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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **FOR THE COUNTY OF SACRAMENTO**

16 CENTER FOR BIOLOGICAL DIVERSITY )  
17 Petitioner and Plaintiff, )  
18 v. )  
19 CALIFORNIA DEPARTMENT OF PARKS )  
20 AND RECREATION, an agency of the State )  
21 of California; and CALIFORNIA STATE )  
22 PARK AND RECREATION COMMISSION, )  
23 Respondents and Defendants. )

CASE NO.:

**VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

(Violations of California Environmental  
Quality Act [CEQA], Pub. Res. Code § 21000,  
et seq.; Code of Civil Procedure §§ 1094.5,  
1085; California Vehicle Code § 38026.)

1 Petitioner CENTER FOR BIOLOGICAL DIVERSITY, a non-profit corporation,  
2 (hereinafter “Center” or “Petitioner”) brings this action on its own behalf, on behalf of its  
3 members, on behalf of the general public, and in the public interest, pursuant to Code of Civil  
4 Procedure section 1094.5 and Public Res. Code section 21168, or, in the alternative, pursuant to  
5 Code of Civil Procedure section 1085 and Public Res. Code section 21168.5; in order to protect  
6 the resources of Red Rock Canyon State Park from expansion of off-highway vehicle use  
7 within the Park. The Center respectfully alleges as follows:

### 8 INTRODUCTION

9 1. Over extensive public opposition and in violation of the California Environmental  
10 Quality Act (“CEQA”), on March 3, 2023, the California State Park and Recreation  
11 Commission (“Commission”) approved the Department of Parks and Recreation’s  
12 (“Department’s”) Red Rock Canyon State Park General Plan Revision (“Project” or “General  
13 Plan”), and certified an inadequate environmental impact report (“EIR”) for the Project. The  
14 Department of Parks and Recreation (“Department”) filed the Notice of Determination on  
15 March 3, 2023, which was received by the California Office of Planning and Research on  
16 March 6, 2023.

17 2. Red Rock Canyon State Park is a unique area that is home to valuable habitat and  
18 species, including Mojave ground squirrel, desert tortoise, and a suite of rare plants. A large  
19 addition to the park was given to the State of California by the Federal government as part of  
20 the California Desert Protection Act of 1994, specifically to ensure conservation of these  
21 resources. Nonetheless, the recently adopted Red Rock Canyon General Plan authorizes non-  
22 street legal, off-highway vehicle (“OHV”) combined-use of two roads (allowing use non-street  
23 legal vehicles to use these road segments along with other fully licensed and insured vehicles)  
24 and OHV access to a campground within the Red Rock Canyon State Park, that will have a  
25 significant negative impact on the environmental resources in the Park. The Commission  
26 adopted the General Plan Revision without conducting adequate environmental analysis of  
27 those avoidable impacts, and without adopting any measures to feasibly minimize and mitigate  
28

1 those impacts, in violation of CEQA. The Commission and the Department also failed to adopt  
2 or seriously consider an alternative that would avoid those impacts in order to support  
3 conservation of the Park resources. Instead, the Commission and Department dismissed  
4 substantial evidence of impacts and offered shifting rationales to support its approval of OHV  
5 combined-use of the two roads and Park campground.

6 3. The Draft EIR prepared for the General Plan failed to accurately describe how the  
7 expansion of OHV activities through approving combined-use on these two roads and in the  
8 Park campground under the General Plan could impact Park resources and failed to  
9 acknowledge the increased importance of conservation of the resources in the Park because  
10 similar resources on surrounding lands are subject to high-levels of OHV use and other  
11 cumulative impacts. The Final EIR admits that the Alternative 2 examined in the EIR would  
12 better protect Park resources and reduce the impacts. Despite this admission, the Commission  
13 rejected this alternative in favor of a Project that increased OHV use in the Park.

14 4. The Final EIR failed to substantively address the many public comments  
15 regarding the significant impacts from the proposal to allow combined-use of OHVs on two  
16 Park roads and at the Ricardo Campground. These comments pointed out, among other things,  
17 that those recreational activities conflict with preservation and conservation within the Park and  
18 are readily available outside the Park, and therefore should not be allowed pursuant to the  
19 Public Resources Code section 5019.53. The Final EIR claimed that Vehicle Code section  
20 38026 would allow for designation of OHV combined-use on these segments of public roads.  
21 This was despite the fact that the statute allows only segments *of no more than 3 miles in length*  
22 and State Parks admitted Sierra View Road segment was 3.1 miles long. The Final EIR also  
23 ignored evidence provided in comments that the Sierra View Road segment was actually far  
24 longer, at approximately 4.5 miles long. Because the Sierra View Road segment exceeds 3  
25 miles, the Vehicle Code section 38026 cannot authorize the designation. This issue was raised  
26 again at the hearing but the Department and the Commission waved it away.

1 5. The Commission adopted the General Plan with a finding of no significant  
2 impacts. It adopted no mitigation measures, no mitigating conditions of approval, and no  
3 mitigation monitoring and reporting plan.

4 **JURISDICTION AND VENUE**

5 6. This Court has jurisdiction over the writ action under section 1094.5 of the Code  
6 of Civil Procedure and section 21168 of the Public Resources Code.

7 7. This Court also has jurisdiction over the writ action under section 1085 of the  
8 Code of Civil Procedure, and section 21168.5 of the Public Resources Code.

9 8. This Court also has jurisdiction over the declaratory judgment action under Code  
10 of Civil Procedure section 1060.

11 9. Venue for this action properly lies in the Sacramento Superior Court because  
12 Respondents have their headquarters in Sacramento County. Code of Civil Procedure § 401.

13 10. This petition is timely filed in accordance with Public Resources Code section  
14 21167 and CEQA Guidelines section 15112.

15 **PARTIES**

16 11. Petitioner and Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (the  
17 “Center”) is a non-profit, public interest corporation, with over 89,000 members including over  
18 17,000 members in California. The Center has an office in Oakland, California, in addition to  
19 other offices elsewhere in the United States and Mexico. The Center and its members are  
20 dedicated to protecting the diverse native species and habitats through science, policy,  
21 education, and environmental law. Center members and staff have interests in the Federally  
22 threatened desert tortoise and its critical habitat, California endangered Mojave ground squirrel  
23 and its habitat, and a suite of rare plants and unique transitional habitats and natural  
24 communities that will be affected by the General Plan and the Department’s management of  
25 Red Rock Canyon State Park pursuant to that General Plan and use of the 2 Park roads and the  
26 Ricardo Campground by OHVs. The Center and its members are directly, adversely and  
27 irreparably affected, and will continue to be prejudiced by the General Plan and its  
28

1 implementation, as described herein, until and unless this Court provides the relief prayed for in  
2 this petition.

3 12. Respondent and Defendant CALIFORNIA DEPARTMENT OF PARKS AND  
4 RECREATION is a state agency under the laws of the State of California, the CEQA “lead  
5 agency” for the Red Rock Canyon State Park General Plan, and the agency responsible for  
6 management of the Red Rock Canyon State Park in accordance with the law.

7 13. Respondent and Defendant CALIFORNIA STATE PARK & RECREATION  
8 COMMISSION is a Commission in the Department as constituted under Public Resources  
9 Code sections 530 et seq., and is expressly required to approve all general plans for park units,  
10 Public Resources Code section 5002.2. The Commission approved the Red Rock Canyon State  
11 Park General Plan at issue in this action and certified the EIR at issue in this action.

12 14. Respondents and Defendants herein are collectively referred to as “State Parks.”

13 15. The Center has exhausted all administrative remedies, as required by Public  
14 Resources Code section 21177, by submitting timely written comments regarding the Scoping  
15 Notice, Draft EIR, and Final EIR to the Department and testifying at the hearing before the  
16 Commission prior to the General Plan approval. The Center’s comments and testimony  
17 requested that State Parks comply with CEQA and other laws, and perform a full and adequate  
18 environmental review before approving the Project. All issues raised in this petition were raised  
19 to State Parks prior to Project approval.

## 20 STATEMENT OF FACTS

### 21 **Park Resources: Imperiled Wildlife and Rare Plants**

22 16. The Mohave ground squirrel (*Xerospermophilus mohavensis*) is listed as a  
23 threatened species under the California Endangered Species Act (“CESA”).<sup>1</sup> Red Rock Canyon  
24 State Park provides important habitat for the ground squirrel with occupied habitat in the  
25 northern areas of the park traversed by Sierra View Road. “The northern portion of the Park is  
26 part of the Little Dixie Wash key population center, and the remainder of the Park outside the El  
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28 <sup>1</sup> <https://wildlife.ca.gov/Conservation/Mammals/Mohave-Ground-Squirrel>

1 Paso Mountains is considered part of the species’ population expansion area.” (Draft EIR at 2-  
2 68; Draft EIR, Appx. B, Biological Resources Report at 54 [same]; *see also id.* at 51 Figure 9  
3 [map of wildlife species occurrences].) Public comments recommended development of a  
4 conservation management plan in coordination with the California Department of Fish and  
5 Wildlife for the Mojave ground squirrel in the park. (Final EIR at 3-49.)

6 17. The Mojave desert tortoise (*Gopherus agassizii*) is the California State reptile and  
7 was listed as a threatened species under the California Endangered Species Act in 1989 and  
8 currently it is under review to be uplisted to endangered. It was listed as a threatened species  
9 under the federal Endangered Species Act (“ESA”) in 1990 (55 Fed. Reg. 12178-12191, April 2,  
10 1990), and received federal critical habitat designation in 1994 (59 Fed. Reg. 5820-5866, Feb. 8,  
11 1994). Red Rock Canyon State Park provides habitat for the desert tortoise: “all areas of the  
12 Park would generally be considered suitable for desert tortoise except for areas of steep rock  
13 outcrops, cliff faces, and rocky canyon bottoms, where habitat is limited or inaccessible to the  
14 species.” (Draft EIR at 2-66; Draft EIR, Appx. B, Biological Resources Report at 50 [same].)

15 18. Red Rock Canyon State Park is the largest public land unit in this part of the  
16 western Mojave that is managed exclusively for the highest levels of conservation. In light of  
17 ongoing climate change, the park also provides a key habitat linkage for species, between the  
18 western Mojave Desert and the southern Sierra Nevada mountains. Species populations are  
19 modeled to move northwards and to higher elevations and Red Rock Canyon State Park is a key  
20 area for this movement to occur.

21 19. Red Rock Canyon State Park is also home to many rare and imperiled plant  
22 species. Among the special status plant species in the park are Charlotte’s phacelia (*Phacelia*  
23 *nashiana*), Solitary blazing star (*Mentzelia eremophila*), Red Rock tarplant (*Deinandra arida*),  
24 Red Rock Canyon monkeyflower (*Erythranthe rhodopetra*) and Death Valley sandmat  
25 (*Euphorbia vallis-mortae*). The Draft EIR noted that much of the park has not been adequately  
26 surveyed for rare plants.

1 The large size of the Park and the fact that two new species were discovered  
2 during the Biological Resources Report surveys that had not been previously  
3 recorded in the Park suggests that many more species occur in the Park that have  
4 yet to be discovered and adequately documented.

5 (Draft EIR at 2-48). Additional known occurrences of special status plant species in the Park  
6 include Red Rock poppy (*Eschscholzia minutiflora ssp. twisselmannii*), Lemmon's jewelflower  
7 (*Caulanthus lemmonii*), Depressed ipomopsis (*Loeseliastrum depressum*), Rattan's cryptantha  
8 (*Cryptantha rattanii*), Reveal's buckwheat (*Eriogonum contiguum*), cottony buckwheat  
9 (*Eriogonum gossypinum*), slender nemacladus (*Nemacladus gracilis*), and alkali Mariposa lily  
10 (*Calocortus striatus*). (Final EIR at 3-77; FEIR at 3-17.)

### 11 **Red Rock Canyon State Park and Proposed General Plan**

12 20. Red Rock Canyon State Park first “became a park unit of the State Park System in  
13 1968 with the purchase of approximately 4,000 acres from private owners.” (Draft EIR at 1-3.)  
14 In 1994, the California Desert Protection Act (“CDPA”) transferred certain federal public lands  
15 to the State of California to expand Red Rock Canyon State Park. CALIFORNIA DESERT  
16 PROTECTION ACT, 1994 Enacted S. 21, 103 Enacted S. 21, 108 Stat. 4471, 4472; codified at  
17 16 USCS § 410aaa-71. The CDPA states that the purpose of the transfer was “for inclusion in  
18 the State of California Park System,” and includes a reversion clause: “Should the State of  
19 California cease to manage these lands as part of the State Park System, ownership of the lands  
20 shall revert to the Department of the Interior to be managed as part of California Desert  
21 Conservation Area to provide maximum protection for the area’s scenic and scientific values.”  
22 *Id.* Pursuant to the CDPA, the BLM began the process of transferring 20,500 acres (Last Chance  
23 Canyon Addition) to California State Parks although some lands have not yet been conveyed  
24 due to encumbrance of unpatented mining claims. The park now includes approximately 25,000  
25 acres.

26 21. For decades State Parks has promised to update the General Plan which provides  
27 management direction for the park to address the newly incorporated lands. On December 5,  
28 2008, State Parks first issued a notice of preparation for the Red Rock Canyon General Plan and

1 the EIR (SCH# 2008121026). The Center submitted scoping comments on January 30, 2009.  
2 After nearly a decade without progress on the General Plan revision on October 9, 2018, State  
3 Parks issued another notice of preparation for the Red Rock Canyon General Plan and the EIR  
4 (SCH# 2008121026) The Center submitted comments on November 9, 2018. On March 26 and  
5 27, 2019, State Parks held public meetings and provided documentation on “Preliminary  
6 Planning Concepts.” The Center submitted comments in response on April 26, 2019. On  
7 October 23 and 24, 2019, State Parks held additional public meetings and issued “Revised Plan  
8 Concept Packet” document. The Center provided additional comments in response on  
9 December 12, 2019.

10 22. On October 17, 2022, State Parks issued the notice of availability of the Draft EIR  
11 for public comment. The Draft EIR stated that impacts to all biological resources, would be less  
12 than significant. (Draft EIR at 5.2-1.)

13 23. The Center and many other members of the public timely submitted comments on  
14 the DEIR. These comments, among other things, addressed the need for better protections for  
15 park resources and opposed the inclusion of OHV access on park roads and to the Ricardo  
16 Campground due to significant impacts that had not been identified, analyzed or mitigated in  
17 the EIR. Public comments also challenged State Parks’ authority to designate the segment of  
18 Sierra View Road as a combined-use road under the Vehicle Code section 38026 because it is  
19 4.5 miles long and far exceeds the statutory authorization for segments no more than 3 miles.  
20 (FEIR 3-49.) Comments also challenged the DEIR’s misidentification of the proposed General  
21 Plan as the environmentally superior alternative because it included significant environmental  
22 impacts that could be avoided. (DEIR at 5.23-4.) In contrast, commenters explained that the  
23 EIR’s Alternative 2, which would not allow OHV use in the park, would avoid these impact and  
24 should have been identified as the environmentally superior alternative.

25 24. On February 21, 2023, State Parks released the Final EIR and announced that the  
26 State Park and Recreation Commission (“Commission”) would hold a hearing on the Draft  
27 General Plan and Final EIR on March 3, 2023. The Final EIR revised the DEIR in several  
28



1 relevant ways. These included for the first time providing a map of the proposed segments of  
2 roads that would be open to OHV combined-use, and providing responses to comments.

3 25. The Final EIR failed to directly address comments regarding impacts from OHV  
4 use of roads and the Ricardo Campground; instead it claimed there was no substantial evidence  
5 that opening roads and the campground to OHV could significantly impact resources. On that  
6 same basis, the FEIR dismissed comments that supported Alternative 2 as the environmentally  
7 superior alternative (Final EIR at 3-95), as compared to the proposed General Plan.

8 26. The Final EIR also failed to meaningfully respond to comments from the public  
9 specifically noting that the Sierra View Road segment was 4.5 miles long as measured by  
10 commenters and others using a variety of methods, not 3.1 miles long, and did not meet the  
11 requirements of Vehicle Code Section 38026 which limits such combined-use segments to *less*  
12 *than* 3 miles. Instead, the response to comments simply repeated earlier statements by State  
13 Parks, for example, “State Parks measured the proposed Sierra View Road connectivity route  
14 using Geographical Information System information (a blend of Bureau of Land Management  
15 (BLM) data and digitizing the road through aerial imagery), which measured a length of 3.1  
16 miles from the western edge of the Park boundary to the northern edge of Park boundary.”

17 27. In response to the Final EIR’s response to comments the Center and others  
18 submitted additional comments to State Parks on March 2, 2023. Those comments directly  
19 refuted the statements made in the FEIR regarding the nature of the impacts to park resources  
20 from authorizing OHV use of park roads and the campground based on documentation already  
21 provided to State Parks, and provided additional evidence regarding those impacts.

22 28. At the Commission hearing on March 3, 2023, the Department presented the  
23 General Plan revision to the Commission for approval. At the hearing State Parks staff stated  
24 that the Sierra View Road segment would be 3.1 miles long and the Red Rock Canyon Wash  
25 segment would be 1.7 miles long—no mention was made of the campground loop road within  
26 the campground in that calculation.

1           29.     During the hearing, Center staff and many other members of the public again  
2 raised issues regarding significant impacts that would occur from allowing OHV use on Sierra  
3 View Road, Red Rock Canyon Wash Road, and in Ricardo Campground under the proposed  
4 General Plan.

5           30.     During the hearing, members of the public also challenged State Parks’ claim that  
6 combined-use by OHVs of Sierra View Road and Red Rock Wash Road could be authorized  
7 under Vehicle Code section 38026. The State Parks staff presentation claimed that the segments  
8 that would be open to OHV use were Red Rock Canyon Wash Road, 1.7 miles, and Sierra View  
9 Road, 3.1 miles. Members of the public challenged the designation of the segment of Sierra  
10 View Road proposed to be included for combined-use in the General Plan because it is over 3  
11 miles long even by State Parks’ own calculation, and, therefore, not within the Vehicle Code  
12 section 38026 statutory requirement. Members of the public also reiterated that the segment of  
13 Sierra View Road at issue was actually longer—approximately 4.4 or 4.5 miles long.

14           31.     At the hearing, the Commission approved the Red Rock Canyon General Plan and  
15 certified the EIR.

16           32.     The Department filed a Notice of Determination on March 3, 2023 and the Notice  
17 was marked received by the California Office of Planning and Research on March 6, 2023.

18                           **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

19                                   **AND INADEQUATE REMEDIES AT LAW**

20           33.     Petitioner objected to the Project in the administrative process, and fully  
21 exhausted its administrative remedies. Petitioner submitted letters during the comment period  
22 raising the issues set forth herein.

23           34.     Petitioner has no plain, speedy or adequate remedy in the course of ordinary law  
24 unless this Court grants the requested writ of mandate and request for declaratory relief. In the  
25 absence of such remedies, Respondents’ approval of the Red Rock Canyon General Plan would  
26 authorize activities to go forward that would proceed in violation of state law.

1 35. Petitioner has complied with Public Resources Code section 21167.7 by providing  
2 notice of the action to the California Attorney General and furnishing the Attorney General with  
3 a copy of this petition. A copy of that notice is attached as Exhibit A.

4 36. Petitioner has complied with Public Resources Code section 21167.5 by providing  
5 the Respondents, and each of them, with notice of its intention to commence the action. Copies  
6 of those notices and a proof of their service are attached as Exhibit B.

7 37. Petitioner elects to prepare the administrative record. A copy of that election is  
8 attached as Exhibit C.

9 **FIRST CAUSE OF ACTION**

10 **(Violations of CEQA, Pub. Res. Code § 21000 et seq.)**

11 38. Petitioner incorporates all previous paragraphs as if fully set forth.

12 **The EIR Failed to Adequately Disclose and Analyze the Project's Impacts**  
13 **from OHV Use of Sierra View Road, Red Rock Canyon Wash Road, and Ricardo**  
14 **Campground, Failed to Adequately Identify the Environmental Baseline, and Failed to**  
15 **Disclose the Project's Inconsistency the Vehicle Code.**

16 39. CEQA requires the lead agency to conduct an adequate environmental review  
17 prior to making any formal decision regarding projects subject to CEQA. (CEQA Guidelines, 14  
18 Cal. Code Regs. § 15004).

19 40. CEQA imposes upon State Parks a clear, present and mandatory duty to certify an  
20 EIR only if the EIR fully discloses to the public the significant environmental effects that may  
21 occur. The EIR for the General Plan lacks the necessary analysis.

22 41. Further, CEQA requires adoption of feasible alternatives that will reduce the  
23 adverse impacts and all feasible mitigation measures that will reduce adverse environmental  
24 impacts. Two feasible alternatives were rejected without substantial evidence that would support  
25 such findings. Additionally, many feasible mitigation measures were discussed in the Final EIR  
26 but no mitigation measures were adopted.

27 42. CEQA requires a lead agency to adopt all feasible mitigation for significant  
28 environmental impacts.

1           43.     The Draft General Plan EIR and Final EIR claimed that there would be no  
2 significant impacts to Park resources from allowing OHV use in the Ricardo Campground, and  
3 on Red Rock Canyon Wash Road and Sierra View Road. However, public comments included  
4 substantial evidence that OHV use of Ricardo Campground and combined-use of Red Rock  
5 Canyon Wash Road and Sierra View Road by OHVs will significantly impact the area’s wildlife  
6 and habitats and therefore allowing this access conflicts with statute and the failure to address  
7 these impacts violates CEQA.

8           44.     Red Rock Canyon State Park provides habitat for the desert tortoise: “all areas of  
9 the Park would generally be considered suitable for desert tortoise except for areas of steep rock  
10 outcrops, cliff faces, and rocky canyon bottoms, where habitat is limited or inaccessible to the  
11 species.” (DEIR at 2-66; DEIR, Appx. B, Biological Resources Report at 50 [same].) Few  
12 surveys have been done for tortoise in the park and therefore the mapping of occurrences does  
13 not indicate absence in other areas. DEIR, Appx. B, Biological Resources Report at 49-50; *id.* at  
14 51 Figure 9 [map of wildlife species occurrences showing tortoise occurrences only in the  
15 northern area.] Public comments explained the need for desert tortoise surveys throughout the  
16 park and recommended they be undertaken immediately along with development of a desert  
17 tortoise conservation plan. (FEIS at 3-49.)

18           45.     OHV routes have long been documented to cause declines in desert tortoise  
19 populations both from direct impacts by crushing tortoises on road surfaces, or indirect impacts  
20 through habitat alteration from soil compaction, vegetation destruction via direct impacts or  
21 indirect impacts via dust, promotion of weed invasions which displaces native vegetation, and  
22 toxins from exhaust. Roads are also documented to form barriers that inhibit dispersal and  
23 subsequent gene flow between subpopulations and metapopulations. Because roads alter  
24 hydrology, any resulting enhanced hydrological conditions increases diversity and productivity  
25 of vegetation beside roads, which attracts the herbivorous tortoise and places them at greater risk  
26 of direct mortality from motorized vehicles. Among the information provided to show that OHV  
27 use of roads can significantly impact desert tortoise, commenters submitted a study from nearby  
28

1 desert areas (Berry et al. 2014) showing that desert tortoise populations fair far better in areas  
2 where OHVs are excluded.

3 46. OHVs are known to directly and indirectly impact Mohave ground squirrels.  
4 OHVs can result in the mortality of individuals, collapsing of burrows, removal of shrubs used  
5 for cover, decrease in annual species used as forage, and changes in soil structure. Comments  
6 provided substantial evidence of these well documented impacts. Comments also raised the need  
7 to consider the impacts in the context of a changing climate particularly for long-term planning.  
8 For example, a recent study documented the Mohave ground squirrels strong sensitivity to  
9 climate variation, suggesting that global climate change will likely result in a northward shift in  
10 suitable habitats. And commenters raised the need for informed conservation planning as  
11 essential for this rare, declining species.

12 47. Public Comments included substantial evidence that OHV use of Ricardo  
13 Campground and OHV use of Red Rock Canyon Wash Road and Sierra View Road will  
14 significantly impact the area's flora and soils and therefore allowing this access conflicts with  
15 statute and the failure to address these impacts violates CEQA. For example, allowing OHV use  
16 along these routes and in the campground would increase dust deposition which reduces  
17 photosynthesis, affects stomata function, and can inhibit reproduction on vegetation resources.  
18 Among the special status plant species that will be affected are four rare and sensitive species of  
19 plants, Charlotte's phacelia (*Phacelia nashiana*), Solitary blazing star (*Mentzelia eremophila*),  
20 Red Rock tarplant (*Deinandra arida*), Red Rock Canyon monkeyflower (*Erythranthe*  
21 *rhodopetra*) along Red Rock Wash Road, in addition to Death Valley sandmat (*Euphorbia*  
22 *vallis-mortae*) along Sierra View Road. Comments also noted that other rare plants known to  
23 occur in the park had not been adequately surveyed in the park including Red Rock poppy  
24 (*Eschscholzia minutiflora ssp. twisselmannii*), Lemmon's jewelflower (*Caulanthus lemmonii*),  
25 Depressed ipomopsis (*Loeseliastrum depressum*), Rattan's cryptantha (*Cryptantha rattanii*),  
26 Reveal's buckwheat (*Eriogonum contiguum*), cottony buckwheat (*Eriogonum gossypinum*), and  
27  
28

1 slender nemacladus (*Nemacladus gracilis*). (Final EIR at 3-77.) Even the Draft EIR itself noted  
2 that much of the park has not been adequately surveyed for rare plants.

3           The large size of the Park and the fact that two new species were discovered  
4 during the Biological Resources Report surveys that had not been previously  
5 recorded in the Park suggests that many more species occur in the Park that have  
6 yet to be discovered and adequately documented.

7 (Draft EIR at 2-48). The lack of adequate surveys for these rare plants undermines the adequacy  
8 of the EIR.

9           48. California Department of Fish and Wildlife (“CDFW”), a trustee agency, found  
10 that significant impacts could occur to special-status plant species from vehicle traffic and other  
11 activities that would be authorized under the proposed General Plan:

12           Special-status plant species are threatened with habitat loss and habitat  
13 fragmentation resulting from development, vehicle and foot traffic, and  
14 introduction of non-native plant species (CNPS 2020), all of which may be  
15 unintended impacts of the Project and all future Projects tiered from this General  
16 Plan DEIR. Therefore, impacts of the Project will potentially have significant and  
17 cumulative impacts to populations of the species mentioned above if present in the  
18 project area.

17 (FEIR at 3-18.)

18           49. CDFW also explained that the discretionary Guidelines in the General Plan are not  
19 sufficient to protect sensitive plant species found in the Park and that mitigation measures  
20 should be adopted.

21           CDFW finds that some mitigation measures provided are not actionable nor  
22 enforceable. For example, Section 5.9.4 Sensitive Plants Guideline 1-1 states;  
23 “State Parks will protect sensitive plant species, including those that are listed  
24 under Federal and State laws as rare, threatened, or endangered, candidates for  
25 listing, or that are species of concern. Protection methods may include habitat  
26 preservation, seed banking, restoration/enhancement, and visitor education.” This  
27 does not constitute an actionable nor an enforceable measure. CDFW recommends  
28 that future CEQA documents tiered from this DEIR for projects include mitigation  
measures that meet the requirements of actionable and enforceable.”

(FEIR at 3-11.)

1           50.     The comments also provided evidence of impacts to soils and air quality. As the  
2 DEIR itself explained that soil erosion results from OHV recreational use: Impact 5.12-2 Soil  
3 Erosion, “human activities, including historic mining, road construction, and OHV recreation,  
4 have resulted in negative erosion impacts.” (Draft EIR at 5.12-12.) Comments also explained  
5 that impacts to soils can diminish carbon sequestration potential of desert soils and that the EIR  
6 had failed to address these potentially significant impacts. (Final EIR at 3-86 to 3-88.)

7           51.     Additionally, the Draft EIR itself provided evidence that OHV use in the park can  
8 have and has had significant impacts. The Draft EIR’s discussion of past OHV use in the park  
9 stated:

10  
11           Recreational activities that were previously allowed resulted in various effects on  
12 the Last Chance Canyon area’s resources, ranging from minor to *extensive damage*  
13 *to desert vegetation and soils*. Through resource management actions, such as  
14 fencing, signage, and vegetation restoration, many of the heavily affected sites in  
15 the Park are returning to a more natural and stable state. In other areas, the impacts  
16 of earlier OHV use *will be evident long into the future.*” (DEIR at 2-22 to 2-23  
[emphasis added].) The also DEIR acknowledged that “research has shown that  
OHV activity may be a potential threat as it damages vegetation communities and  
degrades pristine habitats (Laabs 2005).

17 (Draft EIR at 2-73.) While this statement was made in the context of potential impacts to one  
18 small mammal, the yellow-eared pocket mouse, the same is true for impacts to other wildlife  
19 and habitats. Similarly, the Draft EIR justifies closing some areas to OHV use based on damage  
20 caused but then ignores the damage that will be caused by opening other roads and Ricardo  
21 campground to OHV use. For example, the Draft EIR states:

22  
23           3.1.1.2 Issue 2: Vehicle Damage to Natural or Cultural Resources

24           State Parks staff and the public have concerns about damage to physical, natural  
25 and cultural resources caused by vehicles. Some of the damage is from visitors  
26 taking unauthorized routes or going off designated roads. A two-year study funded  
27 by the State Parks’ Cultural Stewardship Program assessed damage to  
28 archaeological sites caused by OHVs and vehicular recreation, undertaken from  
2004 to 2006. The report pointed out sensitive areas in the Park that needed to be  
closed and areas rehabilitated to meet current resource codes. More recent field

1 evaluations also identified roads that impacted natural, cultural, and aesthetic  
2 resources. State Parks staff have closed some roads to vehicular traffic in sensitive  
3 areas and restored areas where damage has occurred.

4 (Draft EIR at 3-2.) The EIR flatly ignores data and information provided by commenters as well  
5 as its own findings in stating that there is no substantial evidence of significant impacts from  
6 OHV use.

7 52. OHV use would detract from visitor experience by disrupting other visitor's  
8 enjoyment of the natural, scenic, and cultural and ecological values of the Park and campground  
9 by increasing noise, dust, and emissions in the park as well as other impacts to park resources.  
10 Specifically, having OHV vehicles at Ricardo Campground would contribute noise, emissions  
11 and would take away from the visitor experience for others seeking quiet recreation and  
12 enjoyment.

13 53. California Department of Fish and Wildlife also commented that the DEIR's  
14 analysis of impacts from OHV use was not adequate:

15 CDFW recommends that a recirculated Program DEIR better define how and  
16 under what conditions the expansion will take place, when the expansion will  
17 occur, and how all OHV use will be monitored. In addition, there should be  
18 discussion of how the inherent impacts of this type of activity can be minimized.  
19 CDFW recommends that the recirculated CEQA document analyze the cumulative  
20 impacts of OHV use within the entirety of the 25,000 acre park that would result  
21 from an increase in OHV usage. CDFW recommends that a cumulative impact  
22 analysis be conducted for all biological resources that will either be significantly  
23 or potentially significantly impacted by the proposed OHV expansion, including  
24 impacts that are determined to be less than significant with mitigation incorporated  
25 or for those resources that are rare or in poor or declining health and will be  
26 impacted by the Project, even if those impacts are relatively small (i.e. less than  
27 significant). Cumulative impacts should be analyzed using an acceptable  
28 methodology to evaluate the impacts of past, present, and reasonably foreseeable  
future projects on resources and should be focused specifically on the resource,  
not the Project. An appropriate resource study area should be identified and  
utilized for this analysis. CDFW staff is available for consultation in support of  
cumulative impacts analyses as a trustee and responsible agency under CEQA.

(Final EIR at 3-11 to 3-12.)



1           54.     The Draft EIR also failed to consider the cumulative impacts of OHV use in the  
2 region. The Draft EIR also failed to adequately take into account cumulative impacts of climate  
3 change that will only heighten the effects of habitat loss and other impacts experienced today.  
4 Impacts to habitat connectivity and wildlife linkages in Red Rock Canyon State Park were not  
5 adequately addressed in the EIR particularly in light of climate change. The impacts of climate  
6 change will be felt by all native species, requiring range shifts for many. Surviving such intense  
7 climatic change will require genetic diversity, movement corridors and available habitat in their  
8 new range. Current threats only make it less likely that species will have the adequate resources  
9 to adapt. Public comments urged State Parks to do more to address needed conservation  
10 measures across all habitats, with a critical emphasis on maintaining and enhancing connectivity  
11 for all species under climate change. (Final EIR at 3-86.) State Parks did not provide any  
12 additional analysis of these resources and impacts.

13           55.     The comments also explained that there are alternative routes that can be utilized  
14 as transportation corridors by OHVs who are recreating in the many OHV recreation areas  
15 surrounding Red Rock Canyon State Park including Power Line Road and EP-15. Therefore, the  
16 asserted “need” for short-cuts through the park from OHV areas outside the park is not  
17 supported and there is no basis to sacrifice park resources to accommodate such uses. Public  
18 Resources Code Section 5001.8(a)(2) requires that in a park, vehicle “use is confined to paved  
19 areas and other areas specifically designated and maintained for normal ingress, egress, and  
20 parking.” State Parks acknowledges that this policy has been repeatedly violated by OHVs  
21 accessing the park: “While inconsistent with Department policy and the unit classification, there  
22 is evidence that primitive roads in the Park are used by non-street legal OHV enthusiasts for trail  
23 riding and as a transportation corridor to BLM lands.” (Draft EIR at 2-22.) Instead of seeking  
24 ways to end these violations, State Parks’ decision to allow OHV use on Red Rock Wash Road  
25 and Sierra View Road and in the Ricardo Campground makes such violations even more likely,  
26 and despite the history of such unlawful trail riding, the EIR failed to address the significant  
27 impacts of such activities that State Parks admits has and likely will occur in the future and the  
28

1 EIR failed to propose any monitoring of or minimization and mitigation measures for these  
2 highly likely significant impacts.

3 56. The Final EIR does not cure the failure to address these significant impacts to Park  
4 resources. Instead of utilizing the existing, available scientific information and studies to assess  
5 the potentially significant impacts of OHV use in the Park, the Final EIR argues that the studies  
6 did not provide substantial evidence of significant impacts. The introduction of OHVs creates a  
7 need for monitoring and enforcement of OHV use to be sure that vehicles are adhering to  
8 designated routes and to monitor the status of special-status plant populations and wildlife that  
9 could be impacted by the introduction of OHVs; however no such monitoring was considered in  
10 the EIR or adopted as part of the General Plan.

11 57. The failure to address these significant impacts infects the EIR's analysis and  
12 conclusions regarding the direct, indirect and cumulative impacts to resources and comparison  
13 of the alternatives in the EIS, and renders the EIR inadequate.

14 58. The final decision by State Parks did not require implementation of any mitigation  
15 measures as a condition of the project approval and State Parks did not adopt a mitigation  
16 reporting or monitoring plan.

17 59. State Parks entirely failed to commit to alternatives or mitigation that would  
18 reduce or minimize impacts from OHV use of Sierra View Road, Red Rock Canyon Wash  
19 Road, and Ricardo Campground.

20  
21 **The EIR Failed to Adequately Identify the Environmental Setting or Baseline**

22 60. CEQA requires "description of the physical environmental conditions in the  
23 vicinity of the project" to serve as the baseline against which impacts to resources will be  
24 measured. (CEQA Guidelines section 15125(a).)

25 61. The EIR failed to provide needed survey information for desert tortoise and rare  
26 plants in large areas of the Park. As a result, the EIR could not adequately analyze whether  
27 impacts from the project would be significant.

28 62. In addition, the EIR failed to adequately identify all of the existing environmental

1 damage to Park resources from illegal activity by OHV in the Park as part of the environmental  
2 baseline. It is critical for the EIR to acknowledge that baseline damage from OHV use in order  
3 to provide adequate analysis of the additional impacts that will be caused by authorizing non-  
4 street legal OHVs access to Park roads and the Ricardo Campground under the proposed  
5 General Plan. The fact that State Parks has not adequately enforced OHV restrictions in the past,  
6 “does not change the scope of CEQA review in the present” where it seeks to authorizes  
7 currently illegal uses. *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131  
8 Cal.App.4th 1170, 1196. The impact of expanding and authorizing a use that has been conducted  
9 illegally in the past must be addressed.

### 10 **The EIR Failed to Disclose the Project's Inconsistency with the Vehicle Code.**

11 63. The EIR improperly failed to disclose the project's inconsistency with existing  
12 statutory requirements in violation of CEQA. CEQA Guidelines, Appendix G, section XI.B  
13 requires identification of a project’s impacts resulting from conflicts with any land use plan,  
14 policy or regulation adopted from the purpose of avoiding or mitigating an environmental effect.  
15 The Vehicle Code imposes limits on OHV use of highways to avoid traffic safety and land use  
16 incompatibility impacts. Thus, violation of these regulations is a significant adverse impact that  
17 must be analyzed and avoided if feasible. As detailed below, the adoption of a combined-use  
18 segment of Sierra View Road of longer than 3 miles violates the Vehicle Code section 38026.  
19 Therefore, the EIR was required to disclose this information and explain that the proposed  
20 General Plan was infeasible and could not be lawfully implemented. Because the EIR did not it  
21 also fails as an informational document.

### 22 **The EIR Failed to Provide Adequate Responses to Comments**

23 64. Under CEQA, the lead agency must provide written responses to comments  
24 submitted during the EIR comment period. (Public Resources Code § 21092.5.) Responses  
25 require good faith, reasoned analysis. (CEQA Guidelines § 15088(c).)  
26  
27  
28

1           65.    Objections to the lead agency’s position must be “addressed in detail giving  
2 reasons why specific comments and suggestions were not accepted.” (CEQA Guidelines §  
3 15088(c).

4           66.    In response to comments, the Final EIR made no substantive changes to the DEIR,  
5 but included some revisions to the proposed General Plan, including for the first time a clear  
6 map of the roads and campground proposed for use by OHVs in the proposed General Plan.  
7 (Final EIR at 4-4, Draft General Plan at 4-39 [Figure 4-8. Proposed Routes Open to Non-Street  
8 Legal Motorized Vehicles].) The Final EIR explained that State Parks has also added statutory  
9 language to the Draft General Plan Revision regarding restrictions on the use of OHVs on  
10 combined-use on road segments that are designated. (Final EIR at 4-3 to 4-4.)

11           67.    Many of the responses to comments regarding impacts from OHV use on Sierra  
12 View Road, Red Rock Canyon Wash Road, and in Ricardo campground were simply dismissive  
13 and/or non-responsive. For example, the response summarily dismissed comments and scientific  
14 studies about impacts of OHV use of roads as not providing “substantial evidence.”

15           68.    In response to other comments that raised concerns about the proposal to allow  
16 OHV access in the Park, the Final EIR stated: “if State Parks does not establish a connectivity  
17 route for non-street legal OHVs, there would be no clear path for access between the non-street  
18 legal OHV permitted use areas that border the Park, which would increase the potential for  
19 illegal crossing of the Park through sensitive resource areas.” (Final EIR at 3-153 [response  
20 O14-3].) However, State Parks cannot lawfully justify allowing avoidable significant impacts to  
21 resources by raising the specter of future illegal activity by individual OHV riders. Future illegal  
22 activity cannot provide a basis for State Parks to adopt an EIR that rejects the feasible alternative  
23 of prohibiting ORV use in Red Rock Canyon State Park which would a substantially lessen or  
24 avoid significant impacts to resources of the Park. (Pub. Res. Code § 21002.) Such a  
25 consideration can only be made after the EIR acknowledges the significant adverse impact, and  
26 has separately made findings that there are beneficial overriding considerations *and* that there  
27 are no feasible alternatives or mitigation measures that would eliminate or substantially lessen  
28

1 the significant adverse impact. (Pub. Res. Code § 21081; CEQA Guidelines §§ 15091, 15092,  
2 15093.)

3 69. Several commenters, including the Center, submitted comments on the Final EIR  
4 before the Project was approved, in order to respond to various statements by State Parks in the  
5 response to comments. These additional comments provided additional studies and information  
6 about OHVs' significant impacts on natural resources.

7 **State Parks' Findings Are Contradicted by Substantial Evidence In The Record**

8 70. In order to approve a project with significant adverse environmental impacts, the  
9 lead agency must make findings, supported by substantial evidence, that the project's benefits  
10 will outweigh its adverse impacts and that there are not feasible mitigation measures or less  
11 damaging alternatives available.

12 71. In order to support a finding of no significant impacts the EIR must include more  
13 than conclusions, it must include sufficient discussion of potentially significant effects to  
14 adequately inform the public and decisionmakers of the issues raised by the proposed project  
15 and their environmental consequences. (CEQA Guidelines, § 15151.) The determination  
16 whether a discussion is sufficient is not solely a matter of discerning whether there is substantial  
17 evidence to support the agency's factual conclusions. *Sierra Club v. Cty. of Fresno*, 6 Cal. 5th  
18 502, 516, (2018).

19 72. Here, the EIR failed to discuss impacts that would result from OHV use of the  
20 roads and in the campground and the response to comments in the Final EIR dismissed the issue  
21 by claiming there was no substantial evidence of such impacts. However, there is substantial  
22 evidence that there may be significant impacts from allowing combined-use of OHVs on Sierra  
23 View Road, Red Rock Canyon Wash Road, and in Ricardo Campground. Therefore, the record  
24 does not support the Commission's findings of no significant impact, its failure to choose an  
25 alternative that could avoid those impacts, its failure to consider or adopt feasible and  
26 enforceable minimization and mitigation measures, and its failure to adopt needed monitoring to  
27 ensure impacts are avoided, minimized and mitigated to protect Park resources.  
28

1 73. Thus, the finding of no significant impact is unsupported in the face of substantial  
2 evidence of significant impacts, in violation of CEQA.

3 **The EIR Unlawfully Rejected the Environmentally Superior Alternative.**

4 74. Under CEQA, it is the policy of the State that a proposed project cannot be  
5 approved if a feasible alternative to the project exists that will reduce the project's significant  
6 impacts. CEQA additionally imposes upon lead agencies a clear duty to consider a reasonable  
7 range of alternatives, including any feasible alternative which could substantially lessen the  
8 significant environmental effects of the Project.

9 75. State Parks ignored the substantial evidence of significant impacts of OHV use, in  
10 an attempt to elide this requirement. By claiming no significant impacts would occur from OHV  
11 use, State Parks could then also claim that the proposed General Plan and Alternative 2 would  
12 have virtually the same impacts to the environment.

13 76. Here, the EIR considered one feasible alternative (Alternative 2) that would reduce  
14 and avoid the significant impacts of OHV use in the park and fulfill CEQA's mandate. But State  
15 Parks did not adopt this alternative based on the erroneous finding that the proposed General  
16 Plan would not have any significant impacts.

17 **SECOND CAUSE OF ACTION**

18 **(Violations of Vehicle Code § 38026)**

19 77. Petitioner hereby refers to and fully incorporate by reference the paragraphs set  
20 forth above as though fully set forth at length herein.

21 78. In California, the state legislature has preempted the field of motor vehicle traffic  
22 regulation. (Vehicle Code § 21.)

23 79. The Vehicle Code only provides State Parks with limited authority to allow off-  
24 highway vehicles to use short segments of public roads for "combined-use" if the statutory  
25 criteria are met. Specifically, Vehicle Code § 38026 provides as relevant here:  
26  
27  
28

1           **Combined-use highways**

2           (a)     In addition to Section 38025 and after complying with subdivision (c) of  
3           this section, if a local authority, an agency of the federal government, or the  
4           Director of Parks and Recreation finds that a highway, or a portion of a highway,  
5           under the jurisdiction of the authority, agency, or the director, as the case may be,  
6           is located in a manner that provides a connecting link between off-highway motor  
7           vehicle trail segments, between an off-highway motor vehicle recreational use area  
8           and necessary service facilities, or between lodging facilities and an off-highway  
9           motor vehicle recreational facility and if it is found that the highway is designed  
10          and constructed so as to safely permit the use of regular vehicular traffic and also  
11          the driving of off-highway motor vehicles on that highway, the local authority, by  
12          resolution or ordinance, agency of the federal government, or the Director of Parks  
13          and Recreation, as the case may be, *may designate that highway, or a portion of a*  
14          *highway, for combined use* and shall prescribe rules and regulations therefor. *A*  
15          *highway, or portion of a highway, shall not be so designated for a distance of*  
16          *more than three miles*, except as provided in Sections 38026.1 and 38026.2. A  
17          freeway shall not be designated under this section.

18          (Emphasis added.) State Parks is not granted discretion in interpreting this section.

19                 80.     State Parks is required to comply with these mandates in adopting any combined-  
20                 use under the Vehicle code section 38026, but did not do so when approving the Project. Rather,  
21                 the General Plan adopted by State Parks authorizes combined-use of Sierra View Road for well  
22                 over 3 miles. Even if this road segment were 3.1 miles long, as State Park claims, this would be  
23                 a violation of the statute. However, as commenters explained in response to the Draft EIR and at  
24                 the hearing, the EIR failed to disclose that the actual length of the segment of Sierra View Road  
25                 is much longer and measures 4.5 miles. Thus, State Parks in violation of law and relied on a  
26                 plain error of fact in its designation of this segment of Sierra View Road for combined-use by  
27                 OHVs.

28                 81.     The Vehicle Code section 38036 only authorizes the designation of road segments  
up to three miles long for combined-use by OHVs. State Parks was not authorized to allow  
combined-use of OHV on road segments longer than three miles and its decision to do so in the  
Red Rock Canyon General Plan is legally invalid.

1 **THIRD CAUSE OF ACTION**

2 **(Declaratory Relief Pursuant to Code of Civil Procedure § 1060)**

3 82. Petitioner incorporates by reference herein each and every allegation contained in  
4 the previous paragraphs.

5 83. An actual controversy exists between Petitioner and State Parks because State  
6 Parks has failed to comply with the Vehicle Code in adopting combined-use by non-street legal  
7 off highway vehicles for a road segment that does not meet the statutory criteria.

8 84. Petitioner is beneficially interested in having the State Parks comply with all  
9 applicable provisions of law and their legal duties, as set forth herein.

10 85. A judicial declaration and determination is necessary and appropriate at this time  
11 in order that the parties ascertain their rights and obligations with respect to State Parks’  
12 obligations under the Vehicle Code and in order to resolve all controversies between the parties  
13 hereto regarding such rights and duties.

14 86. Therefore, Petitioner seeks a declaration that the State Parks’ action to allow  
15 combined-use of OHVs on public road segments longer than 3 miles is an abuse of discretion, or  
16 otherwise fails to comply with the law.

17 87. Unless declaratory relief is granted, State Parks may attempt to allow combined-  
18 use of OHVs on other road segments of longer than 3 miles in violation of the Vehicle Code in  
19 Red Rock Canyon State Park or other state park units.

20 **FOURTH CAUSE OF ACTION**

21 **(Violations of the Public Resources Code)**

22 88. Petitioner hereby refers to and fully incorporate by reference the paragraphs set  
23 forth above as though fully set forth at length herein.

24 89. Public Resources Code section 5019.53 requires State parks to be managed to  
25 “*preserve* outstanding natural, scenic, and cultural values, indigenous aquatic and terrestrial  
26 fauna and flora, and the most significant examples of ecological regions of California such as ...  
27 desert and desert mountains.” (Emphasis added.) There is no mention of OHV travel in Parks  
28



1 anywhere in a State Park unit under Public Resources Code section 5019.53. Authorizing  
2 combined-use of OHVs on Sierra View Road and Red Rock Canyon Wash Road through the  
3 park and allowing OHV use of Ricardo Campground will undermine preservation of park  
4 values.

5 90. Public Resources Code section 5019.53 allows “improvements” to support  
6 recreation only if they are “consistent with the preservation of natural, scenic, cultural, and  
7 ecological values for present and future generations” and prohibits “improvements” which are  
8 “attractions in themselves, or which are *otherwise available to the public within a reasonable*  
9 *distance outside the park.*” (Emphasis added.) There are many opportunities for OHV recreation  
10 surrounding the park both in State and Federal “open” areas where unrestricted use is allowed  
11 and on OHV routes on other BLM lands. (*See, e.g., Draft EIR at 2-23.*)<sup>2</sup> For example, Onyx  
12 Ranch SVRA to the West of Red Rock includes 26,000 acres of “scenic and challenging terrain  
13 for all-terrain vehicles (ATV’s), motorcycles, recreational OHV’s, and 4X4 vehicles.” (DEIR at  
14 3.22-6.) The BLM Jawbone Canyon OHV area to the South of the park consists of 5,132 acres.  
15 The BLM Dove Springs OHV area to the North of Red Rock consists of 3,935.8 acres.

16 91. State Parks acknowledges that there are ample camping and recreational OHV  
17 opportunities for OHVs outside the park including camping at Onyx SVRA (Draft EIR at 5.22-  
18 6), and the purpose of the OHV combined-use designation is to serve OHV recreation *outside*  
19 *the park:*  
20

- 21 Provide primitive roads that will allow non-street legal vehicles registered as  
22 OHVs *to connect to OHV trails and riding areas outside the Park*, including:  
23 (a) Red Rock Wash Road from the Ricardo Campground loop trail to the Dove  
24 Springs BLM OHV Area.  
25 (b) Sierra View Road connecting EP 465 to the Dove Springs BLM OHV Area.

26 <sup>2</sup> At hearing State Parks stated: “Onyx Ranch State Vehicular Recreation Area and Jawbone  
27 Canyon and Dove Springs, BLM OHV Areas are adjacent to the park. There's also [] thousands  
28 of acres, if not millions of acres that surround Red Rock Canyon State Park that are open public  
lands that are federally, and state operated.”

1 (Draft EIR at 4-33 [emphasis added]; General Plan at 4-41.) The proposal to jointly utilize Park  
2 facilities including Ricardo Visitor Center for OHV visitors to Onyx Ranch SVRA and the  
3 campground for OHV focused recreationists will become an “attraction in itself” for recreation  
4 opportunities available outside the park. (Draft EIR at 4-50.)

5 92. State Parks’ focus on accommodating OHV recreation *in the park*, although it is  
6 readily available nearby, undermines State Parks duty to prioritize preservation of Red Rock  
7 Canyon State Park resources. Because allowing OHV use of the Ricardo Campground, Red  
8 Rock Canyon Wash road access, and Sierra View Road will be “attraction in themselves” for  
9 OHVs, and providing this access for OHV’s is not “consistent with the preservation of natural,  
10 scenic, cultural, and ecological values for present and future generations” designation of these  
11 roads and Ricardo Campground for use by OHVs violates the statutory prohibition in Public  
12 Resources Code section 5019.53.

13 **PRAYER FOR RELIEF**

14 In each of the respects enumerated above, Respondents have violated their duties under  
15 law, abused their discretion, failed to proceed in the manner required by law, and decided the  
16 matters complained of without the support of substantial evidence. Accordingly, adoption of  
17 combined-use roads under Vehicle Code section 38026 must be set aside, and the certification of  
18 the EIR and the approval of the Red Rock Canyon General Plan Revision must be set aside.

19 WHEREFORE, Petitioner prays for relief as follows:

- 20 1. For an alternative and peremptory writ of mandate, commanding Respondents:  
21 A. To set aside and vacate the certification of the EIR supporting the approval  
22 of the Red Rock Canyon General Plan; and  
23 B. To set aside and vacate the Red Rock Canyon General Plan Revision and  
24 all associated approvals; and  
25 C. To set aside and vacate State Parks’ findings in support of its decision to  
26 approve the Red Rock Canyon General Plan Revision.  
27 2. For an order precluding Respondents from taking any action to allow OHV use of  
28

1 Sierra View Road, Red Rock Canyon Wash Road, and Ricardo Campground without first  
2 addressing significant impacts to Park resources and adopting feasible mitigation measures and  
3 monitoring requirements, or to undertake any other actions that could result in a significant  
4 adverse impact on Park resources from OHV use in the Park until after the preparation and  
5 consideration of an adequate EIR and adoption of all feasible alternatives and mitigation  
6 measures;

7 3. For a declaration that Respondents, and each of them, have a) failed to fulfill their  
8 statutory obligations under the Vehicle Code section 38026, by designating a segments of Sierra  
9 View Road of over 3 miles for combined-use by OHVs; and b) failed to fulfill their statutory  
10 obligations under the Public Resources Code section 5019.53 by allowing OHV use of the park  
11 roads and campground that are attractions in themselves, will degrade park resources and visitor  
12 experience, and because when that type of recreation is readily available in many other places nearby.

13 4. For a temporary stay, temporary restraining order, and preliminary and permanent  
14 injunctions restraining State Parks, and their agents, servants, and employees, and all others  
15 acting in concert with them or on their behalf, from taking any action to implement, fund or  
16 construct any portion or aspect of the Project, pending full compliance with the requirements of  
17 CEQA, the Public Resources Code, the Vehicle Code, and all applicable regulations;

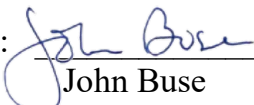
18 5. For costs of the suit;

19 6. For reasonable attorneys' fees; and

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

21 DATE: April 3, 2023

Respectfully Submitted,

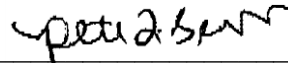
22  
23  
24  
25 By:  \_\_\_\_\_  
John Buse

26  
27 Attorney for Petitioner and Plaintiff  
Center for Biological Diversity

**VERIFICATION**

1  
2 I, Peter Galvin, declare that I am the Director of Programs for the Center for Biological  
3 Diversity, the Petitioner in this action, and authorized to make this verification. I have read the  
4 foregoing Petition for Writ of Mandate and know the contents thereof, and the same is true of  
5 my own knowledge.  
6

7 I declare under penalty of perjury that the foregoing is true and correct. Executed this  
8 31st day of March, 2023 in Athens, Alabama.  
9

10  
11 

12 \_\_\_\_\_  
13 Peter Galvin  
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# **Exhibit A**



***Via U.S. Mail***

April 3, 2023

Mr. Rob Bonta, Attorney General  
Office of the Attorney General  
Attn: Environmental/CEQA Filing  
1300 I Street  
Sacramento, CA 95814-2919

**Re: Notice of Commencement of Legal Action Alleging Environmental Harm**

Dear Attorney General Bonta:

The enclosed Petition for Writ of Mandate in *Center for Biological Diversity v. California Department of Parks and Recreation, et al.* (Sacramento County Superior Court), is submitted to your office pursuant to Code of Civil Procedure section 388 and Public Resources Code 21167.7.

Petitioner in this case challenges the adoption of the Red Rock Canyon State Park General Plan Revision (“Project” or “General Plan”), and certification of an environmental impact report for the Project. Petitioners allege environmental harms that could affect the public generally and the natural and cultural resources of the State Park. Petitioner is specifically concerned that the Project will have significant negative environmental impacts on, among other things, biological resources (including special status species: Mohave ground-squirrel, desert tortoise, and many rare plants), soils, air quality, and greenhouse gas emissions.

Please acknowledge receipt in the enclosed prepaid, self-addressed envelope. Thank you for your attention to this matter.

Sincerely,

John Buse, Senior Counsel  
Center for Biological Diversity  
1212 Broadway, Suite 800  
Oakland, CA 94612  
jbuse@biologicaldiversity.org

Enclosure: Verified Petition for Writ of Mandate

# **Exhibit B**



***Via FedEx***

March 31, 2023

Armando Quintero, Director, California State Parks  
Department of Parks and Recreation  
715 P Street  
Sacramento, CA 95814

**Re: Notice of Commencement of Legal Action Pursuant to the California Environmental Quality Act**

Dear Director Quintero,

The Center for Biological Diversity (“Petitioner”) intends to commence an action for writ of mandate to vacate and set aside the decision of the Park and Recreation Commission (the “Commission”) approving the Red Rock Canyon State Park General Plan Revision (the “Project”) and certifying a Final Environmental Impact Report prepared by the California Department of Parks and Recreation (the “Department”) for the Project. The Commission and the Department will be named as Respondents in this action. Petitioner submits this notice pursuant to Public Resources Code section 21167.5.

The action will commence on or around April 3, 2023 and will be based upon on Respondents’ failure to comply with the California Environmental Quality Act (Public Resources Code § 21000, et seq.) in adopting the Environmental Impact Report and approving the Project, among other grounds.

Sincerely,

John Buse, Senior Counsel  
Center for Biological Diversity  
1212 Broadway, Suite 800  
Oakland, CA 94612  
[jbuse@biologicaldiversity.org](mailto:jbuse@biologicaldiversity.org)





***Via FedEx***

March 31, 2023

California Park and Recreation Commission  
c/o Staff Liaison  
715 P Street  
Sacramento, CA 95814

**Re: Notice of Commencement of Legal Action Pursuant to the California Environmental Quality Act**

Dear Park and Recreation Commission and Commissioners,

The Center for Biological Diversity (“Petitioner”) intends to commence an action for writ of mandate to vacate and set aside the decision of the Park and Recreation Commission (the “Commission”) approving the Red Rock Canyon State Park General Plan Revision (the “Project”) and certifying a Final Environmental Impact Report prepared by the California Department of Parks and Recreation (the “Department”) for the Project. The Commission and the Department will be named as Respondents in this action. Petitioner submits this notice pursuant to Public Resources Code section 21167.5.

The action will commence on or around April 3, 2023 and will be based upon on Respondents’ failure to comply with the California Environmental Quality Act (Public Resources Code § 21000, et seq.) in adopting the Environmental Impact Report and approving the Project, among other grounds.

Sincerely,

John Buse, Senior Counsel  
Center for Biological Diversity  
1212 Broadway, Suite 800  
Oakland, CA 94612  
[jbuse@biologicaldiversity.org](mailto:jbuse@biologicaldiversity.org)

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF ALAMEDA

3 I am employed in Oakland, California. I am over the age of 18 and not a party to the foregoing  
4 action. My business address is Center for Biological Diversity, 1212 Broadway, Suite 800,  
5 Oakland, California 94612. My email address is trettinghouse@biologicaldiversity.org.

6 On March 31, 2023, I served a true and correct copy of the following document(s):

7 **Notice of Commencement of Legal Action Pursuant to CEQA**

8  BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through  
9 Center for Biological Diversity's electronic mail system to the email address(s) shown below.

10  BY FEDERAL EXPRESS: By placing a true and correct copy thereof in sealed envelope(s).  
11 Such envelope(s) were addressed as shown below. Such envelope(s) were deposited for  
12 collection and mailing following ordinary business practices with which I am readily familiar.


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14 Armando Quintero, Director California State Parks 15 Department of Parks and Recreation 715 P Street 16 Sacramento, CA 95814	California Park and Recreation Commission c/o Staff Liaison 715 P Street Sacramento, CA 95814
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18  STATE: I declare under penalty of perjury under the law of California that the foregoing  
19 is true and correct.

20 Executed on March 31, 2023 at Alameda, California.

21   
22 Theresa Rettinghouse

# **Exhibit C**

1 John Buse (SBN 163156)  
2 Peter J. Broderick (SBN 293060)  
3 Lisa T. Belenky (SBN 203225)  
4 CENTER FOR BIOLOGICAL DIVERSITY  
5 1212 Broadway, Suite 800  
6 Oakland, CA 94612  
7 Telephone: (510) 844-7100  
8 Facsimile: (510) 844-7150  
9 Email: jbuse@biologicaldiversity.org  
10 pbroderick@biologicaldiversity.org  
11 lbelenky@biologicaldiversity.org

12 Attorneys for Petitioner and Plaintiff  
13 Center for Biological Diversity

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **FOR THE COUNTY OF SACRAMENTO**

16 CENTER FOR BIOLOGICAL DIVERSITY ) CASE NO.:  
17 Petitioner and Plaintiff, )  
18 v. )  
19 CALIFORNIA DEPARTMENT OF PARKS ) **PETITIONER’S NOTICE OF**  
20 AND RECREATION, an agency of the State ) **ELECTION TO PREPARE**  
21 of California; and CALIFORNIA STATE ) **ADMINISTRATIVE RECORD**  
22 PARK AND RECREATION COMMISSION, )  
23 Respondents and Defendants. ) [Pub. Res. Code § 21167.6]

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1                   **TO RESPONDENTS CALIFORNIA DEPARTMENT OF PARKS AND**  
2 **RECREATION AND CALIFORNIA STATE PARK AND RECREATION**  
3 **COMMISSION:**

4                   In this action, Petitioner CENTER FOR BIOLOGICAL DIVERSITY respectfully  
5 petitions this Court for a Writ of Mandate directed to Respondents CALIFORNIA  
6 DEPARTMENT OF PARKS AND RECREATION and CALIFORNIA STATE PARK AND  
7 RECREATION COMMISSION. Petitioner challenges Respondents’ March 3, 2023 certification  
8 of the Environmental Impact Report (“EIR”) for the Red Rock Canyon State Park General Plan  
9 Revision and approval of the Red Rock Canyon State Park General Plan Revision.

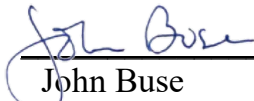
10                   Pursuant to Public Resources Code section 21167.6(b)(2), Petitioner hereby elects to  
11 prepare the record of proceedings related to this action. The record will be organized  
12 chronologically, paginated consecutively, and indexed so that each document may be clearly  
13 identified as to its content and source, in a form and format consistent with the California Rules  
14 of Court, Rule 3.1365.

15                   Petitioner will include in the record of proceedings all documents, including transcripts,  
16 minutes of meetings, notices, correspondence, reports, studies, proposed decisions, final drafts  
17 and any other documents or records relating to Respondents’ determination to approve the  
18 Project.

19                   Petitioner requests that Respondents (1) promptly provide petitioner access to the record  
20 of proceedings so that petitioner may reproduce the same, and (2) subsequently inspect and  
21 certify Petitioner’s reproduction of the record of proceedings so that Petitioner may timely lodge  
22 the same with the Court pursuant to Public Resources Code section 21167.6(b)(2).  
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1 DATE: April 3, 2023

Respectfully Submitted,

2  
3 By:   
4 \_\_\_\_\_  
5 John Buse  
6 Attorneys for Petitioner and Plaintiff  
7 Center for Biological Diversity  
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