

1 CHATTEN-BROWN & CARSTENS LLP
2 Jan Chatten-Brown (SBN 050275)
3 Josh Chatten-Brown (SBN 243605)
4 302 Washington Street, #710
5 San Diego, CA 92103
6 619-940-4522; 310-798-2400
7 Fax: 310-798-2402
8 E-mail: jrcb@cbcearthlaw.com
9 E-mail: jcb@cbcearthlaw.com

10 Attorneys for Petitioner Sierra Club

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
01/13/2017 at 01:18:43 PM
Clerk of the Superior Court
By Patrick Gonzaga, Deputy Clerk

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF SAN DIEGO**

13 CASE NO.: 37-2017-00001635-CU-TT-CTL

14 SIERRA CLUB,

15 Petitioner,

16 v.

17 COUNTY OF SAN DIEGO,

18 Respondent.

19 **PETITION FOR WRIT OF MANDATE**

20 **IMAGED FILE**

21 (CALIFORNIA ENVIRONMENTAL
22 QUALITY ACT)

1 **INTRODUCTION**

2
3 1. Petitioner Sierra Club (“Petitioner” or “Sierra Club”) files this Petition for Writ
4 of Mandate seeking to set aside the Forest Conservation Initiative Lands (FCI) General Plan
5 Amendment (GPA) (“Project”) approved by the County of San Diego (“County”) on
6 December 14, 2016.

7 2. This action is required because the Project’s climate change analysis, contained
8 within the 2016 Final Supplemental Environmental Impact Report (SEIR), relies upon the
9 County’s 2016 Guidance Document, which improperly adopted a threshold of significance
10 for greenhouse gas (GHG) emissions in violation of CEQA.

11 3. This action is also required because the County of San Diego should not be
12 amending the General Plan to allow for additional development on lands that were
13 designated as open space, rural lands, or other lands that were essentially “greenfields” when
14 the 2011 General Plan Update was enacted unless or until it adopts an adequate Climate
15 Action Plan (CAP) to comply with previously adopted mitigation measures that were
16 designed to assure attainment of greenhouse emission reduction goals. The Sierra Club’s
17 challenge to the County’s 2016 Guidance Document and the prospective adoption of General
18 Plan Amendments (GPA)’s that convert greenfields to development is already challenged in
19 *Sierra Club v. County of San Diego*, Case No. 37-2012-00101054-CU-TT-CTL.

20 4. Unfortunately, this action is necessary because the County of San Diego
21 refused to stipulate that failure to challenge this Project would not adversely impact its
22 pending action in *Sierra Club v. County of San Diego*, Case No. 37-2012-00101054-CU-TT-
23 CTL, and there was insufficient time to allow the Sierra Club to seek an amendment to its
24 pending Second Supplemental Petition.

25 5. In August 2011, the County adopted a General Plan Update (GPU) that
26 accommodated growth within the County by shifting development toward specific areas of
27 the County. As mitigation for the GPU, the County adopted Mitigation Measure CC-1.2,
28 which required the County to prepare a CAP with detailed greenhouse gas emissions

1 reduction targets and deadlines; and comprehensive and enforceable GHG emissions
2 reduction measures that will achieve a 17% reduction in emissions from County operations
3 from 2006 by 2020 and a 9% reduction in community emissions between 2006 and 2020.
4 GPU Mitigation Measure CC-1.2 required the preparation of a CAP within six months from
5 the adoption date of the GPU.

6 6. The County has indicated that it is currently preparing a new CAP, and the
7 projected date of adoption is the end of 2017, approximately two years before the 2020
8 deadline for achieving a 17% reduction in emissions from 2006 levels. The approval of the
9 FCI GPA further jeopardizes the ability of the County to attain the 2020 emission reduction
10 goals to which it previously committed itself.

11 7. The FCI GPA will result in an increase in approximately 1448 additional
12 dwelling units over that assumed within the GPU EIR. Thus, over five years after the
13 adoption of the GPU, the County's approval of the FCI GPA authorizes additional
14 development above and beyond the development contemplated in the GPU EIR, without first
15 complying with the mitigation measure that was intended to address the climate change
16 impacts of the GPU.

17 8. CEQA prohibits an agency from attempting to defeat the conditions it imposed
18 upon itself by moving ahead with a project in spite of the previously adopted conditions.
19 The County should not be allowed to adopt further general plan amendments unless and until
20 the County demonstrates that it has already fulfilled the commitments it made over five years
21 ago to mitigate the impacts of its GPU.

JURISDICTION

22
23
24 9. This Court has jurisdiction over the writ action under section 1085 et seq. and
25 1094.5 et seq. of the Code of Civil Procedure, and sections 21168 and 21168.5 of the Public
26 Resources Code.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PARTIES

10. Petitioner Sierra Club is a national nonprofit organization with more than 600,000 members nationwide, including almost 150,000 in California and 12,000 members in San Diego and Imperial Counties.

11. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth’s ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club’s concerns encompass climate stabilization, coastal issues, land use, transportation, wildlife and habitat preservation, parks and recreation. The interests that Petition seeks to further in this action are within the purposes and goals of the organization. Petitioner and its members have a direct and beneficial interest in Respondents’ compliance with CEQA, its own mitigation measures, and the Judgment of this Court. The maintenance and prosecution of this action will confer a substantial benefit on the public by protecting the public from the environmental and other harms alleged herein, including but not limited to requiring informed decision-making.

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

BACKGROUND AND STATEMENT OF FACTS

13. The Forest Conservation Initiative is a voter-approved initiative that required approximately 72,000 acres of backcountry lands within the Cleveland National Forest to have a minimum lot size of 40 acres. The FCI was originally approved in 1993 and expired on December 31, 2010.

1 14. The FCI GPA project expands the Village land use designations outside of the
2 established boundaries for the Village areas. Implementation of the Project would allow
3 development to further encroach into the Cleveland National Forest.

4 15. On August 3, 2011, the County adopted a General Plan Update, in which the
5 “County committed to preparing a climate change action plan with ‘more detailed
6 greenhouse gas [GHG] emissions reduction targets and deadlines’ and ‘comprehensive and
7 enforceable GHG emissions reductions measures that will achieve’ specified quantities of
8 GHG reductions by the year 2020.” (*Sierra Club v. County of San Diego* (2014) 231
9 Cal.App.4th 1152, 1156, *emphasis added*.)

10 16. Mitigation Measure CC-1.2 “requires the preparation of a County Climate
11 Change Action Plan within six months from the adoption date of the General Plan Update.”
12 (*Id.* at 1159.)

13 17. On July 20, 2012, Sierra Club filed a Petition for Writ of Mandate in Case No.
14 37-2012-00101054-CU-TT-CTL challenging the County's June 20, 2012 approval of the
15 CAP and Thresholds and an Addendum to the General Plan Update EIR.

16 18. On April 19, 2013, Judge Taylor ruled in favor of the Sierra Club, concluding
17 that the CAP was not properly approved and violated CEQA. The court stated, “In view of
18 the foregoing, the court finds it unnecessary to address the subsidiary dispute over whether
19 the guidelines for determining thresholds of significance for GHG were adopted or not.” On
20 April 24, 2013, the court issued a Writ of Mandate and entered Judgment. The County
21 appealed the Judgment on June 12, 2013.

22 19. In November 2013, the Director of Planning and Development sent a
23 memorandum to the Board of Supervisors indicating the intent to adopt the 2013 Thresholds.

24 20. On February 18, 2014, Sierra Club filed a Supplemental Petition for Writ of
25 Mandate requesting that the court order the County to set aside the 2013 Thresholds unless
26 and until the County has complied with the Judgment.

27
28

- 1 c. The 2016 Thresholds were not adopted by ordinance, resolution, rule, or
2 regulation as required by CEQA Guidelines section 15064.7; and
3 d. The 2016 Thresholds were not developed through a public review process
4 as required by CEQA Guidelines section 15064.7.

5 30. The FCI GPA utilizes the improperly adopted threshold of significance set
6 forth in the 2016 Thresholds, in violation of CEQA.

7
8 **SECOND CAUSE OF ACTION**

9 **For Violation of CEQA**
10 **Processing Further General Plan Amendments**
11 **Without a Legally Adequate CAP and Thresholds of Significance**
12 **(Cal. Code Civ. Pro. §§1085, 1094.5; Cal. Pub. Res Code §§21168.5, 21168)**

13 31. Paragraphs 1 through 28 are fully incorporated herein.

14 32. In the absence of a legally valid CAP and Thresholds, the County's processing
15 and approval of additional General Plan Amendments that allow growth not envisioned
16 within the GPU violates CEQA because the County is not implementing a mitigation measure
17 that it previously committed to prior to authorizing additional development and growth.

18 **PRAYER FOR RELIEF**

19 In each of the respects enumerated above, Respondent has violated its duties under the
20 law, abused its discretion, failed to proceed in the manner required by law, and decided the
21 matters complained of without the support of substantial evidence.

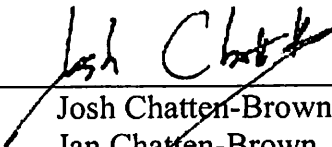
22 WHEREFORE, Petitioner prays for relief as follows:

- 23 1. For an alternative and peremptory writ of mandate commanding Respondent to
24 set aside and vacate approval of the Forest Conservation Initiative Lands General Plan
25 Amendment unless and until the County prepares a legally valid CAP and thresholds;
26 2. For costs of the suit;
27 3. For reasonable attorneys' fees; and
28 4. For such other and further relief as the Court deems just and proper.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATE: January 13, 2017

Respectfully Submitted,
CHATTEN-BROWN & CARSTENS

By: 

Josh Chatten-Brown
Jan Chatten-Brown
Attorneys for Petitioner