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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF RIVERSIDE

12 ALBERT THOMAS PAULEK;) Case No.
FRIENDS OF THE NORTHERN SAN) Original Date of Filing: May 5, 2016
13 JACINTO VALLEY; CENTER FOR)
BIOLOGICAL DIVERSITY) **PETITION FOR WRIT OF MANDATE AND**
14) **COMPLAINT FOR DECLARATORY AND**
Petitioners/Plaintiffs,) **INJUNCTIVE RELIEF**
15)
vs.) [Pub. Res. Code § 21000, *et seq.* (California
16) Environmental Quality Act); Government Code §
COUNTY OF RIVERSIDE; COUNTY) 53511; Government Code § 526a]
17 OF RIVERSIDE BOARD OF)
SUPERVISORS; and DOES 1-20) **CASE DESIGNATION: CEQA, VALIDATION,**
18) **TAXPAYER RELIEF**
Respondents/Defendants.)
19)
20 CASTLE & COOKE COMMERCIAL-)
CA INC.; WESTERN RIVERSIDE)
21 COUNTY REGIONAL)
CONSERVATION AUTHORITY; and)
22 DOES 21-50,)
Real Parties in Interest.)
23)
24)

1 **INTRODUCTION**

2 1. In this action, Petitioners and Plaintiffs ALBERT THOMAS PAULEK,
3 FRIENDS OF THE NORTHERN SAN JACINTO VALLEY, and CENTER FOR
4 BIOLOGICAL DIVERSITY (“Petitioners”) challenge the April 5, 2016 action of Respondents
5 and Defendants COUNTY OF RIVERSIDE and COUNTY OF RIVERSIDE BOARD OF
6 SUPERVISORS (“County”) approving the land exchange of Western Riverside Multiple
7 Species Habitat Conservation Plan (“MSHCP”) Conservation Lands (“Land Exchange”) for
8 highly disturbed land owned by Real Party in Interest CASTLE & COOKE COMMERCIAL-
9 CA INC., and approving a plan for Real Party in Interest WESTERN RIVERSIDE COUNTY
10 REGIONAL CONSERVATION AUTHORITY (“RCA”), a Joint Powers Authority that
11 includes the County, to fund and perform translocation of San Diego ambrosia plants, an
12 imperiled species protected under the Endangered Species Act, from MSHCP Conservation
13 Lands (“Translocation”).

14 2. Petitioners challenge the Land Sale as invalid, an illegal waste of County
15 property and funds, and in violation the California Environmental Quality Act (“CEQA”).

16 3. The MSHCP Conservation Lands were purchased with County funds collected
17 under County of Riverside Ordinance 810.2, Western Riverside Multiple Species Habitat
18 Conservation Plan Mitigation Fee Ordinance (“Ordinance 810.2”) for the express purpose of
19 acquiring lands to further the conservation goals of the MSHCP. The MSHCP Conservation
20 Land was selected for inclusion in the MSHCP conservation land portfolio and purchased with
21 Ordinance 810.2 funds in part because of its existing populations of San Diego ambrosia, a
22 federally endangered species, and Munz’s onion, a state threatened and federally endangered
23 species. The San Diego ambrosia and Munz’s onion populations persist onsite and, since
24 2004, have been managed as a critical part of MSHCP conserved lands by RCA.

1 4. In the Land Exchange, the County has swapped the MSHCP Conservation
2 Lands for land that has neither San Diego ambrosia or Munz’s onion on site and is, in fact, in
3 such a poor condition due to over a century of mining that it is subject to a decades-long
4 Reclamation Plan under the Surface Mining and Reclamation Act. The acquired land is,
5 therefore, of far less conservation and economic value and, in swapping high value MSHCP
6 Conservation Lands for this low value land, the County engaged in waste.

7 5. The Land Exchange is contingent upon the RCA funding and performing an
8 expensive translocation plan for San Diego ambrosia. No plans have been made to address the
9 disturbances to the protected Munz’s onion population in the MSHCP Conservation Land.
10 Over \$300,000 of RCA funds, which are collected from Joint Powers Agreement parties
11 including the County, will be used to fund the Translocation. RCA funds are only to be
12 expended to further the goal of the MSHCP. A large, unnecessary expenditure of RCA funds
13 for a project in contravention to the MSHCP goals is a waste of County funds.

14 6. By approving the Land Sale and the Translocation, the County and RCA have
15 undermined the integrity of the entire MSHCP and its Implementing Agreement, a multi-party,
16 legally binding contractual agreement entered into by the County, eighteen cities, five County
17 municipal agencies, United State Fish and Wildlife Services (“USFWS”), California
18 Department of Fish and Wildlife (“CDFW”), California Department of Transportation, and
19 California Department of Parks and Recreation after many years of planning and negotiation
20 that has been directing land use and conservation efforts in the area for over a decade. If the
21 County, as a party to the MSHCP, is permitted exchange or otherwise dispose of this MSHCP
22 Conservation Land for the purpose of enabling development, there is nothing stopping any
23 other MSHCP parties from disposing additional MSHCP conserved lands.

24 7. In approving the Land Sale, the County did not conduct any CEQA analysis

1 but instead relied on an addendum to a 1989 Environmental Impact Report (“EIR”) for another
2 project for which the County was not even the lead agency and which does not in any way
3 address the Land Exchange or Translocation. The County has, therefore, failed to comply with
4 the CEQA, Public Resources Code § 21000 *et seq.* and the CEQA Guidelines, title 14
5 California Code of Regulations, § 15000 *et seq.* (“Guidelines”).

6 8. In swapping County property purchased with funds collected pursuant
7 Ordinance 810.2, where the exchange does not meet the Government Code section 25365
8 requirement that the divested property “is not required for county use and the property to be
9 acquired is required for county use,” in disposing of MSHCP Conservation Lands in violation
10 of the MSHCP and Joint Powers Agreement, and in approving the Land Exchange without
11 undergoing any CEQA review, the County has entered into an invalid contract for the Land
12 Exchange subject to this reverse validation action.

13 9. Petitioners petition this Court for a Writ of Mandate under the Code of Civil
14 Procedure, sections 1085 and 1094.5 directing Respondents to vacate and set aside their
15 approval of the Land Exchange.

16 **JURISDICTION AND VENUE**

17 10. This Court has jurisdiction over this action pursuant to sections 187, 526a, 861,
18 863, 1085, and 1094.5 of the California Code of Civil Procedure, and sections 21168 and
19 21168.5 of the Public Resources Code.

20 11. For the purposes of Petitioners’ Reverse Validation Action, jurisdiction over
21 the County may be had by publication of summons in a newspaper of general circulation
22 designated by this Court within 60 days of the filing of a complaint and Petitioners will so
23 publish a summons. (Code Civ. Proc. §§ 861, 861.1, 863.)

24 12. For the purposes of Mr. Paulek’s taxpayer waste claim, jurisdiction over the

1 County is established by Mr. Paulek’s position as a citizen resident of the County of Riverside
2 who is assessed for and is liable to pay, or, within one year before the commencement of the
3 action, has paid, a tax in Riverside County.

4 13. Venue for this action properly lies in the Riverside County Superior Court
5 because Respondents and the real property at issues are located in Riverside County.
6

7 **THE PARTIES**

8 14. Petitioner ALBERT THOMAS PAULEK, an individual, is a citizen resident,
9 homeowner, and tax payer in Riverside County. Mr. Paulek is a retired California Department
10 of Fish and Wildlife (the “Department” or “CDFW”) Associate Wildlife Biologist. He was the
11 manager of the Department’s San Jacinto Wildlife Area from 1991 to 2006. Mr. Paulek is a
12 Certified Wildlife Biologist with extensive knowledge and experience working with the
13 wildlife resources and conservation programs of western Riverside County and the State of
14 California. Mr. Paulek participated in the public review of this Project as an individual and as
15 the Conservation Chair of the Friends of the Northern San Jacinto Valley. Mr. Paulek uses
16 publicly accessible portions of the MSHCP Conservation Land and surrounding areas for
17 recreational, wildlife viewing, scientific, and educational purposes. He will be directly
18 affected by the Land Exchange and Translocation and their components, as described herein.

19 15. Petitioner FRIENDS OF THE NORTHERN SAN JACINTO VALLEY
20 (“Friends”) is a California non-profit public interest corporation with 300 members in western
21 Riverside County. Friends members are residents, homeowners, and tax payers in Riverside
22 County. Since 1991 Friends has been dedicated to preserving and protecting the northern San
23 Jacinto Valley, the San Jacinto Wildlife Area, and surrounding natural resources. The
24 organization sponsors regular nature walk and environmental restoration activities at the San

1 Jacinto Wildlife Area, and works to influence a wide variety of land use, transportation,
2 management and water issues that affect the San Jacinto Wildlife Area and the northern San
3 Jacinto Valley. Friends use publicly accessible portions of the MSHCP Conservation Land and
4 surrounding areas for recreational, wildlife viewing, scientific, and educational purposes.
5 Friends members will be directly affected by the Land Exchange and Translocation and their
6 components, as described herein.

7 16. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (“Center”) is a
8 California non-profit public interest corporation with over 48,000 members, including
9 members living in western Riverside County. Center members are residents, homeowners, and
10 tax payers in Riverside County. The Center and its members are dedicated to protecting
11 diverse native species and habitats through science, policy, education, and environmental law.
12 Center members use publicly accessible portions of the MSHCP conserved lands, including the
13 Conservation Land, and surrounding areas for recreational, wildlife viewing, scientific, and
14 educational purposes. Center members will be directly affected by the Land Exchange and
15 Translocation and their components, as described herein.

16 17. Mr. Paulek and members of the Friends and Center timely presented written
17 comments during the administrative hearings on the matters being challenged in this petition.
18 Mr. Paulek, Friends, and the Center and their members are directly, adversely, and irreparably
19 affected, and will continue to be prejudiced by the Land Exchange and Translocation and their
20 components, as described herein, until and unless this Court provides the relief prayed for in
21 this petition.

22 18. Respondent COUNTY OF RIVERSIDE is a local governmental agency and
23 political subdivision of the State of California charged with the authority to regulate and
24 administer land use activities within its boundaries, subject at all times to the obligations and

1 limitations of all applicable state, federal, and other laws, including CEQA and the CEQA
2 Guidelines.

3 19. Respondent THE COUNTY OF RIVERSIDE BOARD OF SUPERVISORS is
4 the legislative body and the highest administrative body of the County.

5 20. Real Party in Interest WESTERN RIVERSIDE COUNTY REGIONAL
6 CONSERVATION AUTHORITY (“RCA”) is public agency formed in 2004 by a Joint Powers
7 Agreement (most recently amended in 2011) entered into by the County and eighteen cities
8 that are parties to the MSHCP pursuant to the provisions of the California Government Code
9 section 6500 et seq. The RCA was formed to implement and administer the MSHCP. The
10 cities of Banning, Beaumont, Calimesa, Canyon Lake, Corona, Eastvale, Hemet, Jurupa
11 Valley, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Norco, Perris, Riverside, San
12 Jacinto, Temecula, Wildomar, and the County of Riverside are the parties to the Joint Powers
13 Agreement. The RCA Board of Directors is composed of one member from each of the cities
14 and all five members of the County of Riverside Board of Supervisors.

15 21. Real Party in Interest CASTLE & COOKE COMMERCIAL-CA INC. (“Castle
16 & Cooke”) is the owner of the approximately 40 acres of real property that will be conveyed to
17 the COUNTY in exchange for the MSHCP Conservation Lands in the Land Sale. On
18 information and belief, CASTLE & COOKE is a corporation formed under the laws of the
19 State of California with its principal place of business in California.

20 22. Based on the Castle & Cooke’s status as the other party to the Land Exchange,
21 and on Petitioners’ information and belief, Real Parties adequately represent the interests of
22 any and all other non-joined parties in the Project.

23 23. Petitioners are currently unaware of the true names and capacities of Does 1
24 through 20, inclusive, and therefore sue those parties by such fictitious names. Does 1 through

1 20, inclusive, are agents of the County, RCA, or other local, state, or federal government who
2 are responsible in some manner for the conduct described in this petition, or other persons or
3 entities presently unknown to the Petitioners who claim some legal or equitable interest in the
4 Land Exchange. Petitioners will amend this petition to show the true names and capacities of
5 Does 1 through 20 when such names and capacities become known.

6 24. Petitioners are currently unaware of the true names and capacities of Real
7 Parties in Interest, Does 21 through 50, inclusive. Does 21 through 50, inclusive, are persons
8 or entities presently unknown to the Petitioners who claim some legal or equitable interest in
9 the Land Exchange. Petitioners will amend this petition to show the true names and capacities
10 of Does 21 through 50 when such names and capacities become known.

11 **GENERAL ALLEGATIONS**

12 *Establishment of Western Riverside Multiple Species Habitat Conservation Plan Conservation* 13 *Land*

14 25. Due to the significant number of federally- and state- protected endangered and
15 threatened species found in western Riverside County, the County, USFWS, the Bureau of
16 Land Management, CDFW, and various other municipalities and agencies began planning for
17 the Western Riverside Multiple Species Habitat Conservation Plant in 1997. The MSHCP was
18 intended to comply with the Endangered Species Act (16 U.S.C. 1531, et. seq.) and the
19 California Endangered Species Act (California Fish and Game Code sections 2050, et seq.).
20 Due to the high biodiversity of the Riverside area, the MSHCP covers the largest number of
21 species of any existing habitat conservation plan, 146.

22 26. The County was the lead agency for the purposes of CEQA review of the
23 MSHCP. On June 17, 2003 the County of Riverside Board of Supervisors unanimously
24 approved the MSHCP, certified the MSHCP EIR, and executed the MSHCP's Implementing

1 Agreement.

2 27. In preparation for expected approval of the MSHCP, the County
3 adopted Ordinance 810.2, the Western Riverside Multiple Species Habitat
4 Conservation Plan Mitigation Fee Ordinance, on July 22, 2003. Ordinance 810.2
5 permitted the County to collect development fees that “shall be used to finance the
6 acquisition of lands and certain improvements necessary to implement the goals and
7 objectives of the MSHCP.” (Ordinance 810.2, subd. (2)(J).)

8 28. On January 30, 2004, the County passed Resolution No. 2004-069 authorizing
9 the County to purchase real property in the City of Lake Elsinore from a private party. That
10 resolution states “Whereas, the acquisition of the property will assist the County in providing
11 open space for conservation of wildlife and plant life.” Ordinance 810.2 funds were used to
12 make the purchase. The purchase included 48 acres identified here as MSHCP Conservation
13 Land and as APNs 390-130-029, 390-210-022, 390-200-009, 390-200-011, and 389-080-054.

14 29. The MSHCP Conservation Lands were purchased with County funds collected
15 under County of Riverside Ordinance 810.2 for the express purpose of acquiring lands to
16 further the conservation goals of the MSHCP. The MSHCP Conservation Land was selected
17 for inclusion in the MSHCP conservation land portfolio and purchased with Ordinance 810.2
18 funds in part because of its existing populations of San Diego ambrosia, a federally endangered
19 species, and Munz’s onion, a state threatened and federally endangered species. The MSHCP
20 Conservation Land includes one of only two conserved population of the San Diego ambrosia
21 and is one of only three left in the entire world. MSHCP fees may be used for the acquisition,
22 management, and administration of MSHCP conserved lands. The MSHCP does not authorize
23 fees to be used for the translocation of species covered by the MSHCP to facilitate
24 development.

1 30. Through independent legislative and administrative processes, throughout 2003
2 and 2004, the following entities became parties to the MSHCP: United States Fish and Wildlife
3 Service, California Department of Fish and Wildlife, California Department of Transportation,
4 California Department of Parks and Recreation, County of Riverside, Western Riverside
5 County Regional Conservation Authority, Riverside County Flood Control and Water
6 Conservation District, Riverside County Regional Parks and Open Space District, Riverside
7 County Waste Management District, Riverside County Transportation Commission; the cities
8 of Banning, Beaumont, Calimesa, Canyon Lake, Corona, Hemet, Jurupa Valley, Lake Elsinore,
9 Moreno Valley, Murrieta, Norco, Perris, Riverside, San Jacinto, Temecula, Menifee,
10 Wildomar, and Eastvale (the “Cities”).

11 31. On January 27, 2004 the County and the Cities entered into a Joint Powers
12 Agreement for “the purpose of acquiring, administering, operating and maintaining land and
13 facilities for ecosystem conservation and habitat reserves for certain rare, threatened and
14 endangered species covered by the [MSHCP].” The Joint Powers agreement served to
15 implement the MSHCP and create the RCA.

16 32. Based upon the MSHCP, on June 22, 2004 the CDFW issued a 75-year Natural
17 Community Conservation Plan permit and the USFWS issued a 75-year Incidental Take
18 Permit. These permits allow MSHCP permittees to harm or kill protected plants and wildlife
19 in exchange for certain conservation commitments, including the assembly of conserved lands.

20 33. From 2005 to present, the MSHCP Conservation Land has been identified in
21 every MSHCP annual report as contributing to the assembly of MSHCP conserved lands and
22 the attainment of MSHCP species objectives for the San Diego ambrosia and the Munz’s
23 onion.

1 *Translocation and Land Swap Approvals*

2 34. On January 13, 2015, the County adopted Resolution No. 2015-030, Notice of
3 Intention to Exchange Real Property in the City of Lake Elsinore, proposing to convey
4 approximately 48 acres of MSHCP conserved land in exchange for the conveyance by Castle
5 & Cooke of 49 acres of vacant land located adjacent to County-owned MSHCP Conservation
6 Land, APNs 390-130-029, 390-130-029, and 390-200-009.

7 35. The Castle & Cooke land described in Resolution No. 2015-030 includes
8 approximately 49 acres in the City of Lake Elsinore, APNs 390-200-010, 390-160-006, and
9 390-130-028. These parcels have been mined for over a 100 years and are so highly disturbed
10 that they are subject to a reclamation plan, RP112 Reclamation Plan, under the Surface Mining
11 and Reclamation Act, Public Resources Code sections 2770 et seq. Pursuant to RP112
12 Reclamation Plan, the reclamation will be complete in 2060.

13 36. As the Reclamation Plan explains, “The site has been in operation since the late
14 1800s and most extraction and operation areas have been disturbed for decades, therefore
15 existing wildlife habitat on the project site is limited or nonexistent.” (RP112 Reclamation
16 Plan Amendment (August 3, 2011) at p. 17.) Under the RP112 Reclamation Plan, Pacific
17 Aggregates Inc., and Pacific Clay Products, on information and belief subsidiaries of Castle
18 and Cooke, the parent company of Castle & Cooke, accepted responsibility for the cost of
19 reclamation.

20 37. On April 5, 2015, the RCA adopted Resolution No. 2015-004. Referencing the
21 County’s Notice of Intention to Exchange Real Property in the City of Lake Elsinore, the
22 resolution explained, “WHEREAS, a portion of the area proposed for conveyance to Castle &
23 Cooke supports San Diego ambrosia, a federally endangered plant and MSHCP covered
24 species, which would need to be relocated; and WHEREAS, the City of Lake Elsinore and

1 County of Riverside have requested the RCA’s assistance in facilitating this relocation after the
2 land exchange agreement between the County and Castle and Cooke is finalized.”

3 38. The RCA approved the Translocation at the cost of approximately \$330,000,
4 claiming that “the relocation of the San Diego ambrosia will protect the population” and would
5 somehow save the RCA “limited management funds.”

6 39. Both the County and RCA have argued that they will save money by disposing
7 of the MSHCP Conservation Land. The County states that the exchange is “desired by the
8 County to accommodate the County’s conservation purpose resulting in significant savings to
9 the [MSHCP]” (Resolution 2016-103 at p. 2) because Castle & Cooke “will assume the slope
10 maintenance obligations.” (*Id.* at p. 3.) RCA states “As part of the land exchange, the slope
11 easement will be extinguished ensuring the County of Riverside and its successor, the RCA,
12 will not be required to maintain large areas of manufactured slopes using limited management
13 funds.” (RCA Resolution 2015-004 at p. 2.) These meritless claims are based upon the
14 County and RCA’s claims that the County has had and will continue to have a responsibility to
15 fund slope management within MSHCP Conservation Lands.

16 40. Critically, the MSHCP prohibits the inclusion of such slopes within the
17 MSHCP: “manufactured slopes associated with proposed development shall not extend into
18 the MSHCP.” (MSHCP section 6.1.4.) Thus, any County MSHCP implementation funds or
19 RCA funds spent on maintaining manufactured slopes with the MSHCP Conservation Land
20 has been spent in an illegal waste of funds. Cost savings for the cessation of an unpermitted
21 expenditure is, therefore, no grounds upon which the Land Exchange or Translocation can
22 legally be based.

23 41. On February 9, 2016, the County adopted Resolution 2016-074, which
24 reconfigured and slightly reduced the acreage involved in the Land Exchange. According to

1 Resolution 2016-074, the Land Exchange would involve transfer of approximately 40 acres of
2 MSHCP Conservation Land for approximately 40 acres of Castle & Cooke land.

3 42. Despite strong opposition to the Land Exchange and Translocation, including
4 numerous letters from Petitioners and joint letters from the USFWS and CDFW meticulously
5 detailing the many legal deficiencies with these plans, on April 5, 2016, the County approved
6 Resolutions Nos. 2016-102 and 103, approving the Land Transfer and Translocation.

7 43. Resolution No. 2016-102 is entitled “Considering the Alberhill Ranch Specific
8 Plan Final Environmental Impact Report 89-2 and EIR Addendum No. IV for Vested Tentative
9 Tract Map No. 35001 Making Responsible Agency Findings Pursuant to the California
10 Environmental Quality Act and Issuing Certain Limited Approval for Vested Tentative Tract
11 Map No. 35001 by Authorizing the Exchange of Fee Interests in Real Property and Easement
12 Reservations Located in the City of Lake Elsinore, County of Riverside, State of California
13 with Castle & Cooke Commercial-CA, Inc. by Grant Deed.”

14 44. In Resolution 2016-102, the County bases its approval of the Land Exchange
15 and Translocation on the Alberhill Ranch Specific Plan Final Environmental Impact Report
16 (“Alberhill EIR”) and its addenda.

17 45. The Alberhill EIR is a 1989 document prepare by the City of Lake Elsinore as
18 the lead agency for a project that addressed, in some fashion, the Castle and Cooke land of the
19 Land Exchange. The Alberhill EIR, for which the County was a *responsible* but not *lead*
20 agency, was prepared for a housing development project proposed long before the MSHCP
21 was even contemplated. Neither the Alberhill EIR nor any of its addenda, including that which
22 the County purports to rely upon in Resolution 2016-102, Addendum No. IV, addressed the
23 MSHCP Conservation Lands or its populations of endangered species in any way. The
24 Alberhill EIR is, therefore, entirely irrelevant to the Land Exchange and Translocation and

1 provides no information regarding the County’s discretionary approvals of these actions.

2 46. Resolution 2016-103 is entitled “Authorization to exchange real property
3 located in the City of Lake Elsinore, County of Riverside, State of California. Resolution
4 2016-103 provides for the County’s conveyance of the MSHCP Conservation Land to Castle &
5 Cooke, with the County reserving an easement over a portion of APN 390-130-029 which is
6 purportedly the parcel containing the San Diego ambrosia population “to restrict development
7 by C&C and to accommodate the successful translocation of the San Diego Ambrosia plants
8 located thereon to another location as further described and shown [on attachments].”

9 (Resolution 2016-103 at p. 2.)

10 47. Neither the County nor the RCA have provided any plans for the translocation
11 of the Munz’s onion plants on the MSHCP Conservation Land. While the County retains an
12 easement over a portion of APN 390-130-029 “to accommodate the successful translocation of
13 the San Diego Ambrosia plants located thereon,” neither the County nor RCA have set out any
14 criteria for what constitutes a “successful” translocation.

15 48. Resolution 2016-103 also approves an Indemnification Agreement “whereby
16 Castle and Cooke Commercial-CA, Inc. will indemnify the County for any claims or demands
17 initiated against the County associated with the County’s actions and approvals relating to this
18 exchange transaction.” (*Id.* at p. 3.)

19 49. The County purported to have entered into the Land Exchange pursuant to
20 Government Code section 25365: “Whereas, pursuant to Government Code Section 25365, the
21 County may exchange real property belonging to the County with any person upon the terms
22 and conditions as are agreed upon between the parties, and if the values of each parcels of land
23 are approximately equal.” (Resolution No. 2016-103 at p. 2.) In fact, Section 25365 permits
24 such exchanges between a county and a private entity only to remove title defects or where

1 “the real property to be exchanged is not required for county use and the property to be
2 acquired is required for county use.” (Gov. Code, § 25365, subd. (b).)

3 50. The County did not make a finding, and cannot make a finding that the
4 MSHCP Conservation Land is not required for county use. Likewise, the County did not make
5 a finding, and cannot make a finding that the highly degraded Castle & Cooke property is
6 required for county use.

7 51. The Land Exchange and Translocation are inconsistent with the terms of the
8 Natural Community Conservation Plan permit and the Incidental Take Permit for the MSHCP.

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

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

17 54. This petition is timely filed in accordance with Public Resources Code section
18 21167 and CEQA Guidelines section 15112.

19 55. Petitioners will comply with Code of Civil Procedure section 863 by
20 publishing a validation summons in a Riverside County newspaper of general circulation
21 designated by the court within 60 days of the filing of this complaint.

22 56. Petitioner Mr. Paulek is a citizen resident and taxpayer in the County of
23 Riverside and, is therefore, due a right to challenge the waste of taxpayer property and funds
24 by the County.

1 57. Respondents have abused their discretion, failed to proceed in the manner
2 required by law, entered into an invalid contract, and engaged in illegal waste of property and
3 funds in the following ways:

4 **FIRST CAUSE OF ACTION**
5 **Violation of CEQA (Public Resources Code § 21000 et seq.)**
6 **(By All Petitioners Against All Respondents)**

7 58. Petitioners hereby incorporate by reference each and every allegation set forth
8 above.

9 59. The CEQA Guidelines define a “project” as “the whole of an action, which has
10 a potential for resulting in either a direct physical change in the environment, or a reasonably
11 foreseeable indirect physical change in the environment, and which is either undertaken,
12 supported, or approved by a public agency’s discretionary decision. (Guidelines § 15378.)
13 “The term ‘project’ refers to the activity which is being approved and which may be subject to
14 several discretionary approvals by governmental agencies. The term ‘project’ does not mean
15 each separate governmental approval.” (Guidelines § 15378, subd. (c).)

16 60. The public agency that has the principal responsibility for carrying out or
17 approving a project is the “lead agency.” (Pub. Res. Code § 21067.) If more than one public
18 agency will be involved with a project that is carried out by a public agency, the agency
19 carrying out the project is the lead agency even if the project is located within the jurisdiction of
20 another public agency. (Guidelines § 15051, subd. (a).) For projects carried out by
21 nongovernmental entities, the lead agency is the public agency with the greatest responsibility
22 for supervising or approving the project as a whole. (Guidelines § 15051, subd. (b).) The lead
23 agency must determine whether to prepare an EIR or a negative declaration to evaluate the
24 project’s environmental effects, and “will cause the document to be prepared.” (Guidelines
§ 15367.)

1 61. A “responsible agency” is a public agency other than the lead agency that has
2 responsibility for carrying out or approving a project. (Pub. Res. Code § 21069.) After a lead
3 agency’s decision certifying an EIR or negative declaration, a responsible agency has four
4 options if it believes the EIR or negative declaration are not adequate for its use. It must either
5 (1) take the issue to court within 30 days after the lead agency files a notice of determination;
6 (2) be deemed to have waived any objection to the adequacy of the EIR or negative declaration;
7 (3) prepare a subsequent or supplemental EIR if new information or changed circumstances
8 show that there are new impacts or more severe impacts than shown in the EIR; or (4) assume
9 lead agency status as provided in Guidelines section 15052(a)(3). (Guidelines § 15096, subd.
10 (e).) A responsible agency *must* assume the lead agency role if it is called on to approve a
11 project after the statute of limitations has expired for a challenge to the actions of the lead
12 agency when either (1) the lead agency did not prepare any environmental documents for the
13 project; (2) a subsequent or supplemental EIR is required; or (3) the lead agency prepared
14 inadequate environmental documents without consulting with the responsible agency and the
15 statute of limitations has expired for a challenge to the actions of the lead agency. (Guidelines
16 § 15052, subd. (a).)

17 62. The County is the proper lead agency for the Land Exchange project, as it has
18 the principal responsibility for carrying out *and* approving the Land Exchange. The County
19 abused its discretion by failing to assume its proper lead agency role and responsibility in
20 approving the Land Exchange.

21 63. The County further abused its discretion by failing to assume the lead agency
22 role when no other putative lead agency prepared any environmental document for the Land
23 Exchange. Even if the Alberhill Ranch Specific Plan EIR and EIR Addendum No. IV was
24 prepared “for” the Land Exchange or Translocation, which it was not, the County abused its

1 discretion by failing to assume the lead agency role because a subsequent or supplemental EIR
2 is necessary based upon new information that indicates that the Land Exchange and
3 Translocation will have significant environmental consequences not considered in the Alberhill
4 Ranch Specific Plan EIR or EIR Addendum No. IV. Finally, the County abused its discretion
5 by failing to assume the lead agency role despite the inadequacy of the Alberhill Ranch Specific
6 Plan EIR and EIR Addendum No. IV.

7
8 **SECOND CAUSE OF ACTION**
9 **Violation of CEQA (Public Resources Code § 21000 et seq.)**
10 **(By All Petitioners Against All Respondents)**

11 64. Petitioners hereby incorporate by reference each and every allegation set forth
12 above.

13 65. CEQA requires that a lead agency must prepare a legally adequate EIR or
14 negative declaration prior to approving any discretionary project that may have a significant
15 environmental effect. The EIR or negative declaration must fully disclose and analyze the
16 project's potentially significant environmental effects. The lead agency is also required
17 pursuant to CEQA to consider mitigation measures and alternatives that would reduce or avoid
18 the project's significant environmental effects, to adopt all feasible mitigation measures and/or
19 alternatives, and to determine that proposed mitigation measures will or will not be effective in
20 avoiding or substantially lessening the project's significant environmental impacts.

21 66. A responsible agency must consider the CEQA analysis prepared by the lead
22 agency and reach its own conclusions on whether and how to approve the project. (Guidelines
23 § 15096, subd. (a).) A responsible agency is responsible for mitigating or avoiding only the
24 direct and indirect effects of those parts of a project which it decides to carry out, finance, or
approve. (Guidelines § 15096, subd. (g)(1).) When an EIR has been prepared for a project, a

1 responsible agency shall not approve the project as proposed if the agency finds any feasible
2 alternative or feasible mitigation measures within its powers that would substantially lessen or
3 avoid any of the project's significant environmental effects. (Guidelines § 15096, subd. (g)(2).)
4 If after the lead agency's certification of the EIR, a responsible agency receives new
5 information showing that there are new impacts or more severe impacts than shown in the EIR,
6 or if there are substantial changes in the project for the circumstances under which it is
7 undertaken, it must prepare a supplemental or subsequent EIR prior to approving the project.
8 (Guidelines §§ 15162, 15163.)

9 67. An EIR must provide a complete and accurate description of both the project
10 and the project's environmental setting.

11 68. An EIR must provide sufficient environmental analysis such that decision-
12 makers can intelligently consider environmental consequences when acting on proposed
13 projects. Mitigation measures adopted for a project's significant environmental effects must be
14 concrete and enforceable.

15 69. The Land Exchange and Translocation will have significant adverse
16 environmental consequences, including the removal of existing San Diego ambrosia and
17 Munz's onion plants and the relocation of some of these plants without sufficient assurance of
18 their continued vitality. The Land Exchange and Translocation will also have a significant
19 environmental effect due to their inconsistency with applicable plans and policies, including the
20 MSHCP, the MSHCP Implementing Agreement, the MSHCP Natural Community Conservation
21 Plan permit, and the MSHCP Incidental Take Permit.

22 70. Neither the Alberhill Ranch Specific Plan EIR, EIR Addendum No. IV, nor any
23 other environmental document adequately describes the Land Exchange or Translocation or
24 consider their environmental consequences.

1 71. Neither the Alberhill Ranch Specific Plan EIR, EIR Addendum No. IV, nor any
2 other environmental document consider feasible mitigation measures or alternatives that would
3 avoid the Land Exchange and Translocation's environmental consequences.

4 72. There is no legally adequate environmental analysis for the Land Exchange or
5 Translocation.

6 73. The County abused its discretion by approving the Land Exchange and
7 Translocation without any legally adequate environmental review, and without adequate
8 consideration of the Project's environmental consequences.

9 74. The County abused its discretion by failing to adopt feasible mitigation
10 measures or alternatives within its powers

11 75. The County abused its discretion by failing to prepare a subsequent or
12 supplemental EIR to address the Land Exchange and Translocation's significant environmental
13 impacts.

14 **THIRD CAUSE OF ACTION**
15 **CEQA Findings Not Supported By Substantial Evidence**
16 **(By All Petitioners Against All Respondents)**

17 76. Petitioners hereby incorporate by reference each and every allegation set
18 forth above.

19 77. CEQA requires that public agencies adopt certain findings in connection with
20 their project approvals. When they approve projects, both lead agencies and responsible
21 agencies must find either (1) that the project's significant environmental effects have been
22 mitigated or avoided or (2) that the unmitigated impacts are outweighed by specific
23 overriding economic, legal, social, technological, or other benefits of the project. The lead
24 agency may reach the latter conclusion and adopt a Statement of Overriding Considerations
only if it finds that there are no feasible mitigation measures or alternatives to avoid or

1 substantially lessen the remaining significant environmental effects of the project.

2 78. No substantial evidence supports the County’s finding that the Land
3 Exchange or Translocation is within the scope of Alberhill Ranch Specific Plan EIR
4 Addendum No. IV.

5 79. No substantial evidence supports the County’s finding that the environmental
6 effects of the Land Exchange or Translocation have been adequately addressed.

7 80. No substantial evidence supports the County’s finding that Alberhill EIR
8 Addendum No. IV is a complete and accurate reporting of the Land Exchange and
9 Translocation’s potential environmental impacts.

10 81. No substantial evidence supports the County’s finding that mitigation measures
11 imposed by the City of Lake Elsinore as lead agency for the Alberhill Ranch Specific Plan EIR
12 and EIR Addendum No. IV are sufficient to reduce all the Land Exchange and Translocation’s
13 potentially significant environmental impacts to less than significant levels.

14 82. No substantial evidence supports the County’s finding that there are no feasible
15 alternatives that would avoid or substantially lessen the Land Exchange and Translocation’s
16 significant environmental effects while still achieving most of their objectives.

17
18 **FOURTH CAUSE OF ACTION**

19 **Reverse Validation Action**

20 **(Govt. Code §§ 53510, 53511, and Code Civ. Proc. § 860 et seq.)**

21 **(By All Petitioners Against All Respondents)**

22 83. Petitioners hereby incorporate by reference each and every allegation set forth
23 above. Pursuant to Government Code section 53510 and 53511 and Code of Civil Procedure
24 section 860 any local agency may bring a validation action to determine the validity of any of
its bonds, warrants, contracts, obligations, or evidences of indebtedness.

1 84. If no proceedings have been brought by the relevant agency, any interested
2 person may bring an action within the time and in the court specified by Code of Civil
3 Procedure section 860 to determine the validity of the contract. (Code Civ. Proc. § 863.)
4 These actions brought by interested persons are called Reverse Validation Actions.

5 85. Petitioners bring this Reverse Validation Action as interested persons in order
6 to challenge the validity of Land Sale and Translocation.

7 86. This Reverse Validation Action is timely pursuant to Code of Civil Procedure
8 section 860, 863, and 864 because it was brought within 60 days of the Land Sale approval.

9 87. The Land Sale was made in violation of Ordinance 810.2, the MSHCP, the
10 MSHCP Implementing Agreement, the MSHCP Natural Community Conservation Plan
11 permit, the MSHCP Incidental Take Permit, Government Code section 25365, the Joint Powers
12 Agreement, and CEQA and should therefore be invalidated.

13 88. Petitioners plead in the alternative for a writ of mandamus pursuant to Civil
14 Code section 1085.

15 **FIFTH CAUSE OF ACTION**
16 **Taxpayer Waste (Code of Civil Procedure § 526a)**
17 **(By Mr. Paulek against all Respondents)**

18 89. Petitioners hereby incorporate by reference each and every allegation set forth
19 above.

20 90. Petitioner Mr. Paulek has been assessed for and is liable to pay, or, within one
21 year before the commencement of the action, has paid, a tax therein to the County.

22 91. In approving the Land Exchange in violation of Ordinance 810.2, Government
23 Code section 25365, the MSHCP, and the Joint Powers Agreement the County has engaged in
24 an illegal waste of County property and funds.

1 92. In approving the Land Exchange of property designated as MSHCP
2 Conservation Lands, the County engaged in an illegal waste of County property.

3 93. In approving the Land Exchange whereby MSHCP Conservation Land will be
4 exchanged for privately owned land of far lesser conservation and economic value, the County
5 has engaged in an illegal waste of County funds.

6 94. In approving the Translocation to be funded by County funds funneled through
7 the RCA, the County has engaged in an illegal waste of funds.

8 95. The Land Sale should be declared an illegal waste of taxpayer property and
9 funds and thus invalidated.

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, Petitioners pray for relief as follows:

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

14 (A) to vacate and set aside approval of the Land Exchange and Translocation as set
15 out in County Resolutions Nos. 2016-102 and 2016-103;

16 (B) to suspend any and all activity pursuant to Respondents' approval of the Land
17 Exchange and Translocation that could result in an adverse change or alteration to the physical
18 environment until Respondents have complied with all requirements of CEQA and all other
19 applicable state and local laws, policies, ordinances, and regulations as are directed by this
20 Court pursuant to Public Resources Code section 21168.9;

21 2. For declaratory relief that the Land Exchange and Translocation were a waste of
22 County property and funds and are thus invalid actions;

23 3. For a stay, temporary restraining order, preliminary injunction, and permanent
24 injunction prohibiting any actions by Respondents or Real Parties pursuant to Respondents'
approval of the Land Exchange and Translocation until Respondents have fully complied with
all requirements of CEQA and all other applicable state and local laws, policies, ordinances,

1 and regulations;

2 3. For costs of the suit;

3 4. For attorneys' fees pursuant to the Code of Civil Procedure section 1021.5; and

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

5 DATED: May 5, 2016

6 CENTER FOR BIOLOGICAL DIVERSITY

7 By:



8 April Rose Sommer

9 John Buse

Attorneys for Petitioners/Plaintiffs

10 CENTER FOR BIOLOGICAL DIVERSITY

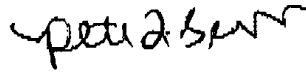
1 **VERIFICATION**

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
7 information and belief, and as to those matters I believe them to be true.

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

10
11 Executed on May 5, 2016 at Shelter Cove, Humboldt County, CA.

12 

13 _____
14 Peter Galvin
15 Director of Programs
16 Center for Biological Diversity
17
18
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24

1 VERIFICATION

2

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

4 I am a party to this action as an individual and make this verification on behalf of

5 myself. I am also the Conservation Chair of the Friends of the Northern San Jacinto Valley,

6 which is a party to this action, and am authorized to make this verification for and on its behalf,

7 and I also make this verification for that reason. I have read the foregoing document and know

8 its contents. The matters stated in it are true of my own knowledge except as to those matters

9 that are stated on information and belief, and as to those matters I believe them to be true.

10 I declare under penalty of perjury under the laws of the State of California that the

11 foregoing is true and correct.

12

13 Executed on May 5, 2016 at Los Angeles, Los Angeles County, CA.

14 

15

Albert Thomas Paulek

1 John Buse (SBN 163156)
April Rose Sommer (SBN 257967)
2 CENTER FOR BIOLOGICAL DIVERSITY
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3 Oakland, CA 94612
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Email: asommer@biologicaldiversity.org
5 *Attorneys for Petitioner Center for Biological Diversity*

6 Susan L. Nash (SBN 122533)
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7 P. O. Box 4036
Idyllwild, California 92549
8 Voice: (909) 228-6710
Fax: (951) 659-2718
9 *Attorney for Petitioners Albert Thomas Paulek and
Friends of the Northern San Jacinto Valley*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF RIVERSIDE

12 ALBERT THOMAS PAULEK;) Case No.
FRIENDS OF THE NORTHERN SAN)
13 JACINTO VALLEY; CENTER FOR) **NOTICE OF COMMENCEMENT OF LEGAL**
BIOLOGICAL DIVERSITY) **ACTION PURSUANT TO THE CALIFORNIA**
14) **ENVIRONMENTAL QUALITY ACT**
Petitioners/Plaintiffs,)
15) [Pub Res. Code § 21167.5]
vs.)
16)
COUNTY OF RIVERSIDE; COUNTY)
17 OF RIVERSIDE BOARD OF)
SUPERVISORS; and DOES 1-20)
18)
Respondents/Defendants.)
19)
20 CASTLE & COOKE COMMERCIAL-)
CA INC.; WESTERN RIVERSIDE)
21 COUNTY REGIONAL)
CONSERVATION AUTHORITY; and)
22 DOES 21-50,)
23)
Real Parties in Interest.)
24)

1 TO RESPONDENTS COUNTY OF RIVERSIDE and COUNTY OF RIVERSIDE BOARD
2 OF SUPERVISORS:

3 Please take notice that on or about May 5, 2016, Albert Thomas Paulek, Friends Of The
4 Northern San Jacinto Valley, and the Center for Biological intend to commence an action
5 seeking a writ of mandate to overturn, set aside, void, and annul Respondents' Land Exchange
6 of 48 acres of Western Riverside Multiple Species Habitat Conservation Plan conserved land
7 as approved in Resolutions Nos. 2016-102 and 2016-103 under the California Environmental
8 Quality Act ("CEQA," Public Resources Code Section 21000 *et seq.*). This action will be
9 based on the grounds that Respondents' approval of the Project was in violation of CEQA.

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DATED: May 4, 2016

John Buse
April Rose Sommer
CENTER FOR BIOLOGICAL DIVERSITY

By: 

John Buse
Attorney for Petitioner
Center for Biological Diversity

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April Rose Sommer (SBN 257967)
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5 *Attorneys for Petitioner Center for Biological Diversity*

6 Susan L. Nash (SBN 122533)
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Fax: (951) 659-2718
9 *Attorney for Petitioners Albert Thomas Paulek and
Friends of the Northern San Jacinto Valley*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF RIVERSIDE

12 ALBERT THOMAS PAULEK;) Case No.
FRIENDS OF THE NORTHERN SAN)
13 JACINTO VALLEY; CENTER FOR) **PROOF OF SERVICE OF**
BIOLOGICAL DIVERSITY) **NOTICE OF COMMENCEMENT OF LEGAL**
14) **ACTION PURSUANT TO THE CALIFORNIA**
Petitioners/Plaintiffs,) **ENVIRONMENTAL QUALITY ACT**
15)
vs.)
16)
COUNTY OF RIVERSIDE; COUNTY)
17 OF RIVERSIDE BOARD OF)
SUPERVISORS; and DOES 1-20)
18)
Respondents/Defendants.)
19)
20 CASTLE & COOKE COMMERCIAL-)
CA INC.; WESTERN RIVERSIDE)
21 COUNTY REGIONAL)
CONSERVATION AUTHORITY; and)
22 DOES 21-50,)
23)
Real Parties in Interest.)
24)

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

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, Oakland,
5 California 94612.

6 On February 25, 2016, I served a true and correct copy of the **NOTICE OF**
7 **COMMENCEMENT OF LEGAL ACTION PURSUANT TO THE CALIFORNIA**
8 **ENVIRONMENTAL QUALITY ACT** on the parties in this action by placing a true copy thereof in a
9 sealed envelope addressed as below:

10 Melissa Cushman
11 County of Riverside
12 County Counsel
3960 Orange St., Ste. 500
Riverside, CA 92501

Board of Supervisors
County of Riverside
County Administrative Center
4080 Lemon Street, 5th Floor
Riverside, California 92501

13 BY MAIL Such envelopes were sealed and placed for collection and mailing following
14 ordinary business practices.

15 Executed on May 4, 2016 in Oakland , California.

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

18
19
20 

21
22 April Sommer
23
24

1 John Buse (SBN 163156)
April Rose Sommer (SBN 257967)
2 CENTER FOR BIOLOGICAL DIVERSITY
1212 Broadway, Ste. 800
3 Oakland, CA 94612
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Email: asommer@biologicaldiversity.org
5 *Attorneys for Petitioner Center for Biological Diversity*

6 Susan L. Nash (SBN 122533)
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Fax: (951) 659-2718
9 *Attorney for Petitioners Albert Thomas Paulek and
Friends of the Northern San Jacinto Valley*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF RIVERSIDE

12 ALBERT THOMAS PAULEK;) Case No.
FRIENDS OF THE NORTHERN SAN)
13 JACINTO VALLEY; CENTER FOR) **NOTICE OF ELECTION TO PREPARE**
BIOLOGICAL DIVERSITY) **ADMINISTRATIVE RECORD**
14)
Petitioners/Plaintiffs,) [Pub Res. Code § 21167.6]
15)
vs.) Original Date of Filing: May 5, 2016
16)
COUNTY OF RIVERSIDE; COUNTY)
17 OF RIVERSIDE BOARD OF)
SUPERVISORS; and DOES 1-20)
18)
Respondents/Defendants.)
19)
CASTLE & COOKE COMMERCIAL-)
20 CA INC.; WESTERN RIVERSIDE)
21 COUNTY REGIONAL)
CONSERVATION AUTHORITY; and)
22 DOES 21-50,)
23)
Real Parties in Interest.)
24)

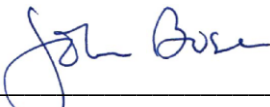
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TO RESPONDENTS COUNTY OF RIVERSIDE and COUNTY OF RIVERSIDE BOARD
OF SUPERVISORS:

Petitioners Albert Thomas Paulek, Friends Of The Northern San Jacinto Valley, and the
Center for Biological Diversity elect to prepare the record of proceedings in the above-
captioned proceeding pursuant to Public Resources Code section 21167.6(b)(2).

DATED: May 4, 2016

John Buse
April Rose Sommer
CENTER FOR BIOLOGICAL DIVERSITY

By: 

John Buse
Attorney for Petitioner
Center for Biological Diversity