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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**  
14

15 CALIFORNIA CHAPARRAL INSTITUTE, a )  
16 non-profit corporation, ENDANGERED )  
17 HABITATS LEAGUE, a non-profit corporation; )

18 Petitioners,

19 vs.

20 BOARD OF FORESTRY AND FIRE )  
21 PROTECTION, a public agency, CALIFORNIA )  
22 DEPARTMENT OF FORESTRY AND FIRE )  
23 PROTECTION, a public agency, and DOES 1 )  
24 through 5, inclusive, )

25 Respondents.  
26  
27  
28

Case No. 37-2020-00005203-CU-TT-CTL

**VERIFIED PETITION FOR WRIT OF  
MANDATE**

(California Environmental Quality Act)

## INTRODUCTION

1. This action challenges the approvals by Respondent Board of Forestry and Fire Protection (“Board” or “Respondent”) and Respondent California Department of Forestry and Fire Protection (“Department” or “Respondent”) of the California Vegetation Treatment Program (“CalVTP” or “Program”), and the related failure to comply with the California Environmental Quality Act (“CEQA”), Pub. Res. Code § 21000, *et seq.*

2. Among other things, Respondents failed to consider the environmental impacts associated with the Program, failed to prepare and circulate required environmental analysis, and failed to consider and adopt feasible alternatives and mitigation.

3. Additionally, Respondents failed to comply with requirements of the Public Resources Code.

4. Petitioner seeks alternative and peremptory writs of mandate declaring Respondents’ approvals invalid, and enjoining Respondents from taking steps to implement the approvals.

## PARTIES

5. Petitioner California Chaparral Institute (“CCI” or “Petitioner”) is a non-profit research and educational organization dedicated to the preservation of California’s native chaparral ecosystem, helping communities adapt to the fire-prone environments in which they live, and improving the physical and mental health of individuals through reconnections with Nature. Petitioner and its members have been injured as a result of Respondent’s actions. Petitioner and its members use, enjoy, and benefit from the resources affected by Respondent’s actions. Respondent’s actions adversely affect the aesthetic, recreational, economic, environmental, and health and safety interests of Petitioner and of Petitioner’s members. The interests of Petitioner and Petitioner’s members have been and will continue to be adversely affected by Respondent’s unlawful actions. The relief sought in this Petition would redress Petitioner’s and Petitioner’s members’ injuries.

6. Petitioner Endangered Habitats League (“EHL” or “Petitioner”) is a tax-exempt non-profit California corporation dedicated to the conservation of native ecosystems and to sustainable land use and transportation planning. Since 1991, EHL has engaged in planning partnerships across Southern California and worked to create habitat preserve systems, whose ecosystem functions are threatened by

1 Program approval. EHL members live and enjoy the biological diversity in areas proposed for treatment  
2 and degradation under the CalVTP. Petitioner and its members have been injured as a result of  
3 Respondent's actions. Petitioner and its members use, enjoy, and benefit from the resources affected by  
4 Respondent's actions. Respondent's actions adversely affect the aesthetic, recreational, economic,  
5 environmental, and health and safety interests of Petitioner and of Petitioner's members. The interests of  
6 Petitioner and Petitioner's members have been and will continue to be adversely affected by Respondent's  
7 unlawful actions. The relief sought in this Petition would redress Petitioner's and Petitioner's members'  
8 injuries.

9 7. Respondent Board of Forestry and Fire Protection is a government-appointed body within the  
10 California Department of Forestry and Fire Protection. It is responsible for developing the general forest  
11 policy of the state, determining the guidance policies of the Department, and representing the state's  
12 interest in federal forestland in California.

13 8. Respondent California Department of Forestry and Fire Protection is the State of California's  
14 agency responsible for fire protection in State Responsibility Areas of California, as well as the  
15 administration of the state's private and public forests.

16 9. Petitioners do not know the true names or capacities of the persons or entities sued herein as  
17 Does 1 through 5, and therefore sue these respondents by such fictitious names. Petitioners will amend  
18 the Petition to set forth the names and capacities of said respondents along with appropriate charging  
19 allegations when the same have been ascertained.

#### 20 **PROJECT DESCRIPTION AND HISTORY**

21 10. Since the 1980's, the California Legislature has recognized an increase in the number of  
22 uncontrolled fires on wildlands in the State, resulting in destruction of important natural resources, loss  
23 of recreation opportunities, and hazards to public safety.

24 11. On October 30, 2015, Governor Jerry Brown proclaimed a State of Emergency related to  
25 the occurrence of extensive tree mortality throughout the State.

26 12. On May 10, 2018, Governor Brown issued Executive Order B-52-18, which, among other  
27 things, required improved forest management and restoration.  
28

1 13. A report prepared by the California Governor's Wildfire Strike Force in 2019 asserted:  
2 "Climate change has created a new wildfire reality for California. The state's fire season is now almost  
3 year round. More than 25 million acres of California wildlands are classified as under very high or  
4 extreme fire threat."

5 14. The Board has described its California Vegetation Treatment Program as intended "to treat  
6 vegetation that could become fire fuel" and "to serve as one component of the state's range of actions  
7 to reduce wildfire risk and diminish or avoid the harmful effects of wildfire on people, property, and  
8 natural resources with the California Department of Forestry and Fire Protection's (CAL FIRE's) State  
9 Responsibility Area (SRA). The SRA is an area of more than 31 million acres of private and public  
10 land ...."

11 15. The Board has claimed: "The treatable landscape, which is the portion of the SRA where  
12 vegetation conditions are suitable for treatment, consists of approximately 20.3 million acres. As part  
13 of the CalVTP, CAL FIRE and other project proponents would implement vegetation treatment  
14 activities on up to approximately 250,000 acres annually within the treatable landscape."

15 16. The Board has stated: "The proposed CalVTP consists of three treatment types: wildland-  
16 urban interface (WUI) fuel reduction, fuel breaks, and ecological restoration." It has identified five  
17 objectives of the Program:

- 18 a. "serve as the vegetation management component of the state's range of actions  
19 underway to reduce risks to life, property, and natural resources ...";
  - 20 b. "substantially increase the pace and scale of vegetation treatments to contribute to a  
21 statewide total of at least 500,000 acres per year on non-federal lands ...";
  - 22 c. "increase the use of prescribed burning as a vegetation treatment tool ...";
  - 23 d. "contribute to meeting California's GHG emission goals by managing forests and other  
24 natural and working lands as a net carbon sink ..."; and
  - 25 e. "improve ecosystem health in fire-adapted habitats by safely mimicking the effects of a  
26 natural fire regime, considering historic fire return intervals, climate change, and land  
27 use constraints."
- 28

1 17. The Board has identified five “treatment activities” to meet these objectives: prescribed  
2 burning, mechanical treatment, manual treatment, prescribed herbivory, and application of herbicides.

3 18. The Board has also identified several “Standard Project Requirements” (“SPR’s”), which, it  
4 claims, “are intended to avoid and minimize environmental impacts and comply with applicable laws  
5 and regulations.”

6 19. On June 24, 2019, the Board issued a draft Environmental Impact Report regarding the  
7 Program. Numerous comments were submitted on the DEIR, including from Petitioners. Among other  
8 things, they noted concerns about the Program’s impacts to human health, community protection, air  
9 quality, greenhouse gas emissions, biological resources and habitat, wetlands, wildlife movement,  
10 public safety, water quality, hazardous and toxic substances, historical and cultural resources,  
11 watersheds, open space, land use, community character, aesthetics, and public services, as well as  
12 cumulative impacts.

13 20. Comments also noted the EIR’s failure to adequately describe the Program and to discuss  
14 the environmental baseline.

15 21. Comments also noted the EIR’s failure to consider and adopt sufficient mitigation measures  
16 and alternatives to address the Program’s significant impacts.

17 22. Comments, including from Petitioner, noted that none of California’s most devastating  
18 wildfires have been significantly influenced by dead trees and most of these fires were far from forested  
19 landscapes and for those few devastating fires that were near forests, including the Camp Fire, all of the  
20 forests around the communities destroyed by fire had the types of suggested thinning and fuel treatments  
21 prescribed by the CalVTP.

22 23. Comments also noted that thinning forests and creating large areas of clearance with little or  
23 no vegetation creates conditions that increase the rate of fire movement, facilitates the spread of embers,  
24 and allows for increased wind speeds that create a “bowling alley” effect for embers to target structures,  
25 the key factor in home ignition.

26 24. A Final EIR (“FEIR”) was published on November 27, 2019.

27 25. The EIR noted it would be the only analysis of the Program’s impacts in many instances. It  
28 claimed the EIR “functions as a Program EIR in accordance with State CEQA Guidelines Section

1 15168(c) for streamlining later activities.” Regarding future activities of CAL FIRE “or other project  
2 proponents,” the EIR stated that if “the project proponent finds that the impacts were analyzed in the  
3 PEIR, ... no additional CEQA documentation would need to be prepared or publicly circulated.” The  
4 EIR also asserted this approach “would facilitate an increase in the pace and scaled of project  
5 approvals” and claimed: “If a later EIR is prepared, it could be limited in its scope to the new or  
6 substantially more severe impact ....”

7 26. Numerous additional comments, including from Petitioners, were received regarding the  
8 Program and FEIR. These comments noted the continuing failures to address the Program’s impacts  
9 and the continued insufficiency of the environmental analysis. Comments also noted the Board’s  
10 failure to adequately respond to comments that had been submitted on the draft EIR.

11 27. Comments, including from Petitioners, noted the failure to account for plant community  
12 extirpation due to projected climate change impacts and how the cumulative impact of their treatments  
13 will accelerate those impacts. They also noted the contradiction between the Board’s assertion that  
14 chaparral is suffering from too much fire and Program’s targeting of chaparral areas for “ecological  
15 restoration” via prescribed burning or other habitat clearance techniques. Comments also noted the  
16 Board’s failure to recognize that although “fuel” treatments can provide help during fire suppression of  
17 non-wind-driven fire events, they consistently fail when it matters most - during the wind-driven wildfires  
18 that cause all the devastation since all of the most devastating fires in California have been wind-driven.

19 28. Comments noted that Petitioner and others had been addressing these concerns with the Board  
20 and others since at least 2005.

21 29. On December 11, 2019, the Board met to consider the Program and the EIR. Testimony in  
22 opposition, including from Petitioner, was received regarding numerous concerns. The Board voted to  
23 continue the hearing.

24 30. On December 30, 2019, the Board voted to approve the Program and EIR.

25 31. Approvals included: Resolution No. 2019-01, certifying the FEIR and Resolution No. 2019-  
26 02, approving the Program, adopting mitigation measures and a Mitigation, Monitoring and Reporting  
27 Program, and adopting CEQA Findings and a Statement of Overriding Considerations.

28 32. A Notice of Determination was filed on December 30, 2019.

**EXHAUSTION OF ADMINISTRATIVE REMEDIES  
AND INADEQUATE REMEDIES AT LAW**

33. Petitioners exhausted all available administrative remedies, and objections to the Project have been presented orally and in writing to the Board, as required by Public Resources Code Section 21177. These include, but are not limited to, letters and oral comments presented during public hearings.

34. Petitioners have complied with the requirements of Public Resources Code Section 21167.5 by mailing a written notice of commencement of this action to the Board. A true and correct copy of that notice is attached hereto as Exhibit 1.

35. Petitioners have advised the Board that Petitioners have elected to prepare the record of proceedings relevant to the approval of the Program, pursuant to Public Resources Code Section 21167.6. A true and correct copy of that notice is attached hereto as Exhibit 2.

36. Petitioners have complied with Public Resources Code Section 21167.7 by filing a copy of the original petition with the California Attorney General. A true and correct copy of the notification is attached hereto as Exhibit 3.

37. Petitioners have no adequate remedy at law unless the Court grants the requested writ of mandate requiring the Board to set aside its approval of the Program and the EIR. In the absence of such remedy, the Board's approvals will remain in effect in violation of State law, and Petitioners will suffer irreparable harm because of the significant adverse environmental impacts generated by the Program.

**FIRST CAUSE OF ACTION  
(FAILURE TO COMPLY WITH CEQA PROCEDURAL REQUIREMENTS)**

38. Petitioners incorporate by reference each of the allegations set forth in this Petition as if set forth herein in full.

39. The FEIR fails to meet the requirements for an objective analysis of impacts.

40. Respondents failed to recirculate the EIR after substantial changes were made.

41. Respondents failed to revise the EIR or prepare supplemental analysis after substantial changes were made to the Program.

42. Respondents failed to follow procedures mandated by CEQA, including but not limited to, failing to notify responsible agencies, failing to provide proper notice for public involvement, failing to provide adequate information in the EIR and allow adequate opportunity for public input, and failing to provide adequate access to Program-related documents.

**SECOND CAUSE OF ACTION  
(FAILURE TO ADEQUATELY CONSIDER ENVIRONMENTAL IMPACTS AS REQUIRED  
BY CEQA)**

43. Petitioners incorporate by reference each of the allegations set forth in this Petition as if set forth herein in full.

44. Respondents' approval of the EIR constituted a prejudicial abuse of discretion in that the EIR is not in accord with CEQA, the CEQA Guidelines, and case law, but rather is legally inadequate and insufficient in numerous respects, including but not limited to, the following:

- a. The Project description is not stable and finite, and is unclear, inconsistent, skewed, inaccurate and incomplete in numerous respects;
- b. The FEIR fails to discuss the existing environmental conditions in the affected area, including but not limited to, conditions on the ground and current planning conditions;
- c. The FEIR fails to analyze adequately the significant adverse direct, indirect and cumulative effects of the Program, including but not limited to, the following:
  - i. Human health and safety impacts, including impacts to area residents, toxins, groundwater contamination and soil contamination, impacts associated with cumulative exposures to several different sources of emissions, impacts associated with likely future emissions, impacts associated with loss of recreation, impacts associated with micro-climate changes, impacts associated with increased fire risk, and impacts associated with exposures to sensitive individuals and other sensitive receptors;
  - ii. Air quality impacts, including but not limited to, failing to adequately analyze impacts, failing to address reasonably foreseeable impacts, failing to adopt mitigation measures for significant impacts to air quality, and failing to consider a reasonable range of alternatives;



- 1                   iii. Biological resource impacts, including but not limited to, failing to address impacts  
2                   to open space, failing to address impacts to sensitive habitats and plant and animal  
3                   species, failing to consider impacts of biological resources below the soil, failing to  
4                   address impacts of mitigation proposed, failing to address impacts to wildlife  
5                   corridors and wildlife movement, failing to protect important resources, relying  
6                   upon old and inadequate survey data, lack of a synthesized project analysis, failing  
7                   to provide a regional context, failing to address impacts to wetlands and wetland  
8                   species, failing to provide for adequate protection of riparian areas, and failing to  
9                   address impacts to other species of concern;
- 10                  iv. Greenhouse gas emission impacts, including but not limited to, failing to  
11                  adequately analyze impacts, failing to adopt mitigation measure for significant  
12                  impacts to greenhouse gas emissions, failing to analyze net loss of carbon  
13                  sequestration with the removal of vegetation and damage to the ability of soils to  
14                  sequester carbon as a result of vegetation treatment activities, and failing to  
15                  address a reasonable range of alternatives;
- 16                  v. Hydrological and water quality impacts, including but not limited to, failing to  
17                  address reasonably foreseeable impacts and the introduction of pollutants to  
18                  groundwater and surface water, failing to address impacts associated with  
19                  erosion, and failing to adopt mitigation measures to address impacts;
- 20                  vi. Land use and community character impacts, including but not limited to, failing to  
21                  adequately analyze impacts, and failing to address impacts to neighborhood and  
22                  community character;
- 23                  vii. Visual effects and neighborhood character, including but not limited to, failing to  
24                  adequately analyze impacts, failing to address impacts to existing resources,  
25                  failing to address impacts to neighboring homes, failing to adopt mitigation  
26                  measure for significant impacts to visual effects and neighborhood character, and  
27                  failing to address a reasonable range of alternatives;
- 28

- 1           viii. Transportation and traffic impacts, including but not limited to, failing to  
2           consider existing conditions, failing to adequately analyze impacts, failing to  
3           address reasonably foreseeable impacts to traffic and traffic safety, failing to  
4           recognize the Program's impacts in relation to existing problems and failing  
5           streets and intersections, failing to address safety considerations associated with  
6           existing and Program traffic, failing to assess impacts associated with  
7           evacuation during emergencies, using incorrect criteria to determine impacts,  
8           failing to adopt mitigation measures for significant impacts to traffic;  
9           ix. Toxics and toxic substances impacts, including impacts associated with  
10           hazardous wastes and materials, polluted air quality, polluted surface water and  
11           groundwater, and polluted soils, and failing to address requirements for the  
12           handling and disposal of toxic and hazardous substances and waste;  
13           x. Noise impacts, including but not limited to, failing to consider existing noise  
14           conditions, failing to adequately analyze impacts, failing to address reasonably  
15           foreseeable impacts, failing to adopt mitigation measures for significant impacts  
16           to noise, and failing to address a reasonable range of alternatives;  
17           xi. Historic and tribal cultural resource impacts, including but not limited to, failing  
18           to adequately analyze impacts, failing to adopt mitigation measure for  
19           significant impacts to historic and tribal cultural resources, and failing to address  
20           a reasonable range of alternatives;  
21           xii. Paleontological resources impacts, including but not limited to, failing to  
22           adequately analyze impacts, failing to adopt mitigation measures for significant  
23           impacts to paleontological resources, and failing to address a reasonable range  
24           of alternatives;  
25           xiii. Natural resource impacts, including but not limited to, failing to address soils  
26           and geology in the area;  
27           xiv. Public services and facilities impacts, including but not limited to, failing to  
28           consider existing public facility conditions and supply, failing to consider

1 reasonably foreseeable impacts, failing to address impacts to parks and recreation,  
2 police, paramedic, fire services, and water supply, and failing to adopt adequate  
3 mitigation measures for significant impacts to public services and facilities;

- 4 d. The EIR fails to consider adequately the cumulative impacts of the Program and other  
5 projects that are either existing, approved, planned, or reasonably foreseeable, including  
6 future projects and other developments located both within and outside of Respondent's  
7 area of responsibility;
- 8 e. The EIR illegally defers analysis of reasonably foreseeable impacts;
- 9 f. The EIR improperly segments the Program, piecemealing or otherwise avoiding  
10 reasonably foreseeable impacts, and separately focusing on isolated parts of the whole;
- 11 g. The EIR fails to consider adequately impacts that narrow the range of beneficial uses of  
12 the environment, in violation of Section 15126(e) of the CEQA Guidelines;
- 13 h. The EIR fails to address adequately impacts that cannot be mitigated, including but not  
14 limited to, describing their implications and the reasons why the Program is being  
15 proposed notwithstanding its adverse effects;
- 16 i. The EIR fails to consider adequately the significant irreversible effects of the Program,  
17 in violation of Section 15126(f) of the CEQA Guidelines, including but not limited to,  
18 air quality impacts; traffic circulation impacts; noise impacts; and the change in the  
19 existing community character;
- 20 j. The EIR fails to analyze adequately a reasonable range of alternatives to the Program,  
21 which could reduce substantially Program related impacts, and to evaluate the  
22 comparative merits of the alternatives;
- 23 k. The EIR fails to analyze adequately feasible mitigation measures, fails to provide for  
24 mitigation for each environmental effect, illegally relies upon deferred mitigation  
25 measures, and fails to provide for effective and enforceable mitigation; and

26 45. Respondents, in determining the significance of the environmental effects caused by the  
27 Program, failed to consider adequately substantial evidence of environmental impacts that may be  
28 significant in violation of Section 15064(b) of the CEQA Guidelines.

1           46. Respondents failed to respond adequately to public comments.

2                                   **THIRD CAUSE OF ACTION**  
3           **(FAILURE TO ADOPT FEASIBLE MITIGATION MEASURES AND ALTERNATIVES**  
4                                   **REQUIRED BY CEQA)**

5           47. Petitioners incorporate by reference each of the allegations set forth in this Petition as if set  
6           forth herein in full.

7           48. Respondents failed to consider and adopt feasible alternatives, including but not limited to,  
8           alternatives requiring less impacts that meet some or all of the Program objectives.

9           49. Respondents failed to adopt the environmentally superior alternative.

10          50. Respondents failed to consider and adopt feasible mitigation measures, failed to mitigate for  
11          each environmental effect, illegally deferred mitigation, and failed to provide for effective and enforceable  
12          mitigation.

13          51. Respondents identified various significant impacts of the Program, including but not limited  
14          to, significant impacts to aesthetics, air quality, archaeological, historical and tribal cultural resources,  
15          biological resources, greenhouse gas emissions, transportation, and public services, utilities and service  
16          systems, yet failed, without explanation or support, to adopt feasible mitigation measures or alternatives to  
17          address these impacts.

18                                   **FOURTH CAUSE OF ACTION**  
19           **(FAILURE TO ADOPT FINDINGS THAT ARE SUPPORTED BY EVIDENCE IN THE**  
20                                   **RECORD)**

21          52. Petitioners incorporate by reference each of the allegations set forth in this Petition as if set  
22          forth herein in full.

23          53. Respondents failed to adopt findings that are supported by substantial evidence in the  
24          record.

25          54. Among other things, the findings assert that the Program will have less than significant  
26          impacts to human health, aesthetics and visual resources, agricultural and forestry resources, air  
27          quality, archaeological, historical and tribal cultural resources, biological resources, geology, soils and  
28          mineral resources, greenhouse gas emissions, energy resources, hazardous materials, public health and  
29          safety, hydrology and water quality, land use and planning, population and housing, noise, recreation,

1 transportation, public services, utilities and service systems, wildlife, and cumulative impacts where  
2 there is insufficient evidence to support such findings.

3 55. Additionally, the findings rely upon old and inadequate data, lack a synthesized analysis, fail  
4 to provide a regional context, and fail to address significant and relevant criteria.

5 56. Additionally, the Board failed to make the findings required by Public Resources Code Section  
6 4483.

7 **FIFTH CAUSE OF ACTION**  
8 **(FAILURE TO ADOPT A STATEMENT OF OVERRIDING CONSIDERATIONS THAT IS**  
9 **SUPPORTED BY EVIDENCE IN THE RECORD)**

10 57. Petitioners incorporate by reference each of the allegations set forth in this Petition as if set  
11 forth herein in full.

12 58. Respondents failed to adopt a Statement of Overriding Considerations that is supported by  
13 substantial evidence in the record despite the Program's significant environmental impacts.

14 **SIXTH CAUSE OF ACTION**  
15 **(VIOLATION OF PUBLIC RESOURCES CODE SECTION 4483)**

16 59. Petitioners incorporate by reference each of the allegations set forth in this Petition as if set  
17 forth herein in full.

18 60. The Program violates and is inconsistent with Public Resources Code Section 4483.

19 61. Among other things, the Board failed to provide "additional consideration ... for chaparral and  
20 coastal sage scrub plant communities that are being increasingly threatened by fire frequency in excess of  
21 their natural fire return patterns ...."

22 62. Additionally, the Board failed to ensure that treatments of "chaparral and coastal sage scrub  
23 occur only if [it] finds that the activity will not cause 'type conversion' away from the chaparral and  
24 coastal sage scrub currently on site."

25 63. Among other things, the Program illegally: (1) fails to distinguish and protect chaparral within  
26 forests, (2) fails to properly define and identify "type conversion" of vegetation, (3) fails to define or  
27 provide uniform metrics to measure natural habitat function of chaparral and other shrubland alliances to  
28 evaluate the need for ecological restoration and/or removal of up to 65% shrub cover, (4) avoids

responsibility and determination of the project proponent, and (5) allows type conversion when Section 4483(b)(2) clearly prohibits such "away from the chaparral and coastal sage scrub currently on site."

**PRAYER FOR RELIEF**

WHEREFORE, Petitioners pray for relief as follows:

A. For a temporary restraining order, preliminary injunction and/or permanent injunction enjoining Respondents from taking any steps to further the Program until lawful approval is obtained from Respondents after the preparation and consideration of adequate environmental analysis, with adequate notice to interested parties, adoption of findings supported by substantial evidence, and compliance with applicable requirements;

B. For alternative and peremptory writs of mandate, vacating approval of the FEIR and all aspects of the Program, and enjoining Respondents from taking any steps to further the Plan until lawful approval is obtained from Respondents after the preparation and consideration of adequate environmental analysis, with adequate notice to interested parties, adoption of findings supported by substantial evidence, and compliance with applicable requirements;

C. For costs of suit;

D. For reasonable attorneys' fees; and

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

DATED: January 28, 2020

Respectfully Submitted,

**DELANO & DELANO**

By: s//Everett L. DeLano III  
Everett L. DeLano III  
Attorneys for Petitioners