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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
DEPARTMENT 72; HON. TIMOTHY TAYLOR

GOLDEN DOOR PROPERTIES, LLC, a) Case No.
California limited liability company, and) 37-2018-
DOES 1-10, inclusive,) 00013324-
) CU-TT-CTL
Petitioner and Plaintiff,)
)
vs.)
)
COUNTY OF SAN DIEGO, a political)
subdivision of the State of California; and)
DOES 11-20, inclusive,)
)
Respondent and Defendant.)
)

CERTIFIED COPY/DIGITALLY SIGNED
REPORTER'S TRANSCRIPT
September 14, 2018
Pages 1 through che

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Court-Approved Reporter

1 SEPTEMBER 14, 2018; SAN DIEGO, CALIFORNIA

2 * * * * *

3 THE COURT: Golden Door. Let me have your
4 appearances, if you please.

5 MS. CHATTEN-BROWN: Jan Chatten-Brown of
6 Chatten-Brown & Carstens for the Sierra Club.

7 MR. CHATTEN-BROWN: Josh Chatten-Brown on
8 behalf of the Sierra Club, Center for Biological
9 Diversity, et al.

10 MR. GARRETT: Chris Garrett, Lathem & Watkins,
11 on behalf of Golden Door, Petitioner and Intervenor.

12 MR. TAKAHASHI: Taiga Takahashi, also on behalf
13 of Golden Door.

14 MS. SILVA: Claudia Silva on behalf of the
15 County of San Diego, Respondent on all matters.

16 MR. HEINLEIN: Josh Heinlein on behalf of the
17 County of San Diego.

18 THE COURT: Okay. Before we get to the meat of
19 the hearing today we had a status conference scheduled
20 to talk about the state of the administrative record. I
21 received a lodgement. I have been here ten years and
22 this is the first time I ever had one of these delivered
23 in a little rectangular black thing that apparently
24 contains the Golden Door's version of the administrative
25 record.

26 Did you get a copy of that?

27 MR. HEINLEIN: Yes, Your Honor.

28 THE COURT: Okay. What is the county -- well,

1 first, what's the Sierra Club's view of that document?
2 Is that also your proposed administrative record?

3 MS. CHATTEN-BROWN: Yes.

4 THE COURT: Okay. All right. Thank you.
5 What's the county's view in that regard?

6 MR. HEINLEIN: Your Honor, we have -- we're
7 about, I would say, 40 percent of the way through the
8 documents, so we are on track to complete our review by
9 the October 15th deadline. There is --

10 THE COURT: That's a deadline for
11 certification?

12 MR. HEINLEIN: Right.

13 THE COURT: Good.

14 MR. HEINLEIN: And there have been a couple of
15 minor discrepancies that we noted in the record. We've
16 reached out to Golden Door on those, and whenever we've
17 noted a discrepancy they have worked with us to make the
18 requisite changes. So, so far nothing that would
19 prohibit us from proceeding in the manner that we've
20 contemplated.

21 THE COURT: And certifying the record.

22 MR. HEINLEIN: So far.

23 THE COURT: Good. Assuming that the record is
24 certified, what do I send to the Court of Appeal, that
25 black rectangular thing?

26 MR. HEINLEIN: I believe so.

27 MS. SILVA: Yes.

28 THE COURT: Thank you. Is there anything else

1 you want to take up on the status conference?

2 MR. HEINLEIN: No.

3 MR. GARRETT: I just wanted to make sure the
4 Court was aware -- I think at one point the Court urged
5 us to reach out to the Court of Appeal regarding the
6 pending case involving --

7 THE COURT: Yes.

8 MR. GARRETT: That it was raising issues
9 regarding the Court's jurisdiction that -- the case was
10 argued on Monday and submitted.

11 THE COURT: I heard that. Thank you.

12 Okay. Now, turning to the, as I put it a
13 moment ago, the meat of today's hearing. This -- this
14 is the briefing, and it grew, or at least purported to
15 grow today. I received, as I was in the middle of my
16 morning calendar, the county's sur-reply, which is
17 essentially a response to the Court's tentative ruling.

18 That's not proper, and I think I stopped at the
19 end of Page 1 for that reason. The Rules of Court are
20 very explicit. Opening, opposition, reply, that's it.
21 That's what the briefing is, absent an order of the
22 Court in advance for further briefing. You don't just
23 grant yourself the right to file a sur-reply.

24 So I decline to consider it. If I were to
25 consider it, you would have granted yourself a
26 continuance, because then I have to give them an
27 opportunity to respond, and then presumably you'd want a
28 sur-reply to their response to the sur-reply, and, you

1 know, that's just not how it works. Briefing has to
2 come to an end at some point. Moving, opposition,
3 reply. That's it.

4 So you went to a lot of work to prepare it.
5 It's -- apparently it has appended to it a supplemental
6 declaration which makes it even more objectionable,
7 because you can't do that. You can't put in new
8 evidence after briefing is closed. We would just end up
9 with a round delay of briefing that would go on ad
10 infinitum. We can't have that. I need to make a
11 decision, and -- and let you go to the Court of Appeal
12 if you're aggrieved by that decision. That's how it
13 works. I'm at peace with that. I want you to have the
14 opportunity to take -- you know, to seek appellate
15 review, but I can't be considering sur-replies filed the
16 day of the hearing. I just can't.

17 So for all those reasons I decline to consider
18 the sur-reply, and I have not read it, and I have not
19 considered the supplemental declaration that is
20 apparently appended to it.

21 So with that as a prologue, let me hear from
22 the moving party first.

23 MR. GARRETT: Chris Garrett. I'll speak for
24 the Golden Door, and, Your Honor, I would like to submit
25 on the tentative with just a few brief comments.

26 THE COURT: All right, sir, go ahead.

27 MR. GARRETT: And first of all, I think that I
28 have a concern that the county -- part of the county's

1 approach in opposing our motion is to enmesh the Court
2 in what appears to be the most complicated swamp ever
3 imaginable, and I think that the Court should -- should
4 try to avoid that. And from our perspective the way
5 that the issue should be looked at is, first of all,
6 whether the state of preliminary injunction should be
7 granted.

8 Second, what the scope of that stay or
9 injunction should be. And we're comfortable, Your
10 Honor, with the Court's language in the -- in the
11 tentative, and we would -- we would accept that scope.
12 However, the county may have something different to say.

13 And then the third point is that, I believe the
14 county has different ideas and procedures for how they
15 might seek exceptions and clarifications to the Court's
16 ruling that, you know, can't be done today. Some of
17 their -- I think what they may say is that they would
18 like to get things clarified with respect to individual
19 projects. And what I'm worried about is that in the
20 course of the hearing today that might be invited error
21 by the Court's part. That I know the Court has been
22 very eager to be sure, and we agree that, to the extent
23 to which the Court is going to be making decisions about
24 individual projects, rather than the matter in the
25 project that's before the Court, that has to be done
26 based on a record as to those projects, you know, with
27 the opportunity for counsel for real parties, whoever,
28 to participate if they want to.

1 So and with -- again, I would -- my biggest
2 concern I think in the argument today is that the county
3 will try to make it so complicated that the Court will
4 back off of the tentative, and then secondly, that the
5 Court may be invited to start enmeshing itself in the
6 details of particular projects which -- which I think
7 could be done in a separate proceeding with a record
8 with other parties if that's what the county wants to do
9 after the injunction and stay is issued.

10 I did want to mention one other point. The
11 oral argument on Monday in front of the Court of Appeal
12 reminded me that the county's position -- of the
13 county's position earlier in the proceeding here, where
14 the county had stated that they remember well -- a year
15 ago, in 2017, the county said that if this -- the Court,
16 which the order we proposed is modeled on the order the
17 Court issued for the 2016 document, and for that matter,
18 the 2013 document. And in each one of those cases the
19 county faced the situation of whether -- you know, how
20 they would go forward once the Court had said you can't
21 use this document. You can't use this thing that the
22 county's adopted, the 2013 guidelines, the 2016
23 significant threshold that we thought was a significant
24 threshold, and the Court agreed.

25 And I think the same is true for the 2018
26 thresholds. It's the same process. It's no different,
27 and I'm quite surprised that the county thinks that
28 there is something different here than before. Of

1 course early on in the process both the Golden Door and
2 the Sierra Club asked the Court instead to simply --
3 consider just stopping the project with the county from
4 considering any projects until they finished the Climate
5 Action Plan or at least the general plan, and then the
6 projects. And the Court rejected that view, and we were
7 aware of that, that argument. I know the Court's -- and
8 the county's statement that they were going to go ahead
9 in the absence of the documents, it could continue to
10 process projects, and so our -- our motion was done with
11 respect to that.

12 We did not seek an order from the Court, just
13 having all the proceedings that the county come to a
14 stop. Instead we tailored it the same way, which is
15 don't use the document, which the Court has found it has
16 the problems that the tentative says that it has. So
17 when -- when we were in front of the Court of Appeal,
18 the one of the last briefs the county filed with the
19 Court of Appeal was that basically the appeal was moot,
20 it didn't need to be decided anymore because the county
21 had just adopted proclusive and mandatory guidelines
22 which they called superseded anything else in -- on
23 Valentine's Day of 2018, the Valentine's Day actions
24 which included approving the -- the new cap, the
25 threshold of significance and the new GHG-1 mitigation
26 measure. And they represented to the Court of Appeal
27 that those were the new exclusive procedures that the
28 county was going to use for processing projects going

1 forward.

2 The Court may recall the 2016 document said,
3 here's the recommended and recognized threshold, but you
4 can use others on a case-by-case basis. The 2018
5 thresholds were proclusive. These are the ones that you
6 are supposed to use. They didn't say, and we will
7 consider others or whatever. There is no grandfathering
8 in the 2018 thresholds. There is simply a statement,
9 this is what you're going to use from this -- this time
10 henceforth. And so we found it quite surprising that
11 the county's one of many count -- the county
12 inconsistent positions here is that the stay won't mean
13 anything, because they didn't ever use the 2018
14 guidelines, and that they instead used some other
15 process that won't be affected by the Court's stay, so
16 therefore, the state would really be irrelevant.

17 I guess really what happens with those
18 particular projects and whether that's accurate or not,
19 you know, may be determined in some other forum, but
20 from my perspective if the Court were to grant the stay,
21 the preliminary injunction, the county really has three
22 options. One is to recognize that they have been
23 processing projects based on the new mandatory
24 guidelines, and then stop, and if they want to use
25 alternatives the Court's kind of said they can use
26 alternatives.

27 Or secondly, they can say well, what we put
28 together here doesn't -- isn't affected by the Court's

1 tentative. We're certain of that. It doesn't reference
2 any of the documents that the Court has referred to,
3 tells us we can't use, so therefore, we'll just keep
4 doing what we're doing, and there won't be a problem.
5 Which, again, I think is in the papers, they seem to say
6 that's maybe where they are going.

7 And then the third option which they've
8 mentioned is, you know, gee, we'd like the Court's
9 clarification about this, so look at this piece of paper
10 from this particular project record. You can see from
11 that piece of paper and the project record that we
12 weren't really using what the Court's enjoining, and we
13 want clarification.

14 And so I think if the county wants
15 clarification of any injunction that the Court issues,
16 really the only the way that that could be granted -- it
17 can't be granted today, especially if the Court's not
18 considering the sur-reply papers but instead --

19 THE COURT: Well, do you think I should?

20 MR. GARRETT: No, I don't think you should. I
21 do not think you should. And I think the only way to do
22 it is through a subsequent motion where the Court --
23 it's only -- each document is only a couple of pages,
24 but whatever project they think they want clarification
25 from the Court on, it's just, you know, a few pages of
26 that document and then, you know, the county I think can
27 make sure that if the developer's lawyer wants to be a
28 participant in those proceedings and intervene for that

1 limited purpose, then I think that would deal with that
2 issue. Otherwise I'm concerned that later the county
3 may claim this Court's decision was in error, because
4 rather than just simply addressing a single county
5 document --

6 THE COURT: You've suggested I think a real
7 serious due process problem, absent the project
8 applicant doing what your client did in one of these
9 cases, right?

10 MR. GARRETT: Well, we're a project opponent
11 but --

12 THE COURT: Okay. Okay, but --

13 MR. GARRETT: So we intervened.

14 THE COURT: Intervened, yeah, that's the
15 procedure that would have to be followed.

16 MR. GARRETT: Right. I don't think I'm the one
17 suggesting due process. What I'm concerned about is
18 that the county is inviting the Court to make a due pros
19 -- perhaps claim that the count -- the Court has made a
20 due process error by inviting the Court to examine the
21 records of particular proceedings, which I don't think
22 is necessary.

23 THE COURT: In the absence of project
24 applicant.

25 MR. GARRETT: That's correct. And so what I'm
26 saying --

27 THE COURT: I would not do that.

28 MR. GARRETT: Right. Okay, well then great. I

1 just wanted to --

2 THE COURT: I would not do that because that
3 would affect the due process rights of that project
4 applicant, and absent an intervention by that project
5 applicant I don't think it would be right for me to be
6 making decisions about that project applicant's project,
7 do you?

8 MR. GARRETT: No, I don't at all. In fact, I
9 interpreted the county's papers as inviting the Court to
10 leap into that maelstrom, and I'm hoping the Court will
11 stay away from that.

12 THE COURT: That's where I thought you were
13 going. I just wanted to make sure that I was
14 apprehending accurately what you were saying.

15 MR. GARRETT: That's right.

16 THE COURT: Okay.

17 MR. GARRETT: And I think, you know, just like
18 any other injunction, when, you know, if Your Honor
19 issues an injunction that says Neighbor A is supposed to
20 stay off of Neighbor B's property, you have people like
21 Neighbor A who will come and --

22 THE COURT: You don't know the verdict that we
23 took about two hours ago.

24 MR. GARRETT: No, I don't.

25 THE COURT: It was neighbor A and Neighbor B.

26 MR. GARRETT: Well, you can issue an injunction
27 like that but if they are anything like some of the
28 clients I know, Neighbor A says well, I have been

1 enjoined from doing that. Does that mean I can't stick
2 a six-foot pole over if I don't go over? I mean, I
3 can't get up to the edge and shout, or can I drive my
4 car partially onto it. And in each case I think
5 normally what the Court's would say is, you can
6 interpret the injunction the way it is. If it's
7 necessary to get clarification there be a proceeding to
8 do that, but it's not essential for the issuance --

9 THE COURT: Yeah, it would be called a motion
10 to vacate or modify the injunctive relief, right?

11 MR. GARRETT: Right.

12 THE COURT: A duly noticed motion. I mean --

13 MR. GARRETT: Correct. Rather than put it in
14 sur-reply papers.

15 THE COURT: Well, I'm not thinking of that, but
16 I'm thinking of potentially transgressing the rule
17 against advisory opinion.

18 MR. GARRETT: Correct.

19 THE COURT: I mean, I would have to deal with
20 it on a -- three concrete set of facts. Otherwise it's
21 not a real controversy, and absent a real controversy I
22 don't have authority to decide it.

23 MR. GARRETT: You have jumped ahead to where I
24 was going, Your Honor.

25 THE COURT: Okay.

26 MR. GARRETT: Which is, I don't think the Court
27 has to issue a series of advisory opinions today, which
28 I think will be one of the county's objections to the --

1 to any -- any injunction order that the Court might
2 issue.

3 The last point I wanted to make, Your Honor,
4 and, again, we're happy with the tentative is, we're
5 also concerned about, while the county staff has said in
6 their opinion as county staff members, they don't think
7 particular developers would start construction tomorrow,
8 it's interesting the way the declaration's worded. It
9 doesn't refer to grading. People can start grading
10 right away after approvals. And it's simply a county
11 staff member, and I respect their opinion, but they are
12 in fact not providing a guarantee to the Court that the
13 GHG emissions won't occur between now and the trial.
14 And Your Honor may have been in similar situations where
15 someone seeks an injunction, and the other party says
16 well, I was never going to do that anyway, and I think if
17 you know that early enough in the process the
18 appropriate thing may be just a stipulation and an
19 order. I'm not doing that anyway. No one is going to
20 get a vested right here to go forward and construct and
21 be immune from the Court's order, if the Court rules
22 that the merits that -- the matters set to be enjoined
23 be -- the GHG emissions are not going to occur. We, the
24 county, can guarantee all that.

25 But I think there is so much confusion in the
26 county's response that the only certainty that we have
27 that these GHG emissions won't occur prior to the trial,
28 is this injunction and stay. And it -- you know,

1 obviously you can always turn it around and say, you
2 know, it wouldn't harm the county if they are saying
3 there won't be any construction anyway, but I think the
4 reason why the moving party should get the injunction in
5 this situation is because of the ambiguity the county
6 itself has raised with respect to what may occur between
7 now and the December trial.

8 THE COURT: Do you want to address bond?

9 MR. GARRETT: Your Honor, we accept the Court's
10 tentative on the bond.

11 THE COURT: Thank you, sir.

12 MR. GARRETT: I didn't realize that people
13 actually read the Court's tentative and then e-mail the
14 counsel offering to arrange for the bond. So I have
15 become quite a popular person with the bonding
16 companies.

17 THE COURT: Okay. Let's hear from the Sierra
18 Club.

19 MS. CHATTEN-BROWN: Yes, Your Honor. First I
20 want to thank you for a very thorough and reasoned
21 tentative. Obviously we agree with it. There -- I
22 would like to reserve most of my comments until we hear
23 from the County Counsel. But I did want to bring to
24 your attention there was one potential ambiguity
25 understanding that we have been -- we have been waiting
26 for seven years for an adequate Climate Action Plan.
27 It seems that the county has either not followed the
28 letter or certainly not the spirit of the Court's orders

1 in various places before, and because the county
2 emphasizes that despite the fact they have told the
3 Courts of Appeal it's a mandatory cap that some of these
4 applicants aren't utilizing the cap.

5 And we compared on several the county asked if
6 there was actually a chart comparing the exact language
7 of mitigation at GHG-1, which is the out of county
8 offsets, to what a number of the applications that are
9 being processed and actually that have even been
10 approved, and we have challenged, are. And we think
11 they really are GHG-1 by a different name, but just to
12 avoid any potential ambiguity we've prepared a revised
13 proposed order. If we may present that to the Court.

14 THE COURT: Has your adversary seen it?

15 MS. CHATTEN-BROWN: Yes, I provided it to them
16 yesterday.

17 THE COURT: Oh, okay. Hand it to the Bailiff.

18 MS. CHATTEN-BROWN: Yeah. And really the only
19 substantive addition is to stay them as we asked before
20 from relying upon mitigation measure GHG-1, and adding
21 or -- and this is on Line 13 -- or any other out of
22 county carbon credits used to offset a project with GHG
23 emission, and that is entirely because of the alleged --

24 THE COURT: Is it Orange County?

25 MS. CHATTEN-BROWN: No, in San Diego County.

26 THE COURT: Any other out of county, meaning if
27 they did a carbon offset would Orange county they would
28 have violated this order?

1 MS. CHATTEN-BROWN: Well --

2 THE COURT: Let me ask -- let me ask, does --

3 MS. CHATTEN-BROWN: Okay.

4 THE COURT: Mr. Garrett, does your client agree
5 with this order that's just been presented to me?

6 MR. GARRETT: Yes, it does.

7 THE COURT: Okay.

8 MR. GARRETT: And I would answer yes. I mean,
9 if all the accounting here has been done for in county,
10 in San Diego County.

11 THE COURT: Yeah. Right.

12 MR. GARRETT: So it could be Orange County or
13 it could be Thailand or it could be in Zimbabwe.

14 THE COURT: Yeah.

15 MS. CHATTEN-BROWN: I mean, the commitment in
16 2011 was that they would produce in the county. That's
17 one of the fundamental --

18 THE COURT: I read the brief. I read the
19 brief.

20 MS. CHATTEN-BROWN: Okay. Thank you, Your
21 Honor.

22 THE COURT: All right. Thank you. So you want
23 me to sign this?

24 MS. CHATTEN-BROWN: That is our request.

25 THE COURT: This paper right here? All right.
26 Thank you. Let's hear from the county.

27 MR. HEINLEIN: Sure, Your Honor. Ms. Silva and
28 I are going to handle various parts of the -- of the

1 argument here, but I think I would like to begin where
2 Ms. Chatten-Brown left off, which is the very problem
3 with the order that they presented.

4 As Your Honor well knows, this action is
5 challenging the county's Climate Action Plan, and what
6 this new proposed order now, goes well beyond the carbon
7 -- the Climate Action Plan. It now wants this Court to
8 enjoin not just projects that rely on -- specifically on
9 the mitigation Measure MGHG-1 in the Climate Action
10 Plan, but even if projects don't rely on the Climate
11 Action Plan at all, under this order, Sierra Club
12 believes they should be enjoined.

13 THE COURT: No, only if it involves an out of
14 county carbon credit.

15 MR. HEINLEIN: Right, but even if that project
16 didn't rely on the cap, but relied on out of county
17 carbon credits, which are consistent and authorized
18 under state law and under CEQA, under this order those
19 projects would be enjoined even if they have nothing to
20 do with the cap. And that is the very situation that we
21 are facing here, is we have several projects.

22 THE COURT: Well, what was the Court of Appeal
23 told? Is it mandatory or not?

24 MR. HEINLEIN: What -- I'm a little confused,
25 Your Honor.

26 THE COURT: Your adversary had represented to
27 me that on Monday of this week the Court of Appeal was
28 told that this is a mandatory plan. What was the Court

1 of Appeal told? Did you argue it?

2 MS. SILVA: I -- I'd like to respond to that,
3 Your Honor.

4 THE COURT: Okay.

5 MS. SILVA: What the county represented to the
6 Court of Appeal was that the Climate Action Plan had
7 been adopted, and therefore we suggested reversal which
8 remanded the direction to examine the effect of the cap,
9 the guidelines and thresholds on the original written
10 injunction as part of a reversal. We didn't make a
11 representation of mandatory, and what's important and
12 significant is the timing of this all. The argument of
13 the cap applicability to future projects depends upon --
14 and the projects that are upcoming -- it all depends on
15 when -- when the notice of preparation and those other
16 documents and projects were started.

17 So as Mr. Heinlein has indicated, the cap
18 itself has a mitigation measure to a cumulative impact
19 to the cap, whereas, state law also allows for carbon
20 offsets as a mitigation measure specifically provided
21 for in the state code.

22 THE COURT: Okay.

23 MR. HEINLEIN: And so, Your Honor, there --

24 THE COURT: You deny telling the Court of
25 Appeal that this was a mandatory -- that use of this is
26 mandatory, at least for some of the pending projects?

27 MS. SILVA: I don't believe I made any such
28 representation.

1 THE COURT: Go ahead.

2 MR. HEINLEIN: Your Honor, there are a couple
3 of -- I believe unintended consequences of the Court's
4 tentative ruling that you should be made aware of in
5 regards to staying or enjoining the county from using
6 the threshold of significance.

7 THE COURT: I had a feeling you were going to
8 say that because I read that on the first page of the
9 document that I declined to consider. I mean, I got to
10 the Court has reviewed -- the county has reviewed the
11 Court's tentative ruling, and then it goes on to say
12 there, unintended consequences. That's why I stopped.

13 MR. HEINLEIN: I understand.

14 THE COURT: You can't reply to the Court's
15 tentative. So here's what I'm going to do from now on.
16 I'm going to issue tentative rulings at 1 o'clock for a
17 1:30 hearing so you don't have time to do this. The
18 whole purpose of doing tentative rulings early is to get
19 you ready for oral argument. It's not to have you take
20 that as an invitation to give me further briefs that I
21 did not ask for, solicit or allow.

22 MR. HEINLEIN: I understand, Your Honor.

23 THE COURT: Well, why did you do it?

24 MR. HEINLEIN: Because the last time we were
25 here and we made certain arguments and certain
26 discussions, Your Honor kept repeating, has your
27 adversary seen this before, has your adversary seen this
28 before.

1 THE COURT: I always try to ask that and I just
2 did.

3 MR. HEINLEIN: Exactly, and that was the whole
4 reason why we presented the sur-reply, but I understand
5 Your Honor has not accepted it. Regardless, the
6 county is still authorized to make these arguments here
7 in court. And one of these --

8 THE COURT: Not with a supplemental affidavit.

9 MR. HEINLEIN: Okay. One of the unintended
10 consequences of staying or enjoining the county from
11 using the threshold of significance is with regards to
12 general plan consistent projects. There are 183 general
13 plan consistent projects that the county is currently
14 processing. By staying or enjoining the county from
15 utilizing the threshold of significance, none of those
16 projects can go forward unless they go back --

17 THE COURT: What is the scope of those
18 projects?

19 MR. HEINLEIN: They vary in size. Most of them
20 are -- are residential subdivisions of 50 lots or less.
21 Condo conversions. There -- they range in type and size
22 of project, but they are all consistent with the land
23 use designations and the general plan, and those
24 projects by utilize -- by being consistent with the
25 general plan, are able to tier off the general plan and
26 the cap and not having to do their independent GHG
27 analysis.

28 Petitioners have never claimed that general

1 plan consistent projects which won't be utilizing carbon
2 offsets can't go forward, but by stopping or enjoining
3 the county from using the threshold of significance and
4 guidelines for those projects, those projects are
5 stopped in their tracks. They cannot go forward.

6 THE COURT: So you're objecting to Paragraph 2
7 at this point, Paragraph 2 of the proposed order?

8 MR. HEINLEIN: That is one of the items that we
9 are objecting to, yes.

10 THE COURT: Go ahead, sir.

11 MR. HEINLEIN: The second item, Your Honor, is
12 what we believe to be a little bit of ambiguity in the
13 pronouncement that says, that the state does not
14 preclude projects currently in process if the projects
15 do not utilize the offset program provided in MGHG-1.
16 The projects that are currently going to be up for board
17 consideration do not rely on the cap. They do not tier
18 off the cap. They do not utilize MGHG-1, because they
19 don't rely on the cap. These projects were in process
20 and proposed to use carbon offsets before the cap was
21 ever in existence, before the draft EIR for the cap and
22 the draft cap were ever put out there.

23 THE COURT: You're positive of that?

24 MR. HEINLEIN: Yes. The evidence is attached
25 to Mr. Newfeld's original declaration of the -- of the
26 draft EIR --

27 THE COURT: So they won't be in violation of
28 the order then.

1 MR. HEINLEIN: That is our understanding, and
2 we simply wanted that clarification.

3 THE COURT: Well, I can't clarify something
4 that I -- I don't have a crystal ball. You know, there
5 is just a limit to what possible future iterations of
6 something I can predict. There's a limit to human
7 language expression.

8 MR. HEINLEIN: I understand.

9 THE COURT: I can make orders that are clear,
10 that seem clear, and, you know, you then have to go
11 forward and either comply with them or take the risk of
12 noncompliance.

13 MR. HEINLEIN: But -- and based on your Your
14 Honor's comment just now, the new order presented by the
15 Sierra Club again would prevent those very projects from
16 going forward.

17 THE COURT: Because of what language?

18 MR. HEINLEIN: Because of the language that
19 says, or any other out of county carbon credits used to
20 offset a project's --

21 THE COURT: I thought you just got through
22 telling me that they are not GHG reliant.

23 MR. HEINLEIN: No, no, no. They are not
24 relying on the cap. They propose to use carbon offsets
25 in their EIRs before there was ever a cap, before the
26 draft EIR for the cap, before the draft cap was ever
27 released for public comment. Those projects propose
28 under CEQA, under CEQA 151264(c)3, to use carbon

1 offsets, because it is specifically allowed under CEQA.
2 Those projects are not relying on the cap in any way,
3 shape or form, and we have this ambiguity now of those
4 projects and whether or not they can proceed.

5 In addition, under Public Resource's Code
6 21167.3, that code provision allows a local agency, even
7 in the face of an injunction, to conditionally approve a
8 project. And we submit that the county should be able
9 at a minimum to conditionally approve projects even in
10 the face of an injunction.

11 And the third thing I will submit, Your Honor,
12 is the admission that Petitioner's made in their reply
13 briefs themselves. On Page 11 of its reply brief,
14 Golden Door states, if it is true as the county
15 repeatedly argues, that none of the projects in process
16 actually rely on the 2018 cap approvals, the projects
17 may nonetheless proceed even if a stay is granted.

18 Similarly on Page 9 of its reply brief, Sierra
19 Club says, if those applicants relied upon the out of
20 county offset mitigation measure, and the applicants
21 were willing to take the risk that this measure could
22 ultimately be found to be illegal, the county could
23 still grant conditional approvals to projects. So all
24 I'm asking for is this Court to hold Petitioners to
25 their admissions.

26 THE COURT: Did you bring the alternative to
27 this proposed order?

28 MR. HEINLEIN: I did not, Your Honor. To hold

1 the Petitioners to those admissions that those projects
2 can go forward either with the conditional approvals, or
3 just simply on their own merit without a conditional
4 approval. That's what Petitioners -- that's what
5 Petitioners have admitted. And I -- from here I think
6 Ms. Silva is going to go into the 1094.5, 1085 issues
7 and proceed further.

8 THE COURT: Thank you.

9 MS. SILVA: I want to address the Court's
10 ruling with regards to whether 1085 or 1094.5 applies to
11 the petitions and to -- and to the cap itself. Based on
12 California Supreme Court state law, the Court of
13 Appeal's decision in the 2012 Sierra Club litigation cap
14 case, and basically what was already conceded by Sierra
15 Club in the filing of their own petitions, it is clear
16 that either 1085 matters, and this is fundamental,
17 because it goes to the Court's ruling as to whether a
18 stay can be imposed under 1094.5.

19 1085 as the Court's aware, applies to
20 legislative decisions and 1094 applies to quasi
21 judicial. And in this instance there are only
22 legislative decisions that are under challenge. The
23 adoption of the cap and the amendment of the general
24 plan are definitively legislative acts --

25 THE COURT: Okay. You're reading and I need
26 you to slow down a little bit just to have mercy on the
27 court reporter, please.

28 MS. SILVA: Yes. Thank you.

1 THE COURT: Thank you.

2 MS. SILVA: So the type of documents that were
3 approved, the underlying actions, which are the general
4 plan amendments and the cap in this instance, are
5 definitively legislative acts which drive this type of
6 mandamus to which they are subject. The Supreme Court
7 in Western States Petroleum made clear that the court's
8 look at the nature of the actions taken as determinant
9 and not looked at CEQA documents or how the CEQA
10 document was adopted.

11 And in regards to the current 2018 cap
12 challenges, those cases are 1085 review. I want to talk
13 a little bit more about what Western States Petroleum
14 looks at, because in Western States Petroleum the court
15 flatly rejects it, looking at whether a hearing was
16 required by law to determine whether 21168 or 21168.5
17 apply. What they explained in Western States was that
18 courts traditionally held that quasi-legislative actions
19 must be challenged by traditional mandamus, even if the
20 agency was required by law to conduct a hearing and
21 take evidence. It is the actions themselves that drive
22 the standard of review, not whether the environmental
23 document required a hearing.

24 And in fact Western States acknowledged that
25 some had argued that the 1085, 1094.5 determination
26 should depend on whether the challenged action is
27 reviewable under 21168, because a hearing was required
28 by law, or .5, because a hearing was not required. This

1 is essentially the very same argument that Golden Door
2 makes, yet the Supreme Court flatly ruled the contention
3 has at least one fatal flaw, and rejected that argument.

4 Golden Door's reliance on the William S.
5 Hartley and High School District case is an appellate
6 decision that precedes the Supreme Court decision in
7 Western States Petroleum and is -- and is a flawed
8 approach. It cannot stand in the light of that Supreme
9 Court case which has rejected this argument.

10 In addition, there really can't be any dispute
11 that the amendment of a general plan and the adoption of
12 the Climate Action Plan are legislative acts. While
13 this Court acknowledged that the Sierra Club concluded
14 such without any citation to law, we also believe the
15 citations made by Golden Door are not dispositive
16 because of the Western States Petroleum case. Moreover,
17 the Sierra Club was barred from making any such argument
18 necessary regards to whether this was a 1084 or a
19 1094.5, because the Court of Appeal acknowledged that
20 the parties both concluded that was subject to the 1085
21 rule and the standard of review.

22 Also the general plan we consistently cited the
23 case law which demonstrates that general plan
24 consistency review is under 1085, and that's in the San
25 Francisco Tomorrow case. Moreover, the Supreme Court in
26 McGills versus Thomas case, at 36 Cal.3rd 561, Page 570,
27 has been -- is definitively clear, the adoption of a
28 general plan amendment is a legislative act. So while

1 Sierra Club has argued that ten -- that the 1094.5
2 should apply to them, they frankly have no standing or
3 basis upon which to use a 1094.5 based request for stay,
4 because they have already conceded that issue by way of
5 the earlier court, by what they pled in their actual
6 first supplemental petition and their 2018 petition, and
7 they cannot now change course.

8 Moreover, as we have -- as the Western States
9 Petroleum case determined, Golden Door's argument that
10 this should be treated as a 1094.5 petition is
11 contradicted by the holding, which says, you look at
12 what the actual actions are, and these are legislative
13 acts to control the type of standard of review
14 applicable in the CEQA case.

15 I'll now turn it over to Mr. Heinlein to
16 address the remaining issues.

17 THE COURT: Well, no.

18 MS. SILVA: No?

19 THE COURT: No.

20 MS. SILVA: Okay.

21 THE COURT: What's the practical import of what
22 you've just argued? Let's assume I agree with --

23 MS. SILVA: The practical --

24 THE COURT: The practical import of all of
25 that.

26 MS. SILVA: The practical to this Court is that
27 this Court cannot base its tentative ruling based on the
28 stay, and its determination on a bond needs to be

1 revised, because the ten -- a stay cannot be based on
2 1094.5 when it's obtained by --

3 THE COURT: But you asked for an injunction and
4 --

5 MS. SILVA: In the alternative, a preliminary
6 injunction, if the Court were so to rule, and Mr.
7 Heinlein will address that, requires a different and a
8 higher showing. It requires likely -- not only the
9 likelihood on the merits, but they also have to show
10 imminent harm, and bond needs to be posted without
11 exception.

12 THE COURT: Okay. Thank you.

13 MS. SILVA: Thank you.

14 MR. HEINLEIN: Your Honor, on the issue of the
15 likelihood of success on the merits, Your Honor's
16 tentative ruling said that they are likely to succeed on
17 the general plan consistent to the argument. And I can
18 only believe from that, that Your Honor is referring to
19 the general plan mitigation that you're seeking 1.2,
20 which is the mitigation measure that calls for the
21 county to adopt a cap. I think it's important that Your
22 Honor take a look at the late specific language that is
23 in that mitigation measure, and also take a look at the
24 specific language that is in SB-32, the state law by
25 which the county is -- is trying to reach those targets
26 for GHG reductions. The mitigation measure, general
27 plan mitigation Measure CC1.2 says that, the county will
28 prepare a Climate Action Plan for the reduction of

1 community-wide, i.e., unincorporated county and county
2 operations, green house gas emission consistent with
3 state legislative targets, and it has a little bit of
4 additional language from there.

5 SB-32, which sets those state legislative
6 targets says that, in adopting rules and regulations to
7 achieve the maximum technologically feasible and cost
8 effective green house gas emission reductions,
9 authorized by this division, the State Board shall
10 ensure that statewide green house gas emissions are
11 reduced to at least 40 percent below the statewide green
12 house gas emissions limit no later than 2030. County
13 obligated itself to -- to reduce community-wide green
14 house gas emissions. The state said it's going to
15 reduce statewide green house gas emissions. Very
16 similar almost identical language.

17 Now, how does the state do that? One of the
18 ways in which the state does that is through the Cap and
19 Trade Program. And as Sierra Club admitted, the Cap and
20 Trade Program allows an entity to purchase carbon
21 offsets, not just in California, but anywhere in the
22 country, and two cities in Canada. So the state in its
23 community that it regulates says, you can reduce
24 state-wide emissions by purchasing carbon offsets out of
25 state. The county similarly uses almost identical
26 language for its mitigation measure, and as a mitigation
27 measure to the cap, says that, projects may after they
28 -- after they exhaust all feasible on-site mitigation

1 measures, may as one off-site mitigation measure,
2 purchase carbon offsets from outside of the county.
3 There should be no discernable difference between the
4 state regulations and how you reduce state-wide
5 emissions and county rules and how you reduce
6 county-wide emissions. The language is nearly identical
7 and so should the standard.

8 Second, the case law we cited in our opposition
9 brief when a court is looking at general plan
10 consistency, the standard is that the court is supposed
11 to defer to an agency's factual finding of consistency
12 unless no reasonable person could have reached the same
13 conclusion. No reasonable person could have reached the
14 same conclusion. And by finding that Petitioners are
15 likely to succeed on the general plan's consistency
16 argument, what Your Honor is essentially saying, is that
17 no reasonable person could have reached the same
18 conclusion that the county did.

19 I would submit that based on the mere --

20 THE COURT: Concluding about what?

21 MR. HEINLEIN: About the general plan
22 consistency.

23 THE COURT: About the feasibility requiring all
24 mitigation to be within the county; that's what you
25 didn't study.

26 MR. HEINLEIN: But that's --

27 THE COURT: That's what you didn't analyze.

28 MR. HEINLEIN: But that is not what -- the

1 issue is whether or not the mitigation measure is
2 consistent with -- the mitigation measure to the
3 mitigation measure is consistent with the general plan.
4 The issue isn't about the feasibility of studying
5 whether or not it's possible to -- to purchase carbon
6 offsets all within ten years.

7 THE COURT: I read your adversary's, and they
8 have a different view on that .

9 MR. HEINLEIN: They may but you -- I don't
10 believe that based on the Court's ruling that the Court
11 is giving adequate deference to the county's own
12 interpretation of its general plan and what it requires.

13 Finally, in regards to irreparable harm and
14 what is in the public interest if -- under the 1094.5
15 issue. In terms of irreparable harm, Mr. Garrett stood
16 up and criticized Mr. Newfeld for stating that none of
17 these projects that are the subject of Petitioners'
18 motion could begin construction for 12 to 18 months,
19 because they still need to go out and get permits.
20 There's no evidence to rebut that. There is no evidence
21 in the record that says these projects can start
22 construction immediately.

23 THE COURT: For all I know the scrapers are
24 idling right now.

25 MR. HEINLEIN: Without a grading permit, and
26 there is no evidence that there is a grading permit,
27 they can't do that. There is simply no evidence in the
28 record that they can actually start construction.

1 THE COURT: You know, that's interesting, but
2 I'll just tell you a story about a case I had in here
3 several years ago where people ran around asking me to
4 enjoin the -- you know, the tearing down of the alleged
5 historic landmark under CEQA. And by the time they got
6 the papers pulled together and ran in here, I asked
7 what's the status of the demolition? And they said,
8 let's go look. And I went, and it was too late. The
9 building was -- you know, it was too late. The stopping
10 demo at that point would have created more problems than
11 it would have solved, so I denied the injunction, and at
12 least for the people bringing the case, the historic
13 structure was lost forever.

14 Is that the kind of brinkmanship that you want
15 me to engage in?

16 MR. HEINLEIN: I'm not asking Your Honor to
17 engage in it.

18 THE COURT: Well, do you want to wait until
19 there's evidence that the B-9s are idling and waiting --
20 awaiting my decision before tearing out coastal sage
21 shrubs -- scrub, or whatever it's called?

22 MR. HEINLEIN: I am not, Your Honor, but as the
23 Sierra Club has already represented they have sued,
24 filed a CEQA challenge to the three projects that have
25 already been approved. There is nothing preventing them
26 from filing in those cases a motion for preliminary
27 injunction in those cases. So as Your Honor said, those
28 projects can be reviewed on their own records and can

1 stop them from doing construction in those cases.
2 Nothing is stopping them from doing that. Instead they
3 want to use this action to stop those projects as well
4 as any others that might be approved in the future.

5 THE COURT: No. I think they are asking me to
6 stop the county from doing that. That's all this
7 language would propose to do.

8 MR. HEINLEIN: The other issue, Your Honor, is
9 in regards to your statements about the public interest
10 and having there be a public interest in ensuring that
11 MGHG-1 is consistent with the general plan. I don't
12 dispute that that is in the public interest, but that
13 determination can only be made on the basis of a full
14 and accurate record, which Your Honor may have a
15 proposed record that the county is still reviewing, and
16 Your Honor has not yet had an opportunity to review
17 that record. And yet --

18 THE COURT: But I do have this.

19 MR. HEINLEIN: I understand. I understand and
20 I --

21 THE COURT: I'm putting my hand a great big
22 thick stack of documents that was submitted in this case
23 so the Court of Appeals knows what I'm talking about.

24 MR. HEINLEIN: And I'm concerned about the
25 public having a notion about the Court prejudging issues
26 in this case. And that frankly -- and I believe it's
27 important and in the public interest that the Court --

28 THE COURT: That happens with every request for

1 injunctive relief. To a certain extent it is prejudging
2 it. It's rough justice, based on what's before me
3 today, is there enough here to stop this until we have a
4 hearing on the merits?

5 MR. HEINLEIN: I understand, Your Honor, but my
6 -- my concern was heightened this morning when I was
7 driving in and listening to the radio, and I have a
8 radio report that Your Honor has not just issued a
9 tentative ruling specific to this motion, but Your Honor
10 has ruled in Sierra Club's favor on the case entirely,
11 and that's the report that is out there in the media.

12 THE COURT: They get it wrong sometimes. I
13 hope they are taking careful notes. I have not decided
14 this case yet. Whoever said that on the radio is wrong.

15 MR. HEINLEIN: I think that needs to be made
16 clear.

17 THE COURT: I just did.

18 MR. HEINLEIN: Your Honor, again, I think we
19 made the argument in our opposition brief, but I'll say
20 it again. Projects that are enjoined from going
21 forward, and I know Your Honor's tentative ruling
22 doesn't make reference to any specific projects, but the
23 practical affect of it certainly -- it has an affect on
24 various projects. None of those parties are before this
25 Court. Those parties have interest in seeing those
26 projects timely processed by the county and stopping --

27 THE COURT: Sir, I did read this, and I
28 appreciate what you're saying. I do. But you went into

1 -- you, the county, went into this with your eyes open.
2 You knew with a 100 percent degree of certainty that
3 these folks over here were not going to take this lying
4 down. They told you not to pass this the way that you
5 did, and told you what they were going to do if you did
6 pass it the way that you did, and the Board of
7 Supervisors decided to go ahead anyway. I am not the
8 architect of this problem. Okay? The county decided in
9 the face of this challenge that they knew with a 100
10 percent certainty it was coming down the pipe to
11 proceed. What did they think was going to happen? This
12 -- this was fore ordained the day they voted in favor.
13 The Sierra Club could not have been clearer in its
14 intent, in stating its intention.

15 Am I missing something on that?

16 MR. HEINLEIN: No, but that doesn't relieve
17 them of their obligation to notify and serve necessary
18 and indispensable parties.

19 THE COURT: I just don't agree with on you that
20 point. I'm not proposing to enjoin anyone except the
21 county. And, you know, I asked you if you brought me an
22 alliterative order and you didn't, because you don't
23 want me to sign any order and I get that. But I'm going
24 to sign one, and so I would have thought that if you had
25 wanted me to be clear or clearer than a -- how many
26 pages is this gall dang tentative? Seven page, single
27 spaced tentative, that you would have brought me
28 something that you thought would clear up some potential

1 future ambiguities, and you didn't. And so I guess you
2 want me to just cross out lines and add stuff on this
3 form of order that your adversary brought, and I mean,
4 I guess I'll have to do that, in the absence of a better
5 plan.

6 But from the 10,000 foot view I think I've got
7 this right. I think that the public interest is going
8 to be served by stopping this where it is now, because
9 if developers go ahead based on something that is
10 ultimately found to be unlawful, and it won't be me
11 deciding that, it will be the Court of Appeal or the
12 Supreme Court, they're going to have to redo and undo a
13 bunch of stuff that really doesn't get anywhere, doesn't
14 get anyone anywhere. It just adds transaction costs and
15 makes it even more frustrating to deal with getting
16 projects approved in California, and I just don't see
17 the utility of that. I don't. So anyway --

18 MR. HEINLEIN: Lastly, Your Honor --

19 THE COURT: Well, I thought you said finally.

20 MR. HEINLEIN: I'm sorry, I apologize. One
21 last issue on the bond.

22 THE COURT: Yes.

23 MR. HEINLEIN: Your Honor's tentative ruling
24 says that Sierra Club doesn't have to post a bond. With
25 all due respect, Your Honor, CCP 529 requires that an
26 applicant for preliminary injunction post a bond before
27 the injunction is effective. The only exceptions are
28 the case of family law matters, and when a -- and when a

1 plaintiff is indigent. Sierra Club is not an indigent
2 plaintiff. There is simply no discretion to exempt them
3 from a bond requirement on a preliminary injunction just
4 because they are a non-profit organization.

5 THE COURT: Thank you, sir. Okay. Let's go
6 back and hear the replies of counsel. Mr. Garrett, you
7 were first so you get to go first on this one. Are you
8 leading me into error, sir?

9 MR. GARRETT: Your Honor, I -- no, I think you
10 heard my prediction was true about the indispensable
11 parties point, but I did want to make one point, which
12 is I do believe that the Court said that there would be
13 a bond, and I did agree. My client is not disputing
14 that, and I don't have the particular language in front
15 of me, but we're willing to post the bond. The Court is
16 entering a single injunction as I understand it, not
17 several injunctions in several cases, so there will be a
18 bond for --

19 THE COURT: Well, the way -- that's one of the
20 problems with this paper that I was just handed by
21 Mr. Chatten-Brown. It applies only to his case not
22 yours, and so I asked you if you agreed with it, and
23 then you're client isn't mentioned in here at all, and
24 there's no provision in this document for a bond. So I
25 don't think I can sign this paper at all.

26 MS. CHATTEN-BROWN: Okay.

27 MR. GARRETT: Your Honor, I understand. And so
28 I just wanted to point out that we are posting a bond

1 and the bond can be posted with respect to any order
2 that the Court enters.

3 THE COURT: You had -- you had proposed an
4 order with your moving papers?

5 MR. GARRETT: That's correct, Your Honor.

6 THE COURT: And it -- I take it back. This was
7 Mr. Chatten-Brown's proposal. So this one has now been
8 superceded by the one that was submitted today, which is
9 not effective for the reason that I have indicated.

10 MR. GARRETT: We did have a proposed order and
11 that was attached to our moving papers.

12 THE COURT: You did? Oh, okay. Let me dive
13 into --

14 MR. GARRETT: The opening papers. Yes.

15 THE COURT: Let me find that.

16 MR. GARRETT: What's the ROA Number, do you
17 know?

18 MR. TAKAHASHI: Your Honor, at the end of the
19 -- the Memorandum of Points and Authorities.

20 THE COURT: Yeah. Aah, here it is.

21 MR. GARRETT: So it outlines, Your Honor, the
22 order that we proposed.

23 THE COURT: It doesn't have a bond requirement
24 either.

25 MR. GARRETT: We didn't know that the Court was
26 going to grant it so we would -- we could submit to the
27 Court a proposed order that adds the bond requirement.

28 THE COURT: Thank you.

1 MR. GARRETT: Or if you wish we can go in
2 hallway and confer and come back with a proposed order.

3 THE COURT: I was about to suggest that you
4 just e-mail this to my clerk in a modifiable form, and
5 I'll just write my own order. At least I'll have a
6 starting point.

7 MR. GARRETT: Okay. Thank you, Your Honor.

8 THE COURT: Thank you.

9 MR. GARRETT: And then with respect --

10 THE COURT: Will you do that, Mr. Takahashi?

11 MR. TAKAHASHI: Yes, Your Honor.

12 THE COURT: She will give you her e-mail
13 address and you can just send it to her in Word. No
14 justified margins, but in a form where I can change it.

15 MR. TAKAHASHI: Certainly, Your Honor.

16 THE COURT: Thank you.

17 Anything further, Mr. Garrett?

18 MR. GARRETT: Unless Your Honor was
19 particularly troubled by a specific point that the
20 county made, I agree with some of the framework of what
21 Mr. -- what County Counsel has said with respect to how
22 the Court might interpret a general plan. In this
23 situation the county specifically adopted a general plan
24 requirement, and it's been a cornerstone since the 2011
25 general plan, that there would be substantial reductions
26 in emissions in San Diego County. The original Court of
27 Appeal opinion mentions the 473,000 tons goal, and
28 that's been carried through all the way.

1 In this case there's no ambiguity. The county
2 in fact amended the documents to specify community-wide,
3 i.e., unincorporated county. And the whole problem with
4 this case is just boiled down to the county wanted to,
5 on the one hand, allow unlimited development of any
6 project as long as they provided offsets somewhere in
7 the world without ending up what that would mean for
8 emissions increases in San Diego County. And it's just
9 very clear that what the county wanted to do was
10 simultaneously say they were reducing emissions in
11 San Diego County as required by the general plan and
12 their mitigation measures, while adopting a mitigation
13 measure that allowed unlimited increases in the county,
14 so long as their offsets obtained somewhere else. The
15 county in these papers --

16 THE COURT: And your argument was they -- if
17 they were going to do -- they could do that, but they
18 had to find after study that doing it within the county
19 was not feasible and set that forth.

20 MR. GARRETT: Right, and they also needed --

21 THE COURT: Did I interpret that right?

22 MR. GARRETT: Yes. Yes, that's right, and they
23 also needed to add up what emissions increase would be,
24 that we have 50 general pending plan amendments. No one
25 ever sat down and said, if all these projects get their
26 offsets from outside of San Diego County, what will the
27 emissions increase be within the county? That was never
28 added up, so no one knows. We did attempt in order to

1 show harm in our motions papers what a few of those
2 projects added up would be, and I think one crucial fact
3 that was in front of the county, and it was from the
4 county's own documents, what they approved on
5 Valentine's Day, which was there are no offsets
6 available in San Diego County.

7 The record is absolutely clear when the board
8 adopted these proceedings, there's only one potential
9 credit available, and it was not eligible at this time
10 because the trees had not been planted, as set forth in
11 our papers. So when the county acted on February 20 --
12 February 14th, they knew to a certainty that all 50 of
13 these projects' general plan amendments going forth this
14 year would have to obtain offsets from outside the
15 county, and that would result in a sizable green house
16 gas emission increase. So this is one, a clear
17 situation where the county said we're decreasing
18 emissions in the county, but at the same time they were
19 causing an emissions increase and not adding the numbers
20 up or telling anyone what it was, and they admitted that
21 even though they --

22 THE COURT: That's in the absence of analysis
23 to which you had heard?

24 MR. GARRETT: Correct.

25 THE COURT: Thank you.

26 MR. GARRETT: Nothing further, Your Honor.

27 THE COURT: Okay.

28 MS. CHATTEN-BROWN: In the interest of not

1 prolonging this --

2 THE COURT: Well, you need to address bond.

3 MS. CHATTEN-BROWN: That's what I was going to
4 address. That was the only thing that I was saving.

5 THE COURT: Thank you.

6 MS. CHATTEN-BROWN: I do believe that there's
7 ample authority for the Court, but we did not cite them
8 because this did not come up previously in terms of the
9 specific authority to not have a bond for a party acting
10 in a public interest. But the -- the Laurel Heights
11 case does talk about if there's going to be a bond, it
12 can be a nominal bond, and I would say here we have --
13 it's really for all practical purposes one case. Golden
14 Door is putting up a \$50,000 bond. I think that that is
15 adequate to cover the matter, but if you did impose a
16 bond on the Sierra Club, which I don't believe is
17 necessary, I would ask it be \$50. The Sierra Club may
18 be wealthy at the national level. We wouldn't be doing
19 so much pro bono work if they had resources here so --
20 and just one last note, I very much appreciate, we very
21 much appreciate your early tentatives.

22 THE COURT: Okay. The case is submitted for
23 decision. Thank you.

24 MR. HEINLEIN: Your Honor, one final point.
25 I'm sorry.

26 THE COURT: No. You don't get sur-reply and
27 you don't get sur-sur argument.

28 MR. HEINLEIN: This isn't a sur-argument.

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THE COURT: This hearing is concluded and the matter is submitted for a decision. Thank you.

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