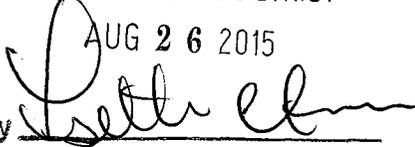


SCANNED

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 26 2015

By 
Lisette Huezo Deputy

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

13 FRIENDS OF BIG BEAR VALLEY and
14 CENTER FOR BIOLOGICAL DIVERSITY

15 Petitioners/Plaintiffs,

16 v.

17 COUNTY OF SAN BERNARDINO, and DOES
18 1-10

19 Respondent/Defendant

20 MARINA POINT DEVELOPMENT
21 ASSOCIATES, IRVING OKOVITA, and DOES
22 11-50,

23 Real Parties in Interest.

CIVDS 1512665
CASE NO.:

(California Environmental Quality Act)

PETITION FOR WRIT OF MANDATE and
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

C.C.P. §§1085, 1094.5 & §1021.5; Pub. Res.
Code §§ 21000 et seq., San Bernardino County
Code

Fax Filed

BY FAX

INTRODUCTION

1
2 1. Petitioners, Friends of Big Bear Valley and Center for Biological Diversity (collectively,
3 Petitioners) bring this action to set aside San Bernardino County's ("County") approval of substantial
4 changes to a large-scale residential development project ("Project") in the community of Fawnskin on
5 the north shore of Big Bear Lake. This sparsely populated area contains important habitat for a number
6 of protected species including the bald eagle and the southwestern willow flycatcher. Significant
7 portions of the property have been continuously used by the members of the public for wildlife
8 observation and passive recreational use for over 100 years.

9 2. In 1991, the County approved a large-scale residential and commercial project known as
10 the Marina Point development project. Following this approval, however, Real Parties in Interest,
11 including Irving Okovita and Marina Point Development Associates ("Developer") failed to take
12 meaningful steps towards completing the Project. The site remained largely idle for roughly a decade.
13 In the early 2000s, the Developer commenced a series of illegal and unpermitted construction and
14 grading of the site, which actions were eventually halted by various regulatory agency enforcement
15 actions.

16 3. Nearly a quarter of a century after the County's original approval in 1991, the project
17 permits have expired and local conditions have changed significantly. Under the County Development
18 Code, the County may not approve or authorize any further construction activities or revisions to the
19 original project until and unless the Developer applies for and obtains a new land use approval.

20 4. Nonetheless, the County has continued to issue grading, demolition and related permits
21 for the Project. Petitioners' challenge to these illegally issued permits is currently pending in San
22 Bernardino Superior Court (Friends of Big Bear Valley, et al. v. County of San Bernardino, et al, San
23 Bernardino Superior Court Case No. CIV-DS-1409159).

24 5. In this case, Petitioners challenge the County's approval of major revisions to the Project
25 in violation of the California Environmental Quality Act ("CEQA"). Here, the County belatedly
26 prepared an Addendum to the EIR on the theory that none of the conditions requiring a Subsequent or
27 Supplemental EIR are present. Based entirely on the false premise that the revised Project is
28

1 “substantially reduced” compared to the originally approved Project, the County concluded that the
2 Project as revised would not result in any new significant environmental effects or a substantial increase
3 in the severity of the significant effects identified in the 1991 EIR.

4 6. Petitioners contend the County could not rely on the 1991 EIR and an Addendum to
5 approve a Revised Project because the 1991 approvals have expired and are therefore null and void. To
6 proceed with the Project, revised or not, the Developer must apply for a new Project approval which the
7 County must then analyze by preparing a new EIR.

8 7. In the alternative, even if the County could lawfully rely on the 1991 Project EIR to
9 consider a Revised Project, circumstances are such that the County was required at least to prepare a
10 Subsequent or Supplemental EIR because (1) substantial changes to the Project require major revisions
11 to the EIR, (2) substantial changes to the environmental circumstances require major revisions to the
12 EIR, and (3) significant new information which could not have been previously known has become
13 available since the 1991 certification of the Project EIR.

14 8. Petitioners also contend the County could not lawfully approve a “Minor Revision to
15 Approved Action for the Marina Point Final Development Plan” because the County’s 1991 approval of
16 the Planned Development Permit and Final Development Plan had already expired.

17 **PARTIES**

18 9. Petitioner Friends of Big Bear Valley (“Friends”) is a non-profit, public interest
19 environmental association of hundreds of individuals who seek to ensure that the open space and
20 natural wilderness values and resources of Big Bear Valley area are preserved and adequately protected.
21 Friends submitted extensive comments regarding the Project, objecting to the County’s ongoing
22 violation of its Development Code and CEQA. Friends’ members regularly visit the Big Bear Lake
23 area, including the area where the Project site is located, and use and enjoy it for wildlife observation,
24 as well as spiritual, recreational and educational purposes. As such, Friends and its members are
25 directly, adversely and irreparably harmed, and will continue to be harmed, by the Project and its
26 components unless this Court provides the requested Prayer for Relief.

1 10. Petitioner Center for Biological Diversity (the "Center") is a nonprofit, public interest
2 corporation, with approximately 50,100 members and offices throughout the United States. The Center
3 and its members are dedicated to protecting imperiled species and their habitat through science, policy,
4 education, advocacy and environmental law. Center members reside and own property in San
5 Bernardino County and use areas surrounding the Project site and impacted by the Project for
6 recreation, wildlife viewing, scientific and educational purposes, and intend to continue these uses as
7 permitted. The Center submitted extensive and timely comments on the County's ongoing violations of
8 its Development Code and failure to conduct adequate environmental review under CEQA for the
9 Project. The Center and its members are directly, adversely and irreparably harmed by the Project, and
10 will continue to be harmed unless this Court grants the requested Prayer for Relief.

11 11. Respondent County of San Bernardino is a political subdivision of the State of California
12 and the Lead Agency for the approval of the Project and is responsible for complying with, and
13 implementing, the Laws of the State of California, including CEQA and, further, for insuring that the
14 agencies, instrumentalities, officials and employees of the County comply with the Laws of the State of
15 California. Respondent County Board of Supervisors is the governing body of the County. The Board
16 conditionally approved the Project in 1991, and more recently approved the Revised Plan and adopted
17 the EIR Addendum for the Revised Plan. The Board of Supervisors is responsible for complying with
18 the requirements of the County Development Code and CEQA.

19 12. Petitioners do not know the names and capacities of Respondents Does 1-10, and
20 therefore sue said Respondents under fictional names. Petitioners are informed and believe and on that
21 basis allege that each fictionally named Respondent is responsible in some manner for committing acts
22 upon which this action is based. Petitioners will amend this Petition to show these Respondents' true
23 names and capacities if and when they are ascertained.

24 13. Real Party in Interest Irving Okovita is an individual who is an applicant for the Project
25 and is the owner of the Marina Point Project and/or property.

26 14. Real Party in Interest Marina Point Development Associates is an owner of the
27 Project/and or Project Property. Petitioners are informed and believe and on that basis allege that
28

1 Marina Point Development Associates is a general partnership located and doing business in the State
2 of California.

3 15. Petitioners do not know the names and capacities of Real Parties in Interest Does 11-50,
4 and therefore sue said Real Parties in Interest under fictional names. Petitioners are informed and
5 believe and on that basis allege that each fictionally named Real Party in Interest is responsible in some
6 manner for committing acts upon which this action is based or has a material interest affected by the
7 Project or the County's actions with respect to the Project. Petitioners will amend this Petition to show
8 these Real Parties in Interest's true names and capacities if and when they are ascertained.

9 JURISDICTION AND PARTIES

10 16. This Court has jurisdiction over the writ action under sections 1085 and 1094.5 of the
11 Code of Civil Procedure ("CCP"), and sections 21168 and 21168.5 and 21168.9 of the Public
12 Resources Code.

13 17. Venue is proper in this Court because the Project site is located in San Bernardino
14 County and Respondents' approval of the Project also occurred in San Bernardino County.

15 EXHAUSTION OF ADMINISTRATIVE REMEDIES

16 18. Petitioners have exhausted all administrative remedies to the extent required by law.

17 19. Petitioners have complied with Public Resources Code section 21167.5 by prior service of a
18 notice upon the Respondents indicating their intent to file this Petition. A copy of Petitioner's Notice is attached
19 as Exhibit A.

20 20. Petitioners have complied with the requirements of Public Resources Code section 21167.7 by
21 sending a copy of this Petition to the California Attorney General.

22 21. Petitioners have elected to prepare the record of proceedings in the above-captioned proceeding
23 or to pursue an alternative method of record preparation pursuant to Public Resources Code Section
24 21167.6(b)(2). Notification of the Election to Prepare the Administrative Record is attached as Exhibit B.

25 22. This petition is timely filed in accordance with Public Resources Code section 21167 and CEQA
26 Guidelines section 15112.

27 STATEMENT OF FACTS

28

1 23. The Project site is located on the southeastern edge of the unincorporated community
2 of Fawnskin, California, on Grout Bay, on the eastern shore of Big Bear. Grout Bay and the
3 surrounding area provide prime foraging habitat for bald eagles, which are protected under the
4 federal Bald and Gold Eagle Protection Act and the California Endangered Species Act. The bald
5 eagle is also a California fully protected species under the California Fish and Game Code. The
6 Project site is regularly utilized by bald eagles and the only bald eagle nest in Big Bear Valley is
7 located less than one mile from the Project site.

8 24. The Project site was once a recreation vehicle campground known as "Cluster Pines."
9 Members of the public regularly used portions of the lakefront and access trails traversing the
10 Project regularly for wildlife observation and recreational purposes. Prior to Developer's actions,
11 the Project site contained hundreds of native trees, including hundreds of Jeffrey pines. The site also
12 included three buildings which served as restroom and shower facilities for the campsite.

13 25. In the early 1980s, the Developer proposed a large-scale development project on the
14 Cluster Pines site. The County prepared an EIR and approved the project in 1983, but by 1991, that
15 approval had expired through the Developer's inaction. In 1991, the Developer came back with a
16 proposed 133-condominium and commercial project that was billed as a "destination resort". In
17 addition to the condominiums, the 1991 Project proposed to expand the existing Marina from 60 to
18 175 boat slips and provide 264 parking spaces. The 1991 Project also contemplated new
19 recreational and spa facilities. The Final Development Plan for the 1991 Project required the applicant
20 to preserve 160 of the Project site's original trees.

21 26. Despite the fact that the original project EIR had been certified in 1983, the County did
22 not prepare an EIR for the 1991 Project. Instead, the County relied on the 1983 EIR to comply with
23 CEQA. On December 9, 1991, the County issued a tentative tract map and issued a Planned
24 Development Permit approving a phased development plan. On April 28, 1992, the County Staff
25 revised certain key Conditions of Approval.

26 27. The Project site remained vacant for much of the decade following the Project approval
27 in 1991. The Developer never obtained a new project approval from the County, but it did record a
28 final tract map on December 21, 2000, nine years after the County issued the Planned Development
Permit.

1 28. During 2002 and 2003 the Developer engaged in unpermitted and unlawful construction
2 activities on the site. For instance, in May 2003, the Developer began grading the site without first
3 performing required vector control, causing the County to suspend the Developer's grading permit.
4 The Developer also conducted multiple unpermitted and unlawful dredge and fill operations in Big
5 Bear Lake, resulting in the Big Bear Municipal Water District and the Army Corps of Engineers
6 intervening to halt the illegal operations. The Developer's contractors performed open-air spray-
7 painting of construction equipment without taking precautions to prevent the paint from being carried
8 into the lake or the Fawnskin community.

9 29. In 2004, Petitioners were forced to sue the Developer in federal district court for
10 violating the Clean Water Act by dredging and filling in Big Bear Lake, and the federal Endangered
11 Species Act by damaging the critical bald eagle habitat. For the duration of this litigation, from
12 April 16, 2004 until September 9, 2009, the district court enjoined the Developer's work at the
13 Project site. The district court ultimately found that the Developer had violated both the Endangered
14 Species Act and Clean Water Act. The court of appeals overturned the district court's Clean Water
15 Act ruling on jurisdictional grounds, but left the district court's findings of fact in place. The
16 Endangered Species Act litigation became moot when the bald eagle was delisted from the federal
17 Endangered Species Act in 2007. The bald eagle continues to be listed under the California
18 Endangered Species Act and is also a "Fully Protected Species" under California law.

19 30. More recently, in 2010, the California Department of Forestry issued a timber harvest
20 permit exemption for the Developer to cut less than 3 acres of trees on the Project site. A few days
21 after the Department of Forestry site inspection, workers at the site cut down a bald eagle perch tree
22 outside the designated harvest area. The Developer has also regularly violated a Condition of
23 Approval that prohibits construction activity during bald eagle winter foraging season (December 1
24 through April 1).

25 31. On March 18, 2014, the Developer submitted a "Minor Site Plan Revision"
26 application to the County to obtain approval for substantial changes to the development plan. The
27 label "minor" was misleading as the proposed changes were substantial. On April 9, 2014,
28 Petitioners and other concerned environmental organizations and individuals submitted comments
to the County opposing the new application, arguing that because the 1991 development approval
had already expired, the County was required to issue a new planned development permit.
Petitioners also argued that owing to substantial changes to the project and the environment, as well

1 as new information about the Project's environmental impacts, CEQA required the County to
2 conduct new or additional environmental review.

3 32. The Revised Site Plan also requested removal of key mitigation measures the County
4 had imposed as conditions of approval in 1991 in order to address the project's significant adverse
5 impacts on the environment, including but not limited to impacts on water supplies, cumulative
6 traffic (Conditions 30, 35 & 37), water quality impacts on Big Bear Lake (Conditions 52 and 53),
7 decreases in the amount of surface water in the lake (Conditions 52 and 53) and aesthetic and view
8 impacts (Condition 76). The conditions attached to the Revised Site Plan did not include any
9 conditions requiring these key mitigation measures.

10 33. Original Conditions of Approval 17, 26, 27 & 28, for example required the
11 Developer to "provide a reliable and assured water supply adequate in quantity and quality to meet
12 the health and safety code requirements" and "provide ... for 100% of the project's estimated water
13 demand at maximum day demand usage by providing a new operational well to the DWP." These
14 measures were specifically intended to mitigate the "significant impacts related to [the] need for
15 new or substantial alteration to the area's water system ... to a level of non-significance." The
16 County's approval of the Revised Site Plan eliminated these mitigation measures as the new
17 conditions attached to the approval of the Revised Site Plan do not include these conditions.

18 34. In April 2014 the Developer bulldozed and graded the site, including vital riparian
19 areas adjacent to the Big Bear Lake, thereby destroying important riparian habitat, including willow
20 trees which provide vital habitat for the federally protected southwestern willow flycatcher.

21 35. County Planning Staff approved the Site Plan Revision application on December 30,
22 2014. Petitioners promptly appealed the approval to the County Planning Commission, which heard
23 and denied the appeal on April 5, 2015. On the eve of the hearing, the County released a hastily put
24 together Addendum to the EIR, which concluded that the project revisions were minor and would not
25 result in new significant impacts or a substantial increase in the severity of the significant effects
26 previously identified in the EIR. The Addendum's conclusions were based primarily on the false
27 assertion that "the Revised Project is substantially reduced from the previously approved EIR Project."

28 36. The Addendum is fundamentally misleading and therefore fails as an informational
document. The Addendum downplays the magnitude and significance of the scope of the revisions by
implying that the Project is actually reduced in size and intensity and will therefore have fewer and less
significant impacts. The evidence shows, however, that contrary to the Addendum's claims, the Project

1 as revised is actually has a bigger footprint, is more intense, and will have more significant impacts.
2 For example, the Addendum claims the revisions merely shifts the location of the buildings on the
3 Project site (Addendum at §2.0). Evidence submitted to the Planning Commission and Board of
4 Supervisors, however, shows that the Project changes are extensive and significant. The Revised
5 Project includes new docks that extend into the Big Bear Lake and not merely in the Marina. The
6 original Project included no such docks. Similarly, the clubhouse for the Revised Project appears to be
7 substantially larger than the clubhouse approved for the original Project. Whereas the Revised Project
8 will actually increase the size of the residential units by almost 40%, the Addendum and the County
9 Planning Staff Report actually claim the Revised Project would be smaller. Evidence shows that size of
10 the residential units is increased from 264,100 square feet to 364,844 square feet (as shown on the Site
11 Plan), and the overall footprint of the residential units is increased from 3.30 acres to 3.37 acres (as
12 shown on the Site Plan). By focusing on the number of units rather than the total footprint and square
13 footage, the Addendum falsely suggests the Revised Site Plan has fewer and less intense environmental
14 impacts.

15 37. The Addendum lists a number of the Project's environmental impacts, which it then
16 concludes would be reduced to a less than significant level with mitigation. Yet, the purported
17 "mitigation measures" are nowhere to be found in the County's original 1991 Findings and Conditions
18 of Approval or the conditions of approval approved in connection with the Revised Site Plan. Thus,
19 because the relevant mitigation measures are not legally binding and enforceable pursuant to any
20 conditions of approval, the Addendum's conclusion that the impact would be reduced to less than
21 significant is not supported by substantial evidence. The Addendum, moreover, fundamentally fails as
22 an informational document because it does not analyze the impacts of eliminating or altering key
23 mitigation measures.

24 38. The Addendum also fails to take into account any new information about the Project
25 setting or the environment generally. For example, the Addendum ignores substantial new information
26 and changed circumstances affecting the Project and Project setting:

- 27 • The RV Park near the site has not been in operation for 15 years and the site may in
28 some ways have reverted to its original natural state. This also means the Project is no
longer compatible with adjacent land uses.
- Because of the Revised Project's larger footprint, 78% of the Project site will no longer
be preserved as open space. Preservation of open space was cited by the County as one

of the project's significant public benefits.

- Bald eagle foraging habitat has decreased significantly in the Big Bear Lake area due to rampant development;
- Bald eagles have actually been regularly using the site for foraging; several bald eagles are now known to reside in the valley year round and some have been known to nest near the project site. The original project EIR specifically concluded that at the time of certification, bald eagles were not known to stay in the valley year round and did not nest locally.
- Newly discovered information shows Caltrans does not own a right-of-way on the highway adjacent to the Project site. This may affect the feasibility of traffic safety mitigation measures (road improvements) which can no longer be installed on CalTrans right of way.
- The State of California has acknowledged that Climate Change is a serious problem that must be urgently addressed by lead agencies charged with making discretionary land use decisions. Health and Safety Code §38550; Executive Order S-3-05, SB 32. The original approval did not analyze the significance of the Project's contribution to climate change and did not impose any mitigation measures to address Project impacts.
- The County approved the Project (in 1991) and approved a Revised Project in reliance on 30-year-old water supply analysis that did not take into account the climate change's impact on water supply or the current historic drought. Reduced water supplies and the corresponding water rationing in communities throughout the Big Bear Valley may increase the risk of wildfire by impairing the local agencies' ability to suppress wildfires.
- The 1983 EIR assumed the Project would require 150 gallons of water per day, per connection. More recent studies have shown, however, that water usage in the Project area is on average about 250 gallons per day per connection.
- Owing to the increased levels of pollution in Big Bear Lake, this waterbody has now been declared an "impaired water body." Increased runoff from the project site is therefore a more serious concern now than it was the time the EIR was certified.
- The new amenities envisioned by the Revised Plan (such as expanded clubhouse, spa, indoor/outdoor pool, restaurant, banquet facilities, and gourmet food shop,

ponds/skating ring) would require substantially more water than anticipated by the 1991 EIR.

- The risk of wildfire has increased dramatically since the 1991 EIR concluded the Project posed a "small fire hazard). According to recent EIRs prepared for projects in the Project's vicinity, the risk of wildfire fires in San Bernardino County are "acute" due to drought conditions, increased temperatures and bark beetle infestations.
- Traffic conditions in the Project's vicinity have changed dramatically since 1991. Peak traffic on North Shore Drive near the site has increased from 1500 daily trips in 1981 to between 5,200 and 12,000. Moon Camp 2010 RDEIR at 4.8-8A. Sunday daily trips on the same road segment were 23,700 trips west of the Project site and 7,400 trips east of the site.
- Moreover, the County now employs more accurate models to evaluate traffic impacts compared to the methodologies available in 1991.
- The Revised Project's overall cumulative impact is considerably more significant because the general Project area has undergone significant development and has experienced substantial increase in population.

39. The Addendum also failed to consider substantial changed circumstances that warrant preparation of an SEIR.

40. The County Planning Commission denied Petitioner's appeal. The County Board of Supervisors, likewise, upheld the denial of Petitioners' appeal and upheld the Planning Staff's approval of the "Minor Site Plan Revision."

41. Contrary to the County's claims and the misleading information contained in the Site Plan Revision application and corresponding maps, the revised site plan would substantially increase the size and intensity of the proposed development.

FIRST CAUSE OF ACTION
(VIOLATION OF CALIFORNIA ENVIRONMENTAL QUALITY ACT)

42. Petitioners incorporate all previous paragraphs as if fully set forth.

43. CEQA also requires an agency to prepare a new EIR, or a subsequent or supplemental EIR ("SEIR") where substantial changes are proposed in a project that will require new analysis or major revisions to an EIR, substantial changes to the circumstance under which the project is undertaken will require major revisions to an EIR, or new information becomes available, which

1 was not known at the time that an earlier EIR was certified as complete.

2 44. CEQA requires public agencies first to analyze all of a project's reasonably foreseeable
3 environmental effects in the initial study and to conduct an EIR when substantial evidence exists that
4 the Project may have a significant effect on the environment so as to fully study the potential effects
5 and to analyze mitigation measures and alternatives to the Project.

6 45. CEQA imposes upon the County a clear, present and mandatory duty to include all
7 feasible mitigation measures or adopt alternatives which would substantially lessen the significant
8 environmental effects of the project.

9 46. The County violated CEQA by failing to prepare and certify a new and adequate EIR
10 because the approval of the Revised Site Plan amounted to a new discretionary decision of a Project
11 that could potentially cause significant environmental impacts.

12 47. Even if the County could rely on the 1991 EIR in approving the Revised Site Plan, the
13 County was required to prepare a subsequent or supplemental EIR pursuant to Pub. Res. Code §21166
14 and CEQA Guideline §15162 because, as set forth above, (1) substantial project changes require
15 substantial revisions to the EIR, (2) substantial changed circumstances require EIR revisions, and (3)
16 significant new information has become available that could not have been known at the time of the
17 1991 certification of the original EIR.

18 48. In any event, the EIR Addendum is legally inadequate and violates CEQA because it
19 fails to adequately describe the Project, as revised, fails to consider changed circumstances and new
20 information, and fails to consider the impacts of elimination of mitigation measures that had been
21 imposed as part of the County's 1991-1992 Project approval. Moreover, substantial evidence does not
22 support the Addendum's conclusion that the Project's impacts on water supply, water quality,
23 biological resources and aesthetics will be reduced to less than significant with mitigation.

24 49. The County violated CEQA by eliminating previously imposed mitigation measures (as
25 conditions of approval) without any meaningful notice or disclosure to the public, or any analysis of the
26 residual potential environmental impacts of the Project

27 **SECOND CAUSE OF ACTION**
28 **(VIOLATION OF SAN BERNARDINO MUNICIPAL CODE AND CONDITIONS OF APPROVAL)**

50. Petitioners incorporate all previous paragraphs as if fully set forth.

51. The County Development Code contains stringent timeframes in which an applicant

1 must complete a phased planned development project. In addition to complying with all time limits
2 specifically set pursuant to conditions of approval, an applicant is required to " either record a tract map
3 or obtain Building Permits for at least one phase of the project within five years of the Development
4 Plan conditional approval and, as applicable, within each succeeding five-year period. Each five-year
5 period shall begin with the last County approved action that was accomplished (e.g., recordation of a
6 tract map, obtain a Building Permit)." § 86.06.060(a)(5)(B). If these deadlines are not met, the Planned
7 Development Permit approval expires and becomes invalid. § 86.06.060(a)(1). Extensions of time are
8 not available for phased projects (§§ 85.10.080, 86.06.060(b)(2)(E)) and all work at a site must cease
9 when a development permit expires. § 86.06.060(c).

10 52. The Developer recorded a tract map for the Project on December 21, 2000 however,
11 since then the Developer has neither recorded any further tract maps for the site nor obtained any
12 building permit for the Project. Thus, by operation of the Development Code and the 1992 revised
13 Conditions of Approval, the 1991 Planned Development Permit expired on December 21, 2005.

14 53. Despite this permit expiration and in violation of the Development Code, County staff
15 has continued to issue grading, demolition, and other permits for work at the Project site.
16 Petitioners' challenge to these illegally issued permits is currently pending in Friends of Big Bear
17 Valley, et al. v. County of San Bernardino, et al , SBSC Case No. CIV-DS-1409159.

18 54. The County's approval of the "Minor Revision to Approved Action for the Marina Point
19 Final Development Plan" was therefore unlawful and in violation of the County Municipal Code
20 because the County's 1991 approval of the Planned Development Permit and Final Development Plan
21 had already expired.

22 PRAYER FOR RELIEF

23 In each of the respects enumerated above, Respondent has violated its duties under law, abused
24 its discretion, failed to proceed in the manner required by law, and decided the matters complained of
25 without the support of substantial evidence. Accordingly, the adoption of the EIR Addendum and the
26 approval of the Minor Revision to Approved Action must be set aside.

27 WHEREFORE, Petitioners pray for relief as follows:

- 28 1. For an alternative and peremptory writ of mandate, commanding Respondent:
 - A. To set aside and vacate its EIR Addendum and Findings supporting the Project;
 - B. To set aside and vacate any and all approvals for the Project based upon the EIR

1 Addendum, including, but not limited to, the Revised Site Plan; and

2 C. To prepare and certify a legally adequate EIR or SEIR for the Project so that
3 Respondent will have a complete disclosure document before it, identify for the decision-makers and
4 public the potential significant impacts of the Project, and enable it to formulate realistic and feasible
5 alternatives and mitigation measures to avoid those impacts;

6 2. For declaratory judgment, stating that the actions of SAN BERNARDINO COUNTY
7 in certifying the Addendum and approving the Revised Site Plan were unlawful;

8 3. For declaratory judgment stating that (1) the Developer's land use approvals for the Project
9 have expired under the County Code and the Conditions of Approval for the Project, and (2) the actions of
10 SAN BERNARDINO COUNTY in approving other plans and/or permits, including a Minor Revision to
11 Approved Action for the Marina Point Final Development Plan was unlawful and in violation of the
12 County Code which prohibits the County from issuing any other permits for the Project until the County
13 issues new land use approvals for the Project;

14 4. For a temporary restraining order, preliminary injunction, and permanent injunction
15 prohibiting any actions by Respondent or Real Parties based on the Addendum, the Minor Revision to
16 Approved Action, or any of the Project approvals to construct any portion of the Project or to develop or
17 alter the Project site in any way that could result in a significant adverse impact on the environment
18 unless and until a lawful approval is obtained from Respondent after the preparation and consideration
19 of an adequate EIR or SEIR;

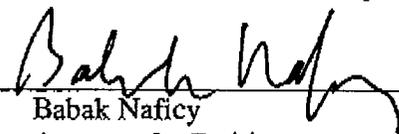
20 5. For costs of the suit;

21 6. For reasonable attorneys' fees; and

22 7. For such other and further relief as the Court deems just and proper.

23 DATE: August 24, 2015

Respectfully Submitted,

24
25 By: 
26 Babak Naficy
27 Attorney for Petitioners
28