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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 10 2014

R. Mc Elvea

APR 11 2014

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF RIVERSIDE

14 PROTECT WINE COUNTRY, an unincorporated)
15 association,)

16 Petitioner,

17 vs.

18 COUNTY OF RIVERSIDE,

19 Respondent,

20 DOES 1 through 10, inclusive,

21 Respondents,

22 and DOES 10 through 100, inclusive,

23 Real Parties in Interest.

CASE NO.: RIC 1401719

ASSIGNED FOR ALL PURPOSES TO:

JUDGE: Hon. John Molloy

DEPARTMENT: 10

ACTION FILED: February 21, 2014

**FIRST AMENDED PETITION FOR WRIT
OF MANDATE**

(Code Civ. Proc. §§ 1085, 1094.5; Pub. Res. C. §
21000 *et seq.*)

CASE DESIGNATION: CEQA

INTRODUCTION

1. Petitioner, Protect Wine Country ("Petitioner"), respectfully requests issuance of a peremptory writ of mandate setting aside the decisions of the County of Riverside ("County") adopting and approving the Wine Country Community Plan, which approvals include tentatively approving General Plan Amendment No. 1077; tentatively certifying Programmatic Environmental Impact Report ("EIR") No. 524 (SCH # 2009121076); adopting Ordinance No. 348.4729; and adopting the Temecula Valley Wine Country Design Guidelines and Temecula Valley Greenhouse Gas Reduction Workbook, all associated approvals made by the County on or about December 3, 2013.
2. The Project required the following discretionary actions of the County, among others:
 - a. Certification of Programmatic Environmental Impact Report No. 524, and adoption of associated findings, statement of overriding considerations, and mitigation monitoring program;
 - b. Adoption and approval of General Plan Amendment No. 1077, amending the existing Southwest Area Plan (SWAP) and Circulation Element of the Riverside County General Plan;
 - c. Adoption and approval of Ordinance No. 348.4729, amending Riverside County Ordinance No. 348 to add the four new zoning classifications that implement the General Plan: Wine Country-Winery Existing, Wine Country-Winery, Wine Country-Equestrian, and Wine Country-Residential; and
 - d. Adoption and approval of the Temecula Valley Wine Country Policy Area Design Guidelines and addition of the Greenhouse Gas Reduction Workbook, that replaces the existing Citrus Vineyard Policy Area Design Guidelines with the Temecula Valley Wine Country Design Guidelines and addition of the Greenhouse Gas Reduction Workbook.
3. On December 3, 2013, the County voted to approve the Project including the tentative approval of General Plan Amendment No. 1077 and tentative certification of Programmatic EIR No. 524

1 subject to resolution adoption and findings; and also the *approval* of Ordinance 348.4729 and
2 Temecula Valley Wine Country Policy Area Design Guidelines and addition of the Greenhouse
3 Gas Reduction Workbook.

- 4 4. The County's action to make these discretionary approvals constitutes a project approval for
5 purposes of CEQA as the County finally approved some actions and tentatively approved others
6 subject only to the resolution adoption and findings.
- 7 5. In approving the Project, the County violated the provisions of the California Environmental
8 Quality Act (CEQA) (Public Resources Code § 21000 *et seq.*) in that the County failed to make
9 necessary findings required by the Title 14 of the California Code of Regulations §§ 15091 and
10 15092. The County also failed to adopt all feasible mitigation for Project impacts as required
11 for Project approval by Title 14 of the California Code of Regulations §15092. Lastly, the
12 County failed to adopt a statement of overriding considerations as required pursuant to Title 14
13 of the California Code of Regulations §§ 15092 and 15093.
- 14 6. The County finally approved and adopted resolutions approving General Plan Amendment No.
15 1077 and certifying Programmatic EIR No. 524, among other things, on March 11, 2014 as part
16 of the Board of Supervisor's policy calendar.
- 17 7. In approving the Project, the County also violated the provisions of CEQA by failing to
18 adequately evaluate project impacts, failing to adopt all feasible mitigation, adopting uncertain
19 mitigation, failing to consider a reasonable range of alternatives, and failing to make adequate
20 findings that the environmentally superior alternative is infeasible.
- 21 8. The EIR finds that the Project will have significant and unavoidable impacts to the environment
22 in the areas of to/from agriculture, air quality (including health risks), greenhouse gas
23 emissions, noise, public services/recreation/utilities (fire protection and library facilities),
24 traffic/circulation, growth inducing impacts, and cumulative impacts. If allowed to stand,
25 Project approval would thus significantly affect the environment.
- 26 9. The County engaged in improper spot zoning in approving the Project without incorporating
27 two parcels owned by Calvary Chapel Bible Fellowship, a "donut hole" within the boundaries
28 of the Project area. By permitting these parcels to remain zoned Citrus/Vineyard, the County

1 failed to comply with State Planning and Zoning Law, Government Code Section 65000 *et seq.*
2
3 10. By this verified Petition, Petitioner alleges the following:

4 **PARTIES**

- 5 11. Petitioner, Protect Wine Country, is a California unincorporated association composed of
6 residents, grape growers, vinters, wineries, and tourist oriented businesses in Temecula's wine
7 country. Petitioner is dedicated to preserving the rural atmosphere and agricultural nature of
8 Temecula's wine country. Petitioner and its members opposed the project and submitted
9 comments opposing approval of the Project to the County, which has/had discretionary approval
10 authority over the Project.
- 11 12. Respondent, County of Riverside, is a local government agency charged with the authority of
12 regulating and administering land use and development within its territory in compliance with
13 the provisions of its general plan and zoning ordinances as well as applicable provisions of state
14 law including CEQA. The County was the lead agency for the Project and is therefore charged
15 with the duty of ensuring compliance with these applicable laws.
- 16 13. DOES 1 through 10 are individuals, entities, or agencies with the authority to grant Project
17 approvals pursuant to CEQA. Petitioner is unaware of the true names or capacities of the
18 Respondents identified herein under the fictitious names DOES 1 through 10 inclusive.
- 19 14. DOES 10 through 100 are individuals or entities that may have an ownership interest in the
20 property, were project applicants, or claim an interest in the Project approvals at the subject of
21 this lawsuit. Petitioner is unaware of the true names or capacities of the Real Parties in Interest
22 identified herein under the fictitious names DOES 10 through 100 inclusive.

23 **STATEMENT OF FACTS**

- 24 15. The Project location consists of approximately 18,990 acres in the Temecula Valley region in
25 the southwest area of Riverside County, approximately three miles north of the border with San
26 Diego County.
- 27 16. The Project area is located east of the City of Temecula, south of Lake Skinner, and northwest
28 of Vail Lake.
17. The EIR acknowledges the area contains some of Riverside County's prime agriculture lands

1 within the Temecula Valley.

2 18. The Project was developed to preserve and enhance viticulture potential within the Temecula
3 Valley region, as the region is a unique area within Riverside County and has the right climate
4 and environment for growing wine producing grapes.

5 19. The Project also allows incidental commercial and secondary uses that are directly related to,
6 are developed in conjunction with, and support the viability of viticulture and equestrian
7 operations and uses within the Temecula Valley region.

8 20. The Project was developed to achieve the following goals:

- 9 a. Ensure that the Wine Country region develops in an orderly manner that maximizes the
10 area's viticulture and related uses, and balances the need to protect existing rural
11 lifestyles in the area.
- 12 b. Ensure that the Riverside County General Plan and its supporting regulatory documents,
13 such as the Zoning Ordinance and Design Guidelines, provide a comprehensive
14 blueprint that will achieve the community's vision.
- 15 c. Ensure adequate provisions for the establishment of wineries and equestrian operations,
16 associated auxiliary uses, and other compatible uses, as deemed appropriate.

17 21. To achieve the above goals, the EIR stated the following Project objectives:

- 18 a. To preserve and enhance the Wine Country region's viticulture potential, rural life style
19 and equestrian activities.
- 20 b. To continue to allow for an appropriate level of commercial tourist activities that is
21 incidental to viticulture activities.
- 22 c. To coordinate where, and under what circumstances, future growth should be
23 accommodated.
- 24 d. To develop provisions to ensure that future growth is balanced and coordinated with the
25 appropriate public services, infrastructure and other basic necessities for a healthy,
26 livable community.

27 22. General Plan Amendment No. 1077 consists of an amendment of the existing Southwest Area
28 Plan and other elements of the General Plan including, but not limited to:

- a. Deletion of the policies of the Citrus Vineyard and Valle de Los Caballos Policy Areas, specifically policies SWAP 1.1 through SWAP 2.1; and the addition of the Temecula Valley Wine Country Policy Area;
 - b. Revisions to the SWAP Statistical Summary;
 - c. Deletion of the boundaries of the Citrus Vineyard and Valle de Los Caballos Policy Areas (SWAP Policy Areas Figure 4) and addition of the boundary of the Temecula Valley Wine Country Policy Area;
 - d. Revisions to the Circulation Network (SWAP Figure 7);
 - e. Revisions to the Trails and Bikeway Systems map (SWAP Figure 8);
 - f. Revisions to the General Plan Circulation Element Circulation Network;
 - g. Revisions to the General Plan Circulation Element Trails Network; and
 - h. Amendment to any other portions of the General Plan reflecting changes arising from the proposed SWAP amendments.
23. Zoning Ordinance Amendment No. 348.4729 would add four new Zoning Classification that implement the General Plan including (1) Wine Country- Winery; (2) Wine Country- Winery Existing; (3) Wine Country- Residential; and (4) Wine Country-Equestrian.
24. Two alternatives to the Project were evaluated in the EIR: No Project/ Existing General Plan Policies and Zoning Classifications Alternative; and Reduced Density (25% Reduction) Alternative.
25. The EIR concludes that the Project will have significant and unmitigated impacts to/from the following: agriculture, air quality (including health risks), greenhouse gas emissions, noise, public services/recreation/utilities (fire protection and library facilities), traffic/circulation, growth inducing impacts, and cumulative impacts. The EIR concludes that all other impacts will be less than significant or mitigated below a level of significance.
26. A Notice of Preparation for the Project was circulated and a scoping meeting scheduled for January 19, 2010.
27. The Draft EIR was completed and circulated for review from December 5, 2011 to February 2, 2012.

- 1 28. During the public comment period, the County received thirty-two (32) comments, plus one
2 comment after the close of the public comment period.
- 3 29. The Project came before the Planning Commission on July 25, 2012; August 22, 2012;
4 September 26, 2012; December 5, 2012; and December 19, 2012. The Planning Commission
5 recommended the Board of Supervisors certify the EIR and approve the Project. The Planning
6 Commission took no action on the Temecula Valley Wine Country Design Guidelines and
7 Greenhouse Gas Reduction Workbook as the actions are considered Board Policies of the Board
8 of Supervisors.
- 9 30. The Final EIR was completed and disseminated September 3, 2013.
- 10 31. The Project came up for hearing before the Board of Supervisors on September 24, 2013. The
11 Board of Supervisors voted to direct staff to modify the Planning Commission's
12 recommendations for Ordinance 348.4729.
- 13 32. The modifications to Ordinance 348.4729 made pursuant to the Board of Supervisors' direction
14 on September 24, 2013 were referred back to the Planning Commission for a report and
15 recommendation.
- 16 33. Staff presented the Board modifications to the Planning Commission on November 6, 2013 and
17 November 20, 2013.
- 18 34. Upon review of the Board modifications, the Planning Commission made the following
19 recommendations on November 20, 2013:
- 20 a. Revision to the format of Ordinance No. 348.4729;
- 21 b. Clarifications to definitions, permitted uses and development standards in Ordinance No.
22 348.4729 set forth in Table A of the staff report, with a clarifying modification to the
23 definition of Commercial Equestrian Establishment;
- 24 c. Modifications to the trails network planning document for equestrian trails associated
25 with Ordinance No. 348.4729, asking for sensitivity to property owners near trails;
- 26 d. Modification to the boundaries of the Wine Country Zones set forth in Ordinance No.
27 348.4729 with a recommendation to remove the portion south of Highway 79
28 approximately 956 acres from the Wine Country Community Plan.

- 1 35. The Project came up for a second hearing before the Board of Supervisors on December 3,
2 2013. The Board voted to tentatively certify the EIR; tentatively approve General Plan
3 Amendment No. 1077; approve Ordinance No. 348.4729; and adopt the Temecula Valley Wine
4 Country Design Guidelines and Temecula Valley Greenhouse Gas Reduction Workbook.
- 5 36. Petitioner is informed, believes, and thereon alleges that the Board of Supervisors tentatively
6 approved the Project without the trails network planning document as part of Ordinance No.
7 348.4729; and without modification to the boundaries of the Wine Country Zones set forth in
8 Ordinance No. 348.4729 with a recommendation to remove the portion south of Highway 79
9 approximately 956 acres from the Wine Country Community Plan.
- 10 37. Petitioner is informed, believes, and thereon alleges that the Board of Supervisors tentatively
11 approved the Project without a two-story restriction for winery property buildings.
- 12 38. Petitioner is informed, believes, and thereon alleges that the Board of Supervisors tentatively
13 approved the Project with a 30-acre "doughnut hole," which exempts two (2) parcels owned by
14 the Calvary Chapel Bible Fellowship from the Wine Country Community Plan and its
15 associated zoning. One of these parcels is vacant, one is developed.
- 16 39. Petitioner is informed, believes, and thereon alleges that the two (2) parcels owned by the
17 Calvary Chapel Bible Fellowship maintain their existing zoning classification which is the
18 Citrus/Vineyard Zone (C/V Zone), and that the C/V Zone is less restrictive than the Project
19 zoning.
- 20 40. Petitioner and its members submitted comments on and in opposition to the Project.
- 21 41. Petitioner is informed, believes, and thereon alleges that a Notice of Determination has not yet
22 been posted.
- 23 42. On March 11, 2014, the Project was placed on the Agenda of the County Board of Supervisors
24 as part of its policy calendar. The Board of Supervisors voted to take the following actions:
- 25 a. Adopt Resolution 2014-044 Adopting the Wine Country Community Plan and
26 Certifying Program EIR No. 524;
- 27 b. Adopt Resolution 2014-040 amending the Riverside County General Plan in accordance
28 with the Board's actions taken on General Plan Amendment No. 1077 amending the

1 existing Southwest Area Plan (SWAP) and Circulation Element of the Riverside County
2 General Plan, and General Plan Amendment No. 936 amending the existing Mead
3 Valley Area Plan (MVAP);

- 4
5 c. Adopt Ordinance No. 348.4729 amending Riverside County Ordinance No. 348 to add
6 the following four new zoning classifications that implement General Plan Amendment
7 No. 1077: Wine Country-Winery Existing, Wine Country-Winery, Wine Country-
8 Equestrian, and Wine Country-Residential;
- 9 d. Adopt the Temecula Valley Wine Country Design Guidelines and Temecula Valley
10 Greenhouse Gas Reduction Workbook that replaces the existing Citrus Vineyard Policy
11 Area Design Guidelines with the Temecula Valley Wine Country Design Guidelines and
12 addition of the Greenhouse Gas Reduction Workbook; and
- 13 e. Direct the Clerk of the Board to submit the Notice of Determination for the Program
14 EIR No. 524 and the Notice of Exemption for GPA00936 to the County Clerk for filing
15 and posting within five (5) working days of the approval for the above referenced
16 projects.

17 43. As adopted, Resolution 2014-040 adopting General Plan Amendment No. 1077 amending the
18 existing Southwest Area Plan (SWAP) and Circulation Element of the Riverside County
19 General Plan applies to 17,910 acres and encompasses the majority of the areas formerly
20 covered by the Citrus/Vineyard Policy area and the Valle de los Caballos Policy Area, as well
21 as approximately 7,516 acres within the surrounding vicinity of these policy areas. Resolution
22 2014-040 states that the Project does not apply to two parcels, comprising 20 acres, owned by
23 Calvary Chapel Bible Fellowship.

24 44. Petitioner and its members will be irreparably harmed by the potential environmental
25 consequences of Project approval.

26 45. The maintenance of this action is for the purpose of enforcing important public policies of the
27 State of California with respect to the protection of the environment under CEQA. The
28 maintenance and prosecution of this action will confer a substantial benefit upon the public by
protecting the public from environmental harms and other harms alleged in this Petition.

1 Petitioner is acting as a private attorney general to enforce these public policies and prevent
2 such harm.

3
4 46. Petitioner has performed all conditions precedent to filing the action by complying with the
5 requirements of Public Resources Code § 21167.5, in notifying Respondent of the filing of this
6 action (attached hereto as Exhibit "A"), and by complying with the requirements of Public
7 Resources Code § 21167.6, in notifying Respondent of Petitioner's election to prepare the
8 record of Respondent proceedings in connection with this action (attached hereto as Exhibit
9 "B").

10 47. Pursuant to Government Code Section 65009 (c)(1), any litigation brought to attack review, set
11 aside, void, or annul the decision of legislative body to adopt or amend a zoning ordinance must
12 be commenced and service must be made within 90 days after the legislative body's decision.

13 48. Petitioner has performed all conditions precedent to filing the action by complying with the
14 requirements of Government Code Section 65009 (c)(1) as the County approved Ordinance
15 348.4729 on December 3, 2013 amending the County's zoning ordinance, and Petitioner has
16 brought suit and intends to serve this Petition within 90 days of this decision.

17 **FIRST CAUSE OF ACTION**

18 **(All Parties did not comply with the Requirements of CEQA.)**

19 **a. The County Approved the Project without Making Necessary Findings, Certifying 20 the EIR, Adopting Mitigation, and Adopting a Statement of Overriding 21 Considerations.**

22 49. Petitioner hereby realleges and incorporates paragraphs 1 through 48 above as though set forth
23 in full herein.

24 50. The purpose of CEQA is not to generate paper, but to compel government at all levels to make
25 decisions with environmental consequences in mind. CEQA thus requires more than mere
26 preparation of documents. (Cal. Code of Regulations, Tit. 14 § 15003 (g).)

27 51. Procedures of CEQA and local planning should run concurrently, not consecutively. (Public
28 Resources Code § 21003(a).) To the extent possible, the EIR process should be combined with
the existing planning, review, and project approval process used by each public agency. (Cal.
Code of Regulations, Tit. 14 § 15080)

52. An EIR is defined by CEQA as an informational document which, when its preparation is

1 required, shall be considered by every public agency prior to its approval or disapproval of a
2 project. The purpose of an EIR is to provide public agencies and the public with detailed
3 information about the effects of the project proposed to be approved. (Public Resources Code §
4 21061)

5 53. The CEQA Guidelines set forth the process for preparation of an EIR and Project approval,
6 based in part on the premise that the Project and its environmental review will be approved at
7 the same general time.

8 54. CEQA defines "approval" as "the decision by a public agency which commits the agency to a
9 definite course of action in regard to a project intended to be carried out by any person. The
10 exact date of approval of a project is a matter determined by each public agency according to its
11 rules, regulations, and ordinances. Legislative action in regard to a project often constitutes
12 approval." (Tit. 14 Cal. Code Regs. § 15352)

13 55. State CEQA Guidelines § 15090 requires that, prior to approving a project, the lead agency
14 shall certify that the final EIR has been completed in compliance with CEQA; the final EIR was
15 presented to the decision-making body of the lead agency; and that the decision-making body
16 reviewed and considered the information contained in the final EIR prior to approving the
17 project; and the final EIR reflects the lead agency's independent judgment and analysis."
18 [emphasis added] (Tit. 14 Cal. Code Regs. § 15090(a); *See also*, Public Resources Code §§
19 21082.1(c), 21100 (a), 21151 (a).)

20 56. State CEQA Guidelines § 15091 provides no public agency shall approve or carry out a project
21 for which an EIR has been certified which identifies significant environmental effects unless the
22 agency makes written findings supported by substantial evidence for each effect, accompanied
23 by a brief explanation of the rationale, that, (1) Changes or alterations have been required in, or
24 incorporated into, the project which avoid or substantially lessen the significant environmental
25 effect as identified in the final EIR; (2) Such changes or alterations are within the responsibility
26 and jurisdiction of another public agency and not the agency making the finding; or (3) Specific
27 economic, legal, social, technological, or other considerations, including provision of
28 employment opportunities for highly trained workers, make infeasible the mitigation measures

- 1 or project alternatives identified in the final EIR. (Tit. 14 Cal. Code Regs. § 15091)
- 2
- 3 57. State CEQA Guidelines § 15092 sets forth the requirements for project "Approval," including
- 4 subsection (b), which requires that, "A public agency shall not decide to approve or carry out a
- 5 project for which an EIR was prepared unless either: (1) The project as approved will not have a
- 6 significant effect on the environment, or (2) The agency has: (A) Eliminated or substantially
- 7 lessened all significant effects on the environment where feasible as shown in findings under
- 8 Section 15091, and (B) Determined that any remaining significant effects on the environment
- 9 found to be unavoidable under Section 15091 are acceptable due to overriding concerns as
- 10 described in Section 15093." (Tit. 14 Cal. Code Regs. § 15092)
- 11
- 12 58. State CEQA Guidelines § 15093 requires when a lead agency approves a project which will
- 13 result in the occurrence of significant effects which are identified in the final EIR but are not
- 14 avoided or substantially lessened, the agency shall state in writing the specific reasons to
- 15 support its action based on the final EIR and/or other information in the record. This "statement
- 16 of overriding considerations" must be supported by substantial evidence in the record and
- 17 included in the record of project approval in addition to the findings necessary pursuant to
- 18 Section 15091. (Tit. 14 Cal. Code Regs. § 15093)
- 19
- 20 59. On December 3, 2013, the County voted to approve the Project including the tentative approval
- 21 of General Plan Amendment No. 1077 and tentative certification of Programmatic EIR No. 524
- 22 subject only to resolution adoption and findings; and also the *approval* of Ordinance 348.4729
- 23 and Temecula Valley Wine Country Policy Area Design Guidelines and addition of the
- 24 Greenhouse Gas Reduction Workbook.
- 25
- 26 60. The County "approved" the Project on December 3, 2013 pursuant to CEQA by committing
- 27 itself to approval by approving Ordinance 348.4729 and Temecula Valley Wine Country Policy
- 28 Area Design Guidelines and addition of the Greenhouse Gas Reduction Workbook; and by
- tentatively approving General Plan Amendment No. 1077 and tentatively certifying
- Programmatic EIR No. 524 subject only to the adoption of resolutions and finding.
61. An agency decision is final where the "agency has exhausted its jurisdiction and possessed no
- further power to reconsider or rehear the claim." (*California Water Impact Network v. Newhall*)

County Water Dist. (2008) 161 Cal.App.4th 1464, 1485.)

62. The County's approval of the Project is final under State law as the County *approved* Ordinance 348.4729 and Temecula Valley Wine Country Policy Area Design Guidelines and addition of the Greenhouse Gas Reduction Workbook; and further tentatively approved General Plan Amendment No. 1077 and tentatively certifying Programmatic EIR No. 524 subject only to the adoption of resolutions and findings. Petitioner is informed, believes, and thereon alleges there will be no rehearing or reconsideration of the Project but merely the adoption of written findings and resolutions prepared by staff.

63. Petitioner is informed, believes, and thereon alleges the County approved the Project without certifying the Final EIR as required by CEQA. (Tit. 14 Cal. Code Regs. §15091)

64. Petitioner is informed, believes, and thereon alleges the County approved the Project without making the necessary findings required by CEQA. Specifically, the County failed to adopt findings required pursuant to State CEQA Guidelines §§ 15092 and 15091. (Tit. 14 Cal. Code Regs. §15092)

65. Petitioner is informed, believes, and thereon alleges the Project without either mitigating all impacts or adopting a statement of overriding considerations pursuant to State CEQA Guidelines §§ 15092 and 15093. (Tit. 14 Cal. Code Regs. §§ 15092-15093)

66. By failing to certify the EIR, failing to make necessary findings, and failing to adopt mitigation and/ or adopt a statement of overriding considerations, the County committed a prejudicial abuse of discretion for which the Project approvals must be set aside. (Public Resources Code § 21168, Code Civ. Proc. §§ 1085, 1094.5.)

SECOND CAUSE OF ACTION

(All Parties did not comply with the Requirements of CEQA.)

a. The County Failed to Adequately Evaluate Project Impacts.

67. Petitioner hereby realleges and incorporates paragraphs 1 through 66 above as though set forth in full herein.

68. An EIR is an informational document intended to inform agency decision-makers and the public of the significant environmental effects of a project and minimize those significant effects through the implementation of mitigation measures or project alternatives. (Public Resources

- 1 Code § 21061; California Code of Regulations, tit. 14 § 15121.)
- 2
- 3 69. CEQA requires that an EIR be adequate, complete, and evidence a good faith effort at full
- 4 disclosure. (California Code of Regulations, tit. 14 § 15003(i).)
- 5
- 6 70. An adequate EIR must include enough relevant information to permit full assessment of
- 7 significant environmental impacts by the public and reviewing agencies. (California Code of
- 8 Regulations, tit. 14 § 15147.)
- 9
- 10 71. An EIR must identify and focus on the possible significant environmental effects of a proposed
- 11 project. Only effects which are clearly insignificant or unlikely to occur need not be discussed
- 12 in the EIR and, for those clearly insignificant and unlikely impacts, the Initial Study may be
- 13 attached to provide a basis for limiting the impacts discussed. (Pub. Res. C. § 21100, California
- 14 Code of Regulations, tit. 14 §§ 15126, 15126.2, 15143.)
- 15
- 16 72. An adequate EIR must evaluate all potentially significant environmental impacts of a proposed
- 17 project, including both direct and indirect impacts, short-term and long-term impacts, local and
- 18 regional impacts, and cumulative impacts. (California Code of Regulations, tit. 14 §§ 15126,
- 19 15126.2, 15130)
- 20
- 21 73. CEQA provides that the failure to comply with CEQA's information disclosure provisions can
- 22 result in a prejudicial abuse of discretion regardless of whether a different outcome would have
- 23 been reached if the agency had complied. (Public Resources Code § 21005 (a))
- 24
- 25 74. The EIR failed to adequately evaluate Project impact to/from aesthetics, air quality/health risks,
- 26 biology, cultural resources, greenhouse gas emissions, soils/geology, hydrology and water
- 27 quality, land use/planning, noise, traffic, cumulative impacts, and regional impacts, among
- 28 others.
75. Petitioner and its members commented that the EIR failed to adequately evaluate Project impacts. For example, Petitioner commented that the EIR failed to adequately evaluate Project impacts to land use and planning through inadequately considering the impacts of the "donut hole" created for Calvary Chapel Bible Fellowship. Members of Petitioner also commented that the EIR failed to adequately consider impacts to/from traffic, among other effects.
76. By failing to adequately evaluate Project impacts, the County committed a prejudicial abuse of

1 discretion for which the Project approvals must be set aside. (Public Resources Code § 21168,
2 Code Civ. Proc. §§ 1085, 1094.5.)

3 **b. The County Failed to Adopt all Feasible Mitigation Measures.**

4 77. Petitioner hereby realleges and incorporates paragraphs 1 through 76 above as though set forth
5 in full herein.

6 78. CEQA establishes a duty on the part of the lead agency to mitigate all significant environmental
7 impacts. (Public Resources Code § 21002, 21002.1; California Code of Regulations, tit. 14 §
8 15021(a).)

9 79. A lead agency may not approve a project for which there are significant environmental impacts
10 unless the agency finds that: (a) mitigation measures have been required of the project which
11 avoid or substantially lessen the significant environmental effects, or (b) mitigation measures
12 are found to be infeasible based on substantial evidence. (Public Resources Code § 21081;
13 California Code of Regulations, tit. 14 § 15091.)

14 80. A lead agency may not adopt a statement of overriding considerations for significant project
15 impacts unless all feasible mitigation has been required of the project, or the agency makes
16 findings, supported by substantial evidence, of the infeasibility of said measures. (Public
17 Resources Code § 21081, 21081.5; California Code of Regulations, tit. 14 § 15091.)

18 81. Petitioner commented that not all feasible mitigation was required of this Project. Petitioner
19 and its members proposed additional feasible mitigation measures to lessen the Project's
20 environmental impacts.

21 82. The County failed to adopt all feasible mitigation measures in violation of CEQA and failed to
22 make findings, supported by substantial evidence, that said measures were infeasible.

23 83. By approving the Project when feasible mitigation existed to reduce Project impacts, the County
24 committed a prejudicial abuse of discretion for which the Project approvals must be set aside.
25 (Public Resources Code § 21168, Code Civ. Proc. §§ 1094.5, 1085.)

26 **c. Mitigation Measures are Uncertain, Unenforceable, and Improperly Deferred.**

27 84. Petitioner hereby realleges and incorporates paragraphs 1 through 83 above as though set forth
28 in full herein.

85. CEQA requires that a public agency ensure that mitigation measures are fully enforceable,

- 1 certain to occur, and not improperly deferred. (Public Resources Code § 21081.6 (b); California
2 Code of Regulations, tit. 14 § 15097)
- 3 86. Mitigation measures adopted for the Project are vague, uncertain and unenforceable, and
4 improperly deferred in violation of CEQA.
- 5 87. By approving the Project when mitigation measures are not fully enforceable, the County
6 committed a prejudicial abuse of discretion for which the Project approvals must be set aside.
7 (Public Resources Code § 21168, Code Civ. Proc. §§ 1094.5, 1085.)
- 8 **d. The County Failed to Consider a Reasonable Range of Project Alternatives and**
9 **Failed to Make Findings that the Environmentally Superior Alternative is Infeasible.**
- 10 88. Petitioner hereby realleges and incorporates paragraphs 1 through 87 above as though set forth
11 in full herein.
- 12 89. An adequate EIR must consider a reasonable range of alternatives to the proposed project. The
13 alternatives must be designed to meet basic project objectives and lessen or avoid significant
14 environmental impacts. (California Code of Regulations, tit. 14 § 15126.6(a).) The lead agency
15 shall also evaluate a “no project” alternative in the EIR. (California Code of Regulations, tit. 14
16 § 15126.6 (e).)
- 17 90. The project description in an EIR must include a statement of objectives sought by the proposed
18 project. (California Code of Regulations, tit. 14 § 15124)
- 19 91. The statement of project objectives helps the lead agency develop a reasonable range of
20 alternatives to evaluate in the EIR and aids the agency in evaluating whether to adopt or reject
21 project alternatives in lieu of the project. (California Code of Regulations, tit. 14 §§ 15124,
22 15126.6 subd. (c) and (i).)
- 23 92. Objectives must not be so narrowly tailored so as to unduly circumscribe the agency’s
24 consideration of alternatives. An unduly narrow definition of project objectives may render the
25 EIR’s treatment of alternatives inadequate. (*City of Santee v. County of San Diego* (1989) 214
26 Cal.App.3d 1438; *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490.)
- 27 93. The EIR states the Project was developed to achieve the following goals:
- 28 a. Ensure that the Wine Country region develops in an orderly manner that maximizes the
area’s viticulture and related uses, and balances the need to protect existing rural

lifestyles in the area.

- b. Ensure that the Riverside County General Plan and its supporting regulatory documents, such as the Zoning Ordinance and Design Guidelines, provide a comprehensive blueprint that will achieve the community's vision.
- c. Ensure adequate provisions for the establishment of wineries and equestrian operations, associated auxiliary uses, and other compatible uses, as deemed appropriate.

94. To achieve the above goals, the EIR stated the following Project objectives:

- a. To preserve and enhance the Wine Country region's viticulture potential, rural life style and equestrian activities.
- b. To continue to allow for an appropriate level of commercial tourist activities that is incidental to viticulture activities.
- c. To coordinate where, and under what circumstances, future growth should be accommodated.
- d. To develop provisions to ensure that future growth is balanced and coordinated with the appropriate public services, infrastructure and other basic necessities for a healthy, livable community.

95. The EIR considered a No Project/Existing General Plan Policies and Zoning Classifications alternative as the "no project" alternative required by CEQA.

96. The EIR considered only one alternative apart from the required "no project" alternative, the Reduced Density (25% Reduction) Alternative.

97. The County rejected four additional alternatives from consideration in the EIR:

- a. Pending General Plan Amendments Approval Alternative
- b. Alternative Location Alternative
- c. One Policy Area/One Zone Alternative
- d. No Build Scenario/ Existing Condition Alternative.

98. The County failed to evaluate a reasonable range of project alternatives that were designed to meet basic project objectives and lessen the significant impacts of the Project where it considered only one alternative apart from the mandatory "no project" alternative.

1 99. A lead agency may also not approve a project for which there are significant environmental
2 effects unless it makes findings supported by substantial evidence that alternatives are
3 infeasible. (Public Resources Code §§ 21002, 21081 (a)(3); California Code of Regulations, tit.
4 14 § 15091 (a)(3).)

5 100. The County failed to make findings supported by substantial evidence that the
6 environmentally superior alternative was infeasible as required by Public Resources Code §
7 21081 (a)(3) and California Code of Regulations, tit. 14 § 15091 (a)(3).

8 101. By failing to consider a reasonable range of alternatives for the Project, failing to
9 approve the environmentally superior alternative, and not making findings regarding
10 infeasibility of alternatives based on substantial evidence, the County committed prejudicial
11 abuses of discretion for which the Project approvals must be set aside. (Pub. Res. C. § 21168,
12 Code of Civ. Proc. §§ 1094.5, 1085)

13 THIRD CAUSE OF ACTION

14 (All Parties did not comply with the Requirements of State Law related to Zoning.)

15 102. Petitioner hereby realleges and incorporates paragraphs 1 through 101.

16 103. The general plan functions as a “constitution for all future developments,” and land use
17 decisions must be consistent with the general plan and its elements. (*Citizens of Goleta Valley*
18 *v. Board of Supervisors* (1990) 52 Cal.3d 553, 570.)

19 104. A “project is consistent with the general plan if, considering all its aspects, it will further
20 the objectives and policies of the general plan and not obstruct their attainment.” (*Corona-*
21 *Norco Unified School Dist. v. City of Corona, supra*, 17 Cal.App.4th at p. 994.)

22 105. Zoning ordinances carry out the goals of a general plan, and thus must remain consistent
23 with the general plan. (Gov’t Code § 65860 (a))

24 106. A spot zone results when a small parcel of land is subject to more or less restrictive
25 zoning than surrounding properties. (Hagman et al., Cal. Zoning Practice (Cont.Ed.Bar 1969) §
26 5.33, p. 152, *Foothill Communities Coalition v. County of Orange* (Jan. 2014) 2014
27 Cal.App.Lexis 22, *13-19.)

28 107. Spot zoning usually occurs where a small parcel is restricted and given lesser rights than
the surrounding property, as where a lot in the center of a business or commercial district is

- 1 limited to uses for residential purposes thereby creating an “island” in the middle of a larger
2 area devoted to other uses. (*Arcadia Development Co. v. City of Morgan Hill* (2011) 197
3 Cal.App.4th 1526, 1536.)
- 4 108. Spot zoning may, however, also occur where most of a large district is devoted to a
5 limited or restricted use, but additional uses are permitted in one or more “spots” in the district.
6 In such a case, discrimination in favor of the “spot” or “island” occurs as it may be devoted to a
7 greater number of uses than the surrounding territory. (*Wilkins v. San Bernardino* (1946) 29
8 Cal. 2d 332, 341; *Foothill Communities Coalition v. County of Orange* (Jan. 2014) 2014
9 Cal.App.Lexis 22, *13-19.)
- 10 109. “The essence of spot zoning is irrational discrimination.” (*Avenida San Juan*
11 *Partnership v. City of San Clemente* (2011) 201 Cal.App.4th 1256, 1268.)
- 12 110. Spot zoning may be permissible if it is in the public interest or a substantial public need
13 exists. (*Arcadia Development Co. v. City of Morgan Hill* (2011) 197 Cal.App.4th 1526, 1536,
14 *Foothill Communities Coalition v. County of Orange* (Jan. 2014) 2014 Cal.App.Lexis 22, *19)
- 15 111. Spot zoning is impermissible if it is not in the public interest and/or where the agency
16 decision is arbitrary or capricious or devoid of evidentiary support. (Code Civ. Proc. § 1085,
17 *Arcadia Development Co. v. City of Morgan Hill* (2011) 197 Cal.App.4th 1526, 1536, *Foothill*
18 *Communities Coalition v. County of Orange* (Jan. 2014) 2014 Cal.App.Lexis 22, *19-20)
- 19 112. In reviewing the enactment of zoning ordinances, the courts will inquire as to whether
20 the scheme of classification and districting is arbitrary or unreasonable. The decision of the
21 zoning authorities as to matters of opinion and policy will be set aside or disregarded by the
22 courts where the regulations have no reasonable relation to the public welfare or the physical
23 facts show that there has been an unreasonable, oppressive, or unwarranted interference with
24 property rights in the exercise of the police power. (*Lockard v. Los Angeles* (1949) 33 Cal. 2d
25 453, 461.)
- 26 113. General Plan Amendment No. 1077 amending the existing Southwest Area Plan
27 (SWAP) and Circulation Element of the Riverside County General Plan deleted the
28 Citrus/Vineyard policy area of the General Plan and replaced this policy area with the Temecula

1 Valley Wine Country Policy Area.

2 114. Ordinance No. 348.4729 amending Riverside County Ordinance No. 348 added the
3 following four new zoning classifications that implement General Plan Amendment No. 1077:
4 Wine Country-Winery Existing, Wine Country-Winery, Wine Country-Equestrian, and Wine
5 Country-Residential.

6 115. Petitioner is informed, believed, and thereon alleges that the County did not delete the
7 Citrus/Vineyard Zone from its zoning ordinance.

8 116. Petitioner is informed, believes, and thereon alleges that the County approved the
9 Project with a 30-acre "donut hole," which exempts two (2) parcels owned by the Calvary
10 Chapel Bible Fellowship from the Wine Country Community Plan and its associated zoning.

11 117. Petitioner is informed, believes, and thereon alleges that the two (2) parcels owned by
12 the Calvary Chapel Bible Fellowship thus maintain their existing zoning classification which is
13 the Citrus/Vineyard Zone (C/V Zone).

14 118. Petitioner is informed, believes, and thereon alleges that the two (2) parcels owned by
15 the Calvary Chapel Bible Fellowship are to be the only remaining pieces of property in the
16 County with the zoning Citrus/Vineyard Zone (C/V Zone) with Project approval.

17 119. Petitioner is informed, believes, and thereon alleges that and that the C/V Zone is less
18 restrictive than the Project zoning.

19 120. Petitioner and its members commented that the County engaged in improper spot zoning
20 by approving the Project with a 30-acre "donut hole" exempting two (2) parcels owned by the
21 Calvary Chapel Bible Fellowship from the Wine Country Community Plan and its associated
22 zoning.

23 121. The County's decision to approve the Project with a 30-acre "donut hole" exempting the
24 parcels owned by the Calvary Chapel Bible Fellowship from the Wine Country Community
25 Plan and its associated zoning has no reasonable relation to the public welfare and was not in
26 the public interest.

27 122. The County engaged in improper spot zoning by approving the Project with a 30-acre
28 "donut hole" exempting the two (2) parcels owned by the Calvary Chapel Bible Fellowship

1 from the Wine Country Community Plan and its associated zoning.

2 123. The County's decision to approve the Project in light of the evidence of unreasonable
3 and invalid spot zoning was arbitrary and capricious such that the Project approvals must be set
4 aside. (Code Civ. Proc. §§ 1085, 1094.5.)

5 124. In addition, the various uses permitted by the Citrus/Vineyard Zone in Ordinance No.
6 348 are not compatible with the policies, land uses, and objectives of the General Plan because
7 the uses permitted by the Citrus/Vineyard Zone are less restrictive than those permitted by
8 Ordinance No. 348.4729. The Project has thus rendered the County's zoning ordinance
9 inconsistent with the General Plan.

10 125. The County's approval of the Project with the donut hole retaining Citrus/Vineyard
11 Zoning for Calvary Chapel Bible Fellowship has rendered the County's Zoning Ordinance,
12 Ordinance 348, inconsistent with the General Plan. The approval of the Project was thus
13 arbitrary and capricious and the Project approvals must be set aside. (Code Civ. Proc. §§ 1085,
14 1094.5.)

15 WHEREFORE, Petitioner prays for the following relief on all causes of action:

16 126. For the Court's peremptory writ of mandate requiring Respondent County to set aside
17 their decision certifying the EIR for the Project.

18 127. For the Court's peremptory writ of mandate requiring Respondent County to set aside all
19 Project approvals.

20 128. For the Court's peremptory writ of mandate requiring Respondent County to fully
21 comply with the requirements of CEQA prior to any future approval of the Project. (Code Civ.
22 Proc. §§ 1085, 1094.5).

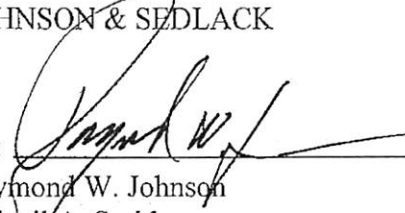
23 129. For the Court's peremptory writ of mandate requiring Respondent County to fully
24 comply with the requirements of CEQA prior to any future certification of the EIR. (Code Civ.
25 Proc. §§ 1085 1094.5).

26 130. For the Court's writ of mandate requiring Respondent County to fully comply with the
27 requirements of State laws relating to zoning to not engage in the practice of illegal spot zoning
28 prior to any future approval of the Project. (Code Civ. Proc. §§ 1085, 1094.5).

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131. For the Court's writ of mandate requiring Respondent County to fully comply with the requirements of State Planning and Zoning law in bringing the County's Zoning Ordinance into consistency with the General Plan. (Code Civ. Proc. §§ 1085, 1094.5).
132. For a judgment enforcing the duty imposed upon the County by CEQA to adequately address impacts to the environment in any subsequent action taken regarding the Project.
133. For a judgment enforcing the duty imposed upon the County by State laws relative to zoning to not engage in the practice of illegal spot zoning in any action taken regarding the Project.
134. For costs of this suit, including attorney's fees pursuant to California Code of Civil Procedure Section 1021.5.
135. For such other and further relief, including preliminary and permanent injunctive relief.

DATED: April 10, 2014

Respectfully submitted,
JOHNSON & SEDLACK

By: 
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