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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA

VENTURA COUNTY COALITION OF LABOR, AGRICULTURE, AND BUSINESS, a non-profit membership organization; and VENTURA COUNTY AGRICULTURAL, ASSOCIATION, a California non-profit corporation,

Petitioners,

v.

COUNTY OF VENTURA, a political subdivision of the State of California; VENTURA COUNTY BOARD OF SUPERVISORS; VENTURA COUNTY PLANNING COMMISSION; and DOES 1-25, inclusive,

Respondents.

Case No.

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

[CEQA Matter, Cal. Pub. Res. Code §§ 21000, *et seq.*; Violation of Brown Act Government Code § 54950, *et seq.*; Violation of Government Code §§ 65008 and 65351]

Petitioners seek a writ of mandate and declaratory and injunctive relief against Respondents County of Ventura, Ventura County Board of Supervisors, and Ventura County Planning Commission (collectively "County" or "Respondents"), and alleges as follows:

I. INTRODUCTION

1. This Petition challenges the County's adoption of the 2040 General Plan Update ("General Plan" or "Project") and the County's certification of the Environmental Impact Report ("EIR") on September 15, 2020. The County adopted the General Plan and certified the associated EIR with maximum speed and minimum care. This occurred primarily as the product of a local official with larger political ambitions, intent upon creating a legacy and adopting these documents prior to his departure from local office. To that end, this official directed County staff to prioritize speed above all other considerations, and at the expense of a thorough and accurate analysis, public outreach, and even correcting easily identified legal and factual errors and omissions. The result was predictable: a document and process that collectively and comprehensively failed to fulfill their procedural and substantive obligations, and multiple failures to proceed in a manner required by law. A writ of mandate should issue here, setting aside the adoption of the General Plan and certification of the EIR for failures to comply with the Planning and Zoning Law, the California Environmental Quality Act ("CEQA", Public Resources Code ["Pub. Res. Code"] §21000 *et seq*.) and CEQA Guidelines (Cal. Code Regs., tit. 14, §15000 *et seq*.), and the Ralph M. Brown Open Meetings Act (the "Brown Act"; California Government ["Gov't"] Code § 54950 *et seq*.); as well as a declaratory judgement that certain General Plan policies are preempted by State and Federal law.

2. Every county and city in California is required to adopt a General Plan "for the physical development of the county or city, and of any land outside its boundaries, which in the planning agency's judgment bears relation to its planning." (Gov't Code § 65300.) A General Plan is the most important land use blueprint that a local government creates. It establishes the foundation for the regulations under which a community shall live and work for decades into the future—the California Supreme Court has recognized it as the "'constitution' for future development." (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal. 3d 531, 540.) Accordingly, a General

Plan must reflect both the concerns and the aspirations of the community for which it is written.

3. Because the General Plan is the foundational policy document guiding all development in a jurisdiction over the course of decades, public participation is essential. In a County with a significant minority community that is often disproportionately burdened by the consequences of development, public engagement and access is paramount. To that end, State law imposes two separate public participation obligations on cities and counties to ensure their "constitutions for future development"—and the concurrent environmental impacts—are thoroughly vetted not just by decisionmakers but also by the public.

4. First, the Planning and Zoning Law requires a fully-accessible public process for the adoption or amendment of a General Plan, including accessible hearings and outreach. (Gov't Code § 65351). These requirements are not aspirational—they are mandates.

5. Second, CEQA ensures that residents are not only advised of the comprehensive policy that informs future land use decisions, but also of the environmental impacts stemming from the city or county's foundational land use document. As the CEQA Guidelines recognize, "public participation is an essential part of the CEQA process." (CEQA Guidelines § 15201.) CEQA requires agencies to provide notice that it is preparing an EIR (Pub. Res. Code § 21092) and provide for public review of the draft EIR (Pub. Res. Code §§ 21105, 21108; CEQA Guidelines § 15087). This public participation is intended to assist the agency in weighing the environmental impacts of and alternatives to the proposed project. A failure to permit adequate public participation results in uninformed decision-making, which fundamentally undermines the purpose of CEQA.

6. In 2015, the County began the process of updating its existing General Plan to incorporate many laudable goals. The County originally represented to the public and to the consultant hired to complete the work, that the update would include revisions to all of the "elements" or topical categories required under the state Planning and Zoning Law, including the General Plan's Housing Element, as well as an update to the County's Zoning Ordinance to implement the new General Plan policies.

7. The 2040 General Plan is comprised of a collection of nine elements, of which the most relevant to this Petition are the "Agriculture Element" and the "Conservation and Open Space

Element."

8. The Agriculture Element is intended to provide guidance and programs for agricultural resources and land uses in the County. Among other things, this element includes programs and policies related to electrification of farming equipment and infrastructure, as part of an unexamined effort to reduce greenhouse gas ("GHG") emissions associated with future development contemplated in the GPU:

a) **AG-5.2 (Electric- or Renewable-Powered Agricultural Equipment)**. "The County shall encourage and support the transition to electric- or renewable-powered or lower emission agricultural equipment in place of fossil fuel-powered equipment, when feasible."

b) AG-5.3 (Electric- or Renewable- Powered Irrigation Pumps). "The County shall encourage farmers to convert fossil fuel-powered irrigation pumps to systems powered by electric or renewable energy sources, such as solar-power, and encourage electric utilities to eliminate or reduce stand-by charges."

9. Implementation Programs I and J are associated with these two policies, and both are included within the County's Climate Action Plan ("CAP"). Program I provides among other things that the County and the Air Pollution Control District ("APCD") will develop a plan with conversion targets. Implementation Measure J calls for the development, with APCD, of potential economic or regulatory incentives to facilitate conversion.

10. The Conservation and Open Space Element is intended to provide, among other things, guidance and programs related to energy resources and planning for climate change, and includes some implementation overlap with the Agriculture Element, particularly with respect to GHG reduction. Included is a suite of policies in this element and a mitigation measure in the EIR principally designed to prohibit natural gas in new residential and commercial buildings (collectively referred to as the "Natural Gas Ban"):

a) Goal COS-S (Building Code Update): The County shall "update the Building Code to include a mandatory Energy Reach Code." Goal COS-S is also included in the County's Climate Action Plan, which is Appendix B of the GPU.

b) **Goal COS-8.6 (Zero Net Energy and Zero Net Carbon Buildings)**: "The County shall support the transition to zero net energy and zero net carbon buildings, including electrification of new buildings."

c) **Goal COS-10.4 (Greenhouse Gas Reductions in Existing and New Development)**: "The County shall reduce GHG emissions in both existing and new development through a combination of measures included in the GHG Strategy, which includes new and modified regulations, financing and incentive-based programs, community outreach and education programs, partnerships with local or regional agencies, and other related actions."

d) **MM GHG-1 (Implementation Program HAZ-X):** As revised in the final EIR, HAZ-X requires that the County "support the proposed reach codes under COS-S" by including "a new program in the Hazards and Safety element that prohibits the installation of new natural gas infrastructure in new residential development construction" and that the program "be extended to include new commercial development building types such as including but not limited to offices, retail buildings, and hotels."

11. By adopting the General Plan with this prohibition on the use of specific energy sources, the County has unlawfully encroached into state and federal law by banning future development and use of natural gas infrastructure.

12. Moreover, when it adopted the General Plan, the County ignored the command of CEQA to weigh and evaluate the Project's impacts across a broad spectrum of impact categories, to address those impacts through the imposition of feasible mitigation measures to reduce their significance, and to consider alternatives that could avoid or lessen significant impacts while accomplishing the basic objectives of the Project. Instead, the County left unexamined many of the secondary effects of the policies adopted in the GPU and of the mitigation measures incorporated in the EIR; imposed illusory, infeasible, or deferred mitigation incapable of modulating the impacts of the GPU; and deprived the public of its right to participate in the proceedings.

13. A writ of mandate is appropriate here to stop the enforcement and effect of the

General Plan, at least until the County fulfills its basic CEQA duty of properly analyzing and mitigating the extensive significant environmental impacts identified in the record by countless members of the public, through comment letters and at public hearings. Declaratory relief also is appropriate to address the County's failure to comply with the Brown Act, and Planning and Zoning law, as explained further herein. Finally, declaratory relief is appropriate to address the General Plan's multiple conflicts with state and federal law.

II. THE PARTIES

14. Petitioner Ventura County Coalition of Labor, Agriculture, and Business ("CoLAB") is a 501(c)6 non-profit membership organization formed in 2010 to support land-based and industrial businesses including farming, ranching, oil, mining, and service, and to promote sensible and rational local government. Its mission is to preserve and support a healthy and expanding economic base by monitoring regulatory policy, educating stakeholders, and representing labor, agriculture and other business interests while protecting the local quality of life. CoLAB works tirelessly to promote a strong local economy while preserving the local quality of life in Ventura County by identifying and researching issues that impact businesses, working with regulatory agencies, organizing stakeholders, and proposing solutions to problems that impact Ventura County. CoLAB advocates for businesses through local regulation, by providing expertise, and by researching and educating campaigns to inform the public.

15. CoLAB represents over 500 members, consisting of citizens, labor organizations, businesses, and agricultural interests. Its members own property and operate businesses in Ventura County, and have beneficial, operational, environmental, educational, and scientific interests in the Project area. CoLAB's members depend on it to balance environmental, regulatory, and economic concerns through advocacy. CoLAB has a substantial interest in ensuring local policies support and respond to the needs of its members, particularly with respect to agriculture, labor, and business regulations, and that state and federal laws relating to the use of natural gas in buildings are enforced and that Ventura County complies with its legal obligations under state and federal law. This action will confer a substantial benefit on the public by protecting the public from environmental and other harm alleged herein.

16. CoLAB has standing to bring this action because some of its members would have independent standing as they are denied statutory rights, the interests that CoLAB seeks to address by this action are germane to its fundamental purpose, and the claims asserted seek only declaratory and injunctive relief and therefore do not require participation of individual members. CoLAB and its members also have a direct and beneficial interest in the County's compliance with CEQA, the CEQA Guidelines, and California State law and federal law.

17. Petitioner Ventura County Agricultural Association ("VCAA") 501(c)6 non-profit membership organization formed in 1970 to promote the common business interest of persons, firms, and corporations engaged in the business of agriculture in the California counties of Ventura and Santa Barbara. VCAA provides a range of services to agricultural employers, packing sheds, and labor contractors, and its services include training, assisting members in addressing labor matters, representing members in administrative and court proceedings, policy and procedure development, and analysis of federal, State and local laws that affect agricultural operations.

18. VCAA has a substantial interest in ensuring local policies support and respond to the needs of its members, particularly with respect to agriculture, labor, and business regulations, and that state and federal laws relating to the use of natural gas in buildings are enforced and that Ventura County complies with its legal obligations under state and federal law. This action will confer a substantial benefit on the public by protecting the public from environmental and other harm alleged herein.

19. VCAA has standing to bring this action because some of its members would have independent standing as they are denied statutory rights, the interests that the VCAA seeks to address by this action are germane to its fundamental purpose, and the claims asserted seek only declaratory and injunctive relief and therefore do not require participation of individual members. VCAA and its members also have a direct and beneficial interest in the County's compliance with CEQA, the CEQA Guidelines, and California State law and federal law.

20. CoLAB, VCAA, and their members are "beneficially interested" in the provisions of the GPU because its members engage in a range of agricultural and related business activity, use natural gas in buildings as part of their operations and infrastructure, and plan to use natural gas in

new buildings in Ventura County. The continued viability of agricultural land uses and their operations are critical to the mission of these organizations and their members. Additionally, the continuation of natural gas infrastructure development and use is critical to their residential, agricultural, commercial, and industrial operations, and is entirely consistent with and a necessary compliment to achieving other environmental and energy provisions of the General Plan. The organizations and their members also are beneficially interested in the County's ability to implement its General Plan and to achieve its climate change reduction goals.

21. Residents of California, including members of CoLAB and VCAA, already suffer through rolling blackouts due to excess electricity demands, the insufficiency of the existing electrical grid, and public safety power shutoffs due to increasing wildfires in California. These blackouts and shutoffs prevent use of any electrical appliances (including hot water heaters, HVAC systems, and cooking appliances). Further, peak times for residential energy use are evening hours when current renewable energy technologies cannot meet supply; this supply shortfall is overwhelmingly met by electricity plants that are themselves powered by natural gas. A ban on natural gas infrastructure would only exacerbate the harm for any resident member who lives in a newly constructed building. Similarly, commercial members like restaurants would not be able to operate or to cook certain foods and—during blackouts—would have to shut down entirely if natural gas appliances were effectively banned because the pipes and infrastructure supporting them could not be built. Additionally, the operations of agricultural processing facilities – major employers and regional economic contributors - require seasonal peaks of energy usage that can only be met by natural gas technologies. Finally, oil and natural gas producers—including the thousands of employees who make such operations possible—are adversely impacted by the GPU's ban of natural gas infrastructure.

22. The GPU's mandate to ban the development of new natural gas infrastructure harms and will harm Petitioner by raising their costs of operation and restricting their access to utility service that is otherwise available under state law. The use of natural gas in new buildings is important because it ensures residents and businesses can access basic functions (hot water, appliances, life-saving medical equipment), even if the electric grid is turned off, and it provides

cost-effective power. Petitioner therefore has an interest over and above the interest of the public at large in ensuring that the provisions in the Ventura County GPU are valid and enforceable under state law.

23. Respondent County of Ventura ("County") is a political subdivision of the State of California organized and existing under the laws of the State of California, with the capacity to sue and be sued. The County is the "lead agency" for the purposes of Public Resources Code Section 21067, with principal responsibility for conducing environmental review of the proposed actions. The County has a duty to comply with CEQA and other state and federal laws.

24. Respondent Ventura County Board of Supervisors ("Board of Supervisors") is the governing body of the County of Ventura. The Board of Supervisors approved the GPU, certified the Final EIR, and made the findings pursuant to CEQA on September 15, 2020, and filed its Notice of Determination for these actions on September 16, 2020.

25. Respondent Ventura County Planning Commission ("Planning Commission") is the five-member hearing and review body that, *inter alia*, advises the Board of Supervisors on planning on zoning matters. On July 16, 2020, the Planning Commission recommended that the Board of Supervisors adopt the Final EIR and the related findings.

26. As referred to herein, the term "County" includes, but is not limited to, the Board of Supervisors, the Planning Commission, County employees, agents, officers, boards, commissions, departments, and their members, all equally charged with complying with duties under the County Municipal Code, and with the laws of the State and Country.

27. Petitioners do not know the true names or capacities, whether individual, corporate, associate or otherwise, of Respondent Does 1 through 25, inclusive, and therefore sues said Respondents under fictitious names. Petitioners will amend this Petition to show their true names and capacities when and if the same have been ascertained.

III. JURISDICTION, VENUE AND EXHAUSTION OF ADMINISTRATIVE REMEDIES

28. This Court has jurisdiction under California Code of Civil Procedure sections 1094.5 and 1085 and Public Resources Code sections 21168, 21168.5, and 21168.9.

29. Venue is proper in this Court because the causes of action alleged in this Petition

arose in Ventura County, and all parties are located or do business in Ventura County.

30. In accordance with Public Resources Code § 21167(c), this Petition has been filed within 30 days of the County's September 16, 2020 Notice of Determination approving the Ordinance and certifying the Final EIR. (*See also* CEQA Guidelines §§ 15113(c)(1) and 15094(g).)

31. Petitioners complied with the requirements of Public Resources Code § 21167.5 and California Code of Civil Procedure § 388 by serving on Respondent County written notice of Petitioner's intention to commence this action on October 14, 2020. A copy of the proof of service is attached hereto as Exhibit A.

32. Petitioners have complied with Public Resources Code § 21167.6 by filing concurrently with this Petition a notice of their election to prepare the record of administrative proceedings related to this action.

33. Petitioners have complied with Public Resources Code section 21167.6 by furnishing the California Attorney General with a copy of this Petition.

34. Petitioners have performed all conditions precedent to filing the instant action, and has exhausted any and all available administrative remedies to the extent required by law. Petitioner appeared before the County prior to the adoption of the Ordinance, submitted extensive written and oral comments, and objected to the approval of the Project.

35. Petitioners have no plain, speedy or adequate remedies in the ordinary course of the law because Petitioner and its members will be irreparably harmed by the County's violations of CEQA, the Brown Act and other Planning and Zoning laws in approving the Ordinance unless this Court grants the requested writ of mandate and requires Respondent County to set aside its adoption of the Ordinance until appropriate CEQA review is undertaken, and refrain from further local regulation of matters that are preempted by state and federal law.

IV. FACTS COMMON TO ALL CAUSES OF ACTION

A. PROCEDURAL HISTORY

36. On or about January 14, 2019, the County issued a Notice of Preparation ("NOP") of a Draft Environmental Impact Report ("DEIR") for the General Plan Update, thereby triggering the start of the environmental review process for the 2040 General Plan.

37. On January 13, 2020, the County released its Public Review Draft 2040 General Plan and simultaneously issued a Notice of Availability ("NOA") of a Draft Environmental Impact Report for the Ventura County 2040 General Plan ("DEIR"). Although the County acknowledged the concurrent preparation, neither a draft 2021 Housing Element nor a draft Zoning Code Update were provided to the public, and the environmental impacts of an updated Housing Element and Zoning Code Update were not considered, analyzed, or discussed in the DEIR. No draft 2021 Housing Element has been released to the public to date.

38. Rather than releasing a comprehensive Zoning Code Update for public review concurrent with the 2040 General Plan, the County issued the Proposed Zoning Amendments separately. Despite the fact that the Proposed Zoning Amendments would work in tandem with the various new policies of the 2040 General Plan, the potentially significant impacts of the Proposed Zoning Amendments were not disclosed in the DEIR such as impacts to agricultural resources, biological resources, increased risk of wildfire, GHG emissions, public services and utilities, and traffic/vehicle miles travelled, and no separate environmental review was conducted. The Proposed Zoning Amendments are scheduled for adoption by the Board of Supervisors on November 10, 2020.

39. The 2040 General Plan contemplates other amendments and updates to the County Zoning Code.

40. Upon Petitioners' review of the Public Review Draft 2040 General Plan and the DEIR, Petitioners provided the County with detailed comment letters describing the legal, factual, procedural, and substantive issues in the records. Given the significant issues in the documents, Petitioners urged the County to revise and recirculate the DEIR and the Public Review Draft 2040 General Plan to bring it within compliance—but the County refused to do so.

41. Rather than make substantive revisions to cure the deficiencies in the documents, such as modifications to mitigation measures to render those measures enforceable or otherwise legally adequate, or to implement different mitigation measures or project alternatives to address significant impacts associated with implementation of the General Plan, the County finalized its Final Environmental Impact Report for the 2040 General Plan ("FEIR") (together with the DEIR,

"EIR"), which totaled 1,352 pages including another 2,361 pages in attachments, and released it to the public on July 2, 2020.

42. The FEIR included significant new information, new analysis, and incomplete responses to comments received by the County during the public review and comment period for the DEIR. For example, the FEIR recalculated GHG emissions generated by the oil and gas industry based on new and flawed data, but failed to provide a full public review and comment period during which Petitioners or the public could review and comment upon this new information and new analysis.

43. By law, the County was required to "provide opportunities for the involvement of citizens, California Native American tribes, public agencies, public utility companies, and civic, education, and other community groups" in the General Plan and EIR process. (Gov't Code §65351.) The County was also required to make available for the public inspection copies of the documents it was relying upon in the adoption of the General Plan and certification of the EIR. These obligations were neither diminished nor excused by the global pandemic and statewide stay-at-home orders.

44. On July 9, 2020, the County finally released a Staff Report and 42 exhibits, totaling over 10,000 pages in anticipation of the Planning Commission hearing on July 16, 2020. The County released additional documents, including several errata, at 6:42 p.m. on July 14, 2020—less than two days before the hearing, and less than one day before the purported deadline to submit written comments.

45. On that same day, July 14, 2020, the comment letters submitted by CoLAB's members for the hearing via the email address provided on the Planning Commission website (https://vcrma.org/public-comments-for-planning-commission-hearings) were erroneously and improperly rejected as "undeliverable" and "invalid recipient." There is no way to determine how many emails, and from whom, were excluded from the record for that hearing, but there is clear evidence that the administrative record fails to include all submitted public comment. As such, CoLAB notified the Planning Commission that it could not take action on the General Plan or the EIR, as both require consideration of "all comments and testimony prior to approving." Petitioner

further urged the County to postpone the meeting to allow members of the public to safely attend the meeting in person or to allow for time to ameliorate disparate access to technology in the community—but the County, once again, refused the request.

46. To further complicate matters and to further disenfranchise the public, the County's posted agenda for the July 16, 2020 Planning Commission meeting did not advise that the public was able to attend to meeting virtually via the computer application "Zoom," thus violating California Executive Order N-29-20. Instead, the County posted inconsistent and confusing instructions regarding virtual participation on other unrelated pages on the County website—but not on the County's agenda page—and then the County changed the instructions hours before the Planning Commission meeting. Once the meeting started, pervasive technology issues thwarted widespread, stable public access to the hearing. For example, multiple attempts to access the public Zoom presentation failed, and participants in the hearing were ejected from the Zoom presentation at the conclusion of their speaking time, resulting in further (and often failed) attempts to connect and view the meeting.

47. Technology malfunctions were not the only issues that arose during the hearing on July 16, 2020. Planning staff presented for the first time substantial revisions to documents during the hearing itself thereby providing no meaningful opportunity for review and comment. These revisions included wholesale changes to portions of Chapters 3 to 5 of the Final EIR, as well as presentation of revised mitigation measures, depriving the public—and the Commissioners themselves—of an opportunity for informed review, comment, and decisionmaking. Worse still, the introduction of documents during the hearing prompted the Commission to move public comment to an earlier time than residents were told comment would occur. That is, the Commission forced speakers to comment on a project and documents that were still under revision by Planning staff during the hearing to consider those documents, and did not have an opportunity to respond to the actual document the Planning Commission considered.

48. The County enabled and maintained the Zoom "chat" feature during the hearing. As a result, throughout the entirety of the hearing, including after the close of public comments and during deliberations, one or more members of the Commission accessed this Zoom chat and

selectively advanced certain comments and questions, but not others, into the deliberations. The Commission and County staff failed to disclose that this "non-public" chat was occurring with Commissioner(s), or the contents of those conversations at any time during or after the hearing, even though selective comments were used during deliberations to influence the Commission action.

49. In addition to the closed-session Zoom "chat" discussions, members of the Commission also engaged in closed session meetings with one another and County staff during the July 16, 2020 hearing. On two separate occasions during the deliberation portion of the hearing, Commissioner Aidukas made statements indicating that she was involved in back-channel communications during the hearing with County staff, in violation of the open public hearing process.

50. CoLAB timely notified the County of these violations by the Planning Commission and demanded the County cure them, but as with Petitioner's other comments, the County disregarded these concerns and failed to address those violations.

51. Days after the Planning Commission hearing, on July 20, 2020, the County closed its administrative offices completely and moved to an entirely virtual meeting schedule.

52. The hearing before the Ventura County Board of Supervisors was scheduled for September 1, 2020, and was organized and occurred under similar, and unlawful, circumstances.

53. On Thursday, August 27, 2020 at 5:30 pm, the County dumped thousands of pages of material and exhibits in anticipation of the Board hearing. No realisitic expectation could possibly exist that members of the public would have any reasonable opportunity to review and intelligently comment on these materials. Because the responsive documents were provided ***after*** the Planning Commission hearing and less than one month before the Board hearing, Petitioners (and the rest of the public) did not have time to review and analyze the documents they received, and were thus unable to provide fully informed comments at the Planning Commission phase. CoLAB requested a continuance of the Board hearing so that it could review the produced documents, which contain critical evidence relating to the GPU and EIR but the County refused. The County's failure to continue the hearing deprived CoLAB, and the broader public, of the ability to review the documents provided and provide meaningful comment.

54. On September 1, 2020, the Board proceeded as planned and, over CoLAB's objection, opened a public hearing to consider the 2040 General Plan and its EIR. At the conclusion of that meeting, the Board of Supervisors continued the public hearing to September 15, 2020, but then also directed County Staff to make several policy revisions in the 2040 General Plan documents. The County completed no additional environmental analysis, and no revisions to the EIR to determine whether these revisions to the General Plan would result in new or different environmental impacts from those disclosed in the EIR.

55. On September 15, 2020, the Board adopted Resolution No. 20-106, which certified the EIR, adopted CEQA Findings of Fact and a Statement of Overriding Considerations, adopted a Mitigation Monitoring Program, repealed the existing General Plan except for portions constituting the 2014-2021 Housing Element, and approved and adopted the 2040 General Plan and 2040 General Plan Background Report.

B. THE COUNTY FAILED TO COMPLY WITH CEQA.

56. CEQA is based upon the principle that "the maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern." (Pub. Res. Code § 21000(a).) In CEQA, the Legislature established procedures designed to achieve these goals—principally, the EIR. These procedures provide both for the determination and for full public disclosure of the potential adverse effects on the environment of projects that governmental agencies propose to approve, and require a description of feasible alternatives to such proposed projects and feasible mitigation measures to lessen their environmental harm. (Pub. Res. Code § 21002.)

57. CEQA is not merely a procedural statute; it imposes clear and substantive responsibilities on agencies that propose to approve projects, requiring that public agencies not approve projects that harm the environment unless and until all feasible mitigation measures are employed to minimize that harm. (Pub. Res. Code §§ 21002, 21002.1(b).)

58. CEQA defines a project as "the whole of an action, which has a potential for resulting in either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment." (CEQA Guidelines § 15378(a).)

59. There is no dispute that in this case, the "project" as defined by the County is the

adoption of the General Plan.

60. The failure either to comply with the substantive requirements of CEQA or to carry out the full CEQA procedures so that complete information as to a project's impacts is developed and publicly disclosed constitutes a prejudicial abuse of discretion that requires invalidation of the public agency action regardless of whether full compliance would have produced a different result. (Pub. Res. Code § 21005.) A lead agency may not undertake actions that could potentially have a significant adverse effect on the environment, or limit the choice of alternatives or mitigation measures, before complying with CEQA. (CEQA Guidelines § 15004(b) (2).)

1. <u>The EIR Failed to Include an Adequate Project Description.</u>

61. An EIR's analysis of environmental impacts is based on the Project description. Accordingly, an "accurate, stable, and finite project description is the sine qua non of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) "However, a curtailed, enigmatic, or unstable project description draws a red herring across the path of public input." (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655.) Without an accurate and complete project description, decisionmakers and the public cannot fully understand a project's likely impacts on the environment.

62. The EIR's project description scatters various project details throughout a voluminous appendix, forcing the public and decisionmakers to ferret out information that might be relevant to the impact analysis; omits or misrepresents key components of the Project—most particularly the concurrently-processed 2021 Housing Element—and fails to account for the housing allocation already adopted for the County by the Southern California Association of Governments ("SCAG"), the regional planning agency for Ventura County. Similarly, the Project description does not include or describe the concurrently-prepared amendments to the County's zoning ordinance, rendering impossible any evaluation of the consistency of the amendments with the General Plan, or to evaluate how the zoning ordinance would ultimately codify the various implementation and other follow-on plans.

63. The Project description also fails to adequately identify the location of the new land use designations, rendering impossible any attempt to fully evaluate the potential impacts of the new

plan; fails to describe or even summarize the proposed goals, policies, and implementation programs, and therefore fails to provide enough information to determine whether the new policies and programs established in the General Plan are consistent with the County's Guidelines for Orderly Development and the Save Open Space & Agricultural Resources Initiative; fails to describe what each new General Plan element will actually do; and excludes any meaningful description of the implementation measures, actions and programs necessary to carry out the General Plan.

64. The Project description fails to account for last-minute revisions and additions made to the 2040 General Plan by County Staff and the Board of Supervisors, long after CEQA review had completed;

65. Because the Project description fails to include the full scope of the project; is impermissibly vague; relies upon flawed assumptions, including but not limited to, erroneous growth projections and false assumptions relating to existing GHG emissions within the County it fails to "adequately apprise all interested parties of the true scope of the Project," and the approval of the Project was a prejudicial abuse of discretion that violates CEQA. (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454-44.)

2. <u>The EIR Failed to Fully Analyze Impacts of the Project.</u>

66. Through a variety of errors and abuses of discretion—including illusory, infeasible, or deferred mitigation; piecemealing; and a failure to consider the effects and secondary effects of General Plan policies and mitigation—the EIR failed to analyze or disclose the full impacts of the General Plan. Even to the extent the County recognizes an impact may be significant and unavoidable, it cannot simply escape its obligation to mitigation on the basis of that finding: the CEQA Guidelines require the County to find that it has identified and required ***all*** feasible mitigation measures before it may determine the impact is unavoidable, and that the benefits of a project override its significant effects. (CEQA Guidelines §§ 15091(a), 15093(a).)

a. <u>The EIR Relies on Illusory, Infeasible, and Deferred Mitigation.</u>

67. CEQA requires an agency to attempt to avoid or mitigate the significant effects of an action by requiring changes in a project. CEQA requires that mitigation measures be feasible, effective, concrete and enforceable. If a mitigation measure does not meet these criteria, the County

may not rely on that measure as a basis for determining a reduction in the severity of the impact, as it cannot provide substantial evidentiary support for such a finding. (*See King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 852, 870.)

68. "Feasible" means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Pub. Res. Code § 21061.1.)

b. <u>The EIR Impermissibly Relies on Illusory Mitigation Measures.</u>

69. The Final EIR contains measures that are not enforceable: they are either qualified in a manner that does not require implementation or subjects implementation to unfettered discretion, or they are impermissibly deferred and contain no valid performance standards that allow any evaluation of their ultimate effect.

70. The Final EIR modified several of the Draft EIR's mitigation measures with qualifiers that render them ineffective. These qualifiers include "if feasible" or "to the maximum extent feasible." However, the measures contain no method to determine feasibility, delegating to staff the determination regarding any particular requirement. Such qualifiers prevent the County from actually requiring or ensuring any particular action by future applicants or developers, rendering the measures unenforceable. The affected mitigation measures include, at a minimum: Mitigation Measure ("MM") AQ-1b; MM BIO-1; MM CUL-1c; MM CUL-3; MM GHG-1; MM NOI-1; MM NOI-3; and MM CTM-1.

71. In order to be effective, a mitigation measure must actually result in a specific, identified level of impact reduction. Measures that contain only vague effects, and that defer potential reductions to future actions, violate CEQA. The County Board of Supervisors cannot support a Statement of Overriding Considerations under CEQA while relying on deficient mitigation. (*King & Gardiner Farms, LLC, supra.,* 45 Cal.App.5th at p. 870.)

72. Taking only one of the above examples, MM GHG-1 is impermissibly vague, defers actual mitigation to future actions without analyzing the effects thereof, and fails to provide sufficient evidence to support the County's findings:

a) MM GHG-1 defers the imposition of any energy requirements for commercial,

retail, hotel and other buildings to future, discretionary decisions concerning the feasibility of any such requirements. This deprived both decision-makers and the public of a full understanding of the measure's effectiveness at the time the EIR was be certified.

b) MM GHG-1 is contradicted by the County's statements regarding the energy needs in the EIR. Section 4.6 projects that both electric and natural gas demand will increase by approximately the same amount (over 6 percent) through 2040. These projections conflict with the aims and intended effects of MM GHG-1, which is designed to preclude natural gas use in virtually all new buildings in the County and shift that demand to a single source of energy. If no change in energy use patterns is anticipated, then MM GHG-1 is ineffective. If MM GHG-1 will actually change energy use as intended, then the EIR's discussion of future energy demand is inaccurate.

c) MM GHG-1 must result in a specific impact reduction that is disclosed to the public and the County's decision makers. The County has failed to disclose to the public the impacts that will remain significant and unavoidable after mitigation.

73. The EIR also applies many GPU policies and implementation programs that use the words "encourage" or "discourage" as evidence of impact reduction, even to the point of assigning a hard number value for reduction of GHG emissions. The mitigation value of policies and implementation programs are illusory in nature or, at best, impermissibly deferred. Examples of these measures include: AG-5.1 ("shall encourage farmers to reduce fertilizer application"); AG-H; AG-5.2; AG-5.3; AG-J; AG-L; COS-8.2; and COS-8.7. While these GPU policies and implementation programs are not themselves mitigation measures, the EIR relies on them as evidence for reduced impacts; consequently, they also must meet the criteria for mitigation measures. They do not meet this standard, and deprive the resulting impact significance conclusions of evidentiary support.

c. <u>The EIR Impermissibly Relies on Infeasible Mitigation Measures.</u>

74. The County failed to address the economic feasibility of any of the proposed

mitigation measures in the EIR. This is a crucial omission because, without any concept of whether the measures are actually feasible, the County's determination that these measures will actually be implemented or be effective lacks the support of substantial evidence.

75. Mitigation Measure AG-2 requires agricultural conservation easements at a 1:1 ratio, but provides no exemptions, alternatives, or in-lieu options where purchase of agricultural conservation easements is infeasible. These options make the difference between economically feasible and infeasible mitigation requirements. The County's proposed Mitigation Measure AG-2 contains none of these options or alternatives and, therefore, cannot be directly compared to the other jurisdictional programs in terms of either feasibility or effect. As such, the record lacks any substantial evidence that MM AG-2 will be feasible or effective.

76. The EIR also failed to respond to comments regarding the availability of Important Farmland for purchase within Ventura County. Without any attempt to identify potential donor or preservation sites for agricultural land, the EIR does not and cannot conclude the measure is feasible under any circumstances, whether in the short or long term. As the response fails to provide any information indicating parcels of Important Farmland are indeed available to purchase as mitigation acreage, the Final EIR fails to establish the feasibility of this mitigation measure or respond to the information provided in comments that established the infeasibility of the measure. This leaves the conclusions in the EIR unsupported. That the impact was already determined significant and unavoidable does not relieve the County of its state-law responsibility to propose and evaluate feasible measures to reduce impacts.

d. <u>The EIR Impermissibly Relies on Deferred Mitigation Measures.</u>

77. The CEQA Guidelines require that the EIR's formulation of mitigation "not be deferred until some future time." (CEQA Guidelines § 15126.4(a)(1)(B).) The details of a mitigation measure may be developed after project approval only when it is impractical or infeasible to include the details during the Project's environmental review and the agency commits itself to the mitigation, adopts specific performance standards, and identifies the potential actions to achieve the performance standard. *Id*.

78. County staff admitted their intention to defer environmental and feasibility analysis

of mitigation measures in public meetings. On February 19, 2020, Planning Director Dave Ward stated to the Agricultural Policy Advisory Committee that "this is a program EIR...feasibility of mitigations would be assessed at the Project level...a program level doesn't require this." Mr. Ward further stated that the programmatic EIR need only examine the environmental impacts of a "specific policy or program, then that's part of the CEQA analysis…there would have to be a policy or program specific to that item, then we are assessing that." Not so: the EIR included specific policies, and relied upon such policies for evidentiary support for the determinations regarding the significance of environmental impacts. Consequently, the EIR had an obligation to demonstrate the measures actually would reduce impacts.

79. The County impermissibly relied upon deferred mitigation without an adequate performance standard. Specifically, Mitigation Measure AG-2 requires conservation easements be "of sufficient size to be viable for long term farming use as determined by the County." This is unfettered discretion, with no performance standards, criteria, or indicators, by County staff with no established or required level of expertise to make this determination. Not only does this ignore that the agricultural area proposed for replacement previously functioned, but it also represents impermissible deferral of mitigation, and precludes any determination of effectiveness in the EIR. Further, this required determination creates the potential to expand the agricultural mitigation ratios above 1:1, subject only to the whims of staff—who may have no qualification to make such a determination—and with no expert review. This directly contradicts the County's unsubstantiated argument that a 1:1 ratio would be economically feasible, and appears to permit imposition of a larger mitigation ratio—which may meet or exceed 2:1—even in the face of the County's admission that a 2:1 ratio is infeasible.

80. Additionally, the GHG reduction policy enhancement program states "for any additional future policies that may be adopted as part of the County's GHG reduction strategy (COS-10.1), the CEC may recommend new subprograms…the subprograms shall be recommended to the Board of Supervisors for consideration and approval no later than 2025." This policy, upon which the EIR relies as mitigation, does not describe any actual mitigation at all, but rather is merely a suggestion that, in the future, the County may (or may not) adopt unspecified subprograms for un-

identified, undisclosed future policies as part of its mitigation measures for GHG emissions.

81. In MM PS-1 and New Implementation Program PFS-X, review of future projects for Law Enforcement security measures states "future discretionary projects shall be reviewed by the County Sheriff's Department to determine whether the Project includes adequate security measures…" The County fails to provide any definition or description of "adequate security measures" in the General Plan or the EIR, but instead is deferring disclosing the requirements and any associated analysis of impacts from the GPU to future EIRs.

82. MM CTM-3, Revised IP CTM-C, requires the county to update its initial study guidelines to account for the new vehicle miles traveled ("VMT") metric, and relies upon this unspecified future action as mitigation for traffic impacts, but fails to provide actual requirements or performance standards for mitigating VMT impacts. In doing so it completely undercuts any mitigation assumptions in the transportation analysis in the EIR, and deprives the conclusions of substantial evidentiary support. This is not a mitigation measure, but rather a statement that the County will defer the creation of mitigation measures to a later time, with no indication that these future, unknown proposed policies and programs will go through future CEQA analysis or the General Plan amendment process. Despite this, the EIR relies upon the measure for its conclusion regarding the significance of traffic impacts.

e. <u>The EIR fails to evaluate the secondary effects of General Plan policies.</u>

83. The Project's direct, indirect, and secondary impacts on agricultural resources must be evaluated under CEQA, and this requirement extends to the foreseeable effects of General Plan policies and programs. But the EIR did not disclose the impacts of implementing General Plan Policies AG-5.2 or AG-5.3, which are designed to encourage the transition to renewable- or electric-powered agricultural equipment and irrigation pumps, on the long-term viability and future economic development of local agriculture. For example, the EIR failed to disclose the prohibitive cost of such a transition or the increased wildfire risk resulting from this transition. Peer-reviewed, published articles in international scientific and technology journals summarizing large-scale, comprehensive studies conducted around the world indicate that the technology is simply not

available to convert larger, more powerful tractors to all electric, and that the available technology may not be affordable. Consequently not only does the evidence fail to support the feasibility of this measure, but all available evidence indicates the measure is not feasible and cannot provide an evidentiary basis for the EIR's determination regarding the significance of potential impacts to agricultural resources.

84. The Project's impacts on biological resources must also be evaluated under CEQA. Yet the EIR did not disclose the impacts of implementing General Plan Policy COS-1.15, which requires the County to manage a countywide target of planting two million new trees throughout the County by 2040. At the August 6, 2019 Board of Supervisors public hearing, a local professional biologist provided testimony that the proposed planting of "two million trees" would have a significant negative impact on Ventura County's native landscape, native vegetation communities, and protected biological resources. The planting of millions of trees into a landscape that is primarily chaparral and sage scrub would result in an adverse physical change to the environment that will impact the native vegetation and biological resources. Moreover, it is not clear that the County can meet the foreseeable water demand for such planting, and these plantings can increase fire risk, depending on species and location. The County nevertheless failed to evaluate the effects of COS-1.15.

85. As described above, the GPU establishes a framework that prohibits natural gas in new residential and commercial buildings. Under this approach, the County claims that the Project's GHG emissions would be reduced primarily by implementing a single source of energy, banning natural gas in new buildings and developing new and expanded distributed energy sources. But the County cannot leave the reasonably foreseeable secondary effects of such a policy unexamined.

86. The County was required to consider potentially significant secondary impacts associated with the implementation of an SSoE prior to adopting the GPU and EIR, many of which have not been sufficiently addressed by state, regional and local public entities. More specifically:

a) The EIR fails to analyze how single-source of energy policies increase energy costs and disproportionately harm disadvantaged communities.

b) The EIR fails to analyze how single-source of energy policies cumulatively

contribute towards the implementation of a single-source of energy strategy for California that will require, at minimum, millions of acres of new distributed energy generation, new bulk transmission throughout the western U.S., and a more than 15,000 percent increase in grid scale battery manufacturing and deployment that will have a direct and material effect on the quality of life in underserved communities.

c) The EIR fails to evaluate and disclose the GHG emissions from the importation of electricity, which will in part be satisfied by coal-fired generation facilities.

d) The EIR fails to analyze how the significant expansion of electricity infrastructure throughout the County would increase fire risk, as infrastructure would foreseeably traverse wildlands.

e) The EIR fails to analyze how MM GHG-1 may result in the "wasteful" use of natural gas resources and infrastructure, or the "wasteful" or "inefficient" expenditure for additional energy consumption to accommodate the HAZ-X Program.

f) The EIR fails to analyze the indirect environmental impacts of increased deployment of distributed energy generating facilities (and accompanying distribution and transmission assets). For example, the EIR does not analyze how the construction of additional distributed energy sources may impact federally and/or state protected species, result in increased construction and operational noise levels for sensitive receptors, and/or degrade water quality during project construction or operation.

g) The EIR does not quantify increased energy demand, or address whether additional generation, distribution or transmission assets may be needed to facilitate increased energy demand under Program HAZ-X. By merely assuming—against all available evidence—that the local grid has sufficient infrastructure to accommodate increased energy demand stemming from Program HAZ-X, the County has impermissibly skirted its obligation to analyze the

impacts the GPU and MM GHG-1 will have on utility infrastructure, as well as the effects associated with expansion of necessary infrastructure.

h) When intermittent renewable energy supplies are not deployed (i.e., solar power at night when demand is highest), using energy sources that have less energy efficiency to meet building energy needs can produce more GHG emissions than natural gas. Yet, the EIR has not analyzed, or even acknowledged, the potential GHG impacts that could occur from displacing natural gas in new residential and commercial structures with a single source energy.

i) The EIR fails to acknowledge the SSoE's effects on energy reliability and safety concerns in light of the State's increasing wildfires and public safety power shutoffs ("PSPSs").

f. <u>The EIR fails to properly analyze the Project's contribution to climate change impacts.</u>

87. The GPU and the EIR establish a policy framework that would prohibit natural gas in new residential and commercial buildings. This framework consists of the following specific policies:

a) **Goal COS-S (Building Code Update)**: The County shall "update the Building Code to include a mandatory Energy Reach Code." Goal COS-S is also included in the County's Climate Action Plan, which is Appendix B of the GPU.

b) **Goal COS-8.1 (Reduce Reliance on Fossil Fuels**): "The County shall promote the development and use of renewable energy resources … to reduce dependency on petroleum-based energy sources."

c) **Goal COS-8.6 (Zero Net Energy and Zero Net Carbon Buildings)**: "The County shall support the transition to zero net energy and zero net carbon buildings, including electrification of new buildings."

d) **COS-10.4 (Greenhouse Gas Reductions in Existing and New Development)**: "The County shall reduce GHG emissions in both existing and new development through a combination of measures included in the GHG Strategy, which includes

new and modified regulations, financing and incentive-based programs, community outreach and education programs, partnerships with local or regional agencies, and other related actions."

e) **MM GHG-1 (Implementation Program HAZ-X):** As revised in the final EIR, HAZ-X requires that the County "support the proposed reach codes under COS-S" by including "a new program in the Hazards and Safety element that prohibits the installation of new natural gas infrastructure in new residential development construction" and that the program "be extended to include new commercial development building types such as including but not limited to offices, retail buildings, and hotels."

88. As described above, these policies establish a framework that prohibits natural gas in new residential and commercial buildings. Because the County's single-source of energy ("SSoE") policy will control discretionary approvals for years to come, the time to analyze the environmental impacts from the single-source of energy policies is now — not later.

89. A host of academic reports demonstrate that the County cannot simply assume that a single-source energy program will reduce GHG emissions or be an effective mitigation measure to reduce GHG emissions from a project. California continues to rely on natural gas for energy generation and to stabilize the state's power grid as additional intermittent energy sources are deployed. When intermittent renewable energy supplies are not deployed (*i.e.*, solar power at night when demand is highest), using energy sources that have less energy efficiency to meet building energy needs can produce more GHG emissions than natural gas. Yet, the EIR does not analyze, or even acknowledge, the potential GHG emissions that could occur from displacing natural gas in new residential and commercial structures with a single source of energy.

90. Further, the GHG analysis includes unsubstantiated and double-counted reductions in emissions. The County simultaneously credits its Project with emissions decreased outside of the County while disclaiming responsibility for new GHG emissions the Project induces outside of the County.

91. In General Plan policy COS-8.4 (Clean Power Alliance), the County "credits" itself

for a reduction of 20,445 metric tons of carbon dioxide equivalent emissions from the increase of electricity through renewable sources. But the County never acknowledges that there is no local electricity production in Ventura County. Any reductions in GHG emissions related to increased use of renewably sourced electrical power would occur outside of County—and likely State—boundaries and are beyond the ability of the County to control under the current policy framework.

92. At the same time, the County acknowledges that the General Plan will lead to the increased importation of oil, but disclaims responsibility for this increase in concurrent GHG emissions because these are "outside the County." This is nonsense: in analyzing the impacts of its project, the County cannot cherry-pick when and where it chooses to consider "outside" GHG emission impacts, particularly given the prevalence of coal-fired power plants outside of California and the foreseeable need to import electricity. By selectively including GHG credits when it favors the General Plan, and simply assuming that imported electricity would be renewably sourced, the County has obfuscated and minimized the true impacts of the Project.

93. Additionally, the County relies on GPU policy COS-H (tree planting) in calculating the Project's emissions, but these calculations grossly overestimate the GHG sequestration of the tree planting program. The County's calculations assume a 100% survivability rate for all trees planted. It also assumes the same carbon sequestration volume regardless of type of tree, size of tree, and whether the tree is a sapling or fully grown. As stated by Supervisor Park at the September 10, 2019 Board hearing, some of these newly planted trees "may be replacements" for existing trees. However, the calculation assumes that the entire number of trees planted is "in addition" to existing trees. If the County is replacing fully grown, mature trees with saplings, a long-term decrease will occur in the carbon capture, which renders the GHG emissions credit obtained by this calculation erroneous or, at the very least, unsupported. Also, as described above, the EIR has not established the feasibility of planting the number of trees assumed, or the effects associated with those plantings.

94. In assessing the Project's GHG emissions, the County also relies on a program, GPU policy (COS-1.15) for which no funding is guaranteed in order to discount the Project's contribution to climate change.

95. The County has prepared a rosy, pie-in-the-sky portrait of GHG impacts under the

Project which has deprived the public and decisionmakers of an understanding of the true impacts of the Project in violation of CEQA.

g. <u>The EIR fails to evaluate and disclose the cumulative impacts of the Project.</u>

96. CEQA requires public agencies to consider whether a proposed action will have significant cumulative impacts and implement feasible mitigation measures to reduce or avoid such impacts.

97. CEQA Guidelines § 15355 states that cumulative impacts may occur from "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts," including (a) "individual effects…resulting from a single project or a number of separate projects;" and (b) "the change in the environment which results from the incremental impact of the Project when added to other closely related past, present, and reasonably foreseeable probable future projects" that "can result from individually minor but collectively significant projects taking place over a period of time."

98. Even assuming the in-progress 2021 Housing Element was not analyzed piecemeal from the General Plan update (as described below, piecemealing occurred, in violation of CEQA), CEQA would have required the EIR to evaluate the cumulative effects of that project and the General Plan. Specifically, and as described above, the 2021 Housing Element ***will*** foreseeably result in a substantially greater amount of housing than was assumed in the General Plan EIR, thereby altering fundamental assumptions regarding County-wide growth embedded in the General Plan and EIR. This increase implicates a range of environmental impact issue areas, including at a minimum housing, traffic, air quality, noise, GHGs, and land use, all of which the EIR failed even to acknowledge, let alone consider and disclose.

99. The County also was required to consider potentially significant cumulative impacts associated with the implementation of an SSoE policy prior to adopting the GPU and certifying the EIR.

100. For example, SSoE development will significantly and adversely affect agricultural resources, including large amounts of prime farmland, other cropland and grazing land in California

and in out-of-state locations. These cumulative impacts will directly affect farmers and ranchers in Ventura County by converting lands currently in agricultural use for power generation, transmission and storage, and indirectly impact County agriculture by adversely harming the state and western U.S. agricultural infrastructure and capacity, including severe agricultural land area contraction.

101. Because the County failed to account for this cumulative impact, it failed to implement all feasible mitigation to reduce the Project's cumulative effect, including prohibiting energy generation and storage installations on agricultural and grazing lands and exempting agricultural operations from mandatory SSoE requirements.

102. SSoE development will also cumulatively and significantly impact the state's existing population and housing crisis by increasing the structural energy costs for residential and commercial buildings. California households will be required to allocate more disposable income for energy and less income will be available to pay a mortgage or rent. The implementation of the SSoE will result in adverse income impacts that will cumulatively increase the severity of the state's existing housing affordability crisis.

103. Because the County failed to account for this cumulative impact, it failed to comply with CEQA requirements for reducing the Project's cumulative effect, including amending the General Plan to allow for continued access to natural gas in new developments alongside the development of clean, zero-emission and net negative emission gas supplies concurrently with SSoE implementation to facilitate the concurrent expansion of wind and solar capacity.

104. As explained in the General Plan Resources Appendix, the impairment of the extraction of local mineral resources will also cause significant impacts to air quality as a result of the additional vehicle miles travelled to more distant mineral resource supplies due to the lack of localized availability of mineral resources. Moreover, significant air emissions will result from the increased risk of uncontrolled wildfires, which release tons of reactive organic gases, nitrogen oxides, and particulate matter into the atmosphere.

3. <u>The County Has Illegally Engaged in Piecemealing in Order to Evade CEQA Review.</u>

105. CEQA requires an EIR to analyze "the whole of an action, which has a potential for

resulting in either a direct physical change in the environment or a reasonable foreseeable indirect physical change in the environment." (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.)

106. Over the course of the General Plan Update process, the County stripped away several measures that it initially recognized as integral parts of a larger whole, and has scheduled them for separate consideration after the September 1, 2020 hearing on the GPU itself. These include the proposed effective revocation of vested rights of mineral lessors and lessees on October 6, 2020, as well as anticipated consideration of the General Plan Housing Element in October 2021. Each of these proposals is properly considered a part of the General Plan, as they have wide-ranging and interrelated effects.

107. At a minimum, the Housing Element is more than merely foreseeable: it was, in fact, part of and then consciously separated from the larger General Plan effort, is directly related to it, and necessarily affects the fundamental land use and growth assumptions within the General Plan. For example, the Southern California Association of Governments ("SCAG") adopted in July 2020 the Regional Housing Needs Assessment ("RHNA") for the County. Although the RHNA remains subject to some challenge by the County, the allocation is unlikely to substantially shrink, and the County has an obligation under the law to demonstrate its ability to meet its RHNA allocation. Further, to the extent the County retains an obligation to provide more housing than the General Plan assumes (and the RHNA in fact exceeds the General Plan growth projections), the EIR simply fails to account for the actual growth for which the County must plan. Even worse, as described above, the EIR failed even to recognize the Housing Element in its cumulative impacts analysis, despite current development and foreseeable content.

108. Incorporating the Housing Element would have required only minimal delay. Both the Housing Element and General Plan relied on the same consultant who prepared both items concurrently.

109. The "whole of the action" is not defined by what is convenient—and here, the minimal lag cannot even be characterized as "inconvenient." Further, not only does excluding the Housing Element from the General Plan present a piecemealing problem, it undermines the accuracy

and stability of the General Plan project description, given that the County admits that the Housing Element may require amendments to the General Plan Update in the immediate near future.

4. The County Failed to Recirculate the EIR in Violation of CEQA.

110. Respondents violated CEQA by failing to recirculate the EIR after adding significant new information to the EIR, thus depriving the public of a meaningful opportunity to comment upon the Project's substantial adverse impacts and suggest feasible ways to mitigate such impacts, including, but not limited to wholesale changes to portions of Chapters 3, 4, and 5 of the FEIR. The County attempts to replace in its entirety the fundamental analytic basis of the effects of the Project's GHG emissions by providing an entirely new GHG emissions inventory. Even then, however, the new emissions inventory partially or entirely excluded whole industries or sources in the County. Petitioner noted the County's obligation to recirculate the Final EIR in light of the substantial new information and analyses included after issuance of the Draft EIR.

111. CEQA Guidelines section 15088.5(a)(4) requires recirculation where an analysis "was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." A flawed and misleading baseline alone precludes informed consideration and comment, irrespective of whether the baseline is more or less favorable to the underlying project. (*See Neighbors for Smart Rail v. Exposition Metro Line Constr. Auth*. (2013) 57 Cal.4th 439.) Further, the County effectively conceded the fundamental inadequacy of the GHG baseline by providing an entirely new, replacement baseline study (which also was flawed, as discussed herein).

5. The County Precluded Meaningful and Adequate Public Participation.

112. The County did not write its Final EIR and other environmental review documents in plain language so that members of the public could readily understand the documents. In particular, by refusing to translate any CEQA documents—or any substantive documents or summaries—into Spanish, the County precluded meaningful and adequate public participation by monolingual Spanish-speaking residents. These individuals were deprived of their statutory rights to inform themselves about and to comment meaningfully upon the GPU and its environmental consequences before the Board of Supervisors approved it.

113. The County provided Spanish and Mixteco interpretation services at less than half of the County-hosted open house workshops and issued hearing notices in Spanish and Mixteco for only some of the hearings. Moreover, as described above, none of the actual documents—or even summaries of any documents—have been translated into Spanish or Mixteco and distributed for the public. Even worse, the Spanish-language web page maintained by the County contained links to English documents.

114. CEQA Guidelines advise that "EIRs shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can rapidly understand the documents." (CEQA Guidelines § 15140.) Similarly, as described above, the Government Code provisions related to preparation of General Plans require robust outreach efforts (§ 65351), and the guidelines issued by the Office and Planning and Research strongly encourage the provision of at least some materials in alternative languages.

115. The County tacitly acknowledged such efforts were needed in a community with 40 percent Spanish speakers, and a large fraction of monolingual Spanish- and Mixteco-speakers. The County provided interpretation services at some of its workshops and translations of some of its notices. But the County nevertheless refused to translate even a single summary document into Spanish or Mixteco.

116. Further, and irrespective of language, the County produced illegible maps as part of the public review of the EIR and General Plan. The illegibility of these figures was specifically raised to the County during the comment process and disregarded. Under CEQA, the information provided in the EIR must be of sufficient detail and quality to allow the reader to determine potential impacts resulting from the Project. Illegible figures deprive the public of a meaningful opportunity to permit informed participation.

6. <u>The County Failed to Provide Adequate Responses to Comments.</u>

117. CEQA requires the lead agency to provide written responses to comments submitted during the EIR comment period. (Pub. Res. Code § 21092.5.) Responses require good faith, reasoned, and adequately detailed analysis. (CEQA Guidelines § 15088(c).)

118. Objections to the lead agency's position must be "addressed in detail giving reasons

why specific comments and suggestions were not accepted." (CEQA Guidelines § 15088(c).)

119. Instead of providing good faith responses, as required by CEQA, many of the County's responses to comments were off-point and non-responsive.

120. Throughout the entirety of the County's responses to comments, the County mischaracterized comments submitted by organizations and individuals, ignored specific portions of comments, provided partial responses to comments, ignored and disregarded technical evidence provided in comments without providing refuting expert testimony, and engaged in circularity by simply referring the commenter back to the flawed analysis in the EIR, without providing additional information or context relevant to the comment. In some cases, the Final EIR simply mischaracterized the comment and answered the comment the County would have preferred to receive, rather than the comment actually submitted. The Final EIR is substantially unresponsive to comments.

121. For example, the County failed to adequately address comments regarding the feasibility of mitigation measures, including and especially Mitigation Measure AG-2. As this measure is fundamental to the conclusions of the EIR regarding impacts to agricultural resources, this failure deprives the analysis of evidentiary support.

122. Despite receiving thousands of comments, many of them providing alternatives and suggesting mitigation for the environmental impacts of the Project, the FEIR included very limited modifications.

C. THE NATURAL GAS BAN

123. Under the General Plan, the County "shall" pass a reach code banning new natural gas infrastructure by 2030. (GPU, Conservation and Open Space Element, Implementation Measure COS-S) The General Plan mandate will have an immediate deterrent effect on the behavior of commercial and residential customers and contractors in planning future construction projects because the General Plan has the force of law such that every local decision regarding land use and development must be consistent with the General Plan. (Gov't Code 65300 *et seq*.; *Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal. App. 4th 91, 97.) Thus, the statement in the General Plan to ban the development of new natural gas infrastructure has force and effect of requiring the

County to follow that mandate. The mandate also effects Petitioner because they must make business and employment decisions in light of this mandate and are presently harmed by the requirement that the County pass a ban on new natural gas infrastructure.

124. A General Plan is subject to the general preemption principles and may be preempted by state and federal law. (*Rumford v. City of Berkeley* (1982) 31 Cal. 3d 545, 550.) A General Plan policy may be preempted if (1) it conflicts with state law; (2) it is in a field that is fully occupied by State or Federal law; or (3) it is in a field that is impliedly occupied by State or Federal law. (*San Diego Gas & Electric Co. v. City of Carlsbad* ("*Carlsbad*") (1998) 64 Cal.App.4th 785, 793; *Harbor Carriers, Inc. v. City of Sausalito* (1975) 46 Cal.App.3d 773, 775-76.)

125. The mandate in the General Plan to ban natural gas infrastructure in new buildings is preempted by state and federal law.

1. <u>California Law Preempts the General Plan's Natural Gas Mandate.</u>

126. State law and policy comprehensively and strongly regulate the energy sector. State law recognizes the central role of natural gas utilities in planning and regulating energy use and conservation, and expressly promotes balanced energy policies that look to diverse energy sources for reliability and as a risk mitigation strategy. As the Legislature has found and declared, "a principal goal of electric and natural gas utilities' resource planning and investment shall be to minimize the cost to society of the reliable energy services that are provided by natural gas and electricity, and to improve the environment and to encourage the diversity of energy sources…" (Pub. Util. Code § 701.1(a) (1); *see also* Pub. Res. Code § 25400 [requiring the State Energy Resources Conservation and Development Commission to "conduct an ongoing assessment of the opportunities and constraints presented by all forms of energy, to encourage the balanced use of all sources of energy to meet the state's needs, and to seek to avoid possible undesirable consequences of reliance on a single source of energy"].) And state law requires the Commission to "identify strategies to maximize the benefits obtained from natural gas . . . as an energy source, helping the state realize the environmental and cost benefits afforded by natural gas…." This mandate includes "[o]ptimizing the role of natural gas as a flexible and convenient end use energy source, including the efficient use of natural gas for heating, water heating, cooling, cooking, engine operation, and

other end uses, and the optimization of appliances for these uses." (Pub. Res. Code § 25303.5.)

127. The California Constitution bestows the Legislature with the power to control public utilities (Cal. Const. Art. XII, § 3) and has granted the Legislature with "plenary power . . . to confer additional authority and jurisdiction" over public utilities to the California Public Utilities Commission ("CPUC"). (Cal. Const. Art. XII, § 5.) In turn, the Legislature delegated broad regulatory authority to the CPUC to "supervise and regulate every public utility in the State" and that the CPUC "may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." (Cal. Pub. Util. Code § 701.) The CPUC's authority includes all things necessary to ensure adequate, reliable, and efficient public utility service to California ratepayers at just and reasonable rates, which includes providing necessary equipment and facilities. (*Id.* at §§ 451, 701, 761.)

128. The CPUC's power as delegated by the Legislature preempts any city or county regulation on the same matters: "A city, county, or other public body may not regulate matters over which the Legislature grants regulatory power to the [Public Utilities] Commission." (Cal. Const. Art. XII, § 8.) Accordingly, localities cannot regulate the essential activities of a utility regulated by the CPUC. (*Carlsbad,* 64 Cal.App.4th at 802-803.) While municipalities retain police power over safety and health regulation (Cal. Const. Article XI, Section 7; Public Utilities Code § 2902), that power is narrow, certain, and limited.

129. Under state law, natural gas utilities are subject to mandates to provide reliable, affordable service to all customers. As "[t]he Legislature finds and declares . . . [that in] order to ensure that all core customers of a gas corporation continue to receive safe basic gas service in a competitive market, each existing gas corporation should continue to provide this essential service . . . ." (Pub. Util. Code § 328; *see* Pub. Util. Code § 328.1(a) [defines "basic gas service" as including "transmission, storage for reliability of service, and distribution of natural gas, purchasing natural gas on behalf of a customer, revenue cycle services, and after-meter service."].)

130. In accordance with the CPUC's powers as vested by the Legislature, the CPUC recently issued Orders Instituting Rulemaking (OIRs) that, among other things, recognize the impact of local ordinances restricting the use of natural gas on the rates, infrastructure, and long-term

planning for the natural gas system and regulation. (*See* Rulemaking 20-01-007 (Jan. 27, 2020), at 16-17 [stating the CPUC will need to "determine a long-term planning strategy to balance the impact that the Projected reduction in gas demand will have on the gas systems with the existing statutorily mandated rules and programs that ensure the safe and reliable provision of energy in California"].)

131. The relationship between regulated utilities and the CPUC (or Legislature) is sometimes referred to as the "Regulatory Compact," which generally describes an exchange of rights and obligations: the utility is granted an exclusive franchise to operate in a service area, and in return, the utility has a duty to serve all customers within that service area. Corresponding to the utility's duty to serve is the customer's right to such reliable, affordable service and the customer's ability to choose utility services. It is recognized that the CPUC's regulation of rates and service is intended to benefit the public; the CPUC has an obligation to balance the protection of ratepayers from monopoly pricing and protection of the investors' rights to earn a fair return on their investment, as well as to ensure adequate, reliable utility service. (*Federal Power Commission v. Hope Natural Gas Co.* (1944) 320 U.S. 591, 603 ["The rate-making process … involves a balancing of the investor and the consumer interests."].)

132. Recognition of the central role of the Regulatory Compact in state control over and regulation of the energy industry further affirms that natural gas regulation is a state-wide concern and that the public has a right to have access to reliable, affordable natural gas service.

2. <u>Federal Law also Preempts the General Plan's Natural Gas Mandate.</u>

133. The Energy Policy and Conservation Act (42 U.S.C.A. § 6201 *et seq.*) ("EPCA") codifies federal energy policy and is intended to promote energy conservation that, among other things, regulates the energy use and energy efficiency of appliances.

134. The EPCA was enacted in 1975 in response to the oil crisis and was intended to create a "comprehensive energy policy" to address "the serious economic and national security problems associated with our nation's continued reliance on foreign energy resources." (*Air Conditioning & Refrigeration Inst. v. Energy Res. Conservation & Dev. Comm'n*, 410 F.3d 492, 498 (9th Cir. 2005).)

135. In 1987, Congress amended the EPCA to strengthen federal regulation, by passing

the National Appliance Energy Conservation Act ("NAECA"). As the Senate recognized at the time, varying state standards created "the problem of a growing patchwork of differing state regulations which would increasingly complicate [appliance manufacturers'] design, production and marketing plans." (S. Rep. No. 100-6, at 4 (1987); *see also* H.R. Rep. No. 100-11, at 24 (1987).) The NAECA amendment contained "two basic provisions:" "[t]he establishment of Federal standards and the preemption of State standards." (S. Rep. No. 100-6 at 2 (1987).) Moreover, the change reflected Congress' intent to allow only "performance-based codes" that "authorize builders to adjust or trade off the efficiencies of the various building components so long as an energy objective is met." (*Id.* at 10-11.)

136. As amended, the EPCA expressly preempts state and local regulations concerning the energy efficiency and energy use of covered products – both consumer and industrial appliances—for which the EPCA sets energy efficiency standards. The express preemption in the EPCA's consumer regulations states that "effective on the effective date of an energy conservation standard established in or prescribed under section 6295 of this title for any covered product, no State regulation concerning the energy efficiency, energy use, or water use of such covered product shall be effective with respect to such product unless the regulation" falls within certain enumerated exceptions. (42 U.S.C. § 6297(c).) The EPCA defines "energy use" as "the quantity of energy directly consumed by a consumer product at point of use . . . ." (42 U.S.C. § 6291(4).) "Energy" is further defined as "electricity, or fossil fuels." (*Id.* § 6291(3).) And the EPCA's energy efficiency and use regulations affect certain categories of "covered products," which include the types of products listed in 42 U.S.C. § 6291(2). The EPCA's industrial standards also explicitly "supersede any State or local regulation concerning the energy efficiency or energy use of a product for which a standard is prescribed or established" in the federal statute,. (*Id.* § 6316(b)(2)(A), § 6311(2)(B).) "Energy use" and "energy" have definitions equivalent to the consumer provisions. (*Id.* § 6311(4), § 6311(7).) Taken together, it is clear that the EPCA's standards preempt state and local laws concerning the quantity of electricity or fossil fuels consumed by appliances. Thus, the default rule with any state or local regulation of the energy use of covered appliances is federal preemption; Congress intended for national policy to control.

137. The County's Natural Gas Mandate falls within the general rules of preemption because it regards the quantity of natural gas consumed by appliances in new buildings: by barring natural gas infrastructure required to use natural gas, it requires that no natural gas is used in appliances. This prohibition necessarily affects all appliances in new buildings, including appliances covered by the EPCA (such as consumer water heaters, furnaces, dishwashers, and stoves/ovens, and industrial heating equipment, water heaters, and furnaces). CoLAB's members use such appliances.

138. The EPCA contains limited exceptions to the general rule of preemption. It allows concurrent state and local regulation only where a state or local government meets the statutory criteria for an exemption from preemption. The County's Natural Gas Ban fails to satisfy the EPCA exemptions for preemption because, among other things, it does not set its objectives in terms of total consumption of energy, it does not permit builders to select items whose combined energy efficiencies meet an objective for total energy consumption but rather requires a particular category of items, and it does not give credit on a one-to-one basis for all appliances whose energy efficiency exceeds the federal standards, insofar as it gives no credit to the use of natural gas appliances no matter their efficiency. (42 U.S.C. §§ 6297(f)(3), 6316(2)(B)(i).)

139. In short, there are no circumstances under which the County could enforce or enact its mandate to ban new natural gas infrastructure without violating the EPCA. Any local ban on new natural gas infrastructure is preempted by EPCA. Whatever form the ban takes, whether a permit application is granted or denied, and whether there are exceptions to the ban, does not change the fact that the required ban violates EPCA. For this reason, the reliance of the EIR on Policy COS-S deprives the GHG analysis and conclusions of evidentiary support.

FIRST CAUSE OF ACTION

(Petition for Writ of Mandate under Public Resources Code § 21168.5 and California Code of Civil Procedure § 1085 and/or 1094.5; Declaratory Relief under Code of Civil Procedure § 1060)

140. Petitioner hereby incorporates by this reference the allegations of all previous paragraphs of this Petition as though fully set forth herein.

141. CEQA is designed to ensure that public decisions are made in light of the long-term protection of the environment. It requires all agencies considering a project to evaluate the potential environmental impacts of the proposed action. If the Project may cause significant environmental impacts, the agency is required to prepare an EIR that complies with the requirements of the statute. The EIR must provide sufficient environmental analysis such that the decision makers can intelligently consider environmental consequences when acting on the proposed project.

142. CEQA also mandates that the lead agency adopt feasible and enforceable mitigation measures that would reduce or avoid any of a project's significant environmental impacts. If any of the Project's significant impacts cannot be mitigated to a less than significant level, CEQA bars the lead agency from approving the Project if a feasible alternative is available that would meet the Project's objectives while avoiding or reducing its significant environmental impacts.

143. CEQA further mandates that a lead agency may approve a project that would have significant, unavoidable environmental impacts only if the agency finds that the Project's benefits would outweigh its unavoidable impacts.

144. CEQA requires that an agency's findings for the approval of a project be supported by substantial evidence in the administrative record and provide an explanation of how the record supports the conclusions the agency has reached.

145. The County violated CEQA by approving the GPU in violation of CEQA's requirements and by certifying a legally deficient EIR:

a. The County failed to provide an adequate, stable project description. Because the Project description failed to include the full scope of the Project and was impermissibly vague, it fails to adequately apprise all interested parties of the true scope of the Project.

b. The County failed to adequately disclose, analyze, or mitigate the Project's significant impacts related to (1) agricultural resources, (2) air quality, (3) land use, (4) biological resources, (5) climate change, (6) housing and population, (7) wildfire risk; (8) utilities, and (9) water supply.

c. The County failed to adequately disclose, analyze, or mitigate the Project's significant

and foreseeable cumulative effects from another component of the General Plan that the County concurrently processed.

d. The County unlawfully deferred the implementation of certain mitigation measures.

e. The County relied on ineffective, invalid, and illusory mitigation measures and failed to impose other effective or legally required mitigation measures.

146. The County violated CEQA by failing to adequately respond to numerous public comments relating to environmental concerns including fire hazards, mineral resources, agricultural resources, traffic and circulation, greenhouse gases, air quality, cumulative impacts, and community character.

147. The County violated CEQA by failing to recirculate the EIR after adding significant new information to the EIR's analysis and thereby depriving the public of a meaningful opportunity to comment on the Project's significant environmental impacts and means of avoiding or mitigating those impacts. This new information included, among other things, an entirely new—though still erroneous—GHG emissions inventory.

148. The County violated CEQA by failing to write its EIR and other documents in plain language so that members of the public could readily understand the documents. In particular, by refusing to translate critical CEQA documents—or even summary documents—into Spanish or Mixteco, the County precluded meaningful and adequate public participation by monolingual Spanish- and Mixteco-speaking residents. These individuals were deprived of their statutory rights to inform themselves about and to comment meaningfully upon the GPU and its environmental consequences before the Board of Supervisors approved it.

149. Moreover, the County has violated CEQA in that it has engaged in illegal project-splitting (piecemealing), because it separated the Housing Element from the General Plan Update to evade CEQA review of the originally combined project. The County compounded this error by failing even to account for the known housing allocation (adopted by SCAG about five months prior to adoption of the General Plan EIR) in the Project-level or cumulative impact analysis in the EIR.

150. Petitioner as well as members of the general public will suffer irreparable harm if the relief requested herein is not granted and the Ordinance is allowed to go into effect in the absence

of a full and adequate CEQA analysis and absent compliance with all other applicable provisions of CEQA.

SECOND CAUSE OF ACTION

(Petition for Writ of Mandate under California Code of Civil Procedure § 1085 and/or 1094.5; Declaratory Relief under Code of Civil Procedure §1060 -- Violation of the Ralph M. Brown Act – Government Code §§ 54953, 54960.1, 54960.2)

151. Petitioner hereby incorporates by this reference the allegations of all previous paragraphs of this Petition as though fully set forth herein.

152. The Brown Act, Gov't Code § 54950, *et seq*. protects the public's right to participate in the public's business through its instrumentalities, agencies, and commissions. "All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency." (Gov't Code § 54950 (a).)

153. Under the Brown Act, "[a]ll meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency." (Gov't Code § 54953 (a) (3).) The act also permits agencies to hold meetings via teleconference, *i.e.,* through electronic means, either audio, video, or both, but in order to do so, the County "shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public." (Gov't Code § 54953(a) (3).) On March 17, 2020, Executive Order N-29-20 suspended some, but not all, of the Brown Act teleconference meeting requirements. For example, the rule requiring "at least one member of the state body be physically present at the location specified in the notice of the meeting" was suspended. In all other manners germane to this action, the Brown Act was in effect. The Executive Order required that "in each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also given notice of the means by which members of the public may observe the meeting and offer public comment." *Id.* It also required the County to, "post[] such means on the body's Internet website."

Id.

154. The County violated the Brown Act and Executive Order N-29-20 by failing to properly give notice of the means by which members of the public may participate or comment for the July 16, 2020 Planning Commission meeting. Specifically, the agenda did not identify or suggest that the public was able to attend to meeting virtually, the County posted inconsistent and confusing instructions regarding virtual participation on other unrelated pages on the County website—but not on the County's agenda page—the County changed the instructions hours before the Planning Commission meeting. Throughout the hearing, pervasive technology issues thwarted widespread, stable public access to the hearing.

155. The County introduced new changes to the General Plan into the record after public comment had occurred, depriving the public of any opportunity to address the materials.

156. During the Planning Commission hearing, Commissioners engaged in an unagendized closed meeting, and asked questions of staff and deliberated via chat, out of view of the public, in violation of the Brown Act.

157. The County also violated the Brown Act by adding thousands of pages of material and exhibits just days before the September 1, 2020 Board hearing. Because the responsive documents were provided ***after*** the Planning Commission hearing and less than one month before the Board hearing, CoLAB and the rest of the public did not have time to review and analyze the documents it received, and was thus unable to provide fully informed comments at the Planning Commission phase. The County's failure to continue the hearing deprived CoLAB, and the broader public, of the ability to review the documents provided and provide meaningful comments to the County on these substantial changes to the General Plan.

158. Pursuant to Government Code sections 54960.1(b) and 54960.2, CoLAB identified and clearly described the County's Brown Act violations in its numerous letters to the County and timely demanded the County cure and correct the actions taken on July 16, 2020 and September 1, 2020 in violation of the Brown Act.

THIRD CAUSE OF ACTION

(Petition for Writ of Mandate under California Code of Civil Procedure § 1085 and/or 1094.5; Declaratory Relief under Code of Civil Procedure §1060 -- Violation of Government Code § 65351)

159. Petitioner hereby incorporates by this reference the allegations of all previous paragraphs of this Petition as though fully set forth herein.

160. Section 65351 of the Government Code requires the County to "provide opportunities for the involvement of citizens, California Native American tribes, public agencies, public utility companies, and civic, education, and other community groups" in the General Plan and EIR process. The General Plan Guidelines published by Governor's Office of Planning and Research strongly encourage local agencies with a significant non-English-speaking or non-native English speaking population to provide documents—even summary documents—in languages other than English, to facilitate meaningful public participation.

161. Here, despite a large Spanish-speaking population in the County, and a significant plurality of monolingual Spanish and Mixteco speakers, the County failed to provide any substantive documents or summaries in languages other than English. Even though the County maintained Spanish language portal page to the General Plan update, the links on that page sent visitors to English-language documents.

162. Additionally, the County provided translators for only half of the community meetings it conducted as part of the General Plan update process.

163. This effort was wholly inadequate to engage non-English speakers in the General Plan update process, and Petitioners are informed and believe, and on that basis allege, several groups representing the Spanish and Mixteco speakers in the County attempted to meet with staff on multiple occasions to attempt to address the inadequacy of the County's efforts. Collectively, these failures evidence the County's violation of section 65351 of the Government Code.

FOURTH CAUSE OF ACTION

(Petition for Writ of Mandate under California Code Of Civil Procedure § 1085 and/or 1094.5; Declaratory Relief under Code of Civil Procedure § 1060 - Preemption under State Law)

164. Petitioner hereby incorporates by this reference the allegations of all previous paragraphs of this Petition as though fully set forth herein.

165. Energy regulation is a matter of state-wide concern, is subject to extensive state-level regulation, and will be adversely affected by a plurality of local ordinances. The California Constitution delegates to the Legislature wide-ranging authority to regulate utilities, including natural gas utilities, and to ensure the safe, reliable, and affordable supply of energy to customers.

166. State law and policy also make the natural gas system central to planning, including to mitigating the risk of relying on a sole source of energy.

167. The Regulatory Compact further affirms that energy regulation is a state-wide concern intended to provide customers with safe, reliable and affordable service from natural gas utilities, and that customers are entitled to use natural gas utilities.

168. Determinations concerning whether natural gas delivery should be allowed are inherently general, federal or state-level decisions, not local. "Over regulations not exclusively local, those affecting the business as a whole, or affecting the public as a whole, and those which the nature of the business and the character of the regulation require should be under the single agency of the state, are by our act committed to the exclusive jurisdiction of the Public Utilities Commission." (*Los Angeles Ry. Corp. v. Los Angeles* (1940) 16 Cal. 2d 779, 787.)

169. The Natural Gas Ban which purports to require the phasing out of the delivery of natural gas to new development is actually a regulation of natural gas utilities in disguise. Delivering natural gas (and regulating the infrastructure required for such delivery) is an "essential" aspect of a natural gas utility and has been so thoroughly regulated by state law that determining whether natural gas infrastructure will be allowed has become a matter of state concern preempted by the CPUC's authority. The Natural Gas Ban Mandate does not have exclusively local impact, but instead raises statewide concerns affecting energy policy, the reliability and safety of energy systems

and markets, development and maintenance of infrastructure, and customer rights to utility service.

170. Thus, the field of regulating natural gas utilities is undoubtedly preempted by the Legislature's and CPUC's authority: natural gas regulation is a matter of state concern that cannot tolerate individual local actions. The Natural Gas Ban Mandate intrudes into this area of state-wide concern and regulation. (*Carlsbad*, 64 Cal. App. 4th at 793 (a field is impliedly preempted when "(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality.").)

171. Local bans also conflict with state law and policy and violate the Regulatory Compact. (*See Carlsbad* 64 Cal.App.4th at 793 ("A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication."); *Hartwell Corp. v. Super. Ct.* (2002) 27 Cal.4th 256, 281-82 ("Endowed by the state with a legally enforceable monopoly and authorized by the state to charge rates that guarantee it a reasonable rate of return …, a public utility, in turn, must comply with the comprehensive regulation of its rates, services, and facilities as specified in the Public Utilities Code.").) Here, the CPUC ensures that natural gas service is available to all customers and requires natural gas utilities to make reliable service available to all customers at reasonable rates; the Natural Gas Ban Mandate, on the other hand, would prohibit residents and businesses from choosing to use the service that the utility is required to make available.

172. Moreover, the CPUC has been and is conducting rulemaking proceedings on long-term planning for the natural gas system in terms of infrastructure, rates, and service. (*Orange County Air Pollution Control Dist. v. Public Util. Com.* (1971) 4 Cal.3d 945, 950 (the CPUC has "paramount jurisdiction in cases where it has exercised its authority, and its authority is pitted against local regulation on a matter of statewide concern"); *California Water & Tel. Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 31 (holding that an ordinance on water delivery system

was preempted, because the PUC has exclusive regulatory jurisdiction over water utilities as a matter of statewide concern).)

173. Because the Natural Gas Ban Mandate impermissibly encroaches into an area of state-wide concern, is not exclusively local, affects state-wide regulation, and affects the rights of customers who would otherwise be entitled to avail themselves of natural gas service, it is preempted by state-wide law and regulation and is void and unenforceable.

FIFTH CAUSE OF ACTION

(Petition for Writ of Mandate under California Code Of Civil Procedure § 1085 and/or 1094.5; Declaratory Relief under Code of Civil Procedure § 1060- Preemption under Federal Law)

174. Petitioner hereby incorporates by this reference the allegations of all previous paragraphs of this Petition as though fully set forth herein.

175. The County's Natural Gas Ban Mandate is necessarily preempted by the EPCA, because there is no manner by which the County may prohibit the installation of natural gas infrastructure without violating the EPCA.

176. By prohibiting the installation of natural gas infrastructure, the County's Natural Gas Ban Mandate acts to ban natural gas appliances. It therefore concerns the energy use of products covered by the EPCA and the mandate is preempted. (42 U.S.C. §§ 6297, 6316.)

177. The County's Natural Gas Ban Mandate is not eligible for exemption from preemption, because among other things, it does not set an objective in terms of total consumption of energy, it does not permit builders to select items whose combined energy efficiencies meet an objective for total energy consumption, but rather, requires a particular category of items, and it does not give credit on a one-to-one basis for all appliances whose energy efficiency exceeds the federal standards, insofar as it gives no credit to the use of natural gas appliances no matter their efficiency. (42 U.S.C. §§ 6297(f)(3); 6316(2)(B)(i).)

178. The County's Natural Gas Ban Mandate is thus preempted by the EPCA and is void and unenforceable.

PRAYER FOR RELIEF

In each of the respects enumerated above, the County has violated its duties under law, abused its discretion, failed to proceed in the manner required by law, and decided the matters complained of without the support of substantial evidence. Accordingly, the County's action approving the GPU and certifying the EIR must be set aside.

WHEREFORE, Petitioners pray for relief as follows:

1. For a peremptory writ of mandate, directing the County Board of Supervisors to set aside and vacate its certification of the EIR, Findings of Fact, and Statement of Overriding Considerations supporting the approval of the General Plan Update;

2. For a peremptory writ of mandate, directing the County Board of Supervisors to set aside and vacate any approvals for the General Plan Update based on the EIR, Findings of Fact, and Statement of Overriding Considerations supporting the Project, including but not limited to, the Housing Element and zoning update;

3. For a peremptory writ of mandate, directing the County to comply with CEQA, the CEQA Guidelines, and to take any other action as required by Public Resources Code section 21168.9 or otherwise required by law;

4. For a peremptory writ of mandate directing the County to vacate and set aside its September 15, 2020 actions taken in violation of the Brown Act, including but not limited to approval of the General Plan Update and certification of the EIR;

5. For a peremptory writ of mandate directing the County to vacate and set aside its July 16, 2020 actions taken in violation of the Brown Act, including but not limited to the recommendation by the Planning Commission of the approval of the General Plan Update and certification of the EIR;

6. For a temporary stay, temporary restraining order, and preliminary and permanent injunction restraining the County and its respective agents, servants and employees from taking any action to implement the General Plan Update pending full compliance with CEQA and other state and local laws;

7. For a declaration that the County's actions violated CEQA, violated the Brown Act,

violated the applicable provisions of the Government Code, and are preempted by state and federal law;

8. For costs of suit in this action;

9. For reasonable attorneys' fees, including as authorized by Code of Civil Procedure § 1021.5, and other provisions of law; and

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

DATED: October 14, 2020

JEFFER MANGELS BUTLER & MITCHELL LLP
BENJAMIN M. REZNIK
MATTHEW D. HINKS
NEILL E. BROWER

By: 

MATTHEW D. HINKS
Attorneys for Petitioners VENTURA COUNTY COALITION OF LABOR, AGRICULTURE, AND BUSINESS and VENTURA COUNTY AGRICULTURAL ASSOCIATION

JMBM | Jeffer Mangels Butler & Mitchell LLP

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF VENTURA

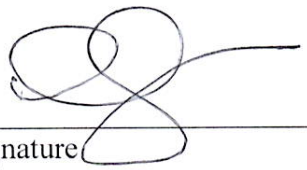
I have read the foregoing **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** and know its contents.

I am an officer of Petitioner and Plaintiff Ventura County Coalition of Labor, Agriculture, and Business, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

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

Executed on October 13, 2020, at Ventura, California.

Louise Lampara
Print Name of Signatory



Signature

EXHIBIT A

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1900 Avenue of the Stars, 7th Floor, Los Angeles, CA 90067-4308.

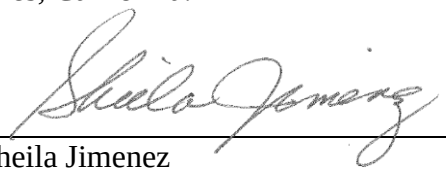
On October 14, 2020, I served true copies of the following document(s) described as **NOTICE OF INTENT TO FILE CEQA PETITION** as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Jeffer Mangels Butler & Mitchell LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Los Angeles, California.

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

Executed on October 14, 2020, at Los Angeles, California.



Sheila Jimenez

JMBM | Jeffer Mangels Butler & Mitchell LLP

SERVICE LIST

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