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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**

11 THE PROTECT OUR COMMUNITIES
12 FOUNDATION, a California nonprofit
13 corporation,

14 Petitioner,

15 v.

16 COUNTY OF SAN DIEGO, a municipal
17 corporation; and DOES 1-100,

18 Respondent(s).

19 THE REGENTS OF THE UNIVERSITY OF
20 CALIFORNIA, on behalf of its San Diego
21 Campus' School of Global Policy and
22 Strategy; and ROES 101-200,

23 Real Parties In Interest(s).

CASE NO. _____

**VERIFIED PETITION FOR WRIT OF
MANDATE UNDER THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT
AND OTHER LAWS**

**(CCP §§ 1085, 1094.5; Public Resources
Code § 21000 et seq. ("CEQA"))**

24 **"The science is unequivocal, the changes are unprecedented,
25 and there is no more time for delay."**¹

26 ¹ IPCC, 2021: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the
27 Sixth Assessment Report of the Intergovernmental Panel on Climate Change ("IPCC Sixth Assessment
28 Working Group I Report") [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N.
Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K.
Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)]. Cambridge University Press, Cambridge,
United Kingdom and New York, NY, USA, 2391, p. v.

1 Petitioner THE PROTECT OUR COMMUNITIES FOUNDATION (Petitioner) alleges
2 as follows in this Verified Petition for Writ of Mandate (Petition) pursuant to the California
3 Environmental Quality Act (CEQA), the County’s competitive bidding mandates, and other
4 laws:

5 INTRODUCTION

6 1. This case challenges certain actions by Respondent COUNTY OF SAN DIEGO
7 (County) related to its decision to implement the County’s Regional Decarbonization
8 Framework (RDF) based on a document entitled San Diego Regional Decarbonization
9 Framework Technical Report (Technical Report) that fails to comport with the County’s own
10 decarbonization timeframe (Project). While Petitioner fully supports the preparation of a
11 regional plan to reduce carbon emissions as much as possible, as quickly as possible, such a
12 plan is only as good as the technical analysis it is based on. And here, the Technical Report
13 contains a renewable energy production geospatial analysis that does not reflect reality, lacks
14 evidentiary support, and arbitrarily minimizes rooftop and parking lot solar potential in San
15 Diego which constitutes the region’s simplest and best mechanism to quickly reduce greenhouse
16 gas (GHG) emissions.

17 2. The Technical Report was prepared by a consultant that failed to publicly disclose
18 its close ties to the investor-owned-utility industry, and specifically to San Diego Gas & Electric
19 Company (SDG&E). The investor-owned-utility industry financially benefits from construction
20 of capital projects like transmission lines, but does not enjoy such profits from rooftop and
21 parking lot solar; thus, to protect its constituent shareholders’ financial interests, the industry has
22 been actively working to minimize distributed energy projects like rooftop and parking lot solar
23 throughout the nation.

24 3. Instead achieving “zero carbon in the region by 2035,” as the County had
25 directed, the consultant aimed for a “low carbon 2050 future for the San Diego region,” and
26 made no attempt to establish any basis for the rapid reductions in GHG emissions required by
27 climate science in order to avoid or mitigate the most devastating climate change impacts.
28

1 strategies designed to maximize utility profits over consumer and GHG emissions reduction
2 benefits, in support of just and reasonable utility rates, and in support of fair, reasonable, and in
3 support of responsible energy practices, polices, rules, and laws. Petitioner seeks to obtain
4 enforcement of the public duties that are the subject of this lawsuit.

5 9. Respondent County is a public agency under section 21063 of the Public
6 Resources Code. The County is authorized and required by law to hold public hearings, to
7 determine the adequacy of and certify environmental documents prepared pursuant to CEQA,
8 and to take other actions in connection with the approval of projects within its jurisdiction.

9 10. Real Party in Interest The Regents of the University of California is the governing
10 body of the University of California which entered into the contract to produce the Technical
11 Report that is the subject of this litigation on behalf of its San Diego Campus' School of Global
12 Policy and Strategy (GPS).

13 11. The true names and capacities of Respondents identified as DOES 1 through 100
14 and Real Parties in Interest identified as ROES 101 through 200 are unknown to Petitioner,
15 which will seek the Court's permission to amend this pleading in order to allege the true names
16 and capacities as soon as they are ascertained. Petitioner is informed and believes, and on that
17 basis alleges, that each of the fictitiously-named Respondents 1 through 100 has jurisdiction by
18 law over one or more aspects of the project that is the subject of this proceeding and that each of
19 the fictitiously-named Real Parties in Interest 101 through 200 has some cognizable interest in
20 the allegations or the project challenged herein.

21 **BACKGROUND**

22 **A. The County Authorizes Development of a “Zero Carbon Sustainability 23 Plan” in Partnership with GPS to Achieve Zero Carbon by 2023.**

24 12. On January 27, 2021, the County, through its Board of Supervisors, directed its
25 Chief Administrative Officer “to develop a framework for a regional zero carbon sustainability
26 plan in partnership with the University of California San Diego School of Global Policy and
27 Strategy which shall include strategies and initiatives to achieve zero carbon in the region by
28 2035.” ([January 27, 2021 Statement of Proceedings](#), p. 4 [Item 3].)

1 13. The County also authorized the negotiation and award of a no-bid contract with
2 GPS to develop “a regional framework and report to the Board as described below, with an
3 option for additional research and leadership on subsequent actions as directed by the Board...”
4 ([January 27, 2021 Statement of Proceedings](#), p. 4-5; [January 27, 2021 Board Letter for Agenda](#)
5 [Item 3](#), p. 3).

6 **B. The County and GPS Enter Into a “Single Source” Contract to Produce**
7 **the Technical Report.**

8 14. On or about July 12, 2021, the County entered into a “single source” contract with
9 GPS, without competitive bidding, to produce the Technical Report. ([Contract No. 564557](#).)

10 15. Although the contract between the County and GPS claimed that GPS had no
11 direct or indirect conflict of interest (*id.* at p. 12), in fact GPS is heavily funded and influenced
12 by the investor-owned electric utility industry which financially benefits from construction of
13 capital projects like transmission lines; and, correspondingly, from minimizing distributed
14 generation projects like rooftop and parking lot solar projects. Unlike remote, utility-scale
15 renewable energy projects which require construction of long lead-time transmission lines to
16 carry the output from remote solar and wind energy development areas to coastal areas,
17 distributed generation projects like rooftop and parking lot solar generate energy at or near the
18 end user of the energy and can be quickly deployed. Thus, rooftop and parking lot solar
19 saturation can maximize GHG emissions reductions before the planet exceeds heating of 1.5°C
20 above preindustrial levels, eliminate any need for more transmission lines and the associated
21 utility industry profits, and mitigate or avoid the worst climate change impacts and other
22 significant land use and human health impacts.

23 16. The investor-owned-utility industry is incentivized to oppose distributed
24 generation projects like rooftop and parking lot solar, even though they make the most sense for
25 the public from both the environmental (*e.g.* GHG emissions reduction, land use, and human
26 health) and cost perspective for the San Diego region. As Edison Electric Institute (EEI), the
27 trade association representing all U.S. investor-owned electric companies, warned its investor-
28 owned-utility company constituents a decade ago, distributed generation like rooftop solar

1 “would bring the ‘prospect of declining retail sales and earnings; financing of major investments
2 in the T&D [transmission and distribution]...; potential obsolescence of existing business and
3 regulatory models,” and that net metering programs that are used in connection with rooftop
4 solar deployment would have “significant potential adverse impact to utility investors.”²

5 17. David Victor (Victor) is a professor at GPS, served as an advisor throughout
6 preparation of the Technical Report, and led the policy analysis to “connect the infrastructure
7 plan to policy levers at the County level and a discussion of state policy that can support San
8 Diego” after “detailing the physical system transformation.” ([Contract No. 564557](#), p. 22.)

9 18. GPS failed to disclose that Victor has long been involved with the investor-owned-
10 utility companies’ research and development arm, the Electric Power Research Institute (EPRI),
11 where Victor currently serves as the longest-serving member of EPRI’s Advisory Council. Most
12 of EPRI’s members are electric utility companies that provide funding to EPRI for specific
13 research projects.³ The same investor-owned utility CEOs that lead the EEI board of directors
14 also sit on the EPRI board of directors.⁴

15 19. According to documents obtained under the California Public Records Act, GPS
16 accepted a pledge from EPRI in the amount of \$900,000 on or about January 7, 2021, paid in
17 installments in 2021 and 2022, all of which were earmarked to support research “being
18 conducted by David G. Victor.”

19 20. According to disclosures required by California Public Utilities Commission
20 General Order [77-M](#), SDG&E contributed \$843,411.00 to EPRI in 2021: a more than \$700,000
21 increase from SDG&E’s contribution to EPRI two years earlier. ([SDG&E 2021 GO 77-M](#)
22 [Report](#), p. 46; [SDG&E 2019 GO 77-M Report](#), p. 38.)⁵ In the three-year period from 2019
23 through 2021, SDG&E contributed \$3.06 million to EEI and \$1.26 million to EPRI.

24
25 ² Gideon Weissman, Bret Fanshaw, [Blocking the Sun -12 Utilities and Fossil Fuel Interests That Are](#)
26 [Undermining American Solar Power](#) (Environment America Research & Policy Center: 2015), p. 12.

27 ³ Electric Power Research Institute, Inc., [Notes to Consolidated Financial Statements as of and for the](#)
28 [Years Ended December 31, 2021 and 2020](#) (April 11, 2022), p. 8, 16;

⁴ EEI Newsroom, [Warner Baxter Elected EEI Chair; Pedro J. Pizarro and Maria Pope Elected Vice](#)
[Chairs](#) (June 20, 2022).

⁵ SDG&E’s 2022 GO 77-M Report has not yet been made publicly available.

1 21. On or about June 29, 2022, the County amended the contract with GPS by adding
2 “additional scope for the finalization of the RDF Technical Analysis Report.” (Contract No.
3 564557, [Modification 1](#), p. 1.) The amendment increased the compensation paid to GPS and
4 resulted in a new total contact price of \$641,000. (*Ibid.*) The amendment supplemented the
5 scope of work to include finalizing the technical analysis and supporting the “implementation
6 process.” (Contract No. 564557, [Modification 1](#), Exhibit A, p. 1.)

7 22. The amendment required further work regarding the electric sector, including
8 “[s]patial analysis to identify low-impact, high quality areas for wind and solar development, and
9 to coordinate the early planning of the transmission network needed to interconnect new low-
10 impact renewable energy power plants to the grid” and regarding the policy analysis led by
11 Victor. (Contract No. 564557, [Modification 1](#), Exhibit A, p. 1.) The amendment added a
12 subtask described as follows: “Building on the chapter on Key Policy Considerations in the RDF
13 Technical Report, the RDF team will advise the County on institutional arrangements in order to
14 promote science-based climate policy across the San Diego region's jurisdictions and agencies,”
15 work that would be co-led by Victor. (Contract No. 564557, [Modification 1](#), Exhibit A, p. 3.)

16 23. At the time they entered into the amendment, GPS and the County knew but failed
17 to disclose that Victor co-authored the so-called “decarbonization plan” published in April 2022
18 by SDG&E.⁶ During the County’s April 7, 2022 Energy Sector Workshop, Emily Leslie, the
19 lead author of the renewable energy production geospatial analysis in Chapter 2 of the Technical
20 Report, stated in the virtual workshop chat: “There is cross pollination between this project team
21 and the SDG&E project team. David Victor has been contributing to both.”

22 24. Both the original contract and the amendment stated that “Prof. David Victor will
23 be providing significant in-kind hours to the project, financed by UC San Diego” ([Contract No.](#)
24 [564557](#), p. 27; Contract No. 564557, [Modification 1](#), Exhibit A, p. 6), without disclosing that
25 EPRI had paid money to GPS to support work by Victor and did not make reference to
26 SDG&E’s payments to EPRI.

27
28 _____
⁶ SDG&E, [The Path to Net Zero](#) (April 2022).

1 **C. GPS Lacked “Unique Knowledge, Skill, or Ability” Required for a**
2 **Technical Assessment of Regional Decarbonization Pathways.**

3 25. Board of Supervisors Policy A-87 requires the County to “competitively procure
4 goods and/or services unless otherwise allowed for under this Policy or required by State or
5 federal law.” ([Policy A-87](#), p. 1.) Policy A-87 states that single source contracts can be utilized
6 where “Only one manufacturer, distributor, supplier or service provider can provide the required
7 goods and/or services.” ([Policy A-87](#), p. 2.).

8 26. The County claimed that an agreement with GPS “qualifies for a single source
9 exception to Board Policy A-87 under paragraph D.3 of that policy” solely because GPS “has
10 been a leader in global and national research on decarbonization strategies and is well-positioned
11 and uniquely-qualified to scale this work to the San Diego County region” ([January 27, 2021](#)
12 [Board Letter for Agenda Item 3](#), p. 3) and without justifying the exception pursuant to the policy.

13 27. The County did not address the terms of D.3 which on its face applies only when
14 “[t]he procurement is for services from a provider with unique knowledge, skill, or ability not
15 available from other sources.” ([Policy A-87](#), p. 2). In fact, numerous consultants could have
16 performed the technical analysis necessary to establish a basis for development of meaningful
17 regional decarbonization policies and actions.

18 28. Far from procuring services from a provider with unique knowledge, skill, or
19 ability not available from other sources, the contract itself recognized that GPS would need to
20 engage subcontractors in order to perform the work. ([Contract No. 564557](#), p. 1.)

21 **D. A Critical Chapter of the Technical Report Demonstrates that GPS Failed**
22 **to Perform the Contract Objectively, Competently, or Accurately.**

23 29. The Technical Report falsely claimed that it “was funded by the County of San
24 Diego,” and that “[t]he authors declare no competing interests with relevant entities in the San
25 Diego region.” ([Technical Report](#), p. 3.) In fact, Victor was paid with funds provided by GPS
26 and remains intimately involved with the investor-owned-utility industry through EPRI and
27 SDG&E. (See [Contract No. 564557](#), p. 27; Contract 564557, [Modification 1](#), Exhibit A, p. 6;
28 [EPRI Advisory Council Roster](#); [SDG&E website](#) [stating that its plan to “decarbonize California
through 2045” was “conducted with technical support” from Victor].)

1 30. Chapter 2 of the Technical Report, entitled “Geospatial Analysis of Renewable
2 Energy Production,” reveals that GPS failed to perform the contract objectively, competently, or
3 accurately, much less demonstrate any unique knowledge, skill, or ability.

4 31. In purporting to estimate the costs of new transmission line construction that
5 would be necessary for development of remote, utility-scale renewable energy projects in San
6 Diego County and Imperial County, the Technical Report arbitrarily ignored the \$3.9 billion cost
7 of and decade-long construction time necessary to develop the only transmission line project
8 listed in the Technical Report that is capable of transporting 2,000 MW (the targeted
9 transmission capacity) from the Greater Imperial CREZ⁷ located in eastern San Diego County
10 and Imperial County. (See [Technical Report](#), p. 63 [New Imperial Valley-Serrano 500 kV line
11 estimated to take 120 months at the cost of \$3,680 million, plus New Imperial Valley 500/230
12 kV Bank at new substation estimated to take 105 months at the cost of \$214 million].)
13 Inexplicably and inconsistently, the Technical Report later admits to the exponentially higher
14 costs and long construction timeframe necessary for transmission line development that it
15 ignores in Chapter 2. (*Id.* at p. 267 [admitting in Chapter 7 that “CAISO estimates necessary
16 transmission network upgrades for San Diego - Imperial - Baja – Arizona to be \$3.9 billion and
17 will take decades to complete”].)

18 32. Instead, the Technical Report arbitrarily utilized the costs of a project identified as
19 “Non-CREZ” and described as an “Internal San Diego reconductoring” project (by definition a
20 project not intended to transport electricity from remote areas and that can be developed on a
21 much shorter timeframe than new transmission line construction) to erroneously account for only
22 a tiny fraction of actual transmission costs. (See [Technical Report](#), p. 63 [non-CREZ, internal
23 San Diego reconductoring project estimated to take 18 months and cost \$89 million].)
24
25
26

27 ⁷ CREZ is an acronym for Competitive Renewable Energy Zone: a specific area within California
28 identified by state agencies as having high-value solar and/or wind resources. (See *e.g.* Brewster Birdsall
et al., [Senate Bill 350 Study Volume IX: Environmental Study Prepared for California ISO](#) (July 8, 2016),
p. 6 (Figure 1-1. Competitive Renewable Energy Zone (CREZ) Boundaries).

1 33. Had GPS utilized the cost of the relevant \$3.9 billion transmission line project to
2 estimate the costs of new transmission line construction necessary to support remote, utility-scale
3 renewable energy projects, the Technical Report would have concluded that the transmission
4 cost adder necessary to deliver remote solar and wind power to areas where the power is used
5 equals approximately \$127 per megawatt-hour (/MWh) and will take at least a decade to build.
6 The cost adder of the new San Diego – Imperial Valley transmission line with transformer
7 capacity project, in dollars per megawatt hour, is calculated first by ascertaining the annual cost
8 of the project, and then by dividing the annual cost of the project by the annual potential
9 generation of the line: \$3.894 billion⁸ [estimated project cost] x 0.1349⁹ [new transmission line
10 capital recovery factor] = \$525 million/yr [annual cost]; \$525 million/yr [annual cost] ÷
11 4,119,351 MWh/yr [annual potential generation]¹⁰ = \$127/MWh.¹¹

12 34. The Technical Report identifies large rooftop solar potential citing to a GIS
13 analysis conducted by the consultant(s) in two set of units, square footage and acres, but then
14 arbitrarily assumes extraordinarily low rooftop solar potential for San Diego County with no
15 supporting documentation. ([Technical Report](#), p. 35.)
16
17

18 ⁸ As identified in the Technical Report, the total cost of the transmission plus transformer project equals
19 \$3.894 billion, with a total increase of 1,812 MW. (See [Technical Report](#), p. 63 (Table 2.F: identifying a
20 \$3,680 million transmission line with 1,412 MW increase, and a \$214 million transformer bank with 400
21 MW increase); see also *id.*, at p. 267 (Table 7.1: “CAISO estimates necessary transmission network
22 upgrades for San Diego - Imperial - Baja - Arizona to be \$3.9 billion . .”).

23 ⁹ The new transmission line capital recovery factor has been extrapolated from SDG&E’s Sunrise
24 Powerlink application before the California Public Utilities Commission: \$254 million/yr [annualized cost]
25 ÷ \$1.883 billion [total cost] = 0.1349/yr, with \$1.883 billion being the final Sunrise Power Link cost and
26 \$254 million/yr being the annualized cost of Sunrise Power Link: (\$1.883 billion/\$1.265 billion) x \$164
27 million/yr + \$10 million/yr operations and maintenance = \$254 million/yr. (See D.08-12-058, p. 293
28 [final Sunrise Power Link cost: \$1.883 billion]; A.06-08-010, SDG&E Application Chapter IV (August 4,
2006), p. V-9 [original capital cost = \$1.265 billion]; *id.* at p. V-11 [\$164 million/yr annualized capital
over 40 years + \$10 million/yr operations & maintenance].)

¹⁰ Extrapolated production of 1,812 MW of solar and wind generation interconnected to new San Diego –
Imperial Valley transmission line: (1,812 MW [added generation identified in the [Technical Report](#) at p.
63] / 1,264 MW [actual renewables capacity connected to Sunrise Power Link]) x 2,873,543 MWh/yr
[Sunrise Power Link annual production] = 4,119,351 MWh/yr. (R.20-08-020, Exhibit [PCF-24](#) [Powers
Rebuttal Testimony], p. 37; Exhibit [PCF-60](#)).

¹¹ See also Bill Powers, [Problems with RDF treatment of rooftop/parking lot solar](#) (January 25, 2023), p.
3, 18.

1 35. The 2.7 billion square feet of usable rooftop solar potential identified in the
2 Technical Report converts to more than 21,000 MW DC¹² and about 19,500 MW AC,¹³ but the
3 Technical Report claims that “estimated region-wide rooftop solar potential capacity of
4 approximately 3,360 MW AC” by citing to a footnote that does not in fact support the statement
5 made. ([Technical Report](#), p. 35). The Technical Report then utilizes this artificially low rooftop
6 solar potential to erroneously conclude that rooftop solar could meet only “12% of estimated
7 2050 electricity demand.” ([Technical Report](#), p. 36.)

8 36. Google Project Sunroof, a software developed by Google utilizing Google’s
9 expansive mapping and computing data resources and relying only upon reliable rooftop surface
10 area, estimates 14,700 MW DC of rooftop solar potential in San Diego County -- in the range of
11 four times the output the Technical Report erroneously assumes -- with 9.5 million metric tons
12 per year of avoided CO₂ emissions from the electricity sector in San Diego County.¹⁴

13 37. The Technical Report repeatedly recognized the benefits of customer-generated
14 solar conceptually, but entirely and irrationally failed to quantify those benefits.

15 38. The Technical Report also arbitrarily reduced the potential contribution of rooftop
16 and parking lot solar to decarbonization by arbitrarily using an exceptionally high – and
17 unsupported – 2050 electricity demand estimate of 49,979 GWh, approximately 2.6 times the
18 actual 2020 demand of 19,158 GWh. ([Technical Report](#), p. 64). In contrast, California projects
19 a statewide increase of only 1.76 times from 2022 to 2045. (*See* California Air Resources Board,
20 [2022 Scoping Plan for Achieving Carbon Neutrality](#) (November 16, 2022), p. 202.)¹⁵

21
22
23 ¹² CPUC Docket Number A.08-03-015, Southern California Edison Solar Photovoltaic Program
24 Testimony (March 27, 2008), p. 32 [“Generally, a 1 MW array employing crystalline modules will require
25 125,000 square feet of roof space.”]. Therefore, 2.7 billion ft² ÷ 125,000 ft²/MW DC = 21,600 MW DC.

26 ¹³ The direct current (DC) produced by the solar panel must be converted to alternating current (AC) in an
27 inverter to be compatible with grid power. (*Id.* at p. 1 [DC to AC conversion ratio of 0.90].)

28 ¹⁴ Project Sunroof data explorer (June 2019), results available at https://sunroof.withgoogle.com/data-explorer/place/ChIJHWD_IzDr24ARKAeA6yv9DTU/. Google Project Sunroof sets a rigorous solar exposure definition of usable roof area that reduces overall rooftop solar potential and identifies San Diego County rooftop solar potential as 1 billion square feet (ft²), equivalent to 14,700 MW DC). The Google Project Sunroof 14,700 MW DC estimate equates to approximately 13,230 MW AC.

¹⁵ Similarly, the Draft 2022 Scoping Plan Update stated that electricity demand will grow by “nearly 80 percent” by 2045. ([Draft 2022 Scoping Plan Update](#) (May 10, 2022), p. 161.)

1 39. Like residential rooftop and parking lot solar, commercial/industrial building solar
2 does not require new transmission capacity to be deliverable. Rooftop and parking lot solar flow
3 over the lower voltage distribution grid in the urban and suburban areas where the power is used.

4 40. The Technical Report assumes erroneously high commercial rooftop solar cost by
5 using outdated estimates that do not purport to be production cost estimates from a
6 geographically limited report (*see* [Technical Report](#), p. 36), concluding only that further work
7 should be done “to confirm distribution grid capability” to accommodate commercial rooftop
8 solar. ([Technical Report](#), p. 36.) The Technical Report irrationally ignores commercial solar
9 costs in the reputable National Renewable Energy Laboratory (NREL) Annual Technology
10 Baseline (ATB) database¹⁶ that the Technical Report itself uses when estimating capital costs for
11 remote utility-scale solar and wind costs elsewhere in the report ([Technical Report](#), p. 25). The
12 commercial rooftop solar cost should be approximately \$48/MWh in 2022 as identified by in the
13 same 2020 NREL ATB spreadsheet relied on in the Technical Report, not the \$92/MWh
14 commercial rooftop solar cost erroneously assumed in the Technical Report.

15 41. The Technical Report entirely ignores parking lot solar potential in the region,
16 even though the County’s own Office of Education has implemented a highly space efficient
17 (60+ percent of parking area covered with solar panels) and successful parking lot solar project.
18 See Figure 1.

19 42. San Diego County ground-level commercial parking area solar potential has been
20 very conservatively estimated at 3,300 MW AC by Powers Engineering assuming only 25
21 percent of the parking area is covered with solar panels.¹⁷ Commercial parking area solar
22 potential estimates increase to about 7,900 MW AC utilizing average parking lot solar coverage
23 estimates of 60 percent consistent with the County’s Office of Education solar parking lot array
24 as shown in Figure 1.

25 _____
26 ¹⁶ <https://atb-archive.nrel.gov/electricity/2020/data.php>

27 ¹⁷ See Bill Powers, [Roadmap to 100 Percent Local Solar Build-Out by 2030 in the City of San Diego](#) (May
28 2020), p. 21-24 (This report relies on very conservative rooftop solar and parking lot solar potential
estimates to make the point that, even using very conservative estimates, the City of San Diego has
sufficient local solar potential to achieve 100 percent clean electricity by 2030 relying only on a build-out
of local solar capacity.).

1 **Figure 1. San Diego County Office of Education Park Lot Solar Arrays**¹⁸



10
11 43. The combined San Diego County rooftop and parking lot solar, assuming the
12 approximately 13,200 MW AC Google Project Sunroof estimate for residential and commercial
13 rooftops and the conservative 3,300 MW AC Powers Engineering estimate of 25 percent solar
14 coverage for commercial parking areas, equals 16,500 MW AC: nearly five times greater than
15 the unsupported RDF estimate of 3,360 MW AC.¹⁹

16 44. Rooftop and parking lot solar can meet the majority of the Technical Report’s
17 projected 2050 electricity demand, even using a very conservative parking lot solar utilization
18 factor of 25 percent.

19 45. The tremendous potential of rooftop and parking lot solar is reflected by actual
20 trends in renewable energy deployment in San Diego County, which has the highest
21 concentration of rooftop and parking lot solar of any county in the state. San Diego has more
22 than 1,850 MW AC of rooftop and parking lot solar in operation, having added 260 MW AC in
23 2022 alone,²⁰ compared to less than 300 MW of utility-scale remote solar and wind capacity.²¹

24
25 ¹⁸ See Bill Powers, *Roadmap to 100 Percent Local Solar Build-Out by 2030 in the City of San Diego* (May
26 2020), p. 23 (Figure 3).

27 ¹⁹ The combined San Diego County estimate would increase to 21,100 MW AC if 60 percent solar
28 coverage is assumed for parking lot solar: 13,200 MW AC + 7,900 MW AC = 21,100 MW AC.

²⁰ See California Distributed Generation Statistics [click on “Charts” and “SDGE”], available at
<https://www.californiadgstats.ca.gov/charts/>.

²¹ See <https://www.eia.gov/electricity/data/eia860/>.

1 46. The Technical Report thus failed to recognize the tremendous GHG emissions
2 reduction and other benefits that could be quickly achieved by rooftop solar and parking lot
3 solar, especially when combined with battery storage to enable 24/7 power, connected to the
4 distribution grid.

5 **E. The County Decides to Authorize Development of an Implementation**
6 **Playbook Based on the Misleading and Erroneous Technical Report.**

7 47. On August 31, 2022, the Board of Supervisors heard an item entitled “Receive an
8 Update on the Integrated Regional Decarbonization Framework and Design of Implementation
9 Playbook (Districts: All).” ([August 31, 2022 Statement of Proceedings](#), p. 9 [Item 5].)

10 48. The County explained that the “the integrated RDF has three key components: the
11 technical report, the workforce development study, and the Implementation Playbook;” and
12 decided to turn its focus to “the development of the Implementation Playbook, which will
13 translate the technical findings of the RDF so far into implementable actions for our region to
14 decarbonize.” (*Ibid.*) The County decided it would be “transitioning from the education phase
15 of outreach to the implementation phase of the RDF” since “[t]he technical report and the
16 workforce development study are now complete and available on our website.” (*Ibid.*)

17 49. However, because the Technical Report failed to address the County’s directive to
18 achieve zero carbon by 2035, and because the Technical Report vastly understates both (1) the
19 energy output available from the region’s simplest, most straightforward renewable energy
20 source (rooftop and parking lot solar), and (2) the true costs of remote, utility-scale renewable
21 energy sources; developing implementing strategies using the Technical Report as a baseline is
22 arbitrary and would fail to reduce GHG emissions to the extent possible and as quickly as
23 possible and result in adverse climate change, land use, and human health impacts.

24 50. On August 31, 2022, the County announced that the Technical Report was “now
25 complete and available on our website,” and directed staff to “translate the technical findings of
26 the RDF so far into implementable actions for our region to decarbonize” by developing an
27 “Implementation Playbook” based on the Technical Report. (*Ibid.*)
28

1 51. The County Refuses to Address the Deficiencies in the Technical Report,
2 Requiring Petitioner to File the Instant Petition.

3 52. Petitioner seeks review by and relief from this Court under Code of Civil
4 Procedure section 1085, Public Resources Code section 21168.5, and other provisions of law.

5 53. The County has taken final agency action with respect to approving the Project.
6 The County has a duty to comply with applicable state and local laws, including but not limited
7 to CEQA, prior to undertaking the discretionary approvals at issue in this lawsuit. Petitioner
8 possesses no effective remedy to challenge the approvals at issue in this action other than by
9 means of this lawsuit.

10 54. Petitioner has performed any and all conditions precedent to filing the instant
11 action.

12 55. Neither Public Resources Code section 21177 nor any other exhaustion-of-
13 remedies requirement may be applied to Petitioner, because the County prevented any
14 meaningful public comment under CEQA.

15 56. Nonetheless, Petitioner identified the flaws in Chapter 2 of the Technical Report
16 and repeatedly requested that the County avoid relying on such flawed information. Petitioner
17 and others provided comments orally, in writing, and in chats at every opportunity; and did their
18 best, under the circumstances, to express their concerns to the County.

19 57. On February 24, 2023, Petitioner complied with Public Resources Code section
20 21167.5 by mailing to the County a letter stating that Petitioner planned to file a Petition for Writ
21 of Mandate seeking to invalidate the County's approval of the Project. Attached hereto as
22 Exhibit A is the true and correct copy of this letter and proof of service.

23 58. On or about February 27, 2023, Petitioner will comply with Public Resources
24 Code section 21167.7 and Code of Civil Procedure section 388 by furnishing the Attorney
25 General of the State of California with a copy of the Petition. Attached hereto as Exhibit B is the
26 true and correct copy of the letter transmitting the Petition to the Attorney General.

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1 59. Pursuant to Public Resources Code section 21167.6(b)(2), Petitioner elects to
2 prepare the record of proceedings in this action. Concurrently with this Petition, Petitioner will
3 file a notice of election to prepare the administrative record.

4 60. The County’s conduct in approving the Project and in purporting to comply with
5 CEQA constitutes a prejudicial abuse of discretion because, as is explained herein, the County
6 failed to proceed in the manner required by law and it acted in excess of its jurisdiction.

7 61. Petitioner has no plain, speedy, or adequate remedy in the ordinary course of law,
8 and Petitioner will suffer irreparable harm as a result of the County’s violations of the laws
9 referenced herein, including CEQA and the County’s own competitive bidding requirements,
10 unless this Court grants the requested writ of mandate to require the County to set aside its
11 approval of the Project and related actions. In the absence of such remedies, the County’s
12 approvals will remain in effect in violation of State and local law, and Petitioner and its members
13 will be irreparably harmed. No money damages or legal remedy could adequately compensate
14 Petitioners and their members for that harm.

15 62. The County failed to satisfy its clear, present, ministerial duty to act in accordance
16 with the laws and its own requirements as referenced herein. When the County is permitted or
17 required by law to exercise discretion in setting policy, taking action, and approving projects
18 under the aforementioned laws, the County remains under a clear, present, ministerial duty to
19 exercise its discretion within the limits of, and in a manner consistent with, those laws and
20 requirements. The County has failed and refused to do so, and instead has exercised its
21 discretion beyond the limits and in violation of those laws.

22 63. Venue for this action properly lies in the Superior Court for the State of California
23 in and for the County of San Diego pursuant to Code of Civil Procedure section 394. The
24 County’s main offices are located in and the activities authorized by the County will occur in San
25 Diego County. Venue for this action properly lies in the Central division. The County’s Board
26 of Supervisors, which took action to approve this Project, does business at 1600 Pacific
27 Highway, San Diego, CA 92101, which is assigned to the Central division. Similarly, the action
28 that is challenged in this litigation--the approval of the Project—took place at the same location.

FIRST CAUSE OF ACTION
Violations of CEQA
Cal. Code Civ. Pro. § 1085
(Against All Respondents and Real Parties in Interest)

64. Paragraphs 1 through 63 are fully incorporated into this paragraph.

65. The County has a mandatory and ministerial duty to comply with CEQA whenever the County approves a non-exempt activity which has the potential for resulting in a direct or a foreseeable indirect physical change in the environment – a “project” as defined by CEQA. (*Union of Medical Marijuana Patients, Inc. v. County of San Diego* (“*Medical Marijuana Patients*”) (2019) 7 Cal.5th 1171, 1191-1193; Pub. Res. Code, §§ 21065, 21080, subd. (a).)

66. Petitioner seeks to ensure the public receives the benefits to which it is entitled under the County’s own ordinances and policies, and under CEQA, which “was enacted to (1) inform the government and public about a proposed activity’s potential environmental impacts; (2) identify ways to reduce, or avoid, those impacts; (3) require project changes through alternatives or mitigation measures when feasible; and (4) disclose the government’s rationale for approving a project.” (*Protecting Our Water & Environmental Resources v. County of Stanislaus* (“*POWER*”) (2020) 10 Cal.5th 479, 488.)

67. The County’s decision to implement the Technical Report constitutes an “activity directly undertaken by any public agency.” (Pub. Res. Code, § 21065.)

68. Establishing strategies, policies, plans, or pathways with reference to an unrealistic and arbitrary baseline and timeframe -- one that does not adequately account for the GHG reduction potential and other benefits of rooftop and parking lot solar, and that dramatically overstates the benefits of remote, utility-scale renewable energy projects -- will not allow for GHG emissions reductions as quickly as possible and to the extent possible; and is the type of activity that “by its general nature” is “capable of causing a direct or reasonably foreseeable indirect physical change in the environment.” (*Medical Marijuana Patients*, 7 Cal.5th at 1197).

1 69. The County misconstrued CEQA’s definition of “project” and failed to apply the
2 proper legal standard under CEQA and California law when it determined that implementing the
3 Technical Report was not subject to CEQA because it was “administrative in nature and is not a
4 project as defined in CEQA Guidelines Section 15378(b)(5).”

5 70. In fact, the County’s decision to implement the Technical Report cannot be
6 described as an administrative activity “that will not result in direct or indirect physical changes
7 in the environment.” (14 Cal. Code. Regs., § 15378, subd. (b)(5).) According to the County
8 itself, the “Implementation Playbook” will “translate the technical findings of the RDF so far
9 into implementable actions for our region to decarbonize.” These implementable actions, by
10 definition, will result in direct or indirect physical changes as detailed herein.

11 71. The County’s decision to proceed with implementation plans based on the
12 Technical Report committed the County to a definite course of action and precluded
13 consideration of alternatives and mitigation measures.

14 72. Under CEQA, the County “cannot argue” that its decision to proceed with
15 implementation based on the Technical Report “is not a project ‘merely because further
16 decisions must be made’ before the activities directly causing environmental change will occur.”
17 (*Medical Marijuana Patients*, 7 Cal.5th at 1200 (citation omitted).) Environmental review must
18 be “done early enough to serve, realistically, as a meaningful contribution to public decisions.”
19 (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 134-35.

20 73. The County itself admits that “to avert the worst impacts of climate change, the
21 region needs to take a carbon neutral approach to climate action planning immediately.” ([Board
22 Letter dated January 27, 2021](#), p. 3.)

23 74. Scientists agree that if global warming exceeds 1.5°C above preindustrial levels,
24 “some impacts will cause release of additional greenhouse gases,” including some that “will be
25 irreversible, even if global warming is reduced.”²²

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²² IPCC, [Contribution of Working Group II to the Sixth Assessment Report](#), p. 19.

1 75. In 2020, the average global temperature reached 1.2°C above preindustrial
2 levels.²³ Without rapid emissions reductions, the 1.5° target will be passed by 2030.²⁴

3 76. The Technical Report made no attempt to maximize GHG emissions reductions in
4 the region sufficient to contribute its fair share of the emissions reductions required to avoid
5 exceeding the 1.5° target and the associated climate change impacts.

6 77. The Technical Report even failed to reduce GHG emissions in the timeframe
7 required by the County’s initial authorization, which was “to achieve zero carbon in the region
8 by 2035.” ([January 27, 2021 Statement of Proceedings](#), p. 4 [recommendation #2]; *id.* at p. 5
9 [taking action as recommended].)

10 78. Instead, while conceding that “aiming to decarbonize sooner may be desirable
11 from the climate standpoint,” the County explained that its consultants at GPS believed
12 decarbonization should occur more slowly “to move in concert” with “national, State, and local
13 governments.” ([Board Letter dated November 17, 2021](#), p. 4.)

14 79. The County’s consultant’s belief that decarbonization should move more slowly
15 contradicts the consensus of climate scientists which establishes that reducing GHG emissions to
16 the extent possible as quickly as possible is required to avoid devastating environmental impacts.

17 80. Climate science instructs that the more quickly GHG emissions are reduced in the
18 near term, the more likely that the severity of impacts caused by climate change will be
19 minimized: “It is virtually certain that global surface temperature rise and associated changes can
20 be limited through rapid and substantial reductions in global GHG emissions” and “[c]ontinued
21 GHG emissions greatly increase the likelihood of potentially irreversible changes in the global
22 climate system.”²⁵

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27 ²³ World Meteorological Organization, Press Release Number: 14012021: [2020 was one of the three](#)
[warmest years on record](#) (January 15, 2021).

28 ²⁴ Adam R. Aron, *The Climate Crisis – Science, Impacts, Policy, Psychology, Justice, Social Movements*
(2023), p. 73-74 & Figure 3.3.

²⁵ IPCC, [Working Group I Contribution to the Sixth Assessment Report](#), p. 63.

1 81. “The science is unequivocal, the changes are unprecedented, and there is no more
2 time for delay.”²⁶ “With each additional increment of warming, these changes will become
3 larger, resulting in long-lasting, irreversible implications, in particular for sea level rise.”²⁷

4 82. Instead of decarbonizing within the 2030 timeframe necessary to avoid the severe
5 climate change impacts anticipated by climate scientists, or even within the 2035 timeframe the
6 County itself required of GPS, the Technical Report mapped a trajectory toward what it refers to
7 as “an aspirational low-carbon 2050 future for the San Diego region.” (See e.g. [Technical](#)
8 [Report](#), p. 20.)

9 83. By proceeding with implementation plans based on an inaccurate report that used
10 arbitrary data and failed to assess decarbonization on a timeframe necessary to mitigate or avoid
11 the worst climate change impacts or the 2035 timeframe established by the County, and that
12 failed to properly quantify and acknowledge available rooftop and parking lot solar in the San
13 Diego region (the GHG emissions reduction strategy that for the San Diego region can be most
14 quickly, efficiently, and effectively deployed), the County precluded implementation of
15 alternatives and mitigation measures that can reduce GHG emissions to the greatest extent
16 feasible in the most critical timeframe necessary to avoid the worse climate impacts.

17 84. The cumulatively significant GHG emissions impact of the County’s decision to
18 proceed with implementation based on the Technical Report alone constitutes a significant
19 environmental effect. (Pub. Res. Code § 21083, subd. (b)(2); Pub. Res. Code, § 21084, subd.
20 (b); Cal. Code Regs., tit. 14, § 15064, subd. (h)(1); Cal. Code Regs., tit. 14, § 15183.5.)

21 85. The County’s decision to proceed with implementation based on the Technical
22 Report precludes alternatives and mitigation measures that could lead to adoption of an
23 implementation plan that would minimize pollution and human health impacts in disadvantaged
24 communities by maximizing replacement of polluting fossil fuels with rooftop and parking lot
25 solar in disadvantaged communities.

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28 ²⁶ IPCC, [Working Group I Contribution to the Sixth Assessment Report](#), p. v.

²⁷ IPCC, [Working Group I Contribution to the Sixth Assessment Report](#), p. v.

1 86. As the Legislature has recognized, “[c]ontinuing to reduce greenhouse gas
2 emissions is critical for the protection of all areas of the state, but especially for the state’s most
3 disadvantaged communities, as those communities are affected first, and, most frequently, by the
4 adverse impacts of climate change, including an increased frequency of extreme weather events,
5 such as drought, heat, and flooding. The state’s most disadvantaged communities also are
6 disproportionately impacted by the deleterious effects of climate change on public health.”
7 (Stats. 2016, Ch. 249, § 1, subd. (c).)

8 87. The County’s decision to proceed with implementation based on the Technical
9 Report precludes alternatives and mitigation measures that would avoid or minimize significant
10 land use impacts caused by developing large, utility-scale solar in the backcountry and
11 potentially in Imperial County instead of maximizing rooftop and parking lot solar in already
12 developed areas of the County.

13 88. The County was required by law to complete CEQA review before deciding to
14 proceed with development of implementation plans based on the arbitrary Technical Report.
15 (Cal. Code Regs., tit. 14, § 15004.) By failing to conduct any CEQA review, the County violated
16 CEQA.

17 89. The County violated the fundamental CEQA principle “that before conducting
18 CEQA review, agencies must not ‘take any action’ that significantly furthers a project ‘in a
19 manner that forecloses alternatives or mitigation measures that would ordinarily be part of
20 CEQA review.’” (*Save Tara*, 45 Cal.4th at 138.)

21 **SECOND CAUSE OF ACTION**
22 **Violations of Competitive Bidding Mandates**
23 **Cal. Code Civ. Pro. § 1085**
24 **(Against All Respondents and Real Parties in Interest)**

25 90. Paragraphs 1 through 89 are fully incorporated into this paragraph.

26 91. The County has a clear, present, and ministerial duty under Policy A-87 to ensure
27 all contracts are competitively bid, unless a specific exemption applies and has been properly
28 documented.

1 92. Petitioner is informed and believes and thereon alleges that the contracts with
2 GPS violated the public bidding requirements because they were awarded on a single source
3 basis without documenting or meeting the requirements for single source contracts; and without
4 acknowledging that GPS - through Victor's involvement with the investor-owned-utility
5 industry and SDG&E, had a conflict of interest and could not represent the public's interest in
6 the simplest and quickest GHG emissions reduction strategies – regional saturation of rooftop
7 and parking lot solar with battery systems.

8 93. Petitioner seeks to enforce the public duties established by the County's
9 competitive bidding requirements, which "are for the purposes of inviting competition, to guard
10 against favoritism, improvidence, extravagance, fraud and corruption, and to secure the best
11 work or supplies at the lowest price practicable, and they are enacted for the benefit of property
12 holders and taxpayers, and not for the benefit or enrichment of bidders, and should be so
13 construed and administered as to accomplish such purpose fairly and reasonably with sole
14 reference to the public interests." (*Domar Electric, Inc. v. County of Los Angeles* (1994) 9
15 Cal.4th 161, 173 [quoting 10 McQuillan, *Municipal Corporations* (3d rev. ed. 1990) § 29.29, p.
16 375].)

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Petitioner respectfully prays for relief as follows:

19 **On the First Cause of Action**

20 1. For a peremptory writ of mandate directing that:

21 (a) The County void its decision to proceed with implementation plans based on the
22 Technical Report, and any and all subsequent decisions based on the Technical Report;

23 (b) The County and Real Parties (and any and all persons acting at the request of, in
24 concert with, or for the benefit of one or more of them) suspend any action authorized by the
25 ordinances, resolutions, and associated agreement(s) approved by the County that could result in
26 any change or alteration to the physical environment unless and until the County complies with
27 CEQA and the Judgment of this Court; and
28

1 **On the Second Cause of Action**

2 2. For a peremptory writ of mandate directing that:

3 (a) The County refrain from violating competitive bidding mandates;

4 (b) The County rescind its approval of the contract with GPS and any and all
5 amendments thereto; and

6 (c) The County refrain from relying on the Technical Report without first complying
7 with competitive bidding mandates.

8 **On All Causes of Action**

9 3. For costs of suit;

10 4. For reasonable attorneys' fees; and

11 5. For such other and further relief as the Court deems just and proper.

12
13 DATED: February 27, 2023

SHUTE, MIHALY & WEINBERGER LLP

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By: 

WINTER KING

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Attorneys for Petitioner The Protect Our
Communities Foundation

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Verification

I, Bill Powers, declare:

I am a member of the Board and Board Secretary of Petitioner The Protect Our Communities Foundation. I am authorized by Petitioner to make this verification on its behalf. I have read the foregoing Petition and know the contents thereof, and the facts therein stated are true to my own knowledge, except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 27, 2023 at San Diego, California.

By: Bill Powers
Bill Powers, Secretary
The Protect Our Communities Foundation

1621031.1

EXHIBIT A

SHUTE MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

WINTER KING
Attorney
King@smwlaw.com

February 24, 2023

U.S. Mail

San Diego County Board of Supervisors
c/o Clerk of the Board
County of San Diego
County Administration Center, Room 402
1600 Pacific Highway
San Diego, CA 92101

Re: *The Protect Our Communities Foundation v. County of San Diego,
et al.*: Notice pursuant to PRC § 21167.5

Dear Chair Vargas and Members of the Board:

This letter is to notify you that The Protect Our Communities Foundation will file suit against San Diego County for failure to comply with the requirements of the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq., the CEQA Guidelines, California Code of Regulations title 14, section 15000 et seq., and other state and local laws in the administrative process that culminated in the County's decision to proceed with the County's Regional Decarbonization Framework (RDF) by developing an "Implementation Playbook" based on a document entitled San Diego Regional Decarbonization Framework Technical Report (Technical Report). The lawsuit will also challenge the County's decision to contract with a consultant to prepare the Technical Report even though the consultant had a conflict of interest in the substance of that document due to its close ties with the investor-owned-utility industry, and specifically with San Diego Gas & Electric Company (SDG&E), in violation of the County's public bidding requirements. This notice is given pursuant to Public Resources Code section 21167.5.

San Diego County Board of Supervisors
February 24, 2023
Page 2

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

A handwritten signature in blue ink, appearing to read "L. King", written over the typed name Winter King.

Winter King

1621021.2

PROOF OF SERVICE

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, CA 94102.

On February 24, 2023, I served true copies of the following document(s) described as:

NOTICE OF INTENT TO SUE

on the parties in this action as follows:

San Diego County Board of Supervisors
c/o Clerk of the Board
County of San Diego
County Administration Center, Room 402
1600 Pacific Highway
San Diego, CA 92101

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly & Weinberger LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 24, 2023, at San Francisco, California.



Jennifer K Miao

EXHIBIT B

SHUTE MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

WINTER KING
Attorney
King@smwlaw.com

February 27, 2023

Via U.S. Mail

Attorney General Rob Bonta
Office of the Attorney General
1300 I Street
Sacramento, CA 95814-2919

Re: *The Protect Our Communities Foundation v. County of San Diego, et al.*

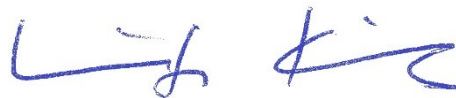
Dear Attorney General Bonta:

Enclosed please find a copy of the Verified Petition for Writ of Mandate (“Petition”) in the above case.

This Petition is provided to you in accordance with Public Resources Code section 21167.7 and Code of Civil Procedure section 388. Please acknowledge receipt in the enclosed prepaid, self-addressed envelope. Thank you.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Winter King

Enclosure

1621472.1