

1 XAVIER BECERRA
Attorney General of California
2 CHRISTINA BULL ARNDT
SARAH E. MORRISON
3 Supervising Deputy Attorneys General
KIMBERLY R. GOSLING (SBN 247803)
4 SHANNON CLARK (SBN 316409)
NICOLE RINKE (SBN 257510)
5 Deputy Attorneys General
600 West Broadway, Suite 1800
6 San Diego, CA 92101
P.O. Box 85266
7 San Diego, CA 92186-5266
Telephone: (619) 738-9519
8 Fax: (619) 645-2271
E-mail: Kimberly.Gosling@doj.ca.gov
9 *Attorneys for People of the State of California*
ex rel. Xavier Becerra, Attorney General

***NO FEE PURSUANT TO
GOVERNMENT CODE § 6103***

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

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14
15 **CENTER FOR BIOLOGICAL
DIVERSITY, PRESERVE WILD SANTEE,
16 CALIFORNIA CHAPARRAL INSTITUTE,
ENDANGERED HABITATS LEAGUE,
17 CALIFORNIA NATIVE PLANT
SOCIETY, and SIERRA CLUB,**

18 Petitioners,

19 v.

20
21 **COUNTY OF SAN DIEGO, BOARD OF
SUPERVISORS OF THE COUNTY OF
22 SAN DIEGO, and DOES 1 through 20,
inclusive,**

23 Respondents,

24 **BALDWIN & SONS, LLC; MOLLER
25 OTAY LAKES INVESTMENTS, LLC;
ERIC JOHNSTON; CHUCK MILLER;
26 TED SHAW; and DOES 21 through 40,
inclusive,**

27 Real Parties in Interest.
28

Case No. 37-2020-00046553-CU-WM-CTL

**PEOPLE'S NOTICE OF MOTION AND
MOTION FOR LEAVE TO INTERVENE**

Date: May 7, 2021
Time: 8:30 a.m.
Dept.: C-74
Judge: The Honorable Ronald L. Styn
Trial Date: Not set
Action Filed: December 17, 2020

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on May 7, 2021, at 8:30 a.m., in Department C-74 of the
3 Superior Court for the State of California, County of San Diego, located at 330 West Broadway,
4 San Diego, CA 92101, the People of the State of California *ex rel.* Xavier Becerra, Attorney
5 General (People) will and hereby do move the Court for leave to intervene in the above-captioned
6 action, Case Number 37-2020-00046553-CU-WM-CTL, pursuant to Code of Civil Procedure
7 section 387, subdivision (d). The People’s proposed Petition for Writ of Mandate in Intervention
8 (Petition in Intervention) is attached to this motion as Exhibit 1. The Petition in Intervention
9 challenges the Otay Ranch Resort Village 13 project approved by respondents the County of San
10 Diego and the San Diego County Board of Supervisors under the California Environmental
11 Quality Act (Pub. Resources Code, §§ 21000 et seq.).

12 This motion is based on the following grounds:

13 1. Under Government Code section 12606, the People, as represented by the Attorney
14 General, have an unconditional right to intervene in any judicial or administrative proceeding in
15 which facts are alleged concerning pollution or adverse environmental effects that could affect the
16 public in general. Such facts are alleged in the lawsuit pending before this Court.

17 2. The motion is timely and will not impair or impede the prompt resolution of the
18 issues presented in this action.

19 3. Based on the unconditional right of the People to intervene pursuant to
20 Government Code section 12606, and in accordance with Code of Civil Procedure sections 387,
21 subdivision (d), and 388, this Court should grant the People leave to intervene.

22 This motion is based upon this Notice, the Petition in Intervention, the accompanying
23 Memorandum of Points and Authorities, any matters of which this Court may take judicial notice,
24 the pleadings on file with the Court in this action, and such other matters which may be brought
25 to the attention of this Court before or during the hearing on this motion.

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Dated: March 17, 2021

Respectfully Submitted,
XAVIER BECERRA
Attorney General of California
CHRISTINA BULL ARNDT
SARAH E. MORRISON
Supervising Deputy Attorneys General
SHANNON CLARK
NICOLE RINKE
Deputy Attorneys General



KIMBERLY R. GOSLING
Deputy Attorney General
*Attorneys for People of the State of
California ex rel. Xavier Becerra, Attorney
General*

SA2019102285

EXHIBIT 1

1 XAVIER BECERRA
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6 San Diego, CA 92101
P.O. Box 85266
7 San Diego, CA 92186-5266
Telephone: (619) 738-9519
8 Fax: (619) 645-2271
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO

15 **CENTER FOR BIOLOGICAL
DIVERSITY, PRESERVE WILD SANTEE,
16 CALIFORNIA CHAPARRAL INSTITUTE,
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Case No. 37-2020-00046553-CU-WM-CTL

**[Proposed] PEOPLE'S PETITION FOR
WRIT OF MANDATE IN
INTERVENTION**

[CEQA CLAIM]

**[Code Civ. Proc., §§ 387 and 1094.5; Gov.
Code, § 12606; Pub. Resources Code,
§ 21167]**

Dept.: C-74
Judge: The Honorable Ronald L. Styn
Trial Date: Not set
Action Filed: December 17, 2020

INTRODUCTION

1
2 1. The People of the State of California, acting by and through Attorney General Xavier
3 Becerra (the People), intervene as of right in this action pursuant to Government Code section
4 12606. The People seek a writ of mandate under California Code of Civil procedure section
5 1094.5 directing respondents the County of San Diego and the San Diego Board of Supervisors
6 (collectively, Respondents) to vacate their approval of the Otay Ranch Resort Village 13 project
7 (Project), including their Environmental Findings and their November 18, 2020 certification of
8 the Final Environmental Impact Report (FEIR), and to suspend activities implementing the
9 Project until Respondents have complied with the California Environmental Quality Act (CEQA),
10 Public Resources Code sections 21000 et seq.

11 2. The Project is a residential and resort development that includes 1,881 single-family
12 homes; a mixed-use site with 57 multifamily homes and 20,000 square feet of commercial space;
13 a resort site with 200 guest rooms and up to 20,000 square feet of commercial office use; parks
14 and managed open space; an elementary school site; and a public safety site for a fire station. The
15 Project site is located on 1,869 acres of undeveloped open space in the foothills of the Jamul
16 Mountains in San Diego County, east of Chula Vista. The Project will have significant adverse
17 environmental impacts, including but not limited to impacts on fire safety and wildfire risk,
18 greenhouse gas (GHG) emissions, air quality, biological resources, water supplies and quality,
19 aesthetics, traffic, and land use.

20 3. Respondents’ environmental review and approval of the Project violates CEQA and
21 the regulations implementing CEQA in title 14, California Code of Regulations, sections 15000
22 et seq. (CEQA Guidelines). Respondents failed to disclose or adequately analyze the Project’s
23 significant environmental impacts on wildfire risk and GHG emissions as required under CEQA,
24 and failed to identify and adopt feasible and enforceable mitigation measures to reduce such
25 impacts. Respondents’ approval of the Project violates CEQA and must be overturned.

26 4. Respondents have abused their discretion and failed to act as required by law. As a
27 result of Respondents’ approval of the Project and certification of the FEIR, the People will suffer
28 great and irreparable harm to their interests, including the adverse environmental effects of the

1 Project that could endanger the Project’s residents, neighboring residents, and the public
2 generally. The People have no adequate remedy at law for this irreparable harm.

3 **ALLEGATIONS SUPPORTING INTERVENTION**

4 5. The Attorney General has an unconditional right to “intervene in any judicial or
5 administration proceeding in which facts are alleged concerning pollution or adverse
6 environmental effects which could affect the public generally.” (Gov. Code, § 12606.) The
7 original petition in this action alleges facts concerning pollution and adverse environmental
8 effects. Accordingly, pursuant to Government Code section 12606, the People, acting through the
9 Attorney General, are entitled to intervene as a matter of right.

10 6. The People’s intervention is timely. The administrative record has not yet been
11 certified, and the Court has not held a case management conference, established a briefing
12 schedule, or set a trial date. The People’s intervention thus will not prejudice existing parties.

13 **PARTIES**

14 7. The Attorney General, as the chief law enforcement officer of the State of California,
15 has broad independent powers under the California Constitution and the California Government
16 Code to participate in all legal matters in which the State is interested. (Cal. Const., art. V, § 13;
17 Gov. Code, § 12511.) The Attorney General has express statutory authority to participate in cases
18 involving the protection of California’s environment and a unique and important role in the
19 enforcement of CEQA. (Gov. Code, §§ 12600-12612; Pub. Resources Code, §§ 21167.7, 21177,
20 subd. (d); *City of Long Beach v. City of Los Angeles* (2018) 19 Cal.App.5th 465.) “The Attorney
21 General may maintain an action for equitable relief in the name of the people of the State of
22 California against any person for the protection of the natural resources of the state from
23 pollution, impairment, or destruction.” (Gov. Code, § 12607.) The People file this Petition for
24 Writ of Mandate in Intervention (Petition) pursuant to the Attorney General’s independent power
25 to protect the natural resources of the State from pollution, impairment, or destruction, in
26 furtherance of the public interest.

27 8. The People are informed and believe, and on that basis allege, that petitioner the
28 Center for Biological Diversity is a non-profit conservation organization dedicated to the

1 protection of native species and their habitats through science, policy, and environmental law, and
2 that the Center for Biological Diversity submitted written comments to the County objecting to
3 and commenting on the Project and its Draft Environmental Impact Report (DEIR) and/or FEIR.

4 9. The People are informed and believe, and on that basis allege, that petitioner Preserve
5 Wild Santee is a volunteer community environmental organization that aims to protect and
6 enhance the quality of life and preserve natural resources in the City of Santee and adjoining
7 areas, and that Preserve Wild Santee submitted written comments to the County objecting to and
8 commenting on the Project and its DEIR and/or FEIR.

9 10. The People are informed and believe, and on that basis allege, that petitioner the
10 California Chaparral Institute is a non-profit education, research, and advocacy organization
11 dedicated to the preservation of native shrubland habitats throughout the West, and that the
12 California Chaparral Institute submitted written comments to the County objecting to and
13 commenting on the Project and its DEIR and/or FEIR.

14 11. The People are informed and believe, and on that basis allege, that petitioner the
15 Endangered Habitats League is a non-profit California corporation dedicated to the conservation
16 of native ecosystems and to sustainable land use and transportation planning, and that the
17 Endangered Habitats League submitted written comments to the County objecting to and
18 commenting on the Project and its DEIR and/or FEIR.

19 12. The People are informed and believe, and on that basis allege, that petitioner the
20 California Native Plant Society is a California non-profit corporation, that the mission of the
21 California Native Plant Society is to conserve California native plants and their natural habitats,
22 and to increase understanding, appreciation, and horticultural use of native plants, and that the
23 California Native Plant Society submitted written comments to the County objecting to and
24 commenting on the Project and its DEIR and/or FEIR.

25 13. The People are informed and believe, and on that basis allege, that petitioner the
26 Sierra Club is a national non-profit organization dedicated to exploring, enjoying, protecting, and
27 preserving the environment for future generations, and that the Sierra Club submitted written
28 comments to the County objecting to and commenting on the Project and its DEIR and/or FEIR.

1 14. Respondent the County of San Diego (County) is, and at all relevant times herein
2 mentioned was, a political subdivision of the State of California. The County is a local
3 governmental agency charged with regulating and controlling land use and development within
4 the County, including but not limited to complying with all provisions of state law, including
5 CEQA. The County is the lead agency for the Project under Public Resources Code section
6 21067, which gives it principal responsibility for conducting environmental review of proposed
7 actions. The County has a duty to comply with CEQA.

8 15. Respondent the Board of Supervisors of the County of San Diego (Board) is, and at
9 all relevant times herein mentioned was, the elected decision-making body of the County. The
10 Board is responsible for adopting and amending land use regulations, making certain land use
11 decisions, and ensuring its decisions comply with applicable laws. As the decision-making body
12 with the authority to grant Project approval and adopt necessary plan amendments, the Board was
13 charged with responsibilities under CEQA for conducting a proper review of the Project's
14 environmental impacts pursuant to CEQA. The Board and its members are sued in their official
15 capacities.

16 16. The People are informed and believe, and on that basis allege, that real party in
17 interest Baldwin & Sons, LLC, is a Project applicant and is listed as such on the County's notice
18 of determination filed for the project on November 19, 2020, is registered with the State of
19 California as a limited liability company, does business in the State of California, and is the
20 recipient of the Project approvals that are the subject of this Petition and therefore a real party in
21 interest within the meaning of Public Resources Code section 21167.6.5.

22 17. The People are informed and believe, and on that basis allege, that real party in
23 interest Moller Otay Lakes Investments, LLC, is a Project applicant and is listed as such on the
24 County's notice of determination filed for the project on November 19, 2020, is registered with
25 the State of California as a limited liability company, does business in the State of California, and
26 is the recipient of the Project approvals that are the subject of this Petition and therefore a real
27 party in interest within the meaning of Public Resources Code section 21167.6.5.
28

1 18. The People are informed and believe, and on that basis allege, that real party in
2 interest Eric Johnston is a Project applicant and is listed as such on the County’s notice of
3 determination filed for the project on November 19, 2020, is a natural person, does business in the
4 State of California, and is the recipient of the Project approvals that are the subject of this Petition
5 and therefore a real party in interest within the meaning of Public Resources Code section
6 21167.6.5.

7 19. The People are informed and believe, and on that basis allege, that real party in
8 interest Chuck Miller is a Project applicant and is listed as such on the County’s notice of
9 determination filed for the project on November 19, 2020, is a natural person, does business in the
10 State of California, and is the recipient of the Project approvals that are the subject of this Petition
11 and therefore a real party in interest within the meaning of Public Resources Code section
12 21167.6.5.

13 20. The People are informed and believe, and on that basis allege, that real party in
14 interest Ted Shaw is a Project applicant and is listed as such on the County’s notice of
15 determination filed for the project on November 19, 2020, is a natural person, does business in the
16 State of California, and is the recipient of the Project approvals that are the subject of this Petition
17 and therefore a real party in interest within the meaning of Public Resources Code section
18 21167.6.5.

19 21. The People are unaware of the true names and capacities of respondents Does 1
20 through 20, inclusive, and sue them under these fictitious names. The People are informed and
21 believe, and on that basis allege, that the fictitiously named respondents are also responsible for
22 the actions described in this Petition. When the true identities and capacities of these respondents
23 have been determined, the People will amend this Petition, with leave of the Court if necessary, to
24 insert such identities and capacities.

25 22. The People are unaware of the true names and capacities of real parties in interest
26 Does 21 through 40, inclusive, and sue them under these fictitious names. The People are
27 informed and believe, and on that basis allege, that the fictitiously named real parties also have an
28 interest in the matters to be determined by this Petition. When the true identities and capacities of

1 these real parties have been determined, the People will amend this Petition, with leave of the
2 Court if necessary, to insert such identities and capacities.

3 **JURISDICTION AND VENUE**

4 23. The Court has jurisdiction over the matters alleged in this Petition pursuant to Public
5 Resources Code sections 21168 and 21168.5 and California Code of Civil Procedure section
6 1094.5.

7 24. Venue for this action properly lies in San Diego County Superior Court pursuant to
8 Code of Civil sections 394 (actions against a city, county, or local agency) and 395 (actions
9 generally), because Respondents' main offices are located in San Diego County and the violations
10 of CEQA alleged in this Petition arose in San Diego County.

11 25. CEQA's exhaustion requirements do not apply to the Attorney General. (*City of*
12 *Long Beach, et al., Xavier Becerra (Attorney General, as Intervener) v. City of Los Angeles,*
13 (2018) 19 Cal.App.5th 465.) The People thus have satisfied all statutory prerequisites to filing
14 this action.

15 **GENERAL ALLEGATIONS**

16 **The County's Obligations Under CEQA**

17 26. CEQA's primary purposes are to: "inform governmental decisionmakers and the
18 public of a project's potential significant environmental effects before a project is approved and
19 those effects become irreversible; identify ways that environmental damage can be avoided or
20 reduced; prevent significant, avoidable environmental damage by requiring the adoption of
21 feasible alternatives or feasible mitigation measures and disclose to the public a governmental
22 agency's reasons for approving a project with significant environmental impacts." (CEQA
23 Guidelines, § 15002, subd. (a).) To achieve these goals, CEQA requires an Environmental
24 Impact Report (EIR) for any project that may have a significant effect on the environment. The
25 California Supreme Court described the EIR as the "heart of CEQA" and an "environmental
26 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental
27 changes before they have reached ecological points of no return." (*Laurel Heights Improvement*
28

1 *Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392, internal quotations
2 omitted.)

3 27. The public agency’s charge in preparing an EIR thus is to make a reasonable, good-
4 faith effort to disclose all that it reasonably can about the project’s significant environmental
5 effects. (Pub. Resources Code, § 21061; CEQA Guidelines, § 15121, subd. (a).) The purpose of
6 an EIR is “not to generate paper, but to compel government at all levels to make decisions with
7 environmental consequences in mind.” (CEQA Guidelines, § 15003, subd. (g).) Thus, “given the
8 key role of the [EIR] in carrying out CEQA’s requirements, ‘the integrity of the process is
9 dependent on the adequacy of the EIR.’” (*California Native Plant Society v. City of Santa Cruz*
10 (2009) 177 Cal.App.4th 957, 977-980.)

11 28. CEQA requires an EIR to identify and analyze a project’s significant environmental
12 impacts, including those impacts caused or exacerbated “by bringing development and people
13 into the area affected.” (Pub. Resources Code, §§ 21002, 21002.1, subd. (a); CEQA Guidelines,
14 § 15126.2, subd. (a).) The impacts of development in areas prone to wildfire specifically require
15 consideration: “the EIR should evaluate any potentially significant direct, indirect, or cumulative
16 environmental impacts of locating development in areas susceptible to hazardous conditions (e.g.,
17 floodplains, coastlines, *wildfire risk areas*), including both short-term and long-term conditions,
18 as identified in authoritative hazard maps, risk assessments or in land use plans addressing such
19 hazard areas.” (CEQA Guidelines, § 15126.2, subd. (a), emphasis added.)

20 29. In 2012, the Legislature required the Office of Planning and Research, together with
21 the Natural Resources Agency and the California Department of Forestry and Fire Protection
22 (CalFIRE), to amend the CEQA Guidelines to require consideration of fire hazard impacts for
23 projects on lands classified as very high fire hazard severity zones, such as the those where the
24 Project is located. (See Pub. Resources Code, § 21083.01.)

25 30. The Natural Resources Agency amended the CEQA Guidelines Appendix G, which is
26 the checklist for agencies considering environmental review under CEQA, to include questions
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28

1 specifically focused on “the effects of new projects in creating or exacerbating wildfire risks.”¹
2 “While wildfire risk already exists in such areas, bringing development to those areas makes the
3 risk worse.” (*Ibid.*) The Resources Agency specifically identified development in the wildland-
4 urban interface, particularly lower-density arrangements, as high-risk development:

5 “[H]ousing arrangement and location strongly influence fire risk, particularly
6 through housing density and spacing, location along the perimeter of
7 development, slope, and fire history. Although high-density structure-structure
8 loss can occur, structures in areas with low- to intermediate- housing density
9 were most likely to burn, potentially due to intermingling with wildland
vegetation or difficulty of firefighter access. Fire frequency also tends to be
highest at low to intermediate housing density, at least in regions where humans
are the primary cause of ignitions.” (*Ibid.*)

10 31. The potential wildfire-related impacts that agencies must consider include:
11 (1) whether a project would expose people or structures, either directly or indirectly, to a
12 significant risk of loss, injury, or death involving wildland fires; and (2) whether it would, due to
13 slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project
14 occupants to pollutant concentrations from wildfire or the uncontrolled spread of wildfire.
15 (CEQA Guidelines, App. G, subds. IX(g), XX.)

16 32. The EIR also must identify feasible mitigation measures to reduce or avoid the
17 project’s significant environmental impacts. (Pub. Resources Code, §§ 21002, 21002.1,
18 subd. (a).) Lead agencies “should not approve projects as proposed if there are feasible
19 alternatives or feasible mitigation measures available which would substantially lessen the
20 significant environmental effects of such projects.” (Pub. Resources Code, § 21002.) As such,
21 CEQA requires each lead agency to “mitigate or avoid the significant effects on the environment
22 of projects that it carries out or approves whenever it is feasible to do so.” (Pub. Resources Code,
23 § 21002.1, subd. (b).)

24 33. CEQA lead agencies must “ensure that feasible mitigation measures will actually be
25 implemented as a condition of development, and not merely adopted and then neglected or

26 _____
27 ¹ California Natural Resources Agency, *Final Statement of Reasons for Regulatory Action:
28 Amendments to the State CEQA Guidelines* (Nov. 2018), at p. 87, [https://resources.ca.gov/
CNRALegacyFiles/ceqa/docs/2018_CEQA_Final_Statement_of%20Reasons_111218.pdf](https://resources.ca.gov/CNRALegacyFiles/ceqa/docs/2018_CEQA_Final_Statement_of%20Reasons_111218.pdf).

1 disregarded.” (*Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000)
2 83 Cal.App.4th 1252, 1261, citing Pub. Resources Code, § 21002.1, subd. (b).) Thus, mitigation
3 measures adopted pursuant to an EIR to mitigate or avoid a project’s significant impacts on the
4 environment must be “fully enforceable through permit conditions, agreements, or other
5 measures.” (Pub. Resources Code, § 21081.6, subd. (b).)

6 34. With regard to GHG impacts of a Project, CEQA requires a lead agency to make “a
7 good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate
8 or estimate the amount of greenhouse gas emissions resulting from a project,” and states that, in
9 so doing, the agency “may consider a project’s consistency with the State’s long-term climate
10 goals or strategies, provided that substantial evidence supports the agency’s analysis of how those
11 goals or strategies address the project’s incremental contribution to climate change and its
12 conclusion that the project’s incremental contribution is not cumulatively considerable.” (CEQA
13 Guidelines, § 15064.4.) A sustainable communities strategy developed pursuant to Senate Bill
14 (SB) 375 is an example of a long-term climate strategy that must be considered under CEQA.

15 35. CEQA also requires that an “EIR shall discuss any inconsistencies between the
16 proposed project and applicable general plans, specific plans and regional plans . . . [including]
17 regional transportation plans.” (CEQA Guidelines, § 15125, subd. (d).)

18 36. The agency’s act or decision must be supported by substantial evidence in light of the
19 whole record. (Pub. Resources Code, §§ 21168, 21168.5; CEQA Guidelines, § 15384.)
20 “Substantial evidence” is defined as relevant, reasonable information and inferences that a fair
21 argument can be made to support a conclusion, including facts, reasonable assumptions
22 predicated upon facts, and expert opinion supported by facts. (CEQA Guidelines, § 15384.)
23 Substantial evidence does not include argument, speculation, unsubstantiated opinion, or
24 inaccurate or erroneous evidence of social or economic impacts which do not contribute to or are
25 not caused by physical impacts on the environment. (*Ibid.*)

26 37. “When the informational requirements of CEQA are not met but the agency
27 nevertheless certifies the EIR as meeting them, the agency fails to proceed in a manner required
28 by law and abuses its discretion.” (*Cherry Valley Pass Acres and Neighbors v. City of Beaumont*

1 (2010) 190 Cal.App.4th 316, 327.) “The error is prejudicial ‘if the failure to include relevant
2 information precludes informed decisionmaking and informed public participation, thereby
3 thwarting the statutory goals of the EIR process.’” (*Id.* at p. 328, quoting *San Joaquin*
4 *Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721–722.)

5 **The Project and Environmental Setting**

6 38. The proposed Project is a residential and resort community with an adjacent open-
7 space preserve, located in the foothills of the Jamul Mountains, east of Chula Vista, in
8 unincorporated San Diego County. The proposed development comprises 1,938 residential units,
9 a resort, commercial and office space, parks, an elementary school, and a public safety site. The
10 Project is expected to result in approximately 7,000 residents in permanent housing, with 850
11 additional staff and guests on the Project site each day. The development will contain no
12 affordable housing.

13 39. The Project is located in the 23,000-acre Otay Ranch area—the largest development
14 project in the County’s history. The Otay Subregional Plan establishes land uses for Otay Ranch.

15 40. The Project site consists of 1,869 acres of undeveloped land at the interface of
16 existing urban development and undisturbed open spaces. It is bordered by Lower Otay
17 Reservoir to the south and west. The Project site consists of native coastal sage scrub and
18 grassland habitats—which, as the FEIR recognizes, include highly flammable vegetation. The
19 site topography is characterized by a broad mesa sloping to the south, broken by several steep
20 canyons draining from north to south. Portions of the mesa extend north into the Jamul
21 Mountains, where the terrain primarily consists of steeper slopes, which typically facilitate more
22 rapid fire spread.

23 41. The FEIR also acknowledges that numerous fires have occurred in the Project’s direct
24 vicinity. According to the FEIR, five fires have burned on the property, and much of the property
25 has burned four times over approximately 125 years. This includes the October 2003 Mine/Otay
26 fire, which burned the entire Project area and nearly 40,000 acres in Otay Mesa overall. The
27 FEIR fails to mention other fires on the property, including the 2007 Harris Fire, which burned
28 more than 90,000 acres, including a majority of the Project site. The frequency, scale, and

1 severity of these wildfires has increased in recent years, exacerbated by climate change and by
2 high-risk development and human activity encroaching into the wildland-urban interface.

3 42. The Project site is adjacent to large expanses of open space to the north and east,
4 where wildfires could likely start and spread to the Project area. Based on the location of the
5 Project site and its history and frequency of wildfires, there is significant potential for wildfire in
6 the region and in the Project area. The Project site is particularly vulnerable to wildfire ignition
7 and spread during extreme fire weather.

8 43. The Project area is designated as a very high fire hazard severity zone—CalFIRE’s
9 highest designation.

10 44. The Project is located in an undeveloped area approximately 15 miles from
11 downtown San Diego and 0.25 miles east of the Chula Vista city limit, south of the
12 unincorporated community of Jamul. Because it is distanced far from jobs, goods, and other
13 services, the Project will require future residents to drive more than 76 million miles per year.
14 The Project also will generate GHG emissions from electrical and natural gas usage, mobile
15 transportation, and solid waste generation, among other sources. The FEIR estimates that
16 construction of the Project will generate 38,476 metric tons of GHG emissions, and that operation
17 of the Project will produce 33,791 metric tons of GHG emissions each year.

18 45. The Project includes mitigation measures and regulatory compliance measures and
19 project design features (PDF) intended to reduce GHG emissions. PDFs include compliance with
20 several regulatory requirements, including building energy efficiency standards, the California
21 Integrated Waste Management Act and the Pavley I Standards and Advanced Clean Cars
22 Program, which set standards to reduce GHG emissions from mobile sources. The Project also
23 includes nine GHG mitigation measures, including mitigation measures GHG-7 and GHG-8,
24 which require the purchase of offset credits to mitigate remaining GHG emissions from
25 operational and construction emissions. Notably, mitigation measures GHG-7 and GHG-8
26 mitigate the vast majority of all emissions generated by the project. Measure GHG-7 mitigates
27 100% of all construction GHG emissions with the purchase of offset credits, and measure GHG-8
28 mitigates approximately 85% of operational GHG emissions through offset credits. This high

1 amount of mitigation through offsets, rather than through means to reduce vehicle use, renders
2 them inconsistent with state and local plans. Moreover, measures GHG-7 and GHG-8 are lacking
3 in standards and requirements that ensure they will be in compliance with CEQA.

4 **Applicable Land Use Plans**

5 46. The San Diego Association of Governments (SANDAG) is the federally designated
6 regional agency directing overall transportation infrastructure funding. Every four years
7 SANDAG prepares a Regional Transportation Plan for the County of San Diego. Following the
8 enactment of SB 375 (Gov. Code, § 65080 et seq.), SANDAG also is required to prepare a
9 Sustainable Communities Strategy, which aims to reduce environmental impacts, in particular
10 GHG emissions from driving, through transportation planning. Together, the Regional
11 Transportation Plan and the Sustainable Communities Strategy set forth a combined plan,
12 applicable to the County, that is designed to address climate change impacts from transportation
13 and land use.

14 **Respondents' Environmental Review and Project Approval**

15 47. On or about October 14, 2004, Respondents issued a notice of preparation for the
16 Project, in which Respondents notified public agencies and interested individuals that, as lead
17 agency, Respondents would be preparing a DEIR for the Project. Respondents released the DEIR
18 on or about April 6, 2015.

19 48. Respondents released a recirculated DEIR on or about April 12, 2019.

20 49. On December 27, 2019, the Attorney General for the State of California submitted a
21 letter stating that the DEIR failed to adequately acknowledge the risk of wildfire that will result
22 from the Project, as well as the cumulative fire risk posed by all new development in Otay Ranch.

23 50. In or around March 2020, Respondents released the FEIR for the Project.

24 51. On November 12, 2020, the Attorney General for the State of California submitted a
25 second letter explaining that the FEIR did not correct the deficiencies addressed in the Attorney
26 General's December 27, 2019 letter.

27 52. In addition to the Attorney General for the State of California, Petitioners, along with
28 members of the public and numerous other organizations and government entities, submitted

1 comments voicing significant concerns regarding the legal deficiencies of the original DEIR, the
2 recirculated DEIR, and the FEIR, including regarding the analysis and mitigation of the Project’s
3 wildfire risks, GHG impacts, and various other adverse environmental impacts.

4 53. At a public hearing on November 18, 2020, Respondents certified the FEIR, approved
5 the Project, and adopted Findings and a Statement of Overriding Considerations in support of the
6 Project approval and FEIR certification, despite the numerous legal deficiencies identified in the
7 DEIR and FEIR. Respondents recorded a notice of determination the next day.

8 **FIRST CAUSE OF ACTION**

9 **(Violation of CEQA – Failure to Analyze Project Impacts)**
10 **Pub. Resources Code, § 21000 et seq.; Code Civ. Proc., § 1094.5)**

11 54. The People hereby incorporate all of the allegations in the paragraphs above as if
12 fully set forth herein.

13 55. CEQA mandates that a public agency considering approval of a project that may have
14 a significant effect on the environment prepare an EIR that identifies and analyzes all potentially
15 adverse effects of the project, including reasonably foreseeable direct, indirect, and cumulative
16 impacts from all phases of the project. (Pub. Resources Code, § 21100; CEQA Guidelines,
17 §§ 15126, 15126.2.)

18 56. As an informational and public disclosure document, the purpose of an EIR is to
19 provide the public—as well as the public agency—with detailed information about the Project’s
20 potential impacts, and to identify ways to avoid or minimize those impacts. (Pub. Resources
21 Code, § 21061; CEQA Guidelines, § 15121, subd. (a).)

22 57. The EIR must analyze any significant environmental effects the project might cause
23 or exacerbate by bringing development and people into a hazardous area, including wildfire risk
24 areas. (CEQA Guidelines, § 15126.2, subd. (a).) CEQA requires the EIR to analyze a project’s
25 potential to increase or exacerbate wildfire risk, including the increased risk of wildfire ignition or
26 spread and the sufficiency of evacuation capacity, particularly in a wildfire-prone area. (Pub.
27 Resources Code, § 21083.01; CEQA Guidelines, App. G, subds. IX and XX.) This analysis must
28

1 disclose the project’s potential wildfire impacts based on its specific design, density,
2 configuration, land uses, and location, among other relevant factors. (*Ibid.*)

3 58. CEQA also requires that an EIR disclose, analyze, and mitigate to the extent feasible
4 a proposed project’s significant adverse environmental impacts on GHG emissions. (Pub.
5 Resources Code, § 15064.4.)

6 59. CEQA further requires that an EIR discuss any inconsistencies between a proposed
7 project and applicable regional plans, including regional transportation plans. (CEQA
8 Guidelines, § 15125, subd. (d).)

9 60. The FEIR fails to disclose and properly analyze the Project’s significant direct,
10 indirect, and cumulative impacts on wildfire risk. Among other things, the FEIR fails to disclose
11 and adequately analyze the fact that locating the Project in a very high fire hazard severity zone,
12 surrounded by undeveloped land, increases the risk of wildfire. The FEIR’s conclusions
13 regarding wildfire risk related to the Project are not supported by substantial evidence, including
14 but not limited to its rejection of the scientific evidence documenting the increased wildfire risk
15 caused by developments like the Project, and its conclusion that the Project is not the type of
16 “leapfrog” development that leads to a higher level of risk. Indeed, the FEIR does not quantify
17 the risk at all, but simply concludes that the Project can fully compensate for wildfire hazards and
18 reduce any impact to less than significant through limited Project design features.

19 61. The FEIR also fails to disclose and analyze the cumulative increased wildfire risk
20 posed by the Project in conjunction with other proposed Otay Ranch development, including the
21 nearby Otay Ranch Village 14 and Planning Areas 16/19 project. These developments would add
22 thousands of homes in a highly fire-prone area of the County. As discussed above, construction
23 in such an area increases the threat of wildfires, and together the new developments will only
24 enhance this effect.

25 62. The FEIR also violates CEQA by failing to adequately analyze and disclose the
26 Project’s direct, indirect, and cumulative impacts relating to GHG emissions and climate change.
27 Specifically, the FEIR fails to adequately mitigate the Project’s GHG emissions, is inconsistent
28 with state, regional, and/or local GHG emissions reduction plans, policies, and regulations,

1 including the Regional Transportation Plan and Sustainable Communities Strategy, and fails to
2 incorporate all feasible mitigation measures to address GHG impacts.

3 63. The County’s action in certifying the FEIR and approving the Project without
4 adequately evaluating the Project’s environmental impacts is arbitrary and capricious, lacking in
5 substantial evidence, a prejudicial abuse of discretion, and/or not in accordance with law.
6 Accordingly, the County’s certification of the FEIR and approval of the Project must be set aside
7 under Code of Civil Procedure section 1094.5 and Public Resources Code section 21168.9.

8 **SECOND CAUSE OF ACTION**

9 **(Violation of CEQA – Failure to Impose Adequate Mitigation Measures)**
10 **Pub. Resources Code, § 21000 et seq.; Code Civ. Proc., § 1094.5)**

11 64. The People hereby incorporate all of the allegations in the paragraphs above as if
12 fully set forth herein.

13 65. CEQA requires a public agency to “mitigate or avoid the significant effects on the
14 environment of projects that it carries out or approves whenever it is feasible to do so.” (Pub.
15 Resources Code, § 21002.2, subd. (b); CEQA Guidelines, §§ 15021, subd. (a), 15126.4,
16 subd. (a)(2).)

17 66. A lead agency may not approve a project for which there are significant
18 environmental impacts unless the agency finds, supported by substantial evidence, that:
19 (a) mitigation measures have been required of the project which avoid or substantially lessen the
20 significant environmental effects, or (b) mitigation measures are found to be infeasible based on
21 substantial evidence. (CEQA Guidelines, § 15091.)

22 67. CEQA requires that adopted mitigation measures be fully enforceable. (Pub.
23 Resources Code, § 21081.6, subd. (b); CEQA Guidelines, § 15126.4, subd. (a)(2).)

24 68. The formulation of mitigation measures may not be deferred to some future time,
25 except that specific details of a mitigation measure may be developed after project approval when
26 it is impractical and infeasible to include those details in the environmental review and the lead
27 agency “(1) commits itself to the mitigation, (2) adopts specific performance standards the
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1 mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly
2 achieve that performance standard.” (CEQA Guidelines, § 15126.4, subd. (a)(1)(B).)

3 69. The FEIR violates CEQA because it relies on GHG mitigation measures that are
4 vague, deferred, unenforceable, and/or inconsistent with applicable state, local, and/or regional
5 plans, policies, and/or regulations, and fails to set forth the specific numerical reductions in GHG
6 emissions these measures will achieve.

7 70. The FEIR violates CEQA because it fails to incorporate all feasible GHG emission
8 mitigation and avoidance measures.

9 71. The FEIR further violates CEQA because it impermissibly relies on off-site offsets to
10 mitigate Project GHG emissions that are not real, permanent, quantifiable, verifiable, and
11 enforceable reductions as set forth in Health and Safety Code section 38562, subdivision (d)(1),
12 are not additional to any other requirement of law or regulation (CEQA Guidelines, § 15126.4,
13 subd. (c)(3)), and lack legally-required performance standards.

14 72. The FEIR violates CEQA because it fails to analyze, disclose, and, if necessary,
15 provide adequate mitigation for the impacts resulting from the Project’s inconsistency with state,
16 regional, and/or local GHG emissions reduction plans, policies, and regulations, including the
17 Regional Transportation Plan and the Sustainable Communities Strategy.

18 **PRAYER FOR RELIEF**

19 The People pray for judgment as follows:

20 1. For alternative and/or peremptory writs of mandate directing Respondents to vacate
21 and set aside certification of the FEIR, adoption of the Findings, and approval of all associated
22 Project permits, entitlements, and approvals;

23 2. For alternative and/or peremptory writs of mandate directing Respondents to comply
24 with CEQA and take any other action as required by Public Resources Code section 21168.9;

25 3. For injunctive relief restraining Respondents and Real Parties in Interest, and their
26 agents, servants, and employees, and all others acting in concert with them or on their behalf,
27 from taking any action to implement, fund or construct any portion or aspect of the Project,
28 pending full compliance with the requirements of CEQA;

1 4. For a declaration that Respondents' actions in certifying the EIR and approving the
2 Project violated CEQA, and that the certification and approvals are invalid and of no force or
3 effect, and that the Project is inconsistent with other applicable plans, policies, or regulations;

4 5. For attorneys' fees as authorized by Code of Civil Procedure section 1021.8 and other
5 provisions of law; and,

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

7

8 Dated: March 17, 2021

Respectfully Submitted,

9

XAVIER BECERRA
Attorney General of California
CHRISTINA BULL ARNDT
SARAH E. MORRISON
Supervising Deputy Attorneys General
SHANNON CLARK
NICOLE RINKE
Deputy Attorneys General

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KIMBERLY R. GOSLING
Deputy Attorney General
*Attorneys for People of the State of
California ex rel. Xavier Becerra, Attorney
General*

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DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **Center for Biological Diversity, Preserve Wild Santee, California
Chaparral Institute, Endangered Habitats League, California Native Plant
Society, and Sierra Club v. County of San Diego, Board of Supervisors of
the County of San Diego**

Case No.: **37-2020-00046553-CU-WM-CTL**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 17, 2021, I served the attached:

**PEOPLE’S NOTICE OF MOTION AND MOTION FOR LEAVE TO
INTERVENE; EXHIBIT 1 – [Proposed] PEOPLE’S PETITION FOR WRIT OF
MANDATE IN INTERVENTION**

by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on March 17, 2021, at San Diego, California.

Charlette Sheppard
Declarant

/s/ Charlette Sheppard
Signature

ATTACHED SERVICE LIST

<p>SAN DIEGO COUNTY COUNSEL Josh Heinlein County Administration Center 1600 Pacific Highway, Room 355 San Diego, CA 92101 Joshua.Heinlein@sdcounty.ca.gov <i>Attorney for Respondents County of San Diego and Board of Supervisors of the County of San Diego</i></p>	<p>GATZKE DILLON & BALANCE LLP David P. Hubbard 2762 Gateway Road Carlsbad, CA 92009 dhubbard@gdandb.com <i>Attorney for Real Parties in Interest Baldwin & Sons, LLC; Moller Otay Lakes Investments, LLC; Eric Johnson; Chuck Miller; and Ted Shaw</i></p>
<p>CHATTEN-BROWN, CARSTENS & MINTEER LLP Jan Chatten-Brown Josh Chatten-Brown 302 Washington Street #710 San Diego, CA 92103 jcb@cbcearthlaw.com jrcb@cbcearthlaw.com <i>Attorneys for Petitioner Sierra Club</i></p>	<p>SHUTE MIHALY & WEINBERGER LLP William J. White Kevin P. Bundy Laura D. Beaton 396 Hayes Street San Francisco, CA 94102 White@smwlaw.com Bundy@smwlaw.com Beaton@smwlaw.com <i>Attorneys for Petitioners Endangered Habitats League and California Native Plant Society</i></p>
<p>CENTER FOR BIOLOGICAL DIVERSITY John Buse Aruna Prabhala Peter J. Broderick 1212 Broadway, Suite 800 Oakland, CA 94612 jbuse@biologicaldiversity.org apruabhala@biologicaldiversity.org pbroderick@biologicaldiversity.org <i>Attorneys for Petitioners Center for Biological Diversity, Preserve Wild Santee, and California Chaparral Institute</i></p>	