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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF LAKE**

10 CENTER FOR BIOLOGICAL  
11 DIVERSITY

12 Petitioner,

13 v.

14 COUNTY OF LAKE, BOARD OF  
15 SUPERVISORS OF THE COUNTY OF  
LAKE; and DOES 1 through 20, inclusive,

16 Respondents.

17  
18 LOTUSLAND INVESTMENT  
HOLDINGS, INC.; and DOES 21 through  
19 40, inclusive,

20 Real Parties in Interest.

Case No.

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

[Pub. Res. Code § 21000, et seq.  
(California Environmental Quality Act);  
Code Civ. Proc. § 1094.5 (§ 1085); Gov.  
Code § 65300, et seq. (California Planning  
and Zoning Law)]

1 **INTRODUCTION**

2 1. This action challenges the July 21, 2020 decision of Lake County and its Board of  
3 Supervisors (“Respondents”) to approve the Guenoc Valley Mixed Use Planned Development  
4 Project (“Project”) and certify an Environmental Impact Report (“EIR”) for the Project (State  
5 Clearinghouse Number 2019049134). The Project includes a general plan amendment, a new  
6 zoning district, a zoning reclassification, subdivision map, and various other associated  
7 approvals.

8 2. The Project, proposed by Lotusland Investment Holdings, Inc. (“Real Party in  
9 Interest”), would encompass a total of approximately 16,000 acres in the southeastern portion of  
10 the County, about 2 miles southeast of Middletown and 15 miles north of Calistoga. The Project  
11 site is mostly undeveloped open space and ranch land, with some existing vineyards. It contains  
12 thousands of acres of valuable and sensitive oak woodland and savannah and habitat that  
13 supports numerous special-status plant and wildlife species, such as Golden eagle, Western pond  
14 turtle, and Yellow-legged frog.

15 3. The Project has been billed in promotional materials as “one of the world’s  
16 preeminent luxury resort communities” and “a perfect fit for the present moment, when high net  
17 worth individuals are seeking to move out of urban areas to more natural, healthy, and pristine  
18 environments.” It proposes a luxury resort with retail and commercial uses and low density  
19 residential “estates.” It will also include recreational facilities such as a golf course, spa and  
20 wellness center, and polo club. In total, the Project would permit the development of up to 850  
21 hotel and resort residential units and 1,400 residential estates. The Project also includes an off-  
22 site housing complex for its workers in Middletown.

23 4. Members of the public including the Center for Biological Diversity (the  
24 “Center”) and other environmental organizations raised concerns throughout the administrative  
25 process that the Project will have significant negative environmental impacts on, among other  
26 things, biological resources (including special status species), wildfire, community safety,  
27 greenhouse gas emissions, water quality, water supply, traffic, and land use. Yet, Respondents

1 failed to disclose or adequately analyze these impacts, failed to identify and adopt feasible  
2 mitigation measures to reduce them, and failed to consider reasonable alternatives to the Project.

### 3 **THE PARTIES**

4 5. Petitioner CENTER FOR BIOLOGICAL DIVERSITY is a non-profit  
5 conservation organization dedicated to the protection of native species and their habitats through  
6 science, policy, and environmental law. The Center has approximately 81,000 members  
7 worldwide, including members who reside within communities in the vicinity of the Project.  
8 The Center has worked for many years to protect imperiled plants and wildlife, open space, air  
9 and water quality, and the overall quality of life for people in unincorporated Lake County  
10 where the Project is proposed. Members of the Center will be directly and adversely affected by  
11 the approval and construction of the Project.

12 6. Respondent COUNTY OF LAKE (the “County”), a political subdivision of the  
13 State of California, is responsible for regulating and controlling land use in the unincorporated  
14 territory of the County, including implementing and complying with the provisions of CEQA.  
15 The County is the “lead agency” for the Project for the purposes of Public Resources Code  
16 Section 21067, with principal responsibility for conducting environmental review of the Project.  
17 The County has a duty to comply with CEQA and other state laws.

18 7. Respondent BOARD OF SUPERVISORS OF THE COUNTY OF LAKE (the  
19 “Board”) is the duly elected decision-making body of the County. As the decision-making body,  
20 the Board is responsible for granting the various approvals necessary for the Project and for  
21 ensuring that the County has conducted an adequate and proper review of the Project’s  
22 environmental impacts under CEQA.

23 8. On information and belief, Real Party in Interest LOTUSLAND INVESTMENT  
24 HOLDINGS, INC. (“Real Party in Interest”), is a corporation registered to do business in the  
25 State of California, is the owner of the real property that is the subject of the approvals  
26 challenged in this action, is the Project applicant for purposes of CEQA, and is the recipient of  
27 the approvals challenged in this action.

1 9. Petitioner does not know the true names and capacities, whether individual,  
2 corporate, associate, or otherwise, of respondents DOES 1 through 20, inclusive, and therefore  
3 sues said respondents under fictitious names. Petitioner will amend this Petition to show their  
4 true names and capacities when the same have been ascertained. Each of the respondents is the  
5 agent and/or employee of Respondents, and each performed acts on which this action is based  
6 within the course and scope of such respondent's agency and/or employment.

7 10. Petitioner does not know the true names and capacities, whether individual,  
8 corporate, associate, or otherwise, of real parties in interest DOES 21 through 40, inclusive, and  
9 therefore sues said real parties in interest under fictitious names. Petitioner will amend this  
10 Petition to show their true names and capacities when the same have been ascertained.

### 11 **JURISDICTION AND VENUE**

12 11. This Court has jurisdiction to issue a writ of mandate to set aside Respondents'  
13 decision to approve the Project under California Code of Civil Procedure section 1094.5 (or  
14 alternatively, section 1085) and Public Resources Code section 21168.5 (or alternatively, section  
15 21168) and section 21168.9.

16 12. Venue for this action properly lies in the Lake County Superior Court because  
17 Respondents and the proposed site of the Project are located in the County. Many of the  
18 significant environmental impacts from the Project that are the subject of this lawsuit would  
19 occur in the County, and the Project would affect the interests of County residents, including  
20 members of the Center.

21 13. Respondents have taken final agency actions with respect to approving the Project  
22 and certifying the EIR. Respondents had a duty to comply with applicable state laws, including  
23 but not limited to CEQA and the State Planning and Zoning Law, prior to undertaking the  
24 discretionary approvals at issue in this lawsuit.

25 14. Petitioner has complied with the requirements of Public Resources Code section  
26 21167.5 by serving a written notice of Petitioner's intention to commence this action on  
27

1 Respondents on August 19, 2020. A copy of the written notice and proof of service is attached  
2 hereto as Exhibit A.

3 15. Petitioner has complied with the requirements of Public Resources Code section  
4 21167.6 by concurrently notifying Respondents of Petitioner's request to prepare the record of  
5 administrative proceedings relating to this action. A copy of the Petitioner's Election to Prepare  
6 Administrative Record of Proceedings is attached hereto as Exhibit B.

7 16. Petitioner has performed any and all conditions precedent to filing this instant  
8 action and has exhausted any and all administrative remedies to the extent required by law,  
9 including, but not limited to, timely submitting extensive comments objecting to the approval of  
10 the Project and identifying in writing to Respondents the deficiencies in Respondents'  
11 environmental review for the Project on April 21, 2020, July 6, 2020, and July 20, 2020, and  
12 orally during the County of Lake Planning Commission's hearing on June 18, 2020 and the  
13 Board's hearings on July 7 and July 21, 2020.

14 17. This Petition is timely filed in accordance with Public Resources Code section  
15 21167 and CEQA Guidelines section 15112.

16 **GENERAL ALLEGATIONS**

17 **The Proposed Project and Project Site**

18 18. The Project is located on approximately 16,000 acres in unincorporated  
19 southeastern Lake County. The Project site is largely undeveloped, consisting predominately of  
20 agricultural land and open space. The site contains thousands of acres of oak woodlands, which  
21 provide valuable habitat and connectivity for a wide variety of species. Blue oak woodland is the  
22 most predominant habitat type on the Project site.

23 19. The site also includes a large network of ponds and reservoirs connected by major  
24 tributaries as well as perennial and intermittent streams. There are almost 200 acres of riparian  
25 stream habitat, as well as over 400 acres of emergent wetlands, over 650 acres of ponds and  
26 reservoirs, over 122 acres of jurisdictional wetlands, and over 10 acres of jurisdictional open  
27 waters in the Project area. The Project site provides wildlife movement corridors and contains

1 habitat for numerous protected and special status wildlife species such as the Golden eagle,  
2 Western pond turtle, and foothill yellow-legged frog, all of which have been observed on the  
3 site. At least nine separate special status plant species have also been observed and recorded  
4 onsite.

5         20. The Project is a phased master planned mixed-use resort and residential  
6 community intended to provide high-end luxury accommodations and services. The Project  
7 includes a resort, consisting of hotels, retail and commercial uses; low density residential  
8 housing; and recreation amenities such as a golf course, spa and wellness center, and equestrian  
9 facilities and polo club. The Project approvals include a General Plan and Zoning Ordinance  
10 Amendment that would introduce a new zoning district and rezone the entire Project site to  
11 permit the development of up to a total of 850 hotel and resort residential units and 1,400  
12 residential estates. The Project also includes an off-site housing complex for its workers, located  
13 on a 12.75-acre site in central Middletown, and an off-site water supply well and pipeline  
14 located adjacent to Butts Canyon Road. The Project will eventually add over 4,000 new  
15 residents—approximately 6% of Lake County’s 2017 population—to the Project site and off-site  
16 location.

17         21. The Project site is extremely susceptible to wildfire. The majority of the Project  
18 site is located in an area designated by the California Department of Forestry and Fire Protection  
19 as a “Very High” or “High” Severity Fire Hazard Zone. Environmental review documents for  
20 the Project indicate that a majority of the Project site has been burned by wildfire since the  
21 1950s, with at least 12 separate wildfires burning a portion of the Project site. More recent fires,  
22 including the Butts Fire in 2014 and the Jerusalem and Valley Fires in 2015, were large-scale  
23 fires that affected large portions of the site. In particular, the Valley Fire caused wide-spread  
24 damage to the southern portion of the site, particularly along Butts Canyon Road. These affects  
25 are still visible and present today.

26         22. The Project will generate greenhouse gas emissions from the removal of carbon-  
27 sequestering forest land, Project construction, and new vehicle traffic, in addition to other

1 sources. The EIR acknowledges that even with the proposed mitigation measures, the Project  
2 will emit over 30,000 metric tons of CO<sub>2</sub>-equivalent greenhouse gas emissions each year and  
3 acknowledges that this impact will be significant.

4 23. The EIR acknowledges that the Project will also have significant and unavoidable  
5 impacts to aesthetics, land use and agriculture, noise, and transportation.

### 6 **The Project Approvals and EIR**

7 24. On or about April 23, 2019, the County issued a Notice of Preparation (“NOP”)  
8 for the Project, in which it notified public agencies and interested individuals that, as a lead  
9 agency, it would be preparing a Draft EIR to analyze the proposed Project’s potentially  
10 significant environmental impacts.

11 25. On or about February 21, 2020, Respondents published a Notice of Availability of  
12 a Draft EIR for the Project and circulated the Draft EIR for public review and comment.

13 26. Petitioner and numerous others, including public agencies, organizations, and  
14 individual members of the public, submitted comments on the Draft EIR. Commenters pointed  
15 out serious deficiencies in the Draft EIR. For example, commenters explained that the Project  
16 would have significant impacts on biological resources (including special status species),  
17 greenhouse gas emissions, water supplies, water quality, wildfire risk and public safety, traffic,  
18 and land use, and that the EIR’s analysis and proposed mitigation of those impacts was woefully  
19 inadequate.

20 27. On April 21, 2020, before the close of the comment period on the Draft EIR,  
21 Petitioner submitted written comments on the Draft EIR to the County. The comments  
22 explained, among other things, that the Draft EIR failed to comply with CEQA in the following  
23 respects:

- 24 a. The Draft EIR’s Project Description failed to describe the whole of the proposed  
25 action and failed to accurately describe the nature and extent of the project  
26 approvals being considered as a part of the Project;

- 1 b. The Draft EIR's analysis of and mitigation for impacts to biological resources was  
 2 inadequate because, *inter alia*, it failed to disclose, evaluate, avoid and/or mitigate  
 3 significant impacts to biological resources including special status species,  
 4 sensitive habitat, including oak woodlands and aquatic resources, and wildlife  
 5 movement;
- 6 c. The Draft EIR's analysis of and mitigation for the Project's greenhouse gas  
 7 impacts was inadequate because, *inter alia*, the Draft EIR failed to provide  
 8 adequate information regarding the Project's emissions and purported reductions  
 9 from mitigation, the proposed mitigation measures were improperly deferred and  
 10 unenforceable, and the Draft EIR failed to consider all feasible mitigation;
- 11 d. The Draft EIR's analysis of and mitigation for the Project's impacts to water  
 12 quality and hydrology were inadequate because, *inter alia*, the Draft EIR provided  
 13 inadequate stream setbacks and buffers;
- 14 e. The Draft EIR's analysis of and mitigation for the Project's wildfire-related  
 15 impacts were inadequate because, *inter alia*, the Draft EIR failed to disclose the  
 16 increased risk of wildfire resulting from the Project, failed to disclose the full  
 17 extent of the Project's wildfire-related impacts, failed to adequately mitigate the  
 18 Project's wildfire-related impacts, and failed to consider the Project's impact on  
 19 the ability of residents and those in the vicinity of the Project site to evacuate  
 20 safely in the event of a wildfire; and
- 21 f. The Draft EIR failed to disclose, analyze or mitigate the Project's cumulative  
 22 impacts.

23 28. On or about June 12, 2020, the County released a Final EIR for the Project, which  
 24 included text changes to the Draft EIR and Respondents' responses to public comments on the  
 25 Draft EIR. Many of the defects identified in the Draft EIR identified by Petitioner and other  
 26 commenters persisted in the Final EIR.



1           29.    On June 18, 2020, the Planning Commission held a hearing to consider the  
2 Project. Petitioner submitted comments and testimony at the hearing requesting that the County  
3 postpone the Board’s approval of the project in order to permit the public and interested parties  
4 the time they needed to adequately and intelligently review the Final EIR and thousands of  
5 additional pages of accompanying documentation. After multiple commissioners admitted that  
6 they had not yet fully reviewed the voluminous Final EIR, the Planning Commission voted to  
7 continue the hearing for 7 days, to June 25, 2020.

8           30.    On June 25, 2020, the Planning Commission held a hearing at which it continued  
9 its consideration of the Project. At that meeting, the Planning Commission voted to recommend  
10 approval of the Project and certification of the EIR, and the item was calendared for hearing  
11 before the Board on July 7, 2020.

12          31.    On June 30, 2020, Petitioner submitted a letter to the County expressing alarm at  
13 the speed with which the County was hurrying to approve the Project and repeating its request  
14 that the County postpone the Board’s hearing to approve the Project to allow the public and  
15 interested parties the necessary time to adequately and intelligently review the Final EIR and  
16 accompanying documentation. The County provided no response to this letter.

17          32.    In a letter submitted to the County on July 6, 2020, before the hearing to consider  
18 the Project and certify the Final EIR, Petitioner described deficiencies remaining in the Final  
19 EIR, commenting that the Final EIR failed to comply with CEQA in the following respects:

- 20           a. The EIR’s analysis of and mitigation for impacts to biological resources remained  
21           inadequate because, *inter alia*, it failed to adequately disclose, evaluate, avoid  
22           and/or mitigate significant impacts to biological resources including special status  
23           species, sensitive habitat including oak woodlands and aquatic resources, and  
24           wildlife movement;
- 25           b. The EIR’s analysis of and mitigation for the Project’s greenhouse gas impacts  
26           remained inadequate because, *inter alia*, the EIR failed to provide adequate  
27           information regarding the Project’s emissions and purported reductions from

1 mitigation, the proposed mitigation measures were improperly deferred and  
2 unenforceable, and the EIR failed to consider all feasible mitigation; and

3 c. The EIR's analysis of and mitigation for the Project's impacts to water quality and  
4 hydrology remained inadequate;

5 d. The EIR's analysis of and mitigation for the Project's impacts to water supply  
6 remained inadequate;

7 e. The EIR's analysis of and mitigation for the Project's wildfire-related impacts  
8 remained inadequate because, *inter alia*, the EIR failed to disclose the increased  
9 risk of wildfire resulting from the Project, failed to disclose the full extent of the  
10 Project's wildfire-related impacts, failed to adequately mitigate the Project's  
11 wildfire-related impacts, failed to disclose existing wildfire and safety conditions  
12 on the Project site, and failed to consider the Project's impact on the ability of  
13 residents and those in the vicinity of the Project site to evacuate safely in the event  
14 of a wildfire; and

15 f. The EIR failed to disclose, analyze or mitigate the Project's cumulative impacts.

16 Petitioner requested that the County revise the EIR to correct the deficiencies and recirculate the  
17 revised EIR for public review and comment.

18 33. On July 6, 2020, the California Attorney General submitted a letter to the County  
19 commenting on the Final EIR for the Project. The Attorney General stated that after reviewing  
20 the environmental review documents for the Project, including the Final EIR, it concluded that  
21 the EIR's discussion and analysis of the Project's wildfire impacts was inadequate and failed to  
22 comply with CEQA and the CEQA Guidelines. Specifically, the Attorney General's letter stated  
23 that the Final EIR was deficient in the following ways:

24 a. The Final EIR failed to analyze the increased risk of wildfire ignition and spread  
25 that would result from the Project;

- b. The Final EIR failed to adequately analyze the Project’s alternatives, and in particular the County’s findings failed to justify the rejection of the EIR’s Alternative C;
- c. The Final EIR failed to adequately analyze or disclose the Project’s impacts on community health and safety in the event of a wildfire, including the Project’s impacts on the ability of residents to evacuate; and
- d. The Project failed to comply with applicable regulations governing dead end roads.

The Attorney General’s letter also noted that the County’s timeline for preparation of the Final EIR and scheduling of hearings to approve the Project represented “an unusually rapid pace to consider an EIR, particularly one for a Project of this scale and significance.”

34. On July 7, 2020, the Board held its public hearing to consider the Project, and at the Project applicant’s request, continued the hearing for two weeks.

35. On July 20, 2020, Petitioner submitted a letter with additional comments on the Final EIR and the County’s supplemental environmental review documents. Petitioner objected to the County’s last-minute addition of new materials and substantive changes to the Project and environmental review for the Project and requested that the Board deny or postpone approval and continue the hearing and direct the EIR to be revised and recirculated for public review and comment prior to approval of the Project. The comments identified numerous deficiencies in the environmental review for the Project, including the following:

- a. The environmental review for the Project failed to properly analyze and mitigate the Project’s greenhouse gas-related impacts, and the last-minute changes to the mitigation—including a brand-new carbon offset purchase program—did not cure these deficiencies;
- b. The environmental review for the Project failed to properly analyze and mitigate the Project’s wildfire-related impacts, and the last-minute addition of new Project materials did not cure these deficiencies; and

- 1 c. The environmental review for the Project failed to properly analyze and mitigate  
2 the Project’s greenhouse gas-related impacts, and the last-minute addition of new  
3 Project materials did not cure these deficiencies.

4 36. On July 20, 2020, the California Attorney General submitted a second letter to the  
5 County with further comments on the Final EIR for the Project and the supplemental documents  
6 that the County and Project Applicant had recently posted to the County’s website. The letter  
7 requested that “that the Board of Supervisors refrain from certifying the FEIR and approving the  
8 Project until we have the opportunity to review the supplemental FEIR documentation”  
9 including an “Errata” to the Final EIR; new Responses to Comments; an updated Mitigation  
10 Monitoring and Reporting Program; updated CEQA Findings of Fact and Statement of  
11 Overriding Considerations; new Project maps and materials; and a response letter with exhibits  
12 from the applicant’s attorney. The letter noted that the Attorney General and the public had only  
13 one day to review much of the additional analysis, assess its adequacy, and be informed about  
14 the Project’s wildfire impacts. The letter further explained that the environmental review for the  
15 Project remained inadequate for the following reasons:

- 16 a. The environmental review for the Project failed to provide a Project-specific  
17 analysis of increased wildfire risks resulting from the Project;  
18 b. The environmental review for the Project failed to analyze whether Alternative C  
19 would have reduced wildfire risks compared to the Project;  
20 c. The environmental review for the Project failed to address evacuation, including  
21 capacity on internal and external roadways, in the event of wildfire; and  
22 The Project continued to fail to comply with applicable dead-end road  
23 requirements; and  
24 d. The environmental review for the Project did not address deficiencies in  
25 mitigation for the Project’s wildfire-related impacts.

26 The Attorney General requested that the County “refrain from certifying the FEIR and  
27 approving the Project until the FEIR is further revised and sufficient time is provided for our  
28

1 office and members of the public to review and understand the wildfire risks associated with the  
2 Project.”

3 37. Other non-profit conservation organizations, including the California Native Plant  
4 Society and the California Wildlife Foundation, submitted written comments to the County prior  
5 to the Board’s final hearing on the Project identifying additional deficiencies in the  
6 environmental review for the Project and requesting that the Board deny approval of the Project.

7 **Respondents’ Approval of the Project and Certification of the EIR**

8 38. On July 21, 2020, the Board of Supervisors held a public hearing to consider  
9 whether to certify the Final EIR and approve the Project. Petitioner and members of the public  
10 attended the public hearing and gave testimony opposing the certification of the Final EIR and  
11 approval of the Project.

12 39. At the conclusion of the July 21, 2020 hearing, the Board of Supervisors adopted  
13 the Planning Commission’s recommendation, certified the Final EIR, approved the Project and  
14 adopted findings in support of the Project approval and EIR certification, and voted to adopt a  
15 General Plan amendment as well as other Project-related entitlements. During the hearing,  
16 Supervisor Rob Brown observed, “This is the largest land use decision this board will ever  
17 make.”

18 40. On or about July 21, 2020, the County filed a Notice of Determination for the  
19 Project with the County Clerk, which stated that the County had approved the Project, prepared  
20 an EIR, and adopted Findings and a Statement of Overriding Considerations. The County filed  
21 the Notice of Determination even though the Project approvals had not yet undergone a second  
22 reading as required by California law.

23 41. The Notice of Determination listed Lotusland Investment Holdings, Inc. as the  
24 sole project applicant.

25 42. As a result of Respondents’ actions in approving the Project, certifying the EIR for  
26 the Project, and adopting Findings and a Statement of Overriding Considerations, Petitioner and  
27 its members will suffer significant and irreparable harm. Petitioner has no plain, speedy, or

1 adequate remedy at law for this irreparable harm. Unless this Court grants the requested writ of  
2 mandate to require Respondents to set aside certification of the EIR and approval of the Project,  
3 Respondents' approval will remain in effect in violation of state law.

4 43. Respondents have prejudicially abused their discretion and failed to proceed in the  
5 manner required by law in the following ways:

6 **FIRST CAUSE OF ACTION**

7 **Violation of CEQA – Inadequate EIR (Public Resources Code § 21000, et seq.,**  
8 **CEQA Guidelines 14 Cal. Code Regs. § 15000 et seq.)**

9 44. Petitioner hereby incorporates by reference each and every allegation set forth  
10 above.

11 45. CEQA was enacted by the legislature to ensure that the long-term protection of the  
12 environment is a guiding criterion in public decisions. CEQA requires the lead agency for a  
13 project with the potential to cause significant environmental impacts to prepare an EIR for the  
14 project that complies with the requirements of the statute, including, but not limited to, the  
15 requirement to disclose and analyze the project's potentially significant environmental impacts.  
16 The EIR must provide sufficient environmental analysis such that the decisionmakers can  
17 intelligently and fully consider environmental consequences when acting on the proposed  
18 project. Such analysis must include and rely upon thresholds of significance that are based on  
19 substantial evidence in the record.

20 46. CEQA also mandates that the lead agency analyze and adopt feasible and  
21 enforceable mitigation measures that would reduce or avoid any of a project's significant  
22 environmental impacts. If any of the project's significant impacts cannot be mitigated to a less  
23 than significant level, then CEQA bars the lead agency from approving a project if a feasible  
24 alternative is available that would meet the project's objectives while avoiding or reducing its  
25 significant environmental impacts.

1 47. CEQA requires that substantial evidence in the administrative record support all of  
2 the agency's findings and conclusions, including those contained in the EIR, and that the agency  
3 explain how the evidence in the record supports the conclusions the agency has reached.

4 48. Respondents committed a prejudicial abuse of discretion and failed to proceed in a  
5 manner required by law because the Project relies on an EIR that fails to meet the CEQA's  
6 requirements for the disclosure, analysis, mitigation, reduction, and/or avoidance of significant  
7 environmental impacts from the Project, including direct and cumulative impacts relating to  
8 wildfire, greenhouse gas emissions, traffic, biological resources, water supplies, water quality,  
9 and land use.

10 49. **Project Description.** The Draft EIR's Project Description failed to describe the  
11 whole of the proposed action and failed to accurately describe the nature and extent of the  
12 project approvals being considered as a part of the Project.

13 50. **Biological Resources.** The EIR fails to adequately disclose, analyze, and/or  
14 mitigate the Project's significant direct and cumulative impacts to biological resources,  
15 including numerous special status wildlife and plant species affected by the Project. Those  
16 wildlife species include, but are not limited to: Pallid bat, Golden eagle, Northern harrier, White-  
17 tailed kite, American peregrine falcon, Bald eagle, Yellow warbler, Yellow-headed blackbird,  
18 Western pond turtle, Foothill yellow-legged frog, and Western bumble bee. Those plant species  
19 include, but are not limited to, Konocti manzanita, Narrow-anthered brodiaea, Greene's narrow-  
20 leaved daisy, Two-carpellate western flax, Lake County western flax, Colusa layia, Keck's  
21 checkerbloom, Green jewelflower, and Three Peaks jewelflower. The EIR's biological resources  
22 analysis is inadequate because, *inter alia*, the EIR:

- 23 a. fails to include and fully analyze all biological resources impacts resulting from
- 24 the Project;
- 25 b. relies on mitigation measures that are vague, ineffective, deferred, and/or
- 26 unenforceable;
- 27 c. fails to incorporate all feasible mitigation or avoidance measures;

- d. fails to adequately disclose, analyze, and/or mitigate the Project’s significant impacts on habitats and features such as oak woodlands and riparian areas; and
- e. fails to adequately disclose, analyze and/or mitigate the direct, indirect, and cumulative impacts of the Project on other biological resources, including cumulative impacts to wildlife movement.

51. **Greenhouse Gas Emissions.** The EIR fails to adequately disclose, analyze, and/or mitigate the Project’s significant direct, indirect, and cumulative greenhouse gas impacts. The EIR’s analysis of greenhouse gas impacts is inadequate because, *inter alia*, the EIR:

- a. fails to include and fully analyze all greenhouse gas emissions resulting from the Project;
- b. fails to support its selection of thresholds of significance with substantial evidence in the record;
- c. relies on greenhouse gas mitigation measures that are vague, ineffective, deferred, and/or unenforceable;
- d. fails to incorporate all feasible mitigation and avoidance measures; and
- e. impermissibly relies on off-site offsets to mitigate Project’s greenhouse gas emissions because the EIR fails to provide substantial evidence that such offsets are real, permanent, quantifiable, verifiable, and enforceable reductions.

52. **Transportation.** The EIR fails to adequately disclose, analyze, and/or mitigate the Project’s significant direct, indirect, and cumulative traffic impacts. The EIR’s analysis of traffic impacts is inadequate because, *inter alia*, the EIR:

- a. fails to include and fully analyze all traffic impacts resulting from the Project;
- b. relies on traffic mitigation measures that are vague, deferred, and unenforceable;
- c. improperly relies on outdated “level of service” metrics when evaluating traffic impacts; and
- d. fails to incorporate all feasible mitigation and traffic reduction measures.





1 participation. The alternatives analysis in the EIR does not meet CEQA's requirement that an  
2 EIR consider a reasonable range of alternatives that lessen the Project's significant  
3 environmental impacts, does not focus on alternatives that either eliminate adverse impacts or  
4 reduce them to insignificance even if they would to some degree impede the Project's  
5 objectives, failed to consider a feasible alternative that would lessen significant impacts,  
6 unlawfully rejects alternatives without adequately analyzing whether their impacts would be less  
7 significant than the Project's, and fails to support with substantial evidence its conclusions  
8 regarding alternatives.

9       **58. Response to Comments.** The responses to comments in the Final EIR fail to meet  
10 CEQA's requirements in that they neither adequately dispose of all the issues raised, nor provide  
11 specific rationale for rejecting suggested Project changes, including the consideration or  
12 adoption of feasible mitigation measures or alternatives. CEQA requires that a lead agency  
13 evaluate and respond to all environmental comments on the Draft EIR that it receives during the  
14 public review period. The responses must describe the disposition of the issues raised and must  
15 specifically explain reasons for rejecting suggestions and for proceeding without incorporating  
16 the suggestions. The Final EIR's responses to comments fail to satisfy the requirements of law.

17       **59.** Based upon each of the foregoing reasons, the EIR is legally defective under  
18 CEQA. Respondents prejudicially abused their discretion in violation of CEQA in approving the  
19 Project. As such, the Court should issue a writ of mandate directing Respondents to set aside the  
20 certification of the EIR and approval of the Project.

## **SECOND CAUSE OF ACTION**

### **Violation of CEQA — Failure to Recirculate Environmental Impact Report (Public Resources Code § 21000, et seq., CEQA Guidelines § 15000 et seq.)**

24       **60.** Petitioner hereby incorporates by reference each and every allegation set forth  
25 above.



1 Statement of Overriding Considerations do not outweigh the Project’s substantial costs to public  
2 health and the environment. Respondents’ Findings and Statement of Overriding Considerations  
3 are not supported by substantial evidence in the record.

4 67. When an EIR concludes that a project would result in significant environmental  
5 effects, but where mitigation measures and alternatives identified in the EIR are deemed  
6 infeasible, the CEQA findings must identify the specific economic, legal, social and  
7 technological and other considerations that make infeasible the adoption of mitigation measures  
8 or alternatives. All CEQA findings must be supported by substantial evidence in the record and  
9 must disclose the analytical route by which approval of a project is justified. Here, the findings  
10 regarding the impacts, mitigation measures, and alternatives relied upon by Respondents’  
11 approval of the Project are not supported by substantial evidence in the record, and do not  
12 disclose the links between evidence and conclusions.

13 68. Respondents’ Findings of Fact and Statement of Overriding Considerations fail to  
14 reflect the independent judgment of Respondents.

15 69. As a result of the foregoing defects, Respondents failed to proceed in a manner  
16 required by law, and their decision to approve the Project and adopt Findings of Fact and a  
17 Statement of Overriding Considerations was not supported by substantial evidence.

18 **FOURTH CAUSE OF ACTION**

19 **Violation of State Planning and Zoning Law**

20 **(Government Code § 65300, et seq.)**

21 70. Petitioner hereby incorporates by reference each and every allegation set forth  
22 above.

23 71. The California State Planning and Zoning Law requires the legislative body of  
24 each county to adopt a general plan for the physical development of the county. The County’s  
25 General Plan is a fundamental land use planning document and serves as the “constitution” for  
26 future development within the County. Land use decisions, including the approvals associated  
27 with the Project, must be consistent with the General Plan.

72. The Project is inconsistent with mandatory County of Lake General Plan policies, including, but not limited to, Open Space and Conservation Policy 1.13 requiring the County to support the conservation and management of oak woodland.

73. By approving a project inconsistent with the County’s General Plan, Respondents prejudicially abused their discretion and violated provisions of the State Planning and Zoning Law, requiring invalidation of the County’s approvals.

WHEREFORE, Petitioner prays for relief as follows:

**PRAYER FOR RELIEF**

1. For alternative and peremptory writs of mandate directing Respondents to vacate and set aside certification of the EIR, adoption of the Findings and Statement of Overriding Considerations, and approval of all associated Project permits, entitlements, and approvals;
2. For alternative and peremptory writs of mandate directing Respondents to comply with CEQA and the CEQA Guidelines and take any other action as required by Public Resources Code section 21168.9;
3. For a temporary stay, temporary restraining order, and preliminary and permanent injunctions restraining Respondents or Real Party, and their agents, servants, and employees, and all others acting in concert with them or on their behalf, from taking any action to implement, fund or construct any portion or aspect of the Project, pending full compliance with the requirements of CEQA and the CEQA Guidelines;
4. For a declaration that Respondents’ actions in certifying the EIR and approving the Project violated CEQA and the CEQA Guidelines, and that the certification and approvals are invalid and of no force or effect, and that the Project is inconsistent with other applicable plans, policies, or regulations;
5. For costs of the suit;
6. For attorney’s fees as authorized by Code of Civil Procedure section 1021.5 and other provisions of law; and,
7. For such other and future relief as the Court deems just and proper.

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DATED: August 19, 2020

CENTER FOR BIOLOGICAL DIVERSITY

By: 

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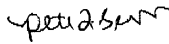
Aruna Prabhala  
Peter Broderick  
Ross Middlemiss

Attorneys for Petitioner CENTER FOR  
BIOLOGICAL DIVERSITY

1 **VERIFICATION**

2 I am the Director of Programs for the Center for Biological Diversity, which is a party  
3 to this action. I am authorized to make this verification for and on its behalf, and I make this  
4 verification for that reason. I have read the foregoing document and know its contents. The  
5 matters stated in it are true of my own knowledge except as to those matters that are stated on  
6 information and belief, and as to those matters I believe them to be true.

7 I declare under penalty of perjury under the laws of the State of California that the  
8 foregoing is true and correct. Executed this 19th day of August, 2020, in Shelter Cove,  
9 California.

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13 Peter Galvin  
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# **Exhibit A**





***Via U.S. Mail***

August 19, 2020

Anita Grant  
Lake County Office of County Counsel  
255 North Forbes Street  
Lakeport, CA 95453

**Re: Notice of Commencement of Legal Action Pursuant to the California Environmental Quality Act**

Dear Ms. Grant,

The Center for Biological Diversity (“Petitioner”) intends to commence an action for Writ of Mandate and Complaint for Declaratory and Injunctive Relief to vacate and set aside the decision of Lake County and Lake County Board of Supervisors (“Respondents”) approving the Guenoc Valley Mixed Use Planned Development Project (the “Project”) and certifying an Environmental Impact Report for the Project. Petitioner submits this notice pursuant to Public Resources Code section 21167.5.

The action will commence on August 20, 2020 and will be based upon on Respondents’ failure to comply with the California Environmental Quality Act (Public Resources Code § 21000, *et seq.*) and other provisions of law in adopting the Environmental Impact Report and approving the Project. Petitioner will elect to prepare the administrative record of proceedings pursuant to Public Resources Code § 21167.6.

Sincerely,

Peter Broderick  
Staff Attorney  
Center for Biological Diversity



***Via U.S. Mail***

August 19, 2020

Board of Supervisors  
Lake County  
255 North Forbes Street  
Lakeport, CA 95453

**Re: Notice of Commencement of Legal Action Pursuant to the California Environmental Quality Act**

Dear Lake County Board of Supervisors,

The Center for Biological Diversity (“Petitioner”) intends to commence an action for Writ of Mandate and Complaint for Declaratory and Injunctive Relief to vacate and set aside the decision of Lake County and Lake County Board of Supervisors (“Respondents”) approving the Guenoc Valley Mixed Use Planned Development Project (the “Project”) and certifying an Environmental Impact Report for the Project. Petitioner submits this notice pursuant to Public Resources Code section 21167.5.

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Sincerely,

Peter Broderick  
Staff Attorney  
Center for Biological Diversity

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF ALAMEDA

3 I am employed in Oakland, California. I am over the age of 18 and not a party to the foregoing action.  
4 My business address is Center for Biological Diversity, 1212 Broadway, Suite 800, Oakland, California  
5 94612. My email address is trettinghouse@biologicaldiversity.org.

6 On August 19, 2020, I served a true and correct copy of the following document(s):

7 **NOTICE OF COMMENCEMENT OF LEGAL ACTION PURSUANT TO CEQA**

8  BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Center  
9 for Biological Diversity's electronic mail system to the email address(s) shown below.

10  BY U.S. Mail: By placing a true and correct copy thereof in sealed envelope(s). Such envelope(s)  
11 were addressed as shown below. Such envelope(s) were deposited for collection and mailing following  
12 ordinary business practices with which I am readily familiar.

13 Anita Grant 14 Lake County Office of County Counsel 15 255 North Forbes Street Lakeport, CA 95453	Board of Supervisors Lake County 255 North Forbes Street Lakeport, CA 95453
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16  
17  STATE: I declare under penalty of perjury under the law of California that the foregoing is true  
18 and correct.

19 Executed on August 19, 2020 at Oakland, California.

20   
21 Theresa Rettinghouse

# **EXHIBIT B**

1 Aruna Prabhala (SBN 278865)  
Peter Broderick (SBN 293060)  
2 Ross Middlemiss (SBN 323737)  
CENTER FOR BIOLOGICAL DIVERSITY  
3 1212 Broadway, Suite 800  
Oakland, California 94612  
4 Telephone: (510) 844-7100  
Facsimile: (510) 844-7150  
5 aprabhala@biologicaldiversity.org  
pbroderick@biologicaldiveristy.org  
6 rmiddlemiss@biologicaldiversity.org

7  
8 Attorneys for Center for Biological Diversity

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

10 **COUNTY OF LAKE**

11 CENTER FOR BIOLOGICAL  
12 DIVERSITY

13 Petitioner,

14 v.

15 COUNTY OF LAKE, BOARD OF  
SUPERVISORS OF THE COUNTY OF  
16 LAKE; and DOES 1 through 20, inclusive,

17 Respondents.

18 LOTUSLAND INVESTMENT  
19 HOLDINGS, INC.; and DOES 21 through  
40, inclusive,

20 Real Parties in Interest.  
21

Case No.

**PETITIONER'S NOTICE OF  
ELECTION TO PREPARE  
ADMINISTRATIVE RECORD**

[Pub. Res. Code § 21167.6]

1           **TO RESPONDENTS COUNTY OF LAKE AND BOARD OF SUPERVISORS OF**  
2 **THE COUNTY OF LAKE:**

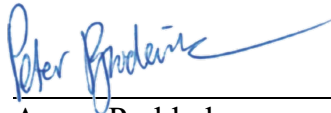
3           In the above-captioned action (the “Action”), Petitioner Center for Biological  
4 Diversity (“Petitioner”) petitions this Court for a Writ of Mandate, directed to the County of  
5 Lake and Board of Supervisors of the County of Lake (collectively, “Respondents”). Petitioner  
6 challenges Respondents’ July 21, 2020 approval of the Guenoc Valley Mixed Use Planned  
7 Development Project (the “Project”) and certification of an Environmental Impact Report  
8 (“EIR”) for the Project. Petitioner seeks a determination that Respondents’ approval of the  
9 Project is invalid and void and fails to satisfy the requirements of the California Environmental  
10 Quality Act (“CEQA”), Public Resources Code section 21000 *et seq.*, the CEQA Guidelines,  
11 Title 14, California Code of Regulations, section 15000 *et seq.* and other provisions of law.

12           Pursuant to Public Resources Code section 21167.6(b)(2), Petitioner hereby elects to  
13 prepare the record of proceedings for the Action. The record will be organized chronologically,  
14 paginated consecutively, and indexed so that each document may be clearly identified as to its  
15 contents and source, in a form and format consistent with California Rules of Court, Rule  
16 3.2205.

17           Petitioner will include in the record of proceedings all documents, including transcripts,  
18 minutes of meetings, notices, correspondence, reports, studies, proposed decisions, final drafts,  
19 and any other documents or records relating to Respondents’ determination to approve the  
20 Project.

1 DATED: August 19, 2020

CENTER FOR BIOLOGICAL DIVERSITY

2  
3 By: 

4 Aruna Prabhala  
5 Peter Broderick  
6 Ross Middlemiss

7 Attorneys for Petitioner CENTER FOR  
8 BIOLOGICAL DIVERSITY  
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