

1 GLORIA D. SMITH (#200824)  
2 **THE LAW OFFICES OF GLORIA D. SMITH**  
3 48 Rosemont Place  
4 San Francisco, CA 94103  
5 Telephone (415) 308-9124  
6 gloria@gsmithlaw.com  
7 Attorneys for Petitioners/Plaintiffs

8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF ALAMEDA**

10 CALIFORNIA NURSES ASSOCIATION,  
11 Petitioners,  
12 vs.  
13 COUNTY OF ALAMEDA,  
14 Respondents.

Case No.:

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

15 SUTTER HEALTH, INC.; DOES 1-10,  
16 Real Parties In Interest.

(California Environmental Quality Act,  
Pub. Res. Code § 21000, *et seq.*; Code  
of Civil Procedure §§ 1094.5, 1085.)

18 **INTRODUCTION**

19 1. This is a case of an agency rushing to approve a large hospital project, and in  
20 so doing, utterly failing to fully investigate and inform the public of all of the far-  
21 reaching and serious environmental effects associated with its hasty actions. The  
22 Alameda County Board of Supervisors approved construction of the Sutter Medical  
23 Center's Castro Valley Replacement Hospital and associated demolition of the  
24 existing Eden Medical Center and Laurel Grove Rehabilitation hospital at the same  
25 site ("Project").  
26

27 **VERIFIED PETITION FOR WRIT OF MANDATE**

1 2. At first glance, the County’s approval appears to be a laudable step. However,  
2 upon closer inspection, it becomes clear that the County failed to take the time to  
3 mitigate the Project’s significant, and in some cases, undisclosed, environmental  
4 impacts on public health and safety, traffic, air quality, and public services in direct  
5 violation of the California Environmental Quality Act (“CEQA”). Instead, the  
6 Alameda County Board of Supervisors approved the Project and a final environmental  
7 impact report (“FEIR”) for the Project on June 9, 2009.

8 3. In written comments and oral testimony, approximately 100 member members  
9 of the public, Petitioner California Nurses Association/National Nurses Organizing  
10 Committee (“CNA” or “Petitioner”) and CNA’s experts detailed for the County the  
11 EIR’s numerous Project deficiencies and unmitigated impacts. The County’s EIR  
12 violated CEQA in the following ways:

13 4. First, the FEIR is legally deficient because it omitted a full analysis of  
14 potentially significant impacts caused by soil and ground water contamination at the  
15 Project site. Despite the County being on full notice of problems with contamination  
16 from the start, it still omitted important analyses from the EIR. For example, in  
17 response to the County’ notice of preparation of a CEQA document, the earliest stage  
18 of the County’s environmental review, the California Department of Toxic Substance  
19 Control (“DTSC”) strongly recommended a thorough assessment of past land uses at  
20 the site, and further recommended that the County conduct soil and/or ground water  
21 sampling. DTSC also expressed concern that the County had failed to disclose  
22 whether lead-based paint and asbestos-containing material would require abatement.

23 5. CNA’s expert also requested soil and groundwater sampling. The site is  
24 contaminated due to current and former leaking underground storage tanks. CNA  
25 also provided evidence of health and safety impacts from organicchlorine pesticide  
26

1 residue given the site has a history of past use as orchards. These impacts may  
2 present health and safety risks to construction workers.

3 6. Rather than conducting ground water and soil sampling, Sutter Health simply  
4 provided a written environmental site assessment (“ESA”) to the County based on  
5 document review and superficial site reconnaissance. To date, there is no evidence  
6 the County has required proper groundwater and soil sampling at the site.

7 7. Second, the County violated CEQA because the FEIR lacked mitigation of the  
8 Project’s significant impacts on traffic circulation and noise before adopting a  
9 statement of overriding considerations. In so doing, the County failed to impose all  
10 feasible mitigation before it approved the Project with significant unavoidable impacts  
11 on traffic circulation and noise. Worse, the FEIR’s mitigation strategy for traffic is  
12 legally deficient under CEQA.

13 8. Third, the County disclosed a new, significant impact for the first time in the  
14 FEIR which was omitted from the DEIR. The impact of construction cranes  
15 obstructing the flight paths of helicopters was not mentioned at all in the DEIR. Yet,  
16 the FEIR cursorily disclosed this significant impact and then provided mitigation  
17 measures not available during the notice and comment phase of the CEQA process.

18 9. This omission is particularly egregious because Caltrans’ Division of  
19 Aeronautics raised this exact impact in CEQA comments six months before the  
20 County issued the DEIR. The Caltrans’ Aeronautics Division recommended that the  
21 County identify construction-related hazards which may penetrate helicopters’ flight  
22 path. The County ignored this impact until the FEIR.

23 10. Fourth, the FEIR omitted a proper investigation and analysis of the significant  
24 impacts associated with the closures of the existing Eden Medical Center and Laurel  
25 Grove community-based hospitals, together the two facilities have provided  
26 accessible acute care and related services to residents of the Castro Valley for more  
27

1 than 50 years. The Eden Medical Center provides care irrespective of a patient's  
2 economic class or hospital reimbursement status as a Medicare, Medi-Cal or other  
3 government health program beneficiary.

4 11. Closure of Eden Medical Center will potentially eliminate care for  
5 approximately 6,000 patients annually ineligible for private-room services. The  
6 Project would also eliminate existing acute psychiatric hospital services and  
7 rehabilitation health care currently provided by the two hospitals. Elimination of  
8 these services will severely burden remaining community health care facilities, which  
9 in turn will adversely affect public health, burden existing public services, increase  
10 traffic and erode air quality as patients travel further to find medical care.

11 12. The new replacement hospital will serve as an exclusive, regional luxury  
12 hospital with private patient rooms available only to those patients with private health  
13 care plans.

14 13. Finally, and related, the County failed to investigate and disclose the  
15 potentially significant impacts associated with the closure of Sutter Health's Eden San  
16 Leandro hospital.

17 14. Both the County and Sutter Health recognize that the two Eden hospitals,  
18 Castro Valley and San Leandro, are part of one "medical center." Indeed, According  
19 to Sutter Health, "Eden is a full-service, 302-bed medical center with campuses in  
20 Castro Valley and San Leandro, serving the health care needs of residents of Alameda  
21 County and surrounding communities."

22 15. CEQA requires lead agencies to analyze, disclose and mitigate a proposed  
23 project's potentially significant impacts on public services. Despite full notice of  
24 Sutter Health's intention to close San Leandro hospital, the County ignored the  
25 potentially serious impacts the closure of three community hospitals will have on  
26 Alameda County. These hospitals have historically served all patients regardless of

1 their insurance status. The loss of these hospitals will disproportionately impact the  
2 remaining facilities that do not exclude government health program beneficiaries.  
3 These impacts must be investigated, disclosed and mitigated to the extent feasible.  
4 16. In all of these ways, the FEIR shows that the County failed to address all of  
5 the Project's potentially significant and far-reaching impacts, and failed to fully  
6 mitigate these and other impacts. It is just this type of rushed decision making that  
7 CEQA prohibits.

8 **PARTIES**

9 **California Nurses Association/National Nurses Organizing Committee**

10 17. CNA is one of California's oldest nonprofit social welfare institutions.  
11 Founded in 1903, today CNA represents over 80,000 members throughout the  
12 country. CNA has represented its members on nursing and public health issues  
13 before municipal, county, and state bodies for over 100 years. CNA members provide  
14 professional care for patients in medical facilities in Alameda County and Castro  
15 Valley. CNA members and their families have a direct and substantial interest in  
16 assuring that scarce health care resources are devoted to providing safe and quality  
17 care to all persons, and that new hospitals are developed, constructed and operated in  
18 a manner that will serve the public health.

19 18. In addition, CNA members are concerned about safe land use and sustainable  
20 development in Alameda County. CNA members live in the communities that suffer  
21 the impacts of environmentally detrimental and poorly planned projects. Ill-  
22 conceived development, in turn, may jeopardize human health and safety. This is  
23 particularly true here given the potential for soil and groundwater contamination at the  
24 site which stands to put site workers at risk.

25 19. Finally, CNA members suffer the health and safety impacts associated with  
26 poorly conceived projects land use decisions, such as the closure of three important

1 community-based hospitals. CNA members suffer the ill effects of air pollution and  
2 struggle with traffic congestion similar to or more frequently than other members of  
3 the community. Petitioner therefore has a direct and beneficial interest in the  
4 County's compliance with CEQA.

5 **County of Alameda**

6 20. Respondent County of Alameda ("County") is the lead agency responsible for  
7 preparation of environmental documents that inform the public, other agencies and  
8 decision makers on a proposed project, its impacts, and if necessary, evaluates  
9 mitigation measures and/or alternatives to lessen or avoid any significant  
10 environmental impacts.

11 **Alameda County Board of Supervisors**

12 21. Respondent Alameda County Board of Supervisors ("Board") is the duly  
13 elected legislative body of Respondent Alameda County. As the decision making  
14 body for the Project, the Board is charged with responsibilities under CEQA such as  
15 certifying a final CEQA document and granting the various approvals necessary for  
16 the Project to proceed.

17 **Sutter Health, Inc.**

18 22. Real Party in Interest is Sutter Health, Inc. ("Sutter Health") is a California  
19 corporation that controls and operates a multi-provider integrated health care system  
20 which markets and provides commercial health care services in more than 100  
21 northern California communities. Sutter Health-controlled affiliates and subsidiaries  
22 include acute care and psychiatric hospitals, medical foundations and groups, skilled  
23 nursing facilities, ambulatory care clinics, home health agencies and a variety of other  
24 specialized health care service providers and health care related businesses.

25 23. Operating a hospital in the State of California is a conditional privilege granted  
26 under fixed-term, renewable health facility licenses issued by the California

1 Department of Health Care Services pursuant to its statutory authority to license and  
2 regulate hospital operations in this state. (Health & Safety Code §§ 1251, 1254, 1256,  
3 1298.)

4 24. Real Party Sutter Health controls and operates, either directly or through a  
5 controlled affiliate or subsidiary, approximately thirty-eight licensed acute care  
6 hospitals in Northern California, within the meaning of the Health & Safety Code.  
7 Specifically, Sutter Health controls and operates the subject hospitals, Eden Medical  
8 Center, San Leandro Hospital and will operate the Sutter Medical Center's Castro  
9 Valley Replacement Hospital.

10 **Does 1 through 10**

11 25. CNA is unaware of the true names and capacities of Respondents DOES 1  
12 through 10, and sue such Respondents by fictitious names. Petitioner is informed and  
13 believes, and based on such information and belief alleges, that the fictitiously named  
14 Respondents are also responsible for the actions described in this Petition. When the  
15 true identities and capacities of these Respondents have been determined, CNA will  
16 amend this Petition to insert such identities and capacities.

17 **JURISDICTION AND VENUE**

18 26. This Court has jurisdiction over the matters alleged herein pursuant to Public  
19 Resources Code sections 21168 and 21168.5, Government Code sections 6258 and  
20 6259, and Code of Civil Procedure sections 526, 527, 1060, 1085, and 1094.5.

21 27. This Court has venue because the County of Alameda and the Alameda County  
22 Board of Supervisors are deemed to reside in Alameda County. Venue is proper court  
23 pursuant to Code of Civil Procedure sections 393, 394.

24 28. CNA has complied with Public Resources Code section 21167.6 and Code of  
25 Civil Procedure section 389.6 by serving a copy of this petition on the Attorney  
26 General. (Attachment A)

27 **VERIFIED PETITION FOR WRIT OF MANDATE**

1 29. CNA has complied with Public Resources Code section 21167.5 by prior  
2 service of a letter upon Alameda County and Sutter Health indicating its intent to file  
3 this petition. (Attachment B)

4 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

5 30. Petitioner has performed all conditions precedent to this filing and has  
6 participated in the administrative process to the extent such participation was  
7 permitted, and thus has fully exhausted its administrative remedies.

8 31. The County has taken final agency action with respect to the subject Project  
9 approvals. The County has a mandatory duty to comply with CEQA prior to  
10 undertaking the discretionary approvals at issue in this lawsuit.

11 32. CNA possesses no other remedy to challenge the County's abuse of discretion  
12 other than by means of this lawsuit.

13 **RELIEF REQUESTED**

14 33. CNA seeks a peremptory writ of mandate, temporary and permanent injunctive  
15 relief, costs, and attorneys' fees.

16 **IRREPARABLE HARM**

17 34. CNA has no plain, speedy, or adequate remedy in the ordinary course of law.  
18 If the County's decisions regarding the Project are effectuated, then Petitioner will be  
19 irreparably harmed. No money damages or other legal remedy could adequately  
20 compensate CNA for that harm.

21 **PUBLIC BENEFIT**

22 35. This action involves enforcement of an important right affecting the public  
23 interest. Petitioner will confer a substantial benefit to the citizens of the County, the  
24 unincorporated area in which the proposed Project would be located, as well as on  
25 citizens of the State of California generally, and therefore will be entitled to an award  
26

27 **VERIFIED PETITION FOR WRIT OF MANDATE**

1 of reasonable attorneys' fees pursuant to section 1021.5 of the Code of Civil  
2 Procedure.

3 **STATEMENT OF FACTS**

4 **The Sutter Medical Center Replacement Hospital Project**

5 36. Real Party in Interest, Sutter Health filed a development application with the  
6 County to construct the replacement hospital on April 2, 2008. The Project site is  
7 located on 18.97 acres in the unincorporated Castro Valley area of Alameda County,  
8 California. The Project is bounded by Lake Chabot Road to the east, Renton Way and  
9 Congress Way to the south, Stanton Avenue to the west, and Somerset Avenue to the  
10 north, with residential, commercial and medical uses neighboring the Project site  
11 immediately north and south within this block.

12 37. The Project would include a new six- to seven-story, 230,000 square feet  
13 general in-patient, diagnostic and acute care facility containing approximately 130  
14 private, single-patient room beds. The Project would also include construction of a  
15 four-story, 80,000 square foot medical office building.

16 38. The Project would result in the demolition of the existing six-story, 235,500  
17 square foot, 178-bed, Eden Medical Center Hospital which does not meet State  
18 earthquake-resistant standards for hospitals. The Project would also result in  
19 demolition of an existing 20,000 square foot medical office building, the 49,250  
20 square foot Laurel Grove Rehabilitation hospital and the Pine Cone apartment  
21 complex, and result in the relocation of an existing helicopter landing site (helistop).

22 39. The Project would establish a Planned Development district for the site, and  
23 require amendments to the Castro Valley Plan and Castro Valley Central Business  
24 District Specific Plan to: expand existing land use designation and boundaries to  
25 include the entire site; modify policies to support the Project and land uses.

1 **The County's CEQA Process**

2 40. The County issued a notice of preparation of a CEQA document on May 5,  
3 2008, and a draft environmental impact report (DEIR) on December 4, 2008. The  
4 County responded to comments and issued a final environmental impact report  
5 (FEIR) on March 13, 2009. Public hearings were held on December 15, 2008,  
6 January 5 and May 12, and June 9, 2009.

7 41. In response to the County's CEQA notice of preparation, Caltrans, Caltrans'  
8 Division of Aeronautics, the Department of Toxic Substances Control, the East Bay  
9 Municipal Utility District, Alameda County Congestion Management Agency and the  
10 Alameda County Public Works Agency all submitted detailed substantive comments.

11 42. Petitioner CNA submitted written comments and testified before the County on  
12 May 5, 7, 12, and June 5, and 9, 2009. In addition, approximately 100 members of  
13 the public provided oral comments at the County's various hearings. The Project  
14 generated intense public interest.

15 43. Petitioner CNA commented on numerous factual and legal inadequacies in the  
16 EIR. Nevertheless, the County's rejected CNA's request that it analyze the  
17 potentially significant impacts on site contamination, traffic circulation and public  
18 services, among other issues, associated with the new hospital and the closure of the  
19 existing Eden Castro Valley, Laurel Grove and San Leandro facilities.

20 44. In each set of written and oral comments, CNA respectfully requested that the  
21 County properly analyze the public's concerns in a revised EIR recirculated for full  
22 review.

23 45. At the May 12, 2009 Board of Supervisors' meeting, CNA members, other  
24 organizations and individuals testified in opposition of certification of the Project EIR  
25 on the grounds that the EIR failed to adequately address the Project's numerous  
26 significant impacts in violation of the requirements of CEQA. Representatives for the

1 applicant, Sutter Health, asserted that any delay in approval of the Project would  
2 jeopardize its ability meet a 2013 deadline with which existing hospitals must comply  
3 with seismic safety standards proscribed by S.B.1953. The County Board of  
4 Supervisors voted to approve the Project entitlements and to certify the Project EIR.

5 46. Petitioner and members of the public reiterated their concerns with the Project  
6 at the final public hearing on June 9, 2009 to no avail.

7 47. Petitioner is informed and believes, and therefore alleges, that on June 12,  
8 2009, the County filed a Notice of Determination for the Project.

### 9 **Site Contamination Impacts**

10 48. CNA's expert Mr. Matt Hagemann provided expert opinion that diesel and  
11 associated hydrocarbon chemicals may be contaminating groundwater and soil at the  
12 Project site. According to a 2008 environmental site assessment, removal of four  
13 leaking underground storage tanks occurred in 1991 and 1994.

14 49. In 1995, the San Francisco Bay Regional Water Quality Control Board ("Water  
15 Board") and the Alameda County Department of Environmental Health ("ACDEH")  
16 collected groundwater samples. In 1996, ACDEH published a site assessment finding  
17 that the residual levels of diesel components were a low risk.

18 50. Importantly, the ACDEH made this finding before the published environmental  
19 screening levels for contaminants in soil. In 2008, the Water Board adopted a  
20 screening limit protective of human health at 83 parts per million ("ppm") where  
21 ground water is shallow and is a potential source of drinking water. According to the  
22 Project's environmental site assessment, the concentration of diesel in soil at the  
23 Project site is 1,500 ppm, with benzene, toluene, ethylbenzene, and xylenes (or  
24 BTEX) detected as well.

25 51. Contamination levels could well be higher because the excavation was  
26 reportedly hampered by the proximity of the existing hospital building and the

1 presence of a concrete pad beneath the former tank. In other words, the testing  
2 method was suboptimal.

3 52. The Water Board reported ground water at the Project site at only 8 feet below  
4 the surface. The Water Board identified this particular ground water source as  
5 potential drinking water for Castro Valley. Whether ground water is contaminated  
6 due to underground storage tanks must be investigated now before workers risk  
7 exposure, and well before Project construction precludes necessary sampling and  
8 clean-up.

9 53. In addition to the potential for contaminated drinking water, the presence of  
10 diesel contaminated soil may pose a risk to site workers during Project construction.  
11 CNA's expert recommended a program to sample soil to ensure the protection of  
12 groundwater resources, and construction worker safety. Such testing is all the more  
13 essential because the FEIR failed to investigate, disclose and mitigate potentially  
14 significant impacts associated with demolition of a new 20,000 gallon underground  
15 storage tank.

16 54. The 1996 ACDEH site assessment expressly required the property owner to  
17 promptly notify the agency of any changes in land use, structural configuration or site  
18 activities. Real Party, Sutter Health, failed to affirmatively report the proposed  
19 changes to ACDEH as required. No documented sampling of groundwater or soil  
20 contamination has occurred in fourteen years.

21 55. Related, the County omitted potential pesticide contamination due to the site's  
22 former use as orchards. The record shows that the Project site was part of a rural area  
23 including residential ranch complexes, chicken farming, and other agricultural uses  
24 prior to the initial construction of the hospital in 1954.

25 56. CNA's expert reviewed aerial photographs from 1939 and 1946 photographs  
26 depicting orchards at the site. Prior agricultural use may indicate the use of

1 organochlorine pesticides commonly applied at the time such as DDT, DDE, and  
2 toxaphene. Organochlorine pesticides are known to be recalcitrant (long lasting) in  
3 soils and may persist for many decades in soil at concentrations.

4 57. Unidentified and unmitigated pesticide residue may pose a hazard to  
5 construction workers through dermal contact and ingestion of dust. Organochlorine  
6 pesticides are concentrated in fatty tissues and are associated with cancer,  
7 neurological and liver problems, and birth defects.

8 58. The FEIR did not identify the former orchards, and did not consider the  
9 potential former use of organochlorine pesticides at the site. Potential organochlorine  
10 pesticide use, coupled with the documented hydrocarbon contamination of the soils  
11 would further substantiate the need for soil sampling to ensure construction worker  
12 safety. CEQA required the County to investigate and disclose these potentially  
13 significant impacts.

14 59. CNA's expert showed that Project construction activities may result in  
15 significant risks to workers at the site and contaminant releases. CEQA required the  
16 County to fully disclose all aspects of hazardous materials and contamination in the  
17 DEIR and propose adequate mitigation for public review and comment. Instead, the  
18 FEIR omitted meaningful disclosure an analysis of impacts, and illegally deferred  
19 proposing mitigation of these significant impact.

20 60. In the case where comments from experts or sister agencies disclose new or  
21 conflicting data or opinions raising concern that the lead agency may not have fully  
22 evaluated the project, such comments may not simply be ignored. (*People v. County*  
23 *of Kern* (1974) 39 Cal.App.3d 830, 841-842.) Here the CEQA process revealed  
24 conflicts between the County's environmental site assessment, other agencies and/or  
25 expert testimony.

## Traffic Circulation Impacts

61. The project will cause significant and unavoidable cumulative impacts to traffic circulation for the following intersections:

- Castro Valley Boulevard and Strobridge Avenue
- Strobridge Avenue and Stanton Avenue
- Strobridge Avenue and the I-580 westbound off-ramp
- Strobridge Avenue and the I-580 eastbound ramps at Gary Drive

62. The FEIR omitted adequate measures to mitigate the traffic impacts at any of the subject roadways. The FEIR accepted these impacts as significant and unavoidable and proposed a statement of overriding considerations.

63. In comments on the EIR, CNA submitted expert opinion by professional engineer Tom Brohard, proposing measures to mitigate the project's traffic impacts. The County rejected Mr. Brohard's feasible mitigation to mitigate traffic impacts.

64. CNA's expert also demonstrated how the County's traffic mitigation program was deficient. Aside from several minor physical improvements, the mitigation strategy for each of the identified intersection-related impacts was to impose traffic impact fees and fair share fees. Or, the County proposed to pay for and install the mitigation measure itself.

65. The FEIR's traffic mitigation strategy violates CEQA, because the statute requires lead agencies to show that the proposed mitigation measures will be effective, enforceable and implemented in a timely manner.

66. The FEIR's fee program lacks a date-certain for implementation, and lacks any showing that the fees will actually result in traffic reduction measures. CEQA requires more. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4<sup>th</sup> 1173, 1188-89 (Fair share mitigation fees must be part of a reasonable, enforceable plan reasonably tied to the actual mitigation of traffic impacts at issue).)

1 67. Finally, the County's switch in the FEIR to pay for traffic signals itself rather  
2 than requiring the Project Sponsor to mitigate its own project-induced impacts was  
3 likewise unjustifiable. Given severe budgetary constraints, there is no evidence in the  
4 record these measures will ever be implemented.

5 68. A public agency may not rely on mitigation measures of uncertain efficacy or  
6 feasibility. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d  
7 692, 727 (finding groundwater purchase agreement inadequate mitigation measure  
8 because no record evidence existed that replacement water was available).)  
9 Mitigation measures must be fully enforceable through permit conditions, agreements  
10 or other legally binding instruments. (CEQA Guidelines, § 15126.4(a)(2).)

11 **Significant Impacts from Construction Cranes Obstructing Helicopters**

12 69. The impact of construction cranes obstructing the flight paths of helicopters  
13 was not disclosed in the DEIR. This impact along with proposed mitigation did not  
14 arise until the FEIR, thereby precluding the public from reviewing and commenting  
15 on this significant impact.

16 70. The FEIR disclosed that the height of construction cranes may well exceed the  
17 200-foot trigger requiring notification to the Federal Aviation Administration and  
18 requiring a variance for the Caltrans Division of Aeronautics.

19 71. Project construction will take between 4 and 5 years. According to the FEIR,  
20 cranes will extend into the helicopters' flight path causing the hospital to notify all  
21 helicopter operators in advance of the date and time of flight path closures.

22 72. The FEIR's cursory review and disclosure of this significant impact at the end  
23 of the environmental review process deprived the public of the opportunity to review  
24 the safety problem and comment on the County's cursorily -proposed mitigation of  
25 alerting helicopter pilots of the obstruction and the proposal to mark the cranes with  
26 red lights at night and orange and white flags during the day.

1 73. Disclosure of a new significant impact is an automatic trigger for recirculation  
2 of the document. (CEQA Guidelines, §15088.5(a)(1) (significant new information  
3 requiring recirculation includes disclosures showing that a new significant  
4 environmental impact requires mitigation..))

5 **Impacts on Public Services: Failure to Fully Describe the Project**

6 74. The EIR failed to describe the full scope of the Project. Despite public and  
7 agency comments concerning the planned closure of three community based Eden  
8 facilities, Castro Valley, Laurel Grove and San Leandro hospitals, the EIR omitted  
9 any discussion of the potentially significant impacts on public services resulting from  
10 these closures.

11 75. Under CEQA, impacts on service levels and performance standards at public  
12 facilities is a potentially significant impact that must be investigated, disclosed and  
13 mitigated in an EIR. (CEQA Guidelines, Section XIII.) The other hospital closures  
14 will have impacts on public services, and is particular alarming given California’s  
15 current fiscal crisis.

16 76. According to Sutter Health:

17 “All patients depend on their local community hospitals for critical  
18 health care services, regardless of their ability to pay. But many  
19 hospitals are facing multi-billion dollar budget cuts and are  
20 dangerously close to shutting their doors.

21 California is facing a severe budget shortfall – now estimated at \$16  
22 billion. To address this massive budget deficit, the Governor  
23 declared a “fiscal emergency,” and signed a measure that delays  
24 and reduces Medi-Cal payments to hospitals by 10 percent. This  
25 represents a total cut of \$500 million to hospitals throughout the  
26 state, and a potential cut of \$1.3 million to Eden Medical Center.  
27 The payment deferrals and cuts will take effect on July 1 [2008]  
28 and will impact the 2,500 Medi-Cal patients that Eden serves.

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

To make matters worse, [former] President Bush has proposed a \$94.4 billion cut from Medicare and another \$18 billion cut from the Medicaid program over the next five years. This could result in \$11 billion in losses for California’s hospitals and health systems. California’s 6.7 million Medi-Cal patients will suffer most from these severe budget cuts.

This reduction in funding will seriously jeopardize access to hospital care for California’s working poor and uninsured as well as specialized services such as emergency and trauma care that we all depend on regardless of our insurance status.

The proposed Medi-Cal cuts affect all hospitals and will even more severely impact “safety net” hospitals. **The severity of the cuts could force some hospitals to close or reduce access to essential health care services. As a result, hospitals with already overcrowded emergency rooms will be further inundated with more patients, longer wait times, and financial stresses. The loss of critical hospital services will not only be devastating for low income Californians but will also present an increasingly harmful public health scenario for all Californians.**

Exacerbating the problem is a growing trend of doctors who no longer treat Medi-Cal patients because of the program’s woefully low payment rates. When patients are unable to receive care from their doctors, they often turn to already overcrowded hospital emergency rooms – the most expensive setting in which patients receive care. Cutting Medi-Cal payments only worsens this dilemma.

Most important, where will patients go when hospitals are forced to close their doors? **More than 70 California hospitals have closed in the past 10 years. Statewide, nearly half of California’s hospitals operate in the red and many are either near or already in bankruptcy proceedings.** When hospital ERs are backlogged with Medi-Cal and other patients who can’t find doctors to care for them, it doesn’t matter how good the insurance coverage is when patients have to drive several hours to receive emergency care.

1           When a hospital is forced to close its doors because it cannot sustain  
2           the financial losses resulting from the uninsured and Medi-Cal  
3           shortfalls, hospital services are lost to the entire community.

4   77.     The closure of the three Eden hospitals will result in the loss of “safety net”  
5   hospitals described above. The County was required to investigate and disclose the  
6   impact of these losses on Alameda County public services, and the resulting  
7   environmental impacts on air quality and traffic congestion.

8   78.     The loss of community based health care shifts patients with insurance  
9   limitations from the Eden hospitals to other regional hospitals resulting in an increase  
10  in vehicle miles traveled as emergency vehicles, patients and visitors are forced to  
11  travel to facilities further from their homes. Emergency service vehicles transporting  
12  patients greater distances over longer periods of time would put pressure on the  
13  County’s dispatch capacity for the Sherriff’s Office, Emergency Services Dispatch  
14  Unit, and the County Fire Departments.

15  79.     Increased vehicle miles traveled for emergency, patient and visitor vehicles to  
16  and from hospitals increases both traffic congestion and regional air pollution  
17  emissions with associated adverse impacts on public health.

18  80.     The shift in patient populations from the existing Eden facilities to other  
19  county-funded hospitals such as Highland General hospital would severely strain the  
20  already severely over burdened psychiatric and acute care capacity in the region,  
21  resulting in significant impacts on public services.

22  81.     Finally, the loss of local access to acute care would result in disproportionate  
23  adverse socio-economic impacts on low-income residents of Castro Valley and  
24  Alameda County who already face a lack of access to medical care, transportation and  
25  child care. Adding this extra burden constitutes environmental injustice.

26  
27  
28

1 82. The EIR failed to investigate and disclose the direct physical changes,  
2 reasonably foreseeable indirect physical changes and the cumulative effects  
3 associated with the physical change of closing the Eden facilities.

4 83. The impacts related to the closure of these hospitals were raised from the  
5 beginning of the County's CEQA process. For example, at the January 5, 2009,  
6 Planning Commission hearing, members of the public and the Alameda County  
7 Planning Commission noted that the question of consolidation of services was an  
8 appropriate issue for the Project.

9 84. Then the May 12, 2009 Agenda for the Alameda County Board of Supervisors  
10 Planning Meeting, referenced a recommendation from the Castro Valley Municipal  
11 Advisory Council that "the Council recommended that the Board of Supervisors  
12 consider the possibility of the closure of the San Leandro Hospital and the cumulative  
13 impact on the Sutter Hospital so that it may be addressed in the Environmental Impact  
14 Report." CNA provided detailed comments on this critical issue on May 9, 12 and  
15 June 5 and 9, 2009.

16 85. Nevertheless, the County omitted the significant impacts on traffic congestion,  
17 air quality, public services and on public health in the FEIR.

### 18 **County's Statement of Overriding Considerations**

19 86. The FEIR concluded that even with mitigation, the Project will cause  
20 significant and unavoidable impacts on traffic conditions and noise.

21 87. The County may only approve the project if it finds that "specific economic,  
22 legal, social, technological, or other benefits of a proposed project outweigh the  
23 unavoidable adverse environmental effects." (CEQA Guidelines, §15092(a).)  
24 Significantly, the County cannot make this finding if there is additional feasible  
25 mitigation that would reduce the impacts. CEQA provides, "[t]he Legislature finds  
26 and declares that it is the policy of the state that public agencies should not approve

1 projects as proposed if there are feasible alternatives or feasible mitigation measures  
2 available which would substantially lessen the significant environmental effects of  
3 such projects ....” (Pub. Res. Code, § 21002.)

4 88. CNA’s experts identified additional feasible mitigation for the unavoidable  
5 impacts enumerated in the FEIR. The City failed to show why the proposed measures  
6 were infeasible. This is not permitted by CEQA. To pass legal muster, an agency’s  
7 responses to comments must specifically explain the reasons for rejecting suggestions  
8 received in comments and for proceeding with a project despite its environmental  
9 impacts. Such explanations must be supported with specific references.

10 89. By failing to consider feasible mitigation measures to reduce the potential for  
11 adverse noise and traffic congestion impacts resulting from project construction and  
12 operation, the FEIR did not provide the public with a properly informative document,  
13 and failed to meet CEQA’s mandate to minimize effects on the environment where  
14 feasible. (*See Los Angeles Unified School District v. City of Los Angeles* (1997) 58  
15 Cal.App.4th 1019, 1029.)

16 **CAUSE OF ACTION**  
17 **(Violation of the California Environmental Quality Act,**  
18 **Pub. Resources Code, § 21000 *et seq.*)**

19 90. Petitioner realleges and incorporates by reference all prior paragraphs of this  
20 petition as if fully set forth below.

21 91. Like all public agencies in California, Alameda County and the Alameda  
22 County Board of Supervisors were at all times under a clear and present mandatory  
23 duty to comply with all requirements of CEQA and the CEQA Guidelines.

24 92. Pursuant to CEQA, the purpose of an EIR is “to identify the significant effects  
25 on the environment of a project, to identify alternatives to the project, and to indicate  
26 the manner in which those significant effects can be mitigated or avoided.” (Pub.  
27 Res. Code §§ 21002.1; 21100.)

28 **VERIFIED PETITION FOR WRIT OF MANDATE**

1 93. CEQA requires that all public agencies adopt objectives, criteria and  
2 procedures for the evaluation of projects and the preparation of environmental  
3 impacts reports. (Pub. Res. Code § 21082.) Thresholds of significance to be adopted  
4 for general use as part of the lead agency’s environmental review process must be  
5 adopted through a public process and be supported by substantial evidence. (CEQA  
6 Guidelines § 15064.7.) “A lead agency shall determine whether a project may have a  
7 significant effect on the environment based on substantial evidence in light of the  
8 whole record.” (Pub. Res. Code § 21082.2.)

9 94. CEQA requires the Court to establish whether an agency abused its discretion  
10 by finding whether an agency failed to proceed in the manner required by law, and/or  
11 the agency’s decision is not supported by substantial evidence. (Pub. Res. Code §  
12 21168.)

13 95. A “significant environmental effect” is “a substantial, or potentially  
14 substantial, adverse change in any of the physical conditions within the area affected  
15 by the project including land, air, water, minerals, flora, fauna, ambient noise, and  
16 objects of historic or aesthetic significance.” (CEQA Guidelines § 15382.)

17 96. More specifically, CEQA requires a lead agency to identify and describe the  
18 direct and indirect significant effects of a project. These effects include relevant  
19 specifics about the project area, resources involved, physical changes and changes  
20 caused in population distribution, population concentration, the human use of the  
21 land, including commercial development, health and safety problems caused by the  
22 physical changes, and other aspects of the resource based including public services.  
23 (CEQA Guidelines § 15126.2.)

24 97. An EIR must also include an accurate project description and description of the  
25 environmental setting. Relevant here, the lead agency must include a statement of a  
26 project’s technical, economic, and environmental characteristics, including supporting

1 public service facilities. (CEQA Guidelines § 15124.) Likewise, a lead agency must  
2 describe the project from both local and regional perspectives, and knowledge of the  
3 regional setting is critical to the assessment of environmental impacts. (CEQA  
4 Guidelines § 15125.)

5 98. An EIR “shall discuss cumulative impacts of a project when the project’s  
6 incremental effect is cumulatively considerable.” (CEQA Guidelines § 15130(a).)  
7 An analysis of feasible mitigation measures and a reasonable range of alternatives are  
8 crucial to CEQA’s substantive mandate that avoidable significant environmental  
9 damage be substantially lessened or avoided where feasible. (Pub. Res. Code §§  
10 21002, 21081, 21100.)

11 99. CEQA requires that for each significant impact, the agency must make findings  
12 that: (1) through changes it avoided or substantially lessened the project’s impacts; (2)  
13 or, such changes were the responsibility of another agency; (3) or, specific economic,  
14 legal, social, technological or other considerations made mitigation infeasible.  
15 (CEQA Guidelines, § 15091.) CEQA’s findings requirement forces a lead agency to  
16 draw legally relevant sub-conclusions supportive of its ultimate decision; the result  
17 facilitates orderly analysis and minimizes the likelihood that the agency will randomly  
18 leap from evidence to a decision. (*Sacramento Old City Assn. v. City Council of*  
19 *Sacramento* (1991) 229 Cal.App.3d 1011, 1034.)

20 100. Finally, an agency may only adopt a statement of overriding considerations  
21 once it has required the implementation of all feasible mitigation measures to reduce  
22 the impact to less than significant levels. (CEQA Guidelines §§ 15126.4, 15091.)

23 101. The County abused its discretion and failed to proceed in the manner required  
24 by law by certifying the June 12, 2009 FEIR and relying upon the EIR in approving  
25 the Castro Valley Replacement Hospital project.

1 102. The City abused its discretion because the following decisions were not  
2 supported by substantial evidence: the decision **not** to fully investigate and disclose  
3 the soil and groundwater contamination at the Project site; the decision **not** to disclose  
4 significant impacts from construction cranes obstructing the flight paths of  
5 helicopters; the decision **not** to disclose the impacts on traffic, air quality and public  
6 services as a result of the closures of the existing Eden Castro Valley, Laurel Grove  
7 and San Leandro hospitals; the decision to adopt a statement of overriding  
8 considerations with respect to noise and traffic impacts; and the decision to ignore  
9 feasible mitigation proposed by the public.

10 **A. The County Failed to Investigate and Disclose Site Contamination**

11 103. The County failed to proceed in a manner required by law when it failed to  
12 sample groundwater and soil shown in the record as contaminated by diesel and other  
13 petro chemicals. Instead, the County approved the Project and certified a faulty EIR  
14 that did not comply with the requirements of CEQA.

15 104. When properly executed, an EIR serves as an “environmental alarm bell whose  
16 purpose is to alert the public and its responsible officials to environmental changes  
17 before they have reached ecological points of no return.” (*County of Inyo v. Yorty*  
18 (1973) 32 Cal.App.3d 795, 810.) An EIR “serves not only to protect the environment  
19 but also to demonstrate to the public that it [the public] is being protected.” (CEQA  
20 Guidelines, § 15003(b).)

21 105. CNA’s expert showed that the EIR relied upon an outdated 1996 ACDEH  
22 assessment completed before the Water Board published protective screening levels.  
23 The new information showed that the concentration of diesel in soil where  
24 groundwater is shallow and is 1,500 ppm far above the safety screening level of 83  
25 ppm.

1 106. The 1996 ACDEH site assessment expressly required the property owner to  
2 promptly notify the agency of any changes in land use, structural configuration or site  
3 activities. Real Party, Sutter Health, failed to affirmatively report the proposed  
4 changes to ACDEH as required. No documented sampling of groundwater or soil  
5 contamination has occurred in fourteen years.

6 107. Instead, despite the fact that the Project construction and demolition will occur  
7 in an urban environment and the evidence of numerous uninvestigated and  
8 unmitigated site contamination and hazardous materials, the County refused to fully  
9 document these potentially significant impacts on human health, despite a clear legal  
10 duty. (CEQA Guidelines § 15144 (“**an agency must use its best efforts to find out**  
11 **and disclose all that it reasonably can**”).) CEQA requires agencies to inform the  
12 public and responsible officials of the environmental consequences of their decisions  
13 *before* they are made, thereby protecting the environment and informed self-  
14 government. (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Comrs.* (2001)  
15 91 Cal.App.4<sup>th</sup> 1344, 1354 (emphasis in original).)

16 **B. The County Failed to Investigate and Disclose Significant Impacts from**  
17 **Construction Cranes Obstructing Helicopters**

18 108. The County failed to proceed in a manner required by law when it failed to  
19 fully investigate and disclose the significant impact of construction cranes obstructing  
20 the flight paths of helicopters.

21 109. CEQA requires a lead agency to re-circulate an EIR when significant new  
22 information is added to the EIR following public review but before certification.  
23 (Pub. Res. Code § 21092.1.) The Guidelines clarify that new information is  
24 significant if “the EIR is changed in a way that deprives the public of a meaningful  
25 opportunity to comment upon a substantial adverse environmental effect of the  
26

1 project” including, for example, “a disclosure showing that ... [a] new significant  
2 environmental impact would result from the project.” (CEQA Guidelines § 15088.5.)

3 110. Disclosure of a new significant impact is an automatic trigger for recirculation  
4 of the document. (CEQA Guidelines, §15088.5(a)(1) (Significant new information  
5 requiring recirculation includes a disclosure showing that a new significant  
6 environmental impact would result from the project or from a new mitigation measure  
7 proposed to be implemented..))

8 111. The impact of construction cranes obstructing the flight paths of helicopters  
9 was not disclosed in the DEIR. This impact along with proposed mitigation did not  
10 appear until the FEIR thereby precluding the public from reviewing and commenting  
11 on this significant impact.

12 **C. Incomplete and Inadequate Project Description**

13 112. The EIR is legally deficient because it omitted an accurate description of the  
14 Project as required under CEQA. The EIR failed to completely and accurately  
15 describe the actual scope of the Project to encompass the impacts associated with  
16 closures of the existing Eden Medical Center, Laurel Grove and Eden San Leandro  
17 hospitals, and related loss of services. The County ignored the potentially serious  
18 impacts the closure of the three community hospitals will have on Alameda County’s  
19 traffic congestion, air quality, public services and remaining community based health  
20 care facilities. These hospitals have historically served all patients regardless of their  
21 insurance status. The loss of these hospitals will disproportionately impact the  
22 remaining facilities that do not exclude government health program beneficiaries.

23 113. The County was required to include the closure of San Leandro Hospital in the  
24 Project description as part of the overall regional setting.

1 114. The failure to provide an accurate and consistent project description renders an  
2 EIR legally deficient. (CEQA Guidelines §15124; *County of Inyo v. City of Los*  
3 *Angeles* (1977) 71 Cal.App.3d 185, 193.)

4 **D. Failure to Evaluate the Substantial Impacts Caused by the Closure of**  
5 **Eden Medical Center, Laurel Grove and Eden San Leandro Hospital**

6 115. The EIR failed to evaluate substantial evidence that the closure of three Eden  
7 hospitals in Alameda County will result in significant impacts on the environment and  
8 public services. CEQA required the County to investigate, disclose and mitigate to  
9 the extent feasible the direct, indirect and cumulative Project impacts on traffic  
10 congestion, air quality and health and safety. (CEQA Guidelines §§ 15125, 15126.2.)

11 116. CEQA forces agencies both to develop environmental information and to  
12 disseminate it to the public. EIRs “demonstrate to an apprehensive citizenry that the  
13 agency has, in fact, analyzed and considered the ecological implications of its action.”  
14 (CEQA Guidelines, § 15003(d).) “[T]he requirement of a detailed statement helps  
15 insure the integrity of the process of decision by precluding stubborn problems or  
16 serious criticism from being swept under the rug.” (*Sutter Sensible Planning, Inc. v.*  
17 *Board of Supervisors* (1981) 122 Cal.App.3d 813, 820.)

18 117. CEQA requires an EIR to disclose and evaluate *all* significant effects of the  
19 proposed project. (Pub. Res. Code § 21100 (b)(1).)

20 118. An EIR also serves a two-fold function by providing the public information  
21 both about a project's impacts and about the environmental and economic values of  
22 agency decisionmakers. [A] paramount consideration is the right of the public to be  
23 informed in such a way that it can intelligently weigh the environmental consequences  
24 of any contemplated action and have an appropriate voice in the formulation of any  
25 decision. (*Environmental Planning and Information Council v. County of El Dorado*  
26 (1982) 131 Cal.App.3d 350, 354.) “The policy of citizen input which underlies the

1 act . . . supports the requirement that the responsible public officials set forth in detail  
2 the reasons why the economic and social value of the project, in their opinion,  
3 overcomes the significant environmental objections raised by the public.” (*People v.*  
4 *County of Kern* (1974) 39 Cal.App.3d 830, 841; *see also* CEQA Guidelines, §  
5 15003(e).)

6 119. The County’s FEIR failed to perform these critical functions.

7 **E. Failure to Propose Adequate Measures to Mitigation For**  
8 **Project Impacts**

9 120. CEQA creates a substantive policy by which agencies cannot approve projects  
10 with significant environmental impacts when feasible mitigation measures can  
11 substantially lessen or avoid such impacts. (Pub. Res. Code § 21002.) CEQA  
12 mitigation policy is further described in CEQA Guidelines § 15002(a), as, *inter alia*,  
13 “[i]dentifying the ways that environmental damage can be avoided or significantly  
14 reduced,” and “[p]revent[ing] significant, avoidable damage to the environment by  
15 requiring changes in projects through the use of alternatives or mitigation measures  
16 when the government agency finds the changes to be feasible.”

17 121. In this case, the Project will cause a number of significant environmental  
18 impacts. CEQA requires the County to acknowledge, to properly analyze, and to  
19 avoid or minimize the impacts associated with the County’s approval of the actions  
20 and entitlements necessary for the development and operation of the proposed  
21 hospital.

22 122. Measures in the FEIR fail to fully mitigate the project's significant adverse  
23 impacts, including but not limited to impacts on traffic, air quality, site contamination  
24 and public services. Furthermore, purported mitigation measures identified in the  
25 FEIR, and relied upon by the County, in approving the Project are, in fact, not  
26 “mitigation measures” at all; rather, they constitute impermissible deferrals of the

1 County's mitigation obligations (fare share traffic fees); or are too vague and  
2 conclusory to qualify as mitigation measures under CEQA (many of the FEIR's  
3 hazardous materials and site contamination impacts).

4 123. Thus, the County's approval of the project violates its duty to the people of the  
5 State of California to prevent environmental damage that can reasonably be avoided.  
6 In its comments to the County, CNA requested that the County mitigate impacts on  
7 traffic, air quality, public safety due to hazardous materials exposure and on public  
8 services. Because the County failed to do so, and because significant adverse  
9 impacts will follow, the County prejudicially abused its discretion.

10 **F. Unlawful Adoption of Statement of Overriding Considerations**

11 124. After adopting CEQA findings, an agency may adopt a "statement of  
12 overriding considerations" as a means to approve a project with unmitigated  
13 significant environmental impacts. (Pub. Res. Code § 21081(a)(b); CEQA  
14 Guidelines, § 15093.) Statements of overriding considerations must be supported by  
15 substantial evidence in the record. (*Sierra Club v. Contra Costa County* (1992) 10  
16 Cal.App.4th 1212, 1222-1224.)

17 125. CEQA creates a substantive requirement under which agencies cannot approve  
18 projects with significant environmental impacts when feasible mitigation measures  
19 can substantially lessen or avoid the impacts. (Pub. Res. Code § 21002.) In  
20 furtherance of this mandate, a legally adequate EIR must identify "[m]itigation  
21 measures proposed to minimize the significant effects on the environment." (Pub.  
22 Res. Code, § 21100(b)(3).) Mitigation measures must be capable of "[a]voiding the  
23 impact altogether by not taking a certain action or parts of an action"; "[m]inimizing  
24 impacts by limiting the degree or magnitude of the action and its implementation"; (c)  
25 "[r]ectifying the impact by repairing, rehabilitating, or restoring the impacted  
26 environment"; (d) "[r]educing or eliminating the impact over time by preservation and

1 maintenance operations during the life of the action”; or (e) “[c]ompensating for the  
2 impact by replacing or providing substitute resources or environments.” (CEQA  
3 Guidelines § 15370.)

4 126. The Board of Supervisors adopted a statement of overriding considerations that  
5 was not supported by substantial evidence in the record. In particular, the Board of  
6 Supervisors found that there were no feasible mitigation measures available to avoid  
7 the Project's significant noise and traffic impacts.

8 **G. Unlawful Findings**

9 127. The Board of Supervisors’ findings on the purported need for and benefits of  
10 the Project were impermissibly vague and in several instances, inaccurate. The  
11 findings failed to take into account the closures of the existing and San Leandro Eden  
12 hospitals.

13 128. The findings also ignored the fact that Project will cater to fully insured  
14 patients who do not rely on Medicare, Medi-Cal or other government health programs  
15 for healthcare. In so doing, the Board of Supervisors misleadingly found that the  
16 Project would replace or increase healthcare services as compared to the existing  
17 hospitals. From that inaccurate premise, the Board of Supervisors made findings that  
18 the Project would substantially increase health care capacity.

19 129. In fact, the administrative record shows that the Project will decrease capacity  
20 for an already under served segment of the Alameda County population. The finding  
21 that the Project’s benefits outweigh its significant unmitigated impacts is not  
22 supported by substantial evidence in the record. Accordingly, in adopting the  
23 statement of overriding considerations and inaccurate findings, the Board of  
24 Supervisors prejudicially abused its discretion.

25 */// /// ///*

26 */// /// ///*

27 **VERIFIED PETITION FOR WRIT OF MANDATE**



- 1           d)     Issue a temporary restraining order and a preliminary and  
2                     permanent injunction enjoining the County from authorizing any  
3                     further permits, entitlements, or construction-related activities for  
4                     the Project until the County has prepared and certified a legally  
5                     adequate environmental impact report for the Project and filed a  
6                     return on the writ demonstrating compliance therewith;
- 7           e)     Refrain from approving any further permits or entitlements for  
8                     the Project until the County has prepared and certified a legally  
9                     adequate EIR and complied with all other applicable  
10                    requirements of CEQA, as directed by this Court pursuant to  
11                    Public Resources Code section 21168.9; and
- 12          f)     Comply with all other applicable requirements of CEQA, as  
13                     directed by this Court pursuant to Public Resources Code §  
14                     21168.9;

15           2.     That the Court issue a temporary restraining order and a preliminary and  
16 permanent injunction barring Respondents, Real Parties in Interest, and all other  
17 persons working on their behalf, from proceeding with any activity that may result in  
18 any physical change in the environment on the Project site until the County takes all  
19 necessary steps to bring its actions in compliance with CEQA and the writ is  
20 discharged;

21           3.     That California Nurses Association be awarded costs of this proceeding;

22           4.     That California Nurses Association be awarded reasonable attorneys  
23 fees for this action pursuant to Code of Civil Procedure § 1021.5, and any other  
24 applicable provisions of law; and

