

1 Dean Wallraff (SBN 275908)
2 ADVOCATES FOR THE ENVIRONMENT
3 10211 Sunland Blvd.
4 Shadow Hills, CA 91040
5 Phone: (818) 353-4268
6 Facsimile: (818) 864-3224
7 dw@aenv.org

8 Attorney for Petitioner,
9 Save the Agoura Cornell Knoll

Dept. 1

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Superior Court Of California
County Of Los Angeles

APR 07 2017

Sherril R. Carter, Executive Officer/Clerk
By: Charles L. Coleman, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

13 SAVE THE AGOURA CORNELL KNOLL,
14 PETITIONER,

15 v.

17 CITY OF AGOURA HILLS,
18 AGOURA HILLS CITY COUNCIL,
19 AGOURA HILLS PLANNING COMMISSION,

21 RESPONDENTS,

22 DORON GELFAND,
23 AGOURA AND CORNELL ROADS, LP
24 DOES 1 TO 100,

26 REAL PARTIES IN INTEREST.

CASE NO.

BS 169207

27 VERIFIED PETITION FOR WRIT OF
28 MANDATE AND COMPLAINT FOR
29 INJUNCTIVE RELIEF

California Environmental Quality Act
(Pub. Res. Code §§ 21000-21189.3)

Planning and Zoning Law
(Gov. Code §§ 65000-66499.58)

City of Agoura Hills Oak Tree
Preservation Regulations
(Agoura Hills Municipal Code §§ 9657-
9657.5.)

Petitioner, Save the Agoura Cornell Knoll, alleges:

Introduction

1. By this action, Petitioner, Save the Agoura Cornell Knoll challenges the unlawful actions of the City of Agoura Hills, its Planning Commission, and its City Council, (collectively, the **City**) in approving land-use entitlements for the Cornerstone Mixed-Use Project (the **Project**), a mixed-use residential-commercial project with 35 dwelling units and 68,918 square feet of commercial space located at the southeast corner of the intersection of Agoura Road and Cornell Road in the City of Agoura Hills, County of Los Angeles (the **Project Site**).
2. The Project will destroy habitat for rare native plants, hinder visual beauty for which Agoura Hills is known, prevent the establishment of approved recreational amenities, increase already-frustrating traffic on Kanan Bridge and Agoura Road during summertime, and damage the already-fragile water quality of the Malibu Creek watershed. Its dense and auto-centric design will require mass grading, flattening of a treasured knoll, and removal or encroachment upon 59 oak trees, all of which conflict with the City's General Plan, the Agoura Village Specific Plan (**Specific Plan**), and the City's oak tree ordinance.
3. The significant environmental impacts listed in the previous paragraph cannot be mitigated with a redesign of the Project, and will not be mitigated into insignificance by the mitigation measures listed in the Mitigated Negative Declaration. CEQA therefore requires the City to prepare an Environmental Impact Report for the Project.

Parties

4. Petitioner Save the Agoura Cornell Knoll (**STACK**) is an unincorporated association whose members include individuals residing and working in the vicinity of the Project, and individuals concerned about the urban built environment in the City of Agoura Hills and neighboring communities. STACK brings this action on behalf of the public. Members of STACK have a beneficial interest in this case because the actions being taken by the City, and challenged in this case, affect them directly as neighbors of the Project and members of the public at large.

- 1 5. Respondent City of Agoura Hills (**City**) is a municipal corporation. The Agoura
2 Hills City Council (**City Council**) is the City’s legislative body. The Agoura Hills
3 Planning Commission (**Planning Commission**) is a unit of City government
4 having jurisdiction over certain land-use approvals within the City.
- 5 6. Respondents Doron Elfand and Agoura and Cornell Roads, LP are, on
6 information and belief, the legal and equitable owners of the Project Site and the
7 Applicants for the entitlements being challenged in this case (**Applicant**).
- 8 7. Petitioner is currently unaware of the true names and capacities of respondents
9 and defendants **Does 1 through 10**, and therefore sues those parties by such
10 fictitious names. Does 1 through 10 are agents of the Respondent Applicant who
11 are responsible in some manner for the conduct described in this petition, or
12 other persons or entities who claim some legal or equitable interest in the subject
13 matter of this action. Petitioners will amend this petition to show the true names
14 and capacities of Does 1 through 10 when such names and capacities become
15 known.
16

17 **Jurisdiction and Venue**

- 18 8. This Court has jurisdiction over the matters alleged in this petition under Code
19 of Civil Procedure (**CCP**) §§1085 and 1094.5, Pub. Res. Code § 21167 and Gov.
20 Code § 65009.
- 21 9. This case is properly classified as an unlimited civil case, and therefore within the
22 jurisdiction of this Court, because it is not one of the types of cases listed as
23 limited civil cases in CCP §§ 86, 86.1 or 87.
- 24 10. Venue is proper in this Court under CCP § 394 because the Respondent City of
25 Agoura Hills is a local agency with territory wholly within Los Angeles County,
26 which is where the Project’s environmental effects will be felt.
- 27 11. Petitioners have performed all conditions precedent to filing this action,
28 including exhaustion of all administrative remedies available to them.
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32 **The Project**

- 33 12. The Project at issue in this case is the proposed construction of a mixed-use
34 development known as the Cornerstone Project with 35 dwelling units and
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1 68,918 square feet of commercial space located at the intersection of Agoura
2 Road and Cornell Road in the City of Agoura Hills. The Project would replace
3 open space on an undeveloped knoll, currently vegetated with native sage scrub
4 and coastal oak woodlands, with 116,776 square feet of apartment, commercial,
5 retail, and office development, distributed among seven two- and three-story
6 buildings up to 45 feet tall. Over 100,000 square feet of parking would be
7 constructed.

- 8 13. Located at the southeast corner of Cornell Road and Agoura Road, the 8.11-acre
9 Project Site is situated in the northern foothills of the Santa Monica Mountains
10 and features steep slopes of up to 4:1 and elevations ranging from 800 to 1,050
11 feet. 95,000 cubic yards of cut and 6 months of grading would occur, requiring
12 nearly 6,000 one-way heavy truck trips, or 90 one-way truck trips per day.
13
- 14 14. The Project-Site slopes are very steep, steep enough to require the construction of
15 6-foot-tall retaining walls.
- 16 15. The Project Site is located at the edge of the Agoura Hills City limits, bordering a
17 County-designated significant ecological area (SEA) that included the Project site
18 itself prior to City annexation.
19
- 20 16. All 59 oak trees on the Project Site would be impacted, with 29 slated for removal,
21 and the protected zones of the remaining 30 encroached upon.
- 22 17. The Project Site is designated in the General Plan and City zoning as Open Space
23 Restricted (OS-R) and Planned Development - Agoura Village Specific Plan.
24
- 25 18. The Applicant sought, and the City has approved, the following discretionary
26 entitlements (the **Project Entitlements**) in Case No. 07-AVDP-002:
- 27 a. Tentative Parcel Map No. 70559, subdividing the Project Site into two
28 parcels;
 - 29 b. Development Permit No. 07AVDP-002;
 - 30 c. Conditional use permit for hillside development;
 - 31 d. Oak Tree Permit to remove 29 oak trees and 21,271 square feet of scrub
32 oak habitat, and to encroach within the protected zone of six oak trees.
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1 19. In connection with the Project, the City has adopted an Initial Study (IS), a
2 Mitigated Negative Declaration (MND), and Mitigation Monitoring and
3 Reporting Program (MMRP) for the Project, under the California Environmental
4 Quality Act, Pub. Res. Code. §§ 21000-21189.3 (collectively, the **CEQA**
5 **Approvals**).

6 **Approval Process**

7
8 20. On January 5, 2017, the Planning Commission approved the Project Entitlements
9 and adopted the CEQA Approvals.

10 21. On January 19, 2017 California Native Plant Society filed an Appeal Application,
11 appealing the Planning Commission's approvals to the City Council.

12
13 22. On March 8, 2017 the City Council denied the appeal, approved the Project
14 Entitlements, and adopted the CEQA Approvals.

15 **First Cause of Action**

16 **Violation of CEQA**

17 23. STACK incorporates ¶¶ 1-22 as though set forth here.

18
19 24. In approving the MND, the City violated the California Environmental Quality
20 Act, Public Resources Code §§ 21000-21189.3 (**CEQA**) and the **CEQA**
21 **Guidelines** (14 Cal. Code Regs. §§ 15000-15387 plus appendices) in significant
22 ways, which are described in the following paragraphs.

23
24 25. The City of Agoura Hills has failed to prepare a legally adequate Initial Study and
25 Mitigated Negative Declaration because those documents fail to even consider
26 impacts related to land use/planning and recreation.

27 26. The City has also failed to disclose, analyze, and mitigate the Project's significant
28 aesthetic, cultural, biological, land use, recreational, and water quality impacts, as
29 well as the cumulative impacts caused by allowing exceptions and increases in
30 density beyond the limits of the Agoura Village Specific Plan.

31 27. Where mitigation measures are included, they are vague, deferred, or inadequate
32 to truly mitigate the Project's impacts. An EIR is required before the Project may
33 be lawfully approved.
34
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1 **Aesthetic Impacts**

- 2 28. The conversion of a scenic knoll into seven 3-story buildings, along with the
3 removal of 29 trees and 95,000 cubic yards of grading will cause significant
4 adverse impacts to the visual quality of the site. Most of the Project’s visual
5 impacts were not analyzed in the Specific Plan, so the Project’s CEQA
6 documentation must fully analyze those impacts, but fails to do so.
- 7 29. The Project’s aesthetic impacts are significant, and cannot be mitigated into
8 insignificance without a redesign, so the City must prepare an EIR for the Project.

9

10 **Biological Resources**

- 11 30. The Project Site is ecologically significant and was designated as such by the
12 County of Los Angeles. While the County’s SEA determination does not apply
13 now that the land is located in the City of Agoura Hills, the site’s important
14 biological resources remain. The 8.2-acre Project Site comprises some of the most
15 visually and botanically sensitive land in the City of Agoura Hills. There probably
16 is no more botanically rich equivalent-sized property within the City boundary.
17 One hundred native plant species, two Federally-listed plant species, multiple
18 plant species of concern, rare plant communities, and scores of oak trees make up
19 an ecologically unique site. The grading for the proposed project would eliminate
20 a minimum of 6.25 acres of this vegetation and its substrate. The permanent
21 future fuel modification would adversely affect all of the remaining 1.96 acres to
22 varying degrees. These are significant impacts that must be analyzed in an EIR.
- 23
- 24 31. The Project site and adjacent environs host ten special or protected plant
25 populations. The Project would remove at least 63 percent of the 142 Agoura
26 Hills dudleya individuals, even though it is a federally threatened species. Lyon’s
27 pentachaeta is listed as endangered on both the state and federal endangered
28 species lists, but the Project would remove all individuals documented on-site.
29 Also present is the Ojai navarettia, considered “[s]eriously endangered in
30 California” under the criteria used by the California Department of Fish and
31 Wildlife to assess plant species significance. Since the plants involved are so rare,
32 the loss of any of these populations presents a significant adverse impact on
33 biological resources that requires preparation of an EIR.
- 34
- 35

- 1 32. The MND also fails to consider the Project's fuel0-modification zone in its
2 analysis of the Project's impacts on rare and endangered plant species. Fuel
3 modification zones for the Project will extend hundreds of feet from the
4 buildings. Accordingly, the Project's true impact on these species has not likely
5 been disclosed. Thus, without disclosure and analysis, this impact cannot have
6 been adequately mitigated such that use of an MND is appropriate.
- 7 33. 59 coast and interior live oak trees grow on the Project site. The Project would
8 affect all of these oaks, removing 29 of them and permitting encroachment into
9 the protected zone for the remaining 30 oak trees. The encroachment into the
10 root and driplines of these trees severely reduces the likelihood that they will
11 survive construction of the Project. It is not "saving them in place" as claimed by
12 the MND. Additionally, the City permits the removal of up to 20 percent of the
13 canopy and root zones of the remaining trees. (Agoura Hills Municipal Code
14 § 9567.5.) The removal and/or slow death of 59 oak trees is a significant adverse
15 impact on biological resources that is not adequately mitigated in the MND. An
16 EIR is required to analyze alternatives to the Project that will retain far more of
17 the site's oak woodland.
- 18 34. The Project is located within a significant documented wildlife corridor that
19 extends from the coast through the Kanan watershed, Oak Park, Simi Hills,
20 Angeles and Los Padres National Forests to the Temblor and Tehachapi Ranges.
21 The MND does not consider the ecological effects of the Project on the corridor.
22 These effects are potentially significant, and must be analyzed in an EIR.
- 23 35. Despite the Project site's importance as a repository of rare plant species that
24 would be eliminated by Project construction, the IS/MND determines that
25 impacts to biological resources can be fully mitigated and are therefore
26 insignificant. But the mitigation measures the MND relies upon are vague,
27 deferred, or ineffective, and will not ensure the propagation of rare plant species
28 or the continuation of oak woodlands that would be required for the Project's
29 impacts to remain at a level below significance. Examples of vague, deferred, or
30 ineffective mitigation measures are given in the following paragraphs.
- 31 36. CS-BIO-1 claims that the Applicant will "offset the loss of individual Lyon's
32 pentachaeta and Agoura Hills dudleya plants through onsite restoration (salvage
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1 and replanting), offsite preservation, offsite enhancement, or another method
2 approved by the City...in consultation with CDFW and USFWS.” This
3 mitigation measure is vague and ineffective. First, CDFW advises against the
4 transplantation and creation of offsite habitat for rare plant species because it is
5 ineffective and far inferior to retaining individuals and populations that already
6 exist. Thus, none of these nonspecific methods will offset any individuals lost to
7 development. Second, the measure does not require the concurrence or
8 agreement with CDFW or USFWS, just undefined “consultation.” Moreover, the
9 measure specifically provides that avoidance is not necessary if it would “not be
10 feasible or would compromise the objectives of the Specific Plan.” But this
11 determination would be made after Project approval, and out of the public eye.
12 Based on the failure to retain any of the site’s 59 oak trees without encroachment,
13 it is already clear that the City and the Applicant view any project modifications
14 or revisions to preserve biological resources as infeasible. CS-BIO-1 then
15 provides for the preparation of a restoration plan that identifies the number of
16 plants to be planted and the methods that will be used for preservation. While the
17 formulation of specific details of mitigation measures may be deferred if
18 performance standards are adopted with Project approval, this measure specifies
19 the adoption of future performance standards. Thus, the MND relies on a future
20 plan that will have to meet goals that will not be established prior to Project
21 approval. This deprives the public and decision makers of the ability to evaluate
22 the effectiveness of mitigation measures before Project approval, in violation of
23 CEQA. Even with this mitigation measure, any rare plant individuals found
24 within the development footprint or fuel modification zones will be removed.
25 The adverse impacts of eliminating these populations and of eliminating
26 populations of species on the verge of extinction would remain. An EIR is
27 required.

- 28 37. CS-BIO-2 discusses the future development of protocol to protect rare plant
29 species identified in fuel modification zones, but there is no reason that this
30 protocol cannot be developed now and included in the MND and MMRP.
31 Deferral of mitigation is not permitted when it can be developed prior to Project
32 approval.
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- 1 38. CS-BIO-3, permits the destruction of 244 Ojai navarretia plants so long as a
2 restoration plan is prepared in the future. Years of studies demonstrate that
3 restoration is far inferior to preservation. This mitigation measure is both
4 impermissibly deferred and likely ineffective. It will not mitigate the loss of the
5 244 individual plants.
- 6 39. CS-BIO-9 requires the replacement of four oak trees for every one tree removed,
7 but permits payment of an in-lieu fee instead of replacement of the 29 trees that
8 will be removed if space is not available for replanting. This does not mitigate the
9 loss of oak woodlands on the site and will result in a net loss of oak trees in
10 Agoura Hills. Even if trees are replanted onsite or offsite, grading and drainage
11 alterations to the site will reduce the ability of replanted oak trees to survive and
12 thrive. Attempts to recreate oak woodlands as mitigation for other developments
13 are often unsuccessful.
- 14 40. Much of the Project's most severe vegetation impact could be avoided by
15 reducing the project footprint. The MND contains no analysis of alternatives that
16 might significantly reduce the Project's impact on biological resources. An EIR
17 must be prepared so that the City can consider a reasonable range of alternatives
18 that might reduce the Project's significant impacts on biological resources.

19
20 **Recreational Resources**

- 21 41. The Agoura Village Specific Plan and the 2008 Regional Trails Plan depict the
22 Zuma Ridge Trail/Rim of the Valley Trail's path as extending from Agoura Road
23 along the east side of Cornell Road to an equestrian center. Thus, the Zuma Ridge
24 Trail must pass through the Project Site. But the Project includes several three-
25 story buildings and widened streets that will prevent extension of this hiking and
26 equestrian trail and construction of the equestrian center. This inconsistency
27 with adopted City plans is an adverse land use impact, as well as an adverse
28 impact on recreation that must be disclosed, analyzed, and mitigated in an EIR.
29 By removing a scenic knoll and 59 oak trees in favor of dense, urban
30 development and by replacing the rural, two-lane road with a wider, suburban
31 road with wide sidewalks and ample parking, the Project will affect the aesthetic
32 quality and recreational value of the Zuma Ridge Trail and other nearby trails
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1 that view the Project site. The MND fails to assess this potentially significant
2 impact.

- 3 42. The Rim of the Valley Trail Corridor Master Plan includes a spur from the Rim
4 of the Valley Trail leading from Cheseboro Canyon across the 101 freeway and
5 along the south side of Agoura Road to the project site by the Cornell Road
6 intersection. The MND is deficient for not addressing the existence of this
7 planned spur trail and potential adverse impacts to the unofficial City trail along
8 Cheseboro Creek and Agoura Road.
9
- 10 43. The National Park Service has planned a trail, the Agoura Equestrian Center
11 Connector, coming from Cheseboro Canyon and then along the north side of
12 Agoura Road (Zuma Ridge Trail), up a short stretch of Cornell Road and then up
13 to the paper street through the proposed development (Paramount Ranch
14 Connector Trail). The MND is deficient for not addressing the existence of these
15 planned trails, which have been part of the NPS Trails Plan since at least 2004.

16 **Land Use**

- 17 44. As alleged below, the Project is inconsistent with the General Plan and Specific
18 Plan, but the IS and MND do not discuss these inconsistencies. CEQA requires
19 any inconsistencies between a proposed project and applicable land use plans to
20 be discussed in a Project's environmental documentation. A Project's
21 inconsistencies with local plans and policies constitute significant impacts under
22 CEQA, which, in this case, require an EIR to be prepared.
23
- 24 45. The Project will induce more growth, by providing a high-quality, full-service,
25 moderate-grade road to dozens of ridgeline and sub-ridgeline parcels located
26 directly to the south and east. The MND should have analyzed how the Project
27 would accelerate the development of small lots served by this road, and by
28 providing utility services and drainage options to these lots.
29
- 30 46. The IS/MND concludes, with no discussion that "because there would be no
31 significant impacts, no mitigations measures are required." An IS is required to
32 support findings such as the finding of no significant land-use impacts, with
33 some substantial evidence and reasoned discussion. The lack of any basis for the
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1 conclusion that the Project will have no significant land-use effects violates
2 CEQA and is sufficient ground for setting aside the IS/MND.

3 **Water Quality**

4
5 47. The Project will replace natural soil surfaces with impervious surfaces that
6 prevent water from percolating into the ground, promoting runoff. Runoff of
7 impervious surfaces in urban areas contains toxic materials such as oil and other
8 chemicals, as well as sediments that increase turbidity of downstream waters and
9 harm wildlife. The IS and MND fail to analyze the potentially significant effects
10 of the increased toxic runoff on water quality.

11 48. The CEQA analysis of water quality impacts in the IS/MND relies on outdated
12 water quality standards and requirements, resulting in a failure to include
13 mitigation measures adequate to eliminate the Project's true impacts on water
14 quality. More specifically, the MND relies on a "Conceptual SUSMP" to fully
15 mitigate the Project's operational impacts on water quality. However, the
16 "Conceptual SUSMP" does not acknowledge revised water quality standards
17 established by the Environmental Protection Agency for the Malibu Creek
18 watershed in 2012, or that California issued a new permit for pollutant discharges
19 from urban sources to the Malibu Creek watershed in 2012. The "Conceptual
20 SUSMP" also fails to discuss the City's responsibilities under the Municipal
21 Separate Storm Sewer System permit that implements these 2012 water quality
22 standards for the Malibu Creek watershed. The IS/MND contains no specific
23 mitigation or reporting requirements designed to comply with these applicable
24 regulations. Thus, the record does not contain substantial evidence in support of
25 the IS/MND's conclusion that significant impacts will not occur. On the contrary,
26 the Project's impacts on water quality will remain significant, and preparation of
27 an EIR is required.

28 **Traffic**

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30 49. Based on traffic counts taken exclusively in October and March 2013, the MND
31 finds that the Project's peak hour trips will not cause significant traffic impacts.
32 Arguably, this may be true in October and March, but in summer months, four-
33 lane Kanan Road provides the safest and most direct access to Zuma Beach for
34 San Fernando Valley residents. Zuma Beach receives in excess of six million
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1 visitors each year. This results in extreme traffic congestion in which it may take
2 10 minutes for a car to travel 100 feet. The Project's additional 3,035 trips per day
3 must be analyzed for its environmental impact. Congestion, such as that
4 experienced on Kanan Road in the summer, also increases emissions of tailpipe
5 emissions such as carbon monoxide that can become dangerous when
6 concentrated by stopped traffic. These conditions will be exacerbated by the
7 Project, but are not disclosed, analyzed, or mitigated in the MND. The existence
8 of this potentially significant environmental impact must be analyzed in an EIR.

9 **Tribal Cultural Resources**

- 10 50. The City determined that Archaeological CAL-LAN-1352 meets the criteria for
11 inclusion on the California Register of Historic Resources, so it is a historic
12 resource, as defined in CEQA Guidelines § 15064.5(a) as well as a CEQA
13 archaeological resource.
- 14 51. The MND therefore erred by finding, with no supporting evidence, that the
15 Project would not cause a substantial adverse change in the significance of CAL-
16 LAN-1352 when, in fact, it would destroy this historical resource. This is a
17 significant effect under CEQA that requires the preparation of an EIR.
- 18 52. There is no substantial evidence in the record that Mitigation Measure CS-CR-3,
19 which requires a Phase III data recovery excavation program if avoidance of CA-
20 LAN-1352 is not possible, will be sufficient to mitigate the Project's destruction
21 of CA-LAN-1352 to a level where it is not significant.
- 22 53. The City failed to provide notice to California Native American tribes as required
23 by Pub. Res. Code § 21080.3.1(d) so that such tribes could consult with the City
24 concerning the Project.
- 25 54. The IS/MND determined that the Project may have significant impacts on an
26 identified tribal cultural resource, but failed to discuss whether that impact is
27 significant, and whether feasible alternatives or mitigation measures could avoid
28 or substantially lessen the impact, as required by Pub. Res. Code. § 21082.3(b).
29 The IS/MND's failure to include this information violates CEQA.
30
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33 **Greenhouse Gases**

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1 55. The City’s adoption of the greenhouse-gas (GHG) significance threshold of 3,000
2 metric tonnes CO2E per year is not supported by substantial evidence.

3 56. The GHG mitigation measure “Implement employee trip reduction program to
4 achieve an eight percent reduction in vehicle trips” is highly questionable, and
5 not supported by substantial evidence. It seems unlikely that a sufficient
6 percentage of the trips made in connection with the Project would be made by
7 employees of businesses operating on the Project Site that such a program could
8 result in an overall 8% reduction in trips.
9

10
11 **Second Cause of Action**

12 ***Violation of Planning and Zoning Law — Approval of Project Inconsistent with***
13 ***the Applicable General Plan and Specific Plan***

14 57. Petitioner incorporates ¶¶ 1–22 as though set forth here.
15

16 58. The Project Site is located in the City of Agoura Hills. It is within the territory of
17 the Agoura Village Specific Plan and the Agoura Hills General Plan.
18

19 59. The Planning and Zoning Law, Gov. Code §§ 65000-66499.58, requires the City
20 to approve development projects only when they are consistent with the
21 applicable land-use plans. The City violated the Planning and Zoning Law in
22 approving the Project because it is inconsistent with the Specific Plan and
23 General Plan for the reasons set forth in the following paragraphs.

24 60. The Project is inconsistent with the Mobility Element of the 2010 General Plan
25 Update. The General Plan describes Agoura Road east of Cornell as a “semi-
26 rural” two-lane road without street lights. While the General Plan anticipates
27 widening Agoura Road west of Kanan, it does not discuss, and its EIR does not
28 analyze, widening east of Kanan. But the Project would double the width of the
29 sidewalks provided and install angled parking and streetlights, likely in an effort
30 to establish a right-of-way for a 4-lane Agoura Road. The General Plan also
31 designates Agoura Road east of Kanan as a “valuable scenic resource in the
32 community that [provides] scenic views of the Santa Monica Mountains,
33 including Ladyface Mountain.” The General Plan seeks to protect the views of the
34 Santa Monica Mountains and Agoura Hills’ position as “Gateway to the Santa
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1 Monica Mountains National Recreation Area” by restricting street lighting,
2 requiring setbacks from the road to preserve hillside vistas, and requiring
3 preservation of oak trees near roadway segments designated as “valuable scenic
4 resources.” The Project is inconsistent with these requirements in that it adds
5 street lighting, widens the road and its right-of-way to reduce setbacks, and
6 widens the road right-of-way and sidewalks such that all 59 of the oak trees on-
7 site would either be removed or encroached upon.

8 61. The purpose espoused in the Specific Plan is to create a destination to attract
9 visitors and residents to a pedestrian-friendly, outdoor environment serving as a
10 gateway to the Santa Monica Mountains. By contrast, the Project is suited to a
11 transit-oriented development located in an urban area. The Cornerstone Project
12 is inconsistent with several policies of the Agoura Village Specific Plan, including,
13 but are not limited to, the following:

- 14
- 15 a. Despite Specific Plan policies calling for the preservation of mature oak
16 trees, and especially of oak trees, whenever possible the Project will
17 adversely impact all 59 oak trees located on the Project site. Twenty-nine
18 of the oak trees will be removed, and the remaining 30 trees will
19 experience encroachment into the zones established to protect them from
20 adverse development impacts. The Project could be redesigned to (1)
21 preserve more oak trees and; (2) to prevent encroachment into the
22 protected zones of the protected trees. This is a significant impact on both
23 biological resources and land use that is not mitigated by the MND. There
24 are viable alternatives that have not been analyzed.

 - 25 b. The Specific Plan requires the Project to “minimize grading on existing
26 slopes and knolls to the greatest extent possible.” The IS/MND claims that
27 the Project would include only minor grading along the edge of the knoll
28 and would greatly preserve the feature. However, the Project renderings
29 demonstrate that the only part of the knoll that would be preserved is a
30 concrete ring around four oak trees. Most of the knoll would be removed
31 to widen roadways at the intersection of Agoura Road and Cornell and to
32 establish a 10-foot sidewalk, retaining walls, and angled parking spaces.
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- 1 c. The Mitigation, Monitoring and Reporting Program adopted with the
2 Specific Plan EIR requires preservation of “the majority of the knoll
3 located south and east of the intersection of Agoura and Cornell Road” to
4 avoid an otherwise significant aesthetic impact under CEQA. The
5 Project’s failure to retain this knoll causes a significant aesthetic impact
6 that is not disclosed or mitigated in the MND, as well as a significant
7 impact on land use caused by the Project’s inconsistency with the Specific
8 Plan.
- 9 d. The Specific Plan requires minimization of grading “to follow natural the
10 contours,” specifically in Zone E where the Project is located. Instead, the
11 Project requires massive grading and 95,000 cubic yards of grading and
12 six months of truck trips to flatten out the site for development.

13
14 **Third Cause of Action**

15 ***Violation of Agoura Hills Oak Tree Preservation Regulations, Agoura Hills***
16 ***Municipal Code § § 9657–9657.5***
17 ***(against all Respondents and Real Parties in Interest)***

- 18 62. Petitioner incorporates ¶¶ 1–22 as though set forth here.
- 19
20 63. The Project conflicts with the City’s oak tree ordinance, which states, “It shall be
21 the policy of the City of Agoura Hills to require the preservation of all healthy
22 oak trees unless compelling reasons justify the removal of such trees.” (Agoura
23 Hills Municipal Code § 9657.2.) The City ordinance applies to both the tree itself,
24 and to the “protected zone.” Per the City, “The protected zone is defined as the
25 area beneath the dripline or canopy of the tree plus five more feet beyond the
26 dripline. Oaks are especially sensitive to disturbance in this protected zone and
27 therefore activities with this zone require special attention.” The Project would
28 remove 29 oak trees completely and encroach into the protected zone of the
29 remaining 30, endangering their health. “Compelling reasons” do not include the
30 Applicant’s failure to design a Project capable of retaining more trees or capable
31 of avoiding the protected zone of retained trees. The Project does not meet one of
32 the exemptions listed in Municipal Code § 9657.4. Thus, the Project fails to
33 comply with the City’s oak tree ordinance, a significant adverse impact on land
34 use that is not mitigated by the MND. The existence of an unmitigated significant
35 adverse impact requires that an EIR be prepared.

1 64. The City violated its Oak Tree Ordinance by granting the Project permits under
2 Municipal Code § 9657. The ordinance prohibits the City from granting an oak
3 tree permit to remove more than two trees for the Project unless it makes specific
4 findings that “the continued existence totally prevents the development of the
5 subject property.” (Municipal Code § 9657.5.) While it is reasonable that some of
6 the trees would need to be removed to build a mixed-use development on the site
7 consistent with the Agoura Village Specific Plan, this is not true for all 59 site
8 trees. Project building locations could be modified or resized to accommodate at
9 least some of the site’s oak trees. The City lacks substantial evidence in support of
10 this finding for 59 trees.

11 65. Tree removal is not permitted unless additional findings are made. The City must
12 find: (a) that the Project and tree removals can occur without endangering the
13 health of the remaining trees on the property; (b) that the removal of the trees
14 will not cause unmitigated soil erosion; *and* (c) that avoidance of the removal
15 would be cost-prohibitive or preclude the reasonable and efficient use of the
16 property. (Municipal Code § 9657.5(C)(3)(a)-(c).) However, the Project removes
17 or encroaches upon all trees, so the finding in (a) cannot be made. The finding in
18 (b) is countered by substantial evidence submitted by City resident, Samuel
19 Unger, that the Project’s water quality impacts have not been mitigated. The
20 findings in (c) also cannot be made, as the record contains no evidence that
21 avoidance of some of the trees would be cost-prohibitive or preclude the
22 reasonable use of the property. There is no requirement that property be
23 developed to its maximum permitted square footage. Reasonable use, in the face
24 of 59 protected trees, is a smaller development than the proposed Project.
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27 **Prayer for Relief**

28 WHEREFORE, Petitioner prays for relief as follows:

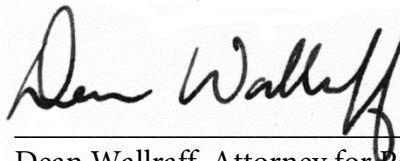
- 29 1. for a peremptory Writ of Mandate:
- 30 a. directing the City to set aside the Project Entitlements and the MND;
- 31 b. ordering the City to prepare an Environmental Impact Report for the
- 32 Project; and
- 33
- 34
- 35

1 c. ordering the City and the Applicant to cease all Project activity that may
2 result in a physical change to the environment until the City re-approves
3 the Project following the certification of the Environmental Impact
4 Report.

- 5 2. for an injunction ordering the City and the Applicant to cease all Project activity
6 that may result in a physical change to the environment until the City re-
7 approves the Project following the certification of an Environmental Impact
8 Report for the Project;
9
10 3. For costs of suit;
11
12 4. For attorney's fees as authorized by Code of Civil Procedure §1021.5 and other
13 provisions of law; and
14
15 5. For such other and further relief as the Court deems just and proper.

16 Dated: April 6, 2017

17 Respectfully Submitted,
18 by Advocates for the Environment, Inc.

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21 Dean Wallraff, Attorney for Petitioner,
22 Central City West Organizing STACK
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Verification

I am a member of the unincorporated association known as Save the Agoura Cornell Knoll, the Petitioner in this action. I am authorized to execute this verification on its behalf. I have read the foregoing Petition and am familiar with its contents.

The matters stated herein are true of my own knowledge except as to those matters that are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on April 5, 2017 at Cornell, California.


Steve Hess