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ELFIN FOREST HARMONY GROVE  
7 TOWN COUNCIL; ENDANGERED  
HABITATS LEAGUE; and CLEVELAND  
8 NATIONAL FOREST FOUNDATION

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN DIEGO - CENTRAL DIVISION**

11 ELFIN FOREST HARMONY GROVE  
TOWN COUNCIL; ENDANGERED  
12 HABITATS LEAGUE; and CLEVELAND  
NATIONAL FOREST FOUNDATION,

13 Petitioners,

14 v.

15 COUNTY OF SAN DIEGO; BOARD OF  
16 SUPERVISORS OF COUNTY OF SAN  
DIEGO; and DOES 1-20,

17 Respondents.

18  
19 RCS - HARMONY PARTNERS, LLC;  
20 INTEGRAL COMMUNITIES, LLC; THE  
EDEN HILLS PROJECT OWNER, LLC;  
21 SUNROAD ENTERPRISES; SUNROAD  
NEVADA ENTERPRISES, INC.; and  
DOES 21-40,

22 Real Parties in Interest.  
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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**08/24/2018** at 01:15:18 PM

Clerk of the Superior Court  
By Bryant Schmelzel, Deputy Clerk

Case No. 37-2018-00042927-CU-TT-CTL

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

CCP §§ 1085, 1094.5; Public Resources  
Code § 21000 et seq. ("CEQA"); State  
Planning and Zoning Law; Subdivision  
Map Act

## **INTRODUCTION**

1  
2       1.       This action challenges the July 25, 2018 decision of the County of San Diego  
3 and its Board of Supervisors (collectively, “County” or “Respondents”) to approve the  
4 Harmony Grove Village South project (“Project” or “HGVS”) proposed by Real Party in  
5 Interest RCS – Harmony Partners, LLC (“RCS” or “Real Party”). This Project—which  
6 would place hundreds of new residences in a wildfire-prone, rural area of the County,  
7 lacking urban services and infrastructure —is exactly the kind of suburban sprawl the  
8 County sought to curb in its 2011 comprehensive General Plan update. Nonetheless, the  
9 County bent over backwards to approve the development, amending the General Plan,  
10 rezoning the property, and adopting a statement of overriding considerations to justify the  
11 significant environmental impacts of the Project, among other actions.

12       2.       In approving the Project, the County violated numerous state and local laws,  
13 including the California Environmental Quality Act (“CEQA”), Public Resources Code  
14 § 21000 et seq., the CEQA Guidelines, title 14 California Code of Regulations, § 15000 et  
15 seq., State Planning and Zoning Law, the Subdivision Map Act, and the County’s own  
16 General Plan. For example, the Project violates mandatory General Plan requirements  
17 limiting growth outside of designated villages, requiring affordable housing, and protecting  
18 County residents from wildfire threats. The environmental impact report (“EIR”) lacks  
19 adequate analysis of numerous impacts, including air quality, greenhouse gas, wildfire,  
20 traffic, emergency access, and land use. The EIR also failed to provide an adequate project  
21 description, use the appropriate baseline, or discuss sufficient alternatives. And the  
22 mitigation adopted for many impacts is plainly inadequate or ineffective. For example, the  
23 EIR relies heavily on out-of-County carbon offsets to reduce the Project’s significant  
24 greenhouse gas emission, despite no substantial evidence that such offsets are effective or  
25 even available, and then provides a one-way ratchet authorizing the County to reduce this  
26 paltry mitigation requirement after Project approval without further environmental review.

27       3.       Moreover, the County’s approval of this Project is just one of many recent  
28 and proposed County actions that, taken together, dramatically undermine the goals and

standards set forth in the County’s General Plan. According to evidence in the administrative record for this Project, the County is slated to approve more than 10,000 new residential units in areas that were not designated for such growth in the 2011 General Plan. These approvals require so many General Plan amendments that the County has taken to “bundling” or “batching” them—i.e., approving more than one project at the same time—in an attempt to comply with state law prohibiting cities and counties from amending their general plans more than four times per year.

4. The County’s approval of so many projects, including HGVS, that are plainly inconsistent with its comprehensive General Plan policies violates State Planning and Zoning Law. Moreover, the County’s treatment of these “batched” projects as *separate* for purposes of environmental review, yet *combined* for purposes of amending the General Plan, is inconsistent with a fundamental mandate of CEQA: that lead agencies analyze the whole of a project in their environmental review. Here, the County “batched” the HGVS project together with two other major developments—Valiano and Otay 250—but failed to adequately analyze the impact of approving all three projects together.

5. For all of these reasons, the County’s approval of the Project and certification of the EIR constituted an abuse of discretion and must be overturned.

### **PARTIES**

6. Petitioner Elfin Forest Harmony Grove Town Council (“Town Council”) is a 501(c)(3) non-profit corporation that provides a forum for residents in the Elfin Forest and Harmony Grove communities to address local issues; acts to maintain the area’s rural characteristics, and; represents the community in discussions with outside interests. The Town Council participated extensively in the administrative process leading up to the County’s adoption of its 2011 General Plan, and thus has a significant stake in ensuring the County follows through on the commitments it made there. Members of the Town Council also live, work, and recreate in the vicinity of the proposed HGVS Project, and thus will be impacted by the increased traffic, wildfire risk, and other environmental impacts of the Project.

1           7.       Petitioner Endangered Habitats League (“EHL”) is a tax-exempt non-profit  
2 California corporation dedicated to the conservation of native ecosystems and to  
3 sustainable land use and transportation planning. Since 1991, EHL has engaged in  
4 planning partnerships across Southern California and worked to create habitat preserve  
5 systems, now threatened by climate change. EHL is extremely active in the San Diego  
6 region, where many of its members live and enjoy the biological diversity in the area, and  
7 served on the County advisory committee for the 2011 General Plan Update. EHL  
8 submitted written comments to the County objecting to and commenting on the Project and  
9 EIR.

10           8.       Petitioner Cleveland National Forest Foundation (“CNFF”) is a nonprofit  
11 corporation dedicated to preserving the plants, animals and other natural resources of  
12 Southern California mountains by protecting the land and water they need to survive.  
13 CNFF is committed to sustainable regional land use planning in San Diego County in order  
14 to stem the tide of urban encroachment on wildlands. Members of CNFF are residents and  
15 taxpayers of San Diego County who will be adversely affected by the Project’s significant  
16 environmental impacts. CNFF submitted written comments to the County objecting to and  
17 commenting on the Project and EIR.

18           9.       The interests that the Town Council, EHL, and CNFF (together,  
19 “Petitioners”) seek to further in this action are within the goals and purposes of these  
20 organizations. Petitioners and their members have a direct and beneficial interest in the  
21 County’s compliance with laws bearing upon approval of the Project. These interests will  
22 be directly and adversely affected by the Project, which violates provisions of law as set  
23 forth in this Petition, and which would cause substantial harm to the natural environment  
24 and the quality of life in the surrounding community. The maintenance and prosecution of  
25 this action will confer a substantial benefit on the public by protecting the public from  
26 environmental and other harms alleged herein. Petitioners and their members submitted  
27 extensive comments to the County objecting to approval of the Project and certification of  
28 the Environmental Impact Report (“EIR”).

1           10.     Respondent County of San Diego is, and at all times herein mentioned was, a  
2 political subdivision of the State of California responsible for regulating and controlling  
3 land use within the County, including but not limited to implementing and complying with  
4 the provisions of the Subdivision Map Act, State Planning and Zoning Law, the County's  
5 General Plan and ordinances, and CEQA. The County is the "lead agency" for the  
6 purposes of Public Resources Code section 21067, with principal responsibility for  
7 conducting environmental review of proposed actions. The County has a duty to comply  
8 with CEQA and state law.

9           11.     Respondent Board of Supervisors of the County of San Diego is, and at all  
10 times herein mentioned was, the duly elected decision-making body of Respondent  
11 County. As the decision-making body, the Board of Supervisors was charged with  
12 responsibilities under CEQA for conducting a proper review of the proposed action's  
13 environmental impacts and granting the various approvals necessary for the Project. The  
14 Board also is and was responsible for implementing and complying with the provisions of  
15 the Subdivision Map Act, State Planning and Zoning Law, the County's General Plan and  
16 zoning ordinances. The Board and its members are sued here in their official capacities.

17           12.     Petitioners are unaware of the true names and capacities of Respondents  
18 fictitiously named DOES 1 through 10 and sue such respondents by fictitious names.  
19 Petitioners are informed and believe, and on the basis of such information and belief,  
20 allege the fictitiously named respondents are also responsible for the actions described in  
21 this Petition. When the true identities and capacities of these respondents have been  
22 determined, Petitioners will amend this petition, with leave of the court if necessary, to  
23 insert such identities and capacities.

24           13.     Petitioners are informed and believe, and thereon allege, that Real Party in  
25 Interest RCS – Harmony Partners, LLC, is, and at all times herein mentioned was, the  
26 applicant for approval of the Project. RCS – Harmony Partners, LLC is a Colorado Limited  
27 Liability Company registered to do business in California with the California Secretary of  
28 State. As the Project applicant, RCS – Harmony Partners, LLC is a recipient of the

1 approvals granted by Respondents as part of the Project, and thus is a real party in interest  
2 within the meaning of Public Resources Code section 21167.6.5.

3 14. Petitioners are informed and believe, and thereon allege, that Real Party in  
4 Interest Integral Communities, LLC is the applicant for approval of the Valiano project.  
5 Integral Communities is listed on the Notice of Determination for the Valiano project as  
6 “Project Applicant,” and is thus a real party in interest within the meaning of Public  
7 Resources Code section 21167.6.5. Petitioners are informed and believe, and thereon  
8 allege that Integral Communities, LLC is a Delaware Limited Liability Company  
9 registered to do business in California with the California Secretary of State.

10 15. Petitioners are informed and believe, and thereon allege, that Real Party in  
11 Interest The Eden Hills Project Owner, LLC is an applicant for and project owner of the  
12 Valiano project. The Eden Hills Project Owner, LLC is a Delaware Limited Liability  
13 Company registered to do business in California with the California Secretary of State.  
14 While The Eden Hills Project Owner, LLC is not listed on the Notice of Determination for  
15 the Valiano project, Petitioners name The Eden Hills Project Owner as a real party in  
16 interest in an abundance of caution.

17 16. Petitioners are informed and believe, and thereon allege, that Real Party in  
18 Interest Sunroad Enterprises is the applicant for approval of the Otay 250 project. Sunroad  
19 Enterprises is listed on the Notice of Determination for the Otay 250 project as “Project  
20 Applicant,” and thus is a real party in interest within the meaning of Public Resources  
21 Code section 21167.6.5. Petitioners are informed and believe, and thereon allege, that  
22 Sunroad Enterprises is not registered with the California Secretary of State and therefore  
23 may be named erroneously in the Notice of Determination.

24 17. Petitioners are informed and believe, and thereon allege, that Real Party in  
25 Interest Sunroad Nevada Enterprises, Inc. is the true applicant for approval of the Otay 250  
26 project. Sunroad Nevada Enterprises, Inc. is a Nevada Corporation registered to do  
27 business in California with the California Secretary of State. While Sunroad Nevada  
28 Enterprises, Inc. is not listed on the Notice of Determination for the Otay 250 project,

1 Petitioners name Sunroad Nevada Enterprises, Inc. as a real party in interest in an  
2 abundance of caution.

3 18. Petitioners are unaware of the true capacities of Real Parties in Interest Does  
4 11 through 20 and sues such real parties in interest by fictitious names. Petitioners are  
5 informed and believe, and based on such information and belief, allege that the fictitiously  
6 named real parties in interest are directly and materially affected by the actions described  
7 in this Petition. When the true identities and capacities of these real parties in interest have  
8 been determined, Petitioners will amend this Petition, with leave of the court if necessary,  
9 to insert such identities and capacities.

### 10 **JURISDICTION AND VENUE**

11 19. Petitioners hereby reallege and incorporate by reference the preceding  
12 paragraphs in their entirety.

13 20. Pursuant to Code of Civil Procedure sections 526, 527, 1085, 1087, and  
14 1094.5, and Public Resources Code sections 21168 and 21168.5, the San Diego County  
15 Superior Court has initial jurisdiction to issue a writ of mandate to set aside Respondents'  
16 decision to certify the EIR and approve the Project.

17 21. Venue for this action properly lies in the Superior Court for the State of  
18 California in and for the County of San Diego pursuant to Code of Civil Procedure section  
19 394. Respondents' main offices are located in and the activities authorized by Respondents  
20 will occur in San Diego County.

21 22. Venue for this action properly lies in the Central division. The Board of  
22 Supervisors, which took action to approve this Project and is named as respondent, does  
23 business at 1600 Pacific Highway, San Diego, CA 92101, which is assigned to the Central  
24 division. Similarly, the action that is challenged in this litigation--the approval of the  
25 project—took place at the same location.

26 23. Petitioners have performed any and all conditions precedent to filing the  
27 instant action and have exhausted any and all available administrative remedies to the  
28 extent possible and required by law. Petitioners and their members submitted numerous

1 objections to approval of the Project and the County's inadequate analysis and mitigation  
2 of the Project's impacts in the EIR prepared for the Project.

3       24. Respondents have taken final agency actions with respect to adopting the  
4 EIR and approving the Project. Respondents have a duty to comply with applicable state  
5 laws, including but not limited to CEQA, prior to undertaking the discretionary approvals  
6 at issue in this lawsuit. Petitioners possess no effective remedy to challenge the approvals  
7 at issue in this action other than by means of this lawsuit.

8       25. On August 23, 2018, Petitioners complied with Public Resources Code  
9 section 21167.5 by emailing and mailing to Respondents a letter stating that Petitioners  
10 planned to file a Petition for Writ of Mandate seeking to invalidate Respondents' approval  
11 of the Project. Attached hereto as Exhibit A is the true and correct copy of this letter.

12       26. On August 24, 2018, Petitioners will comply with Public Resources Code  
13 section 21167.7 and Code of Civil Procedure section 388 by furnishing the Attorney  
14 General of the State of California with a copy of the Petition. Attached hereto as Exhibit B  
15 is the true and correct copy of the letter transmitting the Petition to the Attorney General.

16       27. Pursuant to Public Resources Code section 21167.6(b)(2), Petitioners elect to  
17 prepare the record of proceedings in this action. Concurrently with this Petition, Petitioners  
18 will fill a notice of election to prepare the administrative record.

19       28. Petitioners have no plain, speedy, or adequate remedy in the course of  
20 ordinary law unless this Court grants the requested writ of mandate to require Respondents  
21 to set aside their adoption of the EIR and approval of the Project. In the absence of such  
22 remedies, Respondents' approvals will remain in effect in violation of State law, and  
23 Petitioners and their members will be irreparably harmed. No money damages or legal  
24 remedy could adequately compensate Petitioners and their members for that harm.

### 25                                   **STATEMENT OF FACTS**

26       29. Petitioners reallege and incorporate by reference the preceding paragraphs in  
27 their entirety.  
28



1 **I. The County Comprehensively Updated Its General Plan in 2011, Adopting**  
2 **Numerous Policies to Curb Harmful Sprawl Development.**

3 30. Between 2009 and 2011, the County conducted a comprehensive public  
4 process to update its General Plan. This update was the first comprehensive revision to the  
5 General Plan since 1978 and, according to the General Plan itself, was “the result of the  
6 collective efforts of elected and appointed officials, community groups, individuals, and  
7 agencies who spent countless hours developing a framework for the future growth and  
8 development of the unincorporated areas of the County.” 2011 General Plan at 1-2.

9 31. The resulting General Plan committed in its first pages to an  
10 “environmentally sustainable approach to planning that balances the need for adequate  
11 infrastructure, housing, and economic vitality, while maintaining and preserving each  
12 unique community with the County, agricultural areas, and extensive open space.” General  
13 Plan at 1-2.

14 32. The primary means of achieving this balance is the General Plan’s adoption  
15 of a “Community Development Model.” The General Plan explains:

16 [I]n the County’s Community Development Model, the central core is  
17 surrounded by areas of lesser intensity including “Semi-Rural” and “Rural  
18 Lands.” . . . The “Village” would contain the densest neighborhoods and a  
19 broad range of commercial and civic uses that are supported by a dense  
20 network of local roads containing bicycle lanes and walkways linking the  
21 neighborhoods with parks, schools, and public areas. Outside of the  
22 “Village,” “Semi-Rural” areas would contain low-density residential  
23 neighborhoods, small-scale agricultural operations, and rural commercial  
24 businesses. In turn, these would be surrounded by “Rural Lands”  
25 characterized by very low density residential areas that contain open space,  
26 habitat, recreation, agriculture, and other uses associated with rural areas.

27 General Plan at 2-8.

28 33. This Community Development Model moved the County away from its  
previous land use policies, which encouraged dispersal of development across the County,  
and instead focuses new development in existing villages. General Plan at 2-7 to 2-9; *see*  
*also* General Plan at 2-3 (“Our villages are intended to grow in compact land development  
patterns to minimize intrusion into agricultural lands and open spaces; the distance that we  
travel to our local services and businesses; and the need for extensive infrastructure and

1 services; while also inducing community association, activity, and walking.”); *id.* at 3-2  
2 (“Focusing development in and around existing unincorporated communities allows the  
3 County to maximize existing infrastructure, provides for efficient service delivery, and  
4 strengthens town center areas while preserving the landscape that helps define the unique  
5 character of the unincorporated County.”).

6 34. The Community Development Model undergirds many of the General Plan’s  
7 “Guiding Principles.” For example, under Guiding Principle Number 1, the County  
8 commits to “support[ing] a reasonable share of projected regional population growth.” The  
9 General Plan notes that this principle will be implemented by “planning and facilitating in  
10 and adjacent to existing and planned villages.”

11 35. Guiding Principle Number 2 reiterates this point, noting that the County  
12 commits to “promot[ing] health and sustainability by locating new growth near existing  
13 and planned infrastructure, services, and jobs in a compact pattern of development.” The  
14 discussion notes the adverse impacts caused by haphazard, sprawl development, including  
15 greater costs for infrastructure development, greater stresses on community services,  
16 increased travel time, increased gasoline consumption, air pollution, GHG emissions, and  
17 loss of habitat. To reduce these impacts, the Plan commits to “more compact development  
18 . . . within existing and planned communities.”

19 36. Compact development focused around existing and planned communities,  
20 and retention of semi-rural and rural lands, also supports Guiding Principles Number 5  
21 (“Ensure that development accounts for physical constraints and the natural hazards of the  
22 land”) and Guiding Principles Number 7 (“Maintain environmentally sustainable  
23 communities and reduce greenhouse gas emissions that contribute to climate change”). By  
24 concentrating new development in existing communities, development is correspondingly  
25 limited in the high-risk urban-wildland interface. And compact communities support  
26 “reduced automobile use and increased use of public transit, walking, and bicycling.”

27 37. To implement the Community Development Model, the General Plan places  
28 all unincorporated land into one of three regional categories: Village, Semi-Rural, and

1 Rural. General Plan at 3-6. These designations were based on an analysis of development  
2 constraints, including road access, water/sewer, habitat, and hazards. General Plan at 3-4.  
3 The Plan then permits Village lands to be developed at higher residential densities (i.e.,  
4 more than 2 dwelling unit per acres), while significantly restricting residential  
5 development on Semi-Rural and Rural lands. *See* General Plan Table LU-1 (tying regional  
6 categories to land use designations and maximum densities). This scheme is intended to  
7 ensure future development patterns of compact development patterns in the villages,  
8 surrounded by much lower density rural development. The Countywide Regional  
9 Categories Map (Figure LU-1) graphically illustrates this vision, with islands of compact  
10 development surrounded by a semi-rural and rural backcountry.

11 38. One of the key benefits of the Community Development Model is its ability  
12 to reduce climate change impacts. *See, e.g.,* General Plan at 2-9 (“Developing the County’s  
13 communities more compactly meets critical objectives with the mandates of AB 32, the  
14 *California Global Warming Solutions Act of 2006*.”).

15 39. Numerous specific General Plan policies also support these broader policy  
16 goals. For example:

17 a. Policy LU-1.1 directs the County to “[a]ssign land use designations on  
18 the Land Use Map in accordance with the Community Development model and boundaries  
19 established by the Regional Categories Map.”

20 b. Policy LU-1.2 strictly limits the approval of leapfrog developments  
21 (i.e, Village densities located away from established Villages) and LU-1.4 regulates village  
22 expansions (i.e., limits new Village designations adjacent to existing villages, requires  
23 specific findings).

24 c. Policy LU-1.3 requires land use designations to “preserve surrounding  
25 rural lands.”

26 d. Policy LU-2.5 requires the County to “maintain greenbelts between  
27 communities to reinforce the identity of individual communities.”  
28

1 e. Policy LU-10.3 requires the County to “[u]se Semi-Rural and Rural  
2 land use designations to define the boundaries between Villages and Rural Land Use  
3 designations to serve as buffers between communities.”

4 40. Another major goal of the General Plan is to create a housing stock at a  
5 range of prices (Goal H-1), especially in order to meet the County’s Regional Housing  
6 Needs Assessment allocations for lower income households. The Housing Element  
7 recognizes that one of the most promising mechanisms for achieving this goal is by  
8 requiring large-scale residential developers, to provide affordable housing. For this reason,  
9 Policy H-1.9 “[r]equires developers to provide an affordable housing component when  
10 requesting a General Plan amendment for a large-scale residential project when this is  
11 legally permissible.”

12 41. The County approved this comprehensive General Plan update in 2011.

13 **II. The San Dieguito Community Plan, Which Incorporates Policies Specific to the**  
14 **Elfin Forest-Harmony Grove Sub-Area, Identifies Numerous Constraints on**  
**Development.**

15 42. The County adopted the San Dieguito Community Plan, including its Elfin  
16 Forest Harmony Grove addendum, in 2011. This Community Plan was also the result of  
17 extensive public outreach and planning. In 2005, the Town Council commissioned a  
18 survey of all area residents, entitled, “Elfin Forest Harmony Grove: A Snapshot of Our  
19 Community.” The two communities—Elfin Forest and Harmony Grove—subsequently  
20 held numerous public meetings to review and refine drafts of the community plan and met  
21 repeatedly with County staff to refine wording to ensure the policies would be enforceable.

22 43. According to this plan, the Elfin Forest / Harmony Grove community  
23 encompasses approximately 4,727 acres primarily characterized by open space. This  
24 community is “a rural enclave with large lots with citrus and avocado orchards, as well as  
25 horse and alpaca ranches. It is an extremely peaceful and quiet place and generally remains  
26 in its natural state. The dark night sky is an important aesthetic resource; and there are  
27 many scenic views in the community, including those of the hills, the valleys, and the  
28 riparian habitat. The character of Elfin Forest is based on openness: open land, open

1 spaces, and undeveloped countryside with a low density of homes.” San Dieguito  
2 Community Plan (Elfin Forest – Harmony Grove) at 9.

3       44.     The Harmony Grove community is similarly undeveloped and  
4 environmentally sensitive. It is situated in two intersecting valleys “cradled in dramatic  
5 brush-covered hills and granite formations. The valleys, though physically close to urban  
6 areas, are isolated by the topography of the surrounding hills, and are rural in character.  
7 The valleys are home to a diverse population of native plants and animals, including deer,  
8 coyotes, bobcats, mountain lions, golden eagles and other raptors, least Bells’ vireos,  
9 gnatcatchers, ravens, and numerous species of plants. There are a multitude of species  
10 thriving in this area that are on protected lists.” San Dieguito Community Plan (Elfin  
11 Forest – Harmony Grove) at 15. Outside of the village, Harmony Grove has no established  
12 trails, sidewalks, street lights, lighted signs, or traffic signals.

13       45.     In the Elfin Forest – Harmony Grove appendix to the San Dieguito  
14 Community Plan, the County anticipated and addressed mounting development pressures.  
15 Under “LAND USE PLANNING ISSUES,” the County noted: “The Harmony Grove  
16 community, working with County staff, designed a Village Development Pattern Model as  
17 represented in the General Plan Land Use Map. There still exist many large undeveloped  
18 parcels of land within Harmony Grove outside the footprint of the approved Village.  
19 Development of these parcels with an urban, clustered or suburban design would threaten  
20 the continued existence of the rural residential and equestrian character of Harmony  
21 Grove.” San Dieguito Community Plan (Elfin Forest – Harmony Grove) at 19.

22       46.     The Community Plan also identified a number of challenges and risks to  
23 development within the Community Plan area at increased densities. These challenges  
24 include “[a] sensitive environmental ecosystem that is extremely fragile and should be  
25 protected;” “[limited access into and out of the community;” “[a]n extreme vulnerability to  
26 wildfires . . . because of the topography and open space characteristics;” and “limitations  
27 of septic system capacity and even feasibility in the rocky and clay soil native to Elfin  
28 Forest.” San Dieguito Community Plan (Elfin Forest – Harmony Grove) at 13.

1           47. For the Harmony Grove area, the Community Plan states “[t]he Village  
2 development pattern as shown in the General Plan Land Use Map must be strictly adhered  
3 to as the formal development model for the area.” San Dieguito Community Plan (Elfin  
4 Forest – Harmony Grove) at 21.

5           48. Despite these significant constraints on development, the Elfin Forest  
6 Harmony Grove communities acknowledged that they needed to accommodate their fair  
7 share of residential development necessitated by the region’s continued growth. To that  
8 end, the community endorsed the designation of a village boundary for Harmony Grove  
9 Village.

10           49. However, the community remained concerned about the impacts of  
11 development beyond these boundaries in the future. As a result, residents worked hard to  
12 ensure that their community plan contained strong policies limiting the expansion of the  
13 HGV boundary and imposing limits on urban development more generally. For example,  
14 Policy LU-1.13 provides that “[a]ny and all development in Elfin Forest must be served  
15 only by septic systems for sewage management to ensure the preservation of the  
16 community’s rural character.” San Dieguito Community Plan (Elfin Forest – Harmony  
17 Grove) at 27. Similarly, the County established the geographic boundaries of the area  
18 served by the HGV waste water treatment plant to match the Village boundaries, in order  
19 to preserve the rural residential density surrounding HGV.

20           50. According to these policies, the area just south of the Harmony Grove  
21 Village area was designated “semi-rural” and “rural,” as a buffer between Village densities  
22 and large swaths of protected open space. Outside of the designated Village, land use is  
23 restricted primarily to low density, large lot, single family residential and open space uses.  
24 This property already received an upzone in 2011 from 25 units to 170 during the General  
25 Plan Update process. The County and other agencies have over time purchased over 3,000  
26 acres of land around the designated Village for habitat preservation. This adjacent open  
27 space in a Very High Fire Risk zone also severely increases the wildfire risk, both from  
28

1 introducing new ignition sources from humans, and from the risk of entrapment as the fuel  
2 load is extreme.

3 51. As part of the 2011 General Plan update, developers specifically requested a  
4 higher density designation for the area just south of the Harmony Grove Village, but staff  
5 rejected that request.

6 52. The County adopted these policies when it adopted the San Dieguito  
7 Community Plan in 2011.

### 8 **III. History of the Harmony Grove Village South Project.**

9 53. Just a few years after the County adopted its 2011 General Plan, in March  
10 2015, Real Party applied to develop the Project, which is more than twice as dense as that  
11 permitted by the General Plan and includes a mix of residential and commercial uses.

12 54. Specifically, the Project proposes to develop 453 dwelling units, 5,000 sf of  
13 commercial/civic use, and an on-site wastewater treatment facility.

14 55. The Project is exactly the kind of expanded urban development that the  
15 community and the County sought to prevent when the County adopted stringent, anti-  
16 sprawl policies in the 2011 General Plan and San Dieguito Community Plan.

17 56. For example, under the 2011 General Plan Land Use Designation for the  
18 Project site, and based on the site's slope, the maximum number of residential units  
19 allowed was 174. However, the Project would develop 453 dwelling units and 5,000  
20 square feet of commercial/ civic uses. Rather than maintaining large lot sizes consistent  
21 with the neighboring rural residential uses, the Project would include dense, urban  
22 development, with the large majority of lots smaller than 10,000 sf and some lots as small  
23 as 1,462 sf. Rather than maintaining all new homes on septic systems, the Project requires  
24 annexation into a sewer district (either the San Diego County Sanitation District or  
25 RDMWD) and a major use permit for an on-site wastewater treatment facility. And, the  
26 Project would be located in the area designated as a buffer zone between the urban  
27 Harmony Grove Village and the area's sensitive habitat.

28 57. The Project does not include any affordable housing component.

1           58.     Because the Project would allow urban development outside of the  
2 designated Harmony Grove Village area, the County was required to make and support  
3 findings under General Plan policy LU-1.4, Village Expansion. According to this policy,  
4 the County may “[p]ermit new Village Regional Category designated land uses *only* where  
5 contiguous with an existing or planned Village *and* where all of the following criteria are  
6 met: [1] Potential Village development would be compatible with environmental  
7 conditions and constraints, such as topography and flooding; [2] Potential Village  
8 development would be accommodated by the General Plan road network; [3] Public  
9 facilities and services can support the expansion without a reduction of services to other  
10 County residents; [4] The expansion is consistent with community character, the scale, and  
11 the orderly and contiguous growth of a Village area.”

12           59.     The Notice of Preparation (NOP) was circulated for public review from  
13 August 27, 2015 to September 28, 2015. During this time, input on the scope and content  
14 of the environmental information to be contained in the Draft EIR was received from the  
15 public and agencies.

16           60.     The Draft EIR for the proposed project was initially circulated for public  
17 review from April 20, 2017 to June 20, 2017 (a 60-day public review period). All  
18 interested persons and organizations had an opportunity during this time to submit their  
19 written comments on the Draft EIR to the County of San Diego.

20           61.     In preparing the EIR, the County used a number of consultants and  
21 subconsultants. Contrary to its own CEQA Guidelines, many of these consultants were not  
22 on the County’s list of consultants authorized to prepare CEQA documents for the County  
23 for privately initiated projects.

24           62.     In response to comments received from the circulation of the Draft EIR,  
25 several additions and/or changes were made to the environmental analysis, including GHG  
26 emissions. Due to these revisions and additions, a Draft Revised EIR was recirculated from  
27 February 22, 2018 to April 9, 2018 (a 45- day public review period). A total of 73  
28



comment letters were received during the public review periods for both the Draft EIR and Draft Revised EIR.

63. On April 5, 2018, the San Dieguito Community Planning Group (SDCPG), an advisory community planning committee, recommended denial of the project by a vote of 11-0-0-2 (11 votes for denial, 0 votes for approval, 0 abstentions, and 2 absent votes). The SDCPG recommended denial for a number of reasons, including that the Project failed to conform with the General Plan (including Land Use Policy LU-1.4), would have significant fire safety and evacuation impacts, and is incompatible with community character.

64. The Final EIR was issued in May 2018.

65. The Planning Commission considered the proposed Project on May 24, 2018. Despite significant community opposition, the Planning Commission recommended approval of the Project by a vote of 4-2-1-0.

66. The Board of Supervisors considered the proposed Project on July 25, 2018. In an attempt to avoid the legislative limit on the number of times the County may amend its General Plan each year, the County “batched” the Project together with two other major residential developments outside of designated “Villages,” the Valiano and Otay 250 projects.

67. The Valiano project proposed 326 residential units on a 239-acre site north and outside the boundaries of the Harmony Grove Village.

68. The Otay 250 project proposed 3,158 residential units, 78,000 square feet of commercial uses, and 765,000 square feet of “business technology employment uses” on a 253-acre site in the Otay Subregional Plan Area.

69. The Board approved all three projects (HGVS, Valiano, and Otay 250) on July 25, 2018. The Board certified the environmental impact reports for all three projects at the same time.

1           70.     The EIR for HGVS concluded the Project would have significant,  
2 unavoidable environmental impacts related to aesthetics (short-term), air quality, and  
3 transportation/traffic.

4           71.     The County nonetheless found that overriding social and economic interests  
5 outweighed these significant environmental harms, including (1) additional housing for  
6 County residents, (2) increased property tax revenue, (3) opportunities for construction  
7 employment, (4) proximity to existing employment opportunities, (5) supporting an  
8 existing village and community, (6) recreational benefits of new parks and multi-use trails,  
9 (7) biological open space, and (8) enhanced environment and safety of Escondido Creek  
10 through construction of roadway bridge.

11           72.     For HGVS, the County also approved: amendments to the General Plan Land  
12 Use Element and the San Dieguito Community Plan; a Specific Plan; a Zone  
13 Reclassification to change the underlying zoning from Limited Agriculture (A70) and  
14 Rural Residential (RR) to Specific Plan (S88); a Major Use Permit for an on-site waste  
15 water treatment facility; a Vesting Tentative Map; and a site plan.

16           73.     Petitioners are informed and believe, and on that basis allege, that,  
17 throughout the administrative process for the HGVS project, the County utilized a  
18 document management system that automatically deleted e-mails and other records after  
19 60 days, including e-mails and records related to the HGVS project and that were required  
20 to be included in the administrative record for this case.

21 **IV.   Public comments on the HGVS Project.**

22           74.     Throughout the administrative process leading up to the Board of  
23 Supervisor's approval of the HGVS Project, community groups, environmental  
24 organizations, and individuals, including Petitioners, submitted voluminous comments  
25 objecting to the Project and identifying fundamental flaws in the EIR.

26           75.     First and foremost, the Town Council identified numerous ways in which the  
27 Project is inconsistent with the 2011 General Plan. For example:  
28

1           a.       The Project is incompatible with the General Plan’s guiding principles  
2 for development, which strictly limit new development to designated “Villages” in order to  
3 preserve open space and agriculture, as well as to curb significant environmental impacts  
4 associated with sprawl development, including greenhouse gas emissions, traffic impacts,  
5 and air quality degradation.

6           b.       The Project is also incompatible with numerous policies designed to  
7 protect the community from risks associated with wildfires. For example, the Project  
8 places dense, urban development in a Very High Fire Hazard Severity Zone, contrary to  
9 Policies LU-6.10 and 11, and fails to provide both a primary and secondary access/egress  
10 route to support emergency services, contrary to Policies M-1.2 and S-3.5.

11           c.       The County approved the Project before adopting an adequate Climate  
12 Action Plan, as required by the General Plan mitigation measure CC-1.2.

13           d.       The Project fails to provide any affordable housing, in violation of  
14 Policy H-1.9, which requires developers to provide an affordable housing component when  
15 requesting a General Plan amendment for a large-scale residential project.

16       76.       The Town Council also identified numerous flaws in the EIR.

17           a.       The Project Description is misleading as it paints the Project as a  
18 continuation and natural outgrowth of Harmony Grove Village, when, in fact, it is  
19 precisely the kind of urban expansion that the Conty and community sought to prevent in  
20 adopting strict boundaries for the Harmony Grove Village. The very naming of the project  
21 as “HGV SOUTH” is a clear attempt to mislead.

22           b.       The EIR uses an improper baseline for assessing project impacts by  
23 including future, permitted (but not yet built) development of Harmony Grove Village and  
24 Harmony Grove Spiritualist association in the baseline used to assess the Project’s  
25 impacts.

26           c.       The EIR fails to address the full scope of environmental impacts that  
27 will result from loosening the development restrictions in the General Plan and San  
28

1 Dieguito Community Plans, including but not limited to land use and growth-inducing  
2 impacts.

3 d. As demonstrated by expert reports submitted by the Town Council,  
4 the EIR fails to adequately analyze fire hazards caused by the Project, which would expand  
5 the wildland-urban interface and increase fire risks significantly. The EIR also fails to  
6 identify feasible mitigation for these increased hazards.

7 e. The EIR's traffic analysis was also incomplete and inadequate, as set  
8 forth in additional expert reports submitted by the Town Council. For example, the EIR  
9 fails to analyze all impacted freeway operations and ignores the serious traffic problems  
10 related to the Project's entrance, which indisputably create unsafe conditions at any speed  
11 greater than 27.5 miles per hour.

12 f. Crucially, the EIR never adequately analyzes or mitigates the  
13 Project's impacts on community-wide emergency access and evacuation, an issue that  
14 affects the lives and safety of every member of the community, new and old.

15 g. The EIR fails to adequately analyze the air quality impacts that will  
16 occur as a result of the Project's inconsistency with the San Diego Air Pollution Control  
17 District's Regional Air Quality Strategy ("RAQs").

18 h. The climate change impacts analysis is also faulty, as it relies on the  
19 very same greenhouse gas analysis and methodology found inadequate by the San Diego  
20 County Superior Court in 2016.

21 i. The EIR's threshold of significance for greenhouse gas impacts was  
22 also improper, as it is the threshold that was designed for infill and transit-oriented  
23 development, not sprawl developments like HGVS.

24 j. The EIR improperly avoids analysis of environmental impacts by  
25 relying on Project features to mitigate those impacts, contrary to the Court of Appeal's  
26 holding in *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52  
27 Cal.App.4th 1165.

1 k. The EIR failed to consider a reasonable range of alternatives,  
2 including an alternative proposed by the Town Council—the “Harmony Commons”  
3 alternative—that would have met Project objectives with fewer impacts.

4 l. The EIR ignored land use impacts related to compliance with state  
5 and local annexation laws and policies, despite the fact that the Project required annexation  
6 into a sewer district.

7 m. The EIR’s analysis of impacts to biological resources was inadequate,  
8 as demonstrated by a third expert report submitted by the Town Council. For example, the  
9 EIR fails to minimize and mitigate sensitive habitat loss, fails to identify significant  
10 impacts to plant and animal species, and fails to follow methodology prescribed by the  
11 Natural Community Conservation Planning requirements for determining impacts to  
12 coastal sage scrub. The EIR also failed to analyze the severe cumulative impacts to  
13 biological resources resulting from the combined approval of HGVS and Valiano, and the  
14 proposed approval of the Newland Sierra project.

15 77. After the Final EIR was issued, the Town Council also noted that the County  
16 could not make the findings required to approve the Project under the County Zoning  
17 Code. For example, the Project was not “compatible with adjacent uses” which are rural.  
18 The development would increase fire risk, requires annexation to a sewer district because it  
19 lacks sufficient utilities to support the dense development proposed, and would generate  
20 substantial amounts of traffic. The Project is also inconsistent with numerous provisions of  
21 the General Plan and Community Plan for the area.

22 78. In addition, the County’s CEQA Findings for the Project were inadequate.  
23 For example, the Findings did not justify rejection of the Town Council’s proposed  
24 alternative.

25 79. Lastly, the Town Council commented that the EIR had failed to consider the  
26 cumulative impacts of bundling this Project together with general plan amendments  
27 allowing two other massive developments outside of designated Villages, as well as scores  
28

1 of additional proposed projects that would also ignore the General Plan's smart growth  
2 policies and allow dense, urban development throughout the County's rural regions.

3           a.       The County's approval of tens of thousands of new residential units  
4 outside of designated Villages, including the HGVS Project, would fundamentally  
5 undermine the County's General Plan and create internal inconsistencies in that planning  
6 document.

7           b.       The EIRs for these batched projects fail to provide a complete,  
8 accurate and stable project description, or complete, consistent lists of cumulative projects.

9           c.       All of the proposed projects, when taken together, would have  
10 significant cumulative impacts related to inconsistencies with San Diego's Air Quality  
11 Plan. The HGVS Project, together with six other planned projects, would be inconsistent  
12 with the RAQs for San Diego County because they would result in more intense land uses  
13 and increased vehicle miles traveled. According to Town Council calculations, these  
14 cumulative projects, if taken together as CEQA requires, would result in VOC emissions  
15 that exceed San Diego Air pollution Control District thresholds of significant by more than  
16 2,000%. Yet the EIR for HGVS did not consider these cumulative impacts, much less  
17 mitigate them or make findings justifying Project approval in light of them.

18           d.       The cumulative wildfire impacts of HGVS together with the other  
19 batched projects and the other proposed general plan amendments authorizing dense  
20 development outside of villages were also ignored. Increasing the risk and intensity of  
21 wildfires not only impacts human health and safety, it also impacts critical habitat for  
22 endangered and sensitive species.

23           e.       By developing sprawling residential developments far from public  
24 transit and job centers, all of these cumulative projects also contribute significantly to  
25 transportation-related energy consumption. The EIR for HGVS failed to make any attempt  
26 to quantify either the increase in VMT caused by these projects or transportation-related  
27 energy consumption on a cumulative basis. According to calculations prepared by the  
28 Town Council, based on evidence in the record, these cumulative projects would cause

1 VMT to increase by 644,739 miles every day, or over 235 million new VMT per year. This  
2 is an astonishing impact that must have been, but was not, analyzed as a potentially  
3 significant cumulative impact.

4 f. The cumulative climate change impacts of HGVS and other batched  
5 and proposed projects is similarly jaw-dropping, resulting in hundreds of thousands of  
6 metric tons of CO2 equivalent per year. Again, the EIR for HGVS failed to quantify, much  
7 less consider the feasibility of mitigating, such significant cumulative impacts.

8 g. The EIR also failed to consider the cumulative impacts related to  
9 consistency with the General Plan's Community Development Model and numerous  
10 policies in the Land Use and Housing Elements. Nor did the EIR consider the cumulative  
11 impacts related to consistency with SANDAG's Regional Transportation Plan/Sustainable  
12 Communities Strategy, or the approved or proposed Multiple Species Conservation Plans.

13 80. EHL and CNFF also submitted comments objecting to the HGVS Project.  
14 EHL raised many of the same issues the Town Council had raised about the cumulative  
15 effects of HGVS when viewed in light of the other sweeping general plan amendments  
16 under consideration by the County. CNFF commented on the cumulative impacts of the  
17 batched GPAs, their inconsistency with the County's General Plan, and the Final  
18 Environmental Impact Reports' ("FEIR") failure to accurately analyze these  
19 inconsistencies.

## 20 **FIRST CAUSE OF ACTION**

### 21 **Violation of CEQA**

#### 22 **(Public Resources Code § 21000 et seq.; State & County CEQA Guidelines)**

23 81. Petitioners reallege and incorporate by reference the preceding paragraphs in  
24 their entirety.

25 82. CEQA requires the lead agency for a project with the potential to cause  
26 significant environmental impacts to prepare an EIR that complies with the requirements  
27 of the statute, including, but not limited to, the requirement to analyze the project's  
28 potentially significant environmental impacts. The EIR must provide sufficient

1 environmental analysis such that the decision makers can intelligently consider  
2 environmental consequences when acting on the proposed project. Additionally, the EIR  
3 must identify feasible mitigation measures to reduce or avoid the project's significant  
4 environmental impacts, as well as analyze a reasonable range of alternatives to the project.

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

11       84. CEQA further mandates that a lead agency may approve a project that would  
12 have significant, unavoidable environmental impacts only if the agency finds that the  
13 project's benefits would outweigh its unavoidable impacts.

14       85. Under CEQA, all the findings required for an agency's approval of a project  
15 must be legally adequate and supported by substantial evidence in the administrative  
16 record, and CEQA further requires that an agency provide an explanation of how the  
17 evidence in the record supports the conclusions the agency has reached.

18       86. Respondents failed to proceed in the manner required by law and violated  
19 CEQA by certifying an EIR that is inadequate and fails to comply with the requirements of  
20 CEQA and the CEQA Guidelines. The inadequacies in the County's analysis include, but  
21 are not limited to, failure to adequately analyze and mitigate the following impacts:

- 22           a. Climate change/greenhouse gas
- 23           b. Air quality
- 24           c. Biological resources
- 25           d. Fire hazards
- 26           e. Land use
- 27           f. Traffic and transportation
- 28           g. Emergency access



1           87. Respondents failed to proceed in the manner required by law and violated  
2 CEQA by certifying an EIR that fails to adequately consider the cumulative and growth-  
3 inducing impacts of the Project.

4           88. Respondents violated CEQA and the CEQA Guidelines by relying on Project  
5 features to mitigate Project-related impacts. Respondents similarly violated CEQA and the  
6 CEQA Guidelines by relying on ineffective, unenforceable, and unproven mitigation  
7 measures to reduce Project impacts, including mitigation for greenhouse gas impacts and  
8 wildfire impacts. The mitigation measures for greenhouse gas impacts are the same or  
9 similar to those adopted in the County’s February 14, 2018 Climate Action Plan, which is  
10 currently challenged in *Sierra Club v. County of San Diego* (San Diego Sup. Ct. Case No.  
11 37-2012-101054-CU-TT-CTL).

12           89. Respondents violated CEQA by failing to consider Project alternatives that  
13 would have reduced significant impacts while still meeting project objects. Similarly,  
14 Respondents violated CEQA by adopting overly narrow Project objectives.

15           90. Respondents violated CEQA by adopting findings that are inadequate as a  
16 matter of law in that they are not supported by substantial evidence in the record.

17           91. Respondents also violated CEQA by treating the HGVS, Valiano, and Otay  
18 250 projects as a single project for purposes of approving General Plan amendments while  
19 simultaneously treating HGVS, Valiano, and Otay 250 as separate projects for purposes of  
20 environmental review. The County failed to prepare a single EIR analyzing all three  
21 projects together, and failed to provide a complete, accurate and stable project description  
22 for the combined projects. The individual EIRs for these projects did not even consider the  
23 other two projects under the “cumulative impacts” analysis, e.g., the cumulative impacts  
24 analysis for HGVS listed Valiano but not Otay 250 as a project with potentially cumulative  
25 impacts.

26           92. Respondents violated their own CEQA guidelines by using consultants that  
27 were not on the approved consultant list.

1           93.     The County violated CEQA Guidelines § 15088(c) by failing to respond to  
2 public comments. Jacqueline Arsivaud submitted a June 20, 2017 letter on behalf of by the  
3 Elfin Harmony Grove Town Council that attached and expressly referenced a spreadsheet  
4 that lists 100 individual comments, organized by impact. The FEIR fails to include or  
5 respond to the comments submitted in that spreadsheet.

6           94.     Respondents violated state and local law, including Public Resources Code  
7 section 21167.6(e) and County Board of Supervisors Resolution 17-170 and Policy A-129,  
8 by failing to retain all records necessary for a complete administrative record in a CEQA  
9 action. Petitioners are informed and believe, and on that basis allege, that, throughout the  
10 administrative process for the HGVS project, the County deleted records related to the  
11 HGVS project that were required to be included in the administrative record for this case.

12           95.     As a result of the foregoing defects, Respondents prejudicially abused their  
13 discretion and failed to proceed in the manner required by law by certifying an EIR,  
14 making findings, and taking related actions that do not comply with the requirements of  
15 CEQA. As such, Respondents' certification of the EIR and approval of the Project must be  
16 set aside.

## 17                                   **SECOND CAUSE OF ACTION**

### 18                   **Violation of State Planning and Zoning Laws and the Subdivision Map Act**

#### 19                                   **(Gov. Code §§ 65300 et seq.; 66410 et seq.)**

20           96.     Petitioners reallege and incorporate by reference the preceding paragraphs in  
21 their entirety.

22           97.     Government Code section 65300 requires the legislative body of each county  
23 to adopt a general plan for the physical development of the county. The general plan serves  
24 as a charter for future development to which all other land use decisions must conform.  
25 *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773.

26           98.     Government Code section 65030.1 directs that decisions about growth  
27 “should be guided by an effective planning process, including the local general plan.”  
28

1 Government Code section 65300.5 requires that the local general plan be “integrated,  
2 internally consistent and compatible.”

3       99. Government Code section 65860 requires that zoning be consistent with the  
4 general plan. Courts have held that other land use decisions must also be consistent with  
5 the general plan. *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d  
6 800, 806. Permits and other land use decisions must also be consistent with the applicable  
7 zoning ordinance. *Land Waste Management v. Contra Costa County Bd. of Supervisors*  
8 (1990) 222 Cal.App.3d 950, 957-59. State Planning and Zoning Law requires compliance  
9 with all General Plan policies that are “fundamental, mandatory, and specific.” *Families*  
10 *Unafraid to Uphold Rural etc. County v. Board of Supervisors* (1998) 62 Cal.App.4th  
11 1332, 1342; *Spring Valley Lake Assn v. City of Victorville* (2016) 248 Cal.App.4th 91,  
12 100-101.

13       100. Government Code § 65358(b) limits the number of times per calendar year  
14 that a city or county may amend any mandatory General Plan element. That limit is  
15 currently four. Mandatory San Diego County General Plan elements include: the Land Use  
16 Element, Mobility Element, Conservation and Open Space Element, Housing Element,  
17 Safety Element and Noise Element.

18       101. Prior to approval of the Project, the County had already amended the Land  
19 Use Element in 2018, for the Lake Jennings Marketplace project.

20       102. The Subdivision Map Act is a state statute designed to regulate the  
21 subdivision of real property in California. *Gardner v. County of Sonoma* (2003) 29 Cal.4th  
22 990, 996-97; Gov. Code § 66411. The purposes of the Act include, among other things,  
23 ensuring that a community’s growth is orderly and that necessary improvements are made  
24 so that the subdivision does not become a burden on neighbors and taxpayers. *Gardner*, 29  
25 Cal.4th at 997. To implement these purposes, the Subdivision Map Act mandates that  
26 subdivision approvals, including approvals of vesting tentative maps, be consistent with an  
27 adopted general plan and local zoning regulations. Gov. Code §§ 66473.5, 66498.3(a).

1           103. The County violated the requirements of state law by approving a project  
2 that is inconsistent with the requirements of the County’s General Plan and amending the  
3 General Plan in a manner that renders it internally inconsistent. For example, and as  
4 described above, the Project is inconsistent with:

5           a. Core General Plan policies and principles that require the County to  
6 focus urban development in designated Villages and strictly limit dense development  
7 outside of Village boundaries. These policies and principles include, but are not limited to,  
8 Guiding Principle Number 1, Guiding Principle Number 2, Guiding Principle Number 5,  
9 Guiding Principle Number 7, LU-1.1, LU-1.2, LU-1.3, LU-1.4, LU-1.5, LU-2.1, LU-2.4,  
10 LU-2.5, LU-10.3.

11           b. Policies designed to reduce vehicle trips within communities and  
12 preserve rural lands. These policies include, but are not limited to, LU-5.1, LU-5.3.

13           c. Policies designed to protect residents from hazards, including  
14 wildfires, and minimize exposure to hazards. These policies include, but are not limited to,  
15 LU-6.10, LU-6.11, M-1.2, S-3.5, and S-1.1.

16           d. Policies requiring provision of affordable housing when General Plan  
17 amendments are required. These policies include, but are not limited to, H-1.9.

18           e. Policies within the San Dieguito Community Plan (Elfin Forest –  
19 Harmony Grove), designed to preserve the community’s rural character. These policies  
20 include, but are not limited to, CM-10.2.1, LU-1.1.1, LU-1.1.2.

21           104. Respondents also abused their discretion by approving the Project outside of  
22 the designated Harmony Grove Village area, despite lacking substantial evidence to make  
23 the findings under General Plan policy LU-1.4, Village Expansion. According to this  
24 policy, the County may “[p]ermit new Village Regional Category designated land uses  
25 *only* where contiguous with an existing or planned Village *and* where all of the following  
26 criteria are met: [1] Potential Village development would be compatible with  
27 environmental conditions and constraints, such as topography and flooding; [2] Potential  
28 Village development would be accommodated by the General Plan road network;

1 [3] Public facilities and services can support the expansion without a reduction of services  
2 to other County residents; [4] The expansion is consistent with community character, the  
3 scale, and the orderly and contiguous growth of a Village area.”

4 105. As a result of the foregoing defects, Respondents prejudicially abused their  
5 discretion and failed to proceed in the manner required by law by approving the Project,  
6 making findings, and taking related actions that do not comply with the County’s General  
7 Plan, State Planning and Zoning Law, and the Subdivision Map Act. As such,  
8 Respondents’ approval of the Project must be set aside.

9 **THIRD CAUSE OF ACTION**

10 **Declaratory Relief**

11 **(Violation of General Plan)**

12 106. Petitioners reallege and incorporate by reference the preceding paragraphs in  
13 their entirety.

14 107. An actual and immediate controversy has arisen and now exists regarding the  
15 legality of the County’s action in approving multiple GPAs to allow greater densities than  
16 permitted by the General Plan in areas that are designated by the General Plan for rural or  
17 low-density development.

18 108. The County is required to follow the law including but not limited to the  
19 requirement that the County must have an internally consistent General Plan and must not  
20 approve projects or zoning changes that are inconsistent with General Plan policies.

21 109. The 2011 General Plan adopted a “Community Development Model” to  
22 govern development in the County. In this model, designated “Villages” would be the only  
23 areas of the County with dense residential neighborhoods, commercial and civic uses, and  
24 networks of roads, bike lanes, and walkways. These “Villages” are then be surrounded by  
25 semi-rural areas with low-density residential neighborhoods, small-scale agricultural  
26 operations, and rural commercial businesses. The semi-rural areas are then surrounded by  
27 rural lands with very low density residential areas, open space, habitat, recreation,  
28 agriculture, and other rural uses.

1           110. This “environmentally sustainable approach to planning” was carefully  
2 crafted to achieve numerous 2011 General Plan goals, including reduced vehicle miles  
3 traveled, reduced greenhouse gas emissions, improved transportation, and the preservation  
4 of “each unique community with[in] the County, agricultural areas, and extensive open  
5 space.”

6           111. Key to this “Community Development Model” was the County’s  
7 commitment not to allow dense residential development outside of existing villages.

8           112. Yet, in 2018, the County has already “batched” numerous General Plan  
9 amendments, including the amendments authorizing the development of the HGVS,  
10 Valiano, and Otay 250 projects, to allow multiple projects to exceed allowable densities  
11 and to permit development in areas designated by the General Plan for rural or low-density  
12 development. Furthermore, the County is currently processing numerous other GPA  
13 applications that will allow additional residential development projects to exceed allowable  
14 densities and to develop suburban housing projects in rural or low-density areas of the  
15 County. For example, the County plans to “bundle” forty-one separate General Plan  
16 amendments (called the “Property Specific Requests”) for consideration by the Board of  
17 Supervisors at one time. These amendments would also allow development that was not  
18 studied or permitted under the 2011 General Plan. These projects are anticipated to be  
19 considered by the Board of Supervisors in 2018.

20           113. By approving multiple General Plan Amendments that allow higher density  
21 residential development in areas that are designated by the General Plan for limited growth  
22 or rural uses, the County has created, and will create, an internally inconsistent General  
23 Plan. On the one hand, the core General Plan principle, and numerous General Plan  
24 policies, impose strict limitations on where dense development can occur. On the other  
25 hand, the County is continually undermining those limitations by approving amendment  
26 after amendment allowing dense development outside of designated “Villages.”

27           114. These amendments also compromised the ability of the County to meet other  
28 General Plan requirements such as those related to the reduction of GHGs, transportation

1 management, and affordable housing. There is no substantial evidence that the County can  
2 meet its own General Plan requirements when it has approved, or will approve, multiple  
3 residential projects that substantially deviate from the density allowances of the General  
4 Plan and that will involve growth in areas assumed by the General Plan to be for rural or  
5 low-density development.

6 115. A judicial declaration is necessary and appropriate at this time in order that  
7 the parties ascertain their rights and obligations with respect to the adoption of the GPAs.

8 116. Therefore, Petitioners seek a declaration that the County's action in  
9 approving the numerous GPAs for dense development outside of the "Villages" designated  
10 in the 2011 General Plan, including the "batched" GPAs for Valiano, HGVS, and Otay  
11 250, creates an internal inconsistency in the General Plan, is an abuse of discretion, or  
12 otherwise fails to comply with the law.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Petitioner prays for judgment as follows:

15 1. Alternative and peremptory writs of mandate directing the County to vacate  
16 and set aside its certification of the EIR and Project approvals;

17 2. Alternative and peremptory writs of mandate directing the County to comply  
18 with the requirements of CEQA, State Planning and Zoning Law, Subdivision Map Act,  
19 and the County's General Plan and Zoning Code, and to take any other action as required  
20 by Public Resources Code Section 21168.9;

21 3. For a temporary stay, temporary restraining order, and preliminary and  
22 permanent injunctions restraining the County and Real Party in Interest and their agents,  
23 servants, and employees, and all others acting in concert with the County on their behalf,  
24 from taking any action to implement the Project, pending full compliance with the  
25 requirements of CEQA, the CEQA Guidelines, State law, and the County Code;

26 4. For a declaration that the County's action in approving general plan  
27 amendments to increase density outside of the "Villages" designated in the 2011 General  
28 Plan creates an internal consistency in the General Plan, is an abuse of discretion, or

1 otherwise fails to comply with law;

2 4. For costs of the suit;

3 5. An order awarding Petitioner its attorneys' fees under Code of Civil  
4 Procedure section 1021.5, Government Code section 800, and other applicable authority;  
5 and

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

8 DATED: August 23, 2018

SHUTE, MIHALY & WEINBERGER LLP

9  
10 By: 

11 WINTER KING  
12 SARA A. CLARK

13 Attorneys for Petitioners  
14 ELFIN FOREST HARMONY GROVE  
15 TOWN COUNCIL; ENDANGERED  
16 HABITATS LEAGUE; and CLEVELAND  
17 NATIONAL FOREST FOUNDATION  
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# Exhibit A

SHUTE MIHALY  
& WEINBERGER LLP

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

WINTER KING  
Attorney  
king@smwlaw.com

August 23, 2018

**Via E-Mail and U.S. Mail**

Clerk of the Board  
County of San Diego  
County Administration Center, Room 402  
1600 Pacific Highway  
San Diego, CA 92101  
E-Mail: david.hall@sdcounty.ca.gov

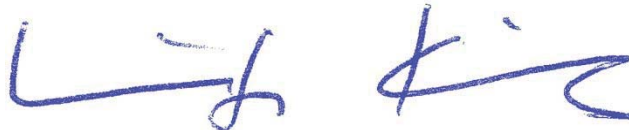
Re: Harmony Grove Village South Project (PDS2015-GPA-15-002;  
PDS2015-SP-15-002; PDS2015-TM-5600; PDS2015-REZ-15-003;  
PDS2015-MUP-15-008; PDS2015-ER-15-08-006)

Dear Board of Supervisors:

Please take notice that Elfin Forest Harmony Grove Town Council, Endangered Habitats League, and Cleveland National Forest Foundation will file suit challenging the County's approval of the Harmony Grove Village South Project (including approval of GPA 18-003, which also included the Valiano and Otay 250 projects) for failure to comply with the California Environmental Quality Act, among other statutes. This notice is given pursuant to Public Resources Code section 21167.5.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Winter King

## **PROOF OF SERVICE**

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

On August 23, 2018, I served true copies of the following document(s) described as:

### **LETTER TO COUNTY OF SAN DIEGO RE NOTICE OF CEQA SUIT**

on the parties in this action as follows:

Clerk of the Board  
County of San Diego  
County Administration Center, Room 402  
1600 Pacific Highway  
San Diego, CA 92101  
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 Zehring@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 August 23, 2018, at San Francisco, California.



---

Amy Zehring

# Exhibit B

SHUTE MIHALY  
& WEINBERGER LLP

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T: (415) 552-7272 F: (415) 552-5816  
www.smwlaw.com

WINTER KING  
Attorney  
King@smwlaw.com

August 24, 2018

Via U.S. Mail

Xavier Becerra  
Attorney General  
California Department of Justice  
1300 I Street  
Sacramento, CA 95814-2919

Re: Notice of Filing CEQA Litigation (Elfin Forest Harmony Grove  
Town Council et al. v. County of San Diego et al.)

Dear Attorney General Becerra:

Enclosed please find a copy of the Verified Petition for Writ of Mandate in the above-titled 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 for your attention to this matter.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Winter King

Enclosure: Verified Petition for Writ of Mandate