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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SAN BERNARDINO

12 CENTER FOR BIOLOGICAL) Case No.
13 DIVERSITY, SAN BERNARDINO) Original Date of Filing: February 26, 2016
14 VALLEY AUDUBON SOCIETY, and)
SIERRA CLUB) **PETITION FOR WRIT OF MANDATE AND**
15) **COMPLAINT FOR DECLARATORY AND**
Petitioners/Plaintiffs,) **INJUNCTIVE RELIEF**

16 vs.) [Pub. Res. Code § 21000, *et seq.* (California
17) Environmental Quality Act); Government Code §
CITY OF HESPERIA; CITY COUNCIL) 66400 *et seq.* (Subdivision Map Act)

18 OF THE CITY OF HESPERIA; and)
DOES 1-20) **CASE DESIGNATION: CEQA**

19 Respondents/Defendants.)
20)
21)

22 HESPERIA VENTURE I, a California)
Limited Liability Company; TERRA)
23 VERDE GROUP, a Delaware Limited)
Liability Company; and DOES 21-50,)

24 Real Parties in Interest.)
25)
26)
27)

INTRODUCTION

1
2 1. In this action, Petitioners and Plaintiffs Center for Biological Diversity, San
3 Bernardino Valley Audubon Society, and the Sierra Club (“Petitioners”) challenge
4 Respondents and Defendants City of Hesperia and the City Council of the City of Hesperia’s
5 (“City”) January 27, 2016 approval of the Specific Plan and Phase 1 of the Tapestry
6 development project (“Project”) and certification of the final Environmental Impact Report
7 (“EIR”) for the Project.

8 2. This Project is of an astounding scale—the total Project area is 9,365 acres. It
9 will increase the size of the arid town of Hesperia by approximately 50 percent, adding
10 approximately 47,500 new residents to an already resources-constrained area. The Project
11 allows for the destruction of at least 5,839 acres and will impact an additional 3,526 acres of
12 sensitive wildlife habitat and agricultural lands on site. The Specific Plan approves the phased
13 development of 16,196 residential units and as much as 1.4 million square feet of commercial
14 and retail space. Phase 1, the first phase of the Specific Plan development, would construct
15 2,104 residential units and destroy over 700 acres of wild and farm lands.

16 3. The environmental impacts of constructing a low-density subdivision the size
17 of city in a sensitive, dry desert landscape are exceptional. The Project will push imperiled
18 desert species out of essential habitat, destroy ecologically significant native habitat, and
19 decrease available water resources and overall water quality. At least twenty-four sensitive
20 species will be affected by the proposed project, including the endangered southwestern willow
21 flycatcher and the arroyo toad and designated critical habitat for both these species. The addition
22 of over 47,000 new residents and their cars will worsen air quality, traffic congestion, and
23 noise in and around the City. Water, already a scarce resource for Hesperia, will need to be
24 imported in ever greater amounts from unreliable sources to slake the thirst of the Project. The
25 Project will spew millions of tons of greenhouse gases into the atmosphere, causing California
26 to slide farther away from its lofty mandates to decrease greenhouse gas emissions.

27 4. The City attempted to evaluate both the Specific Plan and Phase 1 in one EIR

1 and failed to adequately and accurately address either component of this mega-development.
2 Respondents have failed to identify, analyze, or propose acceptable mitigation measures for the
3 Project’s environmental impacts. The EIR is based upon an entirely inadequate and inaccurate
4 baseline due to the City’s failure to conduct even the most basic surveys and research on
5 critical issues such as surface water quality, projected water supply, and endangered biological
6 resources. In addition, where the EIR does address sensitive species and habitat, the EIR
7 improperly minimizes and mischaracterizes the Project’s severe impacts to these resources.
8 The EIR also impermissibly diminishes the significance of the Project’s massive greenhouse
9 gas impacts by comparing it to an illegal “business as usual” scenario. The EIR fails to
10 adequately analyze project alternatives or adopt feasible mitigation measures, especially those
11 related to the destruction of the arroyo toad and southwestern willow flycatcher critical habitat
12 and the Project’s greenhouse gas emissions.

13 5. The City’s approval of the Project also violates the Subdivision Map Act
14 because the Project fails to adequately ensure the availability of future water supply to meet
15 Project demands, and the Project is likely to cause substantial environmental damage and
16 substantially and avoidably harm wildlife and their habitat.

17 6. In approving the project, the City failed to comply with the California
18 Environmental Quality Act (“CEQA”), Public Resources Code § 21000 *et seq.*; the CEQA
19 Guidelines, title 14 California Code of Regulations, § 15000 *et seq.*; and the Subdivision Map
20 Act, Government Code § 66400 *et seq.* Petitioners petition this Court for a Writ of Mandate
21 under the Code of Civil Procedure, sections 1085 and 1094.5 directing Respondents to vacate
22 and set aside their approval of the Project and certification of the EIR for the Project.

23
24 **JURISDICTION AND VENUE**

25 7. This Court has jurisdiction over this action pursuant to sections 1085, 1094.5,
26 187, and 526 of the California Code of Civil Procedure, and sections 21168 and 21168.5 of the
27 Public Resources Code.

1 8. Venue for this action properly lies in the San Bernardino County Superior
2 Court because Respondents and the proposed site of the Project are located in San Bernardino
3 County.

4 **THE PARTIES**

5 9. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (“Center”) is a
6 California non-profit public interest corporation with over 47,000 members, including
7 members living in San Bernardino County. The Center and its members are dedicated to
8 protecting diverse native species and habitats through science, policy, education, and
9 environmental law. Center members reside and own property in San Bernardino County and
10 use publicly accessible portions of the Project site and surrounding areas for recreational,
11 wildlife viewing, scientific, and educational purposes. Center members will be directly
12 affected by the actions in this litigation, and its components, as described herein.

13 10. Petitioner SAN BERNARDINO VALLEY AUDUBON SOCIETY
14 (“Audubon”) is a California non-profit public benefit corporation with approximately 2,000
15 members who are residents and property owners within the Inland Empire of Southern
16 California, including within the County of San Bernardino, and who will be directly affected
17 by this action. The purpose of Audubon is to educate the public about the environment,
18 planning and infrastructure issues, and to take action to protect the region’s natural heritage
19 areas when necessary. Many Audubon members receive personal, scientific, professional, and
20 spiritual benefit from rare, sensitive, threatened and endangered species that will be affected by
21 the action that is the subject of this litigation. Audubon members reside and own property in
22 San Bernardino County and use publicly accessible portions of the Project site and surrounding
23 areas for recreational, wildlife viewing, scientific, and educational purposes. Audubon
24 members will be directly affected by the actions in this litigation, and its components, as
25 described herein.

26 11. Petitioner SIERRA CLUB is a California non-profit social welfare corporation
27 with approximately 732,000 members. Sierra Club is dedicated to exploring, enjoying, and

1 protecting the wild places of the earth; to practicing and promoting the responsible use of the
2 earth's ecosystems and resources; to educating and encouraging humanity to protect and
3 restore the quality of the natural and human environment; and to using all lawful means to
4 carry out these objectives. Sierra Club's particular interest in this case and the issues that this
5 Project approval concerns stem from the Sierra Club's local San Geronio Chapter's interests
6 in preserving the native, endangered, imperiled and sensitive species and wildlife habitats of
7 the Inland Empire. The 6,032 members of the San Geronio Chapter live, work, and recreate in
8 an around the areas that will be directly affected by the construction and operation of the
9 Project. Sierra Club members reside and own property in San Bernardino County and use
10 publicly accessible portions of the Project site and surrounding areas for recreational, wildlife
11 viewing, scientific, and educational purposes. Sierra Club members will be directly affected
12 by the actions in this litigation, and its components, as described herein.

13 12. Members of the Center, Audubon, and Sierra Club timely presented written
14 comments during the administrative hearings on the matters being challenged in this petition.
15 The Center, Audubon, and their members are directly, adversely, and irreparably affected, and
16 will continue to be prejudiced by the Project and its components, as described herein, until and
17 unless this Court provides the relief prayed for in this petition.

18 13. Respondent CITY OF HESPERIA ("City") is a local governmental agency and
19 political subdivision of the State of California charged with the authority to regulate and
20 administer land use activities within its boundaries, subject at all times to the obligations and
21 limitations of all applicable state, federal, and other laws, including CEQA, the CEQA
22 Guidelines, and the Subdivision Map Act. The City also has the authority to approve land use
23 development and certify the EIR. The City is the CEQA lead agency for the EIR prepared for
24 the Project.

25 14. Respondent CITY COUNCIL OF THE CITY OF HESPERIA is the legislative
26 body and the highest administrative body of the City.

1 15. Real Party in Interest HESPERIA VENTURE I is listed as the Project applicant
2 in the EIR and City documents. On information and belief, HESPERIA VENTURE I, LLC is
3 a California limited liability corporation with its principal place of business in California.

4 16. Real Party in Interest TERRA VERDE GROUP is a Project funder, developer,
5 and/or landowner. On information and belief, TERRA VERDE GROUP is a Delaware limited
6 liability corporation with its principal place of business in California.

7 17. Based on the Real Parties' status as the identified applicant, funder, promoter,
8 developer and/or owner for the Project, and on Petitioners' information and belief, Real Parties
9 adequately represent the interests of any and all other non-joined parties in the Project.

10 18. Petitioners are currently unaware of the true names and capacities of Does 1
11 through 20, inclusive, and therefore sue those parties by such fictitious names. Does 1 through
12 20, inclusive, are agents of the City, state, or federal government who are responsible in some
13 manner for the conduct described in this petition, or other persons or entities presently
14 unknown to the Petitioners who claim some legal or equitable interest in the Project that is the
15 subject of this action. Petitioners will amend this petition to show the true names and
16 capacities of Does 1 through 20 when such names and capacities become known.

17 19. Petitioners are currently unaware of the true names and capacities of Real
18 Parties in Interest, Does 21 through 50, inclusive. Does 21 through 50, inclusive, are persons
19 or entities presently unknown to the Petitioners who claim some legal or equitable interest in
20 the Project that is the subject of this action. Petitioners will amend this petition to show the
21 true names and capacities of Does 21 through 50 when such names and capacities become
22 known.

23 **GENERAL ALLEGATIONS**

24 20. The City of Hesperia is in the southwest corner of San Bernardino County, in
25 the foothills of the San Bernardino Mountains and at the northern edge of the San Bernardino
26 High Desert area. The Project site covers about 9,365 acres on the southeast edge of the City,
27 approximately eight miles east of Interstate 15 and less than a mile north of Silverwood Lake.

1 State Route 173 serves as the Project’s southern and eastern boundaries.

2 21. The Project site consists primarily of undisturbed native habitat and farmland.
3 There is a wide variety of native habitat types found on site; the most abundant among these
4 include alkali meadow, chamise chaparral, and Mojave mixed scrub. 73 percent of the Project
5 area is characterized as flat, with grades ranging from 0 to 20 percent. The southwestern
6 portion of the Project contains rolling hills and canyons, with 13 percent of slopes in the area
7 exceeding 40 percent.

8 22. Three major waterways traverse the Project: the West Fork Mojave River,
9 Grass Valley Creek, and Horsethief Canyon. The West Fork Mojave River enters into the
10 Project area from its southern edge and flows across the Project in a northeasterly direction.
11 Grass Valley Creek flows north from the San Bernardino Mountains and enters the Project
12 from the south. Grass Valley Creek continues north before it meets with the West Mojave
13 Fork River, to the east of the Project. Horsethief Canyon flows along the foothills of the San
14 Bernardino Mountains and enters the Project from the south.

15 23. The Project is comprised of a Specific Plan and the first phase of development
16 (“Phase 1”). The Specific Plan is the blueprint for a ten-phase development and specifies the
17 location and density of development within the Project area. Phase 1 is the first phase of
18 development slated for construction. The Tapestry EIR combines environmental review for
19 both the Specific Plan and Phase 1, and purports to analyze impacts relating to the construction
20 and operation of the Specific Plan and Phase 1. Information in the EIR relating to the Specific
21 Plan is programmatic in nature and information regarding and Phase 1 is site-specific.

22 24. The Specific Plan updates and amends a specific plan for Rancho Las Flores, a
23 defunct project that was never built.

24 25. On July 18, 1991, the City annexed the Project area as part of the Rancho Las
25 Flores approval process.

26 26. Development under the Specific Plan would be separated into three villages:
27 Mesa Village, Summit Valley Village, and Grass Valley Village.

1 27. As much as 1.4 million square feet of commercial space will be constructed in
2 two separate city centers.

3 28. The EIR describes full build-out of the Specific Plan as comprising 19,311
4 residential units for 56,683 residents. By 2010, the City of Hesperia included 90,173 residents
5 living in 29,004 residential units. Thus, the Project would increase the population and number
6 of residential units in the City by over fifty percent. Construction would occur over 9,365
7 acres and take 21 years to complete.

8 29. After the City circulated the final EIR but before the Project was approved, the
9 Project proponent unilaterally elected to reduce the number of residential units at full build-out
10 of the Specific Plan to 16,196. Neither the City nor the applicant provided any additional
11 information regarding this change, and the City did not prepare an updated EIR. Thus, the
12 public was not informed of or provided a public comment period to address how this change
13 may affect the environmental impacts analysis, the construction footprint, the proposed
14 housing densities, or the projected population at build-out.

15 30. Phase 1 will be constructed in the northeastern portion of the Specific Plan.
16 The EIR states that Phase 1 construction will urbanize 927.06 acres, including 510.79 acres
17 dedicated to housing. Phase 1 as described in the EIR would construct 2,173 housing units and
18 take three years to build.

19 31. The post-EIR staff report to the City Council briefly discusses a decrease in the
20 number of residential units that would be built in Phase 1. The staff report suggests Phase 1
21 will now build 2,104 residential units but fails to discuss or disclose any other details of the
22 altered Project. Thus, like the new Specific Plan, the City did not provide the public with
23 notice and opportunity to comment on environmental impacts, the construction footprint, the
24 proposed housing densities, or the projected population at build-out of Phase 1.

25 32. The EIR discusses three separate pending tentative tract maps that subdivide
26 the Project in different ways. Tentative Tract Map 1 subdivides the property into large parcels
27 for future phases of development. Tentative tract maps 2 and 3 divide the Phase 1

1 development into different land uses and further subdivides certain portions of Phase 1 into
2 individual residential lots. The Project applicant has not submitted tentative tract maps for
3 phases 2 to 10.

4 33. The EIR does not provide detailed information on subdivision and proposed
5 land uses for phases 2 through 10 of development. Further, the EIR leaves phases 2 to 10 open
6 to amendments, which may change the entire makeup of these phases, including total number
7 of residential units, the square footage of commercial space, and the acres dedicated to open
8 space.

9 *Biological Resources*

10 34. The Project area has 24 different vegetation communities, including 22 native
11 vegetation communities, two of which the California Department of Fish and Wildlife
12 classifies as critically imperiled and five that it classifies as imperiled. The Project will
13 permanently and temporarily impact all imperiled vegetation communities on site.

14 35. The Project area contains at least 18 special status animal species and six
15 special status plant species. At least nine special status animal species may occur within Phase
16 1. Of the over 150 animal species found on site, there are 12 butterfly, 5 amphibian, 11 reptile,
17 108 bird, and 14 mammal species.

18 36. At least 248 plant species exist on the Project site, including at least 221 native
19 species. At least six of the 248 species are special status species. Special status plant species
20 include: Plummer's mariposa lily (*Calochortus plummerae*) (CNPS Rare Plant Rank 4.2),
21 Palmer's mariposa lily (*Calochortus palmeri* var. *palmeri*) (CNPS Rare Plant Rank 1B.2),
22 short-joint beavertail (*Opuntia basilaris* var. *brachyclada*), golden-rayed pentachaeta
23 (*Pentachaeta aurea* ssp. *aurea*), golden violet (*Viola purpurea* ssp. *aurea*) (CNPS Rare Plant
24 Rank 2b.2), and Joshua tree (*Yucca brevifolia*) (City Protected Plant). Of these, Joshua tree
25 and golden violet are found within the Phase 1 project area.

26 37. Special status animal species that occur within the Project site include the
27 arroyo toad (*Anaxyrus californicus*) (Federal endangered, California Species of Special

1 Concern), western pond turtle (*Actinemys marmorata*) (proposed for Federal listing, State
2 Species of Special Concern), coast horned lizard (*Phrynosoma coronatum*) (State Species of
3 Special Concern), two-striped garter snake (*Thamnophis hammondi*) (State Species of Special
4 Concern), Cooper's hawk (*Accipiter cooperii*) (State Watch List), northern harrier (*Circus*
5 *cyaneus*) (State Species of Special Concern), white-tailed kite (*Elanus leucurus*) (California
6 Fully Protected Species), prairie falcon (*Falco mexicanus*) (Federal Bird of Conservation
7 Concern, State Watch List), white-faced ibis (*Plegadis chihi*) (State Watch List), Bell's sage
8 sparrow (*Amphispiza belli belli*) (Federal Bird of Conservation Concern, State Watch List),
9 California horned lark (*Eremophila alpestris actia*) (State Watch List), loggerhead shrike
10 (*Lanius ludovicianus*) (Federal Bird of Conservation Concern, State Species of Special
11 Concern), least Bell's vireo (*Vireo belli pusillus*) (Federal Endangered, State Endangered),
12 willow flycatchers (*Empidonax traillii* spp.) (State Endangered) including the southwestern
13 willow flycatcher (*Empidonax traillii extimus*) (Federal Endangered), vermilion flycatcher
14 (*Pyrocephalus rubinus*) (State Species of Special Concern), yellow warbler (*Setophaga*
15 *petechia*) (Federal Bird of Conservation Concern, State Species of Special Concern), bald
16 eagle (*Haliaeetus leucocephalus*) (Federal Bird of Conservation Concern, State Endangered,
17 California Fully Protected Species), and golden eagle (*Aquila chrysaetos*) (Federal Bird of
18 Conservation Concern, State Watch List, California Fully Protected Species). Other species
19 that have a high potential to occur on site include the gray vireo (*Vireo vicinior*) (State Species
20 of Special Concern), and American badger (*Taxidea taxus*) (State Species of Special Concern).

21 38. Phase 1 construction may adversely affect at least nine special status animal
22 species, including the bald eagle (*Haliaeetus leucocephalus*), golden eagle (*Aquila chrysaetos*),
23 coast horned lizard (*Phrynosoma coronatum*), Cooper's hawk (*Accipiter cooperii*), California
24 horned lark (*Eremophila alpestris actia*), loggerhead shrike (*Lanius ludovicianus*), prairie
25 falcon (*Falco mexicanus*), gray vireo (*Vireo vicinior*), and American badger (*Taxidea taxus*).

26 39. The entire Project area serves as a wildlife corridor between riparian and
27 upland habitat. The Project severs at least one important corridor.

1 40. Build-out of the Specific Plan will result in direct, permanent and temporary
2 impacts to the entire Project area. Direct impacts during construction would occur through
3 activities such as grading, clearing vegetation, and dewatering.

4 41. The EIR does not calculate the total acreage of indirect and cumulative impacts
5 to biological resources, but the Project will likely indirectly impact species and habitat over the
6 entire 9,365 acres of the Project and beyond. Indirect impacts would include a host of human-
7 species conflicts such as vehicle collisions, water pollution, and wild species predation by
8 domestic animals.

9 42. The EIR relies on inadequate surveys for the federally endangered
10 southwestern willow flycatcher, arroyo toad, and least Bell's vireo. Protocol-level surveys for
11 least Bell's vireo were never done, while surveys for the arroyo toad and southwestern willow
12 flycatcher were not conducted according to established protocols (United States Fish and
13 Wildlife ("USFWS") survey protocols for the arroyo toad and United States Geological
14 Service survey protocol for the southwestern willow flycatcher).

15 43. In the EIR, the City states that it relies on numerous other surveys for arroyo
16 toads, but it does not cite these surveys or describe what survey protocols were observed. The
17 EIR fails to evaluate the full area of on-site occupancy of arroyo toads, which includes areas up
18 to 1 kilometer from sites known to contain arroyo toad adults, juveniles, larvae, or eggs.

19 44. The Project will directly affect 976.5 acres of arroyo toad critical habitat and
20 1.2 acres of southwestern willow flycatcher critical habitat but does not require adequate
21 mitigation to compensate for the loss of this critical habitat. To mitigate impacts to
22 southwestern willow flycatchers from domestic animal predation, the EIR proposes fencing,
23 which has not been demonstrated to be effective at preventing predation and can be harmful to
24 other terrestrial wildlife. Mitigation of direct impacts to the 976.5 acres of designated arroyo
25 toad critical habitat is proposed at the unacceptably low level of 1.25:1. The ratio required to
26 actually accomplish mitigation for this highly imperiled species is much higher. Further, the
27 Project applicant will only set aside 3,003 acres of various habitat types for all species, which

1 is not even enough to fully mitigate impacts from the loss of the arroyo toad critical habitat.

2 45. The proposed mitigation for biological impacts is inadequate because the EIR
3 lacks specificity as to the suitability of the 3,003 acres of mitigation lands as mitigation for
4 identified significant impacts to specific special status wildlife and plants. In addition, the
5 proposed mitigation is inadequate because even after mitigation the Project will result in a net
6 loss of habitat for special status species.

7 46. It is also problematic that the City fails to identify mitigation parcels for nearly
8 two-thirds of the land set aside for mitigation, instead deferring a determination on where this
9 mitigation will take place to an undetermined future date.

10 47. Willow flycatchers (not the southwestern willow flycatcher subspecies), a
11 California Endangered Species Act species, were found on site during a 2014 survey. The EIR
12 contains no analysis of Project impacts to this species, nor does it propose mitigation specific
13 to this species.

14 48. The golden eagle and the bald eagle are fully protected species under
15 California law, and federally protected under the Bald and Golden Eagle Protection Act; most
16 forms of take of this species is illegal. Golden and bald eagle habitat is shrinking in California,
17 largely due to development projects and direct and indirect mortality is increasing.

18 49. The Project will directly and indirectly remove thousands of acres habitat
19 suitable for bald and golden eagles. Yet, the EIR determines that Project-related impacts for
20 this species are less than significant.

21 50. The white-tailed kite, another fully protected species, has also been recorded
22 within the Project area. However, the EIR provides no analysis of potential impacts to this
23 species.

24 *Water Quality*

25 51. The largest waterways that occur on the Project are the West Fork Mojave
26 River, Grass Valley Creek, and Horsethief Canyon. The Project contains numerous ephemeral
27 tributaries to the Mojave River.

1 52. The EIR states that no significant impacts to hydrology or water quality would
2 result from the implementation of either the Specific Plan or Phase 1. Because the EIR
3 concludes water quality impacts are less than significant prior to mitigation, it does not propose
4 mitigation measures for any impacts.

5 53. The EIR does not contain sufficient data regarding existing and Project-related
6 water quality conditions to determine whether water quality impacts are significant. No known
7 surface water quality data is available for the site; still, in its EIR, the City assumes that water
8 quality within and surrounding the Project site is generally moderate to good. The EIR bases
9 its water quality assumptions primarily on a 1990 technical report prepared for the Rancho Las
10 Flores Specific Plan, the defunct predecessor to the Project. This technical report is mostly
11 comprised of older studies done downstream from the Project site. In the absence of data or
12 quantitative evidence, the EIR assumes that baseline water quality within the Project is good
13 because on-site and upstream watersheds occur in primarily undeveloped areas.

14 54. Runoff from the entire Project site flows into the Mojave River. The Mojave
15 River is listed as impaired for 15 miles between the Upper Narrows and the Mojave Forks
16 Reservoir due to its high concentrations of fluoride. The Mojave River is impaired for four
17 miles between the Upper Narrows and Lower Narrows due to high concentrations of fluoride,
18 total dissolved solids, and sulfate. Runoff from the Project would flow toward these impaired
19 waters.

20 55. The EIR states that the discharge of hazardous construction related materials,
21 such as oil and hazardous debris, may impact the water quality of downstream waters. The
22 EIR also states that long-term operation of the Project would result in increased turbidity,
23 oxygen depletion, and toxicity to downstream waters and species. The EIR does not attempt to
24 quantify impacts to water quality from the Project's Specific Plan or from Phase 1.
25 Nonetheless, the EIR concludes that surface water quality impacts from the construction and
26 operation of the Project would remain less than significant. The EIR does not cite to or rely on
27 water quality studies or other similar evidence to reach this conclusion. Instead, the EIR relies

1 on obtaining future water quality permits with as-yet specified terms and conditions and
2 adherence to vague, unenforceable best management practices.

3 56. This conclusion is not supported by the information before the agency. For
4 instance, applicable water quality permits may not be able to prevent significant impacts from
5 nonpoint source runoff of motor oils and plastics from polluting waterways and injuring native
6 aquatic species.

7 *Surface Drainage*

8 57. The majority of the Project site's surface runoff currently drains to the Mojave
9 River.

10 58. The EIR states that the proposed Specific Plan drainage system would not
11 substantially alter existing surface drainage on or off the Project site. Thus, the EIR concludes
12 that Project-wide impacts to drainage, erosion, and flooding would be less than significant
13 because the Project would not modify principal on-site drainage courses. However, the City
14 does not rely on any phase-specific or programmatic studies or models to arrive at this
15 conclusion, and it admits that Project construction and operation will affect several smaller
16 drainage courses.

17 59. The EIR's conclusions are not supported by a detailed drainage study for Phase
18 1. The City has represented that it will conduct one only after the completion of design efforts.
19 This did not occur prior to the finalization of the EIR. Thus, the EIR fails to provide sufficient
20 baseline information with which to draw a conclusion regarding Phase 1 drainage impacts.
21 Because Phase 1 and its related drainage planning has not been designed, the EIR does not
22 provide sufficient information for decisionmakers and the public to make an informed decision
23 regarding the impacts of the Project on drainage.

24 *Runoff, Erosion, and Flooding*

25 60. Buildout of the Specific Plan will substantially increase the amount of
26 impervious surfaces within the Project site, and implementation of Phase 1 development would
27 add substantial areas of impervious surfaces within the Phase 1 footprint. The EIR does not

1 address how these additional impervious surfaces could impact runoff and flooding potential
2 for the Project site.

3 61. While acknowledging that flooding of a significant portion of the Project is
4 possible, the City concludes that implementation of the Specific Plan and Phase 1 would result
5 in less than significant runoff and flooding impacts. Without more information regarding the
6 flooding potential of Phase 1 and the Project, it is unreasonable to conclude that potential
7 runoff and flooding impacts are less than significant.

8 *Water Supply*

9 62. The Project site falls within the Mojave River Groundwater Basin. The
10 Mojave Water Agency is the entity responsible for managing the use, replenishment and
11 protection of the groundwater basin, which is recharged by rainfall and snowmelt from the
12 local mountains, as well as imported water and on-site discharge of treated effluent. The
13 Hesperia Water District, which oversees water supply to the City, relies on groundwater
14 resources from the Mojave Groundwater Basin for all of its current and most of its future water
15 needs.

16 63. The Mojave Groundwater Basin is currently in a state of overdraft. It is highly
17 likely that the Project will increase this rate of overdraft. For example, the Crestline Sanitation
18 District currently recharges the Basin with treated wastewater and the Project will build upon
19 and thus eliminate the District's wastewater disposal site. At the same time, water needs for
20 approximately 47,000 new residents and commercial buildings will further burden the Basin.
21 Yet, the EIR has concludes that Project-related groundwater impacts would be less than
22 significant, a conclusion not supported by the evidence before the City.

23 64. Total Specific Plan water demand is projected to be 10,922 acre-feet per year,
24 6,542 acre-feet of which is planned to come from groundwater and State Water Plan imports,
25 while 4,380 acre-feet would come from recycled water.

26 65. By 2035, Hesperia Water District projects its total water demands to be 24,817
27 acre-feet per year during normal wet years and 27,299 acre-feet per year during both single-dry

1 and multiple-dry years. The EIR does not provide a similar wet-year, dry-year comparison for
2 Specific Plan or Phase 1 water usage.

3 66. The EIR relies on water supply analysis generated under the 2010 Hesperia
4 Urban Water Management Plan, which, is based on the 2004 Mojave Water Agency Regional
5 Water Management Plan. The 2004 Mojave Water Agency Regional Water Management Plan
6 estimates that, by 2020, the Mojave Water Agency will be operating under massive
7 groundwater deficits.

8 67. To offset groundwater deficits, the Mojave Water Agency will require 58,400
9 acre-feet per year of imported State Water Project water delivery just to achieve water balance.
10 State Water Project imports would need to supply approximately half of the Basin's water
11 needs.

12 68. In its 2004 Water Management Plan, the Mojave Water Agency projects that
13 the State Water Project could supply the necessary volume of water by assuming it will be able
14 to consistently receive 77 percent of its allocated water. Current State Water Project import
15 allocations to the Mojave Water Agency actually average substantially below 50 percent
16 annually. For instance, during the current drought, the Mojave Water agency has received
17 between 0 and 20 percent of its allocated water. Data on drought conditions and historic water
18 allocations is not incorporated into the EIR.

19 69. For Phase 1 of construction, the City concludes that adequate water supplies
20 would be available to meet Phase 1 requirements and that no associated impacts would arise
21 from supplying water to Phase 1 implementation.

22 70. The EIR erroneously equates the availability of water supply to environmental
23 impacts relating to using the identified supply. Even if new or expanded water supplies are
24 unnecessary, supplying the Project with water could cause several severe environmental
25 impacts depending on how and where this water is obtained.

26 *Groundwater Impacts*

27 71. Under the Specific Plan, large areas of impervious surfaces will limit local

1 groundwater recharge. In addition, the Project will permanently dewater the south-central and
2 southeast portions of the Project for construction, thus limiting local groundwater recharge and
3 potentially impacting groundwater quality.

4 72. The City concludes that potential impacts from Phase 1 related to groundwater
5 supplies would be less than significant since the Project would conform with applicable
6 requirements related to groundwater adjudication and use. The EIR offers no other evidence or
7 support for this conclusion, and substantial evidence to the contrary indicates that Phase 1 will
8 have a significant, adverse impact on groundwater supplies.

9 73. As previously stated, the Mojave Groundwater Basin is currently in a state of
10 overdraft; any hydrological change that reduces the capacity of the Basin to recharge will cause
11 potentially significant impacts that the EIR should have discussed. The Project includes
12 hydrological changes such as the removal of the Crestline Sanitation District wastewater
13 discharge fields.

14 74. Additionally, the EIR improperly defers discussion of potentially significant
15 groundwater impacts arising from the build-out of the Specific Plan until environmental
16 analysis is completed for the other phases of development. This is an impermissible use of
17 tiering as a device to defer the identification of significant environmental impacts that the
18 Specific Plan is expected to cause.

19 75. The EIR fails to address the impacts groundwater drawdown and dewatering
20 will have on sensitive species found within the Project area.

21 *Air Quality*

22 76. The Project is located within the Mojave Desert Air Basin and just northeast of
23 the South Coast Air Basin. San Bernardino County suffers from chronically poor air quality.
24 It is currently in violation of federal air quality standards set for particulate matter (“PM”) 10
25 and 2.5 and ozone.

26 77. During Project construction, the Project will exceed thresholds set for at least
27 four harmful air pollutants: volatile organic compounds, nitrogen oxides, carbon monoxide,

1 and PM₁₀. During peak construction, Project emissions may emit nitrogen oxides at nearly
2 twenty times over regional air quality thresholds set for this pollutant. The Project will emit
3 over three times the threshold set for carbon monoxide. Because of the phased construction
4 plan for the Project, these construction-related air quality impacts will persist in Project
5 communities up to the year 2028 and beyond.

6 78. These air quality impacts are identified as significant and immitigable.
7 Because the EIR fails to take into account all sources of air quality impacts, as required by
8 CEQA, the impacts are even greater than identified. Despite this, the City has not proposed
9 strong, enforceable mitigation measures in light of these significant impacts to air quality, and
10 it fails to adopt all feasible mitigation measures.

11 *Greenhouse Gas Emissions*

12 79. In 2006, California enacted the Global Warming Solutions Act (“AB 32”) to
13 reduce California greenhouse gas emissions to 1990 levels by 2020. In order for the state to
14 meet this mandated goal, new development projects must play a significant role in greenhouse
15 gas reductions.

16 80. The Project, at Specific Plan buildout, will emit staggering amounts of
17 greenhouse gases each year, totaling 302,355.4 metric tons per year. Phase 1 of the Project
18 will emit annual greenhouse gas emissions of 43,790 metric tons per year.

19 81. The EIR concludes that these emissions are less than significant *prior to*
20 *mitigation*, relying largely on analysis provided in the City of Hesperia Climate Action Plan
21 (“Climate Action Plan”).

22 82. The Climate Action Plan compares future emissions to a “business as usual”
23 scenario. The business as usual scenario is a concept borrowed from the California Air
24 Resources Board’s Scoping Plan for AB 32, which outlines a general strategy for California to
25 meet AB 32’s target of reducing GHG emissions to 1990 levels by 2020. The Scoping Plan
26 notes in passing that reaching this statewide goal requires cutting 30 percent of statewide
27 emissions from business-as-usual emissions levels from a hypothetical 2020 scenario where

1 current laws curbing greenhouse gas emissions are not in place. However, this “30-percent”
2 figure is a statewide goal and is not intended to be used in regional climate action plans, even
3 less so for site-specific developments.

4 83. To make its significance determination, the EIR fabricates a hypothetical,
5 dirtier Project than is currently allowed under California law. It then compares that business-
6 as-usual scenario to the Project to determine Project emissions are less than significant. It is
7 impermissible for the EIR to rely on this methodology without demonstrating that the business-
8 as-usual comparison is can be reasonably derived from the statewide projections in the AB 32
9 Scoping Plan. Instead of admitting the Project will cause a significant increase in greenhouse
10 gas emissions, the EIR misleadingly describes what is essentially the creation of a new city as
11 a carbon-reducing project.

12 84. The Project also fails to take into account the need for greater greenhouse gas
13 reductions in the future, as mandated by executive actions issued by Governors
14 Schwarzenegger and Brown. These executive actions require the state to reduce emission
15 levels to 40 percent below 1990 levels by 2030 and 80 percent below 1990 levels by 2050.
16 New development projects need to shoulder a comparatively large share of these reductions in
17 order for the state to reach these targets. The massive emissions from new projects, such as the
18 large Specific Plan, are additive in nature and tend to work against the goals and mandates of
19 these laws, while emissions reductions in these projects are more feasible to obtain. The
20 Project’s greenhouse gas emissions will continue well beyond the 2020 horizon at which the
21 analysis in the EIR ends. Except for assuming that new technology will reduce emissions in
22 the future, the EIR does not explain or analyze how the Project will meet future reduction
23 targets, let alone require meaningful mitigation to ensure the success of these targets. The City
24 failed its CEQA duties when it did not discuss foreseeable Project-related greenhouse gas
25 emissions past 2020 in light of AB 32 and the governors’ executive actions.

26 85. The EIR provides a meager list of steps directed at reducing emissions, none of
27 which contain enforcement mechanisms. The EIR does not consider or include a variety of

1 feasible or enforceable mitigation measures that could lower Project-related greenhouse gas
2 emissions, such as measures to reduce vehicle miles traveled, energy use, waste, water
3 consumption, and to promote greater use of solar power and energy efficient building designs.

4 *Traffic*

5 86. The Project will generate a significant portion of future traffic growth in
6 Hesperia. Portions of future roadway networks would not be constructed without the Project.

7 87. The Project will cause significant local traffic impacts as early as build-out of
8 Phase 1, causing increased delays along major arteries. The EIR states that all other phases of
9 the Project would not result in significant traffic impacts. However, this conclusion was
10 equivocal, with the City stating that additional traffic impacts analyses would need to be
11 conducted at the various development phases to confirm this conclusion. Thus, the true extent
12 of the Project's traffic impacts remain uncertain. The EIR does not provide sufficient
13 information with which to base an informed decision regarding potential traffic impacts, in
14 violation of CEQA. Traffic impacts on species also remain undisclosed and unquantified.

15 88. The EIR proposes roadway improvements, including constructing two
16 additional lanes at certain intersections to mitigate Project-related traffic impacts. However,
17 the City claims that even after mitigation, impacts to two main intersections would remain
18 significant, even though additional feasible mitigation measures are available to reduce these
19 impacts, such as mandatory public transportation systems and higher-density, more centralized
20 city planning. Mitigation measures the EIR proposes—such as a voluntary ride-sharing
21 program—are unenforceable and inadequate to reduce remaining impacts to less than
22 significant.

23 *Noise*

24 89. Existing noise levels at several locations in the City already exceed noise
25 standards set by the City. Project operation will serve to increase the noise levels at these
26 already noisy locations and cause new areas within the Project area and City to surpass these
27 thresholds.

1 90. After Phase 1 build-out alone, 21 out of the 53 modeled noise locations along
2 the Rancho Los Flores Parkway are expected to exceed mandated noise levels. A study that
3 modeled noise levels pre- and post-Project found that pre-Project noise levels exceeded noise
4 standards at 8 of 19 locations tested, while noise levels at those same locations post-Project
5 would exceed standards in 16 of the 19 locations. Calculation and discussion of more detailed
6 noise-related impacts for all other phases of development were deferred until a later date,
7 making it impossible to judge the true noise impacts from the Project on sensitive receptors
8 and sensitive species.

9 91. Several mitigation measures were proposed to mitigate noise, such as off-site
10 construction of noise walls. These mitigation measures may not be feasible because of
11 unspecified off-site construction restrictions, thus making these mitigation measures infeasible.
12 CEQA requires that proposed mitigation measures must be feasible.

13 92. Regarding construction noise, the EIR states that construction will violate City
14 noise standards over the 21-year construction period. The EIR attempts to discount these noise
15 impacts by labeling these impacts temporary, and determines that these impacts will be less
16 than significant so long as construction noise falls within the “temporary construction noise”
17 exemption in a City ordinance and the City Noise Element. The characterization of 21 years of
18 continuous construction noise as “temporary” lacks credibility. Even so, the admission that
19 construction noise will exceed noise thresholds for 21 years straight should be sufficient to
20 determine construction noise levels would remain significant even after mitigation. The EIR’s
21 conclusion that the Project’s noise impacts are less than significant is not supported by
22 evidence in the EIR or otherwise before the City.

23 *Growth Inducing Factors*

24 93. The EIR concludes the Project will have significant and unavoidable impacts
25 on population and housing since its implementation will result in the addition of 56,683
26 residents to the City at build-out. This projection overshoots the Southern California
27 Association of Governments’ population projection for the City by 14,356 residents. Oddly,

1 the EIR concludes that no feasible mitigation measures exist to reduce these impacts. The
2 City's ultimate approval of a scaled-down project that would include over 3,000 fewer
3 residential units sharply contradicts this conclusion, and shows that alternatives that feature
4 fewer residents at build-out are available.

5 94. Although the EIR states the Project would provide schools, parks, and
6 commercial businesses to meet residents' recreational and educational needs, it concludes that
7 these services will not result in additional growth in and near the City and Project. However, it
8 is likely these features will accommodate and attract growth in areas surrounding the Project.
9 The EIR fails to provide any facts or analysis to support its bare assertion that these services
10 would not facilitate future growth.

11 *Cumulative Impacts*

12 95. The EIR concludes that implementation of the Specific Plan would result in
13 significant cumulative impacts regarding air quality, noise, and traffic. The EIR concludes that
14 impacts from all other environmental issue areas (e.g., housing, growth inducement, biological
15 resources, water supply, water quality, etc.) would be less than significant.

16 96. The EIR provides no facts and analysis to show that cumulative light,
17 greenhouse gas, water quality, and hydrology impacts relating to the Project and other existing
18 and future development would be less than significant. Instead, it relies on adherence to
19 various regulations, plans, and permits to conclude that these impacts will be less than
20 significant. However, adherence to permits and regulations that are not designed to combat
21 cumulative impacts, without more evidence, is insufficient to prove these impacts will be less
22 than significant.

23 97. Similarly, the EIR concludes that cumulative impacts to biological resources
24 would be less than significant because the *Project* would implement *Project-level* mitigation
25 measures. This fails as cumulative impacts analysis, as Project-level mitigation measures
26 cannot be designed to alleviate or address cumulative impacts to species in the face of overall
27 increases in human populations, intensified land uses, and decreases in available habitat and

1 habitat connectivity.

2 98. Regarding cumulative impacts from energy consumption, the EIR concludes
3 Project impacts will be less than significant when compared to county, state, and regional
4 energy projections. The scope of this cumulative impacts analysis is improper and
5 inadequately defined, since any resource impact could be deemed cumulatively insignificant in
6 the context of regional and statewide projections.

7 99. The EIR states the Project would cause a 10 percent increase in City population
8 relative to 2035 population projections under the EIR for the General Plan. The EIR
9 erroneously concludes this impact is cumulatively less than significant.

10 100. The EIR lists three additional, foreseeable projects that will contribute to
11 cumulative impacts. However, aside from naming these projects, the EIR fails to discuss the
12 foreseeable cumulative impacts from these projects.

13 *Alternatives Analysis*

14 101. The EIR considered seven alternatives to the Proposed Project in total: the No
15 Build, Existing Specific Plan, Reduced Impact Footprint, Reduced Density, Reduced Impact
16 Footprint and Density, Half-acre Lots, and the Estate Density alternatives.

17 102. All of these alternatives analyze impacts on the Specific Plan level. The EIR
18 does not provide any analysis of alternatives for Phase 1 of development.

19 103. The EIR was meant to provide two distinct environmental analyses, one for the
20 Specific Plan and one for Phase 1. Both the Specific Plan and the Phase 1 portions of the EIR
21 need to discuss a reasonable range of alternatives relevant to each portion, to satisfy their
22 separate and distinct CEQA requirements. The failure of the Phase 1 EIR to consider
23 alternatives invalidates the Phase 1 EIR.

24 *Project and EIR Approval*

25 104. On December 3, 2013, the City issued a Notice of Preparation of the
26 Environmental Impact Report.

27 105. On July 15, 2014, the Hesperia Water District Board of Directors approved the

1 Water Supply Assessment.

2 106. On December 4, 2014, the draft EIR was circulated for public review.

3 107. On January 30, 2015, Petitioners timely submitted comments responding to
4 issues in the draft EIR.

5 108. In August 2015, the final EIR was completed.

6 109. On November 2, 2015, Petitioners submitted comments in response to the final
7 EIR.

8 110. On September 24, 2015, the City of Hesperia Planning Commission voted to
9 recommend certification of the EIR, approval of the Specific Plan, and approval of the three
10 tentative tract maps.

11 111. On January 27, 2016, City Council approved the Specific Plan and tentative
12 tract maps and certified the EIR.

13 112. Petitioners have exhausted all administrative remedies by submitting written
14 comments to the County prior to Project approval, requesting compliance with CEQA and the
15 completion of full and adequate environmental review. All issues raised in this petition were
16 raised in a timely manner before Respondents by Petitioners, other members of the public, or
17 public agencies.

18 113. Petitioners have complied with Public Resources Code section 21167.5 by
19 prior service of a notice upon Respondents indicating its intent to file this Petition. A Proof of
20 Service of this notification, with the notifications attached, is attached as Exhibit A.

21 114. This petition is timely filed in accordance with Public Resources Code section
22 21167 and CEQA Guidelines section 15112.

23 115. Respondents have abused their discretion and failed to proceed in the manner
24 required by law in the following ways:

25 //

26 //

27 //

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF CEQA: Failure proceed in the manner required by law**

3 **(Public Resources Code § 21000, *et seq.*)**

4 116. Petitioners hereby incorporate by reference each and every allegation set forth
5 above.

6 117. Under CEQA, the City is required to prepare a complete and legally adequate
7 EIR prior to approving any discretionary project that may have a significant adverse
8 environmental effect. The EIR must accurately describe the project and the preexisting
9 environmental setting. In addition, the EIR must fully disclose and analyze the project's
10 potentially significant environmental effects.

11 118. As a lead agency, the City has a clear, present, and mandatory duty to analyze
12 and adopt all feasible mitigation measures as well as consider a reasonable range of
13 alternatives and adopt any feasible alternative that would substantially lessen the significant
14 environmental effects of the Project.

15 119. CEQA requires the lead agency to provide for public review and comment on
16 the project and associated environmental documentation. An EIR must provide sufficient
17 environmental analysis such that decision-makers can intelligently consider environmental
18 consequences when acting on proposed projects.

19 120. Respondents violated CEQA and failed to proceed in the manner required by
20 law in the following ways:

21 **Defective Project Description**

22 121. CEQA requires that an EIR contain a fixed, stable, and finite description of the
23 project subject to environmental review. A fixed, stable, and finite project description is
24 essential for an accurate review of the project's environmental consequences and for a
25 meaningful opportunity for the public to comment on these consequences.

26 122. The EIR does not accurately or adequately describe the Project, as required by
27 CEQA;

1 123. The project description for the Project anticipates that the Project will require
2 additional sources of water supply. The EIR, however, contains a shifting and unstable
3 description of the Project's reliance and impacts on groundwater resources;

4 124. The EIR fails to adequately determine whether a reliable long-term water
5 supply exists for the Project, relies on speculative future actions, fails to consider pending State
6 Water Project pumping curtailments, and otherwise fails to show that sufficient water will be
7 available for the Project;

8 **Failure to Establish Accurate Baseline**

9 125. The EIR fails to provide an adequate baseline against which to compare the
10 Project's impacts to surface water resources, water quality, groundwater, and water supply;

11 126. The EIR fails to provide an accurate description of the presence and status of
12 federally endangered species including the arroyo toad, least Bell's vireo, or southwestern
13 willow flycatchers.

14 **Failure to Adequately Disclose and Analyze the Project's Impacts**

15 127. CEQA requires the EIR to fully disclose and evaluate all potentially significant
16 environmental impacts that may arise from its approval of the Project, including direct,
17 indirect, and cumulative impacts.

18 *Biological Resources*

19 128. The EIR fails to fully disclose and evaluate the Project's impacts to biological
20 resources, including the endangered southwestern and other willow flycatchers, least Bell's
21 vireo, and arroyo toad, as well as other endangered, threatened, and rare species of wildlife and
22 plants, and sensitive habitats;

23 129. The EIR fails to evaluate the effect of the Project's fragmentation of the site's
24 existing intact and contiguous habitat and wildlife corridors, and fails to evaluate the effect of
25 this fragmentation on the remaining open space areas;

26 130. The EIR contains an inadequate description of impacts to golden eagles and
27 bald eagles;

1 131. The EIR provides no discussion of potential impacts to white-tailed kites,
2 despite this species' known occurrence within the Project area.

3 *Water Supply and Quality*

4 132. The EIR impermissibly defers the analysis and mitigation, and otherwise fails
5 to evaluate the environmental impacts of supplying the Project with water;

6 133. The EIR contains insufficient information to determine whether a reliable long-
7 term water supply exists for all phases of the Project;

8 134. The EIR underestimates the likelihood of water supply shortfalls associated
9 with the Project and fails to analyze the environmental impacts of potential water supply
10 shortfalls;

11 135. The EIR does not adequately describe the impacts of using groundwater to
12 supply the Project;

13 136. The EIR fails to adequately discuss the impacts the addition of impervious
14 surfaces will have on groundwater basin recharge rates, runoff, and flooding;

15 137. The EIR inadequately discusses Project-related water quality impacts;

16 138. The EIR fails to fully analyze flooding, drainage, and erosion risks.

17 *Air Quality*

18 139. The EIR fails to take into account all sources of air quality impacts resulting
19 from the Project.

20 *Traffic and Noise*

21 140. The EIR fails to fully disclose and evaluate the increased traffic, construction,
22 and operational noise impacts that will result from the Project.

23 *Climate Change*

24 141. The EIR fails to adequately analyze how the effects of climate change will
25 exacerbate Project impacts;

26 142. The EIR improperly minimizes impacts related to greenhouse gas emissions—
27 totaling a massive 302,355 metric tons per year—by impermissibly comparing Project

1 emissions to an unbuildable “business as usual” projection improperly derived from the AB 32
2 Scoping Plan.

3 *Growth Inducing Impacts*

4 143. The EIR fails to adequately analyze impacts to population and housing and
5 growth inducement.

6 *Cumulative Impacts*

7 144. The EIR provides an inadequate discussion of cumulative impacts, especially
8 as these impacts relate to biological resources, traffic, water quality, water supply, and
9 greenhouse gas emissions;

10 145. The EIR fails to account for the increase in cumulative impacts between the
11 Project and the Project’s predecessor, the Rancho Las Flores Specific Plan.

12 **Inadequate Analysis of Mitigation Measures**

13 146. CEQA requires the adoption of concrete, feasible, enforceable mitigation
14 measures for any significant environmental impacts. Deferral of the analysis of the feasibility
15 and adoption of mitigation measures violates CEQA.

16 147. The EIR fails to provide a reasonable analysis of mitigation measures to avoid,
17 minimize, or mitigate the Project’s significant environmental impacts. The EIR fails to describe
18 and evaluate reasonable mitigation measures and alternatives that could eliminate or
19 substantially lessen significant environmental impacts of the project.

20 148. The EIR fails to consider adequate, feasible mitigation for identified significant
21 impacts, including but not limited to: impacts to sensitive native habitats; endangered,
22 threatened, and rare wildlife and plants; water supply; water quality; air quality; climate
23 change; traffic, and noise. The EIR instead relies on measures that will not reduce these
24 impacts to less than significant levels and measures of unknown effectiveness;

25 149. Specifically, the EIR does not provide adequate mitigation for impacts to 976.5
26 acres of critical habitat for the federally endangered arroyo toad and 1.2 acres of critical habitat
27 for the southwestern willow flycatcher;

1 150. The EIR fails to propose adequate mitigation for impacts arising from
2 greenhouse gas emissions;

3 151. In approving the Project, the City failed to adopt all feasible mitigation
4 measures that would reduce or avoid the Project’s significant environmental impacts;

5 **Inadequate Alternatives Analysis**

6 152. The agency preparing the EIR must consider a reasonable range of alternatives
7 and adopt any feasible alternative to substantially lessen the significant environmental effects
8 of the Project.

9 153. The EIR fails to consider a reasonable range of alternatives to the Project;

10 154. The EIR fails to analyze any alternatives to Phase 1 of the Project at all;

11 155. In approving the Project, the City failed to analyze a feasible, environmentally
12 superior alternative to the Project that would not have significant immitigable impacts on most
13 or all environmental measures.

14 **Inadequate Response to Comments**

15 156. The City failed to respond adequately to comments submitted by Petitioners,
16 other members of the public, and other agencies. Instead, the responses given to numerous
17 comments regarding the Project’s biological resources, water supply, water quality, air quality,
18 traffic impacts, mitigation measures, and alternatives are conclusory, evasive, confusing, or
19 otherwise non-responsive, contrary to the requirements of CEQA. In addition, the City failed
20 to provide an adequate rationale for rejecting alternatives to the Project proposed by
21 Petitioners. By failing to provide adequate responses to public comments and proposed
22 alternatives, Respondents failed to proceed in the manner required by law.

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1 **SECOND CAUSE OF ACTION**

2 **VIOLATION OF CEQA: Failure to Recirculate an Amended EIR**

3 **(Public Resources Code § 21000, *et seq.*)**

4
5 157. Petitioners hereby incorporate by reference each and every allegation set forth
6 above.

7 158. Respondents failed to proceed in a manner required by law in the following
8 ways:

9 159. CEQA requires that if significant new information is added to an EIR after a
10 draft EIR is prepared, but before certification of the final EIR, an amended EIR must be
11 amended and recirculated for public review and comment.

12 160. Comments submitted to Respondents after the Draft EIR was circulated
13 provided significant new information within the meaning of Public Resources Code section
14 21092.1 and CEQA Guidelines section 15088.5 including, but not limited to, information about
15 biological resources, global warming, hydrology, water quality, air quality, traffic, noise,
16 planning and environmental policies and applicable plans, energy use and conservation, and
17 cumulative and growth inducing impacts.

18 161. Despite the availability of this significant new information, including a
19 changed environmental context for the Project, Respondents failed to amend and recirculate the
20 EIR, or any portion of the EIR. As a result of Respondents' failure to amend and recirculate
21 the EIR, the public and other public agencies were deprived of any meaningful opportunity to
22 review and provide comments on the Project of the EIR.

1 **THIRD CAUSE OF ACTION**

2 **Findings Not Supported by Substantial Evidence**

3 **(Code of Civil Procedure §§ 1085; 1094.5)**

4
5 162. Petitioners hereby incorporate by reference each and every allegation set forth
6 above.

7 163. As described below, Respondents' findings are not supported by substantial
8 evidence:

9 164. CEQA and the California Planning and Zoning Law require that Respondents
10 adopt certain findings in connection with their certification of the EIR and approval of the
11 Project.

12 165. The EIR fails to provide substantial evidence that sufficient water will be
13 available for the Project;

14 166. No substantial evidence supports Respondents' findings that impacts to
15 biological resources, water quality, air quality, traffic, noise, climate change, population
16 growth will be directly, indirectly, and cumulatively less than significant;

17 167. No substantial evidence supports Respondents' findings that greenhouse gas-
18 related impacts will be less than significant;

19 168. No substantial evidence supports Respondents' findings that no feasible
20 alternatives or mitigation measures exist to eliminate or reduce the Project's unavoidable
21 significant adverse environmental impacts;

22 169. Respondents' statement of overriding consideration is not supported by
23 substantial evidence;

24 170. Respondents' failure to amend and recirculate the EIR is not supported by
25 substantial evidence and represents a failure to proceed in the manner required by law;

26 171. No substantial evidence supports Respondents' findings that the Project is
27 consistent with the Subdivision Map Act.

1 **FOURTH CAUSE OF ACTION**

2 **Violation of Subdivision Map Act**

3 **(Government Code § 66400 et seq.)**

4 172. Petitioners hereby incorporate by reference each and every allegation set forth
5 above.

6 173. The Subdivision Map Act prohibits subdivision approvals if the subdivision
7 design is “likely to cause substantial environmental damage or substantially and avoidably
8 injure fish or wildlife or their habitat.”

9 174. As approved, the Project is likely to cause substantial environmental damage
10 and to substantially and avoidably injure wildlife and wildlife habitat.

11 175. Pursuant to Government Code section 66473.7, the City is required to
12 condition approval of the Project’s tract maps on the availability of a sufficient water supply
13 to serve future development of the tracts. Government Code section 66473.7(a)(2) defines
14 “sufficient water supply” to mean that “the total water supplies available during normal,
15 single-dry, and multiple-dry years within a 20 year projection that will meet the projected
16 demand associated with the proposed subdivision, in addition to existing and planned future
17 uses, including, but not limited to, agricultural and industrial uses.”

18 176. The EIR does not consider the impacts to water allocation from the current
19 statewide drought, or from similar potential future droughts.

20 177. The EIR overestimates the amount and reliability of water that may be
21 supplied by local groundwater and State Water Project imports.

22 178. The City has failed to adequately support its conclusion that adequate water
23 supply will exist for the Project.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Petitioners pray for relief as follows:

3 1. For alternative and peremptory writs of mandate, commanding Respondents:

4 (A) to vacate and set aside approval of the Project, including approval of the
5 tentative tract maps;

6 (B) to vacate and set aside certification of the Final EIR for the Specific Plan and
7 Phase 1 of the Project;

8 (C) to suspend any and all activity pursuant to Respondents' approval of the Project
9 that could result in an adverse change or alteration to the physical environment until
10 Respondents have complied with all requirements of CEQA, the Subdivision Map Act and all
11 other applicable state and local laws, policies, ordinances, and regulations as are directed by
12 this Court pursuant to Public Resources Code section 21168.9.

13 2. For a stay, temporary restraining order, preliminary injunction, and permanent
14 injunction prohibiting any actions by Respondents or Real Parties pursuant to Respondents'
15 approval of the Project and certification of the EIR for the Project until Respondents have fully
16 complied with all requirements of CEQA, the Subdivision Map Act, and all other applicable
17 state and local laws, policies, ordinances, and regulations;

18 3. For costs of the suit;

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

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

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27 (signature page follows)

1 DATED: February 26, 2016

CENTER FOR BIOLOGICAL DIVERSITY

2
3 By:



4 April Rose Sommer

5 John Buse

6 Aruna Prabhala

7 Nicholas Whipps

8 Attorneys for Petitioners/Plaintiffs

9 CENTER FOR BIOLOGICAL DIVERSITY

10 SAN BERNARDINO VALLEY AUDUBON SOCIETY

11 SIERRA CLUB

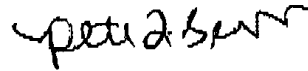
1 **VERIFICATION**

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

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

7 Executed on February 25, 2015 at Shelter Cove, Humboldt County, CA.

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

10 

11
12 _____
13 Peter Galvin
14 Director of Programs
15 Center for Biological Diversity
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Exhibit A

1 PROOF OF SERVICE

2
3 STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

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

7
8 On February 25, 2016, I served a true and correct copy of the NOTICE OF
9 COMMENCEMENT OF CEQA ACTION on the parties in this action by placing a true copy thereof in
10 a sealed envelope addressed as below:

11 City of Hesperia City Council
12 Hesperia City Hall
13 9700 Seventh Avenue
Hesperia, CA 92345

14 BY MAIL Such envelope was sealed and placed for collection and mailing following
15 ordinary business practices.

16 Executed on 26 February, 2015 in San Francisco, California.

17
18 STATE I declare under penalty of perjury under the law of California that the foregoing
19 is true and correct.

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23 _____
24 Nicholas Whipps
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Exhibit B

1 John Buse (SBN 163156)
April Rose Sommer (SBN 257967)
2 Aruna Prabhala (SBN 278865)
3 Nicholas Whipps (SBN 306865)
CENTER FOR BIOLOGICAL DIVERSITY
4 1212 Broadway, Suite 800
Oakland, CA 94612
5 Telephone: (510) 844-7100
Email: jbuse@biologicaldiversity.org
6 asommer@biologicaldiversity.org
7 aprabhala@biologicaldiversity.org
8 nwhipps@biologicaldiversity.org

9 Attorneys for Petitioner
CENTER FOR BIOLOGICAL DIVERSITY

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF SAN BERNARDINO

13 CENTER FOR BIOLOGICAL DIVERSITY;)
14 SAN BERNARDINO VALLEY AUDUBON)
15 SOCIETY; and SIERRA CLUB,)

16 Petitioners,)

17 vs.)

18 CITY OF HESPERIA; CITY COUNCIL OF)
19 THE CITY OF HESPERIA; and DOES 1-20,)

20 Respondents.)

Case No.

**NOTICE OF COMMENCEMENT OF
LEGAL ACTION PURSUANT TO THE
CALIFORNIA ENVIRONMENTAL
QUALITY ACT**

[Pub Res. Code § 21167.5]

21 TO RESPONDENTS CITY OF HESPERIA AND CITY COUNCIL OF THE CITY OF HESPERIA:

22 Please take notice that on February 26, 2016, the Center for Biological Diversity the San
23 Bernardino Valley Audubon Society, and the Sierra Club intend to commence an action seeking a writ
24 of mandate to overturn, set aside, void, and annul Respondents' (1) approval of the Tapestry Specific
25 Plan and Phase 1 of development of the Tapestry Specific Plan (the "Project"), Project No. SPL13-
26 00001; (2) certification of a final Environmental Impact Report ("EIR") for the Project, State
27 Clearinghouse No. 2013111021; and (3) adoption of a Mitigation Monitoring and Reporting Program,
28 Findings, and Statement of Overriding Considerations for the Project under the California

1 Environmental Quality Act ("CEQA," Public Resources Code Section 21000 *et seq.*). This action will
2 be based on the grounds that Respondents' approval of the Project and certification of the EIR was in
3 violation of CEQA.

4
5 DATED: February 25, 2016

John Buse
April Rose Sommer
Aruna Prabhala
Nicholas Whipps
CENTER FOR BIOLOGICAL DIVERSITY

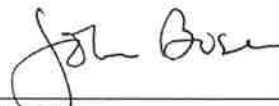
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10 By: 
11 John Buse
12 Attorney for Petitioner
13 Center for Biological Diversity
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Exhibit C

1 John Buse (SBN 163156)
April Sommer (SBN 257967)
2 Aruna Prabhala (SBN 278865)
3 Nicholas Whipps (SBN 306865)
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7 aprabhala@biologicaldiversity.org
8 nwhipps@biologicaldiversity.org

9 Attorneys for Petitioner
CENTER FOR BIOLOGICAL DIVERSITY

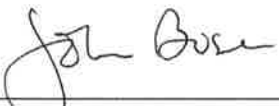
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF SAN BERNARDINO

13 CENTER FOR BIOLOGICAL DIVERSITY;)	Case No.
14 SAN BERNARDINO VALLEY AUDUBON)	
15 SOCIETY; and SIERRA CLUB,)	NOTICE OF ELECTION TO PREPARE
)	ADMINISTRATIVE RECORD
16 Petitioners,)	
)	[Pub Res. Code § 21167.6]
17 vs.)	
)	Original Date of Filing: February 26, 2016
18 CITY OF HESPERIA; CITY COUNCIL OF)	
19 THE CITY OF HESPERIA; and DOES 1-20,)	
)	
20 Respondents.)	

21
22 TO RESPONDENTS CITY OF HESPERIA AND CITY COUNCIL OF THE CITY OF HESPERIA:
23 Petitioners Center for Biological Diversity, San Bernardino Valley Audubon Society, and Sierra
24 Club elect to prepare the record of proceedings in the above-captioned proceeding pursuant to Public
25 Resources Code section 21167.6(b)(2).

26 DATED: February 26, 2016 John Buse
27 April Sommer
Aruna Prabhala
28 Nicholas Whipps
CENTER FOR BIOLOGICAL DIVERSITY

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By: 

John Buse
Attorney for Petitioner
Center for Biological Diversity