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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

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By Michael Clemens, Deputy Clerk

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION**

13  
14 NORTH COUNTY ADVOCATES, a non-profit )  
15 corporation; )  
16 Plaintiff, )  
17 vs. )  
18 CITY OF CARLSBAD, a public body corporate )  
19 and politic, and DOES 1 through 10, inclusive, )  
20 Defendants. )

Case No. 37-2019-00042954-CU-MC-NC

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

1 **INTRODUCTION**

2 1. This Complaint seeks to enjoin Defendant City of Carlsbad (“City” or “Defendant”) from  
3 violating the voter-adopted Initiative Proposition E (“Prop E”) and the City’s Growth Management  
4 Plan (“GMP”).

5 2. By this action, Plaintiff also seeks a declaration that the City has been and is violating Prop E  
6 and the GMP, and seeks an injunction directing the City to take appropriate and necessary action to  
7 remedy these ongoing violations of law.

8 3. Pursuant to San Diego Superior Court Rule 1.2.2, venue is proper in the North County  
9 Division of the San Diego Superior Court, in that the acts giving rise to this complaint took place  
10 within this judicial district.

11 **PARTIES**

12 4. Plaintiff North County Advocates is a California non-profit public benefit corporation that  
13 seeks to protect the environment, public health and welfare in the northern part of San Diego County.  
14 Plaintiff and its members have been injured as a result of Defendant’s actions. Plaintiff and its members  
15 use, enjoy and benefit from the resources affected by Defendant’s actions. Defendant’s actions adversely  
16 affect the recreational, vocational, aesthetic, scientific, environmental and economic interests of Plaintiff  
17 and of Plaintiff’s members. Plaintiffs members pay property taxes in the City of Carlsbad. The interests  
18 of Plaintiff and Plaintiff’s members have been and will continue to be adversely affected by Defendant’s  
19 unlawful actions. The relief sought in this Complaint would redress Plaintiff’s and Plaintiff’s members’  
20 injuries.

21 5. Defendant City of Carlsbad is a political subdivision of the State of California and the County  
22 of San Diego and a body corporate and politic exercising local government powers, as specified by the  
23 Constitution and the laws of the State of California.

24 6. Plaintiff does not know the true names or capacities of the persons or entities sued herein as  
25 Does 1 through 10, and therefore sue these Defendants by such fictitious names. Plaintiff will amend the  
26 Complaint to set forth the names and capacities of said Defendants along with appropriate charging  
27 allegations when the same have been ascertained.  
28

1 **FACTUAL BACKGROUND**

2 7. The California Constitution defines an initiative as “the power of the electors to propose  
3 statutes and amendments to the Constitution and to adopt or reject them.”

4 8. Prop E, a citywide initiative passed by the City of Carlsbad’s voters in 1986, established the  
5 Growth Management Plan (“GMP”). On December 2, 1986, the City certified the passage of Proposition  
6 E at the November 4, 1986 election, and adopted and ratified the Proposition as Ordinance No. 9824. It  
7 provided, among other things: “NO DEVELOPMENT SHALL BE APPROVED by the City of Carlsbad  
8 unless it is guaranteed that concurrent with need all necessary public facilities be provided as required by  
9 [the GMP] with emphasis on ensuring good traffic circulation, schools, parks, libraries, open space and  
10 recreational amenities.”

11 9. In voting to approve Prop E, the people of the City of Carlsbad ordained: “The City Council  
12 or the Planning Commission shall not find that all necessary public facilities will be available concurrent  
13 with need as required by the Public Facilities Element and the City’s 1986 growth management plan  
14 unless the provision of such facilities is guaranteed.” Prop E cemented the requirement that the Public  
15 Facilities Standards laid out in the GMP must be guaranteed before development can be approved.

16 10. Accordingly, the City is required by Prop E, and the powers reserved by the residents of  
17 Carlsbad therein, to comply with the mandates of the GMP. The City is obligated by Prop E to ensure  
18 the provision of all necessary public facilities prior to approving development.

19 11. Among other things, the City must guarantee the provision of open space in accordance with  
20 Prop E and the GMP, including the requirements of the City’s GMP and the Citywide Facilities and  
21 Improvement Plan (“CFIP”) open space performance standard, and the open space specifically called for  
22 in Prop E.

23 12. The GMP standard for open space is: “Fifteen percent of the total land area in the zone  
24 exclusive of environmentally constrained non-developable land must be set aside for open space and must  
25 be available concurrent with development.”

26 13. The CFIP implements the GMP by requiring the provision of facilities and improvements  
27 as a condition precedent to allowing any development. The CFIP accomplishes this task through the  
28

1 use of performance standards for necessary facilities that must be provided in each Local Facility  
2 Management Zone (“LFMZ”).

3 14. The CFIP provides an open space performance standard applicable to all LFMZ’s. These  
4 performance standards set forth the required level of facilities, such as open space, the City must  
5 guarantee as Carlsbad continues to grow. The open space performance standard requires: “Fifteen percent  
6 of the total land area in the zone exclusive of environmentally constrained non-developable land must be  
7 set aside for permanent open space and must be available concurrent with development.”

8 15. The CFIP states that environmentally constrained non-developable land includes “beaches,  
9 wetlands, floodways, other water bodies, riparian and woodland habitats,... slopes greater than twenty-  
10 five (25) percent, major roadways, railroad tracks and major power line easements.” Thus, these types of  
11 constrained lands cannot be counted towards the 15% open space requirement.

12 16. Additionally, while areas such as “greenbelts, pocket-parks, trails, increased setbacks along  
13 scenic corridors, and open space links between environmentally-sensitive areas” may be counted  
14 toward the open space performance standard, required community parks and school playgrounds may  
15 not. Community parks that count toward the required three acres of special use area per 1,000  
16 population within each Park District for the associated LFMZ may not be counted toward the open  
17 space performance standard.

18 17. Among other things, Prop E guaranteed that 40% of Carlsbad would always remain open  
19 space and no development could be approved by the City unless open space and all other necessary public  
20 facilities are provided.

21 18. The language of Prop E and the associated ordinance proposed in 1986 called for the  
22 guaranteed provision of several categories of public facilities, including open space. Included with the  
23 Prop E language in the 1986 ballot pamphlet was the following argument given to voters from Carlsbad  
24 Mayor Mary Casler and four members of Carlsbad City Council:

25 Proposition E puts a permanent cap on the total number of residential units  
26 that can be built in Carlsbad; reduces the overall density of the city and  
27 guarantees that we will always be a low density residential community  
28 with 40% open space. **NO DEVELOPMENT SHALL BE APPROVED**  
unless all required public facilities are provided up front.

1           19. The language of Prop E and the materials in the 1986 ballot pamphlet clearly demonstrate  
2 the voter approved Prop E requires 40% open space in Carlsbad.

3           20. Despite this guarantee, the City’s Annual Open Space Status Report for Fiscal Year  
4 2017/2018 states that the total open space percentage is 37.9% of total acreage, leaving the City 2.1%  
5 short of the 1986 guarantee. Assuming this number is correct, a shortage of 2.1% of the total acreage  
6 translates to approximately 525.6 acres of missing open space in Carlsbad needed to fulfill the  
7 requirements of Prop E.

8           21. The City’s website states that once all major new development is completed the total  
9 amount of open space will be between 38 and 39%. However, Carlsbad voters were led to believe that  
10 voting for the initiative would guarantee 40% open space in the City. The City must provide 40%  
11 open space and comply with Prop E.

12           22. The GMP standard for parks is: “Three acres of community park or special use park per 1,000  
13 population within the Park District, must be scheduled for construction within a five year period.”

14           23. The 2017-18 Growth Management Plan Monitoring Report acknowledges the City is failing to  
15 meet these requirements for three of the four quadrants within the City.

16           24. The GMP standard for circulation requires:

17                   No road segment or intersection in the zone nor any road segment or  
18 intersection out of the zone which is impacted by development in the zone  
19 shall be projected to exceed a service level C during off-peak hours, nor  
20 service level D during peak hours. Impacted means 20% or more of the  
traffic generated by the local facility management zone will use the road  
segment or intersection.

21           25. The 2017-18 Growth Management Plan Monitoring Report acknowledges the City is failing  
22 to meet these requirements for eight roadway segments. It acknowledges Levels of Service E and F  
23 along El Camino Real, College Boulevard, Melrose Drive, and Cannon Road.

24           26. These failures impact eight different Local Facility Management Zones.

25           27. The 2017-18 Growth Management Plan Monitoring Report fails to address impacts to  
26 intersections, nor does it address non-peak hour service levels.

27           28. Recently, City staff has represented to the City Council that it may characterize certain  
28 roadway segments as “built out and exempt from the [Level of Service] standard.” Staff claimed

1 several roadway segments, including portions of La Costa Avenue, El Camino Real, and Palomar  
2 Airport Road, were to be considered “exempt.” The City provided no justification for how it could  
3 “exempt” roadway segments from the clear service level requirements of the GMP and Prop E. Nor did  
4 the City provide any analysis of whether intersections were meeting the service level requirements.

5 **FIRST CAUSE OF ACTION**  
6 **(VIOLATIONS OF PROPOSITION E AND THE GROWTH MANAGEMENT PLAN)**

7 29. Plaintiff incorporates by reference each of the allegations set forth in this Complaint as if set  
8 forth herein in full.

9 30. The City has been and is failing to properly analyze compliance with performance standards  
10 for open space.

11 31. The City has violated and is violating Prop E and the Growth Management Plan by failing to  
12 analyze compliance with performance standards for open space. Prop E mandates that the City shall not  
13 approve any development unless it is guaranteed that the GMP performance standards have been met. In  
14 order to comply with this mandate, the City must analyze whether the Zone is compliant before approving  
15 a development.

16 32. The City has failed and is failing to apply the performance standards to all of the local facility  
17 management zones within the City. Proposition E clearly requires all zones within the City to have land  
18 “set aside for permanent open space and ... available concurrent with development.”

19 33. The City has asserted that Zones 1 through 10 and Zone 16 are “exempt” from open space  
20 performance standards. Citing this “exemption,” the City makes a practice of not analyzing whether or  
21 not the open space standards for the Zone have been met during the project approval process in these  
22 zones. The City’s stated rationale for claiming this “exemption” is that when the initial LFMPs were  
23 created for these zones, they were determined to be complaint with the performance standards for open  
24 space. The City has asserted that there is no need for City staff to analyze open space compliance when  
25 approving development projects in these zones.

26 34. This assertion, as well as the reasoning behind it, is incorrect and unsupported. Pursuant to the  
27 1986 GMP, a LFMP was prepared for each of the 25 Zones in the City of Carlsbad. The LFMPs for  
28 Zones 1 – 10 and 16 each state: “Existing open space meets the adopted performance standard.”

1 However, they also note: “An ongoing work program will assure the open space performance standard is  
2 maintained through build out.”

3 35. As one example, in Zone 6, the City has refused to analyze compliance with open space  
4 performance standards during the project approval process. In addition, the LFMP for Zone 6 also lists  
5 three Special Conditions for Zone 6 Open Space. The third Special Condition includes the following  
6 requirement: “Prior to approval of a proposed development in Zone 6, the approving authority shall be  
7 required to find that the development contributes to meeting the open space facility performance standard  
8 at build out and that the development does not preclude the provision of performance standard open space  
9 at the build out of Zone 6.”

10 36. The City has similarly refused to analyze compliance with open space performance standards  
11 during the project approval process in Zone 9. Plaintiffs are informed and believe and thereon allege that  
12 there are similar violations in other zones.

13 37. The City continues to approve development without analyzing whether zones are in  
14 compliance with the open space performance standards in violation of Prop E and the GMP.

15 38. The City is not meeting the Growth Management Plan performance standards, yet continues to  
16 approve development contrary to Prop E.

17 39. The City has been and is applying an incorrect performance standard for open space by  
18 including ineligible land in open space calculations.

19 40. The City’s analysis of open space includes ineligible areas, such as environmentally  
20 constrained land, in violation of Prop E and the GMP.

21 41. The City has allowed and continues to allow development in violation of the prohibitions in  
22 Prop E and the GMP.

23 42. Currently, zones do not have 15% of the total land area in the zone exclusive of  
24 environmentally constrained non-developable set aside as open space, yet the City continues to approve  
25 development.

26 43. The City has recently approved projects in zones that do not meet the performance  
27 standards for open space, including the Robertson Ranch Project, PA 22, the Quarry Creek Project, and  
28 the Bressi Ranch Project.

1 44. The City must periodically review changes to “environmentally constrained” land.

2 45. Environmental and anthropogenic influences change land and related land uses over time.  
3 Consequently, local policy documents and regulations relating to land use planning and development  
4 require periodic review and update. Periodic review is necessary for the City’s open space program to  
5 ensure compliance the CFIP open space performance standard.

6 46. The City must determine whether changes since 1986 mean that the amount of  
7 “environmentally constrained non-developable land” changes as well – for example, whether the  
8 construction of additional roads, the recognition of additional floodways, and/or the adoption of protected  
9 lands under the Habitat Management Plan would lead to an increase in the amount of “environmentally  
10 constrained non-developable land.” The latest GMP monitoring report claims that all but one LFMZ has  
11 adequate area set aside to satisfy the open space performance standard. However, that is incorrect.

12 47. In order to properly comply with open space performance standard, the City must periodically  
13 review the changing characteristics of land to determine if the open space performance standard is being  
14 met.

15 48. An update must be done to determine the proper classification of lands as environmentally  
16 constrained non-developable or unconstrained for the purposes of proving adequate facilities pursuant to  
17 the CFIP. This reevaluation is necessary to understand the total inventory of land within the city that must  
18 be considered when determining open space requirements.

19 49. The City has failed to meet the 40% open space requirement of Prop E.

20 50. The City must provide 40% open space throughout the City.

21 51. The City has also failed and is failing to meet the GMP standard for parks.

22 52. The 2017-18 Growth Management Plan Monitoring Report acknowledges the City is failing to  
23 meet these requirements for three of the four quadrants within the City.

24 53. The City has also failed and is failing to meet the GMP standard for circulation.

25 54. The City has failed and is failing to meet the thresholds for several roadway segments.

26 55. The 2017-18 Growth Management Plan Monitoring Report acknowledges the City is failing to  
27 meet these requirements for eight roadway segments.

28 56. The City has also failed and is failing to address impacts to intersections.



1           57. The City has also failed and is failing to address non-peak hour service levels for roadway  
2 segments.

3                                   **SECOND CAUSE OF ACTION**  
4                                   **(DECLARATORY RELIEF)**

5           58. Plaintiff incorporates by reference each of the allegations set forth in this Complaint as if set  
6 forth herein in full.

7           59. There is an actual controversy between Plaintiff and the City regarding the rights and duties of  
8 the City regarding Prop E and the GMP. Unless declaratory relief is granted, the City will continue to  
9 violate Prop E and the GMP and will continue to allow development in violation of Prop E and the GMP.  
10 Plaintiff asks this Court to make a declaration regarding the obligations of Prop E and the GMP and that  
11 City must cease its violations of Prop E and the GMP.

12                                   **THIRD CAUSE OF ACTION**  
13                                   **(INJUNCTIVE RELIEF)**

14           60. Plaintiff incorporates by reference each of the allegations set forth in this Complaint as if set  
15 forth herein in full.

16           61. The City’s wrongful conduct in violating Prop E and the GMP, unless and until enjoined and  
17 restrained by order of this Court, will cause great and irreparable injury to Plaintiff, to Plaintiff’s members,  
18 and to the public interest. Unless injunctive relief is granted, the City will continue to violate Prop E and  
19 the GMP and will continue to allow development in violation of Prop E and the GMP. Plaintiff asks this  
20 Court to require the City to comply with Prop E and the GMP.

21                                   **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for relief as follows:

23           A. For declaratory relief stating that the City is not in compliance with and is violating  
24 Proposition E, the Growth Management Plan, and applicable requirements;

25           B. For a temporary restraining order, preliminary injunction and/or permanent injunction  
26 enjoining Defendants from approving any further development in violation of Proposition E and the  
27 Growth Management Plan until Defendants come into compliance with Proposition E, the Growth  
28 Management Plan, and applicable requirements;

1 C. For costs of suit;

2 D. For reasonable attorneys' fees; and

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

4 DATED: August 13, 2019

Respectfully Submitted,

5 **DELANO & DELANO**

6  
7 By:



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Everett L. DeLano III  
M. Dare DeLano  
9 Tyler T. Hee

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