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***Exempt from Filing Fees Pursuant to
Government Code, § 6103***

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN DIEGO, CENTRAL DIVISION

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14
15 **PEOPLE OF THE STATE OF**
16 **CALIFORNIA EX REL. ROB BONTA,**
17 **ATTORNEY GENERAL OF THE**
18 **STATE OF CALIFORNIA,**
19
20
21 **CITY OF POWAY and POWAY CITY**
22 **COUNCIL,**
23
24 **SHEA HOMES LIMITED**
25 **PARTNERSHIP; SHEA HOMES, INC.;**
26 **SHSC GC, Inc.; DOES 1-20.**
27
28
Petitioner / Plaintiff,

v.

Respondents / Defendants,

Real Parties in Interest,

Case No.

**PEOPLE OF THE STATE OF
CALIFORNIA'S PETITION FOR WRIT
OF MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

**[Code Civ. Proc., §§ 1085; 1094.5; 1060;
525; Pub. Resources Code, § 21000 et seq.]**

FILED UNDER THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT
(CEQA)

Date:
Time:
Dept:
Judge:
Action Filed:

1 **INTRODUCTION**

2 1. The People of the State of California, acting by and through Attorney General Rob
3 Bonta (“Petitioner” or “the People”), file this petition alleging that the City of Poway (together
4 with its City Council, “Respondents” or “City”) has violated the California Environmental
5 Quality Act (“CEQA,” Public Resources Code, §§ 21000 et seq.) by its failure to conduct
6 additional CEQA review at a development site at which the City recently authorized construction,
7 despite the unexpected discovery of multiple ancestral human remains and thousands of tribal
8 cultural resources unearthed to date.

9 2. A developer known as Shea Homes is actively constructing a new subdivision of
10 approximately 40 luxury homes (the “Project”) in Poway—even though repeated discoveries of
11 significant tribal cultural resources indicate that portions of the site are likely a cemetery,
12 comprised of ancestral human remains and associated grave goods belonging to ancestors of
13 Kumeyaay Nation, and therefore a sacred site.

14 3. The City certified an environmental impact report (“EIR”) for the Project in 2003.
15 Although the EIR acknowledged that a discovery of human remains on the site would be
16 considered significant, the EIR did not adopt any mitigation measures for the possibility of
17 discovering ancestral human remains or associated grave goods.

18 4. In the decades between the City’s certification of the EIR and its authorization of
19 construction at the site, prescribed archeological work on the site—performed by the developer’s
20 consultant without any tribal consultation or tribal monitoring—unearthed an enormous trove of
21 more than 8,000 tribal cultural resources, including hundreds of pottery fragments, dozens of
22 specialized tools like hammers and hammer stones, a variety of semi-precious stones, carved
23 bone, and arrowheads. The public was never notified of the significance of those findings, which
24 greatly exceeded the findings that were anticipated in 2003.

25 5. On October 21, 2025, ancestral human remains believed to be the cremated bones
26 of a child were discovered on the Project site. Since then, two more ancestral human remains
27 have been discovered: a jawbone with seven human teeth on March 10, 2026, and the cremated
28 rib bones of a teenager or small-boned adult on March 17, 2026.

1 6. Even after an EIR has been prepared and certified, subsequent events such as the
2 occurrence of substantial changes in circumstances or the emergence of significant new
3 information require the lead agency to act under CEQA to conduct additional analysis when one
4 or more discretionary approvals remain. (Pub. Resources Code, § 21166, subds. (b), (c); 14 Cal.
5 Code Regs., § 15162, subds. (a)(2), (3).)

6 7. Reopening CEQA would provide for a complete evaluation of the significant,
7 newfound tribal cultural resources at the site and for appropriate mitigation measures to be
8 applied, in consultation with California Native American tribes who are traditionally and
9 culturally affiliated with the area. (Pub. Resources Code, §§ 21080.3.1, 21080.3.2.)

10 8. Despite the repeated and extraordinary discoveries on the site, the City did not
11 require additional analysis or conduct any further CEQA review when it issued multiple
12 subsequent discretionary approvals. Instead, the City improperly abdicated its role to analyze the
13 newfound resources and develop enforceable mitigation measures for the significant discoveries,
14 deferring to a voluntary and unenforceable plan adopted unilaterally by Shea Homes on October
15 24, 2025, which the City had no involvement in preparing.

16 9. Moreover, the City authorized continued construction at the site when it approved
17 a tree removal permit on January 9, 2026. Upon information and belief, the effect of that
18 authorization was to allow Shea Homes to commence grading with bulldozers and other earth-
19 moving equipment. The City granted that approval in spite of the changed circumstances at the
20 site, which should have already triggered additional environmental review.

21 10. The People have an interest in protecting the State’s natural resources and its
22 environment. (Gov. Code, §§ 12600-12612.) Under CEQA, “[a] project with an effect that may
23 cause a substantial adverse change in the significance of a tribal cultural resource is a project that
24 may have a significant effect on the environment.” (Pub. Resources Code, § 21084.2.)

25 11. By failing to consider these extraordinary discoveries prior to issuing subsequent
26 discretionary approvals, the City violated CEQA. The People therefore seek a writ of mandate as
27 well as declaratory and injunctive relief from this Court that would require the City to revisit its
28 CEQA analysis, to adequately analyze the newfound resources, including by pursuing meaningful

1 tribal consultation about the significance of the site, and to consider and adopt adequate and
2 enforceable mitigation measures.

3 12. Unless the People are granted relief for the violations of CEQA outlined below,
4 the City’s actions and inactions challenged herein may result in potentially irreparable damage to
5 tribal cultural resources and information important to California history and prehistory.

6 **PARTIES**

7 13. Petitioners, the PEOPLE OF THE STATE OF CALIFORNIA, file this petition by
8 and through the Attorney General, Rob Bonta. The Attorney General, as the chief law officer of
9 the State of California, has broad independent powers under the California Constitution to
10 participate in all legal matters in which the State is interested. (Cal. Const., art. V, § 13.) The
11 Attorney General has express authority to protect the natural resources of the State of California
12 from impairment or destruction. (Gov. Code, §§ 12600-12612.) The Attorney General also has a
13 unique and important role to play in the enforcement of CEQA. (Pub. Resources Code, §§
14 21167.7, 21177, subd. (d); *City of Long Beach v. City of Los Angeles* (2018) 19 Cal.App.5th 465,
15 475-476.) The People file this Petition pursuant to the Attorney General’s independent power to
16 protect the natural resources and cultural heritage of the State from “irreparable impairment,” in
17 furtherance of the public interest. (Gov. Code, § 12600, subd. (a); cf. Public Resources Code,
18 § 21074, subd. (a) (citing Public Resources Code, § 5024.1, subd. (c).)

19 14. Upon information and belief, Respondent CITY OF POWAY is a city organized
20 under the laws of the State of California. The City is a local government agency charged with
21 authorizing and regulating development within its jurisdiction in compliance with provisions of
22 state law, including CEQA. The City is the lead agency for the Project under Public Resources
23 Code section 21067, with the principal responsibility for conducting environmental review of
24 proposed actions.

25 15. Upon information and belief, Respondent POWAY CITY COUNCIL, is the
26 decision-making body for the City and has the authority and responsibility to assess the impacts
27 of proposed CEQA projects within its jurisdiction.

28

1 **FACTUAL BACKGROUND**

2 **A. The City Approved the Project and Certified an EIR in 2003**

3 21. The Project proposes to develop 40 luxury homes on about 60 acres of land in a
4 previously agricultural area located at 17150 Old Coach Road in Poway, California, within San
5 Diego County.

6 22. The City analyzed potentially significant environmental impacts of the Project
7 more than twenty-three years ago, and certified an Environmental Impact Report (“EIR”) in
8 November 2003.

9 23. In the EIR, the City acknowledged that a find of human remains on the site would
10 be considered significant: “[A] significant impact will occur if the proposed project would . . .
11 [d]isturb any human remains, including those interred outside of formal cemeteries.” (EIR, page
12 5.7-4.)

13 24. The City’s EIR did not adopt or mandate any mitigation measures in 2003 for the
14 possibility of discovering ancestral human remains.

15 25. The City’s EIR determined that two designated portions of the property (Site 141
16 and Site 143) had potential cultural significance from an archaeological perspective and
17 prescribed as mitigation that the developer’s archaeological consultant should perform an
18 “archaeological data recovery program” (essentially a series of targeted excavations) on those two
19 sites.

20 26. The City’s EIR mandated that the archaeological data recovery reports “must
21 include a recovery sample of 2% of the overall subsurface deposit and 5% of the most important
22 portion of the subsurface deposit.” (*Id.*, page 5.7-7.)

23 27. The EIR stated that: “All information derived from the sampling program,
24 laboratory analysis, and special studies should be incorporated into a technical report for
25 submittal to the City as verification of the mitigation requirement. The report should be prepared
26 to a professional standard and must draw relevant conclusions from the data to advance the
27 research objectives stated in the research design.” (*Id.*, pages 5.7-7 to -8.)
28

1 28. The EIR required that “[a]ll collections and associated records shall be submitted
2 to the City of Poway Director of the Department of Development Services and shall be under the
3 ownership of the City of Poway. The City shall have the collections and associated records
4 permanently curated at a qualified facility in San Diego County.” (*Id.*, pages 5.7.8; redline
5 revisions in original omitted.)

6 29. The City considered the significance of several other designated sites on the
7 property (including Site 142) but determined they had no cultural significance.¹

8 30. According to the City’s EIR, completion of the two archaeological data recovery
9 programs “will reduce the impact on cultural resources to a level less than significant.” (*Id.*, Page
10 5.7-8.)

11 **B. The Developer’s Consultant Performs Archaeological Data Recovery Programs**
12 **in 2004 and 2017, Identifying More Than 8,000 Tribal Cultural Resources.**

13 31. In 2004, the landowner’s archaeological consultant, Brian F. Smith and Associates
14 (BFSA), completed an archaeological excavation of Site 143 as prescribed by the Project EIR.

15 32. “The mitigation program resulted in the recovery of 6,155 artifacts – 5,708 lithic
16 production waste specimens [chipped rock indicating human activity in tool-making], 63 ground
17 stone tools, 59 precision tools, six percussion tools, five core tools, three multi-use tools, two
18 bone awls, seven pieces of worked bone, one bead, and 301 pottery fragments.” Some of the
19

21 ¹ CEQA requires that information provided by a California Native American Tribe
22 in consultation be kept confidential, unless the tribe consents to disclosure of the information.
23 (Public Resources Code, § 21082.3, subds. (c), (f).) As no tribal consultation occurred relating to
24 the Project, none of the information contained in this Petition and Complaint is confidential
25 pursuant to those provisions. However, the Public Records Act also recognizes the sensitivity of
26 information relating to Native American graves and sacred places, providing that government
27 agencies are not required to disclose this information. (Gov. Code, §§ 7927.000, 7927.005.)
28 These statutes recognize the Legislature’s intent to protect information relating to the location of
tribal cultural resources to prevent harm, destruction, or looting of those resources. Throughout
this litigation, the People will keep confidential information relating to the specific location of
tribal cultural resources in public filings in furtherance of the Legislature’s intent. Any
confidential information necessary to the resolution of this matter will be furnished to the Court
under seal.

1 artifacts were made of semi-precious stones such as obsidian, quartz, jasper, and granite. The
2 bone awls (long sharp pointed bone tools) were observed to be particularly uncommon.

3 33. BFSA concluded that specialized tools were being manufactured at the site, and
4 that, because obsidian is not local to the area, the recovery of obsidian artifacts and flakes
5 indicated that “occupants at the site had access to an external network of trade” It also
6 concluded that “the site served as a *residential base or camp that was repeatedly inhabited,*
7 *probably on a seasonal basis, by the Late Prehistoric Kumeyaay.*” (Emphasis added.)

8 34. BFSA’s excavation covered just two percent of Site 143. Its report concluded that
9 “[a]ll of the units were excavated to a culturally sterile level or when bedrock was encountered,”
10 and that “the two percent sample of the overall site has achieved an adequate level of recovery
11 from which to conclude that the research potential of the site has been exhausted.”

12 35. Despite the enormous quantity and breadth of resources identified, BFSA
13 concluded that the “site components did not indicate Native American religious, ritual, or other
14 special activities at this location. For these reasons, no consultation with the Native American
15 community was sought.”

16 36. BFSA produced a report documenting these discoveries, which was finalized on
17 June 20, 2004. Upon information and belief, BFSA lodged the report with the City thereafter.

18 37. In between completion of the two archaeological data recovery reports, the City
19 approved a Specific Plan Amendment for the Project on or about August 19, 2014. By that date,
20 Government Code section 65352.3, subdivision (a)(1) and related provisions enacted via Senate
21 Bill 18 (Reg. Sess. 2003-2004, amending portions of the Civil Code and Government Code) had
22 already been in effect for nearly a decade, and would have required the City to consult with
23 California Native American tribes regarding impacts to places of traditional tribal cultural
24 significance. Upon information and belief, the City did not undertake such consultation with any
25 representatives of Kumeyaay Nation about the Project before approving the Specific Plan
26 Amendment for the Project.

27 38. In 2017, BFSA completed an archaeological excavation of Site 141, which
28 unearthed thousands more resources.

1 39. The excavation of Site 141 recovered 401 prehistoric pottery fragments, dozens of
2 customized tools like hammers and hammer stones, 14 projectile points (arrowheads), six bone
3 tool fragments, and substantial volumes of lithic material, including stone artifacts and chipped
4 stones that indicate human activity in creating tools out of stones and minerals. The types and
5 quantities of tools and stone fragments identified on the site reflected that “arrow points were
6 being manufactured and rejuvenated on-site.” Some of the more unusual stones found on the site
7 (including chert and chalcedony) “suggest that trade and/or contact with other groups was an
8 important aspect of the lives of the prehistoric inhabitants of [Site 141].”

9 40. Additionally, Site 141 contains a large bedrock milling feature located in the
10 central portion of the site, which contains 59 separate human-created mortars, depressions, and
11 slicks in the rock, all of which were presumed to be used for the grinding and crushing of food
12 such as acorns and other grains and seeds. Based on the large number of depressions in the
13 bedrock in close proximity to one another, BFSFA concluded that “the communal processing and
14 likely distribution of milling-based foods was occurring prehistorically at [Site 141].”

15 41. BFSFA concluded the site was functionally a village: “The variety of flake-based
16 tools, the quantity of ground stone artifacts and bedrock milling surfaces, and the presence of a
17 moderate amount of pottery indicates that [Site 141] may be *interpreted as a Late Prehistoric*
18 *Kumeyaay habitation site* where plant and animal resource procurement and processing, tool
19 maintenance, and production were the site primary activities.” (Emphasis added.)

20 42. Nonetheless, BFSFA again concluded that the “site components did not indicate
21 Native American religious, ritual, or other special activities at this location. For these reasons, no
22 consultation with the Native American community was conducted.”

23 43. BFSFA produced a report documenting these discoveries, which was finalized on
24 February 3, 2017. Upon information and belief, BFSFA lodged the report with the City thereafter.

25 44. Cumulatively, the excavations of Site 143 and 141 revealed that the Project site
26 encompassed a Kumeyaay village, because of the indications of substantial prehistoric activity by
27 the Kumeyaay people in arrow point manufacture, hunting preparation, food preparation, and
28 likely intertribal trade on the site.

1 45. The City’s EIR did not require tribal consultation among the prescribed mitigation
2 measures, and none occurred during BFSAs’s completion of the archaeological data recovery
3 programs.

4 46. Upon information and belief, both of the archaeological data recovery reports were
5 stored by the City after receipt. The 2004 report is emblazoned with a large handwritten note
6 superimposed over the title: “NOT PUBLIC INFO.”

7 47. Members of the public—including Native American tribes and the Attorney
8 General—had no way of knowing about the contents of the archaeological data recovery
9 programs after their completion.

10 48. Aside from the archaeological excavation activity that was completed in 2004 and
11 2017, upon information and belief, the original landowner pursued virtually no ground-moving
12 activities on the property for more than twenty years.

13 49. The People first obtained copies of the archaeological data recovery programs on
14 February 18, 2026.

15 **C. The U.S. Army Corps of Engineers Issues the Landowner a Wetlands Permit,**
16 **and Requires Tribal Monitoring On-Site**

17 50. The Project is located along an unnamed tributary to Sycamore Creek, and some of
18 the Project’s luxury homes were slated to be built adjacent to riparian habitat and a body of water
19 within the property lines. Therefore, the U.S. Army Corps of Engineers made a jurisdictional
20 determination in 2021 that the site contained federal jurisdictional waters, and that the Project
21 would result in a discharge into those waters, triggering the need for a permit pursuant to Section
22 404 of the federal Clean Water Act (33 U.S.C. § 1344; 33 C.F.R. parts 323 and 330).

23 51. Upon information and belief, on May 31, 2022, the Army Corps issued or
24 reauthorized a nationwide permit for the landowner that imposed various conditions on the
25 developer’s plan to discharge soil and fill material into jurisdictional waters.

26 52. One of the “Special Conditions” imposed by the Army Corps required monitoring
27 by a tribal representative from the Kumeyaay Nation: “Prior to commencing ground-disturbing
28

1 work within the permit area, the permittee shall . . . confirm[] retention of Native American
2 monitor(s) from the Viejas Band of Kumeyaay Indians.”

3 53. Kumeyaay Nation is an indigenous people whose ancestral lands span from
4 northern Baja California in Mexico into San Diego and Imperial Counties from the Pacific Ocean
5 to the mountains and desert. Much of the Kumeyaay Nation’s ancestral territory lies within what
6 is now called San Diego County.

7 54. Within the United States, Kumeyaay Nation includes twelve federally recognized
8 sovereign Native American tribes, including Viejas Band of Kumeyaay Indians (Viejas Band) and
9 San Pasqual Band of Mission Indians (San Pasqual Band).

10 55. San Pasqual Band is a member of Kumeyaay Nation and a federally recognized
11 and sovereign Indian tribe as confirmed in the federal government’s “Indian Tribal Entities
12 Within the Contiguous 48 States Recognized By and Eligible to Receive Services from the United
13 States Bureau of Indian Affairs.” (88 C.F.R. § 54654 (Aug. 11, 2023).)

14 56. On August 29, 2025, Shea Homes entered into a Professional Services Agreement
15 (PSA) with Viejas Band to provide tribal cultural monitoring services for the project.

16 57. After San Pasqual Band learned from Viejas Band that construction at the Project
17 site was imminent, San Pasqual Band wrote a letter to several state agencies and the City on
18 September 22, 2025. The letter requested consultation regarding San Pasqual Band’s “historic
19 properties, places of traditional religious and cultural importance, and cultural and historic
20 heritage resources” on the Project site. It highlighted concerns that San Pasqual Band had never
21 been afforded an opportunity to consult with any agency or entity about the imminent
22 construction, and it expressed concerns in particular about Shea Homes’s apparent plans to
23 remove sacred oak and sycamore trees from the property to make way for the planned
24 construction. San Pasqual Band expressed concern that the “proposed destruction of cultural
25 resources such as oaks and sycamores require addressing as post review discoveries.”
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1 **D. After More than Two Decades, Ground Activities Commence in 2025 and the**
2 **First Ancestral Human Remains Are Discovered Immediately**

3 58. Some construction activities for the Project commenced in the fall of 2025, shortly
4 after Shea Homes acquired the site.

5 59. As of early October 2025, Shea Homes was still awaiting discretionary approval
6 by the City of its final permits.

7 60. In particular, while the City had issued Shea Homes a grading permit in June 2025
8 that would allow it to move soil and alter topography, the grading permit was contingent on the
9 City’s issuance of a tree removal permit, for which Shea Homes had not yet applied. Thus, upon
10 information and belief, Shea Homes was not yet authorized to operate bulldozers or other ground-
11 moving equipment, nor was it yet authorized to remove trees from the site.

12 61. Although Shea Homes was not authorized to operate ground-moving equipment,
13 the City allowed Shea Homes to remove surface-level brush and vegetation, which it began to do
14 on October 21, 2025.

15 62. Immediately after Shea Homes commenced brush-clearing activities on the site,
16 fragments of ancient cremated human bone were found on the surface of the ground on October
17 21, 2025. The bone fragments were identified by the tribal monitor from the Viejas Band, whom
18 Shea Homes had contracted to be on the site.

19 63. A forensic anthropologist summoned to the site pursuant to Health and Safety
20 Code section 7050.5 determined the bones were of ancestral origin, very small, and “possibly
21 human, likely a child.” Her email to the San Diego County Medical Examiner’s Office noted:
22 “This area is a large known ancient village site, [Site 143]. Projectile points, other lithics, and
23 pottery are noted.”

24 64. The ancestral human remains were found on the surface of the earth at Site 143,
25 where BFSA had previously completed its archaeological excavation in 2004.

26 65. The forensic anthropologist referred the discovery of human remains to the Native
27 American Heritage Commission (Commission), as required by Health and Safety Code section
28 7050.5 and Public Resources Code section 5097.98.

1 66. The Commission, in turn, determined that the development property where the
2 remains were found was located within the ancestral homelands of the Kumeyaay Nation.
3 Pursuant to Public Resources Code section 5097.98, subdivision (a), it designated the Kumeyaay
4 Cultural Repatriation Committee as the “Most Likely Descendant” of the ancestral remains found
5 on October 21, 2025.

6 67. Upon information and belief, the Kumeyaay Cultural Repatriation Committee is a
7 consortium Executive Board of Kumeyaay Nation that is comprised of many of the sovereign
8 United States-based Kumeyaay Bands of Kumeyaay Nation.

9 68. Upon information and belief, both Viejas Band and San Pasqual Band are
10 consortium members of the Kumeyaay Cultural Repatriation Committee.

11 69. After the Commission designated the Kumeyaay Cultural Repatriation Committee
12 as the Most Likely Descendant, upon information and belief, the Kumeyaay Cultural Repatriation
13 Committee assigned its responsibilities to San Pasqual Band, based on its understanding that the
14 Project site was closest to San Pasqual Band’s ancestral, familial, and reservation territories.

15 **E. Extraordinary Discoveries Continue on the Site, Yet the City Fails to Reopen**
16 **CEQA Despite Subsequent Discretionary Approvals**

17 70. Despite discovering ancestral human remains on the very first day Shea Homes
18 began brush-clearing activities, upon information and belief, the City never evaluated the
19 significance of the unanticipated discovery of ancestral human remains that occurred on October
20 21, 2025, and did not require any party to implement a mitigation program.

21 71. Upon information and belief, the City verbally issued a stop-work order to Shea
22 Homes after the first discovery of human remains, but its duration and extent are uncertain on the
23 present record. At some point thereafter, upon information and belief, the City elected to defer to
24 the Army Corps’ communication with San Pasqual Band and Viejas Band, rather than engage
25 with either Tribe directly and it either lifted or did not further enforce its verbal stop-work order.

26 72. Upon information and belief, on October 23, 2025, the San Pasqual Band sent a
27 letter to the Army Corps and the City, as well as other state agencies. The letter expressed
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1 numerous concerns with the Project and urged the officials to take action. The letter noted
2 concerns in particular with “[t]he very recently identified and now-known highly likely presence
3 of ancestral remains at the Project site and refusals by the City of Poway and the Project
4 proponent, Shea Homes, to abate ground disturbing activities throughout the Project area despite
5 the extent and reach of ancestral remains and associated items not yet receiving the full spectrums
6 of appropriate and respectful identification, analysis, consideration, and treatment[.]”

7 73. San Pasqual Band’s October 23 letter requested “[a] formal re-evaluation of the
8 Project area and associated resources” It also requested “[a]n immediate stop to all ground
9 disturbing activities of the Project until the extent of ancestral remains, including bodily oils and
10 cremation soils which have not yet been given due review and consideration in the Project area,
11 are identified and appropriately and respectfully addressed following Kumeyaay protocols.”

12 74. Three days after the first discovery of human remains, on October 24, 2025, the
13 archaeological consultant for Shea Homes, BFS A, produced a document called the
14 “Archaeological Resource Management / Unanticipated [sic] Discovery Plan For the Hidden
15 Valley Ranch Project” (hereafter, the “Unanticipated Discoveries Plan”), that purported to govern
16 how discoveries of ancestral human remains would be handled.

17 75. The Unanticipated Discoveries Plan purported to “establish archaeological
18 monitoring protocols” and stated that it “provide[d] procedures that must be followed in order to
19 reduce potential impacts to previously unevaluated cultural, tribal cultural, and historic resources
20 to a level that is less than significant, and to address potential impacts to undiscovered, buried
21 archaeological resources associated with this project.”

22 76. Upon information and belief, the City played no role in drafting the Unanticipated
23 Discoveries Plan, and it undertook no effort to approve the document. It did not issue a Notice of
24 Determination or other typical CEQA approval. Thus, no interested agencies or tribes, let alone
25 the public, were involved in the development of the Unanticipated Discoveries Plan.

26 77. As a voluntarily adopted document drafted unilaterally by the developer, the
27 Unanticipated Discoveries Plan is an unenforceable mitigation measure.
28

1 78. The Unanticipated Discoveries Plan does not meet CEQA’s requirement for
2 enforceable mitigation of significant impacts, and it also fails to satisfy CEQA’s requirement that
3 mitigation measures be developed with public input.

4 79. Upon information and belief, citizens of the San Pasqual Band, including their
5 Tribal Historic Preservation Officer and other tribal representatives, visited the Project site
6 regularly throughout November and December 2025 to monitor the extraordinary finds and to try
7 to initiate conversations with Shea Homes about the newfound significance of the Project site.

8 80. On December 23, 2025, Shea Homes sent a letter to San Pasqual Band alleging
9 that its citizens had been “unlawful[ly] interfer[ing]” with the Project and “harass[ing]” staff on
10 the Project site. The letter gave “formal notice for the San Pasqual tribe to discontinue its
11 unwarranted interference with the [P]roject,” and included a demand that San Pasqual Band “not
12 enter upon its private property and not interfere with its lawful activities.” The letter stated:
13 “Failure to comply will require our pursuit of all available legal remedies, including notification
14 to the San Diego County Sherriff [sic] for removal of uninvited persons and seeking injunctive
15 relief and recovery of damages.”

16 81. On January 9, 2026, the City approved the tree removal permit that Shea Homes
17 had sought. Before issuing the permit, the City’s Municipal Code required the City to consider the
18 “historic or cultural value” of the trees. (City of Poway, Mun. Code, § 12.32.150.) The San
19 Pasqual Band consider many of the trees slated for removal to be sacred, as expressed in their
20 September 2025 letter to the City.

21 82. Upon information and belief, the effect of the City’s issuance of the tree removal
22 permit was to allow Shea Homes to embark on grading at the site, including by the use of
23 bulldozers and other heavy ground-moving equipment.

24 83. On or about March 10, 2026, the second ancestral human remains were unearthed.
25 This time, the discovery was of a jawbone with seven teeth, including canine, molar, and
26 premolar. The forensic anthropologist stated in her findings to the county medical examiner:
27 “These are human teeth.”
28

1 84. The ancestral human jawbone and teeth were found at Site 142, an area which the
2 City had previously determined was not culturally significant in its 2003 EIR. Site 142 was never
3 subject to any prescribed archaeological excavation or mitigation measures.

4 85. As before, the Commission designated the Kumeyaay Cultural Repatriation
5 Committee as the Most Likely Descendant, which in turn confirmed its prior assignment of the
6 role at this Project site to San Pasqual Band.

7 86. On or about March 13, 2026, an unusual pipe made of volcanic rock was
8 unearthed to the east of, but outside the boundaries of, Site 143. The volcanic rock is not local to
9 the region. Upon information and belief, the pipe is believed to have been used for ceremonial
10 purposes, and its presence near the two prior confirmed ancestral human remains indicates that
11 the site was likely used for on-site ceremonies, including funerary rites, cremation, and burial of
12 remains. Because of its non-local origins, the ceremonial pipe further underscores that the site
13 may have served as a nexus of intertribal trade. The area to the east of Site 143 was never
14 evaluated by the City or BFSA.

15 87. On or about March 17, 2026, ancestral human remains were unearthed for the third
16 time elsewhere on the site: the cremated rib bones of a likely teenager.

17 88. This third discovery of ancestral human remains was found between Sites 142 and
18 143. Sites 142 and 143 are more than 500 feet apart. As with the location of the ceremonial pipe,
19 the area between Sites 142 and 143 was never evaluated by the City or BFSA as having any
20 potential cultural resources.

21 89. For the third time, San Pasqual Band was designated as the Most Likely
22 Descendant of the ancestral human remains found on the property.

23 90. Each of the three discoveries of ancestral human remains occurred on a different
24 site on the property, hundreds of feet apart.

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1 principal method by which environmental data are brought to the attention of the agency and the
2 public.” (*Id.* at 365 [citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84].)

3 98. “The [environmental impact] report . . . may be viewed as an environmental ‘alarm
4 bell’ whose purpose it is to alert the public and its responsible officials to environmental changes
5 before they have reached ecological points of no return.” (*County of Inyo v. Yorty* (1973) 32
6 Cal.App.3d 795, 810.)

7 **A. Tribal Cultural Resources and Historical Resources are Separate Types of**
8 **Environmental Resources Under CEQA**

9 99. Under CEQA, tribal cultural resources are important to California’s history and
10 cultural heritage, and can shed light on information important in history or prehistory. (Pub.
11 Resources Code, § 21074, subd. (a) [citing Pub. Resources Code, § 5024.1, subd. (c)].)

12 100. “A project with an effect that may cause a substantial adverse change in the
13 significance of a tribal cultural resource is a project that may have a significant effect on the
14 environment.” (Pub. Resources Code, § 21084.2.)

15 101. A project that will disturb human remains, “including those interred outside of
16 dedicated cemeteries,” is a project that will have a significant impact on the environment. (CEQA
17 Guidelines, App’x G: Environmental Checklist Form.)

18 102. Pursuant to CEQA, tribal cultural resources must be analyzed through a different
19 lens than historical or archaeological resources, even though there may be overlap in the
20 resources analyzed. (See Pub. Resources Code, § 21083.09, subd. (a) [separating the
21 consideration of paleontological resources from tribal cultural resources]; see also *Koi Nation of*
22 *N. California v. City of Clearlake* (2025) 109 Cal.App.5th 815, 824, fn. 4; cf. CEQA Guidelines,
23 App’x G: Environmental Checklist Form.)

24 103. CEQA also defines and provides protections for historical resources separately
25 from tribal cultural resources. (See generally Pub. Resources Code, § 21084.1.) Historical
26 resources include those “listed in, or determined to be eligible for listing in, the California
27 Register of Historical Resources.” The CEQA statute looks to Public Resources Code section
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1 5024.1, which created the California Register of Historical Resources, for guidance on defining
2 historical resources. Section 5024.1 identifies several criteria that can help define a historical
3 resource, including whether the resource “[i]s associated with events that have made a significant
4 contribution to the broad patterns of California’s history and cultural heritage,” “[i]s associated
5 with the lives of persons important in our past,” or “[h]as yielded, or may be likely to yield,
6 information important in prehistory or history.”

7 **B. Although CEQA Promotes Finality, Changed Circumstances and Substantial**
8 **New Information Can Trigger Additional CEQA Review**

9 104. After an EIR is certified by a lead agency, if no litigation is commenced to
10 challenge its adequacy, the report is presumed to comply with CEQA, “unless the provisions of
11 Section 21166 are applicable.” (Public Resources Code, § 21167.2.)

12 105. Section 21166 of CEQA provides that, after an EIR has been prepared and
13 certified, the lead agency must conduct additional environmental analysis when “substantial
14 changes occur with respect to the circumstances under which the project is being undertaken
15 which will require major revisions in the environmental impact report.” (Pub. Resources Code,
16 § 21166, subd. (b); see also CEQA Guidelines, § 15162, subd. (a)(2).)

17 106. Similarly, the lead agency must conduct additional environmental analysis if
18 “[n]ew information, which was not known and could not have been known at the time the
19 environmental impact report was certified as complete, becomes available.” (Pub. Resources
20 Code, § 21166, subd. (c); see also CEQA Guidelines, § 15162, subd. (a)(3).)

21 107. “New information” includes “[s]ignificant effects previously examined” that “will
22 be substantially more severe than shown in the previous EIR.” (CEQA Guidelines, § 15162, subd.
23 (a)(3)(B).) It can also include “[m]itigation measures . . . which are considerably different from
24 those analyzed in the previous EIR” that “would substantially reduce one or more significant
25 effects on the environment . . .” (*Id.* at subd. (a)(3)(D).)

26 108. Because CEQA promotes finality, even where circumstances change or substantial
27 new information becomes available, a lead agency can reopen the environmental review process
28

1 for a project only when “further discretionary approval on that project is required.” (CEQA
2 Guidelines, § 15162, subd. (c); see Pub. Resources Code, § 21080, subd. (a).)

3 **C. Mitigation Measures Must be Enforceable and Fully Implemented**

4 109. When a project will have a significant effect on the environment, the lead agency
5 must adopt an alternative or implement feasible mitigation measures that will substantially lessen
6 the environmental effects. (Pub. Resources Code, § 21002.)

7 110. A lead agency must “mitigate or avoid the significant effects on the environment
8 of projects that it carries out or approves whenever it is feasible to do so.” (Pub. Resources Code,
9 § 21002.1, subd. (b).)

10 111. Mitigation measures must be implemented and enforced. (*Id.*, §§ 21081, subd. (a);
11 21081.6, subd. (b). CEQA Guidelines, §§ 15126.4, subd. (a)(2); 15097, subd. (a).)

12 112. Under the CEQA Guidelines, “[f]ormulation of mitigation measures shall not be
13 deferred until some future time.” (CEQA Guidelines, §15126.4, subd. (a)(1)(B).)

14 **D. CEQA Provides a Process for Lead Agencies To Adopt Guidelines Governing**
15 **Post-Review Discoveries**

16 113. CEQA also requires lead agencies to adopt “objectives, criteria, and procedures for
17 the evaluation of projects and the preparation of environmental impact reports” (Pub.
18 Resources Code, § 21082.)

19 114. As part of those procedures, lead agencies “should make provisions for historical
20 or unique archaeological resources accidentally discovered during construction.” (CEQA
21 Guidelines, § 15064.5, subd. (f).) “If the find is determined to be an historical or unique
22 archaeological resource, contingency funding and a time allotment sufficient to allow for
23 implementation of avoidance measures or appropriate mitigation should be available.” (*Ibid.*)

24 115. The City has adopted Archaeological/Historical Guidelines that provide protocols
25 for evaluating the effects of development on cultural resources. These guidelines specify the steps
26 the City must take when an unanticipated cultural resource is discovered.

27 116. The City’s Archaeological/Historical Guidelines instruct: “Evaluation of the
28 resource must take place before work can resume, and, if necessary, a mitigation program should

1 be implemented and completed prior to resuming construction.” If the resource is significant
2 under CEQA, a “data recovery program” or “preservation/protection plan must be accomplished
3 prior to the resumption of construction procedures.”

4 117. Upon information and belief, Shea Homes is actively pursuing earth-moving
5 activities at the site today, including by deploying equipment such as bulldozers and backhoes,
6 and by blasting with explosives.

7 118. Unless the People are granted relief for the violations of CEQA outlined below,
8 the City’s actions and inactions challenged herein may result in potentially irreparable damage to
9 tribal cultural resources and information important to California history and prehistory.

10 **FIRST CAUSE OF ACTION**

11 *(Violations of CEQA – Failure to Conduct Additional Environmental Analysis;
12 Unlawfully Deferred Mitigation Measures)*

13 **(Pub. Resources Code, § 21166; CEQA Guidelines, §§ 15162, 15064.5, 15126.4;
14 Code Civ. Proc. §§ 1085, 1094.5)**

15 119. The People incorporate by reference all allegations contained in the foregoing
16 paragraphs.

17 120. The City violated CEQA by failing to require subsequent or supplemental
18 environmental analysis when it issued subsequent discretionary approvals for the Project after
19 substantial—in this case, extraordinary—changes in the circumstances surrounding the project
20 occurred and after the emergence of significant new information not previously known. (See
21 generally Pub. Resources Code, § 21166, subs. (b), (c).)

22 121. Substantial changes occurred and new information emerged upon the discovery of
23 each of the ancestral human remains and upon the discovery of an extraordinary quantity and
24 breadth of tribal cultural resources in each of the archaeological data recovery programs, as
25 described further in each of the Counts below.

26 122. A lead agency may reopen the environmental review process for a project approval
27 only when “further discretionary approval on that project is required,” pursuant to CEQA
28 Guidelines section 15162, subdivision (c). (See generally Pub. Resources Code, § 21080, subd.

1 (a.) Here, the City had several obligations to exert discretionary control over the Project after the
2 discoveries occurred and before ground-moving construction commenced, including but not
3 limited to:

- 4 a. When it lifted a stop-work order it issued to Shea Homes after the first ancestral
5 human remains and associated grave goods were uncovered in October 2025;
- 6 b. When it allowed Project construction to resume and continue, in violation of its
7 own Archaeological Guidelines and CEQA Guidelines section 15064.5,
8 subdivision (f), upon the first and each subsequent discovery of human remains;
- 9 c. When it allowed Project construction to resume and continue after it passively
10 received Shea Homes’s archaeological consultant’s production of an Unanticipated
11 Discoveries Plan that purported to prescribe mitigation measures applicable to
12 previously unanalyzed resources on the site, contrary to the City’s own
13 Archaeological Guidelines and CEQA’s requirement that the City analyze the
14 significance of a resource before implementing appropriate and mandatory
15 mitigation measures; and
- 16 d. When it issued a tree removal permit to Shea Homes on January 9, 2026, which
17 cleared the way for Shea Homes to begin earth-moving activities on the site.

18 123. Each of these discretionary actions constitutes a separate violation of CEQA.

19 **Count One: Ancestral Human Remains**

20 124. As noted above, the City’s original EIR acknowledges that a find of ancestral
21 human remains on the site would be considered significant: “[A] significant impact *will occur* if
22 the proposed project would . . . [d]isturb any human remains, including those interred outside of
23 formal cemeteries.” (EIR, page 5.7-4 [emphasis added].)

24 125. The first ancestral human remains were discovered on October 21, 2025 at Site
25 143, a site that Shea Homes’s archaeological consultant, BFSA, had allegedly already “excavated
26 to a culturally sterile level.”

1 126. Additional ancestral human remains were discovered on the site for the second
2 time on March 10, 2026 at Site 142, a designated area which the City had previously determined
3 was not culturally significant in its 2003 EIR. Site 142 was never subjected to any prescribed
4 archaeological excavation or mitigation measures.

5 127. Ancestral human remains were discovered on the site for the third time on March
6 17, 2026 in an area between Sites 142 and 143, which are more than 500 feet apart. This area had
7 previously been so insignificant to the City in 2003 that it had not even been named and had no
8 defined parameters.

9 128. The second and third discoveries of ancestral remains underscore that the City
10 lacked a comprehensive understanding of the cultural significance of the Project site.

11 129. These discoveries represent “[s]ubstantial changes” that required—and obligated
12 the City to undertake, prior to issuing any further discretionary approvals—“major revisions” to
13 the previous EIR, due to the involvement of new, previously unrecognized significant effects.
14 (Pub. Resources Code, § 21166, subd. (b); CEQA Guidelines, § 15162, subd. (a)(2); see, e.g.,
15 *Mira Monte Homeowners Assn. v. County of Ventura* (1985) 165 Cal.App.3d 357.)

16 130. Each of these discoveries of ancestral human remains also constituted the
17 emergence of “[n]ew information, which was not known and could not have been known” at the
18 time the City certified the EIR. (Pub. Resources Code, § 21166, subd. (c); CEQA Guidelines,
19 § 15162, subd. (a)(3); see, e.g., *Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041.) In
20 particular, the discovery revealed that there would be significant effects on previously interred
21 remains that were not discussed in the City’s 2003 EIR (CEQA Guidelines, § 15162, subd.
22 (a)(3)(A)), that those impacts would be “substantially more severe than shown in the previous
23 EIR,” (*id.*, subd. (a)(3)(B)), and further that such a discovery would require new mandatory
24 mitigation measures or alternatives which are “considerably different from those analyzed” in the
25 2003 EIR, necessary to reduce the impacts to a level that is less than significant (*Id.*, subd.
26 (a)(3)(D)).

27 131. CEQA did not yet require tribal consultation in 2003, and no tribe was involved in
28 evaluating the site to determine either whether tribal cultural resources existed, or their

1 significance, at the time the City adopted and certified its EIR. Because the City’s EIR was
2 presumed compliant with CEQA at the time of its adoption and certification pursuant to Public
3 Resources Code section 21167.2, the new information regarding the presence of ancestral human
4 remains was not known and could not have been known with the exercise of reasonable diligence
5 at the time.

6 132. Notwithstanding the significant changed circumstances and new information
7 regarding the presence of human remains that emerged on the site, the City took no actions to
8 revisit its original EIR or to require subsequent or supplemental environmental analysis prior to
9 issuing additional Project approvals.

10 133. By failing to conduct a subsequent or supplemental CEQA analysis in the wake of
11 the extraordinary discoveries of ancestral human remains, the City committed a prejudicial abuse
12 of discretion, failed to proceed in the manner required by law, and acted without substantial
13 evidentiary support.

14 **Count Two: Unlawfully Deferred Mitigation**

15 134. After the first discovery of ancestral human remains, the City abdicated and
16 unlawfully deferred its role as lead agency by allowing Shea Homes to draft an entirely
17 unenforceable mitigation plan (the Unanticipated Discoveries Plan) that purported to govern the
18 handling of human remains for a resource the City already knew would be “significant” if found
19 on the site. (See generally CEQA Guidelines, § 15126.4.)

20 135. Pursuant to its Archaeological Guidelines, the City was required to evaluate the
21 resources before allowing construction to resume and continue, and accordingly, the City was
22 required to use its discretionary authority to review and approve the mitigation measures outlined
23 in the Unanticipated Discoveries Plan.

24 136. “Mitigation measures must be fully enforceable through permit conditions,
25 agreements, or other legally binding instruments.” (CEQA Guidelines, § 15126.4, subd. (a)(2).)

26 137. Under the CEQA Guidelines, “[f]ormulation of mitigation measures shall not be
27 deferred until some future time.” (CEQA Guidelines, §15126.4, subd. (a)(1)(B).)

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1 138. “Deferred mitigation violates CEQA if it lacks performance standards to ensure
2 the mitigation goal will be achieved.” (*Golden Door Properties, LLC v. County of San Diego*
3 (2020) 50 Cal.App.5th 467, 520.)

4 139. Here, the City abdicated its role and unlawfully deferred its role on October 24,
5 2025 when it failed to follow CEQA’s mandate to analyze the resource and implement
6 appropriate mitigation measures using its own discretion. Instead, it passively deferred to Shea
7 Homes, allowing the developer to unilaterally draft a voluntary and unenforceable mitigation
8 measure for the newfound discovery of human remains. (See *Communities for a Better*
9 *Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93 [“Fundamentally, the
10 development of mitigation measures, as envisioned by CEQA, is not meant to be a bilateral
11 negotiation between a project proponent and the lead agency after project approval; but rather, an
12 open process that also involves other interested agencies and the public.”].)

13 140. By deferring to Shea Homes and passively approving its consultant’s
14 Unanticipated Discoveries Plan in the wake of the discoveries of ancestral human remains, the
15 City committed a prejudicial abuse of discretion, failed to proceed in the manner required by law,
16 and acted without substantial evidentiary support.

17 **Count Three: Tribal Cultural Resources**

18 141. In addition to the discoveries of multiple ancestral human remains, substantial
19 changes occurred with respect to the circumstances surrounding the Project after each of the
20 archaeological data recovery projects unearthed—and BFSa reported to the City that it had
21 identified—substantial quantities of resources, indicating that the Project site had once been a
22 Kumeyaay village.

23 142. The subsequent discovery of a ceremonial pipe underscores and amplifies the
24 extraordinary cultural significance of the site.

25 143. These substantial changes required “major revisions” to the previous EIR, prior to
26 the City’s issuance of any further discretionary approvals, because “a substantial increase in the
27 severity of previously identified significant effects” occurred. (Pub. Resources Code, § 21166,
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1 subd. (b); CEQA Guidelines, § 15162, subd. (a)(2); see, e.g., *Mira Monte Homeowners Assn. v.*
2 *County of Ventura* (1985) 165 Cal.App.3d 357.)

3 144. The discovery of thousands of tribal cultural resources at each site also constituted
4 the emergence of “[n]ew information, which was not known and could not have been known” at
5 the time the City certified the EIR. (Pub. Resources Code, § 21166, subd. (c); see, e.g., *Moss v.*
6 *County of Humboldt* (2008) 162 Cal.App.4th 1041.)

7 145. In particular, these discoveries revealed “information of substantial importance,”
8 and demonstrated that even “significant effects previously examined” in the City’s 2003 EIR
9 were “substantially more severe than shown in the previous EIR.” (CEQA Guidelines, § 15162,
10 subd. (a)(3)(B).)

11 146. Notwithstanding the significant changed circumstances and new information that
12 emerged regarding the thousands of tribal cultural resources discovered, the City took no actions
13 to revisit its original EIR or to require further environmental analysis at any point.

14 147. Until February 18, 2026—the date the People obtained copies of the
15 archaeological data recovery programs from the City—the People were uninformed of the
16 substantial change in circumstances that had occurred on the site. (See *Concerned Citizens of*
17 *Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929; see also *Ventura Foothill*
18 *Neighbors v. County of Ventura* (2014) 232 Cal.App.4th 429.)

19 148. By failing to conduct a subsequent or supplemental CEQA analysis in the wake of
20 these discoveries, the City committed a prejudicial abuse of discretion, failed to proceed in the
21 manner required by law, and acted without substantial evidentiary support.

22 149. The People have performed all conditions precedent to filing this action and have
23 exhausted all available remedies to the extent required by law. The People do not have a plain,
24 speedy, or adequate remedy other than by the issuance of a writ of mandate, and have a beneficial
25 interest in requiring the City to satisfy its obligations under CEQA. (Code Civ. Proc. §§ 1085,
26 1086.)

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1 **SECOND CAUSE OF ACTION**

2 *(Violation of CEQA and City’s Archaeological Guidelines – Failure to Evaluate and*
3 *Mitigate Unanticipated Discoveries)*

4 **(CEQA Guidelines, § 15064.5, subd. (f); Code Civ. Proc. §§ 1060, 1085, 1094.5)**

5 150. The People incorporate by reference all allegations contained in the foregoing
6 paragraphs.

7 151. The City abused its discretion by failing to immediately evaluate archaeological
8 resources accidentally discovered during construction and by failing to allow sufficient time to
9 implement avoidance measures or mitigation. (CEQA Guidelines, § 15064.5, subd. (f).)

10 152. CEQA requires agencies to adopt procedures governing the implementation of
11 CEQA. (Pub. Resources Code, § 21082.)

12 153. As part of those procedures, public agencies “should make provisions for historical
13 or unique archaeological resources accidentally discovered during construction.” (CEQA
14 Guidelines, § 15064.5, subd. (f).)

15 154. The City made such provisions in its Archaeological Guidelines. The City’s
16 Archaeological Guidelines require that when an unanticipated discovery is made, construction
17 must cease, the resource must be evaluated, and a mitigation program should be implemented.

18 155. A writ of mandate is appropriate to “compel the performance of an act, which the
19 law specifically enjoins, as a duty resulting from an office, trust, or station.” (Code Civ. Proc.,
20 § 1085, subd. (a).)

21 156. The City had a mandatory duty to evaluate each unexpected discovery made at the
22 Project site and to mitigate impacts before allowing Shea Homes to continue work at the site. The
23 Archaeological Guidelines specify that evaluation of the resource “must take place before work
24 can resume” and if the resource is significant under CEQA, a “data recovery program” or
25 “preservation/protection plan must be accomplished prior to the resumption of construction
26 procedures.”

27 157. Upon information and belief, the City allowed construction to resume and continue
28 without an evaluation of any of the unexpected discoveries made at the Project site since October

1 2025, including any of the three separate findings of ancestral human remains and the ceremonial
2 pipe, in violations of its own Guidelines.

3 158. Further, the City has failed to develop a preservation/protection plan or any
4 mitigation measures for these unanalyzed resources, in violation of CEQA and its own
5 Archaeological Guidelines.

6 159. Further, the City failed to approve or take action to respond to the Unanticipated
7 Discoveries Plan developed unilaterally by Shea Homes on October 24, 2025.

8 160. Thus, the City committed a prejudicial abuse of discretion, failed to proceed in the
9 manner required by law, and acted without substantial evidentiary support.

10 161. The People have performed all conditions precedent to filing this action and have
11 exhausted all available remedies to the extent required by law. The People do not have a plain,
12 speedy, or adequate remedy other than by the issuance of a writ of mandate, and have a beneficial
13 interest in requiring the City to satisfy its obligations arising under CEQA and independently.
14 (Code Civ. Proc. §§ 1085, 1086.)

15 **THIRD CAUSE OF ACTION**

16 *(Violation of CEQA – Failure to Implement Mitigation)*

17 **(Pub. Resources Code, §§ 21002, 21081, subd. (a), 21081.6, subd. (b);
CEQA Guidelines, §§ 15126.4, 15097; Code Civ. Proc. §§ 1085, 1094.5)**

18 162. The People incorporate by reference all allegations contained in the foregoing
19 paragraphs.

20 163. The City abused its discretion, and continues to abuse its discretion, by failing to
21 comply with CEQA’s mandate to implement mitigation adopted in the Project EIR.

22 164. CEQA prohibits public agencies from approving projects if feasible mitigation
23 measures are available that would lessen the project’s significant environmental impacts. (Pub.
24 Resources Code, § 21002.) Public agencies have a duty to implement and enforce adopted
25 mitigation. (*Id.*, §§ 21081, subd. (a), 21081.6, subd. (b); CEQA Guidelines, § 15126.4, subd.
26 (a)(2).)

27 165. This means that an agency must “take steps to ensure that mitigation measures will
28 actually be implemented as a condition of development, and not merely adopted and then

1 neglected or discarded.” (*Katzeff v. Dept. of Forestry & Fire Protection* (2010) 181 Cal.App.4th
2 601, 613 [citations omitted].)

3 166. A public agency that fails to implement or enforce adopted mitigation abuses its
4 discretion by failing to proceed in the manner required by CEQA. (*Lincoln Place Tenants Assn. v.*
5 *City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1507.)

6 167. The EIR found that the Project would have a significant impact on cultural
7 resources in two areas of the property (Sites 143 and 141), which were deemed to have
8 archaeological significance. As mitigation, the City required Shea Homes to perform
9 archaeological data recovery reports on each of those two sites, including exploring at least two
10 percent of each site and five percent of the portion of each site found to be the most significant.

11 168. After the completion of the data recovery programs, the City was obligated to
12 maintain ownership of the resources and the records associated with each. The City was required
13 to permanently curate the collections and associated records at a qualified facility in San Diego
14 County.

15 169. The People have been unable to verify that all collections and associated records
16 produced by the archaeological data recovery programs are permanently curated at a qualified
17 facility in San Diego County.

18 170. Upon information and belief, because the City is not implementing this mitigation
19 measure, it is presently violating CEQA.

20 171. Therefore, City committed a prejudicial abuse of discretion, failed to proceed in
21 the manner required by law, and acted without substantial evidentiary support.

22 172. The People have performed all conditions precedent to filing this action and have
23 exhausted all available remedies to the extent required by law. The People do not have a plain,
24 speedy, or adequate remedy other than by the issuance of a writ of mandate, and have a beneficial
25 interest in requiring the City to satisfy its obligations arising under CEQA and independently.
26 (Code Civ. Proc. §§ 1085, 1086.)

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1 **FOURTH CAUSE OF ACTION**

2 *(Declaratory Relief)*

3 **(Code Civ. Proc. § 1060)**

4 173. The People incorporate by reference all allegations contained in the foregoing
5 paragraphs.

6 174. The People contend that the City's actions and inactions violated CEQA. The City
7 disputes this contention.

8 175. The People additionally contend that the City's actions violate its own
9 Archaeological Guidelines. The City disputes this contention.

10 176. An actual controversy has arisen and now exists between the People and the City
11 regarding their respective rights and duties. A judicial determination and declaration of the
12 parties' respective rights and duties, including a declaration of whether the City's actions violate
13 the law, is necessary and appropriate.

14
15 **PRAYER FOR RELIEF**

16 Wherefore, the People seek relief as set forth below:

- 17 1. For entry of a temporary restraining order, as well as preliminary and permanent
18 injunctive relief prohibiting and enjoining the City and the Real Parties in Interest from
19 pursuing the Project until the City complies fully with the requirements of CEQA;
- 20 2. For peremptory or alternative writs of mandate under, *inter alia*, Code of Civil
21 Procedure sections 1085 and 1094.5, and Public Resources Code section 21168.9,
22 directing the City to:
- 23 a. Vacate and set aside its recent discretionary approvals of the Project;
 - 24 b. Comply with the requirements of CEQA, the CEQA Guidelines, and the City's
25 own Archaeological Guidelines; and
 - 26 c. Refrain from granting any further discretionary approvals for the Project until it
27 complies fully with the requirements of CEQA;
- 28 3. For a declaratory judgment stating that:


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- a. the City violated CEQA by failing to conduct subsequent or supplemental CEQA review here;
 - b. the City’s failure to prepare an adequate subsequent or supplemental environmental analysis under CEQA constitutes a prejudicial abuse of discretion; and
 - c. the City violated its own Archaeological Guidelines by failing to require that the Real Parties in Interest cease construction activities in the area of each discovery of unanticipated resources, that the resources in question be evaluated before work can resume, and that a mitigation program be implemented and completed prior to the resumption of construction;
- 4. For costs of this suit, as well as attorneys’ fees as authorized in Code of Civil Procedure section 1021.8 and other applicable provisions of law; and
 - 5. For such other legal and equitable relief as this Court deems appropriate and just.

Dated: April 20, 2026

Respectfully submitted,

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