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FILED  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

APR 11 2007

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15  
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 IN AND FOR THE COUNTY OF SAN BERNARDINO

18 CENTER FOR BIOLOGICAL ) Case No. CIVSS 0700293  
DIVERSITY, SIERRA CLUB, and SAN )  
19 BERNARDINO VALLEY AUDUBON ) PETITION FOR WRIT OF MANDATE  
SOCIETY )  
20 ) Filed under the California Environmental Quality  
21 Petitioners, ) Act (CEQA) [Pub. Res. Code § 21000, et seq.] and  
22 vs. ) Code Civ. Proc. §§ 1085 and 1094.5.  
23 )  
24 COUNTY OF SAN BERNARDINO, )  
SAN BERNARDINO COUNTY )  
25 BOARD OF SUPERVISORS, )  
and DOES 1-20, )  
26 Respondents. )  
27 )

Petition for Writ of Mandate

1 **INTRODUCTION**

2 1. In this action, Petitioners Center for Biological Diversity, Sierra Club, and  
3 San Bernardino Valley Audubon Society (“Petitioners”) challenge the approvals of  
4 Respondents County of San Bernardino and the San Bernardino County Board of  
5 Supervisors (cumulatively the “County”) in connection with the General Plan Update.

6 2. San Bernardino County is the largest county in the contiguous United States  
7 covering high deserts, alpine forests, and the urbanized San Bernardino Valley.

8 3. Under California law, the General Plan is the constitution for local land use  
9 planning. The General Plan is a comprehensive long range planning document intended to  
10 guide growth within the County over the next twenty years. The challenged approvals  
11 consist of several major components: the updated General Plan, background reports for each  
12 General Plan Element, an updated Development Code, 13 Community Plans, and one Area  
13 Plan (the “Project”).

14 4. The Project is expected to contribute to growth in the County by roughly 32  
15 percent by the year 2030, adding over 620,000 new residents. The Environmental Impact  
16 Report (“EIR”) for the Project admits the General Plan Update results in significant impacts  
17 to aesthetics, agricultural resources, air quality, biological resources, hazards and hazardous  
18 materials, and traffic and circulation.

19 5. Though not addressed by the EIR, the development authorized by the Project  
20 would contribute to climate change through the emission of greenhouse gases. Similarly, the  
21 County would be affected by climate change through, among other things, greater wildfire  
22 hazards, increasing temperatures, and worsening drought.

23 6. Petitioners request that this Court vacate and set aside the General Plan  
24 Update and related approvals and the certification of the EIR because the County failed to  
25 comply with the California Environmental Quality Act (“CEQA”; Pub. Res. Code § 21000,  
26 *et seq.*).



1           12.       The SIERRA CLUB is a national nonprofit organization of over 732,000  
2 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to  
3 practicing and promoting the responsible use of the earth's ecosystems and resources; to  
4 educating and enlisting humanity to protect and restore the quality of the natural and human  
5 environment; and to using all lawful means to carry out these objectives. Over 193,500  
6 Sierra Club members reside in California. The San Gorgonio Chapter of the Sierra Club  
7 focuses on issues within the inland empire, including San Bernardino County. Individual  
8 groups within the San Gorgonio chapter reside within specific geographical areas of San  
9 Bernardino county: the Mojave Group covers the San Bernardino County high desert from  
10 Wrightwood to Needles; the Mountains Group covers the San Bernardino Mountains from  
11 Crestline to Arrowbear; the Big Bear Group covers all of the Big Bear Lake area and  
12 surrounding communities; the Los Serranos Group covers the San Bernardino County areas  
13 around Upland and Rancho Cucamonga; and the Tahquitz Group covers all of the low desert  
14 areas of the Morongo Basin in San Bernardino County, plus Joshua Tree National Park.

15           13.       The Sierra Club has an interest in calling attention to urban sprawl and global  
16 warming, which threaten our environment, our health, and our quality of life. Individual  
17 Sierra Club members use and enjoy publicly accessible lands in the County for  
18 environmental, recreational, and aesthetic purposes. In addition, the Sierra Club and its  
19 members would derive environmental, recreational, health, and aesthetic benefit from  
20 alternative scenarios of development within the Project area. These interests of the Sierra  
21 Club and its members would be directly, adversely, and irreparably affected by Respondents'  
22 failure to comply with the requirements of CEQA and other applicable laws in certifying the  
23 EIR and approving the Project, and would continue to be prejudiced by Respondents'  
24 unlawful actions until and unless this Court provides the relief prayed for in this petition.

25           14.       The SAN BERNARDINO VALLEY AUDUBON SOCIETY ("Audubon") is  
26 a California non-profit public benefit corporation with 2000 members who are residents and  
27 property owners within the Inland Empire of Southern California, including within the

1 County of San Bernardino, and who will be directly affected by the Project. The purpose of  
2 Audubon is to educate the public about the environment, planning and infrastructure issues,  
3 and to take action to protect the County's natural heritage areas when necessary. Many  
4 Audubon members receive personal, scientific, professional, and spiritual benefit from rare,  
5 sensitive, threatened and endangered species that will be affected by the Project. Audubon  
6 members will be directly affected by the project, and its components, as described herein.

7 15. Respondent SAN BERNARDINO COUNTY is a local governmental agency  
8 and political subdivision of the State of California charged with the authority to regulate and  
9 administer land use activities within its boundaries, subject at all times to the obligations and  
10 limitations of all applicable state, federal, and other laws, including CEQA and the CEQA  
11 Guidelines. The County also has the authority to legislate changes to land use and policy  
12 within its jurisdiction. The County is the lead agency under CEQA for the preparation of the  
13 EIR and for the approval of the Project.

14 16. Respondent SAN BERNARDINO COUNTY BOARD OF SUPERVISORS  
15 is the legislative body for the County.

16 17. Petitioners are currently unaware of the true names and capacities of Does 1  
17 through 20, inclusive, and therefore sue those parties by such fictitious names. Does 1  
18 through 20, inclusive, are those individuals who are responsible in some manner for the  
19 conduct described in this petition, or other persons or entities presently unknown to the  
20 Petitioners, who claim some legal or equitable interest in the Project that is the subject of this  
21 action. Petitioners will amend this petition to show the true names and capacities of Does 1  
22 through 20 when such names and capacities become known.

23 **THE PROJECT AND THE ITS IMPACTS**

24 18. San Bernardino County is the largest county in the contiguous United States,  
25 larger in area than the states of Massachusetts, Connecticut, Rhode Island, and Delaware  
26 combined. The County is experiencing explosive rates of growth, along with the rest of the  
27 Inland Empire. The County's 20,160 square miles of high desert, alpine mountains, and the

1 urbanized San Bernardino Valley are expected to grow by approximately 32 percent, or over  
2 620,000 people, by 2030.

3 19. The General Plan is the comprehensive long range planning document  
4 intended to guide future growth within the County. The Development Code contains  
5 ordinances regulating land use and development within the County's jurisdiction.  
6 Community and Area Plans focus on particular regions or communities within the overall  
7 County's General Plan area, adding refinements to the broader General Plan goals and  
8 policies to meet the specific needs or unique circumstances of those communities.

9 20. California state law requires each city and county to adopt a general plan "for  
10 the physical development of the county or city, and any land outside its boundaries which  
11 bears relation to its planning." (Cal. Gov. Code. §65300.) The general plan must cover a  
12 local jurisdiction's entire planning area and address the broad range of issues associated with  
13 development, including seven mandatory elements: Land Use, Circulation, Housing,  
14 Conservation, Open Space, Safety, and Noise. The County included the additional element  
15 of Economic Development. The previous General Plan for San Bernardino County was  
16 adopted in July 1989. The County has been in the process of updating its General Plan since  
17 2003.

18 21. The EIR for the General Plan Update recognized that the Project would result  
19 in impacts to the following resources, which the County has determined it cannot mitigate to  
20 below a level of significance: aesthetics; agricultural resources; air quality; biological  
21 resources; hazards and hazardous materials; and traffic and circulation.

22 22. Despite repeated requests for such an analysis, the EIR lacks *any* quantitative  
23 or qualitative discussion of the impacts of the Project on climate change, global warming,  
24 and greenhouse gas emissions in the County, or the impacts of climate changes on the  
25 development contemplated by the Project.

26 23. The Project would demand large amounts of energy and result in significant  
27 greenhouse gas emissions. Sources of such emissions would include, but not be limited to,

1 the construction and operation of residential, commercial, industrial, governmental,  
2 infrastructure and other planned uses of the County's lands and the millions of automobile  
3 trips the development authorized by the Project would generate. Carbon dioxide, which is  
4 produced by the burning of fossil fuels for energy, is the principal "greenhouse gas" whose  
5 presence and accumulation in the atmosphere contributes to global warming. This warming  
6 will have dramatic consequences for southern California, the United States, and the world  
7 because the warming will result in a rise in sea-level that will inundate coastal areas, increase  
8 drought, contribute to public health impacts, and numerous other deleterious consequences.  
9 In Southern California, warming is likely to result in an earlier, diminished snowmelt that  
10 could reduce water supplies, an increased frequency and intensity of droughts and fires, and a  
11 loss of regional biodiversity. California is not only extremely vulnerable to the impacts of  
12 global warming, but is also responsible for a significant portion of the U.S. and global  
13 emissions of greenhouse gases.

14 24. Research has concluded that global warming will continue to increase the  
15 threat of wildland forest fires in San Bernardino County. The majority of catastrophic  
16 wildland fires occur in the mountain region and impact both mountain and foothill  
17 communities. The urban-wildlands interface areas of the County, where development  
18 intermixes with forest, chaparral, and desert scrub, have a history of substantial property loss  
19 from wildland fires caused by heavy shrub and grass growth in and around rural residential  
20 areas. For example, the Bear Fire burned over 50,000 acres in late 1970 in San Bernardino  
21 County. The Panorama Fire, a decade later, burned over 23,000 acres in the western San  
22 Bernardino Mountains. In October of 2003, the Old Fire and Grand Prix Fire combined to  
23 burn over 160,000 acres from the edges of the City of San Bernardino and Highland  
24 northwest to Lake Silverwood threatening the communities of Crestline Running Springs and  
25 Lake Arrowhead. The Old Fire complex destroyed over 1,100 homes at a cost of over 1.3  
26 billion dollars. San Bernardino County continues to experience high population growth in  
27 mountain and foothill communities in and adjacent to mountain and foothill areas that are

1 subject to wildfire risk. Global warming-related fire increases will cause the most damage  
2 and cost the most in areas adjacent to forests that are close to major metropolitan areas like  
3 San Bernardino County.

4 25. Global warming already has increased the threats posed to the County by  
5 wildland fire. Global warming is partly responsible for increasing large wildfires across the  
6 West, extending the fire season in southern California. Since 1970 the length of the active  
7 wildfire season has increased by 78 days, and the average burn time has increased by 29  
8 days.

9 26. As the EIR recognizes, development in high fire hazard areas will be subject  
10 to periodic wildland fires, which in turn endangers and structures and the people occupying  
11 them. The Project would result in increased development in areas subject and increased  
12 wildland fire threats. Development in high fire hazard areas would increase existing stress  
13 on evacuation routes and public services.

14 27. The California Office of Planning and Research, in the General Plan  
15 Guidelines, requires that the safety element of the General Plan analyze whether adequate  
16 evacuation routes can reduce fire hazards. However, the County did not complete an  
17 evacuation capacity study as a part of the General Plan Update to provide better information  
18 for planners working to ensure public safety in the mountain and hillside communities. The  
19 County Development Code, Fire Safety Overlay, and evacuation plan were not revised as a  
20 part of the General Plan Update process.

21 28. The Project would also result in direct, indirect and cumulative impacts to  
22 biological resources. San Bernardino is host to a vast array of sensitive biological resources.  
23 In the Mountain Region, the California Department of Fish and Game (“CDFG”) recognizes  
24 14 areas of special biological importance, including key areas that support herds of resident  
25 and seasonally migratory mule deer. CDFG also recognizes principal wintering areas for  
26 waterfowl and Bald Eagles at Baldwin Lake and Big Bear Lake. The Mountain region of the  
27 County also includes the headwaters of the Santa Ana River. The Santa Ana River is the

1 largest river system in southern California that is home to numerous imperiled biological  
2 resources.

3           29.       The Desert Region of the County includes a great diversity of biological  
4 resources, including the borrowing owl and Mojave ground squirrel, and is one of the most  
5 fragile ecosystems in the Country. CDFG recognizes numerous areas of special biological  
6 importance within the Desert Region, including areas of deer, bighorn sheep, and desert  
7 tortoise habitat

8           30.       The Valley Region of the County includes wetlands, riparian woodlands,  
9 riparian scrub, and freshwater marsh. Species associated with riparian and willow  
10 woodlands in the Prado Basin include the southwestern willow flycatcher, least Bell's vireo,  
11 and western yellow billed cuckoo. The Santa Ana River is the dominant watershed in the  
12 Valley region. The Santa Ana Watershed Planning Authority identifies several riverine  
13 resources as "Essential Resource Conservation Areas." Alluvial sage scrub and Riversidian  
14 alluvial sage scrub found on the alluvial fans support sensitive species like the San  
15 Bernardino kangaroo rat, San Diego horned lizard, and Los Angeles pocket mouse.

16           31.       The Project would impact wildlife movement and migration, impairing key  
17 wildlife linkages within the San Bernardino Mountain, Little San Bernardino Mountains,  
18 Granite Mountains and neighboring San Gabriel Mountains by allowing development to  
19 proceed in areas identified as essential to wildlife movement.

20           32.       The Project would exacerbate existing violations of the Clean Air Act and  
21 cause significant air quality impacts, even after the mitigation proposed by the County. In  
22 2005, the concentrations of ozone, particulate matter of 2.5 microns or less (PM2.5), and  
23 particulate matter of 10 microns or less (PM10) in San Bernardino County continued to  
24 exceed federal standards by wide margins. San Bernardino County has repeatedly recorded  
25 the highest violations of federal ozone standards in the South Coast Air Basin over the past  
26 decade. Hazardous Air Pollutants ("HAPs") released over the lifetime of the Project would  
27 total over 40 million pounds per year. HAPs are substances that are known or suspected to

1 cause serious health problems such as cancer.

2 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

3 33. Because of the long term implications for natural resources and growth  
4 within San Bernardino County, many conservation groups were involved in comments  
5 during the General Plan Update process in an attempt to create a plan that would reduce  
6 environmental impacts. Center, Sierra Club, and Audubon members presented both oral and  
7 written comments during the administrative hearings on the matters being challenged in this  
8 petition.

9 34. Among the other entities that submitted comments on the General Plan  
10 Update were the U.S. Forest Service and the Office of the Attorney General of California,  
11 which submitted comments, emphasizing that the significant impacts of greenhouse gases  
12 and air quality that must be adequately addressed in this General Plan Update and EIR.

13 35. Petitioners have exhausted all administrative remedies by submitting written  
14 comments to the County prior to the Project's approval and appearing at the public hearings  
15 on the Project to request compliance with CEQA and the completion of full and adequate  
16 environmental review. All issues raised in this Petition were raised before Respondents by  
17 the Petitioners, other members of the public, or public agencies prior to approval of the  
18 Project.

19 **PROCEDURAL ALLEGATIONS**

20 36. The Notice of Preparation (NOP) for the Draft EIR was released on October  
21 5, 2005. The Draft EIR was released on September 8, 2006, for public review and comment  
22 until October 23, 2006. The Final EIR was distributed on February 6, 2007. The San  
23 Bernardino County Board of Supervisors adopted the 2007 General Plan Update and certified  
24 the EIR on March 13, 2007. On March 14, 2007 the County filed a Notice of Determination  
25 for the Project.

26 37. The Petitioners have complied with Public Resources Code section 21167.5  
27 by prior service of a notice upon the County indicating their intent to file this Petition. Proof

1 of Service of this notification, with the notification, is attached as Exhibit A.

2 38. This petition is timely filed in accordance with Public Resources Code  
3 section 21167 and CEQA Guidelines section 15112.

4 39. Respondents have abused their discretion and failed to act as required by law  
5 in the following ways:

6  
7 **FIRST CAUSE OF ACTION**

8 **(Failure to Adequately Disclose and Analyze the Project's Impacts)**

9 40. Petitioners hereby incorporate by reference each and every allegation set  
10 forth above.

11 41. Under CEQA, the County is required to conduct environmental review for  
12 any discretionary project that is not otherwise exempt. Where there is substantial evidence to  
13 support a fair argument that the project may have a significant adverse impact on the  
14 environment, an EIR must be prepared. The EIR must fully disclose and analyze the  
15 project's potentially significant environmental effects. Where, as here, an EIR is required,  
16 the lead agency (here the County) is also required to analyze and consider mitigation  
17 measures and alternatives to the Project, to adopt all feasible mitigation measures and/or  
18 alternatives, and to determine whether proposed mitigation measures would be effective in  
19 avoiding or substantially lessening the Project's significant environmental impacts.

20 42. *If* all feasible mitigation measures and/or alternatives have been adopted, the  
21 County may nonetheless approve the project if it finds the unmitigated impacts are  
22 outweighed by specific overriding economic, legal, social, technological, or other benefits of  
23 the Project.

24 43. The EIR failed entirely to address, or inadequately addresses, entire  
25 categories of environmental impacts. The County therefore failed to proceed in the manner  
26 required by law and abused its discretion by failing to fully disclose and analyze the Project's  
27 environmental effects.

1 **Global Warming Impacts**

2           44.       The EIR is inadequate because it fails to contain an analysis of the Project's  
3 greenhouse gas emissions and global warming impacts. The Project would result in  
4 foreseeable and quantifiable emissions of carbon dioxide and other greenhouse gases from  
5 sources including but not limited to vehicles and the construction, operation, heating,  
6 cooling, and lighting of the housing units, commercial, industrial, governmental and other  
7 facilities. These emissions would contribute directly and cumulatively to the increase in  
8 atmospheric greenhouse gases, and would thus contribute directly, significantly, and  
9 cumulatively to global warming.

10           45.       According to the EIR, growth allowed by the Project would accommodate  
11 over 620,000 new residents and their accompanying housing, automobiles, employment,  
12 commercial, industrial, educational, recreational, religious or spiritual, and infrastructure  
13 needs. The EIR therefore should have, but did not, analyze the impact of greenhouse gas  
14 emissions from the energy use during construction and operation of the development  
15 allowed by the Project, as well as increased and extended vehicle trips and the resulting  
16 climate change.

17           46.       The EIR fails to consider the impacts of global warming on the County and  
18 its natural resources. For example, the impacts of global warming on wildlife, water supply,  
19 wildfire, drought, and rare, sensitive, threatened, or endangered species are not addressed in  
20 the EIR. The EIR failed to address the recognized impacts of global warming including, but  
21 not limited to, the following: global warming has increased the frequency and intensity of  
22 wildfires in southern California; global warming has decreased the quantity of water and  
23 snowpack available for human consumption and fire control; and global warming has  
24 contributed to the shift in behavior and ranges of wildlife such as the checkerspot butterfly.

25 **Hazards**

26           47.       The EIR fails to adequately disclose and analyze the Project's ability to  
27 impair implementation of or physically interfere with an adopted emergency response plan

1 or emergency evacuation plan, and expose people or structures to a significant risk of loss,  
2 injury, or death involving wildland fires, including where wildlands are adjacent to  
3 urbanized areas or where residences are intermixed with wildlands.

4 48. The Project will contribute to increased population pressures along existing  
5 evacuation routes and permit development within areas that are recognized as high fire risk.  
6 The EIR fails to adequately analyze and model the Project's ability to impair existing  
7 evacuation routes used by county residents during wildfire evacuation. The EIR fails to  
8 consider how the increased intensity and frequency of wildfire resulting from global  
9 warming will threaten existing and future development within the County.

#### 10 **Energy Conservation**

11 49. The EIR fails to analyze the Project's impacts related to energy use and  
12 conservation. CEQA requires that Project proponents address the implications of the  
13 Project's energy demands. Appendix F of CEQA states: "[i]n order to assure that energy  
14 implications are considered in project decisions, the California Environmental Quality Act  
15 requires that EIRs include a discussion of the potential energy impacts of proposed projects,  
16 with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary  
17 consumption of energy." The EIR fails to adequately analyze and disclose the potential  
18 energy impacts of the Project.

#### 19 **Transportation and Traffic**

20 50. The EIR fails to disclose and analyze the Project's true impacts on traffic and  
21 transportation. The EIR relies on inadequate traffic models to project volume, trips and  
22 usage on County roads, especially in relation to evacuation routes during emergencies.

#### 23 **Air Quality Impacts**

24 51. The EIR failed to adequately disclose and analyze the Project's impacts to  
25 air quality. The EIR's analysis was lacking in several respects, including but not limited to  
26 the following:

- 27 • The EIR failed to quantify and address the impacts of Hazardous Air

1 Pollutants (“HAPs”) on the general population.

- 2 • The EIR failed to properly analyze the Project’s consistency with the
- 3 2007 South Coast Air Quality Management Plan (AQMP).
- 4 • The EIR did not include a meaningful analysis and supporting
- 5 documentation of the Project’s emission of carbon monoxide (CO),
- 6 ozone-forming volatile organic compounds (VOCs), oxides of nitrogen
- 7 (NO<sub>x</sub>), and particulates (PM<sub>10</sub>).
- 8 • The EIR lacked an analysis of the environmental and public health
- 9 implications of the Project’s admittedly significant air quality impacts.
- 10 • The EIR contained an inadequate analysis of the Project’s direct,
- 11 indirect, and cumulative impacts related to the emission of micro-
- 12 particulate pollution (PM<sub>2.5</sub>), and failed to apply the proper federal
- 13 standard for PM<sub>2.5</sub>.

14 **Cumulative Impacts**

15 52. The EIR must list and analyze all projects that may lead to cumulative  
16 impacts to air quality, biological resources, global warming, and other resources. This  
17 analysis must include projects outside the control of the agency.

18 53. There are many past, present, and probable future projects within and around  
19 the Project area, including other anticipated growth that would contribute to cumulative  
20 impacts to air quality, biological resources (including the elimination of critical wildlife  
21 movement corridors), global warming, and other resources.

22 54. The EIR does not include adequate information on or analysis of the  
23 cumulative impacts of past, present, and probable future development in and around San  
24 Bernardino County on biological resources, land use, air quality, energy conservation,  
25 recreation, aesthetics, hydrology and water quality, water supply, public services,  
26 transportation and traffic, population and housing, and growth inducement.

27 55. The EIR instead summarily concludes, for example, that the proposed  
Project’s impacts associated with the exceedance of air quality standards for criteria

1 pollutant CO, NO<sub>x</sub>, and PM<sub>10</sub> thresholds would be considered cumulatively significant  
2 because the Basin is in non-attainment for these pollutants. This cursory treatment of  
3 cumulative impacts does not meet CEQA's requirements.

#### 4 **Biological Resources Impacts**

5 56. The EIR fails to disclose and adequately analyze the Project's impacts on  
6 biological resources. The Project area contains undeveloped open space that provides  
7 important habitat for numerous rare species and species of concern. The EIR fails to  
8 adequately analyze impacts to rare, threatened, endangered, special status species and their  
9 habitats impacted directly, indirectly and cumulatively by the Project.

10 57. The EIR fails to disclose and analyze impacts to wildlife corridors and  
11 migration. The Project would interfere with wildlife movement and impair key linkages  
12 within the San Bernardino Mountain, Little San Bernardino Mountains, Granite Mountains,  
13 and San Gabriel Mountains by allowing development to proceed in areas identified as  
14 essential to wildlife movement. The EIR fails to adequately analyze and quantify the  
15 impacts to wildlife corridors in the project area.

16 58. The Project would result in indirect effects on sensitive habitat in the County  
17 due to ecological "edge effects" and other consequences of converting undeveloped land.  
18 The large-scale conversion of wildlife habitat would impact existing wildlife corridors,  
19 riparian reserves, parklands, national forests, National Reserves, and Bureau of Land  
20 Management lands. The EIR fails to adequately study the ecological edge effects and other  
21 indirect impacts that would result from the Project.

22 59. The EIR fails to acknowledge and analyze the Project's conflicts with local  
23 policies and ordinances protecting biological resources including, but not limited to, the  
24 Santa Ana Watershed Integrated Watershed Plan, Southern California Integrated Watershed  
25 Program, Upper Santa Ana Wash Land Management and Conservation Plan, and Glen  
26 Helen Specific Plan Natural Resource Management Plan, and Carbonate Habitat  
27 Management Strategy.



1 alternatives.

2 65. CEQA imposes upon the County a clear, present and mandatory duty to analyze  
3 and adopt all feasible mitigation measures as well as consider a reasonable range of  
4 alternatives and adopt any feasible alternative that would substantially lessen the significant  
5 environmental effects of the Project.

6 **Inadequate Analysis of Mitigation Measures**

7 66. With respect to global warming, the EIR does not adequately analyze the  
8 Project's greenhouse gas emissions and global warming impacts and likewise no mention of  
9 any mitigation measures for those impacts. The County failed to respond to feasible  
10 mitigation measures including, but not limited to, installing the maximum possible solar  
11 energy array to generate solar energy for the County; encouraging or requiring passive  
12 heating, natural cooling, solar hot water systems, and reduced pavement; cluster  
13 development to reduce vehicle emissions; following the U.S. Green Building Council's  
14 LEED (Leadership in Energy and Environmental Design) or comparable standards for  
15 energy- and resource-efficient building during pre-design, design, construction, operations  
16 and management; and purchasing or encouraging the purchase of offset credits for the  
17 Project's lifetime greenhouse gas emissions.

18 67. With respect to air quality, the EIR failed to consider mitigation measures to  
19 reduce its significant impacts to air quality despite its long-term and short-term exceedance  
20 of the South Coast Air Quality Management District's significance thresholds for CO, VOC,  
21 NO<sub>x</sub>, and PM<sub>10</sub>. For example, the EIR failed to require offsets for air pollution in excess of  
22 significance thresholds, and failed to require all feasible conservation and energy efficiency  
23 measures.

24 68. With respect to biological resources, the EIR does not consider feasible  
25 mitigation measures and instead relies on generalized and unenforceable Goals and Policies.  
26 For example, the EIR concludes without evidence that the Project's impacts would be  
27 mitigated by, among other things, policies that require coordination with federal, state and

1 local agencies. The EIR failed to consider performance standards or a commitment to  
2 performance standards as mitigation for impacts to rare, sensitive, threatened or endangered  
3 species and their habitat. The EIR failed to consider any mitigation for impacts to wildlife  
4 corridors or migration, and ecological “edge effects.”

5 69. Similarly, the inadequate analysis of hazards, energy conservation, traffic  
6 and circulation, growth-inducing and cumulative impacts is reflected in the absence of  
7 adequate mitigation measures for those impacts.

8 70. The EIR also fails to analyze and incorporate reasonable mitigation  
9 measures for additional potentially significant impacts including, but not limited to:  
10 cumulative impacts, growth inducing impacts, transportation and traffic, energy  
11 conservation, and fire hazards.

12 71. Enforceable performance standards or commitment to performance standards  
13 for mitigation measures must be required for the Project, incorporated into its policies, or  
14 implemented through the development code.

15 72. The Project also includes numerous mitigation measures that are improperly  
16 deferred until after Project approval in violation of CEQA, including, but not limited to:  
17 studies to map and implement protections for revised wildlife corridors; studies to map and  
18 implement protections for rare, sensitive, threatened and endangered species; and an  
19 emergency evacuation study for communities threatened by wildland fire. Deferral of the  
20 analysis of the feasibility and adoption of mitigation measures violates CEQA.

21 73. Respondents’ approval of the Project, despite the inadequate and uncertain  
22 mitigation measures, is not supported by substantial evidence and represents a failure to  
23 proceed in the manner required by law.

#### 24 **Failure to Adopt Reasonable and Feasible Alternatives**

25 74. The County failed to adequately consider feasible and reasonable alternatives  
26 because the EIR provided contradictory and unsubstantiated conclusions regarding the  
27 Project’s impacts. For example, the EIR concluded that Alternative Number 3, Future

1 Growth in Cities Sphere of Influence Alternative, would create greater aesthetic, biological  
2 resource, land use, noise services and utility, recreation and transportation and traffic impacts  
3 without adequate explanation or analysis.

4 75. In approving the Project, Respondents rejected feasible, environmentally  
5 superior alternatives to the Project based on the conclusion that these alternatives would not  
6 meet basic objectives identified in the EIR for the Project.

7 76. The County's failure to consider and adopt feasible and reasonable alternatives,  
8 including environmentally superior alternatives that could eliminate or substantially lessen  
9 significant impacts, was based on an improperly narrow set of Project objectives, is not  
10 supported by substantial evidence, and represents a failure to proceed in the manner required  
11 by law.

### 12 THIRD CAUSE OF ACTION

#### 13 **(Statement of Overriding Considerations Not Supported By Substantial Evidence)**

14 77. Petitioners hereby incorporate by reference each and every allegation set  
15 forth above.

16 78. CEQA provides that a public agency may approve a project with significant  
17 environmental effects only if, after adoption of all feasible mitigation measures and  
18 alternatives, it determines that any remaining unavoidable significant environmental effects  
19 are acceptable due to specific overriding concerns.

20 79. In approving the Project and certifying the EIR, the County Board of  
21 Supervisors identified impacts to aesthetics, agricultural resources, air quality, biological  
22 resources, hazards and hazardous materials, and traffic and circulation as significant  
23 unavoidable consequences of the Project and adopted a Statement of Overriding  
24 Considerations for these impacts.

25 80. The Statement of Overriding Considerations included a finding that there  
26 were no feasible mitigation measures or alternatives to address the Project's unavoidable  
27 significant impacts, as a result of a number of considerations, including the provision of

1 housing opportunities, revenue, and economic development for the County.

2 81. However, the County's Statement of Overriding Considerations is not  
3 supported by substantial evidence and represents a failure to proceed in the manner required  
4 by law. Similarly, the finding that no feasible alternatives or mitigation measures exist to  
5 eliminate or reduce the remaining significant effects was not supported by substantial  
6 evidence.

7 **FOURTH CAUSE OF ACTION**

8 **(Failure to Recirculate EIR)**

9 82. Petitioners hereby incorporate by reference each and every allegation set  
10 forth above.

11 83. CEQA requires that if significant new information is added to an EIR after a  
12 draft EIR is prepared, but before certification of the final EIR, the EIR must be recirculated  
13 for public review and comment.

14 84. Comments submitted to the County after the Draft EIR was circulated  
15 provided significant new information within the meaning of Public Resources Code section  
16 21092.1 and State CEQA Guidelines section 15088.5 including, but not limited to,  
17 information about greenhouse gas emissions and global warming, biological resources,  
18 aesthetics, recreation, air quality, hydrology and water quality, groundwater availability,  
19 public services, transportation and traffic, population and housing, and growth inducement

20 85. Despite the availability of this significant new information, the County failed  
21 to recirculate the EIR, or any portion of the EIR. As a result of the County's failure to  
22 recirculate the EIR, the public and other public agencies were deprived of any meaningful  
23 opportunity to review and comment on the Project, its substantial adverse environmental  
24 consequences, and the new information regarding other unanalyzed environmental effects of  
25 the Project.

26 86. The County's failure to recirculate the EIR is not supported by substantial  
27 evidence and represents a failure to proceed in the manner required by law.

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**FIFTH CAUSE OF ACTION**

**(Inadequate Response to Comments)**

87. Petitioners hereby incorporate by reference each and every allegation set forth above.

88. The County failed to respond adequately to comments submitted by the Petitioners, other members of the public, and other agencies. Instead, the responses given to numerous comments regarding the Project’s impacts to biological resources, air quality, global warming and greenhouse gas emissions, aesthetics, traffic, water supply, hydrology and water quality, wildland fire hazards, cumulative and growth inducing impacts, public services, transportation and traffic, population and housing, and recreation, and regarding the adequacy of the EIR’s treatment of mitigation measures and alternatives are conclusory, evasive, confusing, or otherwise non-responsive, contrary to the requirements of CEQA.

89. By failing to provide adequate responses to public comments and proposed alternatives, Respondents failed to proceed in the manner required by law. Moreover, Respondents’ finding that adequate responses to comments were provided is not supported by substantial evidence.

**SIXTH CAUSE OF ACTION**

**(Inadequate Project Description)**

90. Petitioners hereby incorporate by reference each and every allegation set forth above.

**Inadequate Description of the Existing Environment**

91. CEQA requires that the EIR must provide a sufficient description of the existing environment that may be affected by the Project so that the Project’s impacts may be measured against the background or baseline of the existing environment.

92. Contrary to the requirements of CEQA, the EIR fails to provide a full and accurate description of the already identified impacts of global warming on the County, as well as the greenhouse gas emissions inventory of the County. The EIR also fails to

1 accurately describe the rare, sensitive, threatened and endangered species that exist with the  
2 countywide Project area.

3 93. The finding of an adequate description of the existing environment is not  
4 supported by substantial evidence. By failing to provide an adequate description of the  
5 existing environment, Respondents failed to proceed in the manner required by law.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, the Petitioners pray for relief as follows:

8 1. For alternative and peremptory writs of mandate, commanding Respondents:

9 (A) to vacate and set aside approval of the Project, including approval of the  
10 General Plan, background reports for each General Plan Element, the updated Development  
11 Code, 13 Community Plans and one Area Plan;

12 (B) to vacate and set aside certification of the Final EIR for the Project;

13 (C) to prepare and certify a legally adequate EIR for the Project;

14 (D) to suspend any and all activity pursuant to Respondents' approval of the Project  
15 that could result in an adverse change or alteration to the physical environment until  
16 Respondents have complied with all requirements of CEQA and all other applicable state and  
17 local laws, policies, ordinances, and regulations as are directed by this Court pursuant to Public  
18 Resources Code section 21168.9.

19 2. For a stay, temporary restraining order, preliminary injunction, and permanent  
20 injunction prohibiting any actions by Respondents pursuant to Respondents' approval of the  
21 Project and certification of the EIR for the Project until Respondents have fully complied with  
22 all requirements of CEQA, and all other applicable state and local laws, policies, ordinances,  
23 and regulations;

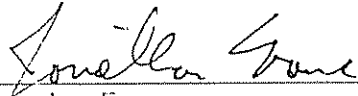
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3 For costs of the suit:  
5 For attorney's fees pursuant to the Code of Civil Procedure section 1021.5; and  
6 For such other and further relief as the Court deems just and proper.

DATED: April 11, 2007

Jonathan Evans  
Julie Teel  
Adam Keats  
Ian Chatten-Brown  
Douglas P. Carstens

By:   
Jonathan Evans  
Attorneys for Petitioners  
CENTER FOR BIOLOGICAL DIVERSITY  
SIERRA CLUB  
SAN BERNARDINO VALLEY AUDUBON  
SOCIETY

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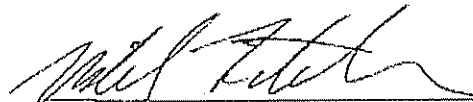
**VERIFICATION**

I have read the foregoing Petition for Writ of Mandate and know its contents.

I am the executive director of the Center for Biological Diversity, which is a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing document and know its contents. The matters stated in it are true of my own knowledge except as to those matters that are stated on information and belief, and as to those matters I believe them to be true.

Executed on April 11, 2007, at Tucson, Arizona.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Michael Finkelstein  
Executive Director  
Center for Biological Diversity

1 Jonathan Evans (247376)  
2 CENTER FOR BIOLOGICAL DIVERSITY  
3 PMB 447, 8033 Sunset Blvd.  
4 Los Angeles, CA 90046  
5 Tel: (213) 598-1466  
6 Fax: (213) 652-1940  
7 Email: [jevans@biologicaldiversity.org](mailto:jevans@biologicaldiversity.org)

8 Adam F. Keats (SBN 191157)  
9 Julie Teel (SBN 208282)  
10 CENTER FOR BIOLOGICAL DIVERSITY  
11 1095 Market St., Suite 511  
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13 Telephone: (415) 436-9682  
14 Facsimile: (415) 436-9683  
15 Email: [akeats@biologicaldiversity.org](mailto:akeats@biologicaldiversity.org)

16 Attorneys for Petitioners

17  
18 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
19  
20 IN AND FOR THE COUNTY OF SAN BERNARDINO

21 CENTER FOR BIOLOGICAL ) Case No.  
22 DIVERSITY, and SAN BERNARDINO )  
23 VALLEY AUDUBON SOCIETY, ) **NOTICE OF COMMENCEMENT OF CEQA**  
24 ) **ACTION**  
25 )  
26 ) [California Environmental Quality Act, Pub. Res.  
27 ) Code § 21167.5]  
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1 TO RESPONDENTS COUNTY OF SAN BERNARDINO, and BOARD OF SUPERVISORS  
2 FOR THE COUNTY OF SAN BERNARDINO:

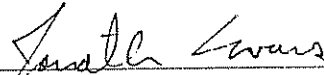
3 Please take notice, pursuant to Pub Res. Code § 21167.5, that on April 10, 2007,  
4 Petitioners Center for Biological Diversity and San Bernardino Valley Audubon Society intend  
5 to commence an action for writ of mandate to review, overturn, set aside, void, and annul the  
6 County of San Bernardino and San Bernardino County Board of Supervisors' decisions  
7 approving the San Bernardino County General Plan Update (the "Project") and certifying an  
8 Environmental Impact Report for the Project (SCH #2005101038). This action is based on  
9 Respondents' failure to comply with the California Environmental Quality Act (Public  
10 Resources Code § 21000 *et seq.*) in approving the Project and adopting the Environmental  
11 Impact Report.

12  
13 DATED: April 7, 2007

Jonathan Evans  
Julie Teel  
Adam Keats

14  
15 CENTER FOR BIOLOGICAL DIVERSITY

16  
17  
18 By:

  
\_\_\_\_\_  
JONATHAN EVANS  
Attorneys for Petitioners  
CENTER FOR BIOLOGICAL DIVERSITY  
SIERRA CLUB

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, California. I am over the age of 18 and  
4 not a party to the foregoing action. My business address is PMB 447, 8033 Sunset Blvd Los  
5 Angeles, CA, 90046.

6 On April 7, 2007, I served a true and correct copy of the NOTICE OF  
7 COMMENCEMENT OF CEQA ACTION on Respondent San Bernardino County and San  
8 Bernardino County Board of Supervisors in this action as follows:

9  BY MAIL. Such envelope was sealed and placed for collection and mailing following  
10 ordinary business practices addressed to:

11  BY PERSONAL SERVICE by personally delivering such envelope by hand to the  
12 offices of the addressee(s).

13  BY OVERNIGHT DELIVERY SERVICE via Express Mail to the offices of the  
14 addressee(s). In accordance with Code of Civil Procedure § 1013(c) as follows: I am  
15 readily familiar with this firm's practice of collection and processing correspondence for  
16 mailing with the Express Mail. Under that practice the correspondence would be  
17 deposited with Express Mail on that same day in the ordinary course of business with  
18 postage thereon fully prepaid at Los Angeles, California. Such envelope was sealed and  
19 placed for collection and mailing following ordinary business practices addressed to:

20 San Bernardino County  
21 Ruth E. Stringer, County Counsel  
22 385 N Arrowhead Avenue, 4th Floor  
23 San Bernardino, CA 92415-0140

24 San Bernardino County Board of  
25 Supervisors  
26 Clerk of the Board of Supervisors  
27 Dena Smith, Clerk of the Board  
385 N Arrowhead Avenue, 2nd Floor  
San Bernardino, CA 92415-0130

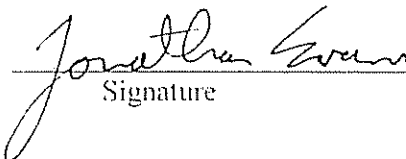
BY FACSIMILE. A true copy thereof was transmitted by facsimile and the transmission  
reported complete and without error

Executed on April 7, 2007 in Los Angeles, California.

STATE I declare under penalty of perjury under the law of California that the  
foregoing is true and correct.

Jonathan Evans

\_\_\_\_\_  
Type or Print Name

  
\_\_\_\_\_  
Signature

