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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/30/2019 at 12:30:59 PM
Clerk of the Superior Court
By Regina Chanez, Deputy Clerk

37-2019-00046002-CU-TT-CTL

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SAN DIEGO, CENTRAL COUNTY DIVISION**

15 **DAVISSON ENTERPRISES, INC.**

16 PETITIONER,

17 v.

18 **CITY OF SAN DIEGO; CITY COUNCIL**
19 **OF THE CITY OF SAN DIEGO; AND**
20 **DOES 1-10,**

21 RESPONDENTS.

22 **CR OTAY CANYON RANCH**
23 **ASSOCIATES, LLC; AND DOES 11-20,**

24 REAL PARTIES IN INTEREST.

) CASE No:

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

) CCP §§ 1085, 1094.5; PRC § 21000 *et seq.*;
) Gov. Code § 65460 *et seq.*

INTRODUCTION

1
2 1. This action challenges the July 29, 2019 decision of the City of San Diego and its
3 City Council (collectively, "City" or "Respondents") to approve the Otay Mesa Central Village
4 Lumina Project No. 555609 ("Project") proposed by Real Party in Interest CR Otay Canyon
5 Ranch Associates, LLC ("CR Associates" or "Real Party").

6 2. In approving the Project, the City violated several state and local laws, including
7 the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et
8 seq., the CEQA Guidelines, title 14 California Code of Regulations, section 15000 et seq., the
9 California Planning and Zoning Law, Government Code section 65450 et seq, and the Central
10 Village Specific Plan within the Otay Mesa Community Plan.

11 3. For these reasons, the City's approval of the Project and its reliance on an
12 insufficient CEQA document constitutes an abuse of discretion and must be overturned.

PARTIES

13
14 4. Petitioner Davisson Enterprises, Inc. ("Petitioner" or "Davisson") is a California
15 corporation incorporated under the laws of the State of California, having its principal place of
16 business in La Mesa, California.

17 5. Petitioner is the general partner of both the Clara Davisson Properties, L.P., and
18 Hattie Davisson Properties, L.P. (collectively referred to herein as the "Davisson Limited
19 Partnerships").

20 6. Petitioner participated extensively in the administrative process leading up to the
21 City's approval of the Project. Petitioner and the Davisson Limited Partnerships are owners of
22 real property within the Central Village Specific Plan area and have a significant stake in
23 ensuring that the City enforces the requirements of CEQA and the Central Village Specific Plan.

24 7. Petitioner and other property owners and developers within the Central Village
25 Specific Plan area have a direct and beneficial interest in the City's compliance with laws
26 bearing upon the approval of the Project. These interests will be directly and adversely affected
27 by the Project, which violates provisions of law as set forth in this Petitioner, and which would
28 cause substantial harm to the natural environment and the quality of life in the surrounding

1 community. The maintenance and prosecution of this action will confer a substantial benefit on
2 the public by protecting the public from environmental and other harms alleged herein.

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

10 9. Petitioner is unaware of the true names and capacities of Respondents fictitiously
11 named DOES 1 through 10 and sue such respondents by fictitious names. Petitioner is informed
12 and believes, and on the basis of such information and belief, alleges the fictitiously named
13 respondents are also responsible for the actions described in this Petition. When the true
14 identities and capacities of these respondents have been determined, Petitioner will amend this
15 Petition, with leave of the court if necessary, to insert such identities and capacities.

16 10. Petitioner is informed and believes, and thereon alleges, that Real Party in Interest
17 CR Otay Canyon Ranch Associates, LLC is, and at all times herein mentioned was, the applicant
18 for approval of the Project. CR Otay Canyon Ranch Associates, LLC is listed on the Notice of
19 Determination for the Project as "Project Applicant" and is thus a real party in interest within the
20 meaning of Public Resources Code section 21167.6.5. Petitioner is informed and believes, and
21 thereon alleges that CR Otay Canyon Ranch Associates, LLC is a Delaware Limited Liability
22 Company registered to do business in California with the California Secretary of State.

23 11. Petitioner is unaware of the true capacities of Real Parties in Interest Does 11
24 through 20 and sues such real parties in interest by fictitious names. Petitioner is informed and
25 believes, and thereon alleges, that the fictitiously named real parties in interest are directly and
26 materially affected by the actions described in this Petition. When the true identities and
27 capacities of these real parties in interest have been determined, Petitioner will amend this
28 Petition, with leave of the court if necessary, to insert such identities and capacities.

JURISDICTION AND VENUE

12. Petitioner realleges and incorporates by reference the preceding paragraphs in their entirety.

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

14. Venue for this action properly lies in the Superior Court for the State of California in and for the County of San Diego because Respondents' main offices are located in and the actions complained of have occurred and will occur in the City and County of San Diego.

15. Petitioner has performed any and all conditions precedent to filing the instant action and has exhausted any and all available administrative remedies to the extent possible and required by law. Petitioner, on its own behalf, and as the general partner on behalf of the Davisson Limited Partnerships, submitted numerous objections to the City's approval of the Project and the City's inadequate analysis of the Project.

16. Respondents have taken final agency actions with respect to approving the Project. Respondents have a duty to comply with applicable state laws, including but not limited to CEQA, prior to undertaking the discretionary approvals at issue in this lawsuit. Petitioner possesses no effective remedy to challenge the approvals at issue in this action other than by means of this lawsuit.

17. On August 28, 2019, Petitioner complied with Public Resources Code section 21167.5 by emailing and mailing to Respondents a letter stating that Petitioner planned to file a Petition for Writ of Mandate seeking to invalidate Respondents' approval of the Project. Attached hereto as Exhibit A is a true and correct copy of this letter.

18. On August 30, 2019, Petitioner will comply with Public Resources Code section 21167.7 and Code of Civil Procedure section 388 by furnishing a copy of the Petition to the Attorney General of the State of California. Attached hereto as Exhibit B is a true and correct copy of the letter transmitting the Petition to the Attorney General.

1 19. Pursuant to Public Resources Code section 21167.6(b)(2), Petitioner elects to
2 prepare the record of proceedings in this action. Concurrently with this Petition, Petitioner will
3 file a notice of election to prepare the administrative record.

4 20. Petitioner has no plain, speedy, or adequate remedy in the course of ordinary law
5 unless this Court grants the requested writ of mandate to require Respondents to set aside their
6 approval of the Project. In the absence of such remedies, Respondents' approval will remain in
7 effect in violation of State law, and Petitioner will be irreparably harmed. No money damages or
8 legal remedy could adequately compensate Petitioner for that harm.

9 **STATEMENT OF FACTS**

10 21. Petitioner realleges and incorporates by reference the preceding paragraphs in
11 their entirety.

12 **The Environmental Impact Report for the Otay Mesa Community Plan Update**

13 22. On March 11, 2014, the City Council adopted the Otay Mesa Community Plan
14 Update, Resolution No. 308810 ("CPU"), to provide sustainable and equitable development
15 opportunities for all properties within the 9,300-acre planning area.

16 23. On March 25, 2014, the City Council approved the Final Environmental Impact
17 Report ("2014 FEIR") for the City of San Diego General Plan Amendment adopting the CPU
18 and the Otay Mesa Public Facilities Financing Plan.

19 24. The 2014 FEIR is a Program Environmental Impact Report pursuant to Code of
20 Regulations title 14 section 15168 which, by encompassing a series of actions that can be
21 characterized as one large project, is meant to provide a more exhaustive consideration of effects
22 and alternatives than a typical Environmental Impact Report for an individual action.

23 25. Under Code of Regulations title 14 section 15168, if a later activity would have
24 effects that were not examined in the previously prepared program EIR, further environmental
25 review is required.

26 26. The 2014 FEIR describes the expansion of the Otay Mesa Trunk Sewer
27 ("OMTS") system, which provides wastewater service to the CPU area, to accommodate growth
28 in the CPU area. (2014 FEIR § 5.14.1.2.)

1 27. The 2004 OMTS Master Plan and the 2009 Refinement and Phasing Report
2 concluded that installation of several gravity mains would be required due to projected increased
3 growth and increased wastewater flows associated with buildout of the CPU. (2014 FEIR §
4 5.14.4.1(b).)

5 28. The 2014 FEIR concluded that the improvements associated with the installation
6 of the gravity mains, required in future phases to accommodate wastewater generation resulting
7 from the buildout of the CPU area, would not result in significant new impacts to the
8 environment. (2014 FEIR § 5.14.4.1(b).)

9 29. The Multi-Habitat Planning Area (MHPA) is the geographical area of the CPU
10 within which the permanent Multiple Species Conservation Program (“MSCP”) preserve will be
11 assembled and managed for its biological resources. (2014 FEIR § 5.4.2.1(b).) Any
12 encroachment in the MHPA is considered a significant impact to the preservation goals of the
13 MSCP. (2014 FEIR § 5.4.3.2(a).)

14 30. The 2014 FEIR states that, because implementation of the CPU has the potential
15 to result in impacts to energy supply due to the development that is anticipated to occur, impacts
16 may need to be addressed in detail at the time specific projects are proposed. (2014 FEIR §
17 5.9.3.1.) Future projects would also be subject to review for measures that would further reduce
18 energy consumption in conformance with existing regulations. (2014 FEIR § 5.9.3.1(b).)

19 31. The 2014 FIER finds that “[t]he combination of planned sustainable building
20 techniques and energy efficiency practices would result in a decrease in energy requirements
21 relative to the current energy code.” (2014 FEIR § 5.9.3.1(b).) Based on this premise, the 2014
22 FEIR concluded that “impacts associated with energy use would be less than significant.” (2014
23 FEIR § 5.9.3.2.)

24 32. The 2014 FEIR measures greenhouse gas (“GHG”) emissions from four sources:
25 vehicular traffic, energy use, water use, and solid waste disposal practices. (2014 FEIR §
26 5.18.1.1(b).) Specifically, the 2014 FEIR notes that GHG emissions would result from the energy
27 used to supply, distribute, and treat water and wastewater as designed in the CPU. (2014 FEIR §
28 5.18.4.1(d).)

33. The 2014 FEIR explains that “[f]uture projects implemented in accordance with the CPU would be required as a condition of project approval to include GHG-reducing features identified in a project-specific analysis as well as demonstrating consistency with applicable GHG plans, policies, and regulations.” (2014 FEIR § 5.18.3.4.) It explains further: “Because the CPU GHG emissions would fall short of the 28.3 percent reduction goal relative to BAU [(Business as Usual)], the cumulative GHG emissions generated from CPU buildout would be considered significant. Therefore, subsequent projects implemented in accordance with the CPU would be required to implement GHG-reducing features beyond those mandated under existing codes and regulations.” (2014 FEIR 5.18.4.1(g).)

Climate Action Plan

34. On December 15, 2015, the City of San Diego adopted its Climate Action Plan (“CAP”), which calls for a 15 percent reduction in energy consumption from municipal facilities by 2020, and a 25 percent reduction by 2035.

35. The CAP is intended to serve as a plan for the reduction of greenhouse gas emissions pursuant to Code of Regulations title 14 section 15183.5(b).

36. The CAP implementation is dependent on the future adoption of consistent ordinances, policies and programs, and attainment of reduction targets requires significant City and regional actions.

The Central Village Specific Plan

37. On July 16, 2015, the City Council approved the most recent amendment (Resolution No. 309815) to the Otay Mesa Public Facilities Financing Plan (“PFFP”), which implements the General Plan and the Otay Mesa Community Plan by identifying the public facilities needed to serve the Otay Mesa community.

38. On April 4, 2017, the City Council adopted, pursuant to City of San Diego Land Development Code § 122.0107, the Central Village Specific Plan, Resolution No. 311019, Ordinance No. 20812 (“Specific Plan”), which designates a 229.2 acre site as a mixed use village located in the central portion of the City of San Diego’s Otay Mesa Community. The Project is located within the site designated by the Specific Plan.

1 39. By its own language, “[t]he Central Village Specific Plan is a regulatory
2 document that sets forth physical design standards and policies relative to land use designations;
3 building intensity; landscaping; architectural character; vehicular and pedestrian circulation; and
4 other infrastructure improvements such as water, wastewater, and drainage systems.” (Specific
5 Plan § 1.8.)

6 40. The Specific Plan also specifies that “[t]he Specific Plan provisions shall take
7 precedence over the Land Development Code,” but “[w]here the Specific Plan is silent on a
8 topic, the Land Development Code requirements shall remain in force.” (Specific Plan § 1.8.)

9 41. The Specific Plan states, broadly, that it “provides the essential link between the
10 policies of the City of San Diego General Plan, Otay Mesa Community Plan, and the
11 development expected in the Specific Plan area. By functioning as a regulatory document, the
12 Central Village Specific Plan provides a means of implementing and detailing the City’s General
13 Plan and Otay Mesa Community Plan. In this regard, all future development plans and
14 entitlement permits for development in the Central Village are required to be consistent with
15 policies and design standards set forth in this document and with all applicable City regulations.”
16 (Specific Plan § 1.8.1.) Additionally, the Specific Plan is implemented by the PFFP “as it
17 identifies the public facilities needed to comply with General Plan standards and the Otay Mesa
18 Community Plan.” (Specific Plan § 1.8.1.)

19 42. The Specific Plan’s Infrastructure Element requires that “[s]ewer flows generated
20 in the portions of the site located west of Cactus Road, as well as portions of Planning Areas 10
21 and 13, would be conveyed to a gravity main located underneath Cactus Road extending from
22 Siempre Viva Road to just north of Street C.” (Specific Plan § 2.6.1.2.) The area described
23 encompasses the Project.

24 43. Gravity sewers, by relying solely on gravity to generate flow, require no energy
25 and therefore do not emit greenhouse gases through their operation.

26 44. The Specific Plan’s Infrastructure Element also notes that “sewer mains shall be
27 installed at adequate depths to serve all planning areas within the Central Village.” (Specific Plan
28 § 2.6.1.2.)

45. The Specific Plan further states that, “[p]rior to approval of a Tentative Map or any other discretionary entitlement approval, a sewer study will be required to analyze its sewer basin and the contribution of others in the basin,” and that “[t]he sewer study shall comply with the Public Utilities Department’s Sewer Design Guide, latest edition.” (Specific Plan § 2.6.1.2.)

46. The City of San Diego Public Utilities Department Sewer Design Guide, revised May 2015, allows for sewer mains to exceed 20 feet in depth “when adequate justification is provided” and upon “approval of the Wastewater Collection Division Senior Civil Engineer.” (Sewer Design Guide § 1.3.1.3.)

47. The Specific Plan requires that “[a]ll water and sewer improvements needed to serve each development phase within the Central Village shall be in place and fully operational prior to the issuance of occupancy permits.” (Specific Plan § 2.6.1.3.)

48. “Substantive Specific Plan modifications” – modifications which do not meet the criteria of a “Minor Modification” – require a “Formal Specific Plan Amendment” processed pursuant to Process 5, as established in San Diego Municipal Code Division 5, Article 2, Chapter 11, and requiring the review and approval of the City Council. (Specific Plan § 3.9.) The only “Minor Modifications” relating to sewer systems in the Specific Plan are the “[f]inal sizing and precise location of water, sewer, storm drainage, and other like infrastructure improvements.” (Specific Plan § 3.8.)

The Project and Addendum

49. The Project proposes the development of a 93.4-acre site located in Otay Mesa, west of Cactus Road and north of Siempre Viva Road, to create up to 1,868 residential dwelling units, 62,525 square feet of commercial use, 6.3 acres of school or recreation use, 6.6 acres of parks, and 16.2 acres of public streets.

50. The Project includes an Addendum to the Otay Mesa Community Plan Update Program Environmental Impact Report No. 30330/304032 (“Addendum”), Tentative Map No. 1972222, Neighborhood Development Permit No. 2106744, Site Development Permit No. 2287794, Public Right-of-Way Vacation No. 2103455, and a Multi-Habitat Planning Area Boundary Line Adjustment (collectively the “Project Approvals”).

1 51. The Project does not provide gravity feed sewer mains to serve all planning areas
2 within the Central Village, as the Specific Plan requires, but instead proposes the construction of
3 two sewer mains which each connect to existing Sewer Pump Station 23T.

4 52. The southern sewer main proposed by the Project would be located adjacent to the
5 MSCP preserve area within a canyon made of nearly entirely steep hillside slopes protected
6 under the City's Environmentally Sensitive Lands ordinance and at risk for impacts arising from
7 leaks and flooding associated with pump station failures.

8 53. Without construction of a gravity-fed sewer system as part of the Project, it is
9 reasonably foreseeable that the remaining properties in the Central Village will be required to
10 either construct private sewer pump stations or raise the elevation of their properties to achieve
11 the height necessary for a gravity sewer system as part of their development. Future property
12 owners and developments in the Central Village would also be subject to increased costs which
13 could require changes in land use patterns to offset those increased costs, as well as slowing or
14 curtailing other developments in the Specific Plan area, worsening the existing housing shortage.

15 54. In contrast to gravity-fed sewers, pump stations result in increased GHG
16 emissions due to their increased energy use during operation and construction.

17 55. Pump stations also create odor impacts, noise impacts, maintenance requirements,
18 sewer spills, health and safety impacts and biological impacts arising from sewer spills, and risks
19 of failure particularly due to power outages and, therefore, require back-up diesel generators,
20 which in turn cause noise, air quality and GHG impacts.

21 56. The foreseeable necessity of other property owners to raise the elevation of their
22 properties to provide for a gravity sewer system would require importation of significant
23 amounts of soil which in turn creates construction noise, GHG emissions, drainage issues, traffic
24 impacts, and air quality impacts. Additionally, such activity would create an inconsistency with
25 the FEIR and the CPU plan which contemplate drainage from the currently existing topography,
26 not the increased velocity and potential change in direction of surface flow that would arise from
27 elevation changes.

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1 57. On May 7, 2019, the City of San Diego Development Services Department
2 submitted the Addendum, which found “no new significant impacts” for the Project and
3 therefore determined that “[n]o new CEQA findings are required with this project.” No public
4 review or comment followed submission of the Addendum.

5 58. The Addendum fails to address the full scope of environmental impacts that will
6 result from the City’s failure to comply with the development restrictions in the Specific Plan.

7 59. The Addendum fails to address the environmental impacts associated with the
8 Project’s pump station-reliant sewer system instead of the mandated gravity flow system.

9 60. The Addendum fails to consider a gravity-fed sewer system as an alternative to
10 the shallower pump station-reliant sewer system of the Project.

11 61. The Addendum fails to address the risks to the MSCP preserve created by the
12 Project’s pump station-reliant sewer system.

13 62. The Addendum fails to address the increased GHG emissions, air quality impacts,
14 odor impacts, noise impacts, traffic impacts, construction impacts, drainage impacts, biological
15 impacts, and health and safety impacts associated with the construction of the Project’s pump
16 station-reliant sewer system, the foreseeable future construction of private sewer pump stations,
17 or raising of property elevations to incorporate the future construction of a gravity sewer main.

18 63. On July 29, 2019, the City Council approved the Project.

19 64. A Notice of Determination for the Project approval was filed by the City on
20 August 2, 2019.

21 **FIRST CAUSE OF ACTION**

22 **Violation of CEQA**

23 **(Public Resources Code § 2100 et seq.; State & County CEQA Guidelines)**

24 65. Petitioner realleges and incorporates by reference the preceding paragraphs in
25 their entirety.

26 66. CEQA requires the lead agency for a project with the potential to cause
27 significant environmental impacts to prepare an Environmental Impact Report (“EIR”) that
28 complies with the requirements of the statute, including, but not limited to, the requirement to

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

6 67. CEQA mandates that the lead agency must consider direct physical changes in the
7 environment, as well as reasonably foreseeable indirect physical changes in the environment,
8 which may be caused by the project.

9 68. An addendum to a previously certified EIR may be prepared and adopted only if
10 minor technical changes or additions are necessary. For all other significant changes or effects
11 not previously discussed, a subsequent EIR or a supplement to the EIR is required. Subsequent
12 EIRs and supplements to EIRs must receive the same notice and public review as is given to a
13 draft EIR.

14 69. The 2014 FEIR itself states that "[i]f the subsequent activities would have effects
15 not analyzed in the [2014 FEIR], then further environmental review would be required pursuant
16 to the CEQA Statutes [sic] and Guidelines." (2014 FEIR p. 1-6.)

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

22 71. CEQA further mandates that a lead agency may approve a project that would have
23 significant, unavoidable environmental impacts only if the agency finds that the project's
24 benefits would outweigh its unavoidable impacts.

25 72. CEQA additionally mandates that an EIR consider the cumulative impacts of a
26 proposed project and probable future projects.

27 73. Under CEQA, all the findings required for an agency's approval of a project must
28 be legally adequate and supported by substantial evidence in the administrative record, and

1 CEQA further requires that an agency provide an explanation of how the evidence in the record
2 supports the conclusions the agency has reached.

3 74. Respondents failed to proceed in the manner required by law and violated CEQA
4 by approving the Addendum and the substantial changes it entails without public notice, without
5 an opportunity for public comments, and without proper evaluation of public comments.

6 75. Respondents violated CEQA by ignoring the required GHG mitigation measures
7 adopted in the 2014 FEIR and the CAP.

8 76. Respondents failed to proceed in the manner required by law and violated CEQA
9 by failing to comply with the requirements of CEQA and the CEQA Guidelines. The
10 inadequacies in the City's analysis include, but are not limited to, failure to adequately analyze
11 and mitigate the following direct, and reasonably foreseeable indirect, Project impacts:

- 12 a. Climate change and greenhouse gas;
- 13 b. Energy use;
- 14 c. Air quality;
- 15 d. Traffic and transportation;
- 16 e. Biological resources;
- 17 f. Land use;
- 18 g. Noise;
- 19 h. Odor;
- 20 i. Health and safety;
- 21 j. Drainage;
- 22 k. Operational and maintenance costs;
- 23 l. Land use.

24 77. Respondents violated CEQA by approving a sewer system inconsistent with the
25 GHG emissions standards in the 2014 FEIR and the CAP, as it is reasonably foreseeable that the
26 Project as approved will cause future developments to construct additional pump stations or raise
27 property elevations resulting in increased GHG emissions and other construction, noise, odor,
28 drainage, traffic, biological, and air quality impacts.

1 78. Respondents violated CEQA by failing to consider Project alternatives that would
2 have reduced significant impacts while still meeting project objectives.

3 79. Respondents violated CEQA by failing to consider the cumulatively considerable
4 environmental effects resulting from Project approval, including but not limited to:

- 5 a. Energy use associated with the foreseeable construction of multiple pump stations
6 required for future projects in the Specific Plan area;
- 7 b. GHG emissions associated with the operation of multiple pump stations required
8 for future projects in the Specific Plan area;
- 9 c. Noise associated with the operation of multiple pump stations required for future
10 projects in the Specific Plan area;
- 11 d. Odors associated with the operation of multiple pump stations required for future
12 projects in the Specific Plan area;
- 13 e. Sewer spills associated with the operation of multiple pump stations required for
14 future projects in the Specific Plan area;
- 15 f. Air quality impacts associated with the operation of multiple pump stations and
16 emergency generators required for future projects in the Specific Plan area;
- 17 g. Noise, odor, GHG, and air quality impacts associated with the importation of soil
18 to raise existing properties to allow for the construction of a gravity fed sewer
19 system for future development in the Specific Plan area;
- 20 h. Modification in land use which could require changes in land use patterns or
21 worsen the existing housing shortage.

22 80. Respondents violated CEQA by adopting findings that are inadequate as a matter
23 of law in that they are not supported by substantial evidence in the record.

24 81. As a result of the foregoing defects, Respondents prejudicially abused their
25 discretion and failed to proceed in the manner required by law. As such, Respondents' adoption
26 of Addendum No. 30330/304032 and approval of the Project must be set aside.

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SECOND CAUSE OF ACTION

Violation of the California Planning and Zoning Law

(Government Code § 65450 et seq.)

82. Petitioner realleges and incorporates by reference the preceding paragraphs in their entirety.

83. Under the California Planning and Zoning Law, no local public works project may be approved and no tentative map may be approved within an area covered by a specific plan unless it is consistent with the adopted specific plan.

84. The City is required to follow the law, including, but not limited to, the requirement that the City must not approve projects that are inconsistent with General Plan, CAP, CPU and/or Specific Plan policies.

85. The Specific Plan requires that “[s]ewer flows generated in the portions of the site located west of Cactus Road, as well as portions of Planning Areas 10 and 13, would be conveyed to a gravity main located underneath Cactus Road extending from Siempre Viva Road to just north of Street C.” (Specific Plan § 2.6.1.2.) The area described encompasses the Project.

86. The Project does not include the construction of a gravity sewer main as the Specific Plan requires, but instead proposes the construction of two non-gravity sewer mains which each connect to existing Sewer Pump Station 23T.

87. An actual and immediate controversy has arisen and now exists regarding the legality of the City’s action in approving the Project to proceed without construction of a gravity sewer main, thereby necessitating further construction of pump stations in the Central Village west of Cactus Road, when the Specific Plan specifically requires that sewer flows generated in the area west of Cactus Road be conveyed to a gravity main.

88. Additionally, the Project’s proposed sewer system is a substantive modification to the Specific Plan and therefore requires a formal Process 5 Specific Plan Amendment.

89. The City violated the law by failing to approve a Specific Plan Amendment to address the Project’s substantive modification to the Specific Plan.

///

1 90. The City's approval of the Project without a gravity sewer main failed to comply
2 with the City's CAP which requires avoidance of significant impacts related to long-term GHG
3 emissions and long-term operational emissions, and requires demonstration of a reduction in
4 BAU GHG emissions.

5 91. Respondents prejudicially abused their discretion and failed to proceed in the
6 manner required by law by approving the Project, making findings, and taking related actions
7 that do not comply with the General Plan, CAP, CPU, Specific Plan, and the California Planning
8 and Zoning Law. As such, Respondents' approval of the Project must be set aside.

9 **THIRD CAUSE OF ACTION**

10 **Declaratory Relief**

11 **(Violation of California Planning and Zoning Law)**

12 92. Petitioner realleges and incorporates by reference the preceding paragraphs in
13 their entirety.

14 93. An actual and immediate controversy has arisen and now exists regarding the
15 legality of Respondents' action in approving a project which fails to comply with the General
16 Plan, CAP, CPU, and Specific Plan.

17 94. Respondents are required to follow the law, including, but not limited to the
18 requirement that the City must not approve projects that are inconsistent with the General Plan,
19 CAP, CPU, and Specific Plan policies.

20 95. A judicial declaration is necessary and appropriate at this time in order that the
21 parties may ascertain their rights and obligations with respect to the General Plan, CAP, CPU,
22 and Specific Plan.

23 96. Therefore, Petitioner seeks a declaration that the City's action in approving the
24 Project without a sustainable, gravity-fed sewer system is inconsistent with the General Plan,
25 CAP, CPU, and Specific Plan, is an abuse of discretion, or otherwise fails to comply with the
26 law.

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PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for judgment as follows:

1. Alternative and peremptory writs of mandate directing the City to vacate and set aside the Project Approvals;
2. Alternative and peremptory writs of mandate directing the City to comply with the requirements of CEQA and to take any other action as required by Public Resources Code Section 21168.9;
3. Alternative and peremptory writs of mandate directing the City to comply with the requirements of the General Plan, CAP, CPU and Specific Plan;
4. For a temporary stay, temporary restraining order, and preliminary and permanent injunctions restraining the City and Real Parties in Interest and their agents, servants, and employees, and all others acting in concert with the City on their behalf, from taking any action to implement the Project pending full compliance with the requirements of CEQA, the CEQA Guidelines, State law, and the Specific Plan;
5. For a declaration that the City's action in approving the Project without a gravity-fed sewer system is inconsistent with the Specific Plan, is an abuse of discretion, or otherwise fails to comply with law;
6. For costs of the suit;
7. An order awarding Petitioner its attorneys' fees under Code of Civil Procedure section 1021.5, Government Code section 800, and other applicable authority; and
8. For such other and further relief as the Court deems just and proper.

DATE: AUGUST 30, 2019

VARCO & ROSENBAUM
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