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DISCOVERY BUILDERS, INC.,  
8 FARIA LAND INVESTORS, LLC,  
DEBONNEVILLE, LLC, and  
9 DISCOVERY REALTY, INC.

10  
11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13

14 DISCOVERY BUILDERS, INC., FARIA  
LAND INVESTORS, LLC,  
15 DEBONNEVILLE, LLC, and DISCOVERY  
REALTY, INC.

16 Plaintiffs,

17 vs.

18 U.S. DEPARTMENT OF DEFENSE;  
19 JAMES MATTIS, in his official capacity as  
Secretary of Defense; U.S. DEPARTMENT  
20 OF THE NAVY; RICHARD V. SPENCER, in  
his official capacity as Secretary of the Navy;  
21 STEVEN R. ISELIN, in his official capacity  
as Principal Deputy Assistant Secretary of the  
22 Navy for Energy, Installations, and  
Environment; ERICA SPINELLI, in her  
23 official capacity as Deputy Base Closure  
Manager, Base Realignment and Closure  
24 Program Management Office,

25 Defendants.  
26  
27  
28

Case No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF UNDER THE  
ADMINISTRATIVE PROCEDURES ACT  
AND THE NATIONAL  
ENVIRONMENTAL POLICY ACT**

**NATURE OF THE ACTION**

1  
2           1.       Plaintiffs DISCOVERY BUILDERS, INC. (“Discovery Builders”), DISCOVERY  
3 REALTY, INC. (“Discovery Realty”), FARIA LAND INVESTORS, LLC (“Faria”), and  
4 DEBONNEVILLE, LLC (collectively “Plaintiffs”) bring this Complaint pursuant to the National  
5 Environmental Policy Act (“NEPA”) and the Administrative Policy Act (“APA”) to challenge the  
6 adequacy of Defendants’ Final Environmental Impact Report (“Final EIS”) and associated Record  
7 of Decision (“ROD”) issued with respect to the closure and planned transfer of the Naval  
8 Weapons Station Seal Beach, Detachment Concord (“CNWS”) for development by the City of  
9 Concord (“Disposal and Reuse Project” or “Project”).

10           2.       Plaintiffs bring their Complaint against the following Defendants: U.S.  
11 DEPARTMENT OF DEFENSE; JAMES MATTIS, in his official capacity as Secretary of  
12 Defense; U.S. DEPARTMENT OF THE NAVY; RICHARD V. SPENCER, in his official  
13 capacity as Secretary of the Navy; STEVEN R. ISELIN, in his official capacity as Principal  
14 Deputy Assistant Secretary of the Navy for Energy, Installations, and Environment; and ERICA  
15 SPINELLI, in her official capacity as Deputy Base Closure Manager, Base Realignment and  
16 Closure Program Management Office West (collectively “Defendants”).

17           3.       Plaintiffs challenge Defendants’ erroneous decision to approve the disposal of the  
18 CNWS, which paves the way for the development of over 5,000 acres of land along one of the  
19 most congested transportation arteries in the nation. In approving this decision that will add  
20 12,272 residential units and 6.1 million square feet of commercial space, Defendants failed to take  
21 the required “hard look” at the Project’s impacts on the residents of the region, as they are  
22 mandated to do by law. Defendants’ decision would add over 32,000 new residents—a nearly  
23 25% increase from the City of Concord’s 2016 population—and generate thousands of new  
24 vehicle trips, cause significant pollution, and strain an overburdened municipal system.

25           4.       In reaching their decision, Defendants relied upon incomplete, faulty data and  
26 assumptions, an analysis that conveniently ignored and segmented consideration of the proposed  
27 use of the CNWS. The analysis provided a range of alternatives that failed to identify a less  
28 impactful action. Defendants failed to supplement their analysis notwithstanding significant new

information regarding traffic patterns and methodology, air quality, and emerging contaminants.

5. The CNWS Project will cause a 25% increase in the population of the City of Concord, and further clog transportation arteries that are already badly congested. The transportation impacts were not fully disclosed and, among other things, Defendants made unrealistic assumptions regarding the number of generated trips, misallocated traffic to create a rosier picture of commute conditions, and ignored the impacts of this exponential population increase on public transportation infrastructure.

6. Similarly, Defendants glossed over and in some cases ignored serious air quality concerns and data in an area that is already subject to pollution stressors. The analysis ignored significant contributors to criteria pollutant emissions during the operational phase of the Project and the analysis incorrectly applied their chosen emissions model, and also disregarded the reasonably foreseeable developments precipitated by Defendants' actions.

7. Additionally, in determining that there will be no impacts from remediation, Defendants made a blanket assertion of deference to compliance with federal, state, and local laws and regulations without identifying mitigation measures or conducting an independent evaluation of the adequacy of such measures, as required by NEPA. Further, the scope of remediation described in the EIS conflicts with what the City of Concord's Disposal and Reuse Project has described in its Environmental Impact Report prepared pursuant to the California Environmental Quality Act, resulting in an inconsistent project description that concludes that portions of the property will be unsuitable for the intended use.

8. Defendants have completely failed to provide the public and decision-makers with complete information in violation of the protections of NEPA and the APA.

## JURISDICTION

9. Because this action arises under the laws of the United States, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

10. This Court is empowered to perform judicial review of federal agency decisions pursuant to 5 U.S.C. §§ 701-706.

11. This Court may issue such declaratory and injunctive relief as is necessary pursuant

1 to 28 U.S.C. §§ 2201-2202.

2 12. Defendants U.S. Department of Defense (“DOD”) and U.S. Department of the  
3 Navy (“Navy”) took a final action that is reviewable under the APA when the agents named in the  
4 caption above issued the Record of Decision (“ROD”), approving the Final EIS and authorizing  
5 the Disposal and Reuse Project under NEPA.

### 6 VENUE

7 13. Venue in the Northern District of California is proper pursuant to 28 U.S.C.  
8 § 1391(e)(1), because “a substantial part of the events or omissions giving rise to the claim  
9 occurred” and “a substantial part of property that is the subject of the action is situated” in Contra  
10 Costa County, which is a part of the Northern District.

### 11 PARTIES

#### 12 Plaintiff Discovery Builders, Inc.

13 14. Plaintiff Discovery Builders, Inc. is a corporation formed in 1998 in the State of  
14 California and engaged in the development of real estate in the San Francisco Bay Area.

15 15. Discovery Builders maintains its headquarters at its company offices in Concord,  
16 California at 4061 Port Chicago Highway, within the impact area of the Disposal and Reuse  
17 Project. Discovery Builders’ headquarters are located within one quarter mile of Highway 4, and  
18 within one half a mile of the North Concord/Martinez Bay Area Rapid Transit (“BART”) station.

19 16. Discovery Builders’ officers and eighty-five (85) employees are headquartered at  
20 the company offices, and regularly use the Highway 4 and Interstate 680 transportation corridors  
21 and regional transportation infrastructure. Additionally, Discovery Builders’ officers and  
22 employees reside near or regularly visit the vicinity of the CNWS. Discovery Builders and its  
23 officers and employees intend to continue to use and enjoy these areas on an ongoing basis in the  
24 future.

25 17. Without the relief sought herein, the aesthetic, health, and transportation interests  
26 of Discovery Builders and its officers and employees will be adversely affected and irreparably  
27 injured. The impacts to these resources will directly and adversely impact Discovery Builders’  
28 property, the operations of its business and, most importantly, the health and welfare of its

1 employees and officers.

2 18. For example, Discovery Builders reasonably believes that employees who suffer  
3 from respiratory problems will experience worsened conditions due to deteriorated air quality in  
4 and around the CNWS, and that employees and officers will be negatively impacted by worsened  
5 traffic conditions in and around the CNWS.

6 19. By way of example, the planned development will introduce an additional 32,000  
7 residents using roadways like Port Chicago Highway that are already graded at Level of Service C  
8 or lower. Portions of Highway 4 are already rated at Level of Service F—meaning there is  
9 “[c]ongestion, high delays, and extensive queuing occurring.” Increasing the population by 25%  
10 will increase the burden on transportation infrastructure that is already beyond capacity and no  
11 satisfactory mitigation has been proposed.

12 20. Discovery Builders’ officers and employees use the area’s roadways and  
13 transportation infrastructure daily, and will be further injured by undisclosed and unanalyzed air  
14 quality emissions from stationary sources within the Project. These concrete injuries are directly  
15 caused by Defendants’ failure to comply with their mandatory duties under NEPA.

16 Plaintiff Faria Land Investors, LLC

17 21. Plaintiff Faria Land Investors, LLC (“Faria”) is a limited liability company formed  
18 in the State of California in 2004, and is engaged in the development of real estate in the San  
19 Francisco Bay Area.

20 22. Faria maintains an office in Concord, California at 4061 Port Chicago Highway,  
21 within the impact area of the Disposal and Reuse Project. Additionally, Faria owns approximately  
22 606 acres of land directly adjacent to the CNWS to the west, which has been designated and  
23 planned for residential use for over fourteen years. The planned Faria development is within one  
24 mile of Highway 4 and within two and one-half miles of the North Concord BART station.

25 23. Faria’s property adjacent to the CNWS and its business interests are directly and  
26 adversely impacted by Defendants’ planned transfer of the CNWS and Defendants’ failure to  
27 adequately disclose, analyze, and assess impacts to the property resulting from impaired air quality  
28 during construction and operation, transportation congestion and hazardous waste contamination.

1 Faria reasonably believes that it will suffer concrete injury due to the Defendants' failure to  
2 comply with NEPA.

3 Plaintiff Discovery Realty, Inc.

4 24. Plaintiff Discovery Realty, Inc. is a corporation formed in 2011 in the State of  
5 California, and is engaged in the sale of real property in the San Francisco Bay Area.

6 25. Discovery Realty maintains its headquarters at its company offices in Concord,  
7 California at 4061 Port Chicago Highway, within the impact area of the Disposal and Reuse  
8 Project.

9 26. Discovery Realty's officers and approximately forty (40) employees are  
10 headquartered at the company offices, and regularly use the Highway 4 and Interstate 680  
11 transportation corridors and regional transportation infrastructure. Additionally, Discovery  
12 Realty's officers and employees reside near or regularly visit the vicinity of the CNWS.  
13 Discovery Realty's Concord headquarters is located within one quarter mile of Highway 4 and  
14 within one half mile of the North Concord/Martinez Bay Area Rapid Transit ("BART") station.  
15 Discovery Realty and its officers and employees intend to continue to use and enjoy these areas on  
16 an ongoing basis in the future.

17 27. Without the relief sought herein, the aesthetic, health, and transportation interests  
18 of Discovery Realty and its officers and employees will be adversely affected and irreparably  
19 injured. The impacts to these resources will directly and adversely impact Discovery Realty's  
20 property, the operations of its business and, most importantly, the health and welfare of its  
21 employees and officers.

22 28. For example, Discovery Realty reasonably believes that its employees who suffer  
23 from respiratory problems will experience worsened conditions due to deteriorated air quality in  
24 and around the CNWS and its employees and officers will be negatively impacted by worsened  
25 traffic conditions in and around the CNWS. Discovery Realty's officers and employees use the  
26 area's roadways and transportation infrastructure daily, and will be further injured by undisclosed  
27 air quality emissions from stationary sources within the Project. These concrete injuries are  
28 directly caused by Defendants' failure to comply with their mandatory duties under NEPA.

1            Plaintiff DeBonneville, LLC

2            29.      Plaintiff DeBonneville, LLC (“DeBonneville”) is a limited liability company  
3 formed in the State of California in 2015, and is engaged in the development of real estate in the  
4 San Francisco Bay Area.

5            30.      DeBonneville maintains an office in Concord, California at 4061 Port Chicago  
6 Highway, within the impact area of the CNWS. Additionally, DeBonneville owns approximately  
7 60 acres of residential-zoned land within the impact area of the Disposal and Reuse Project. The  
8 planned DeBonneville development is within one-quarter mile of Highway 4 and within two and  
9 one-half miles of the North Concord BART station.

10          31.      DeBonneville reasonably believes that it will suffer concrete injury due to the  
11 Defendants’ failure to comply with NEPA including, but not limited to, impaired air quality  
12 during construction and operation and worsened traffic conditions.

13            Defendants

14          32.      Defendant U.S. Department of Defense (“DOD”) is the parent agency of the United  
15 States Department of the Navy and responsible for the closure and transfer process of the Concord  
16 CNWS, which is the subject of the EIS challenged here. The Department of Defense is  
17 responsible for compliance with the APA and NEPA.

18          33.      Defendant James Mattis is the Secretary of the United States Department of  
19 Defense and is responsible for all DOD activities. He is sued in his official capacity.

20          34.      Defendant U.S. Department of the Navy is the agency directly responsible for  
21 operation, closure and transfer of the CNWS, which is the subject of the EIS challenged here.

22          35.      Defendant Richard V. Spencer is the Secretary of the Navy, and is responsible for  
23 all Navy administrative activities. He is sued in his official capacity.

24          36.      Defendant Steven R. Iselin is the Principal Deputy Assistant Secretary of the Navy  
25 for Energy, Installations, and Environment. He approved and signed the Navy’s September 29,  
26 2017 Record of Decision (“ROD”) selecting EIS Alternative 1 for disposal of the CNWS. He is  
27 sued in his official capacity.

28          37.      Defendant Erica Spinelli is the Deputy Base Closure Manager at the Navy’s Base



1 Realignment and Closure Program Management Office, West, and is the principal individual  
 2 responsible for the preparation of the Final EIS challenged here. She is sued in her official  
 3 capacity.

#### 4 **STATUTORY FRAMEWORK**

5 38. The Administrative Procedure Act, 5 U.S.C. §§ 701–706, authorizes courts to  
 6 review final agency actions to ensure that the agency’s actions, findings, and conclusions are not  
 7 arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law. The  
 8 APA authorizes judicial challenges to any final agency action taken pursuant to any statute,  
 9 including NEPA, where the action is made reviewable or where there is no adequate remedy at  
 10 law. 5 U.S.C. § 704.

11 39. The National Environmental Policy Act, 42 U.S.C. §§ 4321-70h is “our basic  
 12 national charter for protection of the environment” (40 C.F.R. § 1500.1(a)). NEPA serves two  
 13 purposes: (1) “it ensures that the agency, in reaching its decision, will have available, and will  
 14 carefully consider, detailed information concerning significant environmental impacts,” and (2) it  
 15 “guarantees that the relevant information will be made available” to the public so it may play a  
 16 role in the decision making process. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332,  
 17 349 (1989). The NEPA process is intended to help public officials “take actions that protect,  
 18 restore, and enhance the environment.” 40 C.F.R. § 1500.1.131.

19 40. Pursuant to NEPA, agencies are required to prepare a detailed environmental  
 20 impact statement (“EIS”) for any major federal action significantly affecting the quality of the  
 21 human environment. 42 U.S.C. § 4332(C). NEPA requires that federal agencies, through the EIS,  
 22 take a “hard look” at major federal actions, including consideration of all direct, indirect, and  
 23 cumulative impacts resulting from past, present, and reasonably foreseeable future actions (40  
 24 C.F.R. §§ 1508.7, 1, 1508.8, 1508.25(c)).

25 41. A “hard look” means the EIS must consider “all foreseeable direct and indirect  
 26 impacts” and must involve “a discussion of adverse impacts that does not improperly minimize  
 27 negative side effects.” *League of Wilderness Defs.-Blue Mountains Biodiversity Project v. U.S.*  
 28 *Forest Serv.*, 689 F.3d 1060, 1075 (9th Cir. 2012) (emphasis added).



42. NEPA requires that, before taking final action, agencies make available high-quality information, including accurate scientific analyses, expert agency comments, and public comments. 40 C.F.R. § 1500.1(b). Agencies are not entitled to use or rely upon inaccurate data or employ faulty assumptions. *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 964 (9th Cir. 2005).

### **FACTUAL ALLEGATIONS**

43. In March 2007, the U.S. Navy declared approximately 5,000 acres of property at the CNWS to be surplus to the defense needs of the federal government, pursuant to the Defense Base Closure and Realignment Act (“DBCRA”). The CNWS was closed in accordance with DBCRA on September 30, 2008.

44. As the Local Redevelopment Authority for CNWS, the City of Concord was charged with developing a reuse plan for the surplus property. In 2012, the City adopted the Concord Reuse Project Area Plan and amended the Concord 2030 General Plan to accommodate the planned redevelopment. During the NEPA process, however, Defendants only considered those alternatives that would be compatible with the policies adopted by the City of Concord, and failed to consider a reasonable range of alternatives as required under NEPA.

45. On March 14, 2013, the Navy published its Notice of Intent to prepare an EIS and conducted public scoping meetings in 2013. During the course of the public scoping meeting, the Defendants received comments raising understandable concerns regarding the Project’s impacts on transportation, including comments by neighborhood residents who expressed concern that the anticipated 25% increase in residents and thousands of vehicles would generate more traffic in what was already one of the most congested areas in the nation. The California Department of Transportation (“Caltrans”) submitted comments suggesting specific methodologies and guidance for analyzing traffic impacts, as did the City of Antioch.

46. Defendants also received scoping comments regarding deteriorating air quality, including a recommendation from U.S. EPA to provide a “detailed discussion of ambient air conditions, National Ambient Air Quality Standards (NAAQS), criteria pollutant nonattainment areas, and potential air quality impacts.” Commenters discussed environmental management of

1 hazardous contaminant at the CNWS site, including a neighborhood alliance that requested  
 2 Defendants identify how the environmental cleanup would be managed.

3 47. In 2014, the U.S. EPA published a Notice of Availability for the Draft EIS, and  
 4 opened the public comment period as required by NEPA. The Draft EIS identified only two  
 5 action alternatives, along with the NEPA-mandated alternative of no project. The action  
 6 alternatives consisted of:

- 7 a. Alternative 1 (the Preferred Alternative) with concentrated development of  
 8 30% of the CNWS acreage for mixed use including 12,272 housing units  
 9 and 6.1 million square feet of commercial space, and
- 10 b. Alternative 2 (Intensified Reuse) calling for an additional 3,500 housing  
 11 units on top of the Preferred Alternative.

12 48. Defendants circulated the Draft EIS for the minimum required 45-day public and  
 13 agency comment period in response to which 34 members of the community and state and federal  
 14 agencies submitted comments highlighting a number of serious inadequacies in the analysis  
 15 performed by the Defendants. Defendants' responses to these comments were perfunctory and  
 16 failed to result in any substantive changes to the EIS, contrary to NEPA's procedural mandate and  
 17 depriving the public of a full and fair discussion of the Project's impacts in violation of NEPA.

18 49. For purposes of the claims set forth in this Complaint, Defendants failed to  
 19 adequately analyze and disclose significant environmental and health-related impacts associated  
 20 with the Project's impacts on (1) traffic and transportation, (2) air quality, and (3) public health.

21 **A. Inadequate Analysis and Disclosure of Traffic Impacts**

22 50. In the Draft EIS, Defendants analyzed 28 intersections, five roadway segments, 12  
 23 freeway segments, and 21 freeway ramps using the Countywide Travel Demand Model adopted by  
 24 the Contra Costa Transportation Authority in 2012. The traffic model projected that Alternative 1  
 25 would add 203,205 daily trips and 21,730 afternoon peak hour trips to the new and surrounding  
 26 road network, which would cause dramatic drops in the Level of Service provided by the existing  
 27 roadway and transit network, both inside and outside the City of Concord.

28 51. Defendants erroneously concluded, however, that their Preferred Alternative would

1 only result in negative impacts to 12 intersections, two roadway segments, four freeway segments,  
 2 and 16 freeway ramps. Moreover, these undesirable impacts in fact comprise only a small fraction  
 3 of the gridlock that is forecast to occur as a result of the Project development.

4 52. Defendant Navy obfuscated the reasonably foreseeable impacts of the Alternative  
 5 by:

- 6 a. misallocating over 13,000 PM peak hour trips, resulting in those trips  
 7 simply disappearing from the analyzed network,
- 8 b. erroneously assuming that peak hour traffic would use alternate routes  
 9 within CNWS,
- 10 c. erroneously assigning over 50% of PM peak hour commute trips to and  
 11 from East County, and 0% of PM peak hour commute trips to the economic  
 12 hubs of San Francisco and Silicon Valley,
- 13 d. assuming without justification that the addition of several thousand  
 14 residences would in fact reduce traffic,
- 15 e. ignoring the impacts of an additional 8,800 riders per day on the already  
 16 overburdened BART and bus systems,
- 17 f. relying on incomplete and unfunded off-site bicycle routes to defray traffic,  
 18 and
- 19 g. failing to analyze queuing at key freeway ramps and intersections.

20 53. Only 40% of the traffic generated by the Project was assigned to study  
 21 intersections. In other words, the EIS analysis only assessed about 8,600 of the Project's total PM  
 22 peak hour volumes on the surrounding network; the remaining 13,000 PM peak hour trips simply  
 23 disappear from the network.

24 54. An astounding 13,000 PM peak hour trips remain unaccounted and unanalyzed in  
 25 the EIS. Additionally, the traffic analysis relies on the spurious assumption that congestion will be  
 26 significantly reduced due to the construction of additional on-site roads and bicycle paths and is  
 27 thus able to conclude that an additional 12,272 housing units and 6.1 million square feet of  
 28 commercial space will somehow result in no significant increase to the overall traffic in the area.

1           55.     Based on economic trends in the region, it is also highly speculative to assume that  
 2 all 26,500 jobs will be developed in a timely manner. Yet Defendants rely on this highly  
 3 optimistic figure to assume that 32% of all project traffic will remain internal to the City of  
 4 Concord.

5           56.     Rather than taking a conservative, hard look at the likely traffic and transit impacts  
 6 of the Project, the Defendants have obfuscated the serious impacts to the local transportation  
 7 network, which fails to provide a “full and fair” discussion of Alternative 1’s regional traffic  
 8 impacts.

9           57.     During the minimum 45-day public comment period, community leaders from the  
 10 East County Transportation Planning Committee (“TRANSPLAN”), the City of Concord, and  
 11 Caltrans raised these issues with Defendants, finding even these watered-down impacts on state  
 12 and local facilities “unacceptable.” TRANSPLAN requested that the Defendants disclose the trip  
 13 generation rates and mode splits for all land use types and questioned reliance on future increased  
 14 BART capacity. Caltrans also questioned the Defendants’ trip distribution, noting the lack of  
 15 project trip generation directed towards employment centers in the west or south.

16           58.     In response, the Defendants dismissed these concerns and merely directed  
 17 commenters back to their existing defective, inadequate, and incomplete analysis, and did not  
 18 provide further data or justification.

19           59.     These deficiencies evince clear failures to observe “scientific integrity” as required  
 20 by federal law (40 C.F.R. 1502.24) and deprived stakeholders—including Plaintiffs—of a full and  
 21 fair discussion of significant environmental impacts.

22 **B. Inadequate Analysis and Disclosure of Air Quality Impacts**

23           60.     Defendants admitted in the Draft EIS that Alternative 1 would result in significant  
 24 impacts on air quality, but stopped short of fully analyzing and disclosing the full extent of these  
 25 impacts. Both construction and operation would result in the emission of criteria air pollutants  
 26 that will exceed the Bay Area Air Quality Management District’s (“BAAQMD”) significance  
 27 thresholds. Construction emissions would reoccur over a 25-year buildout period, repeatedly  
 28 exposing individuals in the vicinity of the Project to deteriorated air quality.

1           61. Defendants acknowledged that building energy use and increased vehicle traffic  
2 would result in significant operational emissions. However, Defendants' assessment of these  
3 impacts was incomplete, leaving the public and other agencies uninformed about the full scope of  
4 their exposure to toxic air contaminants.

5           62. In assessing air quality impacts, Defendants relied on faulty assumptions, avoided  
6 complete analysis, and reached conclusions based on inaccurate, incorrect, or insufficient data.  
7 Defendants presented daily and annual emission rates for criteria air pollutants during construction  
8 and operational phases as determined by the California Emissions Estimator Model  
9 ("CalEEMod"). However, Defendants used the CalEEMod model in a manner that is inconsistent  
10 with its prescribed guidance and, as a result, Defendants failed to accurately characterize the peak  
11 emissions associated with each stage and phase of development.

12           63. Additionally, the resulting estimates from the CalEEMod failed to address  
13 emissions from stationary sources likely to be found in mixed-use development, gasoline service  
14 stations, or dry cleaners. Further, despite scoping comments submitted by the U.S. EPA on this  
15 precise issue, Defendants did not evaluate whether the Project would cause or contribute to  
16 exceedances of National Ambient Air Quality Standards ("NAAQS"), and did not assess or  
17 identify the quantities of various air pollutants that would reach surrounding homes and businesses  
18 in the local community.

19           64. Defendants further claimed that they were not required to conduct a conformity  
20 analysis with the Clean Air Act because, they assert, the contemplated federal action is limited to  
21 only the transfer of land. At the same time, Defendants repeatedly acknowledged that the EIS was  
22 expressly intended to evaluate the potential direct, indirect, short-term, and long term impacts  
23 from the disposal of the former CNWS and the subsequent reuse of the property. Defendants  
24 therefore cannot avoid a conformity analysis.

25           65. Defendants failed to include this analysis, or to include sufficient information to  
26 determine whether the Project is consistent with local clean air plans. In this manner, Defendants  
27 attempted to improperly segment the transfer of the land from its ultimate reuse and, in doing so,  
28 failed to perform the requisite environmental analysis required by NEPA.

1           66.     The mitigation measures prescribed by Defendants to address the significant air  
2 quality impacts of the Project are unstudied and inadequate. For example, in the first year of  
3 construction, the maximum NO<sub>x</sub> daily emission are almost five times the daily threshold, and  
4 more than three times the annual thresholds established by BAAQMD, and will remain above  
5 these thresholds for over a decade. The EIS discounts these as “temporary,” but contains no  
6 assessment of particular mitigation measures designed to address exposure to these dangerous  
7 contaminants in excess of BAAQMD thresholds.

8           67.     During the scoping process and the 45-day public comment period, neighboring  
9 residents expressed their concerns that the development of CNWS would exacerbate existing air  
10 pollution issues. Rather than evaluating these concerns, Defendants referred commenters to  
11 existing inadequate and incomplete sections of the EIS without further revision or explanation.

12           68.     The concerns were fully justified— Defendants’ EIS failed to provide an analysis  
13 of public health risks from various toxic and hazardous pollutants, including diesel particulate  
14 matter generated by both construction and increased traffic, and failed to provide sufficient  
15 information to evaluate the project’s conformity with NAAQS.

16           69.     In light of the paucity of analysis and data, U.S. EPA Region IX rated the Preferred  
17 Alternative as “Environmental Concerns—Insufficient Information” due in part to the significant  
18 air quality impacts. This rating indicates that the EIS lacked sufficient information for U.S. EPA  
19 to fully assess the environmental impacts that should be avoided in order to protect the  
20 environment and that the additional information, data, analyses, or discussion should be included  
21 in the EIS. In particular, U.S. EPA requested that Defendants include specific construction  
22 activity control measures and ban wood-burning fireplaces.

23           70.     Defendants responded to the U.S. EPA by simply listing mitigation measures from  
24 the City of Concord’s separate environmental review, without providing any analysis or discussion  
25 of the sufficiency of these mitigation measures to reduce the impacts to acceptable levels. Without  
26 an iota of scientific analysis, Defendants perfunctorily concluded no revisions were necessary.

27           71.     Without high quality information and rigorous scientific analysis, Defendants could  
28 not possibly fully characterize the significance of the air impacts that would occur at nearby

1 homes and existing businesses, including Plaintiffs' offices and properties.

2 **C. Inadequate Analysis of Impacts from Hazards.**

3 72. Soil, groundwater, and existing structures at CNWS are heavily contaminated with  
4 hazardous materials including arsenic, volatile organic compounds, dioxins, and radiological  
5 materials. Many of the structures onsite are also contaminated with lead-based paint and asbestos.  
6 Ground-disturbing activities necessary to remediate this contamination can expose workers and  
7 the public to hazardous materials, resulting in significant health effects including nausea,  
8 vomiting, headaches, dizziness, burns, and even systemic damage to organs. Indeed, several of the  
9 contaminants of concern are known carcinogens.

10 73. Despite these known risks, the EIS lacks a sufficient degree of detail regarding the  
11 existing location and nature of all hazardous materials on CNWS. Defendants have impermissibly  
12 obscured the results of remediation activities at the site by relying on bare legal requirements to  
13 find that all impacts will be mitigated "to the extent practicable."

14 74. In analyzing impacts from hazards and hazardous materials, Defendants provided  
15 in the EIS only a cursory discussion of intensive remediation efforts that must occur prior to a  
16 transfer. Despite representing that the EIS is intended to evaluate "the consequences of . . .  
17 subsequent reuse by the local community," the EIS does not identify remediation standards,  
18 anticipated use limits, or the degree of supplemental remediation required by developers for the  
19 various sites.

20 75. Throughout the EIS, it is unclear whether CNWS will be remediated to a level that  
21 will support the planned use upon land transfer. For example, there is no indication whether the  
22 Defendants will lift land use controls (LUCs) prohibiting residential development on plots  
23 designated by the Preferred Alternative for residential neighborhoods. Similarly, for several areas,  
24 the investigation and remediation planning is still in progress with LUCs listed as "TBD" – thus  
25 they fail to identify whether or not there would be LUCs on those portions of the site. (See EIS  
26 table 4.8-1, and areas where ICs are listed as "not yet specified" or "not yet determined if  
27 required," including Site 41, Site 42, UXO 0004).

28 76. Defendants provided no Project-specific mitigation measures to ensure that the



1 effects of the remediation are in fact minimized. Instead, Defendants repeatedly cite compliance  
 2 with the bare legal floor of the law without discussion or consideration of other effective  
 3 mitigation measures. Site 22 in the CNWS is a good example. In 2011, a Record of Decision was  
 4 issued for Site 22 imposing a land use control that “will not allow the property to be used for  
 5 residences, hospitals for humans, schools for persons under 21 years of age, day care facilities for  
 6 children, and playgrounds” due to the presence of arsenic in surface soils above remediation goals.

7 77. However, in Defendants’ Preferred Alternative, much of Site 22 is designated for  
 8 residential development. The EIS contains no discussion of the recent bioavailability study  
 9 conducted for the site nor a method for lifting the current land use control. This lack of clarity and  
 10 inconsistency is rampant throughout the discussion of hazards and hazardous materials, and  
 11 renders the EIS unusable as an informational document.

12 78. Defendants’ blanket reliance on potential compliance with bare legal requirements  
 13 also deprived the public of information regarding feasible mitigation measures that would further  
 14 reduce the risks to future Project residents and neighbors. NEPA requires the lead agency to  
 15 consider mitigation measures “not already included in the proposed action” (40 C.F.R. § 1502.14)  
 16 and to identify “[a]ll relevant, reasonable mitigation measures that could improve the project”  
 17 even if they are beyond the scope of the lead agency’s jurisdiction in order to “alert agencies or  
 18 officials who can implement these extra measures . . . and encourage them to do so” (46 Fed. Reg.  
 19 18026, 18031-32 (Mar. 23, 1981)).

20 79. Defendants entirely ignored this obligation. For example, Defendants anticipate  
 21 that the planned remediation will leave in place certain levels of volatile organic compounds  
 22 beneath the residential development. Yet the EIS contains no discussion of management of this  
 23 residual contamination. Instead, the Defendants rely only on compliance with CERCLA and  
 24 RCRA, without any analysis or discussion of any other mitigation.

25 80. These deficiencies deprived stakeholders—including Plaintiffs—of a full and fair  
 26 discussion of significant environmental impacts and the mitigation measures which could alleviate  
 27 them.

28 81. Despite all of these serious defects above, the Navy issued the Final EIS and ROD

1 on September 29, 2017.

2 **FIRST CAUSE OF ACTION**

3 **(VIOLATIONS OF NEPA AND THE APA)**

4 **(INADEQUATE DISCLOSURE AND ANALYSIS OF TRAFFIC IMPACTS)**

5 82. Plaintiffs incorporate by reference paragraphs 1 through 81 above, inclusive, as  
6 though set forth fully herein.

7 83. Under NEPA, an agency preparing an EIS must provide a “full and fair discussion  
8 of significant environmental impacts.” 40 C.F.R. § 1502.1. An adequate analysis of  
9 environmental projects must rigorously examine and disclose the project’s direct, indirect, and  
10 cumulative environmental impacts, including compliance with applicable laws and regulations. 40  
11 C.F.R. §§ 1508.7, 1508.8, 1058.27(b)(10), 1052.25(b), 1052.2(d). That analysis should be based  
12 on reliable and up-to-date data.

13 84. Here, however, the Navy’s Final EIS has mischaracterized and obfuscated the  
14 impacts of the proposed project. Defendants obscure the real impacts to the regional  
15 transportation network by (1) misallocating over 13,000 PM peak hour trips that simply disappear  
16 from the network, (2) erroneously assuming that peak hour traffic would use alternate routes  
17 within CNWS, (3) assigning over 50% of PM peak hour commute trips to and from East County  
18 and 0% to the economic hubs of San Francisco and Silicon Valley, (4) assuming without  
19 justification that the addition of several thousand residences would in fact reduce traffic, (5)  
20 ignoring the impacts of an additional 8,800 riders per day on the already overburdened BART and  
21 bus systems, (6) relying on incomplete and unfunded bicycle routes to defray traffic, and (7)  
22 failing to analyze queuing along key ramp intersections.

23 85. The Defendants failed to take “a ‘hard look’ at the potential environmental  
24 consequences of the proposed action,” including the serious impacts to the transportation system  
25 serving Concord and the surrounding area. *League of Wilderness Defs.-Blue Mountains*  
26 *Biodiversity Project v. U.S. Forest Serv.*, 689 F.3d 1060, 1075 (9th Cir. 2012).

27 86. Defendants relied on faulty assumptions, avoided complete analysis, and reached  
28 conclusions based on inaccurate, incorrect, or insufficient data rendering it impossible for

1 decision-makers and the public to meaningfully evaluate the decision.

2 87. Serious concerns regarding the transportation analysis were elevated to Defendants'  
3 attention during the public comment period. Stakeholders raised concerns regarding, among other  
4 things, further congestion of already gridlocked roadways, and agency plans for handling of  
5 hazardous materials. These issues were squarely before Defendants throughout the administrative  
6 process and yet Defendants' responses were wholly inadequate to address the public's concerns.

7 88. Plaintiffs and others in the area will be adversely affected by these significant and  
8 undisclosed impacts.

9 89. Absent injunctive relief, Plaintiffs will suffer irreparable harm from significant  
10 impacts that Defendants have failed to analyze and mitigate through feasible and prudent  
11 alternatives or mitigation measures, including impacts from gridlocked roadways and  
12 overburdened transit.

13 90. Damages are not adequate to compensate Plaintiffs for Defendants' violations of  
14 NEPA and the APA and the significant impacts to health, safety and the environment that the  
15 project will concentrate on the communities adjacent to CNWS.

## 16 **SECOND CAUSE OF ACTION**

### 17 **(VIOLATIONS OF NEPA AND THE APA)**

#### 18 **(INADEQUATE DISCLOSURE AND ANALYSIS OF AIR QUALITY IMPACTS)**

19 91. Plaintiffs incorporate by reference paragraphs 1 through 90 above, inclusive, as  
20 though set forth fully herein.

21 92. Defendants have failed to fulfill their obligations under NEPA by depriving  
22 Plaintiffs and the public of a "full and fair discussion of significant environmental impacts" (40  
23 C.F.R. § 1502.1) the Project will have on the region's air quality.

24 93. Defendants' analysis of environmental impacts—including air quality—was so  
25 deficient that EPA determined it could not assess the environmental effects of the Project.  
26 Defendants relied on faulty assumptions in projecting full build-out emissions, misused their  
27 emissions model, and failed to consider the project's consistency with NAAQS. The use of  
28 inaccurate data or faulty assumptions renders an EIS invalid as an informational document. *Native*

1 *Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 964 (9th Cir. 2005). Further, when an EIS  
 2 fails to treat environmental details in sufficient detail or when its treatment suffers from  
 3 “incomprehensibility,” it is invalid. *Env’t Defense Fund Inc., v. Army Corps of Engineers*, 348 F.  
 4 Supp. 916, 922 (N.D. Miss. 1972).

5 94. Defendants relied on faulty assumptions, avoided complete analysis, and reached  
 6 conclusions based on inaccurate, incorrect, or insufficient data rendering it impossible for decision  
 7 makers and the public to meaningfully evaluate the decision.

8 95. Defendants received multiple comments regarding the substandard analysis of air  
 9 quality impacts during the public comment period. These issues were squarely before the  
 10 Defendants throughout the administrative process; yet Defendants’ responses were wholly  
 11 inadequate to address the public’s concerns.

12 96. Plaintiffs and others in the area will be adversely affected by these significant and  
 13 undisclosed impacts.

14 97. Absent injunctive relief, Plaintiffs will suffer irreparable harm from significant  
 15 impacts that Defendants have failed to analyze and mitigate through feasible and prudent  
 16 alternatives or mitigation measures, including impacts from deteriorated air quality over a span of  
 17 decades.

18 98. Damages are not adequate to compensate Plaintiffs for Defendants’ violations of  
 19 NEPA and the APA and the significant impacts to health, safety and the environment that the  
 20 project will concentrate on the communities adjacent to CNWS.

### 21 **THIRD CAUSE OF ACTION**

#### 22 **(VIOLATIONS OF NEPA AND THE APA)**

#### 23 **(INADEQUATE DISCLOSURE/ANALYSIS OF HAZARDOUS MATERIALS IMPACTS)**

24 99. Plaintiffs incorporate by reference paragraphs 1 through 98 above, inclusive, as  
 25 though set forth fully herein.

26 100. Defendants have failed to provide sufficient detail regarding the existing location  
 27 and nature of all hazardous materials on CNWS and the risks posed by these hazardous materials  
 28 to human health and the environment. The EIS further contains no discussion of a method for

1 lifting the current land use controls that directly conflict with land uses contemplated in the  
 2 Preferred Alternative. This lack of clarity and inconsistency is rampant throughout the discussion  
 3 of hazards and hazardous materials, and renders the EIS unusable as an informational document.

4 101. Defendants have also impermissibly obscured the results of remediation activities  
 5 at the site by relying on bare legal requirements to find that all impacts will be mitigated “to the  
 6 extent practicable.” Defendants’ mere citation of legal requirements, without any disclosure or  
 7 analysis, deprived the public of information regarding feasible mitigation measures that would  
 8 further reduce the risks to future Project residents and neighbors.

9 102. NEPA requires the lead agency to consider mitigation measures “not already  
 10 included in the proposed action” (40 C.F.R. § 1502.14) and to identify “[a]ll relevant, reasonable  
 11 mitigation measures that could improve the project” even if they are beyond the scope of the lead  
 12 agency’s jurisdiction in order to “alert agencies or officials who can implement these extra  
 13 measures . . . and encourage them to do so” (46 Fed. Reg. 18026, 18031-32 (Mar. 23, 1981)).

14 103. Defendants entirely neglected this obligation. Defendants failed to provide the  
 15 requisite degree of detail necessary to evaluate the proposed action by omitting discussion of  
 16 ongoing, intensive remediation activities, failing to evaluate the full scope of the reasonably  
 17 foreseeable planned uses of the property, and failing to evaluate any mitigation measures beyond a  
 18 rote citation of compliance with the law. Indeed, there remain many areas which are still under  
 19 investigation where the full extent of contamination is yet to be defined.

20 104. Defendants made it impossible for decision-makers and the public to meaningfully  
 21 evaluate the Project.

22 105. Defendants received multiple comments regarding the inadequate hazards analysis  
 23 during the public comment period. These issues were squarely before the Defendants throughout  
 24 the administrative process and yet Defendants’ responses were wholly inadequate to address the  
 25 public’s concerns.

26 106. Plaintiffs and others in the area will be adversely affected by these significant and  
 27 undisclosed impacts.

28 107. Absent injunctive relief, Plaintiffs will suffer irreparable harm from significant

1 impacts that the Defendants have failed to analyze and mitigate through feasible and prudent  
2 alternatives or mitigation measures, including impacts from ongoing remediation efforts.

3 108. Damages are not adequate to compensate Plaintiffs for Defendants' violations of  
4 NEPA and the APA and the significant impacts to health, safety and the environment that the  
5 project will concentrate on the communities adjacent to CNWS.

#### 6 **FOURTH CAUSE OF ACTION**

#### 7 **(VIOLATIONS OF NEPA AND THE APA)**

#### 8 **(FAILURE TO PREPARE SUPPLEMENTAL ENVIRONMENTAL** 9 **IMPACT STATEMENT)**

10 109. Plaintiffs incorporate by reference paragraphs 1 through 108 above, inclusive, as  
11 though set forth fully herein.

12 110. Pursuant to NEPA, agencies are required to prepare supplements to either draft or  
13 final environmental impact statements if "[t]here are significant new circumstances or information  
14 relevant to the environmental concerns and bearing on the proposed action of its impacts." 40  
15 C.F.R. § 1502.9(c). Additionally, every federal agency must adopt procedures for introducing a  
16 supplemental environmental impact statement ("SEIS") into its formal administrative record and  
17 prepare, circulate, and file an SEIS in the same manner as a draft or final EIS unless alternative  
18 procedures have been approved by the Council on Environmental Quality.

19 111. During the intervening years between the circulation of the DEIS and publication  
20 of the FEIS, significant new information has developed concerning (1) traffic patterns in the Bay  
21 Area, (2) population growth models, and (3) emerging contaminants necessitating  
22 supplementation. This information has a direct bearing on the assumptions for and sufficiency of  
23 the environmental analysis contained in the EIS and needs to be addressed. For example, the  
24 findings of the EIS directly conflict with the traffic analyses in the following documents prepared  
25 in the intervening years between the Draft EIS and Final EIS:

- 26 • Contra Costa County Congestion Management Program 2015 Monitoring Report,
- 27 Contra Costa Transportation Authority, Walnut Creek, CA, August 2015;
- 28 • Final Central County Action Plan, CH2MHill, Oakland, CA, September 2017;

- 1 • Contra Costa Center I-680/Treat Boulevard Bicycle and Pedestrian Plan, Alta Planning
- 2 and Design, Oakland, CA, October 2017;
- 3 • East County Action Plan for Routes of Regional Significance, Fehr and Peers
- 4 Associates, Walnut Creek, CA, March 2014; and
- 5 • Draft Environmental Impact Report for The Veranda, LSA, Oakland, CA, May, 2016.

6 112. Additionally, new contaminants have emerged that are highly likely to be present at  
 7 the CNWS, necessitating intensive remediation that was not analyzed in the EIS. These  
 8 contaminants include per- and poly-fluoroalkyl substances (“PFAS”). These substances are  
 9 commonly found at industrial sites and fire/crash training areas, such as CNWS, due to their  
 10 presence in fire repellants and firefighting foams.

11 113. The California Office of Environmental Health and Hazards Assessment recently  
 12 listed certain PFAS as known developmental toxicants and EPA has previously issued an advisory  
 13 finding that “the weight of evidence for human studies supports the conclusion that PFOS  
 14 exposure is a human health hazard.”

15 114. An October 2017 Report to Congress by the US Department of Defense identifies  
 16 the Concord Naval Weapons Station as a defense facility with a “Known or Suspected Release of  
 17 PFOS or PFOA.” (<https://www.denix.osd.mil/derp/home/documents/aqueous-film-forming-foam-report-to-congress/>) In that report, the Department of Defense states “Addressing elevated levels  
 18 of PFOS and PFOA from DoD activities is a priority for DoD.”  
 19

20 115. Despite the known danger posed by these contaminants, the Defendants have  
 21 conducted no supplemental review to address this new information and its effects on the Project’s  
 22 residents and neighbors.

23 116. Defendants have not prepared an SEIS for the Project and opted instead to rely on  
 24 stale data underlying the DEIS, ignoring substantial changes in circumstances and information  
 25 concerning the area of the Project that are relevant to environmental concerns and bearing on the  
 26 Project’s impacts.

27 117. Plaintiffs are informed and believe, and on that basis allege, that there are  
 28 significant new circumstances or information relevant to environmental concerns over and bearing



1 on the Project and its impacts on the surrounding environment. Such concerns include previously  
 2 unforeseeable increases in traffic and congestion, population growth, and emerging contaminants.

3 118. Defendants' decision to rely on an outdated EIS and refusal to prepare an SEIS for  
 4 the Project is contrary to NEPA, arbitrary and capricious under the APA, a prejudicial abuse of  
 5 discretion, and not supported by substantial evidence.

6 119. Plaintiffs and others in the area will be adversely affected by these significant and  
 7 undisclosed impacts and are further harmed as a result of Defendants' violations of NEPA and the  
 8 APA because Plaintiffs have been denied the benefits and protections provided by compliance  
 9 with those laws.

10 120. Plaintiffs, the public, and the decision-makers who approved and are carrying out  
 11 the Project were not fully informed about the impacts of, mitigation measures for, and alternatives  
 12 to the Project prior to the decision to approve and carry out the Project.

### 13 **FIFTH CAUSE OF ACTION**

#### 14 **(VIOLATIONS OF NEPA AND THE APA)**

##### 15 **(FAILURE TO EVALUATE A REASONABLE RANGE OF ALTERNATIVES)**

16 121. Plaintiffs incorporate by reference paragraphs 1 through 120 above, inclusive, as  
 17 though set forth fully herein.

18 122. NEPA imposes a mandatory procedural duty on federal agencies to rigorously  
 19 explore and objectively evaluate all reasonable alternatives to a proposed federal action. 42  
 20 U.S.C. §§ 4332(C)(iii), 4332(E); 40 C.F.R. §§ 1502.14(a), 1502.14(d). An EIS is intended to  
 21 inform decision-makers and the public of the reasonable alternatives that would avoid or minimize  
 22 adverse impacts to the human environment. 40 C.F.R. § 1502.1. This analysis is the heart of the  
 23 NEPA process. *Id.* at § 1502.14. Agencies are required "to the fullest extent possible" to  
 24 "identify and assess the reasonable alternatives to the proposed actions. *Id.* at § 1500.2.

25 123. Defendants violated NEPA and its implementing regulations by failing to consider  
 26 a reasonable range of alternatives for the development of the CNWS. Defendants ultimately  
 27 considered only two alternatives—their "Preferred Alternative" and "Alternative 2." Alternative  
 28 2, however, was merely a more intensive version of the Preferred Alternative development.

1           124. This impermissibly narrow selection necessarily biased the process in favor of the  
2 Defendants' Preferred Alternative by positioning it as the least impactful of the alternatives  
3 considered. Defendants arbitrarily omitted an alternative contemplating less intensive  
4 development than their Preferred Alternative, depriving the public and decision makers of a full  
5 review of potentially viable alternatives.

6           125. Plaintiffs and others in the area have suffered and will continue to suffer harm and  
7 injury to their legal interests arising from and associated with their use and enjoyment of the  
8 Project area as a result of the Defendants' actions.

9           126. Absent injunctive relief, Plaintiffs will suffer irreparable harm from the more  
10 intensive development due to the biased selection of alternatives.

11           127. Damages are not adequate to compensate Plaintiffs for Defendants' violations of  
12 NEPA and the APA and the significant impacts to health, safety and the environment that the  
13 project will concentrate on the communities adjacent to CNWS.

#### 14                                   **SIXTH CAUSE OF ACTION**

#### 15                                   **(VIOLATIONS OF NEPA AND THE APA)**

#### 16                                   **(IMPROPER SEGMENTATION OF ANALYSIS)**

17           128. Plaintiffs incorporate by reference paragraphs 1 through 127 above, inclusive, as  
18 though set forth fully herein.

19           129. When a proposed federal action is part of a larger federal and nonfederal action that  
20 will have a significant impact on the environment, NEPA requires the preparation of an EIS for  
21 the entire action. A lead agency is prohibited from piecemealing "connected" actions to avoid a  
22 full evaluation, and must analyze such actions in a single EIS. 40 C.F.R. § 1508.25(a). Actions  
23 are connected if they "automatically trigger other actions which may require environmental impact  
24 statements," "cannot or will not proceed unless other actions are taken previously or  
25 simultaneously," or "are interdependent parts of a larger action and depend on the larger action for  
26 their justification." 40 C.F.R. § 1508.25(a)(1)."

27           130. The development and use of the CNWS site is a "reasonably foreseeable"  
28 consequence of the Project that must be fully evaluated as part of the EIS. Despite statements that

1 the EIS is intended to evaluate “the consequences of . . . subsequent reuse by the local  
 2 community,” Defendants have on several occasions abdicated responsibility for the evaluation or  
 3 mitigation of the effects associated with these reasonably foreseeable consequences or simply  
 4 failed to include such analysis in the EIS. For example, Defendants have declined to evaluate the  
 5 consistency of operational criteria pollutant emissions with federal NAAQS and have omitted any  
 6 discussion of long-term mitigation for residual contamination.

7 131. Defendants’ failure to evaluate these reasonably foreseeable consequences is a  
 8 violation of NEPA and has deprived the public and decision makers of a full review of the  
 9 Project’s impacts.

10 132. Plaintiffs and others in the area have suffered and will continue to suffer harm and  
 11 injury to their legal interests arising from and associated with their use and enjoyment of the  
 12 Project area as a result of the Defendants’ actions.

13 133. Absent injunctive relief, Plaintiffs will suffer irreparable harm from the more  
 14 intensive development due to the piecemealed evaluation of the Project.

15 134. Damages are not adequate to compensate Plaintiffs for Defendants’ violations of  
 16 NEPA and the APA and the significant impacts to health, safety and the environment that the  
 17 project will concentrate on the communities adjacent to CNWS.

### 18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs Discovery Builders, Inc., Faria Land Investors, LLC, Discovery  
 20 Realty, Inc., and DeBonneville, LLC, pray for judgment against each Defendant as follows:

- 21 1. For a declaratory judgment finding that each Defendant violated the APA and
- 22 NEPA by issuing the Record of Decision approving transfer of the CNWS to the City of Concord;
- 23 2. For an order vacating the EIS and the Record of Decision issued on September 29,
- 24 2017;
- 25 3. For injunctive relief enjoining Defendants from proceeding with the federal action
- 26 approved in the Record of Decision, including the transfer of any portion of the CNWS, unless
- 27 and until Defendants actually and fully comply with the requirements of the APA and NEPA,
- 28 including the preparation and recirculation of a legally sufficient EIS;

1           4.       For attorney's fees, expert fees and costs of litigation as provided pursuant to the  
2 Equal Access to Justice Act, 28 U.S.C. § 2412, and other applicable authorities; and

3           5.       For such further relief as the Court deems necessary and just.

4 Dated: August 20, 2018

FARELLA BRAUN + MARTEL LLP

5  
6 By:           /s/ James H. Colopy            
James H. Colopy

7  
8 Attorneys for Plaintiffs  
9 DISCOVERY BUILDERS, INC., FARIA LAND  
10 INVESTORS, LLC, DEBONNEVILLE, LLC, and  
11 DISCOVERY REALTY, INC.  
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