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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
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BY FAX

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF RIVERSIDE

14 CENTER FOR BIOLOGICAL)
15 DIVERSITY,)
16 Petitioner,)
17 vs.)
18 CITY OF BANNING,)
19 CITY COUNCIL OF THE CITY OF)
20 BANNING,)
21 and DOES 1-20,)
22 Respondents.)
23 SCC/BLACK BENCH, LLC)
24 and DOES 21-50,)
25 Real Parties in Interest.)
26)
27)

) Case No. *BIC* 460967
)
) **PETITION FOR WRIT OF MANDATE**
)
) [Code Civ. Proc. §§ 1085 and 1094.5; Pub. Res.
) Code § 21000, et seq. (California Environmental
) Quality Act)]

1 San Diego, California; Tucson and Phoenix, Arizona; Pinos Altos, New Mexico; Portland,
2 Oregon; and Washington, D.C. The Center and its members are dedicated to protecting the
3 diverse native species and habitats of western North America through science, policy,
4 education, and environmental law. Recognizing that global warming from society's emission
5 of greenhouse gases is one of the foremost threats to the Center's members and their
6 recreational, spiritual, vocational, aesthetic and other interests in the earth's environment,
7 biodiversity, and public health, the Center's Climate, Air, and Energy Program works to reduce
8 United States greenhouse gas emissions and promote sound conservation strategies in order to
9 protect these interests. Center members and staff reside and own property in Riverside County,
10 and use the Project site and surrounding areas for recreational, wildlife viewing, scientific, and
11 educational purposes. The Center and its members are directly, adversely and irreparably
12 affected, and will continue to be prejudiced by the Project and its components, as described
13 herein, until and unless this Court provides the relief prayed for in this petition.

14 7. Respondent CITY OF BANNING is a local governmental agency and political
15 subdivision of the State of California charged with the authority to regulate and administer land
16 use activities within its boundaries, subject at all times to the obligations and limitations of all
17 applicable state, federal, and other laws, including CEQA and the CEQA Guidelines. The City
18 is the CEQA lead agency for the EIR prepared for the Project.

19 8. Respondent CITY COUNCIL OF THE CITY OF BANNING is the legislative
20 body and the highest administrative body of the City.

21 9. Real Party in Interest SCC/BLACK BENCH, LLC ("Applicant") is the
22 applicant for the entitlements that constitute the Project. Based on Applicant's status as the
23 sole identified applicant and developer for the Project, and on Petitioner's information and
24 belief, Applicant adequately represents the interests of any and all other non-joined parties in
25 the Project.

26 10. The Center is currently unaware of the true names and capacities of Does 1
27 through 20, inclusive, and therefore sues those parties by such fictitious names. Does 1

1 through 20, inclusive, are agents of the City, state, or federal government who are responsible
2 in some manner for the conduct described in this petition, or other persons or entities presently
3 unknown to the Center who claim some legal or equitable interest in the Project that is the
4 subject of this action. The Center will amend this petition to show the true names and
5 capacities of Does 1 through 20 when such names and capacities become known.

6 11. The Center is currently unaware of the true names and capacities of Real
7 Parties in Interest, Does 21 through 50, inclusive. Does 21 through 50, inclusive, are persons
8 or entities presently unknown to the Center who claim some legal or equitable interest in the
9 Project that is the subject of this action. The Center will amend this petition to show the true
10 names and capacities of Does 21 through 50 when such names and capacities become known.

11 GENERAL ALLEGATIONS

12 12. The Project site consists of 1,488 acres of wildlands and grasslands at the
13 southern base of the San Bernardino Mountains abutting the San Bernardino National Forest to
14 the north. Approximately two-thirds of the site is located within the City of Banning. The
15 remainder is located within an unincorporated area of Riverside County. The Project site is on
16 the City's northern fringe, and is largely disconnected from the City's existing developed areas.

17 13. Surrounding land uses include undeveloped open space in San Bernardino
18 National Forest and San Bernardino County to the north, undeveloped open space to the west
19 and south, and undeveloped land and low density residential development to the east.

20 14. The eastern portion of the Project site is relatively flat, while the western
21 portion contains steep hillsides and canyons. Chaparral and grassland vegetation covers most
22 of the site (849.4 and 573.4 acres respectively), with smaller bands of oak woodland, oak
23 savannah, and alluvial fan scrub vegetation.

24 15. The Project consists of several components, including a Specific Plan that
25 would allow construction of up to 1,500 houses ("Specific Plan"), an amendment to the
26 Circulation Element of the City's General Plan to accommodate the Project ("General Plan
27 Amendment"), and a Tentative Tract map to allow 1,467 residential units ("Tentative Tract

1 Map 34001"). Off-site features of the Project include access roads and utilities. The Project
2 also includes a Memorandum of Understanding ("MOU") between the City and the Applicant
3 regarding road access to the Project site.

4 16. The City prepared a Draft Environmental Impact Report ("EIR") for the Project
5 and circulated it for public review and comment for 45 days beginning on March 30, 2006.

6 17. According to the Draft EIR, the Project would result in direct impacts to
7 approximately 766.8 acres of annual grassland, chaparral, oak savanna, oak woodland, and
8 alluvial fan scrub habitat.

9 18. The Project will be located within the South Coast Air Basin, which is
10 currently designated as a non-attainment area for ozone and particulate pollution standards.
11 The Project would result in significant air quality impacts even if the air mitigation measures
12 proposed in the EIR and adopted by the City are implemented, including significant emissions
13 of ozone precursors, nitrogen oxides, carbon monoxide, and particulates.

14 19. According to the EIR, the Project will generate 15,164 daily automobile trips.
15 The Project will also result in the use of energy for cooling, heating, and lighting during the
16 Project's lifetime. The Project's construction and operation phases will result in cumulatively
17 considerable emissions of carbon dioxide. Carbon dioxide is the principal "greenhouse gas"
18 whose presence and accumulation in the atmosphere contributes to global warming. This
19 warming will have real consequences for southern California, the United States, and the world,
20 because the warming will also result in additional sea-level rise that will inundate coastal areas,
21 changes in precipitation patterns, and public health impacts. Warming is likely to have
22 particularly harmful effects in southern California, including an earlier, diminished snowmelt
23 that could reduce water supplies, an increased frequency and intensity of droughts and fires,
24 and a loss of regional biodiversity. California is not only extremely vulnerable to the impacts
25 of global warming, but is also responsible for a significant portion of the U.S. and global
26 emissions of greenhouse gases.

27

1 20. On August 15, 2005, the City Planning Commission recommended to the City
2 Council that it approve the Project and certify the EIR.

3 21. On September 19, 2006, the City Council held a hearing on the Project. The
4 public presented testimony that was overwhelmingly opposed to the Project because of its
5 significant environmental impacts.

6 22. At a special meeting and public hearing on October 11, 2006, the City Council
7 approved the General Plan Amendment, approved the MOU, certified that the Final EIR for the
8 Project had been prepared in compliance with CEQA, adopted findings in support of the
9 Project, and adopted a Mitigation Monitoring and Reporting Program for the Project.

10 23. At a continued public hearing on October 24, 2006, the City Council approved
11 the Specific Plan and Tentative Tract Map 34001.

12 24. On October 27, 2006, the City filed a Notice of Determination for the Project
13 stating that the Project will have a significant effect on the environment, that an EIR was
14 prepared for the Project pursuant to CEQA, that mitigation measures were made a condition of
15 approval for the Project, that a Statement of Overriding Considerations was adopted for the
16 Project, and that findings were made pursuant to CEQA.

17 25. As a result of the City's approval of the Project, the Center will suffer great and
18 irreparable environmental harm as described herein. Petitioner has no adequate remedy at law
19 for this irreparable harm.

20 26. The Center has exhausted all administrative remedies by submitting written
21 comments to the City prior to the Project's approval and appearing at the public hearings on
22 the Project to request compliance with CEQA and the completion of full and adequate
23 environmental review. All issues raised in this petition were raised before Respondents by the
24 Center, other members of the public, or public agencies prior to approval of the Project.

25 27. The Center has complied with Public Resources Code section 21167.5 by prior
26 service of a notice upon the City indicating its intent to file this Petition. Proof of Service of
27 this notification, with the notification, is attached as Exhibit A.

1 35. The EIR did not include meaningful analysis of the Project's emission of
2 carbon monoxide (CO), ozone-forming volatile organic compounds (VOCs), oxides of
3 nitrogen (NO_x), and particulates (PM₁₀).

4 36. The EIR lacked analysis of the environmental and public health implications
5 of the Project's admittedly significant air quality impacts.

6 37. The EIR contained no analysis of the Project's direct, indirect, or cumulative
7 impacts related to the emission of microparticulate pollution (PM_{2.5}).

8 38. Emissions were underestimated in the modeling contained in the EIR.

9 39. The EIR fails to mention the potential for sensitive receptors at the parks,
10 school site and numerous trails near the site to be exposed to levels of CO, VOC, NO_x, and
11 PM₁₀ in excess of standards and to other air pollutants not analyzed in this document such as
12 benzene and PM_{2.5}.

13 40. The EIR does not analyze South Coast Air Quality Management District's
14 Local Thresholds of Significance.

15 **Global Warming Impacts**

16 41. The EIR is inadequate because it fails to contain an analysis of the Project's
17 greenhouse gas emissions and global warming impacts. The Project will result in foreseeable
18 and quantifiable emissions of carbon dioxide and other greenhouse gases during both
19 construction and the lifetime of the Project from sources including but not limited to vehicles
20 and the heating, cooling, and lighting of the housing units and other facilities. These emissions
21 will contribute directly and cumulatively to the increase in atmospheric greenhouse gases, and
22 will thus contribute directly and cumulatively to global warming.

23 42. According to the EIR, the Project would allow up to 1,500 houses and add
24 15,164 average daily trips. The EIR therefore should have, but did not, analyze the impact of
25 greenhouse gas emissions from the energy use of the Project during construction and
26 operation as well as increased vehicle trips and the resulting climate change. Nor did the EIR
27 consider measures to mitigate those impacts or alternative designs that would have avoided or

1 lessened those impacts.

2 **Biological Resources Impacts**

3 43. The EIR fails to disclose and adequately analyze the Project's impacts on
4 biological resources. The Project site consists almost entirely of undeveloped open space,
5 including annual grasslands, chaparral, oak woodlands, oak savanna, riparian vegetation, and
6 alluvial fan scrub. The site provides important habitat for rare species and species of concern.
7 Alluvial fan scrub vegetation is a rare habitat type in southern California, and supports rare
8 species such as the Bell's Sage Sparrow and Black-tailed Jackrabbit. Riparian habitat has also
9 been greatly reduced throughout southern California, and most riparian areas are recognized
10 as sensitive plant communities by the state.

11 44. The Project will result in direct impacts to sensitive habitats and the species
12 they support, including the elimination of approximately 596.1 acres of annual grassland,
13 145.5 acres of chaparral, 10.6 acres of oak savanna, 9.9 acres of oak woodland, and 4.7 acres
14 of alluvial fan scrub habitat. The Project will also result in impacts to over 10 acres of
15 riparian habitat and nearly 3 acres of waters of the United States.

16 45. The Project will result in indirect effects on sensitive habitat on and off the
17 Project site due to ecological "edge effects" and other consequences of converting
18 undeveloped land to a housing tract.

19 46. The EIR, however, improperly dismisses the significance of the Project's direct
20 and indirect impacts on biological resources. The EIR's conclusions that the Project will have
21 a less than significant effect on biological resources is not supported by substantial evidence.

22 47. The EIR fails to adequately analyze the Project's impacts on special status
23 species and habitats.

24 48. The EIR fails to adequately analyze the Project's impacts on riparian habitat
25 and streams.

26 49. The EIR fails to adequately study the ecological edge effects and other indirect
27 impacts that will result from the Project.

Cumulative Impacts

1 50. The EIR must list and analyze all projects that may lead to cumulative impacts
2 to air quality, biological resources, global warming, and other resources. This analysis must
3 include projects outside the control of the agency.

4 51. There are many past, present, and probable future projects in and around the
5 Project, including other residential housing developments, which will contribute to cumulative
6 impacts to air quality, biological resources (including the elimination of critical wildlife
7 movement corridors), global warming, and other resources.

8 52. The EIR does not include any information on or analysis of the cumulative
9 impacts of past, present, and probable future projects in and around Banning.

10 53. For example, the EIR fails to provide a meaningful evaluation of cumulative
11 air quality impacts. It instead summarily concludes, for example, that the proposed Project's
12 impacts associated with the exceedance of CO, NO_x, and PM₁₀ thresholds would be
13 considered cumulatively significant because the Basin is in non-attainment for these
14 pollutants. The EIR also makes the unsupported claim that many of the Project's cumulative
15 impacts already have been disclosed, analyzed, and mitigated in the City's General Plan EIR.
16 However, the Project's EIR fails to provide any information explaining how the required
17 analysis was completed in the General Plan EIR, which contains no specifics concerning
18 additional development projects.

18 **Growth-Inducing Impacts**

19 54. The EIR entirely fails to discuss the growth-inducing impacts of the Project.
20 The EIR is required to discuss the ways in which the proposed Project could foster economic
21 or population growth, or the construction of additional housing, either directly or indirectly, in
22 the surrounding environment. The EIR must also discuss the Project's potential to "encourage
23 and facilitate other activities that could significantly affect the environment, either
24 individually or cumulatively." As a result, the EIR must analyze how the Project's extension
25 of roads, sewer, water, and other services, facilities, and improvements to an undeveloped area
26 distant from Banning's core would promote additional development that was not analyzed in
27 the EIR.

1 **SECOND CAUSE OF ACTION**

2 **VIOLATION OF CEQA – PUBLIC RESOURCES CODE § 21000, *et seq.***

3 **(Failure to Adequately Analyze Mitigation Measures and Alternatives)**

4 55. Petitioner hereby incorporates by reference each and every allegation set forth
5 above.

6 56. In addition to containing an inadequate analysis of impacts, the EIR fails to
7 contain a reasonable analysis of mitigation measures to avoid, minimize, or mitigate the
8 environmental impacts of the Project. Similarly, the EIR fails to analyze a reasonable range of
9 alternatives, including off-site alternatives.

10 57. CEQA imposes upon the City a clear, present and mandatory duty to analyze
11 and adopt all feasible mitigation measures as well as consider a reasonable range of
12 alternatives and adopt any feasible alternative that would substantially lessen the significant
13 environmental effects of the Project.

14 58. Concrete, enforceable mitigation measures must be required for a project or
15 incorporated into its design. Deferral of the analysis of the feasibility and adoption of
16 mitigation measures violates CEQA.

17 59. With respect to air quality, the EIR failed to consider mitigation measures to
18 reduce its significant impacts to air quality despite its long-term and short-term exceedance of
19 the South Coast Air Quality Management District's significance thresholds for CO, VOC,
20 NO_x, and PM₁₀. For example, the EIR failed to consider adoption of the South Coast Air
21 Quality Management District's recommended mitigation measures, failed to require offsets for
22 air pollution in excess of significance thresholds, and failed to require all feasible conservation
23 and energy efficiency measures.

24 60. With respect to biological resources, the EIR does not consider feasible
25 mitigation measures and instead relies on measures and Project design features that will not
26 reduce the Project's impacts to a less than significant level. For example, the EIR concludes
27 that the Project's impacts will be mitigated by, among other things, the preservation of

1 approximately 869 acres of open space, despite the absence of any evidence that the preserved
2 open space is threatened by or even susceptible to development, that the preserved open space
3 qualitatively or quantitatively compensates for the habitat that will be destroyed by the
4 Project, and that the open space will be preserved and managed as protected land in
5 perpetuity.

6 61. With respect to global warming, there was no mention of the Project's
7 greenhouse gas emissions and global warming impacts and likewise no mention of any
8 mitigation measures for those impacts.

9 62. Similarly, the inadequate analysis of growth-inducing and cumulative impacts
10 is reflected in the absence of mitigations measures for those impacts.

11 63. The Project also includes numerous deferred mitigation measures in violation of
12 CEQA, including, but not limited to: SC 7-4 (defers submission of a PM₁₀ Management Plan
13 for construction operations); SC 7-5 (requires minimization of construction emissions to the
14 "greatest extent feasible," which is not defined); and SC 5-1, SC 5-2, SC 5-3, and SC 5-4
15 (reliance on future permitting and/or approvals from the California Department of Fish and
16 Game, U.S. Fish and Wildlife Service, Regional Water Quality Control Board, and under the
17 Western Riverside Multiple Species Habitat Conservation Plan despite the lack of evidence
18 that the Project is reasonably capable of meeting the requirements of these programs).

19 64. The City's rejection of feasible, environmentally superior alternatives based on
20 an improperly narrow set of Project objectives is not supported by substantial evidence and
21 represents a failure to proceed in the manner required by law.

22 65. The City's failure to consider feasible alternatives, including environmentally
23 superior off-site alternatives, is not supported by substantial evidence and represents a failure
24 to proceed in the manner required by law.

25 THIRD CAUSE OF ACTION

26 **VIOLATION OF CEQA – PUBLIC RESOURCES CODE § 21000, *et seq.***

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

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

6 2. For a stay prohibiting any actions by Respondents pursuant to Respondents'
7 approval of the Project and certification of the EIR for the Project until Respondents have fully
8 complied with all requirements of CEQA, the Planning and Zoning Law, and all other
9 applicable state and local laws, policies, ordinances, and regulations;

10 3. For a declaration that the Project is inconsistent with CEQA;

11 4. For costs of the suit;

12 5. For attorney's fees pursuant to the Code of Civil Procedure section 1021.5; and

13 6. For such other and further relief as the Court deems just and proper.

14
15 DATED: November 21, 2006

16 Julie Teel
17 John Buse
18 CENTER FOR BIOLOGICAL DIVERSITY

19 By:

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21 _____
22 JOHN BUSE
23 Attorneys for Petitioner
24 CENTER FOR BIOLOGICAL DIVERSITY
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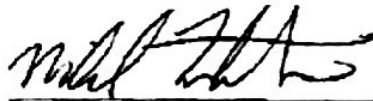
VERIFICATION

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

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

Executed on November 21, 2006, at Tucson, Arizona.

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



Michael Finkelstein
Executive Director
Center for Biological Diversity