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10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN DIEGO--HALL OF JUSTICE (CENTRAL)

13
14 SIERRA CLUB,
15 Plaintiff and Petitioner,
16 vs.
17 COUNTY OF SAN DIEGO and DOES 1 through
18 100,
19 Defendants and Respondents;
20 DOES 101 through 1,000,
21 Real Parties in Interest.

CASE NO. 37-2012-00101054-CU-TT-CTL

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND PETITION FOR WRIT OF
MANDATE UNDER THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT AND
OTHER LAWS**

22
23
24 "[T]he 2050 greenhouse gas emissions reduction goal
25 represents the level scientists believe is necessary to
26 reach levels that will stabilize climate...."¹
27

28 ¹ California Air Resources Board, *Climate Change Scoping Plan*, p. 4 (Dec. 2008).

1 Plaintiff and Petitioner SIERRA CLUB (“Petitioner”) alleges as follows in this Verified
2 Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate under the California
3 Environmental Quality Act and Other Laws:

4 **Introduction**

5 1. While recognizing that “[c]limate change is one of the most urgent global issues” with
6 effects including “loss of species” and human hunger and death, the San Diego region’s largest and
7 most powerful public agency has taken the position that it will not do its part to stabilize the climate.
8 Instead, Respondent COUNTY OF SAN DIEGO (“COUNTY”) makes decisions without considering
9 either minimum climate stabilization requirements or feasible mitigation measures, thus contributing
10 to the ultimate human catastrophe: climate destabilization.

11 2. This action challenges such decisions by COUNTY, including the following decisions
12 which Petitioner is informed and believes and thereon alleges were made or were purportedly made by
13 COUNTY on or about June 20, 2012:

14 A. Approval of Guidelines for Determining Significance for Climate Change (“GHG
15 Significance Threshold”);

16 B. Adoption of a Climate Action Plan (“Climate Action Plan” or “CAP”) that was
17 required to mitigate the otherwise significant adverse environmental impacts resulting from COUNTY’s
18 2011 General Plan Update; and

19 C. Adoption of an Addendum to the County of San Diego General Plan Update
20 Program EIR SCH 2002111067 (“Addendum”).

21 3. The GHG Significance Threshold, the CAP, and the Addendum (collectively, “Project”)
22 independently and together fail to support achieving minimum climate stabilization requirements; and
23 were approved without substantial supporting evidence and without properly involving or notifying the
24 public.

25 4. In addition to turning a blind eye to the science of climate-stabilization criteria,
26 COUNTY failed to keep its own promises to the public. Specifically, the Climate Action Plan fails to
27 meet the requirements of Mitigation Measure CC-1.2, which COUNTY promised and relied upon in
28

1 approving the 2011 County General Plan Update Final Environmental Impact Report (“General Plan
2 EIR”).

3 **Parties**

4 5. Petitioner was founded in 1892 and is the nation’s oldest grassroots environmental
5 organization. Petitioner is a non-profit organization incorporated under the laws of the State of
6 California and has its headquarters in San Francisco, California. It has more than 700,000 members
7 nationwide, including more than 150,000 members in California and more than 12,000 members in the
8 San Diego and Imperial Counties. Petitioner is dedicated to exploring, enjoying, and protecting the wild
9 places of the earth; to practicing and promoting the responsible use of the earth’s ecosystems and
10 resources; to educating and enlisting humanity to protect and restore the quality of the natural and
11 human environment; and to using all lawful means to carry out these objectives. Petitioner’s concerns
12 encompass climate stabilization, coastal issues, land use, transportation, wildlife and habitat
13 preservation, and parks and recreation. The interests that Petitioner seeks to further in this action are
14 within the purposes and goals of the organization. Petitioner and its members have a direct and
15 beneficial interest in the Respondents’ compliance with the California Environmental Quality Act
16 (“CEQA”) and its own mitigation measures. These interests will be directly and adversely affected by
17 adoption of the Corrective Action Plan (“CAP), the Greenhouse Gas (“GHG”) Significance Threshold,
18 and the Addendum which violate provisions of the law as set forth herein and which would cause
19 substantial and irreversible harm to the natural environment, including human health. The maintenance
20 and prosecution of this action will confer a substantial benefit on the public by protecting the public
21 from the environmental and other harms alleged herein.

22 6. COUNTY is a public agency under Section 21063 of the Public Resources Code.
23 COUNTY is authorized and required by law to hold public hearings, to determine the adequacy of and
24 certify environmental documents prepared pursuant to CEQA, and to take other actions in connection
25 with the approval of projects within its jurisdiction.

26 7. The true names and capacities of the Respondents identified as DOES 1 through 100 and
27 Real Parties in Interest identified as DOES 101 through 1,000 are unknown to Petitioner, who will seek
28 the Court’s permission to amend this pleading in order to allege the true names and capacities as soon

1 as they are ascertained. Petitioner is informed and believes and on that basis alleges that each of the
2 fictitiously named Respondents 1 through 100 has jurisdiction by law over one or more aspects of the
3 proposed project that is the subject of this proceeding and that each of the fictitiously named Real
4 Parties in Interest 101 through 1,000 either claims an ownership interest in the proposed project or has
5 some other cognizable interest in the proposed project.

6 **Background Information**

7 8. The 2011 General Plan EIR identified significant impacts related to greenhouse gas
8 (“GHG”) emissions. In certifying the General Plan EIR, and after extensive public comment and
9 review, COUNTY made findings that the mitigation measures identified and described therein would
10 be implemented. Specifically, COUNTY found that adoption of Mitigation Measure CC-1.2 would
11 mitigate potentially significant climate-change impacts to a level of insignificance.

12 9. As a result of extensive public comment, including from the office of the Honorable
13 Edmund G. Brown, Jr., then-Attorney General of the State of California, Mitigation Measure CC-1.2
14 required COUNTY to prepare “comprehensive and enforceable GHG emissions reductions measures.”
15 In particular, COUNTY committed itself (on page 7-80 of the General Plan EIR) to: “Prepare a County
16 Climate Change Action Plan with an update baseline inventory of greenhouse gas emissions from all
17 sources, more detailed greenhouse gas emissions reduction targets and deadlines; and a comprehensive
18 and enforceable GHG emissions reduction measures that will achieve a 17% reduction in emissions
19 from County operations from 2006 by 2020 and a 9% reduction in community emissions between 2006
20 and 2020. Once prepared, implementation of the plan will be monitored and progress reported on a
21 regular basis.”

22 10. On April 27, 2012, COUNTY’s Planning Commission held a hearing on the Draft
23 Climate Action Plan (“Planning Commission Hearing”). Petitioner is informed and believes and
24 thereon alleges that although adoption of the GHG Significance Threshold was also considered by the
25 Planning Commission at the hearing, the matter was not in fact on the Planning Commission’s agenda
26 for the hearing.

27 11. On June 20, 2012, COUNTY’s Board of Supervisors held a hearing on the “County of
28 San Diego Climate Action Plan” (“Board of Supervisors Hearing”). Petitioner is informed and believes

1 and thereon alleges that although both the CAP and the GHG Significance Threshold were discussed
2 at the hearing, on the agenda the matter was described as if the GHG Significance Threshold were
3 merely one aspect of the CAP and not itself subject to a public process, as required by CEQA. In
4 addition, Petitioner is informed and believes and thereon alleges that the agenda referenced
5 “environmental findings included in Attachment C” but did not reference adoption or consideration of
6 an Addendum to the County of San Diego General Plan Update Program EIR (also known as the
7 Addendum).

8 12. Representatives of Petitioner appeared at the Planning Commission Hearing and the
9 Board of Supervisors Hearing, and submitted written and oral comments. Representatives of Petitioner
10 and others also met in person with representatives of COUNTY before the hearings in an attempt to
11 encourage compliance with the law short of litigation.

12 **Notice Requirements and Time Limitations**

13 13. A Notice of Determination for the Project was filed in the Office of the County Clerk
14 for the County of San ^{Diego} ~~Bernardino~~ on or around ^{June 20,} ~~May 3,~~ 2012. Alternatively, no Notice of Determination
15 for the Project has been filed.

16 14. This proceeding is being commenced not more than 30 days after the Notice of
17 Determination’s filing, as required by Public Resources Code Section 21167(c).

18 15. Petitioner has caused a Notice of Commencement of Action to be served on
19 Respondents, as required by Public Resources Code Section 21167.5. A true and correct copy of the
20 Notice of Commencement of Action is attached to this pleading as Exhibit “A.”

21 16. Petitioner will have caused a copy of this pleading to be served on the Attorney General
22 not more than ten days after the commencement of this proceeding, as required by Public Resources
23 Code Section 21167.7 and Code of Civil Procedure Section 388.

24 **Jurisdiction and Exhaustion of Administrative Remedies**

25 17. Petitioner seeks review by and relief from this Court under Public Resources Code
26 Section 21168 or 21168.5, as applicable; and Code of Civil Procedure Sections 1060 *et seq.* and 1084
27 *et seq.*, among other provisions of law.
28

1 18. Petitioner has satisfied each and every exhaustion-of-remedies requirement that must
2 be satisfied in order to maintain this proceeding. In particular:

3 A. The violations of law alleged in this proceeding were identified for Respondents
4 orally or in writing by Petitioner or by one or more other persons (if not by both) prior to the close of
5 the public hearing on the Project, as required by Public Resources Code Section 21177(a). By way of
6 example and not limitation, Petitioner submitted at least two comment letters prior to the close of the
7 final city council hearing on the Project.

8 B. Petitioner objected to the Project's approval prior to the close of the public
9 hearing on the Project, as required by Public Resources Code Section 21177(b). By way of example
10 and not limitation, Petitioner submitted at least two comment letters prior to the close of the final city
11 council hearing on the Project.

12 C. Any and all available appeals of the Project's approval were pursued, and
13 Respondents' approval of the Project is now final.

14 19. Alternatively and additionally, neither Public Resources Code Section 21177(a)-(b) nor
15 any other exhaustion-of-remedies requirement may be applied to Petitioner.

16 20. Respondents' conduct in approving the Project and purporting to comply with CEQA
17 constitutes a prejudicial abuse of discretion because, as alleged in this pleading, they failed to proceed
18 in the manner required by law and made findings not supported by substantial evidence.

19 21. Petitioner has no plain, speedy, adequate remedy in the ordinary course of law, since its
20 members and other members of the public will suffer irreparable harm as a result of Respondents'
21 violations of CEQA and other laws. Respondents' approval of the Project also rests on the failure to
22 satisfy a clear, present, ministerial duty to act in accordance with those laws. Even when Respondents
23 are permitted or required by law to exercise their discretion in approving projects under those laws, they
24 remain under a clear, present, ministerial duty to exercise their discretion within the limits of and in a
25 manner consistent with those laws. Respondents have had and continue to have the capacity and ability
26 to approve the Project within the limits of and in a manner consistent with those laws, but Respondents
27 have failed and refuse to do so and have exercised their discretion beyond the limits of and in a manner
28 that is not consistent with those laws.

1 26. Petitioner is further informed and believes and thereon alleges that Respondents'
2 decision to approve the GHG Significance Threshold is not supported by findings. The document
3 entitled "Environmental Findings" located on COUNTY's website states that the findings were made
4 "relative to the County of San Diego Climate Action Plan." The GHG Significance Threshold is not
5 referenced therein.

6 27. Petitioner is further informed and believes and thereon alleges that even if the findings
7 related to the CAP had related to the GHG Significance Threshold, the findings were not supported by
8 substantial evidence in light of the whole record.

9 28. The scientific community recognizes that dangerous anthropogenic interference ("DAI")
10 within the climate system will not be avoided by achieving targeted 2020 reductions alone. Rather, the
11 2020 targets are merely a single point on an established trajectory (of emissions as a function of year)
12 which results in a level of accumulated GHG emissions in the atmosphere through the year 2050. The
13 scientific consensus is that, by 2050, GHG emissions must be *at least* reduced to 80% below 1990
14 levels and therefore that adherence to a now seven year old Executive Order is a minimum climate
15 stabilization requirement.

16 29. As the Honorable Kamala D. Harris, California Attorney General, has explained,
17 "Executive Order S-3-05 is an official policy of the State of California, established by a gubernatorial
18 order in 2005, and designed to meet the environmental objective that is relevant under CEQA (climate
19 stabilization)."²

20 30. In connection with the Project, Respondents acknowledge the targets established in the
21 Executive Order and the developed emissions forecasts for 2035 necessary to reach 2050 GHG
22 emissions reductions, but admits the CAP "does not achieve the 49% reduction target." Put differently,
23 Respondents acknowledge that the GHG Significance Threshold does not in fact correlate with
24 scientifically established standards of significance--standards which require analysis of more than a
25 single point on the trajectory.

26
27
28 ² Letter from Hon. Kamala D. Harris, Attorney General, Timothy R. Patterson, Supervising Deputy
Attorney General, and Susan Durbin, Deputy Attorney General to Jerome Stocks, San Diego
Association of Governments, dated September 16, 2011, p. 8, fn. 21.

1 consider all reasonably foreseeable aspects of the project and all other projects in the area in its
2 consideration of the cumulative impacts of the project on the area. CEQA Guidelines § 15355.

3 38. An EIR must identify and focus on the significant environmental impacts of a proposed
4 project, giving due consideration to both its short and long-term effects. PUB. RES. CODE § 21100(a)-
5 (b); CEQA Guidelines § 15126. An EIR must similarly contain a “sufficient degree of analysis to
6 provide decision makers with information that allows them to make a decision which intelligently takes
7 account of environmental consequences.” CEQA Guidelines § 15151. A lead agency must eliminate
8 or substantially lessen the environmental impact of the project where feasible. CEQA Guidelines §
9 15126.4.

10 39. Mitigation measures are required by law to be “fully enforceable.” PUB. RES. CODE §
11 2181.6(b); CEQA Guidelines § 15126.4(a)(2). Mitigation measures must be definite and defined so that
12 their effectiveness is ascertainable. *See, e.g., San Franciscans for Reasonable Growth and City &*
13 *County of San Francisco* (1984) 151 Cal. App. 3d 61, 79.

14 40. Instead of “achieving” reductions required by Mitigation Measure CC-1.2, the CAP
15 expressly concedes it “does not ensure reductions. . . .”

16 41. Instead of providing “comprehensive and enforceable GHG emissions reductions
17 measures,” the CAP provides only ideas which may or may not be implemented, may or may not reduce
18 GHG emissions, and may or may not be reviewed by the County in a meaningful manner. The CAP
19 renders Mitigation Measure CC-1.2 ineffective and meaningless.

20 42. Petitioner submitted feasible mitigation measures which were not duly considered or
21 included in the CAP.

22 **Prayer**

23 FOR ALL THESE REASONS, Petitioner respectfully prays for the following relief against
24 Respondents and Real Parties in Interest (and any and all other parties who may oppose Petitioner in
25 this proceeding):

26 A. A judgment determining or declaring that Respondents failed to fully comply with
27 CEQA as it relates to the Project and that its approval was illegal in at least some respect, rendering the
28 approval null and void;

1 B. Injunctive relief prohibiting Respondents and Real Parties in Interest (and any and all
2 persons acting at the request of, in concert with, or for the benefit of one or more of them) from taking
3 any action on any aspect of, in furtherance of, or otherwise based on the Project unless and until
4 Respondents comply with all applicable provisions of CEQA, as determined by the Court;

5 C. Any and all other relief that may be authorized by CEQA but is not explicitly or
6 specifically requested elsewhere in this Prayer;

7 D. All legal fees and other expenses incurred in connection with this proceeding, including
8 but not limited to reasonable attorney fees as authorized by the Code of Civil Procedure and the
9 Government Code; and

10 E. Any and all further relief that this Court may deem appropriate.

11 Date: July 20, 2012.

Respectfully submitted,

12 BRIGGS LAW CORPORATION
13 LAW OFFICE OF MALINDA R. DICKENSON

14 By:

15 Mekaela M. Gladden

16 Attorneys for Plaintiff and Petitioner Sierra Club
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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT AND OTHER LAWS**

Exhibit "A"

BRIGGS LAW CORPORATION

*San Diego Office:
814 Morena Boulevard, Suite 107
San Diego, CA 92101*

*Telephone: 619-497-0021
Facsimile: 619-515-6410*

Please respond to: Inland Empire Office

*Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786*

*Telephone: 909-949-7115
Facsimile: 909-949-7121*

BLC File(s): 1713.00

20 July 2012

Board of Supervisors
County of San Diego
c/o Board Clerk Thomas Pastuszka
1600 Pacific Highway
San Diego, CA 92101

Via Facsimile Only to 619-531-6098

Re: Notice of Commencement of Action

Dear Clerk of the Board of Supervisors:

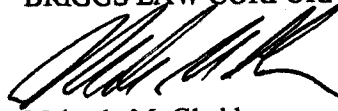
I represent Sierra Club and am sending this Notice of Commencement of Action on my client's behalf.

Please be advised that an action is to be commenced by my client in San Diego County Superior Court against your agency. The action will challenge your agency's actions on the Climate Action Plan on June 20, 2012 on the grounds that the decision violated the California Environmental Quality Act (PUB. RES. CODE § 21000 *et seq.*). The action may also challenge your agency's approval of the project based on one or more violations of other laws.

If you have any questions, please feel free to contact me.

Sincerely,

BRIGGS LAW CORPORATION



Mekaela M. Gladden



BRIGGS LAW CORPORATION

San Diego Office:
814 Morena Boulevard, Suite 107
San Diego, CA 92110

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Recipient's fax number: 619-531-6098

Date: July 20, 2012 BLC File: 1713.00

Total Pages (including cover sheet): 2

Sender: Mekaela Gladden

Sender's fax number: 619-515-6410 909-949-7121

Message: Notice of Commencement of Action

Original Document to Follow? Yes No

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Message: Notice of Commencement of Action

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I have read the foregoing VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE etc. and know its contents.

- Check applicable paragraph: I am a party to this action... I am an Officer a partner a member of SIERRA CLUB

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

- I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason.

Executed on July 20, 20 12, at San Diego, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Mike Bullock

Type or Print Name

Handwritten signature of Mike Bullock

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of, State of California. I am over the age of 18 and not a party to the within action; my business address is,

On, 20, I served the foregoing document described as

- by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list: by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

- BY MAIL: I deposited such envelope in the mail at, California. The envelope was mailed with postage thereon fully prepaid. As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at California in the ordinary course of business.

- Executed on, 20, at, California. (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee. Executed on, 20, at, California. (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. (Federal) declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

* (By MAIL, SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG) ** (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)