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9 Attorneys for Petitioners COALITION FOR A SAFE ENVIRONMENT,
10 COMMUNITY DREAMS, AND CALIFORNIA KIDS IAQ.

11 [List of Counsel continued on next page]

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN DIEGO

14 COALITION FOR A SAFE ENVIROMENT;)
15 CENTER FOR BIOLOGICAL DIVERSITY,)
16 PRESERVE WILD SANTEE, COMMUNITY)
17 DREAMS, CALIFORNIA KIDS IAQ,)
18 CALIFORNIA CHAPARRAL INSTITUTE,)
19 Petitioners,)

20 v.)

21 CITY OF SAN DIEGO, SAN DIEGO CITY)
22 COUNCIL and DOES 1-20,)
23 Respondents.)

24 _____)
25 BROWN FIELD INTERNATIONAL BUSINESS)
26 PARK, LLC dba DPC-BROWN FIELD, AND)
27 DOES 21-40,)
28 Real Parties in Interest)

Case No.:

PETITION FOR WRIT OF MANDATE

(CALIFORNIA ENVIRONMENTAL
QUALITY ACT: PUB. RES. CODE
§§21168, 21168.5)

IMAGED FILE

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Attorneys for Petitioners Center for Biological Diversity,
Preserve Wild Santee, and California Chaparral Institute.

INTRODUCTION

1
2 1. In this action, Petitioners/Plaintiffs Coalition for a Safe Environment, Center for
3 Biological Diversity, Preserve Wild Santee, Community Dreams, California Kids IAQ, and
4 California Chaparral Institute, (“Petitioners”) challenge the decision by City of San Diego and
5 City Council of the City of San Diego (“Respondents”) to approve the Metropolitan Airpark
6 Project (“Project”) and associated Final Environmental Impact Report (“EIR”).

7 2. The Project proposes the development and leasing of 331 acres of aviation and
8 non-aviation facilities located on the 800-acre Brown Field Municipal Airport within the City of
9 San Diego in the Otay Mesa Community Plan Area.

10 3. The Project proposes both an aviation and non-aviation component. The aviation
11 component includes approximately 810,000 square feet operations and support facilities for jet
12 aircraft and helicopters. The non-aviation related facilities include a 1.4 million square foot
13 industrial park, two hotels, 200,000 square feet of commercial uses, a fueling station, a bus
14 station, and a solar photovoltaic energy generation facility.

15 4. Despite the disturbed nature of portions of the Project site, surveys found a dozen
16 sensitive, special status, threatened or endangered species including three species listed under the
17 federal Endangered Species Act. The Project is the home of the largest known burrowing owl
18 population in San Diego and also contains important vernal pool habitat, 98 percent of which has
19 been destroyed in the county. The Project proposes to destroy all six vernal pool locations on the
20 Project site, including those that harbor the federally endangered San Diego fairy shrimp and San
21 Diego button celery.

22 5. In approving the Project, San Diego determined that the Project would result in
23 significant, unavoidable impacts to land use, transportation/circulation, visual effects and
24 neighborhood character, air quality, biological resources, and water quality and flooding, which
25 would negatively affect the local community and regionally important biological resources.
26 Instead of adopting mitigation measures or alternatives to avoid these significant impacts—
27 including those that were proposed by the public and expert wildlife agencies—San Diego
28

1 adopted a Statement of Overriding Considerations that concluded “specific economic, legal,
2 social, technological, or other considerations” justified approval of the Project despite these
3 impacts.

4 6. San Diego approved the Project in contravention to the California Environmental
5 Quality Act (Pub. Res. Code § 21000, et seq., “CEQA”) and Planning and Zoning Law
6 (Government Code § 65000 et seq.) as outlined below. Petitioners accordingly request that this
7 Court issue a writ of mandate under Cal. Code of Civil Procedure sections 1085 and 1094.5
8 directing Respondents to vacate and set aside their approval of the Project and certification of the
9 EIR. This request is based on the following allegations:

10 **JURISDICTION AND VENUE**

11 7. This Court has jurisdiction over this action pursuant to sections 1085, 1094.5, and
12 187 of the California Code of Civil Procedure and sections 21168 and 21168.5 of the Public
13 Resources Code.

14 8. Venue for this action properly lies in the San Diego County Superior Court
15 because Respondent City of San Diego, Respondent San Diego City Council and the proposed
16 site of the Project are located in San Diego County.

17 **PARTIES**

18 9. Petitioner COALITION FOR A SAFE ENVIRONMENT (“CFASE”) is a non-
19 profit unincorporated association with an address of 1601 N. Wilmington Blvd., Ste. B,
20 Wilmington, CA 90744. As an environmental justice community organization, CFASE’s
21 mission statement is to protect, promote, preserve and restore the earth’s delicate ecology,
22 environment, natural resources and wildlife and to attain environmental justice in international
23 trade ports, public and freight transportation corridors, petroleum and energy industries.
24 CFASE conducted wildlife and biological habitat conservation research at the Brown Field
25 Municipal Airport from 2011 through the present. CFASE has reviewed, researched and
26 submitted public comments on the Metropolitan Airpark Project Draft EIR and Final EIR.
27 CFASE has board members, staff, members and volunteers who live, work, visit and/or recreate,
28 support nature conservation, own or conduct business in Otay Mesa, the City of San Diego and
County of San Diego. CFASE also has members statewide in California who are concerned with
the protection of wildlife, their habitat and the conservation of natural resources. CFASE and its

1 members would be significantly and negatively impacted by the Metropolitan Airpark Project.

2 10. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (“Center”) is a non-profit
3 public interest corporation with approximately 48,000 members and offices in San Francisco,
4 Los Angeles, and Joshua Tree, California; Tucson and Flagstaff, Arizona; Anchorage, Alaska;
5 Pinos Altos, New Mexico; Portland, Oregon; St. Petersburg, Florida; Minneapolis and Duluth,
6 Minnesota; Pomona, New York; Richmond, Vermont; Nevada; Washington; and Washington,
7 D.C. The Center and its members are dedicated to protecting imperiled species and their habitats
8 through science, policy, education, and environmental law. Center members reside and own
9 property in San Diego and in San Diego County, and use areas surrounding the Project site for
10 recreational, wildlife viewing, scientific, and educational purposes, and intend to continue these
11 uses as permitted. The Center submitted timely comments on the Project and the inadequacy of
12 the EIR. The Center and its members are directly, adversely and irreparably affected, and will
13 continue to be prejudiced by the Project and its components, as described herein, until and unless
14 this Court provides the relief prayed for in this petition.

15 11. Petitioner PRESERVE WILD SANTEE is a volunteer community environmental
16 organization that has worked to protect and enhance the quality of life and natural resources in
17 the City of Santee and surrounding areas since 1994. PRESERVE WILD SANTEE has also
18 worked actively to conserve vernal pools throughout San Diego County. Members offer input
19 into regional land use decisions in an effort to produce better development projects with fewer
20 environmental impacts. PRESERVE WILD SANTEE submitted timely comments on the Project
21 and the inadequacy of the EIR. PRESERVE WILD SANTEE has members throughout all
22 residential areas of Santee and in the wider San Diego County region. PRESERVE WILD
23 SANTEE and its members are directly, adversely and irreparably affected, and will continue to
24 be prejudiced by the Project and its components, as described herein, until and unless this Court
25 provides the relief prayed for in this petition.

26 12. Petitioner COMMUNITY DREAMS (“CD”) is a non-profit unincorporated
27 association which is a statewide organization involved in community sustainability whose
28 address is 1601 N. Wilmington Blvd., Ste. B, Wilmington, CA, 90744. CD’s objectives are to
review, research, support, participate and recommend creative community planning,
redevelopment, quality of life enhancement, zero emissions public transportation, zero emissions

1 freight transportation and eco-system stewardship opportunities. CD submitted timely comments
2 on the Project and the inadequacy of the EIR. CD has board members, staff, volunteers and
3 members who live, work, visit and/or recreate in San Diego and throughout California. CD and
4 its members' health, safety, environment and sustainability will be significantly and negatively
5 impacted by the Metropolitan Airpark Project.

6 13. Petitioner CALIFORNIA KIDS IAQ ("CKIAQ") is a non-profit unincorporated
7 association, which is a statewide community organization involved in the advocacy of clean
8 indoor air for children in schools, child care centers and the public whose address is 1601 N.
9 Wilmington Blvd., Ste. B4, Wilmington, CA 90744. CKIAQ objectives are to monitor and
10 review proposed clean air policies, programs and project proposals to assure children's rights to
11 clean air and a healthy environment are protected. CKIAQ submitted timely comments on the
12 Project and the inadequacy of the EIR. CK IAQ has board members, staff, volunteers and
13 members who live, work, visit and/or recreate in San Diego and throughout California. CKIAQ
14 and its members' health, safety and environment will be significantly and negatively impacted
15 by the Metropolitan Airpark Project.

16 14. Petitioner THE CALIFORNIA CHAPARRAL INSTITUTE ("Institute") is a
17 nonprofit public interest corporation under California law devoted to protecting and preserving
18 the chaparral native species and habitats in California and the larger ecosystems upon which
19 these species depend for their survival. The Institute submitted timely comments on the Project
20 and the inadequacy of the EIR. The Institute and its members – many of whom reside in San
21 Diego County - are directly, adversely and irreparably affected, and will continue to be
22 prejudiced by the Project and its components, as described herein, until and unless this Court
23 provides the relief prayed for in this petition.

24 15. Petitioners bring this action, not just on their own behalf and behalf of their
25 members, but also to enforce important public rights and to compel compliance with public
26 duties that arise under CEQA, California law, and the San Diego General Plan. Other
27 beneficially interested persons would find it difficult or impossible to seek vindication of the
28 rights asserted. Petitioners' interests in this action are in no way competitive or commercial, and
are instead entirely consistent with the duties they assert. Petitioners have a continuing interest
in, and a well-established commitment to, the public rights asserted.

1 16. Respondent CITY OF SAN DIEGO (“San Diego” or “City”), a California
2 Municipal Corporation, is a local governmental agency and political subdivision of the State of
3 California charged with the authority to regulate and administer land use activities within its
4 boundaries, subject at all times to the obligations and limitations of all applicable state, federal,
5 and other laws, including CEQA, the CEQA Guidelines and the California Planning and Zoning
6 Law. As the CEQA lead agency for the Project, San Diego certified the EIR and approved the
7 Project. San Diego is also the owner and operator of Brown Field Municipal Airport (Project
8 site) through its Real Estate Assets Department, Aviation Division.

9 17. Respondent CITY COUNCIL OF THE CITY OF SAN DIEGO (“San Diego City
10 Council”) is the legislative body and the highest administrative body of San Diego.

11 18. Real Party in Interest BROWN FIELD INTERNATIONAL BUSINESS PARK,
12 LLC dba DPC-Brown Field is listed as the Project applicant on the Notice of Determination filed
13 by the City of San Diego, on the Project approvals and EIR. Based on the status of the Real
14 Party in Interest as the identified applicant for the Project, and on Petitioners’ information and
15 belief, this party adequately represent the interests of any and all other non-joined parties in the
16 Project.

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

24 20. Petitioners are currently unaware of the true names and capacities of Real Parties
25 in Interest, Does 21 through 50, inclusive. Does 21 through 50, inclusive, are persons or entities
26 presently unknown to Petitioners who claim some legal or equitable interest in the Project that is
27 the subject of this action. Petitioners will amend this petition to show the true names and
28 capacities of Does 21 through 50 when such names and capacities become known.

GENERAL ALLEGATIONS

21. The Project proposes the development and lease of aviation and non-aviation

1 facilities located on the Brown Field Municipal Airport within the City of San Diego in the Otay
2 Mesa Community Plan Area. The Project would develop 331 acres of the approximately 880-
3 acre airport property located north and south of the airport runway and bound by La Media Road
4 on the east, Otay Mesa Road on the south, and Heritage Road on the west. Otay Mesa is a mixed
5 residential, commercial and industrial community in the southeast part of the City of San Diego
6 which also borders the country of Mexico and has a US-Mexico Otay Mesa Port of Entry. Otay
7 Mesa is experiencing significant growth pressure due to expanding international trade, freight
8 transportation and goods movement.

9 22. Project aviation uses include operations and related support facilities for jet
10 aircraft and helicopters, including hangars, a fuel station, and maintenance areas for general and
11 corporate aviation. Some aviation facilities would be equipped with solar roof panels.

12 23. The non-aviation related facilities include industrial development, commercial
13 buildings, and solar photovoltaic energy panels. A 1.4-million square foot industrial park is
14 proposed on the northern portion of the project site. Commercial development on the southern
15 portion of the Project would include two hotels, over 200,000 square feet of commercial uses, a
16 gas station for conventional fuels, biofuels and electric vehicles, and a bus transit station. The
17 Project also proposes an approximately six to eight megawatt solar photovoltaic energy
18 generation facility on approximately 64 acres.

19 24. Despite the disturbed nature of portions of the Project site, surveys found a dozen
20 sensitive, special status, threatened or endangered species including three species listed under the
21 federal Endangered Species Act: the coastal California gnatcatcher, San Diego fairy shrimp, and
22 San Diego button celery.

23 25. The Project site contains vernal pools and other seasonal wetlands (basins that
24 contain species protected under the federal Endangered Species Act that rely upon vernal pools,
25 special status vernal pool indicator species, or both). The U.S. Fish and Wildlife Service (“U.S.
26 F&WS”) estimates that nearly 98 percent of the original vernal pools in San Diego County have
27 been destroyed. The Project would eliminate all vernal pool locations on the Project site which
28 harbor the federally endangered San Diego fairy shrimp and San Diego button celery.

29 26. Certain sensitive animals and plants that occur on the Project site, including the
30 coastal California gnatcatcher, coast barrel cactus, burrowing owl, northern harrier and peregrine

1 falcon, are species covered by the San Diego Multiple Species Conservation Program (“MSCP”).
2 The City of San Diego is a participant in the MSCP, which permits the “taking” of covered
3 species, including federally protected species, in exchange for the assembly, establishment,
4 management and conservation of preserve lands in southwestern San Diego County.

5 27. In 2006, a federal court ruled that the City of San Diego’s MSCP subunit plan
6 violated the federal Endangered Species Act because the plan was inadequately funded and
7 afforded insufficient protection to vernal pool species. To date, San Diego has not addressed the
8 MSCP’s funding deficiencies or adopted a new vernal pool plan. As a result, vernal pool
9 species, including San Diego fairy shrimp, are not covered by the MSCP and unpermitted “take”
10 is prohibited under the Endangered Species Act.

11 28. The City’s 2012 Biological Guidelines and San Diego Municipal Code require
12 that impacts to wetlands be avoided. Specifically, for vernal pools, avoidance of the entire
13 watershed, including a buffer based on functions and values, is required. Unavoidable impacts
14 are to be minimized to the maximum extent practicable, and unavoidable impacts must be
15 mitigated. Table 2B of San Diego’s Wetland Mitigation Ratios requires vernal pool habitat be
16 mitigated at a 4:1 to 8:1 ratio. The City and EIR relied on a different range of mitigation ratios.
17 The Project’s vernal pool impacts are inadequately mitigated at a ratio of 5:1.

18 29. The Project site is home to a California species of special concern, the burrowing
19 owl. According to San Diego’s 2011 survey, the Project site contained eleven nesting pairs, 16
20 chicks, and 2 other individual owls, the largest known population of burrowing owls. The EIR
21 found the Project would have a direct impact on 235.72 acres of suitable burrowing owl nesting
22 and foraging habitat, as well as nine burrowing owl breeding pairs and two individuals. The
23 Burrowing Owl Mitigation Plan purports to mitigate these impacts at a ratio of 0.5:1 through
24 onsite and offsite creation, restoration, enhancement and preservation of habitat. The offsite
25 mitigation area was not identified at the time of Project approval.

26 30. Petitioner CFASE visited the Project site at various times in 2011 and 2012.
27 CFASE documented 23 burrowing owls during an initial site visit and 22 owls at the Project site
28 on a follow-up visit on July 6 2011. On subsequent visits, CFASE recorded a declining owl
population: six burrowing owls on February 11, 2012; three owls on March 3, 2012; three
burrowing owls on April 28, 2012, and no burrowing owls on May 1, 2012.

1 31. During the March and April 2012 Project site visits, CFASE discovered the
2 burrowing owl nests had been filled with liquid. Laboratory tests confirmed the liquid contained
3 two toxic chemicals (bromacil and diuron) which indicate the substance was DuPont herbicide
4 Krovar. On information and belief, City agents and/or employees filled the burrowing owl nests
5 with Krovar, in violation of state and federal laws.

6 32. During a 2013 site visit, a Project consultant found only one burrowing owl
7 individual and “evidence of burrow owl use” by an undisclosed number of owls.

8 33. In response to concerns regarding the feasibility and sufficiency of the Burrowing
9 Owl Mitigation Plan, the Project consultant prepared a last-minute expert memo to “review the
10 adequacy” of the proposed mitigation. The memorandum concluded impacts would be less than
11 significant upon implementation and successful completion of the mitigation measures. The
12 analysis, however, was based on the fact that creation of suitable habitat “has the potential” to
13 increase a site’s burrowing owl carrying capacity and “the potential” for success.

14 34. The Burrowing Owl Mitigation Plan relies heavily on passive translocation. There
15 are “no specific success criteria for the utilization or occupation of mitigation areas or artificial
16 burrows.” If the Burrowing Owl Mitigation Plan requirements are followed, “yet burrowing owls
17 are not documented utilizing or occupying the mitigation areas or artificial burrows, no remedial
18 steps shall be required.” The Burrowing Owl Mitigation Plan may be fully implemented and fail
19 completely to mitigate burrowing owl impacts. The conclusion that impacts related to burrowing
20 owls will be less than significant is not supported by substantial evidence.

21 35. After reviewing the City’s response to its comments, the U.S. F&WS submitted
22 additional comments which recommended burrowing owl impacts be avoided or minimized by
23 incorporating the proposed solar facility into other development areas on the airport property.
24 The U.S. F&WS wrote to “stress the importance of the proposed solar facility areas for
25 burrowing owls on Otay Mesa.” The agency noted that this area “has the highest conservation
26 value for burrowing owl[s] on the airport property” because it already supports three pairs of
27 burrowing owls, could support additional owls, and is connected to conserved burrowing owl
28 habitat to the north.

 36. The EIR states the Project will result in greenhouse gas (GHG) emissions of
47,450 metric tons of carbon dioxide equivalent per year at project build-out in 2031. In order to

1 comply with AB 32 and the AB 32 Scoping Plan, the City found the Project would have to
2 reduce “business-as-usual” (BAU) by 28.3 percent from BAU. BAU was calculated to result in
3 emissions of approximately 70,833 metric tons of carbon dioxide equivalent per year. The EIR
4 found Project design and state measures will reduce GHG emissions by approximately 33
5 percent from BAU. Approximately 11 percent of these reductions are a result of vehicle
6 standards, and the remaining 22 percent reduction would result from onsite solar energy
7 generation. The City found GHG impacts will be less than significant.

8 37. The EIR did not include baseline condition GHG emission calculations.
9 Subsequent to the circulation of the Final EIR, additional reports were prepared to analyze the
10 Project GHG emissions. An “Errata” to the EIR included with the agenda materials for Project
11 approval stated “2010 Baseline Conditions” resulted in approximately 8,481 metric tons of
12 carbon dioxide equivalent emissions.

13 38. Project GHG emissions, as measured against the 2010 Baseline will result in
14 38,969 metric tons of carbon dioxide equivalent emissions per year. The Project will result in
15 significant impacts to GHG emissions.

16 39. The AB 32 Scoping Plan requires a 15 percent reduction of GHG emissions from
17 existing conditions. A 15 percent reduction from 2010 baseline would equate to emissions of
18 7,209 metric tons of carbon dioxide equivalent emissions. The Project does not comply with the
19 AB 32 Scoping Plan.

20 40. On October 30, 2012, San Diego issued a Draft EIR for the Project. Following
21 circulation of the Draft EIR, other agencies and members of the public, including Petitioners,
22 provided comments on the Draft EIR. These comments contained, among other things,
23 objections to the EIR’s inadequate analysis of the Project’s biological impacts, consistency with
24 the MSCP and other local and state laws, feasible mitigation measures and alternatives, and
25 impacts to water quality, greenhouse gas emissions, air quality, health impacts, traffic and
26 circulation, visual impacts, and the surrounding community.

27 41. The Final EIR is dated May 17, 2013. The San Diego Planning Commission
28 reviewed and recommended approval of the Project on June 20, 2013. On information and belief,
multiple reports, memoranda, and an “Errata” were prepared, including, for example, for impacts
to burrowing owls, vernal pools, and greenhouse gas emissions, and incorporated into the Final

1 EIR after the public comment period for the EIR.

2 42. On October 7, 2013, the San Diego City Council approved the No Museum
3 Alternative of the Project, which removed the proposed Air and Space Museum component of
4 the Project, and adopted: Resolution number R-308483 (certifying that the Final EIR for the
5 Project was completed in compliance with CEQA), findings in support of the Project, a
6 Mitigation Monitoring and Reporting Program, and a Statement of Overriding Considerations.
7 The San Diego City Council further approved the associated Site Development Permit number
8 768683, Tentative Map Waiver 1099991, Easement Vacation number 1099992, Facilities Benefit
9 Assessment Exemption Ordinance and Leasehold Development Agreement. The San Diego City
10 Council issued its final approval of Resolution numbers R-308483 and R-2014-41 and Ordinance
11 number O-20315 following a second reading on October 22, 2013.

12 43. In approving the Project, San Diego determined the Project would result in
13 significant, unavoidable impacts to land use, transportation/circulation, visual effects and
14 neighborhood character, air quality, biological resources, water quality, and flooding, thereby
15 affecting the local community and regionally important resources. Instead of adopting
16 mitigation measures or alternatives to avoid these significant impacts, San Diego adopted a
17 Statement of Overriding Considerations that concluded “specific economic, legal, social,
18 technological, or other considerations” justified approval of the Project despite these impacts.

19 44. As a result of Respondents’ approvals, Petitioners will suffer great and irreparable
20 environmental harm as described herein. Petitioners have no adequate remedy at law for this
21 irreparable harm.

22 45. Petitioners have exhausted all administrative remedies by providing verbal and
23 written comments to San Diego staff and elected officials prior to Project approval, requesting
24 compliance with CEQA, and the completion of full and adequate environmental review and
25 mitigation. On information and belief, all issues raised in this petition were raised in a timely
26 manner before Respondents by Petitioners, other members of the public or public agencies.

27 46. Petitioners have complied with Public Resources Code section 21167.5 by prior
28 service of a notice upon San Diego indicating their intent to file this Petition. Proofs of Service
of this notification, with the notifications attached, are attached as Exhibit A.

47. Petitioners have advised Respondents that Petitioners elect to prepare the record

1 of the proceedings relevant to the approval of this Project, as modified, in compliance with
2 Public Resources Code § 21167.6.

3 48. Petitioners will comply with Public Resources Code § 21167.7 by submitting a
4 copy of the original petition with the California Attorney General.

5 49. This petition is timely filed in accordance with Public Resources Code section
6 21167 and CEQA Guidelines section 15112.

7 50. Respondents have abused their discretion and failed to proceed in the manner
8 required by law in the following ways:

9 **FIRST CAUSE OF ACTION**

10 **VIOLATION OF CEQA (Public Resources Code § 21000, *et seq.*)**

11 **EIR Does Not Comply With CEQA**

12 **(By All Petitioners Against All Respondents)**

13 51. Petitioners hereby incorporate by reference each and every allegation set forth
14 above.

15 52. CEQA requires that a lead agency must prepare a legally adequate EIR prior to
16 approving any discretionary project that may have a significant environmental effect. The EIR
17 must fully disclose and analyze the project's potentially significant environmental effects. The
18 lead agency is also required pursuant to CEQA to consider mitigation measures and alternatives
19 that would reduce or avoid the project's significant environmental effects, to adopt all feasible
20 mitigation measures and/or alternatives, and to determine that proposed mitigation measures will
21 or will not be effective in avoiding or substantially lessening the project's significant
22 environmental impacts.

23 53. CEQA requires that an EIR must provide a complete and accurate description of
24 both the project and the project's environmental setting.

25 54. The EIR must provide sufficient environmental analysis such that decision-
26 makers can intelligently consider environmental consequences when acting on proposed
27 projects. Mitigation measures adopted for a project's significant environmental effects must be
28 concrete and enforceable.

55. In approving the Project and certifying the EIR, CEQA requires that the lead
agency must find either (1) that the project's significant environmental effects have been

1 mitigated or avoided or (2) that the unmitigated impacts are outweighed by specific overriding
2 economic, legal, social, technological, or other benefits of the project. The lead agency may
3 reach the latter conclusion and adopt a Statement of Overriding Considerations only if it finds
4 that there are no feasible mitigation measures or alternatives to avoid or substantially lessen the
5 remaining significant environmental effects of the project.

6 56. As lead agency, the City of San Diego has a clear, present, and mandatory duty to
7 analyze and adopt all feasible mitigation measures as well as consider a reasonable range of
8 alternatives and adopt any feasible alternative that would substantially lessen the significant
9 environmental effects of the Project.

10 57. Respondents violated CEQA for several reasons, including but not limited to the
11 following:

- 12 a. The EIR failed to adequately disclose and analyze the Project's environmental
13 impacts, including the Project's impacts related to biological resources, hydrology
14 and water quality, air quality, visual resources, planning and environmental
15 policies/plans, land use, traffic and transportation, energy use and greenhouse gas
16 emissions, noise, and cumulative and growth inducing impacts;
- 17 b. Respondent improperly determined significant environmental impacts would not
18 be significant, including impacts to biological resources, hydrology and water
19 quality, air quality, visual resources, planning and environmental policies/plans,
20 land use, traffic and transportation, energy use and greenhouse gas emissions,
21 noise, and cumulative and growth inducing impacts;
- 22 c. The EIR failed to provide a stable, consistent, and adequate description of the
23 Project, which prohibited an accurate depiction of the Project's environmental
24 impacts. If further failed to provide an adequate description of the existing
25 environmental setting of the Project, its vicinity, and the regional context;
- 26 d. The EIR failed to apply proper environmental "baselines," which precluded
27 meaningful and adequate analysis of the Project's impacts related to, among other
28 things, traffic, biological resources (e.g, burrowing owls), and greenhouse gas
emissions;
- e. Respondent and the EIR improperly relied upon regional plans, including the

1 inadequately funded MSCP, to mitigate and assess the Project's significant
2 biological and other impacts;

3 f. Respondent and the EIR failed to adequately evaluate and ensure consistency with
4 applicable state and regional plans, including, for example, the requirements to
5 avoid or mitigate impacts to burrowing owls to the maximum extent practicable,
6 and to reduce greenhouse gas emissions;

7 g. Respondent failed to apply the San Diego Municipal Code and applicable 2012
8 San Diego Biological Guidelines (Environmentally Sensitive Lands regulations),
9 including but not limited to, the avoidance and mitigation requirements and
10 mitigation ratios;

11 h. Respondent and the EIR improperly deferred formulation of mitigation measures
12 and analysis of impacts, including with respect to the Project's impacts to
13 biological resources (e.g., to burrowing owls, wetlands and vernal pools, San
14 Diego fairy shrimp, San Diego button celery, and other protected species and
15 habitat), land use, water quality and hydrology, traffic, air quality and greenhouse
16 gas emissions;

17 i. Respondent and the EIR improperly relied on mitigation measures that are
18 inadequate under CEQA, including measures that are vague and insufficiently
19 concrete, that are unenforceable, and that will not effectively reduce or avoid the
20 Project's significant impacts. These inadequate mitigation measures concern the
21 Project's impacts related to, among other things, biological resources (including
22 burrowing owls, wetlands and vernal pools, San Diego fairy shrimp, San Diego
23 button celery, and other protected species and habitat), land use,
24 transportation/circulation, air quality, greenhouse gas emissions, and water
25 quality/hydrology;

26 j. Respondent and the EIR failed to disclose, analyze and adopt feasible mitigation
27 measures and alternatives to reduce or avoid significant impacts, in direct
28 contravention of CEQA's requirements for an EIR, as well as CEQA's
substantive mandate that all feasible mitigation measures and/or alternatives must
be adopted to avoid or reduce a project's significant impacts. These failures

1 concerned the Project’s impacts related to, among other things, biological
2 resources (including burrowing owls, wetlands and vernal pools, San Diego fairy
3 shrimp, San Diego button celery, and other protected species and habitat), land
4 use, transportation/circulation, air quality, greenhouse gas emissions, and water
5 quality/hydrology;

- 6 k. Respondent and the EIR failed to consider a reasonable range of alternatives,
7 including by improperly dismissing feasible and potentially feasible alternatives
8 suggested by other agencies and the public;
- 9 l. Respondent and the EIR relied on an improperly narrow list of Project objectives
10 to justify the elimination of feasible alternatives;
- 11 m. Respondent failed to adequately respond to comments submitted by the public
12 and governmental agencies during review of the EIR;
- 13 n. Respondent failed to recirculate the EIR after significant new information
14 (including information contained in an “Errata” and in supplemental reports
15 regarding greenhouse gas emissions, burrowing owls, and vernal pools) was
16 added to the EIR that concerned new significant environmental impacts,
17 substantial increases in the severity of impacts, and/or feasible project alternatives
18 or mitigation measures different from ones initially proposed. Such significant
19 new information concerned, but was not limited to: the possibility of conserving
20 16.61 to 28.61 acres of the solar facility area and of relocating H2 outdoor
21 equipment and materials storage; analysis of impacts and mitigation related to
22 greenhouse gas emissions, burrowing owls, and vernal pools; and analysis of
23 impacts from proposed improvements on Airway Road (which were
24 “inadvertently” omitted in the Draft EIR and added to the Final EIR) that will
25 result in an increase in impacts to burrowing owl habitat and freshwater marsh;
- 26 o. Respondent purported to find that adopted mitigation measures (or other changes
27 to the Project) would mitigate or avoid significant impacts of the Project related to
28 land use and biological resources, notwithstanding that such findings (i) were
unsupported by substantial evidence or sufficient analysis, (ii) were based on
mitigation measures that are inadequate and do not comply with CEQA, and (iii)

1 did not comply with the findings requirements of Pub. Resources Code section
2 21081 and CEQA Guidelines section 15091;

- 3 p. Respondent purported to find that mitigation measures and alternatives that would
4 mitigate impacts to Land Use, Biological Resources, Transportation/Circulation,
5 Air Quality, and Water Quality/Hydrology were infeasible, notwithstanding that
6 such findings were not supported by substantial evidence or sufficient analysis,
7 and did not comply with the findings requirements of Pub. Resources Code
8 section 21081 and CEQA Guidelines section 15091;
- 9 q. Respondent purported to find that economic, legal, social, technological, or other
10 benefits of the Project were overriding considerations that permitted approval of
11 the Project despite its significant impacts on the environment, notwithstanding
12 that such findings were unsupported by substantial evidence or sufficient analysis,
13 and did not comply with the findings requirements of Pub. Resources Code
14 section 21081 and CEQA Guidelines section 15093;
- 15 r. Respondent failed to make sufficient findings under CEQA section 21081.
16

17 58. As a result of the foregoing defects, Respondents prejudicially abused their
18 discretion by certifying an EIR that does not comply with CEQA and by approving the Project in
19 reliance thereon. Accordingly, Respondents' certification of the EIR and approval of the Project
20 must be set aside.

21 **SECOND CAUSE OF ACTION**

22 **Violation of California Planning and Zoning Law (Government Code § 65000 et seq.)**

23 **(By All Petitioners Against All Respondents)**

24 59. Petitioners hereby incorporate by reference each and every allegation set forth
25 above.

26 60. Under the California Planning and Zoning Law, the San Diego's General Plan
27 is a fundamental land use planning document, superior to all other land use plans and serving as
28 the constitution or blueprint for all future development within San Diego. The General Plan

1 consists, among other things, of a set of citywide goals and policies. The Otay Mesa Community
2 Plan component of the San Diego General Plan also implements policies of the San Diego
3 General Plan within the Otay Mesa area. All development and land use actions, including the
4 approval of the Project entitlements, must conform to or be consistent with the General Plan, a
5 requirement known as “vertical consistency.”

6 61. San Diego’s General Plan includes strong, mandatory policies, but these
7 policies are only effective if they are observed. As approved, the Project is inconsistent with
8 numerous General Plan policies, including the following:

- 9 a. The Project is inconsistent with General Plan policies within the Conservation
10 Element relating to Open Space and Landform Preservation, Urban Runoff
11 Management, Biological Diversity, and Wetlands;
- 12 b. The Project is inconsistent with General Plan policies within the Mobility
13 Element relating to Walkable Communities, Transit First, Street and Freeway
14 System, and Transportation Demand Management;
- 15 c. The Project is inconsistent with General Plan policies within the Noise Element
16 relating to Noise and Land Use Compatibility, Aircraft Noise, Industrial Activity
17 Noise, and Typical Noise Attenuation Methods;
- 18 d. The Project is inconsistent with the Community Environmental and Design
19 Objectives within the Otay Mesa Community Plan including those that provide
20 for the “preservation of unique natural environments” in accordance with the
21 EIR’s mitigation measures.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Petitioners pray for relief as follows:

- 24 1. For alternative and peremptory writs of mandate, commanding Respondent:
 - 25 (A) to vacate and set aside approval of the Project and all related approvals;
 - 26 (B) to vacate and set aside certification of the Final EIR for the Project;
 - 27 (C) to vacate and set aside approval of Resolution numbers R-308483 and R-2014-41
28 and Ordinance number O-20315;
 - (D) to prepare and certify a legally adequate EIR for the Project;

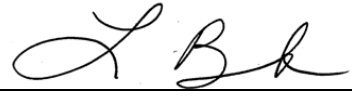
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(E) to suspend any and all activity pursuant to Respondent’s approval of the Project that will prejudice the consideration or implementation of particular mitigation measures or alternatives, until Respondents have complied with all requirements of the California Environmental Quality Act and all other applicable state and local laws, policies, ordinances, and regulations as are directed by the Court pursuant to Public Resources Code section 21168.9.

- 2. For a stay, temporary restraining order, preliminary injunction, and permanent injunction prohibiting any actions by Respondents or Real Parties in Interest pursuant to Respondent’s approval of the Project and certification and/or adoption of the EIR for the Project until Respondent has fully complied with all requirements of the California Environmental Quality Act, the California Planning and Zoning Law, and all other applicable state and local laws, policies, ordinances, and regulations;
- 3. For costs of the suit;
- 5. For attorneys’ fees as allowed by law, including under to the Code of Civil Procedure section 1021.5; and
- 6. For such other and further relief as the Court deems just and proper.

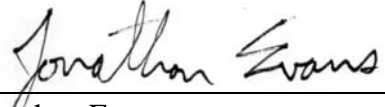
Dated: November 21, 2013

COAST LAW GROUP, LLP

By: 

Livia Borak
Attorneys for Petitioners
COALITION FOR A SAFE ENVIRONMENT
COMMUNITY DREAMS
CALIFORNIA KIDS IAQ

CENTER FOR BIOLOGICAL DIVERSITY

By: 

Jonathan Evans
Attorneys for Petitioners
CENTER FOR BIOLOGICAL DIVERSITY
PRESERVE WILD SANTEE
CALIFORNIA CHAPARRAL INSTITUTE

VERIFICATION

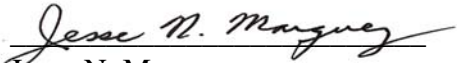
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I, Jesse N. Marquez, declare:

I am an officer, to wit; Executive Director of Coalition For A Safe Environment (CFASE). CFASE is Plaintiff and Petitioner in the above-entitled action, and I have been authorized to make this verification on its behalf.

I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, and know its contents. The matters stated in the Petition are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this verification was signed on the 21st day of November, 2013 in Wilmington, California


Jesse N. Marquez
Executive Director, CFASE

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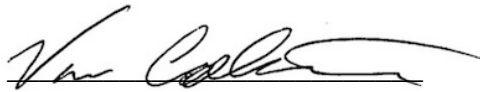
VERIFICATION

I, Van K. Collinsworth, declare:

I am an officer, to wit; Executive Director of Preserve Wild Santee. Preserve Wild Santee is Plaintiff and Petitioner in the above-entitled action, and I have been authorized to make this verification on its behalf.

I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, and know its contents. The matters stated in the Petition are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this verification was signed on the 21st day of November, 2013 in San Diego, California



Van K. Collinsworth
Executive Director, Preserve Wild Santee

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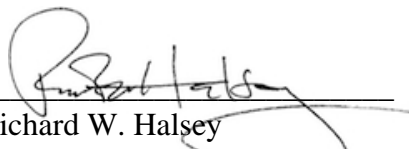
VERIFICATION

I, Richard W. Halsey, declare:

I am an officer, to wit; Director of California Chaparral Institute. California Chaparral Institute is Plaintiff and Petitioner in the above-entitled action, and I have been authorized to make this verification on its behalf.

I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, and know its contents. The matters stated in the Petition are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this verification was signed on the 21st day of November, 2013 in San Diego, California


Richard W. Halsey
Executive Director, California Chaparral Institute

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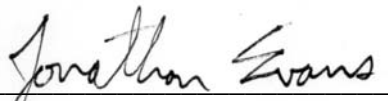
VERIFICATION

I, Jonathon Evans, declare:

I am Toxics and Endangered Species Campaign Director, and staff attorney for the Center for Biological Diversity (CBD). CBD is Plaintiff and Petitioner in the above-entitled action, and I have been authorized to make this verification on its behalf.

I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, and know its contents. The matters stated in the Petition are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this verification was signed on the 21st day of November, 2013 in San Francisco, California



Jonathon Evans
Attorney, CBD

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VERIFICATION

I, Livia Borak, declare:

I am an attorney of record for Community Dreams and California Kids IAQ, Plaintiffs and Petitioners in the above-entitled action, and I have been authorized to make this verification on their behalf.

I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, and know its contents. The matters stated in the Petition are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this verification was signed on the 21st day of November, 2013 in Encinitas, California


Livia Borak
Attorney, Community Dreams and
California Kids IAQ