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11 BOULEVARD LLC, BOULEVARD EMPIRE
12 LLC, LANSING INDUSTRIES PSP LLC, and
13 390 JACUMBA LLC

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SAN DIEGO - CENTRAL DIVISION**

16 569 EAST COUNTY BOULEVARD LLC,
17 BOULEVARD EMPIRE LLC, LANSING
18 INDUSTRIES PSP LLC, and 390
19 JACUMBA LLC,

20 Plaintiff,
21 vs.

22 COUNTY OF SAN DIEGO, BOARD OF
23 SUPERVISORS OF THE COUNTY OF
24 SAN DIEGO, ENDANGERED HABITAT
25 LEAGUE, INC., DIANE JACOBS,
26 MICHAEL BECK, DONNA TISDALE,
27 BACKCOUNTRY AGAINST THE DUMP,
28 INC. and PROTECT OUR COMMUNITIES
FOUNDATION, INC.,

Defendants.

Case No.: 37-2014-00025797-CU-MC-CTL

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, DECLARATORY
RELIEF AND WRIT OF MANDATE**

Action Filed:
Trial Date:

Dept.:
Judge:

25 Plaintiffs 569 EAST COUNTY BOULEVARD LLC, BOULEVARD EMPIRE LLC,
26 LANSING INDUSTRIES PSP LLC, and 390 JACUMBA LLC (hereinafter collectively
27 "LANSING" or "PLAINTIFFS") alleges against Defendants COUNTY OF SAN DIEGO,
28 BOARD OF SUPERVISORS OF THE COUNTY OF SAN DIEGO, ENDANGERED

FILED
CIVIL BUSINESS OFFICE 12
CENTRAL DIVISION
2014 AUG - 1 P 12: 14
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

1 HABITAT LEAGUE, INC., DIANE JACOBS, MICHAEL BECK, DONNA TISDALE,
2 BACKCOUNTRY AGAINST THE DUMP, INC. and PROTECT OUR COMMUNITIES
3 FOUNDATION, INC. (hereinafter collectively "DEFENDANTS") and DOES 1 through 10 and
4 each of them, as follows:

5 **PARTIES**

6 1. Plaintiff 569 EAST COUNTY BOULEVARD LLC is and at all times herein
7 mentioned, a California limited liability company duly organized and existing under the laws of
8 the State of California with its principal place of business in San Diego County whose activity
9 includes land development and the development of master planned communities.

10 2. Plaintiff BOULEVARD EMPIRE LLC is and at all times herein mentioned, a
11 California limited liability company duly organized and existing under the laws of the State of
12 California whose activity includes land development and the development of master planned
13 communities.

14 3. Plaintiff LANSING INDUSTRIES PSP LLC is and at all times herein mentioned,
15 a California limited liability company duly organized and existing under the laws of the State of
16 California with its principal place of business in San Diego County whose activity includes land
17 development and the development of master planned communities.

18 4. Plaintiff 390 JACUMBA LLC is and at all times herein mentioned, a California
19 limited liability company duly organized and existing under the laws of the State of California
20 with its principal place of business in San Diego County whose activity includes land
21 development and the development of master planned communities.

22 5. As parties beneficially interested in and aggrieved by the acts of DEFENDANTS
23 as alleged herein, PLAINTIFFS and their agents participated in the administrative process
24 leading up to and including approval and implementation of the General Plan Update (hereinafter
25 "GPU") and objected to the inadequacies and inconsistencies of the finalized GPU.
26 PLAINTIFFS therefore have a present and cognizable right to DEFENDANTS performance
27 under the Government Code and California Constitution and damages thereon.
28

1 6. PLAINTIFFS are informed and believe that Defendant COUNTY OF SAN
2 DIEGO (hereinafter individually, "COUNTY") is, and at all times herein mentioned was, a
3 political subdivision of the State of California, duly organized and existing under and by virtue
4 of the laws of the State of California. The COUNTY is the land use jurisdiction for decisions
5 made under and pursuant to the Planning and Zoning Law.

6 7. PLAINTIFFS are informed and believe that Defendant COUNTY OF SAN
7 DIEGO BOARD OF SUPERVISORS (hereinafter individually, "BOARD") is, and at all times
8 herein mentioned was, the duly elected governing legislative body of the COUNTY, duly
9 organized and existing under and by virtue of the laws of the State of California and the
10 COUNTY rules and regulations, and the decision-maker responsible for the final approval of the
11 GPU.

12 8. PLAINTIFFS are informed and believe that Defendant ENDANGERED
13 HABITATS LEAGUE, INC. (hereinafter individually, "EHL") is, and at all times herein
14 mentioned was, a non-profit California corporation duly organized and existing under the laws of
15 the State of California with its principal place of business in Los Angeles, California.

16 9. PLAINTIFFS are informed and believe that Defendant DIANE JACOBS
17 (hereinafter individually, "JACOBS") is, and at all times herein mentioned was, the duly elected
18 supervisor for DISTRICT 2 of the BOARD and a resident of the COUNTY.

19 10. PLAINTIFFS are informed and believe that Defendant MICHAEL BECK
20 (hereinafter individually, "BECK") is, and at all times herein mentioned was, appointed by
21 JACOBS as the Chairman and representative for DISTRICT 2 on the San Diego County
22 Planning Commission and is a resident of the COUNTY. PLAINTIFFS are also informed and
23 believe that BECK concurrently is employed by EHL as San Diego Director of projects and
24 programs and serves on the Board of Directors of EHL.

25 11. PLAINTIFFS are informed and believe that Defendant DONNA TISDALE
26 (hereinafter individually, "TISDALE") is, and at all times herein mentioned was, President of the
27 Boulevard Planning Group and a resident of the COUNTY.

1 12. PLAINTIFFS are informed and believe that Defendant PROTECT OUR
2 COMMUNITIES FOUNDATION, INC. (hereinafter individually, "POCF") is, and at all times
3 herein mentioned was, a non-profit California corporation duly organized and existing under the
4 laws of the State of California with its principal place of business in Santa Ysabel, California.

5 13. PLAINTIFFS are informed and believe that Defendant BACKCOUNTRY
6 AGAINST THE DUMP, INC. (hereinafter individually, "BAD") is, and at all times herein
7 mentioned was, a non-profit California corporation duly organized and existing under the laws of
8 the State of California with its principal place of business in Boulevard, California. TISDALE is
9 the President of BAD.

10 14. PLAINTIFFS are not aware of the true names and capacities, whether individual,
11 corporate, or otherwise, of Defendants DOES 1 through 10, inclusive, and therefore
12 PLAINTIFFS sue them by such fictitious names. PLAINTIFFS are informed and believe and
13 thereon allege that DOES 1 through 10 have been, or will be, responsible for the allegations in
14 this Complaint.

15 JURISDICTION AND VENUE

16 15. This Superior Court of the County of San Diego has jurisdiction and authority and
17 is the proper venue within which to file this action to address the issues raised in this Complaint,
18 including to enjoin DEFENDANTS from further action, issue a writ of mandate to set aside the
19 GPU and to compensate PLAINTIFFS for the damages suffered as a result of DEFENDANTS
20 intentional wrongdoing.

21 GENERAL ALLEGATIONS

22 **A. The General Plan Update**

23 16. A draft General Plan Update (hereinafter "GPU") was released for public review
24 in 2008. The COUNTY received comments from numerous state and local agencies, community
25 planning groups, organizations, and individuals expressing concern regarding the potential
26 inadequacies of the GPU.

27 17. The San Diego County Planning Commission, of which BECK was Chairman,
28 held nine public hearings on the GPU from November 6, 2009 through August 20, 2010. An

1 agent of PLAINTIFFS attended the majority of these hearings. At the August 20, 2010 hearing,
2 the Planning Commission made its final recommendation on the GPU to the BOARD.

3 18. The BOARD initially considered the GPU at its October 20, 2010 meeting.
4 Hundreds of organizations and individual members of the public testified in person at the
5 BOARD hearing, commenting on the GPU and expressing and reiterating concerns about its
6 legal adequacy. An agent of PLAINTIFFS attended and provided comments regarding legality of
7 the GPU. The COUNTY continued the item to another hearing, on November 10, 2010.

8 19. At the November 10, 2010 hearing many individuals, businesses, coalitions and
9 organizations, including an agent of PLAINTIFFS, provided additional comments on the GPU.

10 20. On November 15, 2010, an agent of PLAINTIFFS contacted the Planning
11 Commission to request a property specific change to the draft GPU. That request was denied by
12 Eric Gibson of the Department of Planning and Land Use.

13 21. The COUNTY once again continued the item to another hearing on December 8,
14 2010. At that hearing the COUNTY closed public testimony and did not provide another
15 opportunity for public comment prior to approval of the GPU in August 2011.

16 22. Despite closing public testimony, the BOARD continued to hold multiple
17 hearings on the proposed approval of the GPU, introduce evidence and testimony after the public
18 hearings were closed and discuss new information about the GPU and associated approvals and
19 properties impacted by it, including hearings on February 9, 2011, March 16, 2011, April 13,
20 2011 and August 3, 2011. Before the COUNTY'S approval of the GPU on August 3, 2011, the
21 COUNTY revealed new information of substantial importance about the GPU and made
22 substantial modifications to the GPU, yet the public was precluded from testifying as to any of
23 those modifications.

24 23. At the hearing on August 3, 2011 in which the GPU was approved, the COUNTY
25 proposed several additional substantial changes to the GPU which had never before been
26 publicly disclosed. Included in those changes were new policies regarding the re-direction of
27 population growth and new requirements for the authorization of GPU amendments. At no time
28 were public comments allowed for these changes.

1 **B. PLAINTIFFS' Property Acquisition**

2 24. PLAINTIFFS acquired 2,280 acres known as Big Country Ranch on or around
3 February 5, 2006 and 4,000 acres known as Empire Ranch on or around July 26, 2007.
4 PLAINTIFFS acquired numerous additional parcels in the area (Mountain Empire, near
5 Boulevard, California), totaling nearly 8,000 acres. These combined parcels are hereinafter
6 referred to as the SUBJECT PROPERTIES. This occurred prior to the release of the draft GPU.

7 25. Prior to purchasing each of these parcels, PLAINTIFFS performed their due
8 diligence and determined the parcels were zoned for the construction of one dwelling unit per
9 four acres. Only after the purchase of said parcels were PLAINTIFFS informed by seller that
10 COUNTY was considering a severe down-zoning of one dwelling unit per eighty acres.

11 26. In purchasing the parcels, PLAINTIFFS financed approximately \$11 million and
12 has paid in excess of \$8 million.

13 27. The value of parcels, as originally zoned for one dwelling unit per four acres if
14 developed with single family homes in a master developed community would have been in
15 excess of \$100 million. The current value of the parcels based on the radical down-zoning in the
16 General Plan Update is estimated to be \$3.5 million.

17 28. After acquiring Big Country Ranch and Empire Ranch, but prior to acquiring the
18 other smaller parcels, an agent of PLAINTIFFS met with JACOBS to determine whether the
19 SUBJECT PROPERTIES would be subject to the severe and radical down-zoning that was
20 proposed in the draft GPU.

21 29. JACOBS informed PLAINTIFFS agent that the down-zoning was not a foregone
22 conclusion, that she would only support it if the community members supported it and that her
23 concern with keeping the then current designation of one dwelling unit per 4 acres was the lack
24 of an adequate water supply.

25 30. PLAINTIFFS expended exceptional efforts to advise JACOBS of Boulevard
26 community members' support of the then current zoning designation and their opposition to the
27 severe down-zoning that was part of the draft GPU. More than 200 signatures in a community of
28

1 less than 400 were collected as part of a petition drive by PLAINTIFFS to show support for
2 rejecting the proposed down-zoning.

3 31. PLAINTIFFS believe that additional community members would have signed the
4 petition if not for fear of retaliation by TISDALE if it became public that they supported
5 development in Boulevard.

6 32. In order to allay concerns of adequate water, PLAINTIFFS commissioned an
7 independent study, incurring in excess of \$100,000, to determine whether the region could
8 support significant development. The study showed that there was an adequate water supply to
9 support up to 6,000 homes on the SUBJECT PROPERTIES.

10 33. During this lobbying period and prior to approval of the GPU, PLAINTIFFS were
11 approached by BECK, who showed interest in purchasing the SUBJECT PROPERTIES on
12 behalf of EHL.

13 34. BECK requested several meetings to discuss the purchase, including a site visit at
14 which he commented to an agent of PLAINTIFFS that he wanted to purchase the SUBJECT
15 PROPERTIES in order to conserve the land.

16 35. After multiple meetings, PLAINTIFFS and BECK agreed upon a purchase price
17 of \$9 million and stated that he would seek the necessary funding from EHL. BECK never
18 obtained the funding as it became unnecessary when the GPU was approved down-zoning the
19 SUBJECT PROPERTIES so severely that they were constructively converted to an open space
20 designation.

21 36. Further, during this lobbying period PLAINTIFFS came to understand that
22 instead of JACOBS requesting her staff to prepare multiple density scenarios for the rural,
23 unincorporated lands, including the SUBJECT PROPERTIES, as recommended in the State
24 General Plan Guidelines, she instructed them to prepare only alternatives that included low
25 density development.

26 37. Also during this lobbying period, TISDALE authored a letter, on behalf of BAD,
27 that was distributed to the residents of Boulevard, California which characterized Gregory
28 Lansing, an agent of PLAINTIFFS, as a "snake oil salesman" "bully boy" and "bad apple". The

1 letter also states that Lansing would direct PLAINTIFFS to sell their interests in the SUBJECT
2 PROPERTY to construct a 2,200 bed federal prison, allow aggregate mining or “sell to the
3 Indians next door”, with absolutely no basis to make such allegations other than for the purpose
4 of intimidating residents of Boulevard, California into supporting her no development agenda.

5 38. Despite PLAINTIFFS efforts to prevent the effective taking of their property
6 rights, the GPU was approved in August 2011. Because of this severe down-zoning, the
7 SUBJECT PROPERTIES were so severely de-valued that PLAINTIFFS were unable to make
8 payments on their note and were forced into judicial foreclosure.

9 39. In an effort to recoup some of their investment, PLAINTIFFS sought to sell in
10 excess of 4,000 acres of the SUBJECT PROPERTIES to Soltec Solar Development LLC
11 (hereinafter “SOLTEC”), but ongoing, vexatious litigation by BAD, PFOC and TISDALE so
12 destabilized the market for land development by alternative energy companies in the surrounding
13 areas that PLAINTIFFS were unable to come to an agreement with SOLTEC.

14 FIRST CAUSE OF ACTION

15 (Violation of California Constitution, Article 2, Sections 8, 9, 10 and 11 as Against
16 COUNTY, BOARD, JACOBS, BECK and TISDALE)

17 40. PLAINTIFFS repeat and re-allege each and every allegation contained in
18 Paragraphs 1 through 39 of this Complaint and incorporate the same by reference, as though
19 fully set forth herein.

20 41. The California Constitution, Article II, Sections 8 through 11 guarantee the
21 people’s rights to approve or reject measures passed by a legislative body as a power reserved by
22 it under the California Constitution.

23 42. The GPU essentially puts in place the exact type of plan that the voters of San
24 Diego County have already twice rejected as it relates to the unincorporated areas of the County.
25 Specifically, it drastically reduces densities on more than 500,000 acres of privately-held land in
26 the northern and eastern portions of the County and proposes high density villages in a few areas
27 of the County, including in areas which other uses already exist and areas in which the water
28 supply or other infrastructure to support such densities does not exist.

1 43. In 1998, eligible San Diego County residents voted on Measure B, the Rural
2 Heritage & Watershed Initiative which would have downzoned 600,000 acres in eastern San
3 Diego County from 4- and 8-acre lots to 40- and 80-acre lots. This measure was soundly
4 defeated by the voters of San Diego County, with nearly 60% of voters deciding that 4- and 8-
5 acre lots were appropriate for that region of the County.

6 44. In 2004, eligible San Diego County residents voted on a substantially similar
7 ballot measure, Measure A, the Rural Lands Initiative which would have downzoned 694,000
8 acres in northern and eastern San Diego County from 4- and 8-acre lots to 40- and 80-acre lots in
9 the Estate and Rural Development areas, respectively and from 4- and 8- acre lots to 40- and
10 160- acre lots in the Environmentally Constrained areas inside and outside the County Water
11 Authority Boundary, respectively. This measure was soundly defeated by and even greater
12 percentage of the voters of San Diego County, with nearly 65% of voters deciding that 4- and 8-
13 acre lots were appropriate for that region of the County.

14 45. DEFENDANTS have actively and in direct contravention of the will of the San
15 Diego County voters, implemented a general plan that is in all essential features like the two
16 separate referendums that were already rejected.

17 46. As a direct and proximate result of the implementation of an invalid general plan,
18 PLAINTIFFS have suffered general and special damages including, without limitation,
19 emotional distress, expense incurred, lost earnings, lost profits and pecuniary loss, in an amount
20 according to proof, but not less than \$100,000,000.

21 47. Further, PLAINTIFFS request that this Court issue a preliminary and permanent
22 injunction enjoining the COUNTY and BOARD from taking any action in furtherance of the
23 GPU until it is amended to conform to the will of the voters of San Diego County as expressed in
24 the defeat of two separate referendums.

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1 **SECOND CAUSE OF ACTION**

2 **(Violation of California Planning and Zoning Law – Government Code Sections 65000, et**
3 **seq. as Against COUNTY, BOARD, JACOBS, BECK and TISDALE)**

4 48. PLAINTIFFS repeat and re-allege each and every allegation contained in
5 Paragraphs 1 through 47 of this Complaint and incorporate the same by reference, as though
6 fully set forth herein.

7 49. The COUNTY'S approval of the GPU constitutes an abuse of discretion in that
8 the findings are not supported by substantial evidence in the record and the GPU fails to comply
9 with the Planning and Zoning Law. Among other things, the findings are overbroad, inconsistent,
10 internally inconsistent, lack support of substantial evidence and run afoul of later enacted
11 statutes. The COUNTY'S approval of the Housing Element and subsequent update in 2013
12 constitutes a further abuse of discretion in that it is not in substantial compliance with the
13 Housing Element Law and Least Cost Zoning Law and in its current form is impossible to
14 implement.

15 50. The Housing Element requires local governments to be accountable for ensuring
16 that projected housing needs can be accommodated while providing the opportunity for the
17 private sector to meet market demand. These needs are reflected in the Regional Housing Needs
18 Assessment ("RHNA") which is updated regularly to reflect the changing housing needs of the
19 COUNTY.

20 51. The prior Housing Element period was from 2005 through 2011 and reflected a
21 complete failure of the COUNTY to accommodate the low income housing needs to its citizens.
22 Specifically, the COUNTY was assigned 2,476 new units of very low income housing; it created
23 only 3% of that need; 1,881 new units of low income housing were assigned; the COUNTY
24 created 18%; and 2,336 new units of moderate income housing were assigned; the COUNTY
25 created 24%.

26 52. The 2013 Housing Element Update uses the same methodologies used by the
27 COUNTY in the 2005-2011 period, which failed completely in accommodating very low, low
28 and moderate income housing.

1 53. PLAINTIFFS are informed and believe, and based thereon allege, that it will be
2 impossible for Defendant COUNTY to accommodate its allocated fair share of affordable
3 housing during the 2010 through 2020 planning period due to the current state of zoning as
4 determined by the GPU.

5 54. COUNTY was allocated 22,412 units for the planning period, 2,085 extremely
6 and very low income units, 1,585 low income units, 5,864 moderate income units and 12,878
7 above moderate income units. Rather than accommodate the majority of these very low-, low-
8 and moderate income units in vacant sites in the unincorporated communities, the COUNTY has
9 concentrated them in sites which are already in some other use, which discourages the private
10 sector to invest.

11 55. Some of the sites which COUNTY has identified as “underutilized” are currently
12 occupied with uses that make them unavailable for development during the current planning
13 period.

14 56. Further, some of the sites which COUNTY has identified as “underutilized”
15 currently suffer from environmental constraints that affect their development potential because
16 they are considered undesirable and expensive to develop by private sector investors.

17 57. PLAINTIFFS are informed and believe, and based thereon allege, that COUNTY
18 arbitrarily determined that the unincorporated parts of the COUNTY should not be subject to the
19 State Housing Element law establishing the minimum default densities for affordable housing
20 development.

21 58. The Housing Element Update also assigns high density affordable units only to
22 the Alpine, Fallbrook, Lakeside, North County Metro and Ramona communities in the
23 unincorporated areas, without identifying why there was not a broader based fair share of
24 distribution of low income housing.

25 59. The Mountain Empire, which includes the community of Boulevard, had a
26 median income of less than 80% of the regional median, placing it in the low income bracket of
27 COUNTY residents.

1 60. COUNTY assigned absolutely no affordable housing to the Mountain Empire
2 region of the COUNTY even though it is a stated goal of the Housing Element to make
3 affordable housing available in the areas where those citizens who most need it already live.

4 61. The actions of the COUNTY in adopting and implementing the GPU and its
5 subsequent 2013 Housing Element Update are arbitrary, capricious and in excess of the
6 COUNTY's jurisdiction and authority and contrary to the controlling law of the State of
7 California.

8 62. As already described herein, PLAINTIFFS have exhausted all of their
9 administrative remedies and to the extent it did not, any attempt would have been futile.

10 63. PLAINTIFFS have no plain, speedy or adequate remedy in the ordinary course of
11 law to require the COUNTY to set aside the invalid GPU and to otherwise restrain the COUNTY
12 from acting contrary to State law and to restrain the COUNTY from imposing the GPU on the
13 SUBJECT PROPERTIES. PLAINTIFFS are thereby entitled to extraordinary relief by means of
14 writ of mandate directing the COUNTY to set aside the GPU in order to conform to controlling
15 law and the will of the voters of San Diego County.

16 **THIRD CAUSE OF ACTION**

17 **(Unconstitutional Denial of Equal Protection and Due Process of Law as Against**
18 **COUNTY, BOARD, JACOBS, BECK and TISDALE)**

19 64. PLAINTIFFS repeat and re-allege each and every allegation contained in
20 Paragraphs 1 through 63 of this Complaint and incorporate the same by reference, as though
21 fully set forth herein.

22 65. The U.S. Constitution, Fourteenth Amendment, and the California Constitution,
23 Article I, Section 7 guarantee PLAINTIFFS' rights to the equal protection of the laws and to due
24 process of law.

25 66. The GPU unlawfully violates the constitutional guarantees to equal protection and
26 due process of law by subjecting certain portions of the County, including the SUBJECT
27 PROPERTIES, to additional layers of regulation and additional burdens such as the devaluation
28 of property to reduce the potential for development and preserve private land as constructive

1 open space. The GPU applies selectively, unfairly and in an arbitrary and discriminatory manner,
2 without a rational basis for selecting certain unincorporated portions of County lands to be
3 subjected to such burdens. In addition, the GPU is not rationally related to a legitimate public
4 purpose.

5 67. As a direct and proximate result of the implementation of an invalid general plan,
6 PLAINTIFFS have suffered general and special damages including, without limitation,
7 emotional distress, expense incurred, lost earnings, lost profits and pecuniary loss, in an amount
8 according to proof, but not less than \$100,000,000.

9 68. Further, PLAINTIFFS request that this Court issue a preliminary and permanent
10 injunction enjoining the COUNTY, BOARD, JACOBS, BECK and TISDALE from taking any
11 action in furtherance of the GPU until the COUNTY, BOARD, JACOBS, BECK and TISDALE
12 has complied with all applicable laws and regulations, including the Housing Element Law,
13 Least Cost Zoning Law and Political Reform Act.

14 FOURTH CAUSE OF ACTION

15 **(Arbitrary, Unreasonable and Discriminatory Planning and Zoning as Against COUNTY,**
16 **BOARD, JACOBS, BECK and TISDALE)**

17 69. PLAINTIFFS repeat and re-allege each and every allegation contained in
18 Paragraphs 1 through 68 of this Complaint and incorporate the same by reference, as though
19 fully set forth herein.

20 70. The GPU results in a land use, planning and zoning designation on the SUBJECT
21 PROPERTIES which is unreasonable, and as applied to the SUBJECT PROPERTIES, arbitrarily
22 discriminates against PLAINTIFFS by attempting to create a constructive open space
23 designation of the SUBJECT PROPERTIES and other privately-held rural land, purportedly for
24 the benefit of the public at large. COUNTY, through the GPU, drastically and radically reduced
25 the density of the land use designation of the SUBJECT PROPERTIES and other privately-held
26 rural land, in part so that it could discourage or even preclude development and depress land
27 values in an attempt to acquire the land at a significantly lower cost or preserve the land through
28 a constructive open space designation.

1 71. The planning and zoning designations of the SUBJECT PROPERTIES resulting
2 from the GPU are not reasonably related to the accomplishment of legitimate governmental
3 interests in light of the surrounding land use designations, the existence of significant state,
4 federal and Native American open spaces preserves and the physical characteristics of the
5 SUBJECT PROPERTIES and other privately-held rural properties. The GPU imposes land use
6 constraints on the SUBJECT PROPERTIES and other privately-held rural lands that would result
7 in the impairment or deprivation of PLAINTIFFS' and other landowners' rights to make
8 economically viable use of the property, and are unreasonable, arbitrary and discriminatory, in
9 violation of State law and constitutional rights.

10 72. As a direct and proximate result of the implementation of an invalid general plan,
11 PLAINTIFFS have suffered general and special damages including, without limitation,
12 emotional distress, expense incurred, lost earnings, lost profits and pecuniary loss, in an amount
13 according to proof, but not less than \$100,000,000.

14 73. Further, PLAINTIFFS request that this Court issue a preliminary and permanent
15 injunction enjoining the COUNTY, BOARD, JACOBS, BECK and TISDALE from taking any
16 action in furtherance of the GPU until the COUNTY, BOARD, JACOBS, BECK and TISDALE
17 has complied with all applicable laws and regulations, including the Housing Element Law,
18 Least Cost Zoning Law and Political Reform Act.

19 **FIFTH CAUSE OF ACTION**

20 **(Fraud – Intentional Misrepresentation as Against COUNTY, BOARD, JACOBS, BECK**
21 **and TISDALE)**

22 74. PLAINTIFFS repeat and re-allege each and every allegation contained in
23 Paragraphs 1 through 73 of this Complaint and incorporate the same by reference, as though
24 fully set forth herein.

25 75. PLAINTIFFS are informed and believe and thereon allege that COUNTY,
26 BOARD, JACOBS, BECK and TISDALE knowingly made false representations to
27 PLAINTIFFS. Specifically, JACOBS informed an agent of PLAINTIFFS in 20__ that the down-
28 zoning of the SUBJECT PROPERTIES was not a foregone conclusion and that higher density

1 alternatives would be proposed in accord with State general plan guidelines. However, JACOBS
2 knew these alternatives would never be proposed and instructed her staff and BECK to include
3 only a low density option which would down-zone the SUBJECT PROPERTIES from one
4 dwelling unit per four acres to one dwelling unit per eighty acres.

5 76. Further, PLAINTIFFS are informed and believe and thereon allege that JACOBS
6 and TISDALE informed PLAINTIFFS in 2010 that their objections to keeping the one dwelling
7 unit per four acre designation arose from concerns that there was an inadequate water supply and
8 that if adequate water was found, they would support keeping the one dwelling unit per four acre
9 designation. However, JACOBS and TISDALE knew they would oppose keeping the one
10 dwelling unit per four acres designation regardless of the presence of an adequate water supply.

11 77. Further, PLAINTIFFS are informed and believe and thereon allege that BECK
12 approached an agent of PLAINTIFFS and indicated his desire to purchase the SUBJECT
13 PROPERTIES on behalf of EHL. BECK requested several meetings with PLAINTIFFS,
14 including a tour of the SUBJECT PROPERTIES wherein he stated his desire to use the site for
15 conservation. BECK agreed to purchase the SUBJECT PROPERTIES to forestall PLAINTIFFS
16 from selling to potential buyer SOLTEC, knowing that he would never need to purchase them
17 because he, JACOBS and TISDALE planned to implement the radical down-zoning that would
18 make the property valueless for development. Without value for development, the SUBJECT
19 PROPERTIES were constructively re-zoned as open space.

20 78. PLAINTIFFS are informed and believe and thereon allege that COUNTY,
21 BOARD, JACOBS, BECK and TISDALE made these knowingly false representations with the
22 intent to deceive PLAINTIFFS and induce them to refrain from any further lobbying to keep the
23 previous general plan's zoning of one dwelling unit per four acres so that the SUBJECT
24 PROPERTIES could be constructively preserved as open space.

25 79. PLAINTIFFS acted in justifiable reliance upon the truth of these representations
26 by refraining from requesting a general plan amendment, refraining from selling the SUBJECT
27 PROPERTIES and paying for an independent water study to determine whether there was an
28

1 adequate water supply to support development at the SUBJECT PROPERTIES, incurring in
2 excess of \$100,000 for the study.

3 80. PLAINTIFFS, at the time these representations were made, were ignorant of their
4 falsity and believed them to be true. PLAINTIFFS acted in justifiable reliance upon the truth of
5 the representations because PLAINTIFFS believed the COUNTY, BOARD, JACOBS, BECK,
6 and TISDALE were the administrative agents responsible for drafting, approving and
7 implementing the GPU and believed them to be working for the interest of the general public
8 rather than their own self interests.

9 81. As a direct and proximate result of COUNTY, BOARD, JACOBS, BECK and
10 TISDALE'S fraud and deceit and the facts herein alleged, PLAINTIFFS have suffered general
11 and special damages including, without limitation, emotional distress, expense incurred, lost
12 earnings, lost profits and pecuniary loss, in an amount according to proof, but not less than
13 \$100,000,000.

14 82. PLAINTIFFS are informed and believe and thereon allege that in engaging in the
15 conduct alleged herein, COUNTY, BOARD, JACOBS, BECK and TISDALE acted with the
16 intent to injure PLAINTIFFS and intentionally misrepresented and concealed facts with the
17 intention of depriving PLAINTIFFS of their legal rights and to gain financially. As a result of the
18 foregoing, PLAINTIFFS are entitled to exemplary and punitive damages against COUNTY,
19 BOARD, JACOBS, BECK and TISDALE, joint and severally.

20 **SIXTH CAUSE OF ACTION**

21 **(Negligent Misrepresentation, in the Alternative, as Against COUNTY, BOARD, JACOBS,**
22 **BECK and TISDALE)**

23 83. PLAINTIFFS repeat and re-allege each and every allegation contained in
24 Paragraphs 1 through 82 of this Complaint and incorporate the same by reference, as though
25 fully set forth herein.

26 84. PLAINTIFFS are informed and believe and thereon allege that JACOBS knew or
27 should have known that no alternative higher density zoning option would be presented to the
28 COUNTY and/or BOARD for inclusion in the Mountain Empire Community Plan effecting the

1 SUBJECT PROPERTIES and that JACOBS and TISDALE knew or should have known that the
2 presence of a water study showing an adequate water supply to support the higher density zoning
3 would be irrelevant to their decision that the Mountain Empire Community Plan incorporate
4 solely low density zoning that would effectively create a constructive open space zoning
5 designation for the SUBJECT PROPERTIES.

6 85. Further, PLAINTIFFS are informed and believe and thereon allege that BECK
7 knew or should have known that EHL was incapable of purchasing the SUBJECT PROPERTIES
8 and that his representation to PLAINTIFFS that EHL would purchase them would prevent
9 PLAINTIFFS from selling to potential buyer SOLTEC.

10 86. PLAINTIFFS acted in justifiable reliance upon the truth of these representations
11 by refraining from requesting a general plan amendment, refraining from selling the SUBJECT
12 PROPERTIES and paying for an independent water study to determine whether there was an
13 adequate water supply to support development at the SUBJECT PROPERTIES, incurring in
14 excess of \$100,000 for the study.

15 87. PLAINTIFFS, at the time these representations were made, were ignorant of their
16 falsity and believed them to be true. PLAINTIFFS acted in justifiable reliance upon the truth of
17 the representations because PLAINTIFFS believed the COUNTY, BOARD, JACOBS, BECK,
18 and TISDALE were the administrative agents responsible for drafting, approving and
19 implementing the GPU and believed them to be working for the interest of the general public
20 rather than their own self interests.

21 88. As a direct and proximate result of COUNTY, BOARD, JACOBS, BECK and
22 TISDALE'S negligent misrepresentations and the facts herein alleged, PLAINTIFFS have
23 suffered general and special damages including, without limitation, emotional distress, expense
24 incurred, lost earnings, lost profits and pecuniary loss, in an amount according to proof, but not
25 less than \$100,000,000.

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1 **EIGHTH CAUSE OF ACTION**

2 **(Violation of Government Code Sections 87100, et seq. as against BECK and TISDALE)**

3 95. PLAINTIFFS repeat and re-allege each and every allegation contained in
4 Paragraphs 1 through 94, inclusive, of this Complaint and incorporates the same by reference, as
5 though fully set forth herein.

6 96. PLAINTIFFS are informed and believe and thereon allege BECK was and at all
7 times mentioned herein, the Chairman of the San Diego County Planning Commission
8 responsible for drafting and implementing the GPU. While in this position, BECK participated in
9 and influenced decisions as to the revisions of the prior general plan and development of the new
10 general plan.

11 97. Chairman is a public position of the local San Diego County government.

12 98. PLAINTIFFS are informed and believe and thereon allege BECK was and at all
13 times mentioned herein, an employee of EHL (San Diego Director of Projects and Programs),
14 serves on the Board of Directors of EHL and receives compensation from EHL, thus has a
15 financial interest in EHL.

16 99. PLAINTIFFS are informed and believe and thereon allege BECK never disclosed
17 his financial interest in EHL and never recused himself from any decision, vote or discussion on
18 the GPU.

19 100. PLAINTIFFS are informed and believe and thereon allege TISDALE was and at
20 all times mentioned herein, President of the Boulevard Planning Group, a quasi-governmental
21 agency responsible for developing and implementing the policies and goals of the Community
22 Plan for the Mountain Empire and the community of Boulevard which are incorporated into the
23 GPU.

24 101. President of the Boulevard Planning Group is a public position of the local San
25 Diego County government.

26 102. While serving as this public official, TISDALE dominated the Boulevard
27 Planning Group, ignoring requests from Boulevard residents to incorporate higher density land
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1 use designations into the Community Plan, failing to consider alternative groundwater resource
2 evaluations and intimidating residents of Boulevard into her vision of the Community Plan.

3 103. PLAINTIFFS are informed and believe and thereon allege TISDALE has and had
4 at all times mentioned herein, a real property interest in two parcels in Boulevard that would be
5 materially impacted by the implementation of her version of the Community Plan as
6 incorporated into the GPU.

7 104. PLAINTIFFS are informed and believe and thereon allege TISDALE never
8 disclosed this financial interest and never recused herself from any vote or discussion on the
9 Community Plan. To the contrary, TISDALE dominated all discussion of the Community Plan
10 and its implementation into the GPU with little regard for other members of the Boulevard
11 Planning Group or community members who voiced opposition to the same.

12 105. As a direct and proximate result of BECK'S and TISDALE'S desire to financially
13 gain from their positions as public officials, PLAINTIFFS have suffered general and special
14 damages including, without limitation, emotional distress, expense incurred, lost earnings, lost
15 profits and pecuniary loss, in an amount according to proof, but not less than \$100,000,000.

16 106. PLAINTIFFS are informed and believe and thereon allege that in engaging in the
17 conduct alleged herein, BECK and TISDALE acted with the intent to injure PLAINTIFFS and
18 intentionally misrepresented and concealed facts with the intention of depriving PLAINTIFFS of
19 their legal rights and to gain financially. As a result of the foregoing, PLAINTIFFS are entitled
20 to exemplary and punitive damages against BECK and TISDALE, joint and severally.

21 NINTH CAUSE OF ACTION

22 (Injunctive Relief as Against COUNTY, BOARD, JACOBS, BECK and TISDALE)

23 107. PLAINTIFFS repeat and re-allege each and every allegation contained in
24 Paragraphs 1 through 106 of this Complaint and incorporate the same by reference, as though
25 fully set forth herein.

26 108. PLAINTIFFS bring this action because PLAINTIFFS and the general public will
27 suffer irreparable injury if the COUNTY, BOARD, JACOBS, BECK and TISDALE'S actions
28 are not immediately set aside. The COUNTY has approved the GPU, radically devaluing the

1 SUBJECT PROPERTIES, run afoul of the State's Housing Element Law, Least Cost Zoning
2 Law and Political Reform Act and enriched BECK and TISDALE. If the COUNTY, BOARD,
3 JACOBS, BECK and TISDALE are not immediately enjoined and stayed from taking further
4 actions to carry out the GPU, pending resolution of this lawsuit on its merits, PLAINTIFFS and
5 the general public will be irreparably harmed and forced to incur further considerable damages.
6 The public interest warrants the issuance of a writ of mandate, and the preliminary and
7 permanent injunctions requested by PLAINTIFFS.

8 109. PLAINTIFFS have no adequate remedy at law for the injuries alleged herein in
9 that PLAINTIFFS have exhausted all administrative remedies, or to do so would be futile, and
10 damages cannot compensate for the threat that the GPU poses to PLAINTIFFS and the general
11 public.

12 110. PLAINTIFFS request that this Court issue a preliminary and permanent injunction
13 enjoining the COUNTY, BOARD, JACOBS, BECK and TISDALE from taking any action in
14 furtherance of the GPU until the COUNTY, BOARD, JACOBS, BECK and TISDALE has
15 complied with all applicable laws and regulations, including the Housing Element Law, Least
16 Cost Zoning Law and Political Reform Act.

17 **TENTH CAUSE OF ACTION**

18 **(Declaratory Relief as Against COUNTY, BOARD, JACOBS, BECK and TISDALE)**

19 111. PLAINTIFFS repeat and re-allege each and every allegation contained in
20 Paragraphs 1 through 110 of this Complaint and incorporate the same by reference, as though
21 fully set forth herein.

22 112. An actual controversy has arisen and now exists between PLAINTIFFS and
23 COUNTY, BOARD, JACOBS, BECK and TISDALE. PLAINTIFFS contend COUNTY,
24 BOARD, JACOBS, BECK and TISDALE have not complied with the provisions of the Planning
25 and Zoning Law, Housing Element Law, Least Cost Zoning Law and Political Reform Act in
26 drafting, approving and implementing the GPU.

27 113. PLAINTIFFS are informed and believe and on that basis allege that the
28 COUNTY, BOARD, JACOBS, BECK and TISDALE dispute the contentions of PLAINTIFFS.

1 114. PLAINTIFFS seek a judicial declaration and determination of the respective
2 rights and duties of COUNTY, BOARD, JACOBS, BECK and TISDALE to abide by its duties
3 and obligations to PLAINTIFFS and the general public.

4 115. A judicial declaration and determination is necessary and appropriate at this time
5 in order for PLAINTIFFS to ascertain their rights with respect to the duties and obligations of
6 COUNTY, BOARD, JACOBS, BECK and TISDALE in order to resolve all controversies
7 between the parties hereto regarding such rights and duties.

8 **ELEVENTH CAUSE OF ACTION**

9 **(Inverse Condemnation as Against COUNTY)**

10 116. PLAINTIFFS repeat and re-allege each and every allegation contained in
11 Paragraphs 1 through 115 of this Complaint and incorporate the same by reference, as though
12 fully set forth herein.

13 117. PLAINTIFFS purchased the SUBJECT PROPERTIES with the understanding
14 that they were zoned for one dwelling unit per four acres. Due diligence was conducted and
15 PLAINTIFFS were assured this was the land use designation for the SUBJECT PROPERTIES.
16 The ability to develop the property at that density was a prime factor in PLAINTIFFS acquiring
17 the SUBJECT PROPERTIES.

18 118. In down-zoning the SUBJECT PROPERTIES from one dwelling unit per acre to
19 one dwelling unit per eighty acres, COUNTY, BOARD, JACOBS, BECK and TISDALE did not
20 take into account the financial impact that radical down-zoning would have on PLAINTIFFS
21 who purchased the SUBJECT PROPERTIES as an investment opportunity under the impression
22 the higher density zoning would remain in place.

23 119. PLAINTIFFS are informed and believe and on that basis allege that the
24 COUNTY, BOARD, JACOBS, BECK and TISDALE purposefully conspired to down-zone the
25 SUBJECT PROPERTIES in an effort to create a constructive open space and deny PLAINTIFFS
26 the value of their SUBJECT PROPERTIES and investment thereon.

1 120. The new lower density zoning has completely de-valued PLAINTIFFS
2 investment in the SUBJECT PROPERTIES and divested PLAINTIFFS of any economically
3 viable use of the SUBJECT PROPERTIES.

4 121. At all relevant times during the course of drafting and approval of the GPU and
5 inclusive down-zoning, PLAINTIFFS attempted in good faith to work with COUNTY, BOARD,
6 JACOBS, BECK and TISDALE to seek a continuation of the old high density zoning or obtain
7 an amendment to the GPU that would allow the SUBJECT PROPERTIES to keep the higher
8 density zoning that made the SUBJECT PROPERTIES attractive for investment and
9 development when they were purchased.

10 122. COUNTY has thus far refused to accept any amendment to the GPU that would
11 allow a return to the previous higher density zoning of the SUBJECT PROPERTIES.

12 123. PLAINTIFFS have exhausted all of its administrative remedies and to the extent it
13 purportedly did not, any attempt would have been futile.

14 124. As a direct and proximate result of COUNTY, BOARD, JACOBS, BECK and
15 TISDALE'S coerced and unconstitutional taking of PLAINTIFFS' SUBJECT PROPERTIES
16 and BECK'S and TISDALE'S desire to financially gain from their positions as public officials,
17 PLAINTIFFS have suffered general and special damages including, without limitation,
18 emotional distress, expense incurred, lost earnings, lost profits and pecuniary loss, in an amount
19 according to proof, but not less than \$100,000,000.

20 **PRAYER FOR RELIEF**

21 **On The First Cause of Action**

- 22 1. For General and Special damages in an amount to be proven at trial, but no less
23 than \$100,000,000.
24 2. For a preliminary and permanent injunction enjoining COUNTY from any further
25 action under the GPU.
26 3. For a writ of mandate.

27 **On The Second Cause of Action**

- 28 4. For a writ of mandate.

1 **On The Third Cause of Action**

2 5. For general and special damages in an amount to be proven at trial, but no less
3 than \$100,000,000.

4 6. For a preliminary and permanent injunction enjoining COUNTY from any further
5 action under the GPU.

6 **On The Fourth Cause of Action**

7 7. For general and special damages in an amount to be proven at trial, but no less
8 than \$100,000,000.

9 8. For a preliminary and permanent injunction enjoining COUNTY from any further
10 action under the GPU.

11 **On The Fifth Cause of Action**

12 9. For general and special damages in an amount to be proven at trial, but no less
13 than \$100,000,000.

14 10. For punitive and exemplary damages.

15 **On The Sixth Cause of Action**

16 11. For general and special damages in an amount to be proven at trial, but no less
17 than \$100,000,000.

18 **On The Seventh Cause of Action**

19 12. For general and special damages in an amount to be proven at trial, but no less
20 than \$100,000,000.

21 **On The Eighth Cause of Action**

22 13. For general and special damages in an amount to be proven at trial, but no less
23 than \$100,000,000.

24 14. For punitive and exemplary damages.

25 **On The Ninth Cause of Action**

26 15. For a preliminary and permanent injunction enjoining COUNTY from any further
27 action under the GPU.

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