

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into on March 14, 2017, by and between NORTH COUNTY ADVOCATES, a non-profit corporation, on behalf of itself and its members (collectively "NCA"), and the CITY OF CARLSBAD ("City"), a municipal corporation, in light of the following facts and circumstances:

WHEREAS, on September 22, 2015, the City Council of the City adopted Resolution 2015-242, certifying the Final Environmental Impact Report ("General Plan EIR") and adopting Findings of Fact, a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program for the Carlsbad General Plan Update and Climate Action Plan ("CAP") with the City Council of the City finding that these actions were in compliance with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, et seq., and its implementing guidelines ("CEQA Guidelines"), California Code of Regulations, title 14, section 15000, et seq.; and

WHEREAS, on September 22, 2015, the City Council of the City adopted Resolution 2015-243, Resolution 2015-244 and Ordinance No. CS-287, approving the Carlsbad General Plan Update and CAP and adopting General Plan Amendment 07-02, Local Coastal Plan Amendment 07-02, Citywide Facilities and Improvements Plan Amendment SS 15-06, Zoning Ordinance Amendment 07-01, Zone Change 15-02, and CAP SS 15-05 (collectively "General Plan Update and CAP Approvals"); and

WHEREAS, on October 21, 2015, NCA filed a lawsuit challenging the City's certification of the General Plan EIR and approval of the General Plan Update and CAP, entitled *North County Advocates v. City of Carlsbad*, San Diego Superior Court Case No. 37-2015-00035458-CU-WM-NC ("Lawsuit"); and

WHEREAS, pursuant to CEQA, NCA and the City met to discuss settlement of the Lawsuit and engaged in good faith negotiations over a period of months which addressed, among other things, issues arising out of or relating to the Lawsuit; and

WHEREAS, as part of their resolution of the Lawsuit, and simultaneously with entering into this Agreement, NCA and the City intend to enter into a related settlement and community benefit agreement

with Lennar Homes of California, Inc., Preserve Calavera, Friends of Aviara, and Friends of Buena Vista Reservoir which provides for the preservation and enhancement of open-space and park land in the City ("Community Benefit Agreement"); and

WHEREAS, NCA and the City wish to settle the Lawsuit and all claims and disputes between them arising out of or relating to the General Plan EIR and the General Plan Update and CAP without admitting or establishing liability, fault, blame or the truth or veracity of any of the claims made by and between them, in a manner which benefits the residents of Carlsbad; and

WHEREAS, NCA and the City shall be referred to below collectively as the "Parties";

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS SET FORTH BELOW, THE PARTIES AGREE AS FOLLOWS:

1. **Incorporation of Recitals.** The recitals set forth above are incorporated herein as though set forth in full.

2. **No Admission of Liability.** NCA and the City understand, acknowledge and agree that by reason of entering into this Agreement, they do not admit, expressly or impliedly, any fact or liability

of any type or nature, whether or not referred to herein, or the sufficiency of any claims made or that could have been raised by any party, or the allegations, assertions or positions of any party in the Lawsuit. Further, NCA and the City have not made any such admission and this Agreement is entered into solely by way of compromise and settlement of the claims and defenses alleged in the Lawsuit.

3. NCA's Undertakings. In consideration of the obligations undertaken and the promises made herein by the City, NCA hereby covenants and agrees to undertake the following actions:

3.1 In the event the City approves the Poinsettia 61 Project and upon City approval of the Community Benefit Agreement and execution of the Community Benefit Agreement by all parties thereto, counsel for NCA shall execute and deliver to counsel for the City a request for dismissal, with prejudice, of the Lawsuit in its entirety, in a form suitable for filing with the San Diego Superior Court, which shall be filed by counsel for the City, thereby terminating the Lawsuit. Except as provided in a separate letter agreement, the parties shall bear their own costs and attorneys' fees incurred in the Lawsuit.

3.2 NCA, on behalf of its officers, directors, members and all other persons acting by

or on its behalf, does hereby fully and forever release, acquit, and discharge the City, together with its elected and appointed officials, employees, representatives and other agents (collectively "City") from any and all claims, demands, costs, attorneys' fees, rights or causes of action, whether known or unknown, which NCA has or may have against the City that arise out of or are related to the facts or circumstances alleged in the Lawsuit.

4. **The City's Undertakings.** In consideration of the obligations undertaken and the promises made herein by NCA, the City hereby covenants and agrees to undertake the following actions:

4.1 Within five (5) court days after counsel for NCA delivers to counsel for the City the request for dismissal required pursuant to Section 3.1 of this Agreement, counsel for the City shall file the request for dismissal in the San Diego Superior Court, thereby terminating the Lawsuit. Except as provided in a separate letter agreement, the parties shall bear their own costs and attorneys' fees incurred in the Lawsuit.

4.2 The City, on behalf of its elected and appointed officials, employees, representatives and other agents, does hereby fully and forever release, acquit, and discharge NCA,

together with its officers, directors, members and all other persons acting by or on its behalf (collectively "NCA"), from any and all claims, demands, costs, attorneys' fees, rights or causes of action, whether known or unknown, which the City has or may have against NCA that arise out of or are related to the facts or circumstances alleged in the Lawsuit.

4.3. The City shall undertake the following actions within the time specified below.

Except as otherwise stated, the time periods below shall commence upon the date of this Agreement, which shall be the date this Agreement is executed by both Parties:

4.3.1. Within six (6) months, the City shall present to the City Council for consideration and, if approved by the City Council, amend the Growth Management Program ("GMP") parks performance standard adopted by the City Council in Resolution No. 97-434 on April 22, 1997, to remove the 1,562 dwelling unit limit and to provide that the five-year timing requirement for park construction shall commence on the date the City Council approves the GMP parks performance standard amendment.

4.3.2. Within one (1) month, the City shall support a citizen scientist program by designating an employee of the City as the contact person to coordinate and respond to requests for citizen scientist activities in the City within a reasonable time.

4.3.3. The City shall continue to evaluate significant development projects in the Village and Barrio Master Plan area in accordance with the smart growth-related policies referenced in the City's General Plan and CAP. The revised public review draft of the Village and Barrio Master Plan will propose goals, objectives and/or policies consistent with the Community Vision, General Plan and CAP that encourage and support increased alternative modes of transportation use through public infrastructure investments, private development conditions of approval and/or incentives, and partnerships with public transportation agencies, private transportation providers, and non-profit organizations.

4.3.4. The City will participate in SANDAG's Series 14 Regional Growth Forecast and Smart Growth Concept Map technical update, which are expected to be completed by Fall 2017, by (a) reviewing and commenting on SANDAG model land use density and intensity assumptions and

land capacities in Carlsbad, (b) reviewing and providing comments on draft model run results, (c) requesting that SANDAG remove the Quarry Creek Smart Growth Opportunity Area (CB-3) from the Smart Growth Concept Map, and (d) reviewing and commenting on proposed status changes (if any) of Smart Growth Opportunity Areas in Carlsbad based on SANDAG Smart Growth place type criteria.

4.3.5. Within nine (9) months, City staff shall present to the City Council for consideration a policy to require project applicants to conduct early stakeholder outreach for significant new development proposals. Prior to finalizing the proposed policy and scheduling it for City Council consideration, City staff will release the draft policy document for a public review and comment period, and will meet with NCA to discuss and consider their comments on the draft policy document.

4.3.6. As part of the development review process, the City shall evaluate all discretionary projects for consistency with applicable General Plan policies and CAP measures and actions that aim to reduce roadway congestion and vehicle miles traveled (VMT), through Transportation Demand Management (TDM) techniques and multi-modal improvements. Within twenty-four (24) months, City staff shall present to City Council for consideration and approval a TDM plan and ordinance

that addresses alternative transportation modes for new and existing uses as described in CAP Measures K-1 and K-2. Within twelve (12) months, the City shall update its Traffic Impact Analysis (TIA) Guidelines, incorporating multi-modal level of service (MMLOS) analysis to address vehicle, bicycle, pedestrian, and transit modes of travel, and including transportation demand management (TDM) trip reduction methodologies and best practices to reduce automobile trips and improve travel mode shift. The updated TIA Guidelines will also be used to determine requirements for offsetting project impacts and evaluating opportunities for improving project-level connections for all travel modes (vehicle, bicycle, pedestrian, and transit). Within twelve (12) months of the state Office of Planning and Research (OPR) issuing final amendments to the CEQA Guidelines regarding the use of VMT as the primary metric to analyze transportation impacts rather than vehicle level of service (LOS), the City, in collaboration with SANDAG and applicable working groups, will revise the updated TIA Guidelines to be consistent with OPR's final amendments to the CEQA Guidelines.

4.3.7. Pages 4-16 and 4-17 of the City's CAP estimates the citywide baseline alternative transportation mode use by workers as 22 percent, and establishes a target 10 percent

increase in the mode share by 2035. Page 5-9 of the City's CAP identifies projected GHG reductions associated with increased mode share for 2020 and 2035 target years. Within twelve (12) months, the City shall establish a baseline performance metric and monitoring protocols to measure progress toward achieving the mode split assumed in the CAP and corresponding greenhouse gas emission reduction targets.

4.3.8. The City's Fire Department shall collect actual emergency response time data and provide an annual public report, based on a fiscal year and starting in FY 16/17, documenting and summarizing such data.

4.3.9. Within twelve (12) months, the City shall present to the City Council for consideration and, if approved by the City Council, implement a one-year pilot program to employ two provisional park rangers to patrol open space areas. At the end of the pilot program, the City shall evaluate the effectiveness of the program and shall make recommendations to the City Council based on the standards and objectives of the Open Space Management Plan.

4.3.10. Within eighteen (18) months, the City shall present to the City Council for consideration an update to the Community Forest Management Plan which includes a program to identify and protect heritage trees, where practicable, and will include provisions for protection and enhancement of the urban tree canopy.

4.3.11. The City shall address water supply and demand considerations, including a discussion of groundwater and recycled water supplies (to include greywater), in its 2020 Urban Water Management Plan, shall continue its involvement in the North San Diego Water Reuse Coalition, and shall continue to monitor the development of the San Diego Integrated Regional Water Management (IRWM) Program Storm Water Capture Feasibility Study (SWCFS) and evaluate for methods and best practices by which to pursue storm water reuse projects in the future.

4.3.12. Within twelve (12) months, as part of the CAP implementation plan, the City shall establish baseline performance metrics and monitoring protocols to measure progress toward achieving the greenhouse gas emission reduction targets for the measures and actions summarized in the CAP Implementation Matrix Table 5.1, and as more fully described in Chapters 4 and 5 of the CAP.

4.3.13. Within twenty-four (24) months, City staff shall present to City Council for consideration and approval a residential and commercial energy conservation ordinance that addresses the CAP renewable energy and energy conservation measures and actions summarized in CAP Tables 4-1 and 4-2, and as more fully described in Chapter 4 of the CAP.

4.3.14. On an annual basis, based on a fiscal year and starting in FY 16/17, the City shall produce and make publically available a map and corresponding table, summarized by General Plan open space category and Local Facilities Management Zone, that reports the amount of designated open space in the city. The reporting will also provide a brief narrative description of the non-technical changes to open space acreages that may have occurred since that previous reporting year.

4.3.15 The City will meet and collaborate with NCA at least twice annually to discuss the status of acquiring, for the purpose of open space preservation in perpetuity, the properties listed in the City Council approved Proposition C Open Space and Trails Ad Hoc Committee Property Analysis ranking chart. As a part of these meetings, the City will also consider and evaluate for acquisition any other property that is not listed on the Proposition C Open Space and Trails Committee

Property Analysis ranking chart. In doing so, the City will utilize the Property Acquisition Ranking Criteria developed by the Proposition C Open Space and Trails Ad Hoc Committee to consider the value of the acquisition regardless of rank, for open space preservation in perpetuity, any property not included on the Proposition C list. If, through these meetings, a property is evaluated and identified as being appropriate for acquisition for open space preservation in perpetuity, which shall also include identification as having a willing seller, the City shall use good faith efforts to acquire the property. The City shall also use good faith efforts to utilize the open space acquisition funding authority available to the City from the passage of Proposition C toward leveraging funds from other sources such as federal, state, and local grants. NCA agrees in principle to participate in these efforts by assisting in leveraging City funds with funds acquired from other sources, for the sole purpose of pursuing any and all properties identified as potential candidates for acquisition for open space preservation in perpetuity. City and other funds may only be used for costs that are necessary to acquire the real property including but not limited to deposits required by purchase agreements, necessary option payments, appraisals, technical reports, environmental studies of the property, and purchase price payments. For the

purpose of this section, there is no time frame identified, no maximum funding limit on the amount of City funds made available to acquire property for open space preservation in perpetuity, and the minimum funding amount the City shall make available to acquire property for open space preservation in perpetuity is \$4,000,000.

4.3.16. If there is a material failure to implement the related Community Benefit Agreement, the City shall continue to pursue acquisition and development of at least 3.1 acres of new park land in the northwest quadrant of the City, which is in addition to existing and future parks in the northwest quadrant as identified in the General Plan Open Space, Conservation and Recreation Element Tables 4-4 and 4-5.

4.4. The City Manager is authorized to represent and act on behalf of the City in all future actions and decisions necessary to implement this Agreement, and to do so consistent with and in full compliance with the terms and conditions expressed in this Agreement and to the satisfaction of the City Attorney.

5. Reservation of Discretion.

5.1. The Parties acknowledge and agree that nothing in this Agreement shall be construed as circumscribing or limiting the City's discretion with respect to its compliance with CEQA and other applicable laws and regulations in connection with this Agreement and that the City, in its sole and absolute discretion, may adopt mitigation measures or conditions of approval which the City determines are necessary and appropriate to reduce or avoid any potential environmental impact or to comply with any applicable law or regulation relating to this Agreement.

5.2. The Parties further acknowledge and agree that the City reserves its discretion to approve or disapprove all actions which require by law the exercise of discretion and which the City cannot lawfully be committed by contract to exercise in a particular way. Such reservation of discretion will apply to all contemplated legislative and quasi-judicial actions of the City, including without limitation the City's compliance with CEQA, approval of land use entitlements and related agreements, code enforcement and the making of findings and determinations required by law.

6. **Termination of Agreement.** In the event that the City exercises its discretion not to approve the Poinsettia 61 Project and the Community Benefit Agreement is terminated pursuant to Section 8.0 thereof, this Agreement also shall terminate and the provisions of this Agreement shall be of no further force and effect.

7. **Notice.** Formal notices, demands and communications among the Parties shall be given, and shall not be deemed sufficiently given until given in writing by certified mail, return receipt requested, or by overnight delivery to the following persons and addresses, or to such other persons and addresses as the Parties from time to time may designate:

To NCA: North County Advocates
7668 El Camino Real, Suite 104-258
Carlsbad, CA 92009
Info@northcountyadvocates.com

With a copy to: Everett DeLano
DeLano & DeLano
220 W. Grand Avenue
Escondido, CA 92025
760-510-1562
Everett@delanoanddelano.com

To City: Kevin Crawford
City Manager
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, CA 92008-1949
760-434-2821
kevin.crawford@carlsbadca.gov

With a copy to: Celia Brewer
City Attorney
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, CA 92008-1949
760-434-2891
celia.brewer@carlsbadca.gov

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

8. Miscellaneous.

8.1. The Parties understand and agree that additional documents and agreements may be necessary to effectuate this Agreement and the Parties hereby agree to execute and to deliver all

other documents and agreements as may be reasonably necessary to carry out the purposes of this Agreement.

8.2. Each party signing this Agreement jointly and severally represents and warrants that it has full authority to obligate the party or parties or members on whose behalf it is signing and that no further action or authorization is necessary to execute this Agreement on behalf of such party or its members.

8.3. The Parties have read all of this Agreement, fully understand the same and have consulted with their attorneys regarding this Agreement. The Parties hereto are represented by independent counsel with whom each party has fully discussed the terms and consequences of this Agreement, or have had the opportunity to retain independent counsel but have elected not to do so. NCA and its members are represented by the law firm Delano & Delano, 220 W. Grand Avenue, Escondido, CA 92025; and the City is represented by the law firm Hogan Law APC, 225 Broadway, Suite 1900, San Diego, CA 92101. The Parties hereto acknowledge that they execute this Agreement of their own free will and under no threat, menace, coercion or duress of any kind from any party. The

Parties further acknowledge that they execute this Agreement acting on their independent judgment and upon the advice of their respective counsel, without any representation, express or implied, of any kind from any other party, except as specifically set forth herein.

8.4. Except as provided in a separate letter agreement concerning attorney's fees and costs, this Agreement constitutes the entire fully integrated written agreement among the Parties with respect to the subject matter of this Agreement and may not be modified or waived except by a writing duly executed on behalf of the party to be bound by the waiver or modification.

8.5. If any part of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, such decision shall not affect the validity of any remaining portion of this Agreement and the remainder shall stand in full force and effect.

8.6. In the event it becomes necessary for any party to obtain the services of an attorney to enforce the provisions of this Agreement against any party who has breached any obligation set forth herein, the prevailing party in any proceeding shall be entitled to recover all its attorneys' fees and costs incurred.

8.7. This Agreement may be pleaded by any party hereto as a full and complete defense to and may be used as the basis for an injunction against any action, suit, claim or other proceeding of any type which may be prosecuted, initiated or attempted in violation of the terms hereof.

8.8. This Agreement is made, executed and delivered within the County of San Diego, State of California and shall be construed and covered by the laws of the State of California.

8.9. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and to all members, beneficiaries, elected and appointed officials, officers, directors, employees, attorneys, agents, successors, affiliates, heirs and assigns of each party.

8.10. This Agreement may be executed in one or more counterparts and, when executed by each of the Parties signatory hereto, said counterparts shall constitute a single valid Agreement even though each of the signatory parties may have executed separate counterparts hereof.

IN WITNESS WHEREOF, this Settlement Agreement is executed on the date(s) set forth below.

Dated: March 14, 2017

NORTH COUNTY ADVOCATES

By: Howard Krauss
NCA Vice President
~~Howard Krauss~~
Patricia Bleha, President of the
Board of Directors

Dated: March 14, 2017

CITY OF CARLSBAD

By: Matt Hall
Matt Hall, Mayor