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9 FRIENDS OF BIG BEAR VALLEY, BERNARDINO  
10 AUDUBON AND CENTER FOR BIOLOGICAL DIVERSITY

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF SAN BERNARDINO**

13 FRIENDS OF BIG BEAR VALLEY, SAN  
14 BERNARDINO VALLEY AUDUBON SOCIETY,  
15 INC., CENTER FOR BIOLOGICAL DIVERSITY

16 Petitioner/Plaintiff,

17 vs.

18 COUNTY OF SAN BERNARDINO, SAN  
19 BERNARDINO COUNTY BOARD OF  
20 SUPERVISORS; and DOES 1–25,

21 Respondent/Defendant

22 RCK PROPERTIES, INC.; and ROES 26–50,

23 Real Parties in Interest

Case No.:

**VERIFIED PETITION FOR PEREMPTORY  
WRIT OF MANDATE AND COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE  
RELIEF**

**BY FAX**

Code Civ. Proc. §§ 1085, 1094.5 & § 1021.5; Pub.  
Res. Code §§ 21000, *et seq.*

24 **INTRODUCTION**

25 1. Petitioners, Friends of Big Bear Valley, San Bernardino Valley Audubon Society, Inc.  
26 and the Center for Biological Diversity, brings this action to set aside San Bernardino County’s  
27 (“County”) approval of a General Plan Land Use Zoning District Map Amendment and Tentative Tract  
28 Map for RCK Properties, Inc.’s (“Proponent”) Moon Camp 50-Lot Residential Subdivision (“Project”) along scenic North Shore Drive/Highway 38, adjacent to Big Bear Lake, in the community of Fawnskin.

1 Petitioners contend that the County violated the California Environmental Act (CEQA) (Pub. Res. Code  
2 §21000 et seq.) when approving the Project’s Final Environmental Impact Report (“FEIR”).

3 **THE PARTIES**

4 2. Petitioner Friends of Big Bear Valley is a non-profit, public interest environmental  
5 association of individuals that seeks to preserve and protect the open space, wilderness, valuable natural  
6 resources and uniquely dense level of biodiversity of Big Bear Valley.

7  
8 3. Petitioner San Bernardino Valley Audubon Society, Inc. is a 501(c)3 non-profit  
9 organization founded in 1948. San Bernardino Valley Audubon is a leading non-profit conservation  
10 organization in southeastern California, engaging people in the protection of birds and their habitats. We  
11 promote recreational birding, conservation education programs and conservation actions from counting  
12 birds to working with local, state, and national policy makers to safeguard our region’s natural wildlife.

13 4. Petitioner Center of Biological Diversity is a non-profit conservation organization  
14 dedicated to the protection of native species and their habitats through science, policy, and environmental  
15 law. The Center has approximately 81,000 members worldwide, including members who reside within  
16 communities in the vicinity of the Project. The Center has worked for many years to protect imperiled  
17 plants and wildlife, open space, air and water quality, and the overall quality of life for people in Big Bear  
18 Valley where the Project is proposed. Members of the Center will be directly and adversely affected by  
19 the approval and construction of the Project.

20  
21 5. Respondent County of San Bernardino is a political subdivision of the State of California  
22 and the Lead Agency for the approval of the Project. The County is responsible for complying with, and  
23 implementing, the Laws of the State of California, including CEQA (Pub. Resources Code §§ 21000, *et*  
24 *seq.*), the Planning and Zoning law (Gov. Code §§ 65000, *et seq.*), and the Subdivision Map Act (Gov.  
25 Code §§ 66410, *et seq.*). Further, the County is responsible for insuring that the agencies,  
26 instrumentalities, officials, and employees of the County comply with the Laws of the State of California.  
27 Respondent San Bernardino County Board of Supervisors (“Board”) is the legislative body and highest  
28

1 administrative body in the County. The Board has the authority to approve or disapprove proposed  
2 General Plan amendments, tentative tract maps, and other land use entitlements.

3 6. Petitioner does not presently know the identity of Does 1 through 25 but will amend the  
4 Petition as required to specifically identify each such person or entity as a defendant if the identity,  
5 interest and capacity of such party, if any, becomes known.

6 7. According to the County's Notice of Determination, RCK Properties, Inc. ("Applicant")  
7 is the Project applicant and, according to County of San Bernardino Resolution No. 2020-155, is the  
8 recipient of the approval of a General Plan Land Use Zoning District Map Amendment and Tentative  
9 Tract Map for the Project. Accordingly, Petitioner is informed and believes and, on that basis, alleges that  
10 RCK Properties is a Real Party in Interest by virtue of being the Project applicant and the recipient of  
11 approval(s) related to the Project and having an ownership interest in the subject of this litigation.  
12

13 8. Petitioners do not presently know the identity of Roes 26 through 50 but will amend the  
14 Petition as required to specifically identify each such person or entity as a defendant if the identity,  
15 interest and capacity of such party, if any, becomes known  
16

### 17 **JURISDICTION AND VENUE**

18 9. This Court has jurisdiction over the writ action under Code of Civil Procedure ("CCP")  
19 sections 1085 and 1094.5 and Public Resources Code sections 21168 and 21168.5.

20 10. This Court has jurisdiction over Petitioners' claim for declaratory relief under Code of  
21 Civil Procedure section 1060.

22 11. Venue is proper in this court because the action concerns real property in the County of  
23 San Bernardino, with approval by the San Bernardino County Board of Supervisors of a General Plan  
24 Land Use Zoning District Map Amendment and Tentative Tract Map for the development of a proposed  
25 residential subdivision project on the aforementioned real property.

### 26 **PROCEDURAL ALLEGATIONS**

27 12. Petitioners have performed any and all conditions precedent to filing the instant action  
28 and has exhausted any and all administrative remedies to the extent required by law, by inter alia,

1 submitting written comments on the issues that are the subject of this lawsuit during the administrative  
2 process. Petitioners submitted detailed written and oral comments warning the County of numerous  
3 substantive violations of CEQA; therefore, any further attempts to pursue administrative remedies would  
4 be futile.

5           13.       Petitioners have complied with the requirements of Public Resources Code section  
6 21167.5 by mailing a written notice of the commencement of this action to Respondents prior to filing  
7 this petition and complaint. A true and correct copy of this notice is attached hereto as “Exhibit A”.

8           14.       Petitioners has complied with the requirements of Public Resources Code section 21167.7  
9 and Code of Civil Procedure section 388 by mailing a copy of the Petition/Complaint to the state Attorney  
10 General.

11           15.       Petitioners has no plain, speedy or adequate remedy in the ordinary course of law unless  
12 this Court grants the requested writ of mandate to require Respondents to set aside the Project approvals  
13 until they have adequately complied with CEQA. In the absence of such remedies, the County’s approvals  
14 will remain in effect and in violation of CEQA.  
15

16           16.       If the County is not enjoined from implementing the Project pursuant to the approval, and  
17 from undertaking acts in furtherance thereof, Petitioner, the residents of Fawnskin and Big Bear Valley,  
18 San Bernardino Valley Audubon Society and Center for Biological Diversity and the general public will  
19 suffer irreparable harm from which there is no adequate remedy at law in that the Project area and  
20 surrounding area would be irrevocably altered and significant adverse impacts on the environment and  
21 community would result.

22           17.       In pursuing this action, which involves enforcement of important rights affecting the  
23 general public and residents of Fawnskin and Big Bear Valley, Petitioner will be entitled to attorneys' fees  
24 and costs pursuant to, inter alia, Code of Civil Procedure section 1021.5.  
25

26           18.       Petitioner brings this action pursuant to Public Resources Code sections 21168 and  
27 21168.5, as well as Code of Civil Procedure sections 1085 or 1094.5, which require that an agency's  
28 approval of a Project be set aside if the agency has prejudicially abused its discretion. Prejudicial abuse of

1 discretion occurs either where an agency has failed to proceed in a manner required by law or where its  
2 determination or decision is not supported by substantial evidence. Respondents have prejudicially  
3 abused their discretion because the County’s findings are not supported by substantial evidence and the  
4 County failed to comply with the procedural and substantive requirements of CEQA.

5 **STATEMENT OF FACTS**

6 **A. Project Description and Setting**

7  
8 19. The Project is a 62.43 acre subdivision (San Bernardino County Tentative Tract Map TT  
9 16136) consisting of 50 residential lots for custom home construction by individual property owners and  
10 eight lettered lots: Lots A and H, open space/conservation easement to preserve ashy-gray Indian  
11 paintbrush, pebble plain soil conditions, and eagle perch trees; Lot B, open space and neighborhood lake  
12 access; Lot C, parking lot and boat launch for 55 boat-slip marina/boat dock on the east side of the site;  
13 Lots D, E, and F, well sites; and Lot G, reservoir site. Lot C also includes open space for tree and eagle  
14 perch preservation but is not identified as open space due to the development of the marina parking lot  
15 and boat ramp. A 10-acre off-site conservation easement for pebble plain habitat is also planned.

16 20. The Project is set in the unincorporated community of Fawnskin in San Bernardino  
17 County, California. The Project is located on the north shore of Big Bear Lake, split along both the north  
18 and south sides of North Shore Drive (State Route 38). Polique Canyon Road is to the east of the project,  
19 Canyon Road to the west, and Flicker Road to the north.

20  
21 21. The area immediately surrounding the Project on the north side of Big Bear Lake is  
22 primarily open space featuring open Jeffrey Pine forest and Pebble Plain habitat (erroneously identified in  
23 the 2011 Draft Environmental Impact Report as “pebble plain like soil conditions”); National Forest  
24 Service lands are directly adjacent to northern and eastern sides of the Project site and it is bordered on  
25 the western side by Grout Bay. Rural residential developments are also nearby, with a small commercial  
26 component to the west of the Project site. Across the lake, along the south shore, the incorporated city of  
27 Big Bear Lake features more intense commercial and recreational uses, including restaurants and hotels.  
28

1           22.       Because the Project site is adjacent to the National Forest Service lands—fuel  
2 modification setbacks of at least 100 feet are required along their boundary with the Project site—the  
3 Project is situated in an area with a high potential for wildfire. Individual slopes on the Project site range  
4 from 5 to 40 percent, natural vegetation is highly flammable, and there is limited access to water, creating  
5 conditions of extreme fire hazard. If the Project limits the Forest Service’s ability to manage fire risk on  
6 its adjacent lands through hazardous fuel reduction or by further limiting availability of water and staffing,  
7 the already high risk of fire will only increase.  
8

9           23.       The Project site includes areas known to contain bald eagle perch trees, raptor foraging  
10 habitat, and habitat for the San Bernardino flying squirrel, southern rubber boa, southwestern willow  
11 flycatcher, California spotted owl, and multiple species of bats. According to a written comment from the  
12 California Department of Fish and Game, received January 25, 2012 in response to the Project’s second  
13 revised and recirculated draft environmental impact report (see Procedural History, *infra*), a number of  
14 other state designated Species of Special Concern animals have a “moderate to high potential to occur on  
15 site.”  
16

17           24.       The California Department of Fish and Game 2012 comment letter, *supra*, states that the  
18 entire Project site is a “known present and historical location for perching bald eagles” due to its line of  
19 site to Big Bear Lake. A 2002 survey included in the 2011 Draft Environmental Impact Report identified  
20 Big Bear Lake as home to the largest wintering population of bald eagles in Southern California, with as  
21 many as 30 individuals in peak years. According to the County’s CEQA Findings for the Project, a  
22 records search “demonstrated that some of the most utilized perch and roost trees on the north shore of the  
23 lake are located on the Project site.” A January 2009 bald eagle count under the auspices of the US Forest  
24 Service identified 12 individuals in the Big Bear/Baldwin Lake area.  
25

26           25.       Since the circulation of the Revised EIR in 2011, the circumstances of the Bald Eagle in  
27 the Project’s vicinity and in the Big Bear Area as a whole has changed substantially. Thus, the FEIR does  
28 not disclose that a pair of resident Bald Eagles have been nesting in the Project vicinity since 2012 and  
have been using the lakefront and shoreline areas within the Project site for foraging. As such, the FEIR

1 does not analyze the significance of the existence of this nesting pair in close proximity to the Project site,  
2 or explain how the presence of this nesting pair could affect the EIR’s analysis of the Project’s impact on  
3 Bald Eagles.

4           26.       Likewise, the FEIR does not disclose or analyze the fact that the circumstances of Bald  
5 Eagles in Big Bear Valley have changed since 2011 also because since that time, a number of juvenile  
6 eagles have taken up residence in the Big Bear Valley and utilize the lake, including the area immediately  
7 adjacent to the Project site for foraging

8           27.       The Project site also contained a variety of California Native Plant Society 1B and State-  
9 listed Endangered plants species as well as federally-listed threatened plants, according to the California  
10 Department of Fish and Game, *supra*. In particular, significant areas of ashy-gray Indian paintbrush  
11 habitat and five California special status plant species (indicators species for pebble plains habitat) have  
12 been identified within the Project site. The FEIR admits that the western portion of the Project contains  
13 high densities of ashy-gray Indian paintbrush plants. On the other hand, based solely on the opinion of Dr.  
14 Krantz, Ph.D., the FEIR revised the County’s earlier determination that the Project site contained pebble  
15 plain habitat. FEIR 1-4. To reach this conclusion, the County relied solely on the testimony of a single  
16 expert and rejected the methodology developed by and utilized by the US. Forest Service.

17           28.       The evidence shows the FEIR underestimates the extent of special status plants. A U.S.  
18 Forest Service overview map of the site shows over 17 acres of rare plant habitat on over 17 acres just on  
19 the western portion of the property (Attachment G—mc pebble plain map). In addition, another  
20 significant section of pebble plain is mapped further east on the property, along the northern boundary.  
21 This additional acreage and eastern-most section have not been included in any of the surveys, nor  
22 accounted for in the ‘loss of habitat and plant’ calculations. The FEIR’s discussion of impact on rare  
23 plants, therefore, is fatally flawed and must be revised

24           29.       To mitigate the impacts on the ashy-gray paintbrush, the applicant redesigned subdivision  
25 to creates a new Lot “H” Open Space Conservation Easement over the area with the highest concentration  
26  
27  
28

1 of plants (Lots 1-3), with three replacement residential lots proposed to be created along the south side of  
2 Street “A,” an area with significantly lower concentrations of Ashy-Gray Indian Paintbrush.

3 30. To mitigate the impact on protected plant species, the FEIR also proposed the  
4 preservation of the Sugarloaf Pebble Plain as the main off-site mitigation measure. According to the Long  
5 Term Management Plan prepared for the Project (LTMP), the Sugarloaf Pebble Plain is a 10-acre site of  
6 high-quality pebble plain habitat that has been fenced and protected from off-highway vehicles since the  
7 mid-1980s. The County approved the acquisition and management of this property “as partial mitigation”  
8 for the Moon Camp Development’s impact on pebble plain habitat.  
9

10 31. According to the LTMP, the Sugarloaf Pebble Plain parcel was acquired in the 1980s as  
11 mitigation for the construction of the Big Bear High School. The LTMP claims at that time, the County  
12 had intended “to set aside a 2-acre portion of the 10-acre parcel as mitigation for impacts to pebble plain  
13 resources for the High School site, and use the remaining eight (8) acres for mitigation of other projects.  
14

15 32. The LTMP and FEIR’s claim that 8 acres of this parcel is available for mitigation of this  
16 impact of the Moon Camp Project is not supported by substantial evidence in the administrative record.  
17 No credible evidence supports the County’s contention that at the time of the approval of the High School,  
18 the County had intended to and did in fact carve out 8 acres of this property as a set aside for future  
19 mitigation banking. To the contrary, the evidence shows the deed to this parcel was never recorded, no  
20 management plan for its management was ever developed, and the parcel was never actively maintained,  
21 managed or monitored as had been required by the County’s own documents.

22 33. The record includes a historic document entitled “Environmental Impact Report: Biotic  
23 Resources Survey Big Bear Properties Sugarloaf Parcel,” which describes the High School’s impact on  
24 biological resources, and the role the Sugarloaf Parcel can play mitigating that impact. This document,  
25 which refers to the Sugarloaf Parcel as the “Rare Plant Preserve”, lists the Preserve as one of the  
26 components of a suite of mitigation measures intended to mitigate the High School’s biological impacts.  
27 The Biotic Resources Survey does not include any discussion of reserving only two acres of the Preserve  
28



1 for mitigating the High School’s biological impacts, or reserving the additional 8 acres for future  
2 mitigation.

3 34. The Biotic Resources Survey also shows that the County was required but failed to take a  
4 number of steps in order to protect and manage the Sugarloaf Parcel. The County was required to fence  
5 the area, survey and record the dedication of the property and develop and enforce “management  
6 restrictions and guidelines.” The record shows that the County (1) failed to ensure the dedication of this  
7 property was properly surveyed and recorded, (2) did not ensure any “management restrictions and  
8 guidelines” were drafted and (3) did not take any steps to ensure the Dixie Lee Lane property was  
9 properly managed.  
10

11 35. On July 27, 2020, the night before the final hearing on the Project, Planning Staff for the  
12 first time produced documents relevant to the status of the Sugarloaf Parcel. These documents a 1982  
13 letter from a County planner to Forest Properties, Inc., purporting to memorialize an agreement between  
14 the applicant and the County in connection with the status of the Parcel. This letter, however, has not been  
15 authenticated and does not appear to be an official act of the County. The letter, moreover, directly  
16 contradicts the Environmental Impact Report.  
17

18 **B. Procedural History**

19 36. Moon Camp was a resort camp, originally built in 1919, on the present proposed Project  
20 site. It was demolished in 1951 and the site has remained primarily vacant since. In 1969, the present  
21 owners purchased the 62.43 acre site, along with a marina permit. In 2003, the Applicant proposed  
22 Tentative Tract Map 16136, a 92-lot residential subdivision on the Project site.

23 37. In 2005, the County circulated a Draft Environmental Impact Report (“2005 DEIR”) for  
24 that original version of the Project, which was originally noticed to the public in July 2001. The 2005  
25 project description included a 92-lot residential subdivision (minimum lot size 7,200 square feet),  
26 including 31 lakefront lots; three lettered lots; and a 103-boat slip marina. The 2005 DEIR identified a  
27 number of significant adverse and unavoidable impacts. The original version of the Project described in  
28 the 2005 DEIR was never considered for approval at a public hearing.



1 21080 (c), (d), § 21082.2. CEQA Guidelines direct lead agencies to conduct an Initial Study to  
2 “determine if the project may have a significant impact on the environment.” § 15063(a). “All phases  
3 of the project planning, implementation, and operation must be considered in the Initial Study”. CEQA  
4 Guidelines § 15063(a)(1). Besides the direct impacts, the lead agency must also consider reasonably  
5 foreseeable indirect physical changes in the environment in the area in which significant effects would  
6 occur, directly or indirectly. See CEQA Guidelines § 15064(d) & § 15360, see, also, Laurel Heights  
7 Improvement Assn., *supra*, 47 Cal. Ed at 392.

8  
9 42. An indirect impact is a physical change in the environment, not immediately related to  
10 the project in time or distance, but caused indirectly by the project and reasonably foreseeable. CEQA  
11 Guidelines § 15064(d)(2) & § 15358(a)(2). Indirect impacts to the environment caused by a project’s  
12 economic or social effects must be analyzed if they are “indirectly caused by the project, are reasonably  
13 foreseeable, and are potentially significant.” CEQA Guidelines § 15064(d)-(e). A lead agency may not  
14 limit environmental disclosure by ignoring the development or *other activity* that will ultimately result  
15 from an initial approval. City of Antioch v. City Council (1986) 187 CA3d 1325 (emphasis added).  
16 Preparing a proposed negative declaration necessarily involves some degree of forecasting, and the lead  
17 agency “must use its best efforts to find out and disclose all that it reasonably can.” See, CEQA  
18 Guidelines § 15144. The guidelines specifically require that an Initial Study must consider “all phases of  
19 project planning, implementation, and operation.” CEQA Guidelines § 15063(a)(1).

20  
21 43. The EIR must contain a sufficient degree of analysis to provide the decision-makers with  
22 enough information to make an intelligent decision. CEQA Guidelines § 15151. The analysis in the EIR  
23 must be sufficient to connect the dots between facts and conclusion; it may not include the agency’s bare  
24 conclusions or opinions. Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 568.  
25 “The grounds upon which an administrative agency has acted must be ‘clearly disclosed and adequately  
26 sustained.’” San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino (1984) 55  
27 Cal.App.3d 738, 752.

1           44. CEQA requires that agencies “mitigate or avoid the significant effects on the  
2 environment of projects that it carries out or approves whenever it is feasible to do so.” Pub. Res. Code  
3 § 21002.1(b); Napa Citizens for Honest Gov’t v. Napa County Bd. Of Supervisors (“Napa”) (2001) 91  
4 Cal.App.4th 342, 360 (“the EIR must propose and describe mitigation measures that will minimize the  
5 significant environmental effects that the EIR has identified.”) “CEQA does not authorize an agency to  
6 proceed with a project that will have significant, unmitigated effects on the environment, based simply  
7 on a weighing of those effects against the project’s benefits, unless the measures necessary to mitigate  
8 those effects are truly infeasible.” City of Marina v. Board of Trustees of the California State University  
9 (2006) 39 Cal.4th 341, 368-369 (“Marina”).

11           45. Where the CEQA environmental process was procedurally or substantively defective,  
12 reviewing courts may find prejudicial abuse of discretion even if proper adherence to CEQA mandates  
13 may not have resulted in a different outcome. Pub. Res. Code § 21005(a). For example, the Court in  
14 Citizens to Preserve Ojai v. County of Ventura (1985) 176 Cal.App.3d 421, 428 held that the  
15 certification of an EIR that had not adequately discussed the environmental impacts of the project  
16 constituted a prejudicial abuse of discretion even if strict compliance with the mandates of CEQA would  
17 not have altered the outcome. The Court in Resource Defense Fund v. LAFCO (1987) 191 Cal.App.3d  
18 886, 897-8, went so far as to declare that failure to comply with CEQA procedural requirements was per  
19 se prejudicial. The court in Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692  
20 explained that an agency commits prejudicial error if “the failure to include relevant information  
21 precludes informed decision making and informed public participation, thereby thwarting the statutory  
22 goals of the EIR process.” Id., at 712.

24           46. CEQA’s environmental review process is intended to provide the public with assurances  
25 that “the agency has, in fact, analyzed and considered the ecological implications of its actions.” Laurel  
26 Heights Improvement Ass. v. Regents of the University of California (1988) 47 Cal.3d 376, 392. The  
27 function of the environmental review, then, is not merely to result in informed decision making on the  
28 part of the agencies, it is also to inform the public so they can respond to an action with which they

1 disagree. Id.

2 **FIRST CAUSE OF ACTION**

3 (Violations of CEQA)

4 47. Petitioners refer to and incorporate herein by this reference all preceding paragraphs,  
5 inclusive, of this Petition as though fully set forth herein.

6 48. The FEIR fails to adequately describe the Project setting and environmental baseline  
7 in part because the Draft EIR was last revised in 2010. As such, the FEIR does not adequately account  
8 for those local conditions that have undergone substantial change since 2010.

9 49. The Revised EIR does not adequately describe the Project's environmental baseline.  
10 The circumstances of Bald Eagles in Big Bear, particularly in the Project's vicinity, have substantially  
11 changed since 2010. These substantial changes include the fact that a pair of Bald Eagles began nesting  
12 and continue to maintain a nest less than one mile from the site since 2012. Also, since 2011, this pair  
13 has been staying year-round in the Big Bear Valley, a significant change from only bald eagles only  
14 visiting during winter months. Moreover, individual eagles, especially juveniles, have been visiting  
15 Big Bear year around and utilize the whole of the Lake for foraging. Accordingly, the Project would  
16 likely result in much more significant impacts on Bald Eagles than was described in the EIR.  
17 Moreover, any long-term management plan the preservation of Bald Eagles must be based on an  
18 adequate survey and study of Bald Eagles that takes into account these significant, relatively recent  
19 changes that were never noted, let alone analyzed, in the EIR. The County violated CEQA because  
20 owing to this new information, the County was required to update/revise the EIR and recirculate to  
21 provide both the public agencies and members of the public an opportunity to comment. The  
22 significant increase in the severity of the fire danger is another circumstance that has significantly  
23 changed since the 2011 Revised EIR was circulated. The combination of increased population,  
24 prolonged drought, and higher temperatures caused by climate change has created a significant  
25 increase in the Fire Risk in Big Bear Valley since this condition was analyzed in the DEIR over 10  
26 years ago. The increased risk of wildfires is exacerbated by the dangerous inadequacies of the county  
27  
28

1 roads in the project’s vicinity which pose a serious of risk of harm in the event of a catastrophic  
2 wildfire in the Project’s vicinity. In fact, in 2012 San Bernardino County commissioned an  
3 Emergency Route Capacity study whose existence and conclusions were not disclosed or discussed in  
4 the EIR. This study came to the same concluded that the County’s road system in the vicinity of the  
5 Project is among the very worst in the State in terms providing adequate means of evacuation in the  
6 event of a significant wildfire.

7  
8 50. The County’s failure to include this new information in a revised and recirculated EIR  
9 significantly undermines the informational value of the EIR and deprives the public and the elected  
10 officials of the opportunity to make a fully informed decision.

11 51. The FEIR does not adequately describe the extent of pebble plain and ashy-gray paint  
12 brush on site. Without this information, it is impossible to gauge the adequacy of the proposed on and  
13 off-site preserves that are intended to mitigate the direct and indirect impact on pebble plain and ashy-  
14 gray paint brush communities.

15 52. The FEIR fails to adequately analyze the Project’s direct and indirect impacts,  
16 particularly those impacts on water supplies (eg. water levels in the Lake, adjacent private wells),  
17 aesthetics (including light pollution), noise and impacts on protected plant and animal species. The  
18 FEIR understates the Project’s water demand, for example, by assuming the individual houses would  
19 use minimal amounts of water, not taking into account water demand associated with gardens,  
20 orchards, and the extra water demand associated with short-term rentals.

21  
22 53. The EIR does not adequately analyze the Project’s potential impacts on on-site open  
23 space preserve and rare and protected plant communities. The EIR assumes fencing the area would  
24 protect and eliminate Project impact on the conservation area. The EIR does not include any discussion  
25 of the potential impacts of the Project implementation on the preserve. As stated by Dr. Krantz in the  
26 “EIR Biotic Resources Survey Big Bear Properties Sugarloaf Parcel” in 1981 regarding pebble plains  
27 plants in general: “reduction of vegetation, removal of trees and disturbance of soil will alter biological  
28 processes which support the rare plant community and other biota. Hydrologic micro-habitats will be

1 changed.” The EIR does not analyze the proposed construction of a road and 6 homes, plus a well and  
2 access road in the pebble plain and rare plant area would likely cause adverse impacts that have not  
3 been evaluated. The FEIR likewise fails to adequately analyze the impacts associated with the  
4 construction of the infrastructure needed for the Project, including but not limited to impacts associated  
5 with construction of internal roadways and driveways, sewer lines, water lines, well heads, fire safety  
6 zones, etc.

7  
8 54. The FEIR does not include an adequate discussion of the cumulative impact on bald  
9 eagles including the impact of development around the lake over the past 30 to 40 years. The rampant  
10 urban development of the Big Bear area has caused substantial loss of nesting and foraging habitat.  
11 The FEIR does not adequately consider the Project’s contribution to this significant cumulative impact.  
12 To the contrary, the FEIR attempts to paint a rosy picture of the conditions affecting the bald eagle in  
13 Big Bear Valley, without any mention of the impact of loss of habitat and increased population. The  
14 FEIR does not account for the fact that the Big Bear Municipal Water District (Big Bear Lake’s  
15 managing agency), has formally proposed the construction of projects that could affect the nesting  
16 Bald Eagles within ½ mile of the nest. The project includes the proposed expansion of the west launch  
17 ramp to add 42 parking spaces and expansion of the parking area into a portion of filled shallow lake  
18 bottom habitat. District has also proposed the installation of a sediment basin in Grout Creek and  
19 extensive dredging of Grout Bay. The FEIR’s does not consider these projects as part of its cumulative  
20 impact analysis.  
21

22 55. The EIR fails to adequately analyze the effectiveness and biological value of the Bald  
23 Eagle conservation easement, which is one of the key biological mitigation measures for this Project.  
24 As Dr. Bloom explained in his comments, the EIR does not adequately analyze and explain how a  
25 commercial marina, parking lot, and associated facilities that will be open to and used by the public  
26 year-round (except for winter months) can substantially mitigate the Project’s direct, indirect and  
27 cumulative impact on Bald Eagle. As such, the County’s conclusion and contention that the Bald Eagle  
28 conservation easement substantially mitigates the Project’s adverse impacts on the bald eagle is not

1 supported by substantial evidence.

2           56.       The FEIR and the County's approval relies heavily on the preservation of the  
3 Sugarloaf Parcel, however the FEIR does not adequately analyze the suitability of this parcel for  
4 mitigating the Project's impacts on ashy-gray paint brush plant. There is no substantial evidence in the  
5 record to establish the Sugarloaf parcel actually contains ashy-gray paintbrush plants sufficient to make  
6 up for the impacts on the species within the Project site. In fact, one of the proponent's documents, a  
7 slide presentation given to the CaDFW (Attachment K) states specifically on page 9 that there are only  
8 21 Ashy Gray paintbrush plants on that Sugarloaf parcel to be preserved. Accordingly, there is no  
9 substantial evidence to support a conclusion that the preservation of the Sugarloaf Parcel would  
10 adequately reduce the impact to Ashy Gray paintbrush to a less than significant level.  
11

12           57.       The County's approval of the Project violates CEQA because the biological mitigation  
13 measures, including the creation and management of open space and conservation areas, has not been  
14 formally made a condition of approval of the Project, as required by CEQA.  
15

16           58.       The EIR improperly defers the formulation of mitigation measures. The success or  
17 failure of key biological mitigation measures, i.e. the Bald Eagle and special status plants depends on  
18 success of a Long-term Management Plan (LTMP) that does not include key provisions such as  
19 performance standards and a commitment to any specific funding level.  
20

21           59.       While the pre-approval of the LTMP is undoubtedly intended to create the illusion that  
22 the County is not deferring the formulation of mitigation measures, the opposite is true because the  
23 LTMP does not include specific performance criteria by which to measure its success or failure.  
24 Likewise, the LTMP does not prescribe any specific actions in case the proposed mitigation measures  
25 are not successful.

26           60.       For example, the LTMP lacks specific performance criteria with respect to Bald Eagle  
27 perch trees. The LTMP does not propose any criteria by which to decide whether a sufficient number  
28 of perch trees that are actually used by the Eagles have been preserved. As such, the LTMP does not  
include any meaningful criteria by which to judge the success or failure of the plan to identify and



1 prepare (by topping) perch trees for use by the Eagles. The LTMP must include a backup plan to  
2 identify and provide additional perch trees if the targeted trees are not used by Eagles. See Sacramento  
3 Old City v. City Council (1991) 229 Cal.App. 3d 1011, 1029 (an agency may lawfully defer the  
4 formulation of mitigation measures if the measures that will be considered in the future are described  
5 and performance criteria are identified.)

6           61.       Similarly, the LTMP does not include any criteria by which to measure the success or  
7 failure of the management of Lots A and H for conservation of rare and protected plant species. The  
8 LTMP explains that management of the lots will include seasonal closures, trails, interpretive signs and  
9 directives to stay on trails. These signs, however, will not guarantee that residents would stay on the  
10 trails, and would not otherwise harm the rare plant species intended to be protected by the LTMP.  
11 Neither the FEIR nor the LTMP include any adequate analysis of the extent to which such signage are  
12 effective.  
13

14           62.       The LTMP is inadequate and violates CEQA also to the extent that it does not require  
15 monitoring to ensure the rare plant populations remain viable in perpetuity, or any plans for corrective  
16 action in the event that the management plants fail to ensure the long-term viability of the plants. Nor  
17 does the LTMP include any performance criteria, proposed contingency actions, or cost estimate for  
18 managing the conservation areas.  
19

20           63.       The LTMP claims it would be supported in perpetuity through a nonwasting  
21 endowment, but does not include any estimate of the cost of the proposed mitigation measures, or the  
22 size of the endowment needed to fully fund the mitigation and monitoring needed to fully and  
23 adequately implement the LTMP. The County's conclusion that the proposed mitigation plan would  
24 reduce the Project's impact on biological resources to a less than significant level is not supported by  
25 substantial evidence.

26           64.       The LTMP proposes to convey a conservation easement to CDFW over onsite Open  
27 Space Easement lots, granting the agency rights to access the property and oversee the actions of the  
28 conservation manager and the Responsible Party to ensure that the sensitive biological resources are

1 managed according to the terms and conditions of the conservation easement. The evidence in the  
2 record does not support a conclusion that this conveyance would ensure compliance with the terms of  
3 the conservation easement because there is no evidence in the record to show the CDFW has the staff  
4 and resources, and therefore the ability, to monitor and enforce the terms of the conservation easement.

5           65.       The FEIR fails to adequately discuss the Project’s impact on traffic safety, particularly  
6 those hazards associated with creating a residential community immediately adjacent to SR-38, across  
7 from the proposed Marina. A Staff Report admits that consistent with State law and established  
8 protocol, Caltrans recommended the County require the applicant to provide pedestrian access across  
9 SR-38 between the residential area to the marina to address this potentially significant traffic impact.  
10 The Staff Report indicated that the applicant had not agreed to provide the pedestrian access, but  
11 instead the HOA would provide information to the homeowners to discourage pedestrian crossing of  
12 SR 38, and signage warning of cross traffic shall be placed at the entry/exit gate, to discourage unsafe  
13 crossing of the state highway. The FEIR violates CEQA to the extent that it does not include any  
14 adequate discussion of (a) the pedestrian safety hazard identified by Caltrans and (2) the proposed  
15 mitigation measures  
16

17           66.       The FEIR is internally inconsistent because while it claims “the negative results of on-  
18 site surveys, and the available technical and peer reviewed literature, negative effects to the San  
19 Bernardino flying squirrel are not expected,” (FEIR 3-24), it also claims “Considering the RRDEIR  
20 No. 2 already considers impacts to the San Bernardino flying squirrel to be potentially significant  
21 requiring mitigation, the County of San Bernardino does not believe another survey for the species  
22 would provide additional information affecting the significance determinations in the RRDEIR No. 2.  
23 (FEIR at 3-25). The FEIR violates CEQA because additional surveys for the flying squirrel are needed  
24 regardless of whether the results of such surveys would affect the EIR’s significance determination. As  
25 the Supreme Court of California has explained, “an EIR’s designation of a particular adverse  
26 environmental effect as “significant” does not excuse the EIR’s failure to reasonably describe the  
27 nature and magnitude of the adverse effect.” Cleveland Nat’l Forest Found. v. San Diego Assn. of  
28

1 Governments (2017) 3 Cal. 5th 497, 514.

2 67. Flying squirrel mitigation measures violate CEQA because they are couched in  
3 indefinite, unenforceable terms such as “minimize,” “limit,” “prioritize” that are too vague as to be  
4 enforceable. See, King & Gardiner Farms, LLC v. Cty. of Kern (2020) 45 Cal. App. 5th 814, 857  
5 (mitigation measures that required applicants to increase or maximize their use of produced water and  
6 decrease or minimize their use of M&I water violated CEQA.) Prior to the final hearing before the  
7 Board of Supervisors, the County Staff proposed to change these terms specifically in response to  
8 Petitioners’ comments. Specifically, Staff proposed the County change the words “minimize” and  
9 “limit” to “prohibit, and change “prioritize” to “require.” However, it does not appear the final version  
10 of the County’s mitigation monitoring plan, and CEQA findings of fact and statement of overriding  
11 conditions include these changes.  
12

13 68. The record shows the County failed to impose any mitigation measures or conditins of  
14 approval directing the applicant to provide a safe pedestrian passage across SR-38 as required by State  
15 regulation and proposed by CalTrans. Nor did the County impose a requirement requiring the HOA to  
16 provide information to residents discouraging pedestrian passage across the highway. Accordingly, the  
17 County’s failure to identify, analyze and impose mitigation measures to address a potentially  
18 significant impact is in violation of CEQA.  
19

20 69. GHG mitigation measures are illusory and do not pass muster under CEQA. The EIR  
21 concludes the Project would not result in a significant impact on climate change, but this conclusion is  
22 not supported by adequate analysis or substantial evidence. The EIR proposes GHG mitigation,  
23 nevertheless, but unfortunately the proposed mitigation measures do not meet the requirements of  
24 CEQA. The EIR proposes that the applicant would be required to provide information to tenants  
25 stressing the benefits of reducing trash and vehicle miles traveled (VMT) to mitigate climate change.  
26 These voluntary measures do not appear to be seriously designed to mitigate the Project’s GHG  
27 emissions. Likewise inadequate is the requirement that “[t]he developer shall require in the landscape  
28 maintenance contract and/or in onsite procedures that a minimum of 20% of the landscape

1 maintenance equipment shall be electric-powered.” To begin with, the developer is not in a position to  
2 require anything in the landscape maintenance contracts as the HOA, and not the developer, would be  
3 in a position to enter into landscape maintenance contracts. Similarly, a requirement that the developer  
4 include this or any requirement in the “onsite procedures” is demonstrably ineffective because there is  
5 no mechanism by which the HOA could be required to follow any such procedure. Finally, it does not  
6 appear that any of the measures intended to mitigate GHG impacts were in fact adopted by the County  
7 as a condition of approval.

8  
9 70. The FEIR violates CEQA because it does not consider an adequate range of  
10 alternatives capable of reducing the project’s significant impacts. Moreover, the FEIR fails to  
11 adequately respond to potentially feasible alternatives proposed by the public, including an alternative  
12 that would eliminate the marina and related facilities and reduce the number of buildable lots.

13 71. The FEIR’s analysis of the Project’s cumulative impacts is inadequate in part because  
14 the FEIR fails to adequately account for the Project’s impacts in addition to past, present and  
15 reasonably foreseeable future projects that could in the aggregate result in a cumulatively significant  
16 impact.

17  
18 **PRAYER FOR RELIEF**

- 19 1. For a peremptory writ of mandate setting aside and voiding the County’s approval of the  
20 Project, including the Tentative Tract Map, General Plan Amendment, Zone Change and related  
21 developments, as well as the certification of a Final EIR (2005, and 2010 and 2011 revisions);  
22 2. For injunctive relief prohibiting Respondents and Real Party in Interest from proceeding with  
23 any actions pursuant to the Tract Map and other approvals pending full compliance with CEQA;  
24 3. For Petitioner’s costs and attorneys’ fees pursuant to California Code of Civil Procedure  
25 section 1021.5; and  
26 4. For other and further relief as the Court finds proper.  
27  
28

