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CLEVELAND NATIONAL FOREST FOUNDATION and SAVE OUR FOREST AND RANCHLANDS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

CLEVELAND NATIONAL FOREST FOUNDATION; SAVE OUR FOREST AND RANCHLANDS, Petitioners and Plaintiffs, v. COUNTY OF SAN DIEGO; SAN DIEGO COUNTY BOARD OF SUPERVISORS; and DOES 1-20, inclusive, Respondents and Defendants.	Case No. **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF** California Environmental Quality Act ("CEQA") Pub. Res. Code § 21000, et seq.; Code Civ. Proc. § 1094.5 (alternatively, § 1085); California Planning and Zoning Law, Gov. Code § 65000, et seq.
COUNTY OF SAN DIEGO; PLANNING AND DEVELOPMENT SERVICES; and DOES 21-40, inclusive, Real Parties in Interest.	

INTRODUCTION

1. This action challenges the December 14, 2016 decision of the County of San Diego and its Board of Supervisors (collectively "the County" or "Respondents") to approve the Forest Conservation Initiative Amendment (the "FCI Amendment" or "Project") and certify the associated environmental impact report ("EIR"). The Project involves over 70,000 acres of lands in the Cleveland National Forest in unincorporated San Diego County ("FCI Lands"). The FCI, approved by the voters in 1993, amended the General Plan by imposing 40-acre minimum lot size requirements on private landholdings within the Forest.

2. The Project amends the updated General Plan adopted by the County in 2011, to assign new land use designations and development densities to former FCI Lands, and make further changes in land use designations for roughly 400 acres adjacent to former FCI Lands. Among other things, the Project revises the Land Use Element and Land Use Map, amends the County's Zoning Ordinance, and removes the FCI Appendix from the General Plan.

3. As Petitioners Cleveland National Forest Foundation ("CNFF") and Save Our Forest and Ranchlands ("SOFAR"), along with other members of the public, demonstrated throughout the administrative process, the Project is expected to have devastating, long-term consequences for the residents of, and visitors to, San Diego County's backcountry and for the ecological health of the Forest. Those consequences include permanent loss of open space, increased edge effects, significant increases in traffic congestion, increased air pollution and greenhouse gas ("GHG") emissions, and safety impacts, to name a few. Yet the County's EIR fails to disclose or adequately evaluate these environmental impacts or identify effective mitigation measures for adoption, rendering the document inadequate under the California Environmental Quality Act ("CEQA"), Public Resources Code sections 21000 *et seq.* The County's approval of the Project also violated provisions of the California Planning and Zoning Law because the Project is inconsistent with policies and mitigation measures in the County's General Plan.

4. By approving the Project, the County has put the cart before the horse. The EIR,

for example, improperly analyzes the Project's GHG impacts based on interim "guidance" the County developed in July 2016, rather than on thresholds established through an approved Climate Action Plan ("CAP"), as expressly required by the General Plan. The EIR also fails to adequately address the fact that the Project would permit increased development densities on land without adequate access to water supply. The County's direction to staff in 2014 to determine the feasibility of developing the necessary infrastructure to support the approved densities remains incomplete.

5. The EIR also creates a false narrative suggesting that the "No Project" condition, which the EIR uses as the "baseline" for its analysis of the Project, would allow rampant development throughout the backcountry, at approximately three times the density allowed under the Project. The County has not provided evidence or authority to show that FCI Lands "reverted back" to their pre-FCI designations after December 31, 2010, such that this level of development would be allowed. Rather, the Board of Supervisors ("Board") is now able to *change* those designations without a vote of the people. This false narrative permeates the EIR, its analysis of environmental impacts, and consideration of alternatives. Petitioners therefore seek declaratory relief to clarify the density that would be allowed under the "No Project" condition, and whether the land use designation for FCI Lands "reverted back" after the sunset of the FCI.

6. The Project is also wholly unnecessary. The EIR reveals that the Project will result in an alarming number of significant and unavoidable environmental impacts, yet the County failed to adopt the Environmentally Superior Alternative or a different alternative that would have focused development in cities rather than FCI Lands. The County rejected both of these alternatives without substantial evidence that they are infeasible or fail to meet Project objectives, and without substantial evidence that the approved alternative would meet those objectives.

7. As explained in detail below, the County's actions in approving the Project and certifying the EIR violated CEQA and the State CEQA Guidelines, California Code of Regulations, title 14, section 15000 *et seq.* ("CEQA Guidelines"), and the California Planning

and Zoning Law, Government Code sections 65000 *et seq*.

PARTIES

8. Petitioner Cleveland National Forest Foundation ("CNFF") is a nonprofit corporation dedicated to preserving the plants, animals and other natural resources of Southern California mountains by protecting the land and water they need to survive. CNFF is committed to sustainable regional land use planning in San Diego County in order to stem the tide of urban encroachment on wildlands.

9. Petitioner Save Our Forest and Ranchlands ("SOFAR") is a nonprofit corporation dedicated to the protection of wilderness, watershed, and agricultural resources of San Diego County through proper land use planning. SOFAR believes urban sprawl to be the principal threat to the natural resources and quality of life in San Diego County.

10. Petitioners and their respective members have a direct and beneficial interest in San Diego County's compliance with CEQA, the CEQA Guidelines, and the state Planning and Zoning law. These interests will be directly and adversely affected by the Project, which violates provisions of law set forth in this Petition and which could cause substantial and irreversible harm to the natural environment. The maintenance and prosecution of this action will confer a substantial benefit on the public by protecting the public from the environmental and other harms alleged herein. Petitioners submitted written comments to the County objecting to and commenting on the Project and the EIR.

11. Respondent County of San Diego ("County"), a political subdivision of the State of California, is responsible for regulating and controlling land use in the unincorporated territory of the County, including, but not limited to, implementing and complying with the provisions of CEQA and the state Planning and Zoning law. Respondent County is the "lead agency" for purposes of Public Resources Code section 21067, with principal responsibility for conducting environmental review and approving the Project.

12. Respondent San Diego County Board of Supervisors ("Board") is the duly elected legislative body for San Diego County. As the decision-making body, the Board is charged with the responsibilities under CEQA for conducting a proper review of the proposed action's

environmental impacts and granting the various approvals necessary for the Project.

13. Real Party in Interest County of San Diego; Planning and Development Services is the Project applicant as stated on the Notice of Determination for the Project, which the County filed with the County Clerk and State Office of Planning and Research ("OPR") on December 15, 2016. Section 21167.6.5 of the Public Resources Code requires that the Petition name, as Real Party in Interest, the "person or persons identified" by the lead agency in its Notice of Determination.

14. Petitioners do not know the true names and capacities, whether individual, corporate, associate, or otherwise, of respondents DOES 1 through 20, inclusive, and therefore sue said respondents under fictitious names. Petitioners will amend this Petition to show their true names and capacities when the same have been ascertained. Each of the respondents is the agent and/or employee of Respondent County, and each performed acts on which this action is based within the course and scope of such Respondent's agency and/or employment.

15. Real parties in interest named DOES 21 through 40, inclusive, are given fictitious names because their names and capacities are presently unknown to Petitioners. Petitioners will amend this Petition to allege their true names and capacities when ascertained.

JURISDICTION AND VENUE

16. Pursuant to California Code of Civil Procedure sections 1060, 1094.5 (alternative section 1085), and 1087; and Public Resources Code sections 21168.5 (alternatively section 21168) and 21168.9, this Court has jurisdiction to issue a Writ of Mandate to set aside Respondents' decision to certify the EIR and approve the Project.

17. Venue is proper in this Court pursuant to Code of Civil Procedure sections 394 and 395. Respondent County's main offices are located in and the causes of action alleged in this Petition arose in the County of San Diego. The proposed Project lies within San Diego County. Many of the significant environmental impacts of the Project that are the subject of this lawsuit would occur in San Diego County, and the Project would impact the interests of San Diego County residents. Venue is proper in the Central Division of this Court in accordance with Local Rule 1.2.2(E).

18. Petitioners have complied with the requirements of Public Resources Code section 21167.5 by serving a written notice of Petitioners' intention to commence this action on Respondents County and Board on January 12, 2017. A copy of the written notice and proof of service is attached hereto as Exhibit A.

19. Petitioners will comply with the requirements of Public Resources Code section 21167.6 by concurrently filing a notice of Petitioners' election to prepare the record of administrative proceedings relating to this action.

20. Petitioners have complied with the requirements of Public Resources Code section 21167.7 by sending a copy of this Petition to the California Attorney General on January 13, 2017. A copy of the letter transmitting this Petition is attached hereto as Exhibit B.

21. Petitioners have performed any and all conditions precedent to filing this instant action and have exhausted any and all administrative remedies to the extent required by law, including but not limited to timely submitting extensive comments objecting to the approval of the Project and presenting to Respondents the flaws in its environmental review in letters submitted on, but not limited to, March 18, 2013, May 3, 2013, October 15, 2013, February 29, 2016, and December 9, 2016.

22. Petitioners have no plain, speedy, or adequate remedy in the course of ordinary law unless this Court grants the requested writ of mandate to require Respondents to set aside certification of the EIR and approval of the Project. In the absence of such remedies, Respondent County's approval will remain in effect in violation of state law.

STATEMENT OF FACTS

The Project and Its Location

23. The Project is an amendment to the County's General Plan Update adopted in 2011. Among other things, the Project (1) revises the Land Use Element and Land Use Map; (2) revises the Mobility Element and road network; (3) removes the FCI Appendix from the General Plan; (4) amends the Zoning Ordinance; and (5) amends four "Community" and "Subregional" plans within the General Plan. Petitioners are particularly concerned with the Project's changes to the land use designations and allowable development density for FCI Lands.

24. The Project area covers 71,300 acres of land within the Cleveland National Forest ("Forest"), and 400 adjacent acres. The Forest is an approximately 430,000 acre National Forest administered by the U.S. Forest Service. Nearly 300,000 acres of the Forest lie within San Diego County.

25. FCI Lands represent some of the most rugged, inaccessible areas in the County. The Forest contains abundant wildlife and natural resources, mountain vistas, and recreational opportunities all within reach of the San Diego urban area. The forest is nonetheless a stressed, fragile ecosystem due to ever encroaching development and the effects of climate change.

Project Background

26. San Diego County voters approved the FCI in 1993. The FCI amended the General Plan then in place by imposing 40-acre minimum lot size requirements on private landholdings within the Forest. The FCI stated that the initiative would remain in effect until December 31, 2010.

27. In 2011, the County adopted an update to the General Plan, and certified the associated Program Environmental Impact Report ("PEIR"). For reasons related to the timing of the FCI's sunset, the GPU did not address the FCI Lands. The County planned to consider amendments related to the FCI Lands at a later date.

28. In 2012, the County developed a draft map identifying proposed land use designations for the former FCI Lands (the "FCI Amendment"), and prepared an associated Supplemental EIR ("SEIR") to the PEIR. The SEIR was circulated for public review and comment for 45 days.

29. In late 2013, the County seemed poised to adopt the FCI Amendment. However, after considering public comments expressing concern over the new designations proposed for former FCI Lands, the lack of infrastructure planned to support those designations, severe wildfire risks, the SEIR's failure to consider GHG impacts beyond 2020, and the SEIR's reliance on the County's CAP, which had recently been invalidated by the San Diego County

Superior Court,[1] the Board directed County staff to substantially revise the proposed Land Use Map and the SEIR.

The Revised Draft SEIR

30. In January 2016, the County completed a Revised Draft SEIR ("RDSEIR"), containing an amended project description, a revised GHG analysis that purports not to rely on the CAP, and new project alternatives, including the "Modified FCI Condition Alternative" and the "Alpine Alternative Land Use Map Alternative" ("Alpine Alternative").

31. The project proposed in the RDSEIR would support an estimated 6,245 dwelling units ("DUs") after buildout, on the FCI Lands and the 400 acres of adjacent property. The RDSEIR stated that this estimate represents an increase of approximately 1,958 DUs above the assumptions in the 2011 General Plan and associated PEIR. However, the RDSEIR stated that this increase does "not forecast dwelling unit totals relative to the SEIR baseline condition" because the "baseline" for the proposed project is claimed to be the pre-FCI land use designation. The RDSEIR stated that this designation would allow 15,062 DUs on the project site, and is the "No Project" scenario for purposes of the environmental analysis.

32. On January 14, 2016, the County circulated the RDSEIR for public review and comment for 45 days. A total of 70 comment letters were received on the SEIR and RDSEIR, including letters from Petitioners CNFF and SOFAR on February 29, 2016.

33. In comments, Petitioners stated that the RDSEIR failed to adequately analyze or mitigate the GHG impacts of the proposed project. The document failed to propose feasible mitigation measures, beyond policies already in place, to reduce the project's significant impacts on climate change, and also failed to provide substantial evidence to back its statements that potential mitigations were infeasible. Petitioners advised the County not to move forward with the proposed project prior to adoption of a legally adequate CAP, as expressly required by the

[1] *Sierra Club v. County of San Diego*, San Diego Superior Court Case No. 37-2012-00101054-CU-TT-CTL. In October 2014, the Fourth District Court of Appeal affirmed the trial court's ruling. 231 Cal.App.4th 1152. The Board rescinded the CAP in April 2015, and has not readopted it.

2011 General Plan. Petitioners also stated that the General Plan mitigation measures which the RSDEIR identified as applicable to the proposed project's GHG impacts were vague, operational, directory or otherwise unenforceable, in violation of CEQA.

34. Petitioners also stated that the County had not provided evidence that the land use designation for FCI Lands "reverted back" to their pre-FCI categories upon the sunset of the FCI, rather than simply continue until such time, if ever, that the County adopts new designations. Petitioners stated that this assertion in the RSDEIR is not only incorrect but also appeared designed to make the proposed project and alternatives look like "compromise" positions, such that the RSDEIR's analysis of alternatives was not based on substantial evidence.

35. Petitioners advocated for either the "City Centered Alternative," an infill option that would support 4,286 DUs, or the Modified FCI Condition Alternative (the Environmentally Superior Alternative), which would support 4,521 DUs. Petitioners stated that the RSDEIR improperly rejected these alternatives without substantial evidence.

The Final SEIR and the Board's Approval of the Project

36. In October 2016, the County released the Final SEIR ("FSEIR"). The FSEIR found the proposed project would have numerous significant and unavoidable environmental impacts, including GHG impacts affecting the state's ability to comply with Assembly Bill 32; impacts on water quality and supply; impacts on public safety due to wildland fire risk; impacts on plant and animal resources; impacts to traffic congestion and safety; impacts on air quality (including increased cancer risk); impacts to the visual character of the project area; and impacts on several other resource categories.

37. On October 14, 2016, the Planning Commission convened and adopted its recommendation to the Board to approve the Alpine Alternative instead of the proposed project. The Alpine Alternative is the same as the proposed project with respect to the entire project area, with the exception of the Alpine Community Planning Area; under the recommended alternative, this planning area would support slightly fewer DUs (5,735) than under the proposed project (6,245). The Planning Commission also recommended that the Board amend the Zoning

on FCI Lands pursuant to the Project.

38. On October 12, 2016 and December 9, 2016, Petitioners submitted extensive comments on the FSEIR. Petitioners addressed the FSEIR's many inadequacies regarding the analysis of GHG impacts, public safety impacts due to fire hazard, water supply impacts, traffic congestion impacts, biological resources impacts, and growth inducing impacts, among others. Petitioners also addressed the FSEIR's failure to consider or adopt feasible mitigation measures to reduce the Project's significant and unavoidable impacts, and its failure to provide substantial evidence to support its rejection of project alternatives that would be less harmful to the environment.

39. Petitioners stated that the FSEIR's analysis of GHG impacts unlawfully relies on the County's July 2016 GHG "guidance," which the County failed to adopt pursuant to procedures in CEQA. Staff administratively adopted the guidance in July 2016, yet the guidance is effectively a CEQA threshold of significance that must be formally adopted, with an opportunity for public comment, pursuant to CEQA Guidelines section 15064.7.

40. Petitioners stated that the County's 2011 update to the General Plan required the FSEIR to analyze GHG impacts based on thresholds developed under the County's CAP, a mitigation measure that was adopted with the 2011 General Plan Update to ensure that the County sufficiently reduces its emissions to meet AB 32's goals and beyond. PEIR Mitigation Measure CC-I.8 states, "Revise County Guidelines for Determining Significance based on the Climate Change Action Plan." Under PEIR Mitigation Measure CC-1.2, the County was required to adopt a CAP within 6 months of adopting the 2011 General Plan. Because the County has not adopted a legally adequate CAP, and because the General Plan PEIR made clear that adoption of the CAP, among other measures, was necessary to mitigate the Plan's significant climate impacts, the Project is inconsistent with these mitigation measures and the related policies in the 2011 General Plan, including but not limited to Policies COS-20.1 and COS-20.2.

41. Petitioners stated, furthermore, that even if the County's GHG guidance had been properly adopted, use of this guidance violates the supplemental writ filed in the Sierra Club's

pending litigation over the County's CAP (*Sierra Club v. County of San Diego*, San Diego Superior Court Case No. 37-2012-00101054-CU-TT-CTL). That writ ordered the County to set aside GHG guidelines the County developed in 2013, and not reissue such Guidelines until it completes the CAP.

42. Petitioners stated that, even if it were proper to rely on the County's 2016 GHG guidance instead of the CAP, the FSEIR's analysis violates recent California Supreme Court precedent because it relies on statewide per-person GHG goals necessary to achieve AB 32, SB 32 and Executive Order goals, without substantial evidence that they are relevant to projects in San Diego County. The FSEIR fails to provide substantial evidence to support the Project emissions it discloses, and in fact omitted the key table setting forth the Project's emissions from the circulated document.

43. Petitioners stated that the FSEIR's failure to adopt project-specific mitigation to reduce the Project's significant GHG impacts violates CEQA. The FSEIR fails to provide substantial evidence supporting the purported infeasibility of proposed mitigation measures to address climate change impacts, and completely overlooks others proposed as part of the deferred CAP process. For example, the FSEIR rejects mitigation measures requiring "green building" standards due to social/economic infeasibility, but fails support its rejection of this mitigation with substantial evidence. The FSEIR ignores other feasible mitigation measures available to lessen the Project's climate impacts, including requiring electric vehicle charging stations in all new development; use of low or zero-emission construction vehicles; reducing the use of pavement and impermeable surfaces; and purchasing of offset credits.

44. Petitioners also stated that the FSEIR's analysis significantly underestimates the vehicle miles traveled ("VMT") generated by the Project, and that the Project's enormous increase in VMT translates directly to an increase in GHGs. The FSEIR thus fails to disclose the full extent and severity of the GHG impacts of implementing the Project.

45. Petitioners stated that the FSEIR's description of the environmental setting for water supply for the Project is inadequate. Despite overwhelming scientific evidence of the ongoing drought crisis, as well as action at both the state and County levels to address water

shortages and reevaluate water-use planning in the face of a new reduced-water reality, the FSEIR's analysis of water supply impacts barely mentions the current drought.

46. Petitioners also stated that the FSEIR improperly defers analysis of impacts related to expansion of infrastructure to provide water to the Project area. The FSEIR must provide substantial evidence that an adequate, reliable water supply is available to serve the Project area prior to Project approval, yet fails to do so. Petitioners also stated that the FSEIR fails to adequately analyze impacts resulting from uncertain water supplies for the Project's increased density in the Alpine Planning Area. Implementation of water service east of this area would result in additional potentially significant environmental impacts not evaluated in the FSEIR (including, but not limited to, growth-inducing impacts, biological/hydrological impacts from streamflow disruptions to Sweetwater Creek and other surface waters, and the construction of a pipeline next to and across area surface waters). The County should have performed a feasibility study and preliminary CEQA evaluation of implementing new water service prior to approving higher densities under the Project.

47. Petitioners stated that the FSEIR dramatically understates the Project's potential to significantly affect sensitive species and associated habitats, and fails to provide effective, enforceable measures to mitigate such impacts. Species on Project lands and adjacent Forest lands include the Quino checkerspot butterfly, Laguna mountain skipper, southern steelhead, arroyo toad, southwestern willow flycatcher, least Bell's vireo, coastal California gnatcatcher and a Federal candidate species, the Hermes copper butterfly, all of which are extremely vulnerable to Project-related impacts. Yet, the FSEIR never mentions, let alone analyzes, the actual consequences to these species and habitats, nor attempts to identify the specific location of important habitat areas, quantify the expected losses to species and habitats, identify the specific species that would be impacted within each habitat, or analyze the significance of the expected impacts.

48. Petitioners stated that the FSEIR fails to adequately describe the existing setting of FCI Lands in relation to wildland fire hazards. The FSEIR omits critical information required to understand the severity and extent of the wildfire risk that would occur upon implementation of

the Project, and instead presents a generic discussion of wildfire risk that inaccurately suggests the area near the Alpine Planning Area is not at a greater wildland fire risk than any other area in the County.

49. Petitioners stated that the FSEIR fails to conduct an adequate impact analysis associated with the risk of wildfire, by failing to evaluate the extent and severity of increased risk and demand for services resulting from higher development densities proposed by the Project. For example, the FSEIR fails to ensure that adequate services would be available to provide water for fire suppression, and instead defers the analysis of water supply. Furthermore, because the Project will increase and exacerbate people's exposure to fire hazards, necessitating a need for new fire facilities, the Project is inconsistent with General Plan policies S-1.1, Pub-1.4, and LU-6.10.

50. Petitioners stated that the FSEIR fails to support its rejection of mitigation measures to reduce wildfire-related risks with substantial evidence, including measures that would reduce densities and land use intensities in fire-prone areas. The FSEIR rejects these measures on the grounds that implementing them would conflict with the increased growth called for in the General Plan, and with Housing Element goals of providing sufficient housing stock.

51. Petitioners stated that the FSEIR fails to disclose the extent and severity of the Project's traffic impacts because it improperly relies on assumptions that minimize, rather than conservatively assess, these impacts. For example, the FSEIR fails to include all of the potential development area in its analysis of trip generation for the proposed land use changes. Reliance on an inaccurate traffic analysis in turn implicates the FSEIR's air quality, GHG, and noise analyses.

52. Petitioners stated that the FSEIR's analysis of growth-inducing impacts presents conflicting information. On the one hand, the FSEIR acknowledges that the Project would result in population growth in the Alpine Planning Area "beyond what was projected in the General Plan" and thus would "involve expansion of the [San Diego County Water Authority] to allow for extension of utilities to accommodate future development," yet at the same

time states that the new growth induced by the Project would be consistent with the General Plan and would *not* result in unplanned growth. Increasing development densities to allow densities beyond what was contemplated in the General Plan constitutes unplanned growth that must be adequately analyzed under CEQA, which the FSEIR fails to do.

53. Petitioners stated that the FSEIR fails to provide substantial evidence to support its rejection of two alternatives to the Project: the City-Centered Alternative, and the Modified FCI Condition Alternative (the Environmentally Superior Alternative). The FSEIR found that the Modified FCI Condition Alternative failed to sufficiently achieve Project objectives in 6 of 10 evaluation categories, yet failed to support this finding with substantial evidence. Similarly, the FSEIR's findings that the City-Centered Alternative would result in additional impacts, and is infeasible because the County lacks land use authority in cities and is constrained by State law requirements to provide regional housing, are not supported by substantial evidence.

54. Petitioners also reiterated their February 29, 2016 comments that the County had not provided evidence that the land use designations for FCI Lands "reverted back" to their pre-FCI categories upon the sunset of the FCI, rather than simply continue until such time, if ever, that the County adopts new designations. Petitioners stated that this assertion in the FSEIR is not only incorrect but also designed to make the Project and alternatives look like "compromise" positions. By assuming that the "No Project" alternative would result in extensive development throughout the backcountry (15,094 DUs), the FSEIR misidentifies the No Project alternative which, if correctly described, would be the Environmentally Superior Alternative as required by CEQA.

55. On December 14, 2016, the Board approved the Project by adopting the Planning Commission's recommended alternative, the Alpine Alternative. In its findings adopted pursuant to CEQA, the County stated that this alternative's land use designations are "less intensive and would accommodate less development than the proposed Project and would generally result in similar but reduced environmental impacts."

56. On December 15, 2016, the County filed a Notice of Determination with the County Clerk and the state Office of Planning and Research ("OPR").

FIRST CAUSE OF ACTION

(Violations of CEQA)

57. Petitioners hereby reallege and incorporate by reference the preceding paragraphs in their entirety.

58. CEQA is designed to ensure that long-term protection of the environment be the guiding criterion in public decisions. CEQA requires the lead agency for a project with the potential to cause significant environmental impacts to prepare an EIR that complies with the requirements of the statute, including, but not limited to, the requirement to analyze the project's potentially significant environmental impacts. The EIR must provide sufficient environmental analysis such that the decisionmakers can intelligently consider environmental consequences when acting on the proposed project. Such analysis must include and rely upon thresholds of significance that are based on substantial evidence before the decisionmakers. Additionally, the EIR must analyze feasible mitigation measures and a reasonable range of alternatives to the project.

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

60. CEQA requires that substantial evidence in the administrative record support all of the EIR and agency's findings and conclusions, and that the agency explain how the evidence in the record supports the conclusions the agency has reached.

61. The County failed to proceed in a manner required by law and violated CEQA by certifying an EIR that is inadequate and fails to comply with the requirements of CEQA and the CEQA Guidelines. As detailed in the comment letters described above, deficiencies in the EIR include, but are not limited to, the failure to validly disclose, analyze, or mitigate:

a. impacts related to GHG emissions from the Project;

b. impacts related to water supply;

c. impacts to biological resources;

d. impacts associated wildfire hazard risks;

e. impacts to traffic and transportation;

f. impacts associated with the Project's inconsistency with applicable land use plans;

g. growth-inducing impacts.

62. The EIR's analysis of the Project's impacts is additionally flawed due to the County's failure to provide an accurate and complete description of the Project, which resulted in failure to analyze and/or mitigate the full range of significant impacts.

63. The EIR's analysis of the Project's impacts is additionally flawed due to the County's failure to adequately disclose, analyze and/or mitigate the Project's significant cumulative impacts.

64. The EIR's analysis of the Project's impacts is additionally flawed due to the County's failure to identify or use appropriate, evidence-backed thresholds of significance to explain the basis of its conclusions.

65. The EIR's analysis of the Project's impacts is additionally flawed due to the County's failure to adequately describe the environmental setting, as required by CEQA Guideline section 15063(d)(2).

66. The EIR's analysis of impacts is additionally flawed due to the County's failure to identify, consider and/or adopt measures to mitigate Project impacts. CEQA mandates that the lead agency adopt feasible and enforceable mitigation measures that would reduce or avoid any of the project's significant environmental impacts. The County failed to identify or adopt feasible mitigation measures to adequately address the Project's significant impacts.

67. An EIR is required to consider the environmental effects of a reasonable range of alternatives, and assess those alternatives' ability to reduce or avoid the project's significant impacts. If any of the project's significant impacts cannot be mitigated to a less than significant level, then CEQA bars the lead agency from approving a project if a feasible alternative is

available that would meet the project's objectives while avoiding or reducing its significant environmental impacts. The EIR is flawed due to its failure to include a reasonable range of alternatives, and its rejection of feasible alternatives without substantial evidence supporting such omission.

68. The County also violated CEQA by failing to adequately respond to comments on the EIR, including, but not limited to, ignoring or dismissing in a cursory fashion suggestions of feasible mitigation measures and alternatives.

69. Under CEQA, all findings required for the public agency's approval of a project must be legally adequate and supported by substantial evidence in the administrative record. CEQA further requires that an agency provide an explanation of how the evidence in the record supports the conclusions that the agency has reached. The County violated CEQA by adopting findings and a statement of overriding considerations that are inadequate as a matter of law in that they are not supported by substantial evidence in the record. The findings do not provide the reasoning, or analytic route from facts to conclusions, as required by law.

70. The County furthermore violated CEQA by adopting findings and a statement of overriding considerations that fail to support the County's rejection of project alternatives based on their ability to meet the stated project objectives. Because the County fails to make the necessary findings that alternatives analyzed in the EIR are infeasible, the County's statement of overriding considerations is invalid.

71. The County rests its statement of overriding considerations on conclusory statements of Project "benefits," yet there is no substantial evidence to support the County's findings of "benefits" regarding climate change, fire safety, or the Project's ability to accommodate a reasonable share of projected population growth, among other considerations.

72. As a result of such defects in the EIR, the County prejudicially abused its discretion by certifying an EIR that does not comply with CEQA, by failing to proceed in the manner required by law, and by failing to act on the basis of substantial evidence.

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SECOND CAUSE OF ACTION

(Violation of California Planning and Zoning Law)

73. Petitioners hereby reallege and incorporate by reference the preceding paragraphs in their entirety.

74. Under the California Planning and Zoning Law, all County approvals must be consistent with the General Plan, including the goals and policies contained in the General Plan.

75. The Project is inconsistent with the General Plan adopted in 2011 because it conflicts with the policies of that Plan and mitigation measures adopted and incorporated into the Plan, including but not limited to those policies and mitigation measures regarding the establishment and implementation of a Climate Action Plan ("CAP") and thresholds of significance based on the CAP.

76. These General Plan policies and mitigation measures require the County to analyze projects' GHG impacts based on thresholds developed under the County's CAP. Because the County has not adopted a legally adequate CAP, and because the General Plan and associated EIR made clear that adoption of the CAP, among other measures, was necessary to mitigate the Plan's significant climate impacts, the Project is inconsistent with these policies and mitigation measures of the 2011 General Plan.

77. In approving the Project when it is inconsistent with the County's General Plan, the County abused its discretion and violated provisions of the California Planning and Zoning Law, therefore requiring the rescission of the County's actions.

THIRD CAUSE OF ACTION

(Declaratory Relief – Code of Civil Procedure § 1060)

78. Petitioners hereby reallege and incorporate by reference the preceding paragraphs in their entirety.

79. An actual controversy and dispute exists between Petitioners and Respondents regarding the allowable development densities that are allowed on FCI Lands in the absence of the Project. Petitioners assert that when the FCI sunset on December 31, 2010, the FCI Lands kept their FCI densities, and that the sunset of the Initiative simply allows the Board to change

the designations without a vote of the people. Respondents, however, assert that the allowable densities automatically reverted back to their pre-FCI designations, thus allowing an alleged 15,094 dwelling units on FCI Lands in the Project area at buildout.

80. Petitioners seek a judicial declaration of the current allowable densities on FCI Lands in the absence of the Project, as well as a judicial declaration of the respective rights, responsibilities and duties of Respondents and Petitioners with respect to the determination of such densities.

WHEREFORE, Petitioners prays for judgment as follows:

PRAYER FOR RELIEF

1. For a temporary stay, temporary restraining order, and preliminary and permanent injunctions restraining Respondents and their agents, servants, and employees, and all others acting in concert with them or on their behalf, from taking any action to implement, fund or construct any portion or aspect of the Project, pending full compliance with the requirements of CEQA, the CEQA Guidelines, and the California Planning and Zoning law;

2. For a stay, and preliminary and permanent injunctions restraining Real Party in Interest and its agents, employees, officers and representatives from undertaking any activity to implement the Project in any way pending full compliance with the requirements of CEQA, the CEQA Guidelines, and the California Planning and Zoning law;

3. For alternative and peremptory writs of mandate directing Respondents to vacate and set aside its (a) certification of the EIR; (b) adoption of Environmental Findings and Mitigation Monitoring and Reporting Program; and (c) approval of the Project;

4. For alternative and peremptory writs of mandate directing Respondents to comply with CEQA, the CEQA Guidelines, and the California Planning and Zoning law, and take any other action as required by Public Resources Code section 21168.9 or this Court;

5. For a judicial determination and declaration from this Court that Respondents' actions in approving the Project violated CEQA, the CEQA Guidelines, and the California Planning and Zoning law, as set forth above;

6. For this Court's declaration that when the FCI sunset on December 31, 2010, the

FCI Lands kept their FCI densities, and that these densities continue until such time, if ever, that the County adopts new designations for FCI Lands, and of the respective rights, responsibilities, and duties of Petitioners and Respondents with respect to any such lands;

7. For costs of the suit;

8. For attorneys' fees as authorized by Code of Civil Procedure section 1021.5 and other provisions of law; and

9. For such other and future relief as the Court deems just and proper.

DATED: January 13, 2017

SHUTE, MIHALY & WEINBERGER LLP

By: 

CATHERINE C. ENGBERG
JOSEPH D. PETTA

Attorneys for Petitioners and Plaintiffs CLEVELAND NATIONAL FOREST FOUNDATION and SAVE OUR FOREST AND RANCHLANDS

857386.2

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEFand know its contents.

I am the Executive Director of SAVE OUR FOREST AND RANCHLANDS, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 12, 2017, at Descanso, California.

Duncan McFetridge
Print Name of Signatory

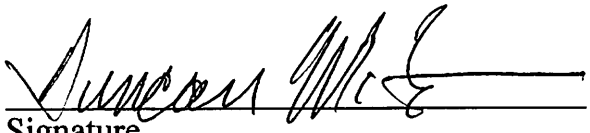

Signature

EXHIBIT A

SHUTE, MIHALY & WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

CATHERINE C. ENGBERG
Attorney
engberg@smwlaw.com

January 12, 2017

Via E-Mail and U.S. Mail

Ernest J. Dronenburg, Jr.
Assessor/Recorder/County Clerk
County of San Diego
County Administration Center
1600 Pacific Highway, Suite 260
San Diego, California 92101
E-Mail: arcc.fgg@sdcounty.ca.gov

David Hall
Clerk of the Board of Supervisors
County of San Diego
County Administration Center
1600 Pacific Highway, Suite 402
San Diego, California 92101
E-Mail: David.Hall@sdcounty.ca.gov

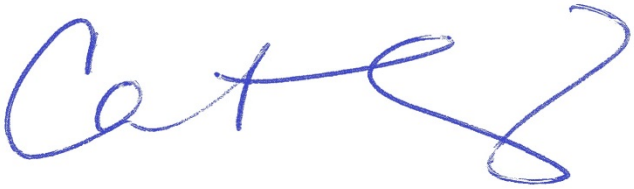
Re: **Notice of Intention to Commence Action under CEQA**
(Forest Conservation Initiative Amendment)
Cleveland National Forest Foundation, et al. v. County of San Diego, et al.

Dear Mr. Dronenburg and Mr. Hall:

This letter is to notify you that the Cleveland National Forest Foundation and Save Our Forest and Ranchlands will file suit against the County of San Diego and the San Diego County Board of Supervisors (collectively the "County") for failure to observe the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq.*, the CEQA Guidelines, California Code of Regulations section 15000 *et seq.*, and the State Planning and Zoning Law, in the administrative process that culminated in approval of the Forest Conservation Initiative Amendment. This notice is given pursuant to Public Resources Code section 21167.5.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Catherine C. Engberg

CCE/dw
cc: Thomas Montgomery, County Counsel
Claudia Silva, Deputy County Counsel

PROOF OF SERVICE

Cleveland National Forest Foundation, et al. v. County of San Diego, et al.
San Diego County Superior Court

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the City and County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, CA 94102.

On January 12, 2017, I served true copies of the following document(s) described as:

NOTICE OF INTENT TO SUE LETTER DATED JANUARY 12, 2017

on the parties in this action as follows:

Ernest J. Dronenburg, Jr.
Assessor/Recorder/County Clerk
County of San Diego
County Administration Center
1600 Pacific Highway, Suite 260
San Diego, California 92101
E-Mail: arcc.fgg@sdcounty.ca.gov

David Hall
Clerk of the Board of Supervisors
County of San Diego
County Administration Center
1600 Pacific Highway, Suite 402
San Diego, California 92101
E-Mail: David.Hall@sdcounty.ca.gov

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly & Weinberger LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address Weibel@smwlaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 12, 2017, at San Francisco, California.

David Weibel

856856.1

EXHIBIT B

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
[redacted]

January 13, 2017

Via U.S. Mail

Kathleen A. Kenealy
Acting Attorney General
State of California
Office of the Attorney General
1300 "I" Street
Sacramento, California 95814-2919

Re: *Cleveland National Forest Foundation, et al. v. County of San Diego, et al.*

Dear Ms. Harris:

Enclosed please find a copy of the Verified Petition for Writ of Mandate and Complaint for Declaratory Relief ("Petition") in the above-captioned action. The Petition is provided to you in compliance with Public Resources Code section 21167.7 and Code of Civil Procedure section 388. Please acknowledge receipt in the enclosed prepaid, self-addressed envelope.

Thank you.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Catherine C. Engberg

CCE/dw
Encl.

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