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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO**

11 SIERRA CLUB,

12 Petitioner,

13 v.

14 COUNTY OF SAN DIEGO,
15 and DOES 1-20,

16 Respondents.

17
18
19 RCS HARMONY PARTNERS, LLC;
20 INTEGRAL COMMUNITIES; INTEGRAL
21 COMMUNITIES, LLC; THE EDEN HILLS
22 PROJECT OWNER, LLC; SUNROAD
23 OTAY PARTNERS, L.P.; SUNROAD
24 ENTERPRISES; and DOES 21-40,

25 Real Parties in Interest.

CASE NO.: 37-2018-00043084-CU-TT-CTL

**SECOND AMENDED PETITION FOR
WRIT OF MANDATE AND COMPLAINT
FOR DECLARATORY RELIEF**

Date: December 13, 2019
Time: 1:30 p.m.
Dept.: C-69
Judge: Hon. Katherine Bacal

IMAGED FILE

(CALIFORNIA ENVIRONMENTAL
QUALITY ACT)

Pub. Res. Code §§ 21000 et seq.
CCP §§ 1085, 1094.5

Action Filed: August 23, 2018

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1 **INTRODUCTION**

2 1. Petitioner Sierra Club (“Petitioner” or “Sierra Club”) files this Petition for
3 Writ of Mandate seeking to require the County of San Diego to rescind and set aside
4 certain land use approvals and entitlements that the County made and granted in violation
5 of its statutory duty to not approve environmentally damaging projects without adopting
6 all feasible mitigation for such harm.

7 2. Specifically, Petitioner seeks a Writ of Mandate ordering the County of San
8 Diego to set aside its July 25, 2018 approvals of three development projects located in
9 undeveloped areas of the County until the County has fully complied with the California
10 Environmental Quality Act (“CEQA”), Public Resources Code sections 21000, et seq.,
11 regarding its mandatory duty under Public Resources Code sections 21002 and 21080 to
12 refrain from approving projects that may significantly harm the environment unless it has
13 adopted all feasible measures to mitigate that harm. Petitioner also seeks a declaration
14 that the County’s processing of the three development projects and single General Plan
15 Amendment constitutes three amendments for the purpose of Government Code section
16 65358(b), which establishes the requirements for enforcing and amending the County’s
17 General Plan. Finally, Petitioner seeks a Writ commanding the County to immediately
18 cease its current policy and practice of automatically deleting from County archives and
19 records documents that CEQA identifies and designates as required to be included in
20 such administrative record, including in the administrative record for this case, and fully
21 comply with Public Resources Code section 21167 regarding the content of the
22 administrative record in CEQA cases.

23 3. The County is already subject to a Writ issued on May 4, 2015 by the San
24 Diego Superior Court, Hon. Timothy Taylor presiding, in Case number 37-2012-
25 00101054-CU-TT-CTL, *Sierra Club, et al. v County of San Diego*. That Writ was issued
26 following remand after the Court of Appeal’s opinion in *Sierra Club v. County of San*
27 *Diego* (2014) 231 Cal.App.4th 1152 affirmed Judge Taylor’s ruling that the County’s
28 previous Climate Action Plan (“CAP”) was not adopted in the manner required by law in

1 that it “fail[ed] to incorporate mitigation measures into the CAP as required by Public
2 Resources Code section 21081.6.” (*Id.* at 1167-68.) The Writ commanded the County to
3 set aside its Climate Action Plan adopted in June 2012, to prepare a new Climate Action
4 Plan to reduce greenhouse gases in the County (hereinafter “Revised CAP”), and to
5 comply fully with CEQA and any and all other applicable laws.

6 The County Has Adopted a New Climate Action Plan, Which Has Been
7 Challenged As Inadequate

8 4. On February 14, 2018, the County adopted its Revised CAP, which was
9 promptly challenged by Petitioner Sierra Club and numerous other environmental and
10 community groups for failing to comply with this Court’s Writ, in that the Revised CAP
11 does not contain fully enforceable and additional (in excess of what would happen absent
12 the activity to create offsets) measures to mitigate the significant adverse effects on the
13 environment of the County’s adoption of the 2011 General Plan Update (“GPU”).

14 5. Most importantly, it has failed to carry out Mitigation Measure CC-1.2 set
15 out in the Program Environmental Impact Report (PEIR) for the GPU. Mitigation
16 Measure CC-1.2 required the adoption by the County of a CAP that would achieve
17 specified reductions in the emissions of greenhouse gases (“GHGs”) from County
18 operations and community emissions *in the County* by the year 2020.

19 6. The Revised CAP fails to satisfy Mitigation Measure CC-1.2 in that it
20 contains almost no enforceable measures to reduce GHG emissions and will not reduce
21 such emissions by 2030 to levels specified in state law. (Health and Safety Code sections
22 38550, 38566.) The County adopted a CAP that relies, among other things, on “County
23 initiatives” to reduce GHG emissions that are unenforceable and unfunded. Further,
24 despite the requirement in the GPU that GHG emissions reductions be made *within the*
25 *County* (Mitigation Measure CC-1.2), the County adopted a CAP that allows GHG
26 emissions *within* the County to rise, if they are purportedly compensated for (“offset”) by
27 GHG emissions reductions *outside* the County, outside the state of California, and even
28 on other continents.

1 7. These provisions of the new CAP are being challenged in the latest lawsuit
2 by the Sierra Club and others over the 2018 CAP, but must be challenged here because
3 the pending lawsuit will not be heard until, as currently scheduled, late November 2018,
4 and will almost certainly be appealed by the County if Petitioners prevail.

5 The County Has Approved New Developments That Will Increase Driving
6 and Create New Greenhouse Gas Emissions That Are Not Adequately Mitigated

7 8. Although transportation is responsible for about 45% of the GHG emissions
8 in the County, and although the County's General Plan, including, for example, the
9 Conservation and Open Space Element, encourages and supports land use development
10 patterns and transportation choices that reduce pollutants and greenhouse gases, the
11 County has thus far approved three large residential development projects in the County's
12 rural back-country areas.

13 9. These projects, commonly known as the Harmony Grove Village South
14 Project, the Valiano Project, and the Otay 250 Project will, combined, result in the
15 construction of just under 4,000 new residential units, none of them designated as low-
16 income housing, and over 800,000 square feet of commercial and office space, all located
17 in undeveloped areas, often referred to as greenfields. The construction of these
18 development projects in locations far from transit and urban services and amenities will
19 cause increased driving and its attendant GHG emissions.

20 10. These projects were never contemplated or analyzed as future projects or
21 the future direction of growth by the 2011 GPU. Consequently, neither project mitigation
22 nor resident evacuation plans in case of wildfires were contemplated. More restrictive
23 zoning with reduced density was intentionally planned in the area in which Harmony
24 Grove Village South and Valiano are proposed due to the high wildfire risk and the need
25 to have wildlands/urban interface standards in place to allow safe evacuation.

26 11. The County's claim that one additional lane road will insure the lives of
27 residents and their large animals escaping from fast-moving wildfires such as the Lilac
28 Hills fire of December 2017 is unpersuasive. Despite acknowledging that no formal

1 evacuation plan exists, the County contends that resident safety is assured. County staff
2 contends that since no lives were lost in the Cocos fire evacuation, safety is assured in the
3 Harmony Grove South Village and Valiano projects.

4 12. In addition to the Projects' inconsistency with the County's own General
5 Plan, they are also inconsistent with the GHG reduction provisions of the region-wide
6 Regional Transportation Plan and Sustainable Communities Strategy prepared by the San
7 Diego Association of Governments ("SANDAG"), which is designed to reduce GHG
8 emissions associated with driving. There was no discussion of this inconsistency in the
9 Projects' EIRs.

10 13. The County's approvals allow these projects to mitigate the climate-
11 changing impacts of the GHG emissions they will cause by obtaining *off-site* GHG
12 emissions offsets. These offsets are not required to be obtained in San Diego County, as
13 the mitigation for the GPU EIR provides, but may be obtained anywhere in the world at
14 the discretion of the County's Director of Planning and Development Services ("PDS").
15 Verification of the amount and the efficacy of these offsets need be shown only "to the
16 satisfaction" of the Director of PDS, without written or duly adopted standards for
17 determining such satisfaction. Obtaining offsets outside of San Diego County violates
18 Mitigation Measure CC-1.2 adopted for the GPU, which requires in-County GHG
19 reductions. In addition, the failure to obtain GHG offsets within the County has other
20 environmental impacts, in that the reductions in conventional air pollutants and the
21 additional jobs that GHG offset projects would produce will not be realized by County
22 residents, but by residents outside the County, and likely outside the United States.

23 The County Is Pursuing an Improper Policy of Automatically Deleting Emails
24 That CEQA Designates As Documents Belonging in the Administrative Record

25 14. The County is also in violation of CEQA in its policy of document
26 retention. Public Resources Code section 21167.6 has a detailed and comprehensive list
27 of categories of documents that the Legislature has determined must be included in the
28 administrative record in a challenge to a public agency's actions for violation of CEQA.

1 Public Resources Code section 21167.6, subdivision (e) includes in the categories of
2 documents that must be included into the record of proceedings for any CEQA case “all
3 internal agency communications, including staff notes and memoranda related to the
4 project or to compliance with [CEQA]” and “all written evidence or correspondence
5 submitting to, or transferred from, the respondent public agency with respect to
6 compliance with this division or with respect to the project.” One appellate court has
7 characterized section 21167.6(e) as “contemplat[ing] that the administrative record will
8 include pretty much everything that ever came near a proposed development or to the
9 agency’s compliance with CEQA in responding to that development.” (*County of*
10 *Orange v. Superior Court of Orange County* (2003) 113 Cal. App. 4th 1, 8.)

11 15. However, the County has adopted an “autodeletion” policy, which
12 automatically deletes emails on County computer servers, unless County employees take
13 affirmative steps to archive such email messages. On information and belief, Petitioner
14 alleges that the County deletes emails after only 60 days.

15 ([www.voiceofsandiego.org/topics/government/these-cities-can-hardly-wait-to-delete-](http://www.voiceofsandiego.org/topics/government/these-cities-can-hardly-wait-to-delete-their-records/)
16 [their-records/](http://www.voiceofsandiego.org/topics/government/these-cities-can-hardly-wait-to-delete-their-records/).) The criteria by which unidentified County employees select emails for
17 archiving, and the reliability with which such archiving is done, have not been made
18 public.

19 16. The County is not complying with Public Resources Code section 21167.6
20 when it deletes internal emails among County staff and external emails between County
21 staff and the developers of the various projects that discuss environmental impacts of
22 projects subject to CEQA or the County’s own compliance with CEQA. Petitioner has
23 no evidence or reason to believe that an exception to this policy of auto-deleting e-mails
24 has been applied to the Harmony Grove Village South, Valiano, and/or Otay 250
25 projects. Given the length of time over which a large-scale development project is under
26 some form of consideration by the County (for example, the Valiano Notice of
27 Preparation of EIR was issued on June 20, 2013), application of a 60-day auto-delete
28

1 policy is almost certain to have resulted in deletion of a large body of emails that section
2 21167.6(e) would require to be included in the administrative record.

3 17. In *Golden Door Properties, LLC v. County of San Diego* (San Diego
4 Superior Court No. 37-2018-00030460-CU-TT-CTL), concerning preservation of County
5 records for the Newland Sierra proposed project, the County filed opposition papers
6 indicating that (a) for projects without litigation holds, only a limited category of “official
7 records” are being retained; and (b) for projects that actually have litigation holds, the
8 only emails being retained are those either selected by certain County employees for
9 retention or those that contain certain limited, non-public search terms.

10 18. Petitioner seeks an order from this Court directing the County to refrain
11 from applying its autodeletion policy to the Harmony Grove Village South, Valiano, and
12 Otay 250 Projects until this litigation, including any appellate litigation, is fully
13 completed.

14 The County Is Improperly “Batching” Projects in an Attempt to Avoid the
15 Limitation on the Number of General Plan Amendments It Can Adopt in a Year

16 19. In order to promote well-considered local land use decisions and stable
17 local land use planning, the Government Code limits the frequency with which a city or
18 county may amend any mandatory element of its General Plan, limiting such
19 amendments to four in any one year. (Government Code section 65358(b).) The policy
20 behind this section was described by the California Supreme Court in *DeVita v. Cty. of*
21 *Napa* (1995) 9 Cal. 4th 763. “General plans that change too frequently to make room for
22 new development will obviously not be effective in curbing ‘haphazard community
23 growth.’ ” (*Id.* at 790, quoting *Selby Realty Co. v. City of San Buenaventura* (1973) 10
24 Cal.3d 110, 120.)

25 20. The Land Use Element is a mandatory element of a local general plan.
26 (Government Code section 65302, subdivision (a).) The Harmony Grove Village South,
27 Valiano, and Otay 250 Projects are all large-scale residential projects, each of which
28 requires a general plan amendment.

1 21. The County is now attempting to evade the purpose and spirit of
2 Government Code section 65358, subdivision (b)'s limitation on General Plan
3 amendments through what it refers to as "batching" or "bundling." This is a practice of
4 grouping together multiple General Plan amendments into a single approval item on the
5 Board of Supervisors' agenda and treating these different General Plan amendments as a
6 *single* amendment for purposes of Government Code section 65385, subdivision (b). The
7 County has used this "batching" process for the approval of the three General Plan
8 amendments for the Projects at issue here, treating the three separate amendments as
9 though they were a single amendment, in spite of the fact that each project was
10 considered and approved by the Planning Commission separately, each project was
11 approved by the Board separately, and separate and individual ordinances, environmental
12 impact reports, and sets of Findings were approved for the different projects.

13 22. The County previously announced that it had planned to consider several
14 additional large-scale residential developments, each of which would require a GPA, in
15 2018. These projects included Lilac Hills Ranch (Land Use and Mobility Elements),
16 Newland Sierra (Land Use and Mobility Elements), Otay Ranch Village 14 and Planning
17 Areas 16 and 19 (Land Use and Mobility Elements), and Warner Ranch (Land Use and
18 Mobility Elements).

19 23. On September 26, 2018, the County approved the Newland Sierra project.
20 The Newland Sierra project was the fifth project that required a GPA that was approved
21 in the 2018 calendar year.

22 24. On November 13, 2018, the County sent an e-mail to the public, which
23 stated in pertinent part: "Several proposed General Plan Amendment (GPA) projects,
24 Lilac Hills Ranch, Otay Village 14 and Planning Areas 16 and 19, Warner Ranch, and
25 Property Specific Requests (PSRs), were tentatively scheduled to be heard by the Board
26 on December 12, 2018. These projects will not be heard by the Board in 2018 due to
27 varying reasons such as staff workload in preparing some of these projects, the County's
28

1 Climate Action Plan litigation and the injunction which applies to the PSRs, and
2 applicants continuing to provide additional information to staff for their projects.”

3 25. The County’s batching policy would allow an indeterminate number of
4 GPAs for large-scale developments that are currently inconsistent with the General Plan’s
5 Land Use Element to be approved on any single occasion, and would allow an equal
6 number of such amendments to be considered on three additional occasions each year.
7 This practice could result in the wholesale rewriting of the Land Use Element without the
8 procedures, analysis, and public involvement that a General Plan requires, and in
9 derogation of the Legislature’s intent that “the general plan and elements and parts
10 thereof comprise an integrated, internally consistent and compatible statement of policies
11 for the adopting agency.” (Govt. Code section 65300.5.) The County’s batching policy
12 can result in a County whose General Plan has been overwhelmed by such amendments.

13 26. Since the County has approved one GPA prior to the adoption of the
14 approval of the three projects challenged herein, Petitioner seeks a declaration from this
15 Court that the single amendment to the General Plan for the Harmony Grove South,
16 Valiano, and Otay 250 projects constitutes three amendments for the purpose of
17 Government Code section 65358, subdivision (b).

18 **JURISDICTION AND VENUE**

19 27. This Court has jurisdiction over the writ action under Code of Civil
20 Procedure sections 1085 and 194.5, et seq., and under sections 21168 and 21168.5 of the
21 Public Resources Code.

22 28. Venue lies in this County because the actions complained of herein were
23 committed in San Diego County, and because the County itself is being sued.
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1 **PARTIES**

2 29. Petitioner Sierra Club is a national nonprofit organization with more than
3 822,900 members nationwide, including 179,000 members in California, and
4 approximately 15,300 members in San Diego and Imperial Counties.

5 30. The Sierra Club is dedicated to exploring, enjoying, protecting, and
6 preserving for future generations the wild places of the earth; practicing and promoting
7 the responsible use of the earth’s ecosystems and resources; educating and enlisting
8 humanity to protect and restore the quality of the natural and human environment; and
9 using all lawful means to carry out these objectives. The Sierra Club’s concerns
10 encompass climate stabilization, coastal issues, land use, transportation, wildlife and
11 habitat preservation, sound and lawful land use, and protection of public parks and
12 recreation. The interests that this Petitioner seeks to further in this action are within the
13 purposes and goals of the organization. Petitioner and its members have a direct and
14 beneficial interest in the County’s compliance with CEQA, with the measures in its own
15 General Plan Update, and with the Judgment and Writ of this Court. The maintenance
16 and prosecution of this action will confer a substantial benefit on the public by protecting
17 the public from the environmental and other harms alleged herein, including but not
18 limited to requiring informed, lawful, and publicly transparent decision-making by the
19 County.

20 31. The County of San Diego is a public agency under Section 21063 of the
21 Public Resources Code. The County is authorized and required by law to hold public
22 hearings, to determine adequacy of and certify environmental documents prepared
23 pursuant to CEQA, and to take other actions in connection with the approval of projects
24 within its jurisdiction.

25 32. RCS Harmony Partners, LLC is a California foreign limited-liability
26 company formed in Colorado. It is a proponent of the Harmony Grove South project.

27 33. Integral Communities, LLC is a California foreign limited-liability
28 company formed in Delaware. It is a proponent of the Valiano project.

1 34. Integral Communities is the Project Applicant for the Valiano project, as
2 listed on the July 26, 2019 Notice of Determination.

3 35. The Eden Hills Project Owner, LLC, is a California foreign limited-liability
4 company formed in Delaware. It is a proponent of the Valiano project.

5 36. Sunroad Enterprises is the Project Applicant for the Otay 250 project, as
6 listed on the July 26, 2019 Notice of Determination.

7 37. Sunroad Otay Partners, L.P. is a California domestic limited partnership. It
8 is a proponent of the Otay 250 project.

9 38. Petitioner does not know the true names and capacities, whether individual,
10 corporate, associate, or otherwise, of respondents DOES 1 through 20, inclusive, and
11 therefore sue said respondents under fictitious names. Petitioner will amend this Petition
12 to show their true names and capacities when the same have been ascertained. Each of
13 the respondents is the agent and/or employee of Respondents, and each performed acts on
14 which this action is based within the course and scope of such Respondents' agency
15 and/or employment.

16 39. Petitioner does not know the true names and capacities, whether individual,
17 corporate, associate, or otherwise, of real parties in interest DOES 21 through 40,
18 inclusive, and therefore sue said real parties in interest under fictitious names. Petitioner
19 will amend this Petition to show their true names and capacities when the same have been
20 ascertained.

21 **BACKGROUND AND STATEMENT OF FACTS**

22 Adoption of the 2011 County General Plan Update and Adoption of the Climate 23 Action Plan as Mitigation for Increased Greenhouse Gas Emissions

24 40. On August 3, 2011, the County adopted a General Plan Update ("GPU"),
25 in which the County committed to preparing a climate change action plan with detailed
26 greenhouse gas ("GHG") emissions reduction targets and deadlines and "comprehensive
27 and enforceable GHG emissions reduction measures that will achieve' specified
28

1 quantities of GHG reductions.” (*Sierra Club, supra*, 231 Cal.App.4th at 1156.) The GPU
2 adopted by the County in 2011 committed to achieving a reduction in GHG emissions to
3 the level that existed in 1990 by 2020, pursuant to the Legislature’s command in Health
4 and Safety Code section 38550 (often referred to as “AB 32”). Since that time, the
5 Legislature has acted to require a reduction in GHG emissions to 30% below the 1990
6 level by 2030. (Health and Safety Code section 38566 [often referred to as “SB 32”].)

7 41. As mitigation for the harm to the climate from GHG emissions that would
8 be caused by the GPU, the County adopted Mitigation Measure CC-1.2, which “requires
9 the preparation of a County Climate Change Action Plan.” (*Sierra Club, supra*, 231
10 Cal.App.4th at 1159.) On June 20, 2012, the County adopted a CAP and Thresholds for
11 determining the significance for CEQA purposes of GHG emissions, as well as an
12 Addendum to the General Plan Update EIR.

13 Challenges to the Climate Action Plan and Their Current Status

14 42. On July 20, 2012, Petitioner Sierra Club filed a Petition for Writ of
15 Mandate challenging the County’s 2012 CAP and Thresholds, alleging that the County
16 had not followed the procedures required by law, and had not conformed to Mitigation
17 Measure CC-1.2 in the GPU. (*Sierra Club v. County of San Diego*, Case No. 37-2012-
18 00101054-CU-TT-CTL.) This ruling was upheld in the October 29, 2014 decision of the
19 Court of Appeal.

20 43. On May 4, 2015, this Court issued a Supplemental Writ of Mandate
21 ordering the County to set aside the CAP, findings, and 2013 Thresholds. On May 30,
22 2017, this Court issued a Second Supplemental Writ of Mandate ordering the County to
23 set aside its challenged 2016 Guidance Document, which the Court determined
24 improperly set a threshold of significance for GHG emissions. The County appealed this
25 judgment and the case has been fully briefed. The Court of Appeal will hear oral
26 arguments on September 10, 2018.
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1 44. In August 2017, the County released a draft Environmental Impact Report
2 (EIR) for a Revised CAP. Petitioner Sierra Club submitted comment letters to the
3 County’s Department of Planning and Development Services, the Planning Commission
4 and the Board of Supervisors, detailing the defects of the Revised CAP. But, on February
5 14, 2018, the County Board of Supervisors adopted the Revised CAP and its Mitigation
6 Measure M-GHG-1, together with associated documents, including the Mitigation
7 Monitoring and Reporting Program. The Board of Supervisors also certified the final EIR
8 on the Revised CAP and adopted the associated Significance Guidelines.

9 County Guidelines Allow the Use of Greenhouse Gas Emissions Obtained Offsite
10 From the Project, Including Outside the County and Outside the Country

11 45. The GHG Significance Guidelines adopted by the County would allow
12 projects that requested a General Plan amendment (“GPA projects”), such as the
13 Harmony Grove South, Valiano, and Otay 250 projects at issue here, to have their GHG
14 emissions deemed to be insignificant for CEQA purposes if the applicant obtains GHG
15 offsets according to a geographic priority list. The priority list requires GHG offsets
16 within the unincorporated County to be sought first, but if the County Director of
17 Planning and Development Services (“Director”) determines none are available, such
18 offsets may be sought in the County as a whole, then anywhere in the State of California,
19 then anywhere in the United States, then anywhere in the world. Further, the Director is
20 empowered to deem GHG offsets to be unavailable in any geographic tier if they are not
21 economically “feasible” to obtain, with such infeasibility to be shown only “to the
22 satisfaction” of the Director. No standards for determining such infeasibility are
23 provided.

24 46. The Supplemental EIR for the CAP stated that virtually no GHG offsets are
25 now available in San Diego County. (FEIR, p. 8-53.) Petitioner is informed and believes
26 that the County still contends this is the case today, even though it is easy to identify
27 many large projects that could provide offsets in the County, such as reducing emissions
28 at the Port or providing more transit. Under the County’s current policy, it is almost

1 certain that the Harmony Grove South, Valiano, and Otay 250 Projects will seek at least
2 some offsets outside the County, and probably outside the United States, where Petitioner
3 is informed and believes they are the least expensive, but where they are also very
4 difficult to verify and enforce.

5 The Individual Development Projects Challenged Herein
6

7 47. The Harmony Grove South Project, to be located about 7.5 miles north of
8 Carlsbad in the San Dieguito Community Plan Area, required a general plan amendment
9 (GPA) in order to be approved. The GPA redesignated the property from Semi-Rural
10 regional category to the Village regional category, and upzoned it to allow much greater
11 density. The GPA increased the number of allowed residential units from 220 units on
12 the 111-acre site to 453 units and 5,000 square feet of commercial and civic uses. None
13 of the units is designated as affordable housing.

14 48. The Harmony Grove south project site is bordered by urban residential and
15 commercial uses to the north, large estate development and vacant lands to the east and
16 west, and large swaths of undeveloped open space to the south, including the Del Dios
17 Highlands Preserve. The site is not far from the 2014 Cocos wildfire.

18 49. A Draft EIR (DEIR) for the Harmony Grove South Project was circulated
19 for public review from April 20, 2017 to June 20, 2017. A recirculated Revised DEIR
20 was circulated for public review from February 22, 2018 to April 9, 2018. On May 24,
21 2018, the County Planning Commission voted to recommend approval of the Project. On
22 July 25, 2018, the Board of Supervisors certified the final Revised EIR on Harmony
23 Grove South and granted the GPA, the Specific Plan, and all other required approvals and
24 entitlements for the Project. The Notice of Determination as to the EIR that is required
25 by Public Resources Code section 21152(a) was posted by the County Clerk on July 26,
26 2018.

27 50. The final EIR (FEIR) for the Harmony Grove South Project stated that the
28 total of GHG emissions, after use of “all reasonable and feasible on-site measures for

1 avoiding or reducing GHG emissions, including the project design features and strategies
2 recommended by CARB in the Scoping Plan Second Update” (FEIR, p. 2.7-23), could
3 not reduce the Project’s GHG emissions to net zero, making the GHG emissions
4 cumulatively significant. As mitigation, Harmony Grove South’s EIR stated that it would
5 achieve net zero emissions through the purchase and retirement of off-site carbon offsets.
6 The off-site offsets would be purchased either through an offsets registry certified by the
7 California Air Resources Board (CARB) or, if no CARB-certified registry was available,
8 through a registry meeting the approval of the County Director of Planning and
9 Development. The FEIR listed the order in which offsets would be purchased, stating:

10 The County will consider, to the satisfaction of the Director of [Planning
11 and Development Services], the following geographic priorities for GHG
12 reduction features, and off-site carbon offset projects: (1) Project design
13 features/on-site reduction measures; (2) off site within the unincorporated
14 areas of the County of San Diego; (3) off site within the County of San
15 Diego; (4) off site within the State of California; (5) off site within the
16 United States; and (6) off site internationally.

17 (FEIR, p. 2.7-24.)

18 51. The Valiano Project (Valiano), to be located immediately to the east and
19 south of the City of San Marcos and one-quarter mile west of the City of Escondido, was
20 previously used for avocado orchards, bee-keeping, and equestrian uses; it is also close to
21 the site of the Cocos wildfire. The site is bordered by open space, estate residential, and
22 various commercial and other uses; it also required a GPA in order to be approved. The
23 GPA redesignated the property from the existing A70 (Limited Agriculture) designation
24 to S88 (Specific Plan Area), and removed a portion of the site from the Elfin Forest-
25 Harmony Grove subarea plan. This increased the number of allowed residential units
26 from 118 units to 326 units on the 239-acre site. None of the units is designated as
27 affordable housing. The property is within the Semi-Rural regional category.

28 52. A DEIR for the Valiano Project was circulated for public review from April
30, 2015 to June 15, 2015, and a Revised Draft EIR was recirculated from December 8,

1 2016 until January 30, 2017. On May 11, 2018, the County Planning Commission voted
2 to recommend approval of the Project. On July 25, 2018, the Board of Supervisors
3 certified the final Revised EIR and granted the GPA and all other required approvals and
4 entitlements for the Project. The Notice of Determination as to the EIR that is required
5 by Public Resources Code section 21152(a) was posted by the County Clerk on July 26,
6 2018.

7 53. The EIR for the Valiano Project stated that the total of GHG emissions,
8 after use of all reasonable and feasible on-site measures for avoiding or reducing GHG
9 emissions, could not reduce the Project's GHG emissions to net zero, making the GHG
10 emissions cumulatively significant. (FEIR, p. 3.1.1-32.) As mitigation, Valiano stated
11 that it would achieve net zero emissions through the purchase and retirement of off-site
12 carbon offsets. The off-site offsets would be purchased either through an offsets registry
13 certified by CARB or, if no CARB-certified registry was available, through a registry
14 meeting the approval of the County Director of Planning and Development. The EIR
15 specifically referred to the use of offsite carbon offsets. (FEIR, p. 3.1.1-33.)

16 54. The Otay 250 project (Otay 250), to be located in the East Otay Mesa
17 Specific Plan area slightly north of the US-Mexico border, was previously designated for
18 technology park uses and is currently undeveloped. The General Plan identified the
19 overall East Otay Mesa Specific Plan as intended for technology manufacturing uses,
20 light and heavy industrial uses, commercial uses to serve employees and visitors, and
21 preservation of environmental resources. A general plan amendment was required to
22 remove the existing technology park designation from the site, to redesignate the 253-
23 acre site for the Otay 250 Project's residential and mixed uses, and to allow development
24 of up to 3,158 residential units, 78,000 square feet of commercial, and 765,000 square
25 feet of office uses.

26 55. A Draft Supplemental EIR (DSEIR) for the Otay 250 Project was
27 circulated for public review from March 23, 2017 to May 8, 2017. On April 13, 2018,
28 the County Planning Commission voted to recommend approval of the Project. On July

1 25, 2018, the Board of Supervisors certified the final EIR and granted the GPA and all
2 other required approvals and entitlements for the Project. The Notice of Determination
3 that is required by Public Resources Code section 21152(a) was posted by the County
4 Clerk on July 26, 2018.

5 56. The EIR for the Otay 250 Project stated that the total of GHG emissions,
6 after use of all reasonable and feasible on-site measures for avoiding or reducing GHG
7 emissions, could not reduce the Project's GHG emissions to net zero, making the GHG
8 emissions cumulatively significant. As mitigation, Otay 250 stated that it would achieve
9 net zero emissions through the purchase and retirement of off-site carbon offsets. The off-
10 site offsets would be purchased either through an offsets registry certified by CARB or, if
11 no CARB-certified registry was available, through a registry meeting the approval of the
12 County Director of Planning and Development. The EIR stated:

13 The County will consider, to the satisfaction of the Director of Planning and
14 Development Services (PDS), the following geographic priorities for GHG
15 reduction projects and programs: 1) off-site within the unincorporated areas
16 off site within the State of California; 4) off-site within the United States;
and 5) off-site internationally.

17 Geographic priorities would focus first on local reduction features
18 (including projects and programs that would reduce GHG emissions) to
19 ensure that reduction efforts achieved locally would provide co-benefits.
20 Depending on the carbon offset project utilized, co-benefits may include
21 reductions in criteria air pollutants, toxic air contaminants, energy demand,
22 water consumption, health benefits, social benefits, and economic benefits.
23 The applicant or its designee shall first pursue offset projects and programs
24 locally within unincorporated areas of the County of San Diego to the extent
such direct investment projects and programs are available and are
financially feasible, as reasonably determined by the Director of [Planning
and Development Services].

25 (FEIR, pp. 2.4-27 and 2.4-28.)
26
27
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1 57. The Planning Commission held a separate hearing on each of the Projects
2 and adopted separate findings and recommendations to the Board of Supervisors for each
3 Project.

4 58. The Board of Supervisors, although acting on all Projects on the same day,
5 adopted a separate Resolution making the approvals for each Project, adopted a separate
6 Ordinance for each Project, and separately certified the EIR for each Project, including
7 making required Findings and adopting mitigation measures and a monitoring program
8 for each Project, as well as a Statement of Overriding Considerations for each Project.

9 Greenhouse Gas Offsets for the Individual Projects Are Inconsistent With the
10 Mitigation Adopted for the 2011 General Plan

11 59. The Harmony Grove South, Valiano, and Otay 250 Projects' EIRs all state
12 that those Projects will mitigate the significant adverse effects of their GHG emissions
13 through the purchase and retirement of carbon offsets, including off-site offsets, which
14 may include out-of-County offsets.

15 60. Each Project is required to show GHG reductions from offsets only at the
16 time of the first grading or construction permit (Harmony Grove South EIR, p. 2.7-28;
17 Valiano EIR, p. 3.1.1-32; Otay EIR, p. 2.4-28). Therefore, neither the County nor the
18 public can know whether any of the three Projects is or is not consistent with the
19 General Plan's Mitigation Measure CC-1.2 until long after the CEQA process has been
20 completed.

21 61. On information and belief, Petitioner alleges that the Director of Planning
22 and Development Services, to whose satisfaction the EIR for each of the three Projects
23 state that the efficacy of off-site offsets must be demonstrated, does not have specialized
24 or institutional expertise in determining the efficacy of offsets. Petitioner is unaware of
25 any criteria made public by the County against which off-site carbon offsets will be
26 evaluated to demonstrate that the offsets are real, permanent, additional (i.e., not required
27 by any other statute, regulation, or program), and enforceable, nor is Petitioner aware that
28

1 the Director's decision will be made in a public manner, with opportunity for public
2 review and comments.

3 62. The County's 2011 GPU has multiple policies to reduce vehicle miles
4 traveled (VMT) in the County, e.g., COS-20.3; M-8.1; M-8.3; M-8.6; M-8.7. However,
5 the Harmony Grove South EIR states that the Project will *increase* VMT by
6 approximately 11.5 million miles per year (EIR, p. 2.7-17), and the Valiano EIR states
7 that the Project will increase VMT by approximately 9.7 million miles per year (EIR, p.
8 3.1.1-27). Remarkably, the Otay 250 EIR states that the Project will decrease County-
9 wide VMT by an unspecified amount (EIR, p. 22.1-21).

10 63. Mitigation Measure CC-1.2 in the 2011 General Plan's EIR Mitigation
11 Measure CC-1.2 provides, in pertinent part:

12 The County Climate Change Action Plan will achieve comprehensive
13 and enforceable GHG emissions reduction of 17% (totaling 23,572
14 MTC02E) from *County* operations from 2006 by 2020 and 9%
15 reduction (totaling 479,717 MTC02E) in *community* emissions from
2006 by 2020.

16 64. Harmony Grove South, Valiano, and Otay 250 are not facially consistent
17 with the GHG reductions called for in Mitigation Measure CC-1.2, since they rely on use
18 of GHG offsets that may be outside the County, and not obtained either from County
19 operations or community emissions in the County. Their EIRs do not establish
20 consistency with Mitigation Measure CC-1.2, which is a central and fundamental Policy
21 of the General Plan Update, since the EIRs do not provide that their offsets will be
22 obtained within the County, and none performs a consistency analysis with Mitigation
23 Measure CC-1.2. None of the Projects' EIRs performs an analysis of the potential
24 adverse environmental impacts of approving that project if that project is inconsistent
25 with Mitigation Measure CC-1.2.
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1 The County’s Autodelete Policy Makes Preparation of a Legally Compliant
2 Administrative Record Under CEQA Impossible, in Violation of CEQA.

3 65. As set out above in Paragraph 15, the County has a document retention
4 policy that automatically deletes various documents 60 days after they are created or
5 received, unless County personnel take affirmative steps to archive them. On information
6 and belief, and based on extensive experience by Petitioner with County environmental
7 review processes, Petitioner alleges that it is common practice for County staff,
8 particularly Planning and Development Services staff, to send and receive multiple
9 documents, including memoranda, studies, and emails to and from developers and
10 developers’ consultants regarding a project for which permits have or will be applied by a
11 given developer, and regarding the County’s compliance with CEQA as to such project.

12 66. In *Golden Door Properties, LLC v. County of San Diego* (San Diego
13 Superior Court No. 37-2018-00030460-CU-TT-CTL) (*Golden Door*), concerning
14 preservation of County records for the Newland Sierra project, the County filed
15 opposition papers indicating that (a) for projects where litigation is being threatened or is
16 expected, only a limited category of “official records” are being retained; and (b) for
17 projects that actually have had litigation holds placed on them, the only emails being
18 retained are those either selected by certain County employees for retention or those that
19 contain certain limited, non-public search terms. A Temporary Restraining Order issued
20 by the Superior Court remains in effect.

21 67. Based on its knowledge of the County’s autodeletion policy, the complexity
22 of the three Projects listed here, and its prior experience with County permitting
23 processes and practices, Petitioner is informed and believes, and on that basis alleges, that
24 at least some emails have been created or received by the County that are not posted on
25 the County’s website (and thus publicly available) regarding each of the Harmony Grove
26 South, Valiano, and Otay 250 projects. Based on the papers filed by the County in
27 *Golden Door*, Petitioner is informed and believes, and on that basis alleges, that it is
28 difficult or impossible for Petitioner to determine what such emails have been created or

1 received, whether such emails have been archived or autodeleted, or whether future such
2 emails will be archived or autodeleted.

3 68. Public Resources Code section 21167.6, and especially section 21167.6,
4 subdivision (e), establish categories of documents that are legally required to be placed in
5 the administrative record in any case challenging a project approval for failure to comply
6 with CEQA, as this Petition does. Based on information and belief, Petitioner alleges
7 that some emails falling into one or more of the categories set out in Public Resources
8 Code section 21167.6, subdivision (e), which are therefore documents required to be in
9 the administrative record of this case may have been autodeleted, or may be autodeleted
10 in the future, in violation of CEQA's requirements concerning administrative records.

11 69. Petitioner Sierra Club is beneficially interested in the existence of a legally
12 adequate administrative record in this case, in order that a just, correct and fully
13 supported decision may be made in the case. It is therefore beneficially interested both in
14 determining the legality of County's autodeletion policy, and in the preservation and
15 placing in the administrative record for this case each and every document, including all
16 emails, that is legally required to be part of that record.

17 The County Attempts to Avoid Government Code Section 65258(b)'s Limitation
18 on Amending General Plans More Than Four Times a Year By "Batching"
19 Multiple Amendments and Adopting Them All As a Single Amendment

20 70. As set out in Paragraph 19 above, Government Code section 65358,
21 subdivision (b) prohibits local agencies like the County from amending a mandatory
22 element of the agencies' General Plan more than four times a year. The Land Use
23 Element is a mandatory element, as set out in Government Code section 65302,
24 subdivision (a).

25 71. The County amended the Land Use Element of its General Plan once in
26 2018 when it approved a General Plan Amendment for the Lake Jennings Marketplace
27 project on January 24, 2018. The three General Plan Amendments for the three Projects
28

1 herein brought to four the total of such amendments made by the County in 2018, the full
2 number allowed by the Government Code in a single year.

3 72. On September 26, 2018, the County approved an additional General Plan
4 Amendment for the Newland Sierra project, which exceeded Government Code section
5 65358, subdivision (b)'s four-times-a-year limit for general plan amendments.

6 73. Petitioner Sierra Club filed comments critical of the County's policy of
7 "batching" such Amendments in order to approve more than four such Amendments in
8 one year. In 2019, the County may attempt to approve more than four projects that
9 require GPAs. Petitioner may file challenges under CEQA to one or more of these
10 projects and is therefore beneficially interested in a determination by this Court as to the
11 legality of County's "batching" policy for General Plan amendments.

12 74. A conflict and active controversy currently exists between the County and
13 Petitioner, in that the County and its County Counsel assert that the batching policy is
14 fully legal under Government Code section 65358, subdivision (b), while Petitioner
15 believes it is not.

16
17 **FIRST CAUSE OF ACTION**

18 **(VIOLATION OF CEQA, PUBLIC RESOURCES CODE SECTIONS 21002**
19 **AND 21081, CEQA GUIDELINES 15126.4)**

20 75. Petitioner hereby realleges all allegations in the previous paragraphs, as
21 though set forth here in full.

22 76. CEQA, at Public Resources Code section 21002, provides that "public
23 agencies should not approve projects as proposed if there are feasible alternatives or
24 feasible mitigation measures available which would substantially lessen the significant
25 environmental effects of such projects. . . ." In addition, Public Resources Code section
26 21081 provides that "no public agency shall approve or carry out a project for which an
27 environmental impact report has been certified which identifies one or more significant
28 effects on the environment that would occur if the project is approved or carried out

1 unless” either the public agency makes findings that changes or alterations to the project
2 have been made that would mitigate or avoid such significant effects, or the public
3 agency adopts a Statement of Overriding Consideration that such significant effects are
4 outweighed by specified economic, social, or other benefits of the project. (Pub. Res.
5 Code section 21081, subds. (a), (b).) Such findings must be supported by substantial
6 evidence. (Pub. Res. Code section 21081.5.)

7 77. The County’s approval of the Harmony Grove South, Valiano, and Otay
8 250 Projects violates Public Resources Code sections 21002 and 21081 in that GHG
9 emissions from each of the Projects may have significant cumulative impacts on the
10 environment by contributing to climate change in California and elsewhere, and such
11 significant effects have not been adequately mitigated. The County, in certifying the EIR
12 for each Project, and in approving each Project, relied on the option of providing off-site
13 and out-of-County reductions in GHG emissions that are not legally adequate to serve as
14 mitigation for GHG emissions from each Project, in that the off-site emissions reductions
15 are not real, permanent, quantifiable, verifiable, and enforceable reductions as set forth in
16 Health and Safety Code Section 38562(d)(1), and are not additional to any other
17 requirement of law or regulation. (CEQA Guidelines section 15126.4(c)(3).)

18 78. The County’s approval of the Harmony Grove South, Valiano, and Otay
19 250 Projects violates Public Resources Code sections 21002 and 21081 in that GHG
20 emissions from each of the Projects will have significant cumulative emissions on the
21 environment by contributing to climate change in California and elsewhere, and such
22 significant effects have not been adequately mitigated. The County, in certifying the EIR
23 for each Project, and in approving each Project, left the determination of the adequacy of
24 off-site, out-of-County GHG emissions reductions to fully offset the GHG emissions of
25 each Project to the discretion of the Director of Planning and Development Services, with
26 no regulations or procedures established by which the Director should make such
27 determination. Without established, defined, and scientifically supported criteria for
28 approving offset registries and offset programs, off-site offsets may be approved by the

1 Director that will not actually reduce GHG emissions, or that may not reduce them to the
2 degree claimed in the relevant Project’s EIR.

3 79. CEQA is a statute intended to “protect[] informed self-government”
4 (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47
5 Cal.3d 376, 392) and “to demonstrate to an apprehensive citizenry that the agency has, in
6 fact, analyzed and considered the ecological implications of its action.” (*No Oil, Inc. v.*
7 *City of Los Angeles* (1974) 13 Cal.3d 68, 86.) Without duly adopted, publicly available
8 criteria in place under which the Director of Planning and Development Services will
9 make the determination as to the validity of off-site GHG reduction registries and
10 programs, the “apprehensive citizenry” of San Diego will not be able to know whether
11 the County has approved projects that have significant environmental impacts that have
12 not been adequately mitigated, in violation of CEQA’s purposes of full environmental
13 disclosure and public accountability.

14 80. The County’s approval of the Harmony Grove South, Valiano, and Otay
15 250 Projects violates Public Resources Code sections 21002 and 21081, and the CEQA
16 Guidelines found at California Code of Regulations, title 14, sections 15126 and 15126.2,
17 in that the EIR for each Project fails to analyze, disclose, and if necessary, provide
18 adequate mitigation for, the impacts resulting from the inconsistency of each Project with
19 County Land Use Element Policy CC-1.2, which requires specified GHG reductions
20 within the County, given that each Project relies on the ability to use out-of-County GHG
21 offsets.

22 81. In each of the respects enumerated above, Respondent County of San Diego
23 has violated its duties under the law, abused its discretion, failed to proceed in the manner
24 required by law, and decided the matters complained of without the support of substantial
25 evidence, all in violation of CEQA.
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27
28

1 **SECOND CAUSE OF ACTION**

2 **(VIOLATION OF CEQA, PUBLIC RESOURCES CODE**
3 **SECTION 21167.6)**

4 82. Petitioner hereby realleges all allegations in the previous paragraphs, as
5 though set forth here in full.

6 83. The County's approval of the Harmony Grove South, Valiano, and Otay
7 250 Projects violates Public Resources Code section 21167.6 in that during its
8 consideration of the applications of these Projects for permits and other approvals and
9 entitlements, the County has failed to preserve all documents specified in Public
10 Resources Code section 21167.6, and particularly 21167.6, subdivision (e), as necessary
11 for production and certification of a complete administrative record to enable judicial
12 review of the County's actions in regard to each Project. The County's policy of deleting
13 emails created or received by the County after 60 days, unless such emails are specially
14 archived, has made it impossible to determine whether all documents specified in Public
15 Resources Code section 21167.6, and particularly 21167.6, subdivision (e), have been
16 preserved, through archiving or other method, for inclusion in the administrative record
17 of any challenge under CEQA to the County approvals, including the challenge made
18 herein.

19 84. If the County has not preserved documents required to be in the
20 administrative record for each Project challenged herein, and if, in consequence, the
21 administrative record cannot be properly certified, the approval for each affected Project
22 must be set aside. (*Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362,
23 373 [the consequence of providing a record to the courts that does not evidence the
24 agency's compliance with CEQA is reversal of project approval].)

25 85. By its failure to adequately preserve documents required under CEQA to be
26 placed in the administrative record in this case, Respondent County of San Diego has
27 violated its duties under the law, abused its discretion, failed to proceed in the manner
28

1 required by law, and decided the matters complained of without the support of substantial
2 evidence, all in violation of CEQA.

3
4 **THIRD CAUSE OF ACTION**

5 **(FOR DECLARATORY RELIEF OF THE COUNTY’S RIGHTS AND DUTIES**
6 **UNDER GOVERNMENT CODE SECTION 65358(b) REGARDING**
7 **BATCHING OF AMENDMENTS TO A MANDATORY ELEMENT OF**
8 **COUNTY’S GENERAL PLAN)**

9 86. Petitioner hereby realleges all allegations in the previous paragraphs, as
10 though set forth here in full.

11 87. Government Code section 65358, subdivision (b), expressly limits any
12 amendment by the County of a mandatory element of its General Plan to four such
13 amendments per year. The County has now approved five such amendments to its
14 General Plan’s Land Use Element, which element is classified as a mandatory element
15 pursuant to Government Code section 65302(a).

16 88. There is an active dispute and controversy between the County and
17 Petitioner regarding amendments to the County’s General Plan. The County contends it
18 has the legal right to amend the Land Use Element of its General Plan more than four
19 times in one year, in that it contends that it may approve multiple such amendments on
20 one occasion by “batching” them, and that it may approve any number of such “batched”
21 amendments, each containing as many changes to the General Plan’s Land Use Element
22 as the County thinks needed, upon each of four occasions per year. Petitioner contends
23 that, to promote the stable, rational, and coherent land use planning goals of the
24 Government Code, the County may not approve as many amendments as it wishes to the
25 Land Use Element on each of four occasions per year, but is limited to a single such
26 amendment on each of four occasions per year.

27 89. Petitioner asks this Court for a declaration of the rights and duties of the
28 parties and that the County has a mandatory and nondiscretionary duty to limit itself to

1 approving no more than one amendment to the Land Use Element of its General Plan on
2 each of four occasions per year.

3 90. This cause of action is exclusively for declaratory relief and shall not be
4 construed in any way to jeopardize the approvals for the Harmony Grove South, Valiano,
5 and Otay 250 projects.

6 91. Petitioner has complied with Public Resources section 21167.7 by serving a
7 copy of this Petition on the California Attorney General. A copy of this letter is attached
8 as **Exhibit A**.

9 92. Petitioner has complied with Public Resources section 21167.5 by sending
10 a notification to the County of San Diego of its intention to file this Petition, prior to
11 filing. A copy of this letter is attached as **Exhibit B**.

12 93. Petitioner has elected to prepare the administrative record in this case.
13 Petitioner's Notice of Election to Prepare the Administrative Record is attached as
14 **Exhibit C**.

15 PRAYER

16 WHEREFORE, Petitioner prays for relief as follows:
17

18 1. For an alternative and peremptory writ of mandate commanding
19 Respondent County to immediately vacate and set aside its certification of the
20 Environmental Impact Reports for the Harmony Grove South, the Valiano, and the Otay
21 250 Projects and to vacate and set aside the approvals of each Project until and unless the
22 County fully complies with all requirements of CEQA;

23 2. For an alternative and peremptory writ of mandate commanding the County
24 to archive and preserve all documents, including emails, created or received by County
25 personnel relating to the consideration and approval of permits and other entitlements for
26 the Harmony Grove South, Valiano, and Otay 250 Projects;
27
28

1 3. For an alternative and peremptory writ of mandate commanding the County
2 to set aside and abandon its policy of automatic deletion from County archives and files
3 of emails 60 days after such documents are created or received;

4 4. For a judgment stating that the County's approval of amendments to the
5 General Plan for Harmony Grove South, Valiano, and Otay 250 Projects constitute three
6 amendments for the purpose of Government Code section 65358, subdivision (b) and any
7 further amendments to the San Diego County General Plan's Land Use Element in the
8 2018 calendar year would violate Government Code section 65358, subdivision (b);

9 5. For costs of this suit;

10 6. For reasonable attorneys' fees; and

11 7. For such other relief as this Court deems just and proper.

12 DATE: July 8, 2018

Respectfully Submitted,

CHATTEN-BROWN & CARSTENS

15 By: /s Josh Chatten-Brown

16 Josh Chatten-Brown

17 Jan Chatten-Brown

18 Attorneys for Petitioner

EXHIBIT A

Hermosa Beach Office

Phone: (310) 798-2400

Fax: (310) 798-2402

San Diego Office

Phone: (858) 999-0070

Phone: (619) 940-4522



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Josh Chatten-Brown

Email Address:

jrcb@cbcearthlaw.com

Direct Dial:

(619) 940-4522

August 23, 2018

California Attorney General
600 W. Broadway 1800
San Diego, CA 92101

Re: Challenge to County of San Diego, *Sierra Club v. County of San Diego*


Honorable Attorney General:

Please find enclosed a copy of the Petition for Writ of Mandate filed to challenge the July 25, 2018 approval by the County of San Diego of the Harmony Village South, Valiano, and Otay 250 development projects and all related entitlements.

This Petition is being provided pursuant to the notice provisions of the Public Resources Code section 21167.7.

Please contact me if you have any questions.

Sincerely,


Josh Chatten-Brown

Enclosure:

Petition for Writ of Mandate and Complaint for Declaratory Relief

I am employed by Chatten-Brown & Carstens LLP in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2200 Pacific Coast Highway, Ste. 318, Hermosa Beach, CA 90254 . On August 23, 2018, I served the within documents:

LETTER TO THE CALIFORNIA ATTORNEY GENERAL

VIA UNITED STATES MAIL. I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices I placed the package for collection and mailing on the date and at the place of business set forth above.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 23, 2018, at Hermosa Beach, California 90254.



Cynthia Kellman

SERVICE LIST

California Attorney General
600 W. Broadway 1800
San Diego, CA 92101

EXHIBIT B

Hermosa Beach Office
Phone: (310) 798-2400
Fax: (310) 798-2402

San Diego Office
Phone: (858) 999-0070
Phone: (619) 940-4522



Josh Chatten-Brown
Email Address:
jrcb@cbcearthlaw.com

Direct Dial:
(619) 940-4522

August 23, 2018

By U.S. Mail

Ernest J. Dronenburg, Jr.
San Diego County Clerk
1600 Pacific Highway, Suite 260
San Diego, CA 92101

Re: Challenge to the County of San Diego's Approval of the Harmony Grove,
Valiano, and Otay 250 Development Projects

Dear Mr. Dronenburg:

Pursuant to Public Resources Code section 21167.5, please take notice that the Sierra Club plans to file a petition for writ of mandate and complaint challenging the July 25, 2018 approvals by the County of San Diego of the Harmony Grove South, Valiano, and Otay 250 projects, and all attendant entitlements.

This petition will be filed in the San Diego Superior Court, Central Division, 330 W. Broadway Street, San Diego, CA 92101.

Sincerely,

A handwritten signature in blue ink that reads 'Josh Chatten-Brown'. The signature is written in a cursive style. Below the signature, the name 'Josh Chatten-Brown' is printed in a standard black font.

PROOF OF SERVICE

I am employed by Chatten-Brown & Carstens LLP in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2200 Pacific Coast Highway, Ste. 318, Hermosa Beach, CA 90254 . On August 23, 2018, I served the within documents:

LETTER TO SAN DIEGO COUNTY CLERK

VIA UNITED STATES MAIL. I am readily familiar with this business’ practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices I placed the package for collection and mailing on the date and at the place of business set forth above.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 23, 2018, at Hermosa Beach, California 90254.

Cynthia Kellman

SERVICE LIST

Ernest J. Dronenburg, Jr.
San Diego County Clerk
1600 Pacific Highway, Suite 260
San Diego, CA 92101

EXHIBIT C

1 CHATTEN-BROWN & CARSTENS LLP
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3 Josh Chatten-Brown (SBN 243605) jrcb@cbcearthlaw.com
4 Susan Durbin (SBN 81750) susanldurbin@gmail.com
5 302 Washington Street, #710
6 San Diego, CA 92103
7 619-940-4522; 310-798-2400
8 Fax: 310-798-2402

9 Attorneys for Petitioner Sierra Club

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN DIEGO**

12 SIERRA CLUB,

13 Petitioner,

14 v.

15 COUNTY OF SAN DIEGO,

16 Respondent.

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20 RCS - HARMONY PARTNERS, LLC,
21 INTEGRAL COMMUNITIES, LLC,
22 THE EDEN HILLS PROJECT OWNER,
23 LLC, and SUNROAD NEVADA
24 ENTERPRISES, INC.,

25 Real Parties in Interest
26

) CASE NO.:

**NOTICE OF ELECTION TO PREPARE
THE ADMINISTRATIVE RECORD**


IMAGED FILE

(CALIFORNIA ENVIRONMENTAL
QUALITY ACT)

1 Petitioner Sierra Club hereby gives notice pursuant to Public Resource Code section
2 21167.6, that Petitioner elects to prepare the administrative record in the above-entitled action.
3

4 DATE: August 23, 2018

Respectfully Submitted,
CHATTEN-BROWN & CARSTENS

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7 By: 
8 Josh Chatten-Brown
9 Jan Chatten-Brown
10 Susan Durbin
11 Attorneys for Petitioner
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1 **PROOF OF SERVICE**

2 I am employed by Chatten-Brown, Carstens & Minter LLP in the County of Los
3 Angeles, State of California. I am over the age of 18 and not a party to the within action. My
4 business address is 2200 Pacific Coast Highway, Ste. 318, Hermosa Beach, CA 90254 . On
July 9, 2019, I served the within documents:

5 **SECOND AMENDED PETITION FOR WRIT OF MANDATE AND**
6 **COMPLAINT FOR DECLARATORY RELIEF**

7 **VIA UNITED STATES MAIL.** I am readily familiar with this business’ practice for
8 collection and processing of correspondence for mailing with the United States Postal Service.
9 On the same day that correspondence is placed for collection and mailing, it is deposited in
10 the ordinary course of business with the United States Postal Service in a sealed envelope with
11 postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or
package addressed to the person(s) at the address(es) as set forth below, and following
ordinary business practices I placed the package for collection and mailing on the date and at
the place of business set forth above.

12 **VIA ONE LEGAL E-SERVICE.** By submitting an electronic version of the
13 document(s) to One Legal, LLC, through the user interface at
www.onelegal.com.

14 **VIA ELECTRONIC SERVICE.** I caused the above-referenced document(s) to be sent to
15 the person(s) at the electronic address(es) listed below.

16 I declare that I am employed in the office of a member of the bar of this court whose
17 direction the service was made. I declare under penalty of perjury under the laws of the State
18 of California that the above is true and correct. Executed on July 9, 2019, at Hermosa Beach,
California 90254.

19
20
21 /s/ Viviana Duran

22

Viviana Duran

1 **SERVICE LIST**

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