



PRESS RELEASE

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Environmental Groups Sue City of Oxnard to Protect Ormond Beach Wetlands From Development

Ventura County — The Environmental Defense Center, the Sierra Club, and the Environmental Coalition filed a lawsuit against the City of Oxnard today disputing the City's decision that new residential, commercial and industrial development at Ormond Beach will not harm sensitive wetlands or the State's plan to restore the area.

On June 14, the City approved the first of two major developments targeted for the Ormond Beach “Specific Plan” area. The SouthShore Project, a primarily residential development with over 1500 housing units, will pave over a vast open space area that currently protects the wetlands from existing urban development. The second development project (not yet approved by the City) would similarly convert an open space area to commercial and light industrial development, and limit the size of the California State Coastal Conservancy’s planned wetland restoration. The City evaluated the potential environmental impacts of both projects in one Environmental Impact Report (EIR). The environmental groups assert that the City’s EIR and approval of the SouthShore Project violated the California Environmental Quality Act and State Planning and Zoning law.

“Ormond Beach is a vitally important habitat area,” said Mike Stubblefield of Los Padres Sierra Club. “These wetlands support numerous rare plants and wildlife, including over 200 species of migratory birds, and the City has failed to carry out its job to make sure this area will be protected from the development.”

Karen Kraus, staff attorney with the Environmental Defense Center, noted, “The City’s environmental review fails to take sea level rise into account, and understates potential impacts to the wetlands as a result.” Ms. Kraus also pointed out that the EIR’s water resources and greenhouse gas emissions analyses are deficient.

Janis McCormick of the Environmental Coalition stated, “The City’s decision totally disregards the Coastal Conservancy’s restoration plan. The new development is incompatible with sensitive wetland habitat, and a portion of the development is directly in the footprint of the Conservancy’s restoration area.”

The Ormond Beach wetlands are located in Oxnard, between Port Hueneme and the Point Mugu Naval Base. Although the wetlands have been historically filled in to create agricultural fields and to support industrial development (including the Halaco facility which has become an EPA “Superfund” clean-up site), the area is still considered an important habitat area. The California State Coastal Conservancy has been acquiring property to permanently protect and restore Ormond Beach since 2001. If successful, the SCC’s restoration plan would restore Ormond Beach to one of the largest preserved coastal wetlands in southern California

The lawsuit was filed in the Superior Court of the County of Ventura. Additional information is available [online](#).

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***The Environmental Defense Center**, a non-profit law firm, protects and enhances the local environment through education, advocacy, and legal action and works primarily within Santa Barbara, Ventura, and San Luis Obispo counties. Since 1977, EDC has empowered community based organizations to advance environmental protection. Program areas include protecting coast and ocean resources, open spaces and wildlife, and human and environmental health. Learn more about EDC at www.EnvironmentalDefenseCenter.org.*

***The Sierra Club** is a national, environmental organization that protects communities, wild places, and the planet. The Los Padres Sierra Club serves Ventura and Santa Barbara Counties. Learn more about Los Padres Sierra Club at <http://lospadres.sierraclub.org/>*

***The Environmental Coalition** is a confederation of citizens and local groups working together to protect the environment and the quality of life throughout Ventura County.*

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12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF VENTURA
VENTURA DIVISION

14 SIERRA CLUB, a Public Benefit Corporation,)
15 ENVIRONMENTAL DEFENSE CENTER, a)
California Public Benefit Corporation, and)
16 ENVIRONMENTAL COALITION, a)
California Public Benefit Corporation,)

17 Petitioners,)

18 vs.)

19 CITY OF OXNARD, CITY COUNCIL OF)
20 THE CITY OF OXNARD, DOES 1-15)

21 Respondents,)

22 ITO FARMS, INC; HEARTHSIDE HOMES,)
23 INC; SOUTHERN CALIFORNIA EDISON)
CO.; PACIFIC LIGHTING SERVICE CO.;)
24 SOUTH SHORE LAND COMPANY, LLC,)
DAVE O WHITE, TRUSTEE OF THE)
25 REALTY SERVICES DEFINED BENEFIT)
PENSION PLAN, AND FRANK E. WHITE,)
26 TRUSTEE OF THE FRANK E. WHITE)
SOLE PROPRIETORSHIP DEFINED)
27 BENEFIT PLAN; RUBY ISHIMOTO; RUBY)
M KATSUDA TRUST; RITSUO-KAZUKO)
28 ITO TRUST; SOUTH SHORE LAND CO.,)
LLC; PLUM VISTA LP; ALLEN AND)
MARILYN CAMP; RUBY KATSUDA;)

Case No: _____

VERIFIED PETITION FOR WRIT OF MANDAMUS

CAL. ENVIRONMENTAL QUALITY ACT ("CEQA") [CAL. PUBLIC RESOURCES CODE §§ 21000 *et seq.*]; CAL. PLANNING AND ZONING LAW [GOVT. CODE §§ 66500 *et seq.*]; CAL. CODE OF CIVIL PROCEDURE §§ 1085, 1094.5

1 RITSUO AND KAZUOKO ITO; SACHIKO)
 ITO; RAYMOND SWIFT; RITSUO ITO)
 AND KAZUKO ITO, TRUSTEES; SACHIKO)
 2 ITO, TRUSTEE; JOHN M KATSUDA;)
 JAMES TADASHI KATSUDA TRUST;)
 3 JAMES KATSUDA; RUBY M KATSUDA)
 1992 TRUST; KENNETH K KATSUDA;)
 4 RUBY ISHIMOTO, TRUSTEE;)
 MARATHON LAND, INC; DEARDORFF-)
 5 JACKSON CO.; YONIT LEVY TRUST;)
 SILVER STAR ENTERPRISES; CALLENS)
 6 RANCH; MILLIGAN RANCH, DOES 16-30,)
)
 7)
 Real Parties in Interest)
 8 _____

9 **INTRODUCTION**

10 1. Petitioners SIERRA CLUB, ENVIRONMENTAL DEFENSE CENTER, and
 11 ENVIRONMENTAL COALITION (Petitioners) challenge the City of Oxnard’s (City, or
 12 Respondent) failure to comply with the California Environmental Quality Act (“CEQA”) and
 13 California Planning and Zoning Law in approving the SouthShore Specific Plan Project
 14 (“SouthShore Project”) and certifying the Ormond Beach Specific Plan Final Environmental
 15 Impact Report (“FEIR”), which evaluates the potential environmental harms from the
 16 SouthShore Specific Plan Project and the South Ormond Beach Specific Plan (collectively,
 17 “Specific Plan projects” or “projects”).¹ Both projects are located near the Ormond Beach
 18 wetland area, an exceptional habitat area located in the City of Oxnard, between Port Hueneme
 19 and Naval Base Ventura County Point Mugu. The wetlands provide vitally important habitat for
 20 an extensive variety of plant and wildlife species. The area includes one of the longest stretches
 21 of undisturbed southern coastal foredunes in Southern California, and it supports over 200
 22 species of migratory birds, including the endangered California least tern and western snowy
 23 plover.

24 2. Although the Ormond Beach area has historically borne the brunt of human
 25 development, particularly industrial development, it has for many years now been a priority of
 26 the California State Coastal Conservancy (“SCC”), which purchased initial acreage in Ormond
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¹ Proponents for the South Ormond Beach Project have not applied for final approval from the City for this Project.

1 Beach to permanently protect its habitat and to support wetland restoration. The SCC is leading
2 restoration planning efforts for the area and is working to acquire a portion of the last remaining
3 undeveloped land in the area as part of this restoration. This undeveloped land – which
4 currently supports agricultural production – is also the focus of the City’s Ormond Beach
5 Specific Plan. The Specific Plan projects would convert the area into commercial, light
6 industrial, and residential development adjacent to, or near, the Ormond Beach wetland area,
7 causing significant impacts to the Ormond Beach wetlands and the species that rely on that
8 area, along with a range of other significant environmental harms.

9 3. As detailed in this Petition, Respondents’ certification of the EIR and approval
10 of the SouthShore Project is unlawful under CEQA and California Planning and Zoning Law.

11 **PARTIES**

12 4. Petitioner SIERRA CLUB is a public benefit corporation. The Sierra Club is a
13 national, environmental organization that protects communities, wild places, and the planet.
14 The Los Padres Sierra Club serves Santa Barbara and Ventura Counties. Sierra Club members
15 use and enjoy Ormond Beach and the surrounding area for recreational, spiritual and scientific
16 purposes, including surfing and hiking; meditation, worship and ritual; and wildlife
17 observation, bird watching, plant collecting and study of ecological relationships. Sierra Club
18 members travel through the Ormond Beach Specific Plan area by motorized vehicle, bicycle
19 and on foot, and they enjoy the scenic attributes of the site and the area generally. The
20 undertaking and enjoyment of each of these uses is jeopardized by Respondents’ certification of
21 the Ormond Beach Specific Plan FEIR and approval of the SouthShore Project, and the Sierra
22 Club, through and on behalf of its members, will suffer direct personal and organizational
23 injury from Respondents’ certification of the Ormond Beach Specific Plan FEIR and approval
24 of the SouthShore Project. The Sierra Club and its members will also be personally and
25 directly injured by Respondents’ failure to comply with CEQA and Planning and Zoning Law.
26 The Sierra Club, through its members and representatives, has participated at public processes
27 concerning the EIR and the SouthShore Project, including public hearings before the City, and
28 has submitted written comments to the City.

1 5. Petitioner ENVIRONMENTAL DEFENSE CENTER (“EDC”) is a California
2 public benefit corporation. The EDC engages in issues primarily within Ventura, Santa Barbara,
3 and San Luis Obispo Counties. The EDC protects and enhances the environment through
4 education, advocacy, and legal action. EDC members use and enjoy Ormond Beach and the
5 surrounding area for recreational, spiritual and scientific purposes, including surfing and hiking;
6 meditation, worship and ritual; and wildlife observation, bird watching, plant collecting and
7 study of ecological relationships. EDC members travel through the Ormond Beach Specific
8 Plan area by motorized vehicle, bicycle and on foot, and they enjoy the scenic attributes of the
9 site and the area generally. The undertaking and enjoyment of each of these uses is jeopardized
10 by Respondents’ certification of the Ormond Beach Specific Plan FEIR and approval of the
11 SouthShore Project, and the EDC, through and on behalf of its members, will suffer direct
12 personal and organizational injury from Respondents’ certification of the Ormond Beach
13 Specific Plan EIR and approval of the SouthShore Project. The EDC and its members will also
14 be personally and directly injured by Respondents’ failure to comply with CEQA and Planning
15 and Zoning Law. The EDC, through its members and representatives, has participated at public
16 processes concerning the FEIR and the SouthShore Project, including public hearings before
17 the City, and has submitted written comments to the City.

18 6. Petitioner ENVIRONMENTAL COALITION is a California public corporation.
19 The Environmental Coalition is a confederation of citizens and local groups working together to
20 protect the environment and the quality of life throughout Ventura County. Environmental
21 Coalition members use and enjoy Ormond Beach and the surrounding area for recreational,
22 spiritual and scientific purposes, including surfing and hiking; meditation, worship and ritual;
23 and wildlife observation, bird watching, plant collecting and study of ecological relationships.
24 Environmental Coalition members travel through the Ormond Beach Specific Plan area by
25 motorized vehicle, bicycle and on foot, and they enjoy the scenic attributes of the site and the
26 area generally. The undertaking and enjoyment of each of these uses is jeopardized by
27 Respondents’ certification of the Ormond Beach Specific Plan FEIR and approval of the
28 SouthShore Project, and the Environmental Coalition, through and on behalf of its members,

1 will suffer direct personal and organizational injury from Respondents' certification of the
2 Ormond Beach Specific Plan FEIR and approval of the SouthShore Project. The Environmental
3 Coalition and its members will also be personally and directly injured by Respondents' failure
4 to comply with CEQA and Planning and Zoning Law. The Environmental Coalition, through its
5 members and representatives, has participated at public processes concerning the EIR and the
6 SouthShore Project, including public hearings before the City, and has submitted written
7 comments to the City.

8 7. Respondent CITY OF OXNARD is an incorporated city within Ventura County
9 vested with the authority and responsibility to regulate and administer land use and
10 development within its territory in compliance with duly adopted provisions of its zoning
11 ordinances, general plan, and all applicable provisions of State law, including CEQA and
12 Planning and Zoning Law. The City is responsible for reviewing environmental documents
13 pertaining to its decisions to ensure compliance with CEQA, for adopting findings under
14 CEQA, and for otherwise complying with CEQA and the CEQA Guidelines. The City also
15 owns property in the Ormond Beach Specific Plan area.

16 8. Respondent CITY COUNCIL OF THE CITY OF OXNARD is the legislative
17 body and highest administrative body of the City of Oxnard.

18 9. Petitioners are informed and believe that at all times herein alleged,
19 Respondents, and each of them, were the agents and employees of the remaining Respondents
20 and while doing the things herein alleged, were acting within the course and scope of such
21 agency and employment.

22 10. The true names and capacities, whether individual, corporate or otherwise, of
23 Does 1-15 are unknown to Petitioner who therefore sues said Respondents by such fictitious
24 names and will seek leave to amend this Petition for Writ of Mandamus when they have been
25 ascertained.

26 11. Real Parties in Interest ITO FARMS, INC and HEARTHSIDE HOMES/INC are
27 the co-applicants for the SouthShore Specific Plan Project. ITO FARMS, INC has a legal
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1 interest in the Ormond Beach Specific Plan because its property is covered by the Ormond
2 Beach Specific Plan and the Ormond Beach Specific Plan FEIR.

3 12. Real Parties in Interest SOUTHERN CALIFORNIA EDISON CO.; PACIFIC
4 LIGHTING SERVICE CO.; SOUTH SHORE LAND COMPANY, LLC, DAVE O WHITE,
5 TRUSTEE OF THE REALTY SERVICES DEFINED BENEFIT PENSION PLAN, AND
6 FRANK E. WHITE, TRUSTEE OF THE FRANK E. WHITE SOLE PROPIETORSHIP
7 DEFINED BENEFIT PLAN; RUBY ISHIMOTO; RUBY M KATSUDA TRUST; RITSUO-
8 KAZUKO ITO TRUST; SOUTH SHORE LAND CO., LLC; PLUM VISTA LP; ALLEN AND
9 MARILYN CAMP; RUBY KATSUDA; RITSUO AND KAZUOKO ITO; SACHIKO ITO;
10 RAYMOND SWIFT; RITSUO ITO AND KAZUKO ITO, TRUSTEES; SACHIKO ITO,
11 TRUSTEE; JOHN M KATSUDA; JAMES TADASHI KATSUDA TRUST; JAMES
12 KATSUDA; RUBY M KATSUDA 1992 TRUST; KENNETH K KATSUDA; and RUBY
13 ISHIMOTO, TRUSTEE are the recipients of the City's approval of the SouthShore Specific
14 Plan Project and/or have a legal interest in the Ormond Beach Specific Plan because their
15 property is covered by the Ormond Beach Specific Plan and the Ormond Beach Specific Plan
16 FEIR.

17 13. Real Parties in Interest MARATHON LAND, INC; DEARDORFF-JACKSON
18 CO.; YONIT LEVY TRUST; SILVER STAR ENTERPRISES; CALLENS RANCH;
19 MILLIGAN RANCH have a legal interest in the Ormond Beach Specific Plan because their
20 property is covered by the Ormond Beach Specific Plan and the Ormond Beach Specific Plan
21 FEIR.

22 14. The true names and capacities, whether individual, corporate or otherwise, of
23 Does 16-30 are unknown to Petitioner who therefore sues said Real Parties in Interest by such
24 fictitious names and will seek leave to amend this Petition for Writ of Mandate when they have
25 been ascertained.

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JURISDICTION AND VENUE

15. Jurisdiction of this Court is invoked pursuant to California Code of Civil Procedure Sections 1085 and 1094.5, and Public Resources Code Sections 21167, 21168, and 21168.5.

16. Venue is proper in this Court pursuant to Code of Civil Procedure Section 394 because this action is brought against the City of Oxnard, which is situated in Ventura County. The Ventura Division of the Superior Court is the proper location for this action to be heard, in accordance with Rule 2.03 of the Ventura County Superior Court Local Rules, because the Respondents do not reside in any of the Zip Code designations identified for the East County Division.

LEGAL BACKGROUND

A. The California Environmental Quality Act

17. CEQA, Public Resource Code Section 21000 *et seq.*, enacted in 1971, requires government agencies to consider the environmental consequences of their actions before approving plans, policies, or projects. In addition to its statutory text, CEQA’s requirements are further defined and implemented by the “CEQA Guidelines” adopted by the Secretary for Resources. (14 Cal. Code Regs. § 15000 *et seq.*)

18. A central element of CEQA is to require public agency decision makers to document and consider the environmental implications of their actions. (Pub. Res. Code §§ 21000, 21001; *Friends of Mammoth V. Board of Supervisors* (1972) 8 Cal 3d. 247, 254-256.)

19. However, CEQA also imposes a substantive mandate on decision makers. Public agencies are prohibited from approving projects with significant environmental effects if “there are feasible alternatives or feasible mitigation measures available which would substantially lessen the environmental effects of such projects.” (Pub. Res. Code § 21002; CEQA Guidelines § 15091.) As stated by one California Appellate Court, the “*most important of* [CEQA’s substantive mandates] is the provision requiring public agencies to deny approval of a project with significant adverse effects when feasible alternatives *or* feasible mitigation

1 measures can substantially lessen such effects.” (*Sierra Club v. Gilroy City Council* (1990) 222
2 Cal. App. 3d 30, 41 (emphasis added).)

3 20. Public participation is also essential under CEQA: [A] paramount consideration
4 is the right of the public to be informed in such a way that it can intelligently weigh the
5 environmental consequences of any contemplated action and have an appropriate voice in the
6 formulation of any decision.” (*Environmental Planning and Information Council v. County of*
7 *El Dorado* (3d Dist. 1982) 131 Cal. App. 3d 350, 354.)

8 21. In complying with CEQA, an agency must first determine whether a project is
9 subject to CEQA or is exempt. If the project is determined not to be exempt, then the agency
10 prepares an Initial Study to determine whether the project may have a significant effect. The
11 statute defines “significant effect on the environment” as meaning “a substantial, or potentially
12 substantial, adverse change in the environment.” (Pub. Res. Code § 21068.) A “significant
13 effect” is defined in the CEQA Guidelines as “a substantial, or potentially substantial, adverse
14 change in any of the physical conditions within the area affected by the project including land,
15 air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic
16 significance.” (CEQA Guidelines § 15382.) If the Initial Study shows that the project may
17 result in one or more significant environmental effects, then the agency must prepare an
18 Environmental Impact Report (“EIR”). (CEQA Guidelines § 15065.)

19 22. Once an agency determines preparation of an EIR is necessary, it prepares a
20 notice of preparation describing the project and soliciting comments on the scope of the EIR,
21 and thus this phase of the CEQA process is known as “scoping.” (CEQA Guidelines §§ 15082,
22 15083.) Following scoping, the agency then prepares a draft EIR. Notice of availability of the
23 DEIR, and opportunity for public review and comment, must be provided. The public review
24 period must be for no less than 30 days following the notice, or at least 45 days when the notice
25 is submitted to the State Clearinghouse. (Pub. Res. Code § 21091(a); CEQA Guidelines
26 §§15105(a); 15205(d).)

27 23. CEQA and its Guidelines establish multiple requirements that must be addressed
28 in an EIR. These include a project description (CEQA Guidelines § 15124); evaluation of

1 environmental impacts (Pub. Res. Code § 21100; Guidelines § 15126); mitigation measures
2 proposed to avoid or minimize the significant effects (Guidelines § 15126.4); a cumulative
3 effects analysis (Pub. Res. Code § 21083(b); Guidelines § 15130); and alternatives to the
4 proposed action (Guidelines § 15126.6.)

5 24. The CEQA Guidelines were also recently amended to address the analysis of
6 greenhouse gas (GHG) emissions. Under AB 32, state GHG emissions must be reduced to
7 1990 levels by 2020, and, pursuant to Executive Order S-3-05, state GHG emissions must be
8 reduced to 80% below 1990 levels by 2050. In 2007, the Legislature enacted SB 97, which
9 required the Governor’s Office of Planning and Research to adopt guidelines “for the mitigation
10 of greenhouse gas emissions or the effects of greenhouse gas emissions as required by [CEQA],
11 including, but not limited to, effects associated with transportation or energy consumption.”
12 (*codified as* Pub. Res. Code § 21083.05.) SB 97 “confirm[s] that GHG emissions are a
13 significant adverse effect under” CEQA. Senate Bill Analysis for SB 97. As stated in that
14 Analysis, the “analysis of GHG impacts under law like CEQA, and its federal counterpart
15 NEPA, is not new, nor did it commence with the passage of the California Global Warming
16 Solutions Act of 2006 [AB 32].”

17 25. Following the draft EIR, the lead agency may then issue a final EIR. The final
18 EIR must contain the draft EIR, comments and recommendations on the draft EIR, the lead
19 agency’s responses to those comments, a list of persons and agencies that commented on the
20 draft EIR, and other information added by the lead agency. (CEQA Guidelines § 15132.)

21 26. Following completion of a final EIR, the lead agency must certify that the final
22 EIR has been completed in compliance with CEQA. (Guidelines § 15090(a)(1).)

23 27. Following completion of a final EIR, the lead agency must also adopt findings
24 regarding the feasibility of relevant mitigation measures or project alternatives that can
25 substantially lessen or avoid significant environmental effects. (CEQA Guidelines § 15096(h).)

26 28. After considering the final EIR and in conjunction with adopting findings, the
27 lead agency may decide whether and how to approve or carry out the project. (CEQA
28 Guidelines § 15092.) An agency may adopt a “statement of overriding considerations” as a

1 means of approving projects with environmental impacts that it has determined do not have
2 feasible alternatives or feasible mitigation measures that would reduce such impacts below
3 significance. (Pub. Res. Code § 21081, subd. (b); CEQA Guidelines §§ 15021(d), 15093.)

4 29. The agency must file a “notice of determination” within five working days “after
5 deciding to carry out or approve the project.” (CEQA Guidelines § 15094(a).)

6 **B. California Planning and Zoning Law**

7 30. Each county and city in California is required to prepare a “comprehensive,
8 long-term general plan for the physical development of the county or city.” (Gov. Code §
9 65300). The general plan has long played a central role in California land use planning, and is
10 recognized as the “constitution” for local land use planning and development. (*O’Loane v.*
11 *O’Rourke* (1965) 231 Cal. App. 2d 774, 782.)

12 31. The general plan must contain “a statement of development policies,” and
13 include diagrams and text establishing “objectives, principles, standards, and plan proposals.”
14 (Gov’t Code § 65302.) In addition, the general plan must contain seven mandatory
15 “elements”—land use, circulation, housing, conservation, open space, noise, and safety—as
16 well as any additional optional elements that a city may in its discretion adopt. (Gov’t Code §
17 65302.) Cities and counties typically craft three types of land use direction in the General
18 Plan—goals, objectives, and policies.

19 32. Because the general plan is the comprehensive plan for all future development in
20 a city, zoning ordinances and other local planning decisions must be consistent with the
21 policies, objectives, and standards contained in a general plan. (*Citizens of Goleta Valley v.*
22 *Board of Supervisors* (1990) 52 Cal. 3d 553, 570; see e.g. Gov. Code § 65860.)

23 33. A “specific plan” is used to systematically implement a general plan, in
24 particular geographic areas. (Gov. Code § 65450.)

25 34. A specific plan must be consistent with the general plan. (Gov. Code § 65454.)
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1 **FACTUAL BACKGROUND**

2 **A. Ormond Beach Wetland Area**

3 35. The Ormond Beach wetland area is located in the City of Oxnard, along the
4 southern coast of Ventura County, between Port Hueneme and Naval Base Ventura County
5 Point Mugu. Only approximately 250 acres now remains of what probably once was well over
6 1,000 acres of wetland habitat. This severe depletion of the area is a result of human
7 development. Much of the area has been filled in to support agricultural fields and industrial
8 development, including the now defunct Halaco facility which is an EPA “Superfund” clean-up
9 site.

10 36. Despite this overall diminishment, the area’s “species richness, high biological
11 diversity, and significant biological, aesthetic and ecological values” is extensively
12 documented.” (FEIR at 3.6-5.) Along with the nearby Mugu lagoon, it represents “one of the
13 largest and most important coastal wetland, estuarine, and dune complexes remaining in
14 Southern California.” (FEIR at 3.6-5.) Ormond Beach is one of only a handful of locations in
15 Southern California that supports foredune habitat. (FEIR at 3.6-6.) Ormond Beach also
16 supports multiple rare and endangered wildlife species, including the California least tern and
17 the Western snowy plover. (see, e.g., FEIR at 3.6-52 – 3.6-53.)

18 37. For this reason, for many years now the protection and restoration of the
19 Ormond Beach wetlands has been a priority of the SCC. Since 2001, the SCC and The Nature
20 Conservancy have been acquiring coastal properties in the Ormond Beach area with the intent
21 of assembling a sufficiently large land area that will enable a self-sustaining wetland restoration
22 project to be planned and implemented. Approximately 540 acres of lands have been acquired.
23 In addition, due to concerns about sea level rise and maintaining the long term viability of the
24 restoration, the SCC’s plans include acquisition of land “within and adjacent to the Specific
25 Plan project area.” (September 22, 2008 letter from Peter Brand (SCC) to Kathleen Mallory
26 (City of Oxnard) Re Recirculated Draft EIR.)

1 **B. Ormond Beach Specific Plan Projects**

2 38. The City of Oxnard 2020 General Plan Land Use Element identifies an Ormond
3 Beach Specific Plan Study Area. (FEIR at 2-1.) The Ormond Beach Specific Plan comprises a
4 smaller geographic area than this study area, consisting of a “Northern Subarea” and a
5 “Southern Subarea.” (FEIR at 2-1 – 2-5.).

6 39. The Northern Subarea encompasses 321.7 acres located north of Hueneme Road
7 and is bounded by Hueneme Road on the south, Edison Drive on the west and Olds Road on the
8 East. The area is within the City’s Sphere of Influence and is proposed for annexation to the
9 City of Oxnard as part of the Project. (FEIR at 2-2, 3.7-13.)

10 40. The Northern Subarea is currently used for commercial agriculture, primarily
11 strawberry and other row crop production. Southern California Edison’s (“SCE”) 220 KV
12 overhead power transmission lines also run along the northern and western edges of the area.
13 (FEIR at 2-16.)

14 41. As initially proposed, the development in the Northern Subarea – the
15 SouthShore Specific Plan Project – would have converted the area to approximately 1200
16 residential units, two primary schools, residential parks (including an 18-acre lake), a mixed use
17 commercial marketplace, and light industrial uses. (FEIR at 2-17.)

18 42. The Southern Subarea encompasses approximately 595 acres located south of
19 Hueneme Road between Edison Drive and Arnold Road and is bounded by Hueneme Road to
20 the north, Edison Drive to the west, and Arnold Road to the east. Other than SCE’s
21 transmission line right of way at the western edge of the property, the area is in unincorporated
22 Ventura County, but located within the City’s Sphere of Influence and is proposed for
23 annexation to the City of Oxnard as part of the Project. (FEIR at 2-2, 3.7-13.)

24 43. The Southern Subarea is currently used for commercial sod farming. The
25 western edge of the property holds 220 KV overhead power transmission lines for SCE. (FEIR
26 at 2-16 – 2-17.)

27 44. The development proposed for the Southern Subarea – the South Ormond Beach
28 Specific Plan – would convert approximately 360 acres of the area to business and research

1 park, light industrial facilities, and harbor-related uses. (FEIR at 2-22.) The southernmost 220
2 acres of the area are not proposed for development or annexation to the City as part of the
3 Ormond Beach Specific Plan. (FEIR at 2-23.)

4 **C. City of Oxnard Environmental Review of Specific Plan Projects**

5 45. The City released a single Draft EIR (“DEIR”) to evaluate the potential
6 environmental impacts for both of the Specific Plan Projects in May 2007. The DEIR was
7 circulated for public review and comment for 60 days.

8 46. In July 2008, the City released a Recirculated Draft EIR (“RDEIR”) for public
9 review and comment. The City determined that “several subjects addressed in the DEIR
10 warranted additional analyses,” including water resources, biological resources, climate change
11 impacts, and alternative analyses. (July 21, 2008 Notice of Availability/Notice of Completion.)
12 The City republished the entire document and the RDEIR was circulated for a 45-day comment
13 period. The Oxnard Planning Commission held a public hearing to receive public comment on
14 August 21, 2008.

15 47. EDC submitted written comments regarding the RDEIR to the City, on behalf of
16 EDC and Sierra Club, on September 22, 2008, identifying numerous problems with the City’s
17 review of environmental impacts, including concerns regarding: project description; cumulative
18 impact analysis; water resources impact analysis; greenhouse gas emissions; biological
19 resources impacts, particularly impacts to the Ormond Beach wetlands area; and agriculture
20 impacts. EDC and Sierra Club representatives and members attended the August 21, 2008
21 Planning Commission hearing and provided similar comments in testimony to the Commission.

22 48. On March 23, 2009, on behalf of EDC, Sierra Club and the Environmental
23 Coalition, EDC submitted an expert report prepared by the Pacific Institute, a nonpartisan
24 research institute, to the City about the potential impacts of sea level rise along the California
25 coast, including in the Specific Plan area. This information included a new estimate of sea level
26 rise that was significantly higher than previous scientific estimates and also significantly higher
27 than estimates in the RDEIR. The new information included recommendations that,
28 “[d]evelopment should be prohibited on natural lands that are immediately adjacent to wetlands

1 at risk,” and “[fu]ture development should be limited in areas that are at risk from rising seas.”
2 It also indicated that sea level rise would cause more frequent and more damaging floods. EDC
3 requested that this new information be added to the EIR and that the relevant portions of the
4 EIR be recirculated.

5 49. The City released the FEIR in late November 2009. On December 10, 2009, the
6 Oxnard Planning Commission held a public hearing and considered public comment on the
7 FEIR. The Planning Commission voted to recommend City Council certification of the FEIR.
8 (Planning Commission Res. No. 2009-41.)

9 50. On March 2, 2010 the Oxnard City Council held a public hearing and considered
10 public comment on the FEIR. The City Council voted to approve certification of the FEIR with
11 a revision to Mitigation Measure BIO-2 regarding direct impacts to foraging habitat. Staff was
12 directed to revise the resolution to memorialize the action and present it at the March 23
13 Council meeting. (March 2, 2010 City Council Minutes.) The item was approved on March 23,
14 2010. (City Council Res. No. 13,775.)

15 51. EDC submitted written comments, on behalf of EDC, Sierra Club, and the
16 Environmental Coalition, to both the Planning Commission (December 8, 2009) and the City
17 Council (February 23, 2010) objecting to certification of the FEIR and identifying multiple
18 legal inadequacies with the document, including problems with: project description; water
19 resources impact analysis; analysis of greenhouse gas emissions; analysis of biological
20 resources impacts, particularly impacts to the Ormond Beach wetlands area; impacts from sea
21 level rise; and agriculture impacts. EDC also identified a procedural problem that the City had
22 added significant new information about water resources, but had failed to recirculate the EIR
23 for public review and comment. EDC, Sierra Club, and Environmental Coalition
24 representatives and members attended the December 10, 2009 Planning Commission hearing
25 and the March 2, 2010 City Council hearing, and provided similar comments and objections in
26 testimony to the Commission and the Council.

27 52. The City did not take action on either of the Specific Plan Projects when it
28 certified the EIR and did not file a Notice of Determination.

1 **D. City of Oxnard Approval of SouthShore Project**

2 53. On March 3, 2011, the Oxnard Planning Commission heard a presentation by the
3 Applicants for the SouthShore Project. Representatives and members of EDC, Sierra Club, and
4 the Environmental Coalition attended this presentation and presented testimony to the
5 Commission identifying their concerns about the SouthShore Project.

6 54. On April 7, 2011 the Planning Commission held a public hearing to consider
7 SouthShore Project Planning and Zoning permits for the Specific Plan, a General Plan
8 amendment, rezoning, Tentative Subdivision Map, and a Development Agreement and to
9 receive public comment. The Planning Commission voted to recommend City Council approval
10 of these items. (Planning Commission Res. Nos. 2011-12, 2011-13, 2011-14, 2011-15, and
11 2011-16.)

12 55. The Oxnard City Council held a public hearing on June 14, 2011, to consider
13 these same items and receive public comment. The Council voted to approve all permits for the
14 SouthShore Project as recommended. (City Council Res. Nos. 14,051 and 14,052; Ord. Nos.
15 2841, 2842, and 2843.) A second reading and adoption of Ord. Nos. 2841, 2842, and 2843 took
16 place on June 28, 2011. (June 28, 2011 City Council Minutes.)

17 56. In approving the SouthShore Project, the City Council made findings of fact,
18 pursuant to Public Resource Code Section 21081(a), that impacts have been mitigated or
19 avoided, or it is infeasible to avoid or mitigate impacts. The findings identify the Project as
20 “including up to 1,545 residential dwelling units.” (City Council Res. No. 14,051, Ex. C at 2.)
21 The City Council also adopted a statement of overriding consideration, pursuant to Public
22 Resource Code Section 21081(b), because the EIR identified several significant, unmitigated
23 impacts, including for: air quality impacts, agricultural resources, noise, and visual/aesthetic
24 resources. (City Council Res. No. 14,051, Ex. C at 104-107.)

25 57. EDC submitted written comments, on behalf of EDC, the Sierra Club, and the
26 Environmental Coalition, to the Planning Commission on April 6, 2011, and to the City
27 Council on June 13, 2011. In these comments, EDC objected to the City’s proposed CEQA
28 findings and the City’s assertions that impacts have been avoided or mitigated to the maximum

1 extent feasible. EDC also identified legal issues with respect to the SouthShore Specific Plan's
2 consistency with the 2020 General Plan, the Development Agreement, and the Tentative Tract
3 Map. EDC, Sierra Club, and Environmental Coalition representatives and members attended
4 the April 7, 2011 Planning Commission hearing and the June 14, 2011 City Council hearing,
5 and provided similar comments and objections in testimony to the Commission and the
6 Council. Members and Representatives of Sierra Club and the Environmental Coalition also
7 attended the June 28, 2011 City Council meeting and objected to final adoption of City Council
8 Ordinance Numbers 2841, 2842, 2843.

9 58. The City filed a Notice of Determination for the SouthShore Project on June 29,
10 2011.

11 59. To date, the proponents for the South Ormond Beach Specific Plan have not
12 applied for final permits and approval from the City.

13 60. Petitioners provided written notice to the Respondents of their intention to file
14 this Petition, in compliance with Public Resources Code Section 21167.5 (Exhibit A.)

15 61. Petitioners have standing to bring this action because Respondents' approval of
16 the SouthShore Project and certification of the FEIR will directly injure the interests of
17 Petitioners and their members. As membership-based organizations, Petitioners represent a
18 wide range of environmental interests and perspectives. Petitioners are public benefit
19 corporations dedicated to protection of the environment in Ventura County. Petitioners' goals
20 include protecting open space, wildlife, and important habitat areas. These goals are directly
21 impacted by Respondents' approval of the SouthShore Project and certification of the FEIR.
22 Members and representatives of Petitioners, on behalf thereof, submitted comments on and
23 objections to City, and have participated at public hearings held by City. Accordingly,
24 Petitioners are parties "beneficially interested" for purposes of establishing standing to bring
25 this mandamus action. (Civ. Proc. Code § 1086.) The claims asserted, and the relief requested,
26 in this action are broad-based, so that participation in the litigation by individual members is
27 not required.
28

1 66. The City failed to include analysis of Project-specific and cumulative impacts to
2 biological resources from sea level rise in the EIR. An EIR must include a detailed statement
3 setting forth all the significant effects of the proposed project on the environment, including any
4 effects the project might cause by bringing development and people into the area affected.
5 (CEQA Guidelines § 15126.2.)

6 a. The EIR acknowledges that sea level rise “will cause wetlands to migrate
7 upslope into low-lying coastal areas, including those adjacent to Ormond
8 Beach,” but does not evaluate potential Project-specific impacts to biological
9 resources from sea level rise. (FEIR, Volume III, Master Response to Comment
10 1 at 6.) Substantial evidence in the record demonstrates that where natural lands
11 exist inland, these areas can provide suitable wetland habitat in the future.
12 However, if these inland areas are developed, they cannot provide suitable
13 wetland habitat to accommodate sea level rise. Wetlands that cannot migrate
14 inland will eventually convert to permanent open water and no longer support
15 the same diversity of plants and animals. In addition, if wetlands become
16 inundated, they will no longer be available to reduce flooding and provide other
17 benefits. The proposed Project development in the Southern Subarea could limit
18 wetland migration and thus adversely impact coastal biological resources.

19 b. The EIR’s analysis of cumulative impacts on biological resources is also
20 improper because the City failed to include in this analysis potential impacts
21 from sea level rise. In addition, the EIR failed to include the SCC’s Ormond
22 Beach wetland restoration project in its cumulative analysis. A cumulative
23 impacts analysis must take into account “probable” future projects. (CEQA
24 Guidelines § 15130(b)(1)(A).) The SCC has been spearheading efforts to
25 acquire, preserve and restore wetland habitat throughout Ormond Beach,
26 including in the Specific Plan area, for many years, and the parameters of the
27 restoration planning have been presented to the public and to the City. Sufficient
28 information was available to evaluate potential impacts in the EIR. Without this

1 information, the severity and significance of the cumulative impacts to
2 biological resources from the proposed development in the Northern subarea,
3 Southern subarea, as well as other past, present and foreseeable projects were
4 not accurately reflected in the EIR.

5 67. The City failed to include analysis of Project-specific and cumulative impacts to
6 geological resources from sea level rise in the EIR. An EIR must include a detailed statement
7 setting forth all the significant effects of the proposed project on the environment, including any
8 effects the project might cause by bringing development and people into the area affected.
9 (CEQA Guidelines § 15126.2.) The EIR acknowledges that sea level rise can increase the
10 frequency and severity of coastal flooding throughout the Ormond Beach Specific Plan area, but
11 fails to adequately evaluate the significance of flooding and erosion impacts, or to identify ways
12 to minimize and/or avoid such impacts. Accordingly, the City improperly concluded that
13 Impact GEO-6 (coastal flooding, tsunami, sea level rise) is less than significant and did not
14 require mitigation.

15 68. The City failed to recirculate the EIR when it was provided with significant new
16 information about sea level rise impacts. CEQA requires re-circulation of an EIR “when
17 significant new information is added to the EIR after public notice is given of the availability of
18 the draft EIR for public review under Section 15087 but before certification.” (CEQA
19 Guidelines § 15088.5(a).) “Significant new information” includes “a disclosure showing that:
20 (1) A new significant environmental impact would result from the project or from a new
21 mitigation measure proposed to be implemented. (2) A substantial increase in the severity of an
22 environmental impact would result unless mitigation measures are adopted that reduce the
23 impact to a level of insignificance. (3) A feasible project alternative or mitigation measure
24 considerably different from others previously analyzed would clearly lessen the environmental
25 impacts of the project, but the project’s proponents decline to adopt it. (4) The draft EIR was so
26 fundamentally and basically inadequate and conclusory in nature that meaningful public review
27 and comment were precluded.”
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- a. EDC submitted an expert report to the City on March 23, 2009 about the potential impacts of sea level rise along the California coast, including in the Project area. This significant new information was submitted after circulation of the RDEIR and prior to certification of the FEIR.
- b. This information included a new estimate of sea level rise that was significantly higher than previous scientific estimates and also significantly higher than estimates in the RDEIR. The new information included a map of the Ormond Beach Specific Plan area that showed it to be within a 100 year coastal flood zone, and showed that most of the area could be inundated at the newly projected levels of sea rise. The report also discussed that more frequent and more damaging floods would occur in the 100 year flood zone, and recommended that new development be limited in areas that are at risk from rising seas. The new information included recommendations that “Development should be prohibited on natural lands that are immediately adjacent to wetlands at risk,” and “Future development should be limited in areas that are at risk from rising seas.”
- c. This report constituted significant new information about the environmental setting and other data that indicated (1) a new or potentially substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance; (2) a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project; and (3) the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment on the issue of sea level rise were precluded. The City, however, declined to recirculate the EIR based on this significant new information, depriving the public of a meaningful opportunity to comment on these new and increased adverse environmental effects, and on feasible ways to mitigate or avoid such effects.

1 69. The City failed to identify and require mitigation measures that will reduce or
2 avoid impacts to biological resources. An EIR must describe feasible measures which would
3 minimize significant adverse impacts. (CEQA Guidelines § 15126.4(a).) Formulation of
4 mitigation measures may not be deferred until some future time, unless the EIR includes
5 specific performance standards for development of the measures. (Id.)

6 a. The EIR identifies, multiple impacts that would be “significant but feasibly
7 mitigated” through a combination of “implementation of the Ormond Beach
8 Natural Resource Management Program and Mitigation Measure BIO-5”
9 (wetland runoff control). These impacts are: for the Northern
10 subarea/SouthShore Project, Impact BIO-10 (Sensitive Offsite Habitats), Impact
11 BIO-11 (Western Snowy Plover), Impact BIO-12 (California Least Tern); and
12 for the Southern subarea, Impact BIO-22 (Sensitive Offsite Habitats), Impact
13 BIO-26 (Western Snowy Plover), Impact BIO-27 (California Least Tern). The
14 EIR’s formulation of the Natural Resource Management Program (“NRMP”)
15 improperly defers mitigation of these impacts, stating that “a qualified biologist”
16 will prepare the program. (FEIR at 3.6-41.) The EIR also does not identify
17 adequate “performance standards which would mitigate the significant effect of
18 the project and which may be accomplished in more than one specified way.”
19 The City also failed to address whether adequate funding had been identified and
20 required to implement the NRMP.

21 i. In approving the Southshore Project, the City improperly concluded that
22 Impact BIO-10 (Sensitive Offsite Habitats), Impact BIO-11 (Western
23 Snowy Plover), and Impact BIO-12 (California Least Tern) were less
24 than significant. (City Council Res. No. 14,051, Ex. C at 52-55.) This
25 conclusion was based solely on “participation in the [NRMP].” (Id.)
26 However, the NRMP improperly deferred mitigation. The City also
27 failed to address whether adequate funding had been identified and
28 required to implement the NRMP. Therefore, the City did not have any

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evidence that the NRMP would be adequate, implemented, or effective in mitigating Project impacts.

- ii. In addition, the City’s conclusion is expressly based on Mitigation Measure BIO-5, which must be implemented by another project (the South Ormond Beach Specific Plan) that has yet to be approved. (FEIR at 3.6-52 and 53; City Council Res. No. 14,051, Ex. C at 53, 53-54, and 55.) Therefore adequate, effective implementation of this mitigation is uncertain.
- iii. Similarly, the Southern Subarea is also required to contribute to the NRMP. Although this information is not clear from the City’s Findings, it is explicit in the FEIR (Impacts BIO-22, BIO-26, and BIO-27) and in the Southshore Specific Plan which states, “Southshore will participate, on a fair-share basis with the South Ormond Beach Specific Plan Project and potentially other projects, in the implementation of an ‘Ormond Beach Natural Resource Management Program’” (SouthShore Specific Plan at 6-12.) Neither the City, nor the EIR, allocates responsibility for portions of the impacts or implementing the NRMP among the projects. Thus, if the Southern Subarea Project is not approved, the impacts will not be fully mitigated.

b. The EIR identifies Impacts BIO 4/BIO 7-7m (Northern Subarea Bird Foraging Habitat) and Impacts BIO-16/BIO-19o (Southern Subarea Bird Foraging Habitat) as significant, but feasibly mitigated through implementation of Mitigation Measure BIO-2. The City subsequently modified Mitigation Measure BIO-2 from what appears in the FEIR, and similarly concluded, when it approved the SouthShore Project, that impacts would be less than significant based on implementation of the revised mitigation measure.

- i. The City violated CEQA by failing to include revised Mitigation Measure BIO-2 in an adopted Mitigation Monitoring and Reporting

1 Program. In order to ensure that mitigation measures and project
2 revisions identified in an EIR are implemented, a lead agency is required
3 to adopt a program for monitoring or reporting on these measures. (Pub.
4 Res. Code § 21081.6; CEQA Guidelines § 15097.)

5 70. The City improperly concluded that impacts to water supply availability –
6 Impact Water 1 (Northern Subarea) and 10 (Southern Subarea) – would be less than significant.

7 As a result, CEQA’s informational purposes were not satisfied by the EIR. *Vineyard Area*
8 *Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 430-31.

9 For example:

- 10 a. The EIR postponed formulation of mitigation measures for both Impact Water 1
11 (Northern Subarea) and 10 (Southern Subarea), leaving uncertain whether these
12 impacts can actually be mitigated, as well as whether the mitigation itself may
13 cause potential environmental harm. The EIR identifies a water demand shortfall
14 of 350 AFY (Northern subarea) and 402 AFY (Southern subarea) generated by
15 each project. However, the EIR defers the decision as to how this project impact
16 will be mitigated. Mitigation Measure WATER-1 only states: “Developer shall
17 provide to the City additional water rights, water supplies, or water offsets in the
18 form of recycled water facilities, conservation retrofits, financial contributions
19 towards City programs which generate in-City water conservation, or
20 participation in other similar programs with [sic] cumulatively result in a total
21 water supply contribution, taken together with other water rights or FCGMA
22 allocation provided to the City, which offset the entire estimated water demand
23 associated with the project.” (FEIR at 3.3-118; see also City Council Res. No.
24 14,051, Ex. C at 25.) This Mitigation Measure fails to ensure a certain, effective
25 water supply that will mitigate the Projects’ impacts.
- 26 b. The EIR fails to provide a consistent and coherent description of future water
27 demand. Demand projections in the EIR are unsupported and inconsistent with
28 water management planning projections otherwise made by the City.

1 c. The EIR overstates the reliability of identified sources of water. For example, the
2 City extensively relies on groundwater “credits,” but fails to identify limitations
3 and restrictions on the use and availability of such credits – e.g., that credits are
4 to be used infrequently to offset surcharges from water agency, not as supply for
5 new development. The EIR also fails to disclose restrictions on imported surface
6 water or to account for fluctuations in water supply that may result from climate
7 impacts. The EIR also fails to include a discussion of contingencies, and of the
8 environmental consequences of those contingencies, in case anticipated water
9 supplies fail to materialize.

10 d. The EIR does not evaluate the potential impacts of the final, approved
11 SouthShore Project. The Project description has changed substantially from the
12 Project evaluated in the EIR – the Project evaluated in the EIR included
13 approximately 1200 residential units but the approved Project included “up to
14 1,545 residential dwelling units.” (City Council Res. No. 14,051, Ex. C at 2.)
15 The City failed to analyze the impacts associated with this substantial increase in
16 Project size in either the EIR or the water supply assessment and verification.
17 Appendix E to the FEIR (Water Supply Assessment and Verification for North
18 Ormond Beach) identifies 1,283 dwelling units for the project description.
19 (FEIR, Volume II, App. E at 5.) Thus, the EIR substantially underestimates
20 water demand for the Project.

21 71. The City failed to evaluate the potential environmental impacts of relying on the
22 identified sources of water. With respect to water resources, the “ultimate question” under
23 CEQA is whether an EIR addresses the “reasonably foreseeable impacts of supplying water to
24 the project.” *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*
25 (2007) 40 Cal. 4th 412, 434. For example:

26 a. The EIR identifies groundwater, particularly the use of groundwater credits, as a
27 source of water, but does not evaluate potential project specific or cumulative
28 impacts to groundwater supply or quality (e.g., over-extraction, seawater

1 intrusion, land subsidence, nitrate concentrations). It does not provide critical
2 information about the environmental setting, including that the groundwater
3 basin is in overdraft, the “safe yield,” or the necessary amount to replenish the
4 basin.

5 b. The EIR identifies the Groundwater Recovery Enhancement and Treatment
6 (GREAT) Program – Phase 1 and Phase 2 – as a water source, but fails to
7 evaluate potential impacts from construction and operation of the GREAT
8 Program. The City improperly attempts to rely on past conclusions from the
9 GREAT Program EIR. However, the GREAT Program EIR is explicit that
10 additional environmental analysis of Phase 2 is not part of that document and
11 would still be required. (GREAT Program EIR at ES-4 – ES-5.) The City also
12 improperly deferred environmental analysis of the impacts of GREAT Program
13 as a water source to some undetermined future time and future EIR, stating that
14 “the wetlands element” would be “covered under the environmental document
15 for the GREAT program at a program level and developed to a project-specific
16 level as that element is developed more substantially.” (FEIR at 3.3-103, 3.3-
17 112.) Potential environmental impacts associated with the GREAT Program that
18 have not been evaluated include impacts to geological resources, biological
19 resources, hydrological resources, and human health. As a result of the City’s
20 failure to evaluate the potential project specific and cumulative environmental
21 impacts associated with the GREAT Program, the EIR also fails to identify and
22 evaluate mitigation for any significant impacts.

23 c. The City failed to evaluate cumulative impacts. For example, the EIR’s
24 geographical scope for cumulative impacts is “citywide.” (FEIR, Volume II,
25 Letter O.4 #10.) However, all the water sources relied on by the City supply
26 wider regions than just the City of Oxnard. The EIR analysis failed to take into
27 account past, present and foreseeable future projects outside City boundaries that
28 also rely on the same water supply and that could impact water supply

1 availability and potential water resource impacts. The EIR also failed to consider
2 water resource impacts that could occur outside City boundaries.

3 72. The City failed to properly tier from, or incorporate documents by reference in
4 its EIR. In order to reduce the size of an EIR, CEQA allows for “tiering” and for “incorporation
5 by reference,” under certain specific circumstances. (CEQA Guidelines §15150, 15152;
6 *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal. 4th
7 412, 443.)

8 a. When tiering is used, the later EIR “shall refer to the prior EIR and state where a
9 copy of the prior EIR may be examined.” (CEQA Guidelines § 15152(g).) The
10 later EIR “should state that the lead agency is using the tiering concept and that
11 it is being tiered with the earlier EIR.” (*Id.*) The EIR references the GREAT
12 Program EIR, states that “a Mitigation Monitoring and Reporting Plan (MMRP)
13 was adopted to ensure that project-specific impacts of the program components
14 are effectively mitigated,” and based on this assertion, concludes that GREAT
15 Program environmental impacts will be less than significant. (FEIR at 3.3-30,
16 3.3-103, 3.3-112.) The City failed to explain the tiering concept or its intent to
17 tier the Ormond Beach Specific Plan FEIR off the GREAT Program EIR. The
18 City also failed to identify where a copy of the GREAT Program EIR could be
19 obtained.

20 b. In order to incorporate any document by reference, an EIR must summarize, or
21 briefly describe, the data referenced, and the “relationship between the
22 incorporated part of the referenced document and the EIR.” (CEQA Guidelines §
23 15150(c).) The documents must also be made available to the public. In
24 discussing water demand, the EIR references information from the 2005 Urban
25 Water Management Plan and also says demand projections are based on a 2030
26 General Plan, a 2030 General Plan Background Report (2006), a Ventura
27 Council of Governments Decapolis Report, and a UCSB Forecast. (FEIR at
28 FEIR at 3.3-44 and 3.3-46.) It does not identify what data from these documents

1 is used to update the demand projections. None of the documents identified were
2 made available to the public. Full citations were not provided. The FEIR thus
3 fails to even minimally comply with CEQA Guidelines for incorporating these
4 documents by reference.

5 73. The City failed to recirculate the EIR when it added significant new information
6 about water resources. CEQA requires re-circulation of an EIR “when significant new
7 information is added to the EIR after public notice is given of the availability of the draft EIR
8 for public review under Section 15087 but before certification.” (CEQA Guidelines §
9 15088.5(a).) “Significant new information” includes “a disclosure showing that: (1) A new
10 significant environmental impact would result from the project or from a new mitigation
11 measure proposed to be implemented. (2) A substantial increase in the severity of an
12 environmental impact would result unless mitigation measures are adopted that reduce the
13 impact to a level of insignificance. (3) A feasible project alternative or mitigation measure
14 considerably different from others previously analyzed would clearly lessen the environmental
15 impacts of the project, but the project’s proponents decline to adopt it. (4) The draft EIR was so
16 fundamentally and basically inadequate and conclusory in nature that meaningful public review
17 and comment were precluded.”

18 a. When the City issued the FEIR, it stated that addenda to the Water Supply
19 Assessments had been prepared “in recognition of changed circumstances which
20 may have an impact on the City’s water supply programs and long-term demand
21 projections, including changes in the availability of imported and local
22 groundwater sources and some changes in anticipated future development within
23 the City which impacts the City’s water demand projections.” (FEIR at 3.3-8 –
24 3.3-9.) These changes “affect the comparison of water supply and demand” and
25 included changes in supplemental water supply programs, reductions in
26 imported water supply, reductions in groundwater supplies, and changes in
27 development patterns. (FEIR, Volume III, App. E Addendum.)
28

- 1 b. The City added the same new information about water supply and demand to its
2 Draft EIR for the 2030 General Plan, and concluded that changes to that EIR
3 based on this information required recirculation of the water resources impact
4 analysis portion of the EIR for public review.
- 5 c. As a result of the updates to the Specific Plan FEIR, a substantial increase in the
6 severity of environmental impacts that were described in the RDEIR was
7 identified.
- 8 d. Although the FEIR concluded impacts were “significant but feasibly mitigated,”
9 as discussed above, as a result of the EIR’s improper analysis of water supply,
10 the FEIR failed to disclose the full scope of potential environmental impacts and
11 to identify and analyze potentially feasible mitigation measures. Thus, the
12 increase in the severity of environmental impacts was more substantial than
13 described in the FEIR.
- 14 e. Adding the new information about water resources impacts to the EIR, but not
15 re-circulating the EIR, deprived the public of a meaningful opportunity to
16 comment on these new and increased adverse environmental effects, and on
17 feasible ways to mitigate or avoid such effects.

18 74. The City violated CEQA by failing to adequately analyze impacts related to
19 greenhouse gas emissions. The Specific Plan Projects will generate greenhouse gas emissions
20 which will result in direct, indirect and cumulative impacts on the environment. CEQA
21 requires agencies to analyze the direct, indirect and cumulative impacts of proposed projects.
22 (Pub. Res. Code § 21100(b)(1); CEQA Guidelines §§ 15064(d) and (h), 15126(a), 15126.2(a),
23 15130.) Lead agencies must also determine the significance of the environmental impacts
24 caused by a project; according to the CEQA Guidelines, such a determination “plays a critical
25 role in the CEQA process.” (CEQA Guidelines § 15064.) If a project may cause a significant
26 impact on the environment, the EIR must analyze mitigation measures that can minimize such
27 adverse impacts. (CEQA Guidelines § 15126.4(a)(1).) The EIR must also analyze alternatives
28

1 that would avoid or substantially lessen any of the significant effects of the project. (CEQA
2 Guidelines § 15126.6(a).)

3 a. The EIR failed to identify and quantify all of the greenhouse gas emissions that
4 would be generated by the projects. For example, the EIR failed to include
5 emissions from water supply and transportation, fugitive emissions, wastewater
6 and solid waste storage and disposal, among other sources and activities. The
7 EIR also used an improper baseline for analyzing greenhouse gas emissions by
8 asserting that “new residential development does not necessarily create entirely
9 new GHG emissions, since most of the persons who will visit or occupy new
10 development will come from other locations where they were already causing
11 such GHG emissions.” (FEIR at 3.4-41.) Accordingly, the EIR failed to account
12 for all greenhouse gas emissions from the Projects and thereby understates the
13 emissions and impacts of the Projects.

14 b. The EIR failed to determine whether impacts from greenhouse gas emissions
15 and climate change would be significant, claiming that such assessment was “too
16 speculative.” (FEIR at 3.4-39, 40.) This omission violates CEQA Guidelines
17 Section 15064.

18 c. The EIR failed to identify and analyze mitigation measures or alternatives that
19 would avoid or minimize impacts related to the greenhouse gas emissions that
20 will be generated by the projects. Instead, the EIR relied on general energy-
21 reduction proposals that are not certain, quantified or enforceable. Because the
22 EIR did not find impacts from greenhouse gases to be significant, the report did
23 not include an analysis of such measures and whether they would be effective in
24 mitigating or avoiding project impacts.

25 75. The City violated CEQA by failing to consider feasible mitigation for significant
26 impacts to agriculture, and by improperly making a statement of overriding considerations with
27 respect to that lack of mitigation. “Public agencies should not approve projects as proposed if
28 there are feasible alternatives or *feasible mitigation measures which would substantially lessen*

1 *the significant environmental effects of such projects . . .*” (emphasis added) (Pub. Res. Code §
2 21002.) CEQA thus provides that “no public agency shall approve or carry out a project for
3 which an environmental impact report has been certified which identifies one or more
4 significant effects on the environment that would occur if the project is approved or carried out
5 unless” the agency finds that, “[s]pecific economic, legal, social, technological, or other
6 considerations, including considerations for the provision of employment opportunities for
7 highly trained workers make infeasible the mitigation measures or alternatives identified in the
8 environmental impact report.”² (Pub. Res. Code § 21081.) When a public agency has properly
9 determined that mitigation measures are truly infeasible, CEQA requires an agency to make a
10 statement of overriding consideration that “specific overriding economic, legal, social,
11 technological, or other benefits of the project outweigh the significant effects on the
12 environment” in order to approve a project. (Pub. Res. Code § 21081.) “Feasible” means
13 capable of being accomplished in a successful manner within a reasonable period of time,
14 taking into account economic, environmental, legal, social, and technological factors. (Pub.
15 Res. Code § 21061.1; CEQA Guidelines § 15364.)

- 16 a. The FEIR identifies three “Class 1” (“significant and unavoidable”) Agricultural
17 Impacts – Impact AG-5 (Northern subarea), Impact Ag-6 (Southern subarea),
18 Impact AG-9 (cumulative). (FEIR at 3.8-23 – 3.8-28.) For Impact AG-5
19 (Northern subarea), the FEIR states that it would be cost prohibitive to replace
20 the lost acreage, and thus, not feasible to reduce impacts. (FEIR at 3.8-23.) For
21 Impact Ag-6 (Southern subarea) the FEIR states that it would be cost prohibitive
22 to replace the lost acreage, and thus, not feasible to reduce impacts. (FEIR at 3.8-
23 26.) For Impact AG-9 (cumulative), the FEIR discusses existing guidelines and
24 policies that would mitigate impacts and the new mitigation of a buyer
25 notification policy, but acknowledges residual significant impacts. (FEIR at 3.8-
26

27 ² The Agency may also find that (1) Changes or alterations have been required in, or incorporated into, the project
28 which mitigate or avoid the significant effects on the environment; or (2) Those changes or alterations are within
the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that
other agency.

1 28.) The FEIR does not discuss the feasibility of additional measures to reduce
2 residual significant impacts. (FEIR at 3.8-28.)

3 b. In approving the SouthShore Project, the City found that the Project would
4 “convert approximately 322 acres of prime farmland currently used for
5 agricultural operations to urban and open space uses.” (City Council Res. No.
6 14,051, Ex. C at 8.) In addition, the Project, “when taken into consideration with
7 development of the Southern Subarea and other pending urban development
8 projects in the City of Oxnard, would result in a cumulative effect on
9 agricultural resources that is considered significant and unavoidable.”
10 Referencing the FEIR, the City stated that these impacts could not be mitigated
11 to a less than significant level “even after application of feasible mitigation,” and
12 concluded that, this impact “is considered [to be] a Project and cumulative
13 significant and unavoidable impact.” (Id.)

14 c. The City also found that specific overriding economic, legal, social,
15 technological, or other benefits of the project outweigh the significant effects on
16 the environment. (City Council Res. No. 14,051, Ex. C at 105-107.)

17 d. The EIR fails to evaluate potentially feasible methods of mitigating Agricultural
18 impacts, and the City’s statements, findings, and conclusion that it is not feasible
19 to mitigate Impacts AG-5 (Northern Subarea), AG-6 (Southern Subarea), and
20 AG-9 (cumulative) are not supported by substantial evidence. For example, the
21 City dismissed, without analysis or substantial evidence, the potentially feasible
22 options of requiring compensation at less than a 1:1 replacement ratio,
23 contributions to conservation programs, and acquisition/preservation in the
24 southernmost portion of the Ormond Beach Specific Plan Area. In addition, the
25 City relied solely on the Applicants’ cost data, which was inconsistent with other
26 information in the EIR.

27 e. As a result of these failures, the EIR omitted critical information regarding
28 whether mitigation measures were truly infeasible. The City’s statement of

1 overriding considerations is thus based on improper findings. The City, therefore
2 also failed to proceed in a manner required by law when it approved the
3 SouthShore Project without a proper basis of approval for the Project.

4 76. The City violated CEQA by failing to consider feasible mitigation for significant
5 visual/aesthetic impacts and by improperly making a statement of overriding consideration with
6 respect to that lack of mitigation. The FEIR identifies two “Class 1” (“significant and
7 unavoidable”) Visual/Aesthetic impacts – Impact AES-9 (Northern and Southern subareas) and
8 Impact AES-12 (cumulative). (FEIR 3.13-21 – 3.13-22.) The EIR does not discuss mitigation
9 measures or their feasibility for either impact. (FEIR 3.13-21 – 3.13-23.)

- 10 a. In approving the SouthShore Project, the City stated, “The transition of land
11 from agricultural to urban uses constitutes a substantial change in the visual
12 character of the area. The City of Oxnard views agricultural lands as an
13 important visual resource, and loss of this resource is an unavoidable
14 consequence of development. The EIR determined that this was a significant
15 and unavoidable cumulative impact of the proposed Project.” (City Council Res.
16 No. 14,051, Ex. C at 8.)
- 17 b. The City also found that specific overriding economic, legal, social,
18 technological, or other benefits of the project outweigh the significant effects on
19 the environment. (City Council Res. No. 14,051, Ex. C at 105-107.)
- 20 c. The EIR fails to evaluate potentially feasible methods of mitigating
21 Visual/Aesthetic impacts, and the City’s statements, findings, and conclusion
22 that it is not feasible to mitigate Impact AES-9 (Northern and Southern subareas)
23 and AES-12 (cumulative) are not supported by substantial evidence. For
24 example, the City dismissed, without analysis or substantial evidence, the
25 potentially feasible options of requiring compensation at less than a 1:1
26 replacement ratio, contributions to conservation programs, and
27 acquisition/preservation in the southernmost portion of the Ormond Beach
28

1 Specific Plan Area. In addition, the City relied solely on the Applicants' cost
2 data, which was inconsistent with other information in the EIR.

3 d. As a result of these failures, the EIR omitted critical information regarding
4 whether mitigation measures were truly infeasible. The City's statement of
5 overriding considerations is thus based on improper findings. The City, therefore
6 also failed to proceed in a manner required by law when it approved the
7 SouthShore Project without a proper basis of approval for the Project.

8 77. The City violated CEQA by failing to adopt a Mitigation Monitoring and
9 Reporting Program. In order to ensure that mitigation measures and project revisions identified
10 in an EIR are implemented, a lead agency is required to adopt a program for monitoring or
11 reporting on these measures. (Pub. Res. Code § 21081.6; CEQA Guidelines § 15097.)
12 Resolution No. 14,051 states that the Mitigation Monitoring and Reporting Program
13 ("MMRP") is attached to the FEIR, but an MMRP was not included with the FEIR, was not
14 otherwise identified in the documents reviewed by the Planning Commission and City Council
15 in their review and consideration of the SouthShore Project, was not available for public review
16 and comment, and was not adopted by the City.

17 78. The City violated CEQA by failing to provide adequate responses to comments
18 on the Revised Draft EIR. A lead agency must evaluate comments on environmental issues
19 received from persons who reviewed a draft EIR and must prepare a written response. (CEQA
20 Guidelines § 15088(a).) The written response must describe the disposition of significant
21 environmental issues raised. (CEQA Guidelines § 15088(c).) Major environmental issues raised
22 when the lead agency's position is at variance with recommendations and objections raised in
23 the comments must be addressed in detail giving reasons why specific comments and
24 suggestions were not accepted. (Id.) There must be good faith, reasoned analysis in response –
25 conclusory statements unsupported by factual information will not suffice. (Id.) The Ormond
26 Beach Specific Plan EIR's responses to comments lacked detail, reasoned analysis and
27 supporting evidence, and sometimes simply failed to respond to significant issues raised in
28 comments. For example, in response to comment Letter S.I (#4), which identified and discussed

1 a concern regarding the adequacy of funding to implement the Ormond Beach NRMP, the City
2 responded: “This concern will be forwarded to the appropriate decision-makers for review and
3 consideration.” (FEIR, Volume II, Letter S.I, #4.) Similarly, in response to comment Letter O.4
4 (#36), which pointed out that it could be possible to mitigate Agricultural impacts with
5 assistance from State agencies, the City responded: “Comment noted.” (FEIR, Volume II,
6 Letter O.4 #36.) Neither response addresses the issues raised by the commenters, why the EIR
7 is adequate without modification, or whether the comment warrants some modification to the
8 EIR. These types of problems occur throughout the responses to comments of the EIR.

9
10 **SECOND CAUSE OF ACTION: VIOLATIONS OF PLANNING AND ZONING LAW**

11 79. Petitioners incorporate by reference the allegations set forth in the paragraphs
12 above.

13 80. No specific plan may be adopted or amended unless the proposed plan or
14 amendment is consistent with the general plan. (Gov. Code § 65454.)

15 81. The SouthShore Specific Plan is inconsistent with the City’s General Plan. The
16 City’s Planning Commission Staff Report analyzed the SouthShore Specific Plan’s consistency
17 with various elements of the City’s General Plan. This analysis was not included in the EIR.
18 Even so, the City’s findings of consistency are unsupported by substantial evidence and are
19 therefore invalid. For example:

- 20 a. The 2020 General Plan Open Space and Conservation Element includes the goal
21 of “maintenance and enhancement of natural resources an open space.” To meet
22 this goal, the 2020 General Plan includes Objective 2, which requires the City to
23 “[m]anage water resources to prevent overdraft and loss of water quality.” The
24 SouthShore Specific Plan is inconsistent with this objective because the Project
25 has not demonstrated sufficient water supply and may impact groundwater
26 supply and water quality, including over-extraction, seawater intrusion, and
27 land-subsidence.
28

- 1 b. The City failed to evaluate the SouthShore Specific Plan’s consistency with
2 Policy C.2 of the Open Space and Conservation Element, which states that the
3 City “should encourage the preservation and enhancement of the wetlands in the
4 Ormond Beach and Mugu Lagoon.” Even had the City evaluated the Project’s
5 consistency with this Policy, a finding of consistency could not be made because
6 of the Project’s unmitigated impacts to the Ormond Beach wetlands. As noted
7 above, the City relies on speculative and deferred mitigation measures to
8 minimize impacts to the wetlands. In addition, the Project is inconsistent with
9 the policy requiring “enhancement” of the wetlands at Ormond Beach because it
10 will interfere with the SCC’s plans for restoration of the site.
- 11 c. The City also failed to evaluate the SouthShore Specific Plan’s consistency with
12 Objective 1 of the Open Space and Conservation Element, which requires
13 protection of unique biological habitats from development. The SouthShore
14 Specific Plan is inconsistent with this objective because evidence in the record
15 indicates that rare plants, coastal biological resources, unique wetland habitat
16 and dunes, and endangered species will be impacted by the Project and the City
17 has not identified and/or required feasible mitigation to reduce or avoid such
18 impacts. Instead, the City relies upon speculative and deferred mitigation
19 measures to mitigate impacts to biological resources. The SouthShore Specific
20 Plan is therefore inconsistent with this objective.
- 21 d. The Project is inconsistent with Objective 3 of the Open Space and Conservation
22 Element, which requires the City to “[p]rotect agricultural lands from premature
23 and unnecessary urbanization.” The SouthShore Specific Plan is inconsistent
24 with this objective because evidence in the record indicates that development of
25 the Specific Plan area was unnecessary and that the City failed to mitigate the
26 loss of this area by protecting other agricultural lands from urbanization. The
27 FEIR and Findings acknowledge a Class I (significant and unmitigated) impact
28 to agricultural resources. The FEIR also acknowledges that the Housing

1 Element does not rely on housing within the Ormond Beach area to fulfill the
2 City's housing goals and requirements; therefore, conversion of this land from
3 agriculture to housing is unnecessary. The SouthShore Specific Plan is therefore
4 inconsistent with this objective.

- 5 e. The SouthShore Specific Plan is inconsistent with Objective 2 of the Growth
6 Management Element, which states: "Insure that new development avoids or
7 fully mitigates impacts on air quality, traffic congestion, noise, and resource
8 protection." The SouthShore Specific Plan is inconsistent with this objective
9 because evidence in the record indicates that biological, agricultural, and
10 visual/aesthetic resources will be impacted by the Project and the City has not
11 identified and/or required feasible mitigation to reduce or avoid such impacts.
12 The FEIR acknowledges Class I (significant and unmitigated) impacts to
13 agricultural and visual/aesthetic resources. In addition, as alleged above, the City
14 improperly deferred mitigation, relied on speculative and uncertain measures,
15 and improperly found certain mitigation measures to be infeasible. There is no
16 substantial evidence demonstrating that the Project is consistent with this
17 objective.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Petitioners respectfully request that the Court grant the following relief:

- 20 1. For a writ of mandate (a) directing that the determinations,
21 findings and decisions of Respondents be vacated and set aside with respect to
22 Respondents' certification of the Ormond Beach Specific Plan FEIR, approval
23 of CEQA Findings, and approval of the SouthShore Specific Plan Project; (b)
24 directing Respondents and Real Parties in Interest to suspend any and all
25 activities pursuant to the determinations, findings or decisions that could result
26 in an adverse change or alteration to the physical environment, until
27 Respondents have taken any and all actions that may be necessary to bring the
28 determinations, findings or decisions into compliance with CEQA and

1 California Planning and Zoning Law; and (c) directing Respondents to take
2 specific actions as may be necessary to bring the determinations, findings or
3 decisions into compliance with CEQA and California Planning and Zoning
4 Law;

- 5 2. For injunctive relief and/or a stay;
- 6 3. For costs of suit;
- 7 4. For reasonable attorneys' fees as authorized by California Civil
8 Code Procedure Section 1021.15 and other provisions of law; and
- 9 5. For such other and further relief as the Court deems just and
10 proper.

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12
13
14 Respectfully submitted this 28th day of July, 2011

15
16
17 _____
18 ENVIRONMENTAL DEFENSE CENTER
19 Karen Kraus
20 Linda Krop

21 Attorneys for Petitioners
22 SIERRA CLUB
23 ENVIRONMENTAL DEFENSE CENTER
24 ENVIRONMENTAL COALITION
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1 **VERIFICATION**

2
3 I, Janis McCormick, have read the foregoing Petition for Writ of Mandate and know its
4 contents.

5 I am an officer of the Environmental Coalition, a non-profit corporation, which is a
6 party to this action. I am authorized to make this verification for and on the organization's
7 behalf, and I make this verification for that reason.

8 I have the petition and know its contents. The matters stated in it are true of my own
9 knowledge except as to those matters that are stated on information and belief, and as to those
10 matters I believe them to be true.

11
12 Executed on July 28, 2011 in Ventura, California.

13
14 I declare under penalty of perjury under the laws of the State of California that the foregoing is
15 true and correct.

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17 _____
18 Janis McCormick
19 ENVIRONMENTAL COALITION
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EXHIBIT A

1 {Insert Notice Letter}
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