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 8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**

10
 11 PROTECT BALLONA WETLANDS, an
 unincorporated association,

12 Petitioner,

13 vs.

14 CALIFORNIA DEPARTMENT OF FISH AND
 15 WILDLIFE, a California state agency,

16 Respondent,

17 _____
 18 DOES 1-25

19 Real Parties in Interest

Case No. **21STCP00237**

**VERIFIED PETITION FOR WRIT OF
 MANDATE**

[California Environmental Quality Act
 ("CEQA"), Public Resources Code,
 sections 21000 et seq.]

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1 Petitioner, PROTECT BALLONA WETLANDS (“Petitioner”), alleges through this
2 Petition for Writ of Mandate (“Petition”), as follows:

3 **INTRODUCTION**

4 1. Petitioner challenges the certification by Respondent California Department of
5 Fish and Wildlife (“CDFW” or “Respondent”) of an Environmental Impact Report (“EIR”) for
6 the so-called “Ballona Wetlands Restoration Project” (the “Project”).

7 2. Petitioner requests that this Court vacate, set aside, rescind and void all of the
8 findings, resolutions and plans (“Project Approvals”) adopted by Respondent to facilitate the
9 Project. The Environmental Impact Report (“EIR”) for the Project was certified by Respondent
10 on or about December 30, 2020. Petitioner requests that the Court vacate any and all Project
11 Approvals because Respondent failed to comply with the provisions set forth under the
12 California Environmental Quality Act, Public Resources Code section 21000, et seq. (“CEQA”)
13 and therefore failed to proceed in a manner required by law.

14 3. Petitioner seeks a Peremptory Writ of Mandate under California Code of Civil
15 Procedure section 1094.5, directing Respondent to vacate, rescind and set aside all Project
16 Approvals, the certification of the EIR because Respondent failed to comply with CEQA.

17 **PARTIES**

18 4. Petitioner, Protect Ballona Wetlands, is an unincorporated association dedicated
19 to the protection of both the community and the environment in Los Angeles. Petitioner and its
20 respective members have a direct and substantial beneficial interest in ensuring that Respondent
21 complies with laws relating to environmental protection. Petitioner and its respective members
22 are adversely affected by Respondents' failure to comply with CEQA in approving the Project.
23 Petitioner has standing to assert the claims raised in this Petition because Petitioner and its
24 members’ aesthetic and environmental interests are directly and adversely affected by
25 Respondent’s’ approval of the Project. Moreover, Petitioner’s members participated in the public
26 review and comment process for the Project.

1 5. Respondent California Department of Fish and Wildlife (“CDFW”) is a state
2 agency, which owns and operates the Ballona Wetlands Ecological Reserve, and is the lead
3 agency for the project being challenged with this action.

4 6. UNUSED

5 7. Petitioner is ignorant of the true names and capacities of Real Parties sued herein
6 as DOES 1-25, inclusive, and therefore sues these Real Parties by such fictitious names.
7 Petitioner will amend this Petition to allege the true names and capacities of fictitiously named
8 Real Parties in Interest. Petitioner is informed and believes and thereon alleges that each
9 Respondent designated herein as a DOE has some responsibility for the events and happenings
10 alleged in this Petition.

11 **JURISDICTION AND VENUE**

12 8. This Court has jurisdiction over the writ action under section 1094.5 of the Code
13 of Civil Procedure, and sections 21168 and 21168.5 of the Public Resources Code.

14 9. This Court also has jurisdiction over the writ action under section 1085 of the
15 Code of Civil Procedure.

16 10. Venue for this action properly lies in the Los Angeles Superior Court because the
17 Project is located in Los Angeles County. Civil Procedure Code section 401 provides that any
18 action against a state agency which may be commenced, tried in, or removed to Sacramento, may
19 also be commenced and tried in any county in which the state Attorney General maintains an
20 office. The California Attorney General maintains an office in Los Angeles County at 300 S
21 Spring St #1700, Los Angeles, CA 90013. Further, Petitioner is located in Los Angeles County.

22 **PROJECT LOCATION AND HISTORY**

23 11. The Ballona Wetlands Ecological Reserve (“BWER”) is an approximate 600-acre
24 open space in the middle of the Los Angeles County coast and halfway along the Santa Monica
25 Bay coastline. It is bordered by the communities of Westchester, Marina del Rey, Playa del Rey,
26 Del Rey and Playa Vista, and it is approximately five miles north of the LAX Airport and close
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1 to Loyola Marymount University. Prior to 1825, the Los Angeles River flowed through the
2 Ballona watershed and into the Ballona Lagoon. Following a period of several years of heavy
3 rains and a series of earthquakes, the Los Angeles River outlet moved to its current location near
4 San Pedro. Today, BWER is a remnant of a what was once a much larger wetland complex that
5 stretched from Venice to the Baldwin Hills. Several historical streams that once converged with
6 the Los Angeles River, including Ballona Creek, Centinela Creek, and Sepulveda (formerly
7 Walnut) Creek still flow into the Ballona Wetlands today. Ballona is primarily fed seasonally by
8 these streams and by rainfall.

9 12. The Ballona Wetlands Ecological Reserve is one of roughly 138 such ecological
10 reserves across the state.

11 **PROJECT**

12 13. Respondent characterizes the Project in the Draft EIR as a “large-scale effort to
13 restore, enhance, and establish native coastal wetland and upland habitats on approximately 566
14 acres within the Ballona Reserve; these efforts would require incidental work on adjacent
15 property. To implement the proposal, CDFW is working with the Los Angeles County Flood
16 Control District (“LACFCD”) to modify project features (e.g., the Ballona Creek channel and
17 levee system) within the Ballona Reserve. The three main components of the Project are
18 restoring wetlands and wetland functions within the Ballona Reserve; restoring and improving
19 public access to the Ballona Reserve; and maintaining existing levels of flood risk management
20 provided by the Ballona Creek channel and levee system.” As explained in detail below,
21 Petitioner contends the entire characterization of the Project as a means of “restoration,
22 enhancement and establishment” is disingenuous as the Project will have unmitigable impacts on
23 the environment.

24 **ENDANGERED SPECIES ON SITE**

25 14. Respondent admits that the BWER currently supports (breeds onsite) species
26 listed as state and/or federally threatened or endangered. These include the following.
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- a. **Belding’s savannah sparrow** (*Passerculus sandwichensis beldingi*). State Endangered. Impacts from the project will be approximately one acre of lost occupied habitat (outside of nesting season).
- b. **El Segundo blue butterfly** (*Euphilotes battoides allyni*). Federally Endangered. This species has recently started occupying BWER due to volunteer restoration efforts and its population has been growing.
- c. **Least Bell’s Vireo** (*Vireo bellii pusillus*). State and Federally Endangered. This bird species has recently returned to BWER, according to the Respondent, due to the creation of the riparian corridor across the street at Playa Vista. CDFW is working on a small enhancement/restoration project to expand existing willow habitat in this area. This species, however, is using habitat that was already present in several areas of the reserve, unrelated to the riparian project that replaced other riparian areas destroyed due to construction of Playa Vista. Most biologists aware of recovery efforts for this endangered songbird credit the efforts of the USF&WS recovery team at Camp Pendleton Army base, and the subsequent expansion of its range northward to places where suitable habitat exists, such as Ballona Wetlands Ecological Reserve.

15. There are additional threatened and/or endangered plant and wildlife species that once existed, are occasional visitors or have the potential to thrive at BWER. These species include, but are not limited to, the Ventura marsh milk-vetch, California least tern and the coastal California gnatcatcher. Additionally, habitat maps for special-status species such as the Silvery Legless Lizard, San Bernardino Ringed-neck Snake, Wandering Skipper, South Coast Marsh Vole and Burrowing Owl all show occurrence or potential occurrence of these species within the Ballona Wetlands.

ALTERNATIVES ANALYZED

- 1 16. The Draft EIR evaluated the potential environmental effects of the following three
2 alternatives and a no-Federal-action/no-project alternative (Alternative 4).
- 3 a. Alternative 1: Full Tidal Restoration/Proposed Action would be
4 implemented within an approximately 483-acre area and would remove
5 existing levees, create a sinuous (i.e., non-linear) Ballona Creek channel
6 with two primary meander-shaped bends, impact contiguous tidal wetlands
7 and other aquatic resources north of Culver Boulevard, and impact
8 managed wetlands south of Culver Boulevard.
- 9 b. Alternative 2: Restored Partial Sinuous Creek would occur in an
10 approximately 426-acre area. It would realign the channel in a manner
11 similar to Alternative 1, but would only impact wetlands in a portion of the
12 area relative to Alternative 1.
- 13 c. Alternative 3: Levee Culverts and Oxbow would occur in an approximately
14 163-acre area, but would not remove existing levees (leaving the channel
15 as-is). It would focus efforts north of the channel and west of Lincoln
16 Boulevard.
- 17 d. Alternative 4: No Federal Action/No Project would maintain existing
18 activities and conditions.

19 17. Natural gas storage wells, monitoring wells, and associated pipelines owned and
20 operated by the Southern California Gas Company (SoCalGas) are located within the Ballona
21 Reserve. The Project contemplates the relocation of active storage wells and natural gas
22 pipelines, but would retain the same size gas storage field beneath the wetlands and surrounding
23 communities, thus, requiring directional drilling along the bluffs of the SoCalGas property
24 adjacent to state property.

25 18. The Project is a major Federal action for which discretionary permits would be
26 required from the Corps for compliance with Section 404 of the Clean Water Act and Sections
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1 10 and 14 of the Rivers and Harbors Act, among other authorities. Corps approval also would be
2 required to modify the Operation, Maintenance, Repair, Replacement and Rehabilitation plan
3 (OMRR&R, Los Angeles District, Corps of Engineers 1999) to reflect any approved changes to
4 existing project infrastructure within the Project site.

5 **PROJECT BACKGROUND, ENVIRONMENTAL REVIEW AND APPROVAL**

6 19. The U.S. Army Corps of Engineers (Corps) must issue permits for the restoration
7 project, thus CDFW and the Corps initially collaborated on the environmental analysis under the
8 National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA).
9 CDFW and the Corps issued a Notice of Preparation (“NOP”) for a NEPA environmental impact
10 statement (EIS) and CEQA Environmental Impact Report (EIR) during the summer of 2012.

11 20. A Notice of Intent (“NOI”) under NEPA and Notice of Preparation (“NOP”) was
12 issued in August 2012. A joint public scoping meeting was held on August 16, 2012. CDFW
13 received numerous written comments during the NOP comment period.

14 21. The Draft Environmental Impact Report/Environmental Impact Statement was
15 released on September 26, 2017. CDFW received numerous written comments on the Draft EIR
16 during this review period. Respondent received over 8,000 pieces of correspondence containing
17 nearly 3,000 distinct comments on the Draft EIR/EIS.

18 16. Respondent received numerous comments from other public agencies including,
19 but not limited to, the United States Fish and Wildlife Service (“USFWS”), National Oceanic
20 and Atmospheric Administration (“NOAA”), and the California Coastal Commission (“CCC”).

21 17. Respondent received numerous comments from community groups and
22 organizations including, but not limited to, the Villa Marina Council, Del Rey Neighborhood
23 Council and Del Rey Residents Association.

24 18. Respondent received numerous comments from environmental organizations
25 including, but not limited to, Ballona Institute, Sierra Club, Ballona Wetlands Land Trust, In
26 Defense of Animals, Santa Monica Bay Audubon Society, California Native Plant Society, and
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1 the Los Angeles Audubon Society.

2 19. On November 8, 2017 a public hearing was conducted to consider the Draft
3 EIR/EIS.

4 20. Respondent did not recirculate a revised Draft EIR. Instead, Respondent prepared
5 responses to comments and published a Final EIR on December 20, 2019. The Final EIR was
6 certified on December 30, 2020 and findings adopted pursuant to Public Resources Code Section
7 21081(a). The U.S. Army Corps of Engineers did not certify the EIS as an Environmental
8 Impact Statement for NEPA compliance purposes.

9 21. On or about December 30, 2020, CDFW filed a Notice of Determination
10 (“NOD”) with the State Clearinghouse. This action has been filed within the applicable statute
11 of limitations.

12 **CEQA’S SUBSTANTIVE AND PROCEDURAL REQUIREMENTS**

13 22. In 1970, the California Legislature enacted CEQA, as a means of forcing public
14 agency decision makers, such as Respondent, to document and consider the environmental
15 implications of its actions. CEQA's fundamental goal is to fully inform the public and the
16 decision makers as to the environmental consequences of proposed projects and to assure
17 members of the public that their elected officials are making informed decisions. CEQA requires
18 governmental authorities, such as Respondent, to fully evaluate potential environmental effects
19 of projects, and to seek feasible means to reduce or avoid significant environmental damage that
20 otherwise could result from their actions, CEQA limits agencies from approving projects with
21 significant adverse impacts when feasible alternatives can substantially lessen such impacts.

22 23. The primary function of an Environmental Impact Report (“EIR”) is to discuss the
23 important environmental consequences of the project, including cumulative effects, and to
24 provide the agency and the general public with mitigation measures and alternatives to the
25 project that would have less serious environmental consequences. Under CEQA, lead agencies,
26 such as Respondent, are required to prepare a complete and legally adequate EIR prior to
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1 approving any discretionary project that may have a significant adverse effect on the
2 environment. The EIR must fully disclose and adequately analyze the project's potentially
3 significant environmental effects. CEQA also requires lead agencies, such as Respondent, to
4 consider mitigation measures and alternatives to a project, adopt all feasible mitigation measures
5 and/or alternatives, determine whether proposed mitigation measures will be effective in
6 avoiding or substantially lessening the project's significant environmental impacts, and to make
7 adequate findings, including an adequate statement of overriding consideration for those
8 significant environmental impacts deemed unavoidable.

9
10 **FIRST CAUSE OF ACTION**

11 **(VIOLATION OF CEQA)**

12 **Improper Description of Project**

13 24. Petitioner re-alleges and incorporates by reference the preceding paragraphs in
14 their entirety, as though fully set forth herein.

15 25. A Draft Environmental Impact Report must contain a project description, which
16 must in turn include: “(a) The precise location and boundaries of the proposed project ... on a
17 detailed map, preferably topographic. ... [¶] (b) A statement of the objectives sought by the
18 proposed project [¶] (c) A general description of the project’s technical, economic, and
19 environmental characteristics [¶] (d) A statement briefly describing the intended uses of the
20 EIR.” CEQA Guidelines, § 15124. “A description of the project is an indispensable component
21 of a valid EIR.” *Western Placer Citizens for an Agricultural & Rural Environment v. County of*
22 *Placer* (2006) 144 Cal.App.4th 890, 898.

23 26. A project description that gives conflicting signals to decision makers and the
24 public about the nature and scope of the project is fundamentally inadequate and misleading.
25 “Only through an accurate view of the project may affected outsiders and public decision-makers
26 balance the proposal’s benefit against its environmental cost, consider mitigation measures,
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1 assess the advantage of terminating the proposal, i.e., the “no project” alternative[], and weigh
2 other alternatives in the balance. *Citizens for a Sustainable Treasure Island v. San Francisco*
3 (2014) 227 Cal.App.4th, 1036, 1052. “ [A]n accurate, stable and finite project description is the
4 sine qua non of an informative and legally sufficient EIR.’ ” *County of Inyo v. City of Los*
5 *Angeles* (1977) 71 Cal.App.3d 185, 192–193.

6 27. A description of a broad range of possible projects, rather than a preferred or
7 actual project, presents the public with a moving target and requires a commenter to offer input
8 on a wide range of alternatives that may not be in any way germane to the project ultimately
9 approved. While there may be situations in which the presentation of a small number of closely-
10 related alternatives would not present an undue burden on members of the public wishing to
11 participate in the CEQA process, in this case the differences between the four alternative projects
12 was vast, each creating a different footprint on public land. Each option created a different set of
13 impacts, requiring different mitigation measures. “[W]hen an EIR contains unstable or shifting
14 descriptions of the project, meaningful public participation is stultified.” *San Joaquin Raptor*
15 *Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656 [project description in
16 DEIR regarding mine expansion was unstable and misleading because it suggested both that no
17 increase in mine production was sought and that mine production would substantially increase if
18 project was approved].)

19 28. Respondent did not select a preferred alternative in either the draft or final
20 Environmental Impact Report for the Project. Respondent did not reveal the preferred alternative
21 until they certified the Final EIR on December 29, 2020. Respondent achieved this by posting a
22 new description of what they characterized as a slightly altered version of Alternative 1.
23 Respondent violated CEQA by failing to provide the opportunity for the public to comment on
24 the newly described project. Respondent also violated CEQA because the description does not
25 accurately reflect the reality of the Project as described in the accompanying information within
26 the EIR.

1 29. Respondent also violated CEQA by failing to adequately describe the Playa del
2 Rey gas storage field infrastructure removal and replacement as part of the Project. The
3 excavation and other construction activity contemplated by the Project would remove currently
4 used infrastructure and enable the Playa del Rey gas storage field to be upgraded to support fossil
5 fuel infrastructure far into the future. This was not adequately disclosed in the Project
6 description. In order to comply with CEQA mandates, a full description of the impacts of the
7 removal and replacement of fossil fuel infrastructure was required, even if the replacement of
8 that infrastructure is on adjacent land Respondent also did not explain fully that the size of the
9 gas storage field, which is still to be located approximately two miles underneath the Ballona
10 Wetlands Ecological Reserve, would be the same as it is today, with accompanying dangers and
11 health impacts to people and to wildlife.

12 Failure to Adopt Statement of Overriding Considerations

13 30. Respondents violated CEQA by certifying an EIR for the Project that is
14 inadequate and fails to comply with CEQA. Among other things, Respondent incorrectly
15 determined that mitigation measures would eliminate environmental impacts to a less than
16 significant level. The excavation of 2.5 million cubic yards of soil and mechanical alteration of
17 hundreds of areas over a nine-year construction timeline will necessarily impact important
18 habitats causing unmitigable impacts. Respondent did not adopt a Statement of Overriding
19 Considerations pursuant to Public Resources Code Section 21081(b) and CEQA Guidelines
20 Section 15091.

21 31. As a result of the foregoing defects, Respondent prejudicially abused its discretion
22 by certifying an EIR that does not comply with CEQA and by approving the Project in reliance
23 thereon. Accordingly, Respondent’s certification of the EIR must be set aside.

24 Inadequate Findings

25 32. CEQA requires that a lead agency’s findings for the approval of a project be
26 supported by substantial evidence in the administrative record. CEQA further requires that a lead
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1 agency provide an explanation of how evidence in the record supports the conclusions it has
2 reached.

3 33. Respondents violated CEQA by adopting findings that are inadequate as a matter
4 of law in that they are not supported by substantial evidence in the record, including, but not
5 limited to, the following:

- 6 a. The determination that the Project would cause no potentially significant impacts;
- 7 b. The determination that certain impacts would be less than significant and/or that adopted
8 mitigation measures would avoid or lessen the Project’s significant effects on the
9 environment;
- 10 c. The determination that alternatives to the Project and proposed mitigation measures that
11 would have avoided or lessened the significant impacts of the Project were infeasible;

12 34. As a result of the foregoing defects, Respondents prejudicially abused their
13 discretion by adopting findings that do not comply with the requirements of CEQA and
14 approving the Project in reliance thereon. Accordingly, Respondents’ certification of the EIR
15 must be set aside.

16 Unlawful Piecemealing

17 35. Respondent has unlawfully piecemealed several components of the Project and
18 authorized activity in furtherance of the Project. “CEQA forbids ‘piecemeal’ review of the
19 significant environmental impacts of a project.” *Berkeley Keep Jets Over the Bay Committee v.*
20 *Board of Port Commissioners* (2001) 91 Cal.App.4th, 1344 1358. Agencies cannot allow
21 “environmental considerations [to] become submerged by chopping a large project into many
22 little ones—each with a minimal potential impact on the environment—which cumulatively may
23 have disastrous consequences.” *Bozung v. Local Agency Formation Commission of Ventura*
24 *County* (1975) 13 Cal. 3d 263, 283-284. In this case, work is currently ongoing at BWER is the
25 form of capping wells and removing related infrastructure. Moreover, several “restoration
26 projects” have been authorized. These projects are part of the Project in question and were
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1 unlawfully piecemealed. Additionally, in the document accompanying the certification approval
2 of the EIR, Respondent states that they intend to engage in further piecemealing that remains
3 mysterious to the public in terms of impacts and specifics: “during the next design phase,
4 CDFW will firm up potential sequences available to further divide the project into smaller
5 components.”

6 The EIR Failed to Disclose and Evaluate Impacts

7 36. Respondent provided inconsistent information about removal and replacement of
8 oil infrastructure in the Draft EIR. Further, the information that was provided did not adequately
9 describe that the gas storage field under the Ballona Wetlands will remain the same size - with
10 directional drilling.

11 37. Additionally, Respondent failed to adequately evaluate the impacts of the removal
12 of certain berms which are currently considered roadways to wells. Significantly, the berms
13 function as habitat for the rare and imperiled Burrowing Owl. As a result of the Project, burrows
14 where the Burrowing Owl currently shelters and sleeps would be removed in order to support the
15 removal and replacement of wells onto adjacent sensitive habitats on land that CDFW has right-
16 of-first refusal for purchase when gas storage operations leave the site. Additionally, the
17 endangered Belding’s Savannah Sparrow has been documented within feet of the work site of
18 VIDOR 5 (one of the well sites). Respondent failed to adequately disclose and evaluate the
19 impacts to these two species caused by the Project.

20 38. Respondent also failed to disclose the complete impacts to public access (both
21 short term and long-term impacts). The Project will result in degradation of public access
22 notwithstanding Respondent’s claim that the Project will enhance access. The public will be
23 deprived of public access for almost a decade once the project begins. In the long term, bike and
24 walking paths will be moved from along the channel to up and around huge berms. This will
25 permanently degrade public access. Moreover, rowing competitions that have taken place within
26 the Ballona Creek estuary for decades will have to be relocated. The Draft EIR also failed to
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1 adequately disclose to the public that funding for revised public access outlined in the Draft EIR
2 had yet to be determined. All of these impacts were inadequately disclosed to the public and
3 ignored in the Draft EIR.

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5 Errors with Environmental Baseline

6 39. In determining whether a project's impacts are significant, an EIR should compare
7 those impacts with existing environmental conditions, which are referred to as the "baseline" for
8 the impact analysis. *Neighbors for Smart Rail v Exposition Metro Line Constr. Auth.* (2013) 57
9 C4th 439, 447; *Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48
10 C4th 310.

11 40. As described in letters by Ballona Institute, Sierra Club, Los Angeles Audubon
12 Society and others that were submitted to Respondent, the baseline conditions for numerous
13 special status species - including some on either state or federal endangered species lists - were
14 either ignored, left out of the report or inadequately described in terms of impacts.

15 41. For example, there are seven species on the federal or state endangered species
16 list relying on the Ballona Wetlands Ecological Reserve for some part of their life cycles for
17 which there is documentation in the record - specifically included in information submitted by
18 Ballona Institute and Sierra Club:

- 19 ● Belding's Savannah Sparrow - *Passerculus sandwichensis beldingi*
- 20 ● California Least Tern - *Sterna antillarum browni*
- 21 ● Coastal California Gnatcatcher - *Poliophtila californica californica*
- 22 ● El Segundo Blue Butterfly - *Euphilotes battoides allyni*
- 23 ● Least Bell's Vireo - *Vireo bellini pusillas*
- 24 ● Light-footed Ridgeway's Rail - *Rallus longirostris levipes*
- 25 ● Western Snowy Plover - *Charadrius nivosas nivosas*

26 42. Yet, the EIR primarily focuses on the Belding's Savannah Sparrow, albeit
27 inadequately providing sufficient mitigation for this species, and only to a minor degree focuses
28 on the Coastal California Gnatcatcher, El Segundo Blue Butterfly and Least Bell's Vireo - for all
three ignoring the impacts that would clearly affect the habitat for these species and wishing that

1 the new habitat that would be created after nearly the entire habitat is obliterated, might
2 somehow appear in the future.

3 43. Respondent failed to adequately disclose and evaluate habitat impacts for the
4 other three endangered or threatened species - California Least Tern - *Sterna antillarum browni*,
5 Light-footed Ridgeway's Rail - *Rallus longirostris levipes* and Western Snowy Plover -
6 *Charadrius nivosas nivosas*. Respondent failed to evaluate these impacts in spite of photos
7 submitted showing mating of California Least Tern on the salt panne within the Ballona
8 Wetlands that would be covered with soil dug up and moved from elsewhere on the site.

9 44. Thus, existing baseline information was not fully documented nor explained for
10 these seven species or for those on the California List of Species of Special Concern or otherwise
11 protected under state wildlife protection laws.

12 45. Additionally, as explained by the Sierra Club through expert opinions provided by
13 Dr. David De Lange and Dr. Mansour Rahimi, Respondent failed to set the appropriate baseline
14 for determining the impacts of tsunamis. Respondent utilized inaccurate elevations and other
15 flawed baseline information leading to flawed conclusions

16 Recirculation was Required

17 46. Respondent was required to recirculate the Draft EIR due to CEQA Guidelines
18 Section 15088.5. This section of the Guidelines states as follows: "A lead agency is required to
19 recirculate an EIR when significant new information is added to the EIR after public notice is
20 given of the availability of the draft EIR for public review under Section 15087 but before
21 certification. As used in this section, the term "information" can include changes in the project or
22 environmental setting as well as additional data or other information. New information added to
23 an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a
24 meaningful opportunity to comment upon a substantial adverse environmental effect of the
25 project or a feasible way to mitigate or avoid such an effect (including a feasible project
26 alternative) that the project's proponents have declined to implement."

1 47. Recirculation was required because the private engineering firms that were hired
2 by the State Coastal Conservancy to evaluate the Project utilized an incorrect flood risk
3 threshold. As a result, the flood control analysis that was conducted for the Project was
4 inaccurate. As a result of these significant errors, the Army Corp of Engineers declined to
5 certify the disputed environmental clearance document. A final Environmental Impact
6 Statement (EIS) under the NEPA has not been published. Certainly, the significant error in the
7 engineering design for the Project constitutes new information warranting recirculation of the
8 EIR. The public was deprived of a meaningful opportunity to comment upon a substantial
9 adverse environmental impact of the Project, namely, approval of a Project that deviates from
10 established flood control standards.

11 48. Further, after the Draft EIR was published the Coastal Commission required the
12 capping of drains that were illegally installed. The Draft EIR was published on September 26,
13 2017, and the Coastal Commission took action pertaining to the capping of drains in December
14 2017. The capping of the drains necessarily impacted the hydrology analysis conducted for the
15 Project. Such analysis would need to be revised to reflect the change in baseline conditions. By
16 failing to update the Draft EIR to incorporate this information and recirculate the Draft EIR, the
17 public was deprived of a meaningful opportunity to comment upon a substantial adverse
18 environmental impact of the Project.

19 49. Further, significant new information pertaining to the abandonment of gas and oil
20 wells within the Ballona Wetlands was revealed after the publication of the Draft EIR. For
21 example, the California Geologic Energy Management Division issued nine permits to
22 “abandon” wells. This abandonment itself has the potential to cause new significant
23 environmental impacts that were not disclosed to the public. Recirculation was required to
24 provide the public with a meaningful opportunity to comment upon the impacts of this activity.

25 50. Further, significant new information was discovered after the publication of the
26 Draft EIR regarding the presence of protected species in close proximity to levees that will be
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1 demolished as part of the Project. New information was discovered about the presence of
2 singing and nesting Least Bell’s Vireo. This endangered songbird has been acknowledged in the
3 DEIR as having nested for several seasons at Ballona Wetlands Ecological Reserve.

4 51. The primary purpose of an EIR is to “foster informed decision making and
5 public participation.” CEQA Guidelines § 15126.6(a); *Ctr. for Biological Diversity v. U.S.*
6 *Dept. of Interior, supra*, 623 F.3d at pp. 642–643. In order to accomplish this goal, an EIR
7 must adequately consider and evaluate other potentially feasible alternatives that could avoid
8 or substantially reduce any of the Project’s significant impacts.

9 52. The state Supreme Court has held that “an EIR for any project subject to CEQA
10 review must consider a reasonable range of alternatives to the project, or to the location of the
11 project, *which*: (1) offer substantial environmental advantages over the project proposal”
12 *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 566. “[T]he discussion
13 of alternatives shall focus on alternatives to the project or its location which are capable of
14 avoiding or substantially lessening any significant effects of the project, even if these
15 alternatives would impede to some degree the attainment of the project objectives, or would be
16 more costly.” CEQA Guidelines, § 15126.6.

17 53. Respondent did not consider a reasonable range of alternatives as required by
18 CEQA. Respondent evaluated three alternatives that all bring more saltwater into the wetlands
19 and heavily alter the ecosystem and one “no action” alternative. Respondent failed to evaluate an
20 alternative that would maintain the current brackish and rainfed seasonal wetlands that exist
21 today. Such an alternative is necessary because such habitats currently exist which support rare
22 and imperiled species (grasslands, coastal scrub, sand dune, and woodlands) that would be
23 destroyed with all alternatives but the “no action.” In order to evaluate a reasonable range of
24 alternatives, Respondent was required to evaluate an alternative that would have maintained the
25 current brackish and rainfed seasonal wetlands, as well as other rare and imperiled coastal
26 habitats. For instance, Respondent has admitted elsewhere that grasslands are more rare and
27

1 imperiled than wetlands.

2 54. Further, the no action alternative that was evaluated reflects incorrect information.
3 For example, there are many things that could be done to improve the current condition of the
4 wetlands if the no action alternative were selected, including, but not limited to, opening trails
5 for public access - which is a management decision that does not require comprehensive
6 environmental review, only issuance of a coastal development permit (if there is new
7 development included like additions of signage or benches).

8 55. Additionally, Respondent was presented with a “Gentle Alternative” prior to
9 certification of the Final EIR that would have provided many of the benefits of the Project
10 without large scale alteration and habitat loss of the Ballona Wetlands. Respondent failed to
11 evaluate this alternative.

12 56. Finally, Respondent failed to identify a preferred alternative. This undermined the
13 fundamental purposes of environmental review because the public was led to believe that
14 Respondent would later choose its preferred alternative, and the public would then be allowed to
15 comment on it. However, no such opportunity occurred.

16 Inadequate Response to Comments

17 57. CEQA Guidelines §15088.5(f) states that “*In no case shall the lead agency fail*
18 *to respond to pertinent comments on significant environmental issues.*” Likewise, CEQA
19 Guidelines §15088(c) states that the written response shall describe the disposition of
20 significant environmental issues raised in comments whenever the lead agency's position is ‘at
21 variance’ with the comment about the ‘significant’ environmental issue. There must be a good
22 faith, reasoned analysis in response, giving details why the comment was not accepted;
23 conclusory statements unsupported by facts will not suffice. CEQA Guidelines § 15088(c).

24 58. Case law regarding what is required in response to comment reinforces and
25 elaborates on these requirements. The court in *People v. County. of Kern*, made the point that
26 the necessity of comments was to prevent “stubborn problems or serious criticism” concerning
27

1 a project from “being swept under the rug.” *People v. Count of Kern* (1974) 39 Cal.App.3d
2 830, 841. The appellate court held that the “failure to respond with specificity in the final EIR
3 to the comments and objections to the draft EIR renders the final EIR fatally defective.” *Id.* at
4 p. 842; See also *Cleary v. Cnty. of Stanislaus* (1981) 118 Cal.App.3d 348, 358; *City of Irvine v.*
5 *Cnty. of Orange* (2015) 238 Cal.App.4th 526, 553.

6 59. Respondents failed to respond adequately to comments submitted by Petitioner,
7 other members of the public, and other agencies. Instead, the responses given to numerous
8 comments regarding the Project’s impacts were dismissive, conclusory, evasive, confusing, or
9 otherwise non-responsive, contrary to the requirements of CEQA.

10 60. By failing to provide adequate responses to public comments and proposed
11 alternatives, Respondents failed to proceed in the manner required by law. Moreover,
12 Respondents’ finding that adequate responses to comments were provided is not supported by
13 substantial evidence.

14 **NOTICE OF COMMENCEMENT OF CEQA PROCEEDING**

15 61. On January 27, 2021, prior to filing this Petition, Petitioner, through its counsel,
16 served the Respondent with notice of Petitioner’s intention to immediately commence a
17 proceeding against Respondents for violation of CEQA in connection with the Project. A copy
18 of the letter providing such notice is attached to this Petition as Exhibit A and is incorporated
19 herein by this reference. This letter satisfied Petitioner’s duties under Public Resources Code
20 section 21167.5.

21 62. On January 28, 2021, Petitioner, through its counsel, served the California
22 Attorney General with notice of the commencement of this lawsuit, together with a true and
23 correct copy of this Petition. A copy of such notice (without the copy of this Petition attached to
24 such notice), together with proof of service, is attached to this Petition as Exhibit B and is
25 incorporated herein by this reference. Such notice satisfies Petitioner’s duties under Public
26 Resources Code section 21167.7 and California Code of Civil Procedure, section 388.

1
2 **PREPARATION OF THE RECORD**

3 63. Pursuant to Public Resources Code, section 21167.6(b)(2), Petitioner elects to
4 prepare the record of proceedings in this action. Concurrently with this Petition, Petitioner is
5 filing a notice of its election to prepare the administrative record. A copy of that election is
6 attached as Exhibit C.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Petitioner prays for relief as follows:

- 9 1. For alternative and peremptory writs of mandate, commanding Respondent:
10 (A) to vacate and set aside approval of the Project;
11 (B) to vacate and set aside certification of the Final EIR for the Project;
12 (C) to prepare and certify a legally adequate EIR for the Project;
13 (D) to suspend any and all activity pursuant to Respondent's approval of the Project
14 that could result in an adverse change or alteration to the physical environment until Respondent
15 has complied with all requirements of CEQA and all other applicable laws, policies and regulations
16 as are directed by this Court pursuant to Public Resource Codes Section 21168.9.
- 17 2. For a stay, temporary restraining order, preliminary injunction, and permanent
18 injunction prohibiting any actions by Respondent pursuant to Respondent's approval of the Project
19 and certification of the EIR for the Project until Respondent has fully complied with all
20 requirements of CEQA, and all other applicable laws, policies regulations.
- 21 3. For costs of the suit;
22 4. For attorneys' fees pursuant to Code of Civil Procedure section 1021.5; and
23 5. For such other and further relief as the Court deems just and proper.

24 Dated: January 28, 2021

25 By: 

26 Jamie T. Hall
27 CHANNEL LAW GROUP, LLP
28 *Attorneys for Petitioner*

Channel Law Group, LLP
8383 Wilshire Blvd., Suite 750
Beverly Hills, CA 90211

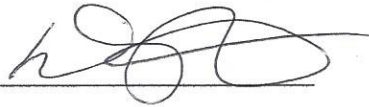
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VERIFICATION

I am a member of Protect Ballona Wetlands and I am authorized to execute this verification on behalf of petitioner. I have read the foregoing Verified Petition for Writ of Mandate and am familiar with its contents. The facts recited in the petition are true and of my personal knowledge.

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

Dated: January 28, 2021

By: 

Wendy-Sue Rosen
Protect Ballona Wetlands

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EXHIBIT LIST

<u>Exhibit No.</u>	<u>Exhibit</u>
A.	Notice of Intent to File CEQA Petition
B.	Notice to California Attorney General
C.	Notice of Election to Prepare Administrative Record

Channel Law Group, LLP
8383 Wilshire Blvd., Suite 750
Beverly Hills, CA 90211

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Exhibit A

Channel Law Group, LLP

8383 Wilshire Blvd.
Suite 750
Beverly Hills, CA 90211

JULIAN K. QUATTLEBAUM, III
JAMIE T. HALL *
CHARLES J. McLURKIN

Writer's Direct Line: (310) 982-1760
jamie.hall@channellawgroup.com

*ALSO Admitted in Texas

January 27, 2021

Via E-mail and U.S. Mail

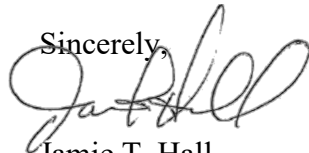
Charlton H. Bonham, Director
California Department of Fish and Wildlife
P.O. Box 944209
Sacramento, CA 94244-2090
director@wildlife.ca.gov
steven.ingram@wildlife.ca.gov

Re: Notice of Intent to Commence CEQA Action and Proceeding; Ballona Wetlands Restoration Project; State Clearinghouse Number 2014051070

To Whom It May Concern:

PLEASE TAKE NOTICE, under California Public Resources Code section 21167.5, that Petitioner, Protect Ballona Wetlands, intends to immediately file a Petition for Writ of Mandate ("Petition") under the provisions of the California Environmental Quality Act ("CEQA"), inter alia, against the California Department of Fish and Wildlife ("CDFW" or "Respondent"). The Petition will be filed in Los Angeles County Superior Court and will allege, inter alia, that Respondent did not comply with the California Environmental Quality Act when it certified the Final Environmental Impact Report for the "Ballona Wetlands Restoration Project" ("Project").

Sincerely,



Jamie T. Hall

Attorney for Petitioner

Channel Law Group, LLP
8383 Wilshire Blvd., Suite 750
Beverly Hills, CA 90211

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Exhibit B

Channel Law Group, LLP

8383 Wilshire Blvd.
Suite 750
Beverly Hills, CA 90211

Main Line: (310) 347-0050
Fax: (323) 723-3960

JULIAN K. QUATTLEBAUM, III
JAMIE T. HALL *
CHARLES J. McLURKIN

Writer's Direct Line: (310) 982-1760
jamie.hall@channellawgroup.com

*ALSO Admitted in Texas

January 28, 2021

By U.S. Mail

Office of the Attorney General
1300 "I" Street Suite 125
Sacramento, CA 94244-2550

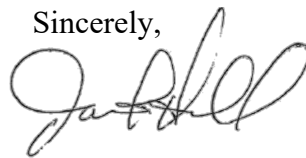
Re: Challenge to Ballona Wetlands Restoration Project; *Protect Ballona Wetlands v. California Department of Fish and Wildlife* (State Clearinghouse No. 2012071090)

Honorable Attorney General Becerra:

Enclosed please find a copy of the Petition for Writ of Mandate filed by Protect Ballona Wetlands against the California Department of Fish and Wildlife ("CDFW" or "Respondent"). The Petition was filed in Los Angeles County Superior Court and alleges that CDFW did not comply with the California Environmental Quality Act ("CEQA") when it certified an Environmental Impact Report for the "Ballona Wetlands Restoration Project" (the "Project").

Please call if you have any questions.

Sincerely,



Jamie T. Hall

Enclosure: Verified Petition for Writ of Mandate

Channel Law Group, LLP
8383 Wilshire Blvd., Suite 750
Beverly Hills, CA 90211

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Exhibit C

1 JAMIE T. HALL (Bar No. 240183)
2 JULIAN K. QUATTLEBAUM (Bar No. 214378)
3 CHANNEL LAW GROUP, LLP
4 8383 Wilshire Blvd., Suite 750
5 Beverly Hills, CA 90211
6 Telephone: (310) 982-1760
7 Facsimile: (323) 723-3960

8 Attorneys for Petitioner,
9 PROTECT BALLONA WETLANDS

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**

12 PROTECT BALLONA WETLANDS, an
13 unincorporated association,

14 Petitioner,

15 vs.

16 CALIFORNIA DEPARTMENT OF FISH AND
17 WILDLIFE, a California state agency

18 Respondent,

19 DOES 1-25

20 Real Parties in Interest

**PETITIONER’S NOTICE OF ELECTION
TO PREPARE THE ADMINISTRATIVE
RECORD**

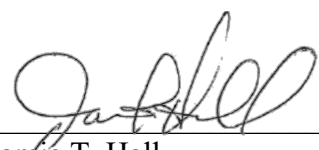
[Public Resources Code Section
21167.6(b)(2)]

Channel Law Group, LLP
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1 Pursuant to Public Resources Code Section 21167.6(b)(2), PROTECT BALLONA
2 WETLANDS (“PETITIONER”) hereby elects to prepare the administrative record and the
3 record of proceedings in connection with this action as provided by Public Resources Code
4 Section 21167.6.

5
6 Dated: January 28, 2021

7
8 By: 
9 Jamie T. Hall
10 CHANNEL LAW GROUP, LLP
11 *Attorneys for Petitioner*

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