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Los Angeles Superior Court

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5 Attorneys for Petitioners/Plaintiffs
FRIENDS OF THE WHITTIER NARROWS NATURAL AREA
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D85 James Chalfant

William Clarke, Executive Officer/Clerk
By *[Signature]* Deputy
K.E. LaFLEUR-CRAYTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT
UNLIMITED CIVIL CASE

FRIENDS OF THE WHITTIER
NARROWS NATURAL AREA,

Petitioner/Plaintiff

v.

SAN GABRIEL RIVER DISCOVERY
CENTER AUTHORITY and
DOES 1 through 20, Inclusive,

Respondents/Defendants

COUNTY OF LOS ANGELES,
SAN GABRIEL AND LOWER LOS
ANGELES RIVERS AND MOUNTAINS
CONSERVANCY,
CENTRAL BASIN MUNICIPAL
WATER DISTRICT,
UPPER SAN GABRIEL VALLEY
MUNICIPAL WATER DISTRICT and
DOES 21 through 100, Inclusive,

Real Parties in Interest/
Defendants.

Case No.

BS125058

PETITION FOR WRIT OF
ADMINISTRATIVE MANDAMUS
AND COMPLAINT FOR INJUNCTIVE
RELIEF

1 **I. INTRODUCTION.**

2 1. Petitioner/plaintiff Friends of the Whittier Narrows Natural Area
3 (Friends) prosecutes this citizen suit challenging the legal validity under the California
4 Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), of (a) a final
5 environmental impact report (EIR) (State Clearinghouse No. 2006081154) certified on
6 January 20, 2010 by respondent/defendant San Gabriel River Discovery Center Authority
7 (Authority), for the Authority’s own project, generally described in paragraph 2 below;
8 and (b) the Authority’s decision certifying the final EIR and approving the project,
9 including related determinations, findings, mitigation measures and mitigation
10 monitoring. The project is proposed on approximately 11.21 acres of land (project site),
11 of which 10.58 acres are located within the 419-acre Whittier Narrows Natural Area
12 (hereafter sometimes “Natural area” or WNNA), an expanse of public open space lands
13 located within the San Gabriel River floodplain, between the Montebello and Puente-
14 Chino Hills. The Natural Area preserves rare coastal alluvial fan sage scrub habitat and
15 constitutes a major Southern California wildlife sanctuary for numerous rare, threatened
16 and endangered wildlife species. For those reasons and due to its geographic location
17 within the East Los Angeles metropolitan area and along the San Gabriel River and Rio
18 Hondo, the Natural Area has special ecological, biogeographical, recreational and
19 scientific significance. It is protected as a Significant Ecological Area (SEA) in the Los
20 Angeles County (County) general plan. The Natural Area also has historic significance.
21 A wildlife sanctuary since its founding by the Audubon Society in 1939, for decades, it
22 has been a crucial part of an Audubon Society Important Bird Area.

23 2. A corrected notice of determination (NOD) filed on January 22,
24 2010 describes the project as including a proposed lease and sublease by the County
25 Department of Parks and Recreation of approximately 11.21 acres to the Authority;
26 demolition of the historic Whittier Narrows Nature Center (and all outbuildings) now
27 operating on the project site; and construction in approximately the same location as this
28 nature center of the proposed 14,000 square foot discovery center building. According to

1 the NOD, in addition to the discovery center building, the “primary project features”
2 would include a 116-space parking lot, an open air classroom, a 0.67-acre constructed
3 riparian/wetland area, a covered outdoor classroom and connecting pathways from these
4 locations. The “construction impact area” is said to occupy five acres within the 11.21-
5 acre project site. Habitat preservation and restoration is supposed to occur on
6 approximately 8.34 acres. Also according to the NOD, the interpretive center would
7 include a lobby, live animal exhibit areas, a classroom, support facilities, administrative
8 offices, and a multi-purpose room available as a meeting room “for reservations and/or
9 rentals” from 8 a.m. to 10:00 p.m., seven days a week. The Authority expects annual
10 attendance at the proposed discovery center complex to range from 75,000 to 90,000
11 visitors.

12 3. In reviewing and approving the project, the Authority prejudicially
13 abused its discretion under CEQA and the State CEQA Guidelines (Guidelines) (Cal.
14 Code Regs., title 14, § 15000 et seq.), in that the certified EIR prepared for approval of
15 the project fails to meet CEQA’s and the Guidelines’ content requirements, standards of
16 adequacy and standards of completeness.

17 4. The Authority further prejudicially abused its discretion under
18 CEQA and the Guidelines by adopting highly inadequate mitigation measures, deferring
19 such measures to the future without articulating specific or enforceable performance
20 standards, or by failing to ensure that all adopted mitigation measures are fully
21 enforceable and funded, and will actually be implemented and complied with during
22 project implementation.

23 5. Because the Authority’s approval of the project is based on a
24 substantially defective final EIR, and fails to comply with CEQA’s requirements
25 concerning the Authority’s duties to adequately mitigate the project’s adverse
26 environmental impacts, the approval cannot be sustained. The approval also cannot be
27 sustained because the Authority violated the Seismic Hazards Mapping Act by failing to
28 secure a geotechnical report for the project before approving it.

1 6. Friends requests judicial relief primarily in the form of a peremptory
2 writ of administrative mandamus, ordering the Authority to decertify the final EIR and to
3 set aside its decision approving the project; and to scrupulously carry out its duties under
4 CEQA and the Guidelines, and under all other applicable federal, state and local laws and
5 regulations, before taking further action on the project (or any alternative project design).
6 Should the Authority intend to reapprove the project (or any alternative project design),
7 Friends requests preparation and circulation of a new or revised draft EIR, adequately
8 describing the project and the physical conditions in the Whittier Narrows Natural Area
9 and larger biogeographical area adversely affected by the project, adequately disclosing
10 and evaluating all environmental impacts of the project, and reviewing a reasonable range
11 of meaningful, potentially feasible alternatives with substantial advantages over the
12 project as proposed, and otherwise fully complying with the information disclosure
13 provisions of CEQA and the Guidelines. Friends further requests that in any
14 administrative proceedings on remand, the Authority refrain from improperly deferring
15 environmental review of any reasonably foreseeable project-related activity, such as the
16 realignment of Lario Creek closer to the discovery center building (which involves a
17 significant alteration of a channel serving both for moving water from the San Gabriel
18 River to the Rio Hondo spreading grounds), or mitigation measures without articulating
19 specific mitigation performance standards; fully describe mitigation measures and their
20 own environmental effects; and ensure their full enforcement, funding, and actual and
21 timely implementation.

22
23 **II. PARTIES TO THIS PROCEEDING.**

24 7. Petitioner/plaintiff Friends of the Whittier Narrows Natural Area is a
25 California nonprofit public benefit corporation, committed to the protection of the
26 Whittier Narrows Natural Area. Friends is organized for the purposes, among other
27 things: (a) to promote the preservation of the Whittier Narrows Natural Area and
28 neighboring lands as open space corridors, and (b) to promote restoration and educational

1 uses in the open space corridors that are compatible with the conservation of plant and
2 animal habitat and migration, historical resources, water quality, and public health and
3 safety. To those ends, throughout project review, Friends has requested adequate
4 environmental information disclosure for the project and scientific integrity in such
5 information disclosure, so that the Authority's governing board, other public decision
6 making bodies or agencies relying on the final EIR for future action on the project, and
7 the public are fully informed about the project's adverse impacts on the significant
8 ecological, hydrographic, historic and recreational resources of its sensitive
9 environmental setting, and may have a meaningful choice of environmentally superior
10 and feasible alternatives, better correlated to the project's educational and recreational
11 objectives than the project as approved.

12 8. Friends maintains this action on its own behalf and on behalf of its
13 members and supporters, and all other citizens similarly situated. Many of Friends'
14 members and supporters are County residents, County taxpayers, and visitors to the
15 Whittier Narrows Natural Area and its existing Nature Center to study this area's
16 ecological resources and enjoy its recreational benefits. This action has been duly
17 approved by Friends' board of directors.

18 9. Friends, its members, its supporters, and the members of the public
19 benefiting from this citizen enforcement action have a substantial, beneficial interest in
20 the relief they seek, and have a present interest, as citizens, in the enforcement of the
21 Authority's public duties under CEQA and the Guidelines, and under all other federal,
22 state and local laws applicable to project development and uses, including County general
23 plan policies and regulations for County-designated SEAs.

24 10. Respondent/defendant San Gabriel River Discovery Center
25 Authority is a joint powers authority established in January 2006, under the Joint
26 Exercise of Powers Act (Gov. Code, § 6500 et seq.), following execution by the named
27 real parties in interest/defendants in this action of a joint exercise of powers agreement
28 dated December 6, 2005 (Agreement). The Authority was created for the purpose of

1 developing and operating the project at issue in this action. The Authority exists as a
2 public agency separate and apart from its four members. By the Agreement, it has the
3 capacity to sue and be sued. It exercises principal responsibility for approving the
4 project, and, therefore, serves as the “lead agency” within the meaning of Public
5 Resources Code section 21067 and Guidelines section 15367, for purposes of
6 environmental review of the project. The Authority has a legally enforceable duty to
7 strictly comply with CEQA and the Guidelines, as well as all other federal, state and local
8 laws applicable to project development and uses, including general plan policies and
9 regulations of the County of Los Angeles. Because the Authority is also the developer of
10 the project, it is the recipient of the approvals challenged in this action.

11 11. Real party in interest/defendant County of Los Angeles is a political
12 subdivision of the State of California and body corporate and politic with quasi-
13 legislative and adjudicatory powers over land uses in its unincorporated territory. (Gov.
14 Code, §§ 23000 et seq.) The County is a party to the Agreement which created the
15 Authority. Through its Department of Parks and Recreation, the County would lease and
16 sublease the approximately 11.21-acre project site to the Authority, as part of the
17 proposed project. The project site is comprised of a 0.63-acre parcel owned by the
18 County and currently occupied by the Whittier Narrows Nature Center, which would be
19 demolished to make room for the 14,000-square foot discovery center building. The
20 remaining 10.58 acres of the project site are leased by the County from the U.S. Army
21 Corps of Engineers (USACE). The County currently operates the entire project site and
22 the Whittier Narrows Natural Area for open space and visitor-serving recreational
23 purposes. To date (February 19, 2010), the lease and the sublease have neither been
24 approved by, nor executed on behalf of, the County board of supervisors.

25 12. Real party in interest/defendant San Gabriel and Lower Los Angeles
26 Rivers and Mountains Conservancy (Conservancy) is a state agency organized within the
27 California Resources Agency, and a party to the Agreement which created the Authority.
28 The Conservancy was created by the California Legislature in 1999, when it adopted the

1 San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy Act. (Pub.
2 Resources Code, § 32600 et seq.) The purposes of the Conservancy are:

3 “(a) To acquire and manage public lands within the Lower Los Angeles
4 River and San Gabriel River watersheds, and to provide open-space, low-impact
5 recreational and educational uses, water conservation, watershed improvement, wildlife
6 and habitat restoration and protection, and watershed improvement within the
7 [Conservancy’s] territory [i.e., those portions of Los Angeles County and Orange County
8 located within the San Gabriel River and its tributaries, the lower Los Angeles River and
9 its tributaries, and the San Gabriel Mountains].

10 “(b) To preserve the San Gabriel River and the Lower Los Angeles River consistent with
11 existing and adopted river and flood control projects for the protection of life and
12 property.

13 “(c) To acquire open-space lands within the territory of the conservancy.

14 “(d) To provide for the public’s enjoyment and enhancement of recreational and
15 educational experiences on public lands in the San Gabriel Watershed and Lower Los
16 Angeles River, and the San Gabriel Mountains in a manner consistent with the protection
17 of lands and resources in those watersheds.”

18 (Pub. Resources Code, § 32602.) The Conservancy is subject to strict limitations on its
19 authority and actions it may take. (See Pub. Resources Code, §§ 32620-32621.)

20 13. Real party in interest/defendant Central Basin Municipal Water
21 District is a California municipal water district organized under Water Code sections
22 71000 et seq., and party to the Agreement which created the Authority. This real party in
23 interest wholesales imported water purchased from the Metropolitan Water District of
24 Southern California to cities, mutual water companies, investor-owned utilities and
25 private companies in southeast Los Angeles County. It also supplies water used for
26 groundwater replenishment and recycled water for municipal, commercial and industrial
27 use.

28 14. Real party in interest/defendant Upper San Gabriel Valley Municipal

1 Water District is a California municipal water district organized under Water Code
2 sections 71000 et seq., and party to the Agreement which created the Authority. This real
3 party in interest provides wholesale water service to water suppliers in the upper San
4 Gabriel Valley. Its mission is to supply imported water for groundwater recharge and
5 domestic consumption within its boundaries.

6 15. Friends is currently unaware of the true names and capacities of
7 Does 1 through 100, inclusive, and therefore sue those parties by fictitious names.
8 Does 1 through 50, inclusive, are agents of the Authority, or are directors, officers or
9 other legal or de facto agents of real parties in interest/defendants, and are responsible in
10 some manner for the conduct described in this pleading. Does 15 through 100, inclusive,
11 are persons or entities who may have a legally cognizable interest in the project.
12 Petitioners will seek leave to amend this pleading to state the true names and capacities of
13 the fictitiously named parties if necessary and when the same have been ascertained.
14

15 **III. JURISDICTION AND VENUE.**

16 16. This Court has original jurisdiction over this action pursuant to
17 California Constitution article VI, section 10, Public Resources Code sections 21167.1,
18 21168.5 and 21168.9, and Code of Civil Procedure section 1094.5.

19 17. Venue is proper in this Court under Code of Civil Procedure section
20 395, subdivision (a), which, as a general rule, provides that “the superior court in the
21 county where the defendants or some of them reside at the commencement of the action
22 is the proper court for the trial of the action.” Venue further is appropriate in this Court
23 because many adverse impacts on the environment alleged herein occur in the County.
24 (See *People v. Selby Smelting & Lead Co.* (1912) 163 Cal. 84, 88-91 [nuisance action to
25 restrain air pollution originating with processes of smelting ores was properly
26 commenced in the county in which the public health and the environment was adversely
27 affected].)
28

1 **IV. FACTUAL AND PROCEDURAL BACKGROUND.**

2 18. The project essentially consists of the demolition of the existing
3 Whittier Narrows Nature Center (sometimes hereafter “WNNC”), now operated by the
4 County’s Department of Parks and Recreation, and replacement of the WNNC with a
5 substantially larger, 14,000 square foot, so-called “discovery center” building. The
6 project also proposes a 116-space parking lot, a 1,000 square foot maintenance building,
7 a 700 square foot “open air classroom,” a 29,158 square foot constructed riparian/wetland
8 area, a 1,000 square foot “covered outdoor classroom,” and connecting pathways
9 between those structures. Construction would occur on five acres (construction impact
10 area) within the 11.21 acre project site. The project site consists of a 0.63 acre parcel
11 owned by the County. The remainder of the project site and the surrounding natural area
12 is owned by USACE. According to the Authority, the project would be open, free to the
13 public, from 8:00 a.m. to 10:00 p.m., seven days per week; also, it would be opened to
14 groups focused on cultural and natural resources and watershed conservation for
15 meetings outside hours of operation, if those groups pay “operational fee[s]” for the time
16 they use the site. (Authority staff report for January 20, 2010 meeting, at 9.)

17 19. The project site is bounded by Durfee Avenue, South El Monte High
18 School, and a restaurant and miniature golf course to the north. County Assessor offices,
19 a church, a hotel, restaurants and Peck Road are located to the east. Commercial, light
20 industrial, and multi-family residences are located to the west, with the Whittier Narrows
21 Recreation Area (Recreation Area) and Whittier Narrows Natural Area located further
22 west. Lario Creek (also known as Zone 1 Ditch channel) and the San Gabriel River
23 parallel the site along the southern boundary of the Natural Area, approximately 0.25
24 miles south of the project site. The developed land uses west, north and east of the
25 project site are located within the incorporated territory of the City of South El Monte.
26 The site is located approximately one mile west of SR 60, and less than a mile from I-
27 605. As configured, access to the project depends on the development of a new road.
28 Access would be provided from the north, via Durfee Avenue. This new vehicular

1 entrance road, located in approximately the middle of the site's northern boundary on
2 Durfee Avenue, would run in a southerly direction, into the undeveloped open space and
3 current bird habitat earmarked for the 116-space parking lot.

4 20. The Authority plans to construct the project in a single phase. The
5 Authority expects construction activities to occur "between October 2011 and April
6 2013." (Draft EIR, p. 5-21 [noting that the 14,000 square foot construction schedule
7 would be similar to that for the project as originally proposed].) However, although not
8 described in the EIR for the project, Belinda Faustinos, Executive Officer of the
9 Authority, indicated at a March 3, 2009 meeting of real party in interest Upper San
10 Gabriel River Municipal Water District's board of directors that construction may have to
11 occur in phases if funding is not available to complete the full project at one time.

12 21. Most of the project site (the 10.58 acres of USACE-owned land), as
13 noted, lies within the Whittier Narrows Natural Area. The Natural Area itself forms the
14 southern portion of the 1,400-acre larger recreation area, and includes more than 200
15 acres of natural woodland. The Natural Area is intended to be less intensively used than
16 the Recreation Area and is supposed to be "maintained for its habitat value, passive
17 recreation, habitat restoration potential, and educational uses." (Final EIR, Master
18 Response 7, p. 3-10.) A portion of the project site is designated "open space" in the Los
19 Angeles County General Plan Whittier Narrows & South El Monte Land Use Plan.
20 Approximately seven acres are located within the Whittier Narrows Dam SEA (County
21 SEA No. 42), as delineated in the Los Angeles County General Plan. With the exception
22 of the discovery center building, most of the construction impact area, including the
23 proposed parking lot is within the SEA.

24 22. In response to a request by the County board of supervisors to
25 prepare a master plan for the San Gabriel River Corridor, the Los Angeles County
26 Department of Public Works prepared the San Gabriel River Corridor Master Plan
27 (Master Plan). The board certified the Master Plan on June 16, 2006. The Master Plan is
28 an overall conceptual plan that describes general guidelines for the development of

1 specific projects in the planning area, including a discovery center project.

2 23. The project site, including the proposed 116-space parking lot area,
3 provides habitat for numerous plant and wildlife species, several of which are
4 endangered, threatened, or otherwise species of special concern under federal or
5 California law. Bird species using the site are especially diverse. They include
6 hummingbirds, raptors, warblers, woodpeckers, wrens, bluebirds and robins. Species of
7 special concern include the Least Bell's Vireo, the Yellow Warbler, the Yellow-Breasted
8 Chat, the White-tailed Kite and and the Yellow-Billed Cuckoo. Additionally, the site
9 provides habitat for more than 100 insect species and serves as a migratory corridor for
10 cougars, bobcats, deer, raccoons and other land mammals. Finally, reptiles including the
11 rare Southwestern Pond Turtle, are found on the project site, particularly in the location
12 of the proposed parking lot.

13 24. The Authority prepared a notice of preparation (NOP) and initial
14 study for the project in 2006. The NOP was posted in the Los Angeles County Clerk's
15 office and distributed to the California Office of Planning and Research, other public
16 agencies and other interested parties on or about August 31, 2006. The Authority held
17 but one public scoping meeting for the project, at South El Monte High School, on
18 September 27, 2006.

19 25. The Authority circulated the draft EIR for the project in June 2009,
20 with the 60-day comment period beginning on June 5, 2009. The Authority held public
21 meetings on June 24, 2009 and July 18, 2009 on the draft EIR. At these hearings and in
22 written comments, representatives of Friends, as well as almost all citizens appearing and
23 providing comments, expressed serious objections to the project and its adverse
24 environmental effects, and failures of the EIR to fully disclose those effects or offer
25 scientifically defensible analysis thereof. Many East Los Angelinos questioned the need
26 for the so-called discovery center and expressed satisfaction with the public services
27 provided by the WNNC. Others questioned nondisclosure of a key project objective --
28 the establishment of a public meeting place for the two water districts that were

1 environment, including, but not limited to, measures to reduce the wasteful, inefficient,
2 and unnecessary consumption of energy.

3 “(4) Alternatives to the proposed project.

4 “(5) The growth-inducing impacts of the proposed project.”

5 (Pub. Resources Code, § 21100, subd. (b).) Guidelines sections 15122 through 15131
6 implement these statutory provisions and specify detailed, mandatory content
7 requirements for draft EIRs. (See Guidelines, § 15120, subs. (a), (c).)

8 30. CEQA also requires that EIRs “contain a statement briefly indicating
9 the reasons for determining that various effects on the environment of a project are not
10 significant and consequently have not been discussed in detail in the environmental
11 impact report.” (Pub. Resources Code, § 21100, subd. (c).) EIRs must discuss
12 substantial, as well as potentially substantial, adverse changes in physical conditions
13 existing within the area which will be affected by the proposed project, including land,
14 air, water, minerals, flora, fauna, noise, and objects of historic or aesthetic significance.
15 (See *id.*, subd. (d).)

16 31. The Guidelines include a provision requiring that an EIR “discuss
17 any inconsistencies between the proposed project and applicable general plans and
18 regional plans.” (Guidelines, § 15125, subd. (d).) Whatever is required to be contained
19 in an EIR must be disclosed in the report itself, and additional written or oral reports not
20 circulated for public review and comment cannot supply what is lacking. (See *Laurel*
21 *Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376,
22 405; *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1052;
23 *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.)

24 32. In their final form, EIRs must incorporate the lead agency’s written
25 responses to public comments. These responses must explain the disposition of
26 significant environmental issues raised (e.g., revisions to the project to mitigate
27 anticipated impacts), and comply with the substantive information disclosure standards
28 set forth in Guidelines section 15088. (See Pub. Resources Code, § 21091, subd. (d);

1 Guidelines, §§ 15088, 15126.4, subd. (a)(1)(A), 15132.)

2 33. While CEQA does not require that EIRs be perfect, they may not
3 preclude relevant, adequate and complete environmental information from being
4 presented to the public. (Pub. Resources Code, § 21005, subd. (a); Guidelines, § 15151.)
5 By Guidelines section 15147, such information “shall include summarized technical data,
6 maps, plot plans, diagrams, and similar relevant information sufficient to permit *full*
7 *assessment* of significant environmental impacts by reviewing agencies and members of
8 the public.” (Emphasis added.)

9 34. The EIR for the project falls substantially short of the standards set
10 forth above. The EIR is inadequate, incomplete, evasive, and irresponsive to public
11 comments, and fails to meet CEQA’s and the Guidelines’ content requirements and
12 standards of adequacy, completeness and good faith effort at full disclosure, all as shown
13 in detailed comments provided to the Authority by Friends, citizens Edward Barajas,
14 Dinah Bear and Mary O’Brien, and other public commentators who objected to the
15 project or the EIR’s adequacy. Specifically, the EIR fails to adequately describe the
16 project and relevant physical baseline conditions altered and impacted by the project
17 (directly, indirectly or cumulatively), and fails to adequately evaluate and mitigate the
18 project’s direct, indirect or cumulative impacts on:

19 (a) Historic and cultural resources, including, the Mexican rancho of F.P.F.
20 Temple and his wife Antonia Margarita Workman de Temple, prominent figures of local,
21 regional and statewide significance. An example of a significant on-site historic
22 resource, unaccounted for in the EIR, are the remnants of “F.P.F. Temple’s Water Ditch”
23 and irrigated fields which, based on historical mapping, entered the Natural Area, crossed
24 under the proposed parking lot and entrance road to the project, and provided water to
25 Temple’s orchard and agricultural fields on the project site. The technology Temple
26 developed in creating Temple’s Water Ditch was later exported throughout California,
27 from the irrigation ditches for Pio Pico, the last Mexican Governor of Alta California, to
28 the silver mines of northern California. Also, the EIR fails to disclose that mature walnut

1 trees that would be lost due to project development are the descendants or likely
2 descendants of the walnut trees cultivated by F.P.F. Temple.

3 (b) Biological resources, including special status wildlife and plant species
4 discussed in various public comments on the project, occurring both on-site and in the
5 site's vicinity. These species include the Least Bell's Vireo (endangered), the Yellow-
6 billed Cuckoo (endangered), the Yellow Warbler (species of special concern), the
7 Yellow-breasted Chat (species of special concern), the White-tailed Kite (species of
8 special concern), the Southwestern Pond Turtle (species of special concern) and,
9 possibly, subsurface blind reptiles. Wildlife surveys for the EIR and the EIR are flawed
10 and incomplete as the surveys are outdated and fail to account for ecosystem conditions
11 in flux as climate change affects the Whittier Narrows Natural Area and the surveys
12 excluded from investigation rare species that occur on the project site (e.g., Yellow-
13 breasted Chat, White-tailed Kite) or have the potential to occur thereon or in the adjacent
14 Natural Area; the number of surveys targeting species not excluded from baseline
15 investigation did not follow proper scientific protocol, e.g., were insufficient in number
16 or conducted over too short a time span to produce conclusions generally accepted in the
17 relevant scientific community of biological experts; and conclusions that species do not
18 or are unlikely to occur on-site or in the site's vicinity were later contradicted by recorded
19 observations of the species alleged to be absent, to be likely absent, or few in number
20 (e.g., Least Bell's Vireo). Likewise, plant surveys were not conducted during the spring
21 and summer months, times when many plants likely to occur on the project site are in
22 bloom. The EIR also gave short shrift to evaluation and mitigation of the indirect,
23 cumulative and irreversible impacts of increased human visitation and other urban edge
24 effects on the sensitive biological resources both on and adjacent to the project site,
25 including the portion of the Natural Area near the Rio Hondo. These shortfalls and
26 failure of the EIR to offer useful quantitative estimates and qualitative discussion of the
27 manner in which construction and all relevant aspects of operation of the project directly
28 and cumulatively harms wildlife and plant species shown to depend on the site or its

1 vicinity, have resulted in understatement of reasonably foreseeable impacts on fauna and
2 SEA habitat values.

3 (c) Biological corridor and major habitat connectivity values of the
4 Whittier Narrows Natural Area, which become increasingly critical as barriers to
5 migration impair connectivity. The expansion of development on the project site and
6 intensification of its uses and Natural Area beyond likely will negatively impact the
7 movement of mammals known to use the Whittier Narrows Natural Area for migration.
8 The Authority should have offered a realistic EIR assessment of the site's uses as a
9 wildlife habitat linkage based on current and reasonably foreseeable future conditions,
10 including reasonably foreseeable project activities. It should have assessed the continued
11 ability of cougars, bobcats and deer to migrate between the Montebello and Puente-Chino
12 Hills, and thus move in and out of core state parkland and national forest habitat areas
13 beyond, and, consistent with the purposes of the Conservancy (one of the Authority's
14 four parent entities), discussed and proposed alternatives or project changes helping to
15 maintain and enhance the ability of those mammals to maintain genetic variation and
16 avoid risk of insulation, disease and extinction.

17 (d) Geology and soils, including impacts caused by reasonably foreseeable,
18 flood hazard and earthquake events. The EIR fails to show that it is safe to construct the
19 project in the San Gabriel River's flood plain, in liquefiable soils. While the final EIR
20 (contrary to the draft EIR) for the first time recognizes that the project site lies in a
21 liquefaction zone, it dismisses the impacts associated with liquefaction and basin depth
22 amplification in the event of an earthquake, relying on the generic conclusion that
23 compliance with building codes will mitigate all geologic and public safety impacts to a
24 level of insignificance. However, without disclosure of the proposed development's
25 foundation, structural and architectural design, without explanation of significance
26 thresholds used given the geology and soils baseline, and without explanation of the basis
27 for the conclusion that compliance with building code requirements alone is supposedly
28 enough to reduce geotechnical and seismic impacts to a level of insignificance, decision

1 makers and the public cannot intelligently and independently learn of or consider the
2 project's public safety impacts. In addition, CEQA, as a matter of law, precludes EIR
3 reliance on mitigation measures without first evaluating the impacts those measures are
4 intended to lessen.

5 (e) Aesthetic resources of the project site. The EIR compares artist's
6 renderings of the erstwhile 18,230 square foot proposed discovery center building and
7 related structures to but a few selected views affected by the project. Based on these
8 renderings, the EIR concludes that the project will have no significant effect on aesthetic
9 resources. However, Friends is informed and believes that there is no evidence that the
10 artist's renderings are based on any actual architectural plans. In any event, no such
11 plans were approved and none are disclosed in the EIR. Moreover, the Authority
12 approved a 14,000 square foot discovery center building alternative which was not
13 depicted in the EIR. In short, no architectural design or plans for the proposed or the
14 approved project were disclosed in the EIR or approved by the Authority. As such, the
15 final EIR cannot intelligently determine the approved project's impacts on aesthetic
16 resources.

17 (f) Human health effects related to the adverse air quality impacts caused
18 by the project.

19 (g) Hydrographic resources, including Lario Creek and the San Gabriel
20 River, and water supply, especially in light of severe, reasonably foreseeable future
21 reductions of water exports from the Sacramento-San Joaquin Delta through the State
22 Water Project, due to significant, climate change-induced increases in the frequency and
23 severity of future droughts, as well as federally-mandated stream flow protections for the
24 threatened delta smelt.

25 35. Contrary to Guidelines section 15125, subdivisions (d) and (e), the
26 EIR fails to discuss project inconsistencies with (a) the USACE Whittier Narrows Master
27 Plan and Environmental Assessment; and (b) the County SEA policies and regulations,
28 considered by the County's Significant Ecological Area Technical Advisory Committee

1 (known as “SEATAC”).

2 36. The EIR offers an inadequate alternatives review, all as shown in
3 detailed public comments, incorporated herein by reference as though fully set forth. The
4 EIR failed to consider in-depth a reasonable range of alternatives that both have
5 substantial environmental advantages over the project, and are feasible, as required by
6 *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553. In-depth EIR
7 alternatives review should have included at least one feasible alternative location and on-
8 site alternatives that require less indoor and more outdoor nature interpretation, or no
9 indoor, stationary interpretive center. Nor does the EIR discussion of alternatives comply
10 with Guidelines section 15126.6, subdivision (d), which requires meaningful evaluation,
11 analysis, and comparison of the alternatives discussed with the project, including
12 quantified assumptions based on fact. (*Kings County Farm Bureau v. City of Hanford*
13 (1990) 221 Cal.App.3d 692, 728-730, 733-735.)

14 37. The Authority’s failure to prepare and certify a legally adequate final
15 EIR constitutes a prejudicial abuse of discretion under CEQA and the Guidelines.
16 Accordingly, a writ of administrative mandamus relief as requested in the prayer to this
17 pleading is indispensable.

18
19 **SECOND CAUSE OF ACTION**
20 **INADEQUATE, VAGUE, DEFERRED, UNFUNDED AND UNENFORCEABLE**
21 **MITIGATION AND FAILURE TO TAKE ACTION SUPPORTED BY LEGALLY**
22 **ADEQAUTE FINDINGS, AND SUPPORTED BY SUBSTANTIAL EVIDENCE IN**
23 **THE LIGHT OF THE WHOLE RECORD**
24 **By Petitioners Against Respondents and Real Parties in Interest**

25 38. Friends incorporates by reference paragraphs 1 through 37 of this
26 pleading, as though fully set forth.

27 39. The Authority had a duty to properly determine all potential
28 significant impacts of the project, including indirect, secondary and cumulative impacts;
to refrain from deferring the formulation of mitigation measures to the future without
articulating specific performance standards; and to adopt legally sufficient findings of

1 approval and a legally sufficient statement of overriding considerations, supported by
2 substantial evidence in the light of the whole record. (See Pub. Resources Code,
3 §§ 21002, 21002.1, 21081, 21081.5, 21081.6; Guidelines, §§ 15089, 15090, 15091,
4 15092, 15093, 15097, 15126.4, subd. (a)(1).) CEQA specifically provides that when
5 making the findings required by Public Resources Code section 21081, subdivision (a)
6 (1), to the effect that changes have been required in or incorporated into the project,
7 mitigating or avoiding each significant effect identified in the final EIR, “[t]he public
8 agency shall adopt a reporting or monitoring program for the changes made to the project
9 or conditions of project approval, adopted in order to mitigate or avoid significant effects
10 on the environment.” (Pub. Resources Code, § 21081.6, subd. (a)(1).) “The reporting or
11 monitoring program shall be designed to ensure compliance during project
12 implementation.” (*Id.*) Furthermore, “[a] public agency shall provide that measures to
13 mitigate or avoid significant effects on the environment are fully enforceable through
14 permit conditions, agreements, or other measures.” (*Id.*, subd. (b); see Guidelines, §
15 15126.4, subd. (a) (2).) Lastly, a lead agency may adopt a statement of overriding
16 considerations approving a project notwithstanding significant environmental effects
17 remaining after mitigation only if (a) the significant effects are shown to be unavoidable;
18 (b) specific economic, legal, social, technological, or other benefits of the project
19 outweigh its unavoidable adverse environmental effects; and (c) substantial evidence in
20 the record supports the specific overriding benefits cited by the agency. (See Guidelines,
21 §§ 15092, 15093.)

22 40. The Authority prejudicially abused its discretion under CEQA and
23 the Guidelines by:

24 (a) Improperly deferring mitigation measures for project impacts, including
25 mitigation measures for impacts related to the removal of several mature trees and other
26 vegetation on the project site, and mitigation measures for urban stormwater runoff
27 impacts during the construction phase, without specifying performance standards for the
28 deferred mitigation measures, disclosing or accounting for their efficacy, or even

1 completely describing them.

2 (b) Failing to discuss mitigation measures' own environmental effects in
3 addition to those of the project as proposed, including the environmental effects of the
4 use of pesticides and herbicides (see Mitigation Measure HYDRO-A) and the replanting
5 of replacement walnut trees (saplings) in areas currently used for foraging.

6 (c) Failing to include mitigation measures to reduce the project's impacts
7 on various special status species known to exist on the project site and in the adjacent
8 Whittier Narrows Natural Area and SEA, including failing to adequately compensate for
9 habitat loss through restoration and failing to provide mitigation for loss of tree habitat
10 until trees are replanted and have grown back to levels of maturity equal or similar to that
11 of the trees that are removed (see Mitigation Measure BIO-C).

12 (d) Failing to ensure that all adopted mitigation measures are fully
13 enforceable and funded, and hence will actually be implemented and complied with
14 during project implementation, and will be in place by the time the impacts will be
15 generated.

16 (e) Adopting overriding considerations unsupported by substantial
17 evidence, that are largely duplicative, and, as a matter of law, cannot sustain overriding
18 the project's residual significant impacts on the environment. The project is not needed
19 to "bring awareness to the value of retaining open space and habitat within the heavily
20 urbanized area." (Overriding Consideration 8.2.3.) Indeed, no evidence has been
21 provided that the East Los Angeles community is unaware of the value of retaining open
22 space and habitat. The historic Whittier Narrows Nature Center, its docents, and the
23 larger, heavily visited Natural Area already provide awareness to the value of retaining
24 open space and habitat within the heavily urbanized area. Also, these existing
25 recreational resources are not any less accessible than the proposed project. (See
26 Overriding Consideration 8.2.5.)

27 41. The CEQA violations pled in this cause of action constitute a
28 prejudicial abuse of discretion under CEQA and the Guidelines. Accordingly, a writ of

1 administrative mandamus as requested in the prayer to this pleading is indispensable.

2 THIRD CAUSE OF ACTION
3 VIOLATION OF THE SEISMIC HAZARDS MAPPING ACT
4 By Petitioners Against Respondents and Real Parties in Interest

5 42. Friends incorporates by reference paragraphs 1 through 41 of this
6 pleading, as though fully set forth.

7 43. Pursuant to the Seismic Hazards Mapping Act (Pub. Resources
8 Code, § 2690 et seq.), local agencies must require developers to submit a site and project
9 specific geotechnical report defining and delineating any seismic hazard, prior to the
10 approval of a project located in a seismic hazard zone, and they must approve such a
11 report. Such a report may only be waived if, based on information resulting from studies
12 conducted on sites in the immediate vicinity of the project and of similar soil composition
13 to the project site, a finding can be and is made that no undue hazard of a seismic kind
14 exists. The Seismic Hazards Mapping Act defines a project as including a structure for
15 human occupancy.

16 44. The challenged project includes several structures for human
17 occupancy, and its site is located in a seismic hazard zone.

18 45. Contrary to the Seismic Hazards Mapping Act, no geotechnical
19 report was submitted for the Authority's review and approval before the Authority
20 approved the project on January 20, 2010, and the Authority has approved no waiver
21 based on the requisite finding and information that no undue hazard of a seismic kind
22 exists in the seismic hazard zone the project is sited in.

23 46. Thus, the Authority's January 20, 2010 approval of the project
24 constitutes a prejudicial abuse of discretion under the Seismic Hazards Mapping Act, and,
25 by the same token, under CEQA's information disclosure provisions in that the Authority
26 omitted adequate environmental investigation and study of the geotechnical and seismic
27 baseline conditions and hazards associated with the discovery center building.

28 Accordingly, a writ of administrative mandamus as requested in the prayer to this
pleading is indispensable.

1
2 FOURTH CAUSE OF ACTION
3 INJUNCTIVE RELIEF
4 By Petitioners Against Respondents and Real Parties in Interest

5 47. Friends incorporates by reference paragraphs 1 through 46 of this
6 pleading, as though fully set forth.

7 48. As a result of respondents' violations of CEQA, the Guidelines and
8 the Seismic Hazards Mapping Act, preliminary and permanent injunctive relief is
9 necessary pending preparation, public circulation and certification of an adequate EIR,
10 curing the information disclosure inadequacies in the EIR challenged in this case. Such
11 relief is indispensable to prevent significant, irreversible or inadequately mitigated
12 adverse project impacts on historic, cultural, biological, geotechnical, aesthetic and
13 hydrographic resources, as well as on the public health and safety; to avoid prejudice to
14 consideration on remand of as yet unaddressed, meaningful and potentially feasible
15 project alternatives and mitigation measures with substantial advantages over the project
16 proposal or its location; to avoid deferral of mitigation without performance standards,
17 and ensure actual implementation and full, effective enforcement of mitigation measures
18 necessary to lessen the project's adverse impacts; and to prevent further breaches by the
19 Authority of its public duties under CEQA, the Guidelines and the Seismic Hazards
20 Mapping Act, to the detriment of Friends, their members and all citizens similarly
21 situated.

22 **VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES AND INADEQUATE**
23 **REMEDIES AT LAW.**

24 49. Friends has exhausted all available administrative remedies which it
25 was required to exhaust. Friends has objected to the approval of the project, and it as
26 well as other public commentators have submitted detailed comments to the Authority,
27 both in writing and orally at public hearings and in discussions with Authority staff,
28 showing the grounds of noncompliance with CEQA.

1 50. Friends has no plain, speedy and adequate remedy at law. Without
2 the relief prayed for in this pleading, the rights of Friends and all other citizens similarly
3 situated to informed self-government, public accountability and a high-quality
4 environment will be defeated.

5 WHEREFORE, Friends prays for relief as follows:

6 ON THE FIRST THROUGH THIRD CAUSES OF ACTION

7 1. That the Court issue a peremptory writ of mandate commanding the
8 Authority:

9 (a) To set aside and void the decision of its governing board
10 certifying the final EIR and approving the project, including the ground lease and the
11 ground sublease with the County for the development, construction and operation of the
12 project, and the governing board's adoption of project-related findings of fact, a
13 statement of overriding considerations, and mitigation, monitoring and reporting
14 program;

15 (b) To prepare, circulate, review and certify a new or revised
16 EIR, curing the information disclosure inadequacies shown in this action, before taking
17 any further action on the project (or any alternative project design);

18 (c) To take all further specific action as shall be necessary to
19 bring its environmental review, decisions, determinations, findings, mitigation measures
20 and mitigation monitoring and reporting into full compliance with CEQA and the
21 Guidelines, as well as all other federal, state and local laws applicable to project
22 development and uses; and

23 (d) To take such further action as is specifically enjoined upon it
24 by CEQA, the Guidelines, and all other applicable federal, state and local laws, including
25 such action as shall be necessary to ensure meaningful public review, and avoid
26 commitment to any project activity, lease, sublease or other entitlement for use prior to
27 certification of a legally adequate final EIR.

28 2. That the Court order the Authority to suspend all activities pursuant


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out-of-pocket expenses pursuant to Code of Civil Procedure section 1021.5, and award Friends their costs of suit.

2. That the Court grant Friends such other and further relief as the Court may deem proper.

DATED: February 19, 2010

ANGEL LAW
Frank P. Angel
Jeff El-Hajj

By: 
Jeff el-Hajj

Attorney for Friends/Plaintiff
FRIENDS OF THE WHITTIER
NARROWS NATURAL AREA

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VERIFICATION

I, Jack L. Bath, declare:

I am a member of the board of directors and treasurer of petitioner/plaintiff Friends of the Whittier Narrows Natural Area. I have read the foregoing petition for writ of administrative mandamus and complaint for injunctive relief, and know its contents. The facts alleged therein are true to my personal knowledge, except for facts alleged on information and belief. Those facts I verify upon information and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I have executed this verification on February 19, 2010, in the County of Los Angeles, California.



JACK L. BATH, Ph.D.