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**SPIRIT OF THE SAGE COUNCIL**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

SPIRIT OF THE SAGE COUNCIL,	)	Case No.:
a California non-profit association,	)	
	)	<b>PETITION FOR</b>
	)	<b>WRIT OF MANDATE</b>
Petitioner,	)	
v.	)	
	)	Cal. Public Res. Code §§ 21000 et seq.
CITY OF PASADENA,	)	California Environmental Quality Act
a public entity; and DOES ONE	)	
through TWENTY-FIVE, inclusive	)	
	)	
Respondents and	)	
Real Parties in Interest.	)	
_____	)	

Petitioner allege as follows:

**I.**

**INTRODUCTION**

1. This action involves a challenge brought under the California Environmental Quality Act (CEQA) against the City of Pasadena’s (“City”) decision to approve a master environmental impact report known as the *Arroyo Seco Master Plan, Master Environmental Impact Report (MEIR)* which is a project known as the Arroyo Seco Master Plan Project

(ASMP Project) consisting of five components including (1) Hahamongna Watershed Master Plan, (2) Central Arroyo Master Plan, (3) Lower Arroyo Master Plan, (4) Rose Bowl Use Plan, and (5) Arroyo Seco Design Guidelines.

2. The City's approval of the MEIR included the adoption of a Mitigation Monitoring and Reporting Program (MMRP) and a Findings of Fact and Statement of Overriding Considerations (Findings). Subsequent to the above adoptions and approvals, City has approved one or more of the underlying construction projects alleged to be included in the ASMP Project and MEIR, and which subsequent approvals have and continue to rely solely on the MEIR, MMRP and Findings without any further CEQA environmental review.

3. By this action, petitioner seeks to have this Court overturn the approvals and adoptions of the City due to (1) failure to prepare a sufficient MEIR in compliance with CEQA, (2) the adoption of findings which are not supported by the evidence, and (3) failure to proceed in a manner required by law.

## **II.**

### **GENERAL ALLEGATIONS**

4. Petitioner SPIRIT OF THE SAGE COUNCIL ("Sage Council") is an unincorporated non-profit association based in Pasadena, California. Sage Council, including its members and supporters, some of whom reside in the City of Pasadena, has a strong interest in the conservation of our local, regional and country's biological resources, cultural heritage and quality of life through wise planning and stewardship of such resources. Sage Council and its members and supporters enjoy and have a strong interest in preserving the integrity of, among other things, natural ecosystems and historic and cultural places. The Sage Council is also active in this region of Los Angeles County in the enforcement of laws and government programs that are designed to protect said natural and historic places such as the one proposed to be adversely affected by the environmental impacts of the City's instant approval. The decision(s) of respondent City will have detrimental impacts on the Sage Council, its members,

and agents, who reside in and around the City of Pasadena, who have visited the locations of the proposed developments. The Sage Council includes its members, agents and individuals who protested Respondent's action preceding the filing of this petition.

5. Respondent and real parties in interest CITY OF PASADENA ("Respondent" or "City") and DOES ONE through TWENTY-FIVE is a current proponent, applicant, developer and/or owner of the real property and lands which are the subject of this litigation, and is a local government agency and subdivision of the State of California and/or charter city charged with complying with applicable provisions of state law including the California Environmental Quality Act ("CEQA"). The city council, as the duly constituted legislative body and administrative body in the City, is charged with the final duty of ensuring, among other things, that all applicable federal, state and county laws are fully and faithfully obeyed and implemented. Respondent, through the final action of its city council, has adopted the resolution(s), ordinance(s) and/or adopted findings of the ASMP Project and MEIR which are the subject of this litigation.

6. Petitioner is currently unaware of other primary interested parties who stand to be directly affected by this litigation but will amend this complaint at a later time that such persons or entities become known, consistent with the laws of this State for adding DOE defendants.

7. This lawsuit has been commenced within the time limits imposed for actions under the California Code of Civil Procedure and California Public Resources Code, as made applicable to the City by its codes or ordinances or by the general laws of this State.

8. Venue and jurisdiction in this Court are proper pursuant to the California Code of Civil Procedure for a matter relating to subject property located within, and an administrative action decided within, the Court's jurisdiction.

9. Petitioner, by and through itself, City staff, state agencies, and other members, residents and other citizen groups citizens operating in the greater Pasadena and Los Angeles

County areas, have made oral and written comments, and have been present and participated in the public hearings and meetings raising each of the legal deficiencies asserted in this petition for writ of mandate.

10. Petitioners have performed all conditions precedent to filing this action by complying with all requirements of the California Public Resources Code, including the giving of prior written notice to Respondent prior to filing this action, and has no other remedy other than to bring this action. All other requests of Respondents and Real Parties, having been previously made, would be futile.

### **III.**

#### **THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

11. In 1970, the California Legislature enacted the California Environmental Quality Act (“CEQA”), Public Resources Code §21000, et seq., as a means of requiring public agency decision-makers such as Respondent to document and consider the environmental implications of their actions. CEQA’s fundamental goal is to fully inform the public and the decision makers as to the environmental consequences of its actions and to assure members of the public that their elected officials are making informed decisions. CEQA requires governmental authorities, such as Respondent, to use all feasible means to reduce or avoid significant environmental damage that otherwise could result from their actions. It forbids agencies from approving projects with significant adverse impacts when feasible alternatives can reduce, eliminate, or otherwise lessen such impacts.

12. The cornerstone of the CEQA process is the preparation of an environmental impact report which discloses the adverse environmental impacts which may result from the proposal or approval by a public agency. The primary function of the environmental impact report is to discuss the important environmental consequences and to inform decision-makers, responsible agencies and the general public of mitigation and alternatives to the project that would lessen the serious environmental consequences.

IV.

**FIRST CAUSE OF ACTION - PETITION FOR WRIT OF MANDATE**

**Violation of the California Environmental Quality Act**

**(Cal. Public Resources Code §§ 21000 et seq.)**

13. Petitioner hereby realleges and incorporates by reference ¶¶ 1-12 above as though fully set forth herein.

14. Respondent, in adopting and certifying findings, mitigation and monitoring reporting program, and statement of overriding considerations for ASMP Project and its MEIR, constitute a prejudicial abuse of discretion in that Respondent failed to proceed in a manner required by law and/or its decisions and adoptions are not supported by substantial evidence.

15. Information and evidence in the record, as well as in the findings made by Respondent in its adoption of the MEIR and its Findings, indicate the procedural and substantive deficiencies of CEQA, as follows:

a. Inadequate Project Description -- An adequate and stable description of a development project has been termed the “sina qua non” of the CEQA process. The Project, and its purpose and goal to rehabilitate, conserve and restore resources is not supported by the substantial evidence. Rather, the ASMP Project unlawfully uses this contrived and unsupported goal to as an excuse for its water collection/storage facilities and park development improvements.

b. Failure to Adequately Mitigate Biological Resources -- The City has improperly refused to disclose, analyze or mitigate for direct and cumulative impacts to biological resources despite recognizing losses will occur. Losses to rare and diminishing sage scrub habitats and other natural open spaces are being lost to water conservation projects without full mitigation. Another example is the substitution of natural areas with active recreation playing fields. City’s findings that no significant impacts will result are not supported by the substantial evidence.

c. Misuse and Misapplication of the Master Environmental Impact Report Process -- City has improperly sought to prepare a master environmental impact report which is elusively trying to have serve as a project-level environmental impact report for the predominance of the numerous development projects identified in, and intended by, the MEIR and ASMP Project. The approval and adoption of the ASMP Project does not contain enough detail to evaluate site-specific impacts that may occur from subsequent development under the ASMP Project. The City's attempt to rely on the MEIR as a project -level and final CEQA environmental review document is not supported by the substantial evidence. The City's failure to identify which of the subsequent developments under the ASMP Project are considered final environmental reviews is a failure to proceed in manner required by law.

d. The MEIR and Adopted Findings Fail to Adequately Disclose, Analyze and/or Mitigate the ASMP Project's Inconsistency with the City's General and Specific Plans -- The law under CEQA requires that the MEIR disclose, analyze, and mitigate any and all conflicts and impacts that the implementation of the ASMP Project will have with adopted plans. The development plan for the ASMP Project fails to identify and mitigate numerous conflicts with the City's general and specific plan policies, goals, and guidelines regarding land use compatibility and requirements for the conserving archeological, cultural, biological and open space resources.

e. Failure to Adequately Respond to Comments Made During the Circulation of the Draft MEIR -- Respondent has failed to adequately provide full and complete responses to public and agency comments as required by CEQA. The City's responses are devoid of facts and substance and, rather, are mostly conclusions which do not address or answer material issues essential to a full and complete analysis of the significant controversial issues of the previous projects of

the final Project. Additionally, the manner of City's sporadic, clumped and paraphrased/re-written draft MEIR comments made by the public and CEQA responsible agencies are not reasonably or sufficiently written so as to apprise the public and decision-makers whether responses are either completely or in good faith.

f. Failure to Impose Reasonable / Feasible Mitigation Measures (Including Avoidance) to Minimize Impacts to Cultural and Historic Resources -- The City has not imposed all feasible alternatives and or mitigation measures to reduce or avoid significant impacts affecting historic, cultural and paleontological resources, including but not limited to: (1) failing to assess and present the impacts being caused by particular developments under the ASMP Project; (2) failure to propose, evaluate, or require avoidance as mitigation measures; and (3) failure to require monitoring by historic resource experts, instead only mentioning one group's suggested approach.

g. Unlawful Adoption of ASMP Project, Including Improper and Illusory Deferral of Mitigation Measures - The City has administratively approved the ASMP Project, including one or more of its specific subsequent project thereunder, on the basis that City will need to enact legislation amending its adopted plans or development codes. Not only is this an unlawful and unenforceable attempt to tie the hands of future legislative bodies, but it indicates an unlawful act of an administrative body seeking to legislate a new application of law

h. Failure to Adequately Assess Cumulative Impacts -- Respondent has failed to consider cumulative impacts arising from other known proposed and/or approved projects which are similarly affecting open space, recreational, biological, and transportation resources. For example, the City excuses any duty or obligation to mitigate impacts to endangered or sensitive species' habitat on the basis a particular species could not be recently located. CEQA requires analysis

and mitigation for small losses of protected resources, which cumulatively may be considered significant. City has failed to set forth the manner required for analysis of cumulative impacts by either a list method or other accepted method.

16. By approving the ASMP Project and MEIR and not fully complying with CEQA, the City has failed to proceed in a manner required by law and/or the decision(s) and findings relating to its CEQA compliance are not supported by the substantial evidence. A peremptory writ of mandamus should be issued compelling the City to revoke its April 14, 2003 and April 16, 2003 approvals, and the matter should be remanded to the City to reconsider its approval of the MEIR and ASMP Project consistent with requirements of CEQA.

V.

**PRAYER FOR RELIEF**

17. By reason of the foregoing, Respondent has violated the California Environmental Quality Act by approving the Project and by certifying a supplemental EIR.

18. Respondent's approval of the Project and the supplemental EIR constitutes legislative action resulting in judicial review pursuant to the standards of Public Resources Code §21168.5 and a traditional mandamus proceeding under California Code of Civil Procedure §1085. The standard of review set forth in Public Resources Code §21168.5 authorizes a writ to issue when there has been a prejudicial abuse of discretion. Abuse of discretion is established if Respondent has not proceeded in the manner required by law, or if the determination or decision is not supported by substantial evidence.

19. Petitioners have a clear, present and beneficial right to the proper performance by Respondent of its duties under CEQA. Petitioners are beneficially interested in the issuance of a Writ of Mandate by virtue of the facts set forth previously, and in that the general public will otherwise be adversely affected by the actions of Respondent herein challenged.

20. Petitioners have no plain, speedy or adequate remedy in the ordinary course of the law other than the relief herein sought.



**WHEREFORE**, Petitioners respectfully pray for judgment as follows:

1. That this Court find that, by approving the ASMP Project, including the certification and/or adoption of the MEIR, mitigation and monitoring reporting program and subsequent ASMP Projects thereunder, Respondent has not proceeded in a manner required bylaw and/or its decisions are not supported by the substantial evidence;
2. That this Court issue a peremptory writ of mandate declaring that one or more of the decision(s) rendered by Respondent on or about April 14, 2003, and any additional resolution of Respondent relating to, or dependent upon, the same are null and void and of no force and effect;
3. That this Court order Respondent to vacate and set aside each of the decisions made on or about April 14, 2003 and April 16, 2003, and each of the resolutions, administrative and legislative decisions of Respondent with respect thereto;
4. That there be issued a writ of mandate ordering Respondent to prepare a new or subsequent MEIR within a reasonable date from the issuance of said writ of mandate, in the event that City, as Real Parties, wish to pursue the Project;
5. That until such time as Petitioner's above claims can be adjudicated by this Court, Respondent and Real Parties be enjoined, restrained and/or the April 14, 2003 and April 16, 2003 decisions of Respondents be stayed from taking effect to preserve the status quo and prevent frustration of Petitioners' and the public's rightful claims and request for judicial review.
6. That Petitioners be awarded their reasonable costs incurred in this action, including attorneys' fees under Cal. Code of Civil Procedure § 1021.5 brought in the public interest; and
7. For such other and further relief as the Court deems just and proper.

Dated: February 22, 2004

LAW OFFICE OF CRAIG A. SHERMAN

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CRAIG A. SHERMAN  
Attorney for Petitioner  
**SPIRIT OF THE SAGE COUNCIL**

**VERIFICATION**

I, LEEONA KLIPPSTEIN, as a duly authorized representative of the petitioner organization in this action known as petitioner Spirit of the Sage Council, hereby verify this PETITION FOR WRIT OF MANDATE pursuant to California Code of Civil Procedure Section 446. The facts herein alleged are true of my own knowledge, except as to the matters which are based on information and belief, for which I believe to be true. I declare under the penalty of perjury under the laws of California that the above foregoing is true and correct and that this verification was executed on the below stated date in Moore County, North Carolina.

Dated: February 8, 2002

By: \_\_\_\_\_  
LEEONA KLIPPSTEIN  
for and on behalf of Petitioner  
SPIRIT OF THE SAGE COUNCIL