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

18 CENTER FOR BIOLOGICAL
19 DIVERSITY, PRESERVE WILD
20 SANTEE, CALIFORNIA CHAPARRAL
21 INSTITUTE, ENDANGERED
22 HABITATS LEAGUE, CALIFORNIA
23 NATIVE PLANT SOCIETY, and SIERRA
24 CLUB,

25 Petitioners,

26 v.

27 COUNTY OF SAN DIEGO, BOARD OF
28 SUPERVISORS OF THE COUNTY OF
SAN DIEGO, and DOES 1 through 20,
inclusive,

Respondents,

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

Real Parties in Interest.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
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By Elizabeth Reyes, Deputy Clerk

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

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

[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); Code Civ. Proc. § 1060]

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15 and California Native Plant Society

1 **INTRODUCTION**

2 1. This action challenges the decision of the County of San Diego and its Board of
3 Supervisors (“Respondents”) to approve the Otay Ranch Resort Village 13 project (“Project”)
4 and certify an Environmental Impact Report (“EIR”) for the Project. The Project includes, but is
5 not limited to, a General Plan Amendment, Specific Plan, Zone Reclassification, and a Tentative
6 Map for a “master-planned community” on approximately 1,869 acres in the Jamul Mountains
7 region of the unincorporated County.

8 2. Petitioners CENTER FOR BIOLOGICAL DIVERSITY, PRESERVE WILD
9 SANTEE, CALIFORNIA CHAPARRAL INSTITUTE, ENDANGERED HABITATS
10 LEAGUE, CALIFORNIA NATIVE PLANT SOCIETY, and SIERRA CLUB (collectively,
11 “Petitioners”) demonstrated repeatedly in comments and testimony throughout the
12 administrative process that the Project will have significant negative environmental impacts on,
13 among other things, biological resources (including special status species such as the Quino
14 checkerspot butterfly), greenhouse gas emissions (“GHGs”) and climate change, wildfire and
15 wildfire safety, water supplies, air quality, water quality, energy consumption, aesthetics, traffic,
16 and land use. Yet Respondents failed to disclose or adequately analyze these impacts, identify
17 and adopt effective mitigation measures to reduce or avoid them, and consider or adopt
18 reasonable alternatives to the Project. The Project is also inconsistent with the County’s General
19 Plan in numerous respects. Respondents’ environmental review and approval of the Project
20 therefore violates the California Environmental Quality Act (“CEQA”), Public Resources Code
21 sections 21000 et seq., and the CEQA Guidelines, 14 Cal. Code Regs sections 15000 et seq., and
22 the State Planning and Zoning Law, Government Code sections 65300 et seq.

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

25 **THE PARTIES**

26 4. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (the “Center”) is a non-
27 profit conservation organization dedicated to the protection of native species and their habitats
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1 through science, policy, and environmental law. The Center has approximately 81,000 members,
2 including members who reside within communities in the vicinity of the Project. The Center has
3 worked for many years to protect imperiled plants and wildlife, open space, air and water
4 quality, and the overall quality of life for people in unincorporated San Diego County in the
5 vicinity of the Project. Members of the Center objected to the approval and construction of the
6 Project and will be directly and adversely affected by the Project.

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

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

15 7. Petitioner ENDANGERED HABITATS LEAGUE (“EHL”) is a tax-exempt non-
16 profit California corporation dedicated to the conservation of native ecosystems and to
17 sustainable land use and transportation planning. Since 1991, EHL has engaged in planning
18 partnerships across Southern California. EHL is extremely active in the San Diego region, where
19 many of its members live and enjoy the biological diversity in the area, including the vicinity of
20 the Project site, and will be directly and adversely affected by the Project. EHL submitted
21 written comments to the County objecting to and commenting on the Project.

22 8. Petitioner CALIFORNIA NATIVE PLANT SOCIETY (“CNPS”) is a binational,
23 non-profit organization with more than 10,000 members distributed across 35 chapters in
24 California and Baja California. The mission of CNPS is to conserve California native plants and
25 their natural habitats and to increase the understanding, appreciation, and horticultural use of
26 native plants. CNPS works closely with decision-makers, scientists, and local planners to
27 advocate for well-informed policies, regulations, and land management practices. CNPS has
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1 members that live in the vicinity of the Project and will be directly and adversely affected by the
2 Project.

3 9. Petitioner SIERRA CLUB is a national nonprofit organization with more than
4 822,900 members nationwide, including 179,000 members in California, and approximately
5 15,300 members in San Diego and Imperial Counties. The Sierra Club is dedicated to exploring,
6 enjoying, protecting, and preserving for future generations the wild places of the earth;
7 practicing and promoting the responsible use of the earth's ecosystems and resources; educating
8 and enlisting humanity to protect and restore the quality of the natural and human environment;
9 and using all lawful means to carry out these objectives. Members of the Sierra Club have
10 environmental, educational, recreational, scientific, and aesthetic interests in the Project area and
11 its wildlife and plant communities. These interests will be directly and adversely affected by the
12 Project.

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

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

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

6 13. On information and belief, Real Party in Interest BALDWIN & SONS, LLC is a
7 Project applicant and/or landowner, is an entity listed on the County’s Notice of Determination
8 filed for the Project on November 19, 2020, does business in the State of California, and is the
9 recipient of the Project approvals that are the subject of this Petition and therefore is a real party
10 in interest within the meaning of Public Resources Code section 21167.6.5.

11 14. On information and belief, Real Party in Interest MOLLER OTAY LAKES
12 INVESTMENTS, LLC is a Project applicant and/or developer, is an entity listed on the
13 County’s Notice of Determination filed for the Project on November 19, 2020, does business in
14 the State of California, and is the recipient of the Project approvals that are the subject of this
15 Petition and therefore is a real party in interest within the meaning of Public Resources Code
16 section 21167.6.5.

17 15. On information and belief, Eric Johnston is a natural person, a Project applicant,
18 listed on the County’s Notice of Determination filed for the Project on November 19, 2020, does
19 business in the State of California, and is the recipient of the Project approvals that are the
20 subject of this Petition and therefore is a real party in interest within the meaning of Public
21 Resources Code section 21167.6.5.

22 16. On information and belief, Chuck Miller is a natural person, a Project applicant,
23 listed on the County’s Notice of Determination filed for the Project on November 19, 2020, does
24 business in the State of California, and is the recipient of the Project approvals that are the
25 subject of this Petition and therefore is a real party in interest within the meaning of Public
26 Resources Code section 21167.6.5.

1 28. The Project area is home to an abundance of important biological resources. The
2 area provides raptor foraging habitat, host plants and nectar resources for the Quino checkerspot
3 butterfly, habitat occupied by the California gnatcatcher and San Diego fairy shrimp, and
4 important habitat for numerous other special and protected species, including mountain lions
5 and burrowing owls. The region is a wildlife movement corridor for species traveling between
6 the protected habitat of San Miguel Mountain to the northwest and the San Ysidro Mountains to
7 the southeast. The Project site contains a regional corridor that connects Dulzura Creek with the
8 Jamul Mountains to the north. The California Department of Fish and Wildlife (“CDFW”) has
9 acknowledged the importance of wildlife migration between these two areas.

10 29. The Project site itself supports numerous sensitive natural vegetation communities
11 including chaparral, coastal sage scrub, riparian and vernal pools. Based on the County’s own
12 data, the Project site provides habitat for 16 special-status plants and 41 special-status wildlife
13 species, including the federally endangered Quino checkerspot butterfly and San Diego fairy
14 shrimp, the federally threatened California gnatcatcher, the federally threatened/state
15 endangered San Diego thornmint, the state fully protected golden eagle and white-tailed kite,
16 and the federal candidate western spadefoot toad.

17 30. For instance, the Project site contains crucial habitat for the federally endangered
18 Quino checkerspot butterfly, an orange-and-black butterfly that was once one of the most
19 abundant butterflies in Southern California, but whose numbers have been drastically reduced
20 due to, among other things, development in its dwindling habitat. The Project proposes to
21 develop significant portions of occupied core Quino checkerspot habitat (including federally
22 designated critical habitat) even though surveys have repeatedly documented individuals of this
23 now-rare species on or near the Project site. The grave threat the Project poses to the Quino
24 checkerspot butterfly prompted experts on the species to weigh in to express their concern that
25 the Project as proposed would “threaten [the butterfly’s] ability to survive in the region.”

26 31. Additionally, recent observations and U.S. Geological Survey (“USGS”) tracking
27 data show that federally protected golden eagles frequently forage in the Project site. Recent
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1 scientific literature indicates that golden eagles are particularly sensitive to development—
2 houses, roads, and infrastructure like those proposed for the Project can cause golden eagles to
3 vacate nearby areas. The Project would almost certainly result in the loss of important eagle
4 foraging habitat and the Cedar Canyon eagle territory, shrinking available habitat in San Diego
5 County significantly.

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

11 33. The Project site is designated as a Very High Fire Hazard Severity Zone by the
12 California Department of Forestry and Fire Protection and the California Public Utilities
13 Commission—the highest fire risk level in California. The designation is well-deserved, as the
14 area has burned at least 12 times in the last 100 years. For example, the 2007 Harris Fire
15 affected over 90,000 acres, including a large portion of the Project site. The Project site is at
16 serious risk for fast-moving, wind-driven fires. According to fire experts, a fire ignited on the
17 Project site under Santa Ana winds would likely spread southwest towards population centers at
18 a rate of several miles per hour. The City of Chula Vista’s nearest residential development is
19 less than 1 mile away. The steep terrain surrounding the Project site, vegetated by chaparral and
20 coastal scrub, would make effective fire suppression difficult. The Project will be served by a
21 single evacuation route—the two-lane Otay Lakes Road.

22 34. The proposed Project site is far from existing job centers and other services. By
23 the County’s own estimate, future residents of the Project will drive over 76 million miles per
24 year in order to access these jobs and other goods and services. The Project is the perfect
25 example of the type of car-oriented sprawl developments that impede the County’s ability to
26 achieve state climate goals.

1 35. Rainwater and runoff from the Project site will end up flowing into Lower Otay
2 Reservoir, which provides drinking water to residents in the City of San Diego. The Lower Otay
3 Reservoir is already listed as an impaired water body under the Clean Water Act. Development
4 of the Project site would further impair these hydrological systems.

5 **Applicable Land Use Plans**

6 **San Diego County General Plan**

7 36. The County approved the Otay Ranch Subregional Plan (“Subregional Plan”), as
8 part of the County’s General Plan, on October 28, 1993. The Subregional Plan establishes land
9 uses for the nearly 23,000-acre Otay Ranch area (in which the Project is located). The
10 Subregional Plan generally identified the Resort Villages area for future development but
11 acknowledged that project-level development approvals cannot occur until after the County
12 considers and addresses site-specific concerns related to such development. Other parcels
13 covered by the Subregional Plan have been developed, though the Project site has not.

14 37. In its 2011 General Plan Update (“GPU”), the County committed to preparing a
15 climate action plan with detailed GHG emissions reduction targets and deadlines and
16 comprehensive and enforceable GHG emissions reduction measures that will achieve specified
17 quantities of GHG reductions. As mitigation for the harm to the climate from GHG emissions
18 that would be caused by development authorized by the 2011 GPU, the County adopted
19 Mitigation Measure CC-1.2, which requires the preparation of a County Climate Action Plan
20 (“CAP”). On June 20, 2012, the County adopted a CAP and Thresholds for determining the
21 significance of GHG emissions for CEQA purposes. This approval was successfully challenged
22 by the Sierra Club in 2014.

23 38. In response, on February 14, 2018, the County Board of Supervisors adopted a
24 revised CAP and certified a Supplemental EIR (“SEIR”) for it. The SEIR and the mitigation and
25 monitoring program adopted by the County pursuant to that SEIR included mitigation measure
26 M-GHG-1, which authorized General Plan Amendment projects to mitigate up to 100% of their
27 GHG emissions by purchasing out-of-County carbon offsets from voluntary registries. M-GHG-
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1 1 permitted the use of carbon offsets from projects outside the County, outside California, and
2 even outside the United States. Sierra Club again challenged those approvals, along with the
3 Center, EHL, Preserve Wild Santee, and others. In a published decision in June 2020 (“*Golden*
4 *Door* decision”), the Fourth District Court of Appeal affirmed the trial court’s ruling that the
5 County’s reliance on Mitigation M-GHG-1 was unlawful and that the SEIR for the CAP failed
6 to comply with CEQA.

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

14 **Multiple Species Conservation Program**

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

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

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

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

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

21 **The Project Approvals and EIR**

22 44. On or about October 14, 2004, the County issued a Notice of Preparation (“NOP”)
23 for the Project, then called the “Otay Ranch Preserve and Resort Community,” in which the
24 County notified public agencies and interested individuals that, as a lead agency, it would be
25 preparing a Draft EIR to analyze the proposed Project’s potentially significant environmental
26 impacts.

1 45. On or about April 6, 2015, Respondents published a Notice of Availability of a
2 Draft EIR for the Project and circulated the Draft EIR for public review and comment.

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

8 47. In letters to the County in May 2015 before the close of the comment period on the
9 Draft EIR, for example, Petitioners sent several separate letters to the County commenting on
10 the Draft EIR. The letters explained that the Draft EIR failed to comply with CEQA in
11 numerous ways, including but not limited to the following respects:

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

24 48. On or about April 12, 2019, the County released a Recirculated Draft EIR, for the
25 Project, which included two new sections, Global Climate Change and Project Alternatives, and
26 associated technical appendices. In addition to the new sections, the Recirculated Draft EIR
27 contained responses to public comments pertaining to sections the County deemed unchanged
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1 by the addition of the new climate change analysis and the addition of a new project-level
2 alternative, Alternative H. The defects identified in the Draft EIR identified by commenters
3 persisted in the Recirculated Draft EIR.

4 49. On or about May 28, 2019, before the close of the public comment period on the
5 Recirculated Draft EIR, petitioners the Center, PWS, and CCI commented that the Recirculated
6 Draft EIR failed to comply with CEQA, including but not limited to the following respects:

- 7 a. the Recirculated Draft EIR's analysis of and mitigation for impacts to biological
8 resources was inadequate because, *inter alia*, it failed to disclose, evaluate, and
9 avoid significant impacts to biological resources including special status species,
10 specifically, but not limited to, the Quino checkerspot butterfly, western
11 spadefoot toad, golden eagle, and San Diego fairy shrimp;
- 12 b. the Recirculated Draft EIR's analysis of, and mitigation for, GHG impacts was
13 inadequate because, *inter alia*, it failed to accurately disclose GHG emissions
14 from the Project, improperly relied on offsets as mitigation for the Project's
15 GHG emissions, and failed to adopt all feasible mitigation measures;
- 16 c. the Recirculated Draft EIR failed to adequately analyze and mitigate the public
17 safety and environmental risks posed by locating the Project in a Very High Fire
18 Hazard Severity Zone; and
- 19 d. the Recirculated Draft EIR failed to adequately disclose, analyze and mitigate
20 Project impacts on water supply.

21 50. On May 28, 2019, before the close of the public comment period on the
22 Recirculated Draft EIR, petitioner EHL submitted comments on the Recirculated Draft EIR,
23 describing its failure to comply with CEQA on a number of grounds, including but not limited to
24 the following:

- 25 a. the Recirculated Draft EIR failed to adequately disclose, analyze, and mitigate
26 impacts to biological resources, including impacts to vernal pools and the San
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1 Diego fairy shrimp, the Quino checkerspot butterfly, the western spadefoot toad,
2 the golden eagle, nesting migratory birds, and the burrowing owl;

- 3 b. the Recirculated Draft EIR: (i) failed to accurately account for, and
4 underestimated, all project-related GHG emissions and the Project's impact on
5 climate change; (ii) lacked both legal and evidentiary support for its conclusion
6 that GHG offsets proposed as mitigation would reduce the Project's climate
7 impacts to a less-than-significant level; (iii) lacked evidentiary support for its
8 conclusion that the Project would be consistent with SANDAG's RTP/ SCS; (iv)
9 failed to incorporate feasible mitigation measures to reduce the Project's climate
10 impacts; and (v) failed to adequately evaluate the Project's cumulative climate
11 change impacts;
- 12 c. the Recirculated Draft EIR failed to adequately disclose, analyze, and mitigate
13 the public safety and environmental risks posed by locating the Project in a Very
14 High Fire Hazard Severity Zone, including those associated with emergency
15 evacuation;
- 16 d. the Recirculated Draft EIR failed to adequately disclose, analyze, and mitigate
17 Project impacts on water supply;
- 18 e. the Recirculated Draft EIR failed to adequately disclose, analyze, and mitigate
19 Project impacts on energy resources;
- 20 f. the Recirculated Draft EIR failed to adequately disclose, analyze, and mitigate
21 the Project's impacts on air quality, including impacts related to criteria air
22 pollutant emissions and toxic air contaminants; and
- 23 g. the Recirculated Draft EIR failed to adequately analyze alternatives to the
24 Project.

25 51. EHL's May 28, 2019 comment letter also commented that approval of the Project
26 would violate California Planning and Zoning Law because approval of the Project would be
27 inconsistent with the County's General Plan and because the General Plan itself was inadequate
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1 and thus could not be relied on. Specifically, the General Plan requires all large-scale residential
2 projects requiring a general plan amendment to provide an affordable housing component,
3 which the Project does not. Further, the County’s General Plan itself cannot be relied on to
4 approve the Project because the General Plan fails to include a required environmental justice
5 element.

6 52. On December 27, 2019, the California Attorney General’s office submitted a letter
7 explaining to the County that the Recirculated Draft EIR’s disclosure and analysis of the
8 Project’s wildfire-related impacts was inadequate. The letter explained that, *inter alia*, Draft EIR
9 failed to disclose or adequately address the increased risk of wildfire ignitions that would result
10 from the Project, failed to adequately address the cumulative wildfire risk posed by the Project,
11 failed to adequately address evacuation in the event of a wildfire, and failed to prohibit certain
12 vegetation on private lots.

13 53. In or around March 2020, the County released a Final EIR for the Project.

14 54. On April 16, 2020, Petitioner EHL submitted comments identifying numerous
15 deficiencies that persisted in the Final EIR, including but not limited to its analysis and
16 mitigation of impacts related to biological resources (including vernal pools, the Quino
17 checkerspot butterfly, and the western spadefoot toad), GHG emissions (including inadequate
18 standards for GHG offsets, improper reliance on future “forecasted” emissions reductions,
19 arbitrary limitations on mitigation obligations, and misinterpretation of California’s cap and
20 trade regulation), wildfire and evacuation, water supply, energy resources, and alternatives. The
21 letter also commented that approval of the Project would violate the State Planning and Zoning
22 Law and the Subdivision Map Act.

23 55. On April 17, 2020, the Planning Commission considered the Project, and voted to
24 recommend approval.

25 56. The Board initially scheduled a hearing on the Project for July 8, 2020, then
26 rescheduled the hearing for August 5, 2020. Shortly before August 5, 2020, the Project was
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1 taken off the Board’s calendar without explanation and no rescheduled hearing date was
2 provided to the public.

3 57. On or about August 20, 2020, the County released additional information
4 regarding carbon offset protocols for the Project’s reduction of GHG emissions. Among other
5 things, the additional information contained revisions to two GHG emissions reduction
6 measures in the Final EIR for the Project, purportedly in response to a June 12, 2020, opinion of
7 the Fourth District Court of Appeal that found that the County’s proposal to address and
8 mitigate GHG emissions through allowing the purchase of carbon offsets failed to comply with
9 CEQA..

10 58. On or about September 18, 2020, Petitioners CNPS, Sierra Club, and EHL each
11 submitted public comments to County describing how the revised GHG mitigation measures
12 failed in numerous respects to remedy the Final EIR’s inadequate analysis and mitigation of
13 GHG impacts. EHL’s comments included an expert report detailing evidence that GHG offsets
14 permitted by the Final EIR’s mitigation measures lacked standards and safeguards necessary to
15 ensure legally adequate and effective mitigation.

16 59. In November 2020, the County provided notice that the Project would be heard
17 before the Board at its November 18, 2020 regularly scheduled hearing.

18 60. In a letter submitted to the County on November 11, 2020, petitioner EHL
19 submitted comments describing how the Final EIR failed to remedy the EIR’s deficient impact
20 analyses, mitigation measures, and alternatives analysis, including, without limitation:

- 21 a. the EIR failed to adequately analyze and mitigate the Project’s impacts on
22 biological resources, including the Quino checkerspot butterfly, vernal pools and
23 San Diego fairy shrimp, western spadefoot toad, and burrowing owl;
- 24 b. the EIR failed to adequately analyze and mitigate the Project’s impacts on GHG
25 emissions and climate change, including by (i) proposing mitigation measures
26 that are improperly deferred, lack adequate performance standards, are
27 unenforceable, and otherwise fail to ensure compliance with both CEQA’s
28

standards for mitigation and the standards articulated in the Fourth District Court of Appeal’s *Golden Door* decision; (ii) failing to support its determination that proposed mitigation measures would reduce the Project’s climate impacts to a less-than-significant level; (iii) relying on “forecasted” emissions reductions in violation of CEQA’s prohibition against deferred implementation of mitigation measures; (iv) failing to evaluate the foreseeable environmental impacts of GHG offset projects proposed as mitigation; (v) arbitrarily limiting the Project’s climate mitigation obligations to 30 years; (vi) failing to analyze and propose additional, feasible on-site mitigation; (vii) continuing to misrepresent the effect of California’s cap and trade program; and (viii) failing to disclose and analyze inconsistencies with SANDAG’s RTP/ SCS;

- c. the EIR failed to adequately analyze and mitigate the public safety and environmental risks posed by locating the Project in a Very High Fire Hazard Severity Zone, including those associated with emergency evacuation;
- d. the EIR failed to adequately disclose, analyze and mitigate Project impacts on water supply;
- e. the Recirculated Draft EIR failed to adequately disclose, analyze and mitigate Project impacts on energy resources; and
- f. the Recirculated Draft EIR failed to adequately analyze alternatives to the Project.

61. EHL’s November 11, 2020 letter also reiterated that approval of the Project would violate State Planning and Zoning Law.

62. In a letter submitted to the County on November 12, 2020, the California Attorney General’s office explained that the Final EIR’s disclosure and analysis of the Project’s wildfire-related impacts remained inadequate. In particular, the letter noted that the Final EIR failed to disclose or adequately address the increased risk of wildfire ignitions that would result from the Project, failed to adequately address the cumulative wildfire risk posed by the Project, failed to

1 adequately address evacuation in the event of a wildfire, and failed to prohibit certain vegetation
2 on private lots.

3 63. In a letter submitted to the County on November 17, 2020, before the final hearing
4 to approve the Project and certify the Final EIR, petitioners the Center, PWS, and CCI described
5 the numerous deficiencies in the Final EIR, commenting that the Final EIR, and specifically its
6 analysis of Alternative H, failed to comply with CEQA in numerous respects, including without
7 limitation:

- 8 a. The EIR’s analysis of and mitigation for the Project’s impacts to biological
9 resources, including special status species such as the federally listed Quino
10 checkerspot butterfly, remained inadequate;
- 11 b. the EIR’s analysis of and mitigation for the Project’s GHG emissions remained
12 inadequate;
- 13 c. the EIR’s water supply analysis remained deficient;
- 14 d. the EIR’s analysis of and mitigation for the Project’s wildfire risks and impacts
15 was inadequate;
- 16 e. the Final EIR did not adequately respond to the Petitioners’ comments on the
17 Draft EIR; and
- 18 f. the County must recirculate a revised EIR for public review and comment.

19 64. In the days leading up to the Board’s hearing on the Project, the County continued
20 to release new information about the Project’s environmental impacts. For example, on or about
21 November 17, 2020, less than twenty-four hours before the Board’s hearing to approve the
22 Project, the County released a new technical memorandum prepared by Chen Ryan Associates
23 entitled Otay Ranch Resort Village 13 Fire Evacuation Analysis – and a November 17, 2020
24 Memorandum from Dudek re Fire-Safety – Otay Ranch Village 13 – Response to Attorney
25 General’s Letter. These materials contained new analysis and significant new information
26 regarding the Project’s impacts.

1 65. On November 17, 2020 and November 18, 2020, prior to the close of the public
2 hearing on the Project, EHL submitted three additional letters to the Board objecting to the
3 County’s late publication of new materials with virtually no time for public review. These letters
4 explained that the new material did not cure the deficiencies in the EIR’s analysis and
5 specifically addressed inadequacies in the EIR’s approach to analyzing and mitigating GHG
6 emissions and impacts relating to wildfire and evacuation safety. One of the letters also
7 explained that the County’s CEQA Findings of Fact and Statement of Overriding Considerations
8 were inadequate.

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

10 66. On November 18, 2020, the Board of Supervisors held a public hearing on the
11 proposed Project and Final EIR to consider whether to certify the Final EIR and approve the
12 Project. Members of the public, including Petitioners’ members, participated in the public
13 hearing and opposed the certification of the Final EIR and approval of the Project.

14 67. At the conclusion of the November 17, 2020 hearing, the Board of Supervisors
15 adopted the Planning Commission’s recommendation, certified the Final EIR, approved the
16 Project and adopted findings in support of the Project approval and EIR certification.

17 68. On November 19, 2020, the County recorded a Notice of Determination for the
18 Project, which stated that the County had approved the Project, certified the EIR, and adopted
19 Findings and a Statement of Overriding Considerations.

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

1 requirements for the disclosure, analysis, mitigation, reduction, and/or avoidance of significant
2 environmental impacts from the Project, including without limitation direct and cumulative
3 impacts to biological resources, GHG emissions and climate change, wildfire risks and safety,
4 emergency evacuation, water supplies, water quality, traffic, aesthetics, land use (including
5 growth inducing impacts), and energy consumption.

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

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

16 **77. Project Description.** The EIR’s project description is legally inadequate because,
17 *inter alia*, the EIR:

- 18 a. fails to describe the whole of the Project;
- 19 b. fails to describe and analyze the Project as it was ultimately approved by the
20 County at the Board’s November 18, 2020 hearing.

21 **78. Biological Resources.** The EIR fails to adequately disclose, analyze, and/or
22 mitigate the Project’s significant direct and cumulative impacts to biological resources,
23 including numerous animal species, plant species, and habitats affected by the Project. Those
24 species include, but are not limited to: Quino checkerspot butterfly, golden eagle, western
25 spadefoot toad, California gnatcatcher, San Diego fairy shrimp, burrowing owl, mountain lion,
26 and Nutall’s scrub oak (*Quercus dumosa*). The EIR’s biological resources analysis is inadequate
27 because, *inter alia*, the EIR:

- a. fails to accurately describe the baseline of existing environmental conditions of the biological resources on the Project site;
- b. fails to adequately disclose, analyze, and/or mitigate the Project's significant impacts to plant and animal species (including special status species);
- c. fails to adequately disclose, analyze, and/or mitigate the Project's significant impacts on habitats and features such as vernal pools and non-riparian wetlands, and preserved areas;
- d. relies on mitigation measures that are vague, ineffective, deferred, and/or unenforceable;
- e. fails to satisfy the requirements of the MSCP County Subarea Plan and the mitigation requirements of the 1993 Otay Ranch GDP/SRP Program Environmental Impact Report; and
- f. fails to properly disclose or analyze the Project's impacts on occupancy and designated critical habitat for Quino checkerspot butterfly.

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

- a. fails to accurately disclose and fully analyze all GHG emissions that will result from the Project;
- b. relies on GHG mitigation measures that are vague, improperly deferred, unenforceable, otherwise inconsistent with the requirements of CEQA and the *Golden Door* decision, and/or inconsistent with the County General Plan and other applicable state, regional, or local plans, policies, or regulations, and fails to set forth the specific numerical reductions in GHG emissions these measures will achieve;
- c. is inconsistent with other applicable plans, policies and regulations addressing the emission of GHGs, including but not limited to SANDAG's RTP/SCS;

- d. fails to incorporate all feasible mitigation and avoidance measures;
- e. impermissibly relies on off-site offsets to mitigate Project emissions because the off-site emissions reductions that would generate offsets are not real, permanent, quantifiable, verifiable, and enforceable, are not additional to reductions required by law or regulation or that otherwise would occur, and lack adequate performance standards;
- f. impermissibly and arbitrarily limits the Project’s mitigation obligations;
- g. fails to provide adequate legal or evidentiary support for its conclusions that proposed mitigation will reduce the Project’s climate impacts and GHG emissions to “net zero” or a less-than-significant level; and
- h. fails to analyze, disclose, and if necessary, provide adequate mitigation for the impacts resulting from the Project’s inconsistency with County General Plan Policy COS-20, which requires specified GHG reductions within the County.

80. **Fire Safety.** Although the Project site is located in an area designated by the California Department of Forestry and Fire Protection as a Very High Fire Hazard Severity Zone, the Respondents failed to adequately disclose or analyze impacts and adopt feasible mitigation measures and alternatives that would reduce or avoid the Project’s direct, indirect, and cumulative wildfire-related impacts. The EIR’s analysis of wildfire-related impacts is inadequate because, *inter alia*, the wildfire analysis in the EIR:

- a. fails to accurately describe the baseline of existing environmental conditions relating to wildfire on the Project site;
- b. fails to adequately disclose, analyze, and/or mitigate the Project’s significant wildfire-related impacts, including but not limited to the likelihood that the Project would increase the risk and intensity of wildfires;
- c. fails to adequately disclose, analyze, and/or mitigate the Project’s significant impacts related to emergency evacuation; and

1 d. fails to adequately assess or mitigate the Project's impacts on area fire protection
2 services and utilities.

3 81. **Water Supply.** The EIR does not adequately disclose, analyze, and/or mitigate the
4 environmental consequences of supplying water to the Project. The EIR's water supply analysis
5 is inadequate because, *inter alia*, the water supply analysis in the EIR:

6 a. fails to adequately analyze the impacts of providing the Project with long-term
7 potable water supply;

8 b. fails to accurately describe the uncertainty surrounding regional supplies in light
9 of increasing drought conditions;

10 c. fails to analyze cumulative impacts associated with supplying water to the Project;
11 and

12 d. presents conflicting information, undermining the documents' ability to accurately
13 disclose, analyze, and/or mitigate the impacts associated with supplying water to
14 the Project.

15 82. **Air Quality.** The EIR fails to adequately disclose, analyze, and/or mitigate the
16 Project's significant direct, indirect, and cumulative impacts to air quality. The Project will have
17 significant and long-term air quality impacts that will be felt by residents of the Project, by
18 residents in the vicinity of the Project, and by sensitive wildlife, and that will have a negative
19 impact on wildlife habitat in the region. While the EIR acknowledges the Project will result in
20 significant air quality impacts, it fails to adopt all feasible mitigation measures and consider
21 alternatives that would reduce these impacts.

22 83. **Growth-inducing impacts.** The EIR fails to adequately disclose, analyze, and/or
23 mitigate the Project's significant growth-inducing impacts because, *inter alia*, the EIR contains
24 limited and inadequate discussion of the growth-inducing impacts of urbanizing a rural,
25 undeveloped area, and the EIR fails to acknowledge that the Project will induce future growth.
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1 84. **Energy.** The EIR fails to adequately disclose, analyze, and/or mitigate the
2 Project’s significant direct, indirect, and cumulative impacts on energy due to the substantial
3 increase in vehicle miles traveled (“VMT”) and fuel consumption the Project will create.

4 85. **Traffic.** The EIR fails to adequately disclose, analyze, and/or mitigate the
5 Project’s significant direct, indirect, and cumulative traffic impacts, including but not limited to
6 VMT-related impacts.

7 86. **Hydrology and Water Quality.** The EIR fails to adequately disclose, analyze,
8 and/or mitigate the direct, indirect, and cumulative impacts the Project will have on hydrology
9 and water quality.

10 87. **Aesthetics.** The EIR fails to adequately disclose, analyze, and/or mitigate the
11 Project’s direct, indirect, and cumulative impacts to aesthetics.

12 88. **Land Use.** The EIR failure to disclose, analyze, and mitigate the Project’s
13 inconsistency with applicable land use plans, including but not limited to: the County’s General
14 Plan (including Policy H-1.9), the MSCP, and the RTP/SCS.

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

- 22 a. improperly relies upon an overly narrow statement of purpose and Project
23 objectives;
- 24 b. does not support its conclusion that no alternative sites exist for the Project;
- 25 c. fails to include quantitative and/or meaningful comparisons of the Project’s
26 impacts and the proposed alternatives;

- 1 d. misrepresents the physical conditions of the Project site in the discussion of
2 alternatives; and
3 e. fails to support with substantial evidence its rejection of the environmentally
4 superior alternative (“Alternative G”).

5 90. **Responses to Comments.** The responses to comments in the Final EIR fail to
6 meet CEQA’s requirements in that they neither adequately dispose of all the issues raised, nor
7 provide specific rationale for rejecting suggested Project changes, mitigation measures, or
8 alternatives. CEQA requires that the lead agency evaluate and respond to all environmental
9 comments on the Draft EIR that it receives during the public review period. The responses must
10 describe the disposition of the issues raised and must specifically explain reasons for rejecting
11 suggestions and for proceeding without incorporating the suggestions. The Final EIR’s
12 responses to comments fail to satisfy the requirements of law.

13 **SECOND CAUSE OF ACTION**

14 **Violation of CEQA — Inadequate Findings and Statement of Overriding Considerations**
15 **(Pub. Resources Code § 21000, *et seq.*)**

16 91. Petitioners hereby incorporate by reference each and every allegation set forth
17 above.

18 92. Respondents’ Findings of Fact and Statement of Overriding Considerations violate
19 the requirements of the CEQA Guidelines. Respondents’ findings fail to identify the changes or
20 alterations that are required to avoid or substantially lessen the project’s significant
21 environmental effects, (CEQA Guidelines § 15091(a)(1)), and do not provide adequate
22 reasoning or the analytic route from facts to conclusions, as required by law. The purported
23 benefits of the Project cited in the Statement of Overriding Considerations do not outweigh the
24 substantial costs of the Project to public health and the environment. Respondents’ Findings and
25 Statement of Overriding Considerations are not supported by substantial evidence in the record.
26 (CEQA Guidelines, § 15091(b).)
27
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1 93. Where mitigation measures and alternatives to a project are not adopted, the
2 CEQA findings must identify specific economic, legal, social, and technological and other
3 considerations that make infeasible the adoption of mitigation measures or alternatives. All
4 CEQA findings must be supported by substantial evidence in the record and must disclose the
5 analytical route by which approval of the Project is justified. The findings regarding the impacts,
6 mitigation measures, and alternatives relied upon by Respondents' approval of the Project are
7 not supported by substantial evidence in the record, and the links between evidence and
8 conclusions are not satisfactorily provided.

9 94. Respondents' Findings of Fact and Statement of Overriding Consideration fail to
10 reflect the independent judgment of Respondents.

11 95. As a result of the foregoing defects, Respondents failed to proceed in a manner
12 required by law, and their decision to approve the Project was not supported by substantial
13 evidence.

14 **THIRD CAUSE OF ACTION**

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

16 **(Pub. Resources Code § 21000, *et seq.*)**

17 96. Petitioners hereby incorporate by reference each and every allegation set forth
18 above.

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

22 98. The Final EIR for the Project was posted to the County's website prior to the
23 Planning Commission's hearing on or around April 17, 2020. The County subsequently made
24 multiple revisions and updates to those Final EIR documents, including changes to its responses
25 to Petitioners' comments on the Draft EIR. These revisions constituted significant new
26 information requiring recirculation of the EIR. The County also added new materials that
27
28

1 contained significant new information regarding the Project and environmental review for the
2 Project.

3 99. Despite the significant new information, Respondents failed to recirculate the
4 whole EIR for public review and comment. As a result of Respondents' failure to recirculate the
5 EIR, the members of the public and public agencies were deprived of the opportunity to
6 meaningfully review and comment on the Project as approved, its substantial adverse
7 environmental consequences, and the new information regarding other unanalyzed
8 environmental effects of the Project.

9 100. 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 **(Pub. Resources Code § 21000, *et seq.*)**

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

16 102. 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.

20 103. 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.

23 104. 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 **(Gov. Code § 65300, *et seq.*)**

1 3. For a temporary stay, temporary restraining order, and preliminary and permanent
2 injunctions restraining Respondents or Real Parties, and their agents, servants, and employees,
3 and all others acting in concert with them or on their behalf, from taking any action to
4 implement, fund, or construct any portion or aspect of the Project, pending full compliance with
5 the requirements of CEQA and the CEQA Guidelines;

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

10 5. For costs of the suit;

11 6. For attorneys' fees as authorized by Code of Civil Procedure section 1021.5 and
12 other provisions of law; and,

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

14
15
16 DATED: December 17, 2020

CENTER FOR BIOLOGICAL DIVERSITY

17
18 By: 

19 _____
20 John Buse
21 Aruna Prabhala
22 Peter J. Broderick

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

1 DATED: December 17, 2020

SHUTE, MIHALY & WEINBERGER LLP

2
3 By: 

4 William J. White
5 Kevin P. Bundy
6 Laura D. Beaton

7 Attorneys for Petitioners ENDANGERED
8 HABITATS LEAGUE and CALIFORNIA
9 NATIVE PLANT SOCIETY

10 DATED: December 17, 2020

CHATTEN-BROWN, CARSTENS & MINTEER LLP

11
12 By: 

13 Josh Chatten-Brown
14 Jan Chatten-Brown

15 Attorneys for Petitioner SIERRA CLUB
16
17
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Exhibit A



Via FedEx

December 17, 2020

Board of Supervisors
San Diego County
1600 Pacific Highway, Rm 402
San Diego, CA 92101

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

To County of San Diego Board of Supervisors,

The Center for Biological Diversity, Preserve Wild Santee, California Chaparral Institute, Endangered Habitats League, California Native Plant Society, and Sierra Club (“Petitioners”) intend to commence an action for writ of mandate to vacate and set aside the decision of the County of San Diego County and the County of San Diego Board of Supervisors (“Respondents”) approving the Otay Ranch Resort Village 13 Project (the “Project”) and associated approvals and certifying an Environmental Impact Report for the Project. Petitioners submit this notice pursuant to Public Resources Code section 21167.5.

The action will commence on December 17, 2020 and will be based upon on Respondents’ failure to comply with the California Environmental Quality Act (Public Resources Code § 21000, *et seq.*) in adopting the Environmental Impact Report and approving the Project.

Sincerely,

Peter Broderick
Staff Attorney
Center for Biological Diversity



Via FedEx

December 17, 2020

San Diego County
c/o County Counsel
County Administration Center
1600 Pacific Highway, Suite 355
San Diego, California 92101

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

To the County of San Diego,

The Center for Biological Diversity, Preserve Wild Santee, California Chaparral Institute, Endangered Habitats League, California Native Plant Society, and Sierra Club (“Petitioners”) intend to commence an action for writ of mandate to vacate and set aside the decision of the County of San Diego County and the County of San Diego Board of Supervisors (“Respondents”) approving the Otay Ranch Resort Village 13 Project (the “Project”) and associated approvals and certifying an Environmental Impact Report for the Project. Petitioners submit this notice pursuant to Public Resources Code section 21167.5.

The action will commence on December 17, 2020 and will be based upon on Respondents’ failure to comply with the California Environmental Quality Act (Public Resources Code § 21000, *et seq.*) in adopting the Environmental Impact Report and approving the Project.

Sincerely,

Peter Broderick
Staff Attorney
Center for Biological Diversity

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF ALAMEDA

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

6 On December 17, 2020, I served a true and correct copy of the following document(s):

7 **NOTICE OF COMMENCEMENT OF LEGAL ACTION PURSUANT TO THE CALIFORNIA**
8 **ENVIRONMENTAL QUALITY ACT**

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

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

14 Board of Supervisors 15 San Diego County 16 1600 Pacific Highway, Rm 402 San Diego, CA 92101	San Diego County c/o County Counsel County Administration Center 1600 Pacific Highway, Suite 355 San Diego, California 92101
--	--

17 STATE: I declare under penalty of perjury under the law of California that the foregoing is true
18 and correct.

19 Executed on December 17, 2020 at Oakland, California.

20 
21 Theresa Rettinghouse

EXHIBIT B

1 John Buse (SBN 163156)
2 Aruna Prabhala (SBN 278865)
3 Peter J. Broderick (SBN 293060)
4 CENTER FOR BIOLOGICAL DIVERSITY
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9 jbuse@biologicaldiversity.org
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11 pbroderick@biologicaldiversity.org

12 Attorneys for Center for Biological
13 Diversity, Preserve Wild Santee, and
14 California Chaparral Institute

15 *Additional counsel listed on next page*

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

18 CENTER FOR BIOLOGICAL
19 DIVERSITY, PRESERVE WILD
20 SANTEE, CALIFORNIA CHAPARRAL
21 INSTITUTE, ENDANGERED
22 HABITATS LEAGUE, CALIFORNIA
23 NATIVE PLANT SOCIETY, and SIERRA
24 CLUB,

25 Petitioners,

26 v.

27 COUNTY OF SAN DIEGO, BOARD OF
28 SUPERVISORS OF THE COUNTY OF
SAN DIEGO, and DOES 1 through 20,
inclusive,

Respondents,

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

Real Parties in Interest.

Case No.

**PETITIONERS' NOTICE OF
ELECTION TO PREPARE
ADMINISTRATIVE RECORD**

[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); Code Civ. Proc. § 1060]

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2 Josh Chatten-Brown (SBN 243605),
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17 Bundy@smwlaw.com
18 Beaton@smwlaw.com

14 Attorneys for Endangered Habitats League
15 and California Native Plant Society

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

3 In the above-captioned action (the “Action”), Petitioners Center for Biological
4 Diversity, Preserve Wild Santee, California Chaparral Institute, Endangered Habitats League,
5 California Native Plant Society, and Sierra Club (“Petitioners”) petition this Court for a Writ of
6 Mandate, directed to the County of San Diego and the Board of Supervisors of the County of
7 San Diego (collectively, “Respondents”). Petitioners challenge Respondents’ November 18,
8 2020 approval of the Otay Ranch Resort Village 13 Project (the “Project”) and associated
9 approvals, and certification of the Final Environmental Impact Report (“EIR”) for the Project.
10 Petitioners seek a determination that Respondents’ approval of the Project is invalid and void
11 and fails to satisfy the requirements of the California Environmental Quality Act (“CEQA”),
12 Public Resources Code section 21000 *et seq.*, and the CEQA Guidelines, Title 14, California
13 Code of Regulations, section 15000 *et seq.*, and that Respondents’ approval of the Project
14 violated the State Planning and Zoning Law.

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

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

1 DATED: December 17, 2020

CENTER FOR BIOLOGICAL DIVERSITY



2
3 By:

4 John Buse
5 Aruna Prabhala
6 Peter J. Broderick

7 Attorneys for Petitioners CENTER FOR
8 BIOLOGICAL DIVERSITY, PRESERVE WILD
9 SANTEE, and CALIFORNIA CHAPARRAL
INSTITUTE

10 DATED: December 17, 2020

SHUTE, MIHALY & WEINBERGER LLP



11
12 By:

13 William J. White
14 Kevin P. Bundy
15 Laura D. Beaton

16 Attorneys for Petitioners ENDANGERED
17 HABITATS LEAGUE and CALIFORNIA
18 NATIVE PLANT SOCIETY

19 DATED: December 17, 2020

CHATTEN-BROWN, CARSTENS & MINTEER LLP



20
21 By:

22 Josh Chatten-Brown
23 Jan Chatten-Brown

24 Attorneys for Petitioner SIERRA CLUB
25
26
27
28