COX CASTLE

CALIFORNIANS FOR HOMEOWNERSHIP

March 3, 2026

City of Seal Beach City Hall
Planning & Development Division
Department of Community Development
Attn: Shaun Temple, Interim Community Development Director
211 Eighth Street
Seal Beach, CA 90740

Re: **NOTICE OF FAILURE TO CEASE A CONDUCT UNDERTAKEN FOR AN IMPROPER PURPOSE PURSUANT TO THE HOUSING ACCOUNTABILITY ACT (GOV'T CODE SECTION 65589.5(h)(6)(E)); Encroachment Permit Application (ENCR-25-0090) for the Lampson Park Place Project**

Dear Mr. Temple:

Cox, Castle & Nicholson LLP writes on behalf of its client Lampson Park Place, LLC ("**Applicant**") and Californians for Homeownership write on its own behalf to provide this **NOTICE OF FAILURE TO CEASE CONDUCT UNDERTAKEN FOR AN IMPROPER PURPOSE** pursuant to the Housing Accountability Act (Gov't Code Section 65589.5(h)(6)(E)) ("**Notice**"), in connection with the City of Seal Beach's ("**City**" or "**Seal Beach**") course of conduct related to the City's failure to properly process the Applicant's encroachment permit application (ENCR-25-0090) for the Lampson Park Place Project ("**Project**"). For the purposes of Government Code section 65589.5(k)(2), this letter constitutes Californians for Homeownership's written comments on the Project.

Project Background

The Project is a housing development project located at 4665 Lampson Avenue in the City of Los Alamitos. The Project includes 246 residential units, 76 of which would be set aside for lower income households. The Project is therefore a "housing development project" as defined under the Housing Accountability Act ("**HAA**") (Government Code Section 65589.5) and a "development that includes housing units affordable to lower income households" as defined under Section 65589.7(d)(1) of the Government Code. As such, the Project receives protections under both the HAA and Government Code Section 65589.7. Post-entitlement phase permits associated with the Project, such as the encroachment permit application at issue here, receive explicit protections under Section 65913.3 of the Government Code.

The Project significantly contributes to the region's housing supply, and in particular, significantly furthers Los Alamitos' housing goals, and contributes to Los Alamitos' Regional Housing Needs Allocation ("**RHNA**") requirements in accordance with the state's housing laws. The Project site is identified within Los Alamitos' 2021-2029 Housing Element, and the 246 units (including 76 affordable units) provided by the Project would constitute approximately 32% of Los Alamitos' total RHNA allocation of 769 units and approximately 25% of Los Alamitos' affordable housing allocation. The project is the first affordable housing project that Los Alamitos has approved in approximately 30 years.

On October 23, 2024, the Los Alamitos Planning Commission voted 7 to 0 to approve recommendations to the Los Alamitos City Council for the four discretionary approvals required for the Project. On November 18, 2024, the Los Alamitos City Council voted 3 to 1 (with one abstention) in favor of these approvals and, thus, approved the Project. The Project entitlements include approval of a Tentative Parcel Map (for finance and conveyance purposes) and Vesting Tentative Tract Map (for condominium purposes), an Affordable Housing Unit application, and a Site Development Permit – Major.

Now that the Project has obtained its entitlements, the Applicant is in the process of applying for its post-entitlement permits and approvals, including such permits and approvals from Seal Beach, for infrastructure required for the Project. An encroachment permit from Seal Beach is one such post-entitlement permit required for the Project.

As described in detail below, the City has improperly delayed and obstructed all progress on the encroachment permit application in violation of the Applicant's rights under the HAA and other state housing laws. In light of the City's efforts to delay or stop the Project and particularly given recent comments by Seal Beach City Councilmembers during its recent meeting to adopt the City's Sixth Cycle Housing Element Update that "Sacramento stinks" and "HCD stinks,"[1] the Applicant believes that Seal Beach will continue to ignore both the Applicant's development rights and HCD's enforcement authority. As such, the Applicant has concluded, after these public comments and over one year of meetings with the City of Seal Beach to advance the Project, it is unable to have any further productive dialogue with the City of Seal Beach as to a sewer connection for the Project.

For these reasons, the Applicant has been forced to pivot to the Rossmoor/Los Alamitos Area Sewer District ("**District**") for the Project's sewer connection. This pivot comes at a cost to Seal Beach. The City will lose millions of dollars in initial and residual sewer connection fees over the years. Moreover, the Project's sewer connection to the District could be much more disruptive and complicated, and frankly, a tremendous waste of resources.

In addition, the City will be walking away from the Applicant's offer to financially contribute to certain City-wide and project-specific undertakings. The Applicant's contributions

[1] The Seal Beach City Council meeting can be viewed at: City Council Meeting - October 27, 2025. These councilmember comments can be heard during remarks starting at approximately 3:28:45.

would be voluntary, *i.e.*, these contributions are not required of the Applicant and are above and beyond any regulatory or permitting requirements for the Project, and they include the following:

- **Voluntary Funding of Stormwater Study** – one-time contribution of **$250,000**.
- **Voluntary Funding of Stormwater WQMP Annual Reporting** – one-time contribution of **$25,000** that can be drawn upon on an annual basis, if necessary.
- **Voluntary Funding of Traffic Improvements** – one-time contribution of **$250,000** for Seal Beach to use for traffic improvements at their discretion.
- **Voluntary Payment of Traffic Impact Fee** – one-time contribution of **$166,058.78**, reflecting fees that would have been assessed had the Project been located within Seal Beach.
- **Voluntary Payment of Parks Impact Fee** – one-time contribution of **$35,000** towards Arbor Park and **$20,000** towards Heather Park improvements, as well as an additional **$75,000** for Seal Beach to use for parks at their discretion, in response to concerns raised by Seal Beach during the Project's entitlement process.
- **Voluntary Payment for Crossing Guard** – one-time contribution of **$100,000** in response to concerns raised by Seal Beach during the Project's entitlement process.

The total amount of voluntary contributions from the Applicant would be **$921,058.78.**

The Project's connection to the City's sewer would also enable the City to collect approximately **$1.2 million** in permit fees in addition to ongoing revenue from monthly billings to residents for sewer service that can be used for ongoing maintenance and that will be subject to the increased sewer rates that Seal Beach anticipates implementing.

Statutory Requirements for This Notice

The Housing Accountability Act provides that a local agency has been deemed to have disapproved a housing development project if the local agency fails to cease a course of conduct undertaken for an improper purpose, such as to harass or to cause unnecessary delay or needless increases in the cost of a proposed housing development project, that effectively disapproves the housing development without taking final administrative action, subject to certain procedural requirements. (Gov't Code Section 65589.5(h)(6)(E).)

To invoke this process, a project applicant must provide to the local agency "written notice detailing the challenged conduct and why it constitutes disapproval." (Gov't Code Section 65589.5(h)(6)(E)(i).) This Notice serves as the requisite notice to the City to initiate this process.

Challenged Conduct and Why It Constitutes a Disapproval

The City of Seal Beach's course of conduct, and its failure to properly process the Applicant's encroachment permit application, is rooted in the City's improper objection to the development of a residential project with affordable housing units along its border in the neighboring City of Los Alamitos.

As described below, the City of Seal Beach has harassed the Applicant and caused the Applicant unnecessary delay and needless increase in the costs of developing the Project. Based on its conduct to date, the Applicant has no reason to believe the City's conduct will change, and in fact, the Applicant believes the City's obstructionist conduct may only worsen in light of the Applicant's understanding that the City will no longer process the encroachment permit application.

As such, the City has effectively disapproved the encroachment permit, and therefore effectively disapproved the Project, pursuant to Section 65589.5(h)(6)(E) of the Housing Accountability Act.

A. The City of Seal Beach Is in Violation of the Post-Entitlement Phase Permit Statute.

Seal Beach has taken the erroneous position that the encroachment permit application is not for a post-entitlement phase permit protected under Government Code Section 65913.3. The City is wrong, there is no doubt the encroachment permit application is a post-entitlement phase permit under the statute.

1. The Encroachment Permit Application Is a Post-Entitlement Phase Permit Subject to the Statute, and the City Has Acknowledged This.

In response to the housing supply crisis and concerns that local governments might use post-entitlement phase permits as leverage to stop or stall residential projects, the state legislature enacted Section 65913.3 and its amendments established by AB 1114 (2023; Haney) and AB 2234 (2022; Rivas).

Section 65913.3 requires local jurisdictions to compile lists that specify in detail the information the local jurisdiction will require from an applicant for a post-entitlement permit. In complying with this requirement, the City created a website that identifies permits that the City considers post-entitlement phase permits, referring to those permits in the context of AB 2234 and ostensibly in compliance with Section 65913.3, identifying "post-entitlement requirements" for each of those permits.[2]

[2] See https://www.sealbeachca.gov/Departments/Community-Development/Planning-Development/Post-Entitlement-Phase-Permits.

The City identifies ENCROACHMENT AND TRANSPORTATION PERMITS as post-entitlement phase permits. In particular, the City's website states:

> **ENCROACHMENT AND TRANSPORTATION PERMITS:**
>
> - Encroachment and transportation Permits include encroachments into public rights of way or City lands and transportation haul routes. The Encroachment & Transportation Permit Applications, which include the submittal items for these permits are online at this link.
>
> - Processing times for Public Works & Engineering Division reviews of Encroachment permits vary depending on the scope of work, varying from two business days for simpler projects to ten business days for more complex projects.
>
> - Processing times for Public Works & Engineering Division reviews of Transportation Permit Applications may take up to 24 hours but are typically processed over the counter, when possible.

As such, the City's own website acknowledges that an encroachment permit is a post-entitlement phase permit, and therefore further acknowledges that an encroachment permit is a ministerial permit. On this basis alone the City has no justification to take any position that the encroachment permit application is subject to discretionary approval or is not a "post-entitlement phase permit under Government Code Section 65913.3."

In any event, the term "post-entitlement permits" is broadly defined under Section 65913.3(j)(3) as nondiscretionary permits that must be obtained "after the entitlement process has been completed to begin construction of a development that is intended to be at least two-thirds residential." Section 65913.3(j)(3) provides illustrative examples of what constitutes "post-entitlement permits," and in relevant part, these include but are not limited to (1) "permits for minor or ***standard off-site improvements***"; and (2) "permits for minor or ***standard excavation and grading***" (emphasis added).

Standard off-site improvements for multi-unit residential projects, such as the Lampson Park Place Project, include excavation work within a city right-of-way for purposes of sewer or water supply infrastructure. This kind of work occurs in connection with nearly every residential development that results in additional residential units being served.

The off-site improvements proposed in the encroachment permit application are no different. Put simply, the improvements allow for infrastructure to support the Project. Any argument to the contrary is mere subterfuge intended to make these improvements appear more complicated or massive than they actually are.

The encroachment permit application does not contemplate work that would, as described in correspondence from the City, "substantially redesign the intersection of Lampson Avenue and Rose Street as well as the portion of Lampson Avenue that extends along the 4665 Lampson Project site." The existing lane configuration, widths, turning patterns and traffic signal equipment at the Lampson and Rose Street intersection would not be changed.

The fact that the list of examples set forth in Section 65913.3(j)(3) does not specifically identify "encroachment permit" is irrelevant. The legislative history for AB 2234 makes clear that the list of examples provided in the statute is just that, ***a list of examples***. Other permits that are subject to AB 2234 (i.e., Section 65913.3) include "permits for excavation, site remediation, and demolition." (Assembly Committee on Housing and Community Development, April 27, 2022, Hearing on AB 2234.) To the extent the encroachment permit is not, for example, a permit for "standard off-site improvements" or for "standard excavation and grading," which it is, the encroachment permit clearly constitutes a permit to be issued "after the entitlement process has been completed to begin construction of a development." (Government Code Section 65913.3(j)(3)(A)(A).) There is no doubt that the encroachment permit satisfies this requirement, and frankly, the encroachment permit meets the only qualification specified in the Code, namely that the permit be one which is issued "after the entitlement process has been completed to begin construction of a development."

2. The City Has Demonstrated an Improper Course of Conduct Handling the Encroachment Permit Application in Violation of the Statute.

The Applicant submitted the encroachment permit application and supporting materials on **February 6, 2025**. The City responded on **February 28, 2025**, stating that the application had been deemed incomplete and improperly requesting numerous additional items the City claimed were necessary to deem the application complete.

Section 65913.3 authorizes a local agency to request only "information that will be required . . . for a post-entitlement phase permit." (Government Code Section 65913.3(a)(1).) The local agency is only authorized to request information specified on certain lists complied by the local agency (Government Code Section 65913.3(a)(1)). Ostensibly, the "lists" compiled for purposes of the City's post-entitlement phase website are the operative lists here. Most, if not all, of the items that the City determined the application lacked are not included in that list, and therefore, the City was not permitted to request those items. Moreover, many of the items requested by the City referred to other approvals and agreements, such as a "franchise agreement" or an "inter-jurisdictional agreement," were either irrelevant or not applicable to the City's processing of the encroachment permit application.

Nonetheless, the Applicant responded to the City on **May 2, 2025**, providing additional information as warranted for the application and making further arguments as to the City's improper course of conduct.

Ignoring those arguments, on **May 23, 2025**, the City yet again issued the Applicant a letter deeming the application incomplete. This letter made further improper demands upon the Applicant, requiring, for example, that:

> [A]dditional permit applications, agreements, plans and other materials and information as set forth herein are required in order for Seal Beach to complete its review and render a decision on the Application in order for the Applicant to proceed with any public improvements within Seal Beach.

This demand ignored the protections given to residential development projects under Section 65913.3. Under this section, the City may not require the Applicant to provide the City with "additional permit applications, plans," or any other materials that were not set forth in the City's list of items it had specified for an encroachment permit application. (Gov't Code Section 65913.3(b)(1)(A) (local jurisdictions are limited to requesting for purposes of completeness review those "incomplete items that are included on the lists required [by jurisdictions to provide under Section 65913.3]").) This would include such items as a "franchise agreement" or an "inter-jurisdictional agreement," items which the City demanded but neither of which are listed on the City's Section 65913.3 webpage.

The Applicant responded to the City on **July 17, 2025**, largely reiterating the Applicant's position that the City's course of conduct was improper, and making clear that the City's requested additional "information" was not allowed under the statute. On **August 13, 2025**, the City issued a "completeness determination" for the Applicant's encroachment permit application pursuant to Section 65913.3.

However, that was not the end of the City's improper course of conduct.

Pursuant to Section 65913.3, the City was required to notify the Applicant within 60 business days of its completeness determination as to whether the Applicant's "complete application . . . is compliant" with the "standards" of the encroachment permit. Per Section 65913.3(d)(1), if the city were to find the complete application "noncompliant," then the city was required to provide the Applicant with "a list of items that are noncompliant and a description of how the application can be remedied" by the Applicant.

The City did not comply with these requirements. Although the City provided additional comments on the application on September 23, 2025, the City did not provide an organized and compiled set of written comments, but rather mere redlines of documents provided to the City earlier. Vague redlines of documents provided by the Applicant do not constitute the statutorily required "list of items that are noncompliant and a description of how the application can be remedied" by the Applicant.

Thus, the City failed to comply with the 60-day requirement for notifying the Applicant whether the encroachment permit application is "compliant" with the "standards" of the City's encroachment permit requirements.

Pursuant to Section 65913.3(f), this is a violation of the Housing Accountability Act. It also demonstrates a continued disregard for the statutory requirements for processing the encroachment permit application as a post-entitlement permit. Moreover, this is further evidence of Seal Beach's "gamesmanship," obstructing the Applicant's rights to have its encroachment permit application fairly evaluated pursuant to the post-entitlement permit statute and other statutory protections.

Most recently, on **February 18, 2026**, the City issued to the Applicant yet another letter, this time in response to certain revisions to the encroachment permit application. This letter is a further "deemed incomplete" letter, requiring items for completeness that are far beyond the items the City is authorized to request. To take just one example, this letter demands that the Applicant provide sewer improvement plans already approved by the District, which is an item that is not contemplated in the City's encroachment permit application, thereby a violation of Section 65913.3, and is of little relevance to the City in any event.

B. The City of Seal Beach Is in Violation of the Sewer Connection Statute.

1. Section 65589.7 of the Government Code Prohibits the City from Denying Any Project Approval Unless Certain Findings Have Been Made, and the City Cannot Make Those Findings.

The Department of Housing and Community Development ("**HCD**") issued to the City a Letter of Technical Assistance dated March 17, 2025, that made it clear that, in no uncertain terms, the City "must approve the sewer connection to the Project or make findings of denial as required under Government Code section 65589.7." The encroachment permit application at issue here is intended to facilitate that sewer connection.

HCD issued to the City a ***further*** Letter of Technical Assistance dated October 7, 2025, stating:

> As laid out in HCD's March 17, 2025 Letter of Technical Assistance, Government Code section 65589.7 establishes an obligation on the part of the City to provide sewer service to the Project. As a public entity providing sewer service, the City has provided sewer service to the Project site for many decades and continues to serve it today. As a result, the City is a public agency that "provides" sewer services within the territory of Los Alamitos as discussed in Government Code section 65589.7, subdivision (a). It is therefore obligated to prioritize

> sewer connection for developments containing affordable units, including the Project.

This October 7, 2025, Letter of Technical Assistance explains:

> If the City determines that there is not sufficient treatment or collection capacity, Government Code section 65589.7, subdivision (c), outlines an option for the provider to make "specific written findings that the denial, condition, or reduction is necessary due to the existence of one or more of the following." The City has not made such findings.

As to the City's ability to make those findings, HCD noted that the City's own sewer analysis summarized in the "infrastructure Constraints" section of its draft 6th Cycle Housing Element "concluded that the existing sewer systems were adequate to accommodate the anticipated new development," and further that the City "has provided sewer service to the site for many decades and continues to serve it today."

The Applicant's analysis of this situation comports with HCD's analysis. Section 65589.7(c) provides that:

> A public agency or private entity that provides water or sewer service shall not deny or condition the approval of an application for services to, or reduce the amount of services applied for by, a proposed development that includes housing units affordable to lower income households unless the public agency or private entity makes specific findings that the denial, condition, or reduction is necessary due to the existence of one or more of the following:
>
> (1) The public agency or private entity providing water service does not have "sufficient water supply," as defined in paragraph (2) of subdivision (a) of Section 66473.7, or is operating under a water shortage emergency as defined in Section 350 of the Water Code, or does not have a sufficient water treatment or distribution capacity, to serve the needs of the proposed development, as demonstrated by a written engineering analysis and report.
>
> (2) The public agency or private entity providing water service is subject to a compliance order issued by the State Department of Health Services that prohibits new water connections.

(3) The public agency or private entity providing sewer service does not have sufficient treatment or collection capacity, as demonstrated by a written engineering analysis and report on the condition of the treatment or collection works, to serve the needs of the proposed development.

(4) The public agency or private entity providing sewer service is under an order issued by a regional water quality control board that prohibits new sewer connections.

(5) The applicant has failed to agree to reasonable terms and conditions relating to the provision of service generally applicable to development projects seeking service from the public agency or private entity, including, but not limited to, the requirements of local, state, or federal laws and regulations or payment of a fee or charge imposed pursuant to Section 66013.

HCD issued guidance regarding the senate bill giving this section its "teeth" (i.e., SB 1087) on May 22, 2006. In that guidance, HCD makes clear that SB 1087 prohibits "water and sewer providers from denying or conditioning the approval or reducing the amount of service for an application for development that includes housing affordable to lower-income households, unless specific written findings are made." (HCD Guidance re Senate Bill 1087, Legislation Effective January 1, 2006: Water and Sewer Service Priority for Housing Affordable to Lower-Income Households, p.2.)

Here, SB 1087 protects the Project from Seal Beach improperly denying service to the Project. Seal Beach is clearly a public agency that provides sewer service. As discussed above, Seal Beach has been providing sewer service to the Property since at least 1971. Moreover, the Project is a "proposed development that includes housing units affordable to lower income households."

Accordingly, the Project, including the Project's infrastructure improvements requiring the encroachment permit application at issue here, qualifies for protection under SB 1087 and Seal Beach is prohibited from denying or conditioning the approval, or reducing the amount of services applied for by the Project, unless Seal Beach is able to make written findings as set forth above, none of which findings can be made as discussed below:

First, the finding requirement in section 65589.7(c)(1) pertains to water supply service, not waste water or sewer service. As such, this finding is not relevant here.

Second, Seal Beach is not subject to any compliance order that we are aware of that would prohibit Seal Beach from providing new water connections. In any event, the Project would not require any new connections, but would instead only require a continuation of the sewer service that Seal Beach currently provides to the Property.

Third, there is clearly sufficient treatment and collection capacity to serve the Project. The EIR for the Project evaluated whether the Project would result in any impacts to wastewater services. This determination in the EIR was based on the extensive written engineering analyses and report demonstrating that there is sufficient capacity to serve the needs of the Project.

Moreover, the City's own documentation regarding its recent efforts to bring its Housing Element into compliance with the Housing Element Law makes clear that no further sewer study is necessary. For example, the City of Seal Beach's Draft Environmental Impact Report ("**EIR**") for the City's Sixth Cycle Housing Element Update evaluates the impact of development contemplated in the Housing Element on the City's wastewater system and concludes there would be no significant impact to the City's system as a result of that development. The Draft EIR explains:

> [T]he Project [i.e., development of sites on the Housing Element Sites Inventory] would have a potential increase of 256,960 gpd of wastewater which would **represent a 0.13 percent increase** {emphasis added} from existing flows. As the Project would result in a less than one percent increase from existing wastewater flows treated at OC San's two wastewater treatment facilities, wastewater generated by buildout of the Housing Opportunity Sites and within the Main Street Program area would be anticipated to be served by OC San's existing treating capacity. (DEIR p. 3.17-10.)
>
> Through personal conversations with the City of Seal Beach, regarding the Housing Opportunity Sites and the Main Street Program, the Project poses no significant impacts to the existing wastewater infrastructure. The Project is not anticipated to result in a determination by the wastewater treatment provider, which serves or may serve the project, that it does not have adequate capacity to serve the project's projected demand in addition to the provider's existing commitments. ***Therefore, impacts would be less than significant***. {emphasis added} (DEIR p. 3.17-20.)

The City's Draft EIR reaches the same result even after taking into account the proposed buildout of 167 dwelling units contemplated by the Old Ranch Country Club ("**ORCC**") Specific Plan. The Draft EIR explains:

> The residential component of the ORCC Specific Plan Project would have a potential increase of 26,720 gpd of wastewater. Therefore, the total 1,773 dwelling units from the Project and ORCC Specific Plan Project would have a total potential increase of 0.14 percent increase from the existing flows of OC

> San during 2023-204. Therefore, implementation of the Project and the residential component of the ORCC Specific Plan Project would continue to result in a less than one percent increase from existing wastewater flows treated at OC San's two wastewater treatment facilities. (DEIR p. 3.17-20.)

This increase of 0.14 percent due to the additional 167 units proposed under the ORCC Specific Plan is only slightly less than any corresponding increase due to the additional 246 units that are to be developed by the Lampson Park Place Project.

Moreover, the City's Draft EIR specifically identifies the Lampson Park Place Project as a "cumulative project related to utility and service systems," in other words, ***as a project included within the "cumulative development"*** evaluated in connection with the City's Housing Element development. (DEIR Tbl. 3.17-6 & p. 3.17-22.) The City's Draft EIR states:

> Regarding utility and service system facilities, ***the potential for cumulative impacts in conjunction with cumulative development is not anticipated***. The impacts posed by the Project and cumulative projects are site specific and may impact the infrastructure in the immediate vicinity of those projects only. Therefore, cumulative impacts from the Project in conjunction with cumulative projects are not anticipated due to the proximity of the cumulative developments to the Project. (DEIR p. 3.17-22.)[3]

In addition, Appendix C: Housing Constraints to the City's Draft 2021-2029 Housing Element makes clear that Seal Beach has an adequate sewer system. The Housing Element states: "New development is able to tap into existing water and sewer lateral lines, ***with no new sewer or water mains necessary***. The City's General Plan identifies adequate infrastructure and public service capacity to accommodate the anticipated build out." (Housing Element p. C-48.)

These excerpts from the City's Draft EIR for its Housing Element and from the Housing Element itself demonstrate that the City of Seal Beach has adequate wastewater capacity for its Housing Element sites, as well as for the ORCC Specific Plan and the Lampson Park Place Project. Given the City's own determinations, Seal Beach's protestation that it

[3] The City's Draft EIR also states that "cumulative impacts from the Project in conjunction with cumulative projects may result in deficiencies to the exiting [sic] wastewater infrastructure." (Draft EIR p. 3.17-22.) However, the City's Draft EIR notes further that "future impacts shall be analyzed at the time of project specific evaluation," and **the City's Draft EIR points out that the project specific evaluation for the Lampson Park Place project had already been completed, and that the "standalone EIR . . . for the Lampson Project . . . identified less than significant impacts to the wastewater infrastructure from the Lampson Project."** {emphasis added} (Draft EIR p. 3.17-22.)

requires ***even further analysis*** of its sewer system is nothing but a sham and an obstructionist tactic to slow or stop the Lampson Park Place Project.

Even if a further sewer study was to be prepared, that study should rely upon a depth-to-diameter (d/D) ratio of 0.8 as a threshold for determining insufficient capacity. The City of Seal Beach has taken the position that the City would rely upon a 0.5 d/D ratio instead to evaluate the Project's sewer demands, which is unreasonable and inconsistent with the City's own analyses and standards. As described above, the City has concluded that it has "adequate infrastructure and public service capacity to accommodate" buildout under the City Housing Element. The only way the City can reach this conclusion is by assuming a standard of 0.8, and this is because ***portions of the City's sewer system are currently above the 0.5 d/D threshold***. The request for a new sewer study does not reflect a true desire to understand the existing flows and capacity of the City's infrastructure, but rather to give the City an opportunity to apply a spurious 0.5 d/D threshold in order to manufacture support for a pre-ordained and improper conclusion to deny the encroachment permit.

If in fact the City believes that an exceedance of the 0.5 d/D demonstrates inadequate sewer capacity for any project, then the City's conclusion in its most recent draft 6th Cycle Housing Element that sufficient sewer capacity exists to accommodate build out is either incorrect or misleading. That draft states: "New development is able to tap into existing water and sewer later lines, with no new sewer or water mains necessary. The City's General Plan identifies adequate infrastructure and public service capacity to accommodate build out." (p. C-48.) This statement would be incorrect if the City took the position that a d/D level of 0.5 demonstrates inadequate capacity given that there are currently 16 sewer segments within the City's sewer system that have a d/D level over 0.5.

The City cannot have it both ways – either the appropriate threshold is 0.8 d/D, or the City's existing sewer capacity is insufficient. When pushed to respond to this contradiction, the City has failed to provide any rational resolution of this contradiction.

In any event, the 0.50 threshold only pertains to peak dry weather d/D determinations. A critical factor is how much pipe capacity remains during wet weather events, as described in the City's 2018 Sewer Master Plan: "The remaining pipeline capacity is reserved for wet weather related inflow and infiltration into the system." (p. 3.5.) In other words, the remaining capacity is reserved for wet weather events that contribute additional water flow into the sewer system. As to that more crucial determination, the City's 2018 Sewer Master Plan states: "The peak wet weather depth of flow to pipe diameter ratio should not exceed 0.80." (p. 3-5)

The Applicant's civil engineer evaluated the Project's contribution to the City's sewer system during wet weather events and determined that peak wet weather flows for all sewer system segments downstream of the Project are well below .80. (See Final EIR, Response to City of Seal Beach EQCB, Response III-3.) This demonstrates that there is sufficient sewer capacity in the City's sewer system for the Project.

Finally, the City ignores the fact that its own 2018 Sewer Master Plan makes clear that only "***new pipe***" is to be installed with a peak dry weather d/D of "less than or equal to 0.50 for 15-inch and smaller pipes, and 0.64 for 18-inch and larger pipes." (p. 3-5.) The Project connects to an existing sewer network, and all segments where the d/D was shown to be over 0.50 are existing pipes. Thus, the 0.50 threshold does not apply to the Project, and instead, the relevant threshold here should be 0.80 d/D.

Fourth, Seal Beach is not under an order, that we are aware of, issued by a regional water quality control board prohibiting new sewer connections.

Fifth, the Applicant will agree to reasonable terms and conditions applicable to Seal Beach's provision of sewer service to the property, including any applicable local, state, or federal laws and regulations or any applicable payment of a fee or charge imposed pursuant to section 66013 of the Government Code.

Because none of these findings can be made, the City is prohibited from denying or conditioning any approval related to, or reducing the amount of service applied for by, the Project.

2. The City's Demand for Additional Sewer Studies and Involvement by the Local Agency Formation Commission Is a Sham and a Delay Tactic.

The City has made the specious claim in correspondence to HCD that it "cannot evaluate the request for sewer service or coordinate with the District without understanding the impact of the Project on the City's sewer infrastructure." (Nicholas Ghirelli, City of Seal Beach City Attorney, Letter to HCD, dated October 30, 2025.)

Seal Beach's demand for a sewer study is nothing more than a delay tactic. As early as September 2022, the Applicant's civil engineer contacted the City of Seal Beach's Public Works Director to determine a scope of work for the sewer study. The City provided detailed scoping requirements, including specific testing locations and durations (i.e., sewer manhole monitoring) and an analysis of certain segments of the City's existing sewer infrastructure. That sewer study was completed a year later, and in September 2023, the Applicant's civil engineer provided a draft of the sewer study to the City of Seal Beach's Public Works Director. On February 15, 2024, and February 26, 2024, Seal Beach's outside civil engineer consultants, NV5 and AKM Consulting Engineers, provided comments on the sewer study.

After another round of review and comments, the Applicant's civil engineer provided to NV5 a finalized stamped and signed sewer study for their approval, and on May 1, 2024, the Applicant's civil engineer received email confirmation from NV5 indicating that all comments on the sewer study had been addressed. ***That sewer study concluded that wastewater volumes produced by the Project would not significantly impact or exceed***

the existing sewer capacity in the public system and demonstrated that the existing sewer system has adequate capacity for the Project.

The City has raised as yet another attempted obstacle in the Applicant's ability to connect to the City's sewer service a purported need for the Local Agency Formation Commission ("**LAFCO**") to review. Further evidence of the City's obstructionist tactics is its repeated and legally incorrect position that LAFCO has ***any role*** reviewing or approving any aspect of the proposed sewer service connection for the Project.

The Government Code is clear that LAFCO plays ***no role*** in these circumstances for many reasons, not the least of which is the fact that Seal Beach has been providing sewer service to the Project site since long before January 1, 2001, which alone exempts the Project from any LAFCO review. (Gov't Code Section 56133(e)(4) (Section 56133 does not apply to "[a]n extended service that a city or district was providing on or before January 1, 2001").)

Ignoring this exemption, Seal Beach engaged in correspondence with LAFCO, no doubt with the intention of further delaying the Project, ostensibly seeking some kind of "confirmation" as to LAFCO's "role regarding the Project." The City attached a letter from LAFCO dated October 7, 2025, which indicates that Seal Beach submitted a "request" to LAFCO to "review" the Applicant's encroachment permit application.

The LAFCO letter does not reflect the fact that the Project is unquestionably exempt from LAFCO review under Government Code Section 56133 because, among other things, the City of Seal Beach provided sewer service for the Project site long before LAFCO's threshold date of January 1, 2001. There is little wonder why the LAFCO letter does not reference the City of Seal Beach's pre-existing service – the City of Seal Beach "request" to OC LAFCO to "review" the Applicant's encroachment permit application ***fails to inform OC LAFCO that Seal Beach has been providing sewer service to the Project site since before January 1, 2001.***

Put simply, Seal Beach made its "request" without providing LAFCO with all the information it would need to evaluate LAFCO's role. Seal Beach is cherry picking the facts and unnecessarily invoking LAFCO processes looking for leverage to stop or slow the Project.

The Project will, of course, comply as required with LAFCO's processes, but clearly Seal Beach is doing all that it can to create roadblocks for the Project. The City of Seal Beach's engagement with LAFCO without providing LAFCO all the facts, ***including the most important and critical fact that the City has been providing sewer service to the Project site since January 1, 2001***, is further evidence that Seal Beach is not acting in good faith.

C. The City of Seal Beach Is in Violation of the Housing Accountability Act.

The Housing Accountability Act also provides the Project significant protection from an improper denial of services by Seal Beach, which would include an effective disapproval by

Seal Beach of the encroachment permit. Section 65589.5(d) provides that a "local agency shall not disapprove a housing development project . . . for very low, low-, or moderate-income households, . . . or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households" unless it makes certain written findings.

The Project, including infrastructure improvements required for the Project, such as those improvements that would be installed subject to the encroachment permit at issue here, qualifies as a housing development providing "housing for very low, low-, or moderate-income households" under the Housing Accountability Act because the Project will provide more than 20 percent of its units for rent to lower income households. (Government Code Section65589.5(h)(3).)

Moreover, an effective denial of the encroachment permit, and thus a denial of services by Seal Beach, constitutes a "disapproval of a housing development project" because Seal Beach's consent to provide sewer service is necessary for the issuance of a building permit, as specified in Condition of Approval #108 for the Project imposed by Los Alamitos.[4] Thus, Seal Beach's sewer service is plainly a "required land use approval[] or entitlement[] necessary for the issuance of a building permit," and denial of that service constitutes a decision to "disapprove the housing development project." (Government Code Section 65589.5(h)(6)(A).)

Seal Beach cannot deny the service unless it makes certain findings required by the HAA, two of which are relevant here, but neither of which can be satisfied.

First, Seal Beach cannot offer any evidence, much less substantial evidence to satisfy its burden of proof, that the housing development project would have a "specific, adverse impact upon the public health or safety." (Government Code Section 65589.5(d)(2).) The Housing Accountability Act narrowly defines "specific adverse impact" to mean a "significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." (Government Code Section 65589.5(d)(2).) As discussed at length above, assuming for the moment that sewer capacity concerns can be viewed as "public health or safety" concerns, it is well documented that the Seal Beach sewer system has adequate capacity to serve the Project. Therefore, Seal Beach cannot identify any "specific, adverse impact upon the public health or safety" in order to satisfy this finding.

Second, Seal Beach cannot offer any evidence to support its burden of proof to show that denial of the service or imposing conditions on the service is required in order for Seal

[4] Condition of Approval # 108 provides that: "A Sewer Will-Serve letter is required prior to approval of building permits. Applicant must coordinate with the City of Seal Beach and/or the Rossmoor Los Alamitos Sewer District (RLAASD) to secure a connection to the sanitary sewer system provided by either the City of Seal Beach or the Rossmoor/Los Alamitos Sewer District."

Beach or Developer to "comply with specific state or federal law." (Government Code Section 65589.5(d)(3). No specific state or federal law is implicated in Seal Beach's decision to provide sewer service, and as explained below, LAFCO authority to review or approve this decision is either non-existent or severely limited. Nothing in Cortese-Knox-Herzberg (the state law governing LAFCOs) requires Seal Beach to deny the service or impose conditions on the provision of service.

The remaining findings are not relevant here, and because Seal Beach cannot satisfy the only two findings that are relevant, Seal Beach is prohibited from denying or conditioning the approval of the service under the Housing Accountability Act.

D. The City of Seal Beach Is in Violation of the Housing Element Law and the Regional Welfare Doctrine

The City is in violation of Housing Element Law principles requiring jurisdictions to consider existing and projected housing needs in the context of both local and regional resources and constraints that are relevant to the preservation, improvement, and development of housing.[5]

Section 65583 of the Government Code governs the contents of each jurisdiction's housing element, including the requirement that a housing element specify "programs" that the jurisdiction will implement to encourage housing and remove impediments to housing supply "through the administration of land use and development controls." (Gov't Code Section 65583(c).) These programs must take into account regional aspects of housing supply.

For example, each jurisdiction must identify programs that:

- Promote and affirmatively further fair housing opportunities and promote housing ***throughout the community or communities*** for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics protected by the California Fair Employment and Housing Act and any other state and federal fair housing and planning law. (Gov't Code Section 65583(c)(5).)

- Affirmatively further fair housing by including a program requiring an assessment of fair housing that analyzes, for example, patterns or trends of disproportionate housing needs ***both within the jurisdiction and comparing the jurisdiction to the region in which it is located***; contributing factors, such as ***local and regional*** historical origins and current policies and practices, for fair housing issues. (Gov't Code Section 65583(c)(10).)

[5] As you know, the City still has not received HCD's certification of its draft 6th Cycle Housing Element.

These requirements indicate that the Housing Element Law requires a jurisdiction to consider housing supply issues as they pertain to both the jurisdiction itself, as well as the regional context within which the jurisdiction is located. This principle is underscored elsewhere in the Housing Element Law, including in the legislative policy and intent provisions found throughout the Law.

For example:

- "[E]ach local government . . . has the responsibility . . . to cooperate with other local governments and the state in addressing regional housing needs." (Gov't Code Section 65580(e).

- "It is the intent of the Legislature in enacting [the Housing Element Law] . . . to ensure that each local government cooperates with other local governments in order to address regional housing needs." (Gov't Code Section 65581(d).)

- "It is the intent of the Legislature that cities . . . shall undertake all necessary actions to encourage, promote, and facilitate the development of housing to accommodate the entire regional housing need, and reasonable actions should be taken by local and regional governments to ensure that future housing production meets, at a minimum, the regional housing need established for planning purposes." (Gov't Code Section 65584(a)(2).)

- "Each local government shall review its housing element as frequently as appropriate to evaluate . . . the appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal." (Gov't Code Section 65588(a)(1).)

This principle is also in keeping with requirements pertaining more broadly to the city's general plan. Section 65352(a)(1) of the Government Code requires that before a city may take action to adopt or amend a general plan, the city must refer that action to other cities "abutting the area" covered by that action.

The City's Housing Element does not include any program or policy consistent with these principles to ensure it does not obstruct a neighboring jurisdiction's efforts to satisfy its own RHNA obligations.

Even from a local, non-regional perspective, the City is already acting contrary to programs identified in the City's draft 6th Cycle Housing Element Update. This Update includes "Program 3e: Priority Water and Sewer Services," which would require Seal Beach to "inform service providers of plans to develop housing affordable to lower-income households ***so those service needs can be prioritized***." (Draft Seal Beach 2021-2029 Housing Element p.29 (emphasis added).)

Seal Beach itself is a provider of services, and as discussed above, it has been providing sewer services to the Project site since 1971. The City's protracted attempts to now deny service to the Project, in the guise of taking actions that effectively result in a disapproval of the encroachment permit, violate Program 3e, whereby Seal Beach calls out the need to prioritize service to projects that include lower-income households. Seal Beach's obstruction of affordable housing is therefore a violation of its own General Plan. (See, e.g., *Spring Valley Lake Ass'n v. City of Victorville* (2016) 248 Cal.App.4th 91, 101.)

The City is also violating common law principles that require a jurisdiction to comply with the regional welfare doctrine. This doctrine mandates that cities may not make land use decisions without considering the "welfare of the region" that may be affected by that decision. The California Supreme Court established this doctrine in *Associated Home Builders v. City of Livermore* (1976) 18 Cal.3d 582 to evaluate whether a city is properly exercising its constitutional police powers.

The Court explained that if a city's land use "restriction significantly affects residents of ***surrounding communities***, the constitutionality of the restriction must be measured by its impact not only upon the welfare of the enacting community, but ***upon the welfare of the surrounding region***." (*Id*. at 601 (emphasis added).) As the Court noted, "***[M]unicipalities are not isolated islands remote from the needs and problems of the area in which they are located***." (*Id*. at 607.) (*See also Arnel Development Company v. City of Costa Mesa* (1981) 126 Cal.App.3d 330; *Northwood Homes, Inc. v. Town of Moraga* (1989) 216 Cal.App.3d 1197; *City of Cupertino v. City of San Jose* (1995) 33 Cal.App.4th 1671.)

Here, the City of Seal Beach must consider the "welfare of the region" when taking any land use action that might affect "surrounding communities" and the "surrounding region," which would include the adjacent community of the City of Los Alamitos. Given the regional welfare doctrine, Seal Beach may not take any action that would obstruct a neighboring jurisdiction's ability to comply with its RHNA obligations. Otherwise, Seal Beach would be taking actions that a court could find are "unreasonable when viewed from a larger perspective." (*Associated Home Builders v. City of Livermore* (1976) 18 Cal.3d 582.)

Potential Penalties Against City of Seal Beach

The Applicant reserves its right to file a lawsuit against the City if the City continues to violate the Housing Accountability Act. We note that if a court rules against the City, then the following penalties against the City are possible:

- The court must issue an order compelling the city to comply within a time period not to exceed 60 days, and that order can include an order that the city "take action on the housing development project." (Gov't Code Section 65589.5(k)(1)(A)(ii).)

- The court may also issue an order directing the city to "approve the housing development project" if the court finds that the city acted in "bad faith" when it

disapproved or conditionally approved the housing development in violation of the HAA. (Gov't Code Section 65589.5(k)(1)(A)(ii).)

- The court shall award reasonable attorney's fees and costs of suit to the plaintiffs/applicants. (Gov't Code Section 65589.5(k)(1)(A)(ii).) Recently, AB 712 made this mandatory and expanded coverage beyond just HAA claims so that mandatory fee recovery applies to all claims asserting rights under broadly defined housing reform laws. (Gov't Code Section 65914.2(b)(1).)

- Legal fees in this context can easily exceed $500,000 if the City mounts a protracted legal defense and forces a court to rule on the merits of the suit. Moreover, the City will be unable to appeal an adverse trial court ruling unless it is willing to post a bond that covers the costs the Applicant will incur due to the delay of an appeal. An appeal would also drive up the City's exposure to higher amounts of attorneys' fees incurred to respond.

- If the city fails to comply with the court's order, then the court "shall impose" upon the city fines in a minimum amount of $10,000 per housing unit in the housing development project. Because the Lampson Project consists of 246 units, the total amount of fines could be a minimum of **$2,460,000**. In determining the amount of this fine, the court must consider the city's progress in attaining its RHNA numbers and any prior violations of the HAA. (Gov't Code Section 65589.5(k)(1)(B).)

- If the City were to persist in its denial despite a court order, then the City risks the court finding that the city acted in "bad faith" by failing to carry out the court's order within the time period prescribed by the court, at which point the court "shall multiply" the amount of the fine identified above by a factor of five (5). Assuming a court were to impose the minimum of $10,000 per housing unit for a total of $2,460,000, the fine against the city under these circumstances could amount to **$12,300,000**. (Gov't Code Section 65589.5(l).)

- Pursuant to recent amendments to the HAA, if a court has previously found that the city violated the HAA within the "same planning period,"[6] then the court "shall multiply" these fines "by an additional factor" for each previous violation. (Gov't Code Section 65589.5(l).)

These potential ramifications of a violation of the HAA are not in the abstract. Other jurisdictions who have been found to violate the Housing Accountability Act have been ordered to pay significant attorneys' fees or post multimillion dollar bonds. For example:

- *San Francisco Bay Area Renters Federation v. Berkeley City Council*, Alameda County Superior Court Case No. RG16834448, was the final in a series of cases

[6] This phrase is not defined in the HAA. Presumably, this phrase is a reference to the Housing Element cycle, which is set to expire in 2029 for the City of Seal Beach.

relating to Berkeley's denial of an application to build three single family homes and its pretextual denial of a demolition permit to enable the project. The Court ordered the city to approve the project and to pay $44,000 in attorneys' fees.

- In *40 Main Street Offices v. City of Los Altos*, Santa Clara County Superior Court Consolidated Case Nos. 19CV349845 & 19CV350422, the court determined that Los Altos violated the HAA, among other state housing laws, by failing to identify objective land use criteria to justify denying a mixed-use residential and commercial project. After the city was ordered to pay a $7 million bond, it dropped its appeal in the case. The city was ultimately forced to pay approximately $1 million in delay compensation and attorneys' fees in the case.

- In *Californians for Homeownership v. City of Huntington Beach*, Orange County Superior Court Case No. 30-2019-01107760-CU-WM-CJC, the court ruled that Huntington Beach violated the HAA when it rejected a 48-unit condominium project based on vague concerns about health and safety, and traffic concerns. Following the decision, the city agreed to pay $600,000 in attorneys' fees.

- In *Yes in My Back Yard v. City of Los Angeles*, Los Angeles County Superior Court Case No. 24STCP00524, the court ruled that the city's finding that an application was incomplete constituted a disapproval under the HAA. The City was ordered to pay over $90,000 in attorneys' fees.

- In *Yes In My Back Yard, et al. v. City of Los Angeles,* L.A.S.C. Case No. 21STCP03883, the court ruled that the city violated the HAA in denying a housing development, and ordered the city to pay approximately $240,000 in attorneys' fees.

- In a series of three cases against the City of Los Angeles, L.A.S.C. Case Nos. 24STCP00524, 24STCP00070, and 24STCP00385, three different trial court judges determined that Los Angeles had violated the HAA by refusing to comply with the terms of its own affordable housing streamlining policy. Between the three cases, the city was ordered to pay over $350,000 in attorneys' fees.

- In *Janet Jha v. City of Los Angeles*, L.A.S.C. Case No. 23STCP03499, the court held that Los Angeles violated the HAA by refusing to process a housing development application based on its erroneous interpretation of state law. After the Court ordered the city to pay a $7.4 million bond, the city abandoned its appeal. The city was ordered to pay approximately $120,000 in attorneys' fees.

- In *California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, the Court of Appeal held that San Mateo had improperly applied subjective criteria in denying a housing development project. The city ultimately agreed to pay $450,000 in the petitioner's attorneys' fees.

- In *District Square LLC v. City of Los Angeles*, L.A.S.C. Case No. 20STCP00654, and *Cesar Chavez 888, LLC v. City of Los Angeles et al.*, L.A.S.C. Case No. 24STCP01880, the court determined that the city's purported "health and safety findings" for denying two housing development projects did not meet the requirements in the HAA, determined that the City had acted deliberately and in bad faith, and ordered the projects approved. In the *Cesar Chavez 888* matter, the court ordered the city to pay approximately $170,000 in attorneys' fees.

- In *600 Foothill Owner, LP v. City of La Cañada Flintridge, et al.* and *California Housing Defense Fund v. City of La Cañada Flintridge, et al.*, Los Angeles Superior Court Case Nos. 23STCP02575 and 23STCP02614, the trial court determined that the City of La Cañada Flintridge had unlawfully rejected a project subject to the HAA. After the City was ordered to pay a $14 million bond, it abandoned its appeal and agreed to pay California Housing Defense Fund nearly $1.3 million in attorneys' fees. A further fee settlement in the millions of dollars is expected with the applicant, and the city has paid its own attorneys over $2 million to litigate the case.

Conclusion

At this juncture, we provide you with this **NOTICE OF FAILURE TO CEASE CONDUCT UNDERTAKEN FOR AN IMPROPER PURPOSE** because the City has clearly demonstrated conduct that constitutes harassment and has caused unnecessary delay and needless increases in the cost of the Project.

As discussed above, because of this conduct, the Applicant has been forced to pivot to the District for the Project's sewer connection. Even though the Applicant is now re-routing away its connection away from the City and to the District instead, the City nonetheless is doubling-down on its illegal course of conduct, continuing to erect barriers for the Applicant's first encroachment permit application (ENCR-25-0090) for a sewer connection to the City, and the Applicant's *second encroachment permit application* (ENCR-25-0244) for a sewer connection to the District. Even most recently, the City's February 18, 2026, letter discussed above, seeks to impermissibly link these two encroachment permit applications by demanding that the Applicant provide a spurious set of "private sewer improvement plans" already approved by the District, apparently for the City's purpose of inexplicably needing to "review" these plans "through separate Encroachment Permit ENCR-25-0244."

Put simply, the City's NIMBY behavior against the Project must stop.

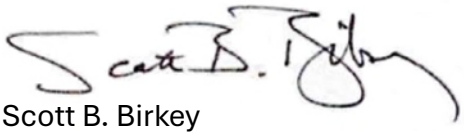
Based on all the above, the Applicant demands that the City immediately deems both encroachment permit applications (application ENCR-25-0090 and application ENCR-25-0244) complete and consistent with applicable permit standards, pursuant to Section 65913.3 of the Government Code, and issue the encroachment permits. In addition, the Applicant demands that the City cease all further harassment and unnecessary delay and

needless increase in the cost of the Project related to the District's processing of the Applicant's request to connect to the District's sewer system.

* * *

Thank you for your prompt attention to this **NOTICE OF FAILURE TO CEASE CONDUCT UNDERTAKEN FOR AN IMPROPER PURPOSE** pursuant to the Housing Accountability Act (Gov't Code Section 65589.5(h)(6)(E)).

Sincerely,



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