

Spirit of the Sage Council

30 North Raymond Avenue, Suite 302
Pasadena, California 91103

BIODIVERSITY

OAK VALLEY CEQA PETITION

SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF RIVERSIDE

SPIRIT OF THE SAGE COUNCIL, an)
unincorporated association,)
)
Petitioner,

CASE NO. 311214

V.

CITY OF CALIMESA AND DOES 1 – 10, Inclusive,
Respondents,

AMENDED PETITION FOR PEREMPTORY WRIT
OF MANDATE
(CEQA, Public Resources Code Section 21000 *et seq.*; California Planning and Zoning Law, Government Code, Section 65000 *et seq.*)

and
OAK VALLEY PARTNERS, L.P. and DOES 11 – 20,
Inclusive,

Real Parties
in Interest

Petitioner alleges through this Petition as follows:

THE PARTIES

1. Petitioner Spirit of the Sage Council (“Petitioner” or “Sage Council”) is an unincorporated non-profit association based in Pasadena, in Los Angeles County that receives a 501(c)(3) non-profit fiscal sponsorship from Social and Environmental Entrepreneurs, Inc., Malibu, California. Sage Council, including its members and supporters, some of whom reside in the County of Riverside, have a strong interest in the conservation of Riverside County’s flora and fauna (including threatened and endangered species), natural resources, ecosystems, open spaces, and quality of life

through wise planning and stewardship. Sage Council and its members and supporters enjoy and have a strong interest in preserving the integrity of, among other things, the area that is the subject of the Oak Valley Specific Plan. The decision of Respondent will have detrimental impacts on Sage Council, its members, and agents, who reside in the County of Riverside and/or visit the area of the Oak Valley Specific Plan. Sage Council includes its members, agents and individuals who protested Respondent’s action preceding the filing of this Petition. Sage Council provided comments and submitted letters via facsimile objecting to Respondent’s action here.

2. Respondent City of Calimesa (“Respondent” or “City”) is a local government municipality charged with complying with applicable provisions of state law, including the California Environmental Quality Act (“CEQA”) and the Planning and Zoning Law. The City Council of the City of Calimesa is the duly constituted legislative body and highest administrative body in the City

and is charged with the final duty of ensuring, among other things, that all applicable federal, state and city laws are fully and faithfully obeyed and implemented. Respondent City, through its City Council, certified an Addendum to a previously certified Environmental Impact Report for its approval of a General Plan Amendment, Pre-Zoning and Development Agreement for the annexation of 1,756 acres as part of the Oak Valley Specific Plan (“Project”), and adopting a Statement of Overriding Considerations.

3 Real Party in Interest Oak Valley Partners, L.P. (“Real Party”) is the proponent and developer of the Project.

4 Petitioner is ignorant of the true names and capacities of Respondents sued herein as DOES 1 through 10, inclusive, and Real Parties in Interest sued herein as 11 through 20, inclusive, and therefore sues these Respondents and Real Parties in Interest by such fictitious names. Petitioner will seek leave to amend the Petition, if necessary, to allege the true names and capacities when ascertained.

THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

5 In 1970, the California Legislature enacted CEQA, Public Resources Code §21000, et seq., as a means of forcing 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 proposed projects and to assure members of the public that their elected officials are making informed decisions. CEQA requires governmental authorities, such as the City, to seek feasible means to reduce or avoid significant environmental damage that otherwise could result from their actions. It limits agencies from approving projects with significant adverse impacts when feasible alternatives can substantially lessen such impacts.

6 The cornerstone of the CEQA process is the preparation of a draft and final Environmental Impact Report (“EIR”) by the public agency which proposes or approves a major project. The primary function of the EIR is to discuss the important environmental consequences, including cumulative effects, and to provide the agency and the general public with mitigations and alternatives to the project that would have less serious environmental consequences.

THE PROJECT

7 The Project consists of approval of: the annexation of 1,714 acres; amendment of the City’s General Plan to replace the current Riverside County land use designation of “Adopted Specific Plan No. 216” with “Oak Valley Specific Plan” and Prezone the area to Specific Plan (S-P); modifications to the Oak Valley Specific Plan document to conform to an annexation to Calimesa; adoption of the Oak Valley Development Agreement including conditions of approval to conform to an annexation to Calimesa; and adoption by reference of an EIR and a Statement of Overriding Considerations. The Project relates to the proposed Oak Valley development, a proposed golf/recreation oriented master-planned community of single and multi-family residential, commercial, and recreational uses. The development will be located in Northern Riverside County between the Cities of Beaumont and Calimesa. The development consists of a 6,405-acre area, 5,830 acres are held by Real Party, with approximately 4,116 acres already within the City and another 1,714 acres annexed by the City as part of the Project. The annexed land is bounded by the Calimesa city limits on the north, Interstate 10 (I-10) on the east, a Southern California Gas Company easement and San Timeteo Canyon Road on the south, and San Timoteo Canyon Road on the west.

8 After receiving Real Party's predecessor's application for the Project, the City caused to be prepared an EIR under CEQA for approval of the Project. The EIR identified a number of significant and unavoidable impacts associated with the Project that could not be mitigated to below a level of significance, and adopted a Statement of Overriding Considerations. The unavoidable and unmitigatable impacts identified included but were not limited to the following:

- a) **Noise** – Noise related to future daily traffic volumes and general urban activities on the Project site will increase local noise levels on the Project site and surrounding areas;
- b) **Air Quality** – Cumulative long-term air quality will be degraded by increased traffic;
- c) **Wildlife** – Wildlife habitat will be destroyed;
- d) **Open Space /Conservation** – The Project site will be permanently converted from undeveloped open space to a planned community;
- e) **Cultural Resources** – It is anticipated that archaeological and paleontological resources may be encountered on the site and affected by the Project. The Project site also will be permanently converted, destroying the land's significance to affected indigenous Native Americans for cultural and religious purposes;
- f) **Agriculture** – Agricultural land will be lost; and
- g) **Circulation** – Cumulative impacts will occur on area and regional roadways.

9 On or about May 22, 1990, the EIR was certified by the County of Riverside, as the City had not yet been incorporated. At the same time, the Oak Valley Specific Plan was adopted, which caused an amendment to the County General Plan and a Zone Change in granting specific development rights for the project site in north Riverside County.

10. In 1990, the City of Calimesa was incorporated. Most of the Oak Valley Specific Plan area was included in the City boundaries. A 1,714-acre portion of the Specific Plan was not included in the incorporation but was located in the sphere-of-influence of the City of Beaumont.

11 For various reasons, the Project was held in abeyance for several years thereafter. Following the acquisition of the property by Real Party, the Project was renewed. The City initiated an annexation proposal that consists of a 1,714-acre site owned by Real Party, located southwest of Interstate 10, and north and east of San Timeteo Canyon Road.

12 In connection with the proposed annexation, on or about December 18, 1997, an "Initial Study/Addendum" to the 1990 EIR was prepared ("Addendum") to address the Project. Phase 1 project area was also given development assurances with density guarantees, and was largely or completely exempt from further environmental review including surveys, studies, or mitigation measures, according to Condition No. 10 of the Development Agreement. The purpose of the Addendum was to determine whether, as a result of changes in the Project since 1990, changes in circumstances, or substantial new information, a subsequent or supplemental EIR was required by CEQA. The Addendum incorporated by reference the 1990 EIR and technical appendices, the Oak Valley Specific Plans 216 (Phase 1) and 216-A (Phases 2 through 5), the associated resolutions, and 1994 Calimesa General Plan and associated EIR.

13 The Addendum concluded that "there is no evidence that an analysis of the 1,714-acre portion of the Oak Valley Specific Plan proposed to be annexed to the City of Calimesa requires major changes to EIR No. 229."

14 On or about March 16, 1998, based on the prior EIR and on the Addendum, the City approved the Project, approved the Addendum and determined that preparation of a supplemental EIR, including limited public review and comment, was not required for any of the five phases. Development is intended to be implemented in five phases for nine planning areas over thirty years.

FIRST CAUSE OF ACTION

(Failure to Prepare A Subsequent Environmental Impact Report or A Supplement to Environmental Impact Report)

15 Petitioner hereby realleges and incorporates by reference ¶¶1-14, above, and ¶¶16-71, below, as though fully set forth herein.

16 Where an EIR previously has been prepared for a project, CEQA requires that a *subsequent* EIR be required where:

- a) Substantial changes are proposed in the project which will require major revisions of the EIR;
- b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or
- c) New information, which was not known and could not have been known at the time the EIR was certified as complete, becomes available.

17 Given the passage of eight years from the time of certification of the EIR, a subsequent EIR was required for this Project under CEQA because substantial changes are proposed in the Project which would require major revisions in the EIR. These changes include but are not limited to a substantial increase in the projected population to reside at the Oak Valley development. As a result, there is a significant understatement of the Project's demographics that renders erroneous the assumptions throughout the Oak Valley Specific Plan and EIR regarding density, circulation, infrastructure, community services, schools, and other issues.

18 Furthermore, the data and technical studies upon which the EIR was based were prepared during the 1980's, and approval of the EIR by Riverside County was based largely on assumptions that no longer apply. The original EIR used a thirty-year buildout period to analyze the development's impacts on a number of environmental conditions. The first eight years of that buildout period have passed, while regionally significant cumulative impacts to those environmental conditions have progressively increased. As a result of the above, substantial changes have occurred in the baseline conditions and circumstances under which the Project is being undertaken, and significant new information regarding environmental impacts and mitigation measures has become available that was not known and could not have been known at the time the EIR was certified.

19 The changes in circumstances and the new information include, but are not limited to:

- 1) substantial increases in the projected population of the region;
- 2) substantial increases in the actual population and in traffic levels in the region, caused by residential and commercial development in San Bernardino and Riverside Counties;
- 3) numerous animal and/or plant species have become protected through federal listing as endangered and/or threatened under the Endangered Species Act;

- 4) loss of natural open spaces and significant habitat acres;
- 5) Multiple Species Habitat Conservation Plan efforts have progressed since the EIR was certified;
- 6) cumulative impacts on the environment in association with numerous land development projects that have been approved or proposed since 1990; and
- 7) advances in mitigation and mitigation monitoring techniques have occurred.

20 In addition, in approving the Project, Respondent also adopted by reference the Statement of Overriding Considerations and other findings made by the County of Riverside in certifying the original EIR. However, the facts underlying the Statement of Overriding Considerations and findings similarly have changed significantly in the nearly ten years since they were made.

21 In addition, a supplemental EIR was necessary to identify, develop and implement adequate mitigation measures and an adequate mitigation monitoring plan to ensure that mitigation measures contained in the EIR are implemented effectively. Because a supplemental EIR was not prepared, there was inadequate analysis of mitigation measures that might reduce the Project's impacts and an inadequate analysis of the Mitigation Monitoring Plan that was added part of the Project.

22 In addition, CEQA Guidelines, Section 15163, requires a *supplement* to an EIR where:

- a) Any of the conditions described in CEQA Section 15162 would require the preparation of a subsequent EIR;
- and
- b) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the changed situation.

23 In the unlikely event a *subsequent* EIR was not required by CEQA because only minor changes were necessary to make the previous EIR apply to the changed situation, then for the same reasons discussed in Paragraphs 17 through 21 above, at minimum, a *supplement* to the EIR was required in order to address those changed conditions described in CEQA section 15162.

24 Respondent's failure to prepare a subsequent EIR or supplement to the EIR was legally erroneous, not based on substantial evidence, and an abuse of discretion and a violation of CEQA.

SECOND CAUSE OF ACTION

Certification of Addendum Based on Inadequate Initial Study)

25 Petitioner hereby reallege and incorporates by reference ¶¶1-24, above, and ¶¶26-71, below, as though fully set forth herein.

26 Under CEQA, where it is not certain to the project proponent whether a supplemental EIR is required, a project proponent may prepare an Initial Study in order to make this determination. If the Initial Study indicates sufficient changes in the project, changed circumstances, or new information, the project proponent must prepare a supplemental EIR.

27 In order to be legally adequate under CEQA, such an Initial Study must contain documentation of the factual basis for concluding that a supplemental EIR is not required. An Initial Study must disclose data or evidence upon which the persons preparing the study relied. An Initial Study containing mere conclusions, including unsupported assumptions regarding the

effectiveness of the mitigation measures, will not satisfy the requirements of CEQA.

28 The Initial Study/Addendum prepared by Respondent in connection with the Project here does not meet the requirements of CEQA. The Initial Study/Addendum is flawed and defective because it fails to adequately and with sufficient data analyze impacts of the project on, inter alia, endangered and/or threatened plants, wildlife, and essential habitat; oak woodlands, wetlands, and riparian woodlands; traffic; water; infrastructure and community services; and other impacts of the five phases of the development.

29 The Initial Study/Addendum also failed to adequately analyze the project's cumulative impacts of the Project in conjunction with other existing and future conditions and projects in the region.

30 Because of the above-described flaws, the Initial Study/Addendum lacked substantial evidence to support its conclusion that a supplemental EIR was not necessary. Respondent's reliance on an Initial Study/Addendum that was inadequate under CEQA was legally erroneous, not based on substantial evidence, and an abuse of discretion and a violation of CEQA.

THIRD CAUSE OF ACTION

(Failure To Make Mandatory Findings of Significance)

31 Petitioner hereby realleges and incorporates by reference ¶¶1-30, above, and ¶¶32-71, below, as though fully set forth herein.

32 Section 15065(a) of the CEQA Guidelines requires an agency to make "mandatory findings of significance" when, *inter alia*, "[t]he project has the potential to... substantially reduce the habitat of a fish or wildlife species... [or] [r]educe the number or restrict the range of a rare or endangered plant or animal."

33 When a mandatory finding of significance is required, the impacts are considered significant by definition, and a subsequent or supplemental EIR must examine these impacts as part of its evaluation of the Project's environmental impacts.

34 The Project will substantially reduce and restrict the habitat and range of rare and endangered wildlife and plant habitat and populations, including but not limited to the San Bernardino kangaroo rat, the Coastal California gnatcatcher, the Southwestern willow flycatcher, the California red-legged frog, the Stephen's kangaroo rat, the Least Bell's vireo, the Southwestern arroyo toad, and the Quino checkerspot butterfly. Because these impacts triggered CEQA's "mandatory findings" of significance, a supplemental or subsequent EIR was required.

FOURTH CAUSE OF ACTION

(Failure of Initial Study to Adequately Analyze or Address Development Agreement)

35 Petitioner hereby realleges and incorporates by reference ¶¶1-34, above, and ¶¶36-71, below, as though fully set forth herein.

36 Real Party sought approval of a Development Agreement with the City which purportedly would provide Real Party with certain entitlements or additional entitlements with respect to the development rights on the Project site, and purportedly "locks in" the General Plan land use designations and zoning for the Oak Valley development over the term of the Development Agreement. The Development Agreement purportedly would provide the City with certain assurances and conditions regarding the manner in which the Oak Valley development will proceed, including issues related to densities, infrastructure and improvements.

37 No specific plan may be adopted or amended unless the proposed plan or amendment is consistent with the City's General Plan. In addition to the annexation, the Project included an amendment of the General Plan, modifications to the Oak Valley Specific Plan, and adoption of the Oak Valley Development Agreement.

38 The Initial Study/Addendum did not analyze the Development Agreement or its potential environmental impacts on the Project site and on the region. Moreover, prior to its adoption by Respondent, the Development Agreement was not circulated for public comment in its final form and was not sufficiently circulated for public review and comment.

39 The failure to analyze the Development Agreement was legally erroneous, not based on substantial evidence, and an abuse of discretion and a violation of CEQA. Respondent should be required to prepare and circulate new CEQA documentation that adequately and completely analyzes the Development Agreement and its potential environmental impacts.

FIFTH CAUSE OF ACTION

(Failure to Require Area Plan Approval and Associated Environmental Studies and Surveys Prior to Subdivision Map Approval for Phase 1 of Oak Valley Development)

40 Petitioner hereby realleges and incorporates by reference ¶¶1-39, above, and ¶¶41-71, below, as though fully set forth herein.

41 Respondent approved, as part of the Project, the Development Agreement, which included as Exhibit D thereto certain "Conditions of Approval." Condition of Approval No. 10 required preparation of the following studies and reports, among others: a biological resource survey and management plan prepared in consultation with the California Department of Fish and Game; a traffic study consistent with the Katz Congestion Management Act; an update on groundwater demand and water availability; and a report on development which has occurred in Oak Valley.

42 However, Condition of Approval No. 10, by its own language, does not apply to Phase 1 of the Oak Valley development. Condition of Approval No. 10 provides that "[p]rior to the approval of the first subdivision map *for an area outside of Phase 1*, an Area Plan shall be submitted to and approved by the City Council... accompanied by" the studies discussed in Paragraph 41, above. The studies therefore would only be required prior to subdivision map approval of lands within Phases 2 through 5 of the Oak Valley development.

43 Respondent did not explain in the Initial Study/ Addendum why the environmental review requirements in Condition of Approval No. 10 were not applied to Phase 1.

44 The failure to apply the requirements of all the Conditions of Approval, or to explain the lack of application of these requirements, including Condition of Approval No. 10, to Phase 1 of the Oak Valley development was legally erroneous, predecisional and biased, not based on substantial evidence, and an abuse of discretion and a violation of CEQA.

SIXTH CAUSE OF ACTION

(Improper Deferral of Environmental Analysis of Phases 2 through 5 of Oak Valley Development)

45 Petitioner hereby realleges and incorporates by reference ¶¶1-44, above, and ¶¶46-71, below, as though fully set forth herein.

46 CEQA requires the preparation of an EIR whenever substantial evidence indicates that a project may have a significant impact on the environment. The CEQA Guidelines define “substantial evidence” as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (CEQA Guidelines, Section 15384(a).)

47 Substantial evidence exists to indicate that the entire Oak Valley development, and each phase thereof, will have a significant impact on the environment.

48 An EIR was certified in 1990 for the Oak Valley Specific Plan. That EIR was incorporated by reference into the Initial Study/Addendum for the Project approved by Respondent.

49 Despite the substantial evidence of significant environmental impacts from the entire Oak Valley development, Respondent has not prepared or caused to be prepared an EIR analyzing these impacts on the entire Oak Valley development. Instead, Respondent has certified the 1990 EIR (incorporated by reference into the Initial Study/Addendum) that, in addition to being stale (see paragraphs 15 through 24, above), addresses potential impacts only of Phase 1 of the Oak Valley development, segments the project, fails to analyze the cumulative impacts of all five phases of the development, and defers analysis of impacts of Phases 2 through 5 to later EIR’s.

50 Analysis of project’s environmental impacts is required under CEQA at the earliest feasible time in the planning process, even though more detailed environmental review may be necessary later, so that those impacts may be identified, analyzed, and mitigated to the fullest extent possible before it becomes too late in the planning process to do so.

51 Respondent’s certification of the 1990 EIR (incorporated by reference in the Initial Study/Addendum) improperly deferred analysis of Phases 2 through 5 of the Oak Valley development to later EIR’s. Respondent was required under CEQA to prepare, at a minimum, a program EIR, a master EIR, or a tiered EIR, that analyzes the impacts of the entire Oak Valley development, and not merely Phase 1. It is possible to determine the general impacts of the entire Oak Valley development, and a knowledge of such impacts is critical to sound program-level and regional planning.

52 The failure to analyze at least the program-level environmental impacts of the entire Oak Valley development was legally erroneous, not based on substantial evidence, and an abuse of discretion and a violation of CEQA. Respondent should be required to prepare an EIR that adequately and completely analyzes the potential environmental impacts of the entire Oak Valley development, Phases 1 through 5.

SEVENTH CAUSE OF ACTION

(Failure to Properly Circulate Initial Study/Addendum to Interested Parties)

53 Petitioner hereby realleges and incorporates by reference ¶¶1-52, above, and ¶¶54-71, below, as though fully set forth herein.

54 Prior to approval of the Project, Real Party was required under CEQA to consult with, obtain comments from, and circulate the Initial Study/Addendum to public agencies with jurisdiction over natural resources within the Project area.

55 The California Department of Fish & Game (“DFG”) has jurisdiction over wildlife and other

resources within the Project area.

56 Respondent failed to properly notice DFG of Respondent's approval of the project, and failed to circulate the Initial Study/Addendum to DFG for review and comment sufficiently before approval of the Project.

57 In addition, prior to approval of the Project, Real Party was required to solicit comments from and circulate the Initial Study/Addendum to affected parties and entities.

58 The Project area is within the ancestral territory of the following affected California Indian Tribes: Shoshone Gabrielinos, Luisenos, and Serranos. These Tribes were not contacted or consulted regarding the Project's impacts on cultural resources and regarding appropriate avoidance and/or mitigation measures, including proper treatment of human remains that may be encountered during ground disturbance activities.

59 The failure to properly circulate the Initial Study/Addendum and to consult with and solicit comments from DFG and the affected Indian Tribes discussed above was legally erroneous, not based on substantial evidence, and an abuse of discretion and a violation of CEQA.

EIGHTH CAUSE OF ACTION

(Inconsistency of the Project with City of Calimesa General Plan, in Violation of Planning and Zoning Law)

60 Petitioner hereby realleges and incorporates by reference ¶¶1-59, above, and ¶¶61-71, below, as though fully set forth herein.

61 The California Planning and Zoning Law, Government Code, Section 65000 et seq., requires specific plans and amendments to general plans to be consistent with the local governing body's general plan. When the Project was approved, the City of Calimesa had in place a general plan (the "General Plan"), which included a Land Use Element, as well as goals and policies. The General Plan is the blueprint or "constitution" governing land uses within the City of Calimesa.

62 The Land Use Element of the General Plan contains the following goals and policies, among others: "Preserve and enhance the rural atmosphere and quality of life in Calimesa"; "Encourage protection of the natural environment through good planning and design"; "Protect existing stable residential neighborhoods through maintenance and upkeep"; "Work with adjacent cities and communities on land use planning for the preservation of the rural community character of the area"; "Ensure, plan and provide adequate infrastructure for all new development, including but not limited to integrated infrastructure planning, financing and implementation"; and "Conserve and protect significant stands of mature trees, native vegetation, and wildlife habitat within the planning area."

63 The Land Use Element of the General Plan also contains the following additional goals and policies: "Consider annexation of land within the City's sphere of influence (i.e., portions of Oak Valley not included in the City, area along San Timeteo Canyon Road to County Line Road) in order to protect natural resources, and provide reasonable growth for Calimesa"; "Development shall be prohibited in areas identified to contain sensitive biological resources and habitats, cultural resources, groundwater recharge areas, prominent ridgelines, unless adequate protection and/or preservation is provided"; and "Development shall be constructed with adequate water supplies."

64 Because of the Project's deficiencies discussed in the First through Seventh Causes of Action, above, including the failure to adequately analyze and address the Project's impacts on various resources and environmental conditions, the Project, including the amendment of the General Plan and the adoption of the Oak Valley Specific Plan, was inconsistent with the goals and policies of the General Plan.

65 The Project's inconsistency with the General Plan violates the Planning and Zoning Law, was legally erroneous, not based on substantial evidence, and an abuse of discretion.

PRAYER FOR RELIEF

66 By reason of the foregoing, Respondent has violated the California Environmental Quality Act and the Planning and Zoning Law by approving the Project and by certifying the Initial Study/Addendum for the Project, notwithstanding the fatal defects described above.

67 Respondent's approval of the Project and the Initial Study/Addendum 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.

68 Petitioner has a clear, present and beneficial right to the proper performance by Respondent of its duties under CEQA and the Planning and Zoning Law. Petitioner is 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.

69 Petitioner has performed, or is excused from performing, all conditions precedent to the filing of this Petition, having raised each and every breach of duty which was required to be raised with Respondent prior to the filing of this Petition through comments submitted to Respondent and the City of Calimesa Planning Commission.

70 Petitioner has no plain, speedy or adequate remedy in the ordinary course of the law other than the relief herein sought.

71 On April 14, 1998, Petitioner sent Respondent and Real Party In Interest, by United States Mail, and respondent's counsel, by facsimile, notice that this action would be filed in Riverside County Superior Court, as required by Public Resources Code section 21167.5. That notice identified the subject matter and the project involved in this action. A copy of that notice is attached hereto as Exhibit A.

WHEREFORE, Petitioner respectfully prays for judgment as follows:

1 That this Court find that, by approving the Project and by certifying the Initial Study/Addendum, Respondent has violated the California Environmental Quality Act and the Guidelines promulgated thereto and the Planning and Zoning Law;

2 That this Court issue its Peremptory Writ of Mandate declaring that the decision rendered by Respondent on or about March 16, 1998, and any resolution of Respondent with respect thereto, are null and void and of no force and effect;

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- 3 That this Court order Respondent to vacate and set aside the purported decision made on or about March 16, 1998, and any resolution of Respondent with respect thereto;
- 4 That there be issued a Writ of Mandate ordering Respondent to prepare an Supplemental Environmental Impact Report or other legally adequate CEQA document, and to comply with the Planning and Zoning Law, in the event Real Party wishes to pursue the Project;
- 5 That until such time as Respondent and Real Party comply with CEQA and the Planning and Zoning Law with respect to this Project, such parties be enjoined and restrained from taking any physical actions toward development or completion of this Project;
- 6 That Petitioner be awarded its reasonable costs incurred in this action, including attorneys' fees; and
- 7 For such other and further relief as the Court deems just and proper.

Dated: December 10, 1998

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