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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SAN DIEGO, CENTRAL DIVISION**

CALIFORNIA NATIVE PLANT SOCIETY,  
HIDDEN VALLEY ZEN CENTER, FRIENDS  
OF HIDDEN VALLEY ZEN CENTER,  
BUENA CREEK ACTION GROUP, DEER  
SPRING OAKS ACTION GROUP, TWIN  
OAKS VALLEY ROAD ACTION GROUP,  
GOLDEN DOOR PROPERTIES, LLC, LISA  
AMANTEA, MICHAEL AMANTEA,  
DARRYL C. BENTLEY, CAROL BRYSON,  
PAMELA J. DINIZ, STANLEY DINIZ,  
FRANCIS J. EASON, REBECCA ENGEL,  
THOMAS ENGEL, DONALD J. FOLSE,  
ELSIE E. GREGORY, GEORGEANN  
HIGGINS, CLAUDIA HUNSAKER,  
MICHAEL HUNSAKER, KAREN MAY, BJ  
MCINTIRE, MICHAEL MCINTIRE, CINDI  
PETERSON, ANA C. ROSVALL, JAMES T.  
ROSVALL, KATHERINE B. ROSVALL,  
LEIGH RAYNER, JOANNE RIZZA, DARLA  
KENNEDY, and WILLIAM R. YOUNG,

Petitioners and Plaintiffs,

v.

COUNTY OF SAN DIEGO, and DOES 1-50,  
inclusive,

Respondents and Defendants.

NEWLAND SIERRA, LLC, RITA BRANDIN,  
and DOES 51-100, inclusive,

Real Parties in Interest.

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

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By Valeria Contreras, Deputy Clerk

CASE NO. 37-2018-00054659-CU-TT-CTL

**Related Cases:**

37-2012-00101054-CU-TT-CTL (Dept. C72)  
37-2016-00037402-CU-TT-CTL (Dept. C72)  
37-2018-00013324-CU-TT-CTL (Dept. C72)  
37-2018-00014081-CU-TT-CTL (Dept. C72)  
37-2018-00030460-CU-TT-CTL (Dept. C73)

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

[IMAGED FILE]

[Code Civ. Proc. §§ 1060, 1085, 1094.5;  
Pub. Res. Code §§ 21000 et seq. (California  
Environmental Quality Act or "CEQA");  
Gov. Code §§ 65000 et seq. (State Planning &  
Zoning Law or "PZL");  
Gov. Code §§ 66410 et seq. (Subdivision Map  
Act);  
County of San Diego Zoning Ordinance;  
California Constitution;

42 U.S.C. § 1983; U.S. Constitution;

42 U.S.C. §§ 2000cc et seq.; Religious Land  
Use and Institutionalized Persons Act]

1     **I.       INTRODUCTION**

2           1.       This action challenges the decision of the County of San Diego (including the  
3     County’s staff and its Board of Supervisors; collectively the “County”) to adopt the Newland  
4     Sierra Specific Plan and associated resolutions, ordinances, and other approvals and to certify the  
5     environmental impact report (“EIR”) for the project (collectively, the “Newland approvals” or  
6     “Newland project”). The Newland project is located in a mostly undeveloped, Very High  
7     Severity fire hazard area in a rural, unincorporated area of the County located far from transit  
8     infrastructure and job centers. The project site – also known as the “Merriam Mountains” (a  
9     mountain range in San Diego County) – is in the rural Twin Oaks Valley north of the City of San  
10    Marcos, and it is one the last remaining large blocks of habitat west of I-15. The Newland  
11    project would remake the region with massive new development, including 2,135 residential  
12    housing units and 81,000 square feet of commercial uses – in other words, a new population  
13    roughly the size of the City of Del Mar – in an area that is designated by the State of California  
14    as a Very High Severity Fire Hazard Zone. According to the former Planning Director for the  
15    County of Sonoma, a nearly 40-year planning professional and a victim of the October 2017  
16    Northern California firestorm, “increasing residential density in high fire hazard areas is a  
17    mistake that will increase the loss of life and property when fire eventually comes to the fire-  
18    prone landscape, as it inevitably will.” “Relying on a hardened structure to protect communities  
19    and residents while **increasing density in a known fire-prone area** seems like **the height of**  
20    **hubris ....**” (Emphasis added.)

21           2.       The Newland project is a highly controversial urban sprawl development project  
22    that has garnered significant public interest and opposition. After the County approved the  
23    project on September 26, 2018, a signature-gathering drive to hold a referendum on the County’s  
24    General Plan amendment necessary for the project ultimately led to the submittal of more than  
25    117,000 signatures, gathered in less than 3 weeks, to the County Registrar. As of the filing of  
26    this petition and complaint, the County Registrar is in the process of validating the signatures. If  
27    the referendum qualifies for the ballot, the Board must either rescind the General Plan  
28    amendment or submit it for approval by the voters.

1           3.       This action challenges the County's actions in approving the Newland project as  
2 violating the California Environmental Quality Act ("CEQA"), Public Resources Code sections  
3 21000 *et seq.*; the State CEQA Guidelines, California Code of Regulations, title 14, sections  
4 15000 *et seq.*, the State Planning and Zoning Law, and other laws and regulations. Among other  
5 improper actions, the County certified an EIR that failed to adequately analyze or mitigate the  
6 project's numerous environmental impacts, including direct, indirect, and cumulative impacts on  
7 the following environmental impacts: aesthetics; air quality; biological resources; cultural and/or  
8 historic resources; greenhouse gas emissions; hazards & hazardous materials and public services,  
9 including wildfire and emergency evacuation hazards; hydrology; noise; population and housing;  
10 transportation and traffic; water supply, utilities and service systems; energy; land use and  
11 planning; general plan inconsistency; and environmental justice. Because of these numerous  
12 defects, the EIR fails as an informational document and does not support a meaningful public  
13 process or informed decision-making.

14           4.       At the core, this action seeks to hold the County accountable for its hubris,  
15 hypocrisy, and disregard for the safety and well-being of existing residents and the environment,  
16 in violation of the law. On one hand, the County makes grand promises regarding environmental  
17 sustainability, affordable housing, and other issues important to ordinary San Diegans; but on the  
18 other hand, the County ignores these promises and pretends they hold no meaning. Instead of  
19 being honest and transparent with the public regarding its policy choices, the County engages in  
20 tortured and constantly shifting logic to excuse its actions. The Newland project will not have  
21 any noticeable effect on the general affordability of housing supply in the County, as it does not  
22 provide a single unit of affordable housing, as defined under state and federal law. The project is  
23 not conserving the environment. To the contrary, the Newland project would result in severe,  
24 irreversible impacts on the project site and surrounding rural Twin Oaks Valley community,  
25 including worsened gridlock conditions on Deer Springs Road and Interstate 15, negative  
26 impacts on the western side of the Newland project in an area of high agricultural use (including  
27 horse ranches), destruction of natural resources, urbanization of a rural mountain valley, and  
28 possibly the loss of irreplaceable historic resources. These are precisely the kind of impacts state

laws like CEQA and the State Planning and Zoning Law, among others, are supposed to reveal and, if possible, avoid. The County, however, consistently downplayed or ignored important impacts, ignored reasoned comments throughout the planning process, destroyed public records regarding the project (thereby frustrating the public's ability to participate in the project's review), and otherwise rigged the process in favor of the developer. The result is an environmental analysis that is clearly inadequate under state environmental law and a series of approvals that disregard overwhelming community opposition, not just from Petitioners, but also from a range of public interest organizations including the Natural Resources Defense Council, Center for Biological Diversity, Sierra Club, Environmental Health Coalition, Environmental Center of San Diego, California Water Impact Network, Endangered Habitats League, and San Diego Audubon Society.

## **II. THE PARTIES**

5. Petitioner and Plaintiff California Native Plant Society ("CNPS") is a California non-profit 501(c)(3) corporation. CNPS was founded in 1965 and currently has about 10,000 members in 35 chapters throughout California and Baja California. Its members include professional botanists, landscape architects, nursery owners, professional conservation workers, agency personnel, and laypersons. The members of CNPS are dedicated to the preservation of California's rich native botanical heritage, the conservation of native plants and their natural habitats (such as woodlands, chaparral, and wetlands), progress on issues that affect native plants and people (such as wildfire and climate change), and advancement of the understanding, appreciation, and horticultural use of native plants. CNPS works closely with decision-makers, scientists, and local planners to advocate for well-informed and environmentally friendly policies, regulations, and land management practices. CNPS focuses its efforts on California's native plants, its vegetation, and related wildfire and climate change issues. The core organizational purposes of CNPS and the interest of its members—many of whom reside in San Diego County—are directly, adversely, and irreparably affected, and will continue to be prejudiced by the Newland project and its components, as described herein, until and unless this Court provides the relief prayed for in this petition and complaint. CNPS is especially concerned

1 about the Newland project's effects on greenhouse gas emissions and climate change, wildfire  
2 risk, and the failure of the County and the applicant to identify and protect native plants. The  
3 maintenance and prosecution of this action will confer a substantial benefit on the public by  
4 protecting the public from the environmental and other harms alleged herein. CNPS therefore  
5 has a direct and beneficial interest in the County's compliance with CEQA, its General Plan, the  
6 PZL, and binding mitigation measures and in ensuring a legally adequate environmental analysis  
7 and mitigation for development proposals on unincorporated County lands.

8         6.         Petitioner and Plaintiff Hidden Valley Zen Center (the "Zen Center") is a  
9 California nonprofit organization founded in 1968. The Zen Center has provided the community  
10 with a space for silent meditation, silent outdoor practice, and a rural contemplative setting for  
11 over fifty years. The rural, silent, natural environment is crucial to the setting of the Zen Center  
12 and to the religious practice of Zen Buddhism. The Newland project will directly, adversely, and  
13 irreparably affect the Zen Center's core organization purposes, and the interests of its  
14 members—many of whom reside in San Diego County. The Zen Center will continue to suffer  
15 prejudice by the project and its components, as described herein, until and unless this Court  
16 provides the relief prayed for in this petition and complaint. The Zen Center is especially  
17 concerned about the noise impacts from the construction of the Newland project and the  
18 expansion of Sarver Lane, as well as the effects of increased noise on its ability to practice. The  
19 Zen Center also has concerns regarding easements and rights of way for the road expansion.  
20 Aside from direct impacts to its facility, the Zen Center is concerned for the loss of wildlife  
21 habitat, the increased fire risk and burden on community evacuation routes, and the complete  
22 disregard for the General Plan. The use of Sarver Lane as a main entry and exit to the Newland  
23 project will directly and adversely affect the Zen Center. The Zen Center therefore has a direct  
24 and beneficial interest in the County's compliance with CEQA, its General Plan, the PZL, and  
25 binding mitigation measures and in ensuring a legally adequate environmental analysis and  
26 mitigation for development proposals on unincorporated County lands.

27         7.         Petitioner and Plaintiff Friends of Hidden Valley Zen Center ("Friends of the Zen  
28 Center") is a California unincorporated association. The members of Friends of the Zen Center

1 reside in, work in, or visit San Diego County, California, and many are practitioners at and/or  
2 supporters of the Hidden Valley Zen Center. Friends of the Zen Center recognize the importance  
3 of a quiet outdoor space for their Zen Buddhist practice and believe in preserving and ensuring a  
4 high quality of life through lawful stewardship of lands, and following the plans, ordinances, and  
5 laws that apply to San Diego County. As people who live in, work in, and visit San Diego  
6 County, and who practice at and/or support the Hidden Valley Zen Center, members of Friends  
7 of the Zen Center have a geographic nexus to the Newland project and will suffer from the  
8 project's adverse environmental impacts. The members of Friends of the Zen Center organized  
9 to protect the Hidden Valley Zen Center from the environmental impacts of the project and the  
10 failure to adequately assess and mitigate environmental impacts. The September 26, 2018  
11 decision of the County to certify the Newland EIR and adopt related approvals directly affect and  
12 injure the members of Friends of the Zen Center. The County's actions adversely affect the  
13 interests of Friends of the Zen Center members because the Newland project will create noise,  
14 vibrations, and other impacts (from both traffic and construction) that will render the Hidden  
15 Valley Zen Center unusable to practice Zen Buddhism. Members of Friends of the Zen Center  
16 therefore have a direct and beneficial interest in the County's compliance with CEQA, its  
17 General Plan, the PZL, and binding mitigation measures and in ensuring a legally adequate  
18 environmental analysis and mitigation for development proposals on unincorporated County  
19 lands.

20 8. Petitioner and Plaintiff Buena Creek Action Group ("Buena Creek Action") is a  
21 California unincorporated association. The members of Buena Creek Action reside in, work in,  
22 or visit San Diego County, California, and live on or near Buena Creek Road, west of the  
23 Newland project. Buena Creek Action recognizes the importance of community planning and  
24 creating affordable housing in the right places in San Diego County and believes in preserving  
25 and ensuring a high quality of life through lawful stewardship of lands, and following the plans,  
26 ordinances, and laws that apply to San Diego County. As people who live in, work in, and visit  
27 San Diego County, and who live west of the Newland project, members of Buena Creek Action  
28 have a geographic nexus to the Newland project and will suffer from the project's adverse

1 environmental impacts. The members of Buena Creek Action organized to protect the interests  
2 of the residents of the region from the environmental impacts of the project and the failure to  
3 adequately assess and mitigate environmental impacts. The September 26, 2018 decision of the  
4 County to certify the Newland EIR and adopt related approvals directly affect and injure the  
5 members of Buena Creek Action. The County's actions adversely affect the interests of Buena  
6 Creek Action members because the Newland project will destroy wildlife corridors, increase  
7 wildfire risk while overburdening existing community evacuation routes, and negatively affect  
8 traffic. Members of Buena Creek Action also participated robustly in the long process to create  
9 the County's General Plan and feel the County betrayed their trust in the process by the County's  
10 willingness to ignore and override the General Plan. Members of Buena Creek Action therefore  
11 have a direct and beneficial interest in the County's compliance with CEQA, its General Plan,  
12 the PZL, and binding mitigation measures and in ensuring a legally adequate environmental  
13 analysis and mitigation for development proposals on unincorporated County lands.

14         9.         Petitioner and Plaintiff Deer Spring Oaks Action Group ("Deer Springs Oaks  
15 Action") is a California unincorporated association. The members of Deer Springs Oaks Action  
16 reside in, work in, or visit San Diego County, California, and live in the Deer Springs Oaks  
17 Community, located near the intersection of Deer Springs Road and the I-15 freeway. The Deer  
18 Springs Oaks Community is a mobile home park for seniors only. Deer Springs Oaks Action  
19 recognizes the importance of community planning and creating affordable housing in the right  
20 places in San Diego County and believes in preserving and ensuring a high quality of life  
21 through lawful stewardship of lands, and following the plans, ordinances, and laws that apply to  
22 San Diego County. As people who live in, work in, and visit San Diego County, and who live  
23 immediately south of the Newland project site, members of Deer Springs Oaks Action have a  
24 geographic nexus to the Newland project and will suffer from the project's adverse  
25 environmental impacts. The members of Deer Springs Oaks Action organized to protect the  
26 interests of the residents of the region from the environmental impacts of the project and the  
27 failure to adequately assess and mitigate environmental impacts. The September 26, 2018  
28 decision of the County to certify the Newland EIR and adopt related approvals directly affect and

1 injure the members of Deer Springs Oaks Action. The County's actions adversely affect the  
2 interests of Deer Springs Oaks Action members because the Newland project will create hazards  
3 including increased risk of wildfire and hazardous degradation of air quality. Members of Deer  
4 Springs Oaks Action are all seniors, and consequently they are particularly concerned about the  
5 effect of hazardous degradation of air quality on the health of their community. Noise from  
6 blasting and construction, including blasting within 100 feet of the Deer Springs Oaks  
7 Community, will have a negative effect on the members, as will the increased traffic due to the  
8 addition of approximately 6,000 new vehicles to an already congested roadway. The members of  
9 Deer Springs Oaks Action are also concerned because the plans for the I-15 interchange declared  
10 as "mitigation" for the Newland project will be immediately adjacent to their community but,  
11 were inexplicably omitted and piecemealed from the EIR's review of the project's environmental  
12 impacts. In the event of an evacuation, members are concerned they would not be able to exit  
13 their community, which only has one exit, onto Mesa Rock Road, which the Newland project  
14 intends as its main evacuation exit. Easements and rights of way needed for project construction  
15 and drainage from the construction of the project and the expansion of Deer Springs Road will  
16 negatively affect the members of Deer Springs Oaks Action. Members of Deer Springs Oaks  
17 Action therefore have a direct and beneficial interest in the County's compliance with CEQA, its  
18 General Plan, the PZL, and binding mitigation measures and in ensuring a legally adequate  
19 environmental analysis and mitigation for development proposals on unincorporated County  
20 lands.

21 10. Petitioner and Plaintiff Twin Oaks Valley Road Action Group ("Twin Oaks  
22 Valley Action") is a California unincorporated association. The members of Twin Oaks Valley  
23 Action reside in, work in, or visit San Diego County, California, and live on or near Twin Oaks  
24 Valley Road, immediately west of the Newland project. Twin Oaks Valley Action recognizes  
25 the importance of community planning and creating affordable housing in the right places in San  
26 Diego County and believes in preserving and ensuring a high quality of life through lawful  
27 stewardship of lands, and following the plans, ordinances, and laws that apply to San Diego  
28 County. As people who live in, work in, and visit San Diego County, and who live immediately



1 west of the Newland project site, members of Twin Oaks Valley Action have a geographic nexus  
2 to the Newland project and will suffer from the project's adverse environmental impacts. The  
3 members of Twin Oaks Valley Action organized to protect the interests of the residents of the  
4 region from the environmental impacts of the project and the failure to adequately assess and  
5 mitigate environmental impacts. The September 26, 2018 decision of the County to certify the  
6 Newland EIR and adopt related approvals directly affect and injure the members of Twin Oak  
7 Valley Action. The County's actions adversely affect the interests of Twin Oaks Valley Action  
8 members because the Newland project will destroy wildlife corridors and unique environmental  
9 features, increase wildfire risk while overburdening existing community evacuation routes,  
10 create hazardous degradation of air quality and extremely noisy conditions, and negatively affect  
11 traffic, including additional traffic to the west of the project, on Twin Oaks Valley Road and  
12 Camino Mayor. This particular section of Twin Oaks Valley Road is at an incline and is narrow  
13 and extremely curvy. These conditions raise a serious safety concern due to the frequency and  
14 number of rock quarry trucks traveling the road. Further, with so many agricultural businesses in  
15 the area, slow moving tractors, backhoes, and other farm equipment often use the road. The  
16 Newland project would make Twin Oaks Valley Road even more dangerous than it already is,  
17 negatively impacting area residents. Members of Twin Oaks Valley Action therefore have a  
18 direct and beneficial interest in the County's compliance with CEQA, its General Plan, the PZL,  
19 and binding mitigation measures and in ensuring a legally adequate environmental analysis and  
20 mitigation for development proposals on unincorporated County lands.

21 11. Petitioner and Plaintiff Golden Door Properties, LLC ("Golden Door") is a  
22 California limited liability company, with its principal place of business in San Diego County,  
23 California. As explained by an expert in historical architecture, the legacy of the Golden Door  
24 links directly with the life of its founder, Deborah Szekely. Ms. Szekely is widely regarded as  
25 the founder of the modern spa movement. The *Huffington Post* entitled her the "Godmother of  
26 Wellness." She founded two internationally known resort spas that offered a wide variety of  
27 mind-body fitness programs. Ms. Szekeley founded Rancho La Puerta in 1940 with her  
28 husband, Edmond Bordeaux Szekely. With its success, she opened the Golden Door, a more

1 intimate one located in San Marcos in 1958. At the Golden Door, she developed innovative spa  
2 experiences, hiring exercise instructors with backgrounds in modern dance and introducing  
3 classes like yoga to her guests. She has dedicated over seven decades of her life to wellness and  
4 the promotion of holistic living. Because of her recognized work, Ms. Szekely obtained an  
5 appointment on the President's Council for Physical Fitness and served 25 years under three  
6 Presidents including Nixon, Ford, and Reagan. She completed her service while she was still  
7 actively running the Golden Door. She was the first woman in California and the fifth woman in  
8 the nation to receive the Small Business Administration Award. She is an activist and continues  
9 to be deeply rooted in service to the community. She is a recognized entrepreneur, James Beard-  
10 nominated author, former diplomat, and planter of North America's first modern garden. She  
11 worked with Save the Children Federation as a National Sponsor for Mexico, and has served on  
12 or was the founding member of numerous boards and organizations. She is a local San Diego  
13 icon and is a recipient for many honors bestowed by the San Diego community. In 2014, the  
14 Women's Museum of California inducted Ms. Szekely into the San Diego Women's Hall of  
15 Fame as a Bridge Builder, recognizing her work creating connections locally and abroad. Today,  
16 the Golden Door is the owner and operator of an award-winning hospitality and agricultural  
17 operation, situated on approximately 600 acres along Deer Springs Road in northern San Diego  
18 County. It was the highest-rated establishment in *Travel and Leisure's* recent list of the world's  
19 best destination spas. The Golden Door's guiding philosophy emphasizes harmony with the  
20 environment in focusing on the health and fitness of its guests. Its property encompasses a  
21 peaceful array of hiking trails, luxurious spa amenities, tranquil Japanese gardens, and a bamboo  
22 forest. The Golden Door engages in extensive local and sustainable agricultural cultivation,  
23 including avocado groves and fresh vegetable gardens as well as citrus and olive trees on its  
24 property. The Golden Door recently opened a roadside "Farm Stand" on Deer Springs Road to  
25 sell its organic produce and other products to the public. Like much of the public, as well as  
26 local, state, and federal governmental agencies, the Golden Door is concerned about the effects  
27 of the Newland project. The construction and operation of the Newland project, along with its  
28 attendant effects, will negatively affect the environment as well as Golden Door's agricultural

1 cultivation and the property's flora and fauna, which are an important part of the Golden Door's  
2 guest experience. In addition, the Twin Oaks Valley area is subject to significant wildfire risk,  
3 which will significantly worsen due to the Newland project. Similarly, unplanned development,  
4 like the Newland project, on unincorporated County lands will also significantly and adversely  
5 affect the Golden Door's guest experience and agricultural operations. Among other things, the  
6 Golden Door is concerned that this project's location in rural Twin Oaks Valley would result in  
7 substantial greenhouse gas ("GHG") and other emissions, traffic impacts, noise impacts, fire  
8 hazards impacts, and other impacts, in violation of, among other laws and regulations, CEQA,  
9 the County's General Plan, and the Planning and Zoning Law. Accordingly, the Golden Door  
10 has a direct and beneficial interest in the County's compliance with CEQA, its General Plan, the  
11 PZL, and binding mitigation measures and in ensuring a legally adequate environmental analysis  
12 and mitigation for development proposals on unincorporated County lands.

13         12.     Petitioners and Plaintiffs Lisa Amantea and Michael Amantea live off Buena  
14 Creek Road, west of the Newland project site. Because of their location off Buena Creek Road,  
15 the Amanteas share many of the concerns of Buena Creek Action. The Amanteas value the Twin  
16 Oaks Valley for its wildlife and wild spaces and understand that the site to be used for the  
17 Newland project currently functions as a wildlife corridor. The Amanteas are concerned that key  
18 wildlife habitat (as well as habitats for native plants) will be destroyed by the construction of the  
19 Newland project. They are also concerned about the Newland project's effect on their already  
20 scarce water supply. The County's approval of the Newland project negatively affect the  
21 Amanteas because the project will increase wildfire risk in their area, which will be exacerbated  
22 by the lack of proper evacuation planning in the event of a wildfire, especially due to increased  
23 traffic from the Newland project. The Amanteas therefore have a direct and beneficial interest in  
24 the County's compliance with CEQA, its General Plan, the PZL, and binding mitigation  
25 measures and in ensuring a legally adequate environmental analysis and mitigation for  
26 development proposals on unincorporated County lands.

27         13.     Petitioner and Plaintiff Darryl C. ("Chris") Bentley lives in the Deer Springs Oaks  
28 Community. He shares many of the concerns of Deer Springs Oaks Action. Mr. Bentley is

1 concerned about the increased fire danger caused by the addition of thousands of homes,  
2 negative effects to wildlife and noise, congestion, and pollution from additional traffic. The  
3 County's approval of the Newland project negatively affect Mr. Bentley because the project will  
4 increase wildfire risk, noise and traffic impacts, and the scarcity and uncertainty of water  
5 resources. Mr. Bentley therefore has a direct and beneficial interest in the County's compliance  
6 with CEQA, its General Plan, the PZL, and binding mitigation measures and in ensuring a  
7 legally adequate environmental analysis and mitigation for development proposals on  
8 unincorporated County lands.

9       14.     Petitioner and Plaintiff Carol Bryson has lived at 908 Deer Springs Road,  
10 immediately south of the Newland project site and immediately north of the project's Deer  
11 Springs Road expansion, for almost fifty years. She bought ten acres in 1970 and over the  
12 intervening years, her family spent many happy years enjoying the rural character of the  
13 property. She currently lives on the property, along with her niece and her niece's family. She is  
14 concerned about the project because she sees it as a new iteration of a project that has been  
15 defeated multiple times and that she thought was precluded by the General Plan. She opposed  
16 previous large developments on the Merriam Mountains and, at age 83, continues to oppose  
17 large-scale, urbanized development there. She is concerned about wildfire risk and lack of  
18 evacuation routes, increased traffic, and ill-defined and unrealistic plans to expand Deer Springs  
19 Road and I-15. She is also concerned that expansion of Deer Springs Road may require  
20 condemnation of her property. The Newland project's noise impacts, among others, will  
21 negatively affect Ms. Bryson. The County and developer recognize that there will be significant  
22 noise impacts to her home, which they do not intend to mitigate. Ms. Bryson therefore has a  
23 direct and beneficial interest in the County's compliance with CEQA, its General Plan, the PZL,  
24 and binding mitigation measures and in ensuring a legally adequate environmental analysis and  
25 mitigation for development proposals on unincorporated County lands.

26       15.     Petitioners and Plaintiffs Pamela J. Diniz & Stanley Diniz live in the Deer Springs  
27 Oaks Community. They share many of the concerns of Deer Springs Oaks Action. The Dinizes  
28 are concerned about the increased fire danger caused by the addition of thousands of homes,

1 negative effects to wildlife and noise, congestion, and pollution from additional traffic. The  
2 County's approval of the Newland project negatively affect the Dinizes because the project will  
3 increase wildfire risk, noise and traffic impacts, and the scarcity and uncertainty of water  
4 resources. Pamela and Stanley Diniz therefore have a direct and beneficial interest in the  
5 County's compliance with CEQA, its General Plan, the PZL, and binding mitigation measures  
6 and in ensuring a legally adequate environmental analysis and mitigation for development  
7 proposals on unincorporated County lands.

8         16.     Petitioner and Plaintiff Francis J. ("Tony") Eason lives in the Deer Springs Oaks  
9 Community. He shares many of the concerns of Deer Springs Oaks Action. Mr. Eason is  
10 concerned about the increased fire danger caused by the addition of thousands of homes,  
11 negative effects to wildlife and noise, congestion, and pollution from additional traffic. Mr.  
12 Eason is worried about traffic "bottlenecks" that would be created during an evacuation and  
13 about the noise and air pollution from project construction and from additional traffic. Mr.  
14 Eason is also particularly concerned about easements and/or rights of way that the Newland  
15 project will need from the Deer Springs Oaks Community. The County's approval of the  
16 Newland project negatively affect Mr. Eason because the project will increase wildfire risk,  
17 noise and traffic impacts, and the scarcity and uncertainty of water resources. Mr. Eason  
18 therefore has a direct and beneficial interest in the County's compliance with CEQA, its General  
19 Plan, the PZL, and binding mitigation measures and in ensuring a legally adequate  
20 environmental analysis and mitigation for development proposals on unincorporated County  
21 lands.

22         17.     Petitioners and Plaintiffs Rebecca ("Reba") Engel & Thomas Engel have lived off  
23 of Sarver Lane for 30 years and continue to own property off of Sarver Lane where they continue  
24 to spend time. They are especially concerned about the noise impacts from the construction of  
25 the Newland project and the expansion of Sarver Lane. They are also concerned for the loss of  
26 wildlife habitat, the increased fire risk and burden on community evacuation routes, and the  
27 complete disregard for the General Plan. The use of Sarver Lane as a main entry and exit to the  
28 Newland project will severely and negatively affect the Engels. The Engels therefore have a

1 direct and beneficial interest in the County's compliance with CEQA, its General Plan, the PZL,  
2 and binding mitigation measures and in ensuring a legally adequate environmental analysis and  
3 mitigation for development proposals on unincorporated County lands.

4 18. Petitioner and Plaintiff Donald ("Dee") J. Folse is a longtime resident in the  
5 Buena Creek/Twin Oaks area, where he is involved in a family business. He shares many  
6 concerns of the Buena Creek Action and Twin Oaks Valley Action. Mr. Folse is concerned  
7 about fire danger in the mountainous and chaparral covered region, which the Newland project  
8 will exacerbate. He is also concerned about the County's apparent disregard for its own General  
9 Plan (while making smaller area developers conform with all plans and rules) and its willingness  
10 to approve a project so similar to a project it had rejected fewer than 10 years ago (namely  
11 Merriam Mountains). The project will negatively affect Mr. Folse by increasing traffic in an  
12 already congested area, and Mr. Folse fears that delivery trucks will be so negatively impacted  
13 by heavy traffic that they will take their business elsewhere. He will also be negatively affected  
14 by the project's use of scarce and uncertain water resources. Mr. Folse therefore has a direct and  
15 beneficial interest in the County's compliance with CEQA, its General Plan, the PZL, and  
16 binding mitigation measures and in ensuring a legally adequate environmental analysis and  
17 mitigation for development proposals on unincorporated County lands.

18 19. Petitioner and Plaintiff Elsie E. ("Jackie") Gregory lives in the Deer Springs Oaks  
19 Community. She shares many of the concerns of Deer Springs Oaks Action. Ms. Gregory is  
20 concerned about the increased fire danger caused by the addition of thousands of homes,  
21 negative effects to wildlife and noise, congestion, and pollution from additional traffic. The  
22 County's approval of the Newland project negatively affect Ms. Gregory because the project will  
23 increase wildfire risk, noise and traffic impacts, and the scarcity and uncertainty of water  
24 resources. Ms. Gregory therefore has a direct and beneficial interest in the County's compliance  
25 with CEQA, its General Plan, the PZL, and binding mitigation measures and in ensuring a  
26 legally adequate environmental analysis and mitigation for development proposals on  
27 unincorporated County lands.

28 20. Petitioner and Plaintiff Georgeann Higgins lives in the Deer Springs Oaks

Community. She shares many of the concerns of Deer Springs Oaks Action. Ms. Higgins is concerned about increased fire danger caused by the addition of thousands of homes, negative effects to wildlife as well as noise, congestion, and pollution from additional traffic. Ms. Higgins is concerned about the rapid loss of animal habitat, including for deer, coyotes, and a plethora of birds. She is also concerned about overburdened area infrastructure, including for water supplies and school resources. Ms. Higgins is concerned about noise impacts from construction and additional traffic created by the Newland project, especially since the County failed to require proper mitigation for the project's impacts on the Deer Springs Oaks Community. The County's approval of the Newland project negatively affects Ms. Higgins because the project will increase wildfire risk, noise and traffic impacts, and the scarcity and uncertainty of water resources. Ms. Higgins therefore has a direct and beneficial interest in the County's compliance with CEQA, its General Plan, the PZL, and binding mitigation measures and in ensuring a legally adequate environmental analysis and mitigation for development proposals on unincorporated County lands.

21. Petitioners and Plaintiffs Claudia Hunsaker & Michael Hunsaker live off of Twin Oaks Valley Road, immediately west of the project site. They share many of the concerns of the Twin Oaks Valley Action. The Hunsakers are concerned about the County's willingness to approve a project that is contrary to many County policies, including those within the General Plan. The Hunsakers are concerned about lack of adequate water resources to support this project, GHG and other emissions, and increased wildfire risk combined with increased area traffic. The County's approval of the Newland project negatively affect the Hunsakers because the project will increase wildfire risk, noise and traffic impacts, and the scarcity and uncertainty of water resources. The Hunsakers therefore have a direct and beneficial interest in the County's compliance with CEQA, its General Plan, the PZL, and binding mitigation measures and in ensuring a legally adequate environmental analysis and mitigation for development proposals on unincorporated County lands.

22. Petitioner and Plaintiff Karen May lives in the Deer Springs Oaks Community. She shares many of the concerns of Deer Springs Oaks Action. Ms. May is concerned about the

1 increased fire danger caused by the addition of thousands of homes, negative effects to wildlife  
2 and noise, congestion, and pollution from additional traffic. She is especially concerned that  
3 evacuation plans for the project are unrealistic and fail to take into account the needs of the  
4 existing community. The County's approval of the Newland project negatively affects Ms. May  
5 because the project will increase wildfire risk, noise and traffic impacts, and the scarcity and  
6 uncertainty of water resources. Ms. May therefore has a direct and beneficial interest in the  
7 County's compliance with CEQA, its General Plan, the PZL, and binding mitigation measures  
8 and in ensuring a legally adequate environmental analysis and mitigation for development  
9 proposals on unincorporated County lands.

10       23.     Petitioners and Plaintiffs BJ McIntire & Michael McIntire live in the Deer Springs  
11 Oaks Community. They share many of the concerns of Deer Springs Oaks Action. The  
12 McIntires are concerned about increased fire danger caused by the addition of thousands of  
13 homes, negative effects to wildlife as well as noise, congestion, and pollution from additional  
14 traffic. They are also concerned about ill-defined easements and rights of way for construction,  
15 expansion of Deer Springs Road, and drainage. The County's approval of the Newland project  
16 negatively affect the McIntires because the project will increase wildfire risk, noise and traffic  
17 impacts, and the scarcity and uncertainty of water resources. BJ and Michael McIntire therefore  
18 have a direct and beneficial interest in the County's compliance with CEQA, its General Plan,  
19 the PZL, and binding mitigation measures and in ensuring a legally adequate environmental  
20 analysis and mitigation for development proposals on unincorporated County lands.

21       24.     Petitioner and Plaintiff Cindi Peterson has lived on Deer Springs Road,  
22 immediately south of the Newland project site and immediately north of the project's Deer  
23 Springs Road expansion, for more than 20 years. The area has been a refuge for her family. She  
24 is concerned about the project because she sees it as a new iteration of a project that has been  
25 defeated multiple times and that she thought was precluded by San Diego's General Plan. She  
26 opposed previous large developments on the Merriam Mountains and continues to oppose large-  
27 scale, urbanized development there. She is concerned about wildfire risk and lack of evacuation  
28 routes, increased traffic, and ill-defined and unrealistic plans to expand Deer Springs Road and I-



1 15. She is concerned about loss of wildlife corridors and the effect thereof on plants and  
2 animals. She is also concerned that expansion of Deer Springs Road may require condemnation  
3 of her property. The project will severely and negatively affect Ms. Peterson by, among other  
4 things, its impacts from blasting. The County and developer recognize that there will be  
5 significant noise impacts to her home, which they do not intend to mitigate. Ms. Peterson  
6 therefore has a direct and beneficial interest in the County's compliance with CEQA, its General  
7 Plan, the PZL, and binding mitigation measures and in ensuring a legally adequate  
8 environmental analysis and mitigation for development proposals on unincorporated County  
9 lands.

10 25. Petitioners and Plaintiffs Ana C. Rosvall, James T. Rosvall & Katherine B.  
11 Rosvall live off Buena Creek Road, west of the Newland project site. They are passionate  
12 advocates for the proper development of San Diego's rural areas and affordable housing in the  
13 right places in the County. They share many concerns of the Buena Creek Action. The Rosvalls  
14 are concerned about fire danger in the mountainous and chaparral covered region, which the  
15 Newland project will exacerbate. The County's apparent disregard for its own General Plan (for  
16 which the Rosvalls participated in the public process) and the County's willingness to approve a  
17 project so similar to a project it previously denied, namely Merriam Mountains, worries the  
18 Rosvalls, as does the lack of schools proposed to accommodate new residents. The Rosvalls are  
19 also concerned about how many aspects of the project have been pushed off until a later date, for  
20 example the I-15 ramp expansion, for which the EIR failed to evaluate and therefore cannot have  
21 been properly mitigated. They are concerned about noise and air quality impacts from rock  
22 crushing and blasting, as well as with the destruction of important wildlife habitat and corridors.  
23 The increased traffic from the project in an already congested area, the increased burden on  
24 already congested roads in the case of an evacuation, and the project's use of scarce and  
25 uncertain water resources will negatively affect the Rosvalls. The Rosvalls therefore have a  
26 direct and beneficial interest in the County's compliance with CEQA, its General Plan, the PZL,  
27 and binding mitigation measures and in ensuring a legally adequate environmental analysis and  
28 mitigation for development proposals on unincorporated County lands.

1           26.     Petitioner and Plaintiff Leigh Rayner lives in an unincorporated area of the county  
2 of San Diego, on top of a hill on the west side of North Twin Oaks Valley. The entire westerly  
3 side of the Newland Sierra project (on the east side of the valley) is visible from his home, and  
4 he appreciates the rural nature and abundant wildlife currently on the project site. Mr. Rayner is  
5 concerned about significant visual, noise, and light pollution that would result from the project.  
6 The project's years of blasting, rock drilling, and grading will carry noise across the valley to  
7 Mr. Rayner's home, since his home lies at the same elevation as much of the grading/blasting.  
8 Further, negative health impacts consisting of respiratory problems from silica dust generated  
9 from blasting and carried on westerly winds will result. The County's approval of the Newland  
10 project negatively affects Mr. Rayner because the project will cause traffic, dust, and emergency  
11 evacuation impacts. The secondary evacuation route for his neighborhood exits on to North  
12 Twin Oaks Valley Road, which will suffer from gridlock during any emergency evacuation with  
13 the construction of the project via Camino Mayor. As an avid bicyclist who rides on Deer  
14 Springs Road, Mr. Rayner is concerned about dangerous road conditions, increased traffic, and  
15 lack of accommodations for safe bicycle travel. Mr. Rayner therefore has a direct and beneficial  
16 interest in the County's compliance with CEQA, its General Plan, the PZL, and binding  
17 mitigation measures and in ensuring a legally adequate environmental analysis and mitigation for  
18 development proposals on unincorporated County lands.

19           27.     Petitioner and Plaintiff Joanne Rizza lives in the Deer Springs Oaks Community.  
20 She shares many of the concerns of Deer Springs Oaks Action. Ms. Rizza is concerned about  
21 increased fire danger that will be caused by the addition of thousands of homes, negative effects  
22 to wildlife as well as noise, congestion, and pollution from additional traffic. The County's  
23 approval of the Newland project negatively affects Ms. Rizza because the project will increase  
24 wildfire risk, noise, and traffic impacts. She is also concerned about the project's use of scarce  
25 and uncertain water resources. Ms. Rizza therefore has a direct and beneficial interest in the  
26 County's compliance with CEQA, its General Plan, the PZL, and binding mitigation measures  
27 and in ensuring a legally adequate environmental analysis and mitigation for development  
28 proposals on unincorporated County lands.

1           28.     Petitioner and Plaintiff Darla Kennedy lives in the Deer Springs Oaks  
2 Community. She shares many of the concerns of Deer Springs Oaks Action. Ms. Kennedy is  
3 concerned about increased fire danger that will be caused by the addition of thousands of homes,  
4 negative effects to wildlife as well as noise, congestion, and pollution from additional traffic.  
5 The County's approval of the Newland project negatively affects Ms. Kennedy because the  
6 project will increase wildfire risk, noise, and traffic impacts. She is also concerned about the  
7 project's use of scarce and uncertain water resources. Ms. Kennedy therefore has a direct and  
8 beneficial interest in the County's compliance with CEQA, its General Plan, the PZL, and  
9 binding mitigation measures and in ensuring a legally adequate environmental analysis and  
10 mitigation for development proposals on unincorporated County lands.

11           29.     Petitioner and Plaintiff William ("Bill") R. Young lives in the Deer Springs Oaks  
12 Community. He shares many of the concerns of Deer Springs Oaks Action. Mr. Young is  
13 concerned about increased fire danger that will be caused by the addition of thousands of homes,  
14 negative effects to wildlife as well as noise, congestion, and pollution from additional traffic.  
15 The County's approval of the Newland project negatively affects Mr. Young because the project  
16 will increase wildfire risk, noise, and traffic impacts. He is also concerned about the project's  
17 use of scarce and uncertain water resources. Mr. Young therefore has a direct and beneficial  
18 interest in the County's compliance with CEQA, its General Plan, the PZL, and binding  
19 mitigation measures and in ensuring a legally adequate environmental analysis and mitigation for  
20 development proposals on unincorporated County lands.

21           30.     Petitioners are informed and believe, and thereon allege, that the Respondent  
22 County is a political subdivision of the State of California under Public Resources Code section  
23 21063. The County is also the lead agency under CEQA responsible for preparing and certifying  
24 the EIR for the Newland project and related approvals prior to formal adoption.

25           31.     Petitioners are informed and believe that Real Party in Interest ("Real Party")  
26 Newland Sierra, LLC ("Newland"), is a Delaware limited liability company, is named as an  
27 applicant on the County's September 27, 2018 Notice of Determination ("NOD") for the  
28 County's approvals regarding the project, and therefore has an interest that may be directly

1 affected by this action. Petitioners are informed and believe that Newland’s former registrations  
2 with the California Secretary of State include the following entities: NNP-Stonegate Merriam,  
3 LLC; and Newland Merriam Mountain, LLC. Petitioners are informed and believe that Newland  
4 is an indirect affiliate of Newland Real Estate Group, LLC, by way of American Newland  
5 Communities, LP, which is an indirect parent entity of Newland.

6 32. Petitioners are informed and believe that Real Party Rita Brandin is the Chief  
7 Executive Officer for Newland. The County’s September 27, 2018 NOD for the County’s  
8 approvals regarding the project name “Rita Brandin” as a project applicant, and therefore she has  
9 an interest that may be directly affected by this action. Petitioners are informed and believe that  
10 Ms. Brandin is a Senior Vice President and Development Director of Newland Real Estate  
11 Group, LLC, and/or American Newland Communities, LP. Petitioners are informed and believe  
12 that Ms. Brandin is the “2018 Chair” of the Building Industry Association of San Diego County.

13 33. The September 27, 2018 NOD identify Newland and Ms. Brandin as the  
14 applicant for the project, and therefore they are the only parties CEQA requires as real parties in  
15 interest. The NOD does not identify any other real parties in interest, and therefore there is no  
16 requirement to name any additional real parties in interest as parties. Petitioners are unaware of  
17 any other parties that CEQA requires as named real parties under applicable law or the true  
18 names and capacities of Respondents/Defendants/Real Parties fictitiously named herein as Does  
19 1 through 100, inclusive, and sues such Respondents/Defendants/Real Parties by fictitious  
20 names. Petitioners will amend this Petition, with leave of the Court if necessary, to allege the  
21 fictitiously named Respondents/Defendants/Real Parties’ true names and capacities if  
22 ascertained.

### 23 **III. JURISDICTION AND VENUE**

24 34. This Court has jurisdiction pursuant to Code of Civil Procedure sections 1060,  
25 1085, and 1094.5, and Public Resources Code sections 21168 and 21168.5.

26 35. Petitioners have performed all conditions precedent to filing this Petition and  
27 Complaint, including, but not limited to, exhausting all administrative remedies or otherwise  
28 being excused therefrom such requirement by futility, lack of jurisdiction, and/or the

1 unavailability of any other timely review, including without limitation the failure of the County  
2 to provide adequate prior public notice, public hearings, or proceedings before the Board of  
3 Supervisors prior to the County's approvals of the Newland project and its EIR.

4 36. Venue is proper in this Court because the Respondent County of San Diego is  
5 located in the County of San Diego, and the violations of Petitioners' rights occurred in the  
6 County of San Diego. Specifically, the approvals challenged and the violations of rights asserted  
7 by way of this action occurred on September 26, 2018, in the County Administration Building,  
8 1600 Pacific Highway, San Diego, California, 92101.

9 37. Petitioners have standing to assert their claims because they (and each of them)  
10 have a material interest in ensuring that the County properly analyze and mitigate the effects of  
11 the project and otherwise to comply with the law. Petitioners seek to vindicate the substantial  
12 public interest in the protection of the environment and other interests as alleged herein.  
13 Petitioners have no plain, speedy, or adequate remedy at law.

#### 14 **IV. FACTUAL BACKGROUND**

##### 15 **A. The Newland project follows the denial of the Merriam Mountains project.**

16 38. The genesis of this dispute starts as far back as 2004, with the submission of a  
17 previous application to urbanize this rural area. In 2007, the County released the draft EIR for  
18 the Merriam Mountains project, located in the same area as the Newland project. By the time  
19 that the Board of Supervisors denied the Merriam Mountains project in 2010, it proposed a  
20 project consisting of 2,630 residents and 110,000 square feet of commercial uses. At this time,  
21 zoning for the project site allowed roughly 300 homes. The Merriam Mountains project failed to  
22 obtain a majority of the vote of the Board in favor at its December 9, 2009 meeting, and the  
23 Board finally denied the project on March 24, 2010. In discussion leading up to her vote against  
24 the Merriam Mountains project, Supervisor Dianne Jacob explained, "There is no way that this  
25 project corresponds to those guiding principles which this board adopted to guide development  
26 under our General Update. This to me is like putting the City of Del Mar in a rural residential  
27 area. It established a very bad precedent. It is clearly leap frog development."

28 39. A little over a year later, in August 2011 the County finally completed its General

1 Plan Update. The 2011 General Plan Update cost approximately \$18 million and took longer  
2 than a decade to complete. Many County residents, including some of Petitioners, participated  
3 intensively in the years-long public process. The General Plan Update rezoned the project site to  
4 even lower density, to allow for only about 99 homes. Though some commercial zoning  
5 remained, as explained in a letter by the attorney for the Merriam Mountains developer to the  
6 County opposing the General Plan Update, “The commercial and office professional  
7 designations in the draft GPU [for the project site] are too small and isolated to be economically  
8 viable ....”

9 40. The 2011 General Plan Update, given the fact that it took so much time and effort  
10 to complete, was thought to provide protection for the community against the type of massive,  
11 unplanned, sprawl development (such as the Newland project). Unfortunately, however, that has  
12 not turned out to be the case.

13 41. In late 2013 and early 2014, Petitioners, or some of them, became aware that a  
14 subsequent owner of the Merriam Mountains / Newland project site sought to revive the massive  
15 development proposal for the site. In a letter dated April 23, 2014, though Newland had not yet  
16 formally presented its application to the County, Petitioner Golden Door, through counsel,  
17 notified the County of Petitioner’s opposition to the forthcoming Newland project.

18 42. In September 2014 and again in January 2015, Newland submitted formal  
19 applications for various approvals for the project to the County. Newland did not appear to have  
20 submitted an application for an amendment to the Zoning Ordinance to exempt the project’s  
21 Specific Plan from the County’s Resource Protection Ordinance.

22 43. The County’s CEQA review for the Newland project was nearly immediately  
23 fraught with prejudicial legal deficiencies, both procedural and substantive.

24 **B. The County’s CEQA process was fraught with error and public opposition.**

25 44. The County issued the Notice of Preparation of an EIR for the Newland project on  
26 February 12, 2015. Given the area’s history as the site of the rejected Merriam Mountains  
27 project, public opposition was immediate. For example, the Back Country Coalition, which had  
28 been involved in the County’s General Plan Update since 1998, wrote in a letter dated March 16,

2015, “County staff and developer Newland Sierra are resurrecting the subject project which has been proven to be a planning failure. Here we have the public being force fed a dreaded second ‘bite of the apple’ ... The cosmetic and miniscule changes in design elements advanced in scoping do not succeed in reducing the outright danger and significant adverse health, well-being and environmental impacts the project would present for existing residents.”

45. Career scientific professionals in the U.S. Fish & Wildlife Service expressed concern as well. In a letter dated March 12, 2015, the Service expressed its concern at the project’s adverse impact on the preservation of biological resources: “One of our primary concerns is the potential impacts of the proposed project to assembling a sub-regional preserve system. The proposed project site is located within the planning area for the North County Multiple Species Conservation Program (NCMSCP). The NCMSCP is a comprehensive habitat conservation planning program that attempts to preserve native habitats for a multitude of sensitive species for which the County, [U.S. Fish & Wildlife] Service, and California Department of Fish and Wildlife entered into a Planning Agreement (Revised and Amended May 12, 2014). The proposed project site and areas to the north, south, east, and west are identified as ‘Pre-approved Mitigation Area’ (PAMA) in the draft NCMSCP plan. More specifically, the proposed project site is located within Planning Unit 9 (San Marcos-Merriam Mountains Core Area) and represents one (Merriam Mountains) of only two remaining large blocks of natural habitat west of Interstate 15 in the PAMA. In addition, the habitat evaluation maps of the County’s draft NCMSCP plan indicates that habitats on and adjacent to the project site are ‘moderate’, ‘high’, and ‘very high’ habitat quality.”

46. In January 2016, Newland submitted an extensively revised Specific Plan, Grading Plan, and Tentative Map to the County. Despite substantial changes to the project in these documents, the County failed to provide notice to community residents and interested parties and failed to circulate a revised Notice of Preparation. Not only did the County fail to provide notice of Newland’s substantial changes to the projects, the County did not publish any key or summary of changes. This obfuscation, which was endemic in the Newland project’s CEQA proceedings from the start, violated CEQA’s central tenet of informing the public and

1 decision makers.

2           47.     On October 5, 2016, the Vallecitos Water District approved a Water Supply  
3 Assessment and Verification under the Water Code in support of the project. Petitioner Golden  
4 Door challenged this approval on October 29, 2016, in Case No. 37-2016-00037559 in  
5 Department N-29 of the Superior Court, on various grounds. This lawsuit named the County and  
6 Real Party Newland as real parties in interest. Vallecitos Water District, in an apparent  
7 admission that its October 5, 2016 action was in error, rescinded the Water Supply Assessment  
8 and Verification and readopted essentially the same document as only a “Water Supply  
9 Assessment” (or “WSA”) on November 16, 2016. Petitioner Golden Door continued with the  
10 challenge in an amended complaint filed on or about December 13, 2016. The Superior Court  
11 sustained the demurrer on jurisdictional grounds. Petitioner Golden Door appealed, and the  
12 Court of Appeal upheld the Superior Court’s judgment in Case No. D072280 in an opinion filed  
13 March 26, 2018. During oral argument, however, the panel noted concern, stating, “It doesn’t  
14 sound like very good water management from what you are portraying to build a subdivision and  
15 users that you can’t support. South Africa now has a couple of cities undergoing similar  
16 problems with this very moment of running out of water.” The panel also noted, “I think all of  
17 us have great concern over your concern about the water.” The Court of Appeal explained that  
18 “When a WSA ‘is found to be incomplete or to contain inaccurate information or faulty analysis,  
19 the lead agency should request the water supplier to modify, correct or supplement the WSA.’”  
20 Petitioner Golden Door made such a request to the lead agency, the County, on March 30, 2018.  
21 The County declined the request.

22           48.     On June 15, 2017, the County released a voluminous draft EIR (nearly 22,000  
23 pages, including appendices) under CEQA for the Newland project. The County provided the  
24 public just 60 days to review and comment on this enormously complicated set of documents,  
25 despite multiple requests for more time from members of the public.

26           49.     In July and August 2017, in order to facilitate review of the project’s air quality  
27 and greenhouse gases technical analyses, the Golden Door (among other members of the public,  
28 including the Sierra Club and the Endangered Habitats League) requested technical



1 documentation (Excel spreadsheets) relied upon by the County’s environmental consultant to  
2 prepare the EIR (Dudek). Initially, the County of San Diego summarily denied the request.  
3 Subsequently, Dudek offered to provide the documents, but only on the condition that Petitioner  
4 Golden Door’s counsel consent to conditions and restrictions on use in order to download and  
5 use the documents from the consultant. Neither the County nor its consultant Dudek provided  
6 any explanation as to the means by which Dudek’s continuing rights would be enforced against  
7 the Golden Door, its legal counsel, and other receiving parties, or the nature and scope of  
8 damages that Dudek would attempt to claim for an alleged “violation” of those “proprietary”  
9 rights. Because the California Public Records Act (“CPRA”) does not provide for the  
10 “conditional” disclosure of public records, Petitioner Golden Door was forced to seek judicial  
11 intervention in Case No. 37-2017-00038561. In December, nearly 6 months after the Golden  
12 Door initially made its request for the records and 4 months after the end of the public comment  
13 period, the parties settled the case. The County agreed, among other things, to provide the  
14 documents at issue, that they were public records within the meaning of the CPRA and were  
15 provided without any restrictions, warnings, or admonishments (or similar statements) regarding  
16 access or use of the public records, that the records would be included in the record of  
17 proceedings, and that users of the records may access or use the records without any concern,  
18 risk, or liability. The County also agreed to reimburse Petitioner Golden Door a portion of  
19 Petitioners’ costs of suit and attorneys’ fees. The County, however, did not extend the public  
20 comment period or provide another public comment period on the draft EIR, to allow the public  
21 to evaluate these new documents.

22         50. Also in July 2017, the County held a public meeting regarding the project. The  
23 purpose of the meeting was unclear, as it was not apparently set to collect the public’s feedback  
24 on the project or respond to it. County staff declared at the beginning of this meeting that,  
25 “comments provided tonight will not be formal comments provided on the Environmental Impact  
26 Report ... so any comments tonight will be provided to us, they will not be part of the formal  
27 process of the response to comments.” In support of the community, Petitioner Golden Door  
28 submitted a transcript of this meeting to the County within the public comment period on the

1 draft EIR, in order to obtain a written response by the County for the comments made by the  
2 public.

3 51. The public comments on the project revealed serious concerns and analytical  
4 deficiencies in the project's draft EIR.

5 52. A leading expert in the field of community egress, traffic simulation, and public  
6 safety as it pertains to wildfire evacuation analysis and planning called the project "one of the  
7 most difficult communities to evacuate in a wildfire in the West." The evacuation plan's reliance  
8 on Camino Mayor renders the plan's analysis deficient. This is because Newland has not  
9 appropriately demonstrated that it has the property rights needed to provide access so that the  
10 road can be built and maintained for general public access. The evacuation plan improperly  
11 assumes such general public access, which is an error.

12 53. A leading expert in the field of biological resources connectivity concluded, the  
13 "design for the project is inconsistent with the connectivity goals of the North County MSCP and  
14 precludes resilient reserve design in the western portion of the plan area."

15 54. Though Newland repeatedly asserted that the existing General Plan zoning  
16 designations permitted over 2,000,000 square feet of commercial space on the site, the evidence  
17 demonstrated that this assertion was factually incorrect. For example, an expert real estate  
18 market analysis revealed that such large-scale development was economically infeasible, stating,  
19 "there does not appear to be significant demand for office space in the subject's designated site  
20 area." The expert market analysis similarly concluded, "As stated in the Retail Market  
21 discussion, there is little to no current demand for retail development at the subject's site." An  
22 independent engineering analysis demonstrated that, due to the regulatory and environmental  
23 constraints of the project site, a maximum of 695,000 square feet of commercial and professional  
24 uses were physically possible to be constructed. A land use analysis similarly revealed that,  
25 according to the data provided by the County, the San Diego Association of Governments  
26 planned for only about 477,000 square feet of commercial and professional uses at the site.

27 55. An expert in air quality analysis with nearly 4 decades of professional experience  
28 identified numerous calculation errors in the draft EIR analysis. When corrected, the expert air-

1 quality analysis revealed, among other things, that the project would result in “significant excess  
2 cancer risks to areas not identified in the DEIR.”

3 56. A leading expert in the analysis of greenhouse gas emissions, Dr. Phyllis Fox  
4 (cited by Courts of Appeal in *Berkeley Keep Jets Over the Bay Committee v. Board of Port*  
5 *Commissioners* (2001) 91 Cal.App.4th 1344, and *Communities for a Better Environment v. City*  
6 *of Richmond* (2010) 184 Cal.App.4th 70, among others) explained that despite Newland’s  
7 repeated and misleading claims of being a “carbon neutral” development, it was not a carbon  
8 neutral development because, among other reasons, the carbon offsets offered as mitigation for  
9 the project’s GHG emissions expire after 30 years.

10 57. In the County’s zeal to conclude that the project was superior to the General Plan,  
11 it even made the outlandish conclusion that the “Existing General Plan Alternative” was not  
12 consistent with a number of existing General Plan policies.

13 58. The California Department of Transportation (“Caltrans”) noted, “Caltrans does  
14 not have a project at 1-15 and Deer Springs Road as identified in the DEIR. Therefore any  
15 reference to such project bearing responsibility for future impacts is incorrect. As a result, the  
16 traffic analysis and mitigation is insufficient and misleading. Direct impacts from this Project  
17 are the responsibility of the County and the Developer to fully and adequately mitigate.” Other  
18 analyses in the EIR, including both fire evacuation and noise, rely on the traffic analysis and  
19 mitigation for traffic impacts.

20 59. After the Hidden Meadows Community Sponsor Group Meeting, in a letter dated  
21 May 21, 2018, the County was asked how long it would take other affected neighborhoods (such  
22 as Hidden Meadows) to evacuate in the event of a large-scale wildfire to a place of relative  
23 safety, such as the urbanized area of Escondido. This question was appeared to have been  
24 ignored. The refusal to respond to this question was even more remarkable because the County  
25 had provided similar analysis for another project it had approved just weeks earlier.

26 60. In October 2017, after the close of the formal comment period on the draft EIR,  
27 Petitioner Golden Door submitted a request under the CPRA for documents submitted by the  
28 EIR consultants to the County regarding the project’s environmental review. Even though the

1 EIR contained tens of thousands of pages, the County, in November 2017, represented to  
2 Petitioner Golden Door that there were only 42 email messages and 13 PDF files responsive to  
3 the CPRA request. The County subsequently revealed that it had a policy to automatically delete  
4 email messages on a rolling 60-day basis. Petitioner Golden Door had initiated litigation naming  
5 the County and Newland as parties on the defense side in October 2016 and again in October  
6 2017 naming the County as the respondent regarding project-related documents. However, until  
7 May 2018, the County did not appear to have given any “hold” or order to preserve evidence  
8 regarding the project’s environmental review. The County does not appear to have made any  
9 effort to identify relevant destroyed public records or to recover such evidence. Petitioner  
10 Golden Door also discovered that the County was using EIR consultants for the project’s  
11 environmental review in violation of the County’s CEQA Guidelines. Petitioner Golden Door  
12 alerted the County to these deficiencies in a detailed letter dated May 14, 2018, and offered an  
13 opportunity to cure these errors. In a letter dated May 30, 2018, the County declined to cure  
14 these errors as requested, and Petitioner Golden Door initiated a lawsuit (filed June 19) to  
15 enforce its rights under the Government Code and the County’s CEQA Guidelines in Related  
16 Case No. 37-2018-00030460. In July 2018, a temporary restraining order issued by the Superior  
17 Court temporarily suspended the County’s auto-delete policy, pending a decision on a motion for  
18 preliminary injunction that is currently set for hearing in Department 73 on November 2, 2018.

19 61. The County released the final EIR for the project for public review on or about  
20 June 18, 2018. In addition to compounding and adding to the legal error of using EIR  
21 consultants in violation of the County CEQA Guidelines, as noted herein, the final EIR failed to  
22 address many of the concerns expressed with the draft EIR. For example, the County’s final EIR  
23 was defective for the following reasons, among others.

24 62. The County improperly brushed off valid and significant questions from the  
25 public. For example, among others, one commenter asked, “how much water will be used during  
26 the construction phase.” Rather than attempting a good-faith analysis, the County at first  
27 brushed off this concern stating, “The amount of construction water used is too speculative ....”  
28 Apparently conceding this legal error, the County – on the day of the hearing – submitted written

1 comments on this issue, coming up with a revised estimate of construction water without  
2 disclosing how it arrived at its conclusion, for example, by disclosing the sources of its data  
3 inputs. This type of last-minute, bare conclusory response does not comply with CEQA. (See,  
4 e.g., *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, fn.  
5 7 [“While the City obviously did the calculations necessary to determine how much extra carbon  
6 dioxide would be emitted as a result of the Project, the EIR completely fails to discuss in any  
7 detail how these calculations came about. As consulting engineer and refinery expert Dr. Phyllis  
8 Fox pointed out in her comment letter, the EIR's numerical estimates of greenhouse gas  
9 emissions does not ‘disclose any of the underlying calculations, e.g., unit throughputs and  
10 capacities, emission factors, fuels, and citations to source data. Thus, it is not possible to  
11 evaluate their accuracy.’”].)

12         63. Another example of the lack of good-faith analysis in the EIR was concerning  
13 biological resources. For instance, when a commenter pointed out to the County that the  
14 mitigation for sensitive oak trees was miscalculated and entirely inconsistent – the EIR stated at  
15 some places that there was a slight surplus of mitigation for oak trees, but in other places  
16 indicated that mitigation for oak trees still had anywhere from a *2 to 18 acre deficit* to make up.  
17 The numbers disclosed in the EIR showed *a deficit in excess of 20 acres* for mitigation. Rather  
18 than correcting and explaining this error, the County initially attempted to brush it off entirely,  
19 merely stating, “Impacts to oak root zones are analyzed in Draft EIR Section 2.4, Table 2.4-27.  
20 Those impacts are also disclosed in the associated figures in the Draft EIR.” Apparently  
21 recognizing this clear legal error, the County – on the day of the hearing – submitted written  
22 comments with a revised estimate of impacts (including revisions to the content of the EIR, even  
23 though the County never revised the EIR to incorporate these unsubstantiated revisions) without  
24 disclosing how it came to these conclusions. Similarly, this type of last-ditch, incomplete and  
25 post-hoc rationalization does not comply with CEQA. (See, e.g., *Communities for a Better*  
26 *Environment, supra*, 184 Cal.App.4th 70, fn. 7.)

27         64. No fewer than 60 individuals submitted comments regarding blasting for the  
28 Newland project. For example, one Petitioner asked, “What is the proposed blasting schedule,

1 how much, and how long do they expect blasting to occur.” It is undisputed that the project  
2 (which is located on a granite mountain) will necessarily require heavy blasting and rock  
3 crushing on and off-site. CEQA requires an assessment of temporary noise increase over  
4 ambient conditions, and an EIR is not adequate if it simply states that more information will be  
5 provided in the future. Despite this, the County in the FEIR maintained, “[a]t the current stage of  
6 project design, a blasting study has not been completed, and no specific blasting timelines, blast  
7 numbers, or locations are proposed or available.” The County added a figure showing “potential  
8 blasting areas.” While some of these areas are very near existing residences (including within  
9 100 feet of some of Petitioners’ homes) the County failed to respond to the question regarding  
10 what blasting will take place or where. And without this analysis, proper mitigation could not  
11 have been (and was not) provided.

12         65. The County brushed off concerns regarding valley fever, which is soil-dwelling  
13 fungus (*coccidioides*) endemic to San Diego County whose spores, when inhaled, create a  
14 substantial risk of potentially fatal infection in humans. Because the project will cause a  
15 substantial amount of soil-disturbing activity, including the movement of 11 million cubic yards  
16 of earth in the vicinity of sensitive receptors (e.g., the neighborhoods and communities in which  
17 some of the petitioners reside), the valley fever risk is real. Among other errors, the County in  
18 its responses to these comments attempted to justify its refusal to test the site for the presence of  
19 infectious spores with the assertion that there are no “commercially available” tests. But that  
20 does not mean that testing is not feasible or available. In March 2017, for example, the Centers  
21 for Disease Control and Prevention reported that it had developed “new tools that make it faster  
22 and easier to detect *Coccidioides* in the environment,” including “culture-independent real-time  
23 polymerase chain reaction (PCR) of soil and methods for detecting the fungus in dust.”

24         66. The County ignored questions from the public regarding evacuation of the area  
25 for existing residents. Rather than address these important public safety questions, the County  
26 merely referred the public back to the “Evacuation Plan” for the project, which only pertained to  
27 evacuation of new residents of the project site, not the effects of the project on existing neighbors  
28 and adjacent communities, like Hidden Meadows, Deer Springs Oaks, and Twin Oaks Valley.

1 The County then conceded that it "'defers to Law Enforcement and Office of Emergency  
2 Services' because, 'among the most important factors for successful evacuations in urban  
3 settings is control of intersections downstream of the evacuation area.'" Yet, the EIR did not  
4 contain any study from local law enforcement and emergency management officials pertaining to  
5 intersection control or estimated time to conduct a broader evacuation of this area, as opposed to  
6 just the project site. There were no performance standards specified for such deferred mitigation  
7 such that the County would be able to make an informed decision regarding the significance of  
8 the impact.

9 67. In addition, the project EIR is riddled with other fatal flaws – notably reliance on  
10 a greenhouse gas mitigation measure that appears likely to be found to be in violation of the  
11 General Plan and a strategy undertaken by the County and Newland to piecemeal the project's  
12 environmental review, as discussed in more detail below.

13 **C. The County's continuing failure to analyze cumulative, in-County GHG**  
14 **emissions and violation of an order of the Court.**

15 68. For the past six years, the County has continued to fail to live up to the legally  
16 binding promises it made in its General Plan in relation to mitigation of greenhouse gases.

17 69. As noted, in 2011, the County approved an update to its General Plan. In the EIR  
18 for its General Plan Update, the County concluded that the GHG and climate change impacts  
19 from the County's operations and from community source were "potentially significant" with  
20 regard to compliance with state law, in particular Assembly Bill 32 ("AB 32"), which requires  
21 the California Air Resource Board to determine 1990 levels of GHG emissions and then to  
22 establish a "statewide greenhouse gas emissions limit that is equivalent to that level, to be  
23 achieved by 2020." (Health & Safety Code § 38550.) AB 32 also reflected that GHG reductions  
24 must continue after 2020, and required that statewide GHG emissions limits established by  
25 CARB "remain in effect until otherwise amended or appealed." (Health & Safety Code §  
26 38550(a).) Further, the Legislature intended that the "statewide greenhouse gas emissions limit  
27 continue in existence and be used to maintain and continue reductions in emissions beyond  
28 2020." (*Id.* at § 38550(b).)

1           70.     The General Plan Update EIR included mitigation measures for GHG and climate  
2 change impacts. The General Plan Update EIR determined that the potential impacts to climate  
3 change were significant, and so mitigation would be required. One of those mitigation measures  
4 was the preparation of a climate action plan that achieved specified, enforceable, and binding  
5 reductions in GHG emissions within the County, as well as associated thresholds for  
6 significance. As noted by the Court of Appeal in *Sierra Club v. County of San Diego* (2014) 231  
7 Cal.App.4th 1152, 1158–59, the General Plan Update’s impetus for GHG mitigation included a  
8 comment letter by the California Attorney General: “There was extensive public comment on the  
9 general plan update, including from the California Attorney General: ‘[W]e encourage the  
10 County to ... incorporate into the General Plan interim policies to ensure that any projects  
11 considered before completion of the CAP will not undermine the objectives of the CAP; and ...  
12 for all GHG impacts the County has designated as significant, adopt feasible mitigation measures  
13 that can be identified today and that do not require further analysis.’”

14           71.     Accordingly, the County developed “Mitigation Measure CC-1.2” (or MM CC-  
15 1.2), which required the County to “Prepare a County Climate Change Action Plan with an  
16 update[d] baseline inventory of greenhouse gas emissions from all sources, more detailed  
17 greenhouse gas emissions reduction targets and deadlines; and a comprehensive and enforceable  
18 GHG emissions reduction measures ....”

19           72.     The County approved a CAP on June 20, 2012 (the “2012 CAP”), which was  
20 apparently intended to serve as a mitigation measure to mitigate otherwise significant adverse  
21 impacts resulting from the County’s 2011 General Plan Update.

22           73.     On July 20, 2012, the Sierra Club challenged the validity of the County’s  
23 adoption of the 2012 CAP in the Superior Court of San Diego County, in Related Case No. 37-  
24 2012-00101054-CU-TT-CTL. On April 24, 2013, the Superior Court entered judgment in favor  
25 of the Sierra Club and required the County to set aside the 2012 CAP.

26           74.     On October 29, 2014, the Fourth District Court of Appeal, Division One, affirmed  
27 the Superior Court’s decision in the 2012 *Sierra Club* case invalidating the 2012 CAP, as  
28 discussed in an opinion authored by the Honorable Judge Nares, with the Honorable Presiding



1 Judge McConnell and Honorable Judge Huffman concurring, in *Sierra Club v. County of San*  
2 *Diego* (2014) 231 Cal.App.4th 1152. The Court explained that MM CC-1.2 required the County  
3 to provide “enforceable measures to ensure GHG emissions will be reduced.” (*Id.* at p. 1176.)

4 75. On March 11, 2015, the Supreme Court denied the County’s Petition for Review  
5 in the *Sierra Club* case. Following the decision and subsequent remittitur, the Superior Court  
6 issued a Supplemental Writ of Mandate on May 4, 2015, setting aside the 2012 CAP and its  
7 associated addendum. The Court also set aside, pursuant to stipulation, a GHG Thresholds  
8 Document that the County had adopted in November 2013.

9 76. On July 29, 2016, the County issued “2016 Climate Change Analysis Guidance:  
10 Recommended Content and Format for Climate Change Analysis Reports in Support of CEQA  
11 Documents” (“2016 GHG County Efficiency Metric Document”). This document set forth a  
12 “County Efficiency Metric” intended to be used as a threshold of significance for analyzing  
13 GHG impacts for development proposals on unincorporated County lands. Suspecting that the  
14 County intended to use the 2016 GHG County Efficiency Metric Document to facilitate approval  
15 of the Newland project and others and believing that the 2016 GHG County Efficiency Metric  
16 Document violated CEQA and other laws, the Sierra Club, along with Petitioner Golden Door,  
17 sued the County. Indeed, Dudek authored a memorandum dated March 2017 entitled  
18 “Efficiency Metric Calculation,” to support its “Greenhouse Gas Emissions Technical Report” as  
19 part of the project draft EIR. The Sierra Club and Petitioner Golden Door prevailed in those  
20 challenges (Related Case Nos. 37-2012-00101054 and 37-2016-00037402) in Department 72 of  
21 the Superior Court in May 2017. The County appealed, and those appeals (Court of Appeal,  
22 Fourth Appellate District, Division One, Case Nos. D072433 and D072406, respectively)  
23 affirmed the Superior Court’s judgment in an opinion dated September 28, 2018, and certified  
24 for publication.

25 77. In a letter dated October 20, 2016, the County initiated environmental review for  
26 a new CAP, “[i]n response to the court’s decision [in Case No. 37-2012-00101054-CU-TT-CTL  
27 and *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152] and considering changes  
28 that have occurred since preparation of the 2012 CAP ....”

1           78.     Notably, in the Newland draft EIR released in June 2017, there was a mitigation  
2 measure entitled “M-GHG-1” that provided for mitigation for the project’s GHG emissions  
3 through the use of carbon offsets, including offsets that did not provide for GHG reductions  
4 within the County (as required by the General Plan).

5           79.     In August 2017, the 2018 CAP’s draft supplemental EIR also included a  
6 mitigation measure entitled “M-GHG-1” that was essentially the same as Newland’s “M-GHG-  
7 1” (pertaining to construction related GHG emissions) and “M-GHG-2” (pertaining to  
8 operational GHG emissions).

9           80.     In February 2018, the County approved the 2018 CAP and related approvals,  
10 including a General Plan Amendment to the Conservation and Open Space Element and new  
11 CEQA Guidelines that set a new GHG threshold – consistency with the CAP – and the use of M-  
12 GHG-1 for all in-process General Plan Amendment projects, including the Newland project.

13           81.     In June 2018, when the County released the Newland final EIR to the public,  
14 Newland’s “M-GHG-1” remained, and it was still essentially the same as the CAP M-GHG-1.  
15 In addition, the Newland final EIR expressly provided that “As to the project’s use of carbon  
16 offsets, the recommended framework for their use accords to Mitigation Measure GHG-1 from  
17 the County’s Supplemental EIR (SCH No. 2016101055) for its CAP.”

18           82.     The 2018 CAP approvals required the use of the M-GHG-1 offsets mitigation  
19 measure for all in-process General Plan Amendment projects, including the Newland project.  
20 The County knew of several General Plan Amendment projects that would be considered for  
21 approval in 2018. Despite this, neither the CAP SEIR nor the Newland EIR disclosed, discussed,  
22 or analyzed the cumulative effects of these projects (including the Newland project). Indeed,  
23 evidence in the record shows that the use of out-of-County offsets for this project would result in  
24 County non-compliance with its GHG reduction targets by the early 2020s, new non-compliance  
25 in 2030, and worsened non-compliance in 2050, thereby violating the mandatory General Plan  
26 requirements to reduce GHG emissions within the County.

27           83.     In March 2018, the Sierra Club and Petitioner Golden Door challenged the  
28 County’s 2018 CAP approvals in Related Case Nos. 37-2018-00014081 and 37-2018-00013324,

1 respectively. The Sierra Club also challenged the 2018 CAP approvals as a violation of the  
2 existing Court judgment in Related Case No. 37-2012-00101054, and Petitioner Golden Door  
3 intervened on the side of Sierra Club in this case to join in that challenge.

4 84. In August 2018, the Sierra Club and Petitioner Golden Door moved for a stay or  
5 preliminary injunction of the 2018 CAP's M-GHG-1 approvals. In opposition, the County  
6 argued against a stay or injunction because such relief would "not allow any development  
7 projects to proceed." The County also represented that such relief would "require applicants of  
8 projects ... that are currently in process to revise the sections of their EIRs addressing GHG  
9 emissions."

10 85. On September 14, 2018, the Superior Court issued a preliminary injunction  
11 against the County enjoining reliance upon the CAP M-GHG-1 in reviewing GHG impacts of  
12 development proposals on unincorporated County lands. The enjoined CAP M-GHG-1 and the  
13 Newland project's M-GHG-1 appeared essentially the same. The County also made an express  
14 statement in the Newland EIR that the project's M-GHG-1 "accords to Mitigation Measure  
15 GHG-1 from the County's Supplemental EIR (SCH No. 2016101055) for its CAP." The County  
16 also previously argued in court that such an injunction would not allow any development to  
17 proceed and would require revisions of EIRs for in-process projects. Despite these facts, the  
18 County nonetheless proceeded with approving the project in violation of the Court's order.

19 **D. The County's piecemealed the project's environmental review.**

20 86. Another example of the County's egregious and willful disregard for the law has  
21 been the piecemealing of the project to avoid environmental review. "There is no dispute that  
22 CEQA forbids 'piecemeal' review of the significant environmental impacts of a project. This  
23 rule derives, in part, from section 21002.1, subdivision (d), which requires the lead agency—in  
24 this case, the Port—to 'consider[] the effects, both individual and collective, of all activities  
25 involved in [the] project.'" (*Berkeley Keep Jets over the Bay Com. v. Board of Port*  
26 *Commissioners of the City of Oakland* (2001) 91 Cal.App.4th 1344, 1358.)

27 87. The County and Newland have been planning for substantial changes to the  
28 freeway interchange at Deer Springs Road and Interstate 15, in order to accommodate the

1 project, for several years. However, rather than include the interchange component as part of the  
2 “whole of the project” for environmental review, the County impermissibly deferred the analysis  
3 as a “mitigation measure” for the project.

4 88. Indeed, documents obtained as part of public records disclosures from the  
5 California Department of Transportation (“Caltrans”) reveal that the County, Newland, and  
6 Caltrans have been separately planning for, designing, and evaluating the interchange project  
7 since as early as 2014. This segmented, piecemeal environmental evaluation has even included  
8 the development of several different interchange alternatives and volumes of studies and design  
9 plans. Caltrans has even begun to draft its environmental conclusions for the interchange  
10 project, writing as early as 2016 in a draft “Project Study Report-Project Development Support  
11 (PSR-PDS)” memorandum that it expected to separately approve the interchange project using  
12 “an Initial Study (IS) with proposed Negative Declaration (ND) or Mitigated ND and a Routine  
13 Environmental Assessment with proposed Finding of No Significant Impact.”

14 89. As part of the segmented environmental review process for the interchange  
15 project, the County also afforded Caltrans special and privileged treatment over the public. For  
16 example, on or about November 2, 2017, after the conclusion of the formal public comment  
17 period on the draft EIR for the Newland project (minus the interchange), the County revised at  
18 least some of the draft EIR and offered a non-public recirculation and review and comment  
19 opportunity for Caltrans and possibly others. In addition to its comment provided within the  
20 formal public comment period in August 2017, Caltrans submitted additional comments on  
21 January 11, 2018. The County did not offer the public a similar opportunity for an extended  
22 comment period, despite multiple requests to do so.

23 90. Despite the public clearly alerting the County to this and other deficiencies, the  
24 County ignored this legal error and pressed forward.

25 **E. All Community Sponsor Groups unanimously recommend denial.**

26 91. Public opposition to the project was overwhelming, particularly as reflected by  
27 the County’s Community Sponsor Groups.

28 92. The Twin Oaks Valley Community Sponsor Group recommended denial of the

1 project with a vote of 4-0 (one recusal).

2 93. The Bonsall Community Sponsor Group recommended denial of the project with  
3 a vote of 6-0 (three seats vacant).

4 94. The Hidden Meadows Community Sponsor Group recommended denial of the  
5 project with a vote of 6-0 with (three seats absent).

6 95. Unfortunately, the County completely ignored the essentially unanimous  
7 opposition to the Newland project by the community groups.

8 **F. The Planning Commission's Review**

9 96. The County Planning Commission held its hearing on the project on June 28,  
10 2018. Ultimately, the Planning Commission voted to recommend approval of the project with  
11 minor modifications. The hearing, however, revealed several other compounding legal errors  
12 made by the County.

13 97. For example, one commenter pointed out that the biological surveys for the  
14 federally protected California gnatcatcher were four years out of date and that the off-site  
15 mitigation site was not suitable replacement habitat for the gnatcatcher because it was outside of  
16 the known geographic and elevational ranges of the gnatcatcher.

17 98. One Commissioner commented, with regard to the gnatcatcher issue, "I really  
18 don't give a whip about a gnatcatcher."

19 99. Another example is the issue of affordable housing. General Plan Policy HE-1.9  
20 states, as shown in the following screen capture from the County's General Plan, Housing  
21 Element, page 6-13:

22  
23 **H-1.9 Affordable Housing through General Plan Amendments.** Require developers to provide an  
24 affordable housing component when requesting a General Plan amendment for a large-scale  
residential project when this is legally permissible.

25 100. In *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435,  
26 476, the Supreme Court explained what "legally permissible" means within the context of  
27 affordable housing. "As already explained, it is well established that price controls are a  
28 constitutionally permissible form of regulation with regard to real property as well as to other

1 types of property or services. (See, *ante*, p. 464.) Accordingly, just as it would be permissible  
2 for a municipality to attempt to increase the amount of affordable housing in the community and  
3 to promote economically diverse developments by requiring all new residential developments to  
4 include a specified percentage of studio, one-bedroom, or small-square-footage units, there is no  
5 reason why a municipality may not alternatively attempt to achieve those same objectives by  
6 requiring new developments to set aside a percentage of its proposed units for sale at a price that  
7 is affordable to moderate- or low-income households.”

8         101. The majority of the Commission dismissed these concerns, but one Commissioner  
9 recognized the import of this requirement. As explained by Commissioner Beck, “These are  
10 policies which the public thought meant something, and they included this very reasonable  
11 policy that for significant general plan amendments the county is going to require affordable  
12 housing. Now, we just heard a five-minute explanation about why those words are not as clear  
13 as they seem to be. It sounds like, I would think, it’s the prerogative of the planning department  
14 to actually implement this policy. I think I heard county counsel say, well, we can’t require it  
15 because we don’t have an ordinance and if we required it on one, it would be ad hoc and maybe  
16 that would be capricious. Arbitrary and capricious. Because you say, wait a minute. Here’s a  
17 policy where we’re going to implement this policy and the policy says provide affordable  
18 housing. So it doesn’t mean anything. That’s the bottom line on this issue, and it’s just  
19 breathtaking to me how many issues are supposed to mean something and they don’t.”

20         102. County staff argued to the Commission that it would be “arbitrary and capricious”  
21 to implement the General Plan’s affordable housing requirement on an “ad hoc” basis. County  
22 staff nonetheless supported, and the majority of the Commission agreed, an exemption for the  
23 project from the requirements of the Resource Protection Ordinance on an ad hoc basis. This  
24 hypocrisy did not escape Commissioner Beck, who observed, “We’ve got a resource protection  
25 ordinance that says these are the criteria under which you should analyze a project. And by the  
26 way, those RPO criteria are what constituted the constraints analysis for the general plan. But  
27 here’s a project which doesn’t meet them, so we’re going to exempt the RPO. It’s depressing.”

28         103. Commissioner Beck also pointed out that the Newland project was unique in that

1 County staff had unilaterally designated the project site as a “hardline” area (i.e., an area planned  
2 for development) in the draft North County MSCP, which was an unprecedented move. “Those  
3 hardline agreements have always included concurrence of the wildlife agencies. Is that not the  
4 case here? [Staff’s response] Okay, that was a lot of words to answer the question about  
5 whether or not this project has hardline concurrence with the wildlife agencies, and the answer is  
6 no. And I explained why that’s problematic. It just increased the conflict going forward and the  
7 politics, frankly, going forward.”

8 104. Government Code section 65302(g)(3), CEQA, and the San Diego County  
9 General Plan require the County to evaluate fire hazards to the community. Two recent appellate  
10 cases (by the Third Appellate District and the Fourth Appellate District, Division 3) confirm that  
11 the County must evaluate the project-level evacuation plan against the broader community-level  
12 evacuation plan. Despite this, in the County staff report presented to the Planning Commission  
13 in June 2018, the County confirmed it does not believe it has any duty to review the project’s fire  
14 hazard evacuation planning under CEQA, stating, “The Plan is not a requirement per CEQA and  
15 was not necessary to reach any of the significance conclusions in the EIR.”

16 105. Finally, it is axiomatic under CEQA case law that the alternatives analysis is the  
17 “core” of the EIR, which the “heart” of CEQA. (*In re Bay-Delta etc.* (2008) 43 Cal.4th 1143,  
18 1162.) Despite this clear directive from the Courts, the County apparently conceded that it did  
19 not have to do an accurate alternatives analysis, based on the mistaken belief that it was not  
20 required to. As County staff (erroneously) explained at the Planning Commission hearing, “we  
21 do not do a project level analysis for EIR alternatives. It’s actually not required under CEQA.  
22 We look at what’s the maximum yield under the general plan. We do consider some of the  
23 constraints on the property, but we do not do as detailed a level analysis as we do for the  
24 proposed project.” The problem with County staff’s dismissal of the evidence, however, is that  
25 the evidence demonstrated to the County that its evaluation of the “Existing General Plan  
26 Alternative” was fundamentally misleading. Despite having the technical analysis and  
27 documentation to support an accurate comparison of alternatives by the public, the County  
28 unreasonably refused to correct it.

**G. The Board of Supervisors Review**

106. The Board of Supervisors held its hearing on September 26, 2018.

107. At some point the week before the September 26 hearing (week starting September 17), a number of “revised” documents were posted on the County’s website for the project. The “revised” documents included changes to the final EIR chapters for the project description, air quality, cultural resources, greenhouse gas emissions, traffic, mitigation measures, and responses to comments. Changes were also made to the Specific Plan, CEQA and Environmental Findings (newly identified locations significantly impacted by noise), Land Use Consistency Analysis appendix, a new EIR appendix regarding housing “attainability” analysis, tentative map, and grading plan. No notice that these revised documents had been posted on the website were given to Petitioners.

108. The County also posted revised right-of-way exhibits on its website, apparently just two days before the September 26 hearing, on September 24.

109. With all of these revisions and changes to the project documentation in the week prior to the September 26 hearing, the County did not identify the changes made to the original document. In many cases, the County did not leave the original document posted, to allow the public to conduct a rudimentary side-by-side comparison. This manner of posting documents on the website, with no notice, explanation, or detail regarding what changed, made it nearly impossible for an ordinary member of the public to understand what was going on, and the County’s actions were antithetical to the purposes of CEQA and precluded informed participation by the public.

110. The conduct of the Board hearing appeared to be designed to limit public participation and prejudice opponents of the project. Given the known public interest in the Newland project, based on previous hearings, the County could have held the hearing at its new offices on Overland Avenue, where the hearing room has larger capacity and parking is more available for the public, but the County chose not to. Rather, the County held the hearing at its downtown County Administration Center. Although most participants expected that the hearing would last all day, a substantial amount of street parking was limited. Parking within the on-site



1 parking structure was also limited. Even if a member of the public obtained one of the on-site  
2 parking spaces, it was limited to 3 hours. This was important because, for public testimony, the  
3 Board segregated testimony according to the viewpoint content of speech, having nearly all  
4 supporters of the project speak before any member of the public who was opposed to the project  
5 had an opportunity to address the Board. The Board did not explain this policy prior to  
6 commencing with public testimony, leaving many members of the public to speculate as to the  
7 conduct of the hearing and unable to plan. As it happened, the Board did not call any member of  
8 the public that was opposed to the project to speak before essentially all of the supporters had the  
9 opportunity to address the Board.

10 111. In addition, the Board only accepted requests to speak between 8 a.m. and about 9  
11 a.m., in person. At least one member of the public arrived at the downtown County  
12 Administration Center prior to 9 a.m., but was unable to submit her request to speak “on time”  
13 due to the inability to find parking.

14 112. Moreover, prior to the hearing, the County appeared to have reserved seating  
15 spaces in the main hearing room for supporters of the project, while not reserving any seating  
16 spaces for any opponents of the project.

17 113. Ultimately, the Board made the following approvals, which are challenged herein:

18 a. Adoption of the CEQA Findings, including the certification and findings  
19 regarding significant effects of the project, the mitigation and monitoring program, the Statement  
20 of Overriding Considerations;

21 b. Certification of the Environmental Impact Report (EIR), PDS2015-ER-15-  
22 08-006;

23 c. Adoption of the resolution entitled A RESOLUTION OF THE SAN  
24 DIEGO COUNTY BOARD OF SUPERVISORS ADOPTING GENERAL PLAN  
25 AMENDMENT (GPA) PDS2015-GPA-15-001;

26 d. Adoption of the resolution entitled RESOLUTION OF THE SAN DIEGO  
27 COUNTY BOARD OF SUPERVISORS APPROVING SPECIFIC PLAN SP-15-001;

28 e. Adoption of the form of ordinance, Ordinance No. 10565 (N.S.), entitled,

1 An Ordinance Changing the Zoning Classification of Certain Property Within THE NORTH  
2 COUNTY METROPOLITAN SUBREGIONAL PLAN AND THE BONSALL Community Plan  
3 AREA, REF: PDS2015-REZ-15-001;

4 f. Introduction of the ordinance entitled, AN ORDINANCE AMENDING  
5 THE RESOURCE PROTECTION ORDINANCE TO ADD AN EXEMPTION FOR THE  
6 NEWLAND SIERRA SPECIFIC PLAN AND APPROVING A RESOURCE PROTECTION  
7 PLAN;

8 g. Adoption of the Resolution entitled RESOLUTION OF SAN DIEGO  
9 COUNTY BOARD OF SUPERVISORS CONDITIONALLY APPROVING TENTATIVE  
10 MAP NO. PDS2015-TM-5597;

11 h. Adoption of the Statement of Reasons to Permit the Proposed Use and  
12 Eliminate Access to Mineral Resources of Regional Significance;

13 i. Direction to PDS staff to update the Transportation Impact Fee Program to  
14 incorporate the Newland General Plan Amendment;

15 j. Requirement that Deer Springs Road to be constructed to 4 lanes, without  
16 a raised median and with a painted center turn lane and requirement that the applicant to enter  
17 into a standard Defense and Indemnification Agreement with the County of San Diego (County)  
18 in accordance with County Code Section 86.201 et seq. and authorize the Director of PDS to  
19 execute the Agreement.

20 k. And, on October 10, 2018, after second reading, adoption of the ordinance  
21 entitled, AN ORDINANCE AMENDING THE RESOURCE PROTECTION ORDINANCE TO  
22 ADD AN EXEMPTION FOR THE NEWLAND SIERRA SPECIFIC PLAN AND  
23 APPROVING RESOURCE PROTECTION PLAN.

24 114. The Board deliberations regarding the project and documentation submitted as  
25 part of the record for the September 26 hearing did not address many of the legal deficiencies  
26 remaining in the EIR and other project documents. Among other things, for example, the Board  
27 made the following prejudicial legal errors or failed to correct them prior to approving the  
28 project.

1           115. Significant changes to the EIR, Findings, and other project documents were made,  
2 with no indication, redline, or explanation of what changes have been made or where.

3           116. Significant new or missing information pertaining to new significant impacts was  
4 left unaddressed by the County, including for example, with regard to the new I-15/Deer Springs  
5 Road interchange and significant noise impacts to sensitive land uses in the vicinity of the  
6 project.

7           117. The County failed to exercise its independent judgment in the EIR process. For  
8 example, it appears that expert Flood Control staff at the County had not reviewed or approved  
9 the EIR's findings on hydrology. On May 30, 2018—just weeks before the release of the final  
10 EIR—the County Flood Control Manager wrote to the Director of Public Works, “As you recall,  
11 ***in March 2017 PDS informed Flood Control to stop our review*** of the Newland Sierra submittal  
12 and deferred Flood Control's outstanding comments on the drainage study and No Rise until  
13 final engineering (see Mark's email below). PDS has invited Flood Control staff to attend the  
14 PC hearings. While we are happy to do so, ***we would not be able to speak to the assertion that***  
15 ***the project will not expose people or structures to significant risk of flooding... or to any of the***  
16 ***other CEQA findings for hydrology.*** You explained that this would be the case to Mark  
17 Wardlaw/PDS last year, so this shouldn't be a surprise.” (Emphasis added.) Similarly, in  
18 August 2016, a civil engineer in the County's Flood Control Engineering division complained  
19 internally that his comments on the project were being ignored: “I think they want to get the  
20 project approved without a resubmittal, and without addressing the comments by acting like they  
21 don't understand what was in the email and ignoring me. I'm tired of responding to people, I  
22 keep telling them, very clearly, that we need a resubmittal that addresses the comments, but they  
23 are just acting like I don't exist.”

24           118. The County failed to evaluate impacts on aesthetic and historic resources such as  
25 the Golden Door. The County's mere disagreement that the Golden Door structures and  
26 landscapes constitute an historical resource does not absolve the County from evaluating  
27 potential impacts, particularly when the County failed to analyze all the factors set forth in  
28 CEQA Guidelines section 15064.5. Section 15064.5(a)(3)(B) states, “Generally, a resource shall

1 be considered by the lead agency to be ‘historically significant’ if the resource meets the criteria  
2 for listing on the California Register of Historical Resources (Pub. Res. Code, § 5024.1, Title 14  
3 CCR, Section 4852) including the following: ... Is associated with the lives of persons important  
4 in our past ....” Notably, the County ignored the fact that the founder of the Golden Door,  
5 Deborah Szekely, is a local icon who has received substantial state, national, and international  
6 attention over the past 60 years. The County’s sophisms that the project itself does not propose  
7 demolishing any structures at the Golden Door is a non-sequitur. The County ignored the fact  
8 that the project includes substantial off-site construction and expansion of Deer Springs Road  
9 that will directly affect the Golden Door, its operations, and its property. As explained by an  
10 expert in architecture and planning, “The south side of Deer Springs Road will expand by either  
11 16 feet or 40 feet depending on the option and the shift in the roadway. Both of these options,  
12 with a southward shift, will clearly require the removal of much of the vegetation and some of  
13 the orchards on the Golden Door Spa property. The removal of these trees will expose portions  
14 of the gardens at Golden Door Spa and other gathering spaces on the property. These spaces will  
15 now see the expanded roadway, its grading and its roadway disturbances. . . . [S]ignificant  
16 screening and character has resulted from the many mature oaks, sycamores, willows, peppers,  
17 pine and citrus that line the south side of the roadway. These trees are significant mature trees  
18 that are providing critical screening and perceptual noise reduction to the gardens and gatherings  
19 spaces within the Golden Door Spa.”

20       119. The County recognized but failed to mitigate for significant noise impacts. The  
21 County claimed that any additional mitigation measures were infeasible for existing residences,  
22 despite the fact that the Newland project would provide its own residents with sound walls,  
23 noise-reducing windows, and air conditioning as noise mitigation. The County asserted that  
24 existing residents did not desire noise mitigation measures, but this assertion was baseless and  
25 pure speculation, as neither the County nor Newland provided evidence that either had actually  
26 asked the residents who lived at the impacted homes, including some Petitioners, and verified  
27 that impacted residents did not want any mitigation.

28       120. CEQA requires that agencies use a site’s actual existing environmental conditions

1 when analyzing a project's potential impacts. The County based many of its significance  
2 conclusions (and therefore the need for mitigation) on an impermissible "plan-to-plan"  
3 comparison of future conditions with the project against a hypothetical future without the project  
4 and failed to make significant conclusions based on existing environmental conditions compared  
5 to the project.

6 121. The EIR improperly relies on "shelter-in-place" as a fire safety strategy but  
7 misleads the public by maintaining that the Newland project is not a shelter-in-place community.  
8 Among other deficiencies, the EIR relies on the shelter-in-place strategy to avoid evaluating the  
9 effects of the project evacuation on the evacuation of existing residents and neighborhoods, but  
10 then fails to evaluate the effects of asking a community of 2,135 homes and over 6,000 people to  
11 stay in their homes during a wildfire. Almost every imaginable fire scenario in the project's fire  
12 safety planning triggers a direction for project residents to shelter in place. According to the  
13 project's Wildland Fire Evacuation Plan, the direction to residents will be to shelter in place in a  
14 wide variety of scenarios, including when there is inadequate time to safely evacuate when  
15 surrounding roads are already congested. But there is also no evaluation or estimation of how  
16 many project residents would follow such a shelter-in-place direction, and, depending on how  
17 many Newland residents follow this direction, what the effect would be on the evacuation times  
18 for existing neighbors and nearby communities who use the same evacuation routes to flee the  
19 area in the event of a large-scale wildfire.

20 122. The County has failed to account for the increasing prevalence and severity of  
21 wildfires. Recent wildfires throughout California, as well as recent past fires in San Diego  
22 County, provide evidence of a much higher risk from wildfire due to climate change and other  
23 climatic changes in San Diego County. The EIR does not examine these new risks and does not  
24 analyze the risks caused by the Newland project associated with this type of wildfire, which  
25 could make both shelter-in-place and rapid or staged community evacuations more difficult or  
26 even impossible in certain circumstances.

27 123. The County's analysis of traffic impacts from the project remained defective. In  
28 addition to impermissibly piecemealing environmental review of the project's planned

1 construction of a new freeway interchange at I-15 and Deer Springs Road and other fatal defects  
2 in the EIR's traffic analysis, the County improperly failed to analyze the project's fair share  
3 contribution for improvements along the I-15 mainline corridor. Although the EIR disclosed  
4 significant impacts on I-15 from the project, the County improperly declared mitigation  
5 infeasible, for example, among others, managed lanes and a fair share contribution to  
6 SANDAG's managed lanes program and/or other programs that may mitigate impacts to the I-15  
7 mainline corridor. The traffic analysis fails to properly analyze that the proposed use of Camino  
8 Mayor would add more traffic to the already congested Twin Valley Oaks Road, which would be  
9 a daily safety concern. Another example of a fatal defect in the EIR's traffic analysis was the  
10 failure to use the most recent and available traffic model for the evaluation of traffic impacts, in  
11 violation of the County's CEQA Guidelines.

12 124. The County failed to require any affordable housing in violation of its General  
13 Plan. The County also failed entirely to evaluate the effect of accessory dwelling units that  
14 would be allowed for by right after the project is constructed, which results in additional traffic,  
15 noise, fire safety, and other impacts that the County failed to evaluate and account for.

16 125. The County failed to fulfill its obligations under SB 1000, which requires the  
17 evaluation of environmental justice issues. By February 14, 2018, the County had amended two  
18 mandatory elements of its General Plan this year. It then had the duty to evaluate environmental  
19 justice issues, including the adoption of a new environmental justice element. Despite  
20 continuing to amend its General Plan in July, it continued to refuse to fulfill its obligation under  
21 SB 1000 to evaluate the issue of environmental justice in the Newland EIR.

22 126. The County failed to disclose, discuss, or analyze the cumulative effects on  
23 energy consumption and environmental justice of permitting in-County GHG emissions and  
24 VMTs in exchange for carbon offsets that would reduce GHG emissions in other places of the  
25 world. As just one example, the County failed to disclose that the use of out-of-County offsets  
26 for this project (and others) would result in County non-compliance with its GHG reduction  
27 targets by the early 2020s, new non-compliance in 2030, and worsened non-compliance in 2050,  
28 thereby violating the mandatory General Plan requirements to reduce GHG emissions within the

County.

127. The County failed to identify a substantial number of rare and sensitive Engelmann oaks impacted by the project's expansion of Deer Springs Road. In failing to identify these sensitive biological resources, the project necessarily did not provide for adequate discussion of the impact of the loss of these rare oak trees in terms of biological resources, historic resources and landscapes, and aesthetics. And the failure to adequately disclose and analyze these rare oak trees means the County could not have provided adequate mitigation for these impacts.

128. The FEIR's biological resources analysis is otherwise not supported by substantial evidence or fails to evaluate important information regarding biological impacts. For example, the County failed to require appropriate seasonal surveys for sensitive plants, including but not limited to, those that serve as habitat for the California gnatcatcher. No surveys were performed during the early spring, when the blooms of summer holly (*Comaristaphylos diversifolia*) and wart-stemmed ceanothus (*Ceanothus verrucosus*) would have been visible. Nor were surveys performed for fall blooming rare plants, like the listed Encinitas baccharis (*Baccharis vanessae*). The above-referenced plants are all listed species.

129. The FEIR improperly relies on transplantation pursuant to a deferred mitigation plan (M-BIO-9) to mitigate impacts to Ramona horkelia (*Horkelia truncate*). The FEIR does not contain any information regarding the conditions under which there may have been successful transplantation, how many of those plants or seeds were collected, how many survived, in what condition, and for how long. This is not proper mitigation, but a proposal to create the mitigation measure after the project is approved. To comply with CEQA, the project applicant must develop a mitigation measure that is shown to be effective for the take of *Horkelia truncate* or explain why mitigation is infeasible.

130. The County failed to acknowledge, discuss, or analyze the impacts of the collapse of the North County Multiple Species Conservation Plan. State and Federal wildlife officials opined that the County's plan to unilaterally designate the project site as a "hardline" without the pre-concurrence of the wildlife agencies may doom the MSCP altogether. As noted by

Commissioner Beck at the June 2018 Planning Commission hearing, the failure to obtain concurrence as to the hardline designation was unprecedented. Similarly, implementation of the RPO and the MSCP are required mitigation measures for the 2011 General Plan, specifically, for example, measures Aes-1.2, Bio-1.2, Bio-1.4, and Bio-1.6. The EIR does not disclose, discuss, or analyze this inconsistency and/or direct conflict with the required mitigation measures under the 2011 General Plan.

131. The County's evaluation of the "Existing General Plan Alternative" was fundamentally misleading and inaccurate, and it prejudiced the EIR's analysis. Among other things, the County assumed that the General Plan was itself exempt from the constraints and requirements of the Resource Protection Ordinance and the I-15 Scenic Corridor designation and requirements in the General Plan, which resulted in a widespread and fundamental underestimation of the project's potential impacts in comparison to this alternative. By refusing to do a good-faith alternatives analysis, the EIR was rendered inadequate under CEQA.

132. The deficiencies in the draft and final EIR and project approvals, as well as the Board's conclusions and findings, described herein are only some of the clear legal errors committed by the County, as facilitated by Newland. Additional specific errors will be demonstrated at trial and based on the administrative record for the project, when and if it is able to be assembled.

## **V. CAUSES OF ACTION**

133. Based on the allegations herein, the following causes of action are alleged.

### **FIRST CAUSE OF ACTION – By All Petitioners Against Defendant and Respondent County for Violations of CEQA**

134. The foregoing allegations are incorporated by reference.

135. The Legislature designed and enacted CEQA to ensure that government agencies incorporate the goal of long-term protection of the environment into their decisions that may affect the environment. CEQA applies to any discretionary action taken by an agency that may cause a reasonably foreseeable change in the environment.

136. In furtherance of its goal of environmental protection, CEQA requires that an EIR



1 adequately disclose and analyze a project's potentially significant environmental impacts. In  
2 addition, the EIR also must adequately inform decision-makers and the public of feasible  
3 mitigation measures and alternative project designs or elements that would lessen or avoid the  
4 project's significant adverse environmental impacts.

5 137. Under CEQA, all findings required for the public agency's approval of a project  
6 must be legally adequate and supported by substantial evidence in the administrative record.  
7 CEQA further requires that an agency provide an explanation of how the evidence in the record  
8 supports the conclusions that the agency has reached.

9 138. In adopting the Newland project approvals, the County failed to proceed in a  
10 manner required by law as alleged herein, and its determinations were not supported by  
11 substantial evidence.

12 139. The County violated CEQA by certifying an EIR for the project that is inadequate  
13 and fails to comply with the requirements of CEQA and the CEQA Guidelines. The County  
14 violated CEQA by taking the following actions, among others.

15 140. The EIR omitted or failed to analyze important facts and information, rendering  
16 the EIR inadequate as an informational document.

17 141. The County failed to adequately disclose, analyze, or mitigate the project's  
18 impacts on the environment, including but not limited to the project's direct, indirect, and  
19 cumulative impacts on: aesthetics; air quality; biological resources; cultural and/or historic  
20 resources; greenhouse gas emissions; hazards & hazardous materials and public services,  
21 including wildfire and emergency evacuation hazards; hydrology; noise; population and housing;  
22 transportation and traffic; water supply, utilities and service systems; energy; land use and  
23 planning; general plan inconsistency; and environmental justice.

24 142. The County failed to adequately disclose, analyze, and mitigate the project's  
25 significant cumulative and/or growth-inducing impacts.

26 143. The County's adopted mitigation measures are illegal. Among other things, the  
27 adopted mitigation constitutes impermissibly deferred mitigation or analysis. Further, the  
28 County illegally deferred the determination of mitigation feasibility to a staff-level determination

1 outside of the public review and comment process that has no or inadequately defined  
2 performance standards. The County also purported to make significance conclusions based on  
3 mitigation measures for which it failed to conduct adequate analysis and/or deferred to after the  
4 County's approval of the project. The County's adopted mitigation and monitoring program  
5 ("MMRP") failed to include all of the mitigation measures and project design features referenced  
6 in the EIR as providing mitigation for the project. The MMRP violates Public Resources Code  
7 section 21081.6 and other provisions of CEQA. For example, it improperly assigns  
8 responsibility for implementation and completion of the mitigation measures to the applicant  
9 developer. While the "County" is listed as an "approving agency," the County is given no  
10 responsibility as a responsible party to ensure implementation of a mitigation measure. No time  
11 period or procedure is given in the MMRP for the applicant developer to submit for approval and  
12 receive written approval, for any of the details, of these mitigation measures.

13 144. The County failed to consider an adequate range of alternatives, presented  
14 fundamentally misleading, inconsistent, and/or insufficiently supported alternatives analysis,  
15 improperly dismissed potentially feasible alternatives suggested by Petitioners and others, and  
16 improperly rejected feasible alternatives without demonstrating infeasibility by substantial  
17 evidence in the record.

18 145. The County failed to adequately respond to comments on the EIR, including, but  
19 not limited to, ignoring or improperly dismissing identification of flaws in the County's analysis,  
20 requests for additional information, and suggestions of feasible mitigation measures and  
21 alternatives. The County also improperly rejected required feasible mitigation measures without  
22 demonstrating infeasibility by substantial evidence in the record. The County also improperly  
23 responded to comments by making conclusory assertions and statements that were not supported  
24 by specific references to empirical information, scientific authorities, or explanatory information  
25 that were available to the public.

26 146. The County failed to recirculate the EIR as required by law. For example, the  
27 EIR for the project was required to be recirculated because significant new information was  
28 added to the document after notice and opportunity for public review were provided, including

1 but not limited to, significant new information regarding the design of the project itself, as well  
2 as the project's impacts to aesthetics; air quality; biological resources; cultural and/or historic  
3 resources; greenhouse gas emissions; hazards & hazardous materials and public services,  
4 including wildfire and emergency evacuation hazards; hydrology; noise; population and housing;  
5 transportation and traffic; water supply, utilities and service systems; energy; land use and  
6 planning; general plan inconsistency; and environmental justice. The EIR also needed to be  
7 recirculated because it was so fundamentally, basically inadequate and conclusory in nature that  
8 meaningful public review and comment were precluded, as well as for other grounds under  
9 CEQA Guidelines section 15088.5.

10 147. The County failed to evaluate the whole of the project as required by law. Among  
11 other things, the County improperly piecemealed from the County's EIR proceedings the  
12 evaluation of an improved I-15/Deer Springs Road interchange and improperly deferred its  
13 environmental review to Caltrans, even though the County, Newland, and Caltrans had been  
14 working together on the design of the interchange for several years. Caltrans has conceded that  
15 it had not planned for the reconstruction of the I-15/Deer Springs Road interchange, and  
16 therefore this component of the project exists only because the project requires it.

17 148. The County failed to maintain an adequate record of proceedings for the project  
18 by deleting public records regarding the project every 60 days, thereby violating ethical and  
19 professional duties in relation to preservation of evidence and applicable law regarding the  
20 preservation of public records, and thereby frustrating the public's fundamental right to review  
21 the project both before and after the County's approval of the project. The County has conceded  
22 that its findings are not based on the whole record, but only on the portions of the whole record it  
23 decided to retain. Among other things, this action violated Public Resources Code section  
24 21167.8(c) by purporting to create a new and more limited administrative record than is required  
25 by this statute.

26 149. The County failed to exercise its independent judgment regarding the EIR's  
27 conclusions and the County's findings. Among other things, the County violated its CEQA  
28 Guidelines by certifying an EIR that used, relied upon, or otherwise incorporated technical

analysis by unauthorized consultants.

150. The County failed to comply with an existing court order enjoining the County from relying on Climate Action Plan mitigation measure M-GHG-1 in reviewing greenhouse gas impacts of development proposals on unincorporated County lands.

151. The County also violated CEQA by adopting inadequate findings. Among other defects, the findings refer only to the “June 2018” version of the EIR and do not reference or refer to the changes made to the EIR after June 2018, which were not provided to the Board of Supervisors. Additionally, the County’s findings do not provide adequate reasoning or the analytic route from facts to conclusions, as required by law. Among other defects, the Findings also purport to change the EIR, without identifying those changes for the public and/or without accompanying necessary changes to the EIR. The Findings also were infected by arbitrary and contradictory reasoning. As one example, the County purported to find less than significant impact on biological resources based on “mitigation” wherein another agency would evaluate the environmental impacts of the proposed mitigation measure. But for other impact areas where mitigation would be under the jurisdiction of another agency, the County found an unavoidable significant impact. In addition, the Findings of Fact and Statement of Overriding Considerations are unsupported by substantial evidence in the record. The County lacked substantial evidence to support the Findings and Statement of Overriding Considerations which were adopted. Among other failures, in making its findings, the County improperly relied upon evidence which was provided by environmental consultants which were retained in violation of the County’s own CEQA Guidelines. Additionally, the County failed to make any CEQA findings or statement of overriding considerations for the entirety of the proposed project, which entirety included the mitigation measure of the new Interstate 15 interchange, and improperly segmented its findings to exclude material portions of the project, such as off-site road improvements including the widening of Deer Springs Road and the new Interstate 15 interchange. Furthermore, the County failed to make findings regarding the feasibility of mitigation measures that would have required the developer to contribute to mitigation for the impacts on congestion on the mainline of Interstate 15, either through a mitigation program through mechanisms

1 administered by the County, the San Diego Association of Governments, Caltrans or other  
2 agencies or governmental organizations. Another example of the defects in the County's  
3 findings include the fact that the findings were based on an incorrect statement of the County's  
4 own General Plan. If the Board had been aware that the Project failed to comply with the  
5 Housing Element and provide an affordable housing component, then it might have reached a  
6 different conclusion in these findings. Instead, the Board based its Findings on an incorrect legal  
7 conclusion that the Board was not required to provide for an affordable housing component, as  
8 defined in the Housing Element, for this project.

9 152. As a result of the foregoing defects, the County prejudicially abused its discretion  
10 by certifying an EIR that does not comply with the requirements of CEQA or the State or County  
11 CEQA Guidelines, thereby precluding informed decision-making. As such, the County's  
12 certification of the EIR, the adoption of the MMRP, and the adoption of Findings and the  
13 Statement of Overriding Considerations and other approvals for project under CEQA must be set  
14 aside.

15 **SECOND CAUSE OF ACTION – By All Petitioners Against Defendant and Respondent**  
16 **County for Violations of Planning and Zoning Law**

17 153. The foregoing allegations are incorporated by reference.

18 154. The Court of Appeal in *Leshar Communications, Inc. v. City of Walnut Creek*  
19 (1990) 52 Cal.3d 531, 540, described the general plan as a “constitution” for future  
20 development.” The *Leshar* Court also explained, “The Planning and Zoning Law itself precludes  
21 consideration of a zoning ordinance which conflicts with a general plan as a pro tanto repeal or  
22 implied amendment of the general plan. The general plan stands. A zoning ordinance that is  
23 inconsistent with the general plan is invalid when passed [citation] and one that was originally  
24 consistent but has become inconsistent must be brought into conformity with the general plan. (§  
25 65860.) The Planning and Zoning Law does not contemplate that general plans will be amended  
26 to conform to zoning ordinances. The tail does not wag the dog. The general plan is the charter  
27 to which the ordinance must conform.” (*Id.* at p. 541.)

28 155. The Court of Appeal in *Resource Defense Fund v. County of Santa Cruz* (1982)

1 133 Cal.App.3d 800, 806, explained, “[u]nder state law, the propriety of virtually any local  
2 decision affecting land use and development depends upon consistency with the applicable  
3 general plan and its elements.”

4 156. The Court of Appeal in *Families Unafraid to Uphold Rural El Dorado County v.*  
5 *Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336, explained, “‘The consistency doctrine  
6 has been described as ‘the linchpin of California’s land use and development laws; it is the  
7 principle which infuse[s] the concept of planned growth with the force of law.’ . . .’ [citation].”

8 157. The Newland approvals violated the State Planning and Zoning Law, as they are  
9 inconsistent with mandatory provisions of the County’s General Plan, including but not limited  
10 to the following: General Plan Policies which were referenced in written comments to the  
11 County: COS-1.2; COS-1.3; COS-1.4; COS-2.2; COS-3.1; COS-7.4; COS-8.1, COS-14; COS-  
12 14.1; COS-20.1; HE-1.9; M-4.4; N-4.3; N-4.5; LU-1.1; LU-1.2, LU-1.3; LU-1.4; LU-2.5; LU-  
13 5.1; LU-5.3; LU-6.9; LU-6.10; LU-6.11; LU-10.3; S-1.1; S-2.6; S-3.5; among others; and  
14 General Plan Mitigation Measures Bio-1.2; Bio-1.4; Bio-1.6; CC-1.2; CC-1.8; among others.  
15 Under the amendments adopted by the Board of Supervisors, the County’s General Plan now  
16 will suffer from fatal internal inconsistencies. For example, the Newland approvals omit any  
17 amendments to the Bonsall Community Plan, apparently because such amendments were never  
18 submitted by the applicant nor considered by the Planning Commission. The absence of any  
19 such amendments renders the County’s Land Use Element internally inconsistent, with certain  
20 portions specifying policies which contradict the Bonsall Community Plan, which is also  
21 included in the Land Use Element.

22 158. The County also violated the State Planning and Zoning Law by taking the  
23 following actions, among others.

24 159. The County failed to comply with the requirements of SB 1000. Government  
25 Code section 65302 provides that a General Plan must include the following mandatory  
26 elements: land use; circulation; housing; conservation; open space; safety; and environmental  
27 justice. Currently, the County’s General Plan does not include an environmental justice element.  
28 SB 1000 (Leyva, 2016) “require[s] the environmental justice element, or the environmental

1 justice goals, policies, and objectives in other elements, to be adopted or reviewed upon the  
2 adoption or next revision of 2 or more elements concurrently on or after January 1, 2018.” The  
3 Newland approvals included revisions of two of the County General Plan’s mandatory elements:  
4 the Land Use Element and the Mobility Element (i.e., the circulation element). Previously, in  
5 February 2018, the County also revised two mandatory elements under the Planning and Zoning  
6 Law: the Conservation Element and the Open Space Element (which the County has combined in  
7 its General Plan). In January 2018, the County revised its Land Use element, another mandatory  
8 element under the Planning and Zoning Law. In July 2018, the County revised the Land Use  
9 element again, with regard to two separate development projects. Accordingly, SB 1000  
10 required the County to adopt an environmental justice element, or review environmental justice  
11 policies in other elements, before it approved the Newland project. The County failed to do so.  
12 Alternatively and/or additionally, SB 1000 also required the County to adopt an environmental  
13 justice element, or review environmental justice policies in other elements, concurrently with  
14 approving the Newland project. Again, the County failed to do so.

15         160. The County exceeded the statutory limit for general plan amendments.  
16 Government Code section 65358, subdivision (b), expressly limits any amendment by the  
17 County of a mandatory element of its General Plan to four such amendments per year. The  
18 County has previously approved four such amendments (one in January 2018 and three in July  
19 2018) to its General Plan’s Land Use Element, which element is a mandatory element pursuant  
20 to Government Code section 65302(a). Under Section 65358, the County may not approve as  
21 many amendments as it wishes to the Land Use Element on each of four occasions per year, but  
22 is limited to a single such amendment on each of four occasions per year. The County violated  
23 Section 65358 by approving the Newland project’s General Plan amendment, which constitutes  
24 the fifth such amendment to the Land Use Element this year.

25         161. The County engaged in impermissible spot zoning in adopting the project’s RPO  
26 exemption ordinance.

27         162. The County’s adoption of the project’s RPO exemption ordinance, entitled “*An*  
28 *Ordinance Amending the Resource Protection Ordinance to Add an Exemption for the Newland*

1 *Sierra Specific Plan and Approving a Resource Protection Plan,”* was fatally inconsistent with  
2 the General Plan when it was approved by the Board and will remain fatally inconsistent with the  
3 General Plan when it becomes effective.

4 163. Similarly, the County’s adoption of the project’s rezoning ordinance, entitled, “*An*  
5 *Ordinance Changing the Zoning Classification of Certain Property Within the North County*  
6 *Metropolitan Subregional Plan and the Bonsall Community Plan Area, REF: PDS2015-REZ-15-*  
7 *001,”* was fatally inconsistent with the General Plan when it was approved by the Board and will  
8 remain fatally inconsistent with the General Plan when it becomes effective. Additionally, the  
9 County’s resolution approving Specific Plan SP-15-001 is fatally inconsistent with the General  
10 Plan that existed on the date the Resolution was adopted. The Resolution, for example, includes  
11 the incorrect factual statement that “the General Plan has been amended.”

12 164. The Resolution adopting Specific Plan 15-0001 violates California Planning and  
13 Zoning law in several respects and is invalid because it contains factually and legally incorrect  
14 statements, as specified by the public in their written communications to the County prior to its  
15 adoption. For example, the Resolution incorrectly states that the project will have project design  
16 features and mitigation measures which will “reduce the project’s greenhouse gas emissions to  
17 zero,” when in fact no such reductions will occur within the project due to these mitigation  
18 measures, and instead the project will increase greenhouse gas emissions in San Diego County.  
19 Other examples of violations include the fact that the Specific Plan does not contain the amount  
20 of parkland required by the County General Plan and does not include any low income or  
21 affordable housing as described in the Housing Element. Other examples include the fact that  
22 the Specific Plan is inconsistent as to the land which it covers, referring to improvements and  
23 roads located outside the property owned by Newland. It provides for the construction and  
24 design of roads which are located outside of the property owned by Newland. The Specific Plan  
25 also violates the Planning and Zoning law by authorizing amendments or revisions to the  
26 Specific Plan without following the requirements for adoption or amendment of ordinances or  
27 resolutions. State law does not provide for changes to a Specific Plan through these procedures.  
28 These provisions are an improper delegation of legislative authority.



1           165. The County improperly made a quasi-adjudicative decision as part of its  
2 legislative enactment of the project exemption from the Resource Protection Ordinance, without  
3 adopting the findings required for quasi-adjudicative decisions. As part of the ordinance itself,  
4 the County also purported to find that the Resource Protection Plan was the “functional  
5 equivalent” of the RPO ordinance, without any factual basis for such determination and without  
6 any findings to explain the basis for the Board of Supervisors’ quasi-adjudicative decision  
7 regarding this factual determination by the Board with respect to the specific application of the  
8 ordinance to a specific landowner.

9           **THIRD CAUSE OF ACTION – By All Petitioners Against Defendant and Respondent**  
10                           **County for Violations of Subdivision Map Act**

11           166. The foregoing allegations are incorporated by reference.

12           167. The County violated the Subdivision Map Act because, among other reasons, the  
13 adopted Tentative Subdivision Map and Specific Plan did not comply with all applicable laws  
14 and regulations, including but not limited to the County General Plan, County ordinances and  
15 regulations, the Planning and Zoning Law, and CEQA. Examples of these legal errors, which  
16 caused the Tentative Subdivision Map not to comply with applicable regulations, include, but are  
17 not necessarily limited to, the following: Material differences between the ordinance for  
18 exemption from the County’s Resource Protection Ordinance presented to the Planning  
19 Commission and the version of the ordinance presented to the Board of Supervisors for approval;  
20 conditional approval of the subdivision map based on a future occurrence; failure to obtain  
21 written consent of all the parties having any record title interest in the real property proposed to  
22 be subdivided or otherwise subject to the Map as required by Government Code sections 66430  
23 and 66436 and other applicable statutes and/or failure to provide the proper notice of subdivision  
24 of the real property proposed to be subdivided or otherwise subject to the Map; and other errors  
25 identified by the public prior to the Board’s approval of the project.

26           **FOURTH CAUSE OF ACTION – By All Petitioners Against Defendant and Respondent**  
27                           **County for Violation of the County Regulatory and Zoning Ordinances**

28           168. The foregoing allegations are incorporated by reference.

1           169. The County Zoning Ordinance, section 7507, subdivision (b) states: “Following  
2 the public hearing on an amendment request, the Board of Supervisors may order the adoption of  
3 the requested amendment, deny the requested amendment, or order the adoption of the requested  
4 amendment with modifications; provided that any modification of the requested amendment not  
5 previously considered by the Planning Commission shall be first referred to the Planning  
6 Commission for report and recommendation, but the Commission shall not be required to hold a  
7 public hearing thereon.”

8           170. Notwithstanding Section 7507’s purported exemption from public hearings,  
9 Section 7506, entitled “Planning Commission Action,” subd. (a), states, “Upon the initiation of a  
10 request to amend The Zoning Ordinance pursuant to Section 7503, the Planning Commission  
11 shall hold a public hearing in all cases where they are required to do so by the California  
12 Government Code.”

13           171. The Planning Commission is a body subject to the requirements of Government  
14 Code sections 54950 et seq. Any report and recommendation regarding whether the project  
15 “Resource Protection Plan” was the “functional equivalent” of the County’s Resource Protection  
16 Ordinance was therefore required to be properly noticed and heard pursuant to the requirements  
17 of Government Code sections 54950 et seq.

18           172. Accordingly, the County violated Section 7507 of its Zoning Ordinance when the  
19 Board approved a revised version of the proposed amendment to the Zoning Ordinance that was  
20 materially different from the version presented to and acted upon by the Planning Commission.  
21 Indeed, the title of the ordinance considered by the Planning Commission was “*An Ordinance*  
22 *Amending the Resource Protection Ordinance to Add an Exemption for the Newland Sierra*  
23 *Specific Plan*,” but the ordinance adopted by the Board was entitled, “*An Ordinance Amending*  
24 *the Resource Protection Ordinance to Add an Exemption for the Newland Sierra Specific Plan*  
25 *and Approving a Resource Protection Plan*” (emphasis added). Such revisions were not  
26 previously considered by the Planning Commission at its June 28, 2018 meeting regarding the  
27 project. Such revisions were not agendized for discussion at the Planning Commission meetings  
28 on June 29, July 20, August 3, September 14, or September 21. Upon information and belief,

1 such revisions were not subsequently referred to the Planning Commission for report and  
2 recommendation prior to Board approval; specifically, the Planning Commission did not hear or  
3 make a recommendation regarding whether the project “Resource Protection Plan” was the  
4 “functional equivalent” of the County’s Resource Protection Ordinance.

5 173. In the alternative, if the Planning Commission did make such a report and  
6 recommendation outside of public hearing, then the County violated Section 7506, which  
7 requires the Planning Commission to “hold a public hearing in all cases where they are required  
8 to do so by the California Government Code.” The Planning Commission is a body subject to  
9 the Brown Act, Government Code §§ 54950 et seq. The Brown Act prohibits the Planning  
10 Commission from making a report and recommendation on the revised RPO exemption  
11 ordinance without holding a properly agendized and noticed public hearing.

12 174. The Newland Project approvals purport to change the established center line of  
13 Deer Springs Road and other roads in the community. Those plans have been changed several  
14 times, most recently just a few days prior to the County’s actions on the Newland Project  
15 approvals. No notice of these changes have been provided to any of the adjoining property  
16 owners along these roads, and the procedures and requirements of the County’s Center Line  
17 ordinance have been violated. This includes, without limitation, Title 7 Highways and Traffic,  
18 Division 5, “Center Lines” and Sections 75.100, 75.101, 75.103 and 75.106. The developer may  
19 claim that its changes to the centerline of county roads are being accomplished through a  
20 subdivision map; however, the developer has no authority to create a subdivision map which  
21 covers other people’s property that is not owned by the developer and which is remote from the  
22 developer’s own property.

23 **FIFTH CAUSE OF ACTION – By Petitioners Tony Eason, Georgeann Higgins, Golden**  
24 **Door Properties, Claudia Hunsaker, Leigh Rayner, Michael Hunsaker, Ana C. Rosvall,**  
25 **and James T. Rosvall Against Defendant and Respondent County for Violation of the**  
26 **California Constitution**

27 175. The foregoing allegations are incorporated by reference.

28 176. The Liberty of Speech Clause of the California Constitution, Article 1, Section

2(a), provides: “**Every person** may freely speak, write and publish his or her sentiments on **all subjects**, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.” (Emphasis added.) Article 1, Section 2(a) is independent of the First Amendment of the United States Constitution. A California municipality thus may not restrict speech on the basis of its **content** (“all subjects”) or discriminate for or against certain **speakers** (“every person”). (Emphasis added.)

177. Article 1, Section 7(a) of the California Constitution provides in relevant part: “A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws ....”

178. Although state law (for example, the Brown Act) permits a local government to place reasonable restrictions on a person’s right to testify at a public hearing, the law does not generally allow local government to conduct public hearings in a manner that discriminates among viewpoints or impermissibly infringe on constitutional rights of equal protection and due process, nor does it permit a local government to generally refuse to allow a member of the public to register their position, in writing, regarding an item of public business at the meeting.

179. At the September 26, 2018 Board of Supervisors meeting, the County violated the rights to freedom of speech, freedom of expression, equal protection, and due process of the petitioners bringing this cause of action in at least one of the following ways.

180. First, the Board discriminated by the viewpoint content of public testimony, by, among other things, calling nearly all of those individuals in favor of the project to testify before any member of the public who were against the project. The County did not articulate any rationale for this policy. This practice prejudiced the “AGAINST” speakers, because they were forced to wait for public testimony of the “FOR” speakers to finish entirely before even having any chance of an opportunity to testify. At least one “AGAINST” speaker had traveled long distances (from northern California) and had to leave before the Board called him to testify due to his travel arrangements. Moreover, the Board also reserved seating in the hearing room for supporters of the project but did not reserve any seating for opponents.

181. Second, the Board denied the opportunity for a representative of Petitioner

1 Golden Door to express his position in opposition to the project in writing by refusing to accept  
2 his “pink” speaker slip, which allows members of the public to record their position in opposition  
3 to an item of public business at the meeting. Board Rule of Procedure 4(b) states, “Any person  
4 who does not wish to speak to the Board but wishes to have the record reflect a position in favor  
5 or in opposition to an agenda item may do so by indicating the same on the Request to Speak  
6 form.” Separate from the issue of whether an individual would be called by the Board to testify,  
7 the County had no legally valid basis to reject any speaker slips from any person, i.e., to refuse to  
8 accept the speaker slip for documentation in the record of proceedings.

9 182. Third, although the Board did not allow any “AGAINST” speakers to testify  
10 during the portion of the meeting that most “FOR” speakers were being called to testify, the  
11 Board allowed a “FOR” speaker who had missed her first chance to testify in the morning to  
12 speak to testify before many “AGAINST” speakers were allowed to testify, during the portion of  
13 the meeting that most “AGAINST” speakers were called to testify.

14 **SIXTH CAUSE OF ACTION – By Petitioners Tony Eason, Georgeann Higgins, Golden**  
15 **Door Properties, Claudia Hunsaker, Leigh Rayner, Michael Hunsaker, Ana C. Rosvall,**  
16 **and James T. Rosvall Against Defendant and Respondent County for Violation of the U.S.**  
17 **Constitution, 42 U.S.C. § 1983**

18 183. The foregoing allegations are incorporated by reference.

19 184. The County and/or its supervisors, employees, and/or agents acting under color of  
20 state law violated the rights of free speech and free expression protected by the First Amendment  
21 to the U.S. Constitution for the petitioners bringing this cause of action.

22 185. The County and/or its supervisors, employees, and/or agents acting under color of  
23 state law also violated the rights of equal protection, substantive due process, and procedural due  
24 process protected by the Fourteenth Amendment to the U.S. Constitution for the petitioners  
25 bringing this cause of action.

26 186. The County has a municipal policy, custom, and/or inadequate training for its  
27 supervisors, employees, and/or agents that caused the deprivation of Constitutional rights as  
28 alleged herein.

1       **SEVENTH CAUSE OF ACTION – By Petitioner Hidden Valley Zen Center Against**  
2       **Defendant and Respondent County for Violation of the Religious Land Use and**  
3       **Institutionalized Persons Act, 42 U.S.C. §§ 2000cc *et seq.***

4       187.   The foregoing allegations are incorporated by reference.

5       188.   Congress enacted the Religious Land Use and Institutionalized Persons Act  
6 (“RLUIPA”) to protect individuals, houses of worship, and other religious institutions from the  
7 discriminatory and burdensome effects of zoning and land use regulations. (See 42 U.S.C. §  
8 2000cc(a)(1).)

9       189.   In general, RLUIPA prohibits the government from imposing or implementing a  
10 land use regulation in a manner that imposes a substantial burden on the religious exercise of a  
11 person, unless the government can demonstrate that imposition of the burden is in furtherance of  
12 a compelling governmental interest and is the least restrictive means of furthering such  
13 compelling interest.

14       190.   RLUIPA provides a cause of action against a government for violation of  
15 RLUIPA’s protections. (*Id.* § 2000cc(a)(1), (a)(2)(C); *id.* § 2000cc-2(a).)

16       191.   For purposes of RLUIPA, the County is a “government,” and Petitioner Hidden  
17 Valley Zen Center is a “religious assembly or institution” which uses its property for “religious  
18 exercise.” (*Id.* § 2000cc-5(4)(A)(i)–(ii), (7)(A)–(B); 42 U.S.C. § 2000bb-2(4).)

19       192.   The County’s land use regulations approved in support of the Newland project fall  
20 within the ambit of land use regulations that RLUIPA is meant to limit, for protecting religious  
21 entities such as the Hidden Valley Zen Center.

22       193.   The Hidden Valley Zen Center is a religious and spiritual location, where  
23 devotees and practitioners practice *zazen* meditation other Zen exercises as a form of religious  
24 exercise. Chief among the requirements for the exercise of Zen practices is a quiet and peaceful  
25 atmosphere. The Hidden Valley Zen Center’s location along Sarver Lane was chosen in 1968,  
26 primarily for its quiet setting. If constructed as approved, the Newland project will require  
27 blasting, rock crushing, and other extreme noise events for a period of at least five years.  
28 Further, the Newland project will significantly increase traffic and population, causing ambient

1 noise to increase. As approved, the Newland project's significant noise impacts will effectively  
2 render the Hidden Valley Zen Center unusable for meditation and therefore its ability to continue  
3 as a location for its religious and spiritual exercise.

4 194. During the administrative proceedings regarding the project, the County was  
5 aware of Petitioner Hidden Valley Zen Center's assertion of its rights under RLUIPA.

6 195. The County's treatment and approval of the Newland project constitutes the  
7 imposition or implementation of land use regulation that imposes a substantial burden on the  
8 Hidden Valley Zen Center's religious exercise, but the County has not demonstrated that such  
9 regulations further a compelling governmental interest, and the County has not demonstrated that  
10 the regulations approved were the least restrictive means of furthering such compelling interest.  
11 Accordingly, the County violated RLUIPA. (42 U.S.C. § 2000cc(a)(1).)

#### 12 **PRAYER FOR RELIEF**

13 A. A declaration of the rights and duties of the respective parties stating that some or  
14 all of the project approvals violate CEQA, the County's General Plan, the PZL, the Subdivision  
15 Map Act, the County's Regulatory and Zoning Ordinances or other laws and regulations as  
16 alleged herein;

17 B. For alternative and peremptory writs of mandate directing the County to set aside,  
18 as appropriate, some or all of the project approvals, for violations of CEQA, the County's  
19 General Plan, the PZL, the Subdivision Map Act, the County's Regulatory and Zoning  
20 Ordinances or other laws and regulations, including constitutional rights, as alleged herein;

21 C. For alternative and peremptory writs of mandate directing the County to comply  
22 with CEQA and the CEQA Guidelines (including the County's CEQA Guidelines), and to take  
23 any other action as required by Public Resources Code section 21168.9, and to comply with the  
24 County's General Plan, the PZL, the Subdivision Map Act, the County's Regulatory and Zoning  
25 Ordinances and all other applicable laws and regulations as alleged herein;

26 D. For a temporary stay, temporary restraining order, and preliminary and permanent  
27 injunctions restraining the County and its agents, servants, and employees, and all others acting  
28 in concert with the County on its behalf, from taking any action to implement the Newland

1 project, pending full compliance with the requirements of CEQA, the CEQA Guidelines, the  
2 County's General Plan, the PZL, the Subdivision Map Act, the County's Regulatory and Zoning  
3 Ordinances and all other applicable laws and regulations as alleged herein;

4 E. For a temporary stay, temporary restraining order, and preliminary and permanent  
5 injunctions restraining Real Parties in Interest and its agents, employees, officers, and  
6 representatives from undertaking any activity to implement the Newland project in any way  
7 pending full compliance with the requirements of CEQA, the CEQA Guidelines, the County's  
8 General Plan, the PZL, the Subdivision Map Act, the County's Regulatory and Zoning  
9 Ordinances and all other applicable laws and regulations as alleged herein;

10 F. For nominal damages as necessary to comply with the requirements of the law as  
11 compensation for the violation of constitutional rights as alleged herein;

12 G. An order directing the recovery of reasonable attorneys' fees incurred in this  
13 matter from the defendants, respondents, and/or real parties in interest, jointly and severally,  
14 pursuant to Code of Civil Procedure section 1021.5 or other applicable law;

15 H. An order directing the recovery of costs of suit incurred herein from defendants,  
16 respondents, and/or real parties in interest, jointly and severally; and

17 I. Grant such other and further relief as the Court deems just, proper, or appropriate.

18 Dated: October 25, 2018

Respectfully submitted,

LATHAM & WATKINS LLP

20 By: /s/Taiga Takahashi  
Taiga Takahashi

21  
22 Attorneys for Petitioners/Plaintiffs California Native  
23 Plant Society, Hidden Valley Zen Center, Friends of  
24 Hidden Valley Zen Center, Buena Creek Action  
25 Group, Deer Spring Oaks Action Group, Twin Oaks  
26 Valley Road Action Group, Golden Door Properties,  
27 LLC, Lisa Amantea, Michael Amantea, Darryl C.  
28 Bentley, Carol Bryson, Pamela J. Diniz, Stanley  
Diniz, Francis J. Eason, Rebecca Engel, Thomas  
Engel, Donald J. Folse, Elsie E. Gregory, Georgeann  
Higgins, Claudia Hunsaker, Michael Hunsaker,  
Karen May, Bj McIntire, Michael McIntire, Cindi  
Peterson, Ana C. Rosvall, James T. Rosvall,  
Katherine B. Rosvall, Leigh Rayner, Joanne Rizza,  
Darla Kennedy, and William R. Young



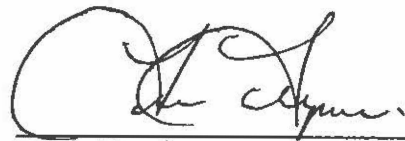
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**VERIFICATION**

I, Tricia Trupiano, am the Senior Director, Human Resources/Corporate Affairs/Events, for Petitioner and Plaintiff Golden Door Properties, LLC, one of the Petitioners in this action, and I am authorized to make this verification. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF and am familiar with its contents. All facts alleged in the VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF are either true of my own knowledge or I am informed and believe them to be true and on that basis allege them to be true.

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

Executed this 25th day of October, 2018, at San Diego County, California.



Tricia Trupiano  
Senior Director  
Human Resources/Corporate Affairs/Events  
Golden Door Properties, LLC