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**ELECTRONICALLY FILED**  
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County of San Benito  
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**Exempt from Filing Fees Pursuant  
to Government Code section 6103**

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN BENITO

12 **CENTER FOR BIOLOGICAL DIVERSITY  
AND PROTECT SAN BENITO COUNTY,**

14 Petitioners,

15 v.

16 **COUNTY OF SAN BENITO; SAN  
17 BENITO COUNTY BOARD OF  
SUPERVISORS,**

18 Respondents.

20 **HENRY RUHNKE; THOMAS JOHN  
21 MCDOWELL AND VICTORIA KNIGHT  
MCDOWELL CHARITABLE  
22 REMAINDER UNITRUST; THOMAS  
JOHN MCDOWELL AND VICTORIA  
23 KNIGHT MCDOWELL, TRUSTEES; AND  
DOES 1 THROUGH 25, INCLUSIVE,**

24 Real Parties in Interest.

Case No. CU-22-00247 (Lead Case)  
Consolidated with Case No. CU-22-00249

**[PROPOSED] INTERVENOR THE  
PEOPLE'S NOTICE OF MOTION AND  
SECOND MOTION FOR LEAVE TO  
INTERVENE; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATION OF MONICA HEGER  
IN SUPPORT THEREOF**

**[Code Civ. Proc., §§ 387, 1085, 1094.5;  
Gov. Code, § 12606; Pub. Resources Code,  
§ 21167]**

**ACTION BASED ON THE CALIFORNIA  
ENVIRONMENTAL QUALITY ACT  
(CEQA)**

Date: 02/03/2025

Time: 10:30 A.M

Dept: 1

Judge: Honorable J. Omar Rodriguez

Action Filed: December 9, 2022

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**AMAH MUTSUN TRIBAL BAND,**  
  
Petitioners,  
  
v.  
  
**COUNTY OF SAN BENITO AND SAN  
BENITO COUNTY BOARD OF  
SUPERVISORS,**  
  
Respondents.

**THE THOMAS JOHN MCDOWELL AND  
VICTORIA MCDOWELL CHARITABLE  
REMAINDER UNITRUST; HENRY  
RUHNKE, IN HIS CAPACITY AS  
REPRESENTATIVE AND/OR TRUSTEE OF THE  
THOMAS JOHN MCDOWELL AND VICTORIA  
MCDOWELL CHARITABLE REMAINDER  
UNITRUST; THOMAS JOHN MCDOWELL,  
IN HIS CAPACITY AS TRUSTEE OF THE  
THOMAS JOHN MCDOWELL AND VICTORIA  
MCDOWELL CHARITABLE REMAINDER  
UNITRUST; AND VICTORIA KNIGHT  
MCDOWELL, IN HER CAPACITY AS TRUSTEE  
OF THE THOMAS JOHN MCDOWELL AND  
VICTORIA MCDOWELL CHARITABLE  
REMAINDER UNITRUST,**  
  
Real Parties in Interest.

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

2           **PLEASE TAKE NOTICE** that on 2/3/2025, in Courtroom 1 of the  
3 County of San Benito Superior Court, Main Courthouse, located at 450 Fourth Street, Hollister,  
4 California, 95023, the People of the State of California *ex rel.* Rob Bonta, Attorney General  
5 (“People”), will move, and hereby do move the Court for leave to intervene in *Amah Mutsun*  
6 *Tribal Band v. County of San Benito, et al.*, Case Number CU-22-00249, which has been  
7 consolidated with *Center for Biological Diversity, et al., v. County of San Benito, et al.*, Case  
8 Number CU-22-00247, for all purposes other than judgment, pursuant to Code of Civil Procedure  
9 section 387, subdivision (d). The People’s [Proposed] Petition for Writ of Mandate in  
10 Intervention (“People’s Petition”) is attached to this motion as Exhibit 1. The People’s Petition  
11 challenges the approval of the Betabel Commercial Development Conditional Use Permit Project  
12 (“the Project”) and certification of the Final Environmental Impact Report (“Final EIR”) for the  
13 Project by Respondents the County of San Benito and the San Benito County Board of  
14 Supervisors (collectively, “Respondents”) under the California Environmental Quality Act  
15 (“CEQA”). (Pub. Resources Code, § 21000 et seq.)

16           This motion is based on the following grounds:

- 17           1.       Pursuant to Government Code section 12606, the People, as represented by the  
18 Attorney General, have an unconditional right to intervene in any judicial or administrative  
19 proceeding in which facts are alleged concerning pollution or adverse environmental effects that  
20 could affect the public in general. Such facts are alleged in the current action.
- 21           2.       The People have an unconditional right to intervene and must be permitted to  
22 intervene as a matter of right pursuant to Code of Civil Procedure section 387, subdivision (d).
- 23           3.       The People’s motion to intervene is timely and will not impair or impede the  
24 prompt resolution of the issues presented in this action.

25           This motion is also based upon this notice, the People’s Petition, the accompanying  
26 Memorandum of Points and Authorities, the Declaration of Monica Heger in support of the  
27 motion, the People’s Request for Judicial Notice filed concurrently with this motion, any  
28 additional matters of which the Court may take judicial notice, the pleadings on file with the

1 Court in the consolidated actions, and such other matters which may be brought to the attention of  
2 this Court before or during the hearing of this motion.

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Dated: January 6, 2025

Respectfully submitted,  
  
ROB BONTA  
Attorney General of California  
CHRISTIE VOSBURG  
Supervising Deputy Attorney General  
  
*/s/ Monica Heger*  
MONICA HEGER  
MARIE E. LOGAN  
Deputy Attorneys General  
*Attorneys for [Proposed] Intervenor  
the People of the State of California*

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
2 **PEOPLE’S SECOND MOTION FOR LEAVE TO INTERVENE**

3 **INTRODUCTION**

4 The People of the State of California *ex rel.* Rob Bonta, Attorney General (“People”) seek  
5 to intervene in *Amah Mutsun Tribal Band v. County of San Benito, et al.*, Case Number CU-22-  
6 00249, which is a challenge filed pursuant to the California Environmental Quality Act  
7 (“CEQA”). The People’s [Proposed] Petition for Writ of Mandate in Intervention (“People’s  
8 Petition”) is attached as Exhibit 1. The People initially sought to intervene in this case in March  
9 2023, shortly after the CEQA petition was filed on December 9, 2022. Despite its tentative ruling  
10 to grant the motion, the Court ultimately denied the People’s intervention motion as moot because  
11 it granted the demurrer sought by Real Parties in Interest and Respondents the County of San  
12 Benito and the San Benito County Board of Supervisors (“the County”). Now that the Court of  
13 Appeal has reversed the Court’s decision granting the demurrer and remanded the case to this  
14 Court, the People file a second motion to intervene. The People’s motion is timely, filed just six  
15 days after this Court vacated the order sustaining the demurrer.

16 The People have an unconditional right to intervene in actions in which facts are alleged  
17 concerning pollution and adverse environmental effects that could affect the public in general.  
18 (Code Civ. Proc., § 387, subd. (d); Gov. Code, § 12606.) Under CEQA, harm to tribal cultural  
19 resources constitutes an adverse environmental effect. (Pub. Resources Code, § 21084.2.)  
20 Petitioner Amah Mutsun Tribal Band (“the Tribe”) alleges that the County violated CEQA when  
21 it approved a development project that will result in irreparable harm to tribal cultural resources.  
22 Therefore, this action involves environmental effects that could affect the public generally,  
23 meeting the requirements for intervention. Thus, the People should be granted leave to intervene.

24 **PROCEDURAL AND FACTUAL BACKGROUND**

25 On or about December 9, 2022, the Tribe filed a Petition (“Tribe’s Petition”) for Writ of  
26 Mandate and Complaint for Declaratory Relief in in this case, alleging that Respondents violated  
27 CEQA by approving the Betabel Commercial Development Conditional Use Permit Project (“the  
28 Project”) and certifying the Project’s final environmental impact report (“Final EIR”).

1 (Declaration of Monica Heger in Support of People’s Motion for Leave to Intervene (“Heger  
2 Decl.”), ¶ 3.) A separate Petition for Writ of Mandate was filed on or about the same day by  
3 Petitioners Center for Biological Diversity and Protect San Benito County in Case Number CU-  
4 22-00247, alleging similar violations.<sup>1</sup> (*Ibid.*) The two actions have since been consolidated for  
5 all purposes other than judgment. (*Id.*, ¶ 4; Stipulation and Order Re Consolidation of Related  
6 Cases for Purposes of Trial Only, Jan. 24, 2023.)

7 The Project is a 111-acre development with 108,425 square-feet of commercial building  
8 space located about 40 miles southeast of San Jose near the U.S. Highway 101 and Betabel Road.  
9 The Project site is on the ancestral lands of the Tribe and entirely within the Juristac tribal cultural  
10 landscape, a landscape sacred to the Tribe. The Project would include a 116-room motel, a second  
11 motel styled as “villas,” an outdoor pool, movie screen, 500-seat event center, convenience store,  
12 gas station, restaurant, livestock corral, and visitor center. It would be designed to mimic a 1940s-  
13 and 1950s-style roadside tourist attraction.

14 On January 20, 2023, the Real Parties in Interest demurred to Petitioners’ CEQA petitions  
15 on statute of limitations grounds, which the County joined. On March 23, 2023, the People  
16 moved to intervene in the Tribe’s action. The Court heard argument on the demurrer and the  
17 People’s motion to intervene on April 24 and May 3, 2023, respectively. During the hearing on  
18 the intervention motion, the Court stated that its tentative ruling was to grant leave for the People  
19 to intervene. (People’s Request for Judicial Notice (“RJN”) Exhibit F [Reporter’s Transcript,  
20 Motion Hearing, May 3, 2023] 6:20-24.) However, the Court ultimately sustained Real Parties’  
21 demurrer on statute of limitations grounds, and therefore denied the People’s motion to intervene  
22 as moot, allowing the People to seek intervention again pending any decision on appeal. (Order,  
23 June 2, 2023; People’s RJN Exhibit G [Reporter’s Transcript, Motion Hearing, May 24, 2023],  
24 6:25, 7:1-5.)

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28 <sup>1</sup> “Petitioners,” as used collectively in this memorandum, refers to the Amah Mutsun  
Tribal Band, Protect San Benito County, and the Center for Biological Diversity.

1           Petitioners appealed the decision to the Sixth District Court of Appeal, arguing that their  
2 petitions were timely filed within 30 days of the County’s legally operative notice of  
3 determination.

4           On July 24, 2024, the Court of Appeal reversed the judgment of dismissal and remanded  
5 the case to this Court for further consideration on the merits. The Court of Appeal concluded that  
6 a “plain language interpretation” of CEQA and the County’s municipal code “compels the  
7 conclusion” that the petitions were timely. (*Center for Biological Diversity v. County of San*  
8 *Benito* (2024) 104 Cal.App.5th 22, 37.) The California Supreme Court denied Real Parties’  
9 petition for review on October 30, 2024, and the Court of Appeal issued its remittitur on  
10 November 1, 2024. On December 31, 2024, this Court vacated the judgment of dismissal.

11           The Tribe’s petition alleges that despite the significant, irreparable environmental harms  
12 anticipated by the Project, particularly to tribal cultural resources, Respondents failed to  
13 adequately disclose, analyze, and mitigate the Project’s significant environmental impacts. (See  
14 Tribe’s Petition, ¶¶ 3, 7, 17, 34, 41-50.) The Project would mar the Tribe’s sacred cultural  
15 landscape, significantly and adversely impact specific tribal cultural resources, and obstruct a  
16 viewshed with spiritual and cultural importance to the Tribe since before European contact,  
17 among other impacts to tribal cultural resources. The People also have an interest in protecting  
18 these tribal cultural resources. The destruction of tribal cultural resources has detrimental impacts  
19 on California Native American tribes and California’s environment more broadly. (People’s RJN  
20 Exhibit A [Assem. Bill No. 52 (2014-2015 Reg. Sess.) § 1, subds. (a)(3) & (b)(9)].) Tribal  
21 cultural resources are important to California’s history and cultural heritage and can shed light on  
22 information important in history or prehistory. (Pub. Resources Code, § 21074, subd. (a) [citing  
23 § 5024.1, subd. (c)].) Thus, protecting tribal cultural resources furthers the public interest and the  
24 state’s policy on preventing “irreparable impairment of the environment.” (Gov. Code, § 12600,  
25 subd. (a); Pub. Resources Code, § 21084.2 [a “project that may cause a substantial adverse  
26 change in the significance of a tribal cultural resource is a project that may have a significant  
27 effect on the environment”].)

28           The People now seek intervention in this matter to ensure CEQA compliance. The People’s

1 Petition, filed concurrently with this motion to intervene, alleges that in approving the Final EIR,  
2 Respondents failed to adhere to CEQA’s requirements for meaningful and timely consultation  
3 with the Tribe, missing statutorily mandated deadlines and rushing through the CEQA process to  
4 approve the Project. As a result, the Project’s Final EIR failed to adequately evaluate impacts to  
5 several tribal cultural resources, and failed to consider whether feasible mitigation could avoid or  
6 lessen those impacts. Respondents also delayed conducting crucial studies to identify tribal  
7 cultural resources at the Project site and analyze Project impacts to those resources, preventing  
8 those impacts and feasible mitigation from receiving adequate consideration during the CEQA  
9 process.

## 10 **ARGUMENT**

### 11 **I. THE COURT SHOULD PERMIT THE PEOPLE TO INTERVENE AS OF RIGHT**

12 The standard for intervention as a matter of right is contained in Code of Civil Procedure  
13 section 387, subdivision (d): “The court shall, upon timely application, permit a nonparty to  
14 intervene in the action or proceeding if . . . a provision of law confers an unconditional right to  
15 intervene.” Courts have held that this provision “should be liberally construed in favor of  
16 intervention.” (*Lindelli v. Town of San Anselmo* (2006) 139 Cal.App.4th 1499, 1505; *Lincoln Nat.*  
17 *Life Ins. Co. v. State Bd. of Equalization* (1994) 30 Cal.App.4th 1411, 1423.) Here, Government  
18 Code section 12606 confers an unconditional right of the Attorney General to intervene in the  
19 case, and this motion to intervene is timely. Therefore, the Court should grant the motion.

#### 20 **A. The People Have a Statutory Right to Intervene.**

21 The People, through the Attorney General, have an unconditional right to intervene in the  
22 current action pursuant to Government Code section 12606, which provides: “The Attorney  
23 General *shall* be permitted to intervene in any judicial or administrative proceeding in which facts  
24 are alleged concerning pollution or adverse environmental effects which could affect the public  
25 generally.” (Italics added.) Government Code section 12606 is to be read in conjunction with  
26 Public Resources Code section 21167.7, which requires service of all CEQA pleadings on the  
27 Attorney General, and Code of Civil Procedure section 388, which requires pleadings alleging  
28 environmental damage to be served on the Attorney General. CEQA’s service requirement “has



1 the effect of informing that office of the action and permits the Attorney General to lend its  
2 power, prestige and resources to secure compliance with CEQA and other environmental  
3 laws . . . .” (*Schwartz v. City of Rosemead* (1984) 155 Cal.App.3d 547, 561.) It is well established  
4 that “the Attorney General can intervene in an action to enforce compliance with CEQA.” (*Id.* at  
5 p. 556, fn. 7; see also *Vasquez v. State of California* (2008) 45 Cal.4th 243, 258 [discussing that a  
6 purpose of CEQA’s service requirement is to provide the Attorney General the option to  
7 intervene].)

8 Protecting tribal cultural resources is in the public interest. As described above, the Tribe’s  
9 Petition alleges that Respondents violated CEQA and that the Project will result in irreparable  
10 harm to invaluable tribal cultural resources. Under CEQA, a substantial adverse change in the  
11 significance of a tribal cultural resource constitutes a significant effect on the environment. (Pub.  
12 Resources Code, § 21084.2.) When the Legislature added tribal cultural resources to the  
13 categories of resources that lead agencies must consider under CEQA, it recognized the  
14 significance of those resources to California history. (See *id.*, § 21001, subd. (b) [indicating  
15 state’s policy to “take all action necessary” to provide the people of the state with “enjoyment of  
16 aesthetic, natural, scenic, and historic environmental qualities”]; cf. Cal. Code Regs. tit. 14,  
17 § 15064.5 [discussing historical and archaeological impacts as environmental impacts].) As such,  
18 this action constitutes a “judicial . . . proceeding in which facts are alleged concerning pollution  
19 or adverse environmental effects which could affect the public generally.” (Gov. Code, § 12606.)  
20 The Attorney General, on behalf of the People, therefore, has an unconditional right to intervene.

21 **B. The Motion to Intervene is Timely.**

22 The People’s second motion for leave to intervene is timely because the case is at an early  
23 stage and no party could be prejudiced by intervention at such an early juncture. When a  
24 provision of law confers an unconditional right to intervene, as Government Code section 12606  
25 does here, courts still inquire into whether the motion is timely. (Code of Civ. Proc. § 387, subd.  
26 (d); *Mar v. Sakti International Corp.* (1992) 9 Cal.App.4th 1780, 1784.)

27 Section 387 does not place a statutory time limit on motions to intervene. (*Noya v. A.W.*  
28 *Coulter Trucking* (2006) 143 Cal.App.4th 838, 842.) However, “it is the general rule that a right

1 to intervene should be asserted within a reasonable time and that the intervenor must not be guilty  
2 of an unreasonable delay after knowledge of the suit.” (*Allen v. Cal. Water & Tel. Co.* (1947) 31  
3 Cal.2d 104, 108 [complaint in intervention untimely where filed 11 years after the  
4 commencement of the action, and several years after the trial].) Under this rule, intervention is  
5 timely unless any party opposing intervention can show prejudice from a delay in filing a motion  
6 to intervene. (See *Truck Ins. Exchange v. Superior Court* (1997) 60 Cal.App.4th 342, 351 [“being  
7 required to prove [one’s] case” is not prejudice].)

8 Here, the People’s second motion to intervene is filed within a reasonable time because this  
9 Court vacated the order sustaining the demurrer six days ago and the litigation is still in its  
10 earliest stages. A briefing schedule and trial date have not yet been set. (Heger Decl., ¶ 7.) As  
11 such, the People’s intervention in this matter will not cause prejudice to the parties by delaying  
12 any briefing.

13 Furthermore, the People acted expeditiously in evaluating their participation in this matter,  
14 including by reviewing the petitions and environmental disclosures and preparing pleadings  
15 seeking to intervene. (Heger Decl., ¶ 8.) The People became involved in this matter soon after  
16 Petitioners notified the Attorney General’s Office of its suit—filing its first motion to intervene  
17 just over three months later—and participated as amicus in the appellate court. (*Ibid.*) Therefore,  
18 this motion to intervene is timely and will not prejudice any party.

19 The People’s first motion to intervene was also timely, as this Court recognized by  
20 tentatively ruling to grant the motion. (People’s RJN Exhibit F, 6:20-24.) Given this tentative  
21 conclusion, it follows that the second motion to intervene—filed six days after this Court vacated  
22 the order sustaining the demurrer and regained jurisdiction—is also timely.

23 Courts have regularly authorized the Attorney General’s intervention as of right in CEQA  
24 cases, even at much later stages. (See, e.g., *City of Long Beach v. City of Los Angeles* (2018) 19  
25 Cal.App.5th 465, 473 [Attorney General intervened 11 months after lawsuit filed]; People’s RJN  
26 Exhibits B-E [court documents from the following cases: *Sierra Club v. City of Moreno Valley*,  
27 No. CVRI2103300 (Super. Ct. Riverside County, July 15, 2021) [all parties stipulated to Attorney  
28 General’s intervention 11 months after lawsuit filed]; *Center for Biological Diversity v. Cnty. of*

1 *Lake*, No. CV421152 (Super. Ct. Lake County, Aug. 20, 2020 [Attorney General’s intervention  
2 motion granted seven months after lawsuit initiated]; *Sierra Club v. Cnty. of San Diego*, No. 37-  
3 2019-00038820-CU-TT-CTL (Super. Ct. San Diego County, July 25, 2019) [Attorney General’s  
4 intervention motion granted 22 months after lawsuit initiated, over real parties’ objections of  
5 untimeliness].)

6 The Attorney General seeks to exercise his unconditional right to intervene in the earliest  
7 stages of this case as the State’s chief law officer and on behalf of the People of California to  
8 enforce CEQA and protect the public interest.

9 Petitioners Amah Mutsun Tribal Band, Center for Biological Diversity, and Protect San  
10 Benito County support the People’s Motion. Real Parties in Interest oppose the motion.  
11 Respondents the County of San Benito and the San Benito County Board of Supervisors did not  
12 state their position on the motion, despite multiple attempts by the People to confer. (Heger Decl.,  
13 ¶ 9.)

#### 14 CONCLUSION

15 The People have an unconditional right to intervene in this case and have timely filed this  
16 motion. Therefore, the People respectfully request that the Court grant the People leave to  
17 intervene and file the People’s Petition.

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Dated: January 6, 2025

Respectfully submitted,  
  
ROB BONTA  
Attorney General of California  
CHRISTIE VOSBURG  
Supervising Deputy Attorney General

*/s/ Monica Heger*  
MONICA HEGER  
MARIE E. LOGAN  
Deputy Attorneys General  
*Attorneys for [Proposed] Intervenor  
the People of the State of California*

**DECLARATION OF MONICA HEGER**

I, Monica Heger, declare as follows:

1. I am a Deputy Attorney General with the California Attorney General’s Office in Sacramento, CA. I have been assigned to represent the People of the State of California, *ex rel.* Rob Bonta, Attorney General (“People”) in the above-entitled consolidated actions.

2. I make the following statements based upon personal knowledge of the facts and, if called as a witness, I could competently testify to these statements.

3. On December 15, 2022, in compliance with Public Resources Code section 21167.7, Petitioner Amah Mutsun Tribal Band notified the California Attorney General’s Office of its petition (Case No. CU-22-00249) that it filed on or about December 9, 2022. The petition for writ of mandate and complaint for declaratory relief against Respondents the County of San Benito and the San Benito County Board of Supervisors, filed in San Benito County Superior Court in Case Number CU-22-00249, alleges violations of the California Environmental Quality Act, Public Resources Code section 21000 *et seq.* A separate petition for writ of mandate was filed on or about the same day by Petitioners Center for Biological Diversity and Protect San Benito County in Case Number CU-22-00247, alleging similar violations. (Petition: Writ of Mandate, Dec. 9, 2022.)

4. Case No. CU-22-00249 has been consolidated with Lead Case No. CU-22-00247 for all purposes other than judgment. (Stipulation and Order Re Consolidation of Related Cases for Purposes of Trial Only, Jan. 24, 2023.)

5. On March 23, 2023, the Attorney General moved to intervene in Case No. CU-22-00249. On May 3, 2023, the Court heard oral argument on the Attorney General’s motion to intervene, stating that its tentative ruling was to “grant leave . . . for the [P]eople to intervene,” pending the Court’s decision on the demurrer. (People’s RJN Exhibit F, 6:20-24.) On May 24, 2023, the Court granted the demurrer and denied the Attorney General’s motion to intervene as moot. (Order, June 2, 2023.) In denying the motion to intervene, the Court said that the People could seek to intervene in the case at a later time, pending any decisions on appeal. (People’s RJN Exhibit G, 7:1-5.)

1           6.           Petitioners appealed the demurrer, and the Attorney General filed an amicus brief  
2 in support of Petitioners in California’s Sixth District Court of Appeal. On July 24, 2024, the  
3 Court of Appeal reversed the judgment of dismissal and remanded the consolidated actions to San  
4 Benito County Superior Court. On October 30, 2024, the Supreme Court denied the petition for  
5 review and the Court of Appeal issued the remittitur on November 1, 2024. This Court vacated  
6 the judgment of dismissal on December 31, 2024.

7           7.           The administrative record has not been lodged with the Court. A briefing schedule  
8 on the merits has not been set. To be prepared to adhere to a briefing schedule, the People have  
9 concurrently filed a motion seeking access to the portion of the administrative record that was  
10 filed under seal. If the Attorney General’s Office can access the sealed record, the People will be  
11 able to adhere to the briefing schedule when it is established.

12           8.           All CEQA petitioners are required to file a copy of their petition with the Attorney  
13 General’s Office. (Pub. Resources Code, § 21167.7.) The Office maintains a log of CEQA  
14 petitions filed with the Office. I reviewed the log for 2022 and 2023. The Office received 182 and  
15 194 petitions, in 2022 and 2023, respectively. The Attorney General’s investigations are  
16 confidential. (See, e.g., Evid. Code, § 1040; Gov. Code, § 7923.600; Code Civ. Proc.,  
17 § 2018.030.) In general, during its usual investigation of CEQA petitions, the Attorney General’s  
18 Office may review the court filings, conduct legal and factual research, review the related  
19 environmental documents and public comments, hold internal meetings and discussions, and  
20 collect information from members of the public, subject matter experts, and other stakeholders.  
21 Since receiving notice of the petitions in these consolidated actions, the Attorney General’s  
22 Office spent considerable time and effort reviewing the petitions, evaluating and verifying the  
23 factual and legal allegations in the petitions and related records, and preparing pleadings seeking  
24 to intervene in Case Number CU-22-00249.

25           9.           The People sought to confer with all parties in the consolidated actions regarding  
26 their position on the People’s Motion. Counsel for petitioner Amah Mutsun Tribal Band stated in  
27 an email sent to me on November 11, 2024, that its client supports the People’s Motion. Counsel  
28 for petitioners Center for Biological Diversity and Protect San Benito County stated in an email

1 sent to me on November 1, 2024, that its clients support the People’s Motion. Counsel for Real  
2 Parties in Interest stated in an email sent to me on November 19, 2024, that its clients oppose the  
3 motion. I sent counsel for the County emails requesting their clients’ position on the People’s  
4 Motion on October 31, November 15, and December 2, 2024. I did not receive any emails from  
5 counsel for the County that stated their clients’ position.

6 I, Monica Heger, declare under penalty of perjury under the laws of the State of  
7 California that the above is true and correct. Executed on January 6, 2025, at Sacramento,  
8 California.

9  
10 */s/ Monica Heger*  
11 MONICA HEGER  
12 Deputy Attorney General  
13 *Attorney for [Proposed] Intervenor*  
14 *the People of the State of California*  
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# **EXHIBIT 1**



1 ROB BONTA  
Attorney General of California  
2 CHRISTIE VOSBURG  
Supervising Deputy Attorney General  
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8 *Attorneys for Intervenor the People of the State of  
California*

**Exempt from Filing Fees Pursuant to  
Government Code section 6103**

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN BENITO

11  
12 **CENTER FOR BIOLOGICAL DIVERSITY  
AND PROTECT SAN BENITO COUNTY,**

13  
14 Petitioners,

15 v.

16 **COUNTY OF SAN BENITO; SAN  
17 BENITO COUNTY BOARD OF  
SUPERVISORS,**

18 Respondents.  
19

Case No. CU-22-00247 (Lead Case)  
Consolidated with Case No. CU-22-00249

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

[Code Civ. Proc. §§ 387, 1085, 1094.5; Gov.  
Code, § 12606; Pub. Resources Code,  
§ 21167]

**ACTION BASED ON THE CALIFORNIA  
ENVIRONMENTAL QUALITY ACT  
(CEQA)**

20 **HENRY RUHNKE; THOMAS JOHN  
21 MCDOWELL AND VICTORIA KNIGHT  
MCDOWELL CHARITABLE  
22 REMAINDER UNITRUST; THOMAS  
JOHN MCDOWELL AND VICTORIA  
23 KNIGHT MCDOWELL, TRUSTEES; AND  
DOES 1 THROUGH 25, INCLUSIVE,**

24 Real Parties in Interest.  
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Dept: 1  
Judge: Honorable J. Omar Rodriguez  
Action Filed: December 9, 2022

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**AMAH MUTSUN TRIBAL BAND,**  
  
Petitioners,  
  
v.  
  
**COUNTY OF SAN BENITO AND SAN  
BENITO COUNTY BOARD OF  
SUPERVISORS,**  
  
Respondents.

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**THE THOMAS JOHN MCDOWELL AND  
VICTORIA MCDOWELL CHARITABLE  
REMAINDER UNITRUST; HENRY  
RUHNKE, IN HIS CAPACITY AS  
REPRESENTATIVE AND/OR TRUSTEE OF THE  
THOMAS JOHN MCDOWELL AND VICTORIA  
MCDOWELL CHARITABLE REMAINDER  
UNITRUST; THOMAS JOHN MCDOWELL,  
IN HIS CAPACITY AS TRUSTEE OF THE  
THOMAS JOHN MCDOWELL AND VICTORIA  
MCDOWELL CHARITABLE REMAINDER  
UNITRUST; AND VICTORIA KNIGHT  
MCDOWELL, IN HER CAPACITY AS TRUSTEE  
OF THE THOMAS JOHN MCDOWELL AND  
VICTORIA MCDOWELL CHARITABLE  
REMAINDER UNITRUST,**  
  
Real Parties in Interest.

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1 **INTRODUCTION**

2 1. The People of the State of California, acting by and through Attorney General Rob  
3 Bonta (“the People”) file this petition challenging the County of San Benito’s and the San Benito  
4 County Board of Supervisors’ (collectively, “Respondents”) approval of the Betabel Commercial  
5 Development Conditional Use Permit Project (“the Project”), and certification of the Final  
6 Environmental Impact Report (“Final EIR”) for the Project under the California Environmental  
7 Quality Act (“CEQA”), Public Resources Code section 21000 et seq.

8 2. The Project is proposed for development by Real Parties in Interest, the Thomas  
9 John McDowell and Victoria McDowell Charitable Remainder Unitrust, and Henry Ruhnke,  
10 Thomas John McDowell, and Victoria Knight McDowell (in their capacity as Trustees and/or  
11 representatives of the Trust) (collectively, “Real Parties”).

12 3. The Project authorizes the development of an 108,425 square-foot commercial  
13 space, including a gas station, restaurant, convenience store, outdoor event center, and a three-  
14 story motel and banquet hall, to be built on the ancestral lands of the Amah Mutsun Tribal Band  
15 (“Tribe”) and within a “tribal cultural landscape” known as *Juristac*. The Project site and its  
16 surroundings hold spiritual, cultural, and historical value for the Tribe, and contain numerous tribal  
17 cultural resources that would be irreparably harmed by the Project.

18 4. Respondents’ environmental review of the Project violated CEQA. In particular,  
19 Respondents’ rushed review process violated the tribal consultation requirements added to CEQA  
20 by Assembly Bill 52 (“AB 52”) in 2014. (Added by Stats. 2014, ch. 532.) These provisions under  
21 CEQA require lead agencies to hold “meaningful and timely” consultations with California Native  
22 American tribes that are traditionally and culturally affiliated with a proposed project’s geographic  
23 area when the tribe requests consultation. (Pub. Resources Code, § 21080.3.1, referencing Gov.  
24 Code, § 65352.4.) As intended by the Legislature, these consultations should incorporate tribal  
25 expertise and knowledge into the environmental review process under CEQA. (Pub. Resources  
26 Code, § 21080.3.1, subd. (a); AB 52, § 1, subd. (a).)

27 5. Respondents knew of the Tribe’s longstanding ties to the Project site. Prior to Real  
28 Parties’ submission of the Project application, the Tribe on multiple occasions communicated to



1 Government Code to participate in all legal matters in which the State is interested. (Cal. Const.,  
2 art. V, § 13; Gov. Code, § 12511.) The Attorney General has express authority to participate in  
3 cases involving the protection of California’s environment and a unique and important role in the  
4 enforcement of CEQA. (Gov. Code, §§ 12600-12612; Pub. Resources Code, §§ 21167.7, 21177,  
5 subd. (d); *City of Long Beach v. City of Los Angeles* (2018) 19 Cal.App.5th 465, 475-476.) “The  
6 Attorney General may maintain an action for equitable relief in the name of the people of the State  
7 of California against any person for the protection of the natural resources of the state from  
8 pollution, impairment, or destruction.” (Gov. Code, § 12607.) The People file this Petition for Writ  
9 of Mandate in Intervention (“Petition”) pursuant to the Attorney General’s independent power to  
10 protect the natural resources of the State from pollution, impairment, or destruction in furtherance  
11 of the public interest.

12 10. Respondent County of San Benito is and was, at all relevant times, a county and  
13 political subdivision of the State of California organized and existing under Government Code  
14 section 23000 et seq. The County is a local governmental agency charged with regulating and  
15 controlling local land use and development within its territory in compliance with provisions of  
16 state law, including CEQA. The County is the “lead agency” for the purposes of Public Resources  
17 Code section 21067, with the principal responsibility for conducting environmental review of  
18 proposed actions. The County, acting through its Board of Supervisors, certified the Project Final  
19 EIR and approved the Project.

20 11. Respondent San Benito County Board of Supervisors is the elected legislative  
21 body of the County of San Benito. The Board of Supervisors is responsible for hearing  
22 administrative appeals for decisions made by individual county departments, making certain land  
23 use decisions, and ensuring those decisions are made in compliance with applicable laws,  
24 including CEQA. The Board of Supervisors certified the Project Final EIR and approved the  
25 Project.

26 12. Henry Ruhnke, Thomas John McDowell, and Victoria Knight McDowell,  
27 Trustees, are identified as Project applicants on the Project’s Notice of Determination, and as such  
28 are named in this Petition as Real Parties in Interest in their official capacities as representatives

1 and/or Trustees of the Thomas John McDowell and Victoria McDowell Charitable Remainder  
2 Unitrust, pursuant to Public Resources Code section 21167.6.5. The Thomas John McDowell and  
3 Victoria McDowell Charitable Remainder Unitrust is also thus named as a Real Party in Interest.

#### 4 **JURISDICTION AND VENUE**

5 13. This Court has jurisdiction over the matters alleged in this Petition pursuant to  
6 Public Resources Code sections 21168 and 21168.5 and Code of Civil Procedure sections 1085  
7 and 1094.5.

8 14. Venue is appropriate in San Benito County Superior Court in accordance with  
9 Code of Civil Procedure sections 394 (actions against a city, county, or local agency) and 395  
10 (actions generally) because Respondents include the County of San Benito and the violations of  
11 CEQA alleged in this Petition arose in the County of San Benito.

12 15. The People have satisfied all statutory prerequisites to filing this action. The  
13 Attorney General is exempt from CEQA's exhaustion requirements and may litigate a CEQA  
14 action without first appearing or raising objections during the administrative proceeding. (Pub.  
15 Resources Code, § 21177, subd. (d).)

#### 16 **CEQA'S LEGAL REQUIREMENTS**

17 16. CEQA is a comprehensive statute designed to provide for the long-term protection  
18 of the environment. (Pub. Resources Code, §§ 21000-21189.) CEQA's primary purposes are to:  
19 inform governmental decisionmakers and the public of a project's potential significant  
20 environmental effects before the project is approved and those effects become irreversible; identify  
21 ways that environmental damage can be avoided or reduced; prevent significant, avoidable  
22 environmental damage by requiring the adoption of feasible alternatives or feasible mitigation  
23 measures; and disclose to the public a governmental agency's reasons for approving a project with  
24 significant environmental impacts. (CEQA Guidelines, § 15002, subd. (a).)

25 17. "CEQA is essentially an environmental full disclosure statute, and the EIR is the  
26 method by which this disclosure is made." (*Rural Landowners Assn. v. City Council* (1983) 143  
27 Cal.App.3d 1013, 1020; *see also* Pub. Resources Code, § 21061 [defining "environmental impact  
28 report" and generally discussing its purpose and contents].)

1           18.       To meet CEQA’s disclosure requirements, an EIR must be “prepared with a  
2 sufficient degree of analysis to provide decisionmakers with information which enables them to  
3 make a decision which intelligently takes account of environmental consequences.” (CEQA  
4 Guidelines, § 15151.) The EIR is the “heart” of CEQA’s disclosure requirement. (*No Oil, Inc. v.*  
5 *City of Los Angeles* (1974) 13 Cal.3d 68, 84.) The EIR has been described as “an environmental  
6 ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental  
7 changes before they have reached ecological points of no return.” (*County of Inyo v. Yorty* (1973)  
8 32 Cal.App.3d 795, 810.)

9           19.       An EIR must identify and describe a project’s direct and indirect significant  
10 environmental impacts, feasible alternatives to the project, and feasible mitigation measures to  
11 reduce or avoid the project’s significant environmental impacts. (CEQA Guidelines, § 15126.2,  
12 subd. (a); Pub. Resources Code, §§ 21002, 21002.1, subd. (a).)

13           20.       A “lead agency” for purposes of CEQA “has the principal responsibility for  
14 carrying out or approving a project which may have a significant effect upon the environment.”  
15 (Pub. Resources Code, § 21067.) The lead agency is responsible for preparing an EIR, where  
16 necessary. (CEQA Guidelines, § 15050.)

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

23           22.       “When the informational requirements of CEQA are not met but the agency  
24 nevertheless certifies the EIR as meeting them, the agency fails to proceed in a manner required by  
25 law and abuses its discretion.” (*Cherry Valley Pass Acres and Neighbors v. City of Beaumont*  
26 (2010) 190 Cal.App.4th 316, 327.) “The error is prejudicial ‘if the failure to include relevant  
27 information precludes informed decisionmaking and informed public participation, thereby  
28

1 thwarting the statutory goals of the EIR process.” (*Id.* at p. 328, quoting *San Joaquin*  
2 *Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721–722.)

3 23. Finally, when significant new information is discovered after a draft EIR is  
4 circulated for public review, such as significant new impacts or new mitigation for those impacts  
5 that were not discussed in the draft EIR, the draft EIR must be recirculated. (CEQA Guidelines,  
6 § 15088.5.)

### 7 **CEQA’S REQUIREMENTS UNDER AB 52**

8 24. The state Legislature enacted AB 52 in 2014, which added tribal consultation  
9 requirements and created tribal cultural resources as a new category of resources in CEQA. In  
10 passing AB 52, the Legislature recognized that existing laws, including CEQA, had not adequately  
11 protected sites, features, places, objects, and landscapes with cultural value, including those  
12 considered sacred and ceremonial to California Native American tribes. (AB 52, § 1, subd. (a).)

13 25. The Legislature recognized that because CEQA did not include tribes’ knowledge  
14 and concerns, “significant environmental impacts to tribal cultural resources and sacred places,  
15 including cumulative impacts, to the detriment of California Native American tribes and  
16 California’s environment,” have occurred. (AB 52, § 1, subd. (a).) It intended for AB 52 to remedy  
17 the absence of tribal knowledge and concerns in CEQA analysis by requiring agencies to consult  
18 with tribes and to incorporate tribal expertise and knowledge in environmental assessments of  
19 projects. (*Ibid.*)

20 26. The Legislature intended for these new CEQA requirements to “establish a  
21 meaningful consultation process” based on mutual respect between tribal governments and lead  
22 agencies (AB 52, § 1, subd. (b).)

23 27. Thus, CEQA requires lead agencies to engage in consultation with tribes, defining  
24 consultation as:

25 the *meaningful and timely* process of seeking, discussing, and considering carefully the  
26 views of others, in a manner that is cognizant of all parties’ cultural values and, where  
27 feasible, seeking agreement. Consultation between government agencies and Native  
28 American tribes shall be conducted in a way that is mutually respectful of each party’s  
sovereignty.



1 (Pub. Resources Code, § 21080.3.1, referencing Gov. Code, § 65352.4 [emphasis added].)

2 28. In keeping with AB 52’s purpose and CEQA’s definition of consultation that  
3 requires a timely process, CEQA imposes time requirements on both tribal governments and lead  
4 agencies. Tribes must request in writing to be informed of any projects in the area in which it is  
5 traditionally and culturally affiliated and, once formally informed of a potential project, must  
6 request consultation in writing within 30 days. (Pub. Resources Code, § 21080.3.1, subd. (b).)  
7 Similarly, the lead agency must notify any tribe that has requested notice of a potential project  
8 within 14 days of a complete project application and must begin consultation within 30 days of  
9 receiving the tribe’s request for consultation. (*Id.*, § 21080.3.1, subds. (d), (e).)

10 29. In enacting AB 52, the Legislature recognized that tribes have expertise about  
11 tribal cultural resources and instructed that consultation must be “meaningful.” (AB 52, § 1, subds.  
12 (b)(4) & (5); Pub. Resources Code, § 21080.3.1, subds. (a) & (b), referencing Gov. Code, §  
13 65352.4.) AB 52 added provisions to CEQA that require consultation to include topics requested  
14 by a tribe, including significant effects to tribal cultural resources, alternatives to the project, and  
15 tribe-recommended mitigation measures. (Pub. Resources Code, § 21080.3.2, subd. (a).)

16 30. AB 52 added tribal cultural resources as a category of resources for which  
17 environmental impacts must be analyzed under CEQA; it specified that a substantial adverse  
18 change in the significance of a tribal cultural resource is a significant effect on the environment.  
19 (Pub. Resources Code, §§ 21083.09, 21084.2.) Tribal cultural resources are defined to include  
20 “sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a  
21 California Native American tribe” that are eligible for inclusion in the California Register of  
22 Historical Resources or a local register of historical resources. (Pub. Resources Code, § 21074,  
23 subd. (a).)

24 31. CEQA requires each tribal cultural resource to be analyzed individually for  
25 significant impacts. (Pub. Resources Code, § 21082.3, subd. (b).) If a proposed project may impact  
26 a tribal cultural resource, the EIR must discuss whether the project will have a significant impact  
27

1 on “an identified tribal cultural resource” and whether feasible alternatives or mitigation measures  
2 would avoid or substantially lessen the impact on “the identified tribal cultural resource.” (*Ibid.*)

### 3 STATEMENT OF FACTS

#### 4 A. The Amah Mutsun Tribal Band and the Environmental Setting

5 32. The Amah Mutsun Tribal Band is a “California Native American tribe” under  
6 Public Resources Code section 21073, and has approximately 600 members. The Project site is  
7 located within the ancestral lands of the Tribe in the Pajaro River Basin, known as *Juristac*. The  
8 Tribe’s ancestors lived in 20 to 30 villages stretched across the foothills and valleys of the Santa  
9 Cruz Mountains, near the Pajaro and San Benito Rivers.

10 33. The Tribe experienced displacement from its ancestral lands due in part to the  
11 forced removal and internment of the Tribe’s ancestors into Spanish Missions starting in the 18th  
12 century, and developments for agriculture and trading by settlers and the United States government  
13 in the 19th century. Nevertheless, the Project site and its surroundings continue to hold immense  
14 cultural value to the Tribe, which has worked actively to preserve these lands and the tribal  
15 cultural resources located therein.

16 34. The Project is located entirely within the *Juristac* tribal cultural landscape, just  
17 east of the confluence of the Pajaro and San Benito Rivers. The confluence serves as a key anchor  
18 in the *Juristac* tribal cultural landscape. *Juristac* is home to an important spiritual leader *Kuksui*  
19 and is where the Tribe conducted important ceremonies. The *Juristac* tribal cultural landscape is a  
20 tribal cultural resource within the definition of Public Resources Code section 21074, subdivision  
21 (a)(1), because it is eligible for inclusion in the California Register of Historical Resources.

22 35. The Project area contains other tribal cultural resources within the definition of  
23 Public Resources Code section 21074, subdivision (a)(1), including but not limited to the  
24 Medicine Man Hill and *Layaani* Medicine Man Pole and viewshed, the Mount Pajaro and Sargent  
25 Hills viewsheds, the Sanchez Adobe, the Ascensión Solórsano’s Historical Period Traditional  
26 Plant Gathering Area, and the *Juristac* and *Isleta/Isleta* Village Area. Each tribal cultural resource  
27 is of unique significance to the Tribe’s history, culture, religion, and traditions. For instance,  
28 Sanchez Adobe is a historical building on the Project site with significance to the Tribe because it

1 was constructed in the 1840s by members of the Tribe, and also served as a resting place for those  
2 members who contributed to building the adobe. The *Juristac* and *Isleta/Islita* Village Area has  
3 significance for the Tribe as a site where people gathered for ceremonies attended by the important  
4 spiritual leader *Kuksui*. Ascensión Solórsano’s Historical Period Traditional Plant Gathering Area  
5 is significant because it embodies the Tribe’s relationship with the natural environment.

## 6 **B. The Project and Its Environmental Impacts**

7 36. The Project is the proposed development of a “roadside attraction” reminiscent of  
8 “the 1940s and 1950s American roadside” in San Benito County, near the U.S. Highway 101 and  
9 Betabel Road, about 40 miles southeast of San Jose. The Project’s building footprint would be  
10 108,425 square feet, with an additional 111.61 acres of trails and undeveloped open space. The  
11 Project would include two motels—a 116-room “Spanish Revival-style” motel and a 9-room motel  
12 styled as “villas”—outdoor pool, movie screen, 500-seat event center, convenience store, gas  
13 station, restaurant, livestock corral, and visitor center. Each building would include amusement  
14 attractions, such as “curio” items for sale and “rural based vintage exhibits.” The visitor center  
15 would house an informational exhibit highlighting the Native American history of the region.

16 37. At least two other large projects are proposed for development near the Project site  
17 on the *Juristac* tribal cultural landscape: Sargent Ranch Quarry is a 403-acre sand and gravel open  
18 pit mine, and Strada Verde Innovation Park is a 2,767-acre development with more than seven  
19 million square feet of built space for an automated vehicle testing, research, and development  
20 center. San Benito County issued a notice of preparation for the Strata Verde Innovation Park in  
21 April 2022 and is currently preparing an EIR for the park. Santa Clara County, the lead agency for  
22 Sargent Ranch Quarry, circulated a Draft EIR in July 2022 and is currently reviewing public  
23 comments on the quarry project.

24 38. The Final EIR found that the Project may cause several significant and adverse  
25 environmental impacts, including substantial adverse changes in the significance of tribal cultural  
26 resources, and significant and adverse cumulative impacts to tribal cultural resources. Although  
27 the Final EIR considered impacts to the *Juristac* tribal cultural landscape as a whole, it did not  
28 consider impacts to individual tribal cultural resources that were identified in two studies

1 conducted to identify tribal cultural resources and potential impacts: an integrated cultural  
2 resources survey and the Betabel ethnographic study. As a result, the Final EIR also failed to  
3 adequately consider resource-specific mitigation measures or feasible alternatives that would avoid  
4 or substantially lessen the impacts to those individual resources.

### 5 **C. Timing of Project CEQA Review and AB 52 Tribal Consultation**

6 39. Respondents' CEQA review process took place within a compressed, six-month  
7 period, with Respondents issuing a Notice of Preparation of an EIR on April 20, 2022, publishing  
8 a Draft EIR for public comments on July 22, 2022, concluding the public commenting period on  
9 September 6, 2022, publishing the Final EIR on September 30, 2022, and certifying the Final EIR  
10 on October 12, 2022. Respondents indicated in public meetings and meetings with the Tribe that  
11 the Real Parties wanted a speedy CEQA review process to ensure the Project was approved prior  
12 to the November 8, 2022 election due to concerns about a local measure on the ballot that, had it  
13 passed, may have complicated the Project's development.

14 40. Respondents' rushed CEQA review was at least partially responsible for its  
15 inadequate AB 52 consultation process with the Tribe. The Tribe made a formal written request for  
16 consultation under AB 52 for the Project on March 20, 2022, but Respondents did not begin  
17 consultation until May 31, 2022. Thus, Respondents failed to meet their 30-day deadline to begin  
18 consultations with the Tribe pursuant to Public Resources Code section 21080.3.1, subdivision (e).

19 41. As a result of the Respondents' and the Real Parties' desired quick timetable for  
20 the CEQA review process, two key studies that incorporate tribal knowledge and expertise on  
21 tribal cultural resources were not performed at the appropriate stage during the CEQA process. As  
22 early as September 2021, the Tribe repeatedly requested that an integrative cultural resources  
23 survey and an ethnographic study be performed on the Project site to identify tribal cultural  
24 resources, to inform the analysis of Project impacts to those resources, and to help guide  
25 consultation discussions of possible mitigation and Project alternatives. Yet, Respondents did not  
26 start to engage in these studies until June 2022 for the survey and July 2022 for the ethnographic  
27 study, claiming that they could not modify their self-imposed CEQA review timeline to complete,  
28 consider, and incorporate these analyses into the Draft EIR.

1           42.       Because the Draft EIR was published on July 22, 2022, shortly after the  
2 completion of the integrative cultural resources study and prior to the completion of the  
3 ethnographic study, the Draft EIR did not identify or analyze impacts to several tribal cultural  
4 resources that the cultural resources survey identified and that the ethnographic study later  
5 confirmed, nor did the Draft EIR provide mitigation for these impacts. Furthermore, the public did  
6 not have an opportunity to comment on the impacts to, or mitigation for, the tribal cultural  
7 resources identified by these two studies.

8           43.       The integrative cultural resources survey and ethnographic study identified  
9 significant new information that Respondents should have, but failed to, incorporate into the Draft  
10 EIR. In particular, the ethnographic study confirmed that several resources, including the Medicine  
11 Man Hill and *Layaani* Medicine Man Pole and viewshed, the Mount Pajaro and Sargent Hills  
12 viewsheds, the Sanchez Adobe, the Ascensión Solórsano’s Historical Period Traditional Plant  
13 Gathering Area, and the *Juristac* and *Isleta/Isleta* Village Area, were eligible for listing in the  
14 California Register of Historical Resources. This newly determined eligibility renders impacts to  
15 these tribal cultural resources significant under CEQA, and requires Respondents to recirculate a  
16 Draft EIR that analyzes the Project’s impacts to and mitigation for these resources.

17           44.       The Tribe raised concerns about the failure of the Draft EIR to incorporate the  
18 ethnographic study’s significant new findings in its September 6, 2022 comment letter on the Draft  
19 EIR, and requested AB 52 consultation on these findings, impacts to these resources, and  
20 mitigation measures.

21           45.       Because of Respondents’ compressed timeline for their CEQA process, their AB  
22 52 consultation on topics requested by the Tribe—especially on new significant impacts and  
23 mitigation for impacts to the tribal cultural resources identified by the ethnographic study—was  
24 not meaningful. Consultation on these topics did not occur until September 30, 2022, mere hours  
25 before Respondents published the Final EIR, in which the significant impacts and mitigation  
26 raised by the Tribe were not incorporated.

27           46.       Despite the deficiencies with Respondents’ tribal consultation under AB 52 and  
28 the Final EIR’s inadequate analysis of the Project’s impacts to tribal cultural resources and

1 mitigation measures that could avoid or reduce the impacts to individual tribal cultural resources,  
2 the County of San Benito’s Planning Commission certified the Final EIR on October 12, 2022.

3 47. The Tribe appealed to the San Benito County Board of Supervisors, protesting the  
4 rushed review process and the lack of consideration of impacts and mitigation to tribal cultural  
5 resources in the Final EIR. The Board of Supervisors denied the appeal and approved the Project  
6 on November 8, 2022.

7 **D. Litigation History**

8 48. On December 9, 2022, the Tribe filed a Petition for Writ of Mandate and  
9 Complaint for Declaratory Relief in this Court. The Center for Biological Diversity and Protect  
10 San Benito County filed a separate Petition for Writ of Mandate on the same day.<sup>1</sup> Both petitions  
11 alleged that the County violated CEQA by certifying the Project’s Final EIR and approving the  
12 Project.

13 49. On January 20, 2023, the Real Parties in Interest demurred to the Petitioners’  
14 CEQA petitions on statute of limitations grounds, which the County joined.

15 50. On January 24, 2023, the Court ordered the two cases (Case Nos. CU-22-00247  
16 and CU-22-00249) consolidated for all purposes other than judgment.

17 51. On March 23, 2023, the People filed a motion to intervene in Case No. CU-22-  
18 00249 in support of the Tribe.

19 52. The Court heard oral argument on the demurrers and on the People’s motion to  
20 intervene on April 24, 2023 and May 3, 2023, respectively.

21 53. In an oral ruling on May 24, 2023, the Court sustained the demurrer on statute of  
22 limitations grounds and denied the People’s motion to intervene as moot. Following the ruling  
23 from the bench, the Court issued a written order on June 2, 2023.

24 54. On July 13, 2023, Petitioners appealed the trial court decision to the Sixth District  
25 Court of Appeal.

26 55. On July 24, 2024, the Sixth District Court of Appeal reversed the judgment of  
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28 <sup>1</sup> “Petitioners,” as used collectively in this petition, refers to the Amah Mutsun Tribal  
Band, the Center for Biological Diversity, and Protect San Benito County.

1 dismissal, finding that Petitioners' CEQA claims were timely, and remanded to the trial court.

2 56. Real Parties in Interest petitioned for California Supreme Court review on  
3 September 13, 2024. On October 30, 2024, the California Supreme Court denied Real Parties in  
4 Interest's petition for review.

5 57. On November 1, 2024, the Sixth District Court of Appeal issued a remittitur,  
6 returning the consolidated cases to this Court's jurisdiction for further consideration on the merits.

7 58. On December 16, 2024, Petitioners filed second CEQA petitions, challenging  
8 Respondents' November 12, 2024 approval of Real Parties in Interest's application for a minor  
9 subdivision/tentative parcel map related to the Betabel Commercial Development. Respondents'  
10 approval relied on an addendum to the Final EIR for this Project.

11 59. On December 31, 2024, this Court vacated the June 2, 2023 order sustaining the  
12 demurrer.

### 13 **FIRST CAUSE OF ACTION**

#### 14 **(Violations of CEQA)**

#### 15 **(Pub. Resources Code, § 21000 et seq.; Code Civ. Proc., §§ 1085, 1094.5)**

16 60. The allegations in paragraphs 1 through 59 are re-alleged and incorporated by  
17 reference herein as though set forth in full.

#### 18 **Failure to Timely Begin AB 52 Consultation with the Tribe**

#### 19 **(Pub. Resources Code, § 21080.3.1, subd. (e))**

20 61. The Legislature sought to balance the protection of tribal cultural resources with  
21 the need to avoid delay in the environmental review process by imposing strict timelines on lead  
22 agencies, with the goal of ensuring that "local and tribal governments, public agencies, and project  
23 proponents" have information early in the CEQA review process. (AB 52, § 1, subd. (b)(7).) The  
24 Legislature intended that tribal consultation takes place at "the earliest possible point" in the  
25 CEQA process so that tribal knowledge is incorporated into the process, tribal cultural resources  
26 can be identified, and culturally appropriate mitigation can be considered by the lead agency. (*Id.*  
27 § 1, subd. (b)(5).) In accordance with that legislative intent, AB 52 requires lead agencies to begin  
28 consultation within 30 days of receiving a tribe's consultation request. (Pub. Resources Code,

1 § 21080.3.1, subd. (e).)

2 62. The Tribe requested formal consultation on March 20, 2022, yet Respondents did  
3 not begin consultation until May 31, 2022—42 days after the statutorily imposed deadline, in  
4 violation of CEQA, Public Resources Code section 21080.3.1, subdivision (e). This failure  
5 constitutes a prejudicial abuse of discretion. (Pub. Resources Code, § 21168.5.)

6 **Failure to Timely Analyze and Mitigate Impacts on Tribal Cultural Resources**

7 **(Pub. Resources Code, §§ 21080.3.1, 21003.1; Gov. Code, § 65352.4)**

8 63. A key policy of CEQA is “requiring an agency to evaluate the environmental  
9 effects of a project at the earliest possible stage in the planning process.” (*City of Redlands v.*  
10 *County of San Bernardino* (2002) 96 Cal.App.4th 398, 410; see Pub. Resources Code, § 21003.1.)  
11 Environmental problems should be identified early and “considered at a point in the planning  
12 process where genuine flexibility remains.” (*Sundstrom v. County of Mendocino* (1988) 202  
13 Cal.App.3d 296, 307.) CEQA requires tribal consultation be “meaningful and timely.” (Pub.  
14 Resources Code, § 21080.3.1, referencing Gov. Code, § 65352.4.) Furthermore, AB 52 intends  
15 that tribal knowledge be incorporated into the CEQA process at “the earliest possible point” so  
16 that tribal cultural resources can be identified, and culturally appropriate mitigation can be  
17 considered by the lead agency. (AB 52, § 1, subd. (b)(5).)

18 64. Respondents violated CEQA by failing to conduct critical studies—despite  
19 repeated urging from the Tribe—to identify tribal cultural resources in a timely manner. As a  
20 result, Respondents failed to timely evaluate and mitigate impacts on these resources, preventing  
21 agency decisionmakers and the public from considering significant impacts on tribal cultural  
22 resources and measures to reduce those impacts.

23 65. Respondents failed to engage in the production of the integrative cultural resources  
24 survey to identify tribal cultural resources until June 2022, within one month of the publication of  
25 the Draft EIR. Respondents also failed to perform the ethnographic study, which identified that the  
26 Project would have a significant adverse effect on at least five tribal cultural resources, until July  
27 2022, after the Draft EIR was circulated to the public. As a result, the Draft EIR failed to analyze  
28 the impacts and mitigation on these newly identified tribal cultural resources in violation of



1 CEQA, Public Resources Code sections 21080.3.1 and 21003.1, and Government Code section  
2 65352.4. This failure constitutes a prejudicial abuse of discretion. (Pub. Resources Code,  
3 § 21168.5.)

4 **Failure to “Meaningfully and Timely” Consult on Topics Requested by the Tribe**  
5 **(Pub. Resources Code, §§ 21080.3.1; 21080.3.2, subd. (a); Gov. Code, § 65352.4)**

6 66. If a tribe requests consultation regarding recommended mitigation measures or  
7 significant effects, the consultation “shall” include those topics. (Pub. Resources Code,  
8 § 21080.3.2, subd. (a).) Tribal consultation must be both meaningful and timely and should  
9 recognize that tribes have expertise and knowledge with regard to their cultural resources. (*Id.*  
10 § 21080.3.1, referencing Gov. Code, § 65352.4; AB 52, § 1, subds. (b)(4), (6).)

11 67. The Tribe requested consultation on the individual tribal cultural resources  
12 identified by the ethnographic study, significant impacts to those resources, and mitigation  
13 measures for those effects shortly after a draft of the ethnographic study was released on August  
14 23, 2022. But Respondents failed to consult with the Tribe about those requested topics until  
15 September 30, 2022. Respondents then released the Final EIR on the same day, hours later,  
16 without including any of the Tribe’s recommendations or concerns, or any discussions about why  
17 they declined to include the Tribe’s recommendations or address the Tribe’s concerns.

18 68. Respondents’ failure to meaningfully and timely consult with the Tribe on topics  
19 requested by the Tribe runs contrary to legislative intent that tribal knowledge be incorporated into  
20 the CEQA process at an early stage, to ensure the protection of tribal cultural resources. (Pub.  
21 Resources Code, § 21080.3.1.) Respondents thus violated CEQA, Public Resources Code sections  
22 21080.3.1 and 21080.3.2, subdivision (a), and Government Code section 65352.4, and committed  
23 a prejudicial abuse of discretion. (Pub. Resources Code, § 21168.5.)

24 **Failure to Adequately Disclose and Analyze the Project’s Adverse Impacts on Individual**  
25 **Tribal Cultural Resources**

26 **(Pub. Resources Code, §§ 21084.2; 21082.3, subd. (b))**

27 69. CEQA requires that the EIR analyze impacts to tribal cultural resources  
28 individually. Statutory language is clear that individual tribal cultural resources are uniquely

1 significant and impacts and mitigation for each resource must be analyzed separately. CEQA’s  
2 definition of tribal cultural resources specifies that resources can be “sites, features, places,  
3 cultural landscapes, sacred places, and objects.” (Pub. Resources Code, § 21074, subd. (a).) Under  
4 the definition, a cultural landscape is distinct from a sacred place or a site that may contribute to  
5 that landscape.

6 70. CEQA further specifies that a substantial adverse change in the significance of “a”  
7 tribal cultural resource is a significant effect on the environment and that an EIR must discuss  
8 whether a project will have a significant impact on “*an* identified tribal cultural resource.” (Pub.  
9 Resources Code, §§ 21084.2; 21082.3, subd. (b) [emphasis added].)

10 71. The Final EIR failed to adequately disclose and analyze the Project’s tribal cultural  
11 resources impacts because it failed to consider that the Project may impact each identified tribal  
12 cultural resource differently. Thus, Respondents violated CEQA because they did not discuss the  
13 adverse impacts to each identified tribal cultural resource. (Pub. Resources Code, §§ 21082.3,  
14 subd. (b); 21084.2.) This failure constitutes a prejudicial abuse of discretion. (Pub. Resources  
15 Code, § 21168.5.)

16 **Failure to Consider Feasible Mitigation on Individual Tribal Cultural Resources**

17 **(Pub. Resources Code, §§ 21002, 21082.3, subd. (b); CEQA Guidelines, § 15021)**

18 72. CEQA prohibits public agencies from approving projects if feasible mitigation  
19 measures are available that would substantially lessen the project’s significant environmental  
20 effects. (Pub. Resources Code, § 21002.) Approval of a project without including feasible  
21 mitigation measures to avoid or minimize environmental damage violates CEQA. (CEQA  
22 Guidelines, § 15021.)

23 73. CEQA requires public agencies to consider mitigation measures for individual  
24 tribal cultural resources. When a project may have a significant impact on a tribal cultural  
25 resource, the EIR shall discuss whether feasible alternatives or mitigation measures avoid or  
26 substantially lessen the impact on “the identified tribal cultural resource.” (Pub. Resources Code,  
27 § 21082.3, subd. (b).) If a tribe requests consultation regarding alternatives to the project or  
28

1 mitigation measures, the lead agency must consult on those topics. (Pub. Resources Code,  
2 § 21080.3.2, subd. (a).)

3 74. The Final EIR violates CEQA because it failed to consider and adopt appropriate  
4 mitigation measures addressing the Project’s significant impacts on each identified tribal cultural  
5 resource. Although the Tribe had requested AB 52 consultation on such mitigation, Respondents  
6 failed to consider the additional measures recommended by the Tribe to mitigate the significant  
7 impacts to individual tribal cultural resources identified in the ethnographic study, and considered  
8 only mitigation for the broader *Juristac* tribal cultural landscape. Respondents therefore violated  
9 Public Resources Code sections 21002 and 21082.3, subd. (b), and CEQA Guidelines, section  
10 15021. This violation was a prejudicial abuse of discretion. (Pub. Resources Code, § 21168.5).

11 **Failure to Recirculate the EIR**

12 **(Pub. Resources Code, § 21092.1; CEQA Guidelines, § 15088.5)**

13 75. A lead agency must recirculate an EIR when “significant new information is added  
14 to the EIR” after it has been made available for public comment but before certification. (Pub.  
15 Resources Code, § 21092.1.) Significant new information that requires recirculation includes, but  
16 is not limited to, a significant new environmental impact, a new feasible project alternative, or new  
17 mitigation that would lessen the impacts. (CEQA Guidelines, § 15088.5, subd. (a).)

18 76. After Respondents circulated the Draft EIR for public comment, the ethnographic  
19 study identified several new tribal cultural resources, each of which would be significantly and  
20 adversely impacted by the Project. These impacts constitute the significant new environmental  
21 impacts that trigger the need for recirculation. Furthermore, the Tribe recommended mitigation  
22 measures to address impacts to these newly identified tribal cultural resources—recommendations  
23 that were not adopted by the EIR. These are new, feasible mitigation measures that should be  
24 considered by the decisionmakers and the public, and trigger the requirement for recirculation.

25 77. Respondents violated CEQA when they failed to recirculate a Draft EIR that  
26 incorporated the new significant impacts to tribal cultural resources and discussion of new feasible  
27 mitigation measures proposed by the Tribe. (Pub. Resources Code, § 21092.1; CEQA Guidelines,  
28 § 15088.5) This failure constitutes a prejudicial abuse of discretion. (Pub. Resources Code,

1 § 21168.5.)

2 **PRAYER FOR RELIEF**

3 WHEREFORE, the People pray for judgment as set forth below:

- 4 1. For peremptory or alternative writs of mandate under Code of Civil Procedure section 1094.5,  
5 or, in the alternative, section 1085, and Public Resources Code section 21168.9:
- 6 a. Directing Respondents to vacate and set aside every determination, finding, and  
7 decision approving the Project and certifying the Final EIR;
  - 8 b. Directing Respondents to vacate and set aside every determination, finding, and  
9 decision made in reliance on the Final EIR, including through an addendum to the  
10 Final EIR;
  - 11 c. Directing Respondents to suspend any and all activities pursuant to, or in furtherance  
12 of, Respondents' determinations, findings, and decisions related to approval of the  
13 Project, certification of the Final EIR, and approval of the addendum, until  
14 Respondents have taken all actions necessary to bring the determinations, findings,  
15 and decision into compliance with CEQA;
- 16 2. For injunctive relief restraining Respondents from taking any action to approve land  
17 development pursuant to the Project or the minor subdivision/tentative parcel map until  
18 Respondents have fully complied with CEQA;
- 19 3. For a declaration that Respondents' actions in certifying the Final EIR and approving the  
20 Project violated CEQA, and the certification, approval, and subsequent actions reliant on the  
21 Final EIR are invalid and of no force or effect;
- 22 4. For costs of this suit;
- 23 5. For attorney's fees as authorized in Code of Civil Procedure section 1021.8 and other  
24 provisions of law; and
- 25 6. For such other relief as the Court deems just and proper.

26  
27 Dated: January 6, 2025

Respectfully submitted,

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/s/ Monica Heger  
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**DECLARATION OF SERVICE BY E-MAIL AND PERSONAL DELIVERY**

Case Name: **Center for Biological Diversity, et al. v. County of San Benito, et al.**

No.: **CU-22-00247**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230.

On January 6, 2025, I e-mailed and also caused ACE Attorney Service, Inc., to serve in person the attached **[PROPOSED] INTERVENOR THE PEOPLE'S NOTICE OF MOTION AND SECOND MOTION FOR LEAVE TO INTERVENE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF MONICA HEGER IN SUPPORT THEREOF** to the following person(s) at the address(es) as follows:

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on January 6, 2025, at Los Angeles, California.

\_\_\_\_\_  
Libby Tecson  
Declarant

\_\_\_\_\_  
*/s/ Libby Tecson*  
Signature