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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **COUNTY OF SAN DIEGO**

17 CENTER FOR BIOLOGICAL  
18 DIVERSITY, PRESERVE WILD  
19 SANTEE, and CALIFORNIA  
20 CHAPARRAL INSTITUTE,

21 Petitioners,

22 v.

23 COUNTY OF SAN DIEGO, BOARD OF  
24 SUPERVISORS OF THE COUNTY OF  
25 SAN DIEGO; and DOES 1 through 20,  
26 inclusive,

27 Respondents,

28 JACKSON PENDO DEVELOPMENT  
COMPANY a/k/a JACKSON PENDO  
DEVELOPMENT; GDCI PROCTOR  
VALLEY, LP; GDC HOLDINGS, LLC;  
PROCTOR VALLEY INVESTORS, LLC;  
GDC INVESTMENTS 11, LP; and DOES  
21 through 40, inclusive,

Real Parties in  
Interest/Necessary Parties.

Case No.

**VERIFIED PETITION FOR WRIT OF  
MANDATE**

[Code Civ. Proc. §§ 1085, 1094.5; Pub.  
Res. Code § 21000, et seq. (California  
Environmental Quality Act); Gov. Code §  
65300 et seq. (State Planning and Zoning  
Law); Fish & Game Code § 2800 et seq.  
(NCCP Act); Code Civ. Proc. § 1060]

1 **INTRODUCTION**

2 1. This action challenges the decision of San Diego County and its Board of  
3 Supervisors (“Respondents”) to approve the Otay Ranch Village 14 and Planning Areas 16/19  
4 project (“Project”) and certify an Environmental Impact Report (“EIR”) for the Project. The  
5 Project includes, but is not limited to, a General Plan Amendment, Specific Plan, Zone  
6 Reclassification, and a Tentative Map for a “master-planned community” on approximately  
7 1,283.6 acres in the Proctor Valley region of the unincorporated County.

8 2. Petitioners CENTER FOR BIOLOGICAL DIVERSITY, PRESERVE WILD  
9 SANTEE, and the CALIFORNIA CHAPARRAL INSTITUTE (collectively “Petitioners”)  
10 demonstrated throughout the administrative process that the Project will have significant  
11 negative environmental impacts on, among other things, biological resources (including special  
12 status species), air quality, greenhouse gases (“GHGs”), water supplies, water quality, fire  
13 safety, energy consumption, aesthetics, traffic, and land use. Yet Respondents failed to disclose  
14 or adequately analyze these impacts, identify and adopt effective mitigation measures to reduce  
15 them, and consider reasonable alternatives to the Project. The Project is also inconsistent with  
16 the County’s General Plan in numerous respects. For example, the County impermissibly allows  
17 for the purchase of “offsets” from outside the County to purportedly mitigate the Project’s  
18 significant GHG emissions. Respondents’ environmental review and approval of the Project  
19 therefore violates the California Environmental Quality Act (“CEQA”), Public Resources Code  
20 sections 21000 et seq., and the CEQA Guidelines, 14 Cal. Code Regs sections 15000 et seq. and  
21 the State Planning and Zoning Law, Gov. Code § 65300 et seq.

22 3. For these reasons, and as described further below, the County’s approval of the  
23 Project and certification of the EIR constitute a prejudicial abuse of discretion.

24 **THE PARTIES**

25 4. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (the “Center”) is a non-  
26 profit conservation organization dedicated to the protection of native species and their habitats  
27 through science, policy, and environmental law. The Center has approximately 70,000 members  
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1 worldwide, including members who reside within communities in the vicinity of the Project.  
2 The Center has worked for many years to protect imperiled plants and wildlife, open space, air  
3 and water quality, and the overall quality of life for people in unincorporated San Diego County  
4 where the Project is proposed. Members of the Center objected to the approval and construction  
5 of the Project and will be directly and adversely affected by the Project.

6 5. Petitioner PRESERVE WILD SANTEE (“PWS”) Santee is a volunteer  
7 community environmental organization that has worked to protect and enhance the quality of  
8 life and preserve natural resources in the City of Santee and adjoining areas since 1994. Preserve  
9 Wild Santee’s members offer input into local land use decisions in an effort to produce better  
10 development projects with fewer environmental and fire safety impacts.

11 6. Petitioner CALIFORNIA CHAPARRAL INSTITUTE (“CCI”) is a 501(c)(3)  
12 nonprofit education, research, and advocacy organization dedicated to the preservation of native  
13 shrubland habitats throughout the West and supporting the creative spirit as inspired by nature.

14 7. Members of the Center, PWS, and CCI have environmental, educational,  
15 recreational, scientific, and aesthetic interests in the Project area and its plants and wildlife.  
16 These interests will be directly and adversely affected by the Project, which violates provisions  
17 of law as set forth in this Petition and which would cause irreversible harm to the natural  
18 environment and its recreational, scientific, and aesthetic assets. The Petitioners and their  
19 members have a direct and beneficial interest in ensuring that Respondents comply with CEQA  
20 and the CEQA Guidelines. The maintenance and prosecution of this action will confer a  
21 substantial benefit on the public by protecting the public from the environmental and other  
22 harms alleged herein.

23 8. Respondent SAN DIEGO COUNTY (the “County”), a political subdivision of the  
24 State of California, is responsible for regulating and controlling land use in the unincorporated  
25 territory of the County, including implementing and complying with the provisions of CEQA.  
26 The County is the “lead agency” for the purposes of Public Resources Code Section 21067, with  
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1 principal responsibility for conducting environmental review of the proposed actions. The  
2 County has a duty to comply with CEQA and other state laws.

3 9. Respondent SAN DIEGO COUNTY BOARD OF SUPERVISORS (the “Board”)  
4 is the duly elected decision-making body of the County. As the decision-making body, the  
5 Board is responsible for granting the various approvals necessary for the Project and for  
6 ensuring that the County has conducted an adequate and proper review of the Project’s  
7 environmental impacts under CEQA.

8 10. On information and belief, Real Party in Interest JACKSON PENDO  
9 DEVELOPMENT COMPANY, also known as JACKSON PENDO DEVELOPMENT (“Real  
10 Party in Interest”), is the Project applicant and developer, is the entity listed on the County’s  
11 Notice of Determination filed for the Project on June 27, 2019, is incorporated in the State of  
12 California and does business in the State of California, and is the recipient of the Project  
13 approvals that are the subject of this Petition and therefore a real party in interest within the  
14 meaning of Public Resources Code section 21167.6.5.

15 11. GDCI PROCTOR VALLEY, LP, GDC HOLDINGS, LLC, PROCTOR VALLEY  
16 INVESTORS, LLC, and GDC INVESTMENTS 11, LP are listed on the Applicant’s Disclosure  
17 of Ownership Interests on Application for Zoning Permits/Approvals form for the Project. On  
18 information and belief, each is an entity registered to do business in the State of California and  
19 does business in the State of California.

20 12. Petitioners do not know the true names and capacities, whether individual,  
21 corporate, associate, or otherwise, of respondents DOES 1 through 20, inclusive, and therefore  
22 sue said respondents under fictitious names. Petitioners will amend this Petition to show their  
23 true names and capacities when the same have been ascertained. Each of the respondents is the  
24 agent and/or employee of Respondents, and each performed acts on which this action is based  
25 within the course and scope of such respondent’s agency and/or employment.

26 13. Petitioners do not know the true names and capacities, whether individual,  
27 corporate, associate, or otherwise, of real parties in interest DOES 21 through 40, inclusive, and  
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1 therefore sue said real parties in interest under fictitious names. Petitioners will amend this  
2 Petition to show their true names and capacities when the same have been ascertained.

3 **JURISDICTION AND VENUE**

4 14. This Court has jurisdiction to issue a writ of mandate to set aside Respondents'  
5 decision to approve the Project under California Code of Civil Procedure section 1094.5 (or  
6 alternatively, section 1085) and Public Resources Code section 21168.5 (or alternatively, section  
7 21168) and section 21168.9.

8 15. Venue for this action properly lies in the San Diego County Superior Court  
9 because Respondents and the proposed site of the Project are located in the County. Many of the  
10 significant environmental impacts from the Project that are the subject of this lawsuit would  
11 occur in San Diego County, and the Project would affect the interests of San Diego County  
12 residents, including members of the Center, PWS, and CCI who reside in San Diego County.

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

17 17. Petitioners have complied with the requirements of Public Resources Code section  
18 21167.5 by serving a written notice of Petitioner's intention to commence this action on  
19 Respondents on July 25, 2019. A copy of the written notice and proof of service is attached  
20 hereto as Exhibit A.

21 18. Petitioners have complied with the requirements of Public Resources Code section  
22 21167.6 by concurrently notifying Respondents of Petitioners' request to prepare the record of  
23 administrative proceedings relating to this action. A copy of the Petitioners' Election to Prepare  
24 Administrative Record of Proceedings is attached hereto as Exhibit B.

25 19. Petitioners have performed any and all conditions precedent to filing this instant  
26 action and has exhausted any and all administrative remedies to the extent required by law,  
27 including, but not limited to, timely submitting extensive comments objecting to the approval of  
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1 the Project and identifying to Respondents the deficiencies in Respondents' environmental  
2 review for the Project on April 16, 2018, June 21, 2019, and June 26, 2019.

3 20. This Petition is timely filed in accordance with Public Resources Code section  
4 21167 and CEQA Guidelines section 15112.

### 5 **GENERAL ALLEGATIONS**

#### 6 **The Proposed Project and Project Site**

7 21. The proposed Project site is in the remote Proctor Valley area of San Diego  
8 County, northwest of the City of Chula Vista and near the small, unincorporated town of Jamul.  
9 Apart from Proctor Valley Road, the site is undeveloped, with views of Proctor Valley, the San  
10 Miguel and the Jamul Mountains, and the dense trees and shrubs of Upper Otay Reservoir.

11 22. Proctor Valley is home to an abundance of important biological resources. The site  
12 abuts the 5,600-acre Rancho Jamul Ecological Reserve, owned by the California Department of  
13 Fish and Wildlife ("CDFW"), to the west, north, and east. The Rancho Jamul Ecological  
14 Reserve provides raptor foraging habitat, host plants and nectar resources for the Quino  
15 checkerspot butterfly, habitat occupied by the California gnatcatcher and San Diego fairy  
16 shrimp, burrowing owl locations, and important habitat for numerous other special and protected  
17 species, including mountain lions. Proctor Valley is a wildlife movement corridor for species  
18 traveling between the protected habitat of San Miguel Mountain to the northwest and the Jamul  
19 Mountains to the east. CDFW has acknowledged the importance of water sources in Proctor  
20 Valley for wildlife migration between these two areas.

21 23. The Project site itself supports numerous sensitive natural vegetation communities  
22 including chaparral, coastal sage scrub, riparian and vernal pools. Based on the County's own  
23 data, 22 special-status plants and 28 special-status wildlife species occur on the Project site,  
24 including the federally endangered San Diego fairy shrimp and Quino checkerspot butterfly, the  
25 federally threatened California gnatcatcher, the federally threatened/state endangered Otay  
26 tarplant, the state fully protected golden eagle and white-tailed kite, and the federal candidate  
27 western spadefoot toad.

1           24. For instance, Proctor Valley contains crucial habitat for the federally endangered  
2 Quino checkerspot butterfly, an orange-and-black butterfly that was once one of the most  
3 abundant butterflies in Southern California, but whose numbers have been drastically reduced  
4 due to, among other things, development in its dwindling habitat. The Project proposes to  
5 develop significant portions of Quino checkerspot habitat even though surveys have repeatedly  
6 documented individuals of this now-rare species on or near the Project site.

7           25. Additionally, recent observations and U.S. Geological Survey (“USGS”) tracking  
8 data show that federally protected golden eagles frequently travel through Proctor Valley and  
9 forage in the Project site. Recent scientific literature indicates that golden eagles are particularly  
10 sensitive to development—houses, roads, and infrastructure like those proposed for the Project  
11 can cause golden eagles to vacate nearby areas. Development in Proctor Valley would almost  
12 certainly result in the loss of important eagle foraging habitat and the San Miguel  
13 Mountain/Rancho San Diego eagle territory, shrinking available habitat in San Diego County  
14 significantly.

15           26. The western spadefoot toad, a state species of special concern that is not covered  
16 by existing take authorization under the County’s Multiple Species Conservation Program  
17 (“MSCP”), is also present in Proctor Valley. This brown and green amphibian requires shallow,  
18 temporary pools or streams during breeding season; the Project site contains at least 16 such  
19 breeding pools.

20           27. Proctor Valley is designated as a very high fire hazard severity zone by the  
21 California Department of Forestry and Fire Protection and the California Public Utilities  
22 Commission—the highest fire risk level in California. The designation is well-deserved, as the  
23 area has burned at least 17 times in the last 100 years. For example, the 2007 Harris Fire  
24 affected over 90,000 acres, including a large portion of the Project site. The Project site is at  
25 serious risk for fast-moving, wind-driven fires. According to fire experts, a fire ignited on the  
26 Project site under Santa Ana winds would likely spread southwest towards population centers at  
27 a rate of several miles per hour. The City of Chula Vista’s nearest residential development is  
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1 less than 1.5 miles away. The steep terrain surrounding the Project site, vegetated by chaparral  
2 and coastal scrub, would make effective fire suppression difficult. The Project will be served by  
3 a single evacuation route—the planned two-lane Proctor Valley Road.

4 28. The proposed Project site is far from existing job centers and other services. The  
5 City of San Diego is nearly an hour away by car, and by the County’s own estimate, future  
6 residents of the Project will drive 50 million miles per year in order to access these jobs and  
7 other goods and services. The Project is the perfect example of the type of car-oriented sprawl  
8 developments that impede the County’s ability to achieve state climate goals.

9 29. Rainwater and runoff from the Project site drain into Proctor Valley Creek and  
10 Jamul Creek, tributaries to the Upper and Lower Otay Reservoirs, which provide drinking water  
11 to residents in the City of San Diego. Jamul Creek and the Lower Otay Reservoir are already  
12 listed as impaired water bodies under the Clean Water Act. Development of the Project site  
13 would further impair these hydrological systems.

14 **Applicable Land Use Plans**

15 **San Diego County General Plan**

16 30. The County approved the Otay Ranch Subregional Plan (“Subregional Plan”), as  
17 part of the County’s General Plan, on October 28, 1993. The Subregional Plan establishes land  
18 uses for the nearly 23,000-acre Otay Ranch area (in which the Project is located). The  
19 Subregional Plan generally designates Village 14 and Planning Areas 16/19 for development but  
20 acknowledges that project-level development approvals cannot occur until after the County  
21 considers and addresses site-specific concerns related to such development. Other parcels  
22 covered by the Subregional Plan have been developed, though Village 14 and Planning Areas  
23 16/19 have not.

24 31. In its General Plan, the County committed to preparing a climate action plan with  
25 detailed GHG emissions reduction targets and deadlines and comprehensive and enforceable  
26 GHG emissions reduction measures that will achieve specified quantities of GHG reductions. As  
27 mitigation for the harm to the climate from GHG emissions that would be caused by  
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1 development authorized by the General Plan, the County adopted Mitigation Measure CC-1.2,  
2 which requires the preparation of a County Climate Action Plan (“CAP”). On June 20, 2012, the  
3 County adopted a CAP and Thresholds for determining the significance of GHG emissions for  
4 CEQA purposes. This approval was successfully challenged by the Sierra Club in 2014.

5 32. In response, on February 14, 2018, the County Board of Supervisors adopted a  
6 revised CAP and certified an EIR for it. The mitigation and monitoring program adopted by the  
7 County pursuant to that EIR included mitigation measure M-GHG-1, which required certain  
8 projects to mitigate GHG emissions by purchasing carbon offsets. Sierra Club again challenged  
9 those approvals, along with the Center. On December 14, 2018, the San Diego Superior Court  
10 granted the petition to set aside the Revised CAP and Mitigation M-GHG-1, finding in part that  
11 Mitigation M-GHG-1 conflicted with the County’s General Plan and associated EIR by allowing  
12 purchase of carbon offsets derived from carbon reduction projects located outside of the County.

13 33. A major goal of the General Plan is to create a housing stock at a range of prices  
14 (Goal H-1), especially to meet the County’s Regional Housing Needs Assessment allocations for  
15 lower income households. The Housing Element recognizes that a critical means of achieving  
16 this goal is to require large-scale residential developers to provide affordable housing.  
17 Accordingly, Policy H-1.9 “[r]equires developers to provide an affordable housing component  
18 when requesting a General Plan amendment for a large-scale residential project when this is  
19 legally permissible.”

### 20 **Multiple Species Conservation Program**

21 34. In response to ongoing threats to federally and state listed endangered species and  
22 continued development pressures, CDFW and the U.S. Fish and Wildlife Service (“USFWS”)  
23 prepared an MSCP for San Diego County. The MSCP is a joint Habitat Conservation Plan under  
24 federal law and Natural Community Conservation Plan under state law. The MSCP established  
25 mechanisms intended to ensure the survival and recovery of certain federally and state listed  
26 species. In turn, it provided the County with limited “take” authorization for MSCP-covered  
27 species pursuant to the federal Endangered Species Act, 16 U.S.C. section 1531 et seq., and the  
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1 California Endangered Species Act, Fish and Game Code section 2050 et seq. The MSCP does  
2 not cover all of the sensitive or special-status species found on the Project site. For example, it  
3 does not cover (or authorize “take” of) the Quino checkerspot butterfly and the western  
4 spadefoot toad.

5 35. To implement the MSCP in the vicinity of the Project, the County and the City of  
6 Chula Vista worked with CDFW and USFWS to prepare a MSCP Subarea Plan (“Subarea  
7 Plan”). The Project is located within the “South County Segment” of the MSCP Subarea Plan.

8 36. CDFW approved the County’s take permit pursuant to the Natural Community  
9 Conservation Program Act (Fish and Game Code § 2800 et seq.) on March 17, 1998. The  
10 County also entered into an “Implementing Agreement” with CDFW and USFWS to establish  
11 the agencies’ roles and responsibilities for carrying out the MSCP and Subarea Plan. According  
12 to CDFW, the County’s Subarea Plan, the Implementing Agreement, and the incidental take  
13 permit obligate the County to assemble an MSCP Preserve and mitigate for impacts to covered  
14 species and their habitats.

15 37. To incorporate the terms of a compromise known colloquially as the “Baldwin  
16 Letter” or “Baldwin Agreement,” the MSCP and the Subarea Plan include modifications to, and  
17 expansion of, the open space preserve system originally approved as part of the County’s  
18 General Plan (specifically, in the Otay Ranch Subregional Plan). Consistent with the Baldwin  
19 Agreement, the Subarea Plan designates approximately 200 acres of central Proctor Valley  
20 (identified as areas PV-1, PV-2, and PV-3) as “no take authorized” and “Otay Ranch Areas  
21 Where No ‘Take Permits’ Will be Issued.” The Subregional Plan designates PV-1, PV-2, and  
22 PV-3 as “100 percent conserved,” meaning such lands fall within the designated “Hardline  
23 Preserve” area. In exchange, the Baldwin Agreement modifications also allowed significantly  
24 increased residential density in Otay Ranch Villages 1, 2, 3, 4, 9, 10 and 11, which the City of  
25 Chula Vista subsequently developed.

26 38. The EIR prepared for the MSCP also establishes preservation of areas PV-1, PV-2  
27 and PV-3 as mitigation for the impacts of the development authorized by the MSCP. The MSCP  
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1 directed the County to modify its General Plan and the Otay Ranch Specific Plan to reflect  
2 changes in development and open space designations as anticipated by the Baldwin Agreement  
3 and incorporated into the MSCP and Subarea Plan. Indeed, both the County and the City of  
4 Chula Vista took the necessary steps to remove other inconsistencies between the MSCP and  
5 their then-existing general plans. However, without explanation or approval, the County failed  
6 to actually re-designate areas PV-1, PV-2, and PV-3 in its General Plan.

7 **Regional Transportation Plan/Sustainable Community Strategy**

8 39. The San Diego Association of Government (“SANDAG”) is the federally  
9 designated regional agency directing overall transportation infrastructure funding. Every four  
10 years it prepares a Regional Transportation Plan (“RTP”) for the entire County of San Diego.  
11 After the enactment of SB 375 (Govt. Code § 65080 et seq.), SANDAG has been required also  
12 to prepare a Sustainable Community Strategy (“SCS”), setting out means for using  
13 transportation projects and funding to reduce the environmental impact of transportation, and in  
14 particular to reduce GHG emissions from driving. The RTP and SCS are a combined Plan that is  
15 applicable to the entire County, with numerous policies intended to ensure the County  
16 effectively addresses climate change impacts from transportation and land use.

17 **The Project Approvals and EIR**

18 40. On or about December 15, 2016 the County issued a Notice of Preparation  
19 (“NOP”) for the Project, in which it notified public agencies and interested individuals that, as a  
20 lead agency, it would be preparing a Draft EIR to analyze the proposed Project’s potentially  
21 significant environmental impacts. CDFW submitted comments on the NOP and observed that  
22 the proposed development footprint included areas designated in the MSCP Subarea Plan as  
23 “Otay Ranch Areas Where No ‘Take Permits’ Will Be Issued” and that a proposed project  
24 alternative that included a land-exchange involving CDFW preserve lands would not be feasible.

25 41. On or about March 1, 2018, Respondents published a Notice of Availability of a  
26 Draft EIR for the Project and circulated the Draft EIR for public review and comment.

1           42.     Petitioners and numerous others, including public agencies, organizations, and  
2 individual members of the public, submitted comments pointing out the serious deficiencies in  
3 the Draft EIR. For example, commenters explained that the Project would have significant  
4 impacts on air quality, greenhouse gases (“GHGs”), biological resources (including special  
5 status species), water supplies, water quality, fire safety, energy consumption, aesthetics, traffic,  
6 and land use.

7           43.     In a letter to the County on April 16, 2018 before the close of the comment period  
8 on the Draft EIR, Petitioners commented that the Draft EIR failed to comply with CEQA in the  
9 following respects:

- 10           a.     The Draft EIR’s analysis of and mitigation for impacts to biological resources was  
11 inadequate because, *inter alia*, it failed to disclose, evaluate, and avoid significant  
12 impacts to biological resources including special status species, vernal pools,  
13 wetlands and federally designated critical habitat; failed to account for impacts to  
14 the Rancho Jamul Ecological Reserve; and
- 15           b.     the Draft EIR’s analysis of and mitigation for GHG impacts was inadequate  
16 because, *inter alia*, the Draft EIR improperly estimated GHG emissions from the  
17 Project, improperly relied on offsets as mitigation for the Project’s GHG  
18 emissions, and failed to adopt all feasible mitigation measures; and
- 19           c.     the Draft EIR’s analysis of the Projects impacts on water supplies was inadequate.

20           44.     In or around September 2018, the County released a Final EIR, for the Project,  
21 which included text changes to the Draft EIR and Respondents’ responses to public comments  
22 on the Draft EIR. The defects identified in the Draft EIR identified by commenters persisted in  
23 the Final EIR.

24           45.     On October 19, 2018, the Planning Commission considered the Project, and voted  
25 to recommend approval.

26           46.     The Board delayed holding a hearing on the Project, later scheduled a hearing for  
27 December 12, 2018, then again delayed the hearing. In or around May 2019, the Board provided  
28

1 notice that the Project would be heard before the Board at its June 26, 2019 regularly scheduled  
2 hearing.

3 47. In mid-June 2019, the Center discovered that the County had made unannounced  
4 changes to the Final EIR and had replaced several sections of the Final EIR on the County's  
5 website with new versions of those documents. These versions contained changes, including  
6 substantive modifications to Final EIR sections on Air Quality, Greenhouse Gas Emissions,  
7 Transportation and Traffic as well as to the proposed mitigation measures and the County's  
8 response to public comments, including the Center's.

9 48. In a letter submitted to the County on June 21, 2019, before the final hearing to  
10 approve the Project and certify the Final EIR, Petitioners described deficiencies remaining in the  
11 Final EIR, commenting that the Final EIR failed to comply with CEQA in the following  
12 respects:

- 13 a. The EIR's analysis of and mitigation for the Project's impacts to biological  
14 resources, including special status species such as the federally listed Quino  
15 checkerspot butterfly, remained inadequate; and
- 16 b. the EIR's analysis of and mitigation for the Project's GHG emissions remained  
17 inadequate; and
- 18 c. the EIR's water supply analysis remained deficient; and
- 19 d. the EIR's analysis of and mitigation for the Project's wildfire risks and impacts  
20 was inadequate; and
- 21 e. the Final EIR did not adequately respond to the Petitioners' comments on the  
22 Draft EIR.

23 49. In a letter submitted to the County on June 26, 2019, prior to the close of the final  
24 hearing to approve the Project and certify the Final EIR, Petitioners commented that:

- 25 a. The County's late changes to the Final EIR, for which it did not provide notice  
26 to the public, impeded public review of the document; and

- 1           b. the County’s proposal to enter into a so-called “Dispute Resolution Agreement”  
2           with CDFW and the applicant that would commit the County to entering into a  
3           land-exchange deal relating to lands in and around the Project area constituted a  
4           new, separate project for which environmental review had not been conducted;  
5           and  
6           c. the County should recirculate a revised EIR that studied the new project.

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

8           50. On June 26, 2019, the Board of Supervisors held a public hearing on the proposed  
9 Project and Final EIR to consider whether to certify the Final EIR and approve the Project.  
10 Members of the public, including members of the Center, PWS, and/or CCI, attended the public  
11 hearing and opposed the certification of the Final EIR and approval of the Project.

12           51. At the conclusion of the June 26, 2019 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 enter into  
15 the Dispute Resolution Agreement, which commits the County to supporting a land exchange  
16 that would drastically alter the Project footprint to, among other things, allow for the  
17 development and destruction of hundreds of acres of the Rancho Jamul Ecological Reserve.

18           52. On June 27, 2019 the County executed the Dispute Resolution Agreement.

19           53. On June 27, 2019, the County recorded a Notice of Determination for the Project,  
20 which stated that the County had approved the Project, certified the EIR, and adopted Findings  
21 and a Statement of Overriding Considerations.

22           54. As a result of Respondents’ actions in approving the Project, certifying the EIR for  
23 the Project, adopting Findings and a Statement of Overriding Considerations, and entering into  
24 the Dispute Resolution Agreement, Petitioners and their members will suffer significant and  
25 irreparable harm as described herein. Petitioners have no plain, speedy, or adequate remedy at  
26 law for this irreparable harm. Unless this Court grants the requested writ of mandate to require  
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1 Respondents to set aside certification of the EIR and approval of the Project, Respondents'  
2 approval will remain in effect in violation of state law.

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

5 **FIRST CAUSE OF ACTION**

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

8 56. Petitioners hereby incorporate by reference each and every allegation set forth  
9 above.

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

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

25 59. CEQA requires that substantial evidence in the administrative record support all of  
26 the agency's findings and conclusions, including those contained in the EIR, and that the agency  
27 explain how the evidence in the record supports the conclusions the agency has reached.

1           60. Respondents committed a prejudicial abuse of discretion and failed to proceed in a  
2 manner required by law because the Project relies on an EIR that fails to meet the CEQA's  
3 requirements for the disclosure, analysis, mitigation, reduction, and/or avoidance of significant  
4 environmental impacts from the Project, including direct and cumulative impacts to wildfire  
5 risks, air quality, GHGs, biological resources, water supplies, water quality, traffic, aesthetics,  
6 land use (including growth inducing impacts) and energy consumption.

7           61. **Environmental Setting.** The EIR fails to comply with CEQA's requirement to  
8 provide an adequate and accurate description of the environmental setting of the Project area.  
9 (CEQA Guidelines § 15125.) The EIR's description of the environmental setting is inadequate  
10 because, *inter alia*, it fails to:

- 11           a. Adequately describe and disclose the Project area's importance as habitat and/or a  
12           corridor and linkage for special status wildlife in the vicinity of the Project;
- 13           b. establish that protocol-level surveys were performed on all appropriate species;  
14           and,
- 15           c. describe and disclose the results of all biological surveys conducted on the Project  
16           site.

17           62. **Project Description.** The EIR's project description is legally inadequate because,  
18 *inter alia*, the EIR:

- 19           a. Fails to describe the whole of the Project;
- 20           b. fails to describe and analyze the Project as it was ultimately approved by the  
21           County at the Board's June 26, 2019 hearing; and
- 22           c. fails to describe the Dispute Resolution Agreement entered into by the County and  
23           the California Department of Fish and Wildlife as part of the Project, or disclose  
24           how the Dispute Resolution Agreement will foreseeably alter the size, footprint,  
25           and location of the Project or result in additional or increased significant  
26           environmental impacts.

1           63.     **Air Quality.** The EIR fails to adequately disclose, analyze, and/or mitigate the  
2 Project’s significant direct, indirect, and cumulative impacts to air quality. The Project will have  
3 significant and long-term air quality impacts that will be felt by residents of the Project, by  
4 residents of the Otay Mesa area, and by sensitive wildlife, and that will have a negative impact  
5 on wildlife habitat in the region. While the EIR acknowledges the Project will result in  
6 significant air quality impacts, it fails to adopt all feasible mitigation measures and consider  
7 alternatives that would reduce these impacts.

8           64.     **Greenhouse Gases.** The EIR fails to adequately disclose, analyze, and/or mitigate  
9 the Project’s significant direct, indirect, and cumulative GHG impacts. The EIR’s analysis of  
10 GHG impacts is inadequate because, *inter alia*, the EIR:

- 11           a. Fails to accurately estimate the GHG emissions that will result from the Project;
- 12           b. relies on GHG mitigation measures that are vague, deferred, unenforceable,  
13           and/or inconsistent with the County General Plan and other applicable state,  
14           regional, or local plans, policies, or regulations, and fails to set forth the specific  
15           numerical reductions in GHG emissions these measures will achieve;
- 16           c. is inconsistent with other emissions reductions plans, policies and regulations;
- 17           d. fails to incorporate all feasible mitigation and avoidance measures;
- 18           e. impermissibly relies on off-site offsets to mitigate Project emissions because off-  
19           site emissions reductions claimed as offsets are not real, permanent, quantifiable,  
20           verifiable, and enforceable reductions as set forth in Health and Safety Code  
21           Section 38562(d)(1), are not additional to any other requirement of law or  
22           regulation (CEQA Guidelines section 15126.4(c)(3)), and lack legally-required  
23           performance standards; and
- 24           f. fails to analyze, disclose, and if necessary, provide adequate mitigation for the  
25           impacts resulting from the Project’s inconsistency with County General Plan  
26           Policy COS-20, which requires specified GHG reductions within the County,  
27           given that each Project relies on the ability to use out-of-County GHG offsets.

1           **65. Biological Resources.** The EIR fails to adequately disclose, analyze, and/or  
2 mitigate the Project’s significant and cumulative impacts to biological resources, including  
3 numerous animal and plant species affected by the Project. Those species include, but are not  
4 limited to: golden eagle, Quino checkerspot butterfly, Western spadefoot toad, California  
5 gnatcatcher, San Diego fairy shrimp, burrowing owl, mountain lion, spreading navarretia, Otay  
6 tarplant, *Dudleya variegata*, and San Diego button-celery. The EIR’s biological resources  
7 analysis is inadequate because, *inter alia*, the EIR:

- 8           a. Relies on mitigation measures that are vague, deferred, and/or unenforceable;
- 9           b. fails to adequately disclose, analyze, and/or mitigate the Project’s significant  
10           impacts on habitats and features such as vernal pools, non-riparian wetlands, and  
11           preserved areas such as the Rancho Jamul Ecological Reserve, Otay Lakes  
12           Cornerstone Lands Preserve and Otay Ranch open space;
- 13           c. fails to satisfy the requirements of the MSCP County Subarea Plan and  
14           Biological Mitigation Ordinance; and
- 15           d. fails to properly analyze the Project’s impacts on occupancy and designated  
16           critical habitat for Quino checkerspot butterfly.

17           **66. Water Supply.** The EIR does not adequately disclose, analyze, and/or mitigate the  
18 environmental consequences of supplying water to the Project. The EIR’s water supply analysis  
19 is inadequate because, *inter alia*, the water supply analysis and the EIR:

- 20           a. Fail to adequately analyze the impacts of providing the Project with long-term  
21           potable water supply;
- 22           b. fail to accurately describe the uncertainty surrounding regional supplies in light of  
23           increasing drought conditions;
- 24           c. fail to analyze cumulative impacts associated with supplying water to the Project;  
25           and

1 d. present conflicting information, undermining the documents' ability to accurately  
2 disclose, analyze, and/or mitigate the impacts associated with supplying water to  
3 the Project.

4 67. **Fire Safety.** Although the Project site is located in an area designated by the  
5 California Department of Forestry and Fire Protection as a Very High Fire Hazard Severity  
6 Zone, the Respondents failed to adopt feasible mitigation measures and alternatives that would  
7 reduce or avoid the Project's direct and cumulative fire safety impacts. Among other things, the  
8 Respondents failed to fully consider the likelihood that the Project would increase the risk and  
9 intensity of wildfires which will impact human health and safety and habitat for special status  
10 species. The EIR also fails to assess the Project's impacts on area fire protection services and  
11 utilities.

12 68. **Growth-inducing impacts.** The EIR fails to adequately disclose, analyze, and/or  
13 mitigate the Project's significant growth-inducing impacts because, *inter alia*, the EIR contains  
14 limited and inadequate discussion of the growth-inducing impacts of urbanizing a rural,  
15 undeveloped area, and the EIR fails to acknowledge that the Project will induce future growth.

16 69. **Energy.** The EIR fails to adequately disclose, analyze, and/or mitigate the  
17 Project's significant impacts on energy due to the substantial increase in VMT and fuel  
18 consumption the Project will create.

19 70. **Traffic.** The EIR fails to adequately disclose, analyze, and/or mitigate the  
20 Project's significant direct, indirect, and cumulative traffic impacts.

21 71. **Hydrology and Water Quality.** The EIR fails to adequately disclose, analyze,  
22 and/or mitigate the direct, indirect, and cumulative impacts the Project will have on hydrology  
23 and water quality.

24 72. **Aesthetics.** The EIR fails to adequately disclose, analyze, and/or mitigate the  
25 Project's direct, indirect, and cumulative impacts to aesthetics. The EIR is inadequate because,  
26 *inter alia*, the EIR:

- a. Fails to properly analyze Project impacts to views along Proctor Valley Road, a designated scenic highway;
- b. contains insufficient analysis of visual impacts to area trails and recreation areas;
- c. contains deficient analysis of night time views; and
- d. fails to adequately account for cumulative impacts on scenic views in and around the Project site.

73. **Land Use.** The EIR failure to disclose, analyze, and mitigate the Project's inconsistency with applicable land use plans, including but not limited to the MSCP and the General Plan.

74. **Alternatives.** The EIR fails to provide a selection and discussion of alternatives that foster informed decision-making and informed public participation. The alternatives analysis in the EIR does not meet CEQA's requirement that an EIR consider a reasonable range of alternatives that lessen the Project's significant environmental impacts, and does not focus on alternatives that either eliminate adverse impacts or reduce them to insignificance, even if they would to some degree impede the Project's objectives. The EIR's analysis of alternatives is inadequate because, *inter alia*, the EIR:

- a. Improperly relies upon an overly narrow statement of purpose and Project objectives;
- b. does not support its conclusion that no alternative sites exist for the Project;
- c. includes the Land Exchange Alternative, which would worsen the Project's environmental impacts;
- d. fails to include quantitative and/or meaningful comparisons of the Project's impacts and the proposed alternatives; and,
- e. misrepresents the physical conditions of the Project site in the discussion of alternatives.

75. **Responses to Comments.** The responses to comments in the Final EIR fail to meet CEQA's requirements in that they neither adequately dispose of all the issues raised, nor

1 provide specific rationale for rejecting suggested Project changes, mitigation measures, or  
2 alternatives. CEQA requires that the lead agency evaluate and respond to all environmental  
3 comments on the Draft EIR that it receives during the public review period. The responses must  
4 describe the disposition of the issues raised and must specifically explain reasons for rejecting  
5 suggestions and for proceeding without incorporating the suggestions. The Final EIR's  
6 responses to comments fail to satisfy the requirements of law.

7 **SECOND CAUSE OF ACTION**

8 **Violation of CEQA — Inadequate Findings and Statement of Overriding Considerations**  
9 **(Public Resources Code § 21000, *et seq.*)**

10 76. Respondents' Findings of Fact and Statement of Overriding Considerations violate  
11 the requirements of the CEQA Guidelines. Respondents' findings fail to identify the changes or  
12 alterations that are required to avoid or substantially lessen the project's significant  
13 environmental effects (CEQA Guidelines § 15091(a)(1), and do not provide adequate reasoning  
14 or the analytic route from facts to conclusions, as required by law. The purported benefits of the  
15 Project cited in the Statement of Overriding Considerations do not outweigh the substantial costs  
16 of the Project to public health and the environment. Respondents' Findings and Statement of  
17 Overriding Considerations are not supported by substantial evidence in the record. (CEQA  
18 Guidelines, § 15091(b).)

19 77. Where mitigation measures and alternatives to a project are not adopted, the  
20 CEQA findings must identify specific economic, legal, social and technological and other  
21 considerations that make infeasible the adoption of mitigation measures or alternatives. All  
22 CEQA findings must be supported by substantial evidence in the record and must disclose the  
23 analytical route by which approval of the Project is justified. The findings regarding the impacts,  
24 mitigation measures, and alternatives relied upon by Respondents' approval of the Project are  
25 not supported by substantial evidence in the record, and the links between evidence and  
26 conclusions are not satisfactorily provided.

1 78. Respondents' Findings of Fact and Statement of Overriding Consideration fail to  
2 reflect the independent judgment of Respondents.

3 79. As a result of the foregoing defects, Respondents failed to proceed in a manner  
4 required by law, and their decision to approve the Project was not supported by substantial  
5 evidence.

6 **THIRD CAUSE OF ACTION**

7 **Violation of CEQA – Failure to Recirculate EIR**

8 **(Public Resources Code § 21000, *et seq.*)**

9 80. Petitioners hereby incorporate by reference each and every allegation set forth  
10 above.

11 81. CEQA requires that if significant new information is added to an EIR after a draft  
12 EIR is prepared, but before certification of the final EIR, the EIR must be amended and  
13 recirculated for public review and comment.

14 82. The Final EIR for the Project was posted to the County's website after the  
15 Planning Commission's October hearing, on or around November 2018. The County  
16 subsequently made multiple revisions and updates to those Final EIR documents, including  
17 changes to its responses to Petitioners' comments on the Draft EIR. Petitioners and the public  
18 were not provided with notice of these revisions, and the revisions from the previously  
19 published Final EIR documents were not discernable by reviewing the revised documents. These  
20 revisions constituted significant new information requiring recirculation of the EIR.

21 83. In or around mid-June 2019, the County added numerous materials, including a  
22 draft so-called Dispute Resolution Agreement, to its agenda for the June 26, 2019 Board hearing  
23 on the Project and EIR. These new materials proposed significant changes to the Project and/or  
24 the adoption of a new, separate project, and contained significant new information regarding the  
25 Project and environmental review for the Project. For example, the Dispute Resolution  
26 Agreement commits the County to supporting a land exchange that would drastically alter the  
27  
28

1 Project footprint to, among other things, allow for the development and destruction of hundreds  
2 of acres of the Rancho Jamul Ecological Reserve.

3 84. Despite the significant new information added to the EIR and the proposed  
4 changes to the Project, Respondents failed to recirculate the EIR or any portion of the EIR as  
5 required by CEQA. As a result of Respondents' failure to recirculate the EIR, the members of  
6 the public and public agencies were deprived of the opportunity to meaningfully review and  
7 comment on the Project as approved, its substantial adverse environmental consequences, and  
8 the new information regarding other unanalyzed environmental effects of the Project.

9 85. By failing to recirculate the EIR prior to approving the Project, Respondents failed  
10 to proceed in the manner required by law.

11 **FOURTH CAUSE OF ACTION**

12 **Violation of CEQA – Failure to Retain Administrative Record Documents**  
13 **(Public Resources Code § 21000, *et seq.*)**

14 86. Petitioners hereby incorporate by reference each and every allegation set forth  
15 above.

16 87. State and local law, including Public Resources Code section 21167.6(e) and  
17 County Board of Supervisors Resolution 17-170 and Policy A-129 require the County to retain  
18 all records necessary to form the complete administrative record of proceedings in an action to  
19 challenge the County's approval of a project under CEQA.

20 88. On information and belief, the County has deleted or destroyed records relating to  
21 the Project and/or environmental review for the Project, which were required to be retained for  
22 inclusion in the administrative record for this action.

23 89. Respondents prejudicially abused their discretion and failed to proceed in the  
24 manner required by law by failing to preserve records necessary for lawful CEQA review.

25 **FIFTH CAUSE OF ACTION**

26 **Violation of State Planning and Zoning Law**  
27 **(Government Code § 65300, *et seq.*)**

1 90. Petitioners hereby incorporate by reference each and every allegation set forth  
2 above.

3 91. The California State Planning and Zoning Law requires the legislative body of  
4 each county to adopt a general plan for the physical development of the county. The County's  
5 General Plan is a fundamental land use planning document and serves as the constitution for  
6 future development within the County. Land use actions, including the approvals associated with  
7 the Project, must be consistent with the General Plan.

8 92. The Project is inconsistent with mandatory County General Plan policies,  
9 including, but not limited to, policies discouraging sprawl; policies discouraging high density or  
10 high intensity development in Very High Fire Hazard Severity Zones; policies requiring GHG  
11 emission reductions to be made within the County (such as Goal COS-20 and Policy COS-20.1);  
12 and policies requiring the provision of affordable housing for projects requesting a General Plan  
13 Amendment (such as Policy H-1.9).

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

17 **SIXTH CAUSE OF ACTION**

18 **Violation of Natural Community Conservation Plan Act and MSCP**

19 **(Fish & Game Code § 2800 et seq.)**

20 94. Petitioners hereby incorporate by reference each and every allegation set forth  
21 above.

22 95. CDFW approved the MSCP, a natural community conservation plan, for the  
23 region in which the Project is located, pursuant to the Natural Community Conservation Plan  
24 Act, Fish and Game Code section 2800 et seq. The MSCP includes both a Subarea Plan and an  
25 Implementing Agreement with the County. Pursuant to these documents, CDFW approved an  
26 "incidental take" permit for the County on March 17, 1998.



1 and all others acting in concert with them or on their behalf, from taking any action to  
2 implement, fund or construct any portion or aspect of the Project, pending full compliance with  
3 the requirements of CEQA and the CEQA Guidelines;

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

8 5. For costs of the suit;

9 6. For attorney's fees as authorized by Code of Civil Procedure section 1021.5 and  
10 other provisions of law; and,

11 7. For such other and future relief as the Court deems just and proper.  
12  
13

14 DATED: July 25, 2019

CENTER FOR BIOLOGICAL DIVERSITY

15  
16 By: 

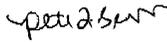
17 John Buse  
18 Aruna Prabhala  
19 Peter Broderick

20 Attorneys for Petitioners CENTER FOR  
21 BIOLOGICAL DIVERSITY, PRESERVE WILD  
22 SANTEE and CALIFORNIA CHAPARRAL  
23 INSTITUTE  
24  
25  
26  
27  
28

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 25 day of July 2019, in Shelter Cove, California.

9  
10 

11 \_\_\_\_\_  
Peter Galvin