

1 Mitchell M. Tsai (Cal. Bar No. 277156)  
2 Naira Soghatyan (Cal. Bar No. 309599)  
3 Reza A. Mohamadzadeh (Cal. Bar No. 332444)  
4 Mitchell M. Tsai Law Firm  
5 139 South Hudson Avenue, Suite 200  
6 Pasadena, California 91101  
7 T: (626) 314-3821, F: (626) 389-5414  
8 E: [mitch@mitchtsailaw.com](mailto:mitch@mitchtsailaw.com)  
9 E: [naira@mitchtsailaw.com](mailto:naira@mitchtsailaw.com)  
10 E: [reza@mitchtsailaw.com](mailto:reza@mitchtsailaw.com)  
11 E: [info@mitchtsailaw.com](mailto:info@mitchtsailaw.com)

12 Attorneys for Plaintiffs and Petitioners Fiber First Los  
13 Angeles *et al.* (Additional counsel on following page)

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **FOR THE COUNTY OF LOS ANGELES**

16 FIBER FIRST LOS ANGELES; MOTHERS	)	CASE NO.: 23STCP00750
17 OF EAST LA; UNION BINACIONAL DE	)	
18 ORGANIZACIONES DE TRABAJADORES	)	<b>FIRST AMENDED VERIFIED PETITION</b>
19 MEXICANOS EXBRACEROS 1942-1964;	)	<b>FOR WRIT OF MANDATE AND</b>
20 BOYLE HEIGHTS COMMUNITY	)	<b>COMPLAINT FOR DECLARATORY AND</b>
21 PARTNERS; UNITED KEETOOWAH BAND	)	<b>INJUNCTIVE RELIEF</b>
22 OF CHEROKEE INDIANS IN OKLAHOMA;	)	California Environmental Quality Act, Cal. Pub
23 CALIFORNIA FIRES & FIREFIGHTERS;	)	Res. Code § 21000 <i>et seq.</i> ; Planning & Zoning
24 MALIBU FOR SAFE TECH; EMF SAFETY	)	Law, Cal. Government Code § 65000 <i>et seq.</i> ;
25 NETWORK; CALIFORNIANS FOR SAFE	)	County Code §§ 22.02.050, 22.232.040,
26 TECHNOLOGY; 5G FREE CALIFORNIA;	)	22.244.030, and 22.244.040; Cal. Const. art. I,
27 and CHILDREN’S HEALTH DEFENSE,	)	§ 7; Code of Civil Procedure §§ 1085, 1094.5
28	)	
Plaintiffs and Petitioners,	)	
v.	)	Petition filed: March 7, 2023
COUNTY OF LOS ANGELES; COUNTY OF	)	<u>Trial:</u>
LOS ANGELES BOARD OF SUPERVISORS;	)	Date: March 12, 2023
COUNTY OF LOS ANGELES REGIONAL	)	Time: 1:30 p.m.
PLANNING COMMISSION; COUNTY OF	)	
LOS ANGELES DEPARTMENT OF	)	Assigned for all purposes to the Honorable
REGIONAL PLANNING; COUNTY OF LOS	)	James C. Chalfant, Department 85
ANGELES DEPARTMENT OF PUBLIC	)	
WORKS; and DOES 1–10, inclusive;	)	
Defendants, Respondents, and Real	)	
Parties in Interest	)	

1 Robert F. Kennedy, Jr.  
2 Chief Litigation Counsel, Children’s Health  
3 Defense  
4 752 Franklin Ave., Suite 511  
5 Franklin Lakes, NJ 07417  
6 P: (202) 854-1310  
7 F: (512) 692-2522  
8 E: [rfk.assistant@childrenshealthdefense.org](mailto:rfk.assistant@childrenshealthdefense.org)  
9 (pending *pro hac vice*)

6 W. Scott McCollough  
7 McCollough Law Firm PC  
8 2290 Gatlin Creek Rd.  
9 Dripping Springs, Texas 78620  
10 (512) 633-3498  
11 P: (512) 633-3498  
12 F: (512) 692-2522  
13 E: [wsmc@dotlaw.biz](mailto:wsmc@dotlaw.biz)  
14 (pending *pro hac vice*)

Julian Gresser  
(Cal. Bar No. 50656)  
Law Office of Julian Gresser  
P.O. Box 30397  
Santa Barbara, CA 93130  
P: 805-563-3226  
E: [juliangresser77@gmail.com](mailto:juliangresser77@gmail.com)

## INTRODUCTION

1  
2           1.       This lawsuit seeks to enjoin the Respondents, Defendants, and Real Parties in Interest  
3 County of Los Angeles (“County”), County of Los Angeles Board of Supervisors (“Board of  
4 Supervisors”), County of Los Angeles Regional Planning Commission (“Planning Commission”),  
5 County of Los Angeles Department of Regional Planning (“Regional Planning”), and County of Los  
6 Angeles Department of Public Works (“Public Works” or collectively with County, Board of  
7 Supervisors, Planning Commission, and Regional Planning as “Respondents”) action on January 10,  
8 2023 (and all previous and subsequent actions) approving an ordinance amending Title 16 and Title 22  
9 of the Los Angeles County Code (“Project” or “Ordinance”) to establish regulations for the review and  
10 permitting of wireless telecommunication facilities.

11           2.       The Ordinance eliminates discretionary conditional use permitting for most wireless  
12 telecommunication facilities, and institutes what is claimed to be ministerial review, stripping away the  
13 site-specific environmental inquiries mandated by the California Environmental Quality Act, Cal.  
14 Public Resources Code (“PRC”) § 21000 *et seq* (“CEQA”).

15           3.       The Board of Supervisors opted to exempt the Project from CEQA environmental  
16 review, ignoring substantial evidence that the Ordinance, through the many individual wireless  
17 facilities that will be permitted under the Ordinance’s procedures, will have a substantial adverse  
18 environmental impact.

19           4.       The Ordinance contains other facial defects, of which the most prominent is an illegal  
20 delegation of the Board of Supervisors’ legislative authority to the Director of its Planning Department  
21 and the Highway Commissioner. Under the Ordinance’s permitting procedures for wireless  
22 telecommunication facilities, the Director and Commissioner are freely able to create new and  
23 substantive obligations, a form of legislative action. They both also have substantial discretion and the  
24 ability to exercise subjective judgment even though the process they oversee is claimed to be  
25 “ministerial.” The Ordinance does not provide any direction or constrain in any way the Director’s or  
26 Commissioner’s discretion and legislative power.

27           5.       The confusion between ministerial and discretionary authority in Titles 16 and 22, the  
28 arbitrary assertion of an exemption from CEQA, and the unlawful delegation of legislative authority  
grant the Los Angeles Planning Department and Department of Public Works with unfettered authority  
and cut the public out of the wireless facility permitting process. The Board of Supervisors justify this  
action by claiming the code amendments will close the Digital Divide. This is false. Those most at risk  
on account of historical and ongoing economic, minority or other forms of discrimination will have no

1 voice, will lack effective legal counsel, and will be unable to escape an unsafe, toxic and aesthetically  
2 displeasing environment caused by an inferior communications delivery medium. The Ordinance will  
3 worsen, not close, the digital divide.

4 6. Moreover, the Ordinance raises profound constitutional and statutory substantive and  
5 procedural due process concerns with regard to individual permit applications that will have a direct  
6 and significant impact on those affected by the Project. Those who live near many of the wireless  
7 projects that will be governed by the Ordinance will suffer significant losses of personal and real  
8 property rights, without any meaningful opportunity to contest or recommend changes to the Ordinance  
9 or to the many wireless projects the Ordinance enables, no right to a hearing of any kind, and no appeal  
10 to a higher authority within the County, not even to the elected Board of Supervisors. The “ministerial  
11 process” the Ordinance designates for most of the permit approvals and thereby forecloses any  
12 possibility for the public to review and/or contest any arbitrary actions of non-elected decisionmakers  
13 and individuals is not consistent with several state statutes, or the California and U.S. Constitutions.

14 7. The Ordinance creates the framework for permitting thousands of wireless facilities  
15 throughout the incorporated and unincorporated parts of the County. The Board of Supervisors  
16 purposefully and unlawfully blinded themselves to the significant and adverse consequences to its local  
17 communities and the environment that will occur as a direct or indirect result of this Project. In light of  
18 numerous disadvantaged low-income communities in the County, the Ordinance and its proposed  
19 ministerial permitting process will have a disparate impact and raise significant environmental justice  
20 issues for such communities, without any possibility or procedure for recourse or change.

21 8. There is ample scientific evidence that a wireless project can often so sicken local  
22 residents that it constructively evicts whole families who can no longer tolerate continuous exposure to  
23 non-ionizing radiation emitted from small cell and macro cell towers. This situation is especially tragic  
24 for poor and minority families who are holding on desperately to affordable housing and lack any  
25 financial means of escape. Basic justice demands that these families, who are represented in this case  
26 by several petitioners and plaintiffs, be given adequate prior notice and a fair hearing before their  
27 voices are silenced, their property is taken or devalued, or their lives are put at risk.

28 9. As is extensively documented, the wireless facilities will endanger the air, water, flora,  
fauna, and objects of historic or aesthetic significance. The wireless facilities are not designed to  
withstand earthquakes or floods and will create new risks of fire.

10. Petitioners seek a Writ of Mandamus, Declaratory, and other relief vacating the County  
Board of Supervisors’ approval of the Ordinance, enjoining all permitting of wireless

1 telecommunication facilities under the Ordinance’s procedures, and declaring that County’s adoption of  
2 the Ordinance failed to comply with CEQA, the California Government Code, the Los Angeles County  
3 Code, and the California and U.S. Constitutions.

4 **PARTIES**

5 11. Plaintiff and Petitioner Fiber First Los Angeles is a grassroots community group focused  
6 on bringing safe, reliable, and affordable technology to every community in Los Angeles.

7 12. Plaintiff and Petitioner Mothers of East LA is a California 501(c)(3) non-profit located  
8 at 3324 Opal St., Los Angeles, CA 90023, and has been operating since 1986. Mothers of East LA is a  
9 community-based group created for the procurement of a better quality of life in East Los Angeles and  
10 the protection of our local environment. The organization works to achieve a safe environment for their  
11 families, their community and future generations.

12 13. Plaintiff and Petitioner Union Binacional de Organizaciones de Trabajadores Mexicanos  
13 Exbraceros 1942-1964 is a California 501(c)(3) non-profit whose mission is to promote the well-being  
14 and the advancement of migrants in the United States. It provides historical, educational, cultural,  
15 health, and art programs for the elderly. It also engages in environmental solidarity projects, and  
16 provides scholarships for young migrants to achieve maximum personal and professional development  
17 in social projects.

18 14. Plaintiff and Petitioner Boyle Heights Community Partners is a California 501(c)(3)  
19 nonprofit located at 603 N. Breed Street, Los Angeles, CA 90033. Boyle Heights Community Partners  
20 is centered in the second oldest community in the City of Los Angeles. Its mission is to protect its  
21 cultural heritage, history, historic places, and people, as well as the integrity of its community. Boyle  
22 Heights Community Partners provides historic preservation education and engages in the landmarking  
23 of historic homes, people of significance, and buildings throughout the local community. Boyle Heights  
24 Community Partners champions historic preservation and aims to grow a cultural arts presence in its  
25 local historic districts, many of which have been designated as a historic preservation overlay zone by  
26 the City of Los Angeles Office of Historic Resources.

27 15. Plaintiff and Petitioner United Keetoowah Band of Cherokee Indians in Oklahoma  
28 (“UKB”) is a sovereign nation, and one of only three federally recognized Cherokee tribes in the United  
States. UKB is headquartered in Tahlequah, Oklahoma. The UKB are known as the Western Cherokee,  
or Old Settlers, as many were already moving west to avoid U.S. encroachment before the Trail of  
Tears officially began. The majority of UKB’s more than 14,000 tribal members are located in  
Oklahoma, but members reside in several other states, including California. Approximately 50 tribal

1 members reside in Los Angeles County.

2 16. Plaintiff and Petitioner California Fires & Firefighters is a d/b/a for Rocky Mountains  
3 for Safe Technology, a 501(c)(3) non-profit organization located at PO Box 1444, Lyons, CO 80540  
4 and incorporated under the laws of Colorado. Its mission is to learn from and safeguard the health of  
5 California firefighters whose fire stations were the first targets of cell towers beginning in the 1990s, to  
6 advocate for safer working conditions, and to protect the land and the people of California through  
7 educating their local elected leaders regarding the increasing threat of telecommunications equipment-  
8 initiated fires.

9 17. Plaintiff and Petitioner Malibu for Safe Tech is a grassroots organization of Los Angeles  
10 County residents working to protect its community and environment from the threats of wireless  
11 telecommunication. Malibu for Safe Tech works to raise awareness of issues surrounding 5G systems  
12 and its impacts to safety, privacy, property values and the health of all living organisms, and interacts  
13 with organizations around the nation regarding the same.

14 18. Plaintiff and Petitioner EMF Safety Network is a grassroots organization that began in  
15 Sebastopol, CA and has grown to over 4,500 members from all over the United States, including many  
16 in Los Angeles County. The EMF Safety Network is a sponsored project of Ecological Options  
17 Network (EON), a 501(c)(3) not-for-profit organization. Since 2009, EMF Safety Network has been  
18 driving and building EMF activism to better protect people and nature by keeping thousands of people  
19 informed and helping them take action on important EMF issues. EMF Safety Network's mission is to  
20 educate and empower people by providing science and solutions to reducing EMFs. Its goal is to  
21 improve lives, achieve public policy change, and obtain environmental justice on the local, state and  
22 national levels.

23 19. Plaintiff and Petitioner Californians for Safe Technology is a coalition of grassroots  
24 leaders throughout California working with community members on local, state, and national issues  
25 regarding safe technology using awareness and education. Its mission is to be a place where  
26 organizations and individuals across California can work together to find strategies for educating  
27 communities, local governments, and schools on safer technology choices. The coalition aligns itself  
28 with organizations that provide the latest scientific research as well as the most current legal and policy  
29 decisions regarding safe technology. These groups include Environmental Health Trust, Americans for  
30 Responsible Technology, Physicians for Safe Technology, and Safer EMR's.

31 20. Plaintiff and Petitioner 5G Free California is a 501(c)(3) non-profit organization based  
32 in Topanga, CA. 5G Free California serves the entire state but has a primary focus on Los Angeles

1 County. The organization has approximately 50 active members and a mailing list of 1,600 subscribers.  
2 5G Free California's mission is to educate and conduct outreach and advocacy on the effects of  
3 wireless radiation on the human environment and to support safer technology.

4 21. Plaintiff and Petitioner Children's Health Defense is a 501(c)(3) non-profit organization  
5 located at 852 Franklin Ave., Suite 511, Franklin Lakes, NJ 07417 and incorporated under the laws of  
6 California. Its mission is to end health epidemics by working aggressively to eliminate harmful toxins  
7 in the human environment, hold those responsible accountable, and establish safeguards to prevent  
8 future harm through litigation, education, advocacy and scientific research. Children's Health Defense  
9 has 1,398 members in Los Angeles County.

10 22. Fiber First Los Angeles together with Mothers of East LA, Union Binacional de  
11 Organizaciones de Trabajadores Mexicanos Exbraceros 1942-1964, Boyle Heights Community  
12 Partners, United Keetoowah Band of Cherokee Indians in California, California Fires & Firefighters,  
13 Malibu for Safe Tech, EMF Safety Network, Californians for Safe Technology, 5G Free California, and  
14 Children's Health Defense are hereinafter collectively referred to as "Petitioners."

15 23. Defendant and Respondent County of Los Angeles is a local public agency. It is also the  
16 lead agency approving the Project, for purposes of CEQA and various state laws. The Project is within  
17 the jurisdictional limits of the County of Los Angeles.

18 24. Defendant and Respondent County of Los Angeles Board of Supervisors is the elected  
19 legislative and decisionmaking body of the County of Los Angeles, which made the ultimate  
20 independent decision on the Project, including its CEQA determination.

21 25. Defendants and Respondents County of Los Angeles Regional Planning Commission,  
22 County of Los Angeles Department of Regional Planning, and County of Los Angeles Department of  
23 Public Works are all a department of the County of Los Angeles that are responsible for drafting the  
24 Ordinance and/or implementing it.

25 26. Defendants and Respondents County of Los Angeles, County of Los Angeles Board of  
26 Supervisors, County of Los Angeles Regional Planning Commission, County of Los Angeles  
27 Department of Regional Planning, County of Los Angeles Department of Public Works are also real  
28 parties and are hereinafter collectively referred to as "County" or "Respondents."

29 27. Petitioners are ignorant of the true names and capacities of respondents and real parties  
30 sued herein as DOES 1 through 10, inclusive, and therefore Petitioners sue said respondents and real  
31 parties in interest by those fictitious names. Petitioners will amend this First Amended Petition to  
32 allege their true names and capacities when the same have been ascertained. Petitioners allege that

1 each of these fictitiously named respondents is in some manner responsible for the wrongful conduct  
2 alleged in this first amended petition. Petitioners allege that these fictitiously named respondents were,  
3 at all times mentioned in this first amended petition, the agents, servants, and/or employees of their co-  
4 respondents and were acting within their authority as such with the consent and permission of their co-  
5 respondents.

6 28. Petitioners have a substantial interest in ensuring that the County's decisions are in  
7 conformity with the requirements of law and in having those requirements properly executed.  
8 Petitioners will be adversely affected by impacts resulting from the County's actions as described  
9 herein. Petitioners are suing on their behalf and on behalf of others who will be affected in the County.

### 10 JURISDICTION AND VENUE

11 29. This Court has jurisdiction over this action pursuant to Code of Civil Procedure ("CCP")  
12 sections 526 (injunctive relief), 1060 (declaratory relief), 1085 (traditional mandate) and 1094.5  
13 (administrative mandate), Public Resources Code sections 21168 and 21168.5 (judicial review under  
14 CEQA), and Government Code section 65009 (actions challenging local government decisions). The  
15 Court has jurisdiction to issue declaratory relief pursuant to CCP section 1060 and injunctive relief  
16 pursuant to CCP section 525 *et seq.*

17 30. Venue is proper in this Court because the Project Site lies entirely within the County of  
18 Los Angeles and the environmental impacts of the Project will be acutely felt in this County. The  
19 causes alleged in this Petition arise in this County. *See* CCP § 393; *see also Cal. State Parks*  
20 *Foundation v. Super. Ct.* (2007) 150 Cal.App.4th 826. Venue is also proper in this Court pursuant to  
21 Code of Civil Procedure sections 394 (actions against a city, county, or local agency), and 395 (actions  
22 generally) since Respondents are in the County of Los Angeles.

23 31. The instant action is timely filed within all applicable limitation periods.

24 32. Petitioners have provided written notice of their intention to file this petition to  
25 Respondents in compliance with PRC section 21167.5, a true and correct copy of which notice,  
26 including the corresponding proof of service, is attached hereto as Exhibit A.

27 33. Petitioners have concurrently filed a notice of their election to prepare the record of  
28 administrative proceedings relating to this action, in compliance with PRC section 21167.6 or other  
applicable laws, a true and correct copy of which notice is attached hereto as Exhibit B.

34. Petitioners have concurrently filed a request for hearing in compliance with PRC section  
21167.4, a true and correct copy of which request is attached hereto as Exhibit C.

35. Petitioners have concurrently filed and served notice of this lawsuit to the California



1 Attorney General in compliance with PRC section 21167.7 and CCP section 388, a true and correct  
2 copy of which notice is attached hereto as Exhibit D.

3 36. Petitioners have performed all conditions precedent to filing this instant action and have  
4 exhausted administrative remedies to the extent required by law under PRC section 21177. Petitioners  
5 and/or other agencies and/or individuals have raised each of the legal deficiencies asserted in this First  
6 Amended Petition orally or in writing during the Respondents' decision-making process.

7 37. The violations by Respondents as alleged herein have negatively affected the beneficial  
8 interests of Petitioners and/or their supporting members. The relief sought by way of this First  
9 Amended Petition will redress this beneficial interest and prevent the likelihood of future injury and  
10 interference with Petitioners' interests, and those of their supporting members.

11 38. Petitioners have no plain, speedy, or adequate remedy in the course of ordinary law  
12 unless this Court grants the requested Writ of Mandate to require Respondents to set aside the approval  
13 and certification of the Project and the corresponding CEQA Notice of Exemption published on or  
14 around February 2, 2023. In the absence of such remedies, Respondents' decisions will remain in effect  
15 in continuous violation of state laws and injurious to Petitioners and their members.

#### 16 **STATUTORY BACKGROUND**

##### 17 **The California Environmental Quality Act**

18 39. In 1970, the California Legislature enacted the California Environmental Quality Act  
19 and declared the maintenance of a quality environment to be a matter of ongoing statewide concern.

20 40. Pursuant to CEQA, public agencies must give "major consideration...to preventing  
21 environmental damage, while providing a decent home and satisfying living environment for every  
22 Californian" when considering project approvals. PRC § 21000, subd. (g).

23 41. The foremost principle in interpreting CEQA is that the Legislature intended CEQA to  
24 be read so as to "afford the fullest possible protection to the environment within the reasonable scope of  
25 the statutory language." *Laurel Heights Improvement Assn. v. Regents of University of California*  
26 (1988) 47 Cal.3d 376, 390; *Communities for a Better Environment v. Cal. Resources Agency* (2002)  
27 103 Cal. App. 4th 98, 109.

28 42. CEQA has four primary purposes. First, CEQA is designed to inform governmental  
decision makers and the public about the potential, significant environmental effects of a proposed  
project. CEQA Guidelines § 15002, subd. (a)(1). "Its purpose is to inform the public and its responsible  
officials of the environmental consequences of their decisions before they are made. Thus, [CEQA]  
'protects not only the environment but also informed self-government.'" *Citizens of Goleta Valley v.*

1 *Bd. of Supervisors* (1990) 52 Cal.3d 553, 564.

2 43. Second, CEQA requires public agencies to identify ways that environmental damage can  
3 be avoided or significantly reduced. CEQA Guidelines § 15002, subd. (a)(2)

4 44. Third, Public agencies “should not approve projects as proposed if there are feasible  
5 alternatives or feasible mitigation measures available which would substantially lessen the  
6 environmental effects of such projects.” PRC § 21002. That is, CEQA requires that public agencies  
7 prevent significant environmental damage by requiring “environmentally superior” alternatives and  
8 feasible mitigation measures. CEQA Guidelines, § 15002, subd. (a)(3); *Citizens of Goleta Valley*,  
*supra*, 52 Cal.3d at 564.

9 45. Fourth, CEQA requires public agencies to disclose to the public the reasons why it has  
10 approved the project in the manner the agency chose if significant environmental effects are involved.  
11 CEQA Guidelines, § 15002, subd. (a)(4).

12 46. “CEQA is a comprehensive scheme designed to provide long-term protection to the  
13 environment.” *Save N. Petaluma River & Wetlands v. City of Petaluma* (2022) 86 Cal.App.5th 207, 215  
14 citing *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112.

15 47. To achieve its objectives of environmental protection, CEQA has a three-tiered  
16 structure. CEQA Guidelines, § 15002, subd. (k); *Comm. to Save the Hollywoodland Specific Plan v.*  
17 *City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1185 – 86. First, if a project falls into an exempt  
18 category, or it can be seen with certainty that the activity in question will not have a significant effect  
19 on the environment, no further agency evaluation is required. *Id.* Second, if there is a possibility the  
20 project will have a significant effect on the environment, the agency must perform a threshold initial  
21 study. *Id.*; CEQA Guidelines, § 15063 subd. (a). If the study indicates that there is no substantial  
22 evidence that the project may cause a significant effect on the environment the agency may issue a  
23 negative declaration. *Id.*, CEQA Guidelines, §§ 15063, subd. (b)(2), 15070. Finally, if the project will  
24 have a significant effect on the environment, an environmental impact report (“EIR”) is required. *Id.*

25 48. The EIR requirement “is the heart of CEQA.” CEQA Guidelines § 15003, subd. (a). The  
26 EIR’s function is to ensure that government officials who decide to build or approve a project do so  
27 with a full understanding of the environmental consequences and, equally important, that the public is  
28 assured those consequences have been considered. For the EIR to serve these goals it must present  
information so that the foreseeable impacts of pursuing the project can be understood and weighed, and  
the public must be given an adequate opportunity to comment on that presentation before the decision  
to go forward is made. *Communities for a Better Environment v. Richmond* (2010) 184 Cal.App.4th 70,

1 80, quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40  
2 Cal.4th 412, 449–450. As such, the EIR is an informational document that functions as “the primary  
3 means of achieving the Legislature’s considered declaration that it is the policy of this state to ‘take all  
4 action necessary to protect, rehabilitate, and enhance the environmental quality of the state.’ *Save N.  
5 Petaluma River & Wetlands v. City of Petaluma* (2022) 86 Cal.App.5th 207, 215.

### 6 **Exemptions from CEQA Environmental Review**

7 49. Activities exempt from CEQA are either expressly identified by statute (i.e., statutory  
8 exemptions, PRC § 21080.01 *et seq.*; CEQA Guidelines §§ 15261 – 85) or fall into one of the classes  
9 deemed categorically exempt by the Secretary of Resources (i.e., categorical exemptions). PRC §  
10 21080, subd. (b)(10); CEQA Guidelines § 15300.

11 50. CEQA identifies certain classes of projects which are exempt from the provisions of  
12 CEQA. These are called categorical exemptions. PRC § 21084 (a); CEQA Guidelines §§ 15300, 15354.  
13 Categorical exemptions are certain classes of activities that generally do not have a significant effect on  
14 the environment. *Id.*

15 51. CEQA categorical exemptions must be “construed narrowly” and cannot be  
16 unreasonably expanded beyond their terms. *County of Amador v. El Dorado County Water Agency*  
17 (1999) 76 Cal.App.4th 931.

18 52. Exemptions are strictly construed to allow for the fullest possible environmental  
19 protections within the reasonable scope of statutory language. CEQA Guidelines § 15003, subd. (f);  
20 *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165,  
21 1192 – 93; *East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula Unified School Dist.* (1989) 210  
22 Cal.App.3d 155, 171; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988)  
23 47 Cal.3d 376, 390 (rejecting “an attempt to use limited exemptions contained in CEQA as a means to  
24 subvert rules regulating the protection of the environment”). A reviewing court must “scrupulously  
25 enforce all legislatively mandated CEQA requirements.” *Citizens of Goleta Valley v. Bd. of Supervisors*  
26 (1990) 52 Cal.3d 553, 564.

27 53. Public agencies utilizing CEQA exemptions must support their determination with  
28 substantial evidence. PRC § 21168.5; *see Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243,  
1251, *as modified on denial of reh’g* (Oct. 29, 1999) (“substantial evidence test governs our review of  
the city’s factual determination that a project falls within a categorical exemption”); *Banker’s Hill,  
Hillcrest, Park W. Cmty. Pres. Grp. v. City of San Diego* (2006 )139 Cal.App.4th 249, 267; *Davidon  
Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 115, *as modified on denial of reh’g* (Apr. 29,

1 1997) (“On review, an agency’s categorical exemption determination will be affirmed if supported by  
2 substantial evidence that the project fell within the exempt category of projects”); *Magan v. Cnty. of*  
3 *Kings* (2002) 105 Cal.App.4th 468, 475, *as modified* (Jan. 13, 2003) (an agency “only has the burden to  
4 demonstrate substantial evidence that the ordinance fell within the exempt category of projects”); *San*  
5 *Lorenzo Valley Cmty. Advocs. for Responsible Educ. v. San Lorenzo Valley Unified Sch. Dist.*  
6 (2006)139 Cal.App.4th 1356, 1386; *Union of Med. Marijuana Patients, Inc. v. City of San Diego*  
7 (2019) 7 Cal.5th 1171, 1186; *Muzzy Ranch Co. v. Solano Cnty. Airport Land Use Com.* (2007) 41  
8 Cal.4th 372, 380, 386-387, *as modified* (Sept. 12, 2007).

9 54. Respondents bear the burden to provide substantial evidence, which must be based upon  
10 facts, reasonable assumptions based on facts, and expert opinion, rather than mere speculation, to  
11 support their findings. CEQA Guidelines § 15384, subd. (a); *Save Our Big Trees v. City of Santa Cruz*  
12 (2015) 241 Cal.App.4th 694, 710-711 citing *Muzzy Ranch Co. v. Solano County Airport Land Use*  
13 *Com.* (2007) 41 Cal.4th 372, 386.

14 55. Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly  
15 inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence.  
16 Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert  
17 opinion supported by facts. CEQA Guidelines § 15064, subd. (f)(5).

18 56. The determination of whether a project may have a significant effect on the environment  
19 calls for careful judgment on the part of the public agency involved, based to the extent possible on  
20 scientific and factual data. CEQA Guidelines § 15064 subd. (b)(1).

21 57. An activity which may not be significant in an urban area may be significant in a rural  
22 area. *Id.*

23 58. In determining whether an effect will be adverse or beneficial, the lead agency shall  
24 consider the views held by members of the public in all areas affected as expressed in the whole record  
25 before the lead agency. CEQA Guidelines § 15064, subd. (c).

26 59. In evaluating the significance of the environmental effect of a project, the lead agency  
27 shall consider direct physical changes in the environment which may be caused by the project and  
28 reasonably foreseeable indirect physical changes in the environment which may be caused by the  
project. CEQA Guidelines § 15064 subd. (d).

60. Economic and social effects of a physical change may be used to determine that the  
physical change is a significant effect on the environment. If the physical change causes adverse  
economic or social effects on people, those adverse effects may be used as a factor in determining

1 whether the physical change is significant. CEQA Guidelines § 15064, subd. (e).

2 61. The decision as to whether a project may have one or more significant effects shall be  
3 based on substantial evidence in the record of the lead agency. CEQA Guidelines 15064, subd. (f).

4 62. If there is substantial evidence, in light of the whole record before a lead agency, that a  
5 project may have a significant effect on the environment, the agency shall prepare a draft EIR. CEQA  
6 Guidelines § 15064, subd. (a)(1); *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988.  
7 Said another way, if a lead agency is presented with a fair argument that a project may have a  
8 significant effect on the environment, the lead agency shall prepare an EIR even though it may also be  
9 presented with other substantial evidence that the project will not have a significant effect. *Id.*; *No Oil,*  
*Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68.

10 63. Erroneous reliance by the lead agency on a categorical exemption constitutes a  
11 prejudicial abuse of discretion and a violation of CEQA. *Azusa Land Reclamation Co. v. Main San*  
*Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1192.

12 64. “[I]f the court perceives there was substantial evidence that the project might have an  
13 adverse impact, but the agency failed to secure preparation of an EIR, the agency’s action must be set  
14 aside because the agency abused its discretion by failing to follow the law.” *Dunn-Edwards Corp. v.*  
15 *Bay Area Air Quality Mgmt. Dist.* (1992) 9 Cal.App.4th 644, 656.

16 65. CEQA exemptions are reserved for projects without potential to have significant  
17 environmental effects. *See Salmon Protection & Watershed Network v. County of Marin* (2004) 125  
18 Cal.App.4th 1098, 1107 [“If a project may have a significant effect on the environment, CEQA review  
19 must occur”].

20 66. “Significant effect upon the environment” is defined as “a substantial or potentially  
21 substantial adverse change in the environment.” PRC § 21068; CEQA Guidelines § 15382. A project  
22 “may” have a significant effect on the environment if there is a “reasonable probability” that it will  
23 result in a significant impact. *No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d at 83 fn. 16; *Sundstrom v.*  
*County of Mendocino* (1988) 202 Cal.App.3d 296, 309.

24 67. If any aspect of the project may result in a significant impact on the environment, an EIR  
25 must be prepared even if the overall effect of the project is beneficial. CEQA Guidelines § 15063, subd.  
26 (b)(1). *See County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1580. This  
27 standard sets a “low threshold” for preparation of an EIR. *Consolidated Irrig. Dist. v. City of Selma*  
28 (2012) 204 Cal. App. 4th 187, 207; *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252; *Pocket*  
*Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928; *Bowman v. City of Berkeley* (2004)

1 122 Cal.App.4th 572, 580; *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748,  
2 754; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 310.

3 68. If substantial evidence in the record supports a fair argument that the project may have a  
4 significant environmental effect, the lead agency must prepare an EIR, even if other substantial  
5 evidence before it indicates the project will have no significant effect. *See Jensen v. City of Santa Rosa*  
6 (2018) 23 Cal.App.5th 877, 886; *Clews Land & Livestock v. City of San Diego* (2017) 19 Cal.App.5th  
7 161, 183; *Stanislaus Audubon Soc’y, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150;  
8 *Brentwood Ass’n for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491; *Friends of*  
9 *“B” St. v. City of Hayward* (1980) 106 Cal.App.3d 988; CEQA Guidelines § 15064 (f)(1).

#### 10 Class 1 and Class 3 Categorical Exemptions

11 69. Pursuant to CEQA Guidelines section 15301, projects exempt under the Class 1  
12 Categorical Exemption consist of the “operation, repair, maintenance, permitting, leasing, licensing, or  
13 minor alteration of existing public or private structures, facilities, mechanical equipment, or  
14 topographical features, involving negligible or no expansion of existing or former use.” CEQA  
15 Guidelines § 15301.

16 70. Pursuant to CEQA Guidelines section 15303, projects exempt under the Class 3  
17 Categorical Exemption consist of “construction and location of limited numbers of new, small facilities  
18 or structures; installation of small new equipment and facilities in small structures; and the conversion  
19 of existing small structures from one use to another where only minor modifications are made in the  
20 exterior of the structure.” CEQA Guidelines § 15303.

#### 21 Exceptions to Categorical Exemptions

22 71. Certain types of projects are ineligible to be exempt from CEQA, even if they otherwise  
23 fit within a CEQA categorical exemption.

24 72. Categorical exemptions do not apply when the cumulative impact of successive projects  
25 of the same type and same place over time may be significant. CEQA Guidelines § 15300.2, subd. (b).

26 73. Projects that may adversely affect historical resources cannot be exempt from CEQA  
27 review. Subdivision (e) of Section 21084 of the California Public Resources Code states that “[a]  
28 project that may cause a substantial adverse change in the significance of a historical resource, as  
specified in Section 21084.1, shall not be exempted . . .” Section 21084.1 of the California Public  
Resources Code provides that “[a] project that may cause a substantial adverse change in the  
significance of an historical resource is a project that may have a significant effect on the environment.  
*See also* CEQA Guideline § 15300.2, subd. (f).

1 74. CEQA Guidelines Section 15300.2, subdivision (a) limits Class 3 exemptions by  
2 location. A project that might otherwise be insignificant in its environmental impact may, in a  
3 particularly sensitive environment, be significant. CEQA Guidelines, § 15300.2, subd. (a). Such  
4 projects cannot be rendered categorically exempt. *See id.*

5 **Planning & Zoning Law and Los Angeles County Code: General Plan Consistency**

6 75. The Planning & Zoning Law, Cal Government Code 65000 *et seq* (“Planning & Zoning  
7 Law”) requires each California city and county must adopt a comprehensive, long-term general plan  
8 governing development. *Napa Citizens for Honest Gov. v. Napa County Bd. of Supervisors* (2001) 91  
9 Cal.App.4th 342, 352, citing Gov. Code §§ 65030, 65300. The general plan sits at the top of the land  
10 use planning hierarchy (*see DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773), and serves as a  
11 “constitution” or “charter” for all future development. *Leshar Communications, Inc. v. City of Walnut*  
12 *Creek* (1990) 52 Cal.3d 531, 540.

13 76. General plan consistency is “the linchpin of California’s land use and development laws;  
14 it is the principle which infused the concept of planned growth with the force of law.” *See Debottari v.*  
15 *Norco City Council* (1985) 171 Cal.App.3d 1204, 1213.

16 77. State law mandates two levels of consistency. First, a general plan must be internally or  
17 “horizontally” consistent: its elements must “comprise an integrated, internally consistent and  
18 compatible statement of policies for the adopting agency.” *See Gov. Code § 65300.5; Sierra Club v.*  
19 *Bd. of Supervisors* (1981) 126 Cal.App.3d 698, 704. A general plan amendment thus may not be  
20 internally inconsistent, nor may it cause the general plan as a whole to become internally inconsistent.  
21 *See DeVita*, 9 Cal.4th at 796 fn. 12.

22 78. Second, state law requires “vertical” consistency, meaning that zoning ordinances and  
23 other land use decisions also must be consistent with the general plan. *See Gov. Code § 65860, subd.*  
24 *(a)(2)* (land uses authorized by zoning ordinance must be “compatible with the objectives, policies,  
25 general land uses, and programs specified in the [general] plan.”); *see also Neighborhood Action Group*  
26 *v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1184.

27 79. A zoning ordinance that conflicts with the general plan or impedes achievement of its  
28 policies is invalid and cannot be given effect. *See Leshar*, 52 Cal.3d at 544.

80. State law requires that all subordinate land use decisions, including conditional use  
permits, be consistent with the general plan. *See Gov. Code § 65860(a)(2); Neighborhood Action*  
*Group*, 156 Cal.App.3d at 1184.

81. Los Angeles County Code (“County Code”) section 22.244.040.B requires ordinance

1 amendments to be consistent with the Los Angeles County General Plan 2035 (“General Plan”).

2 82. County Code section 22.02.050 also requires land use consistency with the General  
3 Plan. It reads: “Notwithstanding the current zone classification applicable to any lot, if that zone  
4 classification does not conform to the General Plan affecting the same lot, then building permits may be  
5 issued only for those land uses which are authorized by both the zone and the objectives, policies, and  
6 land uses specified in the General Plan.”

7 83. A project cannot be found consistent with a general plan if it conflicts with a general  
8 plan policy that is “fundamental, mandatory, and clear,” regardless of whether it is consistent with other  
9 general plan policies. *See Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th  
10 777, 782-83; *Families Unafraid to Uphold Rural El Dorado County v. Bd. of Supervisors* (1998) 62  
11 Cal.App.4th 1332, 1341-42. Moreover, even in the absence of such a direct conflict, an ordinance or  
12 development project may not be approved if it interferes with or frustrates the general plan’s policies  
13 and objectives. *See Napa Citizens*, 91 Cal.App.4th at 378-79; *see also Lesher*, 52 Cal.3d at 544 (zoning  
14 ordinance restricting development conflicted with growth-oriented policies of general plan).

#### 15 **State Law Requirements: Colocation of Wireless Facilities**

16 84. California Government Code section 65850.6(a) states that a colocation facility is a  
17 permitted use not subject to a county discretionary permit if: (1) the colocation facility is consistent  
18 with requirements for the wireless telecommunications colocation facility pursuant to subdivision (b)  
19 on which the colocation facility is proposed; and (2) “the wireless telecommunications colocation  
20 facility on which the colocation facility is proposed was subject to a discretionary permit by the city or  
21 county and an environmental impact report was certified, or a negative declaration or mitigated  
22 negative declaration was adopted for the wireless telecommunications colocation facility in compliance  
23 with [CEQA]” and “the colocation facility incorporates required mitigation measures specified in that  
24 environmental impact report, negative declaration, or mitigated negative declaration.”

25 85. California Government Code section 65850.6(b) states that wireless telecommunications  
26 colocation facilities, where a subsequent colocation facility is a permitted use not subject to a city or  
27 county discretionary permit pursuant to subdivision (a), must be subject to a city or county  
28 discretionary permit and must, among other things, comply with CEQA “through certification of an  
environmental impact report, or adoption of a negative declaration or mitigated negative declaration.”

86. Government Code section 65850.6(c) mandates notice pursuant to Government Code  
65091 and “at least one public hearing on the discretionary permit” required by Section 65850.6(b) for  
wireless telecommunications colocation facilities.



1                   **County of Los Angeles Legislative Land Use and Zoning Process**

2           87.     A zoning ordinance or an amendment to a zoning ordinance, which amendment changes  
3 any property from one zone to another or imposes any regulation listed in California Government Code  
4 section 65850 not theretofore imposed or otherwise removes or modifies any such regulation, must be  
5 adopted in the manner set forth in California Government Code sections 65854 to 65857. Cal. Gov't  
6 Code § 65853.

7           88.     California Government Code section 65850 states that the legislative body of any county  
8 or city may adopt ordinances that do any of the following: (a) Regulate the use of buildings, structures,  
9 and land as between industry, business, residences, open space, including agriculture, recreation,  
10 enjoyment of scenic beauty, use of natural resources, and other purposes; (b) Regulate signs and  
11 billboards; (c) Regulate all of the following: (1) The location, height, bulk, number of stories, and size  
12 of buildings and structures; (2) The size and use of lots, yards, courts, and other open spaces; (3) The  
13 percentage of a lot which may be occupied by a building or structure; and (4) The intensity of land use;  
14 (d) Establish requirements for off-street parking and loading; (e) Establish and maintain building  
15 setback lines; and (f) Create civic districts around civic centers, public parks, public buildings, or public  
16 grounds, and establish regulations for those civic districts.

17           89.     The planning commission must hold a public hearing on the proposed zoning ordinance  
18 or amendment to a zoning ordinance. Cal. Gov. Code § 65854. Notice of the hearing shall be given  
19 pursuant to California Government Code section 65090 and, if the proposed ordinance or amendment to  
20 a zoning ordinance affects the permitted uses of real property, notice shall also be given pursuant to  
21 California Government Code section 65091. *Id.*

22           90.     After the hearing, the planning commission shall render its decision in the form of a  
23 written recommendation to the legislative body. Cal. Gov. Code § 65855. Such recommendation shall  
24 include the reasons for the recommendation, the relationship of the proposed ordinance or amendment  
25 to applicable general and specific plans, and shall be transmitted to the legislative body in such form  
26 and manner as may be specified by the legislative body. *Id.*

27           91.     Upon receipt of the recommendation of the planning commission, the legislative body  
28 shall notice and hold a public hearing. Cal. Gov. Code § 65856.

          92.     Los Angeles County Code section 22.244.010 provides that an ordinance amendment  
may be initiated to alter the boundaries of districts, to impose regulations not previously imposed, or to  
remove or modify any regulation already imposed by Title 22.

          93.     County Code § 22.244.030 states that ordinance amendments in Los Angeles County

1 must be processed in compliance with Chapter 22.232.

2 94. County Code section 22.232 requires the Planning Commission to review the legislative  
3 application for an ordinance amendment at a public hearing and make a recommendation to the Board  
4 of Supervisors. If the Planning Commission recommends approval, the Board of Supervisors must  
5 review the application at a public hearing.

6 95. For an ordinance amendment, any modification of the recommendation of the Planning  
7 Commission by the Board of Supervisors that was not previously considered by the Planning  
8 Commission during its hearing shall first be referred to the Planning Commission for report and  
9 recommendation. County Code § 22.232.040.B.2.a.

9 **Unlawful Precommitment and Prejudicial Effect of Designating Actions as Ministerial,  
10 Including under CEQA**

11 96. A “[d]iscretionary project” means a project which requires the exercise of judgment or  
12 deliberation when the public agency or body decides to approve or disapprove a particular activity, as  
13 distinguished from situations where the public agency or body merely has to determine whether there  
14 has been conformity with applicable statutes, ordinances, regulations, or other fixed standards. The key  
15 question is whether the public agency can use its subjective judgment to decide whether and how to  
16 carry out or approve a project.” CEQA Guidelines § 15357, *see* CEQA Guidelines, § 15369.

17 97. “Ministerial” describes a governmental decision involving little or no personal judgment  
18 by the public official as to the wisdom or manner of carrying out the project. The public official merely  
19 applies the law to the facts as presented but uses no special discretion or judgment in reaching a  
20 decision. A ministerial decision involves only the use of fixed standards or objective measurements,  
21 and the public official cannot use personal, subjective judgment in deciding whether or how the project  
22 should be carried out. Common examples of ministerial permits include automobile registrations, dog  
23 licenses, and marriage licenses. CEQA Guidelines §15369.

24 98. If the law requires an agency “to act on a project in a set way without allowing the  
25 agency to use its own judgment,” the project is ministerial. CEQA Guidelines, §15002, subd. (i)(1).

26 99. The concept of “discretionary” versus “ministerial” actions has also been applied outside  
27 of the CEQA context: “An act is ministerial when it is the doing of a certain thing that is unqualifiedly  
28 required. In other words, where the law prescribes and defines the duties to be performed by a public  
officer with such precision and certainty as to leave nothing to the exercise of discretion or judgment,  
the act is ministerial. (52 Cal.Jur.3d, Public Officers, § 170, p. 333, fns. omitted.)...[a] “ministerial  
project” is one which requires no exercise of discretion by a public agency. We therefore conclude a

1 “ministerial project” is one which requires no exercise of discretion by a public agency.” *Findleton v.*  
2 *Board of Supervisors* (1993) 12 Cal.App.4th 709, 713.

3 100. Designating an action ministerial automatically makes such actions subject to challenges  
4 under Code of Civil Procedure § 1085, inherently depriving the public of the opportunity to challenge  
5 an agency’s decisions unless such decisions can be proven to be arbitrary and capricious. “Code of  
6 Civil Procedure section 1085 [...], ““authorizes a trial court to issue a writ of mandate to compel an act  
7 which the law specifically requires. A petitioner ... is required to show the existence of two elements: a  
8 clear, present and usually ministerial duty upon the part of the respondent, and a clear, present and  
9 beneficial right belonging to the petitioner in the performance of that duty.” (*Yoo v. Shewry* (2010) 186  
10 Cal.App.4th 131, 144 [111 Cal. Rptr. 3d 322] [regarding a petition about a dispute with the Department  
11 over Medi-Cal payments].)” (*California Assn. of Medical Products Suppliers v. Maxwell-Jolly* (2011)  
12 199 Cal.App.4th 286, 302.)

13 101. Critically, “In reviewing such a petition under Code of Civil Procedure section 1085, a  
14 trial court's role generally is to ‘determine whether the agency's action was arbitrary, capricious, or  
15 without evidentiary support, and/or whether it failed to conform to the law. The trial court may not  
16 substitute its judgment for that of the agency or force the agency to exercise its discretion in a certain  
17 way.’ (*Association of Irrigated Residents v. San Joaquin Valley Unified Air Pollution Control*  
18 *Dist.* (2008) 168 Cal.App.4th 535, 542 [85 Cal.Rptr.3d 590] (*Irrigated Residents*).) In considering the  
19 validity of regulations, the courts’ ‘function is to inquire into the legality of the regulations, not their  
20 wisdom.’ (*Morris v. Williams* (1967) 67 Cal.2d 733, 737 [63 Cal. Rptr. 689, 433 P.2d 697] [reviewing  
21 Medi-Cal regulations].)” (*California Assn. of Medical Products Suppliers v. Maxwell-Jolly* (2011) 199  
22 Cal.App.4th 286, 302-303.) As such, designating an action as ministerial automatically and  
23 significantly raises the burden of proof for anyone challenging such actions.

### 24 **Constitutional and Statutory Due Process**

25 102. A person may not be deprived of life, liberty, or property without due process of law.  
26 U.S. Const. amend. XIV; Cal. Const. art. I, § 7.

27 103. Due process requires that deprivation of property by adjudication be preceded by notice  
28 and opportunity for hearing. *Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 549 citing *Mullane v.*  
*Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 313. That is, governmental decisions which  
are adjudicative in nature are subject to procedural due process principles. *Horn v. Cnty. of Ventura*  
(1979) 24 Cal.3d 605, 612 (citing *Mullane v. Central Hanover Tr. Co.* (1950) 339 U.S. 306,  
313; *Franchise Tax Board v. Superior Court* (1950) 36 Cal. 2d 538, 549; *Beck v. City Council of*

1 *Beverly Hills* (1973) 30 Cal.App.3d 112, 115).

2 104. Administrative zoning decisions, such as the grant of a variance or the award of a  
3 conditional use permit, are adjudicatory in nature. *San Diego Bldg. Contractors Assn. v. City Council*  
4 (1974) 13 Cal.3d 205, 211.

5 105. Due process principles require reasonable notice and opportunity to be heard before  
6 governmental deprivation of a significant property interest. *Horn v. Cnty. of Ventura* (1979) 24 Cal.3d  
7 605, 612 citing *North Georgia Finishing, Inc. v. Di-Chem, Inc.* (1975) 419 U.S. 601, 605-606; *Goss v.*  
8 *Lopez* (1975) 419 U.S. 565, 572-576; *Board of Regents v. Roth* (1972) 408 U.S. 564, 576-577; *Boddie*  
9 *v. Connecticut* (1971) 401 U.S. 371, 379; *Sniadach v. Family Finance Corp.* (1969) 395 U.S. 337,  
10 339; *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 206-207; *Beaudreau v. Superior Court* (1975)  
11 14 Cal.3d 448, 458; *Randone v. Appellate Department* (1971) 5 Cal.3d 536, 541.

12 106. Land use decisions which “substantially affect” the property rights of owners of adjacent  
13 parcels may constitute “deprivations” of property within the context of procedural due process. *Horn v.*  
14 *Cnty. of Ventura* (1979) 24 Cal.3d 605, 615, citing *Scott v. City of Indian Wells* (1972) 6 Cal.3d 541,  
15 548–49.

#### 16 **Unlawful Delegation of Legislative Power to Non-Elected Decisionmakers, Including** 17 **Under CEQA**

18 107. The doctrine prohibiting delegation of legislative power is well established in California.  
19 *Kugler v. Yocum* (1968) 69 Cal.2d 371, 375.

20 108. A legislature’s delegation of unbridled discretion to an administrative agency is invalid.  
21 *State Board of Dry Cleaners v. Thrift-D-Lux Cleaners, Inc.* (1953) 40 Cal.2d 436, 448; *Kugler v.*  
22 *Yocum* (1968) 69 Cal.2d 371, 375-377; *Stoddard v. Edelman* (1970) 4 Cal.App.3d 544, 548.

23 109. “[T]he purpose of the doctrine that legislative power cannot be delegated is to assure  
24 that truly fundamental issues will be resolved by the legislature and that a grant of authority is  
25 accompanied by safeguards adequate to prevent its abuse.” *Kugler v. Yocum* (1968) 69 Cal.2d 371, 376.  
26 “This doctrine rests upon the premise that the legislative body must itself effectively resolve the truly  
27 fundamental issues. It cannot escape responsibility by explicitly delegating that function to others or by  
28 failing to establish an effective mechanism to assure the proper implementation of its policy decisions.”  
*Id.* at 376-377.

110. The doctrine applies where the legislative body of a city attempts to delegate its law-  
making functions. *Kugler, supra*, 69 Cal.2d at 375; *Stoddard v. Edelman* (1970) 4 Cal.App.3d 544, 548.

111. A board of supervisors is a “legislative” body. *Horn v. Cnty. of Ventura* (1979) 24

1 Cal.3d 605, 614.

2 112. To avoid delegating unbridled discretion, it is necessary that the delegating statute  
3 establish an ascertainable standard to guide the administrative body. *State Board of Dry*  
4 *Cleaners v. Thrift-D-Lux Cleaners, Inc.* (1953) 40 Cal.2d 436, 448; *Kugler, supra*, 69 Cal.2d at 375-  
5 377; *Stoddard v. Edelman* (1970) 4 Cal.App.3d 544, 548.

6 113. In addition to sufficiently clear standards, a statute delegating legislative power must be  
7 accompanied by “safeguards adequate to prevent its abuse.” *Gerawan Farming, Inc. v. Agric. Lab.*  
8 *Rel. Bd.* (2017) 3 Cal.5th 1118, 1150-1151; *Monsanto Co. v. Off. of Env’t Health Hazard Assessment*  
9 (2018) 22 Cal.App.5th 534, 557-558. That is, the statute must also be coupled with adequate  
10 protections against arbitrary actions or abuse of the delegated authority. *Id.* Such safeguards can include  
11 the joint selection of a mediator, potential review avenues, and/or ultimately an ability to challenge the  
12 determination in court. *Id.*

13 114. CEQA similarly precludes delegation of project approval and CEQA determinations  
14 from the elected decisionmakers to the non-elected ones and requires that, in any case, decisions by  
15 non-elected decisionmakers be reviewed by and appealed to the elected ones. Specifically, CEQA  
16 Guidelines § 15025(a) provides that “A public agency may assign specific functions to its staff to assist  
17 in administering CEQA.” Among such “specific functions” are determinations as to whether the project  
18 is exempt from CEQA, preparing an EIR or mitigated negative declaration, filing notices, and others.  
19 Guidelines § 15025(a)(1)-(6). However, CEQA Guidelines § 15025(b) prohibits delegation of any  
20 approval of an EIR or a Mitigated Negative Declaration, as well as findings and statement of overriding  
21 considerations from the elected decisionmakers to the non-elected ones: “The decision-making body of  
22 a public agency shall not delegate the following functions...” But even as to the exemption  
23 determinations that CEQA does not expressly prohibit delegation under CEQA Guidelines § 15025(b),  
24 CEQA still provides and mandates an appeal procedure to the elected decisionmakers under CEQA  
25 Guidelines, 15601(e): “[w]hen a non-elected official or decisionmaking body of a local agency decides  
26 that a project is exempt from CEQA, and the public agency approves or determines to carry out the  
27 project, the decision that the project is exempt may be appealed to the local lead agency’s elected  
28 decisionmaking body.”

115. As related, CEQA Guidelines § 15004(a), “Before granting any approval of a project  
subject to CEQA, every Lead Agency or Responsible Agency shall consider a final EIR or Negative  
Declaration or another document authorized by these Guidelines to be used in the place of an EIR or  
Negative Declaration. (See: The definition of “approval” in Section 15352.)”

1 116. In turn, CEQA Guidelines § 15352 defines approval as:

- 2 (a) “Approval” means the decision by a public agency which commits the  
3 agency to a definite course of action in regard to a project intended to be  
4 carried out by any person. The exact date of approval of any project is a  
5 matter determined by each public agency according to its rules, regulations,  
6 and ordinances. Legislative action in regard to a project often constitutes  
7 approval.

8 117. Lastly, CEQA Guidelines § 15378(a) defines a “project” broadly as any activity,  
9 including an indirect action by the agency, that may have a direct or reasonably foreseeable indirect  
10 significant environmental impacts:

- 11 (a) “Project” means the whole of an action, which has a potential for resulting  
12 in either a direct physical change in the environment, or a reasonably  
13 foreseeable indirect physical change in the environment, and that is any of  
14 the following:

15 (1) An activity directly undertaken by any public agency including but  
16 not limited to public works construction and related activities  
17 clearing or grading of land, improvements to existing public  
18 structures, enactment and amendment of zoning ordinances, and the  
19 adoption and amendment of local General Plans or elements thereof  
20 pursuant to Government Code Sections 65100–65700.

21 (2) An activity undertaken by a person which is supported in whole or  
22 in part through public agency contacts, grants, subsidies, loans, or  
23 other forms of assistance from one or more public agencies.

24 (3) An activity involving the issuance to a person of a lease, permit,  
25 license, certificate, or other entitlement for use by one or more  
26 public agencies.”

27 118. CEQA Guidelines § 15061(b) lists exempt projects, which list does not include  
28 ordinances, or design checklists.

## **STATEMENT OF FACTS**

### **Procedural History of Ordinance Approval**

29 119. Prior to adoption of the Ordinance, the policy of the Department of Regional Planning  
30 required a Conditional Use Permit (“CUP”) for a wireless facility, and to process wireless facility  
31 applications similarly to radio and television towers. The Conditional Use Permitting process under the  
32 County Code is a discretionary process for reviewing applications and requires “additional  
33 consideration to ensure proper integration with the surrounding community.” County Code §§  
34 22.158.010; 22.230.010. An application for a CUP requires a public hearing and public notification of  
35 the application by publication, mail, and a sign posted on the property. County Code §§ 22.230.010;  
36 22.230.040. Application requirements are specifically delineated in County Code sections 22.222.060,

1 22.222.070, 22.222.080, 22.222.090, and 22.222.110 and must conform to the same before an  
2 application can be deemed complete and approved. County Code § 22.230.030.

3 120. On March 5, 2019, the Los Angeles County Board of Supervisors instructed the Director  
4 of the Department of Regional Planning of the County of Los Angeles (“Director”) to prepare an  
5 ordinance that defines and establishes standards for the location, height, and design of wireless  
6 communication facilities; conduct outreach to residents, the wireless communication facilities industry  
7 and other interested parties; prepare an appropriate environmental document for the ordinance in  
8 compliance with the California Environmental Quality Act and the County’s environmental review  
9 procedures; and present the ordinance and environmental document to the Regional Planning  
Commission and the Board of Supervisors for consideration at their respective public hearings.

10 121. At its public hearing on March 23, 2022, the Department of Regional Planning presented  
11 amendments to Title 22 of the County Code (“Title 22 Amendments”) to the Regional Planning  
12 Commission, and the Regional Planning Commission recommended approval of the Title 22  
13 Amendments to the Board of Supervisors over vigorous public opposition. Amendments to Title 16 of  
14 the County Code were not presented to the Regional Planning Commission, and the Regional Planning  
Commission did not render a recommendation of the same.

15 122. On March 23, 2022, the County Department of Regional Planning issued a Proposed  
16 Environmental Determination (“Environmental Determination”), which reads:

17 Los Angeles County (“County”) completed an initial review for the above-mentioned  
18 project. Based on examination of the project proposal and the supporting information  
19 included for the project, the County proposes that an Exemption is the appropriate  
environmental documentation under the California Environmental Quality Act (CEQA).

20 This project (Ordinance) qualifies for a Categorical Exemption, (Class 1 – Existing  
21 Facilities, and Class 3 – New Construction or Conversion of Small Structures) under the  
22 California Environmental Quality Act (CEQA) and County environmental guidelines. The  
23 project includes authorization for modifications to existing facilities as well as for minor  
alterations to land with the construction or conversion of small structures. Both actions will  
not have a significant effect on the environment.

24 123. On November 15, 2022, the Department of Regional Planning declared that the Project  
25 falls “within a class of projects that have been determined not to have a significant effect on the  
26 environment and which meet the criteria for [Class 1 and Class 3 Exemptions from CEQA review].”  
27 November 15, 2022, Los Angeles County Department of Regional Planning Letter to Board of  
28 Supervisors, page 5. The Department of Regional Planning did not provide any evidence to  
substantiate its claim in the Environmental Determination that the Project is exempt under Class 1 and  
Class 3 Exemptions from CEQA review. *See id.*

1 124. At its public hearing on November 15, 2022, the Board of Supervisors discussed the  
2 Project with County staff and accepted public comment. The Board of Supervisors passed a motion  
3 indicating its intent to approve the Project and made a finding that the Project is exempt from CEQA.

4 125. At its public hearing on December 6, 2022, the Board of Supervisors discussed the  
5 Project with County staff and accepted public comment. The hearing was continued to: (i) a closed  
6 session on December 20, 2022, and (ii) a public hearing on January 10, 2023.

7 126. On January 3, 2023, the County staff proposed revisions and amendments to the  
8 Ordinance. These revisions and amendments were made public on or around January 5, 2023, in the  
9 agenda report in advance of the January 10, 2023, Board of Supervisors hearing. Such revisions and  
10 amendments include, but are not limited to, the following:

- 11 a. Section 16.25.030.B.2 of the Ordinance was revised to include language  
12 authorizing the road commissioner of the County (“Commissioner”) to  
13 amend a design standards checklist and permit conditions for small cell  
14 facilities and eligible facilities requests. It was also revised to require an  
15 applicant to comply with public notification requirements as set forth in the  
16 design standards checklist.
- 17 b. Section 16.25.040.E of the Ordinance was revised to include: (i) a  
18 requirement that owners of and those with issued permits (i.e., permit  
19 holders) for small cell facilities comply with all applicable public safety  
20 requirements; (ii) a prohibition stating that no small cell facility or  
21 combination of small cell facilities shall produce exposure levels that  
22 exceed the applicable FCC Standards for radio frequency emissions.
- 23 c. Section 16.25.050.I of the Ordinance was revised to include a requirement  
24 that all small cell facilities be designed and installed to ensure that the  
25 facilities and supporting structures meet minimum standards for public  
26 safety and that such facilities are maintained to prevent electrical and fire  
27 hazards.
- 28 d. Section 22.140.760.D.4 was added to the Ordinance: “For every new  
application, the applicant shall provide all of the required materials listed  
on either the Land Use Application Checklist – Small Cell Facilities  
 (“SCF”), Collocation and Eligible Facilities Requests (“EFR”), or the  
Zoning Permit Instructions and Checklist, whichever is applicable, and



1 which may be periodically modified by the Director, including a report on  
2 the individual and cumulative radio frequency emissions levels of each  
3 wireless facility demonstrating that such emissions comply with adopted  
4 FCC guidelines. All applications shall provide proof of liability insurance  
5 for each facility covered by the application, and the applicant must comply  
6 with the public notification requirements as set forth in said Checklists.”

7 e. Section 22.140.760.D.5 was added to the Ordinance: “Pre-application  
8 consultation. Prior to submitting an application pursuant to this Subsection  
9 D to install or modify a wireless facility subject to this Section, the applicant  
10 is encouraged to schedule a voluntary pre-application meeting with the  
11 Department to discuss the proposed facility, the requirements of this  
12 Section, applicable checklists and guidelines, and any potential impacts of  
13 the proposed facility. The pre-application meeting shall not initiate any  
14 applicable time period as specified by applicable law, including any FCC-  
15 issued order(s), for the application.”

16 f. Section 22.140.760.E.1.b.v was added to the Ordinance: “The locating of  
17 new facilities shall take into consideration the least aesthetically intrusive  
18 location.”

19 g. Section 22.140.760.E.1.e.i was added to the Ordinance: “Safety standards.  
20 All wireless facility shall be designed by qualified, licensed persons to meet  
21 minimum standards for public safety, and shall comply with all applicable  
22 legal requirements, including the County Building and Fire Codes. All  
23 wireless facilities should be proactively monitored and maintained to ensure  
24 compliance with the safety design.”

25 h. Section 22.140.760.E.1.e.ii. was added to the Ordinance: “No facility or  
26 combination of facilities shall produce at any time exposure levels in any  
27 general population area that exceed the applicable FCC standards for  
28 radiofrequency (RF) emissions.”

i. Section 22.14.760.M was added to the Ordinance: “Abandonment. If a  
wireless facility has ceased to operate for a period of 90 consecutive days,  
the facility shall be considered abandoned. Any permit or other approvals  
associated with that facility shall be deemed terminated and discontinued,

1 unless before the end of the 90-day period, the Director determines that the  
2 facility has resumed operations or an application has been submitted to  
3 transfer the approval to another operator. After 90 consecutive days of non-  
4 operation, the owner of, or permittee for, the facility shall remove the  
5 abandoned wireless facility and restore the site to its original condition. Said  
6 owner or permittee shall provide written verification to the Department of  
7 the removal of the facility within 30 days of the date the removal is  
8 completed. If the facility is not removed within 30 days after the  
9 permit/approval has been terminated pursuant to this Subsection, the  
10 wireless facility shall be deemed to be a nuisance, and the County may cause  
11 the wireless facility to be removed at the expense of the owner/operator or  
12 by calling any bond or other financial assurance to pay for removal.”

13 127. The revised and amended Ordinance was not remanded to the Planning Commission for  
14 review, report, and recommendation.

15 128. At its hearing on January 10, 2023, the Board of Supervisors approved the revised and  
16 amended Ordinance.

17 129. On or around January 25, 2023, the Planning Department released a “Small Cell  
18 Wireless Communications Facilities Design Standards Self-Assessment Checklist.” This Checklist  
19 addresses wireless facilities now subject to Title 16 and facilities not on county infrastructure or on  
20 county highways. This Checklist was not circulated for public comment. The Commissioner made  
21 several subjective and policy decisions while formulating this document. It is unclear why the Planning  
22 Department form covers matters now assigned to Public Works.

23 130. On or around January 25, 2023, the Planning Department released a “Land Use  
24 Application Checklist - Small Cell Facilities (“SCF”), Collocations and Eligible Facilities Requests  
25 (“EFR”). This Checklist was not circulated for public comment. The Commissioner made several  
26 subjective and policy decisions while formulating this document, including but not limited to (1)  
27 insurance coverage requirements, and (2) the notice radius that will be used, if notice is to be required  
28 at all. The Checklist also notes that:

- a. If the facility to be installed is within a Fire Hazard Severity Zone as determined by Cal Fire <https://osfm.fire.ca.gov/fhsz-maps>, a report that details measures employed to mitigate any fire hazards posed by the facility to surrounding vegetation and/or structures.
- b. If the proposed facility will be located on property containing a historic

resource, a Historic Resource Assessment may be required.

- c. The Director of Regional Planning retains the discretion to determine whether the proposed SCF is in compliance with the design standards set forth below.

131. On or around February 7, 2023, the Department of Public Works published a “Small Cell Facility in Public Right of Way Design Standards Checklist.” This Checklist was not circulated for public comment. The Commissioner made several subjective and policy decisions while formulating this document, including but not limited to (1) insurance coverage requirements, (2) the minimum distance a facility must be from residential windows, (3) size limitations, (4) the particular safety standards that apply and (5) certain aesthetics requirements. These specifics were not contained in the Ordinance.

### **The Ordinance**

132. The Ordinance provides that small cell facilities may be built on new infrastructure. County Code §§ 16.25.030.B.3; 16.25.040.A.1.a; 16.25.040.A.1.b; 16.25.040.A.2; 16.25.040.D; 16.25.050.C; 22.140.760.E.1.b.iv; 22.140.760.I.3; and 22.140.760.I.4. That is, new support structures may be constructed to serve these facilities. *See id.*

133. The Ordinance provides that macro facilities may be built on new infrastructure. County Code §§ 22.140.760.D.2.a; 22.140.760.E.1.b.iv; 22.140.760.I.3; and 22.140.760.I.4.

134. The Ordinance states that EFRs include collocated wireless facilities. County Code § 16.25.020.E.

135. The Ordinance states that a wireless facility can be built up to 75 feet in height in industrial, rural, agricultural, open space, resort-recreation, and watershed zones. County Code § 22.140.760.E.1.c.i.

136. The Ordinance states that a wireless facility used to provide wireless services on a temporary basis can be up to 200 feet in height for up to 6 months. County Code § 22.14.230.

137. The Ordinance does not provide an estimate of the quantity of structures that will be allowed to be built throughout the County.

138. The Ordinance does not limit the amount of small cell facilities that can be built and/or implemented pursuant to the Project, including facilities to be located in a highway designated as a Scenic Highway in the County General Plan or to be located within the boundaries of a Significant Ecological Area, Significant Ridgeline, or Coastal Zone.

139. The Ordinance does not limit the amount of new macro facilities that can be built and/or implemented pursuant to the Project, including facilities to be located in a highway designated as a

1 Scenic Highway in the County General Plan or to be located within the boundaries of a Significant  
2 Ecological Area, Significant Ridgeline, or Coastal Zone.

3 140. The Ordinance provides that new towers and support structures may be installed on the  
4 grounds of properties listed or eligible for listing on the National, California, or County historic  
5 registers. County Code § 22.140.760.E.1.b.iv.

6 141. For facilities located on a site containing an eligible resource, the Ordinance states that  
7 the Director may require a historic resource assessment to identify impacts to historic resources and  
8 identify mitigation to minimize impacts. *Id.* The Ordinance does not mandate the Director to require  
9 such assessment. *See id.*

10 142. The Ordinance does not contain any identifiable mitigation or protective measures  
11 against development on historical, cultural, or paleontological resources.

12 143. The Ordinance does not address, identify, or assess the cumulative impacts resulting  
13 from the implementation of multiple wireless facilities that may occur in the same location over time.

14 144. The Ordinance does not prohibit multiple wireless facilities from being implemented in  
15 the same location.

16 145. Section 16.25.030.B.2 of the Ordinance grants the Commissioner with authority to  
17 “adopt and amend a design standards checklist and permit conditions for SCFs and EFRs.”

18 146. Section 16.25.030.B.3 of the Ordinance grants authority to the Commissioner to approve  
19 or disapprove of an applicant’s engineered plans for small cell facilities that are to be mounted on new  
20 or replacement County infrastructure.

21 147. Section 16.25.030.B.7 of the Ordinance grants authority to the Commissioner to grant a  
22 permit “when the commissioner is satisfied” that the small cell facility or eligible facilities request  
23 meets all applicable requirements for a permit.

24 148. Section 16.25.030.B.8 of the Ordinance provides that the Commissioner’s decision on an  
25 application submitted “shall be the final action of the County.”

26 149. Section 16.25.050 of the Ordinance requires small cell facilities to comply with the  
27 design standards checklist adopted by the Commissioner.

28 150. Section 16.25.050.C of the Ordinance provides the Commissioner with approval of the  
structural analysis of the effect of placement of small cell facilities on County infrastructure, including  
wind impacts on traffic signal poles and mast arms of traffic signals, to ensure there is no overburden  
on County infrastructure.

151. Section 22.140.760.D.4 of the Ordinance provides the Director with authority to

1 periodically modify the Land Use Application Checklist – Small Cell Facilities, Collocation Eligible  
2 Facilities Requests, and the Zoning Permit Instructions and Checklist.

3 152. Section 22.140.760.E.1.b.iv of the Ordinance states: “A historic resource assessment,  
4 prepared to the satisfaction of the Director by a qualified architectural historian, may be required for a  
5 facility to be located on a site containing an eligible resource to identify impacts to historic resources,  
6 and identify mitigation to minimize impacts.”

7 153. The Ordinance provides that if a zone or land use category within a Specific Plan is  
8 silent with regard to wireless facilities, the Director may accept an application for a wireless facility if  
9 the Director determines that a wireless facility is similar to another use permitted within such zone of  
10 land use category. County Code § 22.26.030.B.3.

11 154. If a wireless facility is in compliance with Section 22.140.760.D.1 of the Ordinance, the  
12 Director may accept a Ministerial Site Plan Review application (Chapter 22.186). County Code §  
13 22.26.030.B.3.a.

14 155. Section 22.140.760.D.1 of the Ordinance states that a Ministerial Site Plan Review  
15 (Chapter 22.186) application is required to authorize the installation and operation of a macro facility  
16 on an existing base station or tower that meets all standards in section 22.140.760.E of the Ordinance  
17 and does not require a waiver.

18 156. Pursuant to section 22.140.760.G.1 of the Ordinance, existing macro facilities may be  
19 eligible for a Ministerial Site Plan Review (Chapter 22.186) application if such facilities are redesigned  
20 with shorter mounting equipment that extends no more than two feet from the structure, or with  
21 removal of any existing mounting equipment, and with additional screening techniques, such as shrouds  
22 or walls, that blend in with the structure, including color and texture, and conforms to all standards in  
23 section 22.140.760.E of the Ordinance and does not require a waiver.

24 157. Pursuant to section 22.140.760.G.3 of the Ordinance, Eligible Facilities Requests may  
25 be processed with a Ministerial Site Plan Review (Chapter 22.186) application if minor modifications  
26 will bring the facility in conformance with all standards in 22.140.760.E of the Ordinance and does not  
27 require a waiver.

28 158. Section 22.140.760.D.1.a of the Ordinance states “A Ministerial Site Plan Review  
(Chapter 22.186) application is required to authorize [the] [i]nallation and operation of a small cell  
facility located on private property.”

**Los Angeles County General Plan 2035**

159. Guiding Principle 1 of the General Plan “[p]rotect[s] and conserve[s] the County’s

1 natural and cultural resources, including the character of rural communities. In rural areas, land uses  
2 and developments that are compatible with the natural environment and landscape will maintain  
3 existing community character. These work in conjunction with other smart growth strategies to ‘green’  
4 streets and buildings, and protect and conserve natural resources.”

5 160. Policy C/NR 3.11 of the General Plan “[d]iscourage[s] development in riparian habitats,  
6 streambeds, wetlands, and other native woodlands in order to maintain and support their preservation in  
7 a natural state, unaltered by grading, fill, or diversion activities.”

8 161. Policy C/NR 13.1 of the General Plan “[p]rotect[s] scenic resources through land use  
9 regulations that mitigate development impacts.”

10 162. Policy C/NR 13.2 of the General Plan “[p]rotect[s] ridgelines from incompatible  
11 development that diminishes their scenic value.”

12 163. Policy C/NR 14.1 of the General Plan “[m]itigate[s] all impacts from new development  
13 on or adjacent to historic, cultural, and paleontological resources to the greatest extent feasible.”

14 164. Policy C/NR 14.2 of the General Plan “[s]upport[s] an inter-jurisdictional collaborative  
15 system that protects and enhances historic, cultural, and paleontological resources.”

16 165. Policy C/NR 14.6 of the General Plan “[e]nsure[s] proper notification and recovery  
17 processes are carried out for development on or near historic, cultural, and paleontological resources.”

## 18 **CLAIMS FOR RELIEF**

### 19 **FIRST CAUSE OF ACTION**

20 **(By Petitioners Against Respondents For Writ of Administrative Mandate Under CCP § 1094.5  
21 and PRC § 21168 Or in the Alternative CCP § 1085 and PRC § 21168.5 Re: Project Ineligibility  
22 for CEQA Exemptions)**

23 166. Petitioners hereby reallege and incorporate all the above paragraphs as if fully set forth  
24 herein.

25 167. Respondents violated CEQA by unlawfully exempting the Ordinance from  
26 environmental review under the Class 1 and Class 3 categorical exemptions, as the Ordinance neither  
27 facially fits collectively nor individually within either the Class 1 or Class 3 categorical exemptions,  
28 and is not eligible to be categorically exempted from environmental review under CEQA.

168. Public agencies may exempt projects requiring the “operation, repair, maintenance,  
permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities,  
mechanical equipment, or topographical features, involving negligible or no expansion of existing or  
former use” from CEQA environmental review under the “Class 1” CEQA categorical exemption.  
CEQA Guidelines § 15301.

1 169. In addition, public agencies may also exempt projects involving the “construction and  
2 location of limited numbers of new, small facilities or structures; installation of small new equipment  
3 and facilities in small structures; and the conversion of existing small structures from one use to another  
4 where only minor modifications are made in the exterior of the structure” from CEQA environmental  
5 review under the “Class 3” CEQA categorical exemption. CEQA Guidelines § 15303.

6 170. However, CEQA prohibits projects from being categorically exempted from  
7 environmental review under the Class 3, 4, 5, 6 and 11 exemptions if the Project is located in an area  
8 with an environmental resource of hazardous or critical concern. CEQA Guidelines § 15300.2(a).

9 171. In addition, CEQA prohibits agencies from categorically exempting projects from  
10 environmental review if the Project may result in a significant environmental impact due to unusual  
11 circumstances. In addition, projects may not be categorically exempted from CEQA environmental  
12 review if the impact of successive projects of the same type in the same place may cumulatively impact  
13 the environment, if the project may impact a scenic resource, hazardous waste site or a historical  
14 resource. *Id.* 15300.2 (b – f).

15 172. The Ordinance is ineligible to be exempt from CEQA under section 15301 of the CEQA  
16 Guidelines because the Project is facially inconsistent with the exemption as:

17 a. The Project does not facially qualify for the Class 1 Exemption since the  
18 key consideration is that such actions would occur to *existing* facilities. As  
19 the Ordinance makes abundantly clear, small cell facilities may be built on  
20 *new* infrastructure. This means that, under the Ordinance, new support  
21 structures may be constructed to serve these facilities. Thus, such  
22 development is not exempted under section 15301.

23 b. Similarly, pursuant to the Ordinance, large macro facilities may also be  
24 built. Thus, such development is not exempted under section 15301.

25 173. The Ordinance is ineligible to be exempt from CEQA under section 15303 of the CEQA  
26 Guidelines as the Project is facially inconsistent with the exemption as the Project does not facially  
27 qualify for the Class 3 Exemption since only a project proposing a *limited* number of new, small  
28 facilities or structures can be exempted from environmental review under CEQA. The County failed to  
demonstrate the *amount* or *number* of structures that could be implemented in the same “location” or in  
multiple “locations” under the Ordinance. A large number of facilities will be built throughout the  
County pursuant to the Project. Because a categorical exemption should be interpreted to afford the  
fullest possible protection to the environment within a reasonable scope of the statutory language, the

1 Project does not satisfy this exemption.

2 174. The Ordinance is ineligible to be exempt from CEQA under section 15303 because  
3 CEQA Guidelines section 15300.2, subdivision a, limits Class 3 exemptions by location. A project that  
4 might otherwise be insignificant in its environmental impact may, in a particularly sensitive  
5 environment, be significant. CEQA Guidelines, § 15300.2, subd. (a). Los Angeles County is replete  
6 with an extensive host of biological resources and environmentally sensitive habitats, with 4,000  
7 distinct species of plants and animals and 52 endangered species. The location of the construction,  
8 implementation, and operation of wireless facilities pursuant to the Project poses a substantial risk to  
9 the wildlife, habitats, and biodiversity extended through the County.

10 175. The Project is ineligible to be exempt from CEQA under sections 15301 and 15303  
11 because categorical exemptions do not apply when the cumulative impact of successive projects of the  
12 same type and same place over time may be significant. Because there is no limitation to the amount or  
13 number of facilities that can be built within the same location, a conglomerate or cluster of such  
14 facilities may result in a single area. The operation of multiple wireless facilities in the same location  
15 over time may cause substantial adverse environmental impacts to aesthetics and safety by increasing  
16 the risk for fire hazards to the people and wildlife in the area and exposing sensitive species to RF/EMF  
17 radiation.

18 176. The Project is ineligible to be exempt from CEQA under sections 15301 and 15303  
19 because categorical exemptions do not apply to any project that may cause a substantial adverse change  
20 in the significance of a historical resource. New towers and support structures may be installed on the  
21 grounds of properties listed or eligible for listing on the National, California, or County historic  
22 registers. Pursuant to the Ordinance, the County is not required to mandate an environmental  
23 assessment for facilities located on a site containing an eligible resource. New towers and support  
24 structures installed on the grounds of properties listed or eligible for listing on the National, California,  
25 or County historic registers may adversely impact historic resources. A project that may cause a  
26 substantial adverse change in the significance of an historical resource is a project that may have a  
27 significant effect on the environment. The Project may cause a substantial adverse change in the  
28 significance of a historical resource, and as a result may have a significant effect on the environment  
and is therefore ineligible to be exempt from CEQA under sections 15301 and 15303.

177. As a result of the foregoing defects, Respondent prejudicially abused their discretion by  
making determinations or adopting findings that do not comply with the requirements of CEQA and  
approving the Project in reliance thereon. Accordingly, Respondents' approval and exemption of the



1 Project from CEQA must be set aside.

2 **SECOND CAUSE OF ACTION**

3 **(By Petitioners Against Respondents For Writ of Administrative Mandate Under CCP § 1094.5**  
4 **and PRC § 21168 Or in the Alternative CCP § 1085 and PRC § 21168.5, Re: Violations of CEQA;**  
5 **Failure to Substantially Support Findings)**

6 178. Petitioners hereby reallege and incorporate all of the above paragraphs as if fully set  
7 forth herein.

8 179. Respondents violated CEQA in finding that the Ordinance was categorically exempted  
9 from CEQA environmental review under the Class 1 and Class 3 exemptions without substantial  
10 evidence.

11 180. Respondents found that the Ordinance was categorically exempted under the Class 1 and  
12 3 exemptions without providing substantial evidence in support of its determination.

13 181. Respondents failed to provide substantial evidence in finding that that the Ordinance  
14 could be categorically exempted from CEQA environmental review and similarly failed to provide  
15 substantial evidence that the Ordinance would not have a significant environmental impact due to  
16 unusual circumstances, cumulative impacts from successive projects of the same type in the same  
17 place, impact scenic resources, hazardous waste site or a historical resource without substantial  
18 evidence.

19 182. As a result of the foregoing defects, Respondents prejudicially abused their discretion by  
20 making determinations or adopting findings that do not comply with the requirements of CEQA and  
21 approving the Project in reliance thereon. Accordingly, Respondents' approval and exemption of the  
22 Project from CEQA must be set aside.

23 **THIRD CAUSE OF ACTION**

24 **(By Petitioners Against Respondents For Writ of Administrative Mandate Under CCP § 1094.5**  
25 **Or in the Alternative CCP § 1085, Re: Unlawful Colocation)**

26 183. Petitioners hereby reallege and incorporate all the above paragraphs as if fully set forth  
27 herein.

28 184. Government Code Sec. 65850.6(a) allows the colocation of a wireless facility to be a  
permitted use and not subject to discretionary permitting only if the conditions in 65850.6(a)(1) and (2)  
are met. Section 65850.6(a)(1) requires the colocation facility to comport with Section 65850.6(b).  
Section 65850.6(a)(2) and (b) require a certified environmental impact report, negative declaration, or  
mitigated negative declaration, or mitigation measures that conform to the same, pursuant to CEQA  
before permitting a collocated wireless facility.

1 185. SCFs and EFRs can involve “colocation facilities” as defined in 68550.6. Pursuant to  
2 section 16.25.030.A of the Ordinance, a permit application for SCFs and EFRs is complete if it  
3 demonstrates compliance with section 16.25 of the County Code. Section 16.25.030.B.7 *requires* the  
4 Commissioner to grant a permit when the Commissioner is satisfied that the SCF or EFR meets all  
5 applicable requirements for a permit under section 16.25 of the County Code. Authorizing the  
6 Commissioner to deem an application complete and thereafter grant a permit for a collocated wireless  
7 facility simply when the Commissioner determines that the application meets the applicable  
8 requirements under the above mentioned sections violates the necessary environmental compliance  
9 required by California Government Code section 65850.6 because it circumvents the determination of  
10 whether an EIR, negative declaration, or mitigated negative declaration was established on the  
11 collocated wireless facility and the implementation of applicable mitigation measures to the subsequent  
12 collocated wireless facility. Because an environmental assessment is mandated by California  
13 Government Code section 65850.6, the Project cannot be exempted from CEQA.

14 186. Government Code section 65850.6(c) mandates notice pursuant to Government Code  
15 65091 and “at least one public hearing on the discretionary permit” required by Section 65850.6(b) for  
16 wireless telecommunications colocation facilities. Ordinance section 22.140.760.D.1.a allows the  
17 installation and operation of small cell facilities that are located on private property to be approved  
18 through an alleged ministerial site plan review. However, Petitioners allege that the process is instead  
19 discretionary in nature for the reasons set forth in the Sixth Cause of Action herein. Because it is  
20 instead discretionary, the Ordinance therefore violates Government Code section 65850.6(c) for failing  
21 to provide a public hearing on the discretionary permit approval process.

22 187. As a result of the foregoing defects, Respondents prejudicially abused their discretion by  
23 requiring the Commissioner to deem an application complete and thereafter grant a permit for collocated  
24 wireless facilities without first complying with California Government Code section 65850.6.  
25 Accordingly, Respondents’ approval and exemption of the Project from CEQA must be set aside.

#### 26 **FOURTH CAUSE OF ACTION**

#### 27 **(By Petitioners Against Respondents For Writ of Administrative Mandate Under CCP § 1094.5 28 Or in the Alternative CCP § 1085, Re: General Plan Inconsistency)**

188. Petitioners hereby reallege and incorporate all of the above paragraphs as if fully set  
forth herein.

189. Respondents committed a prejudicial abuse of discretion and failed to proceed in a  
manner required by law in approving this Project in that the Project is inconsistent with and frustrates

1 the County’s principles and policies in the County’s General Plan 2035 that are fundamental to the  
2 County. In particular, the Project is inconsistent with the following:

3 190. Guiding Principle 1: “Protect and conserve the County’s natural and cultural resources,  
4 including the character of rural communities. In rural areas, land uses and developments that are  
5 compatible with the natural environment and landscape will maintain existing community character.  
6 These work in conjunction with other smart growth strategies to ‘green’ streets and buildings, and  
7 protect and conserve natural resources.” Wireless facilities can be built up to 75 feet in height in  
8 industrial, rural, agricultural, open space, resort-recreation, and watershed zones. Temporary facilities  
9 may extend up to 200 feet in height for up to 6 months. There is no limitation on the amount or number  
10 of facilities that can be built within the same location, which can create a conglomerate or cluster of  
11 such facilities in a single area. There is no limitation on the amount or number of facilities that can be  
12 built in different locations. The development of such facilities poses a fire hazard that may significantly  
13 impact the conservation of natural resources. The construction and operation of such facilities will  
14 significantly impact the character of rural communities.

15 191. Policy C/NR 3.11: “Discourage development in riparian habitats, streambeds, wetlands,  
16 and other native woodlands in order to maintain and support their preservation in a natural state,  
17 unaltered by grading, fill, or diversion activities.” Wireless facilities can be built up to 75 feet in height  
18 in industrial, rural, agricultural, open space, resort-recreation, and watershed zones. Temporary  
19 facilities may extend up to 200 feet in height for up to 6 months. There is no assessment of the  
20 cumulative impacts of wireless facilities in such locations, and the Ordinance provides no limitation on  
21 the amount or number of facilities that can be built within the same location, which can create a  
22 conglomerate or cluster of such facilities in a single area. The development of such facilities poses a  
23 fire hazard that may significantly impact the preservation of the natural state of such habitats. The  
24 construction and operation of such facilities will significantly impact the natural state of such resources.

25 192. Policy C/NR 13.1: “Protect scenic resources through land use regulations that mitigate  
26 development impacts.” The Ordinance expressly contemplates that facilities will be placed in scenic  
27 rural areas, not just neighborhoods or the urban core. Wireless facilities can be built up to 75 feet in  
28 height in industrial, rural, agricultural, open space, resort-recreation, and watershed zones. Temporary  
facilities may extend up to 200 feet in height for up to 6 months. There is no limitation on the amount  
or number of facilities that can be built within the same location, which can create a conglomerate or  
cluster of such facilities in a single area. The construction and operation of such facilities will  
significantly impact the protection of scenic resources protected by the General Plan, and Respondents

1 do not propose any identifiable mitigation measures to reduce such impact.

2 193. Policy C/NR 13.2: “Protect ridgelines from incompatible development that diminishes  
3 their scenic value.” The Ordinance expressly contemplates that facilities will be placed in scenic rural  
4 areas, not just neighborhoods or the urban core. Wireless facilities can be built up to 75 feet in height in  
5 industrial, rural, agricultural, open space, resort-recreation, and watershed zones. Temporary facilities  
6 may extend up to 200 feet in height for up to 6 months. There is no limitation on the amount or number  
7 of facilities that can be built within the same location, which can create a conglomerate or cluster of  
8 such facilities in a single area. The construction and operation of such facilities will significantly  
9 diminish the scenic value of ridgelines protected by the General Plan.

10 194. Policy C/NR 14.1: “Mitigate all impacts from new development on or adjacent to  
11 historic, cultural, and paleontological resources to the greatest extent feasible.” The Ordinance  
12 expressly allows facilities on, in or near to historical resources. The Ordinance does not contain any  
13 mitigation or protective measures against development on cultural or paleontological resources. There  
14 is no limitation on the amount or number of facilities that can be built within the same location, which  
15 can create a conglomerate or cluster of such facilities in a single area. The implementation of the  
16 Project frustrates the General Plan’s protection of historic, cultural, and paleontological resources.

17 195. Policy C/NR 14.2: “Support an inter-jurisdictional collaborative system that protects and  
18 enhances historic, cultural, and paleontological resources.” The Ordinance expressly allows facilities  
19 on, in or near historical resources. The Commissioner is provided sole discretion to grant permits and  
20 decide and the Director is provided with sole discretion to determine whether environmental  
21 assessments are necessary, with no third-party oversight on their decision-making process, thus  
22 frustrating the policy for an inter-jurisdictional collaborative system.

23 196. As a result of the foregoing defects, Respondents prejudicially abused their discretion by  
24 making determinations or adopting findings that do not comply with the requirements of California  
25 Government Code section 65860 and County Code sections 22.02.050 and 22.244.040.B.2.  
26 Accordingly, Respondents’ approval of the Project must be set aside.

27 **FIFTH CAUSE OF ACTION**

28 **(By Petitioners Against Respondents For Writ of Administrative Mandate Under CCP § 1094.5  
Or in the Alternative CCP § 1085, Re: County of Los Angeles Legislative Land Use & Zoning  
Process)**

197. Petitioners hereby reallege and incorporate all of the above paragraphs as if fully set forth  
herein.

198. The process by which the Project was approved by Respondents violates California

1 Government Code sections 65853, 65854, 65855 and 65857 as well as County Code sections 22.244.030  
2 and 22.232.040.B.2.a.

3 199. Respondents violated California Government Code section 65853 because the  
4 amendments to Titles 16 and 22 of the County’s Code of Ordinances were not adopted in the manner set  
5 forth in California Government Code sections 65854 to 65857.

6 200. Respondents violated California Government Code section 65854 because the planning  
7 commission failed to notice and hold a public hearing on the amendments to Title 16 of the County  
8 Code (“Title 16 Amendments”).

9 201. Respondents violated California Government Code section 65855 because the planning  
10 commission failed to render a decision on Title 16 Amendments in the form of a written  
11 recommendation to the Board of Supervisors.

12 202. Respondents violated County Code section 22.244.030 because the Ordinance was not  
13 approved in a manner that complied with County Code section 22.232.

14 203. Respondents violated California Government Code section 65857 and County Code  
15 section 22.232.040.B.2.a because substantial revisions and amendments were made to the Ordinance  
16 *after* the Planning Commission recommended approval of the Ordinance to the Board of Supervisors.  
17 The Board of Supervisors failed to remand the revised and amended Ordinance to the Planning  
18 Commission for report and recommendation. On January 10, 2023, the Board of Supervisors approved  
19 the revised and amended Ordinance.

20 204. As a result of the foregoing defects, Respondents prejudicially abused their discretion by  
21 approving the Ordinance in manner that failed to comply with the requirements of California  
22 Government Code sections 65853, 65854, 65855 and 65857 as well as County Code sections  
23 22.232.040.B.2.a and 22.244.030. Accordingly, Respondents’ approval of the Project must be set aside.

24 **SIXTH CAUSE OF ACTION**

25 **(By Petitioners Against Respondents For Writ of Administrative Mandate Under CCP § 1094.5  
26 or, in the Alternative, CCP § 1085, and Declaratory Relief Under CCP § 1060 Re: Improper and  
27 Prejudicial Blanket Designation of Permit Approval Process as Ministerial and Unlawful  
28 Precommitment to Future Approvals, Including Under CEQA)**

205. Petitioners hereby reallege and incorporate all of the above paragraphs as if fully set  
forth herein.

206. A ministerial decision describes a governmental decision involving little or no personal  
judgment by the public official as to the wisdom or manner of carrying out the project. CEQA  
Guidelines §15369. The public official merely applies the law to the facts as presented but uses no

1 special discretion or judgment in reaching a decision. *Id.* A ministerial decision involves only the use of  
2 fixed standards or objective measurements, and the public official cannot use personal, subjective  
3 judgment in deciding whether or how the project should be carried out. *Id.* Common examples of  
4 ministerial permits include automobile registrations, dog licenses, and marriage licenses. *Id.*

5 207. If the law requires an agency “to act on a project in a set way without allowing the  
6 agency to use its own judgment,” the project is ministerial. CEQA Guidelines, §15002, subd. (i)(1).

7 208. Respondents erroneously label County Code sections 16.25.030.B.2, 16.25.030.B.3,  
8 16.25.030.B.7, 16.25.050.C, 22.26.030.B.3, 22.140.760.D.1, 22.140.760.G.1 and 22.140.760.G.3 of the  
9 Ordinance as “ministerial” in violation of CEQA Guidelines sections 15369 and 15002, subd. (i)(1)  
because such sections necessitate the Commissioner’s and/or Director’s subjective judgment.

10 209. As an example, Section 16.25.030.B.2 of the Ordinance provides that the Commissioner  
11 may adopt and amend a design standards checklist and permit conditions, which includes public  
12 notification requirements, for SCFs and EFRs. This requires the Commissioner to exercise judgment  
13 and deliberate the substantive contents of the checklist and amend it in the Commissioner’s sole  
14 discretion. The creation and amendment of the design standards checklist is not a process that is clearly  
15 prescribed and defined by the Board of Supervisors, and there is no clear standard for the  
16 Commissioner to follow in order to know when to amend said checklist, what contents should be  
17 amended, and what it should be amended to reflect. Because the Commissioner’s subjective opinion is  
18 required in formulating and amending the checklist, it is discretionary in nature and is erroneously  
deemed a ministerial action.

19 210. Before permit issuance, Section 16.25.030.B.3 of the Ordinance requires the  
20 Commissioner’s approval of engineered plans for SCFs that are to be mounted on new or replacement  
21 County infrastructure. The Ordinance fails to clearly prescribe and define how the Commissioner  
22 should proceed in approving such plans, what elements are required to be incorporated into such plans,  
23 or what elements should be omitted in an engineered plan before it is acceptable for approval by the  
24 Commissioner. Consequently, the Commissioner is required to use its subjective judgment to determine  
25 whether it approves or disapproves of a plan without any clear statutory guidance for how it should  
26 proceed in doing so. Because the Commissioner’s subjective opinion is required in its approval or  
27 disapproval of engineered plans for SCFs that are to be mounted on new or replacement County  
28 infrastructure, it is discretionary in nature and is erroneously deemed a ministerial action.

211. Section 16.25.030.B.7 of the Ordinance requires that the Commissioner grant a permit  
when the Commissioner *is satisfied that* the SCF or EFR meets all applicable requirements for a permit.

1 Section 16.08.040 (incorporated by reference through Section 16.25.030.B.6) provides that the  
2 Commissioner “may make such changes or additions in any application for a permit as in his opinion  
3 are necessary for the protection of the highways, for the prevention of undue interference with traffic,  
4 for the safety of persons using such highways, as to the route over which to move any over height,  
5 width, length or weight load; as to the location, depth, dimensions, character and number of  
6 excavations; as to encroachments made or placed; and as to other permits issued pursuant to this  
7 Division 1.” Section 16.08.050 (also incorporated by reference through Section 16.25.030.B.6)  
8 provides that the Commissioner “may establish additional requirements for the work to be done under  
9 the permit, including equipment to be used, type of backfill, compaction, paving, traffic regulations,  
10 hours of work, flagmen, lights, inspection, and other similar requirements. He also may require  
11 whatever advance notice he deems proper for requests for inspection. The commissioner may add these  
12 requirements and conditions by rubber stamp or attachments to the permit, or both, and they shall be an  
13 integral part thereof.” Section 16.08.080 states, in pertinent part, that “If the applicant complies with  
14 every applicable provision of this Division 1 and all applicable provisions of all other ordinances and  
15 statutes, the commissioner may issue to the applicant a written permit to perform the work set forth in  
16 the application. The commissioner may refuse to issue a permit if he finds that it is not in the best  
17 interest of the general public to do so.” (emphasis added) The Ordinance grants great discretion to the  
18 Commissioner because a grant or denial of a permit is completely contingent upon the Commissioner’s  
19 satisfaction, “opinion” or “finding.” As a result, the Commissioner can arbitrarily grant or deny permits  
20 depending on its level of satisfaction or whatever its “opinion” may be. Because the Commissioner’s  
21 subjective judgment is required in the grant or denial of permit, it is discretionary in nature and is  
22 erroneously deemed a ministerial action.

23 212. For any SCF that is requested to be placed on County infrastructure, Section  
24 16.25.050.C of the Ordinance requires that a structural analysis of the effect of such placement on the  
25 County infrastructure, including wind impacts on traffic signal poles and mast arms of traffic signals,  
26 must be provided for approval by the Commissioner, to ensure there is no overburden on County  
27 infrastructure. The Ordinance fails to clearly prescribe a guideline for the Commissioner to follow in  
28 approving a structural analysis to ensure that there is no overburden of County infrastructure. The  
Commissioner thus must use an exercise of subjective judgment and deliberation to determine whether  
it finds the structural analysis sufficient for approval. Because the Commissioner’s subjective judgment  
is required in the approval or denial of a structural analysis during the permitting process, it is  
discretionary in nature and is erroneously deemed a ministerial action.

1           213. Section 22.26.030.B.3 of the Ordinance provides that if a zone or land use category  
2 within a Specific Plan is silent with regard to wireless facilities, the Director *may* accept an application  
3 for a wireless facility if the Director determines that a wireless facility *is similar to* another use  
4 permitted within such zone of land use category. As a result, the Director is authorized with discretion  
5 in two ways: (i) in determining whether or not to accept an application, and (ii) determining whether  
6 the wireless facility is similar to another use permitted within such zone. Determining whether a  
7 wireless facility is similar to another permitted use necessarily requires a subjective determination and  
8 judgment because there is no objective framework or measure by which to ascertain whether one use is  
9 similar to another use. Once the Director determines if the wireless facility is similar to another  
10 permitted use, the Director then has the discretion to determine whether or not to accept an application.  
11 Because section 22.26.030.B.3 of the Ordinance necessitates the Director’s subjective judgment, it  
12 provides the Director with discretionary authority and is consequently erroneously deemed a ministerial  
13 action.

14           214. Section 22.140.760.D.1 of the Ordinance provides that a Ministerial Site Plan Review  
15 application is required to authorize the installation and operation of a macro facility on an existing base  
16 station or tower that meets all standards in section 22.140.760.E of the Ordinance. Section  
17 22.140.760.E of the Ordinance, however, provides that a historic resource assessment, “prepared to the  
18 satisfaction of the Director,” *may* be required for a facility to be located on a site containing an eligible  
19 resource to identify impacts to historic resources, and identify mitigation to minimize impacts. This  
20 language confers upon the Director two differing levels of discretion: the first is that the Director may  
21 or may not compel a historic resource assessment; and the second is that if the Director does decide to  
22 compel a historic resource assessment, it must be prepared to the Director’s satisfaction. This section of  
23 the Ordinance fails to provide an objective standard to guide the Director in its determinations for: (i)  
24 when a historic resource assessment must be compelled, and (ii) in what instances a historic resource  
25 assessment must be approved by the Director. As a result, the Director is required to use its subjective  
26 judgment to determine the instances in which it will compel and approve a historic resource  
27 assessment. In addition, conformance to sections 22.140.760.E.1.b.v and 22.140.760.E.1.e.i of the  
28 Ordinance also require the Director’s discretion. Section 22.140.760.E.1.b.v states that the locating of  
new facilities must take into consideration the least aesthetically intrusive location. Because the  
Ordinance provides no objective standard for determining what might qualify for the least aesthetically  
intrusive location, the Director is left to its discretion to determine the same. Section 22.140.760.E.1.e.i  
states that all wireless facilities must be designed to “meet minimum standards for public safety” but



1 provides no objective measure for determining what the minimum standard for public safety is. As a  
2 result, the Director is left to its discretion to determine whether wireless facilities subject to this  
3 provision meet minimum standards for safety. Because section 22.140.760.D.1 of the Ordinance  
4 necessitates the Director’s subjective judgment for the foregoing reasons, it provides the Director with  
5 discretionary authority and is consequently erroneously deemed a ministerial action.

6 215. Section 22.140.760.G.1 of the Ordinance provides that existing macro facilities may be  
7 eligible for a Ministerial Site Plan Review application if such facilities are redesigned with shorter  
8 mounting equipment that extends no more than two feet from the structure, or with removal of any  
9 existing mounting, and with additional screening techniques, such as shrouds or walls, that blend in  
10 with the structure, including color and texture, and conforms to all standards in section 22.140.760.E of  
11 the Ordinance, and does not require a waiver. Section 22.140.760.E of the Ordinance, however,  
12 provides that a historic resource assessment, “prepared to the satisfaction of the Director,” *may* be  
13 required for a facility to be located on a site containing an eligible resource to identify impacts to  
14 historic resources, and identify mitigation to minimize impacts. This language confers upon the  
15 Director two differing levels of discretion: the first is that the Director may or may not compel a  
16 historic resource assessment; and the second is that if the Director does decide to compel a historic  
17 resource assessment, it must be prepared to the Director’s satisfaction. This section of the Ordinance  
18 fails to provide an objective standard to guide the Director in its determinations for: (i) when a historic  
19 resource assessment must be compelled, and (ii) in what instances a historic resource assessment must  
20 be approved by the Director. As a result, the Director is required to use its subjective judgment to  
21 determine the instances in which it will compel and approve a historic resource assessment. In addition,  
22 conformance to sections 22.140.760.E.1.b.v and 22.140.760.E.1.e.i of the Ordinance also require the  
23 Director’s discretion. Section 22.140.760.E.1.b.v states that the locating of new facilities must take into  
24 consideration the least aesthetically intrusive location. Because the Ordinance provides no objective  
25 standard for determining what might qualify for the least aesthetically intrusive location, the Director is  
26 left to its discretion to determine the same. Section 22.140.760.E.1.e.i states that all wireless facilities  
27 must be designed to “meet minimum standards for public safety” but provides no objective measure for  
28 determining what the minimum standard for public safety is. As a result, the Director is left to its  
discretion to determine whether wireless facilities subject to this provision meet minimum standards for  
safety. Because the Ordinance necessitates the Director’s subjective judgment for the foregoing  
reasons, it provides the Director with discretionary authority and is consequently erroneously deemed a  
ministerial action.

1           216. Section 22.140.760.G.3 of the Ordinance states that an Eligible Facilities Request may  
2 be processed with a Ministerial Site Plan Review application if minor modifications will bring the  
3 facility in conformance with all standards in section 22.140.760.E of the Ordinance, and does not  
4 require a waiver. Section 22.140.760.E of the Ordinance, however, provides that a historic resource  
5 assessment, “prepared to the satisfaction of the Director,” *may* be required for a facility to be located on  
6 a site containing an eligible resource to identify impacts to historic resources, and identify mitigation to  
7 minimize impacts. This language confers upon the Director two differing levels of discretion: the first  
8 is that the Director may or may not compel a historic resource assessment; and the second is that if the  
9 Director does decide to compel a historic resource assessment, it must be prepared to the Director’s  
10 satisfaction. This section of the Ordinance fails to provide an objective standard to guide the Director in  
11 its determinations for: (i) when a historic resource assessment must be compelled, and (ii) in what  
12 instances a historic resource assessment must be approved by the Director. As a result, the Director is  
13 required to use its subjective judgment to determine the instances in which it will compel and approve a  
14 historic resource assessment. In addition, conformance to sections 22.140.760.E.1.b.v and  
15 22.140.760.E.1.e.i of the Ordinance also require the Director’s discretion. Section 22.140.760.E.1.b.v  
16 states that the locating of new facilities must take into consideration the least aesthetically intrusive  
17 location. Because the Ordinance provides no objective standard for determining what might qualify for  
18 the least aesthetically intrusive location, the Director is left to its discretion to determine the same.  
19 Section 22.140.760.E.1.e.i states that all wireless facilities must be designed to “meet minimum  
20 standards for public safety” but provides no objective measure for determining what the minimum  
21 standard for public safety is. As a result, the Director is left to its discretion to determine whether  
22 wireless facilities subject to this provision meet minimum standards for safety. Because the Ordinance  
23 necessitates the Director’s subjective judgment for the foregoing reasons, it provides the Director with  
24 discretionary authority and is consequently erroneously deemed a ministerial action.

25           217. As a corollary, labeling of permit approvals as by-right or ministerial under the  
26 Ordinance violates CEQA’s prohibition against precommitment, as the County will, by default, process  
27 each individual permit application enabled by the Ordinance as if it is by-right and ministerial (even  
28 though it is not in fact either by-right or ministerial) and will thereby not be obligated to conduct CEQA  
review for such individual permits for any potential significant impacts.

          218. It is a “general principle that before conducting CEQA review, agencies must not ‘take  
any action’ that significantly furthers a project ‘in a manner that forecloses alternatives or mitigation  
measures that would ordinarily be part of CEQA review of that public project.’” *Save Tara v. City of*

1 *West Hollywood* (2008) 45 Cal.4th 116, 138 (“*Save Tara*”); CEQA Guidelines § 15004, subd.

2 (b)(2)(B). When deciding whether an agency precommitted or approved the project, courts “look both  
3 to the agreement itself and to the surrounding circumstances, as shown in the record of the decision, to  
4 determine whether an agency's authorization or execution of an agreement for development constitutes  
5 a “decision ... which commits the agency to a definite course of action in regard to a project.”

6 (Cal.Code Regs., tit. 14, § 15352.)” *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 139.

7 219. Unlawful precommitment – or approval of the project before the review of its  
8 environmental impacts – may be found based on the totality of circumstances even where the final  
9 agreement includes a condition granting the county complete discretion over CEQA matters.

10 *RiverWatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal.App.4th 1186, 1211–1212 (the  
11 agency's public announcements, actions, preparing to relocate tenants from the property, substantial  
12 financial contribution to the project, its willingness to bind itself, by the draft agreement, to convey the  
13 property if the developer ‘satisfied’ CEQA’s ‘requirements, as reasonably determined by the City  
14 Manager,’ all demonstrate that “City committed itself to a definite course of action regarding the  
15 project before fully evaluating its environmental effects. That is what sections 21100 and 21151  
16 prohibit.”)

17 220. Labeling of permit-issuance as by-right or ministerial under the Ordinance further  
18 violated CEQA in that such designation will effectively foreclose the County’s power to shape any  
19 individual projects or to require mitigation of any potential significant impacts from the placement,  
20 modification, or colocation of wireless facilities. As noted in an analogous context of approving  
21 redevelopment plans with various individual development projects therein, “This statement in the EIR  
22 thus offers no guarantee that potential significant impacts reasonably foreseeable now will be analyzed  
23 prior to actual development.” *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency*  
24 (2000) 82 Cal.App.4th 511, 536 (“*Friends of Mammoth*”).

25 221. It is reasonably foreseeable that individual permits and projects enabled or regulated by  
26 the Ordinance may have significant individual and cumulative environmental impacts, including during  
27 their construction and operations phases. “If the proposed activity is the sort that is capable of causing  
28 direct or reasonably foreseeable indirect effects on the environment, some type of environmental  
review is justified, and the activity must be deemed a project. CEQA analysis is then undertaken to  
evaluate the likelihood and nature of the project’s environmental impacts, in order to determine the  
extent of environmental review required.” *Union of Medical Marijuana Patients, Inc. v. City of San  
Diego* (2019) 7 Cal.5th 1171, 1197-1198.

1           222.   “CEQA requires an EIR only for projects whose environmental effect can be described  
2 as ‘significant.’ This key word, however, is not a term of precision but encompasses a range of  
3 meaning.<sup>16</sup> It cannot be adequately defined by a random selection of synonyms from a thesaurus.  
4 Facing a spectrum of possible meanings, describing a range extending from projects of relatively minor  
5 import to those of truly momentous proportions, the court's task is to indicate the point on this spectrum  
6 beyond which the seriousness of the foreseeable impact dictates preparation of an EIR.” *No Oil, Inc. v.*  
7 *City of Los Angeles* (1974) 13 Cal.3d 68, 82–83 (“*No Oil*”). Footnote 16 in *No Oil, supra*, further  
8 provides that *significant* in CEQA covers a “spectrum ranging from ‘not trivial’ through ‘appreciable’  
9 ....” and “reasonably foreseeable” covers “a range of meaning” “extending from the most unlikely  
possibility....” *No Oil*, 13 Cal.3d at 83 & fn. 16.

10           223.   CEQA does not expressly exempt development or policies or ordinances or design  
11 checklists. CEQA Guidelines § 15061(b). To the contrary, CEQA Guidelines § 15111 specifically  
12 provides for CEQA review for permit-applications under any enabling legislation or ordinances where  
13 the related enabling ordinances provide for short review periods. The Ordinance here is such an  
14 enabling ordinance and, as a result, must provide for CEQA review of permits it enables. Yet, to the  
contrary, the Ordinance specifically designates permit-issuance as ministerial to avoid CEQA review.

15           224.   As a result of the foregoing, Respondents prejudicially abused their discretion by  
16 unlawfully designating sections 22.26.030.B.3, 22.140.760.D.1, 22.140.760.G.1 and 22.140.760.G.3 of  
17 the Ordinance as “ministerial” in violation of CEQA Guidelines sections 15369 and 15002, subd. (i)(1)  
18 because such sections necessitate the Director’s subjective judgment, as well as in violation of CEQA’s  
19 prohibition of precommitment to an approval of any individual permits enabled by the Ordinance  
20 without further CEQA review.

21           225.   Similarly, by improperly designating permit approvals of wireless facilities as  
22 ministerial actions under the Ordinance, Respondents blanketly and prejudicially deprived the public of  
23 the right to be apprised of any actions or approvals enabled by the Ordinance or contest such actions  
24 unless they can be proven to be arbitrary and capricious, thus also significantly increasing the burden of  
25 proof to bring such challenges. (See, *California Assn. of Medical Products Suppliers v. Maxwell-*  
26 *Jolly* (2011) 199 Cal.App.4th 286, 302-303 [in reviewing a challenge under “Code of Civil Procedure  
27 section 1085, a trial court's role generally is to “determine whether the agency's action was arbitrary,  
capricious, or without evidentiary support, and/or whether it failed to conform to the law...”].)

28           226.   “[A] project is ministerial ‘when a private party can legally compel approval without any  
changes in the design of its project which might alleviate adverse environmental consequences.’”

1 (Friends of Westwood, at p. 267, 235 Cal.Rptr. 788.) “The statutory distinction between discretionary  
2 and purely ministerial projects implicitly recognizes that unless a public agency [is authorized to] shape  
3 the project in a way that would respond to concerns raised in an EIR, or its functional equivalent,  
4 environmental review would be a meaningless exercise.” (Mountain Lion, at p. 117, 65 Cal.Rptr.2d  
5 580, 939 P.2d 1280.)” *Protecting Our Water and Environmental Resources v. County of Stanislaus*  
6 (2020) 10 Cal.5th 479, 493–494. As held in *Protecting Our Water, supra*, based on the facts of *this* case  
7 as well, “[P]laintiffs are entitled to a declaration that County’s blanket ministerial categorization is  
8 unlawful.” *Id.* at 501-502. The County’s blanket designation of most permit approvals as ministerial  
9 will prejudicially deprive Petitioners and the public of their due process rights (notice, hearing) and  
10 environmental protection rights. Such blanket designation will also significantly increase Petitioners’  
11 burden to successfully challenge any arbitrary actions by the County or its individual decisionmakers  
12 with respect to permit approvals or respective procedures.

#### 12 **SEVENTH CAUSE OF ACTION**

#### 13 **(By Petitioners Against Respondents For Writ of Administrative Mandate Under CCP § 1094.5 14 and PRC § 21168 or in the Alternative, CCP § 1085 and PRC § 21168.5; and Declaratory Relief 15 Under CCP § 1060, Re: Constitutional Due Process Violations)**

16 227. Petitioners hereby reallege and incorporate all of the above paragraphs as if fully set  
17 forth herein.

18 228. A person may not be deprived of life, liberty, or property without due process of law.  
19 U.S. Const. amend. XIV; Cal. Const. art. I, § 7. Due process requires that deprivation of property by  
20 adjudication be preceded by notice and opportunity for hearing. Due process principles require  
21 reasonable notice and opportunity to be heard before governmental deprivation of a significant property  
22 interest. *Horn v. Cnty. of Ventura* (1979) 24 Cal.3d 605, 612, citing *North Georgia Finishing, Inc. v. Di-*  
23 *Chem, Inc.* (1975) 419 U.S. 601, 605-606; *Goss v. Lopez* (1975) 419 U.S. 565, 572-576; *Board of*  
24 *Regents v. Roth* (1972) 408 U.S. 564, 576-577; *Boddie v. Connecticut* (1971) 401 U.S. 371,  
25 379; *Sniadach v. Family Finance Corp.* (1969) 395 U.S. 337, 339; *Skelly v. State Personnel Bd.* (1975)  
26 15 Cal.3d 194, 206-207; *Beaudreau v. Superior Court* (1975) 14 Cal.3d 448, 458; *Randone v. Appellate*  
27 *Department* (1971) 5 Cal.3d 536, 541. Land use decisions which “substantially affect” the property  
28 rights of owners of adjacent parcels may constitute “deprivations” of property within the context of  
procedural due process.

29 229. Under any possible circumstances, the Ordinance is unconstitutional, including for its  
vagueness, overbreadth, and failure to ensure procedural due process, including notice and fair hearing  
for property owners, in processing permit applications and related approvals. The Ordinance enables

1 arbitrary quasi-legislative and quasi-adjudicatory actions by non-elected individuals, without any  
2 oversight, due process, or procedure to contest such actions.

3 230. As an example, wireless facilities will be permitted immediately next to individual  
4 residents' property, and this will have a significant effect on, and lead to a substantial loss of property  
5 rights and property value for those properties adjacent to the wireless facilities. The Ordinance,  
6 however, does not provide any notice or any opportunity for hearing. As a result of the foregoing defect,  
7 Respondents prejudicially abused their discretion by approving the Ordinance without providing  
8 property owners with a hearing and opportunity to be heard in violation of due process rights.  
Accordingly, Respondents' approval of the Project must be set aside.

9 231. Similarly, the Ordinance allows a Commissioner or Planning Director to develop or  
10 modify design checklist to adjudicate permit-applications, and provides for no due process for the public  
11 to review and shape such design checklist. As such, the Ordinance allows for completely arbitrary  
12 actions by individual staff members without any possibility for the public to be notified about such  
13 developed design checklists or proposed amendments thereto, and public review and scrutiny of the  
same.

14 232. Placement of telecommunication devices near individual properties may or will affect  
15 and interfere with individual property rights, including but not limited to unimpeded use of property.

16 233. Similarly, the Ordinance is overbroad as it blanketly allows most, if not all, permit  
17 applications to be treated and processed as ministerial or by-right even though the Ordinance also retains  
18 considerable discretion for the individual decisionmakers and requires extensive subjective judgment.  
19 As such, Petitioner will be deprived of due process, including adequate public notice and an opportunity  
20 to be heard, before their statutory CEQA rights and property rights may be harmed by the County's by-  
21 right or ministerial adjudication of individual permits enabled by the Ordinance. Petitioners are denied  
22 the ability to obtain a hearing and seek the exercise of discretion that lessens the negative impact on  
23 them, and they cannot exhort the Commissioner or Planning Director to make subjective judgments or  
24 findings in their favor even though the Ordinance confers discretion and subjectivity. *See, e.g., Horn v.*  
25 *County of Ventura* (1979) 24 Cal.3d 605, 616-619; *Scott v. City of Indian Wells* (1972) 6 Cal.3d 541,  
548-550.

26 234. The Ordinance fails to provide guarantees and safeguards to guard against arbitrary  
27 actions by the County, including by the Commissioner or Planning Director in devising or amending  
28 design checklists or adjudicating individual applications. It precludes adequate notice and a meaningful  
opportunity for hearing, especially for those actions wrongly deemed as "ministerial" rather than

1 discretionary. Under the Ordinance, the affected nearby property owners are denied any ability to be  
2 timely apprised of and to argue that the Commissioner or Planning Director should exercise the  
3 discretion the Ordinance confers and either deny an SCF application or require changes to a proposed  
4 SCF or EFR. This violates procedural due process required by both legislation and the Fourteenth  
5 Amendment of the U.S. Constitution. See *Mathews v. Eldridge* (1976) 424 U.S. 319, 333 (essence of  
6 due process is notice and the opportunity to be heard at a meaningful time and in a meaningful manner).

7 235. “[I]dentification of the specific dictates of due process generally requires consideration of  
8 three distinct factors: First, the private interest that will be affected by the official action; second, the  
9 risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if  
10 any, of additional or substitute procedural safeguards; and finally, the Government's interest, including  
11 the function involved and the fiscal and administrative burdens that the additional or substitute  
12 procedural requirement would entail.” *Mathews v. Eldridge* (1976) 424 U.S. 319, 335 (“*Mathews*”).

13 236. Based on the three factors in *Mathews*, the private interest that will be affected by the  
14 Ordinance or its enabled permit approvals is significant, involving both deprivation of property rights  
15 and also significant risks to human life and health. The risk of an erroneous deprivation of Petitioners’  
16 private interests is also significant since Petitioners will have neither notice nor opportunity to be heard  
17 before any permits are approved near their properties. And the Government’s interest, including the  
18 function involved and administrative burdens that the additional or substitute procedural requirements  
19 would entail are not significant to provide adequate notice and an opportunity for a public review to the  
20 public. In addition, such notice and opportunity for public review is mandated by various state laws,  
21 including CEQA, California Planning and Zoning Law, and environmental justice principles at issue.

22 237. As a direct result of such procedural due process violations, Petitioners who represent  
23 disadvantaged low-income communities that will be affected by the Ordinance will also be subject to  
24 disparate impact and violations of environmental justice principles for being unable to raise any  
25 environmental justice concerns about any arbitrary actions by individual decisionmakers. “‘So-called  
26 “substantive due process” prevents the government from engaging in conduct that “shocks the  
27 conscience,” [citation], or interferes with rights “implicit in the concept of ordered liberty,” [citation].’  
28 (*United States v. Salerno* (1987) 481 U.S. 739, 746 [95 L. Ed. 2d 697, 107 S. Ct. 2095] [quoting *Rochin*  
*v. California* (1952) 342 U.S. 165, 172 [96 L. Ed. 183, 72 S. Ct. 205], and *Palko v. Connecticut* (1937)  
302 U.S. 319, 325–326 [82 L. Ed. 288, 58 S. Ct. 149], respectively.) As observed by the high court,  
‘guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended’ (*Collins*  
*v. Harker Heights* (1992) 503 U.S. 115, 125 [117 L. Ed. 2d 261, 112 S. Ct. 1061]).” *Cook v. City of*

1 Buena Park (2005) 126 Cal.App.4th 1, 5.

2 **EIGHTH CAUSE OF ACTION**

3 **(By Petitioners Against Respondents For Writ of Administrative Mandate Under CCP § 1094.5**  
4 **Or in the Alternative CCP § 1085, and Declaratory Relief Under CCP § 1060**  
5 **Re: Unlawful Delegation of Legislative Authority to an Administrative Agency)**

6 238. Petitioners hereby reallege and incorporate all of the above paragraphs as if fully set  
7 forth herein.

8 239. The Project improperly delegates the Board of Supervisors' legislative authority to the  
9 Commissioner and the Director of Planning, including under CEQA.

10 240. Legislative bodies have limited authority to delegate their legislative powers to  
11 administrative bodies and must provide ascertainable standards and safeguards. *State Board of Dry*  
12 *Cleaners v. Thrift-D-Lux Cleaners, Inc.* (1953) 40 Cal.2d 436, 448; *Kugler, supra*, 69 Cal.2d at 375-  
13 377; *Stoddard v. Edelman* (1970) 4 Cal.App.3d 544, 548.

14 241. In delegating the elected decisionmaker Board of Supervisors' authority to the non-  
15 elected Commissioner, the Project fails to establish a mechanism to assure the proper implementation  
16 of the Board of Supervisors' policy decisions and an ascertainable standard to guide the Commissioner  
17 in: (i) developing, adopting, and/or amending the design standards checklist for small cell facilities and  
18 eligible facilities requests pursuant to section 16.25.030.B.2 of the Ordinance; (ii) approving an  
19 applicant's engineered plans for small cell facilities that are to be mounted on new or county  
20 infrastructure pursuant to section 16.25.030.B.3 of the Ordinance; (iii) granting permits when the  
21 Commissioner "is satisfied" that the applicable requirements for a permit are met for small cell  
22 facilities or eligible facilities requests pursuant to section 16.25.030.B.7 of the Ordinance; (iv) the  
23 criteria for deciding or finding when an application should be denied or required changes should be  
24 made; and (v) approving an applicant's structural analysis of the effect of placement of small cell  
25 facilities on county infrastructure pursuant to section 16.25.050.C of the Ordinance.

26 242. In delegating the Board of Supervisors' authority to the Director of Planning, the Project  
27 fails to establish a mechanism to assure the proper implementation of the Board of Supervisors' policy  
28 decisions and an ascertainable standard to guide the Director of Planning in: (i) modifying the Land  
Use Application Checklist – Small Cell Facilities, Collocation And Eligible Facilities Requests, and the  
Zoning Permit Instructions and Checklist pursuant to section 22.140.760.D.4 of the Ordinance; and (ii)  
determining whether a historic resource assessment is required and in what instances to approve the  
same for facilities to be located on a site containing a resource eligible for listing on the National,  
California, or County historic registers.



1           243. The Commissioner and Director are delegated the task of devising said checklists, and  
2 fleshing out substantive requirements, including, but not limited to, the liability insurance and public  
3 notification requirements. The Project confers on the Commissioner and Director the discretionary task  
4 of developing and then, on an as-needed basis, unilaterally modifying checklists that impose  
5 substantive requirements that will then be applied to individual permit applications. The new checklist  
6 related tasks delegate legislative and policy determinations to the Commissioner and Director, as the  
7 Commissioner and Director are free to create new substantive obligations by taking legislative and  
8 discretionary action. The Ordinance does not provide any direction in guiding the Commissioner or  
9 Director's discretion regarding these substantive and subjective legislative-type decisions. Applicants  
10 must abide by said checklists, and there is no procedure by which the public can appeal the  
11 implementation, or any modifications to, said checklists.

12           244. The Commissioner's developed design checklist or amendment thereof may have direct  
13 or reasonably foreseeable indirect significant impacts as such design may enable adjudication of  
14 various individual permits or modification requests as ministerial or by-right and hence exempt from  
15 CEQA, whereas such permits or modifications may have the capability to cause significant impacts.  
16 And yet, under the Ordinance, by virtue of allowing the Commissioner to unilaterally develop or  
17 modify design checklists, the Ordinance enables the Commissioner to do so without any CEQA review  
18 and resultant public participation and review safeguards.

19           245. As such, the aforesaid delegation of the power to develop or modify the design checklist  
20 for adjudication of permit or modification applications will violate the non-delegation provisions and  
21 related due process safeguards under CEQA, other state statutes governing land use permitting and the  
22 California Constitution. Specifically, under CEQA Guidelines § 15025(a), CEQA allows the public  
23 agency's delegation of specific functions to the staff, where such functions include determinations of  
24 whether the project (here, development or modification of a design checklist) is exempt from CEQA.  
25 However, subdivision (b) of section 15025 specifically precludes delegation for an approval of an EIR  
26 or mitigated negative declaration.

27           246. In addition, even though CEQA Guidelines § 15025(a)(1) allows staff determinations of  
28 whether the project is exempt from CEQA, CEQA Guidelines § 15061(e) requires that such exemption  
determinations be appealable to the elected decisionmakers.

          247. Further, CEQA defines an approval broadly to include any action by the public agency  
that may directly or indirectly cause environmental impacts and mandates review of the project's  
potential impacts *before* such approval. CEQA Guidelines §§ 15352 & 15004. Similarly, CEQA

1 defines a project broadly to include any action that *may* have significant impacts. CEQA Guidelines §  
2 15387(a).

3 248. CEQA does not expressly exempt development or policies or ordinances or design  
4 checklists. CEQA Guidelines § 15061(b). To the contrary, CEQA Guidelines § 15111 specifically  
5 provides for CEQA review for permit-applications under any enabling legislation or ordinances where  
6 the related enabling ordinances provide for short review periods. The Ordinance here is such an  
7 enabling ordinance and, as a result, must provide for CEQA review of permits it enables. Yet, to the  
8 contrary, the Ordinance specifically designates permit-issuance as ministerial to avoid CEQA review.

9 249. Under CEQA's broad definition of a project and approval, development or amendment  
10 of a design checklist by the Commissioner qualifies as both a project and approval. Hence, it must be  
11 subject to CEQA and require CEQA determination. To the extent such CEQA determination may be an  
12 EIR or Mitigated Negative declaration, it may not be delegated to the Commissioner under CEQA  
13 Guidelines § 15025(b). To the extent such CEQA determination is an exemption, that determination  
14 must be still reviewable by and appealed to the Board of Supervisors under CEQA Guidelines §  
15 15061(e). However, the Ordinance's unconditional delegation of the function of developing design  
16 checklists to the Commissioner without providing for any CEQA review of the same or ensuring that  
17 such action and related CEQA determinations be reviewed by the elected decisionmaking body violates  
18 CEQA's non-delegation and CEQA appeal provisions.

19 250. As a result of the foregoing defects, Respondents prejudicially abused their discretion by  
20 unlawfully delegating legislative authority of developing or amending design checklists to the  
21 Commissioner and Director without any due process safeguards, including under CEQA but also under  
22 controlling state law land use requirements. Accordingly, Respondents' approval of the Project must be  
23 set aside.

### 24 **PRAYER FOR RELIEF**

25 WHEREFORE, Petitioners pray for judgment and relief as set forth below:

26 A. For a Writ of Mandate commanding Respondents to vacate any purported approvals of  
27 the Project, and to require Respondents to complete CEQA environmental review and to ensure public  
28 notice, review, comment, and participation as required by law, including but not limited to California  
and U.S. Constitutions, Planning and Zoning Law, and the County Code;

B. For a temporary stay, temporary restraining order, and preliminary and permanent  
injunctions enjoining Respondents and Real Parties in Interest, and their agents, employees, officers or  
representatives, and all persons acting in concert or participating with Real Parties in Interest from

1 taking any action to implement the Project, unless and until Respondents fully comply with CEQA,  
2 including PRC section 21168.5; California Government Code sections 65860, 65853, 65854, 65855,  
3 and 65857; County Code sections 22.244.030, 22.244.040 and 22.02.050, Constitutional Due Process,  
4 and all other applicable state law;

5 C. For a declaration of the rights and duties of the parties hereto, including but not limited  
6 to a declaratory judgment that Respondents violated their duties pursuant to CEQA, including under  
7 PRC section 21168.5; California Government Code sections, including 65860, 65853, 65854, 65855,  
8 and 65857; County Code sections 22.244.030, 22.244.040 and 22.02.050; California and U.S.  
9 Constitutions; and all other applicable state laws, and that the Ordinance approvals and CEQA  
10 exemption determinations are null and void and without legal effect;


11 D. For a declaration of the rights and duties of the parties hereto, including declaratory  
12 judgment that Respondents' blanket designation of permit approvals as ministerial or by-right under the  
13 Ordinance was improper and also prejudicially foreclosed future CEQA review in violation of CEQA;

14 E. For a declaration of the rights and duties of the parties hereto, including declaratory  
15 judgment that Respondents' delegation of the power to formulate and amend the design checklists to  
16 adjudicate permit-applications for personal wireless telecommunication facilities violated the non-  
17 delegation requirements, including under CEQA and California Constitution;

18 F. For such other relief as this Court deems appropriate and just.

19 DATED: November 2, 2023

MITCHELL M. TSAI LAW FIRM

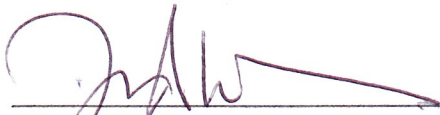
20 By:   
21 MITCHELL M. TSAI  
22 NAIRA SOGHBATYAN  
23 REZA A. MOHAMADZADEH

24 Attorneys for Petitioners and Plaintiffs  
25 FIBER FIRST LOS ANGELES, *et al.*

1 I, Douglas Wood, am Coordinator of 5G Free California, a Petitioner and Plaintiff in this action.  
2 I am authorized to make this verification on its behalf. I have read the foregoing VERIFIED FIRST  
3 AMENDED PETITION and know its contents. The facts alleged therein are within my own knowledge  
4 and I know these facts to be true, except as stated, on information and belief.

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

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8 Executed on October 25, 2023, at Port Washington, New York.

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1 I, Vivian M. Escalante, am the President and Chief Executive Officer of Boyle Heights  
2 Community Partners, a Petitioner and Plaintiff in this action. I am authorized to make this verification  
3 on its behalf. I have read the foregoing VERIFIED FIRST AMENDED PETITION and know its  
4 contents. The facts alleged therein are within my own knowledge and I know these facts to be true,  
5 except as stated, on information and belief.

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

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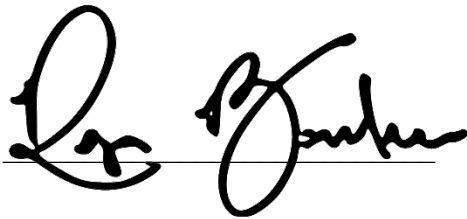
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1 I, Reza Mohamadzadeh, am the attorney of record for California Fires & Firefighters, a  
2 Petitioner and Plaintiff in this action. The representative of California Fires & Firefighters is absent from  
3 the County of Los Angeles at this time. I am authorized to make this verification on its behalf. I have  
4 prepared and read the foregoing VERIFIED FIRST AMENDED PETITION and know its contents. The  
5 facts alleged therein are within my own knowledge and I know these facts to be true, except as stated, on  
6 information and belief.

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

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1 I, Jodi Nelson am Director of Californians for Safe Technology, a Petitioner and Plaintiff in this  
2 action. I am authorized to make this verification on its behalf. I have read the foregoing VERIFIED  
3 FIRST AMENDED PETITION and know its contents. The facts alleged therein are within my own  
4 knowledge and I know these facts to be true, except as stated, on information and belief.

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

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13 Jodi Nelson

1 I, Mary Holland am Counsel Counsel of Children's Health Defense, a Petitioner and Plaintiff  
2 in this action. I am authorized to make this verification on its behalf. I have read the foregoing  
3 VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR  
4 DECLARATORY AND INJUNCTIVE RELIEF and know its contents. The facts alleged therein are  
5 within my own knowledge and I know these facts to be true, except as stated, on information and belief.

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

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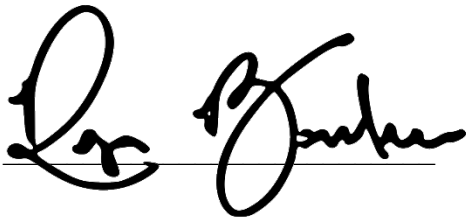
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1 I, Reza Mohamadzadeh, am the attorney of record for EMF Safety Network, a Petitioner and  
2 Plaintiff in this action. The representative of EMF Safety Network is absent from the County of Los  
3 Angeles at this time. I am authorized to make this verification on its behalf. I have prepared and read the  
4 foregoing VERIFIED FIRST AMENDED PETITION and know its contents. The facts alleged therein  
5 are within my own knowledge and I know these facts to be true, except as stated, on information and  
6 belief.

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

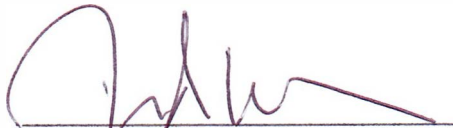
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1 I, Douglas Wood, am Coordinator of Fiber First Los Angeles, a Petitioner and Plaintiff in this  
2 action. I am authorized to make this verification on its behalf. I have read the foregoing VERIFIED  
3 FIRST AMENDED PETITION and know its contents. The facts alleged therein are within my own  
4 knowledge and I know these facts to be true, except as stated, on information and belief.

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

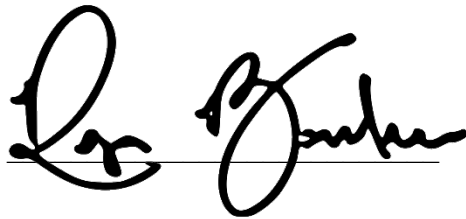
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12 Douglas A. Wood

1 I, Reza Mohamadzadeh, am the attorney of record for Malibu for Safe Tech, a Petitioner and  
2 Plaintiff in this action. The representative of Malibu for Safe Tech is absent from the County of Los  
3 Angeles at this time. I am authorized to make this verification on its behalf. I have prepared and read the  
4 foregoing VERIFIED FIRST AMENDED PETITION and know its contents. The facts alleged therein  
5 are within my own knowledge and I know these facts to be true, except as stated, on information and  
6 belief.

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

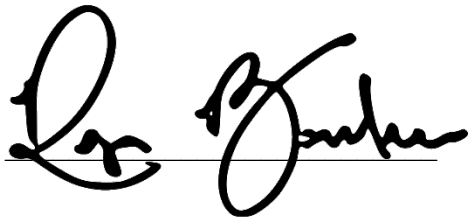
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1 I, Reza Mohamadzadeh, am the attorney of record for Mothers of East LA, a Petitioner and  
2 Plaintiff in this action. The representative of Mothers of East LA is absent from the County of Los  
3 Angeles at this time. I am authorized to make this verification on its behalf. I have prepared and read the  
4 foregoing VERIFIED FIRST AMENDED PETITION and know its contents. The facts alleged therein  
5 are within my own knowledge and I know these facts to be true, except as stated, on information and  
6 belief.

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

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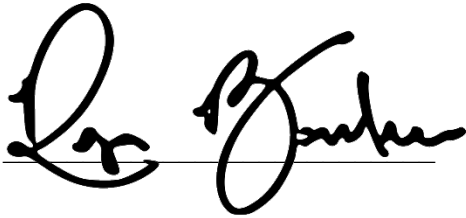
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1 I, Reza Mohamadzadeh, am the attorney of record for Union Binacional de Organizaciones de  
2 Trabajadores Mecicanos Exbraceros 1942-1964, a Petitioner and Plaintiff in this action. The  
3 representative of Union Binacional de Organizaciones de Trabajadores Mecicanos Exbraceros 1942-  
4 1964 is absent from the County of Los Angeles at this time. I am authorized to make this verification on  
5 its behalf. I have prepared and read the foregoing VERIFIED FIRST AMENDED PETITION and know  
6 its contents. The facts alleged therein are within my own knowledge and I know these facts to be true,  
7 except as stated, on information and belief.

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

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A handwritten signature in black ink, appearing to read "Reza Mohamadzadeh", is written over a horizontal line. The signature is cursive and stylized.

1 I, Klint A. Cowan, am the Attorney General of the United Keetoowah Band of  
2 Cherokee Indians in Oklahoma, a Petitioner and Plaintiff in this action. I am authorized to make this  
3 verification on its behalf. I have read the foregoing VERIFIED FIRST AMENDED PETITION and  
4 know its contents. The facts alleged therein are within my own knowledge and I know these facts to be  
5 true, except as stated, on information and belief.

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

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9 Executed on November 2, 2023, at Oklahoma City, Oklahoma.  
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**EXHIBIT A**

P: (626) 314-3821  
F: (626) 389-5414  
E: [mitch@mitchtsailaw.com](mailto:mitch@mitchtsailaw.com)



**Mitchell M. Tsai**  
Attorney At Law

139 South Hudson Avenue  
Suite 200  
Pasadena, California 91101

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**VIA ELECTRONIC & U.S. MAIL**

January 20, 2023

Celia Zavala, Executive Officer  
Los Angeles County Board of Supervisors  
Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 383  
Los Angeles, CA 90012  
Em: [executiveoffice@bos.lacounty.gov](mailto:executiveoffice@bos.lacounty.gov)

Supervisor Hilda Solis, District 1  
Los Angeles County Board of  
Supervisors  
Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 856  
Los Angeles, CA 90012  
Em: [firstdistrict@bos.lacounty.gov](mailto:firstdistrict@bos.lacounty.gov)

Supervisor Lindsey P. Horvath, District 3  
Los Angeles County Board of  
Supervisors  
Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 821  
Los Angeles, CA 90012  
Em: [ThirdDistrict@bos.lacounty.gov](mailto:ThirdDistrict@bos.lacounty.gov)

Supervisor Kathryn Barger, District 5  
Los Angeles County Board of  
Supervisors  
Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 869  
Los Angeles, CA 90012  
Em: [Kathryn@bos.lacounty.gov](mailto:Kathryn@bos.lacounty.gov)

Bruce Durbin  
Supervising Regional Planner  
Department of Regional Planning  
320 West Temple Street  
Los Angeles, CA 90012  
Em: [ordinance@planning.lacounty.gov](mailto:ordinance@planning.lacounty.gov)

Supervisor Holly J. Michell, District 2  
Los Angeles County Board of  
Supervisors  
Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 866  
Los Angeles, CA 90012  
Em: [HollyJMitchell@bos.lacounty.gov](mailto:HollyJMitchell@bos.lacounty.gov)

Supervisor Janice Hahn, District 4  
Los Angeles County Board of  
Supervisors  
Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 822  
Los Angeles, CA 90012  
Em: [FourthDistrict@bos.lacounty.gov](mailto:FourthDistrict@bos.lacounty.gov)



RE: Notice of Intent to File Suit Under the California Environmental Quality Act

Dear Sirs/Madams:

I am writing on behalf of the following parties:

- 1) Fiber First Los Angeles;
- 2) Mothers of East LA;
- 3) Union Binacional de Organizaciones de Trabajadores Mexicanos Exbraceros 1942-1964;
- 4) Boyle Heights Community Partners;
- 5) California Fires & Firefighters;
- 6) Malibu for Safe Tech;
- 7) EMF Safety Network;
- 8) Californians for Safe Technology;
- 9) 5G Free California; and
- 10) Children’s Health Defense.

The above parties are a collection of public interest organizations and Los Angeles County residents (collectively “**Petitioners**”). On behalf of Petitioners, this office is contacting you regarding the County of Los Angeles’ (“**Respondent**”) action on January 10, 2023 and all subsequent actions approving the ordinance amending Title 16 – Highways and Title 22 – Planning and Zoning of the Los Angeles County Code, including any revisions and/or amendments thereto (hereinafter “**Project**”).

Please take notice, pursuant to Public Resources Code (“**PRC**”) § 21167.5, that Petitioners intend to file a Verified Petition for Peremptory Writ of Mandate and Complaint for Declaratory and Injunctive Relief (“**Petition**”), under the provisions of the California Environmental Quality Act (“**CEQA**”), PRC §§ 21000, *et seq.*, against Respondent challenging the unlawful actions taken by Respondent in approving the Project. Petitioner may also file the Petition for violations of other state and/or local laws.

The Petition being filed will seek the following relief:

- A. For a writ of mandate commanding Respondent to vacate and withdraw the approval of the Project, and to require Respondent to comply with CEQA;
- B. For a temporary stay, temporary restraining order, and preliminary and permanent injunctions enjoining Respondent, and its agents, employees, officers and/or representatives, from taking any action to implement the Project, unless and until Respondent fully complies with CEQA;
- C. For a declaration of the rights and duties of the parties hereto, including but not limited to a declaratory judgment that Respondent violated its duty pursuant to CEQA;
- D. For Petitioners' fees and costs, including reasonable attorneys' fees and costs, as authorized by California Code of Civil Procedure section 1021.5 and any other applicable provisions of law; and
- E. For such other relief as the Court deems appropriate and just.

Sincerely,



---

Mitchell M. Tsai

Attorneys for Petitioners

## **PROOF OF SERVICE**

I, Steven Thong, declare as follows:

I am a resident of the State of California and am over the age of 18 years. My business address is: 139 South Hudson Avenue, Ste. 200, Pasadena, California 91101. On January 20, 2023, I served a copy of the foregoing document(s) entitled:

### **Notice of Intent to File Suit Under the California Environmental Quality Act**

on the following parties:

Celia Zavala, Executive Officer  
Los Angeles County Board of Supervisors  
Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 383  
Los Angeles, CA 90012  
Em: [executiveoffice@bos.lacounty.gov](mailto:executiveoffice@bos.lacounty.gov)

Supervisor Hilda Solis, District 1  
Los Angeles County Board of Supervisors  
Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 856  
Los Angeles, CA 90012  
Em: [firstdistrict@bos.lacounty.gov](mailto:firstdistrict@bos.lacounty.gov)

Supervisor Lindsey P. Horvath, District 3  
Los Angeles County Board of Supervisors  
Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 821  
Los Angeles, CA 90012  
Em: [ThirdDistrict@bos.lacounty.gov](mailto:ThirdDistrict@bos.lacounty.gov)

Supervisor Kathryn Barger, District 5  
Los Angeles County Board of Supervisors  
Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 869  
Los Angeles, CA 90012  
Em: [Kathryn@bos.lacounty.gov](mailto:Kathryn@bos.lacounty.gov)


Bruce Durbin  
Supervising Regional Planner  
Department of Regional Planning  
320 West Temple Street  
Los Angeles, CA 90012  
Em: [ordinance@planning.lacounty.gov](mailto:ordinance@planning.lacounty.gov)

Supervisor Holly J. Mitchell, District 2  
Los Angeles County Board of Supervisors  
Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 866  
Los Angeles, CA 90012  
Em: [HollyJMitchell@bos.lacounty.gov](mailto:HollyJMitchell@bos.lacounty.gov)

Supervisor Janice Hahn, District 4  
Los Angeles County Board of Supervisors  
Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 822  
Los Angeles, CA 90012  
Em: [FourthDistrict@bos.lacounty.gov](mailto:FourthDistrict@bos.lacounty.gov)

- by depositing a true and correct copy in a sealed envelope with the United States Postal Service with postage fully prepaid; and
- by electronic service, via electronic transmission, to the email addresses specified above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 20, 2023 in Los Angeles, California.

  
\_\_\_\_\_  
Steven Thong

P: (626) 314-3821  
F: (626) 389-5414  
E: [mitch@mitchtsailaw.com](mailto:mitch@mitchtsailaw.com)



**Mitchell M. Tsai**  
Attorney At Law

139 South Hudson Avenue  
Suite 200  
Pasadena, California 91101

---

**VIA ELECTRONIC & U.S. MAIL**

March 7, 2023

Celia Zavala, Executive Officer  
Los Angeles County Board of Supervisors  
Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 383  
Los Angeles, CA 90012  
Em: [executiveoffice@bos.lacounty.gov](mailto:executiveoffice@bos.lacounty.gov)

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Bruce Durbin  
Supervising Regional Planner  
Department of Regional Planning  
320 West Temple Street  
Los Angeles, CA 90012  
Em: [ordinance@planning.lacounty.gov](mailto:ordinance@planning.lacounty.gov)

Supervisor Holly J. Michell, District 2  
Los Angeles County Board of  
Supervisors  
Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 866  
Los Angeles, CA 90012  
Em: [HollyJMitchell@bos.lacounty.gov](mailto:HollyJMitchell@bos.lacounty.gov)

Supervisor Janice Hahn, District 4  
Los Angeles County Board of  
Supervisors  
Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 822  
Los Angeles, CA 90012  
Em: [FourthDistrict@bos.lacounty.gov](mailto:FourthDistrict@bos.lacounty.gov)

RE: Notice of Intent to File Suit Under the California Environmental Quality Act

Dear Sirs/Madams:

I am writing on behalf of United Keetoowah Band of Cherokee Indians in Oklahoma.

The above party is a public interest organization and Los Angeles County residents (hereinafter “**Petitioner**”). On behalf of Petitioner, this office is contacting you regarding the County of Los Angeles’ (“**Respondent**”) action on January 10, 2023 and all subsequent actions approving the ordinance amending Title 16 – Highways and Title 22 – Planning and Zoning of the Los Angeles County Code, including any revisions and/or amendments thereto (hereinafter “**Project**”).

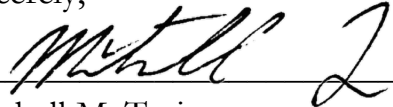
Please take notice, pursuant to Public Resources Code (“**PRC**”) § 21167.5, that Petitioner intend to file a Verified Petition for Peremptory Writ of Mandate and Complaint for Declaratory and Injunctive Relief (“**Petition**”), under the provisions of the California Environmental Quality Act (“**CEQA**”), PRC §§ 21000, *et seq.*, against Respondent challenging the unlawful actions taken by Respondent in approving the Project. Petitioner may also file the Petition for violations of other state and/or local laws.

The Petition being filed will seek the following relief:

- A. For a writ of mandate commanding Respondent to vacate and withdraw the approval of the Project, and to require Respondent to comply with CEQA;
- B. For a temporary stay, temporary restraining order, and preliminary and permanent injunctions enjoining Respondent, and its agents, employees, officers and/or representatives, from taking any action to implement the Project, unless and until Respondent fully complies with CEQA;
- C. For a declaration of the rights and duties of the parties hereto, including but not limited to a declaratory judgment that Respondent violated its duty pursuant to CEQA;

- D. For Petitioner’s fees and costs, including reasonable attorneys’ fees and costs, as authorized by California Code of Civil Procedure section 1021.5 and any other applicable provisions of law; and
- E. For such other relief as the Court deems appropriate and just.

Sincerely,



---

Mitchell M. Tsai

Attorneys for Petitioners

## **PROOF OF SERVICE**

I, Jonathan Montano, declare as follows:

I am a resident of the State of California and am over the age of 18 years. My business address is: 139 South Hudson Avenue, Ste. 200, Pasadena, California 91101. On March 7, 2023, I served a copy of the foregoing document(s) entitled:

### **Notice of Intent to File Suit Under the California Environmental Quality Act**

on the following parties:

Celia Zavala, Executive Officer  
Los Angeles County Board of Supervisors  
Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 383  
Los Angeles, CA 90012  
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Supervisor Hilda Solis, District 1  
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Bruce Durbin  
Supervising Regional Planner  
Department of Regional Planning  
320 West Temple Street  
Los Angeles, CA 90012  
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Supervisor Holly J. Mitchell, District 2  
Los Angeles County Board of Supervisors  
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500 West Temple Street, Room 866  
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Supervisor Janice Hahn, District 4  
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Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 822  
Los Angeles, CA 90012  
Em: [FourthDistrict@bos.lacounty.gov](mailto:FourthDistrict@bos.lacounty.gov)



- X   by depositing a true and correct copy in a sealed envelope with the United States Postal Service with postage fully prepaid; and
- X   by electronic service, via electronic transmission, to the email addresses specified above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 7, 2023 in Los Angeles, California.

/s/ Jonathan Montano

Jonathan Montano

**EXHIBIT B**

1 Mitchell M. Tsai (Cal. Bar No. 277156)  
2 Armita A. Ariano (Cal Bar No. 314434)  
3 Mitchell M. Tsai, Attorney at Law  
4 139 South Hudson Avenue, Suite 200  
5 Pasadena, California 91101  
6 V: (626) 314-3821, F: (626) 389-5414  
7 E: [mitch@mitchtsailaw.com](mailto:mitch@mitchtsailaw.com)  
8 E: [armita@mitchtsailaw.com](mailto:armita@mitchtsailaw.com)  
9 E: [info@mitchtsailaw.com](mailto:info@mitchtsailaw.com)

10 Attorneys for Plaintiffs and Petitioners Fiber First Los  
11 Angeles *et al* (Additional counsel on following page)

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF LOS ANGELES**

14 FIBER FIRST LOS ANGELES; MOTHERS ) CASE NO.:  
15 OF EAST LA; UNION BINACIONAL DE )  
16 ORGANIZACIONES DE TRABAJADORES ) **ELECTION REGARDING**  
17 MEXICANOS EXBRACEROS 1942-1964; ) **ADMINISTRATIVE RECORD**  
18 BOYLE HEIGHTS COMMUNITY )  
19 PARTNERS; UNITED KEETOOWAH BAND ) California Environmental Quality Act, Cal. Pub  
20 OF CHEROKEE INDIANS IN OKLAHOMA; ) Res. Code § 21000 *et seq*; Planning & Zoning  
21 CALIFORNIA FIRES & FIREFIGHTERS; ) Law, Cal. Government Code 65000 *et seq*;  
22 MALIBU FOR SAFE TECH; EMF SAFETY ) County Code §§ 22.02.050, 22.232.040,  
23 NETWORK; CALIFORNIANS FOR SAFE ) 22.244.030, and 22.244.040; Cal. Const. art. I, §  
24 TECHNOLOGY; 5G FREE CALIFORNIA; ) 7; Code of Civil Procedure §§ 1085, 1094.5  
25 and CHILDREN’S HEALTH DEFENSE, )  
26 ) Dep’t:  
27 Plaintiffs and Petitioners, )  
28 v. )  
29 )  
30 COUNTY OF LOS ANGELES; COUNTY OF )  
31 LOS ANGELES BOARD OF SUPERVISORS; )  
32 COUNTY OF LOS ANGELES REGIONAL )  
33 PLANNING COMMISSION; COUNTY OF )  
34 LOS ANGELES DEPARTMENT OF )  
35 REGIONAL PLANNING; COUNTY OF LOS )  
36 ANGELES DEPARTMENT OF PUBLIC )  
37 WORKS; and DOES 1–10, inclusive; )  
38 )  
39 Defendants, Respondents, and Real )  
40 Parties in Interest )  
41 )

1 Robert F. Kennedy, Jr.  
2 Chief Litigation Counsel, Children's Health  
3 Defense  
4 752 Franklin Ave., Suite 511  
5 Franklin Lakes, NJ 07417  
6 V: (202) 854-1310  
7 F: (512) 692-2522  
8 E: [rfk.assistant@childrenshealthdefense.org](mailto:rfk.assistant@childrenshealthdefense.org)  
9 (pending *pro hac vice*)

6 W. Scott McCollough  
7 McCollough Law Firm PC  
8 2290 Gatlin Creek Rd.  
9 Dripping Springs, Texas 78620  
10 (512) 633-3498  
11 V: (512) 633-3498  
12 F: (512) 692-2522  
13 E: [wsmc@dotlaw.biz](mailto:wsmc@dotlaw.biz)  
14 (pending *pro hac vice*)


Julian Gresser  
(Cal. Bar No. 50656)  
Law Office of Julian Gresser  
P.O. Box 30397  
Santa Barbara, CA 93130  
V: 805-563-3226  
E: [juliangresser77@gmail.com](mailto:juliangresser77@gmail.com)

1 TO THE HONORABLE COURT, RESPONDENTS AND REAL PARTIES:

2 PLEASE TAKE NOTICE THAT under the California Environmental Quality Act, Pub. Res.  
3 Code § 21167.6(b)(2), Plaintiffs and Petitioners Fiber First Los Angeles, Mothers of East LA, Union  
4 Binacional de Organizaciones de Trabajadores Mexicanos Exbraceros 1942-1964, Boyle Heights  
5 Community Partners, United Keetoowah Band of Cherokee Indians in California, California Fires &  
6 Firefighters, Malibu for Safe Tech, EMF Safety Network, Californians for Safe Technology, 5G Free  
7 California, and Children's Health Defense hereby elect to prepare the administrative record of  
8 proceedings in the referenced matter.

9 DATED: March 7, 2023

MITCHELL M. TSAI, ATTORNEY AT LAW

10  
11 By:   
12 MITCHELL M. TSAI  
13 Attorneys for Plaintiffs and Petitioners  
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**EXHIBIT C**

1 Mitchell M. Tsai (Cal. Bar No. 277156)  
2 Armita A. Ariano (Cal Bar No. 314434)  
3 Mitchell M. Tsai, Attorney at Law  
4 139 South Hudson Avenue, Suite 200  
5 Pasadena, California 91101  
6 V: (626) 314-3821, F: (626) 389-5414  
7 E: [mitch@mitchtsailaw.com](mailto:mitch@mitchtsailaw.com)  
8 E: [armita@mitchtsailaw.com](mailto:armita@mitchtsailaw.com)  
9 E: [info@mitchtsailaw.com](mailto:info@mitchtsailaw.com)

10 Attorneys for Plaintiffs and Petitioners Fiber First Los  
11 Angeles *et al* (Additional counsel on following page)

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF LOS ANGELES**

14 FIBER FIRST LOS ANGELES; MOTHERS ) CASE NO.:  
15 OF EAST LA; UNION BINACIONAL DE )  
16 ORGANIZACIONES DE TRABAJADORES ) **REQUEST FOR HEARING**  
17 MEXICANOS EXBRACEROS 1942-1964; )  
18 BOYLE HEIGHTS COMMUNITY ) California Environmental Quality Act, Cal. Pub  
19 PARTNERS; UNITED KEETOOWAH BAND ) Res. Code § 21000 *et seq*; Planning & Zoning  
20 OF CHEROKEE INDIANS IN OKLAHOMA; ) Law, Cal. Government Code 65000 *et seq*;  
21 CALIFORNIA FIRES & FIREFIGHTERS; ) County Code §§ 22.02.050, 22.232.040,  
22 MALIBU FOR SAFE TECH; EMF SAFETY ) 22.244.030, and 22.244.040; Cal. Const. art. I, §  
23 NETWORK; CALIFORNIANS FOR SAFE ) 7; Code of Civil Procedure §§ 1085, 1094.5  
24 TECHNOLOGY; 5G FREE CALIFORNIA; )  
25 and CHILDREN’S HEALTH DEFENSE, ) Dep’t:  
26 )  
27 Plaintiffs and Petitioners, )  
28 v. )  
29 )  
30 COUNTY OF LOS ANGELES; COUNTY OF )  
31 LOS ANGELES BOARD OF SUPERVISORS; )  
32 COUNTY OF LOS ANGELES REGIONAL )  
33 PLANNING COMMISSION; COUNTY OF )  
34 LOS ANGELES DEPARTMENT OF )  
35 REGIONAL PLANNING; COUNTY OF LOS )  
36 ANGELES DEPARTMENT OF PUBLIC )  
37 WORKS; and DOES 1–10, inclusive; )  
38 )  
39 Defendants, Respondents, and Real )  
40 Parties in Interest )  
41 )

1 Robert F. Kennedy, Jr.  
2 Chief Litigation Counsel, Children's Health  
3 Defense  
4 752 Franklin Ave., Suite 511  
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8 E: [rfk.assistant@childrenshealthdefense.org](mailto:rfk.assistant@childrenshealthdefense.org)  
9 (pending *pro hac vice*)

6 W. Scott McCollough  
7 McCollough Law Firm PC  
8 2290 Gatlin Creek Rd.  
9 Dripping Springs, Texas 78620  
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12 F: (512) 692-2522  
13 E: [wsmc@dotlaw.biz](mailto:wsmc@dotlaw.biz)  
14 (pending *pro hac vice*)

Julian Gresser  
(Cal. Bar No. 50656)  
Law Office of Julian Gresser  
P.O. Box 30397  
Santa Barbara, CA 93130  
V: 805-563-3226  
E: [juliangresser77@gmail.com](mailto:juliangresser77@gmail.com)



1 TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:  
2 NOTICE IS HEREBY GIVEN that, pursuant to Public Resources Code § 21167.4 and Los  
3 Angeles County Superior Court Local Rule 3.232(h), Petitioners and Plaintiffs Fiber First Los Angeles  
4 together with Mothers of East LA, Union Binacional de Organizaciones de Trabajadores Mexicanos  
5 Exbraceros 1942-1964, Boyle Heights Community Partners, United Keetoowah Band of Cherokee  
6 Indians in California, California Fires & Firefighters, Malibu for Safe Tech, EMF Safety Network,  
7 Californians for Safe Technology, 5G Free California, and Children's Health Defense (collectively  
8 "Petitioners") request a hearing on the merits of their Verified Petition for Peremptory Writ of Mandate  
9 and Complaint for Declaratory and Injunctive Relief ("Petition"), which Petition alleges violations of,  
10 inter alia, the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 *et seq.*

11 This request is being filed with the Court and served on the parties. Following the filing of this  
12 Request for Hearing and Notice of Request, any party may apply to the Court to establish a briefing  
13 schedule and hearing date for the hearing. *Leavitt v. County of Madera* (2004) 123 Cal.App.4th 1502,  
14 1514-23. The hearing date, time, and place, and the briefing schedule for the hearing are to be  
15 established by the Court following such application by any party. *Id.*

16 DATED: March 7, 2023

MITCHELL M. TSAI, ATTORNEY AT LAW

17  
18 By:   
19 MITCHELL M. TSAI  
Attorneys for Plaintiffs and Petitioners

**EXHIBIT D**

1 Mitchell M. Tsai (Cal. Bar No. 277156)  
2 Naira Soghatyan (Cal. Bar No. 309599)  
3 Reza A. Mohamadzadeh (Cal. Bar No. 332444)  
4 Mitchell M. Tsai Law Firm  
5 139 South Hudson Avenue, Suite 200  
6 Pasadena, California 91101  
7 T: (626) 314-3821, F: (626) 389-5414  
8 E: [mitch@mitchtsailaw.com](mailto:mitch@mitchtsailaw.com)  
9 E: [naira@mitchtsailaw.com](mailto:naira@mitchtsailaw.com)  
10 E: [reza@mitchtsailaw.com](mailto:reza@mitchtsailaw.com)  
11 E: [info@mitchtsailaw.com](mailto:info@mitchtsailaw.com)

12 Attorneys for Plaintiffs and Petitioners Fiber First Los  
13 Angeles *et al.* (Additional counsel on following page)

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **FOR THE COUNTY OF LOS ANGELES**

16 FIBER FIRST LOS ANGELES; MOTHERS ) CASE NO.: 23STCP00750  
17 OF EAST LA; UNION BINACIONAL DE )  
18 ORGANIZACIONES DE TRABAJADORES ) **NOTICE TO ATTORNEY GENERAL**  
19 MEXICANOS EXBRACEROS 1942-1964; )  
20 BOYLE HEIGHTS COMMUNITY ) California Environmental Quality Act, Cal. Pub  
21 PARTNERS; UNITED KEETOOWAH BAND ) Res. Code § 21000 *et seq.*; Planning & Zoning  
22 OF CHEROKEE INDIANS IN OKLAHOMA; ) Law, Cal. Government Code § 65000 *et seq.*;  
23 CALIFORNIA FIRES & FIREFIGHTERS; ) County Code §§ 22.02.050, 22.232.040,  
24 MALIBU FOR SAFE TECH; EMF SAFETY ) 22.244.030, and 22.244.040; Cal. Const. art. I,  
25 NETWORK; CALIFORNIANS FOR SAFE ) § 7; Code of Civil Procedure §§ 1085, 1094.5  
26 TECHNOLOGY; 5G FREE CALIFORNIA; )  
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1 Robert F. Kennedy, Jr.  
2 Chief Litigation Counsel, Children's Health  
3 Defense  
4 752 Franklin Ave., Suite 511  
5 Franklin Lakes, NJ 07417  
6 P: (202) 854-1310  
7 F: (512) 692-2522  
8 E: [rfk.assistant@childrenshealthdefense.org](mailto:rfk.assistant@childrenshealthdefense.org)  
9 (pending *pro hac vice*)

6 W. Scott McCollough  
7 McCollough Law Firm PC  
8 2290 Gatlin Creek Rd.  
9 Dripping Springs, Texas 78620  
10 (512) 633-3498  
11 P: (512) 633-3498  
12 F: (512) 692-2522  
13 E: [wsmc@dotlaw.biz](mailto:wsmc@dotlaw.biz)  
14 (pending *pro hac vice*)

Julian Gresser  
(Cal. Bar No. 50656)  
Law Office of Julian Gresser  
P.O. Box 30397  
Santa Barbara, CA 93130  
P: 805-563-3226  
E: [juliangresser77@gmail.com](mailto:juliangresser77@gmail.com)

1 To the Attorney General of the State of California:


2 PLEASE TAKE NOTICE, under Public Resources Code § 21167.7 and Code of Civil  
3 Procedure § 388, that on November 2, 2023, Plaintiffs and Petitioners filed a FIRST AMENDED  
4 VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY  
5 AND INJUNCTIVE RELIEF against COUNTY OF LOS ANGELES, and DOES 1-10 (collectively,  
6 “Defendants, Respondents, and Real Parties in Interest”) in the Los Angeles County Superior Court.  
7 The Plaintiffs and Petitioners allege, inter alia, violations of the California Environmental Quality Act  
8 (“CEQA”), Public Resources Code § 21100, *et seq.*, Planning & Zoning Law, Cal. Government Code  
9 65000 *et seq.*; County Code §§ 22.02.050, 22.232.040, 22.244.030, and 22.244.040; Cal. Const. art. I,  
10 § 7; Code of Civil Procedure §§ 1085, 1094.5

11 A copy of the First Amended Petition is attached as Exhibit A.

12 DATED: November 2, 2023

MITCHELL M. TSAI LAW FIRM

13  
14 By: \_\_\_\_\_

  
15 MITCHELL M. TSAI  
16 NAIRA SOGHBATYAN  
17 REZA S. MOHAMADZADEH

18 Attorneys for Petitioners and Plaintiffs  
19 FIBER FIRST LOS ANGELES, *et al.*

**PROOF OF SERVICE**

I, Steven Thong declare that:

I am a citizen of the United States and work in Los Angeles County, California. I am over the age of eighteen years and am not a party to the within entitled action. My business address is: 139 S. Hudson Ave., Suite 200, Pasadena, California 91101. I served this list of persons with the following document(s) on November 2, 2023:

**NOTICE TO ATTORNEY GENERAL**


The document(s) was served on:

CEQA Coordinator  
Office of the Attorney General  
Environment Section  
1300 "I" Street  
Sacramento, CA 95814-2919  
Em: [CEQA@doj.ca.gov](mailto:CEQA@doj.ca.gov)

X by electronic service, via either electronic transmission or notification consistent with California Code of Civil Procedure 1010.6.

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

Executed this November 2nd, 2023, at Pasadena, California.

  
\_\_\_\_\_  
Steven Thong

1 **PROOF OF SERVICE**

2 I, Steven Thong declare that:

3  
4 I am a citizen of the United States and work in Los Angeles County, California. I am over the  
5 age of eighteen years and am not a party to the within entitled action. My business address is: 139  
6 South Hudson Avenue, Suite 200, Pasadena, California 91101. I served this list of persons with the  
7 following document(s) on November 2, 2023:

8 **FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT  
9 FOR DECLARATORY AND INJUNCTIVE RELIEF**


10 The document(s) was served on:

11 Roland Trinh  
12 Office of the County Counsel  
13 500 West Temple Street #648  
14 Los Angeles, CA 90012  
15 Em: [rtrinh@counsel.lacounty.gov](mailto:rtrinh@counsel.lacounty.gov)

16 Gail Karish  
17 Alisha Winterswyk  
18 Ali V. Tehrani  
19 Patricia Ursea  
20 Best Best & Krieger LLP  
21 18101 Von Karman Avenue, Suite 1000  
22 Irvine, CA 92612  
23 Em: [gail.karish@bbklaw.com](mailto:gail.karish@bbklaw.com)  
24 Em: [alisha.winterswyk@bbklaw.com](mailto:alisha.winterswyk@bbklaw.com)  
25 Em: [ali.tehrani@bbklaw.com](mailto:ali.tehrani@bbklaw.com)  
26 Em: [patricia.ursea@bbklaw.com](mailto:patricia.ursea@bbklaw.com)

27 X by electronic service, via either electronic transmission or notification consistent with  
28 California Code of Civil Procedure 1010.6.

29 I declare under penalty of perjury, according to the laws of the State of California, that the  
30 foregoing is true and correct. Executed this November 2nd, 2023, at Pasadena, California.

31  
32   
33 \_\_\_\_\_  
34 Steven Thong