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

8 *Attorneys for People of the State of California*
9 *ex rel. Xavier Becerra, Attorney General*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO

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14 **SIERRA CLUB,**
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18 **COUNTY OF SAN DIEGO, BOARD OF**
SUPERVISORS OF THE COUNTY OF
SAN DIEGO, and DOES 1 - 20,
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21 **JACKSON PENDO DEVELOPMENT;**
JACKSON PENDO DEVELOPMENT
COMPANY; GDCI PROCTOR VALLEY
LP; GDC HOLDINGS, LLC; PROCTOR
VALLEY INVESTORS, LLC; GDC
INVESTMENTS 11, LP; and DOES 21 - 40,
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Plaintiff,
v.
Respondent,
Real Parties in Interest,

Case No. 37-2019-00038820-CU-TT-CTL

**PEOPLE’S NOTICE OF MOTION AND
MOTION FOR LEAVE TO INTERVENE;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[CEQA CLAIM]

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

Date: July 23, 2021
Time: 10:30 A.M.
Dept: C-68
Judge: The Honorable Richard S.
Whitney

Action Filed: July 25, 2019

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

2 **PLEASE TAKE NOTICE** that on July 23, 2021, at 10:30 A.M. in Department C-68 of the
3 County of San Diego Superior Court, located at 300 West Broadway, San Diego, CA 92101, the
4 People of the State of California *ex rel.* Xavier Becerra, Attorney General (People), will and
5 hereby do move the Court for leave to intervene in the above-captioned consolidated action, Case
6 Number 37-2019-00038820-CU-TT-CTL, pursuant to Code of Civil Procedure section 387,
7 subdivision (d). The People’s proposed Petition for Writ of Mandate in Intervention (Petition in
8 Intervention) is attached to this motion as Exhibit 1. The Petition in Intervention challenges the
9 Otay Ranch Village 14 and Planning Areas 16/19 Project approved by Respondents the County of
10 San Diego, the San Diego County Board of Supervisors, and Does 1-20 under the California
11 Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.).

12 This motion is based on the following grounds:

13 1. Under Government Code section 12606, the People, as represented by the Attorney
14 General, have an unconditional right to intervene in any judicial or administrative proceeding in
15 which facts are alleged concerning pollution or adverse environmental effects that could affect the
16 public in general. Such facts are alleged in the lawsuit pending before this Court.

17 2. The motion is timely and will not impair or impede the prompt resolution of the
18 issues presented in this action.

19 3. Based on the unconditional right of the People to intervene pursuant to
20 Government Code section 12606 and in accordance with Code of Civil Procedure sections 387,
21 subdivision (d), and 388, this Court should grant the People leave to intervene.

22 This motion is based upon this Notice, the Petition in Intervention, the accompanying
23 Memorandum of Points and Authorities, any matters of which this Court may take judicial notice,
24 the pleadings on file with the Court in this action, and such other matters which may be brought
25 to the attention of this Court before or during the hearing on this motion.

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Dated: March 17, 2021

Respectfully Submitted,
XAVIER BECERRA
Attorney General of California
CHRISTINA BULL ARNDT
SARAH E. MORRISON
Supervising Deputy Attorneys General
CATHERINE M. WIEMAN
Deputy Attorney General



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*Attorneys for People of the State of
California
ex rel. Xavier Becerra, Attorney General*

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
2 **MOTION FOR INTERVENTION**

3 **INTRODUCTION**

4 The People of the State of California ex rel. Xavier Becerra, Attorney General (the
5 People) move this court for an order granting the People leave to intervene in this matter, joining
6 petitioners in challenging the decision of San Diego County and its Board of Supervisors
7 (County) to approve the Otay Ranch Village 14 and Planning Areas 16/19 project (Project) and
8 certify an Environmental Impact Report (EIR) for the Project pursuant to the California
9 Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq. The People's
10 proposed Petition for Writ of Mandate in Intervention (Petition in Intervention) is attached as
11 Exhibit 1.

12 The People have an unconditional right to intervene in actions alleging pollution or adverse
13 environmental effects that could affect the public. (Gov. Code, § 12606.) Petitioners Center for
14 Biological Diversity, Preserve Wild Santee, California Chaparral Institute, Endangered Habitats
15 League, California Native Plant Society, and Sierra Club (Petitioners) allege that Respondents
16 approved the Project without complying with the requirements of CEQA, resulting in adverse
17 environmental impacts, including impacts related to wildfire risk and greenhouse gas (GHG)
18 emissions. Therefore, the People should be granted leave to intervene in this action and to file the
19 Petition in Intervention.

20 **STATEMENT OF ALLEGED FACTS**

21 On July 25, 2019, Petitioners filed three separate Verified Petitions for Writ of Mandate.
22 (Center for Biological Diversity Verified Petition for Writ of Mandate; Endangered Habitats
23 League Verified Petition for Writ of Mandate [EHL Petition]; and Sierra Club Verified Petition
24 for Writ of Mandate, together referred to as the Initial Petitions.) The Initial Petitions allege that
25 Respondents violated CEQA by approving and certifying an EIR for the Project without
26 disclosing or adequately analyzing the Project's impacts, identifying and adopting effective
27 mitigation measures to reduce them, or considering reasonable alternatives. (*Id.*) The Project
28 includes, but is not limited to, a General Plan Amendment, Specific Plan, Zone Reclassification,

1 and a Tentative Map for a “master-planned community” on approximately 1,284 acres in the
2 Proctor Valley region of the unincorporated County. (EHL Petition, ¶ 52.) The Project is a
3 proposed residential and mixed-use development that would include over one-thousand single-
4 family homes, along with various commercial and accessory uses. (*Ibid.*) The Project area is
5 rated by the California Department of Forestry and Fire Protection (CalFIRE) as a very high fire
6 hazard severity zone, the highest designation. (*Id.*, ¶ 36.) There have been 17 fires on the Project
7 site in the past 100 years, including the Harris Fire in 2007, which burned approximately 90,440
8 acres in this part of San Diego County, including the majority of the Project Area. (*Ibid.*)
9 Further, the Project will generate significant GHG emissions, including over 16,000 metric tons
10 of CO₂e per year. (*Id.*, ¶ 4.)

11 The People move to intervene to ensure that Respondents disclose and mitigate the
12 environmental impacts of the Project in a manner that fully complies with CEQA.

13 ARGUMENT

14 I. The People Should Be Permitted to Intervene as a Matter of Right

15 Code of Civil Procedure section 387, subdivision (d)(1)(A), provides that a nonparty may
16 intervene as a matter of right upon timely application when a provision of law confers an
17 unconditional right to intervene.

18 Government Code section 12606 gives the People, through the Attorney General, an
19 unconditional right to intervene: “The Attorney General *shall* be permitted to intervene in any
20 judicial or administrative proceeding in which facts are alleged concerning pollution or adverse
21 environmental effects which could affect the public generally.” (Gov. Code, § 12606 [emphasis
22 added].) Government Code section 12606 must be read in conjunction with Public Resources
23 Code section 21167.7, which requires service of all CEQA pleadings on the Attorney General.
24 (See *Schwartz v. City of Rosemead* (1984) 155 Cal.App.3d 547, 561.) CEQA’s service
25 requirement “has the effect of informing that office of the action and permits the Attorney
26 General to lend its power, prestige, and resources to secure compliance with CEQA and other
27 environmental laws.” (*Ibid.*)

28 As noted above, the Initial Petitions allege that Respondents violated CEQA, and that the

1 Project will result in wildfire impacts, GHG emissions, and other adverse environmental impacts.
2 This action constitutes a “judicial . . . proceeding in which facts are alleged concerning pollution
3 or adverse environmental effects which could affect the public generally.” (Gov. Code, § 12606.)
4 The Attorney General, on behalf of the People, thus has an unconditional right to intervene.

5 **II. The Motion to Intervene Is Timely**

6 There is no statutory time limit for filing a motion to intervene. (*Noya v. A.W. Coulter*
7 *Trucking* (2006) 143 Cal.App.4th 838, 842.) Rather, “it is the general rule that a right to
8 intervene should be asserted within a reasonable time and that the intervenor must not be guilty of
9 an unreasonable delay after knowledge of the suit.” (*Allen v. California Water & Tel. Co.* (1947)
10 31 Cal.2d 104, 108.) Intervention is timely unless any party opposing intervention can show
11 prejudice from any delay attributable to the filing of a motion to intervene. (*Truck Ins. Exchange*
12 *v. Superior Court* (1997) 60 Cal.App.4th 342, 351 [motion to intervene filed in lawsuit pending
13 for four years was timely because real parties had shown no prejudice “other than being required
14 to prove their case.”].)

15 The People’s motion is timely. After these consolidated cases were filed, the County
16 considered an alternate development that would have entailed a different development layout than
17 the Project that is the subject of this litigation. That alternate development involved a proposed
18 land swap of state property under the jurisdiction of the Wildlife Conservation Board. On
19 December 8, 2020, the Wildlife Conservation Board rejected the proposed land swap, and
20 therefore the alternate project was no longer viable.¹ During the time that the alternate
21 development was under consideration, there was no reason to believe that the Project—and this
22 case challenging it— would go forward. Therefore it would have been senseless for the People to
23 attempt to intervene in these actions at that time. After the land swap was rejected, the People
24 expeditiously prepared pleadings seeking to intervene in this action and moved to intervene
25 within months.

26 _____
27 ¹ County of San Diego, Planning and Development Services, *Otay Ranch Village 14 and*
28 *Planning Areas 16/19 - Proposed Project Amendment*,
<https://www.sandiegocounty.gov/pds/ceqa/OtayRanchVillage14.html> [last visited March 12,
2021].

1 The People's intervention in this action at this time will not prejudice the parties. The
2 People understand that the County certified the administrative record on February 12, 2021.
3 Opening briefs are due on May 3, 2021. If this motion is granted, the People anticipate meeting
4 this established deadline for filing an opening brief. The People's Petition in Intervention adds no
5 new issues to this case.

6 Because the People have asserted their right to intervene within a reasonable time and
7 without unreasonable delay, and because the People's intervention will not prejudice the original
8 parties, the Court should grant the People leave to intervene.

9 **CONCLUSION**

10 The People have an unconditional right to intervene in these consolidated cases and,
11 therefore, the Court should grant the People leave to file the Petition in Intervention.

12 Dated: March 17, 2021

13 Respectfully Submitted,

14 XAVIER BECERRA
15 Attorney General of California
16 CHRISTINA BULL ARNDT
17 SARAH E. MORRISON
18 Supervising Deputy Attorneys General
19 CATHERINE M. WIEMAN
20 Deputy Attorney General

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25 *California*
26 *ex rel. Xavier Becerra, Attorney General*

EXHIBIT 1

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

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

SIERRA CLUB,

Plaintiff,

v.

**COUNTY OF SAN DIEGO, BOARD OF
SUPERVISORS OF THE COUNTY OF
SAN DIEGO, and DOES 1 - 20,**

Respondents,

**JACKSON PENDO DEVELOPMENT;
JACKSON PENDO DEVELOPMENT
COMPANY; GDCI PROCTOR VALLEY
LP; GDC HOLDINGS, LLC; PROCTOR
VALLEY INVESTORS, LLC; GDC
INVESTMENTS 11, LP; and DOES 21 - 40,**

Real Parties in Interest,

Case No. 37-2019-00038820-CU-TT-CTL
**[Proposed] PEOPLE’S PETITION FOR
WRIT OF MANDATE IN
INTERVENTION**

[CEQA CLAIM]

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

Dept: C-68
Judge: The Honorable Richard S.
Whitney

Action Filed: July 25, 2019

INTRODUCTION

1
2 1. The People of the State of California, acting by and through Attorney General Xavier
3 Becerra (the People), intervene as of right in this action pursuant to Government Code section
4 12606. The People seek a writ of mandate under California Code of Civil procedure section
5 1094.5 directing respondents the County of San Diego and the San Diego Board of Supervisors
6 (collectively, Respondents) to vacate their approvals of the Otay Ranch Village 14 and Planning
7 Areas 16/19 Project (Project), including their Environmental Findings and their October 19, 2018
8 certification of the Final Environmental Impact Report (FEIR), and to suspend activities
9 implementing the Project until Respondents have complied with the California Environmental
10 Quality Act (CEQA), Public Resources Code sections 21000, et seq.

11 2. The Project is a residential development that includes 1,119 single-family homes, a
12 mixed-use site with 10,000 feet of commercial space, a public safety site for a sheriff and fire
13 station, and parks and managed open space. The Project site is located on 1,284 acres of
14 undeveloped open space in the foothills of the Jamul Mountains in San Diego County. The
15 Project will have significant adverse environmental impacts, including but not limited to impacts
16 on fire safety and wildfire risk, greenhouse gas (GHG) emissions, air quality, biological
17 resources, water supplies and quality, aesthetics, traffic, and land use.

18 3. The Respondents’ environmental review and approval of the Project violates CEQA
19 and the regulations implementing CEQA found in title 14, California Code of Regulations,
20 sections 15000, et seq. (CEQA Guidelines). The Respondents failed to disclose or adequately
21 analyze the Project’s significant environmental impacts on wildfire risk and GHG emissions as
22 required under CEQA, and failed to identify and adopt feasible and enforceable mitigation
23 measures to reduce such impacts. The Respondents’ approval of the Project based on such an
24 inadequate review violates California law and must be overturned.

25 4. The Respondents have abused their discretion and failed to act as required by law. As
26 a result of the Respondents’ approval of the Project and certification of the FEIR, the People will
27 suffer great and irreparable harm to their interests, including the adverse environmental effects of
28

1 the Project that could endanger the Project’s residents, neighboring residents, and the public
2 generally. The People have no adequate remedy at law for this irreparable harm.

3 **ALLEGATIONS SUPPORTING INTERVENTION**

4 5. The Attorney General has an unconditional right to “intervene in any judicial or
5 administrative proceeding in which facts are alleged concerning pollution or adverse
6 environmental effects which could affect the public generally.” (Gov. Code, § 12606.) The
7 petitions in this action allege facts concerning pollution and adverse environmental effects.
8 Accordingly, pursuant to Government Code section 12606, the People, acting through the
9 Attorney General, are entitled to intervene as a matter of right.

10 6. The People’s intervention is timely. The Respondents certified the administrative
11 record on February 12, 2021, and opening briefs have not yet been filed. The People’s
12 intervention thus will not prejudice existing parties.

13 **PARTIES**

14 7. The Attorney General, as the chief law enforcement officer of the State of California,
15 has broad independent powers under the California Constitution and the California Government
16 Code to participate in all legal matters in which the State is interested. (Cal. Const., art. V, § 13;
17 Gov. Code, § 12511.) The Attorney General has express statutory authority to participate in cases
18 involving the protection of California’s environment and a unique and important role in the
19 enforcement of CEQA. (Gov. Code, §§ 12600-12612; Pub. Resources Code, §§ 21167.7, 21177,
20 subd. (d); *City of Long Beach v. City of Los Angeles* (2018) 19 Cal.App.5th 465.) “The Attorney
21 General may maintain an action for equitable relief in the name of the people of the State of
22 California against any person for the protection of the natural resources of the state from
23 pollution, impairment, or destruction.” (Gov. Code, § 12607.) The People file this Petition for
24 Writ of Mandate (Petition) pursuant to the Attorney General’s independent power to protect the
25 natural resources of the State from pollution, impairment, or destruction, in furtherance of the
26 public interest.

27 8. The People are informed and believe, and on that basis allege, that Petitioner the
28 Center for Biological Diversity is a non-profit conservation organization dedicated to the

1 protection of native species and their habitats through science, policy, and environmental law.
2 The Center for Biological Diversity submitted written comments to the Respondents objecting to
3 and commenting on the Project.

4 9. The People are informed and believe, and on that basis allege, that Petitioner Preserve
5 Wild Santee is a volunteer community environmental organization that aims to protect and
6 enhance the quality of life and preserve natural resources in the City of Santee and adjoining
7 areas. Preserve Wild Santee submitted written comments to the Respondents objecting to and
8 commenting on the Project.

9 10. The People are informed and believe, and on that basis allege, that Petitioner the
10 California Chaparral Institute is a non-profit education, research, and advocacy organization
11 dedicated to the preservation of native shrubland habitats throughout the West. The California
12 Chaparral Institute submitted written comments to the Respondents objecting to and commenting
13 on the Project.

14 11. The People are informed and believe, and on that basis allege, that Petitioner the
15 Endangered Habitats League is a non-profit California corporation dedicated to the conservation
16 of native ecosystems and to sustainable land use and transportation planning. The Endangered
17 Habitats League submitted written comments to the Respondents objecting to and commenting on
18 the Project.

19 12. The People are informed and believe, and on that basis allege, that Petitioner the
20 California Native Plant Society is a California non-profit corporation. The mission of the
21 California Native Plant Society is to conserve California native plants and their natural habitats,
22 and increase understanding, appreciation, and horticultural use of native plants. The California
23 Native Plant Society submitted written comments to the Respondents objecting to and
24 commenting on the Project.

25 13. The People are informed and believe, and on that basis allege, that Petitioner the
26 Sierra Club is a national non-profit organization dedicated to exploring, enjoying, protecting, and
27 preserving the environment for future generations. The Sierra Club submitted written comments
28 to the Respondents objecting to and commenting on the Project.

1 14. Respondent the County of San Diego is, and at all relevant times herein mentioned
2 was, a political subdivision of the State of California. The County of San Diego is a local
3 governmental agency charged with regulating and controlling land use and development within
4 the County of San Diego, including but not limited to complying with all provisions of state law,
5 including CEQA. The County of San Diego is the lead agency for the Project under Public
6 Resources Code section 21067, which gives it principal responsibility for conducting
7 environmental review of proposed actions. The County of San Diego has a duty to comply with
8 CEQA.

9 15. Respondent the Board of Supervisors of the County of San Diego (Board) is, and at
10 all relevant times herein mentioned was, the elected decision-making body of the County of San
11 Diego. The Board is responsible for adopting and amending land use regulations, making certain
12 land use decisions, and ensuring its decisions comply with applicable laws. As the decision-
13 making body with the authority to grant Project approval and adopt necessary plan amendments,
14 the Board was charged with responsibilities under CEQA for conducting a proper review of the
15 Project's environmental impacts pursuant to CEQA. The Board and its members are sued in their
16 official capacities.

17 16. The People are informed and believe, and on that basis allege, that Real Party in
18 Interest Jackson Pendo Development Company, also known as Jackson Pendo Development, is,
19 and at all times herein mentioned was, the Project applicant and developer. The People are
20 informed and believe that Jackson Pendo Development Company is incorporated in the State of
21 California and does business in the State of California, and is the recipient of the Project
22 approvals that are the subject of this Petition and therefore a real party in interest within the
23 meaning of Public Resources Code section 21167.6.5.

24 17. The People are informed and believe that GDCI Proctor Valley, LP, GDC Holdings,
25 LLC, Proctor Valley Investors, LLC, and GDC Investments 11, LP are listed on the Applicant's
26 Disclosure of Ownership Interests on Application for Zoning Permits/Approvals form for the
27 Project. On information and belief, each is an entity registered to do business in the State of
28 California and does business in the State of California. The People are informed and believed

1 that these entities are also the recipients of the Project approvals that are the subject of this
2 Petition and therefore real parties in interest within the meaning of Public Resources Code section
3 21167.6.5.

4 18. The People are unaware of the true names and capacities of Respondents Does 1
5 through 20, inclusive, and sue them under these fictitious names. The People are informed and
6 believe, and on that basis allege, that the fictitiously named respondents are also responsible for
7 the actions described in this Petition. When the true identities and capacities of these respondents
8 have been determined, the People will amend this Petition, with leave of the Court if necessary, to
9 insert such identities and capacities.

10 19. The People are unaware of the true names and capacities of Real Parties Does 21
11 through 40, inclusive, and sue them under these fictitious names. The People are informed and
12 believe, and on that basis allege, the fictitiously named real parties also have an interest in the
13 matters to be determined by this Petition. When the true identities and capacities of these real
14 parties have been determined, the People will amend this Petition, with leave of the Court if
15 necessary, to insert such identities and capacities.

16 **JURISDICTION AND VENUE**

17 20. The Court has jurisdiction over the matters alleged in this Petition pursuant to Public
18 Resources Code sections 21168 and 21168.5 and California Code of Civil Procedure section
19 1094.5.

20 21. Venue for this action properly lies in San Diego County Superior Court pursuant to
21 Code of Civil sections 394 (actions against a city, county, or local agency) and 395 (actions
22 generally) because Respondents' main offices are located in San Diego County and the violations
23 of CEQA alleged in this Petition arose in San Diego County.

24 22. CEQA's exhaustion requirements do not apply to the Attorney General. (*City of*
25 *Long Beach, et al., Xavier Becerra (Attorney General, as Intervener) v. City of Los Angeles,*
26 *(2018) 19 Cal.App.5th 465.*) The People thus have satisfied all statutory prerequisites to filing
27 this action.

28

1 GENERAL ALLEGATIONS

2 The Respondents' Obligations Under CEQA

3 23. CEQA's primary purposes are to: "inform governmental decisionmakers and the
4 public of a project's potential significant environmental effects before a project is approved and
5 those effects become irreversible; identify ways that environmental damage can be avoided or
6 reduced; prevent significant, avoidable environmental damage by requiring the adoption of
7 feasible alternatives or feasible mitigation measures and disclose to the public a governmental
8 agency's reasons for approving a project with significant environmental impacts." (CEQA
9 Guidelines, § 15002, subd. (a).) To achieve this goal, CEQA requires an Environmental Impact
10 Report (EIR) for any project that may have a significant effect on the environment. The
11 California Supreme Court has described the EIR as the "heart of CEQA" and an "environmental
12 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental
13 changes before they have reached ecological points of no return." (*Laurel Heights Improvement*
14 *Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392 [internal quotations
15 omitted].)

16 24. The public agency's charge in preparing an EIR thus is to make a reasonable, good
17 faith effort to disclose all that it reasonably can about the project's significant environmental
18 effects. (Pub. Resources Code, § 21061; CEQA Guidelines, § 15121, subd. (a).) The purpose of
19 an EIR is "not to generate paper, but to compel government at all levels to make decisions with
20 environmental consequences in mind." (CEQA Guidelines, § 15003, subd. (g).) Thus, "given the
21 key role of the [EIR] in carrying out CEQA's requirements, 'the integrity of the process is
22 dependent on the adequacy of the EIR.'" (*Calif. Native Plant Society v. City of Santa Cruz*
23 (2009) 177 Cal.App.4th 957, 977-980.)

24 25. CEQA requires an EIR to identify and analyze a project's significant environmental
25 impacts, including those impacts caused or exacerbated "by bringing development and people
26 into the area affected." (Pub. Resources Code, §§ 21002, 21002.1, subd. (a); CEQA Guidelines,
27 § 15126.2, subd. (a).) The impacts of development in areas prone to wildfire specifically require
28 consideration: "the EIR should evaluate any potentially significant direct, indirect, or cumulative

1 environmental impacts of locating development in areas susceptible to hazardous conditions (e.g.,
2 floodplains, coastlines, *wildfire risk areas*), including both short-term and long-term conditions,
3 as identified in authoritative hazard maps, risk assessments or in land use plans addressing such
4 hazard areas.” (CEQA Guidelines, § 15126.2, subd. (a) [emphasis added].)

5 26. In 2012, the Legislature required the Office of Planning and Research, together with
6 the Natural Resources Agency and the California Department of Forestry and Fire Protection
7 (CalFIRE), to amend the CEQA Guidelines to require consideration of fire hazard impacts for
8 projects on lands classified as very high fire hazard severity zones, such as those where the
9 Project is located. (See Pub. Resources Code, § 21083.01.)

10 27. The Natural Resources Agency amended CEQA Guidelines Appendix G, which is the
11 checklist for agencies considering environmental review under CEQA, to include questions
12 specifically focused on “the effects of new projects in creating or exacerbating wildfire risks.”¹
13 “While wildfire risk already exists in such areas, bringing development to those areas makes the
14 risk worse.” (*Ibid.*) The Resources Agency specifically identified development in the wildland-
15 urban interface, particularly lower-density arrangements, as high-risk development:

16 “[H]ousing arrangement and location strongly influence fire risk, particularly
17 through housing density and spacing, location along the perimeter of
18 development, slope, and fire history. Although high-density structure-
19 structure loss can occur, structures in areas with low- to intermediate-
20 housing density were most likely to burn, potentially due to intermingling
with wildland vegetation or difficulty of firefighter access. Fire frequency
also tends to be highest at low to intermediate housing density, at least in
regions where humans are the primary cause of ignitions.” (*Ibid.*)

21 28. The potential wildfire-related impacts that agencies must consider include: (1)
22 whether a project would expose people or structures, either directly or indirectly, to a significant
23 risk of loss, injury, or death involving wildland fires; and (2) whether it would, due to slope,
24 prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project

25
26
27 ¹ California Natural Resources Agency, *Final Statement of Reasons for Regulatory Action:
28 Amendments to the State CEQA Guidelines* (Nov. 2018), at p. 87, [https://resources.ca.gov/
CNRALegacyFiles/ceqa/docs/2018_CEQA_Final_Statement_of%20Reasons_111218.pdf](https://resources.ca.gov/CNRALegacyFiles/ceqa/docs/2018_CEQA_Final_Statement_of%20Reasons_111218.pdf).

1 occupants to pollutant concentrations from wildfire or the uncontrolled spread of wildfire.
2 (CEQA Guidelines, App. G, subds. IX(g), XX.)

3 29. The EIR also must identify feasible mitigation measures to reduce or avoid the
4 project's significant environmental impacts. (Pub. Resources Code, §§ 21002, 21002.1, subd.
5 (a).) Lead agencies "should not approve projects as proposed if there are feasible alternatives or
6 feasible mitigation measures available which would substantially lessen the significant
7 environmental effects of such projects." (Pub. Resources Code, § 21002.) As such, CEQA
8 requires each lead agency to "mitigate or avoid the significant effects on the environment of
9 projects that it carries out or approves whenever it is feasible to do so." (Pub. Resources Code,
10 § 21002.1, subd. (b).)

11 30. CEQA lead agencies must "ensure that feasible mitigation measures will actually be
12 implemented as a condition of development, and not merely adopted and then neglected or
13 disregarded." (*Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83
14 Cal.App.4th 1252, 1261 [citing Pub. Resources Code, § 21002.1, subd. (b)].) Thus, mitigation
15 measures adopted pursuant to an EIR in order to mitigate or avoid a project's significant impacts
16 on the environment must be "fully enforceable through permit conditions, agreements, or other
17 measures." (Pub. Resources Code, § 21081.6, subd. (b).)

18 31. With regard to the GHG impacts of a Project, CEQA requires a lead agency to make
19 "a good-faith effort, based to the extent possible on scientific and factual data, to describe,
20 calculate or estimate the amount of greenhouse gas emissions resulting from a project" and states
21 that, in so doing, the agency "may consider a project's consistency with the State's long-term
22 climate goals or strategies, provided that substantial evidence supports the agency's analysis of
23 how those goals or strategies address the project's incremental contribution to climate change and
24 its conclusion that the project's incremental contribution is not cumulatively considerable."
25 (CEQA Guidelines, § 15064.4.) A sustainable communities strategy developed pursuant to
26 Senate Bill (SB) 375 is an example of a long-term climate strategy that must be considered under
27 CEQA.
28

1 32. CEQA also requires that an “EIR shall discuss any inconsistencies between the
2 proposed project and applicable general plans, specific plans and regional plans ... [including]
3 regional transportation plans.” (CEQA Guidelines, § 15125, subd. (d).)

4 33. The agency’s act or decision must be supported by substantial evidence in light of the
5 whole record. (Pub. Resources Code, §§ 21168, 21168.5; CEQA Guidelines, § 15384.)
6 “Substantial evidence” is defined as relevant, reasonable information and inferences that a fair
7 argument can be made to support a conclusion, including facts, reasonable assumptions
8 predicated upon facts, and expert opinion supported by facts. (CEQA Guidelines, § 15384.).
9 Argument, speculation, unsubstantiated opinion or narrative, or inaccurate or erroneous evidence
10 does not constitute substantial evidence. (*Ibid.*)

11 34. “When the informational requirements of CEQA are not met but the agency
12 nevertheless certifies the EIR as meeting them, the agency fails to proceed in a manner required
13 by law and abuses its discretion.” (*Cherry Valley Pass Acres and Neighbors v. City of Beaumont*
14 (2010) 190 Cal.App.4th 316, 327.) “The error is prejudicial ‘if the failure to include relevant
15 information precludes informed decisionmaking and informed public participation, thereby
16 thwarting the statutory goals of the EIR process.’” (*Id.* at 328 [quoting *San Joaquin*
17 *Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721–722].)

18 **The Project and Environmental Setting**

19 35. The proposed Project is a luxury, low-density residential development with an
20 adjacent open-space preserve, located in the foothills of the Jamul Mountains in unincorporated
21 San Diego County. It would include 1,119 single-family homes and “ranchettes” for an overall
22 density of less than one residence per acre. The Project is expected to house approximately 4,028
23 permanent residents.

24 36. The Project is part of the larger Otay Ranch residential development (Otay Ranch),
25 which at 23,000 acres will be the largest residential development project in San Diego County’s
26 history. The development will contain no affordable housing.

27 37. The Project site sits on 1,284 acres of undisturbed open space at the interface of
28 existing urban development and undisturbed open spaces. It is bordered by the 5,600-acre

1 Rancho Jamul Ecological Reserve, which connects to a large area of open space, including the
2 Bureau of Land Management Otay Mountain Wilderness Area, the U.S. Fish and Wildlife Service
3 San Diego-Sweetwater National Wildlife Refuge, the California Department of Fish and
4 Wildlife's Hollenbeck Canyon Wildlife Area, and various lands owned by the City of San Diego
5 and County of San Diego. The Project site is currently vacant, with vegetation consisting of non-
6 native grassland, chaparral, and coastal sage scrub, all of which, as the FEIR recognizes, is highly
7 flammable. These grasslands are also characterized by much more rapid fire spread rates than
8 other vegetation types. Portions of the site abut the Jamul Mountains, where the terrain primarily
9 consists of steeper slopes, which typically facilitate more rapid fire spread.

10 38. The FEIR acknowledges that the Project site has burned regularly. There have been
11 68 recorded fires since 1910 within 5 miles of the Project site. Seventeen of these fires exceeded
12 50 acres. This includes the Harris Fire in 2007, which burned approximately 90,440 acres in this
13 part of San Diego County, including the majority of the Project site. Fires burn on the Project site
14 every 2 to 15 years, with one fire greater than 50 acres on the Project site every 6 years on
15 average. The frequency, scale, and severity of these wildfires has increased in recent years,
16 exacerbated by climate change and by high-risk development and human activity encroaching
17 into the wildland-urban interface.

18 39. The Project area is designated as a very high fire hazard severity zone, CalFIRE's
19 highest designation.

20 40. The Project site is adjacent to large expanses of open space to the north and east,
21 where wildfires could likely start and spread to the Project area. Based on the history and
22 frequency of wildfires on the Project site, there is significant wildfire potential in the region and
23 the Project area. The Project area is particularly vulnerable to wildfire ignition and spread during
24 extreme fire weather.

25 41. Only one two-lane road—Proctor Valley Road— provides ingress and egress for the
26 entire Project site. The Associated Press found that, in terms of the number of evacuation routes
27 available for the size of the population, this area is already in the worst 1% of zip codes in
28 California. The development of Otay Ranch would inevitably exacerbate this area's already-

1 strained evacuation routes and times. If a fire occurred in or near the Project site, all four
2 thousand residents would be forced to evacuate on the same road.

3 42. The Project is located in an undeveloped area approximately 15 miles from
4 downtown San Diego, 0.25 miles east of the Chula Vista city limit, and 1 mile south of the
5 unincorporated community of Jamul. Because it is distanced far from jobs, goods, and other
6 services, the Project will require future residents to drive more than 40 million miles per year.
7 The Project also will generate GHG emissions from electrical and natural gas usage, mobile
8 transportation, and solid waste generation, among other sources. The FEIR estimates that
9 operation of the Project, assuming an artificially low 30-year lifespan, will produce 16,159 metric
10 tons of GHG emissions each year.

11 43. The Project includes mitigation measures and project design features intended to
12 reduce GHG emissions. Design features include, for example, a transportation demand
13 management plan which incorporates bike lanes and a community transportation hub and
14 network, a plan to encourage residents to use electric vehicles, and a plan to plant over 8,000 trees
15 to help sequester carbon onsite, as well as features requiring compliance with regulatory
16 requirements, including energy efficiency standards. The Project also includes four GHG
17 mitigation measures, including mitigation measures GHG-1 and GHG-2, which require the
18 purchase and retirement of carbon offset credits to mitigate all remaining GHG emissions from
19 Project construction and operation. Mitigation Measures GHG-1 and GHG 2 mitigate the vast
20 majority of Project-related GHG emissions. This high level of mitigation through offsets, rather
21 than through means to reduce vehicle use, renders them inconsistent with state and local plans
22 and policies for GHG emissions reductions. Moreover, measures GHG-1 and GHG-2 are lacking
23 in standards and requirements that ensure they will be in compliance with CEQA.

24 **Applicable Land Use Plans**

25 44. The San Diego Association of Governments (SANDAG) is the federally designated
26 regional agency directing overall transportation infrastructure funding. Every four years
27 SANDAG prepares a Regional Transportation Plan for the County of San Diego. Following the
28 enactment of SB 375 (Gov. Code, § 65080 et seq.), SANDAG also is required to prepare a

1 Sustainable Communities Strategy, which aims to reduce environmental impacts, in particular
2 GHG emissions from driving, through transportation planning. The Regional Transportation Plan
3 and the Sustainable Communities Strategy together set forth a combined plan, applicable to the
4 County, that are designed to address climate change impacts from transportation and land use.

5 **Respondents' Environmental Review and Project Approval**

6 45. On or about November 15, 2016, the Real Party in Interest, Jackson Pendo
7 Development Company, submitted an application to the County of San Diego for the Project. On
8 or about December 15, 2016, the County of San Diego issued a notice of preparation for the
9 Project, in which it notified public agencies and interested individuals that, as a lead agency, it
10 would be preparing a Draft Environmental Impact Report (DEIR) for the Project. On March 1,
11 2018, the County released the DEIR for the Project.

12 46. Petitioners, along with members of the public, a number of government agencies, and
13 numerous other organizations, submitted comments voicing significant concerns regarding the
14 DEIR's legal deficiencies, including regarding the DEIR's analysis and mitigation of the Project's
15 wildfire risks, GHG impacts, and various other adverse environmental impacts.

16 47. Respondents issued the FEIR with responses to public comments, but failed to
17 address many of the numerous significant legal deficiencies raised in those comments.

18 48. Despite the numerous legal deficiencies identified in the DEIR, the Respondents
19 certified the FEIR, approved the Project, released its CEQA Findings, and filed the Notice of
20 Determination pertaining to certification of the FEIR on June 27, 2018.

21 **FIRST CAUSE OF ACTION**

22 **(Violation of CEQA – Failure to Analyze Project Impacts)**
23 **Pub. Resources Code, § 21000 et seq.; Code Civ. Proc., § 1094.5)**

24 49. The People hereby incorporate all of the allegations in the paragraphs above as if
25 fully set forth herein.

26 50. CEQA mandates that a public agency considering approval of a project that may have
27 a significant effect on the environment prepare an EIR that identifies and analyzes all potentially
28 adverse effects of the project, including reasonably foreseeable direct, indirect, and cumulative

1 impacts from all phases of the project. (Pub. Resources Code, § 21100; CEQA Guidelines,
2 §§ 15126, 15126.2.)

3 51. As an informational and public disclosure document, the purpose of an EIR is to
4 provide the public—as well as the public agency—with detailed information about the Project’s
5 potential impacts, and to identify ways to avoid or minimize those impacts. (Pub. Resources
6 Code, § 21061; CEQA Guidelines, § 15121, subd. (a).)

7 52. The EIR must analyze any significant environmental effects the project might cause
8 or risk exacerbating by bringing development and people into a hazardous area, including wildfire
9 risk areas. (CEQA Guidelines, § 15126.2, subd. (a).) CEQA requires the EIR to analyze a
10 project’s potential to increase or exacerbate wildfire risk, including the increased risk of wildfire
11 ignition or spread and the sufficiency of evacuation capacity, particularly in a wildfire-prone area.
12 (Pub. Resources Code, § 21083.01; CEQA Guidelines, App. G, subds. IX and XX.) This analysis
13 must disclose the project’s potential wildfire impacts based on its specific design, density,
14 configuration, land uses, and location, among other relevant factors. (*Ibid.*)

15 53. CEQA also requires that an EIR disclose, analyze, and mitigate to the extent feasible
16 a proposed project’s GHG emissions and significant adverse impact on climate change. (CEQA
17 Guidelines, § 15064.4 and App. G, subd. VIII.) The EIR also must disclose and analyze the
18 extent to which a proposed project will conflict with an “applicable plan, policy or regulation
19 adopted for the purpose of reducing GHG emissions.” (*Ibid.*)

20 54. Additionally, CEQA requires that an EIR discuss any inconsistencies between a
21 proposed project and applicable regional plans, including regional transportation plans. (CEQA
22 Guidelines, § 15125, subd. (d).)

23 55. The FEIR failed to disclose and properly analyze the Project’s significant direct,
24 indirect, and cumulative impacts on wildfire risks. Among other things, the FEIR’s conclusions
25 regarding Project-related wildfire risk are not supported by substantial evidence, including but not
26 limited to its rejection of the scientific evidence documenting the increased ignition risk resulting
27 from building in the wildland-urban interface and its disregard of the inadequate evacuation route
28 by assuming that, in an extreme wildfire where evacuation is impossible, residents could

1 simply—and safely—stay in their homes. Indeed, the Respondents do not quantify the risk at all,
2 but simply concludes that the Project can fully compensate for wildfire hazards and drive any
3 impact to less than significant through limited Project design features.

4 56. The FEIR also fails to disclose and analyze the cumulative increased wildfire risk
5 posed by the Project in conjunction with other proposed Otay Ranch development, including the
6 nearby Otay Ranch Resort Village 13 project. These developments would add thousands of
7 homes in a highly fire-prone area of the County. As discussed above, construction in such an area
8 increases the threat of wildfires, and together the new developments will only enhance this effect.

9 57. The FEIR also violates CEQA by failing to adequately analyze and disclose the
10 Project’s direct, indirect, and cumulative impacts relating to GHG emissions and climate change.
11 Specifically, the FEIR fails to adequately mitigate the Project’s GHG emissions; is inconsistent
12 with state, regional, and/or local GHG emissions reduction plans, policies, and regulations,
13 including the Regional Transportation Plan and Sustainable Communities Strategy; and fails to
14 incorporate all feasible mitigation measures to address GHG impacts.

15 58. The Respondents’ action in certifying the FEIR and approving the Project without
16 adequately evaluating the Project’s environmental impacts is arbitrary and capricious, lacking in
17 substantial evidence, a prejudicial abuse of discretion, and/or not in accordance with law.
18 Accordingly, the Respondents’ certification of the FEIR and approval of the Project must be set
19 aside under Code of Civil Procedure section 1094.5 and Public Resources Code section 21168.9.

20 **SECOND CAUSE OF ACTION**

21 **(Violation of CEQA – Failure to Impose Adequate Mitigation Measures and Improper**
22 **Adoption of Unenforceable or Deferred Mitigation)**
23 **Pub. Resources Code, § 21000 et seq.; Code Civ. Proc., § 1094.5)**

24 59. The People hereby incorporate all of the allegations in the paragraphs above as if
25 fully set forth herein.

26 60. CEQA requires a public agency to “mitigate or avoid the significant effects on the
27 environment of projects that it carries out or approves whenever it is feasible to do so.” (Pub.
28 Resources Code, § 21002.2, subd. (b); CEQA Guidelines, §§ 15021, subd. (a), 15126.4, subd.
(a)(2).)

1 61. A lead agency may not approve a project for which there are significant
2 environmental impacts unless the agency finds, supported by substantial evidence, that: (a)
3 mitigation measures have been required of the project which avoid or substantially lessen the
4 significant environmental effects, or (b) mitigation measures are found to be infeasible based on
5 substantial evidence. (CEQA Guidelines, § 15091.)

6 62. CEQA requires that adopted mitigation measures be fully enforceable. (Pub.
7 Resources Code, § 21081.6, subd. (b); CEQA Guidelines, § 15126.4, subd. (a)(2).)

8 63. The formulation of mitigation measures may not be deferred to some future time,
9 except that specific details of a mitigation measure may be developed after project approval when
10 it is impractical and infeasible to include those details in the environmental review and the lead
11 agency “(1) commits itself to the mitigation, (2) adopts specific performance standards the
12 mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly
13 achieve that performance standard.” (CEQA Guidelines, § 15126.4, subd. (a)(1)(B).)

14 64. The FEIR violates CEQA because it relies on GHG mitigation measures that are
15 vague, unenforceable, and/or inconsistent with applicable state, local, and/or regional plans,
16 policies, and/or regulations, and fails to set forth the specific numerical reductions in GHG
17 emissions these measures will achieve.

18 65. The FEIR violates CEQA because it fails to incorporate all feasible GHG emission
19 mitigation and avoidance measures.

20 66. The FEIR further violates CEQA because it impermissibly relies on off-site offsets to
21 mitigate Project GHG emissions that are not real, permanent, quantifiable, verifiable, and
22 enforceable reductions as set forth in Health and Safety Code section 38562, subdivision (d)(1),
23 are not additional to any other requirement of law or regulation (CEQA Guidelines, § 15126.4,
24 subd. (c)(3)), and lack legally-required performance standards.

25 67. The FEIR violates CEQA because it fails to analyze, disclose, and if necessary,
26 provide adequate mitigation for the impacts resulting from the Project’s inconsistency with state,
27 regional, and/or local GHG emissions reduction plans, policies, and regulations, including the
28 Regional Transportation Plan and Sustainable Communities Strategy.

1 **PRAYER FOR RELIEF**

2 The People pray for judgment as follows:

3 1. For alternative and/or peremptory writs of mandate directing Respondents to vacate
4 and set aside certification of the FEIR, adoption of the Findings, and approval of all associated
5 Project permits, entitlements, and approvals;

6 2. For alternative and/or peremptory writs of mandate directing Respondents to comply
7 with CEQA and take any other action as required by Public Resources Code section 21168.9;

8 3. For injunctive relief restraining Respondents and Real Parties in Interest, and their
9 agents, servants, and employees, and all others acting in concert with them or on their behalf,
10 from taking any action to implement, fund or construct any portion or aspect of the Project,
11 pending full compliance with the requirements of CEQA;

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

15 5. For attorneys' fees as authorized by law; and,

16 6. For such other and future relief as the Court deems just and proper.

17 Dated: March 17, 2021

Respectfully Submitted,

18 XAVIER BECERRA
19 Attorney General of California
20 CHRISTINA BULL ARNDT
21 SARAH E. MORRISON
22 Supervising Deputy Attorneys General
23 CATHERINE M. WIEMAN
24 Deputy Attorney General

25 

26 HALLIE E. KUTAK
27 Deputy Attorney General
28 *Attorneys for Intervenor People of the
State of California ex rel. Xavier Becerra,
Attorney General*

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DECLARATION OF SERVICE BY E-MAIL AND CERTIFIED MAIL

Case Name: **Sierra Club, et al, v. County of San Diego, et al.**

Case No.: **37-2019-00038820-CU-TT-CTL**

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. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing and electronic mail with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 17, 2021, I served the attached **PEOPLE'S NOTICE OF MOTION AND MOTION FOR LEAVE TO INTERVENE; MEMORANDUM OF POINTS AND AUTHORITIES** by placing a true copy thereof enclosed in a sealed envelope as certified mail and return receipt requested, in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, and by electronic mail addressed as follows:

PLEASE SEE SERVICE LIST BELOW

I declare under penalty of perjury under the law of the State of California the foregoing is true and correct and that this declaration was executed on March 17, 2021, at Los Angeles, California.

Stephanie Mezquita

Declarant



Signature

SERVICE LIST

Case Name: **Sierra Club, et al, v. County of San Diego, et al.**

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