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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 24 2015

8 Attorney for Plaintiff Gary J. Polizzi

By [Signature]
Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN BERNARDINO
11 SAN BERNARDINO DISTRICT

12 GARY J. POLIZZI,
13 Petitioner,
14 vs.
15 COUNTY OF SAN BERNARDINO,
16 BOARD OF SUPERVISORS FOR THE
17 COUNTY OF SAN BERNARDINO, and
18 DOES 1-20,
19 Respondents.
20
21 MARINA POINT DEVELOPMENT
ASSOCIATES, A CALIFORNIA
GENERAL PARTNERSHIP; IRVING J.
OKOVITA
Real Parties in Interest

Case No.: CIV DS1512175

Crc 2303
VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
INJUNCTIVE RELIEF,
DECLARATORY RELIEF

[California Environmental Quality Act
("CEQA") Case]

Related To Case Number CIV-DS-1403497
and to Case Number CIV-DS-1409159
[Pending Before Hon. Gilbert G. Ochoa]

(50824-2322 433.00 SP)

22 Petitioner Gary J. Polizzi ("Polizzi" or "Petitioner") alleges as follows:

23 INTRODUCTION

24 1. This case involves the development of certain real property in the community of
25 Fawnskin on the northern shore of Big Bear Lake. This area of Fawnskin is sparsely
26 populated and contains vital habitat for multiple protected species, including the bald eagle
27 and the southwestern willow flycatcher. Moreover, Big Bear Lake near the project
28 development is part of the public trust.

1 2. In 1983, Respondent San Bernardino County Board of Supervisors approved a
2 proposal for a large-scale condominium and commercial development—commonly known as
3 the Marina Point development project (the “Project”). The Project was later approved again in
4 1991, and additional conditions were imposed in 1992.

5 3. Following later the 1991 approval, the Project applicants—Real Parties in
6 Interest Irving Okovita and Marina Point Development Associates (collectively, the
7 “Developer”)— failed to complete the Project and the site sat idle for roughly a decade. In the
8 early 2000s, the Developer commenced unlawful construction on the site, which was
9 subsequently halted by various agency enforcement actions. These decades old approvals
10 have expired under the County’s Development Code. Under these circumstances, the
11 Development Code requires the Developer to obtain a new land use approval from the County
12 before work on the Project can continue. Nonetheless, the County has issued grading,
13 demolition, and related permits for the Project and recently has approved a so-called “Minor
14 Site Revision Application” (referred by Respondents as “Minor Revision to Approved
15 Action”) that allows the Project to proceed without any new or supplemental Environmental
16 Impact Report (“EIR”), even though there have been substantial changes to the Project.
17 Issuing these permits in the absence of a valid land use approval prematurely allows
18 destructive activities to take place on the site, and is contrary to the clear provisions of the
19 Development Code. Additionally, the Developer has applied for and was improperly granted
20 County approval of revisions to the Project, improperly using a so-called “Minor Site
21 Revision Application.” The redesigned development includes substantial changes from the
22 1991 proposal and will increase the Project’s density by at least over 30%, based on the
23 figures provided by the Developer.

24 4. Developing the Project would significantly impact the environment of Big Bear
25 Lake and the community of Fawnskin. Among other things, construction and operation of the
26 Project would threaten prime eagle foraging habitat on the north shore of Big Bear Lake,
27 significantly add to the water usage in the area in the midst of a severe drought that was not
28 contemplated when the Project was originally approved, increase pollution of the already-
impaired Big Bear Lake, and create new significant traffic, noise, and light pollution impacts
upon the surrounding community.

1 5. The California Environmental Quality Act, Public Resources Codes section
2 21000 et seq. ("CEQA"), requires the County to properly consider and mitigate these
3 environmental impacts before the Developer may move forward with the Project. The
4 County's failure to do so constitutes a prejudicial abuse of discretion. Therefore, its actions in
5 approving permits for the Project must be set aside until the County fully complies with
6 CEQA for the Project.

7 PARTIES

8 6. Petitioner Gary Polizzi is a local resident of Fawnskin. Polizzi owns and resides
9 part-time in a property adjoining Big Bear Lake and frequently uses and enjoys Big Bear
10 Lake, including the area where the project site is located, and its natural surroundings for
11 scenic, recreational, and educational purposes. Polizzi is therefore directly, adversely, and
12 irreparably affected, and will continue to be prejudiced by the Project and its components
13 unless this Court provides the relief prayed for in this Petition. Upon first learning of the so-
14 called "Minor Site Revision" application in March 2015, Polizzi submitted timely comments
15 on the County's ongoing violations of County Ordinances and its failure to complete adequate
16 environmental review under CEQA for the Project as it presently exists, including as
17 substantially changed by the so-called "Minor Site Revision" application.

18 7. The maintenance and prosecution of this action will confer a substantial benefit
19 on the public by protecting the public from environmental and other harms alleged herein and
20 by ensuring that the County abides by the procedures required by law when approving
21 projects like the Project at issue here.

22 8. Respondent County of San Bernardino ("County"), a political subdivision of the
23 State of California, acting through its various departments and officials, is responsible for the
24 Project approvals, for complying with the County's Development Code, for implementing and
25 complying with provisions of CEQA and the CEQA Guidelines, and for complying with
26 California Public Trust law, as described below. The County is the "lead agency" for the
27 Project under CEQA, and, as such, is required to conduct all environmental reviews mandated
28 under CEQA and otherwise to ensure the Project complies with CEQA, including, without
limitation all required studies for what has now been revealed to be the Developer's filling in
of Big Bear Lake starting in the early 2000's and now ongoing, contrary to the studies that led
to the issuance of the 1991 addition to the 1983 EIR. However, there has never been any EIR

1 (supplemental or otherwise) for this activity, although that is what the County is required to
2 conduct and certify as the lead agency.

3 9. Respondent San Bernardino County Board of Supervisors is the governing body
4 of the County. The Board of Supervisors conditionally approved the 1991 development
5 application and the 2014 so-called Minor Site Revision Application and is also responsible for
6 complying with the requirements of the County Code, the Health and Safety Code, CEQA and
7 the CEQA Guidelines.

8 10. Petitioner does not know the true names and capacities, whether individual,
9 corporate, associate, or otherwise, of Respondents DOE 1 through DOE 20, inclusive, and
10 therefore sue said Respondents under fictional names. Petitioner alleges, upon information
11 and belief, that each fictionally named Respondent is responsible in some manner for
12 committing the acts upon which this action is based. Petitioners will amend this Petition to
13 show these Respondent's true names and capacities if and when they are ascertained.

14 11. Real Party in Interest Marina Point Development Associates is an owner of the
15 Project and/or Project property. Petitioners are informed, and on that basis allege, that
16 Marina Point Development Associates is a general partnership located and doing business in
17 the State of California.

18 12. Real Party in Interest Irving Okovita is an individual who is an applicant for the
19 Project and is the owner of the Project and/or Project property.

20 JURISDICTION AND VENUE

21 13. This Court has jurisdiction over the matters alleged in this Petition under *Code*
22 *of Civil Procedure* §§1085 and 1094.5, and *Public Resources Code* §§21168, 21168.5 and
23 21168.9.

24 14. Venue is proper in this Court because the causes of action alleged in this
25 Petition arose in San Bernardino County, where the Project is located and where the County
26 of San Bernardino acted to implement the Project.

27 15. Petitioner has performed all conditions precedent to filing this Petition and
28 has exhausted all available administrative remedies to the extent required by law.

16. Petitioner has no plain, speedy, or adequate remedy in the course of ordinary
law unless this Court grants the requested writ of mandate to require the County to set aside
its permits for the Project and its approval of the Developer's minor site revision application.

1 In the absence of such remedies, the County's approval will remain in effect in violation of
2 State Law.

3 17. Petitioner has complied with the requirements of *Public Resources Code*
4 §21167.5 by serving a written notice of Petitioner's intention to commence this action on
5 Respondents on August 23, 2015. A copy of the notice and proof of service is attached hereto
6 as Exhibit A.

7 18. Petitioner will comply with the requirements of *Public Resources Code*
8 §21167.6 by concurrently filing a notice of his election that the County prepare the record of
9 administrative proceedings relating to this action and shall timely serve such notice on the
10 County.

11 19. Petitioner is complying with the requirements of *Public Resources Code*
12 §21167.7 by sending a copy of this Petition to the California Attorney General on
13 August 24, 2015. A copy of the letter transmitting this Petition is attached hereto as Exhibit B.

14 **STATEMENT OF FACTS**

15 20. The Project site is located on the southeastern edge of the unincorporated
16 community of Fawnskin, California. The site sits on the eastern shore of Big Bear Lake's
17 Grout Bay. Grout Bay and the surrounding area provide prime foraging habitat for bald
18 eagles, which are protected under the federal Bald and Gold Eagle Protection Act and the
19 California Endangered Species Act, and are also a California fully protected species. The only
20 bald eagle nest in Big Bear Valley is located less than one mile from the Project site.

21 21. The Project site, originally called "Cluster Pines" and since then consistently
22 known as "Cluster Pines" on public record documents, environmental impact studies and
23 submissions by the Developer in connection with the Project, was once a recreation vehicle
24 campground on Big Bear Lake.

25 23. Prior to Developer's actions, the Project site contained hundreds of native trees,
26 including roughly 400 Jeffrey pines. Moreover, a vast portion of the Project Site (at least 4.5
27 acres as of the 1970's) contained in-filled areas below the 72.4 foot contour line (the Ordinary
28 High Water Mark of Big Bear Lake) and which, as such, were and remain part of Big Bear
Lake, and, as alleged in further detail hereinafter, remain a part of the public trust because the
ownership of that acreage has never been transferred to the Developer via any legitimate or
actual deed. Moreover, since then, the Developer has admitted to permanently filling
additional lakebottom land on the western shoreline, which the Developer does not own.

1 24. In the early 1980s, the Developer proposed a large scale development project on
2 the Cluster Pines site, including on lake-bottom land. Although the County prepared an EIR
3 and approved that project in 1983, that approval had expired by 1991 under the County's
4 Development Code because the Developer never recorded a tract map for the site or otherwise
5 commenced that project.

6 25. In 1991, the Developer proposed a 133-condominium and commercial
7 "destination resort" for the site which revised the Project. In addition to erecting new
8 condominium buildings, the Project would expand the existing marina from 60 to 175 boat
9 slips, and would provide 264 parking spaces on site. The 1991 development also anticipated
10 new recreational and spa facilities. Constructing the Project would require substantial grading
11 throughout the Project site and demolition of all buildings existing onsite. However, Under
12 the Project's Final Development Plan, the Developer was to preserve 160 of the Project site's
13 original trees.

14 26. Constructing the Project also would require adding significant fill to what the
15 Developer has admitted is "lake-bottom" land. According to the materials provided by the
16 Developer in the early 1990's, the only "fill" that was to be permanently placed in connection
17 with the Project was to be put on then existing fill. In other words, the 1983 EIR and the so-
18 called 1991-1992 "supplement" or additional material did not contemplate a project that
19 involved permanent lake infill and, indeed, limited the placement of fill only to land above the
20 high water mark. Thus, (A) the prior environmental studies contemplated only the addition of
21 materials from the lake to *existing* fill; (B) the Developer now admits it has permanently in-
22 filled Big Bear Lake along the western shore in violation of the laws alleged herein; and (C)
23 this work is being done without a new EIR and in contravention of the scope of the project
24 that was the subject of the EIR certified under CEQA pursuant to which the Project is
25 proceeding.

26 27. Contrary to its representations and the scope of the operative EIR, the
27 Developer has filled in significant portions of Big Bear Lake without conducting any
28 environmental studies under CEQA and has gone well beyond the scope of the materials it
provided with the later 1991/1992 so-called "supplement" to the 1983 EIR. These materials
also establish that the changes to Big Bear Lake caused by the current drought require that a
new or supplemental EIR be prepared and certified under CEQA.

1 28. Respondent County has never certified any EIR under CEQA approving these
2 activities. Instead, Respondent County has unlawfully permitted the Developer to obtain tacit
3 or underground approval of these activities through the so-called "Minor Site Revision"
4 application, in contravention of CEQA and the Public Trust law.

5 29. The County has never prepared an EIR for the Project in its current substantial
6 changed state, but instead relied on the EIR for the 1983 project and a so-called "supplement"
7 to the 1983 EIR from the 1991-1992 time period. As alleged hereinafter, this does not meet
8 the County's environmental review obligations under CEQA based on the current scope of the
9 Project and the current conditions at the Project site.

10 30. On December 9, 1991, the County (1) issued a tentative map for the Project site,
11 and (2) approved the proposed phased planned development project and issued a Planned
12 Development Permit, subject to numerous conditions, which the Developer has not met or has
13 flaunted with the County's tacit approval.

14 31. On April 28, 1992, County staff added further Conditions of Approval to the
15 1983 Conditions of Approval, so that they included, *inter alia*:

- 16 a. Condition 2, which requires the Developer to either record a tract map or obtain
17 building permits within five years of the approval given in 1991, and within
18 each succeeding five year period.
- 19 b. Condition 6, which prohibits construction activities on the site between
20 December 1 and April 1 to minimize disturbances to bald eagles during the
21 winter foraging season.
- 22 c. Condition 14, which requires the Developer to obtain a tree removal plan from
23 the County's Building and Safety Department before disturbing or removing
24 protected trees and plants.
- 25 d. Condition 15, which requires the Developer to obtain permits before handling
26 hazardous waste and materials.
- 27 e. Condition 16, which requires the Developer to conduct a vector control survey
28 before the County will issue any demolition permits.
- f. Other conditions more specifically alleged hereinafter.

 32. The Developer did little to proceed with the Project after the County's 1991
approval and the Project site sat vacant for the balance of the decade. Even though it never

1 obtained a new project approval from the County, the Developer recorded a final tract map on
2 December 21, 2000, nine years after the approval of the Planned Development Permit.

3 33. Throughout 2002 and 2003, the Developer and its contractors commenced
4 multiple un-permitted activities at the Project site, prompting various agencies to halt the
5 Developer's work on the Project. For instance, in May 2003, workers began grading the site
6 without performing required vector control, causing the County to suspend the Developer's
7 grading permit. The Developer also conducted multiple dredge and fill operations in Big Bear
8 Lake without permits, resulting in the Big Bear Municipal Water District and the Army Corps
9 of Engineers intervening to halt the work.

10 34. Without limitation, the following time-line reflects:

- 11 A. **Early 2000s** – MPDA begins illegal infill of Big Bear Lake, apparently in an effort to
12 reshape the western shoreline from curved to straight, based on what the Developer has
13 since admitted are substantially changed conditions in the western portion of shoreline
14 of Big Bear Lake at the Project site. The infill is unauthorized and illegal (see *Center*
15 *for Biological Diversity v. Marina Point Development Co.* (9th Cir. 2008), 535 F.3d
16 1026)
- 17 B. **September 10, 2002** – MPDA's Section 404 Permit expires after three extensions.
18 MPDA proceeds with the grading and infill without a permit. This unauthorized filling
19 of waters of the U.S. after September 10, 2002 violated Section 301 of the Clean Water
20 Act (CWA), 33 U.S.C. §1311, in addition to violating CEQA.
- 21 C. **October 2002** – MPDA conducts further grading, including the creation of roads on
22 the property, and removal of willows in the wetlands without a 404 permit.
- 23 D. **July 23, 2003** – USACE issues a Cease and Desist Order for unauthorized activities
24 consisting of removal of riprap along the shoreline and construction of a trench in the
25 lakebed within Grout Bay. According to the USACE Report, some of the unauthorized
26 work by the Developer (for which it was cited) was adding "fill material into 0.46
27 acres of water of the United States" and placing additional fill in 2.90 acres of Big
28 Bear Lake in 2003 and, in 2005, the "permanent discharge of fill material" into Big
29 Bear Lake on the western shore. All activity by Marina Point regarding Big Bear Lake
30 stopped as it had to.
- 31 E. All of this infill was done without any EIR and without the lead agency adopting any
32 findings of the USACE. As confirmed by the Ninth Circuit opinion involving the

1 parties to this appeal, all of this work exceeded the scope of the project. *Center for*
2 *Biological Diversity v. Marina Point Development Co.* (9th Cir. 2008), 535 F.3d 1026.
3 1030.

4 F. **October, 2003** – MPDA issues ICMO 1, allowing remedial measures including
5 construction of a riprap 3 feet below the lakebottom. It submits a study analyzing water
6 levels and bald eagle foraging based on hydrological conditions data gathered from
7 1977 to 2003. The Study Area polots were chosen “based on the most probable level of
8 the lake during the Bald Eagle wintering season.” MPDA represents that the
9 remediation measures will result in a 1.53 acre increase in Bald Eagle foraging habitat.
10 MPDA Submission. The work is to be completed by December 1, 2003.

11 G. **October 16, 2003** – Based, in part, on the study MPDA submitted the previous month,
12 USACE issues an Interim Corrective Measure Order (ICMO) approving of the
13 MPDA’s proposed remediation measures and requiring it to implement rock
14 stabilization and remove silt that had eroded into Big Bear Lake. The deadline for this
15 remedial work is set for December 1, 2003.

16 H. **December 2003** – The deadline for the work required as part of ICMO 1 passes.
17 Despite a three-week extension, MPDA still does not complete the required remedial
18 work including the riprap and the erosion control measures while proceeding to infill
19 Big Bear Lake. MPDA employs measures not permitted that exceed the central
20 purpose of the ICMO, setting itself up for another basis upon which to request
21 permission to do further “remedial” work.

22 I. **January 2005** – USACE issues a General Permit for “emergency repairs” in response
23 to MPDA’s application to remove silt from Big Bear Lake. As long as the work is in
24 compliance with the General Permit, states USACE, an individual permit is not
25 required. The permit also requires that MPDA make daily reports by a qualified
26 biologist. USACE specifically states that a general permit “does not obviate the need
27 to obtain other Federal, State, or local authorizations as required by law.” However,
28 MPDA once again fails to actually protect the site from erosion and the shoreline
continues to erode. This would not have occurred if the ICMO work had been
completed.

J. **September 28, 2005** – USACE grants MPDA’s request to continue with “previously
authorized” maintenance work by issuing ICMO 2. The work includes rock

1 stabilization of the 400-foot length of lakeside of the jetty arm around the marina and
2 the placement of a geocellular confinement system on the west side. The deadline for
3 completion is December 1, 2005.

4 K. **November 18, 2005** – USACE issues another ICMO (ICMO 3) at MPDA’s request to
5 extend the length of the lakeside of the jetty arm around the marina by 200 feet to the
6 west stating, “Regrading and compaction of the shoreline and jetties is limited to the
7 work described in your November 15, 2005 letter and its enclosed drawings.” The
8 drawings show lake infill, labeled “BERM”, up to the outer perimeter of the Tract
9 Map. This infill was obviously never the subject of any EIR since MPDA did not own
10 the land in 1983 and had previously represented (including in 1991) that there would
11 be infill only on land above the high water mark. The deadline for the work is
12 December 1, 2005.

13 L. **November 21, 2006** – USACE issues ICMO 4, which authorizes additional
14 remediation measures. The work is to be completed by December 1, 2006.

15 35. The ICMO’s and documents submitted by Polizzi confirm what the Developer
16 has now admitted under oath in discovery in Mr. Polizzi’s case number CIVDS1403497. Even
17 though some of this activity appears to have been authorized by USACE, its findings were
18 never formally adopted by the County.

19 36. The Developer has permanently in-filled Big Bear Lake and reworked the
20 western shore without conducting the required environmental studies under CEQA, and with
21 the intention of selling to unsuspecting members of the general public lake bottom land that
22 the Developer does not have clear title to and which can under the San Bernardino
23 Development Code and a recorded 1983 Agreement, be improved only with six residential
24 home-sites, at the very most.

25 37. It appears that the Developer’s so-called “remedial work” functioned as a guise
26 for the illegal infill. Whether or not that is true, the fact remains that even if USACE was fully
27 aware of the extent of the infill, all of this was done without a new EIR certified under CEQA
28 by the lead agency, without the lead agency adopting any findings of the USACE and in
contravention of the prior environmental studies, which contemplated only the addition of
materials from the lake to *existing* fill. In short, the 1983 EIR and the 1991-1992 addition did

1 not contemplate a project that involved additional permanent lake infill and, indeed, limited
2 the placement of fill only to land above the high- water mark.

3 38. Polizzi's interests in asserting these claims extend well beyond his rights as a
4 member of the general public. This is the same in-fill that has obstructed Mr. Polizzi's lake
5 access and wreaked environmental havoc at the Project site in a manner not within the scope
6 of the project EIR.

7 39. The Developer claims to disagree regarding the impact of these activities on the
8 environment. This is why further studies are required by CEQA, given the significant changes
9 caused by the in-fill of the lake and what Mr. Okovita testified in deposition were significant
10 changes in the Western shore of the Project site caused by erosion and lake water inundation.

11 40. In 2004, Friends Of Fawnskin sued the Developer in federal district court for
12 violating (1) the Clean Water Act through dredge and fill activities in Big Bear Lake and (2)
13 the federal Endangered Species Act by damaging the critical bald eagle habitat. During this
14 litigation, from April 16, 2004 until September 9, 2009, the district court enjoined the
15 Developer's work at the Project site. The district court found that work at the Project site
16 violated both the Endangered Species Act and Clean Water Act. The court of appeals
17 overturned the district court's Clean Water Act ruling on jurisdictional grounds, but left the
18 district court's findings of fact in place. The Endangered Species Act litigation became moot
19 when the bald eagle was delisted from the federal Endangered Species Act in 2007.

20 41. In 2010, the California Department of Forestry issued a timber harvest permit
21 exemption for the Developer to cut under 3 acres of trees on the Project site. Only days after
22 the Department of Forestry inspected the area marked for tree cutting under the exemption,
23 workers at the site cut a frequently-used bald eagle perch tree outside of the area designated
24 for tree cutting. Similarly, the Developer has regularly violated Condition of Approval 6 by
25 performing construction activities during the bald eagle foraging season.

26 42. By 2011, the Developer had yet to seek building permits for the Project site or
27 obtain a new planned development approval from the County. As a result, the Developer's
28 two-decade old phased planned development approval had long expired. Despite this fact,
without providing public notice or opportunity to comment, the County issued a new grading
permit for the Project site on September 28, 2011 and a revised grading permit on October 2,

1 2012. The County also issued a boundary wall permit for the site in early October 2012, again
2 without any notice to the public.

3 43. In mid-2013, the Developer began advertising condominium units to the public
4 that substantially differed in both size and design from the previously-approved 1991
5 development plan.

6 44. On March 18, 2014, the Developer submitted a so-called "Minor Site Plan
7 Revision" application to the County to obtain approval for its substantial changes to the
8 Project. The application did not disclose many of redesigned project components that the
9 Developer was advertising to the public, and instead inaccurately described the proposed
10 changes as only "minor."

11 45. Although an adjoining neighbor, Mr. Polizzi was improperly not given notice of
12 the so-called "Minor Site Plan Revision" application. He only learned of it in March 2015, at
13 which time he became actively involved in opposing it.

14 46. On April 9, 2014, comments were submitted to the County on the Developer's
15 new application, stating that (1) the development approval had expired and the County was
16 required to issue a new planned development permit for any further work at the site, and (2)
17 that substantial changes to the project and the environment, along with new information about
18 environmental impacts, required the County to conduct new or additional environmental
19 review under CEQA.

20 47. Polizzi thereafter submitted his own comments in connection with appeals of
21 the approval of the so-called "Minor Site Plan Revision" application, which approval had
22 occurred before Polizzi was notified of the existence of that application. Many of the
23 comments submitted by Polizzi are similar to what he alleges in this Petition.

24 48. Without limitation, the so-called "Minor Site Plan Revision" application did
25 not disclose that the Developer was using that process to surreptitiously seek approval of the
26 in-fill of portions of Big Bear Lake. The so-called "minor site plan revision" sought after the
27 fact permission to build on or sell newly filled lakebottom land. That application is a
28 substantial change, and has never been the subject of any EIR under CEQA, has never been
29 certified by the lead agency, and contradicts the EIR that was certified and the studies on
30 which that EIR was based.

31 49. The actions of the County in approving the so-called "Minor Site Revision"
32 application were arbitrary and capricious and in violation of CEQA.

1 50. Without limitation, the County unlawfully approved the so-called "Minor Site
2 Revision" application although it knew:

3 A. What the Developer proposed with respect to the Project in March 2014
4 is not the proper subject of a Minor Site Revision;

5 B. The Developer permanently discharged fill material onto lake-bottom
6 land in connection with the Project;

7 C. The Developer misrepresented the dimensions of the land that is the
8 subject of the Minor Site Revision Application;

9 D. The Developer does not and never has owned all of the land that was
10 subject to the in-fill;

11 E. According to the Developer's deposition testimony, he and the County
12 agreed to use the so-called "Minor Site Revision" application as a way to
13 surreptitiously eliminate some of the Project's mitigating conditions without
14 conducting any further review under CEQA.

15 F. According to the Developer's deposition testimony, he and the County
16 agreed to use the so-called "Minor Site Revision" application as a way to obtain a new
17 set of project conditions that would entirely eliminate all of the previous Project
18 conditions, including it's mitigating conditions without conducting any review under
19 CEQA.

20 G. The Developer had conducted unauthorized dredging at the project site at
21 times during the time frame January 1, 2000 through December 31, 2004;

22 H. The Interim Corrective Measure Order that the United States Army
23 Corps of Engineers issued during October 2003 was for remedial work only;

24 I. Legal title to the lake-bottom land that is included in the project site is
25 held by the Big Bear Mutual Water District.

26 J. The Developer has violated numerous mitigating conditions imposed by
27 the County;

28 K. Portions of some of the home sites for sale in Lot 6A of the Revised Site
Development Plan dated 10-10-14 and submitted by the Developer are below the
Ordinary High Water Mark (sometimes referred to as "OHWM") of Big Bear Lake;

1 L. The Developer has been consistently violating the scope of state and
2 federal agency approvals and disregarding mitigating conditions imposed by the
3 County since the project's inception;

4 M. The so-called Minor Site Revision Application is not the proper vehicle
5 to apply for the changes the Developer wished to make since, among other things, it
6 does not adequately reflect the environmental changes that are the result of the
7 Developer's repeated code violations and failure to comply with conditions and
8 directives since 1983/1991;

9 N. Legal title to the lake-bottom land that is included in the project is held
10 by the Big Bear Mutual Water District, and not by the Developer;

11 O. The Water District has never applied for any permissions to modify its
12 land or conducted any studies concerning its land or obtained an operative EIR that has
13 been certified under CEQA for the in-fill of its lakebottom land.

14 51. Many of these violations have resulted in a baseline different from the one
15 considered when the project was originally approved and whose characteristics have not been
16 disclosed as part of the Minor Site Revision Application or any other application subject to
17 public review and comment.

18 52. Nor did the so-called "Minor Site Plan Revision" application disclose that the
19 Developer was using that process to surreptitiously seek the removal of mitigating conditions
20 (including the requirements to provide water to the Project).

21 53. The so-called "Minor Site Plan Revision" application admitted that it proposed
22 to add to the Project "10 site condominium units [which] range in size from 12,000 to 14,000
23 square feet with buildable footprints of approximately 4,500 square feet" (later changed to
24 buildable footprints of approximately 5,000 square feet). This vastly expanded project as a
25 matter of law constituted a significant change to the scope of the project, and the County's
26 approval of it without any environmental review was arbitrary and capricious.

27 54. Specifically, the reduction in the amount of units in the Project from 133 to 110
28 does not represent an across the board reduction, as the County arbitrarily and capriciously
concluded. The County abdicated its responsibilities by simply counting the number of units,
while ignoring the cumulative impacts that the massive increase in square footage would have
on the Project and the fact the Project revisions failed to comply with the San Bernardino

1 County Development Code.

2 55. Without limitation:

3 A. The square footage of residential living spaces in the Project has increased by
4 between thirty to forty percent;

5 B. Staff's report is fundamentally flawed and characterized by numerous lapses in
6 logic and erroneous assumptions. As one of many examples, Staff stated that there was an
7 across-the-board reduction in project impacts because the amount of units had decreased. This
8 was expressed as a decrease in units per square acre from 10.6 to 9.6 per square acre, "thereby
9 lessening every impact proportionally." It was also expressed as "an across the board
10 reduction in the impacts of the project due to a decrease in density." This ignored, among
11 many other things, changes that amount to an increase in impacts, for instance, units that were
12 previously between 1,400 to 1,800 square feet condominium units being replaced by single
13 "units" approximating ranging between 12,000 to 14,000 square feet each according to the
14 Developer's own submission;

15 C. This statement also ignored that the square footage of the entire project has
16 dramatically increased well above the 20% threshold that *Ventura Foothill Neighbors v.*
17 *County of Ventura* (2014) 232 Cal.App.4th 429 found required the preparation of a
18 supplemental EIR. Contrary to Staff's report, there has been an obvious increase in density in
19 this project. One needs only to use a calculator to confirm that point.

20 D. Staff erroneously declined to consider the massive impact that adding over
21 100,000 square feet of residential space to the Project (on what has been vacant land for over
22 15 years) would have on the environment.

23 56. There were also significant changes to the so-called "Minor Site Plan Revision"
24 application even after the March 2014 submission. For example, whereas the ten new luxury
25 homes-sites that were the subject of the March 2014 so-called "Minor Site Plan Revision"
26 application were supposedly going to average 4,500 square feet each on the bottom floor
27 (Developer's March 2014 letter, Exhibit D) they were changed in October 2014 to be 5,000
28 square feet on the bottom floor and, in the instance of the three story, 35-foot tall home
closest to Mr. Polizzi, 5,500 square feet on the bottom floor. Because each of the houses can
be built up to 35-feet, the actual size of each will average up to 13,750 square feet for a three
story home. This significant change can be seen by reading the very small print of the

1 County's version of Developer's 10-10-14 submission. The cumulative square footage is far
2 in excess of a 20% increase. Indeed, the Developer's own submission admits that each of
3 these ten units will range between 12,000 and 14,000 square feet; thereby adding between
4 120,000 to 140,000 square feet of so-called single family residential mansions to the Project
5 via a so-called "Minor Site Revision" application.

6 57. The so-called "Minor Site Plan Revision" application also ignored numerous
7 changed conditions, including:

8 A. Changed climate conditions, including prolonged drought and accompanying
9 water shortages;

10 B. The Developer has substantially changed the Project by including ten single
11 family residence home-sites on two of the approved lots, resulting in 80,000 square feet being
12 added to the Project;

13 C. The Developer is no longer able to properly revegetate, both because of the
14 current configuration of the Project and the vastly decreased supply of water;

15 D. The greatly increased hazards of fire in the region;

16 E. As admitted by the Developer, there has been substantially changed conditions
17 along the western shore of Big Bear Lake due to erosion and the effects of water since the
18 most recent EIR;

19 F. Change from campground to vacant land, as of no later than 2001;

20 G. There has been a substantial loss in lake volume;

21 H. Portions of Big Bear Lake have been eliminated by the diversion of large
22 volumes of water, combined with prolonged drought conditions;

23 I. There now will inevitably be diversion of water onto Polizzi's adjacent property
24 because the Developer has altered adjacent properties, in violation of the conditions of
25 approval;

26 J. The Developer has also substantially reconfigured the Lots;

27 K. There are now less trees on the project site than contemplated and required by
28 the EIR;

L. Changes in Bald Eagle population;

M. Serious issues involving failure of recently installed fill and settling and
ponding in constructed roadways;

- 1 N. Substantial changes to buildings;
- 2 O. The Project's impact on adjoining properties has greatly changed.
- 3 58. Further, the County acted arbitrarily and capriciously in approving the so-called
- 4 "Minor Site Plan Revision" application because the Project that is its subject cannot be built
- 5 in compliance with the terms and conditions of approval or the project documents because,
- 6 without limitation:
- 7 A. The Project now includes five single family residences per lot (ten on two lots),
- 8 in violation of the San Bernardino Development Code;
- 9 B. The Project omits the required 10 foot planter strip screen along the northern
- 10 boundary of the Project (this omission is significant because given what the Developer's co-
- 11 called "Minor Site Revision" states, the "mandatory setback[s]" of "30 feet between units"
- 12 cannot be met if the required 10 foot planter strip screen is included, if as the Developer's site
- 13 plan shows, ten single family residences are constructed in the two lots, as arbitrarily and
- 14 capriciously approved by the County;
- 15 C. The Project includes placing plants into the public right-of-way beach access
- 16 easement, that is below the raised portion of the property, in violation of Condition Number
- 17 62 of the 1983 EIR which states "Trees, irrigation and landscaping shall not be installed on
- 18 public right-of-way;"
- 19 D. The on-site water supply required by the 1992 EIR conditions of approval has
- 20 been omitted, although this is a mitigating condition;
- 21 E. There are now less trees on the property than contemplated and required by the
- 22 EIR;
- 23 F. Easements of record on the property have not been extinguished or relocated, as
- 24 required by the Conditions of Approval (instead, the revised Project shows structure being
- 25 built over these extant easements);
- 26 G. The Developer has circumvented the approval of an eight lot subdivision (only
- 27 six lots of which can be built on) by including ten single family resident homesites on two
- 28 lots, thus effectively creating a total of seventeen lots;
- H. As well, the Developer has expanded the clubhouse and added private boat
- docks in Big Bear Lake after the project EIR issued;
- I. The Developer has violated Large Scale Housing Project Conditions of
- approval 2, 4, and 5 requiring prevention of off-site sedimentation and erosion at all times;

1 J. Due to the drought, the Developer cannot properly revegetate, as the Conditions
2 of Approval require;

3 K. The Developer has not met the condition that defects in landfill be corrected;

4 L. The requirement that the project be constructed in six phases no longer can be
5 met because the developer is now selling Phase One as vacant lots, rather than constructing
6 condominiums;

6 M. The perch trees required by the EIR have been removed;

7 N. Adequate measures have not been taken to prevent run-off, way, in violation of
8 the Conditional Approval;

9 O. The Developer now intends to install trees and irrigation systems are now on
10 public rights of way, in violation of the Conditional Approval;

11 P. The 1983 EIR required buffer for bald eagles by Stanfield Pass is no longer in
12 the plan, in violation of the Conditional Approval;

13 Q. The so-called "public beach" is now 20 feet above Big Bear Lake and the Lake
14 is thus not safely accessible for public use, in violation of the Conditional Approval;

15 R. The Project omits the required Fire Department approvals for the new
16 structures, in violation of the Conditions of Approval.

16 59. With one exception, the County claimed that none of the project conditions was
17 waived. However, this is contradicted by the new project conditions issued with the approval
18 of the so-called "Minor Site revision" application, which illegally waive environmental
19 mitigation measures without findings and without such a waiver even being requested in the
20 so-called "Minor Site revision" application. Moreover, even if these waivers are upheld, many
21 of the remaining conditions will surely have to be modified or waived for the project to be
22 built as depicted on the site plan and other documentation, or thereby resulting in further
23 cumulative significant impacts and inviting further litigation. This is why the Developer has
24 asserted the conditions issued with the approval of the so-called "Minor Site revision"
25 application completely supercede the prior project conditions. In short, the Developer has no
26 intention of complying with the prior conditions and if his testimony is credited, the County
27 has waived all of the prior conditions in approving the so-called "Minor Site revision"
28 application, even though the opposite was represented to the Board Of Supervisors when it
recently voted to deny the appeal.

1 60. On April 9, 2014, Friends of Fawnskin, other concerned environmental
2 organizations, and members of the public submitted comments to the County on the
3 Developer's new application, stating that (1) the development approval had expired and the
4 County was required to issue a new planned development permit for any further work at the
5 site, and (2) that substantial changes to the project and the environment, along with new
6 information about environmental impacts, required the County to conduct new or additional
7 environmental review under CEQA.

8 61. In April 2014, the Developer and its contractors began bulldozing and actively
9 grading the Project site, including riparian areas adjacent to Big Bear Lake. This activity
10 destroyed important riparian habitat, including numerous willows, which provide vital habitat
11 for the southwestern willow flycatcher, a federally-listed endangered species.

12 62. In early May, 2014, the Developer commenced a new tree-cutting operation on
13 the site, cutting numerous large pine trees. As a result of the latest tree cutting activities,
14 fewer than 150 trees remain on the Project site.

15 63. These events have taken place in a broader context; specifically, the ever-
16 expanding scope of a project in Fawnskin that bears little resemblance to the project that was
17 originally approved in 1983. For the past 20 years, under the guise of minor, discretionary
18 revisions, the ever-expanding scope of what was originally slated to be a lakefront marina and
19 residential development, and what was originally framed as an environmentally-sensitive
20 housing project that would not greatly add to the density or impact on the environment, has
21 snowballed into an entirely new project that involves a major reconfiguration of the land
22 adjoining the lake. All of these co-called "minor modifications" have used stale baseline data.
23 This is the subject of a number of reported opinions, including *Center for Biological Div. v.*
24 *Marina Point, et al.* (9th Cir. 2009) 566 F.3d 794, which reversed on grounds of inadequate
25 notice and mootness the lower court's determination that certain parties herein violated the
26 Federal Clean Water Act (inadequate notice) and the Endangered Species Act (mootness), but
27 which did not disturb the District Court's findings of fact. It is also the subject of a pending
28 First Amended Verified Petition for Writ of Mandate CEQA pending in this Court as Case
Number CIVDS1409159 captioned *Friends of Bear Valley and Center on Biological
Diversity v. County of San Bernardino, Board of Supervisors For County of San Bernardino
et al.*, in which certain parties herein are Real Parties in Interest.

1 64. The Project also involves the in-fill of portions of Big Bear Lake and the raising
2 of the elevations of so-called lake bottom land that is not even owned by the Developer, as
3 alleged in greater detail herein.

4 65. The issues raised in this Petition implicate California's strong public policy
5 encouraging preservation of open spaces in their natural condition and the design and
6 implementation of appropriate environmental mitigation measures for Big Bear Lake.

7 66. Big Bear Lake has been identified as impaired by the Environmental Protection
8 Agency and is subject to numerous plans and requirements. The Regional Water Board has
9 listed Big Bear Lake as water quality limited in accordance with the Clean Water Act. Section
10 303(d) of the Clean Water Act requires the establishment of a Total Maximum Daily Load
11 (TMDL) for the pollutants causing the impairment. State law requires an implementation plan
12 and schedule to ensure that the TMDL is met and that compliance with water quality
13 standards is achieved. Given the complex nature of Big Bear Lake and its impaired condition,
14 the implementation plan for Big Bear Lake specifies the development of a Lake Management
15 Plan to address competing uses, nutrient reduction strategies and other plans to control
16 nutrient discharges and aquatic plants as appropriate. Construction and land development
17 have been identified as a probable source contributing to the impairment of Big Bear Lake.

18 67. As well, a complicating factor is that the Santa Ana River Basin (of which Big
19 Bear Lake forms a significant component) has been suffering from a prolonged drought for
20 many years. This has been so significant as to have resulted in a federally approved
21 amendment to the Nutrient TMDL Daily Load (TMDL) to take into account the dry
22 hydrological conditions for Big Bear Lake.

23 68. Dry conditions and lack of precipitation due to anthropogenic climate change have
24 been posing urgent problems in California for several years – drinking water supplies were,
25 and still are, at risk in many California communities and the risk of wildfires across the state
26 has greatly increased. Although Big Bear Lake residents get most of their water from
27 precipitation and melted snow, as of January 2014, snowpack in California's mountains was
28 approximately 20 percent of the normal average.

 69. In January 2014, Governor Jerry Brown declared a drought emergency, noting that
“[e]xtremely dry conditions have persisted since 2012 and may continue beyond [2014] and

1 more regularly into the future, based on scientific projections regarding the impact of climate
2 change on California's snowpack". Referring to the situation as one of "extreme peril" to the
3 safety of persons and property in California due to water shortage and drought conditions,
4 Governor Brown called for a 20% cut back in water use by all citizens. He also placed a
5 moratorium on non-essential landscaping projects at state facilities and on state highways and
6 roads. Governor Brown's Proclamation also called on local water agencies to update their
7 legally required urban and agricultural water management plans in order to plan for extended
8 drought conditions. "We ought to be ready for a long, continued, persistent effort to restrain
9 our water use," he said. This year, 2015, marks the second straight year that the state
10 Legislature has acted on the emergency drought. The water available for the Fawnskin area
11 (and thus for the Project) has been greatly reduced.

12 70. Recently, average water use in the Fawnskin area has grown to 250 gallons per
13 day for every water connection. Existing water infrastructure is already insufficient to meet
14 current fire flow requirements. Indeed, Big Bear Valley Community Services District adopted
15 mandatory outdoor water use restrictions in August 2014.

16 71. Many of these environmental changes are reflected in the San Bernardino County
17 General Plan. Adopted in 2007, the General Plan reflects the County's current development
18 concerns and standards.

19 72. The 1983 EIR concluded that the Project would increase overdraft of the Basin by
20 3%. Although there are fewer units contemplated by the plan approved by the so-called
21 "Minor Site revision" application, the square footage of the structures comprising the Project
22 has greatly increased (by more than 125,000 square feet, which will be occupied by water
23 using residents) and the project has had added to it many water-dependent amenities that were
24 not part of the 1983 EIR, including numerous spas, an indoor-outdoor pool, a pond that
25 converts to an ice skating rink, a "Gazebo with a water feature", a restaurant, banquet
26 facilities, or gourmet food shop. Therefore, the water used by the project has greatly
27 increased. The impact of these changes on the water supply and the increased water usage
28

1 was not part of any later analysis.

2 73. Instead of analyzing this issue, as it was required to do, Respondent County
3 arbitrarily and capriciously used the so-called "Minor Site Revision" application to eliminate
4 mitigating conditions imposed by the Project EIR to ensure an adequate water supply to the
5 Project.

6 74. Specific to the Mountain Region, which includes Fawnskin, the General Plan
7 requires that developers, when feasible, substantially maintain existing percolation, establish
8 controls for soil erosion and sedimentation, use reclaimed wastewater from mountain sewage
9 systems, maintain existing percolation and the surface water runoff rate by discouraging the
10 paving of large surface areas, and create recharge areas for overdrafted basins offsetting
11 increased consumption attributable to new development. The Project is inconsistent with
12 these requirements.

13 75. Moreover, as the Developer has admitted, a portion of the project site that the
14 Developer is modifying under an incorrect claim of ownership or improper exercise of
15 dominion and control lies below the mean high water mark of Big Bear Lake and thus is
16 subject to flooding and inundation of waters of Big Bear Lake, which are subject to change
17 periodically through the year due to weather conditions and stormwater and snowmelt run-off
18 from adjoining property. Plaintiff is informed and believes and thereon alleges that this is why
19 the Developer has raised a substantial portions of lake-bottom land, in-filled futher substantial
20 portions of Big Bear Lake contrary to the studies that resulted in the 1991 EIR document, in
21 violation of the rights of Polizzi, the rights of the general public and the rights of the Big Bear
22 Municipal Water District ("Water District"), during a time when Big Bear Lake is at a low
23 point, almost twelve feet below its normal level.

24 76. The Developer's actions also conflict with the rights of the general public and of
25 the Big Bear Municipal Water District (which is responsible for the overall management of
26 Big Bear Lake on behalf of the public and which purchased the lake bottom in 1977) as
27 alleged herein.

28

1 77. The Developer has admittedly in-filled substantial portions of Big Bear Lake in
2 the area without conducting any environmental studies under CEQA. As alleged herein, the
3 Developer is engaging in these activities on property that is, in fact, lakebottom land and
4 property to which the Developer does not have clear title.

5 78. Real Parties' elevation of the Project site, the in-fill of lakebottom acres and Real
6 Parties' elevation of the adjoining lot and the public beach as alleged herein violates CEQA,
7 as well as the rights of the general public and the rights of the Big Bear Municipal Water
8 District.

9 79. Without limitation, Polizzi is informed and believes and thereon alleges that
10 raising the elevations of the Property will also result in encroachments in areas below the
11 level of the 72.4 foot contour line that is not owned by the Developer or areas to which
12 Developer does not have clear title. Polizzi is further informed and believes and thereon
13 alleges that the Developer's threatened and/or intended actions will impair the separate
14 "easement along the high water line of Big Bear Lake, twenty feet in width, measured from
15 the said high water line inland, solely for such purposes, reasonably related to the ownership
16 and management of said lake..." that is held by the Bear Valley Mutual Water Company, the
17 successor to whom is the Big Bear Mutual Water District.

18 80. Per recorded documents that apply to the Project site and adjoining properties, the
19 72.4 foot contour line is meant to describe when Big Bear Lake is "full" within the meaning
20 of the grant deed by which Real Parties claim title. Per these documents, "the said contour
21 line is located at the same elevation and in the same horizontal plane as the top of the coping
22 of the arches commonly known as Nos. 6, 7, 8, 9 and 10 of the second or new Bear Valley
23 Dam and is also located at an elevation of seventy-two and four-tenths feet above the datum
24 plane by which the contours of said Reservoir have been customarily measured and
25 computed; said datum plane being located at a point fifty-six feet lower in elevation than the
26 top of the coping of the old or first Bear Valley Dam.

27 81. Some or all of the Property below the Ordinary High Water Mark in the area of the
28 Project Site is owned by the Big Bear Mutual Water District, which holds that property as part

1 of the public trust. The Developer's development and filling activities admittedly extend well
2 beyond the 72.4 foot contour line, although there has never been any EIR under CEQA and
3 certified by the Respondent County for this scope of activity.

4 82. Also, all studies used in connection with this project, including the MPDA's bald
5 eagle study, are outdated.

6 83. California has been experiencing a severe drought for the last several years. This
7 project is being allowed to continue under the wishful fiction that time stands still and it was
8 manifestly capricious to approve the Minor Site Revision Plan Application under the illusion
9 that the environmental conditions at the site are the same as they were in 1983 or even in
10 2003. Climate change as well as MPDA's own activities at the project site belie such an
11 absurd assertion.

12 84. For instance, the MPDA, the Bear Valley Mutual District, the U.S. Fish and
13 Wildlife Service, and the California Department of Fish and Game (CA F&G), all agree that
14 the Bald Eagle forages on fish and water fowl that live and feed in waters 0 to 50 feet in
15 depth.

16 85. In issuing ICMO 1 in October 2003, USACE was apparently concerned that
17 certain immediate shoreline protection activities might have an effect on the shallow water
18 foraging habitat of the Bald Eagle's winter range at Big Bear Lake.

19 86. To determine the most probable level of the Lake during the Bald Eagle wintering
20 season, MPDA conducted an analysis of how the shoreline protective activities would affect
21 the bald eagle's foraging habitat, defining shallow waters as 0 to 6 feet in depth. At that time,
22 according to the District, the average rise in the lake level from winter rains and spring thaw
23 was 3-5 feet under "average" rainfall amounts.

24 87. MPDA concluded that there would be a 1.53 acre-increase in shallow waters
25 during the wintering season. However, much of what was adjacent lakebottom land at that
26 time in 2003 is now dry land. This is presumably due, in large part, to the severe drought that
27 has plagued southern California since 2011. It is also due to the fact the MPDA has
28 permanently in-filled a substantial portion of the western shore of the lake at the project site.

1 88. As of July 2015, Bald Eagles are still endangered under state law. Furthermore,
2 the bird is still be protected by the Migratory Bird Treaty Act and the Bald and Golden Eagle
3 Protection Act. Both laws prohibit killing, selling or otherwise harming eagles, their nests, or
4 eggs. The Developer's in-fill activities that exceed the scope of any EIR under CEQA have
5 destroyed prime feeding and foraging areas for the Bald Eagle.

6 89. Furthermore, since October 2003, MPDA obtained a Streambed Alteration Permit
7 (SAP) from CA F&G in 2011 that authorized a "Project" that included "the completion of
8 shoreline protection... various dredging within and adjacent to the former marina, and the
9 completion of a jetty arm." The shoreline protection on the western shoreline required 5,420
10 cubic yards of fill below the ordinary high water mark (OHWM) and 423 cubic yards of
11 riprap below the OHWM.

12 90. The construction of the project was slated to impact 8.29 acres of lakebed, open
13 water and associated vegetation and habitat including 0.22 acres of montane riparian scrub
14 and 2.89 acres of aquatic vegetation. The California Department of Fish And Game ("CA
15 F&G") acknowledged that the project could "potentially substantially adversely affect"
16 existing fish and wildlife resources as well as result in the alteration or loss of foraging,
17 spawning/nesting/breeding, and refuge habitat and imposed many protective and mitigatory
18 measures and conditions to protect the water and surrounding habitat.

19 91. The SAP states, "This Agreement does not relieve the Permittee or any person
20 acting on behalf of the Permittee, including its officers, employees, representatives, agents, or
21 contractors and subcontractors, from complying with other applicable statutes..."

22 92. However, the in-fill authorized in the SAP was not subject to environmental
23 review. Moreover, the onsite restoration activities required for mitigation of the "potentially
24 substantial[] adverse[] affect" on fish and wildlife, including covering the shoreline with
25 native species, was to be completed no later than December 2012. (The requisite fisheries
26 habitat enhancements were to be completed within 30 days of project completion.)

27 93. The aggregate sum of activities approved in connection with all of these interim
28 orders and permits over the past 20 years has had extensive and invasive implications. The
issuance of a Lake or Streambed Alteration Permit alone automatically triggers

1 environmental review under the CEQA. However, in connection with Marina Point, this
2 State's environmental review requirements have not been acknowledged since 1991.
3 Therefore, nothing post 2011 can possibly hope to be characterized as a minor site revision.

4 94. Mr. Polizzi since has been attempting to raise these issues since March 2015.
5 However, his due process rights have been violated numerous times in connection with the
6 Marina Point Development. Although Mr. Polizzi bought property directly adjacent to the
7 Project development site in 2004, and was already in litigation with the Developer, he did not
8 receive his first written notice regarding the project changes until March 26, 2015, after the
9 so-called "Minor Site revision" application was approved.

10 95. Mr. Polizzi's His rights were further jeopardized by Planning Commission Staff's
11 failure to produce to Mr. Polizzi all of the documents that were the subject of the Minor Site
12 Plan Revision Application, including the grading plan as well staff's failure to read Mr.
13 Polizzi's letter before making its decision to recommend approval of the Minor Site Plan
14 Revision Application to the Commission, even though staff received Mr. Polizzi's letter
15 before the recommendation was due and even though the letter was submitted within the
16 deadline communicated by staff.

17 96. There also were improprieties in how Polizzi's appeal was handled by the County,
18 including the disturbing fact that Staff declined to consider when making its
19 recommendations the sixty-two page letter Polizzi's counsel prepared and submitted by the
20 due date they had been given. Moreover, when Polizzi's counsel appeared at Respondent's
21 Planning Commission hearing on April 9, 2015 the correspondence from counsel complaining
22 about this misconduct was not a part of the record, although a letter from MPDA that was
23 submitted after Polizzi's counsel's letter was in the record.

24 97. These violations continued at the hearing. Staff openly admitted to not having seen
25 the project grading plan that was the subject of the so-called "Minor Site Plan Revision"
26 application that staff had recommended approval of.

27 98. Polizzi revealed the discrepancy between the square-footage as represented in the
28 so called "Minor Site Plan Revision" application and the Developer's subsequent submission
of project plans. However, the Commissioners appeared to arbitrarily rely on Staff's brief

1 conclusory response (which was contradicted by the submissions themselves) that there is no
2 discrepancy and made no effort to independently examine and compare the Developer's
3 submissions, apparently accepting Staff's arbitrary and capricious assertion that a reduction in
4 units per square acre necessarily results in "an across the board reduction in the impacts of the
5 project" even though the square footage of the Project has greatly increased.

6 99. The Commission took the same arbitrary and capricious approach on the issue of
7 unpermitted in-fill of Big Bear Lake by wrongly focusing solely on whether the project
8 footprint had changed, while ignoring controverted evidence that the Developer filled in Big
9 Bear Lake in violation of the controlling EIR, and without any certifying any EIR under
10 CEQA that studied this conduct.

11 100. Specifically, Mr. Polizzi's counsel also told the Commission about what the
12 Developer has now admitted was his in-fill of Big Bear Lake, which was never the subject of
13 any EIR. Commissioner Weldy mentioned the claim of in-fill and asked if the project
14 footprint had changed at all. Staff (Mr. Warrick) replied that the project footprint had not
15 changed at all, but never addressed the in-fill. As such, the Commission mistakenly focused
16 on whether the project's footprint had changed, rather than addressing the admitted facts that
17 the only environmental studies conducted in connection with this Project expressly state that
18 there was to be **no in-fill of the lake** and that Big Bear Lake is being in-filled and a vast new
19 project being constructed in the middle of one of the worst droughts in California history, all
20 without any environmental studies being conducted as to this significant change.

21 101. These and other arbitrary and capricious acts by the County require the approval of
22 the so-called "Minor Site Revision" application be set aside and further environmental studies
23 ordered.

24 102. All the incremental approvals and extensions over the past several decades have
25 amounted to a cumulative impact that was never analyzed under any EIR. The Commissioners
26 have buried their heads in the sand in order to justify denial of the appeal based on the fact
27 they were "only" deciding on the Minor Site Revision Application on April 9, 2015, thus
28 ignoring decades of environmental and project-specific changes that have occurred up to this
point and have amounted to something vastly different from what was approved in 1983, at

1 the time of the last EIR.

2 103. There are other findings which are arbitrary and capricious. For example, the
3 finding that “the proposed development, as conditioned, will not have a substantial adverse
4 effect on surrounding property or their allowed use, and will be compatible with the existing
5 and planned land use character of the surrounding area because the proposed multi-family
6 residential Project is located in an area planned for a mix of commercial and residential land
7 uses” ignores that there will be water diverted onto the property of Polizzi and adjoining
8 properties, the lake views of Polizzi and adjoining neighbors will be lost and there will be a
9 structure forty feet above their lots with no set back whatsoever in violation of the conditions
10 of approval. If the Project is built as approved, Polizzi and his neighbors will be looking into
11 forty feet of walls where there was once lake water, wetlands and lake views

12 104. Finding six likewise is arbitrary and capricious. It is predicated on the purported
13 addressing of Project impacts “through the development review process by incorporating as
14 mitigation measures and conditions of approval the recommendations proposed in the various
15 studies, and by incorporating the requirements and standards of the County Development
16 Code.” However, as alleged above and hereinafter, the Project violates the County
17 Development Code and many of the mitigation measures cannot be met based on the current
18 site plan.

19 105. The same applies to the finding that the site is adequate in shape and size to
20 accommodate the proposed residential uses along with all required landscaping, open space,
21 setbacks, walls, fences, yards, noise attenuation measures, fuel modification measures, access
22 roads, drainage improvements and other features.

23 106. That finding is arbitrary and capricious. Polizzi has demonstrated that it is a
24 physical impossibility to meet and that many of these conditions are not being followed in the
25 current plan. For this reason, the finding “that the project will not have a significant adverse
26 impact on the environment with the implementation of all the conditions of approval and
27 environmental mitigation measures” is arbitrary and capricious since the Developer has
28 admitted in the 10-10-14 site plan and in sworn testimony that it does not intend to meet these
conditions and has claimed the County has relieved him from these conditions.

1 107. Finding number 1 that “[t]he proposed development is consistent with the General
2 Plan and any other applicable plan . . .and with the integration of single-unit condominiums
3 the density along the lake shore is being reduced, which further protects the scenic qualities of
4 the area” is arbitrary and capricious and erroneous as a matter of law for all of the reasons
5 alleged above. Without limitation, the Project no longer includes the required trees along the
6 lakeshore to block the view of the buildings from the lake and from the south shore which are
7 one of the conditions of approval.

8 108. Finding number 4 that “[a]dequate public services and facilities exist, or will be
9 provided, in compliance with the conditions of the development plan approval, to serve the
10 proposed development and the approval of the proposed development will not result in a
11 reduction of public services to properties in the vicinity to be a detriment to public health,
12 safety, and general welfare, because water service is provided by the City of Big Bear Lake
13 Department of Water and Power and sanitary sewer is provided by County Special Districts.
14 likewise is arbitrary and capricious.

15 109. Without limitation, that finding ignores that the required reservoir and onsite water
16 supply imposed as mitigating conditions have simply been dropped from the latest approval
17 (although this was not even included on the so-called minor site revision application), that the
18 water in the region (and indeed, statewide) already is inadequate due to the drought, that on
19 May 5, 2015 the State Water Board has mandated an least 16% reduction in per capita water
20 usage for the area and the impact of this reduction must be assessed under CEQA, that even in
21 1983 the Project was found to have a significant impact on water supplies for this area, the
22 1983 EIR anticipated that 250 to 300 residents would be added to tiny Fawnskin by this
23 project, and now many more resident will be added due to the massive increase in square
24 footage approved by the so-called “Minor Site Revision” application.

25 110. Finding number 8 that “[t]here is no substantial evidence that the Project will have
26 a significant effect on the environment because an Environmental Impact Report (EIR) was
27 prepared for this project with the original Planned Development Permit and was subsequently
28 updated when the current development plan was approved” was arbitrary and capricious.

1 Specifically, the EIR for this project was approved in 1983. It has not been addressed or
2 updated since 1991/1992 – even the 1992 report states that it is based on the 1983 Report. But
3 the Staff Report repeatedly misrepresents that the EIR was prepared in 2003 – however, that
4 is 20 years off. A lot has changed since 1983 or even 1992, including the scope of the project
5 and the conditions surrounding the project. A new or supplemental EIR is required.

6 111. And, of course, the Developer's admitted in-fill of Big Bear Lake has never been
7 addressed in any EIR, nor did staff address the evidence that showed that MPDA has filled in
8 significant portions of Big Bear Lake without conducting any environmental studies under
9 CEQA and has gone far beyond the scope of the materials it provided with the later
10 1991/1992 so-called "supplemental" EIR.

11 112. In summary, the so-called "Minor Site Revision" application" was approved in
12 violation of the law even though the Developer never refuted any of the following:

13 A. The Developer has been consistently violating the scope of state and federal
14 agency approvals and disregarding mitigating conditions imposed by the County since the
15 project's inception.

16 B. Many of these violations have resulted in a baseline different from the one
17 considered when the project was originally approved and whose characteristics have not been
18 disclosed as part of the so-called "Minor Site Revision" application or any other application
19 subject to public review and comment.

20 C. What the Developer proposed with respect to the project in March 2014 is not a
21 minor site revision by any stretch of the imagination.

22 D. The Developer permanently discharged fill material onto lake-bottom land in
23 connection with the Project and misused the so-called Minor Site Revision application
24 process to obtain approval of these actions without any environmental impact report under
25 CEQA.

26 E. The Developer misrepresented the dimensions of the land that is the subject of the
27 Minor Site Revision Application.

28 F. The Developer does not and never has owned all of the land that was subject to the
in-fill, nor does it have clear title to much of the Project site.

1 G. The Developer conducted unauthorized dredging at the project site at times during
2 the time frame January 1, 2000 through December 31, 2004;

3 H. The Interim Corrective Measure Order that the United States Army Corps of
4 Engineers issued during October 2003 was for remedial work only;

5 I. Legal title to the lake-bottom land that is included in the project site is held by the
6 Big Bear Mutual Water District.

7 J. The Developer has violated numerous mitigating conditions imposed by the
8 County.

9 K. Portions of some of the home sites for sale in Lot 6A of the Revised Site
10 Development Plan dated 10-10-14 are below the ordinary high water mark of Big Bear Lake.

11 L. The Minor Site Revision Application is not the proper vehicle to apply for the
12 changes the Developer wishes to make since it does not adequately reflect the environmental
13 changes that are the result of MPDA's repeated code violations and failure to comply with
14 conditions and directives since 1983/1991.

15 M. The Developer has admitted that he used the minor site application revision
16 process to obtain waivers of earlier imposed mitigating conditions, and that such waivers
17 were arranged for in verbal communications between he and county officials, although they
18 were not sought in the so-called "Minor Site revision" application. The Developer mistakenly
19 claimed the County had the discretion under CEQA to do this;

20 N. The Developer further claimed that the Development Code allows him to put five
21 single family residences on one lot, but cannot cite to the section that permits this.

22 O. The Developer further claimed that he has a private agreement with the Big Bear
23 Municipal Water District that gives him a sphere of influence over all commercial operations
24 600 feet out into Big Bear Lake along the western shore, in exchange for paying the District a
25 percentage of gross income derived from the Project. He claims this is why he will be able to
26 put boat docks into Big Bear Lake as part of the Project (without any EIR) and this is why he
27 is marketing the Project as having boat dock rights, although there is no EIR reflecting an
28 analysis of the impact of such a use of the lake in this area.

1 113. What has happened here is indicative of fundamentally flawed and unlawful
2 governmental action which should cause great concern to this Court.

3 114. In the words of Oliver Wendel Holmes, Jr., “Men must turn square corners when
4 they deal with the Government” and Government, too, must turn square corners. *Ventura*
5 *Foothill Neighbors v. County of Ventura* (2014) 232 Cal.App.4th 429. The California
6 Supreme Court remarked: “... ‘It is hard to see why the government should not be held to a
7 like standard of rectangular rectitude when dealing with its citizens.’ *Farrell v. County of*
8 *Placer* (1944) 23 Cal.2d 624, 628.

9 115. That has not occurred here.

10
11 **FIRST CAUSE OF ACTION**
12 **(Violations of CEQA)**

13 116. Petitioner hereby realleges and incorporates paragraphs 1 through 115, inclusive.

14 117. CEQA is designed to ensure that the long-term protection of the environment be
15 the guiding criterion in public decisions that may affect the environment. CEQA applies to
16 any action taken by an agency that may cause a reasonably foreseeable change in the
17 environment.

18 118. Approval of a large development like the Project is an act that triggers an agency’s
19 obligation to comply with CEQA.

20 119. In furtherance of its goal of environmental protection, CEQA requires that the lead
21 agency prepare an Environmental Impact Report (“EIR”) for a project whenever substantial
22 evidence in the record supports a fair argument that the project may have a significant effect
23 on the environment. The EIR must comply with the requirements of the statute, including, but
24 not limited to, the requirement to analyze the project’s potentially significant environmental
25 impacts. The EIR must provide sufficient environmental analysis such that the decision-
26 makers can intelligently consider environmental consequences when acting on the proposed
27 project. Additionally, the EIR must analyze feasible mitigation measures and a reasonable
28 range of alternatives to the project.

1 120. CEQA also requires an agency to prepare a new EIR, or a subsequent or
2 supplemental EIR ("SEIR") where substantial changes are proposed in a project that will
3 require new analysis or major revisions to an EIR, substantial changes to the circumstances
4 under which the project is undertaken will require major revisions to an EIR, or new
5 information becomes available, which was not known at the time that an earlier EIR was
6 certified as complete.

7 121. To the extent conditions have changed (as here) and/or the project baseline is
8 different, including as a result of the passage of time, CEQA requires that there be new
9 analysis or major revisions to an EIR. Here, due to the passage of time, changed conditions
10 and the expiration of the Project, the baseline for the project no longer is in effect.

11 122. CEQA mandates that the lead agency adopt feasible and enforceable mitigation
12 measures that would reduce or avoid any of the project's significant environmental impacts.
13 If any of the project's significant impacts cannot be mitigated to a less than significant level,
14 then CEQA bars the lead agency from approving a project if a feasible alternative is available
15 that would meet the project's objectives while avoiding or reducing its significant
16 environmental impacts.

17 123. These mitigation measures must then be enforced.

18 124. CEQA further mandates that a lead agency may only approve a project that
19 would have significant, unavoidable environmental impacts, if the agency finds that the
20 project's benefits would outweigh its unavoidable impacts.

21 125. CEQA requires that an agency's findings for the approval of a project be
22 (a) supported by substantial evidence in the administrative record, and (b) provide an
23 explanation of how the record evidence supports the conclusions the agency has reached

24 126. Because approval of the Project has now expired, and because of other
25 substantially changed conditions, and the matters alleged in the Facts above, Respondents
26 must conduct new environmental review before issuing any new approval or entitlement for
27 the Project.

28 127. Respondents violated CEQA by failing to conduct any environmental review
before issuing the recent permits for the Project and in approving the so-called "Minor Site

1 Revision” application. For instance, by issuing further permits before issuing any new land
2 use approval, and by approving the so-called “Minor Site Revision” application, Respondents
3 failed to consider the whole of the Project as CEQA requires. Moreover, without any
4 environmental review, Respondents failed to adequately disclose, analyze, or mitigate the
5 numerous significant impacts to the environment that will result from the Project’s
6 construction and operation.

7 128. Substantial new information and changed circumstances require the
8 preparation of an SEIR for the Project.

9 129. These changes are alleged in detail in the preceding Facts and include, but are not
10 limited to: (1) the increasing threat of global climate change and the increase in greenhouse
11 gas emissions from land uses like the Project; (2) the year-round presence of bald eagles at
12 Big Bear Lake and the overall decline of the bald eagle population in Big Bear Valley; (3)
13 new information about the threat of PM2.5 emissions, which will result from the construction
14 and operation of the Project; (4) an increased risk of wildfire in San Bernardino County and
15 throughout southern California; (5) the addition of Big Bear Lake to the list of impaired water
16 bodies; (6) extreme drought conditions and water shortages throughout California, which
17 have caused water rationing in communities along Big Bear Lake; (7) the likelihood of new
18 cumulative impacts from the Project following the approval of other development projects
19 within Big Bear Valley; (8) the other matters alleged in the preceding facts.

20 130. The substantial new information is alleged in detail in the preceding Facts.

21 131. The Developer’s advertised and proposed Project “revisions” also anticipate
22 numerous changes to the now-expired 1991 condo development, including massively
23 enlarging the square footage of the project based on the figures provided by the Developer in
24 the so-called “Minor Site Revision” application, nearly doubling the capacity of the Project
25 with new “lock-off units,” reconfiguring the location of buildings, impeding public lakefront
26 access on the site, substantially increasing the size of the planned clubhouse, and extending
27 new docks into Big Bear Lake. These changes have not received environmental review either.

28 132. Since the 1991 condo development approval, there also have been substantial
changes to the Project that require further environmental review. For instance, because of the

1 Developer's extensive onsite tree cutting, fewer than 150 trees remain on the Project site even
2 though the 1991 approval required preservation of 160 trees. Moreover, recent demolition
3 activities have contaminated the Project site with debris containing asbestos.

4 133. Additional substantial changes are alleged at paragraphs 1 through 100 above.

5 134. As well, many of the mitigation measures in the Project cannot be met based on
6 the current site plan. Staff does not address this, but only states that the conditions stand. This
7 is simply an invitation to further litigation that will occur once the Developer seeks relief
8 from the condition that his plans confirm cannot be met. The project as proposed cannot and
9 does not comply with the Development Code.

10 135. None of these changes have undergone environmental review under CEQA nor are
11 they reflected in any EIR certified by the lead agency.

12 136. Respondents further failed to circulate any notice or hold a public hearing before
13 issuing the demolition permits for the Project. Because Respondents did not provide any
14 public process before issuing these permits, and because Polizzi did not receive notice of the
15 so-called "Minor Site Revision" application until March 2015, Polizzi had no actual or
16 constructive notice that the Project being constructed under these permits materially differed
17 from the Project approved in 1983 and thereafter revised in 1991, which was the subject of
18 previous environmental review.

19 137. Polizzi did not receive notice of these permits nor did he receive notice of the so-
20 called "Minor Site Revision" application until March 2015 when he was first provided a copy
21 of it by the Friends of Bear Valley. The County did not file a CEQA notice of determination
22 or exemption after approval of the Project permits.

23 138. Respondents' CEQA violations constitute a prejudicial abuse of discretion. For
24 instance, by failing to conduct any CEQA review, Respondents' did not apprise the public of
25 the Project's significant environmental impacts, nor did they consider whether those impacts
26 could be properly mitigated or avoided.

27 SECOND CAUSE OF ACTION

28 (Violations of San Bernardino Municipal Code)

139. Petitioner hereby realleges and incorporates paragraphs 1 through 138, inclusive.

1 140. The County's Development Code regulates, among other things, "uses of land and
2 structures in San Bernardino County; by preserving and protecting the County's important
3 agricultural, cultural, natural, open space, and scenic resources; and by protecting and
4 promoting the public health, safety, comfort, convenience, prosperity, and general welfare" of
5 County residents. Development Code §81.01.020.

6 141. As a prerequisite to receiving any building, grading, demolition, or similar
7 permits, the Development Code requires applicants for new land use projects to first have a
8 valid land use approval and to otherwise comply with the requirements of the Development
9 Code. §81.01.050(a). It specifically prohibits the County's Building Official from issuing
10 "building, grading, or other construction permits" until all applicable requirements of the
11 Development Code are met. §81.01.050(a).

12 142. The County has determined that the Project is a phased planned development
13 under the Development Code. The Code specifically prohibits the County from issuing
14 building or grading permits for "a site for which a Planned Development Permit is proposed
15 until the Planned Development Permit has been approved in compliance with this Chapter."
16 §85.10.020(b).

17 143. The Development Code outlines stringent time-frames in which an applicant
18 must complete a phased planned development project. In addition to complying with all time
19 limits within any applicable conditions of approval, an applicant "shall either record a tract
20 map or obtain Building Permits for at least one phase of the project within five years of the
21 Development Plan conditional approval and, as applicable, within each succeeding five-year
22 period. Each five-year period shall begin with the last County approved action that was
23 accomplished (e.g., recordation of a tract map, obtain a Building Permit)."

24 §86.06.060(a)(5)(B). If these deadlines are not met, the Planned Development Permit
25 approval expires and becomes invalid. §86.06.060(a)(1). Extensions of time are not available
26 for phased projects (§§85.10.080, 86.06.060(b)(2)(E)) and all work at a site must cease when
27 a development permit expires. §86.06.060(c).

28 144. The Developer recorded a tract map for the Project on December 21, 2000. Since
then, the Developer has neither recorded any further tract maps for the site nor obtained any

1 building permit for the Project. Thus, by operation of the Development Code and the 1992
2 revised Conditions of Approval, the 1991 Planned Development Permit expired on December
3 21, 2005.

4 145. Despite this permit expiration and in violation of the Development Code, County
5 staff has continued to issue grading, demolition, and other permits for work at the Project site.
6 The issuance of these permits violates *Development Code* §§81.01.050(a) and 85.10.020(b).

7 146. The County's continuous practice of issuing permits for the Project despite the
8 Developer's failure to comply with the Conditions of Approval or the Development Code's
9 time limits has created a real and substantial controversy regarding (1) whether the County's
10 approval of the Project has expired, and (2) whether the aforementioned grading, demolition,
11 and boundary wall permits are valid under the County Code.

12 147. In view of the foregoing, Petitioners pray for relief as set forth below.

13 **THIRD CAUSE OF ACTION**

14 **(Violations of the California Public Trust)**

15 148. Petitioner hereby realleges and incorporates paragraphs 1 through 147, inclusive.

16 149. All property below the high water line was owned by the Bear Valley Mutual
17 Water Company; the predecessor in interest to the Water District, the later which was
18 established in the mid-1960's to act as a steward of Big Bear Lake and which had filed suit in
19 1965 to condemn Bear Valley Mutual Water Company's rights in the lake. *Big Bear*
20 *Municipal Water Dist. v. Bear Valley Mutual Water Dist.* (1989) 207 Cal.App.3d 363, 368.

21 150. Several constitutional amendments have been adopted in California in response to
22 wholesale legislative giveaways of waterfront lands (Art. X, Sections 3-5; Art. I, Section 25).
23 Among others, Article X guarantees public access to waterways and forbids landowners to
24 obstruct free navigation. It requires the State legislature to enact laws that interpret the
25 public's right liberally, so that they will always have access to the navigable waters of
26 California. It also forbids landowners "to exclude the right of way to [navigable] water
27 whenever it is required for any public purpose." As well *Civil Code* §670 confirms that the
28 State is the owner of all land below tide water, and below the ordinary high-water mark,

1 bordering upon tide water within the state; of all land below the water of a navigable lake or
2 stream.

3 151. Polizzi as an adjoining neighbor and landowner also has rights and interests in the
4 land located below Big Bear Lake's High Water Line (the "Lake Bottom"). On information
5 and belief, the Lake Bottom is owned by the Big Bear Municipal Water District, who is
6 responsible for the operation and management of Big Bear Lake, including the Lake Bottom,
7 on behalf of the public.

8 152. The public has historically used and continues to use Big Bear Lake for wildlife
9 observation and recreational purposes.

10 153. The Developer has wrongfully claimed title to and/or has interfered with,
11 continues to interfere with, and/or imminently will interfere with, portions of the Lake
12 Bottom. For example, Developer modified certain portions of the Lake Bottom, including by
13 breaching the High Water Line and transferring fill to the Lake Bottom. Accordingly,
14 Petitioners seek to quiet title to public rights against Developer.

15 154. The Developer's actions, if permitted to continue, will threaten this area of Big
16 Bear Lake in that if these actions are permitted to continue, the lake will be permanently in-
17 filled in this area and structures built on this portion of lakebottom land by a Developer who
18 does not have clear title to this lakebottom land, or the right to construct multi-family
19 dwellings on this lakebottom land, in violation of the public trust.

20 155. Respondents' actions in approving the project and in allowing this conduct to
21 continue constitute a prejudicial abuse of discretion, in that Respondents did not proceed in
22 the manner required by the Public Trust Law, and no substantial evidence supports the
23 Board's failure to take action to revoke Marina Point's permits.

24 156. Respondent Board has an affirmative duty to protect public trust resources. Over
25 the years and continuing until the present time, the Board's failure to enforce permit
26 requirements has caused there to be substantial environmental change in and around the
27 project site, which have caused injury to the ecosystem and to members of the public,
28 including Polizzi.

1 157. On information and belief, unless enjoined, Respondents will continue to violate
2 California Public Trust law, as described above.

3 158. In light of the Respondents' failure to comply with the California Constitution and
4 CEQA and the significant likelihood of repeated violations in the future, the Respondents
5 must be permanently enjoined from continuing with the project until such a time as the Board
6 has an evidentiary hearing to establish reasonable development practices that conform to
7 CEQA, Public Trust law and the Constitution. If Respondents are not so enjoined, Polizzi will
8 suffer irreparable injury for which there is no adequate remedy at law.

9 159. An actual controversy exists between Respondents on the one hand and Polizzi on
10 the other regarding the degree to which the California Public Trust doctrine, CEQA, and the
11 Constitution protect Big Bear lake and mandates the Respondent Board's enforcement of the
12 law.

13 160. Specifically, Respondent Board's lack of enforcement of CEQA and Article X of
14 the State Constitution, Respondents' issuance of permits to MPDA and their approval of the
15 so-called "Minor Site Revision" application violate the Public Trust and injure Polizzi. As an
16 actual controversy exists, Polizzi is entitled to and hereby seeks a declaration that the Board
17 has violated its affirmative duty to protect the public trust.

18 161. Petitioner seeks a writ of administrative mandate to vacate and set aside
19 Respondent Board's July 28, 2015 Resolution which failed to uphold the public trust.
20 Additionally, Petitioner seeks declaratory and injunctive relief that Respondent Board has
21 failed to enforce and Respondent Marina Point has failed to comply with state law regarding
22 Marina Point Development including California Public Trust and CEQA.

23 162. Specifically, Polizzi seeks an order of this Court permanently enjoining
24 Respondents from modifying or developing property actually owned by the Developer as
25 shown in the Record Survey, including filling in or otherwise modifying property below the
26 level known as the 72.4 foot contour line as shown by the Record Survey, and purporting or
27 attempting to sell portions of the lake to members of the general public in violation of the
28 public trust.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Petitioner prays for judgment as follows:

- 3 1. For alternative and peremptory writs of mandate directing Respondents to
4 vacate and set aside the demolition, grading, and boundary wall permits for the Project and
5 directing Respondents to set aside their approval of the March 2014 "Minor Site Revision"
6 application;
- 7 2. For alternative and peremptory writs of mandate directing Respondents to comply
8 with CEQA, the CEQA Guidelines, the County Code, all applicable state law, and take any
9 other action as required by Public Resources Code §21168.9;
- 10 3. For preliminary and permanent injunctions restraining Respondents and Real
11 Parties in Interest and their respective agents, servants, and employees, and all others acting in
12 concert with Respondents or Real Parties in Interest on their behalf, from taking any action to
13 implement the Project, pending full compliance with the requirements of CEQA, the CEQA
14 Guidelines, the County Code, and all applicable State Law;
- 15 4. For a declaration that (1) the Developer's land use approvals for the Project have
16 expired under the County Code and the Conditions of Approval for the Project, and (2) the
17 County Code prohibits County staff from issuing building, grading, demolition, boundary
18 wall, and other permits for the Project until the County issues new land use approvals for the
19 Project;
- 20 5. For an order restraining Developer and Respondents and their respective agents,
21 servants, and employees, and all others acting in concert with Developer and Respondents on
22 their behalf, and each of them, from interfering with the public's rights and interests,
23 including Petitioner's, in the public lands and Lake Bottom;
- 24 6. For a determination of the public's title to in the public lands and Lake Bottom;
- 25 7. For an order prohibiting Developer from interfering with, the public's use of Big
26 Bear Lake adjacent to the project site, as determined by this Court;
- 27 8. For costs of the suit;
- 28 9. For attorneys' fees as authorized by Code of Civil Procedure §1021.5
and other provisions of law; and
10. For such other and future relief as the Court deems just and proper.

Dated: August 24, 2015

Respectfully submitted,
LAW OFFICE OF ANTHONY KORNARENS

By:  24 JMT
Anthony Kornarens
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