

1 JOHN G. McCLENDON (State Bar No. 145077)
LEIBOLD McCLENDON & MANN
2 A Professional Corporation
23422 Mill Creek Drive
3 Suite 105
Laguna Hills, California 92653
4 Telephone: (949) 457-6300
Facsimile: (949) 457-6305
5 eMail: john@CEQA.com

6 Attorneys for Petitioner
FOOTHILL COMMUNITIES COALITION
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ORANGE – COMPLEX CIVIL COURTROOM
10

11 FOOTHILL COMMUNITIES)
12 COALITION, an unincorporated)
association)

13 Petitioner,

14 v.

15 COUNTY OF ORANGE, ORANGE)
16 COUNTY BOARD OF SUPERVISORS,)
DOES 1 through 10, inclusive,)

17 Respondents,
18

19 ROMAN CATHOLIC DIOCESE OF)
20 ORANGE, KISCO SENIOR LIVING,)
LLC, and DOES 11 through 25, inclusive,)

21 Real Parties in Interest.
22

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
11/02/2011 at 02:08:00 PM
Clerk of the Superior Court
By Irma Cook, Deputy Clerk

**Case No. 30-2011-00467132-
CU-WM-CXC**

Reassigned to the Honorable
Judge Gail A. Andler

**PETITIONER’S OPENING BRIEF
IN SUPPORT OF PETITION FOR
WRIT OF MANDATE [CORRECTED]**

Date: January 23, 2012
Time: 9:00 a.m.
Dept: CX101

[ACTION FILED: April 14, 2011]

I.

INTRODUCTION

In this action Petitioner FOOTHILL COMMUNITIES COALITION (“Petitioner”) challenges the decision of respondents the COUNTY OF ORANGE (“County”) and ORANGE COUNTY BOARD OF SUPERVISORS (“BoS”) (collectively, “Respondent”) to give preferential land use entitlements to real parties in interest ROMAN CATHOLIC DIOCESE OF ORANGE (“RCDO”) and KISCO SENIOR LIVING, LLC (“Kisco”) (collectively, “RPI”). RPI wants to develop, as a faith-based mission of RCDO, “The Springs at Bethsaida,” a 153-dwelling unit senior living community consisting of a gigantic two-story main building with a central courtyard and basement common area/ parking level and 19 bungalows (the “Project”) on multiple parcels totaling 7.25 acres (the “Project site”) located north of 17th Street in the unincorporated community of North Tustin.

As the Court will see, at the time the main Project site parcel was donated to the Roman Catholic Church over 50 years ago, it obtained from the County, despite strong community opposition, permission to build a church and school on the donated parcel. When the Court of Appeal nixed that permission, the church and school were built elsewhere. Thereafter, the County made a “contract” with the residents of North Tustin to assure them that the area north of 17th Street would remain zoned for low-density, 10,000 square foot minimum lot size single-family homes. For three decades that contract held fast, unbroken by all sides – until this year.

Earlier this year the BoS broke the County’s contract with the North Tustin community by approving, again over strong opposition, RPI’s application to build the Project on RCDO’s property. However, in its haste to do so, the County violated specific mandates of the California Planning and Zoning Law (Gov. Code §§ 65000 *et seq.*: “PZL”), Subdivision Map Act (Gov. Code §§ 66410 *et seq.*: “SMA”) California Environmental Quality Act (Pub. Resources Code §§ 21000 *et seq.*: “CEQA”), and Guidelines for Implementation of CEQA (Tit. 14, Cal. Code Regs., §§ 15000 *et seq.*: “Guidelines”).

Petitioner has brought this action in order to compel Respondent to comply with those specific mandates. As will be shown, the County’s discrimination against an entire community by spot zoning RCDO’s property to accommodate the Project is illegal and cannot stand.

1 II.

2 **FACTUAL BACKGROUND**

3 The controversy at the center of this action is not of recent vintage. To the contrary, it
4 has been episodically erupting in the North Tustin community for over half a century. As history
5 shows, the conflict at the heart of this latest dispute is the same one that was at the heart of the
6 first dispute: RCDO’s desire to develop a donated property in a manner that violates the
7 community’s low-density single-family residential integrity.

8 **A. The 1950s: Origins of the Project’s Long History of Controversy**

9 On August 8, 1956, the home and property of John and Mary Prescott was gifted to the
10 Roman Catholic Archbishop of Los Angeles. (AR F/3806:24-26, 3854:15-16; G/3872.) The
11 reason why they gifted their property (the “Church Parcel”) was so that a church and school
12 named after St. Cecilia could be built on it. (*Id.*; F/3841:25-26.) At that time the Church Parcel
13 was general plan designated and zoned “100-E4 Small Estates District.” (*Tustin Heights Assn.*
14 *v. Board of Supervisors of Orange County* (1959) 170 Cal.App.2d 619, 622-623 [“*Tustin*
15 *Heights*”].)

16 The following year, the Archbishop petitioned the County’s Planning Commission for a
17 conditional use permit (“CUP”) to build St. Cecilia’s Church and elementary school on the
18 Church Parcel. (*Id.*) However, the Planning Commission denied the Archbishop’s application
19 on the grounds that “(1) ‘The site is not large enough to take care of students under customary
20 state standards and also provide adequate parking space’; (2) that ‘Material detriment or injury
21 to the neighborhood will result from issuance of this permit.’” (*Id.*) The Archbishop appealed
22 the denial to the BoS, and after amending his application to add a second parcel to the Church
23 Parcel, on June 5, 1957, the BoS authorized issuance of the CUP. (*Id.*)

24 Tustin Heights Association sought a writ of mandate from this Court commanding the
25 BoS to vacate and set aside its order granting the CUP and that any building permits issued be
26 revoked and rendered null and void. (*Id.*, at 623-624.) This Court sustained a demurrer to the
27 association’s second amended petition without leave to amend, whereupon the association
28 appealed. (*Id.*) On May 25, 1959, the Fourth District Court of Appeal published its *Tustin*

1 *Heights* opinion, reversing this Court and finding that the BoS violated the County’s own laws.
2 (*Id.*, at 628-629 & 637.) The Supreme Court denied the County’s and Archbishop’s petitions
3 for review on July 22, 1959. (*Id.*, at 637.)

4 **B. The 1960s and 1970s: RCDO Gives Up and Developers See Big Profits**

5 After its loss in court, and recognizing the community’s strong opposition to a church and
6 school on the Church Parcel, the Archdiocese of Los Angeles reached the conclusion that the
7 Church Parcel was not suitable for a church. (AR F/3802:20-22, 3803:23-26, 3807:16-17.)
8 Consequently, it abandoned its development plans for the Church Parcel, purchased another site
9 to the south in the City of Tustin, and on that site built St. Cecilia Catholic Church. (*Id.*; AR
10 F/3842:1-4.)

11 Throughout the 1960s, the development of single-family residences in the North Tustin
12 community progressed to the point where, with the exception of a few vacant parcels, the
13 community became largely “built-out,” and by 1970, the Church Property was completely
14 surrounded by such development (AR H/9006, 9011, 9029.) However, the community’s rural
15 residential character began facing a new danger. (AR F/3823:3-5, 3826:8-11.) Seeing an
16 opportunity to turn large profits by rezoning low-density residential lots to multi-family or
17 commercial uses, land speculators began bombarding the community with zone change requests.
18 (AR G/6438, 6441-6442.) These attacks took two forms. For North Tustin properties along the
19 boundary of the City of Tustin, individual parcels would annex into that city and then rezone at
20 higher densities for residential or commercial uses. (AR G/6445.) For other properties,
21 speculators filed applications with the County, causing County staff to spend inordinate time
22 processing all of the zone change requests. (AR G/6438.) For example, in the early 1970s, an
23 application filed by the Prescott Family Trust to convert 6.16 acres it owned at the northwest
24 corner of 17th Street and Newport Avenue from low-density residential to “CN” neighborhood
25 commercial was denied. (AR F/3805:15-21, H/9031-9032.)

26 In the 1970s, the North Tustin community did not win every battle to preserve its low-
27 density residential character. (AR H/9031-9032.) However, it did mostly succeed in limiting
28 rezonings of parcels to higher-density residential to those south of 17th Street and restricting

1 commercial development to a scant 1.8 acres at the community’s extreme southwest corner,
2 south of Newport Avenue. (*Id.*, AR H/9026.)

3 **C. The 1980s: a Land Use “Contract” to End the Spot Zoning Battles**

4 Although further development in the 1970s left the North Tustin community “built out”
5 with the exception of a few parcels, the community’s character was still being threatened by
6 incremental “spot zoning”^{1/} owing to the fact that some property owners wanted their properties
7 rezoned for more intense development. (AR H/9006, 9026.) Both the County and the
8 community’s residents agreed that a solution was needed to address the constant piecemeal
9 assaults on their low-density neighborhood. That solution came on June 16, 1981, when the BoS
10 approved Resolution No. 81-933, authorizing the County’s Environmental Management Agency
11 (EMA) to prepare a specific plan for the North Tustin community in the general vicinity of 17th
12 Street and Newport Avenue. (AR H/8995.) The idea behind creating a specific plan was to
13 finally “put an end to spot zoning in the North Tustin area.” (AR G/6444.) An extensive public

14 _____
15 ¹ Although not defined in the PZL, throughout the United States “spot zoning” is
uniformly frowned upon as poor land use planning smacking of favoritism:

16 “**spot zoning** *n.* a provision in a general plan which benefits a single parcel of
17 land by creating a zone for use just for that parcel and different from the
18 surrounding properties in the area. Example: in a residential neighborhood zoned
for single family dwellings with a minimum of 10,000 square feet, the corner
service station property is zoned commercial. Spot zoning is not favored, since
it smacks of favoritism and usually annoys neighbors.”

19 – www.legal-dictionary/thefreedictionary.com/Spot+Zoning

20 “Spot zoning is a provision in a general zoning plan which benefits a single parcel
21 of land by creating an allowed use for that parcel that is not allowed for the
22 surrounding properties in the area. Because of implications of favoritism, spot
zoning is not favored practice.” – www.definitions.uslegal.com/s/spot-zoning/

23 “*spot zoning* : the illegal singling out of a small parcel of land within the limits of
24 an area zoned for particular uses and permitting other uses for that parcel for the
special benefit of its owners and to the detriment of the other owners in the area
and not as a part of a scheme to benefit the entire area.” – www.m-w.com

25 “**Spot zoning** is the application of zoning to a specific parcel of land within a
26 larger zoned area when the rezoning is usually at odds with a city's master plan
and current zoning restrictions. The rezoning may be for the benefit of a
27 particular owner, and at odds with pre-existing adjacent property owners. The
Standard State Zoning Enabling Act states "all such regulations shall be uniform
28 for each class or kind of building throughout each district." Courts may rule
certain instances of spot zoning as illegal.” – www.wikipedia.org

1 participation program was conducted during the course of specific plan preparation that included
2 formation of the North Tustin Specific Plan Advisory Committee (NTSPAC) comprised of
3 “members appointed by the [BoS] and intended to represent a cross-section of interests within
4 the North Tustin community,” including Douglass Prescott, representing his family’s interests.
5 (AR F/3809:15-21; G/6439:8-9, 6442; H/8988, 8996, 9007.)

6 In a period of just over a year the NTSPAC met twenty times to identify and provide
7 comments on issues needing to be addressed in the specific plan, and the meeting were often
8 contentious. (*Id.*) “When efforts to draft a plan acceptable to all factions within the committee
9 proved unsuccessful, EMA conducted a public meeting before the County’s Planning
10 Commission in March of 1982, at which all of the land use alternatives under consideration were
11 presented.” (AR H/9007.) Two public meetings were also held in the community, one to review
12 land use options, the other to provide residents an opportunity to comment on the draft version
13 of the specific plan. (*Id.*)

14 The result of these efforts was the North Tustin Specific Plan (NTSP), a work of
15 remarkable detail and analysis providing both a comprehensive perspective of land use trends
16 needed to address the community’s land use conflicts as well as a blueprint for final build out
17 of the community in a manner compatible with its character. (AR H/8986 *ff.*) In preparing the
18 NTSP, EMA identified 101 parcels totaling 57.9 acres that were experiencing pressure for
19 change and combined them into 13 parcel groups called “detailed review parcels” for further
20 study. (AR H/9037, 9039-9040.) The NTSP created a “Parcel Consolidation Incentive
21 Program” and applied it to two detailed review parcels (4 and part of 5) north of 17th Street, and
22 three (7, 11 and 13) south of 17th Street, finding the program to be “desired at the specified
23 locations in order to reduce the number of private drives with direct access to arterials and to
24 enable use of modern site development and design techniques.” (AR H/9000, 9077-9780, 9088.)
25 Under the program, the five detailed review parcels included in the Consolidation Incentive
26 District overlay could receive density incentives of up to 9.5 residential dwelling units per acre
27 by merging into a single parcel. (*Id.*; AR H/9189-9191.)

28

1 The NTSP was a compromise, and none of the North Tustin community’s factions got
2 everything they wanted. (AR G/6439:19-26; 6442, 6444.) However, community residents
3 obtained one major concession. Both the Church Parcel, which was one of three parcels in
4 “Design Review Parcel 2,” and the Prescott family’s large lot at the northwest corner of 17th
5 Street and Newport Avenue, which the NTSP identified as two of the largest areas subject to
6 pressures for change, retained their existing detached single-family (RSF) zoning of 2-3.5
7 dwelling units per acre—lots large enough for horses. (AR H/9019, 9021, 9023, 9026, 9038-
8 9040, 9045-9046, 9077, 9082-9083, 9085, 9174-9176.)

9 By 1976 the Church Parcel was controlled by the newly-formed RCDO, and St. Cecilia
10 Church and school was up and running in the City of Tustin. (AR F/3802:20-22, 3806:21-22,
11 3807:15-17, 3842:1-5.) Nevertheless, throughout the NTSP process RCDO made *no* objection
12 to the Church Parcel retaining its RSF zoning, and in fact stated publicly that it was *satisfied*
13 with that zoning, its only concern being that the NTSP might prevent development of a church
14 on the Church Parcel. (AR F/3803:22-3806:10; G/6439:8-18; H/8763, 8766, 9077.) In the end,
15 however, recognizing that existing churches and schools in the community “maintain a low
16 profile character with ample landscaped area for screening and buffering,” the NTSP specifically
17 permitted, by CUP, “[c]hurches, temples and other places of worship (minimum building site
18 area - 40,000 square feet)” and “[e]ducational institutions.” (AR H/9022, 9175.)^{2/}

19 On July 14, August 16, and September 14, 1982, the County’s Planning Commission
20 considered the NTSP along with the EIR prepared for it and unanimously recommended that the
21 BoS approve the NTSP and certify the EIR. (AR H/8759-8769.) On September 29, 1982, the
22 BoS unanimously approved, via the adoption of Ordinance No. 3348, the NTSP as the
23 controlling land use planning document for the North Tustin community, superseding all
24

25 ² For years many wondered why, after losing its court battle to put St. Cecilia’s on
26 the Church Property and putting it elsewhere, RCDO did not use the NTSP process to push for
27 a permitted land use for the Church Property *besides* a church. The answer was revealed earlier
28 this year when RCDO conceded that its motive for retaining the existing RSF zoning was to not
offend the Prescott family who had originally donated the Church Property to build a church on
it, despite RCDO knowing that it was not suitable for that purpose. (AR F/3802:20-3807:2.)
According to RCDO, the Project is intended to fulfill the religious “mission of the church.” (*Id.*)

1 previous land use regulation in the community. (AR H/8757-8758, 8988.) In connection with
2 its approval of the NTSP, the BoS also approved Resolution No. 82-1469, certifying the program
3 EIR [State Clearinghouse No. 82070201] for the NTSP. (AR H/8751-8756.) Thereafter, the
4 owner of “Detailed Review Parcel 1” filed an action challenging the NTSP and its EIR that
5 resulted in a published decision vindicating the NTSP and noting County staff’s statement that
6 the area north of 17th Street was “considered well suited to remain medium/low density” and
7 assurance that “more intense uses will not migrate further north [from the intersection of 17 and
8 Newport] since the uses are established.” (AR H/9039-9043; *Mitchell v. County of Orange*
9 [*“Mitchell”*] (1985) 165 Cal.App.3d 1185, 1188.) On April 30, 1986, the BoS approved, via the
10 adoption of Ordinance No. 3586, an amendment to the NTSP. (AR H/8988.)

11 **D. The 1990s: Land Use Stability and a Failed Attempt at Spot Zoning**

12 The NTSP “stood the test of time” and resulted in nearly two decades of land use peace
13 in North Tustin. (AR G/6442, 6444-6445.) In the late 1990s, the Prescotts made another run
14 at spot zoning their 6-acre “Detailed Review Parcel 3” property at the northwest corner of 17th
15 Street and Newport Avenue, hoping to rezone it for commercial development; however, thanks
16 to the NTSP, the community successfully thwarted them. (AR F/3824:12-15; H/9046-9047.)
17 After this, the community’s land use equilibrium held for another decade, with residents viewing
18 the NTSP as a contract protecting the safety of their community, “a very basic understanding and
19 bond with the County ... to preserve the low density character of the Specific Plan area adjoining
20 Newport Avenue north of 17th Street.” (AR B/730; F/3809:25-3810:4, 3821:7-9; G/6445.)

21 **E. 2009: RCDO Proposes Spot Zoning the Church Property to Multifamily**

22 Although RCDO had participated in the creation of the NTSP and had not challenged its
23 retention of the RSF zoning for the Church Parcel, it nevertheless continued to hold the Church
24 Parcel “for a future use that would further the objectives and mission of the Diocese.” (AR
25 B/389.) In 2003, RCDO “identified the need for a centrally located faith-based senior living
26 community to serve the 56 parishes in Orange County.” (*Id.*) Believing that such a facility
27 “would be more complimentary to the surrounding neighborhood than a church and school while
28 still fulfilling the overall mission of the Diocese,” in 2006, RCDO retained Kisco “to assist in

1 the design and implementation of an independent and assisted living community” on the Church
2 Parcel. (*Id.*) By letter dated February 12, 2008, Mary Prescott advised the County that her
3 family’s trust still retained title to several small parcels adjacent to the Church Parcel, that the
4 trust supported RCDO’s plan to develop all of the parcels “as a senior living facility for retired
5 clergy and others,” and that RCDO could submit applications for a zone change and various
6 approvals to the County without referencing the trust, and she assured the County that the trust
7 would gift its remaining parcels to RCDO contingent upon RCDO obtaining all entitlements for
8 the Project and building the Project on all of the parcels. (AR G/3942-3943.) On January 15,
9 2009, RPIs submitted application for PA090004 (zone change) and on April 15, 2009, two large
10 binders of information. (G/5173 *ff.*)

11 On July 20, 2009, the County issued a “Public Notice” publicizing its intent to prepare
12 a draft EIR and conduct a scoping meeting for the Project. (AR B/219.) The notice – called a
13 “Notice of Preparation” (NOP) in CEQA – described the Project as a 153-unit senior living
14 community comprised of 98 independent living units and 55 assisted living units housed in 19
15 bungalows plus a fortress-like two-story main building nearly the length of a football field. (AR
16 C/220-223, 226; F/3857:25-28.) The NOP erroneously identified the six existing parcels
17 comprising the Project site as “an undeveloped parcel [singular] which fronts Newport Avenue”
18 within the NTSP area and noted that the Project would require a Zone Change and Specific Plan
19 Amendment to modify the NTSP to change the Project site’s land use designation from
20 Residential Single Family (RSF) to Residential Multiple Family (RMF). (*Id.*)

21 The release of the NOP induced a huge outcry from the community, with many protesting
22 a rezoning of the half dozen parcels constituting the Project site to RMF, and one of Petitioner’s
23 members, the Foothill Communities Association (“FCA”) submitting a letter objecting to the
24 proposed return to *ad hoc* spot zoning and attaching (among other things) a copy of the 1982
25 NTSP EIR with its discussion of how the NTSP was intended to end it. (AR C/714 *ff.*) In fact,
26 opposition to the Project was monolithic. A survey of the 96 properties within 300 feet of the
27 Project site received an 80% response rate, with 97% of respondents opposing the Project. (AR
28 C/729-730.) Over 1,100 petitions protesting the Project were submitted to the County –

1 remarkable considering the NTSP’s “maximum allowable development conditions” sanctioned
2 just 1,450-1,537 dwelling units within the NTSP area. (AR G/4012-5164; H/9081-9082.)

3 On May 3, 2010, the County released for a 45-day public review period the draft EIR for
4 the Project, mailing notice of its availability to numerous interested parties, including the
5 Honorable Justice John Trotter (ret.) and his wife. (AR C/285 *ff.*; 1478-1484.) However, the
6 draft EIR’s Project description was a confusing mess. The NOP had stated that the Project site
7 would be rezoned MRF, and the draft EIR’s “Executive Summary” and “Growth-Inducing
8 Impacts” sections affirmed this. (AR C/307, 664.) However, buried elsewhere in the draft EIR
9 was the claim that the County was *instead* proposing to create a completely “new category” of
10 zoning – Senior Residential Housing (SRH) – and apply that new category to the Project site.
11 (AR C/342, 365.) Draft language of the new SRH Category was included in “Appendix L” of
12 the EIR and permitted a density, including bonus, of over 21 units per acre – an increase of up
13 to 600% over the density permitted by the NTSP. (*Id.*, C/1456-1460; E/3264.)

14 On June 30, 2010, RPI sought approval of the Project from the North Tustin Advisory
15 Committee. (AR C/1494.) To assist the Committee in its decision, FCA submitted 262 pages
16 of materials supporting opposition to the Project, including a Power Point noting that over 2,500
17 people had signed petitions opposing it, and a 134-page letter from a CEQA and PZL specialist
18 noting a plethora of problems with the EIR and the proposed NTSP amendment – including the
19 draft EIR’s confusing Project description. (AR G/6025-6286.) The reporter’s transcript for the
20 hearing [AR E/2873 *ff.*] reveals that, after RPI’s representatives presented the Project, numerous
21 residents expressed opposition to it, including Justice Trotter, a “very active practicing Catholic”
22 who criticized the EIR and noted the Project’s dangerous precedential effect for the community.
23 (AR E/2954:3-2956:18.) At the close of the meeting the Committee voted to deny Project
24 approval. (AR E/3015-3016.)

25 After discovering that it had omitted an entire section of the draft EIR, on July 13, 2010,
26 the County released for a 30-day public review period Section 5-14 [“Global Climate Change”]
27 of the draft EIR. (AR C/1495 *ff.*) However, it did not correct the draft EIR’s internally
28 inconsistent Project description. (*Id.*) Then, just before New Years Eve, the County released

1 the final EIR for the Project. (AR C/1616*ff.*; E/3268.) This final EIR included over 100 pages
2 of single-spaced comments to Petitioner’s comments on the draft EIR plus three newly-prepared
3 appendices, including (A) the identification and analysis of a new “Land Swap Alternative” to
4 the Project; (B) a 50-page Supplemental Traffic Analysis; and (C) a 242-page Preliminary Water
5 Quality Management Plan for the Project. (AR C/2265-2330; 2340-2580; E/3268.) Despite
6 adding all of this significant new information to the EIR, the County declined to recirculate it
7 for public review, and Supervisor Campbell and County staff rejected Petitioner’s January 3,
8 2011, plea for more time to review and digest the more than 500 pages of new information,
9 apparently believing that a short continuance “would violate CEQA.” (AR E/3268-3270.)

10 By letter dated January 11, 2011, and addressed to the County’s Planning Commission,
11 FCA’s counsel noted numerous legal problems with the Project and its EIR and complained
12 about the County’s rushed and haphazard CEQA process for the Project. (*Id.*) The following
13 day the Planning Commission conducted a nearly 7-hour-long public hearing on the Project and
14 its EIR that about 400 people attended.^{3/} (AR G/6305.) At the close of the hearing, the Planning
15 Commission recommended that the BoS approve the Project.

16 **F. The BoS Reviews the Project, Certifies the EIR and Approves the Project**

17 On March 4, 2011, the County caused notice to be published of a BoS public hearing on
18 the Project. (AR C/2626-2631.) Although the Project no longer involved rezoning of the Project
19 site from one *existing* zoning category (RSF) to another *existing* category (RMF) but now
20 involved creating an entirely *new* zoning category (SRH) applicable to the *entire* NTSP area, the
21 County only mailed notice of the hearing to property owners within 300 feet of the Project site.
22 (*Id.*; AR E/2679.) Moreover, contrary to PZL requirements, none of the notices stated what the
23 Planning Commission’s recommendation to the BoS on the Project had been. (*Id.*)

24 By letter to the BoS dated March 11, 2011, FCA’s counsel again explained in detail the
25 Project’s numerous legal infirmities and urged the BoS not to approve the Project’s entitlements
26 or certify the EIR, and on March 13, 2011, FCA’s president submitted declarations from original

27 ³ RCDO had been mobilizing support from its parishoners throughout the County
28 to overwhelm the local North Tustin community’s opposition to the Project. (AR G/5881.)

1 NTSPAC members, a survey showing that 98% of residents within 300 feet of the Project site
2 opposed the Project, as well as petitions from 107 residents opposing the Project. (AR G/6407-
3 6434, 6435-6729.) Thereafter, on March 15, 2011, the Board conducted a public hearing on the
4 Project. By this time well over *fifteen hundred* North Tustin residents had petitioned Supervisor
5 Campbell to express their opposition to the spot zoning of the Project site, including nearly four
6 hundred seniors. (AR G/6801-8425.)

7 RPI's representative made a surprising admission at the public hearing. (AR F/3777-
8 3785.) The EIR had stated that the Project's objective was "to fulfill a faith-based mission of
9 [RCDO]," and RPI's representative explained that "[i]t is the mission of the church in Orange
10 to provide for the elderly, lay faithful that have been faithful to the church their entire life. Also
11 to provide for ... clergy retirement in the same location." (AR F/3806:16-3807:2.) However,
12 under questioning she conceded that the Project would actually welcome seniors of all faiths.⁴
13 (AR F/3807:21-23.)

14 FCA's counsel next addressed the BoS, recounting the history of the NTSP, how it
15 limited development north of 17th Street to single-family residential, and how the community felt
16 that RPI's proposal to spot-zone the Church Parcel along with four or five other Powell family
17 parcels would break the NTSP's "contract to their community." (AR F/3808:1-3814:26.) He
18 then noted how the new SRH zoning category was completely new and untested; increasing
19 density up to 600%; the EIR's shifting Project description; confusion over the merger of the
20 Church Parcel with the Powell family parcels; significant new information added to the EIR just
21 before New Years Eve; County staff's improper dismissal of the new land swap alternative; and
22 FCA's desire "to see this project as a one-story project." (*Id.*)

23 Seventy-two people asked to address the BoS, and after RPI's representatives and counsel
24 proffered rebuttals the public hearing was closed. (AR F/381512-15, 3850:1-3852:27.) As the
25 moderator of the hearing, Supervisor Campbell spoke first, noting his regret that RPI and the

26 ⁴ It is unclear why RCDO made this change. One possibility may be that it took to
27 heart FCA's consultant's caution that the Project violated California's Fair Housing Act. (AR
28 G/6116-6117.) Another is that RCDO was simply starting to think like the 1970s spot-zoning
developers and looking for another way to turn a profit off the Church Property besides farming.

1 North Tustin community were unable to reach settlement, and then moved for approval of the
2 Project with certain changes. (AR F/3853:7-3856:16.) The transcript of the hearing shows that
3 a majority of the BoS was displeased with the Project and County staff’s handling of it. While
4 expressing deference to the fact that the Project was in Supervisor Campbell’s district Supervisor
5 Nelson ridiculed the claim that the Project was not spot zoning and strongly chastised County
6 staff:

7 “People have talked about whether how this is or isn’t good for the
8 neighborhood. The one thing that just isn’t right here is this is not
9 the process we should be going through. There was a comment
10 made earlier and I just agree with it, it has nothing to do with this
11 district and other districts, but countywide, if there is a specific plan
12 anywhere and it should be changed, it should be changed just as a
13 pure academic exercise to change the specific plan. To come before
14 us with one owner, one request and a specific project, that’s exactly
15 what you’d want to avoid. You got a bunch of property owners,
16 you’ve got an applicant, you’ve got sort of all these groups that are
17 informed. What a chaotic way to go through this. That’s why you
18 have specific plans. If you are going to amend them, you don’t
19 amend them on a one lot theory. I’m just very frustrated by what’s
20 before us. I defer to Supervisor Campbell as to what’s best for his
21 district. I don’t have any qualms about that nor would I inject
22 myself into that. But the process of the county zoning property in
23 this fashion is not something I support. I don’t think we should
24 have done it this way. It appears by the record in front of me that
25 we participated and kind of facilitated going down that way.”

17 (AR F/3856:19-3857:18; italics added.) Supervisor Bates empathized with the community’s
18 concern over “the mass and density that’s going to come into your neighborhood,” noting that
19 the Project’s main building “does look like a fortress ... 12 yards short of a football field.” (AR
20 F/3857:20-28.) After RPI’s representative said her clients were willing to agree to a small height
21 reduction, Supervisor Bates stated, “So I just think it needs a little more thoughtful work on that
22 front before I’m prepared to support it today. ... I mean, you could look at the zoning issues and
23 those are real.” (AR F/3859:3-7.) Supervisor Nguyen expressed her agreement with Supervisor
24 Nelson’s comments, noting the difficulty of having such a project “right next to individual’s
25 home[s]” and wishing that the Project issues could have been dealt with at the Planning
26 Commission via a compromise between the factions. (AR F/3860:22-3861:12.) Nevertheless,
27 she announced that she would be supporting the Project on account of her fealty to “district
28 prerogative” since it was in Supervisor Campbell’s district and he supported the Project. (*Id.*)

1 In his comments, Supervisor Moorlach did not express support or opposition to the
2 Project, simply noting his concurrence with Supervisor Campbell’s “platform of supporting
3 property rights.” (AR F/3861:14-3862:5.) After RPI’s representatives agreed to reduce the
4 height of the main building by five feet, by a vote of 4-1 the BoS adopted Ordinance 11-008 and
5 Resolutions No. 11-038 and 11-039, approving the Project and certifying the EIR, with
6 Supervisor Nelson casting the no vote. (AR B/7-141; F/3862:8-3867:22, 3869-3871.) On
7 March 17, 2011, the County filed its Notice of Determination for the Project, and on April 14,
8 2011, Petitioner filed this action. (AR A/1-6.)

9 **III.**

10 **APPLICABLE STANDARDS OF REVIEW**

11 As noted at the outset of the *Petition* [¶¶ 2-5], Petitioner contends that Respondents
12 violated the PZL, CEQA and the CEQA Guidelines when it approved the Project.

13 **A. The PZL Standard of Review**

14 The adoption or amendment of specific plans and zoning ordinances are *normally*
15 legislative acts judicially reviewed pursuant to Code of Civil Procedure section 1085.^{5/}
16 (*Mitchell, supra*, 211 Cal.App.3d at 1190-1191; Gov. Code § 65301.5 & 65860(b); *Arnel*
17 *Development Co. v. City of Costa Mesa* (1980) 28 Cal.3d 511, 522.) Thus, courts *usually* decide
18 actions challenging those acts under the section 1085 standard of review: whether the agency’s
19 action was “arbitrary, capricious, or entirely lacking in evidentiary support” (*City of Livermore*
20 *v. Local Agency Formation Commission* (1986) 184 Cal.App.3d 531), or “whether [the agency]
21 has failed to follow the procedure and give the notices required by law.” (*Pitts v. Perluss* (1962)
22 58 Cal.2d 824, 833; *Lewin v. St. Joseph Hospital of Orange* (1978) 82 Cal.App.3d 368, 383.)

23 However, case law explains that, in actions such as this one challenging a spot zoning,^{6/}
24 this standard does *not* apply. The reason why is because, regardless of whether it hurts or favors,

25 _____
26 ⁵ The granting of a CUP is reviewed under Code of Civil Procedure section 1094.5.
(*Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1525.)

27 ⁶ The County did not dispute that approval of the Project’s entitlements amounted
28 to spot zoning, arguing instead that such approval did not constitute “illegal spot zoning.” (AR
E/2689-2690.)

1 spot zoning constitutes “[a] blatant example of discriminatory land use legislation.” (*Wilkins v.*
2 *City of San Bernardino* (1946) 29 Cal.2d 332, 340; *Ross v. City of Yorba Linda* (1991) 1
3 Cal.App.4th 954, 960; *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 900 [“even in the
4 case of zoning regulations, to which courts have been traditionally deferential, a more rigorous
5 form of judicial review, fueled by a suspicion of legislative motive, has been employed when
6 the regulation applies uniquely to a single property owner—so-called “spot zoning.”].)
7 Moreover, in the specific context of the North Tustin community, the *Tustin Heights* court noted
8 that its residents would be subject to special damages and denied equal protection under the law
9 if they could not seek judicial redress when the County excepted one property owner from
10 community land use laws enacted “to protect the integrity and character of their property.”
11 (*Tustin Heights* at 636-637.) Thus, this Court owes no deference to the BoS’s legislative actions
12 spot zoning the Project site. Similarly, in reviewing the County’s administrative action under the
13 PZL—the issuance of a CUP for the Project—this Court is not beholden to the BoS’s conclusions
14 and exercises its independent judgment. (*Goat Hill Tavern, supra*, 6 Cal.App.4th at 1525-1532.)

15 **B. The CEQA Standard of Review**

16 The CEQA issues raised in this action concern Respondents’ failure to comply with
17 CEQA and the CEQA Guidelines. In its seminal CEQA case, *Laurel Heights Improvement*
18 *Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 390-392 [“*Laurel*
19 *Heights I*”], the California Supreme Court provided a concise overview of how statutory
20 provisions in CEQA should be interpreted by California courts:

21 “The foremost principle under CEQA is that the Legislature
22 intended the act ‘to be interpreted in such manner as to afford the
23 fullest possible protection to the environment within the reasonable
24 scope of the statutory language.’ [Citation.] More than a decade
ago, we observed that, ‘It is of course, too late to argue for a
grudging, miserly reading of CEQA.’ [Citation.]”

25 (*See also Save Our Peninsula Committee v. Monterey County Bd. Of Supervisors* (2001)
26 87 Cal.App.4th 99, 118 [“we must ensure strict compliance with the procedures and mandates
27 of [CEQA].”].) CEQA section 21168 states that the standard of review to be employed by the
28 Court in this action challenging Respondents’ noncompliance with CEQA:

1 “(b) The inquiry in such a case shall extend to the questions whether
2 the respondent has proceeded without, or in excess of jurisdiction;
3 whether there was a fair trial; and whether there was any prejudicial
4 abuse of discretion. Abuse of discretion is established if the
respondent has not proceeded in the manner required by law, the
order or decision is not supported by the findings, or the findings
are not supported by the evidence.”

5 Notably, challenges to a lead agency’s failure to proceed in the manner required by CEQA are
6 subject to a less deferential standard than challenges to a lead agency’s substantive factual
7 conclusions. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*
8 (2007) 40 Cal.4th 412, 435 [“*Vineyard*”].) In reviewing these claims, the court must “determine
9 de novo whether the agency has employed the correct procedures, ‘scrupulously enforc[ing] all
10 legislatively mandated CEQA requirements.’” (*Id.*) This less deferential standard of review is
11 applied to “questions of interpretation or application of the requirements of CEQA” because
12 such questions “are matters of law.” (*County of San Diego v. Grossmont-Cuyamaca Community*
13 *College Dist.* (2006) 141 Cal.App.4th 86, 96 [citing *Save Our Peninsula Committee v. Monterey*
14 *Board of Supervisors*, (2001) 87 Cal.App.4th 99, 118]; *see also Galante Vineyards v. Monterey*
15 *Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117 [“the interpretation and
16 applicability of a statute is a question of law which requires an independent determination by the
17 reviewing court.”].)

18 Examples of challenges that are properly analyzed under the “failure to proceed in the
19 manner required by law” standard include the interpretation of CEQA requirements, such as
20 whether a particular agency action is a “project” for CEQA purposes or whether a lead agency
21 complied with CEQA requirements regarding the timing of EIR preparation. (*Save Tara v. City*
22 *of West Hollywood* (2008) 45 Cal.4th 116, 131.) Other examples include an EIR’s failure to
23 provide certain information mandated by CEQA and include that information in its
24 environmental analysis [*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236];
25 informational deficiencies of cumulative impacts analysis that preclude an accurate accounting
26 of air quality impacts [*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124
27 Cal.App.4th 1184, 1220-21]; and the lead agency’s incorrect application of a legal standard that
28 omitted “meaningful information and analysis of cumulative effects and significant environ-

1 mental effects.” (*East Peninsula Ed. Council v. Palos Verdes Peninsula Unified Sch. Dist.*
2 (1989) 210 Cal.App.3d 155, 165, 174.)

3 The substantial evidence standard of review applies only to factual disputes, such as
4 whether to recirculate an EIR. (*Vineyard, supra*, 40 Cal. 4th at 447.) While a court reviewing
5 an agency’s decisions under CEQA does not pass on the correctness of an EIR’s environmental
6 conclusions, it must determine whether those conclusions are supported by substantial evidence,
7 which includes “facts, reasonable assumptions predicated upon facts, and expert opinion
8 supported by facts” and excludes “[a]rgument, speculation, unsubstantiated opinion or narrative,
9 [and] evidence which is clearly inaccurate or erroneous...” (CEQA §21082.2(c); *see also*
10 *Californians for Alternatives to Toxics v. Dept. of Food & Agric.* (2005) 136 Cal.App.4th 1, 17
11 [“conclusory statements do not fit the CEQA bill.”].)

12 **IV.**
13 **ARGUMENT**

14 No one disputes the fact that the PZL, SMA and CEQA are very complex bodies of law.
15 However, it is not necessary for the Court to master the nuances of the PZL, SMA and CEQA
16 in order render judgment in this action. This is so because most of the violations of the PZL,
17 SMA and CEQA the County committed in approving the Project are straightforward and
18 obvious: the County simply failed to follow the procedures and give the notices required by law.

19 **A. The County Violated the PZL**

20 1. An Overview of General Plans and Specific Plans

21 State laws limiting local land use police powers have historically been minimal. For
22 example, while State statutes providing for the adoption of general plans have been around since
23 1927, they were permissive in nature, and a general plan was viewed as merely ““an idealistic
24 statement of policy which might or might not be carried out” [citation omitted]; it was “in reality
25 an interesting study without much direct relevance to day-to-day activity.”” (*City of Santa Ana*
26 *v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 532.)

27 However, in 1971, the Legislature significantly altered the status of the general plan by
28 mandating that zoning and subdivision approvals had to be consistent with a city’s or county’s

1 general plan. (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 772.) One year later, the
2 Legislature enacted urgency legislation to clarify that “consistent with” could only be determined
3 if a jurisdiction had, in fact, “officially adopted” a general plan. (58 Ops.Cal.Atty.Gen. 21, 23-
4 24 (1975).) With these enactments, the general plan became “a constitution for all future
5 development” within a jurisdiction and the single most important planning document governing
6 its land use. (*Id.*; *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531,
7 540; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570-571.)

8 One step below the general plan in the land use approval hierarchy and used for
9 systematically implementing the general plan in a specific geographical area is the specific plan.
10 (Gov. Code § 65450.) In order to be adopted, a specific plan must be consistent with the general
11 plan. (Gov. Code § 65454.) Once adopted, all zoning ordinances within the area covered by the
12 specific plan must be consistent with it. (Gov. Code § 65455.) Similar to how principles of
13 statutory construction operate (where the more specific trumps the more general), the specific
14 plan for an area controls over the jurisdiction’s general plan such that the general plan and its
15 less specific policies may not be applicable to that area. (*Markley v. City Council* (1982) 131
16 Cal.App.3d 656, 668.) Most important for the Court in considering the spot zoning at is at the
17 center of this action, an *exception* to a specific plan is subject to the *same* criteria required for
18 the approval of a zoning variance. (Gov. Code § 65906.) Since a specific plan exception is
19 analogous to a zoning variance, it must be grounded in conditions *peculiar to the particular*
20 *property* as distinguished from other properties in the specific plan area. (*Committee to Save*
21 *Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1677.)

22 2. Notice of the County’s Public Hearings on the Project Violated the PZL

23 a. *Personal Notice Was Inadequate for a Specific Plan Amendment*

24 As FCA’s counsel told the BoS, after the Project was changed from being the rezoning
25 of just the Project site to one adding an entirely new land use category that could ostensibly
26 apply throughout the NTSP area, State law required the County to deliver notices of the public
27 hearings on the NTSP amendment to *all* property owners within the NTSP area and not just
28 those within 300 feet of the Project site. (AR E/3274-3275.) The County failed to do this.

1 **b. Notice of the BoS Public Hearing Omitted Required Information**

2 “In the usual case, the Planning and Zoning Law establishes
3 a two-stage process for a proposed zoning ordinance or amendment
4 to a zoning ordinance. (See §§ 65854, 65855.) In the first stage,
5 the planning commission holds a noticed public hearing on the
6 proposed zoning ordinance or amendment to a zoning ordinance.
7 (§ 65854.) After the hearing, the planning commission must make
8 and transmit a written recommendation to the legislative body that
9 includes “the reasons for the recommendation, [and] the
10 relationship of the proposed ordinance or amendment to applicable
11 general and specific plans.” (§ 65855.) In the second stage, the
12 legislative body, “[u]pon receipt of the recommendation of the
13 planning commission” holds a public hearing. (§ 65856.) At that
14 point, the legislative body “may approve, modify or disapprove the
15 recommendation of the planning commission.” (§ 65857.)”

16 (*Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th
17 877, 890-891.) Here, the County dropped the ball at “the second stage” by failing to properly
18 notice the BoS’s March 15, 2011, public hearing on the Project.

19 Government Code section 65090 mandates that when a provision of the PZL requires
20 notice to be given pursuant to this section that it be published in a newspaper of general
21 circulation at least 10 days before the hearing. In turn, Government Code section 65094 requires
22 the notice to include (among other things) “a general explanation of the matter to be considered.”
23 It is State law that this notice “must include the planning commission’s recommendation as part
24 of the “general explanation of the matter to be considered.” (*Environmental Defense Project*
25 *of Sierra County v. County of Sierra, supra*, 158 Cal.App.4th, at 894.) However, the County’s
26 notice for the BoS’s public hearing on the Project failed to make *any* mention of the Planning
27 Commission’s recommendations. (AR C/2626-2631.) This is a classic instance of “failure to
28 follow the procedures and give the notices required by law.”

29 **3. There Is No Consistency Between the New SRH Zoning and the NTSP**

30 FCA’s counsel accurately described the draft EIR’s attempt to establish “consistency”
31 between the Project’s proposed new SRH zoning designation as “a desperate stretch.” (AR
32 G/6411.) Recognizing that the NTSP expressly *prohibited* multifamily development above 17th
33 Street [AR E/3263, 3266], the County’s EIR consultant created a 7½-page matrix trying to
34 “prove” the Project’s “consistency” with the County’s General Plan while devoting a scant 1½

1 pages to a tortured “consistency analysis” comparing the Project to a few of the NTSP’s
2 generalized goals and policies. (AR B/ 368-377.) However, like “Sherlock Holmes’ “dog in the
3 night-time” which tellingly failed to bark” (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th
4 1359, 1380), conspicuously absent from the analysis was *any* attempt to harmonize the Project
5 with the NTSP’s *regulatory requirements* found in Division III [“Land Use Development and
6 Regulations”] thereof. The reason for this is simple: it cannot be done.

7 As a regulatory document with the force of law—and as the court noted in *Mitchell v.*
8 *County of Orange, supra*—the NTSP *prohibits* density increases north of 17th Street except for
9 “Detailed Review Parcels” 4, (part of) 5, 7, 11 and 13, which qualify for the consolidation
10 incentive program. (AR G/6408-6410; H/9000, 9077-9780, 9081B, 9088, 9189-9191.) Lest
11 there be any doubt, while Division III of the NTSP allows churches, educational facilities and
12 community care facilities of up to 12 persons in the RSF zone, it makes it clear that “all uses not
13 permitted above are prohibited.” (AR G/6410-6612; H/9174-9175.) Yet the NTSP amendment
14 simply added the new SRH zoning designation to the NTSP almost like an afterthought without
15 making any effort to harmonize it with all of the NTSP’s other explicit *regulatory* provisions
16 expressly prohibiting multi-family development north of 17th Street, in doing so creating massive
17 internal inconsistency in the NTSP. (*Id.*)

18 Creating such inconsistency for the benefit of a single Project breached the 30-year
19 “contract” the County made to the North Tustin community when it adopted the NTSP. As the
20 California Supreme Court aptly noted in *Topanga Assn. for a Scenic Community v. County of*
21 *Los Angeles* (1974) 11 Cal.3d 506, 517-518,

22 **“A zoning scheme, after all, is similar in some respects to a**
23 **contract; each party foregoes rights to use its land as it wishes**
24 **in return for the assurance that the use of neighboring property**
25 **will be similarly restricted, the rationale being that such mutual**
26 **restriction can enhance total community welfare. [Citations.]**
27 **If the interest of these parties in preventing unjustified variance**
awards for neighboring land is not sufficiently protected, the
consequence will be subversion of the critical reciprocity upon
which zoning regulation rests.”

28 (Emphasis added.)

1 If a zoning scheme is like a contract, the PZL’s “uniformity requirement”⁷ is like an
2 enforcement clause, allowing parties to the contract to challenge burdens unfairly imposed on
3 them or benefits unfairly conferred on others. (*Neighbors in Support of Appropriate Land Use*
4 *v. County of Tuolumne* (2007) 157 Cal.App.4th 997 [“According to a leading treatise, section
5 65852 “is intended to prevent unreasonable discrimination against or benefit to particular
6 properties within a given zone.” (4 Manaster & Selmi, Cal. Environmental Law and Land Use,
7 *supra*, Zoning, § 60.70, p. 60-114.3 (rel. 45-9/06)”).] This is why Petitioner brought this action:
8 to challenge a benefit unfairly conferred on RPI to the detriment of everyone else.

9 4. The Project Is a Poster Child for Discriminatory Spot Zoning

10 What occurred here was not the usual spot zoning discriminating *against* a property and
11 in favor of surrounding properties such as occurred in *Ross v. City of Yorba Linda, supra*, but
12 spot zoning discriminating *in favor of* one property and against all of its surrounding properties:
13 the granting of a special dispensation for RCDO as “a matter of grace.” (*Tustin Heights, supra*,
14 at 633-634.) Yet no special hardships affecting the Church Parcel existed to merit it a variance
15 under PZL section 65906. And as Justice Trotter wryly observed during the proceedings, “If we
16 were talking about an apartment building [at the Project site], we wouldn’t be having this
17 discussion in the first place.” (AR E/2956:1-4.) In other words, RPI’s proposed multifamily
18 project north of 17th Street would have almost certainly met the same sorry fate as every other
19 north-of-17th-Street zone change proposal for the past 30 years *but for* the fact that RCDO was
20 aggressively touting its need to fulfill its religious “faith-based mission” *on the Church Parcel*.

21 While perhaps well intended, the County’s special dispensation of favor *towards* RCDO’s
22 mission was unconstitutional. In interpreting the United States Constitution’s Establishment
23 Clause the U.S. Supreme Court has said that, “The First Amendment mandates governmental
24 neutrality between religion and religion, and between religion and nonreligion.” (*Epperson v.*
25 *State of Arkansas* (1968) 393 U.S. 97, 104, 21 L. Ed. 2d 228, 89 S. Ct. 266.) However, the

26 _____
27 ⁷ PZL section 65852 provides that “[a]ll such [zoning] regulations shall be uniform
28 for each class or kind of building or use of land throughout each zone, but the regulation in one
type of zone may differ from those in other types of zones.”

1 California Constitution’s Establishment Clause (Art. I, Sec. 4) is even *more* restrictive than the
2 U.S. Constitution’s in that it includes an additional “no preference” provision: “Free exercise
3 and enjoyment of religion without discrimination or preference are guaranteed.” Consequently,
4 and as FCA noted [AR G/6420-6421], under the *sui generis* facts of **this** case, the County’s
5 *favorable* spot zoning of the Project site for RCDO’s benefit impermissibly breached the wall
6 separating church and state. (*Van Schoick v. Saddleback Valley Unified School District* (2001)
7 87 Cal. App. 4th 522, 529, fn. 7 [government may not promote religion].)

8 **B. The Future SMA Public Hearing on the Parcel Merger Will Be a Sham**

9 In connection with approving the Project, the BoS assumed that it would grant, at a later
10 time, the discretionary approval required under the SMA to merge the 5-6 parcels comprising
11 the Project site into a single legal parcel. (AR G/6424-6426.) As FCA’s counsel informed the
12 BoS, doing this necessarily makes the subsequent SMA proceeding a “sham” or “rubber stamp”
13 proceeding. (*Id.*; see *Redevelopment Agency v. Norm’s Slauson* (1985) 173 Cal.App.3d 1121
14 [agency’s precommitment to condemn a property made a sham out of future eminent domain
15 hearing]; *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172.)

16 **C. The County Violated CEQA**

17 1. The Importance of CEQA and the EIR

18 Enacted in 1970, CEQA embodies the entwined themes of substantive environmental
19 protection, information disclosure, and governmental accountability. CEQA requires full
20 disclosure of a project’s significant environmental effects so that decision-makers and the public
21 are informed of these consequences before it is approved in order to ensure that government
22 officials are held accountable for these consequences. (*Laurel Heights Improvement Ass’n of*
23 *San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 392 [“*Laurel*
24 *Heights I*”].) “The heart of CEQA” is the requirement that public agencies proposing to carry
25 out or approve a project that may have a significant effect on the environment must prepare a
26 detailed environmental impact report, or EIR. (CEQA §§ 21061, 21100(a); Guidelines
27 § 15003(a).) Environmental protection is the guiding concept in interpreting CEQA. “The
28 foremost principle under CEQA is that the Legislature intended the act ‘to be interpreted in such

1 manner as to afford the fullest possible protection to the environment within the reasonable
2 scope of the statutory language.” (*Laurel Heights I, supra*, at 390, quoting *Friends of Mammoth*
3 *v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.)

4 2. Respondent Failed to Prepare an Adequate EIR by Not Committing to an
5 Accurate, Stable, and Finite Project Description in the CEQA Process

6 Courts have repeatedly stated that “[a]n accurate, stable and finite project description is
7 the *sine qua non* of an informative and legally sufficient EIR.” (*County of Inyo v. City of Los*
8 *Angeles* (1977) 71 Cal.App.3d 185, 192-93; *San Joaquin Raptor/Wildlife Reserve Center v.*
9 *County of Stanislaus* (1994) 27 Cal.App.4th 713, 730.) “The defined project *and not some*
10 *different project* must be the EIR’s bona fide subject.” (*M.M. Homeowners v. San Buenaventura*
11 *City* (1985) 165 Cal.App.3d 357, 365, italics added.) While an EIR is not designed to freeze a
12 project in the mold of the original proposal, “[o]n the other hand, a curtailed or distorted
13 description of the project may ‘stultify the objectives of the reporting process.’” (*Dry Creek*
14 *Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 28.)

15 “A curtailed, enigmatic or unstable project description draws a red
16 herring across the path of public input.” (*Id.* at p. 197-198 . . .)
17 “[O]nly through an accurate view of the project may the public and
18 interested parties and public agencies balance the proposed project's
19 benefits against its environmental cost, consider appropriate
mitigation measures, assess the advantages of terminating the
proposal and properly weigh other alternatives. (*City of Santee v.*
County of San Diego (1989) 214 Cal.App.3d 1438, 1454.)”

20 (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654.)

21 FCA’s counsel explained this *at length* to the BoS, but it fell on deaf ears. (AR G/6416-
22 6420.) This is a classic example of a failure to proceed in the manner required by law.

23 3. The CEQA Guidelines Required the Recirculation of the 400+ Pages of
24 New Information Added to the Final EIR for Public Review and Comment

25 On December 30, 2010, the County released over 500 pages of new information,
26 including 400+ pages of new analyses, studies and conclusions regarding water quality, traffic,
27 and Project alternatives. When citizens protested this 11th hour document dump, County staff
28 took the position that recirculation of this new information was not required under CEQA.

1 Staff's determination was incorrect. Section 15088.5(a) of the CEQA Guidelines states
2 (in pertinent part) that: "A lead agency is required to recirculate an EIR when significant new
3 information is added to the EIR after public notice is given of the availability of the draft EIR
4 for public review ... As used in this section, the term 'information' can include changes in the
5 project or environmental setting as well as additional data or other information." Further, CEQA
6 section 21092.1, states: "When *significant new information* is added to an environmental impact
7 report after notice has been given pursuant to Section 21092 and consultation has occurred
8 pursuant to Section 21104 and 21153, but prior to certification, the public agency *shall* give
9 notice again pursuant to Section 21092, and consult again pursuant to Section 21104 and 21153
10 before certifying the environmental impact report." (Italics added; see also *Sutter Sensible*
11 *Planning, Inc. v. Board of Supervisors* (1981) 122 Cal.App.3d 813, 818.)

12 In light of clear case law guidance, it was astonishing that County staff claimed the
13 hundreds of pages of new analyses, discussion, and conclusions were not "significant" in relation
14 to the EIR and the Project. Clearly a new traffic study, new Water Quality Management Plan,
15 and all-new Project Alternative Analysis go well beyond "amplifying" or "clarifying" the EIR.
16 Thus, recirculation was necessary and required. (Guidelines § 15088(b).) Notably, "[a] decision
17 not to recirculate an EIR must be supported by substantial evidence in the administrative record."
18 (Guidelines § 15088(e).) There was nothing equating to "substantial evidence" in the EIR or in
19 the procedural record justifying County staff's decision not to re-circulate the new information.

20 Based on the numerous internal inconsistencies in the EIR that FCA identified to the BoS,
21 the Project's EIR was fatally flawed and needed to be revised and recirculated so that informed
22 public review and decision making could take place. (AR G/6414-6416.)

23 4. Respondent Failed to Prepare an EIR that was Internally Consistent

24 CEQA requires an EIR to be internally consistent so that the environmental review
25 process can be meaningful and informative not just to the agency, but to the public as a whole.
26 "The ultimate decision of whether to approve a project, be that decision right or wrong, is a
27 *nullity* if based upon an EIR that does not provide the decision-makers, *and the public*, with the
28 information about the project that is required by CEQA." (*Santiago County Water Dist. v.*

1 *County of Orange* (1981) 118 Cal.App.3d 818, 829; italics added.) “If a final [EIR] does not
2 ‘adequately apprise all interested parties of the true scope of the project for intelligent weighing
3 of the environmental consequences of the project,’ informed decision making cannot occur under
4 CEQA and the final EIR is inadequate as a matter of law.” (*Communities for a Better
5 Environmental v. City of Richmond* (2010) 184 Cal.App.4th 70, 82-83; italics added.) Further,
6 “[T]he existence of substantial evidence supporting the agency’s ultimate decision on a disputed
7 issue is not relevant when one is assessing a violation of the information disclosure provisions
8 of CEQA.” (*Id.* at 82, citing to *Association of Irrigated Residents v. County of Madera* (2003)
9 107 Cal.App.4th 1383, 1392.) The Project EIR was fatally inconsistent. (AR G/6417-6420.)

10 5. The Project’s EIR Failed to Tier Off of the NTSP’s Program EIR

11 Under CEQA, tiering may be used when the sequence of environmental review begins
12 with an EIR prepared for a program, plan (such as a specific plan), policy, or ordinance. (Pub.
13 Resources Code § 21094(a).) When the lead agency has prepared and certified an EIR for a
14 plan, the lead agency “shall examine the significant effects of the later project upon the
15 environment by using a *tiered* environmental impact report...” (*Id.*; italics added.) The first-tier
16 EIR may be followed by an EIR for another plan or policy of lesser scope, or a site-specific EIR
17 for a specific project. (*Id.*; Guidelines, § 15152(b).)

18 Also, the CEQA Guidelines *require* a lead agency to use a tiered EIR when (1) the later
19 project is consistent with the program, plan, policy, or ordinance [CEQA § 21094(b)(1);
20 Guidelines § 15152(d)]; (2) the later project is consistent with the applicable general plan
21 [CEQA § 21094(b)(2); Guidelines § 15152(e)]; (3) the later project is consistent with applicable
22 zoning ordinances or includes rezoning to maintain conformity with the general plan [CEQA
23 § 21094(b)(2); Guidelines § 15152(e)]; and (4) the project is not subject to CEQA section 21166
24 [changes necessitating a subsequent report]. The Project EIR claimed that all of the above
25 criteria were met by the Project and its EIR, yet the County declined to follow the requisite
26 tiering required when all such criteria are present. (AR G/6421-6422.)

27 A program EIR (“PEIR”) was prepared and certified for the NTSP in 1982. (*Id.*)
28 However, not only did the Project’s EIR not tier off of the PEIR for the NTSP, it completely

1 ignored the PEIR as if it never existed. (*Id.*) This is improper under CEQA and violated the
2 mandatory tiering requirements for an EIR. (CEQA § 21094(a).) Based on its complete failure
3 to properly tier off the NTSP PEIR, the Project’s EIR was devoid of meaningful review and
4 needed to be revised to at least acknowledge the existence of the PEIR and thereafter
5 recirculated for public review. (*Id.*)

6 6. The County’s Rejection of the Park/Land Swap Alternative
7 Was Not Supported by Substantial Evidence in the Record

8 The County’s inappropriate behavior in acting as an advocate for the Project applicant
9 rather than a neutral and unbiased decision-maker was glaringly evident in the 11th-hour “Land
10 Swap Alternative” analysis. Moreover, the Land Swap Alternative violated CEQA by
11 containing inconsistent and misleading statements that confused the reader. An EIR must
12 contain a meaningful discussion of Project alternatives. (*Laurel Heights I, supra*, 47 Cal.3d at
13 403; Guidelines, § 15126.6(a) & (d).) As a consequence, County staff’s dismissal of the
14 Land-Swap as a viable alternative amounted to the discounting and dismissal of a reasonable
15 alternative that was a more appropriate land use for the Project.

16 Worse still, County staff’s main reason for claiming the Land Swap Alternative was
17 infeasible was that “[t]his alternative is not feasible because of the uncertainty of accomplishing
18 it in a reasonable amount of time.” The County supported this finding by stating that its
19 “uncertainty” stemmed from the need for the BoS (among other agencies) to take action. (*Id.*)
20 The County’s finding of infeasibility was, at best, completely unsupported and at worst a sham
21 excuse for rejecting the Land Swap Alternative.

22 Additionally, the finding of infeasibility for the Land Swap Alternative was impermissibly
23 vague and ambiguous. Meaningful review of the Land Swap Alternative analysis could not
24 occur based on such vague language, and therefore fails under CEQA. (*Laurel Heights I, supra*,
25 47 Cal.3d at 403; Guidelines, § 15126.6(a) & (d).)

26 No meaningful analysis was included in the Land Swap Alternative to inform the reader
27 of the County’s true concerns. All the reader was left with was that the County did not know
28 how long the Land Swap Alternative would take to implement. This does not equate to

1 “substantial evidence” to support a finding of infeasibility for a project alternative. Guidelines
2 section 15088.5(a), states that a EIR *must* be recirculated for public review where significant
3 new information is presented. Subdivision (e) of Guidelines section 15088 states that a decision
4 not to recirculate an EIR *must* be supported by substantial evidence in the record.

5 Moreover, subdivision (a)(3) of Guidelines section 15088.5 states that recirculation is
6 *required* where a feasible project alternative would clearly lessen the significant environmental
7 impacts of the project, but the project’s proponents decline to adopt it. Here, the Land Swap
8 Alternative lessens numerous impacts. (AR G/6420-6424.) Clearly this alternative was feasible
9 yet was not evaluated thoroughly by the County and rejected for improper reasons. (*Id.*)

10 7. The Air Quality Analysis in the EIR Was Inconsistent and Incorrect

11 The Air Quality Analysis in the EIR fails in several areas. The Air Quality section
12 determined that, “The project would be inconsistent with the AQMP under the first indicator.”
13 (AR G/6426-6427.) Consequently, if there are any federal approvals, permitting, or funding as
14 part of the Project’s construction or operation, then any Project approval would be in violation
15 of federal law because the Project cannot be approved under the Clean Air Act conformity
16 provisions. (See, for instance, § 176 of the Clean Air Act.) The EIR did not discuss funding for
17 the construction or operation of the Project. However, it appears that Kisco receives grants from
18 several sources for operation of its facilities, including possibly grants that include federal funds.

19 Additionally, the Air Quality analysis concludes that “because the proposed project is not
20 regionally significant, changes in the population, housing or employment growth projections do
21 not have the potential to substantially affect SCAG’s demographic projections and therefore the
22 assumptions in SCAQMD’s AQMP.” ((AR G/6426-6427 [EIR, p. 5.6-12].) This is wrong.
23 Growth projections are based on existing plans, which is the existing NTSP. This project
24 changes the Specific Plan and increases density from what is currently allowed in the NTSP by
25 over 600%. Therefore, the Project is inconsistent with regional assumptions and increases
26 growth more than currently planned for by SCAG.

27 Also, the Air Quality Analysis was missing the required disclosures on air toxics. (*Id.*)
28 Diesel particulates are considered a carcinogen. In addition, diesel combustion contains air

1 toxics other than criteria pollutants. The EIR stated that diesel equipment would be used in
2 constructing the Project, but the necessary disclosures about the air toxics associated with diesel
3 emissions were missing, thereby impeding a meaningful review. (*Id.*)

4 The EIR also included “Mitigation Measures 6-1 and 6-2” for short-term construction
5 activities. (*Id.* [EIR, p. 5.6-18].) However, the EIR lacked any analysis on this point. Moreover,
6 the mitigation measures did not address the inconsistency with SCAQMD’s AQMP. Thus, the
7 EIR’s statement that Mitigation Measures 6-1 and 6-2 “would lessen impacts associated with
8 Impact 5.6-1” was not true, and was inconsistent with its other statement that, “Consequently,
9 Impact 5.6-1 would remain significant and unavoidable.” (*Id.* [EIR, p. 5.6-19].) Based on this,
10 the EIR’s Air Quality analysis was inconsistent and flawed needed to be revised and recirculated
11 in accordance with CEQA.

12 8. The Traffic Analysis Was Defective Under Recent Case Law

13 In the recent case of *Sunnyvale West Neighborhood Association v. City of Sunnyvale City*
14 Council (2010) 190 Cal.App.4th 1351, the City of Sunnyvale’s EIR was overturned because,
15 similar to the EIR in the case at hand, it used projected traffic conditions as the baseline to
16 evaluate traffic impacts. (*Id.* at 1358.) The appellate court ruled that the EIR was fatally flawed
17 because, under CEQA, the baseline for measuring environmental impacts must be the conditions
18 “as they exist at the time the notice of preparation is published...” (*Id.*, at 1372.) The Court went
19 on to hold that using future conditions as the baseline results in illusory impacts, and constitutes
20 “a failure to proceed in the manner required by law.” (*Id.*, at 1383.)

21 In the present case, the NOP was published on July 20, 2009. Thus, pursuant to
22 *Sunnyvale* and Guidelines section 15125, the baseline for measuring traffic impacts should have
23 been the conditions that existed on the ground in the vicinity of the Project in July 2009.
24 However, the EIR for the Project used an improper projected baseline that was based on future
25 hypothetical conditions. The EIR stated (in pertinent part) the following: “The relative impact
26 of the added project traffic volumes generated by the proposed project during the AM and PM
27 peak hours was evaluated based on analysis of *future* operating conditions at the six key study
28 intersections, without and with the proposed project.” (Italics added; AR G/6427-6429.)

1 While the EIR contained discussions about “horizon year 2013” and also discussed
2 “existing conditions,” it appears for purposes of establishing a baseline for measuring traffic
3 impacts that the EIR used projected future conditions in year 2035. (AR C/1013 [Appendix E,
4 pp. 23-24].) Appendix E to the EIR stated, “Review of Columns 3 and 4 of Table 8-3 shows that
5 traffic associated with the proposed Project will not have a significant impact at any of the six
6 (6) key study intersections, when compared to the County of Orange LOS standards and
7 significant traffic impact criteria.” (*Id.* [App. E, p. 23].) Table 8-3 then described estimated
8 traffic conditions in year 2035 both with and without the Project, and concluded that no
9 significant traffic impacts will result. (*Id.* [App. E, Table 8-3].)

10 The EIR contained no comparison of traffic impacts on the environment as the
11 environment existed in July 2009, both with and without the Project, as required under recent
12 case law and the CEQA Guidelines. “Case law makes clear that ‘[a]n EIR must focus on
13 impacts to the existing environment, not hypothetical situations.’” (*Sunnyvale, supra*, 190
14 Cal.App.4th at 1373, citing *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183
15 Cal.App.3d 229, 246-247.) As the result of using a future hypothetical baseline for traffic
16 impacts in the EIR for the Project, the BoS and the public lacked complete information because
17 an improper baseline was used for determining traffic and related impacts. This constitute[s]
18 a failure to proceed in the manner required by law. (*Id.*, at 1383.)

19 The California Supreme Court recently looked at this issue and similarly concluded that
20 the proper baseline is *existing conditions on the ground at the time the NOP is published*. In
21 *Communities For A Better Environment v. South Coast Air Quality Management Dist.* (2010)
22 48 Cal.4th 310, the Supreme Court explained: “An approach using hypothetical allowable
23 conditions as the baseline results in ‘illusory’ comparisons that ‘can only mislead public as to
24 the reality of the impacts and subvert full consideration of the environmental impacts,’ a result
25 at direct odds with CEQA’s intent.” (*Id.*, at 322, citing *Environmental Planning Information*
26 *Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 358.) As *Sunnyvale* notes, the
27 Supreme Court has “never sanctioned the use of predicted conditions on a date subsequent to
28

1 EIR certification or project approval as the ‘baseline’ for assessing a project’s environmental
2 consequences.” (*Sunnyvale, supra*, 190 Cal.App.4th at 1375 [italics added].)

3 Based on the foregoing, the EIR was flawed because it lacked sufficient analysis
4 regarding the traffic impacts of the Project in comparison to the conditions existing on the
5 ground in July 2009. Therefore, the EIR should not have been certified by the BoS. At a
6 minimum, the EIR’s traffic study should be redone and thereafter recirculated for public review
7 and comment.

8 9. Approval of the Project Resulted in Improper Project Splitting Under CEQA

9 The County took the position in the EIR that the newly-proposed SRH designation did
10 not need to be evaluated under CEQA on a NTSP-wide basis, but rather only needed to be
11 evaluated as applied to the Project site. (AR G/6429.) Aside from creating an illusory review
12 of environmental impacts because of the overly-limited scope of review and the County’s
13 insistence on comparing the impacts to the maximum density allowed under the General Plan
14 rather than the existing NTSP, it also resulted in illegal piecemealing under CEQA. (*Id.*)

15 In *Christward Ministry v. Superior Court* (1986) 184 Cal.App.4th 180, the court held that
16 the City of San Marcos had acted improperly under CEQA when it (among other things) opted
17 to examine a new land use designation as part of a general plan amendment in relation to the
18 specific project site, rather than on a plan-wide basis. (*Christward Ministry, supra*, 184
19 Cal.App.3d at 193.) Specifically, the court found that under such a position, “an EIR would
20 never be required for a general plan amendment so long as somewhere down the road an EIR
21 was required.” (*Id.*)

22 Similar to *Christward Ministry*, the County here looked at the SRH designation only as
23 it applied to the Project site and not beyond—despite the County conceding in the EIR and the
24 responses to comments that this was the “first” site to get the SRH designation and that others
25 could follow. Such an approach results in illegal project-splitting, as the County will simply
26 evaluate the SRH designation on a project-by-project basis, rather than the entirety of the action.
27 (*Id.*)

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


V.

CONCLUSION

For all of the foregoing reasons, Petitioner respectfully requests this Court to issue a writ of mandate commanding Respondent to set aside the Project's approvals, including certification of the EIR prepared in connection therewith, and ordering Respondent and RPI to take no further steps toward approving or otherwise implementing the Project unless and until Respondent fully complies with the PZL, the SMA, CEQA and the CEQA Guidelines.

Dated: October 31, 2011

LEIBOLD McCLENDON & MANN, P.C.

By: 
John G. McClendon
Attorneys for Petitioner
FOOTHILL COMMUNITIES COALITION

1 **PROOF OF SERVICE**

2 1013A (3) CCP Revised 5/1/88

3 STATE OF CALIFORNIA)
4 COUNTY OF ORANGE) ss.

5 I am employed in the County of Orange, State of California. I am over the age of 18 and
6 not a party to the within action. My business address is 23422 Mill Creek Drive, Suite 105,
7 Laguna Hills, California 92653.

8 On October 31, 2011, I served, in the manner indicated below, the foregoing document
9 described as "*PETITIONER'S OPENING BRIEF IN SUPPORT OF PETITION FOR WRIT OF
MANDATE*" on interested parties in this action by placing the true original thereof enclosed in
a sealed envelope addressed as follows:

10 **SEE ATTACHED SERVICE LIST**

11 _____ (By Overnight Express) I caused such envelope(s) to be placed in the OVERNITE
12 EXPRESS drop box located in Laguna Hills, California, for overnight delivery to the above
addressee.

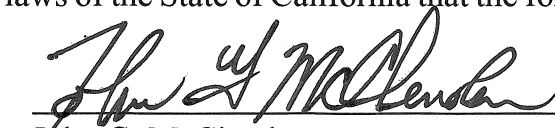
13 _____ (By Fax) I caused such document(s) to be transmitted to the number(s) shown on the
14 attached service list. A transmission report was properly issued by the fax machine and the
transmission was reported as complete and without error to the number(s) listed thereon.

15 _____ (By Mail) I caused such envelope(s) with postage thereon fully prepaid to be placed in
16 the United States mail at Laguna Hills, California. I am "readily familiar" with the firm's
17 practice of processing correspondence for mailing. Under that practice it would be deposited
18 with the U.S. postal service on that same day with postage thereon fully prepaid at Laguna Hills,
California in the ordinary course of business. I am aware that on motion of the party served,
service is presumed invalid if postal cancellation date or postage meter date is more than one day
after date of deposit for mailing in affidavit.

19 XXX (By Email per stipulation of the parties)

20 Executed on October 31, 2011, in Laguna Hills, California.

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

23 
24 _____
25 John G. McClendon

LEIBOLD McCLENDON & MANN
A PROFESSIONAL CORPORATION

1
2
3 **PROOF OF SERVICE**

1013A (3) CCP Revised 5/1/88

4 STATE OF CALIFORNIA)
5)
6) ss.
7)
8)
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 23422 Mill Creek Drive, Suite 105, Laguna Hills, California 92653.

On November 2, 2011, I served, in the manner indicated below, the foregoing document described as "*PETITIONER'S OPENING BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDATE [CORRECTED]*" on interested parties in this action by placing the true original thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

____ (By Overnight Express) I caused such envelope(s) to be placed in the OVERNITE EXPRESS drop box located in Laguna Hills, California, for overnight delivery to the above addressee.

____ (By Fax) I caused such document(s) to be transmitted to the number(s) shown on the attached service list. A transmission report was properly issued by the fax machine and the transmission was reported as complete and without error to the number(s) listed thereon.

XXX (By Mail) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Laguna Hills, California. I am "readily familiar" with the firm's practice of processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Laguna Hills, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

____ (By Email per stipulation of the parties)

Executed on November 2, 2011, in Laguna Hills, California.

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



Carmen Ortiz

LEIBOLD McCLENDON & MANN
A PROFESSIONAL CORPORATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

Attorneys for Respondents:

Nicole Walsh, Deputy County Counsel
Nicholas S. Chrisos, County Counsel
333 West Santa Ana Boulevard, Suite 407
Santa Ana, California 92702-1379
Telephone: (714) 834-6257
Facsimile: (714) 834-2359
E-mail: nicole.walsh@coco.ocgov.com

Attorneys for Real Parties in Interest:

Keli N. Osaki
Manatt, Phelps & Phillips, LLP
695 Town Center Drive, 14th Floor
Costa Mesa, California 92626
Direct Dial: (714) 371-2539
Facsimile: (714) 338-2769
E-mail: kosaki@manatt.com