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8 Attorneys for Petitioners
9 CALIFORNIA NATIVE PLANT SOCIETY,
10 SAN ANTONIO CREEK HOME OWNER
11 ASSOCIATION, and FRIENDS OF SASPILI

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA
ANACAPA DIVISION

CALIFORNIA NATIVE PLANT SOCIETY, a)
California public benefit corporation; SAN)
ANTONIO CREEK HOME OWNER)
ASSOCIATION, an unincorporated)
association; and FRIENDS OF SASPILI, an)
unincorporated association,)

Petitioners,)

vs.)

COUNTY OF SANTA BARBARA; BOARD)
OF SUPERVISORS FOR THE COUNTY OF)
SANTA BARBARA; and DOES 1-10,)

Respondents,)

JEFFREY C. NELSON; THE OAK CREEK)
COMPANY, a California corporation; D.H.L.)
REALTY COMPANY, L.P.; and ROES 12-)
20,)

Real Parties in Interest.)

Case No.

**FIRST AMENDED VERIFIED PETITION
FOR WRIT OF MANDAMUS**

**CALIFORNIA ENVIRONMENTAL
QUALITY ACT (“CEQA”) [CAL. PUBLIC
RESOURCES CODE §§ 21000 et seq.]**

1 **INTRODUCTION**

2 1. Petitioners California Native Plant Society, San Antonio Creek Homeowner Association,
3 and Friends of Saspili (“collectively “Petitioners”) challenge the County of Santa Barbara and
4 Board of Supervisors of the County of Santa Barbara’s (“the County” or “Respondents”) approval of the Park Hills Estates Project (“Project”), and adoption of the Mitigated Negative
5 Declaration (“MND”) for the Project. The Project involves the subdivision and eventual
6 residential development of 16 residential lots on a 14.87-acre piece of open land, located in the
7 fire-prone foothills of Santa Barbara County, California. The Project site supports sensitive
8 plant and animal species, unique geomorphic and geologic, and visual features, and significant
9 cultural resources. The mass grading approved as part of the Project will obliterate these
10 resources, thereby causing significant environmental impacts.

11
12 2. The County acted contrary to CEQA in, *inter alia*, adopting an MND for the Project
13 when an EIR is required due to the existence of substantial evidence in the record supporting a
14 fair argument that the Project may have significant environmental impacts in the areas of
15 biological resources, cultural resources, geological resources, aesthetic values, and public health
16 and safety from increased fire and evacuation risks.

17 3. Petitioners bring this Petition for Writ of Mandamus on their own behalf, on behalf of
18 their members, and on behalf of the general public under California Code of Civil Procedure
19 §1094.5 and allege as follows:
20

21 **PARTIES**

22 4. Petitioners hereby incorporate by reference paragraphs 1 through 3 as if fully set forth
23 herein.

24 5. Petitioner California Native Plant Society (“CNPS”) is a California public benefit
25 corporation recognized as a tax-exempt § 501(c)(3) organization. Its principal office is in
26 Sacramento, California, however it has a statewide network of regional chapters staffed by its
27 volunteer members, including residents of Santa Barbara County. The CNPS purposes include
28 the conservation of California native plants and their natural habitats, including, as necessary,

1 engagement in land use processes affecting populations of native plants and their habitat, and to
2 increase the public's understanding, appreciation, and horticultural use of native plants of
3 California. CNPS, through its members and staff, participated in the proceedings below,
4 including submittal of written and oral comments to Respondent Board of Supervisors.
5 Petitioner's, and its members' interests in preservation of the environmental integrity of native
6 plants and their habitat in the County will be adversely affected by the violations of CEQA and
7 the approval of the Project.

8 6. Petitioner, San Antonio Creek Home Owner Association ("SACHOA"), is an
9 unincorporated association whose members include residents of the San Antonio Creek area of
10 the south coast Santa Barbara County foothills that are affected by the project. SACHOA is
11 dedicated to protection of the environment, including preservation and enhancement of visual,
12 biological, recreational, and cultural resources in the County of Santa Barbara by participating
13 in local environmental and land use policy and decision making. The San Antonio Creek area
14 wherein SACHOA operates and its members reside is located in a designated high fire hazard
15 area that has historically experienced repeated catastrophic wildfires. The San Antonio Creek
16 area has constrained and inadequate emergency evacuation routes that are narrow, windy, steep
17 and too few in number. Its members include residents who are concerned with their ability to
18 safely evacuate themselves, their families, neighbors, friends, pets, livestock and possessions in
19 the event of wildfire and the ability of emergency responders to access, defend and protect their
20 homes during wildfire and other natural disasters, and these concerns are heightened due to the
21 addition of additional residents associated with the Project. Its interests, and the interests of its
22 members in preservation of the environmental integrity of the County will be adversely affected
23 by the violations of CEQA and the approval of the Project.

24 7. Petitioner, Friends of Saspili, is an unincorporated association whose members are
25 dedicated to protection of the environment and cultural resources in the County of Santa
26 Barbara by participating in local environmental and land use policy and decision making. Its
27 members include residents of the County of Santa Barbara that are affected by the Project.
28

1 Petitioner's, and its members' interests in preservation of the environmental integrity of the
2 County will be adversely affected by the violations of CEQA and the approval of the Project.

3 8. Respondent County of Santa Barbara is organized under the laws and Constitution of the
4 State of California. The County is empowered, among other duties, to provide for the orderly
5 planning and management of land use within its borders, including permitting of the Park Hill
6 Estates Project, subject to the obligations and limitations of all applicable state, federal and
7 other laws, including CEQA. The County is the lead agency under CEQA.

8 9. Respondent Board of Supervisors of the County of Santa Barbara is the highest
9 governing authority of the County of Santa Barbara, exercising legislative authority over
10 County land use matters and controlling, through the Chair of the Board, the conduct of the
11 Board of Supervisors' hearings generally and specifically the hearings which led to the approval
12 of the Project.

13 10. DOES 1 through 10, inclusive, are officers, agents or employees of Respondent Santa
14 Barbara County, or other unknown persons, entities or agencies with an interest in the subject
15 matter of this dispute. The identities and capacities of such DOES are unknown to Petitioners at
16 this time. Petitioners will seek leave to amend this Petition to identify the true name and
17 capacity of each such person when identified.

18 11. Real Party in Interest Jeffrey C. Nelson is the Project applicant, and developer of the Park
19 Hill Estates Project. The Oak Creek Company, a California corporation, is Jeffrey C. Nelson's
20 development company, and the entity in addition to Jeffrey C. Nelson responsible for
21 developing the Project. ROE # 11 is Real Party in Interest D.H.L. Realty Company, L.P., the
22 owner of the Project site.

23 12. ROES 12 through 20, inclusive, are individuals, governmental agencies, entities,
24 corporations or other unknown persons that are Real Parties in Interest to this dispute. The
25 identities and capacities of such ROES are unknown to Petitioners at this time. Petitioners will
26 seek leave to amend this Petition to identify the true name and capacity of each such person
27 when identified.
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1
2 **STANDING**

3 13. Petitioners hereby incorporate by reference paragraphs 1 through 12 as if fully set forth
4 herein.

5 14. Approval of the Project will adversely affect the interests of Petitioners. Petitioners are
6 dedicated to preserving the environment of the County of Santa Barbara as set forth, at
7 paragraphs 5, 6, and 7 hereof, and are concerned with maintaining the environmental,
8 biological, cultural, geologic, visual and aesthetic integrity, and safety, of the County of Santa
9 Barbara. Approval of the Project and Mitigated Negative Declaration will adversely affect
10 these interests of Petitioners. Petitioners have submitted comments on and objections to the
11 lack of CEQA compliance, and have participated at public hearings before the Board of
12 Supervisors and Planning Commission. Accordingly, Petitioners are "aggrieved persons"
13 within the meaning of Public Resources Code Section 21177.
14

15 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

16 15. Petitioners hereby incorporate by reference paragraphs 1 through 14 as if fully set forth
17 herein.

18 16. Petitioners have performed all conditions precedent to the filing of this petition by raising
19 each and every issue known to them before the County, in compliance with Public Resources
20 Code Section 21177, and Code of Civil Procedure Sections 1085 and 1094.5.

21 17. Notice of the filing of this action, as required by Public Resources Code Section 21167.5
22 was mailed to the Respondents on November 16, 2012. (See Notice Letter and Proof of Service
23 attached hereto as Exhibit "1")
24

25 **JURISDICTION AND VENUE**

26 18. Petitioners hereby incorporate by reference paragraphs 1 through 17 as if fully set forth
27 herein.
28

1 19. This Court has subject matter jurisdiction pursuant to the California Constitution, Article
2 VI, Section 10, because this case is not a cause given by statute to other trial courts.

3 Jurisdiction of this Court is invoked pursuant to California Code of Civil Procedure Section
4 1094.5; California Public Resources Code Section 21167; CEQA Guidelines Section 15112;
5 and applicable law.

6 20. Venue is proper in this Court pursuant to Code of Civil Procedure §§393, 394 because
7 both Petitioners and Respondent are located within the County of Santa Barbara.

8 21. This Court has jurisdiction over the County of Santa Barbara and the Board of
9 Supervisors of the County of Santa Barbara because the County is an agency established by the
10 legislature of the State of California with its principal place of business located in the County of
11 Santa Barbara.

12 22. Petitioners have no plain, speedy or adequate remedy in the course of ordinary law unless
13 this Court grants the requested writ of mandate to require Respondents to set aside their
14 approval of the Project. In the absence of such remedies, the County's approval will remain in
15 effect in violation of state law.

16
17 **STATEMENT OF FACTS**

18 23. Petitioners hereby incorporate by reference paragraphs 1 through 22 as if fully set forth
19 herein.

20 24. The Project site is a 14.87-acre property currently used as open space, located
21 approximately ¼ of a mile northeast of Tucker's Grove Park, a Santa Barbara County Park, and
22 approximately 620 feet west of San Antonio Creek at its closest point.

23 25. The Project site includes native grasslands, coastal sage scrub, and unique fanglomerate
24 boulders that support a rich biodiversity of moss and lichen species and offer opportunity for
25 unusual ecological interactions between plants and animals. White tailed kites, pallid bats, and
26 other special status species forage on the Project site. A prehistoric bedrock mortar is present
27 on the site, and sixteen known Chumash sites are located within the direct vicinity of the Project
28 site. Human remains of Native American origin have been recorded on the property.

1 26. The San Antonio Creek area is located in a designated high fire hazard area that has
2 historically experienced repeated catastrophic wildfires. The topography, meteorological
3 patterns and fuel loading of the San Antonio Creek area combine to cause particularly ferocious
4 wildfires in the vicinity of the Project and surrounding neighborhoods. The San Antonio Creek
5 area has constrained and inadequate emergency evacuation routes that are narrow, windy, steep
6 and too few in number.

7 27. In 2007, the predecessors to Real Parties obtained County approvals to subdivide the
8 Project site into twelve single-family residential parcels of approximately 1 acre each and one
9 open space lot of approximately 2.2 acres. This project included a 2.72-acre native grassland
10 restoration area encompassing the majority of the open space lot and portions of the rear yards
11 of certain residential parcels.

12 28. After gaining control of the Project site, Real Parties came forward with a new proposal
13 rather than pursue the approved 12-unit project. This new proposal, the “Project”, calls for a
14 denser subdivision that includes 16 single-family residential parcels ranging in size from 0.62 to
15 1.14 acres each, one 0.39 acre lot for an “affordable” unit, and one 1.68 acre open space lot. A
16 substantially increased amount of native grasslands were determined to be present on the site, as
17 a result of either through improved biological survey methods or re-colonization of portions of
18 the site. Compensatory grasslands restoration to allegedly mitigate for the loss of inland
19 foothills native grasslands would occur offsite, in a dissimilar coastal bluff environment several
20 miles from the Project site.

21 29. Public comments received on the draft MND alerted the County that substantial evidence
22 supported a fair argument of significant environmental impacts, and that as such an EIR must be
23 prepared. Rather than prepare an EIR however, the County issued a revised MND.

24 30. The Planning Commission considered the Project and the MND, and on January 25, 2012
25 voted to “find that no action can be taken on the project because the Mitigated Negative
26 Declaration prepared for the project is inadequate, and direct staff to prepare a focused EIR
27 addressing fire protection and biological resources.” The Project Applicant, Real Party Jeffrey
28 C. Nelson, appealed the Planning Commission’s decision to the Board of Supervisors, and on

1 May 22, 2012 the Board of Supervisors voted 2-2 (Supervisor Wolf recused herself), resulting
2 in no action on appeal. County staff determined that this action invalidated the Planning
3 Commission's January 25, 2012 vote directing additional environmental review.

4 31. The Planning Commission again considered the Project after the Applicant proposed a
5 number of modifications to the Project Description, including funding for modifications to an
6 emergency egress route from San Antonio Creek Road through Tucker's Grove Park that would
7 necessitate substantial roadway widening and reconstruction on steep, unstable slopes in the
8 midst of a biologically sensitive dense oak grove within view of a public recreational facility.
9 On September 5, the Planning Commission voted 3-2 to approve the Project and adopt the
10 MND. Petitioners appealed that decision to the Board of Supervisors, which voted 3-1 to
11 approve the Project (Supervisor Wolf recused herself).

12 32. Respondents have abused their discretion and have failed to comply with the law in the
13 following ways:

14
15 **FIRST CAUSE OF ACTION**
16 **VIOLATIONS OF CEQA**

17 33. Petitioners hereby incorporate by reference paragraphs 1 through 32 as if fully set forth
18 herein

19 34. Respondents abused their discretion and failed to proceed in a manner required by law by
20 adopting a MND for the Project in lieu of an EIR and approving the Project on that basis,
21 despite the existence of substantial evidence in the record supporting a fair argument of
22 potentially significant environmental impacts.

23 35. CEQA creates a low threshold requirement for preparation of an EIR, requiring that a
24 public agency prepare an EIR whenever substantial evidence supports a fair argument that a
25 proposed project may have a significant effect on the environment. (Public Resources Code §
26 21151). Significant effect on the environment means a substantial, or potentially substantial,
27 adverse change in the environment. (Public Resources Code § 21068).
28

1 36. The record before Respondents contains substantial evidence supporting a fair argument
2 that the Project may result in significant impacts to biological resources, cultural resources,
3 geological resources, aesthetic resources, and public health and safety from increased fire and
4 evacuation risks to existing and proposed residents.

5 37. Substantial evidence supporting a fair argument that the Project may significantly effect
6 sensitive biological resources includes the detailed fact-based testimony of a credentialed
7 biologist acknowledged as expert in conducting biological resource surveys and assessing
8 project-related impacts to biological resources, that Project site biological resources were not
9 identified or properly evaluated and that the MND did not consider certain resources observed
10 and expected to occur onsite such as nonvascular plants (including the bryophytes and lichens
11 living on the fanglomerate boulders), or invertebrate wildlife (which makes up the biggest part
12 of wildlife biodiversity onsite). Additionally, the County failed to study, consider or disclose
13 the biological impacts associated with the late revision to the Project Description to include the
14 roadway widening and rehabilitation project intended to address fire safety risks. The roadway-
15 widening project will occur in and under the canopy of an oak woodland, on steep slopes and on
16 highly erosive and unstable soils, and adjacent to San Antonio Creek and Tucker's Grove Park,
17 and fact-based biologist testimony provides that the roadway widening would impact mature
18 Coast Live Oak and other trees and Coastal Sage Scrub vegetation. Respondent County failed
19 to comply with applicable protocols for surveying biological resources on site, and
20 consequently did not detect resources previously identified on the site or which would be
21 expected to be present on the site and identifiable if applicable protocols were observed,
22 lowering the threshold for establishment of a fair argument of a potentially significant impact.
23 (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 311).

24 38. Substantial evidence supporting a fair argument that the Project may significantly effect
25 cultural resources includes the fact-based testimony of an active and informed member of the
26 Coastal Band of the Chumash Nation, recognized as a most-likely descendent to the previous
27 native American residents of known local cultural resource sites, that sixteen known Chumash
28 sites are located within the direct vicinity of the Project site that are not are identified or

1 discussed in the MND, and that the MND failed to disclose that human remains have been
2 recorded on the property and that the Native American Heritage Commission has been
3 contacted for a request for a Sacred Lands File search on the property. Site disturbance has
4 already occurred without the presence of an archaeologist or monitor, potentially affecting the
5 archaeological integrity of the site before any cultural survey work was performed. The
6 County's failure to identify the site's potential archaeological significance "enlarges the scope
7 of fair argument by lending a logical plausibility to a wider range of inferences" (*Sundstrom v.*
8 *County of Mendocino* (1988) 202 Cal. App. 3d 296, 311).

9 39. Substantial evidence supporting a fair argument that the Project may significantly effect
10 geological resources includes the undisputed fact that the Project will result in the destruction of
11 a unique geological feature, namely the fanglomerate geological formations surfacing on the
12 Project site. Fanglomerate outcroppings are considered to be unique geomorphic and geological
13 features pursuant to a prior County EIR that Petitioners presented to the Board of Supervisors to
14 support our unheeded request for the evaluation of the Project site's fanglomerate boulders as
15 unique geological features. The MND incorrectly denied the existence of unique geological
16 features on the Project site by overlooking the significance of the fanglomerate boulders.
17 Substantial evidence supports a fair argument that the boulders constitute unique geological
18 features that will be destroyed by the Project, resulting in a significant impact pursuant to the
19 County's impact thresholds.

20 40. Substantial evidence supporting a fair argument that the Project may significantly effect
21 aesthetic resources includes personal observations of area residents that the Project would
22 replace the natural rolling topography with a flattened, tiered site, and would introduce
23 buildings in areas that are currently unobstructed open space, blocking views of the Pacific
24 Ocean, sunsets and coastal ridges of the Santa Ynez Mountains, and introducing structures to an
25 undeveloped open space, completely changing the character of the area and introducing
26 nighttime lighting and glare from windows and fixtures, and resulting in significant impacts
27 pursuant to the County's aesthetic impact thresholds. Additionally, the MND failed to consider
28 the visual significance of the site's unique geological formations, expressions of the unusual

1 fanglomerate boulders and bedrock that provide a unique visual feature that will be destroyed
2 by the Project's extensive grading. The MND's failure to identify and analyze impacts
3 associated with these unique geological formations enlarges the scope of fair argument. (*See*
4 *Sundstrom*, 202 Cal. App. 3d at 311).

5 41. Substantial evidence supporting a fair argument that the Project may significantly effect
6 public health and safety from increased fire and evacuation risks includes the undisputed fact
7 that the Project would increase the permanent population in a high fire hazard area at the
8 wildland/urban interface with limited access and egress, both exposing the new residents to
9 increased risks and compromising the ability of existing residents to safely evacuate in an
10 emergency, and the fact-based testimony of a fire expert that the proposed improved emergency
11 egress path is not viable during wildfire conditions and is generally inadequate as an accessway
12 and could create public safety hazards.

13
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Petitioner prays for judgment as set forth below:

- 16 A. For Alternative and Peremptory Writs of Mandate ordering Respondents to vacate
17 and set aside their approval of each and every element and aspect of the
18 entitlement and authorization of the Project and acceptance of the MND for the
19 Park Hill Estates Project;
- 20 B. For an order staying the approval and prohibiting Respondents from engaging in
21 any activity pursuant to the Park Hill Estates Project approvals until such time
22 that Respondents have complied with CEQA and all other applicable state and
23 local laws, policies, ordinances and regulations as are directed by this Court;
- 24 C. For an order granting an injunction prohibiting Real Parties from engaging in any
25 activity pursuant to the Park Hill Estates Project approvals until such time that
26 Respondents have complied with CEQA and all other applicable state and local
27 laws, policies, ordinances and regulations as are directed by this Court;
- 28

- 1 D. For reasonable attorneys' fees associated with bringing this suit, as authorized
2 under California Code of Civil Procedure § 1021.5 and any other applicable
3 provisions of law;
4 E. For costs of suit; and
5 F. For such other and further relief as this Court deems proper.
6

7 Respectfully Submitted,
8

9 LAW OFFICE OF MARC CHYTILO
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11 Dated: November ____, 2012

12 Ana Citrin
13 Marc Chytilo
14 Attorneys for Petitioners
15 CALIFORNIA NATIVE PLANT SOCIETY,
16 SAN ANTONIO CREEK HOME OWNER
17 ASSOCIATION, and FRIENDS OF SASPILI
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19 Exhibit 1: Notice of Commencement of Action, November 16, 2012
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2 **Verification**
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4 I, David Magney, in my capacity as the President for the Channel Islands Chapter of the
5 California Native Plant Society (“CNPS”), Petitioner in this matter and duly authorized to make
6 such statement, declare that I have read the attached Petition and know its contents, which are
7 true of my own knowledge except as to those matters stated on my information and belief, and as
8 to those matters I believe the Petition to be true.
9

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

12 Executed on November 20, 2012 at Ojai, California.
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16 David Magney, Channel Islands Chapter President
17 California Native Plant Society
18 Petitioner
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