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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

THE PEOPLE OF THE STATE OF CALIFORNIA, ex rel. ATTORNEY GENERAL EDMUND G. BROWN JR., Petitioner, v. COUNTY OF SAN BERNARDINO, SAN BERNARDINO COUNTY BOARD OF SUPERVISORS Respondents.	Case No.: **PETITION FOR WRIT OF MANDATE** **(California Environmental Quality Act, Pub. Resources Code, §§ 21168, 21168.5; Code of Civ. Proc. §§ 1085, 1094.5)**

INTRODUCTION

1. Petitioner, the People of the State of California, ex rel. Attorney General Edmund G. Brown Jr., ("People"), bring this action challenging the approval by Respondents County of San Bernardino ("San Bernardino County") and its Board of Supervisors ("Board") of the update of its General Plan. On March 13, 2007, the Board approved the General Plan update, and certified the Final Environmental Impact Report ("FEIR") on that update as adequate, in violation of the California Environmental Quality Act ("CEQA"; Pub. Resources Code, § 21000 *et seq* .). Respondents failed to fully evaluate and disclose the reasonably foreseeable effects of the General Plan update on global warming, air quality, and other state resources, failed to consider and adopt appropriate mitigation, and otherwise failed to comply with CEQA in the preparation and certification of the FEIR.

2. The General Plan, as updated, will serve as the template for growth and development in San Bernardino County for the next 25 years. San Bernardino County has the largest land area of any county in the contiguous United States, and is larger than the whole of many East Coast states. It is rapidly developing. The General Plan update adopted by Respondents predicts, and purports to accommodate, a 25% increase in the County's population, from just under two million people to just over two and one-half million, by the year 2030. The large size of the County, coupled with the rates at which its residents drive, guarantee that increased population will bring major increases in driving, and concomitant increases in emissions of air pollutants.

3. The General Plan also includes plans for residential and commercial development without requiring the density, energy efficiency, and alternative energy sources that could limit pollutant emissions, and will allow the replacement of forested and vegetated land that currently sequester carbon with buildings, paving, and hardscape, without requiring offsetting measures, including the planting of trees and vegetation, to counter the global warming effects of development.

4. The California Legislature has found that "[g]lobal warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California." (Health and Safety Code section 38501, subdivision (a).) Among the dangers of global warming recognized by the Legislature are "a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems." (*Id.*) Other serious threats posed to California by global warming include damage to agriculture, wine making, tourism, skiing, recreational and commercial fishing, and forestry. (Health and Safety Code section 38501, subdivision (b).) Taking a leading role in meeting the threat posed by global warming, in 2006 the Legislature enacted, and Governor Schwartzenegger signed into law, Assembly Bill 32 ("AB 32," codified at Health and Safety Code section 38501, *et seq.*), a landmark law that requires the State to 1990 to reduce its levels of greenhouse gas emissions to 1990 levels by 2020, a time well within the 2030 planning horizon of the General Plan update.

5. CEQA requires that a public agency undertaking a project with the potential to harm the environment must prepare an environmental impact report (EIR) that uncovers, analyzes, and fully discloses the reasonably foreseeable effects on the environment of the project, and adopts all feasible measures available to mitigate those effects. Here, despite the enactment of AB 32, the FEIR on the General Plan update does not disclose the effects of the General Plan update on emissions of greenhouse gases, makes no attempt to quantify or even to estimate the current levels of greenhouse gas emissions in the County, makes no attempt to quantify or even to estimate the increases in greenhouse gas emissions that the full execution of the General Plan update will cause, makes no attempt to analyze the effects of those increases on global warming or the greenhouse gas emissions reductions required by AB 32, and neither adopts all feasible mitigation measures (including those proposed to Respondents by the Attorney General

and other commenters on the draft EIR) nor makes findings supported by substantial evidence in the record that such mitigation measures are infeasible, all in violation of CEQA.

6. As the FEIR acknowledges, San Bernardino County already has a critical air pollution problem as to conventional air pollutants, with state air quality standards for ozone having been exceeded on 91 days in 2002, and state air quality standards for fine particulate matter having been exceeded on 82 days. The FEIR projects an increase in driving and air pollutant emissions due to driving over the time period covered by the General Plan update. However, the FEIR does not disclose or analyze the amount of increase in emissions, or the distribution and concentration of the pollutants that this increase will cause. Neither does it disclose or adequately discuss the potential effects on human health in general, and to children's lung capacity, asthma rates, adult rates of heart attack or cardiovascular damage in particular, of these increases in pollutant emissions and concentrations. Also absent from the FEIR is a full discussion of the effect of increased air pollution on crop production, tourism (e.g., at mountain and desert park and recreational areas), or other sectors of the economy that will suffer damage from the increased driving and air pollution that the General Plan update will accommodate. The FEIR also fails either to adopt all feasible mitigation measures, as presented to the County in comments on the DEIR, or a demonstration, based on substantial evidence in the record, that such mitigation is infeasible.

7. This is an action for injunctive relief under CEQA against the Respondents. The People seek a writ of mandate to vacate and set aside Respondents' approval of the certification of the FEIR and adoption of the General Plan update, and a court order to require Respondents to provide environmental review and mitigation in compliance with CEQA prior to any re-adoption of the General Plan update.

PARTIES

8. Attorney General Edmund G. Brown Jr. is the chief law officer of the State of California. He has broad independent powers under the California Constitution and

the California Government Code to participate in all legal matters in which the State is interested, which include protecting California's environment and its natural resources. (Cal. Const., art. V, § 13; Gov. Code, § 12511.) The California Legislature has given the Attorney General a unique role to participate in actions concerning pollution and adverse environmental effects which could affect the public or the natural resources of the State. (Gov. Code, §§ 12600-12612.) Government Code section 12600 specifically provides: "It is in the public interest to provide the people of the State of California through the Attorney General with adequate remedy to protect the natural resources of the State of California from pollution, impairment, or destruction." Petitioner People of State of California, ex rel. Attorney General Edmund G. Brown Jr., files this Petition for Writ of Mandate pursuant to the Attorney General's independent power and duty to protect the natural resources of the State from pollution, impairment, or destruction in furtherance of the public interest. The natural resources contained within San Bernardino County, and the climate of the State of California, are vital to the health and welfare of the People of this State.

9. Respondent County of San Bernardino is duly organized and existing under the Constitution and laws of the State of California, is a "public agency" and is the "lead agency" for adoption and execution of the Project, as those terms are used in CEQA and the CEQA guidelines. The CEQA Guidelines ("Guidelines"), found at California Code of Regulations, title 14, section 15000, *et seq.*, are regulations interpreting and implementing CEQA; they are binding on all state agencies, and are binding on Respondents. (Guidelines, section 15000.)

10. Respondent Board of Supervisors of San Bernardino County ("Board") is the governing body of San Bernardino County and is responsible for approval of land use and development projects within the County's jurisdiction, and particularly for adoption of its General Plan update. They are sued in their official capacity only.

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VENUE AND JURISDICTION

11. Pursuant to Public Resources Code sections 21168 and 21168.5, and Code of Civil Procedure sections 1085 and 1094.5, this Court has jurisdiction to hear this matter.

12. Venue is appropriate in this judicial district as the violations of CEQA occurred in San Bernardino County.

STATEMENT OF FACTS

13. Under California law (Govt. Code sections 65100, *et seq.*), every county is required to have a general plan, which acts as "the constitution for growth" in that county. (*Da Vita v. County of Napa* (1995) 9 Cal.4th 763.) The project at issue is an update by Respondents to the San Bernardino County General Plan. The updated General Plan adopts goals and policies that will direct the future of land use, growth, and transportation in San Bernardino County from the present until 2030.

14. San Bernardino County prepared and made publicly available, on September 1, 2006, its draft EIR for the General Plan update. The final EIR (FEIR) was completed and made publicly available on February 6, 2007. Several public hearings were conducted on the draft EIR and FEIR, and on the project by the San Bernardino County Planning Commission; workshops and public hearings were held by Respondent Board of Supervisors. A public hearing on the FEIR was held on March 13, 2007 by Respondent Board of Supervisors at which the Board approved the General Plan update and certified the FEIR.

15. San Bernardino County contains 20,106 square miles, and had approximately 1,963,000 residents in January of 2005.[1/] By the planning horizon year of 2030, the County expects to have approximately 2, 560,000 residents, an increase of nearly 600,000 persons during the 25-year planning horizon of the General Plan update. The FEIR states that "[n]ew residential, commercial and industrial development will

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1. quickfacts.census.gov/qfd/states/06/06071.html_ .

occur as a result of the update of the 2007 General Plan resulting [*sic*] in the creation of more air pollutants that will impact the existing poor air quality in the county." (FEIR, p. IV-29.)

16. Air pollution is already a critical problem in San Bernardino County, with the state standards ozone and fine particulate matter having been exceeded on 91 days and 82 days, respectively, in 2002. Failure to meet federal air quality standards can subject the State to imposition of federal sanctions, such as cut-off of certain transportation funds, or imposition of extremely stringent pollutant offset requirements for the siting of new stationary sources of air pollution. (42 U.S.C. section 7410(m).) Air pollutants are emitted from stationary sources such as industry, and from the driving of cars, trucks and buses. The draft EIR reports that, currently, San Bernardino residents make about 10.35 trips per day per household, totaling approximately 5.2 million person trips per day, and that over 84 % of these trips taken by car. The Conservation Background Report to the EIR states that residents in the southwestern portion of the County, where 78% of the County's population resides, drive approximately 28 million miles *per day* now, and the FEIR predicts a substantial increase in driving and a concomitant increase in resulting air pollutants during the update's planning horizon. However, the FEIR does not estimate the pollutant concentrations that will result from the expected increase in driving, nor does it estimate the health damage that will be produced by this increase in pollutant emissions.

17. The increases in driving, and in use of energy produced by combustion of fossil fuels in the planned commercial, industrial, and residential development that will occur as a result of adoption of the General Plan update will also increase emissions of greenhouse gases such as carbon dioxide. The FEIR does not provide any information whatever as to the amount of greenhouse gases currently emitted in San Bernardino County, nor of the increase in these emissions that will result from the General Plan update. Despite lengthy and detailed comments on this issue by the Attorney General

and other commenters, the FEIR does not even identify global warming and the emission of greenhouse gases as an issue of public controversy.

18. The FEIR contains some measures that purport to mitigate the impact of increased air pollutant emissions. However, many of the measures specified in the FEIR to mitigate the effects of the General Plan update on air quality should be viewed as components of the project itself, and not mitigation, since they consist of legally binding measures currently required by other agencies' regulations. These include a requirement that the County replace vehicles in its fleets with the cleanest vehicles commercially available that meet performance criteria for their intended use, and a requirement that new buildings use paints and coatings that minimize air pollutant emissions.

19. Other measures purporting to reduce future air pollutant emissions consist of vague, unenforceable policies such as "encourage the reduction of automobile usage through various incentive programs," and measures whose method of execution and funding is not stated and is very uncertain, such as "extend public transit between residential areas and industrial/urban employment centers,"are not supported by commitments to their funding or implementation. While Petitioner recognizes the programmatic nature of the FEIR, many mitigation measures seem to be of a "blue sky" nature, unsupported by any evidence in the record that they can be completed or enforced.

20. The draft EIR proposed no measures that to specifically reduce greenhouse gas emissions. After the County received comments on the draft EIR pointing out its lack of analysis of global warming and lack of mitigation measures to address global warming, the County added a short discussion of global warming to the FEIR. However, the FEIR contains no inventory of the current, baseline greenhouse gas emissions in the County, no estimate of the increase in greenhouse gas emissions that will result from the General Plan update, and no analysis of the effects of these increases on the reductions in greenhouse gas emissions mandated by AB 32.

21. Petitioner Attorney General submitted lengthy written comments on the inadequacy of the draft EIR, pointing out its failure to address global warming in any way, and its failure to make adequate disclosure of the effects on air quality and public health of the General Plan update, and to adopt all feasible mitigation measures to reduce emissions of conventional air pollutants, diesel particulate matter, and greenhouse gases. All of these comments were made prior to the close of the comment period on the draft EIR, and are part of the administrative record connected with the approval of the General Plan.

22. On or about February 6, 2007, San Bernardino County released the FEIR, consisting of the draft EIR, the comments on the draft, and the responses to those comments.

23. At a public hearing on March 13, 2007, Respondent Board of Supervisors held a public hearing on the project and FEIR considered the project and the FEIR, received public comments, and by resolution took final action to approve the General Plan update, to adopt Findings and a Statement of Overriding Considerations, and to certify the FEIR as adequate under CEQA.

24. On March 14, 2007, Respondent County filed a Notice of Determination that Respondent Board of Supervisors had certified the FEIR as adequate under CEQA.

STATUTORY AND REGULATORY REQUIREMENTS

25. CEQA requires the preparation of an EIR in order to identify the significant effects on the environment of a project, so that measures to mitigate or avoid those effects, or alternatives that avoid those effects, can be devised. (Pub. Resources Code, §§ 21002.1(a), 21060.) Compliance with the procedural requirements of CEQA sets the stage for development of mitigation measures and alternatives. Without a proper procedural foundation, a local agency cannot comply with CEQA's mandate that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. (Pub. Resources Code, § 21002.)

26. CEQA's fundamental goals are to foster informed decision making and to fully inform the public about the project and its impacts. (Cal. Code Regs., title 14, § 15003.)

27. An environmental impact report must provide public agencies and the public in general with detailed information about the effect that a project is likely to have on the environment, to list ways in which the significant effects of a project might be minimized, and to indicate alternatives to such a project. (Pub. Resources Code, § 21061.) California Code of Regulations, title 14, section 15126.2, requires that the FEIR identify the significant environmental impacts of the project, including direct and indirect impacts. California Code of Regulations, title 14, section 15126.4, requires that the FEIR describe all feasible measures that can minimize significant adverse impacts of the project. CEQA does not allow an agency to defer analysis of impacts and mitigation measures to another agency which may subsequently approve an aspect of the project. (Cal. Code Regs., title 14, § 15126.4, subd. (a)(1)(B).)

CAUSE OF ACTION FOR FAILURE TO COMPLY WITH CEQA AND FOR PREJUDICIAL ABUSE OF DISCRETION

28. The allegations in paragraphs 1 through 27 are realleged and incorporated by reference herein as though set forth in full.

29. Respondents' actions in certifying the FEIR as fully complying with CEQA constituted a prejudicial abuse of discretion, in that Respondents did not proceed in the manner required by CEQA, and substantial evidence does not support their Findings, as set forth below.

30. The FEIR fails to adequately analyze the reasonably foreseeable adverse effects of the General Plan update on air quality, in that the increase in emissions of diesel particulate exhaust reasonably expected to result from implementation of the General Plan update is not adequately disclosed, the actual increases in ambient concentrations of ozone, coarse and fine particulate matter, and diesel particulate matter reasonably expected to result from implementation of the General Plan update are not

adequately disclosed, and the public health effects expected from exposure to these increased pollutant emissions are not adequately disclosed. The FEIR fails to adequately analyze the actual effects of air pollutant emissions that the growth planned for and enabled by the General Plan update, and from the increased driving, construction, and operational emissions that will come from that growth, on local and regional air quality, or on regional efforts to meet federal air quality standards required to be met under applicable federal law. Instead of disclosure and analysis regarding whether expected air emissions from the projects will result in significant impacts on air quality and human health, the FEIR improperly substitutes a conclusory finding of significance.

31. The FEIR fails to adequately analyze the reasonably foreseeable adverse effects of the General Plan update on global warming, and on the implementation of AB 32, in that the increase in emissions of greenhouse gases reasonably expected to result from implementation of the General Plan update is not adequately disclosed, and no comparison is made between the increases in greenhouse gas emissions that are reasonably expected to result from implementation of the General Plan update and the reductions in greenhouse gas emissions mandated by AB 32.

32. The FEIR fails to identify and adopt all feasible mitigation measures, including those suggested by the Attorney General and other commenters on the draft EIR and FEIR, to minimize the adverse effects on global warming, implementation of AB 32, and air quality that will result from the General Plan update.

33. The FEIR fails to respond adequately to comments by the Attorney General and others on air quality and greenhouse gas emissions/global warming. In particular, the responses failed adequately to address the statutory mandate of AB 32, Health and Safety Code section 38501, *et seq.*

34. Respondents abused their discretion and failed to act in the manner prescribed by law in that the Findings adopted by Respondent Board of Supervisors do not address the effects of the General Plan on greenhouse gas emissions or global warming, including cumulative effects on greenhouse gas emissions and global warming,

and neither adopt all feasible mitigation measures for damage, including cumulative damage, to air quality or to greenhouse gas emissions and global warming, nor make findings supported by substantial evidence in the record that such mitigation measures are not feasible.

35. Respondents abused their discretion and failed to act in the manner prescribed by law in that the Statement of Overriding Considerations does not comply with CEQA's mandate that agencies not approve projects that will have significant adverse effects on the environment unless all feasible mitigation measures are incorporated in the project and the agency makes well supported findings that overriding considerations outbalance the environmental harm a project will do. Here, Respondents did not acknowledge all adverse environmental harms the General Plan update will do, and therefore could not and did not perform a legally adequate balancing of the benefits of the General Plan update against its adverse environmental effects. Specifically, Respondents did not acknowledge the adverse effects of the General Plan update on greenhouse gas emissions and global warming.

36. Unless restrained by the Court, Respondents will act upon and carry out the General Plan update without complying with the requirements of CEQA. If construction proceeds without compliance with this law, the People will suffer great and irreparable harm. The People have no plain, adequate and speedy remedy at law.

37. Section 21177 of the Public Resources Code is not applicable to the Attorney General.

38. The People have complied with the requirements of Public Resources Code section 21167.5. A copy of the written notice provided to San Bernardino County and a proof of service, as required by that provision, is attached hereto as Exhibit "A".

39. Respondents' actions in approving the FEIR and the General Plan update, without adequately analyzing all reasonable alternatives that would lessen its adverse effects on the environment, are arbitrary and capricious, without evidentiary support, a prejudicial abuse of discretion, and are not in accordance with law.

40. This petition is excused from verification pursuant to Code of Civil Procedure section 446, subdivision (a).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests the following relief:

1. A peremptory writ of mandate commanding that:

   a. Respondents vacate and set aside its approval of the FEIR for the General Plan update, the approval of mitigation measures for the General Plan update, the approval of a Mitigation Reporting or Monitoring Plan for the General Plan update, the approval of a Statement of Overriding Considerations for the General Plan update, the Findings for the General Plan update, and the approval of the General Plan update;

   b. Respondents withdraw the Notice of Determination thereof;

   c. Respondents prepare and circulate a revised FEIR for public review and comment that is in compliance with the requirements of CEQA; and

   d. Respondents suspend all activity pursuant to the certification of the FEIR and its approval of the General Plan update that could result in any change or alteration to the physical environment until Respondents have taken all actions necessary to comply with CEQA.

2. Preliminary and permanent injunctions restraining Respondents, their agents, employees, contractors, consultants and all person acting in concert with them, from undertaking any construction or development, issuing any approvals or permits, or taking any other action to implement in any way the approval of the General Plan update without full compliance with California law;

3. A declaration of the rights and duties of the parties hereto, including but not limited to a declaratory judgment that prior to undertaking any action to carry out any

aspect of the General Plan update, Respondents must prepare, circulate, and adopt a revised FEIR in accordance with the requirements of CEQA;

4. Petitioner's costs of suit; and

5. Such other relief as the Court deems just and proper.

Dated: April 13, 2007

Respectfully Submitted,

EDMUND G. BROWN JR., Attorney General
of the State of California

TOM GREENE
Chief Assistant Attorney General

THEODORA BERGER
Senior Assistant Attorneys General

SUSAN DURBIN
JAMIE JEFFERSON
Deputy Attorneys General
By: _____
SUSAN DURBIN
Deputy Attorney General

Attorneys for Petitioners

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

I am employed in the County of Sacramento, California. I am over the age of 18 and not a party to the foregoing action. My business address is 1300 I Street, Sacramento, CA. 95814.

On April 11, 2007, I served a true and correct copy of the NOTICE OF COMMENCEMENT OF CEQA ACTION on Respondent San Bernardino County and San Bernardino County Board of Supervisors in this action as follows:

[ ] BY MAIL Such envelope was sealed and placed for collection and mailing following ordinary business practices addressed to:

[ ] BY PERSONAL SERVICE by personally delivering such envelope by hand to the offices of the addressee(s).

[ ] BY OVERNIGHT DELIVERY SERVICE via Express Mail to the offices of the addressee(s). In accordance with Code of Civil Procedure § 1013(c) as follows: I am readily familiar with this firm's practice of collection and processing correspondence for mailing with the Express Mail. Under that practice the correspondence would be deposited with Express Mail on that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California. Such envelope was sealed and placed for collection and mailing following ordinary business practices addressed to:

Ruth E. Stringer, County Counsel
San Bernardino County
385 N. Arrowhead Avenue, 4th Floor
San Bernardino, CA 92415-0140

Robin Cochran, Deputy County Counsel
Office of the County Counsel,
385 North Arrowhead Avenue, 4th Floor
San Bernardino, CA 92415-0140

Dena Smith, Clerk of the Board
Clerk of the Board of Supervisors
San Bernardino County Board of Supervisors
385 N. Arrowhead Avenue, 2nd Floor
San Bernardino, CA 92415-0130

[X] BY FACSIMILE. A true copy thereof was transmitted by facsimile and the transmission reported complete and without error.

Executed on April 11, 2007 in Sacramento, California.

[X] STATE I declare under penalty of perjury under the law of California that the foregoing is true and correct.

S. Claiborne
Type or Print Name

Signature