Development Corporation, and Mana Investments, Inc. / Mana Camden Fund LLC. If no formal RFQ or RFP was issued for any developer selection, please state that in writing.

- ***REQUEST NO. 6 - Surplus Property and Naylor Act Compliance - Cinnabar Site***
  All records, notices, correspondence, and documentation reflecting compliance -or analysis of compliance -with the Surplus Land Act (Gov. Code§ 54220 et seq.) and the Naylor Act (Pub. Resources Code§ 5540) with respect to the Cinnabar Site, including: (a) any notices of availability sent to the City of San Jose, Santa Clara County, or any park or recreation district; (b) any legal analysis or opinions regarding the applicability of the Naylor Act to the Cinnabar Site; and (c) any internal communications regarding whether the Cinnabar Site transfer qualified as a sale or an exchange under Education Code § 17536.

- ***REQUEST NO. 7 - Board Resolution of Intent and August 2022 Authorization***
  All records related to the Board's August 2022 Resolution of Intent to dispose of the Cinnabar Site, including the full agenda packet, staff reports, supporting materials, public notice documents, meeting minutes, and any legal opinions or analyses provided to the Board in connection with that action.

- ***REQUEST NO. 8 - April 2023 Board Resolution - Mana Camden Fund LLC Exchange Agreement***
  All records related to Board Resolution No. 22-23-16 (adopted April 17, 2023), including the full executed Exchange Agreement between Union School District and Mana Camden Fund LLC, all exhibits and attachments thereto, the full agenda packet and staff report, supporting appraisals or valuations, Chicago Title escrow instructions and escrow agreements, and any amendments or modifications to the Exchange Agreement entered into since April 2023.

- ***REQUEST NO. 9 - Scott Sheldon and Terra Realty Advisors - Prior School District Engagements***
  All records reflecting or describing any prior or concurrent engagement, contract, advisory relationship, or referral arrangement between Scott Sheldon and/or Terra Realty Advisors, Inc. and any other California school district, including any marketing proposal materials submitted to the District describing Terra Realty's services or experience with other districts. This request is limited to records in the District's possession, custody, or control.

Upon reviewing the numerous categories of records demanded in your Request, and as permitted under the California Public Records Act, the District must extend the time to respond to your request by fourteen (14) days. The circumstances warranting this extension are the need to search for the requested records and collect any non-confidential and non-privileged records from various sources, which will require searching for, collecting, and appropriately examining a voluminous amount of separate and distinct records. (Gov. Code, §§ 7922.535(c)(1)-(c)(2).)

Therefore, the District will provide a determination regarding your Request no later than April 30, 2026. If you have any questions regarding our response to your public records request, please contact me.

Sincerely,

[redacted]

Dr. Carrie Andrews
Superintendent
Union School District

Outlook

Fw: public comment re item 10.2 for today's Council meeting

From City Clerk <[redacted]
Date Tue 4/28/2026 12:46 PM
To Agendadesk <[redacted]

2 attachments (4 MB)
San Jose 5670 Camden Avenue HAA Letter.pdf; CalHDF v LCF compressed.pdf;

Office of the City Clerk | City of San José
200 E. Santa Clara St., Tower 14th Floor
San Jose, CA 95113
Main: 408-535-1260
Fax: 408-292-6207

How is our service? Your feedback is appreciated!

From: James Lloyd <[redacted]
Sent: Tuesday, April 28, 2026 12:37 PM
To: The Office of Mayor Matt Mahan <[redacted] District1 <[redacted] District2 <[redacted] District3 <[redacted] District4 <[redacted] District5 <[redacted] District 6 <[redacted] District7 <[redacted] District8 <[redacted] District9 <[redacted] District 10 <[redacted]
Cc: City Clerk <[redacted] Burton, Chris <[redacted] CAO Main <[redacted] Webmaster Manager <[redacted] PlanningSupportStaff <[redacted]
Subject: public comment re item 10.2 for today's Council meeting

[**External Email**. Do not open links or attachments from untrusted sources. Learn more]

Dear San José City Council,

The California Housing Defense Fund ("CalHDF") submits the attached public comment (and referenced court case) re item 10.2 for today's Council meeting, the proposed 108-unit housing development project, including eight extremely low-income units, located at 5670 Camden Avenue.

Sincerely,

James M. Lloyd

Director of Planning and Investigations
California Housing Defense Fund
[redacted]
CalHDF is grant & donation funded
Donate today - https://calhdf.org/donate/

[redacted]

FILED
Superior Court of California
County of Los Angeles

MAR 04 2024

David W. Slayton, Executive Officer/Clerk of Court
By: F. Becerra, Deputy

CALIFORNIA HOUSING DEFENSE FUND v. CITY OF LA CAÑADA FLINTRIDGE
Case Number: 23STCP02614 [Related to Case No. 23STPC02575]

Hearing Date: March 1, 2024

ORDER ON PETITIONS FOR WRIT OF MANDATE AND COMPLAINTS FOR DECLARATORY RELIEF

Under the Housing Accountability Act (HAA), Government Code[1] section 65589.5, a municipality may not "disapprove" a qualifying affordable housing project on the grounds it does not comply with the municipality's zoning and general plan if the developer submitted either a statutorily defined "preliminary application" or a "complete development application" while the city's housing element was not in substantial compliance with state law. (See § 65589.5, subds. (d)(5), (h)(5), (o)(1).) This statutory provision, colloquially known as the "Builder's Remedy," incentivizes compliance with the Housing Element Law by temporarily suspending the power of non-compliant municipalities to enforce their zoning rules against qualifying affordable housing projects.

Respondents, the City of La Cañada Flintridge, the City of La Cañada Flintridge Community Development Department, and the City of La Cañada Flintridge City Council (collectively, Respondents or the City) determined Petitioner 600 Foothill Owner, L.P.'s (600 Foothill) proposed mixed-use development did not qualify for the Builder's Remedy. Petitioner 600 Foothill, Petitioner California Housing Defense Fund (CHDF), and Petitioners-Intervenors the People of the State of California, Ex. Rel. Rob Bonta and the California Department of Housing and Community Development (HCD)(collectively, Intervenors), challenge Respondents' decision.

The petitions are granted. The court orders a writ shall issue directing Respondents to set aside their May 1, 2023 decision finding 600 Foothill's application does not qualify as a Builder's Remedy project and to process the application in accordance with the HAA.

JUDICIAL NOTICE

600 Foothill's Request for Judicial Notice (RJN) filed November 8, 2023 is denied as to Exhibit A and granted as to Exhibits B through F. Respondents' objections to Exhibits B through F are overruled. Respondents' objections 1 and 4 are sustained to the extent they pertain to Exhibit A.

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[1] All further undesignated statutory references are to this code.

Respondents' RJN in support of its opposition to the 600 Foothill petition is granted as to all referenced exhibits except as to Exhibits D-3, V and BB.[2]

600 Foothill's Reply RJN of Exhibit AA is granted.

CHDF's RJN of Exhibits A through D is granted.

Respondents' RJN in support of its opposition to the CHDF petition is granted as to all referenced exhibits except as to Exhibit D-3 and V. Except as to Exhibits D-3 and V, the objections of Intervenors and CHDF are overruled.

For all RJNs, the court does not judicially notice any particular interpretation of the records. Nor does the court judicially notice the truth of hearsay statements within the judicially noticed records.

EVIDENTIARY OBJECTIONS, MOTION *IN LIMINE* AND CODE OF CIVIL PROCEDURE SECTION 1094.5, SUBDIVISION (E)

Preliminarily, the court finds none of the parties' evidentiary objections are material to the disposition of any cause of action or issue. The court nonetheless rules on the objections for completeness. The court notes it is not required to parse through long narratives with generalized objections. The court may overrule an objection if the material objected to contains unobjectionable material. The parties make many objections to multiple sentences where much or some of the material is not objectionable. (See Fibreboard Paper Products Corp. v. East Bay Union of Machinists, Local 1304, United Steelworkers . . . (1964) 227 Cal.App.2d 675, 712.)

<u>600 Foothill's Objections</u>

Declaration of Lynda-Jo Hernandez: All objections are overruled.
Declaration of Kim Bowan: All objections are overruled except 3, 12 and 17.
Declaration of Peter Sheridan: All objections are overruled.
Declaration of Keith Eich: All objections are overruled.
Declaration of Susan Koleda: All objections are overruled.
Declaration of Teresa Walker: All objections are overruled except 3, 11, 17, 26 and 29.
Declaration of Richard Gunter III: All objections are overruled except 5-8 and 14-20.

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[2] Contrary to 600 Foothill's assertion, Respondents did not request judicial notice of Exhibit A to the Koleda declaration. 600 Foothill and Intervenors appear correct—Respondents did not submit Exhibits D-3 or V with the Koleda declaration. Accordingly, the court cannot judicially notice Exhibits D-3 or V.

Respondents' Objections to 600 Foothill's Evidence

Declaration of Melinda Coy: All objections are overruled.
Reply Declaration of Garret Weyand: All objections are overruled except 3, 4, 7 and 8.[3]

Intervenors' Objections

Declaration of Susan Koleda: All objections are overruled.

CHDF's Objections

Declaration of Teresa Walker: All objections are overruled except 2, 4 and 6.
Declaration of Susan Koleda: All objections are overruled.
Declarations of Eich, Bowman, Gunter III and Hernandez are all overruled as discussed *infra*.

Motion *In Limine*

Respondents' Motion *In Limine* to Exclude Issues or Evidence (filed February 5, 2024) is denied. Respondents do not demonstrate 600 Foothill has submitted any evidence concerning "infeasibility" of the project that is *outside* of the administrative record. Respondents do not require discovery to respond to 600 Foothill's infeasibility arguments given such arguments are based entirely on the administrative record. (See § 65589.5, subd. (m)(1); Code Civ. Proc., § 1094.5, subd. (e).)

Code of Civil Procedure section 1094.5, Subdivision (e)

Section 65589.5, subdivision (m)(1) in the HAA specifies "[a]ny action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure. . . ." Accordingly, the HAA causes of action are subject to the limitations on extra-record evidence in Code of Civil Procedure section 1094.5, subd. (e). Nonetheless, the HAA causes of action involve questions of substantial compliance with the Housing Element Law, governed, at least in part, by Code of Civil Procedure section 1085. (See e.g., § 65587, subd. (d)(2).) Code of Civil Procedure section 1094.5, subdivision (e) does not apply to a cause of action governed by Code of Civil Procedure section 1085.

The parties have neglected to suggest which parts of their declarations are subject to Code of Civil Procedure sections 1094.5, 1085 or both. The parties also have not moved to augment the administrative record pursuant to Code of Civil Procedure section 1094.5, subdivision (e). Under the circumstances, the court will admit and consider the parties' declarations despite the court

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[3] The declaration is properly submitted to respond to the defense of unclean hands and allegations of "manipulation of the HCD approval process" discussed in Respondents' opposition brief.

having made no order to augment the record.[4] The court notes, however, even if the court excluded all the extra-record evidence submitted, including the lengthy Koleda declarations, the result here would not change.

BACKGROUND

The Housing Element Law[5]

"In 1980, the Legislature enacted the Housing Element Law, 'a separate, comprehensive statutory scheme that substantially strengthened the requirements of the housing element component of local general plans.' " (*Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 221-222 [*Martinez*].)

A housing element within a general plan must include certain components, including, but not limited to: an assessment of housing needs and the resources available and constraints to meeting those needs; an inventory of sites available to meet the locality's housing needs at different income levels, including the Regional Housing Needs Allocation (RHNA); a statement of goals, quantified objectives, and policies to affirmatively further fair housing; and a schedule of actions to address the housing element's goals and objectives. (§ 65583, subds. (a), (b), (c).)

"A municipality must review its housing element for the appropriateness of its housing goals, objectives, and policies and must revise the housing element in accordance with a statutory schedule. (§ 65588, subds. (a), (b).) The interval between the due dates for the revised housing element is referred to as a planning period or cycle, which usually is eight years." (*Martinez, supra,* 90 Cal.App.5th at 221-222.)

"Before revising its housing element, a local government must make a draft available for public comment and, after comments are received, submit the draft, as revised to address the comments, to the Department of Housing and Community Development (HCD). (§ 65585, subd. (b)(1); see § 65588 [review and revision of housing element by local government].) After a draft is submitted, the HCD must review it, consider any written comments from any public agency, group, or person, and make written findings as to whether the draft substantially complies with the Housing Element Law. (§ 65585, subds. (b)(3), (c), (d); . . . .) [¶] If the HCD finds the draft does not substantially comply with the Housing Element Law, the local government must either (1) change the draft to substantially comply or (2) adopt the draft without changes along with a resolution containing findings that explain its belief that the draft substantially complies with the law. (§ 65585, subd. (f).)" (*Martinez, supra,* 90 Cal.App.5th at 221-222.)

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[4] At the conclusion of the hearing, the parties agreed the court could consider all of the evidence before it without regard to Code of Civil Procedure section 1094.5, subdivision (e).
[5] See section 65580, *et seq.*

The City's October 2021 and October 2022 Draft Housing Elements, and HCD's Findings the City Had Not Attained Substantial Compliance with the Housing Element Law

Under the Housing Element Law, the City had a statutory deadl ne of October 15, 2021 to adopt a substantially compliant 6th cycle housing element. (AR 443.) The City submitted its draft housing element to HCD on that day. (AR 443.)

On December 3, 2021, HCD informed the City while the draft "addresses many statutory requirements," to comply with the Housing Element Law, signif cant revisions were required. (AR 443, 445-453.) HCD identified fourteen areas within the first version of the City's draft housing element that required specific programmatic revisions, organized into three broad categories—housing needs, resources, and constraints; housing programs; and public participation. (AR 445-453.) As examples, HCD found the draft housing element lacked a sufficient site inventory analysis identifying potential sites for housing development distributed in a manner to affirmatively further fair housing, or an inadequate site inventory of the City's vacant and underutilized sites to meet the City's RHNA determination. (AR 445-447.)

Ten months later, on October 4, 2022, the City adopted its 2021-2029 housing element (October 2022 Housing Element). (AR 4504-4508, 4509 [Housing Element].) The City thereafter submitted its adopted Housing Element to HCD for review. (AR 5263.)

On December 6, 2022, HCD informed the City "[t]he adopted housing element addresses most statutory requirements described in HCD's [prior] review; however, additional revisions are necessary to fully comply with State Housing Element Law." (AR 5263 [referencing a May 26, 2021 review].) HCD's findings of non-compliance for the October 2022 Housing Element are discussed further in the Analysis section *infra*.

600 Foothill's Preliminary Application

On November 10, 2022—after the City's adoption of the October 2022 Housing Element but before HCD's December 6, 2022 review—600 Foothill submitted the Preliminary Application seeking the City's approval to construct a mixed-used project on a site located at 600 Foothill Boulevard, which is currently occupied by two vacant church buildings and a surface parking lot. (AR 5241.) 600 Foothill proposed to build 80 apartments on the site, 16 of which (or 20 percent) would be reserved for persons earning less than sixty percent of the area median income (the Project). (AR 5243.) 600 Foothill's Preliminary Application explained "given that the City continues to have a Housing Element that is out of compliance with state law," 600 Foothill proposed the Project as a Builder's Remedy project pursuant to section 65589.5, subdivision (d)(5) meaning the Project was not required to account for the City's zoning ordinance or general plan land use designation. (AR 5235.)

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The City Staff Acknowledge Changes to the October 2022 Housing Element Are Necessary to Comply with HCD's Findings

The City's Director of Community Development, Susan Koleda, acknowledged on January 11, 2023 in an email communication that "[a]ll additional changes to the Housing Element have yet to be determined but will likely require additional [Planning Commission/City Council] approval." (AR 12894.) At the City's January 12, 2023 Planning Commission meeting, City staff acknowledged revisions were required for "the Housing Element to be in conformance" with applicable law. (AR 5274-5275.) Director Koleda also stated in a February 9, 2023 email communication that "additional clarifications were required" to the October 2022 Housing Element, and "[t]he additional information will be incorporated into a revised Housing Element, scheduled to be adopted by the City Council on February 21, 2023. It will then be submitted to HCD for review as a third submittal." (AR 13011.)

The City Adopts a February 2023 Housing Element, Fails to Rezone, and "Certifies" Its Substantial Compliance with the Housing Element Law

On February 21, 2023, the City adopted its third revised housing element which addressed the deficiencies to the October 2022 Housing Element identified by HCD. (AR 6274-6279.) In its resolution adopting the revised housing element, the City Council stated it "certifies that the City's Housing Element was in substantial compliance with State Housing Element law as of the October 4, 2022 Housing Element adopted by the City Council. . . ." (AR 6274.) Despite use of the word "certifies" in the City's resolution, Director Koleda opined at the February 21, 2023 council meeting that the "consensus" from the City Attorney, the City's consultants, and HCD was that "self-certification" of the City's housing element "is not an option." (AR 6207-6208; see also Opposition to Intervenors 19:18-21:7 ["wrongly accuse . . . of 'back-dating' and 'self-certifying' "].)

At the time the City adopted its third revised housing element on February 21, 2023, it had not completed the rezoning required by the Housing Element Law. Accordingly, on April 24, 2023, HCD found, although the February 2023 housing element addressed the previously identified deficiencies in the October 2022 Housing Element, and met "most of the statutory requirements of State Housing Law," the City was not in substantial compliance with the Housing Element Law because the City adopted the February 2023 housing element more than one year past the statutory due date of October 15, 2021 and the City had not completed its statutorily required rezoning. (AR 6297-6300; see also AR 7170-7171.) As a result, HCD found the City could not be deemed in substantial compliance with state law *until* it completed all required rezones. (AR 6297-6300; see § 65588, subd. (e)(4)(C)(iii). ["A jurisdiction that adopts a housing element more than one year after the statutory deadline . . . shall not be found in substantial compliance with this article until it has completed the rezoning required by" the Housing Element Law].)

In its April 24, 2023 letter, HCD also opined that "a local jurisdiction cannot 'backdate' compliance to the date of adoption of a housing element," and the City was not in substantial compliance with the Housing Element Law as of October 4, 2022, notwithstanding its "certification" in the City's February 21, 2023 resolution. (AR 6297-6298.)

The City Determines 600 Foothill's Preliminary Application Could Not Rely on the Builder's Remedy and the City Council Affirms the Decision

On February 10, 2023, in response to 600 Foothill's Preliminary Application, the City issued an incompleteness determination (the First Incompleteness Determination) requesting additional detail on several issues. The First Incompleteness Determination did not allege any inconsistencies between the Project and the City's zoning ordinance and general plan. (AR 5276-5279.) Petitioner supplemented its application materials in response to the First Incompleteness Determination on April 28, 2023. (See AR 6305, 7095-7096, 7152-7153, 7169, 7166, 8050-8060.)

On March 1, 2023, the City issued a second incompleteness determination (the Second Incompleteness Determination). The Second Incompleteness Determination advised 600 Foothill the Builder's Remedy did not apply to the Project making the Preliminary Application incomplete for its failure to comply with the City's general plan zoning laws and residential density limitations. (AR 6280-6281; see AR 7176.)

On March 9, 2023, 600 Foothill appealed the Second Incompleteness Determination. (See § 65943, subd. (c); AR 6282-6287, AR 12926.) In support of its appeal, 600 Foothill provided a letter from its attorney explaining 600 Foothill's position the City Council's failure to grant the appeal would constitute a violation of the HAA. (AR 6304-6462, 6317 ["flouts the law"].)

The City Council heard 600 Foothill's appeal on May 1, 2023. The City Council voted unanimously to adopt Resolution No. 23-14, denying the appeal and upholding the Second Incompleteness Determination (the May 1, 2023 Decision). (AR 7151-7160, AR 7161-7168.)

On June 8, 2023, HCD sent the City a Notice of Violation advising the City it violated the HAA and Housing Element Law by denying 600 Foothill's appeal. (AR 7170-7175.) HCD summarized the alleged violations:

> The City cannot 'backdate' its housing element compliance date to an earlier date so as to avoid approving a Builder's Remedy application. In short, the October 4, 2022 Adopted Housing Element did not substantially comply with State Housing Element Law, regardless of any declaration by the City. Therefore, the Builder's Remedy applies, and the City's denial of the Project application based on inconsistency with zoning and land use designation is a violation of the HAA. (AR 7170.)

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The City Determines the Application is Complete and the Project is Inconsistent with City's Zoning Code and General Plan

On May 26, 2023, the City informed 600 Foothill that its Project application was complete. (AR 7169.) On June 24, 2023, the City advised 600 Foothill:

> [I]t remains the City's position (as affirmed by City Council on May 1, 2023) that the 2021-2029 Housing Element was in substantial compliance with state law as of October 4, 2022. Based on that, staff reviewed the project for consistency with the General Plan, applicable provisions of the Downtown Village Specific Plan (DVSP), the Zoning Code, and the density proposed within the 2021-2029 Housing Element. In accordance with [] § 65589.5(j)(2)(A), this letter serves as an explanation of the reasons that the City considers the proposed project to be inconsistent, not in compliance, or not in conformity with these aforementioned guiding documents. (AR 7176.)

The City Completes Rezoning and HCD Certifies the City's Substantial Compliance with the Housing Element Law

On September 12, 2023, the City adopted a resolution completing its rezoning commitments set forth in its housing element. HCD reviewed the materials and, on November 17, 2023, sent a letter to the City finding the City had "completed actions to address requirements described in HCD's April 24, 2023 review letter." (Coy Decl. ¶ 12, Exh. D.)

Writ Proceedings

On July 21, 2023, 600 Foothill filed its verified petition for writ of mandate and complaint for declaratory and injunctive relief against Respondents. On July 25, 2023, CHDF filed its verified petition for writ of mandate and complaint for declaratory relief. The court has related the two actions and coordinated them for trial and legal briefing. The court denied Respondents' motion to consolidate the two actions.

On December 20, 2023, pursuant to a stipulation, Intervenors filed their petition for writ of mandate and complaint for declaratory relief in the CHDF proceeding.

For this proceeding, the court has considered 600 Foothill's Opening Brief, CHDF's Opening Brief, Intervenors' Opening Brief, Respondents' three opposition briefs, 600 Foothill's Reply Brief, CHDF's Reply Brief, Intervenors' Reply Brief, the administrative record, the joint appendix, all requests for judicial notice, and all declarations (including exhibits).[6]

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[6] The court accounted for its evidentiary rulings as to the evidence.

STANDARD OF REVIEW

Pursuant to the Los Angeles County Court Rules (Local Rules), "[t]he opening and opposition briefs must state the parties' respective positions on whether the petitioner is seeking traditional or administrative mandamus, or both." (Local Rules, Rule 3.231, subd. (i)(1).) The parties must also provide their position on the standard of review in their briefing. (See Local Rule, Rule 3.231, subd. (i)(3).)

600 Foothill, CHDF and Respondents do not suggest the standard of review that applies to the causes of action. Intervenors argue Code of Civil Procedure section 1085, not Code of Civil Procedure section 1094.5, applies to their petition.

Under Code of Civil Procedure section 1094.5, subdivision (b), the relevant issues are whether (1) the respondent has proceeded without jurisdiction, (2) there was a fair trial, and (3) 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. (Code Civ. Proc., § 1094.5, subd. (b).)

In administrative mandate proceedings not affecting a fundamental vested right, the trial court reviews administrative findings for substantial evidence. 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 in nature, credible and of solid value. (*Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 305 n. 28.) Under the substantial evidence test, "[c]ourts 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.) The court does "not weigh the evidence, consider the credibility of witnesses, or resolve conflicts in the evidence or in the reasonable inferences that may be drawn from it." (*Doe v. Regents of University of California* (2016) 5 Cal.App.5th 1055, 1073.)

To obtain a traditional writ of mandate under Code of Civil Procedure section 1085, there are two essential findings. First, there must be a clear, present, and ministerial duty on the part of the respondent. Second, a petitioner must have a clear, present, and beneficial right to the performance of that duty. (*California Ass'n for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 704.) "Generally, mandamus is available to compel a public agency's performance or to correct an agency's abuse of discretion when the action being compelled or corrected is ministerial." (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 700.)

An agency is presumed to have regularly performed its official duties. (Evid. Code, § 664.) Under Code of Civil Procedure section 1094.5, the "trial court must afford a strong presumption of correctness concerning the administrative findings." (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817.) A petitioner seeking administrative mandamus has the burden of proof and must cite the administrative record to support its contentions. (See *Alford v. Pierno* (1972) 27 Cal.App.3d 682, 691.) Similarly, a petitioner "bears the burden of proof in a mandate proceeding brought under Code of Civil Procedure section 1085." (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1154.) A reviewing court "will not act as counsel for either party to a [challenge to an administrative decision] 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 [context of civil appeal.)

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

ANALYSIS

Petition for Writ of Mandate – Violations of the HAA

600 Foothill, CHDF, and Intervenors seek a writ of mandate to enforce the requirements of the HAA against the City. Among other relief, they seek a writ directing Respondents to set aside the City Council's "decision, on May 1, 2023, to disapprove an application for a housing development project at 600 Foothill Boulevard, and compelling Respondent to approve the application or, in the alternative, to process it in accordance with the law." (CHDF Pet. Prayer ¶ 1; see also 600 Foothill Pet. Prayer ¶¶ 3-5 and Intervenors Pet. Prayer ¶¶ 1-3.)[7]

Standard of Review

As noted, the HAA at section 65589.5, subdivision (m)(1) specifies "[a]ny action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure. . . ." Nonetheless, Intervenors argue Code of Civil Procedure section 1085, not Code of Civil Procedure section 1094.5, applies because Respondents have a "ministerial duty under the HAA to process the Foothill Owner's Builder's Remedy application." (Intervenors' Opening Brief 10:27; see *Sunset Drive Corp. v. City of Redlands* (1999) 73 Cal.App.4th 215, 221-222. ["A writ of mandate may be issued by a court to compel the performance of a duty imposed by law."])

While there is a colorable argument Code of Civil Procedure section 1085 applies to parts of the HAA claims involving the Housing Element Law, given the Legislature's clear instructions in section 65589.5, subdivision (m)(1), the court concludes Petitioners' writ petitions to enforce the HAA are all governed by Code of Civil Procedure section 1094.5.

[7] 600 Foothill's writ claims under the HAA are alleged in its third through fifth causes of action while CHDF's and Intervenors' are alleged in their first causes of action.

The court's task "is therefore to determine whether the City 'proceeded in the manner required by law,' with a decision supported by the findings, and findings supported by the evidence; if not, the City abused its discretion." (*California Renters Legal Advocacy and Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 837.) The City "bear[s] the burden of proof that its decision has conformed to all of the conditions specified in Section 65589.5." (§ 65589.6.)

As noted, based on the circumstances, the court reaches the same result in its analysis even if the petitions, or parts thereof, are governed by Code of Civil Procedure section 1085. (See e.g., § 65587, subd. (d)(2) [action to compel compliance with Housing Element Law "shall" be brought pursuant to Code of Civil Procedure section 1085].) The HAA claims raise legal questions of statutory construction and concerns about Respondents' substantial compliance with the Housing Element Law. The court decides such issues independently, regardless of whether Code of Civil Procedure section 1094.5 or 1085 governs. (See e.g. *Martinez, supra,* 90 Cal.App.5th at 237.)

<u>The City "Disapproved" the Builder's Remedy Project</u>

600 Foothill contends the City "disapproved" the Project, as the term is defined in the HAA, because the City "determined that the Project could not proceed because it believed the Builder's Remedy was inapplicable." (600 Foothill Opening Brief 7:11-12.) CHDF and Intervenors make the same argument. (CHDF Opening Brief 21:25-28; Intervenors' Opening Brief 15:27-16:3.)

The Builder's Remedy, at section 65589.5, subdivision (d)(5) provides in pertinent part:

> (d) A local agency **shall not disapprove** a housing development project . . . for very low, low-, or moderate-income households . . . unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:
>
> . . . .
>
> (5) The housing development project . . . is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, **and** the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article. (Emphasis added.)

Thus, to prove their claim under the HAA and to proceed with the Project as a Builder's Remedy, Petitioners must show the City "disapprove[d] a housing development project."

(§ 65589.5, subd. (d).)[8] Section 65589.5, subdivision (h)(6) provides to " 'disapprove the housing development project' **includes** any instance in which a local agency does any of the following: (A) Votes on a proposed housing development project application and the application is disapproved, **including any required land use approvals or entitlements necessary for the issuance of a building permit** . . . ." (Emphasis added.)

Here, on May 1, 2023, the City Council denied Petitioner's appeal of the Second Incompleteness Determination stating:

> [T]he City Council of the City of La Cañada Flintridge hereby denies the appeal and upholds the Planning Division's March 1, 2023, incompleteness determination for the mixed use project at 600 Foothill Boulevard, on the basis that the 'builder's remedy' under the Housing Accountability Act does not apply and is not available for the project, and that the project did not 'vest' as a 'builder's remedy' project as alleged in the project's SB 330 Preliminary Application submission dated November 14, 2022, because the City's Housing Element was, as of October 4, 2022, in substantial compliance with the Housing Element law. (AR 7167.)

Notably, Director Koleda informed the City Council, prior to its vote on the appeal, that "if the appeal is denied, the project will be processed accordingly as a standard, nonbuilder's remedy project." (AR 7103.) Thus, the City Council "voted" on a proposed housing development project application and determined the Project could not proceed as a Builder's Remedy project—that is, the Project would be subject to the City's discretionary approvals.

The Legislature has expressed its intent that the HAA "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, subd. (a)(2)(L); *California Renters Legal Advocacy & Education Fund. v. City of San Mateo, supra*, 68 Cal.App.5th at 854.) In addition, "[a]s a basic principle of statutory construction, 'include' is generally used as a word of enlargement and not of limitation. . . . Thus, where the word 'include' is used to refer to specified items, it may be expanded to cover other items." (*Rea v. Blue Shield of California* (2014) 226 Cal.App.4th 1209, 1227.) Applying these canons of statutory construction, the court finds section 65589.5, subdivision (h)(6) should be given a broad construction. Because the City Council made clear any required land use approvals or entitlements would not be issued for the Project, **as a Builder's Remedy project**, the City Council's May 1, 2023 decision falls within the HAA's broad definition of "disapprove."

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[8] It is undisputed the Project constitutes a "housing development project . . . for very low, low-, or moderate-income households" within the meaning of the HAA. HCD advised the City on June 8, 2023: "The Project is proposed as an 80-unit mixed-use project where 20 percent of the units (16 units) will be affordable to lower-income households. The residential portion equates to approximately 89 percent of the Project; therefore, the Project qualifies as a 'housing development project' under the HAA (Gov. Code, § 65589.5, subd. (h)(2)(B))." (AR 7171.) Respondents develop no argument to the contrary.

Respondents contend:

> 600 Foothill defined the "approvals" and "entitlements" it sought in its application – namely, a Conditional Use Permit (USE-2023-0016), Tentative Tract Map 83375 (LAND-2023-0001), and Tree Removal Permit (DEV-2023-0003). (AR 5285.) There was no vote on May 1, 2023, on any of these "required land use approvals" or "entitlements" and, thus, . . . the "vote" needed under the HAA has not occurred. (Opposition to 600 Foothill 19:22-26 [emphasis in original].)

Respondents' narrow interpretation of the statute is unpersuasive. (See § 65589.5, subd. (a)(2)(L).) While the City Council may not have voted to deny the conditional use permit, tentative tract map, and tree removal permit, the City Council voted on May 1, 2023 and determined the Project could not proceed as the project proposed—a Builder's Remedy project. Because the Project was proposed as a Builder's Remedy, the City Council's May 1, 2023 vote on the project application was a "disapproval" within the meaning of the HAA.

Respondents also contend "[t]he City cannot as a matter of law approve or disapprove a development project, including a project under the Builder's Remedy, prior to conducting environmental review under CEQA . . . ."[9] (Opposition to 600 Foothill 16:15-16.) Respondents argue the HAA does not authorize the court "to order the City to accommodate CEQA review after a possible finding by the Court of a violation of the HAA." (Opposition to 600 Foothill 16:25-26 [emphasis in original].)

Again, Respondents' arguments are unpersuasive—a city can disapprove a project without having undertaken CEQA review. Nothing requires a city to undertake CEQA review *before deciding to disapprove a project*. CEQA does not apply to "[p]rojects which a public agency rejects or disapproves." (Pub. Res. Code, § 21080, subd. (b)(5).) "[I]f an agency at any time decides not to proceed with a project, CEQA is inapplicable from that time forward." (*Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 850.) Respondents do not cite any language from the HAA that supports their position.[10]

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[9] CEQA refers to the California Environmental Quality Act at Public Resources Code section 21000, *et seq.*

[10] During argument, the City emphasized its reliance on section 65589.5, subdivision (m)(1) its language concerning finality—an action cannot be brought to enforce the HAA's provisions until there is a "final action on a housing development project" and the City did not take final action on the Project—it merely determined the Project could not be built as a Builder's Remedy project and would be subject to discretionary approvals. As noted by 600 Foothill, an action to enforce the HAA may be initiated after a municipality imposes conditions upon, disapproves **or** takes final action on a housing project. The City made clear in its May 1, 2023 Decision that the Project could not proceed as proposed as a Builder's Remedy project.

While CEQA review is preserved by the HAA[11] nothing suggests a disapproval under the HAA can occur only after CEQA review or that a court lacks authority to issue a writ to *compel compliance with the HAA*, even if a Builder's Remedy project is subject to CEQA compliance. Notably, a suit to enforce the HAA must be filed "no later than 90 days from" project disapproval. (§ 65589.5, subd. (m)(1).) Further, 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." (§ 65589.5, subd. (a)(2)(L).) Respondents' interpretation of the HAA, under which a disapproval cannot occur prior to CEQA review, would hinder the approval and provision of housing. Accordingly, an agency may "disapprove" a project under the HAA before conducting any environmental review under CEQA, and a petitioner's claim to enforce the HAA may be ripe for consideration even if CEQA review has not been performed or completed.

Respondents' reliance on *Schellinger Brothers v. City of Sebastopol* (2009) 179 Cal.App.4th 1245, 1262 [*Schellinger*] is misplaced. *Schellenger* involved a request **to compel** the certification of an environmental impact report. *Schellinger* did not hold that all claims under the HAA or other housing laws are unripe or cannot be filed until CEQA review is completed. The case did not address CEQA in the context of a claim to enforce the Builder's Remedy provision in the HAA. The case also did not suggest a trial court lacks discretion to structure a writ issued pursuant to the HAA in a manner that allows for CEQA review to be completed. "An opinion is not authority for propositions not considered." (*People v. Knoller* (2007) 41 Cal.4th 139, 154-55.)

The court acknowledges *Schellinger* advised the HAA "specifically pegs its applicability to the approval, denial or conditional approval of a 'housing development project' . . . which, as previously noted, can occur *only after the EIR is certified.* (CEQA Guidelines, § 15090(a).)" (*Schellinger, supra,* 179 Cal.App.4th at 1262.) Nonetheless, the court's statement must be interpreted in the context of the issues before that Court. Because the agency there had not disapproved the project at issue, the Court's reference to the "denial" of a housing development project was a dictum. In any event, as discussed, *Schellinger* did not decide the legal question presented here—whether the City "disapproved" a Project when it determined, through a vote of its City Council, the Builder's Remedy Project did not qualify for the Builder's Remedy under the HAA.[12]

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[11] See section 65589.5, subdivisions (e) and (o)(6).

[12] Respondents indicate the City took action to pay for CEQA review of the Project starting in September 2023. (Opposition to 600 Foothill 18:11-14 [citing Sheridan Decl. Exh. JJ].) By that time, however, the City Council had already determined the Project could not proceed as proposed pursuant to the Builder's Remedy. (AR 7167; see also AR 7176.) Respondents do not explain the purpose of CEQA review for a project the City Council has determined could not be approved consistent with the law. This evidence does not support Respondents' position the City Council's May 1, 2023 Decision did not constitute a "disapproval" under the HAA.

Based on the foregoing, Petitioners have demonstrated the City Council "disapproved" the Project with its May 1, 2023 Decision within the meaning of the HAA. Respondents do not show the petitions are "unripe" because CEQA review has not been completed, or that CEQA review is a prerequisite to the "disapproval" of a Project under the HAA. In light of the court's conclusion, the court need not reach the parties' contentions regarding *California Renters v. City San Mateo* (2021) 60 Cal.App.5th 820 and appellate briefing from that case. (See Opposition to 600 Foothill 17:10-28 [citing Sheridan Decl. Exh. EE and FF].)

"Vesting" of the Builder's Remedy and the Date the Pro ect Application was Deemed Complete

Respondents assert the filing of a SB 330 preliminary application does not "vest" the Builder's Remedy because "when a city is determining whether it can make the finding in subsection (d)(5), it considers the status of its Housing Element *as of the date the finding is made.*" (Opposition to 600 Foothill 23:11-13 [emphasis in original].)

The HAA defines "deemed complete" to mean that "the applicant has submitted a *preliminary application* pursuant to Section 65941.1." (§ 65589.5, subd. (h)(5) [emphasis added].) Section 65589.5, subdivision (o)(1) states "a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application including all of the information required by subdivision (a) of Section 65941.1 was submitted." Construing these statutory provisions, along with section 65589.5, subdivision (d), the court concludes a Builder's Remedy "vests" if the local agency does not have a substantially compliant housing element at the time a complete preliminary application pursuant to section 65941.1 is submitted and "deemed complete."

Respondents have not developed any argument the Preliminary Application, submitted in November 2022, lacked the information required by section 65941.1 or was otherwise incomplete within the meaning of the HAA. (See AR 5234-5246.)[13] Thus, if the City's housing element did not substantially comply with the Housing Element Law at that time (see analysis *infra*), the Builder's Remedy "vested" when 600 Foothill submitted its Preliminary Application in November 2022.[14]

Respondents' reliance on subdivision (o) of the HAA is misplacec. Section 65589.5, subdivision (o)(4) provides " 'ordinances, policies, and standards' includes **general plan**, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency." (Empasis added.)

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[13] 600 Foothill's Preliminary Application used the form generated by the City. 600 Foothill completed the form and included necessary attachments.

[14] 600 Foothill's Preliminary Application was "deemed complete," within the meaning of the HAA, when 600 Foothill submitted its application in November 2022. (See AR 5241-5246, 7171; see also Gov. Code §§ 65589.5, subdivision (h)(5) and 65941.1.) During argument, Respondents appeared to conflate the Preliminary Application with a formal project application.

The housing element is a mandatory element of the general plan. (§ 65582, subd. (f).) Section 65589.5, subdivision (o)(1) precludes Respondents from retroactively applying a housing element to a Builder's Remedy project that "vested" before certification of the housing element.

Respondents' vesting argument is also inconsistent with the HAA's policy of promoting housing. (§ 65589.5, subd. (a)(2)(L).) If Respondents' position was correct, as a practical matter "no housing developer would ever submit a builder's remedy application because of the uncertainty about whether the project would remain eligible long enough to be approved." (CHDF Reply 19:8-9.)

600 Foothill's Preliminary Application was "deemed complete," for purposes of the HAA, in November 2022 when 600 Foothill submitted its Preliminary Application. If the Builder's Remedy applies (see *infra*), it therefore "vested" in November 2022.[15]

<u>The City Could Not Be in Substantial Compliance with the Housing Element Law until it Completed Rezoning</u>

Petitioners contend the City's housing element was not in substantial compliance with the Housing Element Law when 600 Foothill filed its Preliminary Application because the City had not completed the rezoning required by sections 65583, subdivision (c)(1)(A) and section 65583.2, subdivision (c). (See 600 Foothill Opening Brief 12:21-23.) Petitioners are correct.

Section 65588, subdivision (e)(4)(C)(i) states:

> For the adoption of the sixth revision and each subsequent revision, a local government that does not adopt a housing element that the department has found to be in substantial compliance with this article within 120 days of the applicable deadline described in subparagraph (A) or (C) of paragraph (3) shall comply with subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583 and subdivision (c) of Section 65583.2 within one year of the statutory deadline to revise the housing element.

Section 65588, subdivision (e)(4)(C)(iii) states:

> A jurisdiction that adopts a housing element more than one year after the statutory deadline described in subparagraph (A) or (C) of paragraph (3) **shall not be found in substantial compliance with this article until it has completed the**

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[15] However, the court reaches the same result in its analysis below even if the application was deemed complete or "vested" anytime up to May 1, 2023, the date of City Council's decision. The City did not complete its required rezoning until September 12, 2023. (See § 65588, subd. (e)(4)(C)(iii).)

rezoning required by subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583 and subdivision (c) of Section 65583.2. (Emphasis added.)[16]

Thus, the statute mandates the jurisdiction "shall not be found in substantial compliance" until completing the rezoning. (*Ibid.*)[17] The plain language of the statutory prohibition is not limited to HCD; the prohibition therefore applies to the courts.

As applied here, the City's statutory deadline to adopt a substantially compliant 6th cycle housing element was October 15, 2021. (AR 443.) The City submitted its draft housing element to HCD on October 15, 2021. (AR 443.) Because the City failed to secure certification of its 6th cycle housing element within 120 days of its statutory deadline of October 15, 2021 (see AR 443-447), October 15, 2022 served as the City's deadline to complete its required rezoning. (§ 65583, subd. (c)(1)(A).) It is undisputed the City did not complete the required rezoning until September through November 2023.

Pursuant to the plain language of section 65588, subdivision (e)(4)(C)(iii), the City "shall not be found" in substantial compliance with the Housing Element Law until the City completed its rezoning in September through November 2023. As a result, the City did not have a substantially compliant housing element when 600 Foothill submitted its Preliminary Application to the City in November 2022; the Builder's Remedy therefore applies to the Project.

Respondents do not challenge the plain language interpretation of section 65588, subdivision (e)(4)(C)(iii).[18] Thus, they concede where an agency has failed to adopt a substantially compliant housing element by more than a year after the statutory deadline to do so, the agency cannot be found in substantial compliance with the Housing Element Law by HCD or a court until it

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[16] During argument, Respondents objected to the court's consideration of legislative history referenced in the court's tentative order distributed prior to the hearing. The court relied 600 Foothill's RJN, Exh. D at 82 and Exh. E at 149. Respondents correctly argued resort to legislative history here is inappropriate given the plain language of the statute and lack of ambiguity. (See *River Garden Retirement Home v. Franchise Tax Bd.* (2010) 186 Cal.App.4th 922, 942.) While the parties later agreed the court could rely on all of the evidence that had been submitted by the parties, the court nonetheless revised its decision to eliminate the discussion of legislative history. Given Respondents' argument, there can be no claim the statute is unclear. "If there is no ambiguity, we presume the Legislature meant what is said and the plain meaning of the language controls." (*Ibid.*)

[17] In any event, as discussed *infra*, the court concludes the City did not adopt a substantially compliant housing element until after 600 Foothill submitted its complete Preliminary Application. Accordingly, even if the statutory bar of section 65588, subdivision (e)(4)(C)(iii) does not apply to the courts, the court still concludes the Builder's Remedy applies to the Project.

[18] As noted *supra* in footnote 16, Respondents agree there is no ambiguity in the statute.

completes its required rezoning. (*Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc.* (2003) 111 Cal.App.4th 1328, 1345, fn. 16 [failure to address point is "equivalent to a concession"].)

Respondents contend the "City could not rezone until it had a General Plan Housing Element under Section 65860(c), HCD did not promulgate draft [Affirmatively Further Fair Housing] requirements for the 6th Cycle housing element until April 23, 2020, and did not promulgate the final version until April 2021, only six months before the then-existing deadline (within SCAG) for submitting a 6th RHNA Cycle Housing Element." (Opposition to CHDF 8: 11-15.)

Respondents' evidence does not demonstrate actions or omissions of HCD or the Southern California Association of Governments (SCAG) precluded the City from adopting a substantially compliant housing element or the required rezoning. Director Koleda advises the final affirmatively further fair housing requirements were available by April 2021, and the City's RHNA increased by only two dwelling units between March 22, 2021 and July 1, 2021. (Koleda Decl. ¶¶ 20, 36.) As persuasively argued by Intervenors, the City "had sufficient time to accommodate its RHNA allocation, or at the very least, the two additional dwelling units added between March and July 2021." (Intervenors' Reply 16, fn. 8.) Respondents also do not show, with persuasive evidence, the timing of HCD's promulgation of affirmatively further fair housing requirements prevented the City from adopting a substantially compliant housing element.

Respondents also argue section 65588, subdivision (e)(4)(C)(iii)'s rezoning requirement "is illegal, unconstitutional, and unenforceable" because "[t]he Government Code specifically contemplates that rezoning will occur after adoption of an amendment to a General Plan, including Housing Elements, ..." (Opposition to Intervenors 12:19, 14:26-27.) Respondents' statutory argument is not fully developed, lacks sufficient analysis of governing legal principles, and is unpersuasive.

Respondents wholly fail to explain how section 65588, subdivision (e)(4)(C)(iii) is "illegal" or "unconstitutional." At most, Respondents assert section 65588, subdivision (e)(4)(C)(iii) conflicts with other statutes requiring consistency between the zoning ordinances of a general law city and its general plan, and the requirement such zoning ordinances be amended "within a reasonable time" to be consistent with a general plan that is amended. (Opposition to Intervenors 13:13-16 [citing § 65860].)

Respondents do not show a conflict between section 65588, subdivision (e)(4)(C)(iii) and section 65860 or any other statute. Contrary to Respondents' assertion, a city could comply with both statutes. Thus, as argued by 600 Foothill, a city could update its zoning simultaneously with the adoption of its housing element. A city could also adopt a housing element that is provisionally certified by HCD and then subsequently complete the rezoning, which is what occurred here. While section 65588, subdivision (e)(4)(C)(iii) may subject a city to the Builder's Remedy it if does not complete its rezoning at the same time adopts its housing element, Respondents do not show such possibility conflicts with section 65860 or that the

Legislature lacked the authority to impose such measures to encourage the development of housing.[19]

Because the City had not completed its required rezoning, the City's housing element was not in substantial compliance with the Housing Element Law when 600 Foothill filed the Preliminary Application in November 2022. As a result, the City Council prejudicially abused its discretion when it found the Builder's Remedy did not apply to the Project in its May 1, 2023 Decision.

<u>Did the City's October 2022 Housing Element Substantially Comply with the Housing Element Law Without Consideration of Rezoning?</u>

In its May 1, 2023 Decision, the City Council found "the 'builder's remedy' under the Housing Accountability Act does not apply and is not available for the project . . . because the City's Housing Element was, as of October 4, 2022, in substantial compliance with the Housing Element law." (AR 7167.) Petitioners contend the City Council's finding was a prejudicial abuse of discretion. The court agrees. The October 4, 2022 Housing Element was not in substantial compliance with the Housing Element Law.

<u>Standard of Review—Substantial Compliance with Housing Element Law</u>

"In an action to determine whether a housing element complied with the requirements of the Housing Element Law, the court's review 'shall extend to whether the housing element . . . *substantially complies* with the requirements' of the law. (§ 65587, subd. (b), italics added.) Courts have defined substantial compliance as '*actual* compliance in respect to the substance essential to every reasonable objective of the statute,' as distinguished from 'mere technical imperfections of form.' [Citations.] Such a review is limited to whether the housing element satisfies the statutory requirements, 'not to reach the merits of the element or to interfere with the exercise of the locality's discretion in making substantive determinations and conclusions about local housing issues, needs, and concerns.' " (*Martinez, supra,* 90 Cal.App.5th at 237.)

HCD is mandated by statute to determine whether a housing element substantially complies with the Housing Element Law. (See e.g., § 65585, subds. (i)-(j); Health & Saf. Code § 50459, subds. (a), (b).) Given HCD's statutory mandate and its expertise, HCD's determination of substantial compliance with the Housing Element Law, or lack thereof, is entitled to deference from the courts. (See *Hoffmaster v. City of San Diego* (1997) 55 Cal.App.4th 1098, 1113, fn. 13

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[19] Further, even assuming a conflict existed, Respondents do not explain why section 65860 would take precedence over section 65588, subdivision (e)(4)(C)(iii) under the specific circumstances presented here (i.e., a statutory bar to attaining substantial compliance with the Housing Element Law until rezoning is complete). (See *State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 960-961. ["If conflicting statutes cannot be reconciled, later enactments supersede earlier ones [citation], and more specific provisions take precedence over more general ones."])

["We substantially rely on the Department of Housing and Community Development's interpretation [. . .] regarding compliance with the housing element law . . . ."]; accord *Martinez, supra,* 90 Cal.App.5th at 243 ["courts generally will not depart from the HCD's determination unless 'it is clearly erroneous or unauthorized' "].)

However, "HCD's housing element compliance determinations are not binding on courts." (See Intervenor Reply 10:2; see also 600 Foothill Opening Brief 15:8-9.) The trial and appellate courts "'independently ascertain as a question of law whether the housing element at issue substantially complies with the requirements of the Housing Element Law.' . . ." (*Martinez, supra,* 90 Cal.App.5th at 237.)[20] Thus, to be clear (and as noted during the hearing) the court has not deferred to HCD concerning substantial compliance—the issue is properly subject to the court's independent review as a question of law.

<u>Affirmatively Further Fair Housing</u>

As background, HCD found the City's October 2022 Housing Element did not substantially comply with the City's duties under the Housing Element Law to analyze how the housing element will affirmatively further fair housing. Specifically, HCD wrote:

> While the element now analyzes census tracts and sites with a concentration of affordable units (p. D71-73), it should still discuss whether the distribution of sites improves or exacerbates conditions. This is critical as the sites to accommodate the lower-income households are only located along Foothill Boulevard near the 210 Freeway. If sites exacerbate conditions, the element should include programs to mitigate conditions (e.g., anti-displacement strategies) and promote inclusive communities. (AR 5263-5264.)

HCD also found "the element must include a complete assessment of fair housing. Based on the outcomes of that analysis, the element must add or modify programs." (AR 5264.)

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[20] While *Martinez* advises " '[t]he burden is on the challenger to demonstrate that the housing element . . . is inadequate" (*ibid.*), the HAA provides the City "bear[s] the burden of proof that its decision has conformed to all of the conditions specified in Section 65589.5." (§ 65589.6; see also § 65587, subd. (d)(2) [city has burden of proof in action to compel compliance with requirements of section 65583, subd. (c)(1)-(3)].) The parties do not address the language in *Martinez* or how it should be applied, if at all, in this proceeding. The court concludes based on sections 65589.6 and 65587, subdivision (d)(2) the burden is on Respondents to show the City Council's May 1, 2023 Decision complied with the HAA. Such a showing requires the City to demonstrate it attained substantial compliance with the Housing Element Law before 600 Foothill's submitted its Preliminary Application and it was "deemed complete." The court notes and clarifies, however, it would reach the same result herein even if the initial burden of proof is with Petitioners.

Housing elements must contain "an inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level"—the "sites inventory." (§ 65583, subd. (a)(3).) The sites inventory must be accompanied by "an analysis of the relationship of the sites identified in the land inventory to the jurisdiction's duty to affirmatively further fair housing." (*Ibid.*) In addition, each updated housing element must include "a statement of the community's goals, quantified objectives, and policies relative to affirmatively furthering fair housing" (§ 65583(b)(1)), and must commit to programs that will, among other things, "Affirmatively further fair housing in accordance with [Section 8899.50]." (§ 65583, subd. (c)(10).)[21]

Here, the October 2022 Housing Element discloses the sites identified by the City to accommodate affordable housing are all located near the Foothill Freeway. (AR 5130.) In this context, HCD found the October 2022 Housing Element lacked sufficient analysis of the relationship of the sites identified in the land inventory to the City's duty to affirmatively further fair housing, i.e. whether the site inventory would improve or exacerbate fair housing conditions. (AR 5263-5264.)

Respondents do not cite to any specific analysis in the October 2022 Housing Element addressing the concern raised by HCD. (See Opposition to 600 Foothill 9:14 [citing AR 1741, 5203].) In fact, neither AR 1741 nor 5203 demonstrate the October 2022 Housing Element analyzed how the clustering of affordable housing near the Foothill Freeway would promote or exacerbate fair housing. While Respondents now explain in the context of *this proceeding* why the City clustered all affordable housing near the freeway (See Koleda Decl. ¶¶ 9-16),

[21] Section 8899.50, subd. (b)(1) provides: "A public agency shall administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and take no action that is materially inconsistent with its obligation to affirmatively further fair housing." Compliance with the obligation is mandatory. (*Id.* at subd. (b)(2).) The statute defines "affirmatively further fair housing" as:

> taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development. (*Id.* at subd. (a)(1).)

Respondents were required to include that analysis in the October 2022 Housing Element. (See § 65583, subds. (a)(3), (b)(1), and (c)(10).)[22]

Respondents contend the "City undertook numerous outreach efforts to reach a variety of economic groups, including via two housing workshops with 18 different stakeholder organizations." (Opposition to 600 Foothill 9:10-12 [citing Koleda Decl. ¶¶ 38-50 and AR 3896-3900, 4651].) Respondents do not cite any authority that outreach alone satisfies the City's statutory obligations to include in its housing element "an **analysis** of the relationship of the sites identified in the land inventory to the jurisdiction's duty to affirmatively further fair housing." (§ 65583, subd. (a)(3) [emphasis added].) Exercising its independent judgment on the statutory question, the court concludes outreach alone does not substantially comply with the requirement—outreach does not constitute analysis.

The deficiencies in the October 2022 Housing Element as to the affirmatively further fair housing analysis are demonstrated by changes made by the City in the February 2023 Housing Element.[23] Specifically, the February 2023 Housing Element added analysis—"the sites to accommodate the lower and moderate-income households are concentrated primarily in the western end of the City along the Foothill Boulevard Corridor, and near the 210 Freeway." (AR 6090.) The analysis recognized "adverse air quality conditions have the potential to be exacerbated" based on "close proximity to the freeway[.]" (AR 6090.) In addition, the revised February 2023 Housing Element committed to Program 24 to mitigate these impacts. (AR 6091; See also AR 5577-5578 [adding Program 24, "Mitigation for Housing in Proximity to Freeways" committing to building design measures for new residential development near the freeway].)

Respondents contend "those air quality mitigation measures were adopted in 2013 and the 2023 Housing Element merely added a heading regarding these existing measures." (Opposition to 600 Foothill 9:7-8 [citing Koleda Decl. ¶ 33 and AR 4515].) Respondents cite AQ Policy 1.1.6 from its General Plan Air Quality Element, which states the policy to "Ensure that new developments implement air quality mitigation measures, such as ventilation systems, adequate buffers, and other pollution reduction measures and carbon sequestration sinks, especially those that are located near existing sensitive receptors." (Koleda Decl. ¶ 33.)

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[22] During argument, Respondents suggested the material included in the February 23, 2023 housing element had previously been provided in the October 2022 Housing Element. While it is true Table D-12 can be found in both versions of the housing element (compare AR 6090 p. D22 with AR 5158 p. D22), the February 23, 2023 revisions to the October 2022 Housing Element (AR 6090-6092) included additional narrative material beyond repeating information from Los Angeles County's Department of Public Health. Further, AR 5193-5204, identified by Respondents during the hearing as an analysis of how the clustering of affordable housing near the Foothill Freeway would promote or exacerbate fair housing within the October 2022 Housing Element, does not appear to address the issue. Finally, it does not appear Respondents cited any of this material in their briefs before the court in response to the claims raised by Petitioners. 600 Foothill objected to the argument as new during the hearing.

[23] See *supra* footnote 22.

While Program 24 and AQ Policy 1.1.6 have similarities, they are not the same. Program 24 identifies specific mitigation measures that apply to receptors near the freeways and is enforceable by HCD. (See § 65585, subd. (i) [requiring HCD to investigate a "failure to implement any program actions included in the housing element."].) In contrast, AQ Policy 1.1.6 is a shorter and more general policy that is *not enforceable by HCD* as a housing element program. Contrary to Respondents' assertion, the inclusion of Program 24 in the February 2023 Housing Element supports HCD's findings that the October 2022 Housing Element lacked sufficient analysis of the City's affirmatively further fair housing obligations.

Exercising its independent judgment on the issue, the court concludes the City's October 2022 Housing Element did not substantially comply with the affirmatively further fair housing requirements in section 65583, subdivisions (a)(3), (b)(1), and (c)(10).[24]

<u>Nonvacant Sites Analysis</u>

HCD found the October 2022 Housing Element's analysis of nonvacant sites did not sufficiently analyze "redevelopment potential and evaluate the extent existing uses impede additional development." (AR 5264.) HCD also found "as the element relies on nonvacant sites to accommodate 50 percent or more of the housing needs for lower-income households, the adoption resolution must make findings based on substantial evidence in a complete analysis that existing uses are not an impediment and will likely discontinue in the planning period." (AR 5264.)

For nonvacant sites, the Housing Element Law provides "the city or county shall specify the additional development potential for each site within the planning period and shall provide an explanation of the methodology used to determine the development potential." (§ 65583.2, subd. (g)(1).) In addition, "when a city or county is relying on nonvacant sites . . . to accommodate 50 percent or more of its housing need for lower income households, the methodology used to determine additional development potential shall demonstrate that the existing use . . . does not constitute an impediment to additional residential development during the period covered by the housing element. An existing use shall be presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued during the planning period." (§ 65583.2, subd. (g)(2).)

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[24] In reaching this conclusion, the court has considered Respondents' assertion the City undertook outreach efforts "in the face of 'changing goal posts' and what appeared to be intentional obstructive behavior by HCD." (Opposition to 600 Foothill 9:16-21.) The court finds Respondents' evidence does not prove substantial compliance with the affirmatively further fair housing requirements in section 65583 or an excuse from substantial compliance. (See e.g. Koleda Decl. ¶¶ 49-50.) The court has also considered CHDF's arguments and evidence that the City discriminated on the basis of race and income when it selected sites for rezoning. The court further discusses CHDF's claims of discrimination and bad faith *infra*.

The Court of Appeal explains "there are many types of sites the Legislature has either deemed infeasible to support lower income housing or that require additional evidence of their feasibility or by-right development approvals before being deemed adequate to accommodate such housing [including] . . . when a city relies on over 50 percent of the inventory to be accommodated on nonvacant sites . . . . The goal is not just to identify land, *but to pinpoint sites that are adequate and realistically available* for residential development targets for each income level." (*Martinez, supra,* 90 Cal.App.5th at 244 [emphasis added].)

Here, more than 50 percent of the parcels included in the City's site inventory to accommodate the lower income RHNA are nonvacant. (AR 4506.) Accordingly, the City is required to comply with section 65583.2, subdivision (g)(2). The site inventory in the October 2022 Housing Element does not show substantial compliance with section 65583.2, subdivision (g)(2). (See AR 5124-5129.) The criteria used to describe nearly all of the lower income nonvacant sites are some combination of "underutilized site," "buildings that are older than 30 years," "vacant lot or parking lot with minimal existing site improvements," "property has not been reassessed" in some time, "antiquated commercial uses," or "existing use retained and institution would add residential units." (AR 5124-5129; see also AR 4601-4603 [discussing methodology].) While these factors may be relevant to and inform on the analysis of "additional development potential" required by section 65583.2, subdivision (g)(1), they do not sufficiently address in any substantive way whether the sites are "likely to be discontinued during the planning period," as required by section 65583.2, subdivision (g)(2).

In the resolution adopting the October 2022 Housing Element, the City Council made the following finding:

> Based on general development trends resulting from continuously rising land values, changes in desired land uses, the financial pressures placed on religious institutions that have been impacted by falling congregation numbers, aging structures, and underutilized properties, rising demand for housing, adjacency to public transportation and commercial services, and other factors/analysis as identified in the Section 9.4.1.3 Future Residential Development Potential and Section 9.4.1.4 Overview of Residential Development Potential and Realistic Capacity Assumptions by Zone of the Housing Element, the existing uses on the sites identified in the site inventory to accommodate the lower income RHNA are likely to be discontinued during the planning period, and therefore do not constitute an impediment to additional residential development during the period covered by the housing element. (AR 4506.)

The City Council's generalized statement does not reference any specific evidence to support a finding the existing uses of nonvacant sites, which were identified to accommodate housing need for lower income households, are "likely to be discontinued during the planning period." (§ 65583.2, subd. (g)(2).)

Further, Petitioners cite record evidence that the owners of several of the nonvacant sites included in the October 2022 site inventory, including certain sites identified for lower income households, informed the City they did not intend to redevelop the site or discontinue the existing use during the planning period. (See AR 5114-5116, 2222, 2238, 2206, 5126, 12812, 5233, 5123-5129, 6054-6061.)[25] Significantly, the City subsequently amended the housing element to disclose that some of the identified lower income category sites are "not currently available" and were included in the site inventory "as a buffer site because it may become available further along in the 6th cycle HE planning period." (AR 6054-6061, 6098.) Such a change in characterization is a major substantive change in the site inventory and demonstrates the October 2022 Housing Element did not substantially comply with the Housing Element Law.

The court has also reviewed Director Koleda's summary of changes to the October 2022 Housing Element. The court concludes, on the whole, Director Koleda's summary is consistent with Petitioners' arguments the October 2022 Housing Element was not substantially compliant and required significant changes. (See Koleda Decl. ¶ 56 and Exh. A.) As Intervenors argue, the substantial changes to the October 2022 Housing Element show the City did not substantially comply with section 65583.2, subdivision (g)(2) until *after* it adopted the October 2022 Housing Element.

Respondents assert the City "adopted a Site Inventory using both a data-driven model endorsed by HCD . . . and along with that gathered 'substantial evidence' by sending TWO mailings to each commercial and religious property owner in the City to determine potential inclusion on the Site Inventory." (Opposition to 600 Foothill 11:9-12 [citing Koleda Decl. ¶¶ 29, 54-56].) However, Respondents do not dispute it included multiple nonvacant sites in the October 2022 Site Inventory for which the City lacked substantial evidence, *in October 2022*, that the existing uses were "likely to be discontinued during the planning period." (§ 65583.2, subd. (g)(2).) Notably, Respondents do not cite any written communications with the nonvacant site owners, prior to the adoption of the October 2022 Housing Element, as evidence the uses were "likely to be discontinued during the planning period." (§ 65583.2, subd. (g)(2).)

Respondents assert their methodology should be sufficient. During the hearing, they followed HCD guidance and should not be penalized for doing so. Respondents also argue for purposes of section 65583.2, subdivision (g)(2), they should not be required to knock on owners' doors and undertake an active investigation for its sites inventory.

The court cannot find on this record the City followed HCD guidance on the section 65583.2, subdivision (g)(2) issue. While the City's reliance on methodology alone may be consistent with

[25] For example, a representative of a restaurant (Panda Express) wrote "we have NO intention of discontinuing the current use of this property during the next eight-year housing planning period." (AR 5115.) The owner of sites 86-89 on the October 2022 site inventory (identified in the lower income category) similarly informed the City that the premises are leased to retail store (Big Lots) under a 20-year lease with two 10-year extension options, and it had no intention of discontinuing the current use during the planning period. (AR 5116.)

HCD's section 65583.2, subdivision (g)(1) compliance guidance, that is not the case for section 65583.2, subdivision (g)(2).

As discussed during the hearing, HCD guidance specifies at Step 3 how to prepare a nonvacant sites inventory when a municipality has relied on "nonvacant sites to accommodate more than 50 percent of the RHNA for lower income households." (Koleda Decl., Exh. Q p. 26.) Consistent with section 65583.2, subdivision (g)(2), the guidance makes clear:

> If a housing element relies on nonvacant sites to accommodate 50 percent or more of its RHNA for lower income households, the nonvacant site's existing use is presumed to impede additional residential development, unless the housing element describes findings based on substantial evidence that the use will likely be discontinued during the planning period. (*Id.* at 27.)

"The goal is not just to identify land, *but to pinpoint sites that are adequate and realistically available* for residential development targets . . . ." (*Martinez, supra,* 90 Cal.App.5th at 244 [emphasis added].) Accordingly, HCD guidance also explains the "housing element should describe the findings and include a description of the substantial evidence they are based on," and a housing element "should describe the findings and include a description of the substantial evidence they are based on." (Koleda Decl., Exh. Q at 27.)
(*Ibid.*)

HCD further advised substantial evidence "includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (*Ibid.*) HCD provides specific examples of what constitutes substantial evidence "that an existing use will likely be discontinued in the current planning period . . . ." (*Ibid.*) Those examples include:

> [1] The lease for the existing use expires early within the planning period,
> [2] The building is dilapidated, and the structure is likely to be removed, or a demolition permit has been issued for the existing uses,
> [3] There is a development agreement that exists to develop the site within the planning period,
> [4] The entity operating the existing use has agreed to move to another location early enough within the planning period to allow residential development within the planning period.
> [5] The property owner provides a letter stating its intention to develop the property with residences during the planning period. (*Ibid.*)

Of the 21 nonvacant sites identified by the City as "sites that are adequate and realistically available for residential development targets" for lower income persons (*Martinez, supra,* 90 Cal.App.5th at 244), 19 percent or only four (sites 74, 91, 95 and 96) provide any site-specific evidence to support the City's inclusion of the site in its sites inventory. (AR 5124-5128.) For the four sites, the owner indicated some interest in redevelopment. (AR 5126, 5128.) The remaining sites rely on the City's generalized methodology to meet their obligations under section 65583.2, subdivision (g)(2).

Respondents argue 600 Foothill's principal "actively manipulated" certain sites that were later deemed "buffer sites." (Opposition to 600 Foothill 10:22.) Respondents also blame deficiencies in their October 2022 site inventory on "dilatory guidance" of HCD and dilatory actions of SCAG. (Opposition to 600 Foothill 12:9-10.) Having considered the evidence cited by Respondents, the court finds Respondents' arguments unpersuasive. As discussed *infra* with Respondents' unclean hands defense, Respondents do not demonstrate 600 Foothill or its principals have engaged in any inequitable or wrongful conduct related to these proceedings, including the City's adoption of its housing element. Respondents also do not prove deficiencies in the site inventory of the October 2022 Housing Element resulted from actions or omissions of 600 Foothill, SCAG or HCD. Nor do Respondents cite any authority suggesting a city or county may be excused from substantial compliance with the Housing Element Law based on actions or omissions of SCAG, HCD or a project applicant.

Respondents contend the City was permitted "to rely upon letters with site owners and between itself and HCD not included specifically in its Housing Element" and the City "made reasonable inferences" from the information it received from site owners. (Opposition to 600 Foothill 12:15-19.) Respondents rely on *Martinez* to support their claims. (See *Martinez, supra,* 90 Cal.App.5th at 248.)

Martinez addressed the City of Clovis' nonvacant site analysis under section 65583.2, subdivision (g)(1); the Court did not analyze the heightened requirements of section 65583.2, subdivision (g)(2). (See *Martinez, supra,* 90 Cal.App.5th at 248-250.) While *Martinez* held the substantive material required by section 65583.2, subdivision (g)(1), need not appear in the Housing Element itself, the Court did not suggest nonvacant sites may be included in a site inventory if the agency lacks substantial evidence, or has not sufficiently investigated or analyzed, whether the sites are "likely to be discontinued during the planning period." (§ 65583.2, subdivision (g)(2).)

Here, Respondents have not cited substantial evidence to support the City's position multiple nonvacant sites listed in the October 2022 inventory could realistically be developed in a manner to satisfy the City's RHNA obligations. In addition, that Respondents made substantive revisions to the site inventory **after** October 2022 also supports a reasonable inference the City did not complete the analysis and attain the evidence required by section 65583.2, subdivision (g)(2), for many of the sites on its site inventory, **before** it adopted the October 2022 Housing Element. (Compare AR 5124-5129 with 6054-6061.)

Exercising its independent judgment, the court concludes the City's October 2022 Housing Element did not include a nonvacant site analysis that substantially complied with the Housing Element Law, including section 65583.2, subdivision (g)(2).

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Realistic Assessment of Development Capacity

The Housing Element Law requires that municipalities "specify for each site [in its inventory] the number of units that can realistically be accommodated on that site." (§ 65583.2, subd. (c).) The law provides "the number of units calculated" for each site "shall be adjusted" to account for "the land use controls and site improvements requirement identified in paragraph (5) of subdivision (a) of Section 65583, the realistic development capacity for the site, typical densities of existing or approved residential developments at a similar affordability level in that jurisdiction, and on the current or planned availability and accessibility of sufficient water, sewer, and dry utilities." (*Id.* at subd. (c)(2).)

CHDF contends the October 2022 Housing Element did not substantially comply with these statutory provisions because it failed to apply a "downward adjustment on the number of units projected on each site to account for, among other constraints, the City's maximum floor-area ratio of 1.5 (AR 4607), its 80-percent maximum lot-coverage requirement (AR 4566), its 35-foot height limit (AR 4567), and significant parking requirements (AR 4572) for sites in mixed-use zones." (CHDF Opening Brief 20:4-7.)

Respondents did not address or rebut CHDF's argument. (*Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc., supra,* 111 Cal.App.4th at 1345, fn. 16 [failure to address point is "equivalent to a concession"].) The court concludes the City's October 2022 Housing Element did not substantially comply with Housing Element Law because the City failed to adjust the development capacity for each site based on the factors set forth in section 65583.2, subdivision (c)(2).[26]

Government Code Section 65583.2, Subdivision (h)

CHDF argues fewer than 50 percent of the October 2022 Housing Element's low-income sites were zoned exclusively for residential use, and the City did not include analysis showing it would "accommodate all of the very low and low-income housing need on sites designated for mixed use [and] allow 100 percent residential use and require that residential use occupy 50 percent of the total floor area of a mixed-use project." (CHDF Opening Brief 20:21-23 [citing § 65583.2, subd. (h)].) CHDF supports its assertion with citations to the administrative record. (CHDF Opening Brief 21:1-4 [citing AR 5124-5129, 4607-4610]; see also AR 4612.) Based on the

[26] During argument, the court engaged CHDF and Respondents at length on this issue. While Respondents provide an explanation that their rezoning included the required adjustments, the court finds Respondents conceded the issue by not addressing it in their brief. (Compare CHDF Opening Brief 19:20-20:15 with Opposition to CHDF 10:10-11:20.) Respondents' analysis of development constraints is not entirely clear and undeveloped in their brief. (See AR 4565-4570.)

evidence, CHDF argues the October 2022 Housing Element did not substantially comply with section 65583.2, subdivision (h).[27]

Respondents do not squarely address CHDF's position, and they do not show, with citation to the administrative record, the October 2022 Housing Element substantially complied with section 65583.2, subdivision (h). (Opposition to CHDF 12:4-9.) Accordingly, the court concludes the October 2022 Housing Element did not substantially comply with the Housing Element Law for this reason as well.

Based on the foregoing, the court concludes the October 2022 Housing Element did not substantially comply with the Housing Element Law. Accordingly, the City Council prejudicially abused its discretion when it found in its May 1, 2023 Decision the Builder's Remedy did not apply to the Project.

Respondents' Defenses to the HAA Causes of Action

Respondents raise a defense of unclean hands to the HAA causes of action asserted by 600 Foothill. Respondents also raise defenses of ripeness, exhaustion of administrative remedies, and claim the petitions violate rules designed to prevent piecemeal litigation.

Unclean Hands

A party seeking equitable relief must have "clean hands" and inequitable conduct by the party seeking relief is a complete defense. (*Dickson, Carlson & Campillo v. Pole* (2000) 83 Cal.App.4th 436, 446; *Salas v. Sierra Chem. Co.* (2014) 59 Cal.4th 407, 432.) The plaintiff must "come into court with clean hands, and keep them clean," or the plaintiff "will be denied relief, regardless of the merits of his claim." (*Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978.) For the doctrine to apply, "there must be a direct relationship between the misconduct and the claimed injuries." (*Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820, 846, citation omitted.)

Respondents contend "the only reasonable inference to draw [from the opposition evidence] is that on the eve of final review and approval of the Housing Element containing the Site Inventory, 600 Foothill's principal was running around town attempting to manipulate owners to 'decline' inclusion on the inventory and derail the process." (Opposition to 600 Foothill 14:2-5.) The court has reviewed all of the evidence cited by Respondents. (Koleda Decl. ¶¶ 46-51; Hernandez Decl. ¶¶ 4, 5; AR 7081-7085, 5233; Sheridan Decl. Exh. DD.) Respondents' assertion

[27] Section 65583.2, subdivision (h) provides in pertinent part: "At least 50 percent of the very low and low-income housing need shall be accommodated on sites designated for residential use and for which nonresidential uses or mixed uses are not permitted, except that a city or county may accommodate all of the very low and low-income housing need on sites designated for mixed use if those sites allow 100 percent residential use and require that residential use occupy 50 percent of the total floor area of a mixed-use project."

that Garret Weyand, one of 600 Foothill's principals, engaged in "deliberate attempts to manipulate the Site Inventory" is speculative and not supported by the evidence. (Opposition to 600 Foothill 10:22.) To the contrary, the court finds Weyand's public advocacy in support of the Project is not evidence of inequitable conduct. (See Reply Weyand Decl.) Respondents have not demonstrated, by a preponderance of the evidence, 600 Foothill or any of its principals, including Weyand and Jon Curtis, engaged in inequitable conduct that has a direct relationship to any cause of action in 600 Foothill's petition. Respondents failed to meet their burden of demonstrating unclean hands and their entitlement to the defense.[28]

<u>Ripeness, Exhaustion, and Piecemeal Litigation</u>

" 'A decision attains the requisite administrative finality when the agency has exhausted its jurisdiction and possesses 'no further power to reconsider or rehear the claim.' . . . Until a public agency makes a 'final' decision, the matter is not ripe for judicial review." (*California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1485.) Relatedly, "[t]he exhaustion doctrine precludes review of an intermediate or interlocutory action of an administrative agency. A party must proceed through the full administrative process 'to a final decision on the merits.' " (*Id.* at 1489.) There are exceptions to the exhaustion requirement, including "when the aggrieved party can positively state what the administrative agency's decision in his particular case would be." (*Edgren v. Regents of University of California* (1984) 158 Cal.App.3d 515, 520.)

Respondents do not show any lack of finality or any further administrative remedy to exhaust as to the May 1, 2023 Decision. The May 1, 2023 Decision of the City Council is final because there is no further avenue for administrative appeal. As discussed, the City disapproved (within the meaning of the HAA) the Project. Nothing in the HAA requires Petitioners to complete CEQA review before suing to enforce the HAA.

Respondents argue 600 Foothill did not sufficiently raise issues pursued in this proceeding, including that the City failed to rezone, the housing element does not meet its affirmatively further fair housing obligation, as well as the site inventory issues. The court concludes Petitioners sufficiently raised and preserved their contentions during the administrative proceedings. (See AR 6284-6286, 6307-6317.) Many of the issues in these petitions were also raised by HCD in letters to the City at the administrative level, including a notice of violation. (AR 7170-7175.)

Respondents argue "[n]o express 'disapproval' of the entire project occurred here . . . ." (Opposition to CHDF 16:25.) While not entirely clear, Respondents seemingly suggest 600 Foothill should *redesign the Project* to avoid reliance on the Builder's Remedy. Respondents do not develop an argument 600 Foothill has any legal obligation, under the circumstances here, to redesign the Project "as a standard, nonbuilder's remedy project." (AR 7103.). Respondents

[28] This defense only applies to 600 Foothill. Respondents do not develop any argument the HAA claims of CHDF or Intervenors are subject to the defense.

also do not show that any further administrative action, including appeal of the City's June 24, 2023 letter describing inconsistency between the Project and the City's general plan and zoning ordinances (see AR 7176), could remedy the harm suffered by 600 Foothill when the City Council determined the Builder's Remedy does not apply to the Project.

Moreover, Petitioners can positively state what the City's decision is with respect to 600 Foothill's application to develop the Builder's Remedy Project. In its May 1, 2023 Decision, the City Council made clear any required land use approvals or entitlements would not be issued for the Project as a Builder's Remedy project. Based on its review of the administrative record and the parties' declarations, the court finds no reasonable possibility Respondents, including the City Council, will change their position and process 600 Foothill's Project as a Builder's Remedy under the HAA. Accordingly, even if some additional appeal or administrative process were available, the futility exception to exhaustion applies under these facts. (See, e.g., *Felkay v. City of Santa Barbara* (2021) 62 Cal.App.5th 30, 40-41 [futility exception, which is a question of fact, applied where city "made plain" it would not permit the proposed development]; *Ogo Associates v. City of Torrance* (1974) 37 Cal.App.3d 830, 832-34 [futility exception applied where it was "inconceivable the city council would grant a variance for the very project whose prospective existence brought about the enactment of the rezoning" that necessitated the variance in the first place].)

Respondents do not demonstrate (1) the HAA claims in the petitions are unripe, (2) Petitioners failed to exhaust their administrative remedies, or (3) Petitioners have violated rules designed to prevent piecemeal litigation. Further, even if Petitioners have additional administrative remedies (such as an appeal of the June 24, 2023 inconsistency letter), the court finds exhaustion of such remedies is futile under the circumstances presented here.

<u>CHDF's Claims of Bad Faith and Discrimination Based on Race and Income</u>

CHDF contends:

> La Cañada Flintridge officials *clearly* acquiesced to the biases and prejudices of city residents when they revised the draft Housing Element's sites inventory and rezoning program to eliminate multiple 'low-income' sites south of Foothill Boulevard. This was a blatant violation of California and Federal fair housing laws alike. (See Gov. Code, § 65008, subd. (b)(1)(C) . . . ; Cal. Code Regs, tit. 2, § 12161, subd. (c) . . . ; *Mhany Management, Inc., supra*, 819 F.3d 581 . . . .) (CHDF Opening Brief 17:13-21.)

As acknowledged in reply, CHDF did not plead a cause of action in its petition alleging the City violated the Fair Housing Act or state or federal discrimination laws. (CHDF Reply 10:15-20.) CHDF also did not move to amend its petition or request leave to amend its petition. (See *Simmons v. Ware* (2013) 213 Cal.App.4th 1035, 1048. ["The pleadings are supposed to define the issues to be tried."])

In reply, CHDF argues the "City's discriminatory site-selection practices demonstrates the City did not substantially comply with the Housing Element Law's requirements to affirmatively further fair housing." (CHDF Reply 10:18-19.) However, CHDF failed to plead that claim in its petition. (See CHDF Reply 10:20-21 [citing CHDF Pet. ¶¶ 22, 26, 29-30 (generalized allegations the City "did not affirmatively further fair housing or provide an assessment of fair housing")].)

On the merits of CHDF's claim, even if the affirmatively further fair housing allegations in the petition are interpreted to encompass CHDF's arguments about race and income discrimination (a difficult task), the court finds Respondents' opposition persuasive. (Opposition to CHDF 13:5-15:21.) There is insufficient evidence the City Council "acquiesced" to or acted based on public comments at the August and September 2022 public hearings highlighted in CHDF's briefs. (See e.g., AR 2602-2603 ["different value system and much more high crime . . . the value system is different than people that move here"], 3491-3494 [similar comments from same individual at AR 2602-2603], 3539-3541, 3543-3545 ["dust off my shotgun" "likelihood of being some bad apples"], 3493 [additional similar comments from commenter at AR 2602-2603 and AR 3491-3494], 5107-5110 [crime and will become dangerous community], 5112 ["fear poor or homeless people will move into La Canada and bring crime"].)

While some of the public comments were quite unfortunate, CHDF cites statements of councilmembers out of context and does not show those councilmembers "agreed" with the public comments highlighted by Petitioners. (CHDF Opening Brief 10:13-11:6.) Even if the councilmembers could have stated their disagreement with certain public comments, but did not, there is insufficient evidence to support an inference the City Council took any action on the housing element based on the unfortunate public comments and discrimination.[29]

Other Contentions Related to the HAA Causes of Action

Several other contentions are not necessary to the court's ruling on the HAA claims. For completeness, the court briefly addresses them.

The court agrees with Intervenors that the City did not have authority under the HAA or Housing Element Law to backdate its housing element and "self-certify" or declare its housing element to be in substantial compliance with state law as of October 2022. (Intervenors Opening Brief 14:3-15:24.) Respondents appear to concede the point. (See Opposition to Intervenors 19:18-21:7 [asserting City did not back date or self-certify].)

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[29] During argument, 600 Foothill provided a series of acts undertaken by Respondents that it believed demonstrated bad faith. Many of those acts, however, flowed from the City's belief it properly adopted the October 2022 Housing Element or the City's violation of the Permit Streamlining Act (PSA) discussed *infra*. Based on all of the evidence before the court, the evidence is insufficient to establish the City acted with bad faith and "will continue to use all means to obstruct" as suggested by CDHF during argument.

As argued by 600 Foothill, when HCD found the October 2022 Housing Element did not substantially comply with the law, section 65585, subdivision (f) required City to take "one" of the following actions: "(1) Change the draft element or draft amendment to substantially comply with this article; [or] (2) Adopt the draft element or draft amendment without changes [, but with] written findings which explain the reasons the legislative body believes that the draft . . . substantially complies with this article despite the findings of the department." (600 Foothill Opening Brief 14:16-19.) The court agrees the "City unlawfully blended these approaches by making some changes in response to HCD's comments, adopting the February 2023 Housing Element with written findings explaining why the October 2022 Housing Element was sufficient, and then resubmitting its revised draft to HCD." (600 Foothill Opening Brief 14:19-22.)

If the City believed its October 2022 Housing Element substantially complied with the Housing Element Law, it should have taken the action set forth in section 65585, subdivision (f)(2). Thereafter, the City could have sued for a judicial declaration that its October 2022 Housing Element substantially complied with state law. The City did not do so here.

The court finds 600 Foothill's arguments based on section 65589.5, subdivisions (j) and (o) are not ripe at this time. Once ripe, the claims are subject to exhaustion. (See 600 Foothill Opening Brief 9:12-10:21; Pet. ¶¶ 134-162.) Upon the remand ordered here, the City is required to process the application as a Builder's Remedy project and in accordance with the HAA, including sections 65589.5, subdivisions (j) and (o). Thus, it is premature to adjudicate today whether the City has complied with those provisions of the HAA.

Relatedly, since the court concludes the City is required by law to process the application pursuant to the Builder's Remedy provision of the HAA, the court need not address the financial infeasibility of a redesigned project. (600 Foothill Opening Brief 8:21-9:3 and 10, fn. 6.)

<u>Summary of HAA Causes of Action and Scope of Writ Relief</u>

The court finds the City Council prejudicially abused its discretion with its finding in its May 1, 2023 Decision that the Builder's Remedy does not apply to the Project. As a remedy, the court grants 600 Foothill's petition and will issue a writ directing Respondents to set aside the May 1, 2023 City Council decision finding 600 Foothill's Project does not qualify as Builder's Remedy and compelling the City to process the application in accordance with the HAA and state law. That remedy is consistent with section 65589.5, subdivision (k)(1)(A)(ii) of the HAA (compliance required in 60 days) and Code of Civil Procedure section 1094.5, subdivision (f).

CHDF argues the court should order the Project "approved" due to the City's alleged bad faith and unlawful discrimination. (CHDF Opening Brief 23:18-24:24.) For the reasons discussed, the court finds evidence the City Council "acquiesced" to or acted based on the public comments from the August and September 2022 public hearings highlighted in CHDF's briefs insufficient. (See e.g., AR 2602-2603, 3491-3494, 3539-3541, 3543-3545, 3493, 5107-5110, 5112.) CHDF has not met its burden of demonstrating Respondents acted in bad faith in connection with those public comments.

CHDF also argues "[w]hen 600 Foothill subsequently proposed a project under the HAA's builder's remedy, the City Council concocted a bizarre scheme to evade judicial review of their decision to disapprove that project, ..." (CHDF Opening Brief 24:15-18.) 600 Foothill contends the court should order Respondents to approve the Project on similar grounds. (600 Foothill Reply 18:13-19:8.) While the court finds the City prejudicially abused its discretion with its May 1, 2023 Decision finding the Builder's Remedy inapplicable to the Project, the court does not find sufficient evidence to conclude the City Council acted in bad faith when it made its legally incorrect decision.

Further, even if it could be argued the City Council lacked a good faith reason to find the Project did not qualify as a Builder's Remedy, Petitioners do not show it would be equitable for the court to compel the City to approve the Project. Among other reasons, CEQA review is specifically preserved by the HAA. (See § 65589.5, subds. (e) and (o)(6); *Schellinger, supra,* 179 Cal.App.4th at 1245.) In the exercise of the court's discretion, the court finds a writ compelling Respondents to approve the Project, without CEQA review, would not be an equitable or proportionate remedy for the violations of the HAA at issue. Respondents should be permitted on remand to process 600 Foothill's application, as a Builder's Remedy, in conformance with state law, including the HAA and CEQA.

Based on the foregoing, the HAA causes of action are GRANTED IN PART.

<u>600 Foothill's First Cause of Action – Violation of Housing Element Law</u>

600 Foothill prays for a writ of mandate "compelling Respondents to adopt a revised housing element pursuant to Government Code Section 65754. 2" and "to complete the required rezoning consistent with an HCD-approved housing element." (Pet. Prayer ¶¶ 1-2.) 600 Foothill filed its petition on July 21, 2023. The petition alleged the City had not substantially complied with the Housing Element Law at that time. (Pet. ¶ 91.)

As discussed, the City completed the required rezoning in September through November 2023, after 600 Foothill filed its petition. On November 17, 2023, HCD sent a letter to the City finding the City had "completed actions to address requirements described in HCD's April 24, 2023 review letter" and was in substantial compliance with the Housing Element Law. (See Coy Decl. ¶ 12, Exh. D.)

600 Foothill has not pleaded in the petition, or argued in its briefing, there is any deficiency in the February 2023 Housing Element that HCD found to be substantially compliant with the Housing Element Law in November 2023, after the City completed its rezoning. Accordingly, the first cause of action is moot. (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573 ["A case is considered moot when 'the question addressed was at one time a live issue in the case,' but has been deprived of life 'because of events occurring after

the judicial process was initiated.' . . . . 'The pivotal question in determining if a case is moot is therefore whether the court can grant the plaintiff any effectual relief.'"])

600 Foothill's first cause of action is DENIED as moot.

600 Foothill's Second Cause of Action – Affirmatively Furthering Fair Housing

600 Foothill prays for a writ "compelling Respondents to comply with their statutory obligation to Affirmatively Further Fair Housing." (Pet. Prayer ¶ 9.) 600 Foothill's writ briefing, however, only challenges the City's compliance with affirmatively further fair housing obligations as to the October 2022 Housing Element and required rezoning. (See 600 Foothill Opening Brief 21:10-12; Pet. ¶¶ 106-108.) 600 Foothill does not develop any argument the City's February 2023 housing element, after completion of the required rezoning, does not comply with the City's affirmatively further fair housing obligations. Accordingly, the second cause of action is moot. (*Wilson & Wilson, supra,* 191 Cal.App.4th at 1573.) Alternatively, to the extent 600 Foothill contends in the petition the City remains out of compliance with its affirmatively further fair housing obligations (see Pet. ¶ 105), 600 Foothill has not sufficiently supported its position with evidence and legal analysis.

600 Foothill's second cause of action is DENIED as moot.

600 Foothill's Sixth Cause of Action – Violation of the PSA

600 Foothill contends the City violated the PSA in several ways with its incompleteness determinations and the City Council's May 1, 2023 Decision. (600 Foothill Opening Brief 19:14-20-25; Pet. ¶¶ 163-175.) 600 Foothill prays for a writ "compelling Respondents review and process applications pursuant to the Permit Streamlining Act's provisions, including refraining from refusing to process development applications based on erroneous assertions of incompleteness." (Pet. Prayer ¶ 4.)

600 Foothill has demonstrated Respondents violated the PSA in at least two respects. Specifically, section 65943, subdivision (a) provides "[i]f the application is determined to be incomplete, the lead agency shall provide the applicant with **an exhaustive list** of items that were not complete." (Emphasis added.) In addition, the list "**shall** be limited to those items actually required on the lead agency's submittal requirement checklist." (*Ibid.* [Emphasis added].) "**In any subsequent review** of the application determined to be incomplete, the local agency shall not request the applicant to provide any new information **that was not stated in the initial list of items that were not complete**." (*Ibid.* [Emphasis added].)

While neither party has cited any published authority interpreting these provisions, the plain language of section 65943, subdivision (a) is clear. The PSA required the City to provide 600 Foothill with an "exhaustive list" of incomplete items in its First Incompleteness Determination; incomplete items are limited to items on the City's "submittal requirement checklist"; and the City could not later request new information it omitted from the initial list. Respondents provide no alternative interpretation of the statutory language. (Opposition to 600 Foothill 20:5-21:8.) Director Koleda reports "it is **a common practice** for the City to provide information to a developer in the early stages of the application review regarding ways that the development does not meet applicable development standards." (Koleda Decl. ¶ 42 [emphasis added].) Even if true, the City's common practice does not supersede the statutory requirements of the PSA.

In violation of these provisions of the PSA, the Second Incompleteness Determination found the Project was inconsistent with City's zoning and general plan standards because the Project did not qualify as a Builder's Remedy. (AR 6280-6281.) However, that issue was not raised in the First Incomplete Determination and was also not included on the City's submittal requirement checklist. (See AR 5276-5279, 6280-6281; see also Koleda Decl. ¶ 42.) Accordingly, the City violated section 65943, subdivision (a).[30]

Respondents suggest 600 Foothill was not prejudiced by the violations of the PSA because the application was deemed complete on May 26, 2023. (Oppo. to 600 Foothill 22:19-21 [citing AR 7169].) Respondents do not cite any authority for the proposition that PSA violations are excused by a purported lack of prejudice. Moreover, 600 Foothill was prejudiced when Respondents made a legally unauthorized incompleteness determination.

600 Foothill does not cite a statute or published authority suggesting the appropriate remedy for these types of violations of the PSA is an order compelling the City to approve the project. As discussed for the HAA causes of action, the court will grant a writ directing Respondents to set aside the City Council's May 1, 2023 Decision and process 600 Foothill's application in accordance with the HAA. The violations of the PSA proven by 600 Foothill provide additional support for that remedy. 600 Foothill does not demonstrate any additional relief is justified under the PSA.

To the extent 600 Foothill prays for a writ directing the City to comply with the PSA in the future or with respect to development applications of non-parties (see Prayer ¶ 4), 600 Foothill

[30] 600 Foothill also contends "Respondents' Second Incompleteness Determination was issued on March 1, 2023 (AR 6280-81) more than 30 days after Petitioner submitted the Project application on January 13, 2023." (600 Foothill Opening Brief 20:22-24.) 600 Foothill did not pay the fees for the application until January 31, 2023, which was less 30 days before March 1, 2023. (AR 7161-7162.) When submitting its application, the City advised 600 Foothill "the 30-day time limit to determine completeness of a development application per Government Code Section 65943 does not begin until all invoiced fees have been paid." (AR 7161-7162) Section 65943 is ambiguous as to whether the 30-day period begins running when the application is submitted/received or when the fees are paid. While 600 Foothill has a colorable argument the 30-day period began when City "received" the application on January 13, 2023, Respondents' alternative interpretation is also reasonable. 600 Foothill has not submitted any legislative history to support its interpretation. Accordingly, the court is not persuaded 600 Foothill met its burden as to it complaint about timeliness under the PSA.

does not sufficiently support such a prayer in its briefing. Specifically, 600 Foothill does not explain how it has standing to enforce the PSA on behalf of non-parties, or how any claim with respect to the City's future compliance with the PSA is ripe for judicial review.

600 Foothill's sixth cause of action is GRANTED IN PART. The court finds the City violated the PSA in the manner it processed 600 Foothill's application. As a remedy, the May 1, 2023 Decision finding that the application was incomplete because the Project does not qualify as a Builder's Remedy must be set aside. In all others respect, the sixth cause of action is DENIED.

<u>600 Foothill's Seventh and Eighth Causes of Action – State Density Bonus Law and Subdivision Map Act</u>

600 Foothill argues the City Council's May 1, 2023 Decision effectively denied 600 Foothill's requests for a density bonus and concessions or incentives under the State Density Bonus Law, and "necessarily constituted a disapproval" under the Subdivision Map Act. (600 Foothill Opening Brief 21:25-22:12; see Pet. ¶¶ 176-197.)

The court's analysis of the seventh and eighth causes of action is similar to that set forth earlier with 600 Foothill's claims under section 65589.5, subdivisions (j) and (o). Upon remand, the City will be required to process 600 Foothill's application as a Builder's Remedy and in accordance with the HAA and other state housing laws, including the State Density Bonus Law and the Subdivision Map Act. It is premature at this time to adjudicate whether the City has complied with those statutes. 600 Foothill has been informed that the City's review process under the State Density Bonus Law and the Subdivision Map Act is ongoing. (See AR 7176-7178, 7169.) Accordingly, 600 Foothill does not prove its seventh and eighth causes of action are ripe for judicial review or that the issues have been exhausted. Further, to the extent 600 Foothill seeks a writ directing the City to "approve" the Project in full, it does not demonstrate it is entitled to that remedy, as discussed earlier.

600 Foothill's seventh and eighth causes of action are DENIED.

<u>600 Foothill's Ninth Cause of Action is Stayed</u>

Respondents specially moved to strike 600 Foothill's ninth cause of action (right to fair hearing) pursuant to Code of Civil Procedure section 425.16. The court denied the motion, and Respondents appealed. Given the appeal, the ninth cause of action is stayed. (See Code Civ. Proc., §§ 425.16, subd. (i), 916, subd. (a); *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 195.)[31]

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[31] Respondents conceded at the time the court heard the special motion to strike that an appeal would stay only the ninth cause of action.

Causes of Action for Declaratory Relief by All Petitioners

Issuance of a declaratory judgment is discretionary. (Code Civ. Proc., § 1060.) Further, "it is settled that declaratory relief is not an appropriate method for judicial review of administrative decisions." (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 127; accord *Sheetz v. County of El Dorado* (2022) 84 Cal.App.5th 394, 414 ["administrative mandamus is 'the proper and sole remedy' to challenge a local agency's application of the law (e.g., application of a zoning ordinance to a particular property)"].)

Although the petitions include various requests for declaratory relief, all such requests pertain to the validity of City Council's May 1, 2023 Decision, including the City Council's determination the October 2022 Housing Element substantially complied with state law and the Project did not qualify as a Builder's Remedy. None of the Petitioners have developed a legal argument that declaratory relief is an appropriate, *or necessary*, form of judicial review of the administrative decisions at issue. Accordingly, Petitioners have not demonstrated they are entitled to declaratory relief.

600 Foothill's eleventh cause of action for declaratory relief, CHDF's second cause of action for declaratory relief, and Intervenors' second cause of action for declaratory relief are DENIED as unnecessary given the court's decision on the HAA causes of action.

Retention of Jurisdiction

The court found Respondents, "in violation of subdivision (d), disapproved a housing development project . . . without making findings supported by a preponderance of the evidence."[32] (§ 65589.5, subd. (k)(1)(A)(i).) Accordingly, the court is required to "retain jurisdiction to ensure that its . . . judgment is carried out . . . ." (*Id.* at subd. (k)(1)(A)(ii).)

CONCLUSION

The petitions of 600 Foothill, CHDF, and Intervenors to enforce the HAA are GRANTED IN PART. The court finds the City Council prejudicially abused its discretion when it found in its May 1, 2023 Decision that the Builder's Remedy does not apply to the Project. The court will grant a writ directing Respondents to set aside the City Council's decision, dated May 1, 2023, finding 600 Foothill's application does not qualify as a Builder's Remedy and to process the application in accordance with the HAA and state law. The HAA claims are denied in all other respects. 600 Foothill's first, second, seventh, and eighth causes of action are DENIED.

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[32] The City's finding its October 2022 Housing Element was in substantial compliance with the Housing Element Law was not supported by substantial evidence. As discussed *supra*, HCD had advised the City why the October 2022 Housing Element was not in substantial compliance. Moreover, Director Koleda on January 11, 12 and February 9, 2023 appeared to accept HCD's evaluation that the City could not achieve substantial compliance with the Housing Element Law without "additional changes" and "clarifications." (AR 12894, 13011.)

600 Foothill's sixth cause of action is GRANTED IN PART. The court finds the City violated the PSA in the manner it processed 600 Foothill's application and, as a remedy, the May 1, 2023 Decision finding the application was incomplete because the Project does not qualify as a Builder's Remedy must be set aside. In all others respect, the sixth cause of action is DENIED.

600 Foothill's ninth cause of action is stayed pending Respondents' appeal of denial of its anti-SLAPP motion. (See Code Civ. Proc. §§ 425.16, subd. (i), 916, subd. (a).)

600 Foothill's eleventh cause of action for declaratory relief, CHDF's second cause of action for declaratory relief, and Intervenors' second cause of action for declaratory relief are DENIED.

As to Case No. 23STCP02614 brought by CDHF, the court will enter judgment on the first cause of action in favor of CDHF and Intervenors on the first cause of action.

As to Case No. 23STPC02575 brought by 600 Foothill, the court does not enter judgment at this time given the pending appeal on 600 Foothill's ninth cause of action and Respondents' special motion to strike. The matter is continued to December 4, 2024 at 9:30 a.m. for a hearing on the status of Respondents' appeal.

The court will retain jurisdiction over this matter (in both cases) as required by section 65589.5, subd. (k)(1)(A)(ii).

IT IS SO ORDERED.

March 4, 2024

Hon. Mitchell Beckloff
Judge of the Superior Court

Apr 28, 2026

City of San José
200 E. Santa Clara Street
San Jose, CA 95113

By Email: [redacted]

CC: [redacted]

Re: Proposed Housing Development Project at 5670 Camden Avenue

Dear San José City Council,

The California Housing Defense Fund ("CalHDF") submits this letter to remind the City of its obligation to abide by all relevant state laws when evaluating the proposed 108-unit housing development project, including eight extremely low-income units, located at 5670 Camden Avenue. These laws include the Housing Accountability Act ("HAA"), SB 330, and the Density Bonus Law ("DBL").

Under the HAA,[1] a city may not disapprove a qualifying affordable housing project (i.e., a housing development project that provides a certain percent of the total units to lower-income households, as defined by Health and Safety Code Section 50079.5) on the grounds it does not comply with the city's zoning and general plan if the developer submitted either a statutorily defined "preliminary application" or a "complete development application" while the city's housing element was not in substantial compliance with state law. (See Gov. Code, § 65589.5, subds. (d)(5), (h)(5), (o)(1).[2]) This statutory provision temporarily suspends the power of non-compliant municipalities to enforce their zoning rules against

[1] AB 1893, effective January 1, 2025, has amended the "Builder's Remedy" provisions of the HAA. However, the AB 1893 allows for vested Builder's Remedy applications to proceed under the previous version of the law.
[2] These code section numbers correspond to the HAA as it existed when the preliminary application for the project at issue was submitted (i.e. before AB 1893 went into effect).

qualifying affordable housing projects. (See, e.g., *California Housing Defense Fund v. City of La Cañada Flintridge*, Case Number: 23STCP02614 (attached), for a recent court decision affirming the plain language of the statute in this regard.) The City's Housing Element was not in substantial compliance with state law when the preliminary application under SB 330 was submitted. The City must therefore allow the project to be developed as proposed.

CalHDF also writes to emphasize that the DBL offers the proposed development certain protections. The City must respect these protections. In addition to granting the increase in residential units allowed by the DBL, the City must not deny the project the proposed waivers and concessions with respect to rear setbacks. If the City wishes to deny requested waivers, Government Code section 65915, subdivision (e)(1) requires findings that the waivers would have a specific, adverse impact upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. If the City wishes to deny requested concessions, Government Code section 65915, subdivision (d)(1) requires findings that the concessions would not result in identifiable and actual cost reductions, that the concessions would have a specific, adverse impact on public health or safety, or that the concessions are contrary to state or federal law. The City, if it makes any such findings, bears the burden of proof. (Gov. Code, § 65915, subd. (d)(4).) Of note, the DBL specifically allows for a reduction in required accessory parking in addition to the allowable waivers and concessions. (*Id*. at subd. (p).) Additionally, the California Court of Appeal has ruled that when an applicant has requested one or more waivers and/or concessions pursuant to the DBL, the City "may not apply any development standard that would physically preclude construction of that project as designed, even if the building includes 'amenities' beyond the bare minimum of building components." (*Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 775.)

As you are well aware, California remains in the throes of a statewide crisis-level housing shortage. New housing such as this is a public benefit: it will provide badly-needed affordable housing; it will bring new customers to local businesses; and it will reduce displacement of existing residents by reducing competition for existing housing. While no one project will solve the statewide housing crisis, the proposed development is a step in the right direction. CalHDF urges the City to approve it, consistent with its obligations under state law.

CalHDF is a 501(c)(3) non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at www.calhdf.org.

Sincerely,

[redacted]

Dylan Casey
CalHDF Executive Director

[redacted]

James M. Lloyd
CalHDF Director of Planning and Investigations

Item 10.2 - 26-472

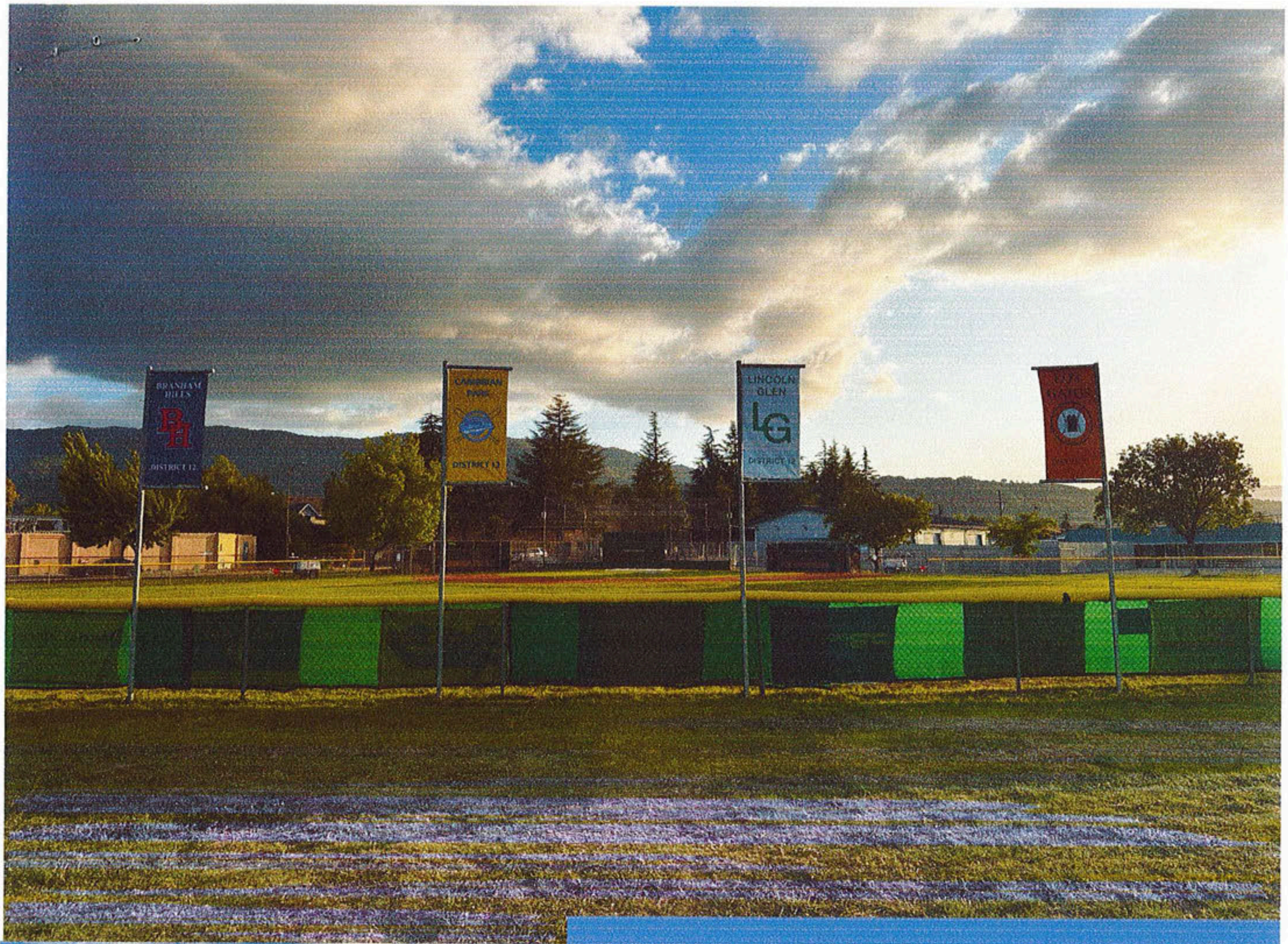
H23, T23-027, ER23-251

10 copies for each -

1 - City Clerk -

Thomas James Hislop

[redacted]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DISTRICT 12
CAMBRIAN PARK
DISTRICT 12
LINCOLN GLEN
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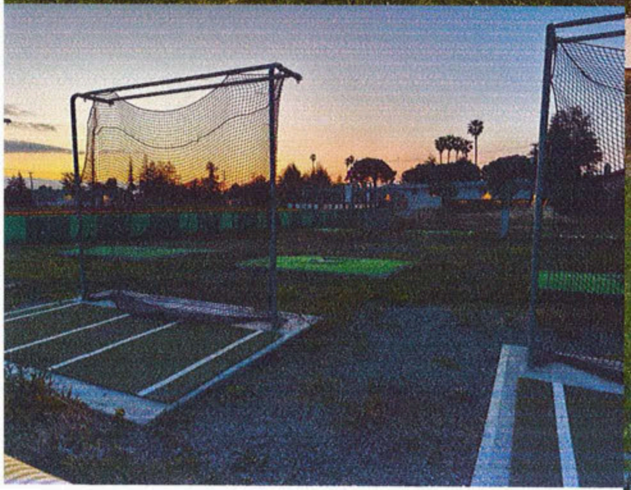

Land sale	Field relcocation	Net
$ 20,000,000.00	$ (10,500,000.00)	$ 9,500,000.00

Per USD presentations

	Taxpayer	USD	Mana
Land	$ (20,000,000)	$ 20,000,000	$ 20,000,000
Relocation	$ (10,500,000)	$ -	$ 10,500,000
Net	$ (30,500,000)	$ 20,000,000	$ 30,500,000

7 afforadable properties @ 30M 4.2M each 100 houses not affordable

Upon reviewing the numerous categories of records demanded in your Request, and as permitted under the California Public Records Act, the District must extend the time to respond to your request by fourteen (14) days. The circumstances warranting this extension are the need to search for the requested records and collect any non-confidential and non-privileged records from various sources, which will require searching for, collecting, and appropriately examining a voluminous amount of separate and distinct records. (Gov. Code, §§ 7922.535(c)(1)-(c)(2).)

Therefore, the District will provide a determination regarding your Request no later than April 30, 2026. If you have any questions regarding our response to your public records request, please contact me.

Sincerely,

[redacted]

Dr. Carrie Andrews
Superintendent
Union School District

4. The Board makes the following findings for the Project in accordance with the California Environmental Quality Act ("CEQA"), Public Resources Code section 21081 and CEQA Guidelines, Title 14 of the California Code of Regulations section 15091.

A. Potentially Significant Effects Determined to be Mitigable to a Level of Insignificance. The Board finds that each of the following potential impacts identified in the IS/MND are potentially significant impacts that may feasibly be mitigated to a less than significant impact. The following effects from the implementation of the proposed Project that are identified in the IS/MND are further found to have been mitigated to a level of less than significant effect or no impact upon the existing physical environment. The measures that achieve this level of mitigation are identified below, followed by the findings of significance relevant to effects upon the Project after mitigation implementation.

3. Air Quality (IS/MND, pp. 18-28.)

c) The modeled annual PM 2.5 (particulate matter) concentration from Project construction would be 0.471 $\mu g/m^3$(micrograms per cubic meter), which substantially exceeds the Project-level CEQA threshold (0.3 $\mu g/m^3$). Implementation of mitigation measure AQ-1 would assure that annual average PM 2.5 (particulate matter) at the existing adjacent residential receptors due to Project construction would be well below the CEQA PM2.5 threshold (and would substantially reduce cancer risk and chronic hazard, as well). With this mitigation measure, this impact would be reduced to a less-than significant level.

Mitigation Measure AQ-1: The Project construction contractor shall implement the following measures to further reduce construction related diesel particulate exhaust emissions:

All off-road equipment greater than 25 horsepower (hp) and operating for more than 20 total hours over the entire duration of construction activities shall meet the following requirements:

- All engines shall be equipped with at least a CARB Level 2 Verified Diesel Emissions Control Strategy (VDECS) device.

5. Cultural Resources (IS/MND, pp. 32-34.)

b) An intensive archaeological inventory of the project area was conducted, and no cultural resources were encountered. However, it is important to note that surface pedestrian surveys cannot always determine what archaeological resources might be present in subsurface contexts. Such buried resources have

UNION SCHOOL DISTRICT
BOARD OF TRUSTEES
RESOLUTION NO. 22-23-16
RESOLUTION APPROVING PROPERTY EXCHANGE AGREEMENT
(Portion of Cinnabar Site)

WHEREAS, the Union School District ("District") is the owner in fee, of approximately 6.67 acres of land located at 5670 Camden Avenue, San Jose, CA 95124, and known as the Cinnabar A portion of the Cinnabar Elementary School ("Exchange Property");

WHEREAS, the Exchange Property is not needed by the District for classroom buildings or educational facility purposes;

WHEREAS, the District desires to obtain a property that can produce a steady income for the District but has determined, based on its independent analysis, that the Exchange Property cannot meet the District's needs;

WHEREAS, on August 15, 2022, the District's governing board approved Resolution No. 22-23-01 declaring its intent to exchange the Exchange Property for the contemplated uses of residential and self-storage development ("Resolution of Intent");

WHEREAS, pursuant to the Resolution of Intent, the District entered into Exchange Agreements with In-Site and Roem, both of whom worked diligently with the City of San Jose to process entitlements for the development of the Exchange Property;

WHEREAS, despite best efforts, In-Site and Roem were unable to proceed with the development of the Exchange Property and the parties have since executed documents to mutually cancel the prior Exchange Agreements;

WHEREAS, the District has reviewed additional proposals for the exchange of the Exchange Property and has determined that an exchange of the site for residential purposes will yield the highest value for the Exchange Property;

WHEREAS, the District and Mana Investments, Inc. ("Mana") desire to enter into an agreement to have the District dedicate the Exchange Property to Mana in exchange for Mana dedicating a property to the District as described below and set forth in the more definitive Exchange Agreement ("Exchange Agreement");

WHEREAS, Education Code section 17536 et seq. provide that the governing board of a school district or county office of education, upon a two-thirds vote of its members, may exchange any of its real property for real property of another person or private business firm upon such terms and conditions as the parties thereto may agree, without complying with any of the disposal of surplus property provisions set forth in the Education Code; and

WHEREAS, the Exchange Agreement shall constitute the entire and complete exchange agreement between the District and Mana for the Exchange Property and therefore, pursuant to Education Code section 17536 et seq., the Exchange Agreement shall be presented to the Board for approval.

NOW, THEREFORE, the Board hereby finds, determines, declares, orders and resolves as follows:

Section 1. That all of the recitals set forth above are true and correct.

Section 2. That the Exchange Property is not or will not be needed by the District for classroom buildings or educational facility purposes.

Section 3. That the Exchange Property shall be exchanged with Mana pursuant to the terms of the Exchange Agreement for the purposes of developing the site for residential use.

Section 4. That, in consideration for the Exchange Property, the District may choose from the three "exchange alternatives" that shall be set forth in the Exchange Agreement, and as summarized generally as follows:

A. If the District identifies a property owned by Mana that it would like to obtain and Mana is willing to exchange such property, Mana shall agree to exchange said property for the Exchange Property, along with any cash considerations necessary to make the exchange of equal value;

B. If the District identifies an exchange property that is owned by a third party, Mana will work with the District so that the District will receive the third party property, Mana will receive the Exchange Property, and the third party will receive payment from Mana for the third party property, along with any cash considerations necessary to make the exchange of equal value; or

C. If the District is unable to identify an acceptable Exchange Property prior to Mana's desire to close escrow pursuant to the terms of the Exchange Agreement, the District shall keep the Exchange Amount (consideration) in escrow or a trust account with Chicago Title Company until such time as the District identifies the appropriate property to finalize the exchange of property, or provides other direction for such Exchange Amount.

Section 5. That the Board hereby approves the Exchange Agreement and delegates authority to the District Superintendent, or her designee, to take any action and/or execute any documents which are necessary to finalize the Exchange Agreement and carry out, give effect to, and comply with the terms and intent of this Resolution.

Section 6. That this Resolution shall take effect upon adoption.

APPROVED, PASSED, AND ADOPTED by the Board of Trustees of Union School District, this 17th day of April, 2023, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

____
Doug Evans, President
Board of Trustees

not intend to, and is not required by this Agreement to, ever take title to any Exchange Property. Therefore, Robson Homes shall not have any liability or obligation with respect to any circumstance or condition on any Exchange Property, whether before or after the Close of Escrow. Without limiting the foregoing, Robson Homes shall not have any liability for any act, condition or circumstance that the District or any of its employees, agents, representatives or contractors commits, creates or discovers on or at any Exchange Property, nor any obligation or liability to any Property Owner other than as expressly set forth in this Agreement.

1.3 Consideration. It is the intent of the Parties that the Exchange Property shall be of equal value to the District Property, and the District Property shall be conveyed in consideration for the Exchange Property. The value of the Exchange Property (the "EP Exchange Value") shall not exceed the DP Exchange Value, as defined in Section 1.3.1 below, unless the District determines, in its sole discretion, that it is willing to acquire a property worth more than the DP Exchange Value. In the event the Exchange Property is worth less than the DP Exchange Value, Robson Homes shall pay to the District in cash the difference between the DP Exchange Value and the EP Exchange Value (the "Additional Cash"). In the event the Exchange Property is worth more than the DP Exchange Value, the District shall be responsible for the payment of the difference between the EP Exchange Value and the DP Exchange Value. Notwithstanding the foregoing, in the event that the District has not identified the Exchange Property in sufficient time to permit the simultaneous closing of the Exchange Property with the closing of the District Property by the Outside Closing Date, Robson Homes shall have the right to acquire the District Property for the cash consideration of the DP Exchange Value; provided, however, that the DP Exchange Value shall remain in Escrow after the Closing until such time as the District identifies and acquires the Exchange Property or the District determines, at its absolute sole discretion, that the DP Exchange Value shall be released to the District. The District shall not be subject to any penalty, fine, or additional charge for failure to identify the Exchange Property by the Outside Closing Date. The District's failure to identify the Exchange Property shall not be construed as a breach of this Agreement or a condition to the District's obligation to close on the transfer of the District Property to Robson Homes.

1.3.1 District Property Exchange Value; No Additional Consideration. Robson Homes and the District agree that there is sufficient consideration for the exchange of real property under the terms and conditions in this Agreement, and no further consideration or compensation is required by either Party. The District Property valuation (the "DP Exchange Value") of Twenty-Two Million Dollars, ($22,000,000) assumes that Robson Homes' will receive approval from the Town for 30 residential lots including 24 market rate and 6 below market rate ("BMR") homes. However, if Robson Homes elects to purchase as part of the District Property all or a portion of the additional approximately 12,947 square feet of land illustrated on Exhibit A-1, the DP Exchange Value shall be increased by an amount equal to One Hundred Dollars ($100.00) per square foot of additional land, based on the survey referenced in Section 2.6 below. Therefore, if Robson Homes acquires all of the additional 12,947 square feet, the DP Exchange Value shall be increased by One Million, Two Hundred Ninety-Four Thousand Seven Hundred Dollars ($1,294,700) to a total of Twenty-Three Million Two Hundred Ninety Four Thousand Seven Hundred Dollars ($23,294,700); provided, however, the actual final DP Exchange Value will be based upon the actual final additional square footage that Robson Homes elects to purchase.

1.3.2 District Property Exchange Value Includes School Impact Fees. The Exchange Value for the District Property includes statutory Level 1 Developer Fees in the amount of Three Dollars and Thirty-Five Cents ($3.35) per square feet for each of the thirty (30) residential lots Robson Homes plans to develop on the Exchange Property. The District will