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EL DORADO CO. SUPERIOR CT.

FILED MAY 16 2022

BY G.M.  
Deputy

Assigned to  
Judge Dylan Sullivan  
For all purposes

10  
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 IN AND FOR THE COUNTY OF EL DORADO

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14  
15 CONCERNED RESIDENTS OF EL  
16 DORADO HILLS HERITAGE VILLAGE,  
17 a California Nonprofit Public Benefit  
18 Corporation

19 Plaintiff and Petitioner

20 v.

21 LENNAR HOMES OF CALIFORNIA,  
22 INC., a California Corporation; LENNAR  
23 HOMES OF CALIFORNIA, LLC, a  
24 California Limited Liability Company; EL  
25 DORADO HILLS COMMUNITY  
26 SERVICES DISTRICT OF EL DORADO  
27 COUNTY, a Special District; KEVIN  
28 LOEWEN, GENERAL MANAGER of El  
29 Dorado Hills Community Services District  
30 and DOES 1 - 100, INCLUSIVE

31 Defendants and Respondents

Case No. 22CNOC040

VERIFIED COMPLAINT FOR  
DECLARATORY RELIEF, NUISANCE,  
INJUNCTIVE RELIEF, PETITION FOR  
WRIT OF MANDATE, AND ATTORNEY  
FEES

(CCP § 1060; Civil Code § 3480; CCP §  
526a; CCP § 1085; CCP § 1021.5)

Plaintiff and Petitioner seeks a declaratory judgment, writ of mandate, nuisance  
abatement and injunctive relief, against Defendants and Respondents Lennar Homes of

COMPLAINT FOR DECLARATORY RELIEF, NUISANCE ABATEMENT, INJUNCTIVE  
RELIEF, PETITION FOR WRIT OF MANDATE AND ATTORNEY'S FEES

1 California, a California Corporation, and Lennar Homes of California, LLC, a California Limited  
2 Liability Company (hereafter collectively “Lennar”), El Dorado Hills Community Services  
3 District of El Dorado County (“CSD” or “District”), and Kevin Loewen, General Manager of the  
4 CSD (“Loewen” or “GM”), and allege as follows:

#### 5 INTRODUCTION

6 1. Carson Creek Specific Plan (CCSP) is a 710-acre age-restricted residential  
7 development under the jurisdiction of El Dorado County. The CCSP includes 37 acres of park  
8 land, with 7 acres of public neighborhood parks and qualifying private neighborhood park  
9 facilities, and a 30-acre regional park suitably located near planned industrial and research and  
10 development uses to avoid inevitable land use conflicts between sensitive residential uses and  
11 intensive lighting typically used in regional parks for competitive sports activities. The location  
12 of the parkland is shown on the CCSP Land Use Map (Exhibit 1). A portion of the CCSP was  
13 acquired by Lennar, for development of an age-restricted residential community known as  
14 “Heritage El Dorado Hills” (“Heritage”)<sup>1</sup>.

15 2. Within the acreage of the CCSP, a 4.65-acre Heritage Neighborhood Park (“Park”) has  
16 been built by Lennar pursuant to the terms of a 2015 Parkland Dedication Agreement (PDA)  
17 between Lennar and the CSD. In response to direction by the CSD, Lennar designed and built  
18 tennis and pickleball courts with intensive stadium-style lighting on 50’ tall poles adjacent to the  
19 age-restricted homes, despite express language in the Specific Plan and PDA authorizing more  
20 limited uses for the Heritage Neighborhood Park. Despite Lennar’s active involvement in the  
21 planning, design and construction of the Park, disclosure documents subsequently provided to  
22 homeowners by Lennar told homebuyers that the developer did not know what type of facilities  
23 would be included in the Park and did not know whether the Park would be lighted.

24 3. Following vociferous objections from residents as construction progressed and the  
25 plans became evident, Lennar asked the CSD Board to authorize removal of the stadium-style  
26 lighting at Lennar’s expense. The CSD Board, despite a prior unanimous vote to designate the  
27 Heritage Neighborhood Park a “dawn-to-dusk” facility, has refused to allow removal of the  
28 lighting. GM Kevin Loewen, who has admitted that he did not realize the light poles were so  
29 tall, now asserts that the CSD cannot determine what the future holds, and that the lighting may

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31 <sup>1</sup> The development is sometimes also referred to as Heritage Village or Heritage Village El  
Dorado Hills.

1 well be needed in the future. Two cursory tests of the lights were conducted without prior  
2 notification of nearby residents or El Dorado County enforcement officials. Significant lighting  
3 trespass was observed by residents as shown in Exhibit 2. Another test of the lighting scheduled  
4 for March 31, 2022 was cancelled and Plaintiff is informed and believes that it will not be  
5 rescheduled, and that Lennar will not remove the lighting without CSD authorization. This  
6 leaves homeowners caught in the middle, facing an imminent public nuisance, negative impact  
7 on their property values and the disruption of the quiet enjoyment of their retirement homes.  
8 Plaintiff has also raised other issues related to the Park, including but not limited to impacts on  
9 the health and safety of residents, from inadequate parking and noise exceeding allowable  
10 thresholds, and the environmental impacts of lights, noise and other factors on the Carson Creek  
11 Preserve, a protected wetlands containing endangered species, adjacent to the Park.

12 4. Plaintiff seeks a resolution of this stalemate to direct removal of the unauthorized  
13 lighting, to restrict Park use to dawn-to-dusk hours as directed by CSD Board action and prohibit  
14 operation of the Heritage Neighborhood Park until such time as comprehensive mitigation of the  
15 impacts of lighting, noise, parking and traffic safety on Heritage homeowners and the Carson  
16 Creek Preserve wetlands are implemented. This approach is necessary in order to avoid the  
17 multiplicity of legal actions that are likely if a global resolution cannot be reached.

#### 18 **PARTIES AND ATTORNEY FEES**

19 5. Plaintiff and Petitioner CONCERNED RESIDENTS OF EL DORADO HILLS  
20 HERITAGE VILLAGE is a California Nonprofit Public Benefit Corporation (“CRHV”,  
21 “Plaintiff” or “Petitioner”). CRHV was formed to represent homeowners within the multi-  
22 phase master planned senior adult residential community known as Heritage - El Dorado Hills  
23 within the Carson Creek Specific Plan (“CCSP”). Formation of this entity was made necessary,  
24 at least in part, because the Heritage El Dorado Hills Master Association (“HOA”), the  
25 homeowner’s association for the community, remains under the control of the developer.

26 6. Defendant and Respondent, LENNAR HOMES OF CALIFORNIA, INC., is a  
27 California Corporation. LENNAR HOMES OF CALIFORNIA, LLC., is a California Limited  
28 Liability Company. The California Secretary of State website reflects a “Legacy Conversion”  
29 effective January 31, 2022 whereby LENNAR HOMES OF CALIFORNIA, INC. was  
30 “converted out” to LENNAR HOMES OF CALIFORNIA, LLC. Plaintiff is informed and  
31 believes that both entities, own or have owned portions of the CCSP and are or have

1 participated in the development of HERITAGE – EL DORADO HILLS. The two entities are  
2 collectively referred to herein as (“Lennar”).

3 7. Defendant and Respondent, EL DORADO HILLS COMMUNITY SERVICES  
4 DISTRICT OF EL DORADO COUNTY (“District” or “CSD”), is a Community Services  
5 District formed under the Community Services District Law (Government Code §61000-  
6 61850). The District was formed on May 21, 1962 by the El Dorado County Board of  
7 Supervisors under authority of Government Code §61600 as an independent special district.  
8 The CSD serves a large, densely developed suburban population located east of the Sacramento  
9 County Line. The CSD boundary has followed the path of development, and now encompasses  
10 approximately 28 square miles (18,079 square acres) located both north and south of Highway  
11 50. The CSD provides parks and recreation services, open space management, and other  
12 community services to residents.

13 8. Defendant and Respondent KEVIN A. LOEWEN, General Manager (“Loewen” or  
14 “GM”) is the General Manager of the El Dorado Hills Community Services District of El Dorado  
15 County.

16 9. The true names and capacities, whether individual, corporate or otherwise, of DOES  
17 1 through 50 are unknown to Petitioner. Petitioner will amend this Petition to set forth the true  
18 names and capacities of said DOE parties when they have been ascertained.

19 10. In pursuing this action which involves the enforcement of important rights  
20 affecting the public interest, the Petitioner will confer a substantial benefit on the citizens of El  
21 Dorado Hills and El Dorado County, and therefore will be entitled to an award of reasonable  
22 attorney’s fees, pursuant to California law, including Code of Civil Procedure 1021.5.

### 23 **JURISDICTION AND VENUE**

24 11. This Court has jurisdiction over this complaint for declaratory relief, injunctive  
25 relief, and petition for writ of mandate pursuant to sections 1060, 526 and 1085 of the California  
26 Code of Civil Procedure, respectively, and for Nuisance pursuant to Civil Code section 3480.

27 12. Venue is proper in this Court pursuant to Code of Civil Procedure § 393, since the  
28 cause of action arose and the impact of the Respondent’s actions are felt in El Dorado County.

29 13. Petitioners have performed any and all conditions precedent to filing this instant  
30 action. Petitioners have no plain, speedy, or adequate remedy at law, unless the court grants the  
31 requested writ of mandate.

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**I. CARSON CREEK SPECIFIC PLAN**

14. The adoption of specific plans by cities and counties is authorized by Government Code §65450, et. seq. A specific plan must include a statement of the relationship of the specific plan to the jurisdiction's adopted general plan (Govt. Code § 65451, subd. (b)) No specific plan may be adopted or amended unless the proposed plan or amendment is consistent with the general plan. (Govt. Code § 65454) Subsequent approvals, including public works projects, tentative maps and zoning ordinances must be consistent with the adopted specific plan. (Govt. Code § 65455)

15. The Carson Creek Specific Plan (SP94-02) was initially approved by El Dorado County ("County") on March 4, 1997 ("CCSP"). Potential environmental impacts resulting from the proposed project were analyzed in a January 1997 Final Program Environmental Impact Report and Addenda, SCH No. 94072021 (hereafter "CCSP FEIR"). Plaintiff is informed and believes that the certified CCSP FEIR does not analyze the Heritage Neighborhood Park location adjacent to the Carson Creek Preserve, nor does the FEIR consider either the scope of many of the improvements within the Park including the intensive stadium-style lighting.

16. The CCSP area includes approximately 710 acres of land generally located south of Highway 50 in the westernmost area of El Dorado County, west of the El Dorado Hills Business Park and south of Golden Foothills Parkway. (See Exhibit 1) The original CCSP allowed a total of about 2,434 single- and multi-family residential units, along with commercial, research and development and industrial uses.

17. Litigation challenging approval of the project ensued. Ultimately, a Settlement Agreement was negotiated between the developer and the plaintiffs ("Settlement Agreement"), which reduced the overall dwelling unit count to 1,700 age-restricted homes. On September 27, 1999, the El Dorado County Board of Supervisors approved amendments to the CCSP and a Development Agreement in conformance with the Settlement Agreement. The amended CCSP expressly provides housing for senior citizens and those 55-years of age or older; thus, development within the CCSP must consider the special needs of this protected population. On information and belief, the CCSP FEIR concludes that impacts to biological resources will be less than significant, based in part, on mitigation measures requiring creation of the Carson Creek wetland Preserve, and the absence of rare, threatened, or endangered species or other

1 special status species onsite.<sup>2</sup> On information and belief, Lennar subsequently commissioned  
2 Helix Environmental to create a draft Long-term Carson Creek Preserve Plan inclusive of more  
3 recent biological studies that establish the presence or likely occurrence of many special status  
4 species. The Preserve is directly adjacent to the Heritage Neighborhood Park. No impact of the  
5 Park and its “improvements” on the Preserve has been conducted.

6 18. The CCSP, as amended, will be developed in Phases. Phase I, designated as the Euer  
7 Ranch, was approved simultaneously with the adoption of the CCSP/Settlement Agreement  
8 under the first tentative map application (TM96-1317). The Euer Ranch, an age-restricted  
9 development by K. Hovnanian Homes marketed under the name “Four Seasons” contains about  
10 460 lots and is completely built-out.

11 19. Phases II and III of the CCSP encompass the remaining age-restricted residential  
12 uses in the undeveloped southern portion of the plan. Developed by Lennar under the name  
13 “Heritage El Dorado Hills”, approved development under this part of the CCSP includes about  
14 1,060 age-restricted single-family homes to be developed in several future phases or “Units”,  
15 along with Industrial, Research and Development, and Open Space lands. A total of 37 acres of  
16 public and private parks is planned under the revised CCSP, including a 30-acre Regional Park  
17 site located near the southern boundary of the Specific Plan adjacent to mainly industrial land  
18 uses in the El Dorado Hills Business Park. In August 2021, Lennar received County approval to  
19 amend the CCSP to change designated Research & Development and Industrial lands to  
20 residential for an additional 409 age-restricted residential home sites.

## 21 **II. CCSP - PARKS AND RECREATION FACILITIES**

22 20. The Carson Creek Specific Plan provides for 37 acres of parks including a 30-acre  
23 Regional Park and 7 acres of neighborhood parks. The CCSP includes a detailed analysis  
24 measuring the Specific Plan’s consistency with adopted General Plan policies:

25 “The plan provides for 37 acres of parks including a 30-acre regional park and 7  
26 acres of neighborhood parks. The Regional Park is designed to meet regional

27 <sup>2</sup> “Special status species” include any species which is listed, or proposed for listing, as  
28 threatened or endangered by the U.S. Fish and Wildlife Service (FWS) or National Marine  
29 Fisheries Service (NMFS), under the provisions of the Endangered Species Act; any species  
30 covered by the Migratory Bird Treaty; any species designated by the FWS as a “candidate” or  
31 “listing” species or “sensitive” species; and any species which is listed and protected by State  
statute in a category implying potential endangerment or extinction.

1 park needs and is youth oriented. The neighborhood parks are designed for easy  
2 pedestrian access to meet the needs of nearby residents.” (CCSP p. 2-17)

3 “A 30-acre Regional Park is located within the project. Accessible from  
4 surrounding single family neighborhoods, this park will provide playing fields for  
5 sports such as soccer, baseball and softball.” (CCSP p. 2-17)

6 “The Carson Creek Specific Plan provides a location for a regional park. The  
7 park site is located an appropriate distance from planned residential areas to  
8 permit unobtrusive lighting for nighttime activity. The park is accessible to the  
9 residents of Carson Creek and to citizens of El Dorado County.” (CCSP p. 2-18)

10 21. The CCSP contains specific land use standards and criteria for the 37 acres of parks  
11 planned within the community.

12 “A 30-acre **Regional Park** is located in the southernmost portion of the site away  
13 from, but accessible to the community. The location will reduce the impact of  
14 regional traffic using the park, **and allow for lighted playing fields without**  
15 **conflict to residential areas...** This park is intended to provide for the large-scale  
16 active recreation needs of the western area of El Dorado County. The park could  
17 have ballfields, basketball courts, and other recreation facilities. Parking areas and  
18 picnic areas will also be provided.” (CCSP p. 3-6)

19 “Several **Neighborhood Parks** have been provided for active and passive use.  
20 The parks may contain picnic areas, playgrounds, and sports fields. Local parks  
21 should be designed to allow visibility from surrounding residential areas...”  
22 (CCSP p. 3-6)

23 22. The CCSP establishes Development Standards including permitted uses for parks  
24 within the plan area, clearly differentiating between the intensity of uses permitted within the  
25 smaller, localized Neighborhood Parks (typically ranging in size from 2- to 10-acres) and the  
26 larger 30-acre planned Regional Park, suitably located adjacent to industrial and similar uses to  
27 avoid or minimize impacts on neighboring homeowners. Permitted uses for the Regional Park  
28 include such primary uses as “Lighted active recreation facilities, picnic and play areas, park  
29 related buildings” and accessory uses including parking. Sports lighting at the Regional Park  
30 “shall employ glare and top reduction technology [and] shall be turned off by 9:45 p.m.”  
31 Likewise, any “PA System employed at the Regional Park shall be designed to minimize  
disturbance to residences... [and] ...shall be turned off by 9:45 p.m.” (CCSP pgs. 4-17 to 4-18)

23. No provision of the CCSP expressly permits or implies that intensive lighting is a  
permitted use within the Heritage Neighborhood Park. Plaintiff is informed and believes that no

1 other Neighborhood Park or “Village Park”<sup>3</sup>, under the control and management of the CSD  
2 contains the type of stadium-style sport court lighting as has been installed in Heritage  
3 Neighborhood Park.<sup>4</sup>

4 24. The CSD has also adopted a series of Master Plans and a Policy Manual which  
5 address the issue of lighting within park facilities, including, for example:

- 6 ● “DCC-2. Locate park amenities which will generate noise or light in context-sensitive  
7 locations. For example, locate unlighted fields and basketball and tennis courts with a  
8 buffer of 40 feet away from home fence lines. Lighted fields should only be considered in  
9 larger parks and in Joint Use situations near schools.”
- 10 ● “LV-3. Design lighting systems and select fixtures to minimize light pollution.

11 25. The CCSP and related conditions of approval also require designation of a site for  
12 the 30-acre Regional Park, but do not require that Lennar either dedicate the site or build the  
13 Regional Park improvements.

14 26. The CCSP provides for annexation of property within the CCSP into the CSD for  
15 dedication and development of park facilities and allocation of Quimby Act credits.

### 16 **III. DEVELOPMENT OF THE CCSP DESIGNATED** 17 **“NEIGHBORHOOD PARK”**

18 27. As part of its development activity within the CCSP, Lennar entered into a Parkland  
19 Dedication Agreement (“PDA”) with the El Dorado Hills CSD in 2015.

20 28. The PDA indicates that, at the time of execution of the agreement, Lennar had  
21 obtained approval from the County of tentative maps for residential developments including Unit  
22 1 (TM04-1391) (Exhibit 3) and Unit 2 (TM06-1428) (Exhibit 4), and that the tentative map for  
23 the residential development of Unit 3 (TM14-1519) (Exhibit 5) was pending but not yet  
24 approved. The approved project entitlements, including the CCSP, the tentative maps for  
25 residential subdivisions and related County ordinances and design standards cannot be modified  
26 by contract between the CSD and Lennar.

27  
28  
29 <sup>3</sup> “Village Park” is a term used by the CSD to describe a park larger than a neighborhood park  
and smaller than a community or regional park. The term is not used in the CCSP.

30 <sup>4</sup> (See [https://www.eldoradohillscsd.org/programs\\_and\\_amp\\_activities/parks.php](https://www.eldoradohillscsd.org/programs_and_amp_activities/parks.php) for listing of  
31 CSD parks and facilities.)



1           29. The recorded PDA identifies the total park acreage required to be dedicated for the  
2 development, including a 4.65 acre “Public Neighborhood Park”, and authorizes 50% credit for  
3 private recreational facilities to be included in the development against the total park acreage  
4 required. Exhibit “C” to the PDA contains a list of improvements to be built in the Heritage  
5 Neighborhood Park, including three tennis courts, two pickleball courts, bocce ball courts, picnic  
6 shelter, children’s play area, parking lot, restroom, open turf area and two parking lot lights.  
7 Exhibit “E” to the PDA is an estimated budget for cost of construction of the Heritage  
8 Neighborhood Park facilities. The PDA requires the Park site grading standards comply with  
9 the 10% slope standards contained in CCSP. The PDA does not indicate or require the tennis  
10 courts or pickleball courts to be lighted, and does not discuss the park lighting standards  
11 contained in the CCSP.

12           30. Directly adjacent to the 4.65-acre Heritage Neighborhood Park is the Carson Creek  
13 Preserve, consisting of approximately 199 acres of upland, wetland and aquatic habitats  
14 established as mitigation for impacts to important biological resources related to development of  
15 the CCSP. Plaintiff is informed and believes that the Preserve supports at least four special  
16 status species, including western pond turtle (*Actinemys marmorata*), burrowing owl (*Athene*  
17 *cunicularia*), tricolored blackbird (*Agelaius tricolor*), and white-tailed kite (*Elanus leucurus*). In  
18 addition, migratory birds and other birds of prey, protected under 50 Code of Federal  
19 Regulations (CFR) 10 of the Migratory Bird Treaty Act (MBTA) and/or Section 3503 of the  
20 California Fish and Game Code, have been observed within the Preserve including: northern  
21 mockingbird (*Mimus polyglottos*), mourning dove (*Zenaida macroura*), turkey vulture (*Cathartes*  
22 *aura*), cliff swallow (*Petrochelidon pyrrhonota*), northern harrier (*Circus cyaneus*), red-winged  
23 blackbird (*Agelaius phoeniceus*), and western scrub-jay (*Aphelocoma californica*). A variety of  
24 other migratory bird species may also utilize the Preserve for nesting or foraging. Plaintiff is also  
25 informed and believes the CCSP EIR does not consider potential impacts of noise or the  
26 intensive lighting now planned within the Heritage Neighborhood Park on species of concern  
27 that are known or believed to be present within the Preserve, as identified in the draft Carson  
28 Creek Preserve Long-Term Management Plan prepared by Helix Environmental Planning dated  
29 June 15, 2021. The Heritage Homeowners Association (HOA) will be saddled with responsibility  
30 as the Preserve Owner/Manager once Lennar completes its development activity. It is unknown  
31 to what extent the HOA, and ultimately individual homeowners may be liable for adverse

1 impacts on the Preserve resulting from installation of lighting which appears inconsistent with  
2 the adopted CCSP and which does not appear to have been analyzed as an allowed use adjacent  
3 to the Preserve.

4 31. The PDA, which was created within the context of the CCSP, does not authorize  
5 installation of tennis court or pickleball court lighting. In fact, the only lights covered by the  
6 PDA are two parking lot lights at a cost of \$5,000 each. The PDA provides that Lennar is  
7 responsible for preparation of improvement plans and specifications for the Heritage  
8 Neighborhood Park for review and approval by the CSD; bidding, execution of contracts and  
9 other documents for construction of the Park; and for construction of the Park improvements as  
10 reflected in the approved improvement plans within specific time frames to ensure timely  
11 completion of construction.

12 32. Meeting records and reports reflect that several meetings of the CSD's Parks and  
13 Planning Subcommittee were held, with at least one presentation by Lennar, concerning the  
14 Heritage Neighborhood Park design. On November 28, 2017, the Subcommittee recommended  
15 approval of the conceptual design plan to the CSD Board. By this time, the Park conceptual  
16 design graphic had been modified to show *lighted tennis courts and lighted pickleball courts*,  
17 and the construction budget included a series of alternatives including the cost of the lighting for  
18 the sport courts. The CSD Board of Directors approved the conceptual design for the Heritage  
19 Neighborhood Park at their meeting on December 14, 2017. The staff report included the  
20 following:

21 "The District's Board Parks and Planning Committee had the opportunity to  
22 review and provide input at several committee meetings to develop the current  
23 conceptual park design. **At the November Parks and Planning Committee  
24 meeting, it was asked of the developer to research the option of adding  
25 lighting to the sports field, to meet the increasing demand of user groups.  
26 After review of the development's environmental documents and Specific  
27 Plan, sports field lighting was not addressed, nor authorized as an approved  
28 use at this location.** It is the recommendation of the Committee that the full  
29 Board review the conceptual design for approval."

30 33. The CSD Board approved the conceptual design at the December 14, 2017 meeting.  
31 Following approval, Lennar and their landscape architect worked to develop construction plans  
for the Heritage Neighborhood Park through much of 2018, in consultation with CSD GM  
Loewen. Plaintiff is informed and believes that, during this time, there was no outreach by either  
Lennar or the CSD to Heritage buyers or homeowners to present the proposed plans or discuss

1 how the peaceful neighborhood Park would be changed. By January 2019, bid packages were  
2 available for contractors based on the landscape improvement plans dated October 30, 2018.

3 34. On May 8, 2019, the CSD made a brief presentation to the El Dorado Hills Area  
4 Planning Advisory Committee (APAC) about plans for the upcoming Heritage Neighborhood  
5 Park. During the discussion, the CSD advised that it was too late to change the Park plans, and  
6 CSD GM Loewen admitted that he had never presented plans to the Heritage homeowners, but  
7 would try to do better outreach in the future. During the discussion, one participant stated his  
8 belief that an overwhelming majority of Heritage owners were unaware of the plans including  
9 the intrusive lighting on the courts.

10 35. On July 11, 2019, the CSD Board approved the award of the Heritage Neighborhood  
11 Park construction contract on the consent calendar by a 5-0 vote. Construction of the Park  
12 commenced in August 2019.

13 36. As Park construction progressed, Heritage homeowners became aware of issues with  
14 the Park design and construction, and false and misleading disclosure statements made to buyers  
15 by Lennar and their sales representatives. In February 2020, the homeowners collected  
16 signatures for a petition to the CSD requesting the public park operating hours be restricted to  
17 between 7:00 AM to 8:00 PM coupled with appropriate noise mitigation to reduce nighttime  
18 noise in the vicinity of the Park. At this time, it appears homeowners were still unaware of plans  
19 to install intensive stadium-style lighting for tennis courts and pickleball courts.

20 37. On March 17, 2020, a meeting of the Parks and Planning Subcommittee was held to  
21 discuss possible changes to the Heritage Neighborhood Park. The staff report for this meeting  
22 mentions lighting for the tennis and pickleball courts. On May 14, 2020, the CSD Board of  
23 Directors considered adoption of dawn-to-dusk operating hours for the Heritage Neighborhood  
24 Park. The staff report advised that eliminating the lighted courts was “not an option for the  
25 construction plan at this stage”. The Board therefore voted to make the Park a dawn-to-dusk  
26 facility, but having been advised by CSD staff that deleting the lighting was not an option in the  
27 construction plans at that stage, did not vote to adopt any change orders. Although Heritage  
28 residents believed the dawn-to-dusk designation would eliminate the lights or prevent use of the  
29 lights, Lennar continued with Park construction and preparation for lighting installation on the  
30 tennis and pickleball courts.

1           38. On January 21, 2021, the large stadium-style light fixtures were installed at the Park,  
2 followed by a flood of objections from Heritage residents. The lights, on 50-foot-tall light poles,  
3 were alleged to light up the tennis and pickleball courts, but the lights were not yet energized so  
4 the effect of the lighting could not be assessed. There was no communication to Heritage  
5 residents either from Lennar or the CSD regarding the lights. Heritage homeowners strongly  
6 objected, and engaged local media.

7           39. On January 22, 2021 a series of letters and emails were initiated between Heritage  
8 residents, Lennar and the CSD. On February 5, 2021 an email from CSD GM Loewen  
9 acknowledged that he and other CSD staff reviewed the final plans, but he did not realize how  
10 high the light poles would be. Heritage Residents attended the February 10, 2021 CSD Board of  
11 Directors meeting to raise objections to the Park lighting and design, both in writing and orally.  
12 The Board of Directors did not allow any questions, and the Board took no action on the  
13 concerns expressed, but did not modify or indicate any intent to modify the dawn to dusk  
14 limitation on use of the Park.

15           40. On April 28, 2021 at the CSD Parks and Planning Committee Meeting, Parks  
16 Superintendent Dan Williams provided an analysis of the lighting, using photographs to compare  
17 Heritage to other lighted parks outside the area. The photographs depicted parks that are  
18 dissimilar for various reasons, and the analysis made no effort to assess the impact of the lighting  
19 on adjacent residences or the Carson Creek Preserve. The exponential increase in the amount of  
20 lighting, according to CSD Parks Superintendent Williams, “is intended for premier top level  
21 competitive play which is needed in the area for user groups.”

22           41. A presentation was made by Parks Superintendent Williams to the CSD Board at  
23 their meeting on May 13, 2021. Residents and County Supervisor George Turnboo were in  
24 attendance and made comments to the Board, but the agenda indicated no action was required on  
25 the item and none was taken.

26           42. On August 3, 2021, Lennar told the CSD Board, in part, “Lennar does not believe the  
27 Lighting is necessary for the Park to be a great amenity”, and requests CSD permission to  
28 remove the sports court lighting at its own expense. Lennar has refused to take any action  
29 without CSD approval. Nevertheless, the CSD Board of Directors and the CSD have steadfastly  
30 refused to authorize the removal of the sports court lights, even at Lennar’s sole expense and  
31

1 even though Heritage Neighborhood Park is officially classified by the CSD as a dawn to dusk  
2 park.

3 43. Plaintiff is informed and believes that on or about January 21, 2022, the CSD Parks  
4 personnel conducted an unannounced test of the parking lot lighting, activating the parking lot  
5 lights which are on light poles much shorter than the sport court lights. The parking lot lighting  
6 test showed substantial light trespass to adjacent homes, and heightened concerns among  
7 Heritage residents. A second test, with CSD Board members present, but without advance notice  
8 to Heritage homeowners, was conducted on February 10, 2022, and included both the stadium-  
9 style court lighting and parking lot lights. Again, the test resulted in substantial light trespass  
10 onto adjacent properties. On information and belief, Plaintiff believes the light and glare from  
11 the Heritage Neighborhood Park also impact the Carson Creek Preserve site, and the special  
12 status species discussed in the draft Carson Creek Preserve Long-Term Management Plan  
13 prepared by Helix Environmental Planning dated June 15, 2021. Several residents of Heritage in  
14 the vicinity captured photos of the lighting impact on homes (Exhibit 2) as the unannounced tests  
15 were conducted.

#### 16 **IV. LIGHTING AND LANDSCAPE ASSESSMENT DISTRICT #39**

17 44. The PDA and project conditions of approval required establishment of a funding  
18 mechanism to ensure that homeowners are primarily responsible for ongoing operation,  
19 maintenance and improvement of the Heritage Neighborhood Park. Early in the development  
20 process before any homeowner closed escrow, Lennar was required to work with the CSD to  
21 establish Landscape and Lighting Assessment District #39 ("LLAD") within the Heritage  
22 development as the financing mechanism. An annual report by an Assessment Engineer must  
23 allocate the cost of the Park improvements, services and maintenance based on the special  
24 benefit to each parcel.<sup>5</sup>

25 45. Here, seven consecutive Annual Assessment Engineers' analyses conclude that  
26 special benefit conferred on property within the Heritage LLAD boundary and the maintenance

27 <sup>5</sup> "[N]o assessment shall be imposed on any parcel which exceeds the reasonable cost of the  
28 proportional special benefit conferred on that parcel," where "special benefit" means "a  
29 particular and distinct benefit over and above general benefits conferred on real property located  
30 in the district or to the public at large." See Proposition 218, The Right to Vote on Taxes Act,  
31 which was approved by the voters of California on November 6, 1996, now codified as Articles  
XIIIC and XIIID of the California Constitution.

1 responsibility of Heritage homeowners is 78.80% of the total; 21.2% of benefits are general in  
2 nature, requiring an equivalent contribution from sources outside the LLAD. The benefit  
3 analysis is consistent with CCSP policy that the Heritage Neighborhood Park was intended  
4 primarily for use by neighboring property owners.

5 46. The improvements, facilities, and services listed in the seven Annual Assessment  
6 Engineers' reports are generally consistent with the CCSP description of a Neighborhood Park,  
7 such as picnic tables, shade structures, bocce ball court, public restroom, parking lot and parking  
8 lot lights, turf area and irrigation. The description does not include other improvements that  
9 have been built within the Park, such as three tennis courts, two pickleball courts, the stadium-  
10 style lighting on 50' tall poles or playground equipment with noisemakers. Under Proposition  
11 218, modification of the LLAD to increase the services and improvements would require  
12 Proposition 218 proceedings and ultimately, property owner approval.

13 47. On April 14, 2022 the CSD BOD received a staff report identifying incomplete and  
14 deficient or defective construction work on Heritage Neighborhood Park, including for example,  
15 rust and discoloration of the tennis court surfaces. On April 23, 2022 at a meeting of the CSD  
16 Administration and Finance Subcommittee, GM Kevin Loewen indicated that Heritage  
17 Neighborhood Park could open within thirty days if the district accepts the Park "as is".  
18 Acceptance of the Park by the CSD raises a series of issues, including here, whether the Heritage  
19 homeowners would be expected to bear financial responsibility through the LLAD #39  
20 assessments to correct defects in the Heritage Neighborhood Park facilities.

21 **V. COUNTY ACTION REGARDING CCSP, CCSP PARK REQUIREMENTS,**  
22 **RELATED COMMUNITY DESIGN STANDARDS/LIGHTING AND NOISE**  
23 **ORDINANCES**

24 48. The County has reviewed and approved many development actions for the CCSP in  
25 reliance on the Carson Creek Specific Plan EIR (SCH No. 94072021), in compliance with Cal.  
26 Code of Regulations § 15182, which provides that subsequent environmental review is not  
27 required unless substantial changes are proposed in the project which require major revisions of  
28 the EIR; substantial changes occur with respect to the circumstances under which the project is  
29 undertaken; or new information of substantial importance, which was not known and could not  
30 have been known at the time the EIR was certified as complete, becomes available (See Cal.  
31 Code of Regulations § 15162). Actions approved by the County exempt from subsequent CEQA  
review have included tentative subdivision maps implementing the CCSP with conditions

1 consistent with the CCSP and EIR or amendments. Other actions have required subsequent  
2 CEQA review, including an August 2021 Specific Plan Amendment converting lands designated  
3 as Research and Development and Industrial to Residential, for which an Addendum to the  
4 CCSP EIR was necessary. On information and belief, Plaintiff alleges the CCSP policies and  
5 environmental review of the Heritage Neighborhood Park has never been amended or revised to  
6 reflect the inclusion of high intensity lighting of the type that has been installed.

7 49. As required by the CCSP and Conditions of Approval, Lennar processed and  
8 obtained Special or Conditional Use Permits for the Heritage private recreational facilities,  
9 including the Heritage Fitness Center in March 2015 and The Retreat Clubhouse in January  
10 2018. Both these permits required noticed public hearings before the Planning Commission, and  
11 both imposed conditions for onsite lighting consistent with the County Zoning Code to avoid  
12 light trespass and limiting hours of operation and height of lighting fixtures.

13 50. On December 15, 2015, El Dorado County adopted a comprehensive Zoning  
14 Ordinance Update, including Community Design Standards for Outdoor Lighting. Although  
15 these standards allow installation of outdoor lighting for sports and performance facilities in  
16 locations where such uses are permitted, the standards require submission of a detailed lighting  
17 plan, and the use of internal louvers and external shields to focus light on the performance area in  
18 order to eliminate light trespass in compliance with recommendations of the Illuminating  
19 Engineering Society of North America (IESNA). The Outdoor Lighting Standards also require,  
20 at a minimum, issuance of an Administrative Permit issued by the Planning Director, and may  
21 require Conditional Use Permits approved by the Planning Commission. Plaintiff is informed  
22 and believes that the lighting installation at the Heritage Neighborhood Park has not obtained any  
23 required planning permit, and does not comply with the County's Outdoor Lighting Standards,  
24 including certifications required prior to issuance of a Certificate of Occupancy by the County.

25 51. The El Dorado County General Plan includes noise standards applicable to noise-  
26 sensitive development, including new residential uses requiring completion of an acoustic  
27 analysis prior to discretionary approval of a new noise generating land use so that noise  
28 mitigation measures can be included in the project design. Plaintiff is informed and believes that  
29 no acoustic analysis of the impacts of the Heritage Neighborhood Park on the age-restricted  
30 residential development in the Heritage community has been conducted to assess the noise  
31

1 impacts on the nearby residences or the Carson Creek Preserve, and accordingly, no mitigation  
2 measures have been incorporated in the design of the Park.

### 3 **VI. NON-DISCLOSURE TO HOMEOWNERS**

4 52. Petitioner is informed and believed that, at the time Lennar began its marketing and  
5 sales of homes to homebuyers, the planning for the Heritage Neighborhood Park was well  
6 underway, but the Park site was only a dirt lot. As part of its Purchase Agreement and Escrow  
7 Instructions package totaling over 100 pages, Lennar included extensive disclosure statements  
8 for electronic signature by buyers.

9 53. A paragraph in Lennar's Homebuyer Disclosure Statement titled "Public Parks"  
10 describes the future 4.65-acre public Park located in Heritage. The disclosure makes several  
11 statements which were patently false at the time they were made to prospective purchasers.  
12 Lennar was actively involved in planning, designing, and contracting for the construction of the  
13 Heritage Neighborhood Park and immersed in the detail of these activities at the time these  
14 statements were provided in writing to homebuyers. The exact same park disclosure statement  
15 was contained in the Homebuyer Disclosure Statement for Heritage homes sold by Lennar in  
16 2017 as in 2020, well after the final approval of the plans and budget for Lennar's construction  
17 of Heritage Neighborhood Park. Lennar had actual knowledge of the lighting of the Park,  
18 improvements in the Park, and the uses of the Heritage Neighborhood Park from at least April  
19 2015, the time of the Parkland Dedication Agreement, and, more specifically, since 2017 and  
20 2019, when Park design documents were officially approved by the CSD. Thus, they didn't  
21 merely fail to disclose what they knew but made misrepresentations in their sales documents.

22 54. Misrepresentations included such statements as: "Seller is not informed as to whether  
23 or not the park is lighted"; "Seller is not informed as to whether the parks contain any  
24 improvements (such as slides, swings or other play equipment)"; and "Seller makes no  
25 representations regarding the location or continued operation of these parks".

26 55. On information and belief, statements made by Lennar sales representatives were  
27 also misleading. Many buyers were told that Heritage Neighborhood Park would be a passive  
28 park with lawn and picnic tables. Those purchasers who bought homes in close proximity to the  
29 Park, in particular, were thereby induced to rely on these misrepresentations to buy their houses,  
30 unaware that the quiet enjoyment of their properties would inevitably be disrupted by Heritage  
31



1 Neighborhood Park as it was being planned and constructed by Lennar, in conjunction with the  
2 El Dorado Hills Community Services District (CSD).

3 56. Plaintiff is informed and believes that the CSD conducted no outreach concerning the  
4 Park design and features including lighting of tennis courts or pickleball courts with residents  
5 most directly impacted until, it was “too late” to make any changes. At a May 8, 2019, meeting  
6 of the El Dorado Hills Area Planning Advisory Committee (APAC) including a presentation by  
7 the CSD concerning plans for the upcoming Heritage Neighborhood Park, General Manager  
8 Kevin Loewen admitted that he had not presented the Park plans to the Heritage homeowners,  
9 but would try to do better outreach in the future. At that meeting, a participant stated his belief  
10 that an overwhelming majority of Heritage owners were unaware of the plans, including the  
11 intrusive lighting on the courts.

12 57. Finally, Heritage homeowners have attempted to raise issues concerning the Park  
13 design and lighting at meetings of the HOA Board of Directors. On information and belief, when  
14 they did so, then Heritage HOA Board President Sean MacDiarmid (now HOA Vice President),  
15 a Lennar employee and senior manager, consistently asserted that the HOA is not responsible for  
16 the Park, has refused to discuss Park issues and repeatedly cut off discussion of Park issues at the  
17 HOA meetings. Considering that the HOA could have asserted claims regarding the adverse  
18 Park impacts including lighting and noise, the actions by representatives of Lennar and their  
19 control of the HOA creates a conflict of interest and raises concerns regarding a breach of  
20 fiduciary duty.

21 **VII. OPERATION OF HERITAGE NEIGHBORHOOD PARK CONSTITUTES A**  
22 **PUBLIC NUISANCE TO HERITAGE HOMEOWNERS**

23 58. Operation of the Heritage Neighborhood Park as currently configured, including the  
24 intrusive lighting, gives rise to a valid public nuisance claim against the CSD related to the  
25 lighting and other issues as herein described. The prospective public nuisance is both substantial  
26 and unreasonable, and is probable and imminent upon commencement of park operations.  
27 Plaintiff alleges the lighting as herein described would violate the limitations in the CCSP, the  
28 County Community Design standards and the Zoning Code. Such a decision to operate the lights  
29 would require additional review, which must consider at least the following: substantial glare and  
30 lighting trespass, the impact on special status species as well as the impact and feasible  
31 mitigation measures to reduce impacts on residents of the age-restricted Heritage community.

1           59. The CSD now seeks to convert what was originally planned as a small, quiet and  
2 passive neighborhood park adjacent to a senior community, into a competitive sports park with  
3 stadium-style lights and noise generators, instead of reserving those uses for the planned 30-acre  
4 Regional Park which was envisioned in the Carson Creek Specific Plan and suitably located  
5 adjacent to Industrial and Research and Development land uses. The CCSP designates the  
6 Heritage site as a Neighborhood Park, but does not authorize intensive lighting. No evaluation  
7 has been performed as part of the CCSP FEIR or any subsequent action through and including  
8 approval of Park construction documents to assess impacts of the lighting on the senior housing  
9 sensitive receptors, or on special status species known or highly likely to be present within the  
10 Preserve, and no testing of the lights to address these questions has been performed.

11           60. Heritage homeowners can assert a valid public nuisance claim against the CSD for  
12 various reasons, including the lighting if operated. First, they can establish special injury to  
13 themselves in person or property, of a character suffered in kind different from the general  
14 public, due to light, noise and traffic disturbances produced by Heritage Neighborhood Park  
15 which will directly impact their properties. Next, the facts in this case show the danger is both  
16 substantial and unreasonable as well as probable and imminent. The evidence from the brief light  
17 demonstrations in Heritage Neighborhood Park illustrate the level of nuisance created by the  
18 lights. The impacts extend to homes in the vicinity, and Plaintiff is informed and believes that  
19 the lighting impact extends also to the Carson Creek Preserve adjacent to the Park, an impact that  
20 does not appear to have been analyzed at any prior stage of the development.

21           61. There is also data on nuisance noise levels produced by pickleball and other sports.  
22 In April, 2020, noise concerns relating to pickle ball courts located close to Heritage residents'  
23 houses was brought to the attention of the CSD. The contention is that the game of pickleball  
24 produces reoccurring impulsive noises and that noise from the Heritage Park pickle ball courts,  
25 which are in close proximity to residents' houses, may exceed noise levels set by the El Dorado  
26 County General Plan. Outdoor recreation facilities are an identifiable noise source, and an  
27 acoustical analysis should have been conducted since Heritage Neighborhood Park is a new  
28 noise generating land use proposed in an area adjacent to the sensitive receptor of a senior citizen  
29 residential community. Plaintiff is informed and believes that no acoustical analysis has ever  
30 been performed for Heritage Neighborhood Park's noise impact on nearby residences. When a  
31 similar challenge was faced by the City of Newport Beach regarding impulsive noise associated

1 with pickle ball impacting senior residences and generating complaints, mitigation measures  
2 were instituted at the suggestion of a consultant.

3 62. The parking impact is illustrated by the lack of available, legal parking in the vicinity  
4 of Heritage Neighborhood Park. The Park itself contains only 23 parking spaces, and it is half a  
5 mile from the closest legal on-street parking. Users of the Park from outside of the Heritage  
6 community can't park in Heritage, as it is a gated community with private roads. There is no  
7 parking allowed on Carson Crossing Drive, so a driver will have to go all the way to Golden  
8 Foothills Parkway to park legally on the street. Illegal parking on narrow roads in the vicinity of  
9 the Park creates a potential safety hazard, restricting access to emergency vehicles. Entrances  
10 and exits to the Park are located on Palmdale Drive, the primary access road for over 1,000  
11 Heritage residents and for emergency vehicle access. The width of Palmdale Drive meets  
12 minimum County standards without consideration of added pressure from Park traffic and illegal  
13 parking. On information and belief, the potential for reduced access to resident and emergency  
14 vehicles presents a significant nuisance and life-threatening hazard that has not been studied by  
15 the Defendants. Additionally, there are hazardous line of sight blind spots due to walls, large  
16 entry signs, and gates.

17 63. The congestion and noise level predicted to be produced by the Park may be  
18 demonstrated by the widespread CSD publicity for the Park, which Plaintiff is informed and  
19 believes includes efforts to actively recruit sports teams from as far away as Cameron Park to use  
20 the public courts at Heritage. While the CSD Board has adopted a dawn-to-dusk designation for  
21 the Park, the CSD has refused to allow Lennar to remove the intensive lighting. Statements have  
22 been made by GM Loewen that the lights may be needed in the future and the CSD has  
23 generated publicity for the Park as a site for competitive sports activities beyond the intended  
24 closure at dusk. If operated with the lighting as planned, Heritage Neighborhood Park would be  
25 the only lighted park in El Dorado Hills other than Promontory Park, an 18.7-acre community  
26 park including at least three lighted ballfields, lighted tennis and bocce ball courts and  
27 approximately 99 parking spaces. If lighted, Heritage Neighborhood Park could reasonably be  
28 expected to attract a significant number of users, particularly after dark when other facilities are  
29 not available.

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**VIII. PLAINTIFF SEEKS A GLOBAL RESOLUTION**

64. Residents of Heritage El Dorado Hills have worked diligently to resolve the issues raised by the construction of the Heritage Neighborhood Park, based on inadequate analysis of the potential impacts on neighboring properties, with unsatisfactory results. Plaintiff, in its representative capacity, has identified a series of options including complaints for damages for misrepresentation and inadequate disclosure, complaint for maintenance of a nuisance or for nuisance abatement and others. Rather than engage in a multiplicity of suits over a period of years, Plaintiff prefers to reach a global resolution, including removal of the unauthorized lighting, a permanent operational restriction to dawn-to-dusk hours, and an injunction to stop the operation of the Park until comprehensive mitigation of the impacts of lighting, noise, parking and traffic safety is implemented.

**IX. SUMMARY OF ISSUES REQUIRING RESOLUTION**

65. In adopting the CCSP and CCSP FEIR, El Dorado County analyzed and authorized a 30-acre Regional Park appropriately planned adjacent to Industrial and Research & Development land uses, and seven acres of Neighborhood Parks located in areas designated for age-restricted senior housing developments. The different park types contained different design standards suitable to their locations; the Regional Park would incorporate lighted ball fields and other facilities for competitive sports activities for use by the broader community, while the Neighborhood Parks were not lighted and generally designed for use by neighbors within walking or biking distance involving more passive uses such as picnic areas and green spaces. Since approval of the CCSP, the County has approved a number of related actions, including CCSP Specific Plan Amendments, tentative subdivision maps and amendments to those maps. Plaintiff is informed and believes that the County has not amended the CCSP to expand the scope of improvements allowed within the different park classifications. Accordingly, the CSD should have implemented parks within the CCSP in a manner consistent with County approvals. The CSD has never conducted environmental review of changes to the park standards, nor has the CSD held a public hearing to attempt to change the park standards within the CCSP.

66. The PDA executed in 2015 between Lennar and the CSD expanded the characteristics of improvements within the 4.65-acre Heritage Neighborhood Park to include active sports facilities including tennis and pickleball courts, but did not include installation of intensive lighting. Later, CSD staff acknowledged in a staff report to the CSD Board that Lennar

1 had been asked “...to research the option of adding lighting to the sports field, to meet the  
2 increasing demand of user groups. After review of the development’s environmental  
3 documents and Specific Plan, sports field lighting was not addressed, nor authorized as an  
4 approved use at this location.” In fact, as stated hereinabove, the CCSP authorizes lighted  
5 active recreational facilities as a permitted use within the 30-acre Regional Park, but not within  
6 smaller neighborhood parks. The County Zoning Ordinance<sup>6</sup> provides that lower intensity park  
7 and recreation uses (picnic areas, day use parks with lighting for security purposes only, and  
8 equestrian/hiking trails) are uses allowed by right in all residential zones. More intensive uses,  
9 such as golf courses, nighttime use parks, public swimming pools and public tennis courts  
10 require approval of a Conditional Use Permit<sup>7</sup>. Nevertheless, the CSD Board approved  
11 installation of lighting for public tennis and pickleball courts apparently without a County-  
12 approved Conditional Use Permit.

13 67. When neighboring residents protested the action, the CSD voted unanimously to  
14 limit Park hours to “dawn-to-dusk”. GM Loewen then told residents the CSD does not know  
15 “what the future may hold” and that the court lighting might be needed in the future, despite the  
16 dawn-to-dusk decision by the Board on July 5, 2021. The effect of the lights on Heritage homes  
17 was first discovered when the parking lot lights were briefly tested for the first time in January  
18 and both the parking lot lights and the stadium-style sport court lights were briefly tested on  
19 February 10, 2022. Lennar has stated it does not believe the lighting is necessary for the Park to  
20 be a great amenity and has offered to remove the lights, an action which would resolve a  
21 substantial component of Plaintiffs concerns. The CSD has refused to allow Lennar to remove  
22 the lights, and has recently discussed acquisition of the Park site from Lennar as-is, despite these  
23 unresolved lighting issues and potential construction defects that the CSD recognizes will need  
24 to be corrected. The County has never amended the CCSP to reflect changes to allowed uses  
25 within Heritage Neighborhood Park, and the CSD should have implemented that Park consistent  
26 with County approvals. However, CSD actions have changed the Heritage Neighborhood Park  
27 into a smaller version of a Regional Park, wholly inconsistent with its placement in the midst of  
28 sensitive receptors in an age-restricted senior residential housing community.

30 <sup>6</sup> EDC Code § 130.24.020; Table 130.24.020.

31 <sup>7</sup> EDC Code § 130.40.210 (See subsections B, F, and G)

1           68. Before the Park becomes operational, it is essential that the impacts of noise,  
2 lighting, parking, and traffic on the neighboring properties and the Carson Creek Preserve be  
3 evaluated for compliance with the adopted CCSP, the County Zoning Ordinance and County's  
4 Community Design Standards, and environmental documents including the draft Carson Creek  
5 Preserve Long-Term Management Plan prepared by Helix Environmental Planning dated June  
6 15, 2021. The analysis should include tests of the lighting to determine the extent of lighting  
7 trespass and glare on adjacent properties and the Preserve; acoustic tests to address noise  
8 impacts; and consideration of the impact of traffic and parking for potential tournament and  
9 league play to assess impacts on emergency vehicle access and adequacy of parking; and related  
10 issues. The analysis must determine whether these impacts are permitted under applicable  
11 regulations, and whether feasible mitigation measures are available that would reduce the  
12 significance of the impacts.

13           69. If the Park becomes operational without such analysis or prior to issuance of the  
14 requested declarations by this court, a multiplicity of separate legal actions is anticipated against  
15 the CSD for operating the Park as a public nuisance and against Lennar for misrepresenting that  
16 Lennar was not aware of the lights or planned park uses, against Lennar and their appointed  
17 HOA representatives for the breach of fiduciary duty of undivided loyalty for making decisions  
18 for the HOA that benefit the interests of Lennar at the expense of the association and its  
19 members.

20           70. The facts summarized above raise a series of issues requiring resolution, which are  
21 broadly described below:

22           a. Whether the execution of a contract (the PDA) between the CSD and Lennar  
23 authorizes Lennar to construct Heritage Neighborhood Park improvements in violation of the  
24 General Plan, County Zoning Ordinances, Community Design Standards, the CCSP, tentative  
25 subdivision maps or other project entitlements (the "governing approvals") or authorizes the  
26 CSD to operate the Heritage Neighborhood Park in violation of same.

27           b. Whether the CSD is authorized to acquire from Lennar and accept for operational  
28 purposes the completed Heritage Neighborhood Park with improvements not authorized in the  
29 governing approvals, where the Park impacts have not been analyzed for impacts on surrounding  
30 properties including the Preserve, and where appropriate mitigation has not been implemented.

1 c. Whether the CSD has authority to refuse to accept the Heritage Neighborhood Park or  
2 to refuse to allow Lennar to receive Quimby Credits unless Lennar delivers the Park with  
3 improvements that are not authorized by the governing approvals and do not include appropriate  
4 mitigation.

5 d. Whether acceptance of the Heritage Neighborhood Park permits the CSD to  
6 commence operation including Park lighting, where no assessment of impacts of lighting, noise,  
7 traffic, parking and safety on nearby sensitive receptor senior housing or the Carson Creek  
8 Preserve has been conducted and no mitigation measures have been implemented;

9 e. Whether acceptance of the Heritage Neighborhood Park with the intent to operate as  
10 currently configured by CSD is a discretionary act that could result in environmental impacts  
11 requiring CEQA review.

12 f. Whether a decision by the CSD Board of Directors to remove the dawn to dusk  
13 limitation on Park operations or to permit the use of lighting during dawn to dusk operations  
14 periods is a discretionary act requiring review under CEQA.

15 **FIRST CAUSE OF ACTION**  
16 **(Declaratory Relief - CCP § 1060)**

17 71. Plaintiff incorporates by reference the allegations of paragraphs 1 through 70 of this  
18 Petition as if fully set forth herein.

19 72. As described at length above, an actual controversy has arisen and now exists  
20 between Petitioners and Respondents CSD and Lennar concerning the authority for construction  
21 and operation of the Heritage Neighborhood Park as configured. Judicial determinations of the  
22 issues listed below and of the respective duties of Petitioners and Respondents are necessary and  
23 appropriate at this time under the circumstances to determine the continuing rights and  
24 responsibilities of the parties with regards to the following and to prevent a multiplicity of  
25 actions. Petitioner seeks the following declarations:

26 a. Neither the PDA contract between the CSD and Lennar nor subsequent conceptual  
27 design or construction contract approvals operate to amend the CCSP or to permit construction  
28 or operation of Heritage Neighborhood Park improvements in violation of the General Plan,  
29 County Zoning Ordinances and Community Design Standards, the CCSP, or other project  
30 entitlements (the “governing approvals”).  
31

1 b. Lennar is not required to construct improvements to the Heritage Neighborhood Park  
2 except to the extent authorized under the governing approvals, and would satisfy parkland  
3 dedication requirements and receive Quimby Act credits if the Park is conveyed to the CSD after  
4 removal of the lights;

5 c. If the Heritage Neighborhood Park is transferred by Lennar to the CSD as currently  
6 configured, including lighting, and the CSD accepts the Park, an analysis of the Park's impacts  
7 including lighting, noise, traffic, parking and safety must be conducted and feasible mitigation  
8 measures must be implemented prior to commencement of operations because the activity's  
9 potential for causing environmental change is sufficient to justify the further inquiry into its  
10 actual effects that will follow from the application of CEQA;

11 d. Alternatively, if the Heritage Neighborhood Park is transferred by Lennar to the CSD  
12 as currently configured and the CSD accepts the Park, the Park shall only be operated dawn to  
13 dusk as previously determined by the CSD without activation of the lighting;

14 e. Any decision by the CSD Board of Directors to accept and commence operation of the  
15 Heritage Neighborhood Park is a discretionary decision;

16 f. Any decision by the CSD Board of Directors to remove the dawn-to dusk limitation or  
17 to permit the use of lighting during park operations periods is a discretionary act requiring  
18 review under CEQA.

19 g. Because the CSD has led homeowners to believe that the Park will be operated as a  
20 dawn-to-dusk facility, but later insists that the lights remain in place because the CSD can't  
21 determine what the future may hold, a declaration that the CSD is estopped to assert any  
22 limitation periods.

23 h. A declaration establishing whether the County of El Dorado or the El Dorado Hills  
24 Community Services District has statutory authority to conduct the review required herein.

25 **SECOND CAUSE OF ACTION**

26 **(Writ of Mandate – CCP § 1085) Against El Dorado Hills Community Services District**

27 73. Plaintiff/Petitioner incorporates by reference the allegations of paragraphs 1 through  
28 72 of this Verified Petition/Complaint as if fully set forth herein.

29 74. The CSD has a present and ministerial duty to ensure the Heritage Neighborhood  
30 Park and any Park lighting or improvements are designed, constructed and operated in  
31 conformance with the governing approvals.





1 88. Respondent CSD/Lennar's conduct was a substantial factor in causing Plaintiff's  
2 harm.

3 89. The governing approvals do not authorize the intrusive and unmitigated impacts of  
4 lighting, noise, traffic, parking or safety issues on residences or the Preserve; the nature of the  
5 harm from the lights does not permit the conclusion that a general authorization to receive and  
6 operate park land showed an unequivocal legislative intent to sanction installation and operation  
7 of invasive lights.

8 90. Plaintiff seeks injunctive relief and abatement of the nuisance.

9 **FOURTH CAUSE OF ACTION**

10 **(Injunctive Relief: CCP §526a) Against El Dorado Hills Community Services District**

11 91. Paragraphs 1 through 90 are incorporated as if set forth in this Fourth Cause of  
12 Action.

13 92. In the absence of this Court's injunction, Defendants El Dorado Hills Community  
14 Services District will commence operation of the Heritage Neighborhood Park as configured  
15 without having conducted a proper and adequate analysis of the Park impacts, including but not  
16 limited to lighting, noise, traffic, parking and safety, and without inclusion of appropriate  
17 mitigation measures to reduce the Park's adverse impacts.

18 93. Accordingly, Plaintiff is entitled to a temporary restraining order, preliminary and  
19 permanent injunction enjoining Defendant El Dorado Hills Community Services District and its  
20 agents, from opening and operating the Park as configured, unless and until a proper analysis is  
21 conducted and appropriate mitigation measures or modifications to the Park are implemented,  
22 including, if necessary, modifications to the Park improvements. Plaintiff has no plain, speedy,  
23 and adequate remedy in the ordinary course of law in that damages or other legal remedy can  
24 adequately compensate Heritage residents for the irreparable harm that they will suffer.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Petitioner and Plaintiff prays that judgment be entered against  
27 Defendants and Respondents as follows:

28 1. For declarations as hereinabove pled regarding operation of the Heritage  
29 Neighborhood Park and lighting and improvements;  
30

1           2. For a Writ of Mandate directing the CSD to operate dawn to dusk until such time as  
2 appropriate review of the Heritage Neighborhood Park and lighting is conducted to determine  
3 whether the Park and park lighting is in conformance with the adopted CCSP, the County Zoning  
4 Ordinance and County's Community Design Standards;

5           3. For a Writ of Mandate directing the CSD and Lennar to produce and execute plans  
6 designed to mitigate impacts of the Heritage Neighborhood Park on the Carson Creek Preserve  
7 and an abatement order to enjoin operation of the Park until such time as said mitigation plans  
8 are approved and executed to the satisfaction of the Court, Petitioners, and governmental  
9 agencies with Preserve oversight;

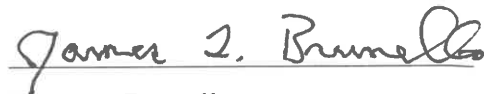
10           4. For an abatement order and injunction enjoining operation of the Heritage  
11 Neighborhood Park as a public nuisance.

12           5. For costs of suit;

13           6. For an award of attorney's fees pursuant to CCP§ 1021.5 and costs; and

14           7. For a stay, temporary restraining order, preliminary injunction, and permanent  
15 injunction, or such other legal and equitable relief as the Court deems just and proper.

16  
17  
18 Dated: May 14, 2022



19 James L. Brunello  
20 Attorney for Plaintiff/Petitioner  
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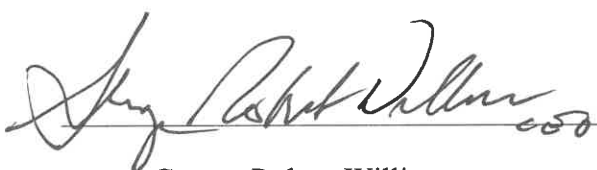
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**VERIFICATION**

I, George Robert Williams, hereby declare:

I am the Chief Executive Officer of CONCERNED RESIDENTS OF EL DORADO HILLS HERITAGE VILLAGE, a California Non-Profit Public Benefit corporation, and a registered voter, resident of Heritage and taxpayer of the County of El Dorado. I have read the foregoing Complaint and know the content thereof. The facts alleged in the above Complaint are true to my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

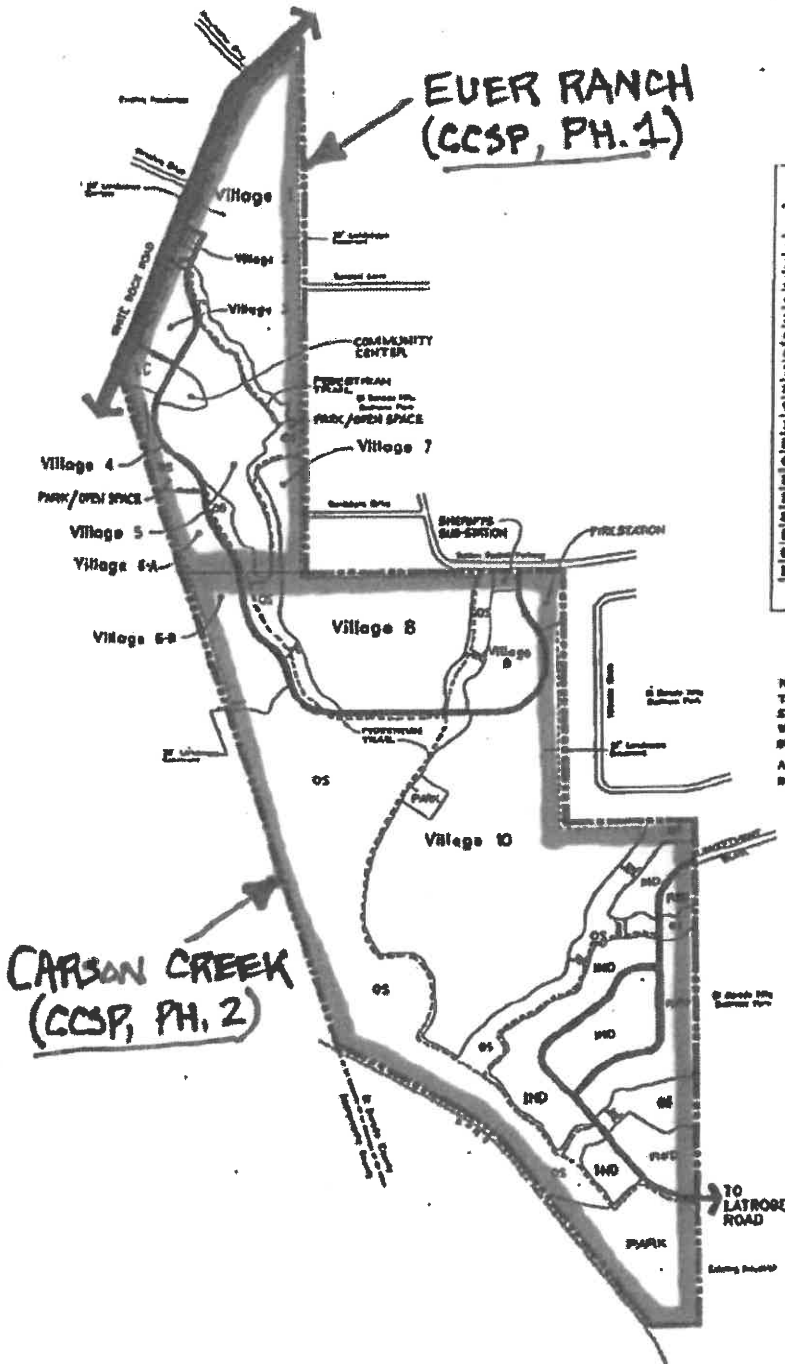
I declare under penalty of perjury under the laws of the State of California that the above is true and correct and the verification is executed on this 14<sup>th</sup> day of May, 2022 in the El Dorado Hills area of El Dorado County, California.

  
George Robert Williams

Date: May 14, 2022

**EXHIBIT 1**  
**CARSON CREEK SPECIFIC PLAN MAP**

# LAND USE PLAN



LAND USE CALCULATIONS			
LAND USE VILLAGES	ACRES	UNITS	D.U.A.
1	74.8	253	3.4
2	1.1	4	3.6
3	9.5	31	2.9
4	3.3	7	2.3
5	31.2	125	4.0
6-A	18.4	50	3.6
6-B	28.9	83	4.0
7	6.3	41	4.0
8	62.3	264	6.3
9	16.4	67	4.0
10	156.4	720	8.5
<b>RESEARCH &amp; DEVELOPMENT</b>			
COMMUNITY CENTER	3.8	8	
LOCAL COMMERCIAL (LC)	4.6	8	
INDUSTRIAL (IND)	59.7	8	
SHERIFF SUB-STATION	1.3	0	
PARKS	37.8	0	
OPEN SPACE (OS)	196.7	0	
FIRE STATION	3.4	0	
<b>TOTAL</b>	<b>712.6</b>	<b>8700</b>	

NOTE: UNIT COUNT SHOWS NUMBER MAY CHANGE FROM VILLAGE TO VILLAGE AND WILL BE FINALIZED AT THE TENTATIVE MAP STAGE. THE CHANGES ARE PERMITTED SO LONG AS THE TOTAL UNIT COUNT DOES NOT EXCEED THE MAXIMUM UNIT COUNT AS SHOWN ON THIS SPECIFIC PLAN.

ACRES ARE SHOWN WHICH ARE APPROXIMATE ONLY AND WILL BE FINALIZED AT TENTATIVE MAP STAGE.

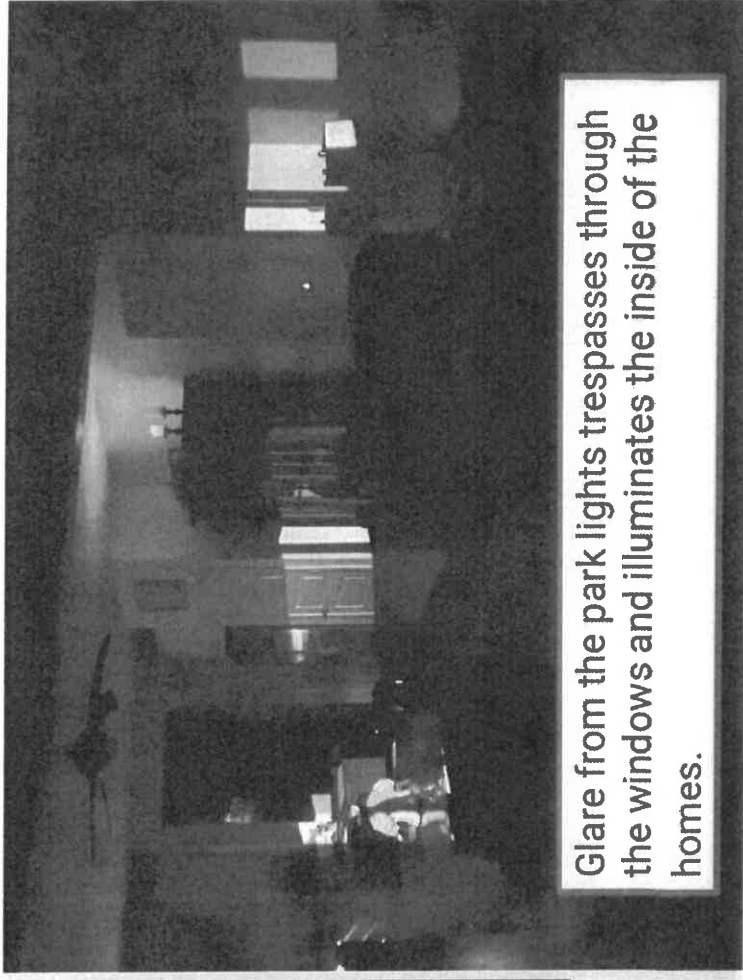
EXHIBIT 2  
HERITAGE NEIGHBORHOOD PARK  
LIGHT TRESPASS PHOTOS

# Evening Impact of Heritage Park Lights

- The EDH Community Services District (CSD) tested the lights on 1/17/22 and again on 2/10/22.
- These photos are from a home on Avelin during the 2/10/22 test



Glare from the park lights illuminate the homes on the other side of Palmdale.

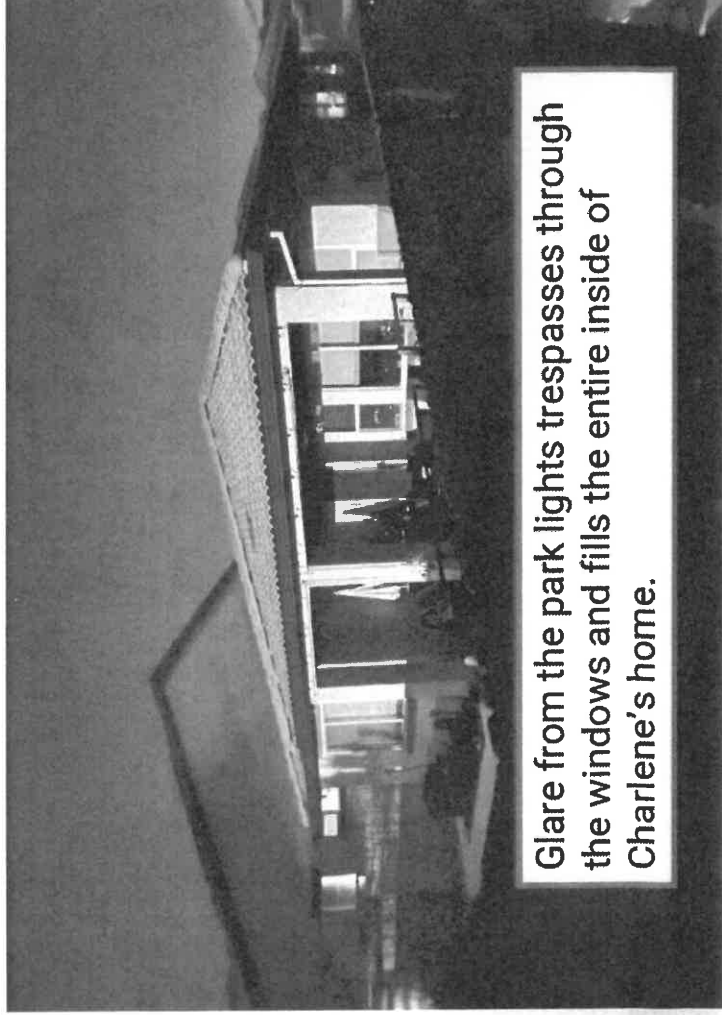


Glare from the park lights trespasses through the windows and illuminates the inside of the homes.

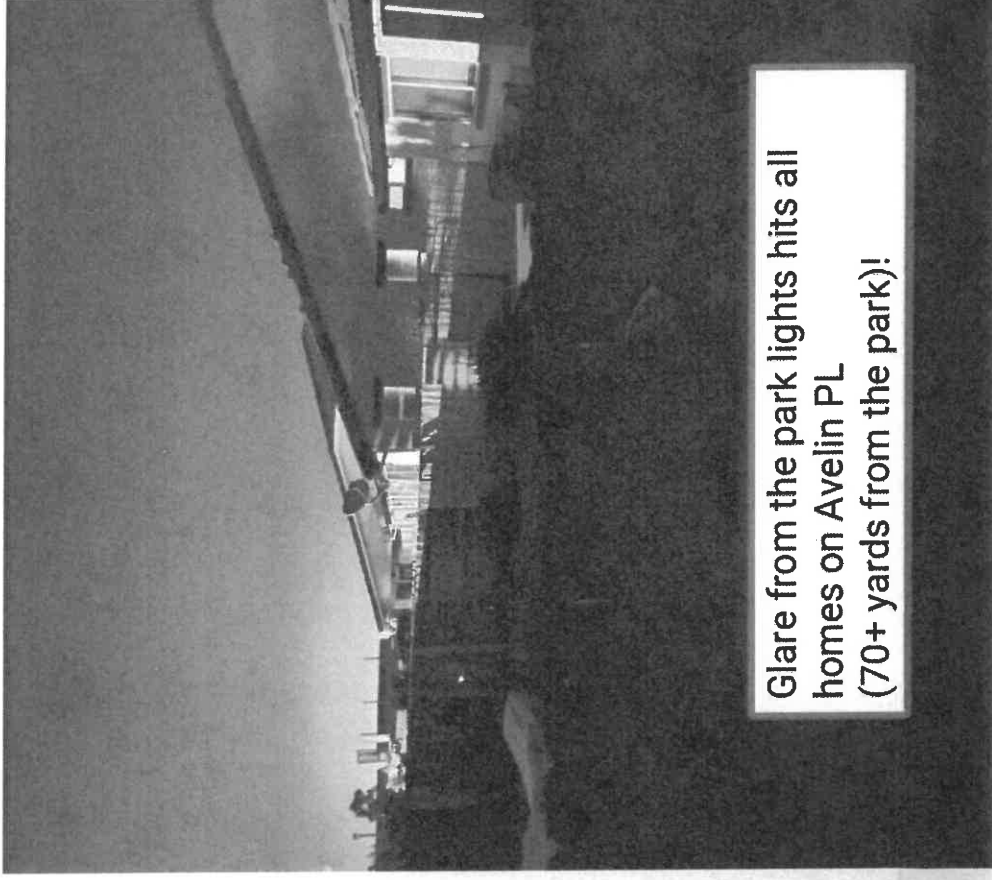


# Evening Impact of Heritage Park Lights

- The EDH Community Services District (CSD) tested the lights on 1/17/22 and again on 2/10/22.
- These photos are from homes on Avelin during the 2/10/22 test



Glare from the park lights trespasses through the windows and fills the entire inside of Charlene's home.



Glare from the park lights hits all homes on Avelin PL (70+ yards from the park)!

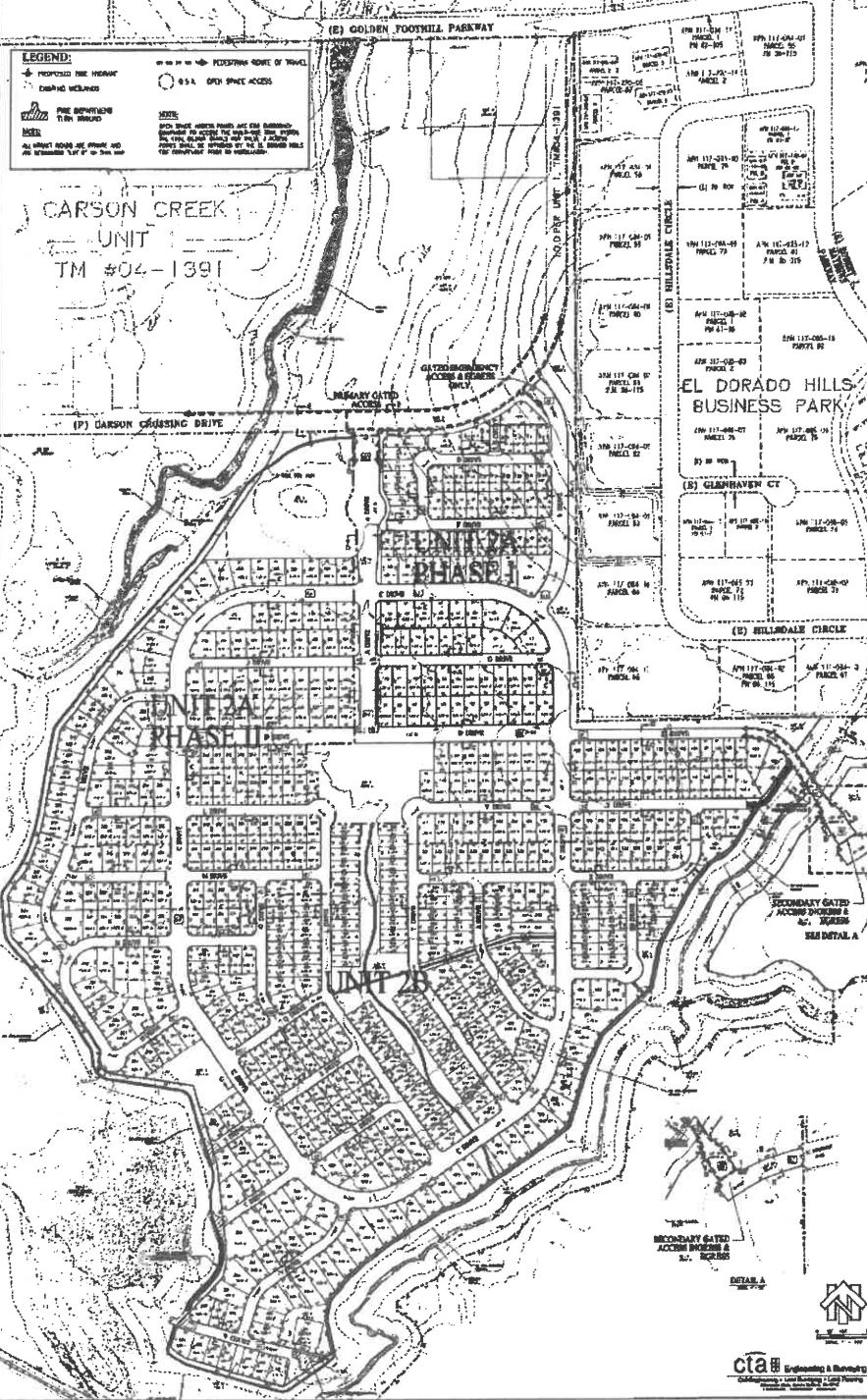
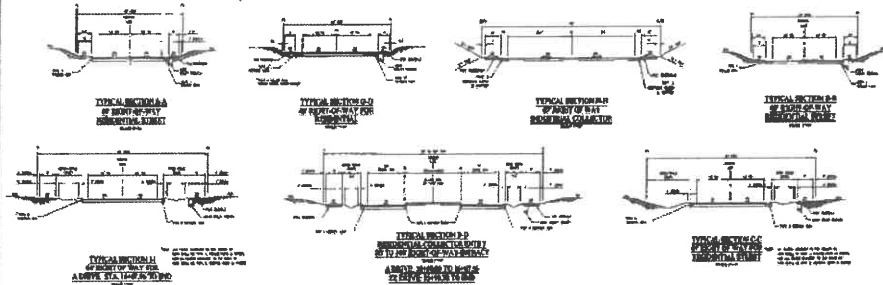
**EXHIBIT 3**  
**HERITAGE AT EL DORADO HILLS**  
**UNIT 1 TENTATIVE MAP**



**EXHIBIT 4**  
**HERITAGE AT EL DORADO HILLS**  
**UNIT 2 TENTATIVE MAP**

REVISED TENTATIVE MAP  
**CARSON CREEK, UNIT 2**  
 PHASE TWO PORTION OF "CARSON CREEK SPECIFIC PLAN"  
 OVERALL LAYOUT AND ZONING

COUNTY OF EL DORADO MAY, 2015 SHEET 2 OF 2 STATE OF CALIFORNIA SCALE: 1"=200'



cta Engineering & Survey  
 15-0761 D 9 of 22

**EXHIBIT 5**  
**HERITAGE AT EL DORADO HILLS**  
**UNIT 3 TENTATIVE MAP**

# TENTATIVE MAP CARSON CREEK - UNIT 3

COUNTY OF EL DORADO SHEET 1 OF 1 STATE OF CALIFORNIA

**OWNER/APPLICANT**

OWNER: HENRY OF CALIFORNIA, LLC  
4420 ROCKY HAVEN DRIVE, SUITE 300  
MCKEESVILLE, OH 43061

**ENGINEER**

**cta** Engineering & Surveying  
Civil Engineering • Land Surveying • Land Planning  
10000 Highway 100, Suite 100  
MCKEESVILLE, OHIO 43061

**MAP SCALE**

**CONTOUR INTERVAL**  
CONTOUR INTERVAL = 1 FEET

**SOURCE OF TOPOGRAPHY**

4000, 5000  
**SECTION, TOWNSHIP and RANGE**  
A PORTION OF SECTION 11, 23 & 34, T. 9 N., R. 4 E., S. 23 E.

**ASSESSOR'S PARCEL NUMBERS**

APN: 17-400 00

**PRESENT ZONING**

CRP

**PROPOSED ZONING**

SRP

**TOTAL AREA**

19.37 ACRES

**TOTAL NUMBER OF PARCELS**

119 - RESIDENTIAL LOTS  
1 - 1000 SQ. FT. LOT  
1 - LITTERED LOGS BARRIERS, SPONGES & BRUSHES A, B, C, & D, 2.21 AC.  
119 SQ. FT. TOTAL

**MINIMUM LOT AREA**

3000 SQUARE FEET

**WATER SUPPLY and SEWAGE DISPOSAL**

E1. DORADO REGIONAL DISTRICT

**PROPOSED STRUCTURAL FIRE PROTECTION**

E1. DORADO REGIONAL DISTRICT FIRE DEPARTMENT

**DATE OF PREPARATION**

04/11/2014

**PHASING PLAN NOTICE**

THE SUBMITTED MAP IS A TENTATIVE MAP. THE SUBMITTER SHALL BE RESPONSIBLE FOR OBTAINING THE NECESSARY APPROVALS FROM ALL AFFECTED AGENCIES AND AGENCIES INVOLVED BY THE COUNTY OF EL DORADO.

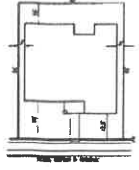
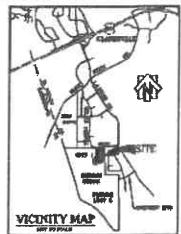
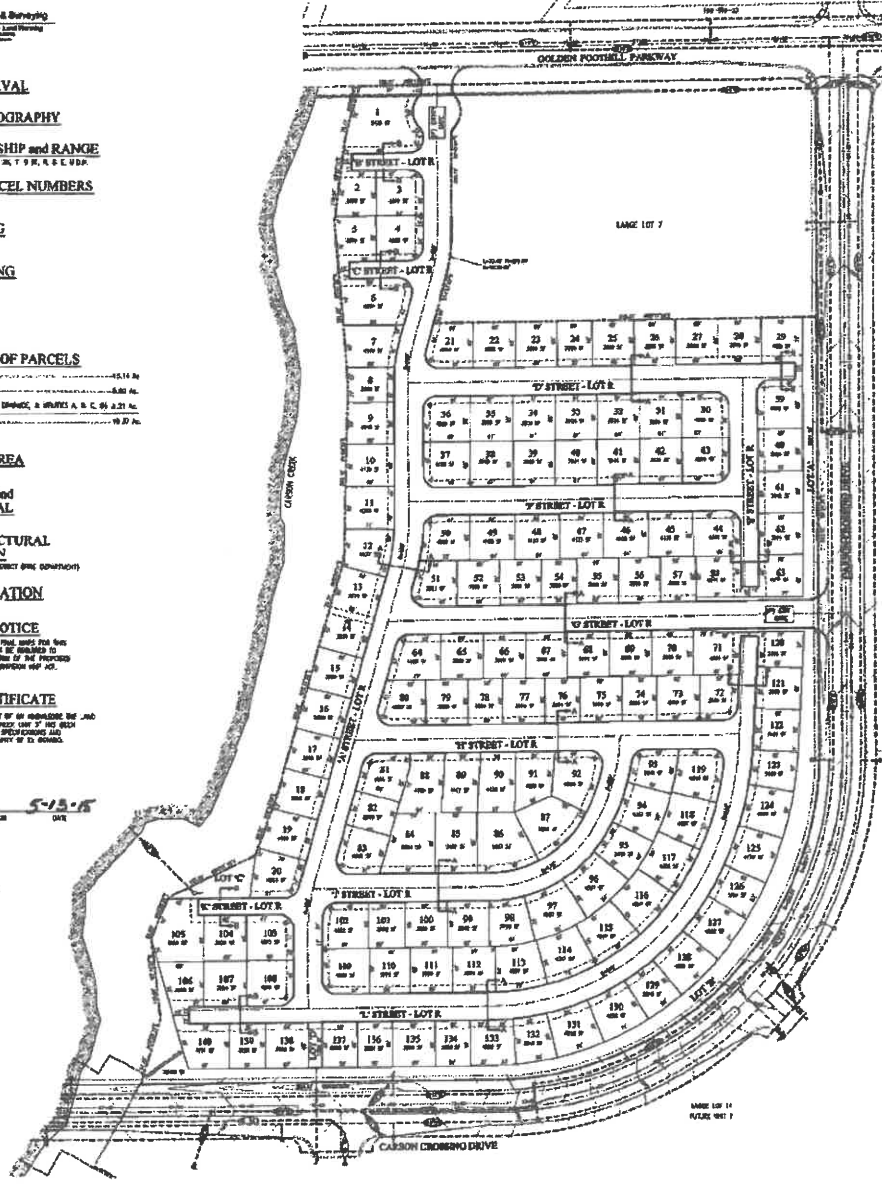
**ENGINEER'S CERTIFICATE**

I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT AND ACCORDS WITH THE RECORDS AND FIELD NOTES MAINTAINED BY THE COUNTY OF EL DORADO.

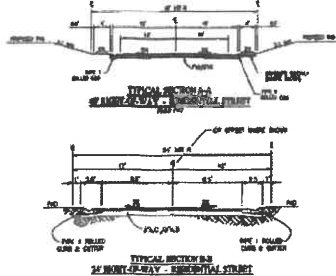
*[Signature]*  
DATE: 5-15-14  
C. A. JENSEN, P.E. & S. J. JENSEN, P.E.

**LEGEND**

- Proposed boundary
- Proposed 100-foot easement
- Proposed driveway
- 10-foot easement
- 20-foot easement
- 25-foot easement



**TYPICAL LOT & LOT LAYOUT DETAIL**  
NOTE: 1. LOT AREA SHALL BE AS SHOWN ON THIS MAP.  
2. LOT AREA SHALL BE AS SHOWN ON THE RECORD MAP.  
3. LOT AREA SHALL BE AS SHOWN ON THE RECORD MAP.



PLANNING DIVISION  
JENSEN/CTA INC.