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11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 IN AND FOR THE COUNTY OF EL DORADO  
13  
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 EL DORADO HILLS COMMUNITY  
22 SERVICES DISTRICT OF EL DORADO  
23 COUNTY, a Special District and DOES 1 -  
24 100, INCLUSIVE

25 Defendants and Respondents

Case No. 22CV0640

VERIFIED SECOND AMENDED AND  
SUPPLEMENTAL 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)

26 Plaintiff and Petitioner seeks a declaratory judgment, writ of mandate, nuisance  
27 abatement and injunctive relief, against Defendant and Respondent El Dorado Hills Community  
28 Services District of El Dorado County (“CSD” or “District”), and allege as follows:

29 **INTRODUCTION**

30 1. Carson Creek Specific Plan (CCSP) is a 710-acre age-restricted residential  
31 development under the jurisdiction of El Dorado County. The CCSP includes 37 acres of park

1 land, with 7 acres of public neighborhood parks and qualifying private neighborhood park  
2 facilities, and a 30-acre regional park suitably located near planned industrial and research and  
3 development uses to avoid inevitable land use conflicts between sensitive residential uses and  
4 intensive lighting typically used in regional parks for competitive sports activities. The general  
5 location of the parkland is shown on the CCSP Land Use Map (Exhibit 1); the exact location of  
6 neighborhood parks and private recreation facilities was finalized with approval of tentative  
7 maps for the subdivisions. A portion of the CCSP was acquired by Lennar Homes of California,  
8 Inc., a California Corporation (“Lennar”) for development of an age-restricted residential  
9 community known as “Heritage El Dorado Hills” (“Heritage”)<sup>1</sup>.

10 2. Within the CCSP, a 4.65-acre Heritage Neighborhood Park (“Park”) has been built by  
11 Lennar under the terms of a 2015 Parkland Dedication Agreement (PDA) between Lennar and  
12 the CSD. (Exhibit 6) Despite express language in the CCSP limiting uses allowed within this  
13 Neighborhood Park, Plaintiff is informed and believes that Lennar, at the direction of the CSD  
14 designed and built tennis and pickleball courts with intensive stadium-style lighting on 50- to 60-  
15 foot-tall poles adjacent to the age-restricted homes. Playground equipment, required under the  
16 Zoning Ordinance to be centrally located within the park or situated in a way that minimizes  
17 noise impacts on adjacent residential property owners, has instead been placed adjacent to the  
18 rear yards of the age-restricted homes, and has been equipped with noise makers to increase,  
19 rather than mitigate the noise impacts on adjacent properties. Plaintiff is informed and believes  
20 that neither Lennar nor the CSD has processed an amendment to the CCSP to authorize these  
21 more intensive park uses and neither Lennar nor the CSD obtained a Conditional Use Permit  
22 (“CUP”), required under the County’s Zoning Ordinance to authorize construction of  
23 improvements within the Neighborhood Park that are not otherwise allowed by right under the  
24 CCSP, General Plan or Zoning Ordinance. Approval of a CUP is a discretionary project that  
25 requires a public hearing typically before the Planning Commission, and is subject to the  
26 requirements and procedures of CEQA. At a minimum, the permitting process requires an  
27 assessment of the impacts of noise and light intrusion on adjacent properties, compliance with  
28 relevant ordinances, and imposition of feasible mitigation measures. The planning permit can be  
29 approved, conditionally approved, or denied, and a Planning Commission decision may be

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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 appealed to the Board of Supervisors. Failure to obtain proper permits in compliance with the  
2 County's Zoning Ordinance constitutes a nuisance per se.

3 3. Despite Lennar's active involvement in the planning, design and construction of the  
4 Heritage Neighborhood Park, Plaintiff is informed and believes the disclosure documents Lennar  
5 provided to homebuyers from at least 2017 falsely stated that the developer did not know what  
6 type of facilities would be included in the Park and did not know whether the Park would be  
7 lighted. Plaintiff is further informed and believes that many homebuyers were told that Heritage  
8 Neighborhood Park would be a passive park with lawn and picnic tables, and more recently that  
9 the Park has been designated "dawn to dusk" only, and that the intensive 50- to 60-foot stadium  
10 style lighting would be removed due to neighborhood protests. Those purchasers who bought  
11 homes in close proximity to the Park, in particular, were thereby induced to rely on these  
12 misrepresentations to buy their homes, unaware that the quiet enjoyment of their properties  
13 would inevitably be disrupted by Heritage Neighborhood Park as it was being planned and  
14 constructed by Lennar, under direction of the CSD.

15 4. As construction progressed, plans for the improvements became apparent, prompting  
16 vociferous objections from residents. At a CSD meeting in May of 2020, the CSD Board of  
17 Directors voted unanimously to make the park a "dawn-to-dusk" facility, but declined to  
18 consider removal of the lighting. In August 2021, in response to continuing objections from  
19 residents, Lennar asked the CSD Board to authorize removal of the stadium-style lighting at  
20 Lennar's expense. The CSD Board, despite their prior unanimous vote to designate the Heritage  
21 Neighborhood Park a "dawn-to-dusk" facility, refused to allow removal of the lighting. CSD  
22 General Manager Kevin Loewen (hereafter "GM" or "Loewen"), who has admitted that he did  
23 not realize the light poles were so tall, now asserts that the CSD cannot determine what the future  
24 holds, and that the lighting may well be needed in the future. Two cursory tests of the lights  
25 were conducted without prior notification to nearby residents or El Dorado County enforcement  
26 officials. Significant lighting trespass was observed by residents as shown in Exhibit 2. Another  
27 test of the lighting scheduled for March 31, 2022 was cancelled and Plaintiff is informed and  
28 believes that it will not be rescheduled, and that Lennar will not remove the lighting unless  
29 authorized by the CSD. This leaves homeowners caught in the middle, facing a public nuisance,  
30 negative impact on their property values and the disruption of the quiet enjoyment of their  
31 retirement homes. Plaintiff has also raised other issues related to the Neighborhood Park,

1 including but not limited to impacts on the health and safety of residents, from inadequate  
2 parking, noise and lighting impacts exceeding allowable thresholds, and the environmental  
3 impacts of lights, noise and other factors on the Carson Creek Preserve, a protected wetlands  
4 containing endangered species, adjacent to the Neighborhood Park, the oversight of which is the  
5 financial and legal obligation of the homeowners.

6 5. The original Complaint filed on May 16, 2022, while Lennar owned the Heritage  
7 Neighborhood Park property, alleged in part that neither the CSD nor Lennar had obtained the  
8 permits required for park improvements. In June of 2022, counsel for Plaintiffs sent a letter to the  
9 County Board of Supervisors on behalf of Concerned Residents of Heritage Village indicating  
10 that CSD and Lennar had failed to obtain proper permits for the Park, and urging the County to  
11 enforce its adopted plans and ordinances. Subsequently, the County Planning Director issued a  
12 letter to the CSD and Lennar raising issues regarding parking lot and sport court lighting and  
13 indicating that at least one of the building permits for Heritage Neighborhood Park could not be  
14 “finalized” until permitting issues were resolved. Notwithstanding the pending litigation and a  
15 number of unresolved “punch list” items, on June 13, 2022 the CSD Board of Directors decided  
16 to accept dedication of the Heritage Neighborhood Park from Lennar. During the course of  
17 deliberations by the CSD Board, CSD Director Hansen moved to accept the Grant Deed, saying  
18 that the CSD should “accept the park and light it up”. The motion to accept the Grant Deed was  
19 approved unanimously by the four Directors in attendance at the meeting.

20 6. A Grant Deed was executed by Lennar on June 16, 2022, accepted on behalf of the  
21 CSD by General Manager Kevin Loewen, and recorded in the office of the County Recorder on  
22 June 23, 2022. (Exhibit 7)<sup>2</sup> Following transfer of title to the Heritage Neighborhood Park  
23 property, Lennar sought dismissal from the case on grounds that the remedies sought by Plaintiff  
24 were no longer available against Lennar. Plaintiff agreed to dismiss Lennar without prejudice.

25 7. Plaintiff seeks a resolution of this stalemate to require the defendant to either process  
26 and obtain required planning permits from the County, or to remove without cost to the Heritage  
27 homeowners, any unauthorized improvements, including tennis courts, pickle ball courts and  
28 unpermitted lighting, and to relocate the playground equipment which was improperly located  
29 directly adjacent to residents' houses in violation of the zoning ordinance at the Heritage

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31 <sup>2</sup> New exhibits related to facts contained in the Supplemental Complaint are numbered “Exhibit  
7” through “Exhibit 11”. Original Exhibits 1 through 6, were attached to the FAC.

1 Neighborhood Park. Further, Plaintiff seeks an order prohibiting continued operation of the  
2 Heritage Neighborhood Park by the CSD until such time as the required planning permits have  
3 been issued and any required mitigation measures for impacts such as light, noise, parking and  
4 traffic safety on the Heritage homeowners and the Carson Creek Preserve have been  
5 implemented, or the unauthorized improvements have been removed from the Park.

6 **PARTIES AND ATTORNEY FEES**

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

14 9. Defendant and Respondent, EL DORADO HILLS COMMUNITY SERVICES  
15 DISTRICT OF EL DORADO COUNTY (“District” or “CSD”), is a Community Services  
16 District formed under the Community Services District Law (Government Code §61000-  
17 61850). The District was formed on May 21, 1962 by the El Dorado County Board of  
18 Supervisors under authority of Government Code §61600 as an independent special district.  
19 The CSD serves a large, densely developed suburban population located east of the Sacramento  
20 County Line. The CSD boundary has followed the path of development, and now encompasses  
21 approximately 28 square miles (18,079 square acres) located both north and south of Highway  
22 50. The land within the CCSP has been annexed into the CSD. The CSD provides parks and  
23 recreation services, open space management, and other community services to residents.

24 10. The true names and capacities, whether individual, corporate or otherwise, of DOES  
25 1 through 50 are unknown to Petitioner. Petitioner will amend this Petition to set forth the true  
26 names and capacities of said DOE parties when they have been ascertained.

27 11. In pursuing this action which involves the enforcement of important rights  
28 affecting the public interest, the Petitioner will confer a substantial benefit on the citizens of El  
29 Dorado Hills and El Dorado County, and therefore will be entitled to an award of reasonable  
30 attorney’s fees, pursuant to California law, including Code of Civil Procedure § 1021.5.  
31

1 **JURISDICTION AND VENUE**

2 12. This Court has jurisdiction over this complaint for declaratory relief, injunctive  
3 relief, and petition for writ of mandate pursuant to sections 1060, 526 and 1085 of the California  
4 Code of Civil Procedure, respectively, and for Nuisance pursuant to Civil Code § 3480.

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

7 14. Petitioners have performed any and all conditions precedent to filing this instant  
8 action. Petitioners have no plain, speedy, or adequate remedy at law, unless the court grants the  
9 requested writ of mandate.

10 **I. CARSON CREEK SPECIFIC PLAN**

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

18 16. The Carson Creek Specific Plan (SP94-02) was initially approved by El Dorado  
19 County (“County”) on March 4, 1997 (“CCSP”). Potential environmental impacts resulting from  
20 the proposed project were analyzed in a January 1997 Final Program Environmental Impact  
21 Report and Addenda, SCH No. 94072021 (hereafter “CCSP FEIR”). Plaintiff is informed and  
22 believes that neither the certified CCSP FEIR nor any subsequent CEQA review analyzed the  
23 Heritage Neighborhood Park location adjacent to the Carson Creek Preserve, nor considered the  
24 impacts of many of the improvements within the Neighborhood Park including the intensive  
25 stadium-style lighting. In fact, most lighting is limited within the CCSP, including street lighting  
26 except where required to satisfy safety standards.

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

1           18. Litigation challenging approval of the project ensued. Ultimately, a Settlement  
2 Agreement was negotiated between the developer and the plaintiffs (“Settlement Agreement”),  
3 which reduced the overall dwelling unit count to 1,700 age-restricted homes. On September 27,  
4 1999, the El Dorado County Board of Supervisors approved amendments to the CCSP and a  
5 Development Agreement in conformance with the Settlement Agreement. The amended CCSP  
6 provided housing for senior citizens and those 55-years of age or older; thus, development within  
7 the CCSP must consider the special needs of this protected population.

8           19. On information and belief, the CCSP FEIR concluded that impacts to biological  
9 resources from the CCSP would be less than significant, based in part, on mitigation measures  
10 that required creation of the Carson Creek Preserve, consisting of approximately 199 acres of  
11 upland, wetland and aquatic habitats. Plaintiff is also informed and believes the CCSP FEIR did  
12 not consider the impacts of the Heritage Neighborhood Park improvements that have been  
13 constructed, on species of concern that are known or believed to be present within the Preserve,  
14 which is directly adjacent to the Park, and no subsequent environmental analysis of these impacts  
15 has been conducted.

16           20. Plaintiff is informed and believes that in June 2021, Lennar commissioned Helix  
17 Environmental to create a draft Carson Creek Preserve Long-Term Management Plan inclusive  
18 of more recent biological studies that establish the presence or likely occurrence of at least four  
19 special status species<sup>3</sup>, including western pond turtle (*Actinemys marmorata*), burrowing owl  
20 (*Athene cunicularia*), tricolored blackbird (*Agelaius tricolor*), and white-tailed kite (*Elanus*  
21 *leucurus*). In addition, migratory birds and other birds of prey, protected under 50 Code of  
22 Federal Regulations (CFR) 10 of the Migratory Bird Treaty Act (MBTA) and/or Section 3503 of  
23 the California Fish and Game Code, were observed within the Preserve including: northern  
24 mockingbird (*Mimus polyglottos*), mourning dove (*Zenaida macroura*), turkey vulture  
25 (*Cathartes aura*), cliff swallow (*Petrochelidon pyrrhonota*), northern harrier (*Circus cyaneus*),

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<sup>3</sup> "Special status species" include any species which is listed, or proposed for listing, as threatened or endangered by the U.S. Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS), under the provisions of the Endangered Species Act; any species covered by the Migratory Bird Treaty; any species designated by the FWS as a "candidate" or "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 red-winged blackbird (*Agelaius phoeniceus*), and western scrub-jay (*Aphelocoma californica*). A  
2 variety of other migratory bird species may also utilize the Preserve for nesting or foraging.

3 21. Plaintiff is informed and believes that, at Lennar’s request, the Heritage Master  
4 Homeowners Association (HOA) Board of Directors delegated to Lennar the right to negotiate  
5 and finalize the terms transferring the ownership title of the Carson Creek Preserve to the HOA.  
6 The HOA has been designated by Lennar as the Preserve Owner. Plaintiff is informed and  
7 believes that the HOA and its members will be financially and legally liable for adverse impacts  
8 to the Preserve from intrusions and obligated to remediate damage. It is presently unknown to  
9 what extent the HOA will be liable for adverse impacts on the Preserve resulting from  
10 construction of improvements within the Heritage Neighborhood Park without required permits  
11 and absent adequate environmental review.

12 22. The CCSP, as amended, was to be developed in Phases. Phase I, designated as the  
13 Euer Ranch, was approved simultaneously with the adoption of the CCSP/Settlement Agreement  
14 under the first tentative map application (TM96-1317). The Euer Ranch, an age-restricted  
15 development by K. Hovnanian Homes marketed under the name “Four Seasons” contains about  
16 460 lots and is completely built-out.

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

27 **II. DESIGN, PERMITTING AND DEVELOPMENT OF THE PARKS ARE**  
28 **REGULATED BY THE GENERAL PLAN, CCSP, AND ZONING ORDINANCE**

29 *Carson Creek Specific Plan*

30 24. The Carson Creek Specific Plan provides for 37 acres of parks including a 30-acre  
31



1 Regional Park and 7 acres of neighborhood parks. The CCSP includes a detailed analysis  
2 measuring the Specific Plan’s consistency with adopted General Plan policies:

3 “The plan provides for 37 acres of parks including a 30-acre regional park and 7  
4 acres of neighborhood parks. The Regional Park is designed to meet regional  
5 park needs and is youth oriented. The neighborhood parks are designed for easy  
pedestrian access to meet the needs of nearby residents.” (CCSP p. 2-17)

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

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

12 25. The CCSP contains specific land use standards and criteria for the 37 acres of parks  
13 planned within the community.

14 “A 30-acre **Regional Park** is located in the southernmost portion of the site away  
15 from, but accessible to the community. The location will reduce the impact of  
16 regional traffic using the park, **and allow for lighted playing fields without**  
17 **conflict to residential areas**... This park is intended to provide for the large-scale  
18 active recreation needs of the western area of El Dorado County. The park could  
have ballfields, basketball courts, and other recreation facilities. Parking areas and  
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 26. CCSP Section 4.12 contains development standards including permitted uses for  
24 parks within the plan area, clearly differentiating between the intensity of uses permitted within  
25 the 30-acre Regional Park, and the smaller, localized Neighborhood Park facilities. Regional  
26 Park permitted uses are “lighted active recreation facilities, picnic and play areas, and park  
27 related buildings”, and parking is identified as an approved accessory use. Restrictions on  
28 Regional Park lighting include glare and top reduction technology, and limitations on the hours  
29 of use. In contrast, permitted uses in Neighborhood Parks are “play grounds, picnic grounds,  
30 recreation centers, public swimming pools, and ballfields.” Development standards for a  
31 Neighborhood Park next to an open space area – such as the preserve – require “the park design

1 shall place structures in the park on the side of the park farthest from the open space”. No  
2 provision of the CCSP expressly permits or implies that sports courts (such as tennis or  
3 pickleball), parking lots or stadium-style sport court lighting is a permitted use within the  
4 Heritage Neighborhood Park.

5 El Dorado County General Plan

6 27. The General Plan Parks and Recreation Element sets standards for types of parks  
7 within the County. As relevant here, Neighborhood Parks are described as “primarily focused on  
8 serving walk-to or bike-to recreation needs... Neighborhood parks are generally 2 to 10 acres in  
9 size and may include a playground, tot lot, turf areas, and picnic facilities.” (GP Policy 9.1.1.2)  
10 The General Plan reserves more intensive uses for Community Parks or Regional Parks, which  
11 might contain, variously, multi-purpose or ball fields, multi-purpose hardcourts, swimming pools  
12 or swimming facilities, tennis courts, and a community center. As with the CCSP, nothing  
13 contained within the General Plan suggests that tennis or pickleball courts, parking lots or  
14 intensive lighting are permitted uses within a Neighborhood Park.

15 El Dorado County Zoning Ordinance

16 28. Although the General Plan and CCSP authorize certain uses within Neighborhood  
17 and Regional Parks, the design, permitting and development of the parks is subject to compliance  
18 with provisions of the County’s Zoning Ordinance. The Zoning Ordinance establishes a zone  
19 designation for all property in the County. A Zoning Ordinance Table identifies uses within each  
20 zone that are allowed “by right” and uses that require additional authorization, such as a  
21 Conditional Use Permit (CUP). If specific development standards are not established in the  
22 CCSP, or if an issue, condition or situation arises or occurs that is not clearly understandable in  
23 the Specific Plan, then regulations and standards of the El Dorado County Zoning Ordinance  
24 shall apply. (CCSP Policy 4.2.3)

25 29. The Zoning Ordinance divides public parks into two types: “Day Use” and  
26 “Nighttime Use”. Day Use parks are intended for use only during daylight hours, and preclude  
27 “...lighting for ball fields and play structures except as may be necessary for public safety or  
28 security purposes.” Nighttime Use parks are “...designed and intended for activities to be carried  
29 on after sunset, such as lighted ballfields and tennis courts”. (EDC Code § 130.80.020 Glossary)

30 30. Zoning Ordinance Special Use Regulations contain additional standards applicable to  
31 public parks, including the requirements for day-use parks that “...1) Use and operation of park

1 facilities shall be limited to daylight hours; 2) Playground equipment shall be centrally located  
2 on the park site, or situated in a way that minimizes noise impacts on adjacent residential  
3 property owners...[and] 5) Lighting shall be limited to security lighting only. Temporary lighting  
4 to extend daytime use of the park facilities shall be prohibited.” (EDC Code § 130.40.210 F).  
5 Nighttime parks with lighting require approval of a Conditional Use Permit, and additional  
6 standards for public swimming pool and tennis court facilities limit those operations to daylight  
7 hours, or require a Conditional Use Permit for nighttime operations or if noise from the facility  
8 would exceed allowable thresholds and impact nearby property owners. (EDC Code §  
9 130.40.210 G)

10 31. The Zoning Ordinance also contains noise standards applicable to noise-sensitive  
11 development, including new residential uses. These noise standards require an acoustic analysis  
12 prior to discretionary approval of a new noise generating land use so that mitigation measures  
13 can be included in the project design. Plaintiff is informed and believes that no acoustic analysis  
14 of the impacts of the Heritage Neighborhood Park on the age-restricted residential development  
15 in the Heritage community has been conducted to assess noise impacts on the nearby residences  
16 or the Carson Creek Preserve, and accordingly, no mitigation measures have been incorporated  
17 in the design of the Heritage Neighborhood Park.

18 32. Plaintiffs are informed and believed that the Heritage Neighborhood Park does not  
19 satisfy CCSP or Zoning Ordinance criteria for uses allowed by right. As currently configured this  
20 Park requires a Conditional Use Permit for at least the three tennis courts, two pickleball courts  
21 and the stadium-style tennis court and pickle ball court lighting fixtures, and the parking lot  
22 lighting which appears to exceed height limitations and illumination standards. Plaintiffs are  
23 informed and believe that neither Lennar nor the CSD has conducted the required lighting and  
24 noise studies, obtained the required Conditional Use Permits, nor located the playground so as  
25 not to disturb the quiet enjoyment of residents' properties such that the current park  
26 improvements and park construction violate the County's Zoning Ordinance, the CCSP and the  
27 General Plan. Such violations of the County ordinances constitute a nuisance per se.

### 28 **III. DEVELOPMENT OF THE CCSP DESIGNATED NEIGHBORHOOD PARK**

29 33. The CCSP and related Tentative Map approvals required the development to be  
30 annexed into the CSD for dedication and development of park facilities and allocation of  
31 Quimby Act credits pursuant to Government Code § 66477. Accordingly, in 2015, Lennar

1 entered into a Parkland Dedication Agreement (“PDA”) with the El Dorado Hills CSD, in  
2 essence a contract between those parties without effect on the County land use regulations or  
3 approvals.

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

11 35. The PDA identifies total park acreage to be dedicated for the development, including  
12 a 4.65 acre “Public Neighborhood Park”, and authorizes 50% credit for the private recreational  
13 facilities to be included in the development against the total park acreage required. Exhibit “C”  
14 to the PDA contains a list of improvements to be built in the Heritage Neighborhood Park,  
15 including three tennis courts, two pickleball courts, bocce ball courts, picnic shelter, children’s  
16 play area, parking lot, restroom, open turf area and two parking lot lights. Exhibit “E” to the  
17 PDA is an estimated budget for cost of construction of the Heritage Neighborhood Park  
18 facilities. The PDA requires the Park site grading standards comply with the 10% slope  
19 standards contained in CCSP. The PDA does not indicate or require the tennis courts or  
20 pickleball courts to be lighted, and does not discuss the park lighting standards contained in the  
21 CCSP. The PDA indicates that Lennar shall obtain CSD approval of the park improvement plans,  
22 but does not mention who is responsible to obtain County planning permits for any of the  
23 improvements included in the PDA that are not permitted by right under the Zoning Ordinance  
24 or the CCSP.

25 36. The PDA and project conditions of approval required establishment of a funding  
26 mechanism to ensure that homeowners are primarily responsible for ongoing operation,  
27 maintenance and improvement of the Heritage Neighborhood Park. Early in the development  
28 process before any homeowner closed escrow, Lennar was required to work with the CSD to  
29 establish Landscape and Lighting Assessment District #39 (“LLAD”) within the Heritage  
30 development as the financing mechanism. An annual report by an Assessment Engineer must  
31

1 allocate the cost of the Park improvements, services and maintenance based on the special  
2 benefit to each parcel.<sup>4</sup>

3 37. Here, eight consecutive Annual Assessment Engineers' analyses conclude that  
4 special benefit conferred on property within the Heritage LLAD boundary and the maintenance  
5 responsibility of Heritage homeowners is 78.80% of the total; 21.2% of benefits are general in  
6 nature, requiring an equivalent contribution from sources outside the LLAD. The benefit  
7 analysis is consistent with CCSP policy that the Heritage Neighborhood Park is designed for  
8 easy pedestrian access to meet the needs of nearby residents.

9 38. The improvements, facilities, and services listed in the eight Annual Assessment  
10 Engineers' reports through FY 2021/22 are generally consistent with the CCSP description of a  
11 Neighborhood Park, such as picnic tables, shade structures, bocce ball court, public restroom,  
12 parking lot and parking lot lights, turf area and irrigation. The description does not include other  
13 improvements that have been built within the Park, such as three tennis courts, two pickleball  
14 courts, the stadium-style lighting on 50' tall poles or playground equipment with noisemakers.  
15 Under Proposition 218, modification of the LLAD to increase the services and improvements to  
16 be maintained by the LLAD would require Proposition 218 proceedings and ultimately, property  
17 owner approval.

18 39. As required by the CCSP and Conditions of Approval, Lennar processed and  
19 obtained Special or Conditional Use Permits for the Heritage private recreational facilities,  
20 including the Heritage Fitness Center in March 2015 and The Retreat Clubhouse in January  
21 2018. Both these permits required noticed public hearings before the Planning Commission, and  
22 both imposed conditions for onsite lighting consistent with the County Zoning Code to avoid  
23 light trespass and limiting hours of operation and height of lighting fixtures. Although Lennar  
24 was evidently aware of the requirement to obtain these planning permits as a condition precedent  
25 to development of the private recreation facilities, Plaintiff is informed and believes that neither  
26 Lennar nor the CSD has obtained a Conditional Use Permit for the public park tennis courts,

27 \_\_\_\_\_  
28 <sup>4</sup> “[N]o assessment shall be imposed on any parcel which exceeds the reasonable cost of the  
29 proportional special benefit conferred on that parcel,” where “special benefit” means “a  
30 particular and distinct benefit over and above general benefits conferred on real property located  
31 in the district or to the public at large.” See Proposition 218, The Right to Vote on Taxes Act,  
which was approved by the voters of California on November 6, 1996, now codified as Articles  
XIII C and XIII D of the California Constitution.

1 pickleball courts, parking lot and parking lot lighting which appears to exceed County height  
2 limitations, nor the stadium style lighting for the tennis and pickleball courts.

3 40. The PDA, which was created within the context of the CCSP, does not address  
4 installation of tennis court or pickleball court lighting. In fact, the only lights covered by the  
5 PDA are two parking lot lights at a cost of \$5,000 each. Plaintiff is informed and believes that  
6 the actual number of parking lot lights built is substantially greater than the lighting identified in  
7 the PDA, and Plaintiff is informed and believes that the height of those lights exceeds County  
8 standards. The PDA provides that Lennar is responsible for preparation of improvement plans  
9 and specifications for the Heritage Neighborhood Park for review and approval by the CSD;  
10 bidding, execution of contracts and other documents for construction of the Park; and for  
11 construction of the Park improvements as reflected in the approved improvement plans within  
12 specific time frames to ensure timely completion of construction.

13 41. Meeting records and reports reflect that several meetings of the CSD's Parks and  
14 Planning Subcommittee were held, with at least one presentation by Lennar, concerning the  
15 Heritage Neighborhood Park design. On November 28, 2017, the Subcommittee recommended  
16 approval of the conceptual design plan to the CSD Board. By this time, the Park conceptual  
17 design graphic had been modified to show *lighted tennis courts and lighted pickleball courts*,  
18 and the construction budget included a series of alternatives including the cost of the lighting for  
19 the sport courts. The report from GM Loewen presented to the CSD Board of Directors for a  
20 December 14, 2017 meeting included the 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.**<sup>5</sup> It is the recommendation of the Committee that the full  
29 Board review the conceptual design for approval."

30 <sup>5</sup> Neither the CCSP nor the Zoning Ordinance differentiates between intensive lighting for sports  
31 fields (soccer, baseball) or sports courts (tennis, pickleball). The CCSP would allow "lighted  
active recreational facilities" within the Regional Park subject to Zoning Ordinance requirements  
for a Conditional Use Permit. The CCSP and CCSP EIR did not analyze or authorize any  
lighting (other than for security purposes) in the Heritage Neighborhood Park, either for ball  
fields or tennis/pickleball courts; under the Zoning Ordinance any such lighting requires  
approval of a Conditional Use Permit.

1  
2 42. Notwithstanding acknowledgement from GM Loewen to the CSD Board that lighting  
3 was not addressed nor authorized in the development approvals or environmental documents, the  
4 CSD Board of Directors approved the conceptual design for the Heritage Neighborhood Park  
5 which included unauthorized improvements at their meeting on December 14, 2017.

6 43. Following conceptual design approval, Lennar and their landscape architect worked  
7 to develop construction plans for the Heritage Neighborhood Park through much of 2018, in  
8 consultation with CSD GM Loewen. Plaintiff is informed and believes that, during this time,  
9 there was no outreach by either Lennar or the CSD to Heritage buyers or homeowners to present  
10 the proposed plans or discuss how the peaceful neighborhood Park would be changed. By  
11 January 2019, bid packages were available for contractors based on the landscape improvement  
12 plans dated October 30, 2018.

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

20 45. On July 11, 2019, the CSD Board approved the award of the Heritage Neighborhood  
21 Park construction contract on the consent calendar by a 5-0 vote. Construction of the Park  
22 commenced in August 2019. Petitioner is informed and believes that construction plans for the  
23 park were submitted to the County, and that building permits were issued by the County at some  
24 point prior to commencement of construction. Petitioner is also informed and believes that no  
25 planning permit has been approved or issued by the County, and apparently no application has  
26 been filed by Lennar or the CSD.

27 46. As Park construction progressed, Heritage homeowners became aware of issues with  
28 the Park design and construction. On information and belief, despite Lennar's direct involvement  
29 in design and construction of the Park, the disclosure documents Lennar provided to homebuyers  
30 from at least 2017 falsely stated that the developer did not know what type of facilities would be  
31 included in the Park, such as whether or not the Park would be lighted and whether the Park  
would contain any improvements, such as slides, swings or other play equipment. Some

1 homebuyers were told that Heritage Neighborhood Park would be a passive park with lawn and  
2 picnic tables, and more recently that the Park has been designated “dawn to dusk” only, and that  
3 the intensive 50- to 60-foot stadium style lighting would be removed due to protests from  
4 neighbors. Thus, purchasers who bought homes in close proximity to the Park, in particular, were  
5 unaware that the quiet enjoyment of their properties would be disrupted by Heritage  
6 Neighborhood Park as it was being planned and constructed by Lennar, as directed by the CSD.  
7 In February 2020, Heritage homeowners collected signatures for a petition to the CSD requesting  
8 the public park operating hours be restricted to between 7:00 AM to 8:00 PM coupled with  
9 appropriate noise mitigation to reduce nighttime noise in the vicinity of the Park. At this time,  
10 Petitioners are informed and believe that homeowners were still unaware of plans to install  
11 intensive stadium-style lighting for tennis courts and pickleball courts.

12 47. On March 17, 2020, a meeting of the Parks and Planning Subcommittee was held to  
13 discuss possible changes to the Heritage Neighborhood Park. A report for this meeting mentions  
14 lighting for the tennis and pickleball courts. On May 14, 2020, the CSD Board of Directors  
15 considered adoption of dawn-to-dusk operating hours for the Heritage Neighborhood Park. GM  
16 Loewen’s report to the CSD Board advised that eliminating the lighted courts was “not an option  
17 for the construction plan at this stage”. The Board therefore voted to make the Park a dawn-to-  
18 dusk facility, but having been advised that deleting the lighting was not an option in the  
19 construction plans at that stage, did not vote to adopt any change orders.

20 48. On January 21, 2021, large stadium-style light fixtures were installed at the Park,  
21 followed by a flood of objections from Heritage residents. The lights, on poles which Plaintiff is  
22 informed and believes are at least 50-feet-tall, were alleged to light up the tennis and pickleball  
23 courts, but the lights were not yet energized so the effect of the lighting could not be assessed.  
24 There was no communication to Heritage residents either from Lennar or the CSD regarding the  
25 lights. Heritage homeowners strongly objected, and engaged local media.

26 49. On January 22, 2021 a series of letters and emails were initiated between Heritage  
27 residents, Lennar and CSD GM Loewen. On February 5, 2021 an email from GM Loewen  
28 acknowledged that he and other CSD staff reviewed the final plans, but he did not realize how  
29 high the light poles would be. Heritage Residents attended the February 10, 2021 CSD Board of  
30 Directors meeting to raise objections to the Park lighting and design, both in writing and orally.  
31 The Board of Directors did not allow any questions, took no action on the concerns expressed,



1 but did not modify or express any intent to modify the dawn to dusk limitation on use of the  
2 Park.

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

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

14 52. On August 3, 2021, Lennar told the CSD Board, in part, “Lennar does not believe the  
15 lighting is necessary for the Park to be a great amenity”, and requested CSD permission to  
16 remove the sports court lighting at its own expense. Lennar has refused to take any action  
17 without CSD approval. Nevertheless, the CSD Board of Directors and the CSD have steadfastly  
18 refused to authorize the removal of the sports court lights, even at Lennar’s sole expense and  
19 even though Heritage Neighborhood Park is officially classified by the CSD as a dawn to dusk  
20 park.

21 53. Plaintiff is informed and believes that on or about January 21, 2022, the CSD Parks  
22 personnel conducted an unannounced test of the parking lot lighting, activating the parking lot  
23 lights which are on light poles which appear to exceed County standards but are much shorter  
24 than the sport court lights. The parking lot lighting test showed substantial light trespass to  
25 adjacent homes, and heightened concerns among Heritage residents. A second test, with CSD  
26 Board members present, but without advance notice to Heritage homeowners, was conducted on  
27 February 10, 2022, and included both the stadium-style court lighting and parking lot lights.  
28 Again, the test resulted in substantial light trespass onto adjacent properties. On information and  
29 belief, Plaintiff believes the light and glare from the Heritage Neighborhood Park also impact the  
30 Carson Creek Preserve site, and the special status species discussed in the draft Carson Creek  
31 Preserve Long-Term Management Plan prepared by Helix Environmental Planning dated June

1 15, 2021. Several residents of Heritage in the vicinity captured photos of the lighting impact on  
2 homes (Exhibit 2) as the unannounced tests were conducted.

3 54. Plaintiff's discovery to identify building permits issued by the County for Heritage  
4 Neighborhood Park improvements is ongoing but incomplete. Plaintiff is informed and believes  
5 that although several minor building permits for improvements such as shade structures have  
6 been approved and finalized, no Conditional Use Permits for improvements such as tennis courts  
7 and pickleball courts or lighting have been found, and building permits issued by the County for  
8 Park lighting do not appear to have been finalized and no certificate of occupancy authorizing  
9 use or operation of the park appears to have been issued to date.

10 **IV. CONSTRUCTION OF HERITAGE NEIGHBORHOOD PARK WITHOUT A**  
11 **CONDITIONAL USE PERMIT CONSTITUTES A NUISANCE PER SE**

12 55. State law authorizes a CSD to exercise certain regulatory powers when providing  
13 services that are similar to services that might otherwise be provided by the county. However,  
14 with regard to land use, Government Code § 61062 provides: "When acquiring, improving, or  
15 using any real property, a district shall comply with Article 5 (commencing with Section 53090)  
16 of Chapter 1 of Part 1 of Division 2 of Title 5, and Article 7 (commencing with Section 65400)  
17 of Chapter 1 of Division 1 of Title 7." Community Services Districts fall within the definition of  
18 a "local agency" in Govt. Code § 53090. Govt Code § 53091 requires local agencies including  
19 the CSD to "comply with all applicable building ordinances and zoning ordinances of the  
20 county..." in which the CSD is situated. Govt. Code § 65400 et. seq. requires local agencies  
21 including CSDs to conform to a county's adopted General Plan.

22 56. Where the law expressly declares something to be a nuisance, then no inquiry beyond  
23 its existence need be made, its mere existence is said to be a nuisance per se. In other words, to  
24 be considered a nuisance per se the object, substance, activity or circumstance at issue must be  
25 expressly declared to be a nuisance by its very existence by some applicable law.

26 57. As discussed above, the CCSP identifies certain uses allowed within the Regional  
27 Park and the more limited uses authorized within the Neighborhood Parks. These allowed uses  
28 are consistent with those identified in the County's General Plan, which reserve more intensive  
29 uses for regional park facilities, and allow limited uses within the local neighborhood parks. The  
30 County's Zoning Ordinance provides even more detail for uses permitted in day-use and  
31

1 nighttime-use parks, and describes the procedures for required Conditional Use Permits for park  
2 facilities and improvements not permitted as a matter of right.

3 58. For park improvements not allowed by right, the Zoning Ordinance requires issuance  
4 of a Conditional Use Permit or similar authorization prior to commencement of construction. The  
5 Zoning Ordinance provides: “Any structure erected, constructed, altered, enlarged, converted,  
6 moved, or maintained, or any land or structure that is used contrary to either the provisions of  
7 this Title or any condition of approval imposed through discretionary authorization, shall be  
8 declared unlawful and be subject to the provisions of Chapter 9.02 (Code Enforcement)”. (EDC  
9 Code Sec. 130.67.040 Abatement of Nuisance and Penalty for Violation.) Chapter 9.02 of the  
10 EDC Code defines a Public Nuisance to include any violation of various building codes or “any  
11 other applicable law” as well as any violation of “...the provisions of this chapter or other  
12 chapter where enforcement is provided for pursuant to this chapter and a violation of the chapter  
13 is declared to be a nuisance.” (EDC Section 9.02.040) Failure to obtain required Conditional Use  
14 Permits for Heritage Neighborhood Park improvements constitutes a public nuisance per se.

15 59. Although Civil Code section 3482 provides that an activity expressly authorized by  
16 statute cannot be deemed a nuisance, the manner in which the activity is operated or performed  
17 may constitute a nuisance. The statutory protection of section 3482 generally does not apply  
18 unless the acts complained of are authorized by the express terms of the statute or by necessary  
19 implication from the powers expressly conferred, so that it can be fairly stated that the law  
20 contemplated the doing of the very act which occasions the injury.

21 60. Here, although both the General Plan and CCSP allow playground equipment within  
22 a Neighborhood Park, the Zoning Ordinance contains specific use regulations applicable to all  
23 property in the unincorporated territory of the County. The regulations conditionally authorize  
24 certain uses subject to specific design standards requiring that playground equipment shall be  
25 centrally located on the park site, or situated in a way that minimizes noise impacts on adjacent  
26 residential property owners. Nothing in the approved planning documents or Zoning Code can be  
27 fairly construed to allow placement of playground equipment outfitted with special noise-making  
28 equipment (such as drums and chimes) adjacent to rear yards of homes, and then certainly not  
29 without an analysis of the impacts on sensitive receptor senior residents. Where a use does not  
30 satisfy adopted standards under the Zoning Ordinance, it is either prohibited or requires a  
31 Conditional Use Permit, variance or other discretionary authorization.

1           61. Petitioner is informed and believes that the existing Heritage Neighborhood Park  
2 improvements including but not limited to stadium-style sport-court lighting, parking lot  
3 lighting, tennis and pickleball courts, and playground equipment either fail to comply with  
4 adopted County conditions or have not been properly authorized under appropriate Conditional  
5 Use Permits. Under the express terms of the County Zoning Ordinance, construction of  
6 improvements under these circumstances is prohibited and constitutes a public nuisance per se.

7           **V. OPERATION OF HERITAGE NEIGHBORHOOD PARK CONSTITUTES A**  
8           **PUBLIC NUISANCE TO HERITAGE HOMEOWNERS**

9           62. Operation of the Heritage Neighborhood Park as currently configured, including the  
10 intrusive lighting, gives rise to a valid public nuisance claim against the CSD related to the  
11 lighting and other issues as herein described. The public nuisance is both substantial and  
12 unreasonable, and has been experienced by adjacent homeowners with the unlawful opening of  
13 the park. Homeowners whose properties are directly behind Heritage Park have endured loud  
14 noise from the playground area of children screaming, noisemakers, and loud birthday parties as  
15 well as visual eavesdropping into their bedrooms from visitors to the playground, which stands  
16 above the level of their houses. There is only a flimsy 6-foot wooden fence separating their  
17 homes from the park playground, which is located directly adjacent to their homes, rather than  
18 centrally located on the park site, or situated in a way to minimize noise impacts on adjacent  
19 residential property owners, as required by the zoning code. Plaintiff further alleges the lighting  
20 as herein described violates the limitations in the CCSP, the County Community Design  
21 standards and the Zoning Code. A decision to operate the lights would require additional review,  
22 which must consider at least the following: substantial glare and lighting trespass, the impact on  
23 special status species as well as the impact and feasible mitigation measures to reduce impacts on  
24 residents of the age-restricted Heritage community.

25           63. The CSD now seeks to convert what was originally planned as a small, quiet and  
26 passive neighborhood park adjacent to a senior community, into a competitive sports park with  
27 stadium-style lights and noise generators, instead of reserving those uses for the planned 30-acre  
28 Regional Park which was envisioned in the Carson Creek Specific Plan and suitably located  
29 adjacent to Industrial and Research and Development land uses. The CCSP designates the  
30 Heritage site as a Neighborhood Park, but does not authorize intensive lighting. No evaluation  
31 has been performed as part of the CCSP FEIR or any subsequent action through and including

1 approval of Park construction documents to assess impacts of the lighting on the senior housing  
2 sensitive receptors, or on special status species known or highly likely to be present within the  
3 Preserve, and no testing of the lights to address these questions has been performed.

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

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

27 66. The parking impact is illustrated by the lack of available, legal parking in the vicinity  
28 of Heritage Neighborhood Park. The Park itself contains only 23 parking spaces, and it is half a  
29 mile from the closest legal on-street parking. Users of the Park from outside of the Heritage  
30 community can't park in Heritage, as it is a gated community with private roads. There is no  
31 parking allowed on Carson Crossing Drive, so a driver will have to go all the way to Golden

1 Foothills Parkway to park legally on the street. Illegal parking on narrow roads in the vicinity of  
2 the Park creates a potential safety hazard, restricting access to emergency vehicles. Entrances  
3 and exits to the Park are located on Palmdale Drive, the primary access road for over 1,000  
4 Heritage residents and for emergency vehicle access. The width of Palmdale Drive meets  
5 minimum County standards without consideration of added pressure from Park traffic and illegal  
6 parking. On information and belief, the potential for reduced access to resident and emergency  
7 vehicles presents a significant nuisance and life-threatening hazard that has not been studied by  
8 the Defendants. Additionally, there are hazardous line of sight blind spots due to walls, large  
9 entry signs, and gates.

10 67. The congestion and noise level predicted to be produced by the Park may be  
11 demonstrated by the widespread CSD publicity for the Park, which Plaintiff is informed and  
12 believes includes efforts to actively recruit sports teams from as far away as Cameron Park to use  
13 the public courts at Heritage. (See Exhibit 11) Although the CSD Board has adopted a dawn-to-  
14 dusk designation for the Park, the CSD has refused to allow Lennar to remove the intensive  
15 lighting. Statements have been made by GM Loewen that the lights may be needed in the future  
16 and the CSD has generated publicity for the Park as a site for competitive sports activities  
17 beyond the intended closure at dusk. If operated with the lighting as planned, Heritage  
18 Neighborhood Park would be the only lighted park in El Dorado Hills other than Promontory  
19 Park, an 18.7-acre community park including at least three lighted ballfields, lighted tennis and  
20 bocce ball courts and approximately 99 parking spaces. If lighted, Heritage Neighborhood Park  
21 could reasonably be expected to attract a significant number of users, particularly after dark  
22 when other facilities are not available.

23 68. Furthermore, the placement of playground equipment on the perimeter of the  
24 Heritage Neighborhood Park adjacent to senior residences instead of centrally located as  
25 provided in the Zoning Ordinance constitutes a public nuisance. The playground is outfitted  
26 with noisemakers including xylophone, chimes and percussion drums with hammers to enhance  
27 the noise, and now that the park is open and operating the homeowners living behind the park  
28 have complained of excessive noise from the playground as well as visual trespassing of park  
29 users into their bedrooms due to the placement of playground equipment adjacent to the rear  
30 yards at a height that permits visual trespass over the fences of the homes adjacent to the park.  
31 Petitioner is informed and believes that several of the residents have reported men working on

1 the playground equipment peering into their yards and homes, and one resident reported that an  
2 adult male on the play structure above their home saw his wife fully nude as she was getting  
3 dressed in the bedroom of the home. This is an ongoing condition that constitutes a public  
4 nuisance.

5 **VI. SUPPLEMENTAL ALLEGATIONS INVOLVING EVENTS**  
6 **OCCURRING SINCE FILING OF THE ORIGINAL COMPLAINT**

7 69. Originally named as a party in this action, Lennar Homes of California, Inc. is a  
8 California Corporation and Lennar Homes of California, LLC., is a California Limited Liability  
9 Company (collectively “Lennar”).<sup>6</sup> In Lennar’s Answer to the original Complaint, Lennar  
10 asserted that, because the CSD had accepted a Grant Deed transferring title to the Heritage Park  
11 to the CSD, Lennar no longer owned the park property, and therefore lacked authority to  
12 provide the remedies sought by Plaintiff. For this reason, subsequent to filing the First  
13 Amended Complaint, Plaintiff dismissed the Lennar parties from the action without prejudice.  
14 The original case caption has been revised to reflect dismissal of Lennar.

15 70. Originally named as a party in his representative capacity, KEVIN A. LOEWEN is  
16 the General Manager of the El Dorado Hills Community Services District of El Dorado County.  
17 Under terms of the CSD Policy Manual, the General Manager has broad authority to act as the  
18 authorized agent and representative of the Board of Directors of the CSD, including “for the  
19 purpose of procuring all necessary permits and execution of related applications necessary for  
20 the commencement and completion of construction projects.” [CSD Policy 3320.20] Although  
21 Plaintiff is informed and believes that GM Loewen, directed construction of the Heritage  
22 Neighborhood Park without the required Conditional Use Permit(s), because Loewen acted in his  
23 official capacity as a representative of the CSD, Plaintiff dismissed Loewen as a party to the  
24 action without prejudice after filing the First Amended Complaint. The original case caption has  
25 been revised to reflect dismissal of Loewen.

26 71. On June 9, 2022, after the original Complaint was filed in this matter, counsel for  
27 Plaintiffs sent a letter to members of the El Dorado County Board of Supervisors, indicating that  
28 the Heritage Neighborhood Park appears to have been constructed without the proper County  
29

30 <sup>6</sup> The California Secretary of State website reflects a “Legacy Conversion” effective January 31,  
31 2022 whereby LENNAR HOMES OF CALIFORNIA, INC. was “converted out” to LENNAR  
HOMES OF CALIFORNIA, LLC.

1 planning permits. (Exhibit 8) This letter advised that Plaintiff had filed this action to declare non-  
2 compliant Heritage Neighborhood Park improvements a public nuisance, and to prohibit  
3 operation of the park until such time as the required permit applications are submitted, related  
4 environmental review is completed, public hearings are conducted, and a final decision rendered  
5 by the responsible County agencies. The letter requested that the County assist the Heritage  
6 homeowners by enforcing the County's adopted plans and ordinances and to prohibit operation  
7 of the park unless and until County-required use permits are issued.

8 72. On June 13, 2022, the CSD Board of Directors authorized acceptance of the Grant  
9 Deed for the Heritage Neighborhood Park from Lennar, notwithstanding both the issues raised in  
10 the pending litigation and a number of unresolved "punch list" items. During discussion of the  
11 issue, CSD Director Hansen moved to accept the Grant Deed, saying that the CSD should  
12 "accept the park and light it up"; the motion was approved by the four Directors in attendance.  
13 The Grant Deed was executed by Lennar on June 16, 2022, accepted on behalf of the CSD by  
14 General Manager Kevin Loewen, and recorded in the office of the County Recorder on June 23,  
15 2022. (Exhibit 7) Every successive owner of property who neglects to abate a continuing  
16 nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the  
17 same manner as the one who first created it. (Civil Code section 3483).

18 73. On July 11, 2022, El Dorado County's Planning and Building Director sent a letter to  
19 Lennar and CSD which identified a number of concerns related to the Heritage Neighborhood  
20 Park, including that a Conditional Use Permit was required and had not been obtained for certain  
21 uses including the "sport court lighting" that has been constructed onsite; the overall height of  
22 parking lot lights which appear to exceed County standards; and alterations to the parking lot  
23 light fixtures which are inconsistent with the submitted plans. (Exhibit 9) The County's letter  
24 indicates that the outstanding building permit for the Heritage Neighborhood Park "will not be  
25 able to be finalized" until such time as these issues are resolved.

26 74. After acceptance and recordation of the Heritage Neighborhood Park Grant Deed on  
27 or about June 23, 2022, the CSD, as the new park owner, removed the construction fencing and  
28 opened the park for public use. Plaintiff is informed and believes that no final inspection has  
29 been conducted by the County for the stadium-style sport court lighting or the parking lot  
30 lighting, and Plaintiff is informed and believes that as a result, the lights are currently not  
31 activated.



1           75. Also following transfer of title to the Heritage Neighborhood Park to CSD on or  
2 about June 23, 2022, Lennar sought dismissal as a party to this action on grounds that the  
3 transfer of title to the property had eliminated Lennar’s continuing rights and responsibilities  
4 with respect to the Park, and that the remedies sought by Plaintiff were no longer available  
5 against Lennar. Plaintiff has dismissed Lennar from the action without prejudice.

6           76. In a recent report General Manager Loewen advised the CSD Board of Directors that  
7 payment to Lennar for park improvements may be withheld until the permitting issue is resolved  
8 because the park cannot be considered complete. “...Permitting of lighting is still a matter to  
9 address with Lennar/County, as the District will be unable to financially reconcile the park  
10 construction costs which would be otherwise due to Lennar if the park remains incomplete, i.e.,  
11 features unpermitted and incomplete cannot be paid for.” (Exhibit 10, p. 7)

12                                   **VII. PLAINTIFF’S CLAIMS ARE RIPE**

13           77. On June 13, 2022, the CSD Board of Directors authorized acceptance of the Grant  
14 Deed for the Heritage Neighborhood Park from Lennar, notwithstanding both the issues raised in  
15 the pending litigation and a number of unresolved “punch list” items. On or about June 23, 2022,  
16 the Grant Deed was recorded, transferring title to the Heritage Park from Lennar to the CSD.  
17 Plaintiff is informed and believes that notwithstanding that required Conditional Use Permits  
18 have not been issued for park improvements, the CSD has accepted title to the property and  
19 commenced operation of the park.

20                                   **FIRST CAUSE OF ACTION**

21                                   **(Declaratory Relief - CCP § 1060) Against CSD**

22           78. Plaintiff incorporates by reference the allegations of paragraphs 1 through 77 of this  
23 Petition as if fully set forth herein.

24           79. As described at length above, an actual controversy has arisen and now exists  
25 between Plaintiff/Petitioner and Respondent CSD concerning the authority for construction and  
26 operation of the Heritage Neighborhood Park as configured. A judicial determination of the  
27 respective duties of Plaintiff/Petitioners and Respondents is necessary and appropriate at this  
28 time to determine the continuing rights and responsibilities of the parties. Plaintiff/Petitioner  
29 seeks the following declarations:  
30

1 a. Neither CSD nor former owner and developer Lennar has obtained the planning  
2 permits required under the CCSP, Zoning Ordinance and County Code for the Heritage  
3 Neighborhood Park improvements as configured and constructed, including tennis and pickleball  
4 courts, location and composition of playground equipment, parking lot and stadium-style sport  
5 court lighting;

6 b. The Heritage Neighborhood Park as configured and constructed, violates the CCSP,  
7 Zoning Ordinance and County Code and cannot be operated without the required planning  
8 permits;

9 c. The cost to obtain the required planning permits or to modify or remove unauthorized  
10 improvements shall be borne by the CSD rather than the Heritage homeowners or the LLAD.

## 11 SECOND CAUSE OF ACTION

### 12 (Writ of Mandate – CCP § 1085) Against CSD

13 80. Plaintiff/Petitioner incorporates by reference the allegations of paragraphs 1 through  
14 79 of this Verified Petition/Complaint as if fully set forth herein.

15 81. The CSD has a present and ministerial duty to ensure the Heritage Neighborhood  
16 Park and any Park lighting or improvements are designed, constructed and operated in  
17 conformance with the governing approvals and applicable County Codes.

18 82. The CSD has a present and ministerial duty to ensure the Heritage Neighborhood  
19 Park and any tennis and pickleball courts, parking lot lighting, stadium-style sport court lighting,  
20 playground equipment and other improvements are not operated until required planning permits  
21 have been issued; until potential environmental impacts, including on the Carson Creek Preserve,  
22 have been assessed; and until all feasible mitigation measures have been implemented.

23 83. Respondents have failed to perform this duty and, unless mandated to do so by this  
24 Court, will continue to fail and refuse to perform the duties imposed on them by law.

25 84. Petitioners have no available administrative remedies.

26 85. Petitioners have no plain, speedy and adequate remedy in the ordinary course of law,  
27 other than the relief sought herein.

28 86. Petitioners are beneficially interested in issuance of a writ of mandate. Petitioner will  
29 be seriously harmed if Respondent CSD continues to refuse to perform their duties.

30 87. At all times, Respondent CSD has been able to perform this duty.  
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1 **THIRD CAUSE OF ACTION**

2 **(Public Nuisance – Civ. Code § 3479) Against CSD**

3 88. Plaintiff incorporates by reference the allegations of paragraphs 1 through 87 of this  
4 Verified Petition/Complaint as if fully set forth herein.

5 89. The CSD has directed the design and construction of the Heritage Neighborhood  
6 Park to include improvements not authorized in the governing approvals or under the County  
7 Code without obtaining or requiring Lennar, the developer/contractor to obtain all required  
8 County permits, including planning permits such as a Conditional Use Permit. Construction of  
9 such improvements absent required County planning permits constitutes a nuisance per se.  
10 Moreover, the commencement of operations of the Heritage Neighborhood Park with its  
11 unauthorized improvements result in glare and light trespass, noise, parking, traffic and safety  
12 issues, and invasion of personal privacy by visual trespass, that are harmful to health, offensive  
13 to the senses, obstruct the free use and comfortable enjoyment of property of residents in the  
14 Heritage senior housing development.

15 90. The condition affects a substantial number of people at the same time;

16 91. The condition is such that an ordinary person would be reasonably annoyed or  
17 disturbed by the condition;

18 92. The seriousness of the harm outweighs the social utility of Respondent CSD's  
19 conduct.

20 93. Plaintiff did not consent to Respondent CSD's conduct

21 94. Plaintiff suffered harm that was different from the type of harm suffered by the  
22 general public; and

23 95. Respondent CSD's conduct was a substantial factor in causing Plaintiff's harm.

24 96. The improvements and related unmitigated impacts of light, noise, traffic, parking  
25 and safety issues on Heritage residents or the Carson Creek Preserve are not authorized without  
26 proper permits under the governing approvals or Zoning Ordinance; the nature of the harm from  
27 the unauthorized improvements does not permit the conclusion that a general authorization to  
28 receive and operate park land showed an unequivocal legislative intent to sanction installation  
29 and operation of improvements without required permits.

30 97. Plaintiff seeks injunctive relief and abatement of the nuisance.

**FOURTH CAUSE OF ACTION**  
**(Injunctive Relief: CCP §526a) Against CSD**

98. Paragraphs 1 through 97 are incorporated as if set forth in this Fourth Cause of Action.

99. In the absence of this Court's injunction, Defendants El Dorado Hills Community Services District will continue to operate the Heritage Neighborhood Park as configured and constructed without obtaining proper planning permits, without conducting a proper and adequate analysis of the Park impacts, including but not limited to lighting, noise, traffic, parking and safety, and without implementing appropriate mitigation measures to reduce the Park's adverse impacts. Improvements not properly permitted constitute a nuisance per se, and an injunction should be issued to prohibit continued operations until the unauthorized improvements are removed, or required permits are issued in compliance with the County's environmental analysis and public hearing process.

100. Accordingly, Plaintiff is entitled to a temporary restraining order, preliminary and permanent injunction enjoining Defendant El Dorado Hills Community Services District and its agents, from operating the Park as constructed and configured, until the unauthorized improvements are removed, or until required permits applications have been submitted, proper analysis is conducted and appropriate mitigation measures or modifications to the Heritage Neighborhood Park are implemented, including, if necessary, modifications to the Park improvements. Plaintiff has no plain, speedy, and adequate remedy in the ordinary course of law in that damages or other legal remedies cannot adequately compensate Heritage residents for the irreparable harm that they will suffer.

**PRAYER FOR RELIEF**

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

1. For the following declarations:
  - a. Neither CSD nor former owner/developer Lennar has obtained the planning permits required under the CCSP, Zoning Ordinance and County Code for the Heritage Neighborhood Park improvements as configured and constructed, including tennis and pickleball courts, location and composition of playground equipment, parking lot and stadium-style sport court lighting;

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- b. The Heritage Neighborhood Park as configured and constructed, violates the CCSP, Zoning Ordinance and County Code and shall not be operated without the required planning permits;
- c. The cost to obtain the required planning permits or to modify or remove unauthorized improvements shall be the responsibility of the CSD, rather than the Heritage homeowners or the LLAD.

2. For a Writ of Mandate directing the CSD to cease operation of the Heritage Neighborhood Park until such time as the CSD shall either 1) process and obtain required Conditional Use Permits from the County for the Heritage Neighborhood Park improvements, including analysis of environmental impacts on the Carson Creek Preserve, and implementation of feasible mitigation measures; or 2) remove at their expense all existing Park improvements not authorized without a Conditional Use Permit, including but not limited to tennis courts, pickle ball courts, playground equipment, parking lots and stadium style sport-court lighting.

3. For an abatement order and stay, temporary restraining order, preliminary injunction, and/or permanent injunction enjoining operation of the Heritage Neighborhood Park as a public nuisance until such time as a) the CSD has applied for and obtained the required permits or amendments to the General Plan, CCSP or Zoning Ordinance to allow the improvements as constructed; or b) the unauthorized improvements are removed without cost to the Heritage homeowners. This Court shall retain jurisdiction to order abatement should the CSD fail to comply with the Court's order.

- 4. For costs of suit;
- 5. For an award of attorney's fees pursuant to CCP§ 1021.5 and costs; and
- 6. For such other legal and equitable relief as the Court deems just and proper.

Dated: February 27, 2023

  
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 James L. Brunello  
 Attorney for Plaintiff/Petitioner

**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 First Amended 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 27th day of February, 2023 in the El Dorado Hills area of El Dorado County, California.

\_\_\_\_\_ Date: \_\_\_\_\_

George Robert Williams

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