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Attorneys for Petitioners/Plaintiffs
 STONE LAKES NATIONAL WILDLIFE REFUGE ASSOCIATION, FREEPORT
 PRESERVATION COALITION, COALITION FOR RESPONSIBLE DEVELOPMENT, TRACY
 OTO, FRANK ALBERT, GARY KRULA AND BRIAN LUJAN

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

STONE LAKES NATIONAL WILDLIFE
 REFUGE ASSOCIATION, FREEPORT
 PRESERVATION COALITION, COALITION
 FOR RESPONSIBLE DEVELOPMENT,
 TRACY OTO, FRANK ALBERT, GARY
 KRULA AND BRIAN LUJAN,

Case No.:

PETITION FOR WRIT OF MANDATE

(California Environmental Quality Act,
 Pub. Resources Code, § 21000 et seq.;
 Code Civ. Proc., §§ 1085, 1094.5.)

Petitioners and Plaintiffs,

vs.

CITY OF SACRAMENTO, a municipal
 corporation; CITY COUNCIL OF
 SACRAMENTO; and DOES 1 through 10,
 inclusive,

Respondents and Defendants.

M & H REALTY PARTNERS, LP; MERLONE
 GEIER PARTNERS, LP; and DOES 11 through
 20, inclusive,

Real Parties In Interest.

INTRODUCTION

1. On January 13, 2009, the City of Sacramento ("City") and the City Council of Sacramento (collectively "the CITY" or "Respondents"), the respondents in this action, approved the Delta Shores Project ("Project") and certified the Environmental Impact Report ("EIR") prepared for the Project.

2. The Delta Shores Project is one of the single largest development projects in the history of Sacramento, proposing to convert 800 acres of productive farmland and other open space to residential subdivisions, strip malls and big-box stores. The Project development would occur within a 100 and 200-year floodplain in the southwest section of the City and would entirely surround the historic community of Freeport on the Sacramento River.

3. The Project site contains numerous wetlands and important habitat for special status species, including Swainson's hawks, greater sandhill cranes, vernal pool crustaceans and burrowing owls. The Project is also located upstream and adjacent to the approved refuge boundary for the Stone Lakes National Wildlife Refuge, which is considered one of the six most threatened National Wildlife Refuges in the nation due to degradation of its ecosystem from surrounding urban development and urban pollutants entering the Refuge watershed.

4. A development of this scale on a sensitive greenfield site presents unique challenges and requires careful assessment and mitigation of impacts. Unfortunately, due to a hurried and fundamentally flawed environmental review process, this kind of careful assessment and mitigation of impacts did not take place. As a result, Project design changes and mitigation measures were not required and a number of significant impacts of the Project remain.

5. These unresolved Project impacts include significant, unmitigated greenhouse gas ("GHG") emissions; a substantial increase in cancer risk and other public health impacts due to high density residential development adjacent to a heavily congested and polluted highway; stormwater and other drainage carrying contaminated soils and urban pollutants into the Stone Lakes Refuge watershed; destruction of the unique community identity and historic character of the

1 Town of Freeport; and irreversibly eliminating the scenic qualities of a designated California State
2 Scenic Highway.

3 6. The EIR's deficiencies appear, in part, to result from the CITY's rush to approve the
4 Project without allowing sufficient time to address in a meaningful fashion the serious unresolved
5 environmental, public health and community impacts of the Project. The City Planning
6 Commission was not provided sufficient time to review and recommend improvements to the
7 document, and the City Council was told that unless it took action immediately, an important
8 highway overpass project to be funded by this development would be delayed by a year.

9 7. Because the changes required to produce a legally adequate and meaningful EIR
10 would have required recirculation of a revised EIR and additional delay, the planning staff
11 attempted to address the EIR's inadequacies through piecemeal revisions and additions of text.
12 The EIR also failed to make required findings of significance and improperly relied on
13 unenforceable "voluntary" and undefined future mitigation measures to address Project impacts.
14 As demonstrated by the written and oral comments presented to the CITY by Petitioners, as well as
15 other substantial evidence in the record, the EIR certified by the CITY is profoundly inadequate
16 and fails to meet the minimum requirements of the California Environmental Quality Act
17 ("CEQA"), Pub. Resources Code section 21000 et seq., and the CEQA Guidelines, 14 California
18 Code of Regulations sections 15000 et seq.

19 8. Due to these errors and deficiencies, Respondents' actions in certifying the EIR,
20 adopting findings of significance and approving Project entitlements constitute a prejudicial abuse
21 of discretion in that Respondent failed to proceed in the manner required by law and Respondents'
22 findings and actions were not supported by substantial evidence.

23 **PARTIES**

24 9. The Stone Lakes National Wildlife Refuge Association, the Freeport Preservation
25 Coalition, the Coalition for Responsible Development and the following individuals, Tracy Oto,
26 Frank Albert, Gary Krula and Brian Lujan (hereafter referred to collectively as "Delta Shores
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Coalition” or “Petitioners”), have joined together to file this Petition as a coalition of individuals and groups concerned about the potential environmental impacts of the Delta Shores Project.

Stone Lakes National Wildlife Refuge Association

10. The Stone Lakes National Wildlife Refuge Association is a non-profit volunteer public benefit corporation whose members include residents and owners of property in the City and in the County of Sacramento who appreciate the region’s environmental qualities and who use areas adversely affected by the Project for recreation, wildlife viewing, scientific and educational purposes. These members’ personal, aesthetic and property interests will be directly, adversely and irreparably affected if the Project is developed without proper disclosure, analysis and mitigation of its environmental impacts in accordance with CEQA requirements.

11. The Stone Lakes National Wildlife Refuge Association’s mission is to conserve, protect and support the Stone Lakes National Wildlife Refuge and to promote its use for educational, recreational and research opportunities. Stone Lakes National Wildlife Refuge is the 505th refuge in the National Wildlife Refuge System and one of the few urban wildlife refuges in the nation. The Refuge is the single largest complex of natural wetlands, lakes and riparian areas remaining in the Sacramento-San Joaquin Delta, and provides critical habitat for waterfowl and other migratory birds of international concern, as well as a number of endangered plant and animal species.

12. The Refuge Association has specifically identified stormwater runoff, water quality, and loss of surrounding habitat as significant challenges for the overall health of Stone Lakes National Wildlife Refuge. The Stone Lakes National Wildlife Refuge is the ultimate destination of stormwater and other drainage from the Project. The Project will create substantial stormwater runoff that may carry urban pollutants into the Refuge water system via Morrison Creek. The Project will also destroy important habitat for special status species that nest and live in the Wildlife Refuge. The Refuge Association is also concerned about the Project’s contribution to global warming and the potential impact of global warming on the Refuge. The Refuge

1 Association seeks to ensure that such Project impacts are analyzed and mitigated in accordance
2 with CEQA requirements.

3 **The Freeport Preservation Coalition and**
4 **Individual Petitioner Tracy Oto**

5 13. The Freeport Preservation Coalition is an unincorporated association of residents
6 and property owners in the Town of Freeport and the surrounding area interested in maintaining the
7 cultural integrity, environmental quality and historic character of this unique community along the
8 Sacramento River. The Town is bordered by the River on the west, and is currently surrounded by
9 natural open space areas and farmland on the north, east and south. Freeport is also located within
10 the Scenic Highway portion of Highway 160. The proposed Project will result in incompatible
11 urban development that will completely envelop the Town of Freeport, threatening its unique
12 community identity and historic character, and causing adverse visual and aesthetic impacts on the
13 Town and Scenic Highway 160. Respondents' violations of CEQA, including the failure to
14 analyze, disclose and mitigate the significant impacts of the Project, or consider alternatives that
15 would lessen the Project's impacts on the Freeport community, directly and irreparably harm both
16 the organizational interests of the Freeport Preservation Coalition and the personal, aesthetic and
17 property interests of its members in preserving the cultural, environmental and historic qualities of
18 the Freeport community. The Freeport Preservation Coalition and its members will be directly,
19 adversely and irreparably affected by Respondents' actions until and unless the Court grants the
20 relief requested in this Petition.

21 14. Petitioner and Plaintiff Tracy Oto is a member of the Freeport Preservation
22 Coalition and an owner and operator of a business in the Town of Freeport. Mr. Oto is concerned
23 that the Project's proposed development of farmland, open space and special status species habitat
24 that currently surrounds the Town of Freeport is incompatible with maintaining the cultural,
25 environmental and historic character of the Town, and will also cause significant aesthetic and
26 visual impacts on Freeport and on Scenic Highway 160. Mr. Oto is further concerned about the
27 Project's contribution to global warming and the potential impact of global warming and climate
28 change on his riverfront community. Mr. Oto's personal, aesthetic and property interests in

1 preserving the cultural, environmental and historic qualities of the Freeport community will be
2 directly, adversely and irreparably affected by Respondents' violations of CEQA until and unless
3 the Court grants the relief requested in this Petition.

4 **Coalition for Responsible Development and**
5 **Individual Petitioners Frank Albert, Gary Krula and Brian Lujan**

6 15. The Coalition for Responsible Development is comprised of Plumbers and
7 Pipefitters Union, Local 447, International Brotherhood of Electrical Workers Union, Local 340
8 and Sheet Metal Workers Union, Local 162 and their members and their families and other
9 individuals who live and work in the City and County of Sacramento. Petitioner Brian Lujan is a
10 member of the Coalition for Responsible Development who lives in the City of Sacramento
11 approximately 2 miles east of the Project site. Petitioner Gary Krula is a member of the Coalition
12 for Responsible Development who lives in the City of Sacramento approximately one mile east of
13 the Project site. Petitioner Frank Albert is a member of the Coalition for Responsible Development
14 who lives in the City of Sacramento approximately one mile north of the Project site.

15 16. The Coalition for Responsible Development was formed to advocate for responsible
16 and sustainable development that will help to ensure the long-term health of the regional
17 construction industry and the economy in general, while at the same time protecting the
18 environment where the coalition members and their families live and work. Its members reside and
19 work in the City and County of Sacramento and are likely to be working on the Project itself and
20 may be among the future residents of the Project. Coalition members include residents of the City
21 of Sacramento, including Mr. Lujan, Mr. Krula and Mr. Albert who appreciate the region's
22 environmental qualities and whose personal, aesthetic and property interests will be adversely
23 affected if the Project is developed without proper analysis and mitigation of its environmental
24 impacts.

25 17. Members of the Coalition for Responsible Development, including individual
26 Petitioners Mr. Lujan, Mr. Krula and Mr. Albert, will suffer health and safety impacts from the
27 Project as residents and workers exposed to toxic air contaminants, contaminated soils, flooding
28 impacts and global warming impacts. The members and their families, including individual

1 Petitioners Mr. Lujan, Mr. Krula and Mr. Albert, are also concerned about the loss of prime
2 farmland and special status species habitat on and near the Project site, as well as cumulative
3 impacts to Stone Lakes National Wildlife Refuge caused by polluted stormwater runoff from the
4 Project and other cumulative development in the area.

5 18. The Coalition for Responsible Development and its members are also concerned
6 that poorly planned and environmentally detrimental projects may jeopardize future construction
7 jobs by making it more difficult and more expensive for business and industry to expand in the
8 region, and by making it less desirable for businesses to locate and for people to live here.
9 Continued degradation can, and has, caused construction moratoria and other restrictions on growth
10 in California. This, in turn, reduces future employment opportunities in the construction industry.

11 19. The interests of the Coalition for Responsible Development and its members in
12 lawful, consistent and environmentally sound land use planning and development approvals in the
13 City of Sacramento, will be directly, adversely and irreparably affected unless this Court provides
14 the relief requested in this Petition.

15 **Respondents City of Sacramento and City Council of Sacramento**

16 20. Respondent and Defendant CITY OF SACRAMENTO is a municipal corporation
17 organized under the laws of the State of California. The City of Sacramento is the lead agency
18 responsible for preparation of an environmental document that describes the proposed Project,
19 evaluates its impacts, and if necessary, evaluates mitigation measures and/or alternatives to lessen
20 or avoid any significant environmental impacts under CEQA.

21 21. Respondent and Defendant CITY COUNCIL OF CITY OF SACRAMENTO ("City
22 Council") is the duly elected legislative and quasi-judicial body of Respondent City. As the final
23 decision-making body for the Project pursuant to its authority to grant legislative approvals and
24 hear and decide appeals, the City Council was responsible for, *inter alia*, lead-agency decision-
25 making with respect to the Project under CEQA, and assuring that the Project complies with all
26 other applicable provisions of federal, state and local laws.

1 **Real Parties in Interest**

2 22. Delta Shores Coalition is informed and believes, and thereon alleges, that Real Party
3 in Interest M & H REALTY PARTNERS, LP is a California limited partnership. Delta Shores
4 Coalition is informed and believes, and thereon alleges, that M & H Realty Partners, LP is a Project
5 applicant and/or owner of the Project property.

6 23. Delta Shores Coalition is informed and believes, and thereon alleges, that Real Party
7 in Interest MERLONE GEIER PARTNERS, LP is a California limited partnership. Delta Shores
8 Coalition is informed and believes, and thereon alleges, that Merlone Geier Partners, LP is a
9 Project applicant and/or owner of the Project property.

10 **Does 1 through 10**

11 24. Delta Shores Coalition is unaware of the true names and capacities of Respondents
12 and Defendants DOES 1 through 10, and therefore names such Respondents and Defendants by
13 fictitious names. Delta Shores Coalition is informed and believes, and based on such information
14 and belief, alleges that the fictitiously named Respondents and Defendants are also responsible for
15 the actions described in this Petition. When the true identities and capacities of Does 1 through 10
16 have been determined, Delta Shores Coalition will seek leave from the Court to amend this Petition
17 to insert such identities and capacities.

18 **Does 11 through 20**

19 25. Delta Shores Coalition is unaware of the true names and capacities of Real Parties in
20 Interest DOES 11 through 20, and therefore names such Real Parties in Interest by fictitious names.
21 Delta Shores Coalition is informed and believes, and based on such information and belief, alleges
22 that the fictitiously named Real Parties in Interest are also responsible for the actions described in
23 this Petition. When the true identities and capacities of Does 11 through 20 have been determined,
24 Delta Shores Coalition will seek leave from the Court to amend this Petition to insert such
25 identities and capacities.

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27. Venue is proper in the County of Sacramento under Code of Civil Procedure section 394, because Delta Shores Coalition brings this action against Respondent and Defendant CITY in the county in which Respondent and Defendant CITY is situated.

29. Delta Shores Coalition has complied with the provisions of Public Resources Code section 21167.6 and Code of Civil Procedure section 388 by mailing a copy of this Petition to the State Attorney General. A true and correct copy of Delta Shores Coalition's Notice to the Attorney General of the State of California, with proof of service thereof, is attached hereto as Exhibit "A".

30. Delta Shores Coalition has complied with Public Resources Code section 21167.5 by mailing a written notice of commencement of this action to the City prior to filing this Petition. A true and correct copy of the notice provided pursuant thereto, with proof of service thereof, is attached hereto as Exhibit "B".

31. Delta Shores Coalition has performed all conditions precedent to this filing and has participated in the administrative process to the extent notice was provided and such participation was permitted, and thus has fully exhausted its administrative remedies.

33. The CITY has taken final agency action with respect to the subject Project approvals.

34. The CITY has a mandatory duty to comply with CEQA prior to undertaking the discretionary approvals at issue in this lawsuit.

35. Delta Shores Coalition possesses no other remedy to challenge the CITY's abuse of discretion of the claims raised herein other than by means of this lawsuit.

IRREPARABLE HARM

36. Delta Shores Coalition has no plain, speedy or adequate remedy in the ordinary course of law. If the City's decisions regarding the Project are implemented, then the Delta Shores Coalition will be irreparably harmed. No money damages could adequately compensate Delta Shores Coalition for that harm.

37. Petitioners are informed and believe that Respondents and Real Parties in Interest are threatening to proceed with construction of the project in the near future. Construction of the Project will irreparably harm the environment in that important grazing habitat for Swainson's hawk will be destroyed, stormwater and other drainage carrying contaminated soils and urban pollutants will pollute and damage sensitive downstream habitats, significant emissions of greenhouse gases will occur unmitigated, scenic views and historic resources will be irreversibly eliminated, and Project residences will be exposed to increased cancer and other health risks. A temporary restraining order and preliminary and permanent injunctions should issue restraining Respondents and Real Parties in Interest from proceeding with the project.

PUBLIC BENEFIT

38. Delta Shores Coalition also files this action in the public interest. Delta Shores Coalition seeks to enforce important public duties and rights under CEQA. Other members of the public who will be adversely affected by the Project's impacts would find it financially, practically, and/or procedurally difficult to protect their rights in the complex administrative and judicial processes for reviewing the Project and enforcing compliance with State and local laws. Thus, this action involves enforcement of an important right affecting the public interest. Delta Shores Coalition will confer a substantial benefit to the citizens of the County, the City, and the region in which the County and City are located, as well as on citizens of the State of California generally.

1 Therefore, Delta Shores Coalition brings this action to vindicate their own legal rights, as well as to
2 enforce important public rights significantly affecting the public interest as a private attorney
3 general under Code of Civil Procedure section 1021.5, and all applicable law.

4 **STATEMENT OF FACTS**

5 **The Delta Shores Project**

6 39. The Delta Shores Project consists of entitlements to develop approximately 800
7 acres of undeveloped farmland and open space. The Project will include up to 5,222 residential
8 units, approximately 1.4 million square feet of strip malls and big-box development along the
9 freeway, and approximately 161,000 square feet of commercial and office space in a
10 residential/mixed-use area. The Project is located in the City of Sacramento, bordering the Town
11 of Freeport and Scenic Highway 160 on the west and the buffer lands of the Sacramento Regional
12 County Sanitation District on the south and east. The Project is bisected by Interstate 5 and the
13 proposed Cosumnes River Boulevard Interchange.

14 **The City's CEQA Process**

15 40. On September 9, 2008, the City of Sacramento circulated a Draft EIR for the
16 Project. The public comment period for the Draft EIR ended on October 23, 2008.

17 41. During the public comment period, the Delta Shores Coalition submitted written
18 comments (including as attachments, expert comments, reports, studies and other supporting
19 substantial evidence) detailing the numerous errors, omissions and deficiencies contained in the
20 Draft EIR.

21 42. In addition to the comments submitted by the Delta Shores Coalition, numerous
22 other agencies and organizations also submitted comments raising concerns regarding the adequacy
23 of the Draft EIR and the proposed Project. The other agencies and organizations identifying
24 deficiencies in the EIR included: the California Department of Fish and Game, the California
25 Department of Transportation, the Delta Protection Commission, Sacramento Regional County
26 Sanitation District, the Sacramento Metropolitan Air Quality Management District, Sacramento
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1 County Planning Director, the Sacramento County Farm Bureau, Friends of the Swainson's Hawk
2 and the South Pocket Homeowners Association.

3 43. Despite the significant number and scope of comments submitted on the Draft EIR,
4 the City released a Final EIR just 43 days later on December 5, 2008. The Final EIR made a
5 number of changes intended to address the shortcomings identified in the Draft EIR comment
6 letters submitted by the Delta Shores Coalition and others, but numerous significant impacts of the
7 Project remained undisclosed, improperly evaluated or inadequately mitigated.

8 44. On December 11, 2008, the City Planning Commission held a hearing to make a
9 recommendation to the City Council on approval of the Project entitlements and certification of the
10 EIR. Members of the Delta Shores Coalition, Friends of the Swainson's Hawk and numerous other
11 speakers testified at the hearing regarding the continued deficiencies of the EIR.

12 45. The Planning Commission expressed concern over the deficiencies in the EIR, and
13 several members of the Commission stated that they had not been given sufficient time to review
14 the EIR and other relevant documents.

15 46. City planning department staff and the attorney for the Project applicant warned
16 against continuing the hearing to allow further review claiming that any continuance could delay
17 the Project by a year. Staff testified that the Project needed to be approved by the City Council at
18 its January 13, 2009 meeting in order to avoid such a delay.

19 47. A motion to continue the Planning Commission hearing on the Project was made,
20 but defeated. The Commission then passed a motion to send this matter to the City Council with
21 "no recommendation" and to provide the City Council with a list of the Commission's concerns
22 regarding the EIR.

23 48. Prior to the City Council hearing, the City released several errata to the Final Project
24 EIR, including an errata released on January 9, 2009 that contained substantive changes to the
25 Project's proposed Swainson's hawk mitigation.

1 49. On January 13, 2009, the Delta Shores Coalition submitted comments, expert
2 testimony and supporting substantial evidence to the CITY delineating the continued inadequacies
3 of the Final EIR, including the issues raised by this Petition.

4 50. The CITY also received written comments on the inadequacies of the Final EIR
5 from numerous other agencies, organizations and individuals, including Friends of the Swainson's
6 Hawk, Defenders of Wildlife, the California Department of Fish and Game, the United States Fish
7 and Wildlife Service and the Sacramento City Planning Commission.

8 51. At the January 13, 2009 City Council meeting, members of the Delta Shores
9 Coalition and numerous other organizations and individuals testified in opposition to certification
10 of the Project EIR on the grounds that the EIR failed to adequately address numerous significant
11 impacts of the Project in violation of the requirements of CEQA. The attorney for the Project
12 applicant again asserted that any delay in approval of the Project would delay the Project by at least
13 a year. The City Council voted 8 to 1 to approve the Project entitlements and to certify the Project
14 EIR.

15 52. Petitioner is informed and believes, and thereon alleges, that on January 16, 2009,
16 the CITY filed a Notice of Determination ("NOD") for the Project.

17 **Toxic Air Contaminants**

18 53. The Project includes entitlements to construct high density residential development
19 119 feet from a heavily congested portion of Interstate 5.

20 54. The record contains uncontroverted evidence that the proposed development
21 adjacent to Interstate 5 may result in an increased cancer risk to future residents of approximately 1
22 in 4000 due to the proximity of heavy diesel and non-diesel vehicle traffic. The administrative
23 record contains guidance documents by both the California Office of Environmental Health Hazard
24 Assessment ("OEHHA") and the Sacramento Metropolitan Air Quality Management District
25 ("SMAQMD") stating that the general threshold of significance for cancer risk from toxic air
26 contaminants is 1-in-1 million.

1 55. The EIR, arbitrarily and without the support of any substantial evidence, sets a
2 threshold of significance for toxic air contaminants at an increased cancer risk of *1-in-2200*. As a
3 result, the CITY found that the Project would not have any significant toxic air contaminant
4 impacts and no mitigation was imposed to protect future inhabitants.

5 56. The record also contains uncontroverted evidence that living near major roadways is
6 associated with other non-cancer health risks, including acute and chronic respiratory disease,
7 reduced lung function and increased asthma hospitalizations and heart attacks as well as premature
8 death in elderly individuals with heart disease. Studies included in the record show that non-
9 cancer health risks from ultrafine particles from gasoline and diesel-powered vehicles have been
10 found to pose a significant health concern particularly to residents within 500 feet of a major
11 roadway. Even though the EIR acknowledges these studies, it fails to include any evaluation of the
12 potential non-cancer health risks from constructing residences within 500 feet of Interstate 5.

13 **Greenhouse Gas Emissions**

14 57. The EIR acknowledges that there is a general scientific consensus that worldwide
15 climate change is occurring, caused in whole or in part by increased emissions of greenhouse gases
16 that keep the Earth's surface warm by trapping heat in the Earth's atmosphere. The record contains
17 uncontroverted evidence that global warming could have serious consequences in California,
18 including changing weather patterns, substantial loss of snow-pack in the Sierra and consequent
19 water shortages, coastal erosion, saltwater intrusion into the Delta, a significant increase in
20 wildfires and a substantial loss of agricultural productivity.

21 58. In 2006, Governor Schwarzenegger signed California Assembly Bill 32 ("AB 32"),
22 a landmark law to control and reduce the emission of global warming gases in California. AB 32
23 requires both reporting of greenhouse gas emissions and their reduction on an ambitious time line,
24 including a reduction of greenhouse gas emissions to 1990 levels by 2020 and to 80 percent below
25 1990 levels by 2050.

26 59. The record includes findings by the California Air Resources Board that any effort
27 to reduce greenhouse gas emissions must address residential and commercial development.
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1 Collectively, energy use and related activities by buildings are the second largest contributor to
2 California's greenhouse gas emissions. Almost one-quarter of California's greenhouse gas
3 emissions can be attributed to buildings.

4 60. The EIR estimates that the Project will result in the release of approximately 82,401
5 tons of GHG emissions during construction and more than 268,832 tons per year of operational
6 GHG emissions at buildout.

7 61. The record includes an analysis of seven feasible threshold measures for
8 determining the significance of a project's greenhouse gas emissions that was published in January
9 2008 by the California Air Pollution Control Officers Association ("CAPCOA"). These thresholds
10 include a zero emission threshold, a 50 residential unit or 900 greenhouse gas tons/year threshold, a
11 1,400 residential unit or 25,000 greenhouse gas tons/year threshold and, as the largest threshold, a
12 2,600 residential unit or 50,000 greenhouse gas tons/year threshold. The 50,000 greenhouse gas
13 tons/year threshold would capture far less than half of new residential or commercial development
14 and CAPCOA states that it would be insufficient to meet the requirements of AB 32. The Delta
15 Shores Project easily meets even the 50,000 greenhouse gas tons/year threshold.

16 62. The EIR declines to make a finding of significance of the Project's GHG emissions
17 on the grounds that such a finding would be speculative.

18 **Stormwater Runoff Impacts on the Stone Lakes National Wildlife Refuge**

19 63. Stone Lakes National Wildlife Refuge is the single largest remaining complex of
20 natural wetlands, lakes and riparian areas remaining in the Sacramento-San Joaquin Delta, and
21 provides critical habitat for waterfowl and other migratory birds of international concern, as well as
22 a number of endangered plant and animal species. The Stone Lakes National Wildlife Refuge
23 Comprehensive Conservation Plan warns that upstream urban development poses significant risks
24 to the ecological integrity of the Refuge.

25 64. The EIR acknowledges that the Project will result in increased stormwater runoff
26 due to placement of impervious surfaces over the Project site. Such runoff may be contaminated
27 with urban pollutants such as sediment, nutrients, trash, metals, bacteria, oil and grease and
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1 organics. The EIR finds that such runoff will not result in a significant impact because the Project
2 will comply with National Pollutant Discharge Elimination System ("NPDES") permit
3 requirements and other regulatory requirements.

4 65. The administrative record contains uncontroverted evidence that urban
5 development and indirect water quality impacts threaten resources in the Stone Lakes National
6 Wildlife Refuge despite compliance with NPDES municipal permit requirements. The
7 administrative record also contains uncontroverted evidence that stormwater detention basins
8 constructed in conjunction with urban development pursuant to NPDES permits only reduce
9 pollutants by 30 to 90 percent, and that the pollutants not detained will likely enter the Refuge and
10 potentially affect fish and wildlife.

11 66. The EIR identifies a "preferred" wetland biofiltration drainage system that would
12 provide superior reduction of the pollutants entering the Stone Lakes National Wildlife Refuge
13 from Project stormwater runoff. However, the City does not require the Project to install the
14 "preferred" wetland biofiltration drainage system to mitigate stormwater impacts. The Project's
15 final approval allows Project developers the option of merely installing a conventional system
16 involving only detention basins.

17 67. The Project's Phase I Environmental Site Assessment report specifically identifies
18 pesticide, petroleum and lead and other metal residues as potential contaminants of the Project
19 soils. The record contains expert testimony that the Project's extensive grading activities create a
20 potential for mobilization of pesticides in stormwater and sheet flow that could affect sensitive
21 downstream resources.

22 **The Town of Freeport and Scenic Highway 160**

23 68. The Town of Freeport is an historic Sacramento-San Joaquin Delta community
24 established as a riverport in 1862 by the Sacramento Valley Railroad in order to avoid port taxes
25 levied by the City of Sacramento.

26 69. The record contains substantial, uncontroverted evidence that the County of
27 Sacramento has designated the Town of Freeport as a "Neighborhood Preservation Area," and has
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1 determined that the Town is historically unique in Sacramento County. The record further contains
2 substantial evidence that the Town of Freeport is characterized by its Delta rivertown atmosphere
3 and its rural characteristics and that the approach of urban development in the City of Sacramento
4 threatens the character of the Town.

5 70. The Project proposes developing high density residential housing of up to 15 units
6 per acre immediately adjacent to the Town of Freeport, converting the entire surrounding rural
7 landscape into continuous tract housing. The record contains testimony that, without a buffer or
8 other meaningful mitigation, this development will swallow up and obliterate Freeport as a distinct
9 and historically unique Delta riverfront town.

10 71. Highway 160 is designated a Scenic Highway through the Town of Freeport and
11 along the western edge of the Project site. The record contains uncontroverted evidence that the
12 scenic view from Highway 160 that led to its designation as a scenic highway expressly included
13 its rural farmland landscape. The Project proposes to eliminate entirely the rural landscape views
14 of Highway 160 where it runs adjacent to the Project and replace it with continuous tract housing.

15 **Flooding**

16 72. The EIR acknowledges that some parts of the Project designated for urban
17 development currently lie within the 100-year flood plain and will not be provided 100-year flood
18 protection until levee improvements are completed sometime in future. The Project approval
19 allows development within the 100-year flood plain even if levee improvements are not completed
20 and without any protection from 100-year flood impacts.

21 73. The EIR acknowledges that more than 80 levees have sustained critical erosion
22 damage over the years in the Sacramento Valley. However, the Project approval allows
23 development within areas potentially at risk from these damaged levees prior to repair of such
24 damage.

25 74. The administrative record contains substantial evidence that both federal and
26 California agencies and the California Legislature now state that the 200-year flood protection is
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1 necessary to reduce the risk of flooding in urban areas to a level of insignificance. In approving the
2 Project, the CITY failed to require 200-year flood protection for the development.

3 **Swainson's Hawk**

4 75. The record contains uncontroverted evidence that the Project site contains important
5 Swainson's hawk foraging habitat, and the EIR acknowledges that Swainson's hawks have been
6 observed on the Project site. The Project site is adjacent to nesting habitat along the Sacramento
7 River, which supports the highest density of nesting hawks in the region.

8 76. The record contains substantial evidence that loss of foraging habitat in the
9 immediate vicinity of Sacramento could result in higher energetic costs for Swainson's hawks as
10 they need to travel further to forage and this may translate into lower reproductive success. The
11 record also contains uncontroverted evidence that preservation of Swainson's hawk habitat through
12 conservation easements or other measures will be insufficient to mitigate impacts on the species if
13 the preserved habitat is more than 10 miles away from the affected Swainson's hawk nests, or if the
14 preferred habitat is not suitable for foraging by Swainson's hawks.

15 **Prime and Important Farmland**

16 77. According to the EIR, approximately 764 acres of prime and important farmland
17 will be converted to urban uses under the Project. In comments included in the administrative
18 record, the Department of Conservation, the agency responsible for promoting proper management
19 of the State's agricultural land, determined that the Project's conversion of agricultural land is an
20 impact of at least regional significance.

21 **FIRST CAUSE OF ACTION**

22 **(Violations of CEQA,**

23 **Pub. Resources Code § 21000 et seq.;**

24 **Code of Civil Procedure §1094.5 or in the alternative §1085.)**

25 78. Petitioners reallege and incorporate by reference all prior paragraphs of this Petition
26 as if fully set forth below.

27 79. The EIR certified by the CITY is legally defective due to its failure to adequately
28 identify, evaluate and mitigate potentially significant impacts and its failure to adequately respond
to comments. As a result of these continued errors and omissions, the CITY's CEQA findings

1 were not supported by substantial evidence. The certified EIR fails to comply with the
2 requirements of CEQA and was improperly used as the basis for approving the Project. It fails to
3 perform its function as an informational document that is meant "to provide public agencies and
4 the public in general with detailed information about the effect which a proposed project is likely to
5 have on the environment" and "to list ways in which the significant effects of such a project might
6 be minimized." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988)
7 47 Cal.3d 376, 391.) In addition, the changes that were made in the Final EIR were sufficient in
8 content and scope to require recirculation for further public review. The failure to recirculate the
9 EIR is a violation of CEQA.

10 **A. CEQA Requirements**

11 80. Like all public agencies in California, the CITY was at all times under a mandatory
12 duty to comply with all requirements of CEQA and the CEQA Guidelines.

13 81. Pursuant to CEQA, the purpose of an EIR is "to identify the significant effects on
14 the environment of a project, to identify alternatives to the project, and to indicate the manner in
15 which those significant effects can be mitigated or avoided." (Pub. Resources Code §§ 21002.1;
16 21100.)

17 82. To fulfill this function, the discussion of impacts in an EIR must be detailed,
18 complete, and "reflect a good faith effort at full disclosure." (CEQA Guidelines § 15151.) CEQA
19 requires an EIR to disclose all potentially significant direct and indirect environmental impacts of a
20 project. (Pub. Resources Code § 21100, subd. (b)(1); CEQA Guidelines § 15126.2, subd. (a).)

21 83. A legally adequate EIR "must contain sufficient detail to help ensure the integrity of
22 the process of decision-making by precluding stubborn problems or serious criticism from being
23 swept under the rug." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692,
24 733.) Mere conclusory pronouncements are not sufficient. An adequate EIR must contain facts
25 and analysis that provide a road map to how an agency has reached its conclusions. (*Citizens of*
26 *Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.)

1 84. CEQA also imposes an affirmative obligation on agencies to avoid or reduce
2 environmental harm by adopting feasible project alternatives or mitigation measures. If an EIR
3 identifies potentially significant impacts, it must then propose and evaluate mitigation measures
4 and alternatives sufficient to minimize these impacts. (Pub. Resources Code §§ 21002.1, subd. (a),
5 21100, subd. (b)(3).)

6 85. Mitigation measures must be specific and enforceable. (CEQA Guidelines
7 § 15126.4, subd. (a)(2).) Mitigation measures that are vague or so undefined that it is impossible to
8 evaluate their effectiveness are legally inadequate. (*San Franciscans for Reasonable Growth v.*
9 *City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79.) Deferring formulation of
10 mitigation measures to post-approval studies is impermissible unless specific performance criteria
11 are articulated. (Pub. Resources Code § 21061.)

12 86. CEQA requires the Court to establish whether an agency abused its discretion by
13 determining whether an agency failed to proceed in the manner required by law, and/or whether the
14 agency's decision is not supported by substantial evidence. (Pub. Resources Code § 21168.)

15 87. Based on these legal standards, the City abused its discretion, exceeded its
16 jurisdiction and proceeded in a manner contrary to law without the support of substantial evidence
17 in the record by committing the following violations:

18 **B. The Findings Regarding the Significance of Health Risks from the**
19 **Project's Proposed Development of High Density Residential Units**
20 **Adjacent to Interstate 5 Are Not Supported by Substantial**
 Evidence and Fail to Comply with the Requirements of CEQA

21 88. Petitioners reallege and incorporate by reference all prior paragraphs of this Petition
22 as if fully set forth below.

23 89. The CITY's finding that the Project's proposed development of high density
24 residential units adjacent to Interstate 5 will not result in significant health risks to future
25 inhabitants relies upon an arbitrary and improperly derived threshold of significance and is not
26 supported by substantial evidence.

1 90. The EIR applies a threshold of significance for toxic air contaminants of 1-in-2200.
2 The EIR states that this threshold is based on the evaluation criterion for preparing health risk
3 assessments (“HRAs”) adopted by SMAQMD in the *Recommended Protocol for Evaluating the*
4 *Location of Sensitive Land Uses Adjacent to Major Roadways* (the “Protocol”).

5 91. The *Protocol* evaluation criterion lacks any foundation for determining a threshold
6 of significance for cancer or other health risks. The *Protocol* evaluation criterion is based on a
7 comparison of regional traffic levels and is not based upon an assessment of the significance of
8 health risks. SMAQMD expressly states in the *Protocol* that the evaluation criterion **does not**
9 **provide an acceptable cancer risk level or a regulatory threshold.** By applying a threshold of
10 significance that is not based upon an assessment of the significance of an impact’s health risks, the
11 CITY’s finding that the Project will not result in significant toxic air contaminant impacts is not
12 supported by substantial evidence.

13 92. The CITY violates CEQA by selecting this threshold on the grounds that the overall
14 benefits of the Project outweigh using a more health protective threshold. CEQA does not permit a
15 finding of significance to be based upon the balancing of a project’s overall benefits. A lead
16 agency may weigh a Project’s impacts against the Project’s benefits to determine whether to adopt
17 a statement of overriding considerations only after a finding of significance has been made.
18 (CEQA Guidelines §§ 15091, 15093.) By improperly and prematurely weighing the overall
19 benefits of the Project in lieu of making a determination of significance, the CITY violated the
20 requirements of CEQA and failed to make findings supported by substantial evidence.

21 93. The EIR’s analysis of potential traffic-related air quality impacts also lacks
22 foundation because it improperly restricts its analysis to cancer risks resulting from exposure to
23 diesel particulate matter emissions from truck traffic. The EIR fails to evaluate at all either the
24 cancer risk from non-diesel vehicular exhaust, or the non-cancer health risks that result from
25 exposure to such exhaust emissions. The record contains uncontroverted evidence that such
26 impacts may be significant. Because the CITY failed to evaluate these impacts, its determination
27
28

1 that the Project would not result in toxic air contaminant risks is not supported by substantial
2 evidence.

3 94. The EIR's assessment of toxic air contaminants is further flawed because it relies
4 upon current traffic data and not upon traffic estimates for when the Project and the Cosumnes
5 River Interchange are built. As a result, the CITY's determination that the Project would not result
6 in significant toxic air contaminant impacts is based upon inaccurate modeling data and is not
7 supported by substantial evidence.

8 **C. The Findings Regarding the Significance of the Project's**
9 **Greenhouse Gas Emissions Are Not Supported by Substantial**
10 **Evidence and Fail to Comply with the Requirements of CEQA**

11 95. Petitioners reallege and incorporate by reference all prior paragraphs of this Petition
12 as if fully set forth below.

13 96. The CITY acknowledges that the Project may result in "potentially cumulatively
14 considerable" GHG emissions, but nevertheless fails to make a finding that such emissions are
15 significant on the grounds that such a finding would be speculative. As a result, the City fails to
16 proceed in a manner required by law.

17 97. The EIR claims that it would be speculative to make a finding of significance
18 because no finding of significance of the Project's GHG emissions can be scientifically made.
19 This claim is not supported by substantial evidence.

20 98. Specific requirements for GHG emission reductions in California necessary to
21 prevent global warming have been statutorily established pursuant to AB 32. Petitioners provided
22 expert comments that the Project's GHG emissions would adversely impact the City's ability to
23 meet its fair share of the AB 32 GHG reduction goals. The EIR, however, arbitrarily fails to
24 evaluate the Project's potential impact on the CITY's ability to meet its fair share of the AB 32
25 GHG reduction goals. As a result, the CITY's determination that the significance of the Project's
26 GHG emissions is speculative is not supported by substantial evidence. The CITY also violates
27 CEQA by failing to adequately respond to Petitioners' comments on this issue.
28

1 99. The EIR also arbitrarily fails to evaluate the most current available guidance on
2 GHG CEQA thresholds developed by the California Air Pollution Control Officers Association
3 (“the CAPCOA guidance”), which was provided to the City by Petitioners during the public
4 comment period on the Draft EIR. A lead agency may formulate standards of significance for use
5 in an EIR as long as a reasonable basis exists for using those standards. (CEQA Guidelines
6 § 15064, subd. (b).) The CAPCOA guidance provides an analysis of seven feasible threshold
7 measures for determining the significance of a project’s GHG emissions and provides a rational
8 basis for using each of the seven identified thresholds. The Delta Shores Project easily meets even
9 the most generous of thresholds evaluated by CAPCOA.

10 100. The EIR rejects the CAPCOA standards on the grounds that the CITY is not
11 *required* to use any of these standards. The EIR fails, however, to provide any analysis to explain
12 why none of these standards would be *appropriate* for use by the CITY. Without such an analysis,
13 the EIR’s rejection of these standards and refusal to make a finding of significance violates the
14 requirements of CEQA and is not supported by substantial evidence. The CITY also violates
15 CEQA by failing to adequately respond to Petitioners’ comments on this issue.

16 101: The EIR identifies a number of measures *voluntarily* adopted by the Project
17 applicant to address GHG emissions, but admits that GHG emissions from the Project “would
18 remain potentially cumulatively considerable” even with these measures. In addition, most of the
19 measures voluntarily adopted are legally inadequate on their face. Over half of the proposed
20 voluntary measures are either already existing regulatory requirements or are vague, uncertain,
21 optional, improperly deferred or otherwise unenforceable. Moreover, without a finding of
22 significance, none of these measures are legally enforceable under CEQA. Accordingly, these
23 measures do not relieve the CITY from its obligation under CEQA to make a finding of
24 significance on the issue of GHG emissions.

25 102. Numerous other specific, enforceable and feasible mitigation measures to reduce
26 Project GHG emissions were presented to the CITY in the public comments submitted on the EIR,

1 but were not required by the CITY in the final Project approval. The CITY's failure to adopt
2 feasible measures to mitigate this significant impact violates the requirements of CEQA.

3 **D. The Findings Regarding the Significance of Impacts on the Stone**
4 **Lakes National Wildlife Refuge and Beach-Stone Lakes Basin**
5 **from Project Stormwater Runoff Are Not Supported by**
6 **Substantial Evidence and Fail to Comply with the Requirements**
7 **of CEQA**

8 103. Petitioners reallege and incorporate by reference all prior paragraphs of this Petition
9 as if fully set forth below.

10 104. The EIR acknowledges that urban stormwater runoff from the Project will flow into
11 the Stone Lakes National Wildlife Refuge and the Beach-Stone Lakes Basin.

12 105. The administrative record contains substantial evidence that upstream urban
13 development poses significant risks to the ecological integrity of the Stone Lakes National Wildlife
14 Refuge and the Beach-Stone Lakes Basin.

15 106. The EIR fails to evaluate the potential for increased urban runoff pollutants to harm
16 downstream biological resources in the Refuge and the Beach-Stone Lakes Basin. The EIR instead
17 simply states without any analysis that compliance with National Pollutant Discharge Elimination
18 System ("NPDES") permits and other regulations will result in no significant impact.

19 107. CEQA requires conclusions in an EIR to be supported by substantial evidence.
20 (Pub. Resources Code § 21081.5; CEQA Guidelines § 15091, subd. (b).) Furthermore, an EIR
21 must provide the reader with the analytic bridge between its ultimate findings and the facts in the
22 record. (*Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d
23 506.)

24 108. The CITY's reliance on compliance with NPDES permits and other regulation lacks
25 foundation because it fails to disclose and evaluate how compliance with these permits and
26 regulations will result in mitigation of the Project's stormwater runoff impacts to a level below
27 significance. By failing to disclose the analytic bridge between the assumption that the Project will
28 comply with permit requirements and the finding that the Project will not result in any significant

1 stormwater runoff impacts, the CITY violates the requirements of CEQA and the finding is not
2 supported by substantial evidence.

3 109. The EIR also violates CEQA by improperly deferring formulation of specific
4 mitigation measures for cleanup of contaminated soil and failing to address potential contamination
5 of stormwater and impacts on the Stone Lakes National Wildlife Refuge and other downstream
6 sensitive resources. The EIR does not provide objective performance standards to ensure that the
7 deferred mitigation measures will provide adequate protection of the watershed from construction
8 runoff of contaminated soils. The performance standard set forth in the EIR, "managed to the
9 satisfaction of the City and the Sacramento County Environmental Management Department," is
10 vague, unenforceable and deprives the public of the opportunity to meaningfully review and
11 comment on its sufficiency. Accordingly, the EIR's finding that impacts from contaminated soil
12 runoff will be mitigated to a level of insignificance is not supported by substantial evidence.

13 **E. The Findings Regarding the Significance of the Project's**
14 **Aesthetic, Visual or Historic Resource Impacts on the Town of**
15 **Freeport and Scenic Highway 160 Are Not Supported by**
16 **Substantial Evidence and Fail to Comply with the Requirements**
17 **of CEQA**

18 110. Petitioners reallege and incorporate by reference all prior paragraphs of this Petition
19 as if fully set forth below.

20 111. The EIR fails to evaluate evidence of the Project's negative aesthetic, visual and
21 historic resource impacts on the Town of Freeport and Scenic Highway 160. As a result, the
22 CITY's determination that the Project will not have any significant impact on the Town of Freeport
23 and Scenic Highway 160 is not supported by substantial evidence.

24 112. The EIR attempts to justify its determination that the Project will not have
25 significant impacts on the Town of Freeport by claiming that the Town of Freeport has not been
26 designated by California as a rural historic landscape or listed on the National Register. However,
27 CEQA does not require such formal designation for impacts to an historic resource to be
28 considered significant. (Pub. Resources Code § 21084.1; CEQA Guidelines § 15064.5, subd. (a).)

1 In addition, CEQA does not permit a lead agency to disregard evidence that an affected resource
2 may be historically significant based solely on the lack of formal designation or listing by a state or
3 federal entity. The EIR acknowledges that, other than checking for state or federal historic listings,
4 it did not evaluate the Town of Freeport for eligibility as an historic district. Accordingly, the
5 CITY's failure to evaluate other evidence of the historic significance of the Town of Freeport
6 violated the requirements of CEQA.

7 113. The CITY also violates CEQA by failing to consider the County of Sacramento's
8 designation of the Town of Freeport as a Neighborhood Preservation Area and the numerous
9 County and City planning documents recognizing the important historic significance of the Town
10 of Freeport. A local designation of a resource as historically significant creates a presumption of
11 significance under CEQA. (Pub. Resources Code § 21084.1: CEQA Guidelines § 15064.5, subd.
12 (a).) Accordingly, the CITY's determination that the Town of Freeport is not an important historic
13 district and its finding that the Project will not have significant aesthetic, visual and historic
14 resource impacts on the Town of Freeport are not supported by substantial evidence.

15 114. The EIR's determination that the Project will not result in any significant visual
16 impact on Scenic Highway 160 is also not supported by substantial evidence. The EIR's finding
17 that the Project would not result in a "major intrusion" under Caltrans *Scenic Highway Guidelines*
18 lacks foundation and ignores the plain language of these guidelines. The Caltrans *Scenic Highway*
19 *Guidelines* defines a "major intrusion" as including "Dense and continuous development" or
20 buildings that "degrade or obstruct scenic view." The Project will not just degrade or obstruct the
21 scenic view of rural landscape from Highway 160 as it passes along the Project site, it will
22 eliminate this scenic view altogether. The EIR's finding that the Project will not have a significant
23 impact on Scenic Highway 160 is not supported by substantial evidence.

24 **F. The Findings Regarding the Project's Potential Flooding Impacts**
25 **Are Not Supported by Substantial Evidence and Fail to Comply**
26 **with the Requirements of CEQA**

27 115. Petitioners reallege and incorporate by reference all prior paragraphs of this Petition
28 as if fully set forth below.

1 116. The EIR's determination that the Project does not pose any significant flood risks to
2 future inhabitants lacks foundation because it fails to require Project areas to be protected from
3 100-year flood prior to construction. Without such a restriction, the EIR's finding that Project
4 flooding impacts will be insignificant is not supported by substantial evidence. The CITY also
5 violates CEQA by failing to respond adequately to Petitioners' comments on this issue.

6 117. The EIR's determination that the Project does not pose any significant flood risks to
7 future inhabitants is also not supported by substantial evidence since it fails to evaluate the risk of
8 flooding due to damaged levees. In response to Petitioners' comments on this issue, the EIR states
9 that various state and federal levee improvement programs have been and are improving the levees
10 that provide flood protection to the Project site. However, the EIR fails to disclose or evaluate the
11 current status of these levees. The EIR also fails to require completion of critical repairs prior to
12 construction of the Project. Without such a restriction or a meaningful evaluation of the current
13 risk of flooding from damaged levees, the CITY's finding that Project flooding impacts will be
14 insignificant is not supported by substantial evidence. Moreover, the CITY violates CEQA by
15 failing to respond adequately to Petitioner's comments on this issue.

16 118. The City's determination that the Project does not pose any significant flood risks to
17 future inhabitants further violates CEQA because the EIR fails to respond to or evaluate the
18 evidence provided in Petitioners' comments on the Draft EIR that the Project's flooding impacts
19 will not be reduced to a level of insignificance without providing 200-year flood protection (either
20 by levees or building design). As a result, the CITY's finding that the Project will not have
21 significant flooding impacts is not supported by substantial evidence. The CITY's refusal to
22 evaluate the potential significance of impacts on the Project from a 200-year flood also violates
23 CEQA's requirement to evaluate all potentially significant impacts and violates CEQA's
24 requirement to respond to comments.

25 **G. The Findings Regarding the Significance of the Project's Impacts**
26 **on Swainson's Hawks Are Not Supported by Substantial Evidence**
27 **and Fail to Comply with the Requirements of CEQA**

28 119. Petitioners reallege and incorporate by reference all prior paragraphs of this Petition
as if fully set forth below.

1 120. The CITY's finding that the mitigation imposed for Project impacts on Swainson's
2 hawks will reduce such impacts to a level of insignificance is not supported by substantial
3 evidence.

4 121. The EIR imposes mitigation to preserve Swainson's hawk habitat either by:
5 (1) purchase of credits at a California Department of Fish and Game ("CDFG") approved
6 mitigation bank that has the Project "within its service area" (which is not defined); or (2) purchase
7 of conservation easements with suitable foraging habitat within ten miles of the Project site.

8 122. This measure is impermissibly vague as to whether the use of a mitigation bank will
9 be allowed if the mitigation bank does not provide protection to suitable foraging habitat within ten
10 miles of the Project site. The EIR's assumption that the use of a mitigation bank which has the
11 Project in its service area would be sufficient to reduce impacts to a level of insignificance is not
12 supported by substantial evidence.

13 123. The EIR's reliance upon preservation of suitable foraging habitat to reduce the
14 impact from loss of Swainson's hawk habitat to a level of insignificance also lacks foundation
15 because it relies upon an impermissibly vague definition of "suitable foraging habitat" that includes
16 fallow fields that may be idle for more than one consecutive growing season and contain
17 continuous weed canopy unsuitable for foraging use by Swainson's hawks. Without an
18 enforceable definition that fallow fields under the mitigation measure's definition of "suitable
19 foraging habitat" do not include "idled" or otherwise unsuitable fields, there is no substantial
20 evidence to support the finding that preservation of such fields will mitigate the Project's impacts
21 on Swainson's hawk to a level of insignificance.

22 124. The finding that the adopted mitigation measure will reduce impacts to less than
23 significant is also not supported by substantial evidence because the mitigation measure fails to
24 require a monetary endowment for management, monitoring, and enforcement to ensure that the
25 replacement habitat is maintained as suitable Swainson's hawk habitat in perpetuity. Numerous
26 expert comments in the record set forth the importance of providing for a management endowment
27 to ensure appropriate management of preservation lands and monitoring and enforcement of the
28

1 mitigation requirements for impacts on Swainson's hawk, and recommend, at a minimum,
2 application of CDFG guidelines for calculating an appropriate amount for the endowment.

3 125. The EIR and findings improperly defer the formulation of a mitigation plan for
4 management of mitigation land in perpetuity for the benefit of Swainson's hawk foraging. For
5 example, the adopted mitigation measure fails to identify the entity or establish any standards for
6 selection of an entity to monitor and enforce the management of the mitigation land for the benefit
7 of Swainson's hawk; there is no provision for management, monitoring, or enforcement of
8 mitigation measures; and no information as to whether all of the required mitigation land for the
9 entire project shall be acquired before issuance of grading permits for any part of the Project site,
10 or whether mitigation land would be acquired piecemeal to correlate with issuance of grading
11 permits for each phase of the Project. As a result of this deferral of formulation of mitigation
12 measures, the findings that impacts upon Swainson's hawk will be reduced to a level of
13 insignificance are not supported by substantial evidence and fail to comply with the requirements
14 of CEQA.

15 **H. The Findings Regarding the Significance of the Project's**
16 **Conversion of Farmland are Not Supported By Substantial**
17 **Evidence and Fail to Comply with the Requirements of CEQA**

18 126. Petitioners reallege and incorporate by reference all prior paragraphs of this Petition
19 as if fully set forth below.

20 127. The EIR's determination that the Project's conversion of 764 acres of prime and
21 important farmland to non-agricultural use will not result in a significant impact is not supported
22 by substantial evidence and violates CEQA's requirement that the impacts of the Project be
23 measured against the real conditions on the ground.

24 128. The EIR's finding that the Project's conversion of farmland will not be a significant
25 impact is based solely on the location of the Project within the City limits and the designation of
26 the Project site in the CITY's General Plan for future development. No other substantial evidence
27 in the record supports this finding.

28 129. CEQA requires that the impacts of the Project be measured against the "real
conditions on the ground" not just against consistency with planning documents. The EIR's

1 assumption that a project's potential impacts are automatically considered less than significant if
2 the project development is consistent with planned or permitted uses is contrary to the requirements
3 of CEQA and is not supported by substantial evidence. By failing to evaluate the actual loss of
4 prime and important farmland, the CITY violated CEQA and lacks substantial evidence to support
5 its findings.

6 **I. The City's Failure to Recirculate the EIR for Further Public**
7 **Comment Violates the Requirements of CEQA and Was an Abuse**
8 **of Discretion**

9 130. Petitioners reallege and incorporate by reference all prior paragraphs of this Petition
10 as if fully set forth below.

11 131. CEQA requires a lead agency to recirculate an EIR when significant, new
12 information is added to the EIR following public review, but before certification. (Pub. Resources
13 Code § 21092.1.)

14 132. The Project will have numerous impacts that are different and more severe than
15 those described in the Draft EIR, including impacts related to special status species, water quality,
16 air quality, global warming, flooding, farmland, and cultural and historical aesthetics. The Final
17 EIR also contained substantial changes and addition of significant information that would trigger
18 the requirement for recirculation. For example, the Final EIR discloses for the first time that the
19 Project will require significant off-site sewage and stormwater improvements. Accordingly, the
20 CITY's failure to revise and recirculate the EIR was an abuse of discretion and was not supported
21 by substantial evidence.

22 133. Recirculation of the EIR is also required because the measures to mitigate for
23 impacts on Swainson's hawk were revised just four days prior to the final January 13, 2009 City
24 Council hearing. These last minute changes to the mitigation: (1) allowed the Purchase of
25 mitigation credits at an unidentified CDFG-approved mitigation bank which has the Project within
26 its "service area" (not defined in the mitigation measure); and (2) designated "fallow land" (not
27 defined in the mitigation measure) as suitable for mitigation land. These revisions result in
28 mitigation measures that will not guarantee that the Project's impacts to Swainson's hawk will be

1 reduced to a level of significance. The EIR must be recirculated so that the public has sufficient
2 time to review and comment on the revised mitigation measures.

3 134. The EIR must also be recirculated because the Draft EIR improperly concealed all
4 discussion of soil contamination and mitigation in the initial study attached as an appendix to the
5 Draft EIR. The Draft EIR failed to disclose, reference or summarize the Project's potential soil
6 contamination impacts and the proposed mitigation measures. "Whatever is required to be
7 considered in an EIR must be in the report itself," not just in the appendices. (*San Joaquin*
8 *Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 727.) The
9 failure of the Draft EIR to disclose or summarize soil contamination impacts and the proposed
10 measures to mitigate these impacts deprived the public of a meaningful opportunity to comment
11 upon a substantial adverse environmental effect of the Project.

12 135. The CITY's failure to recirculate the EIR to remedy the aforementioned defects
13 violated the requirements of CEQA and was an abuse of discretion.

14 WHEREFORE, Petitioner prays for judgment as hereinafter set forth:

15 **PRAYER FOR RELIEF**

16 1. That the Court issue an alternative and/or peremptory writ of mandate directing the
17 CITY to:

- 18 a) Vacate and set aside its approval of the EIR for the Project;
 - 19 b) Vacate and set aside any actions approving permits for the Project;
 - 20 c) Stay the CITY's decisions approving the EIR and all other discretionary
21 approvals for the Project pending determination of this Petition;
 - 22 d) Issue a temporary restraining order and a preliminary and permanent
23 injunction enjoining the CITY from authorizing any further permits,
24 entitlements, or construction-related activities for the Project until the CITY
25 has prepared and certified a legally adequate environmental impact report for
26 the Project and filed a return on the writ demonstrating compliance
27 therewith;
- 28

- 1 e) Refrain from approving any further permits or entitlements for the Project
2 until the City has prepared and certified a legally adequate EIR and complied
3 with all other applicable requirements of CEQA, as directed by this Court
4 pursuant to Public Resources Code section 21168.9; and
5 f) Comply with all other applicable requirements of CEQA, as directed by this
6 Court pursuant to Public Resources Code section 21168.9;

7 2. That the Court issue a temporary restraining order and a preliminary and permanent
8 injunction barring Respondents, Real Parties in Interest, and all other persons working on their
9 behalf, from proceeding with any activity that may result in any physical change in the
10 environment on the Project site until the CITY takes all necessary steps to bring its actions in
11 compliance with CEQA and the writ is discharged;

12 3. That Delta Shores Coalition be awarded costs of this proceeding;

13 4. That Delta Shores Coalition be awarded reasonable attorneys fees for this action
14 pursuant to Code of Civil Procedure section 1021.5, and any other applicable provisions of law;
15 and

16 5. That Delta Shores Coalition be awarded such other and further relief as the Court
17 deems just and proper.

18 Dated: 2/13/09

19 ADAMS BROADWELL JOSEPH & CARDOZO

20
21 By: Thomas A. Enslow
22 THOMAS A. ENSLOW
23 Attorney for Petitioners and Plaintiffs
24 STONE LAKES NATIONAL WILDLIFE
25 REFUGE ASSOCIATION, FREEPORT
26 PRESERVATION COALITION, COALITION
27 FOR RESPONSIBLE DEVELOPMENT, TRACY
28 OTO, FRANK ALBERT, GARY KRULA AND
BRIAN LUJAN

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VERIFICATION

CASE TITLE: *Stone Lakes National Wildlife Refuge Association, the Freeport Preservation Coalition, Coalition for Responsible Development, Tracy Oto, Frank Albert, Gary Krula and Brian Lujan vs. City of Sacramento, a municipal corporation; City Council of Sacramento; and Does 1 through 10, inclusive*

I, Tracy Oto, declare:

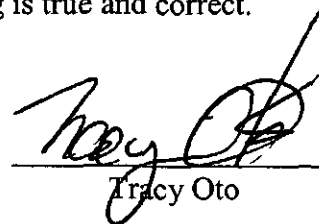
I am a Petitioner/Plaintiff in the above-entitled matter.

I have read the foregoing **Petition for Writ of Mandate** and know the contents thereof.

The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

Executed on FEB. 13, 2009, at City of Sacramento, County of Sacramento, California.

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



Tracy Oto

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PRESERVATION COALITION, COALITION FOR RESPONSIBLE DEVELOPMENT, TRACY
OTO, FRANK ALBERT, GARY KRULA AND BRIAN LUJAN

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

STONE LAKES NATIONAL WILDLIFE
REFUGE ASSOCIATION, FREEPORT
PRESERVATION COALITION, COALITION
FOR RESPONSIBLE DEVELOPMENT,
TRACY OTO, FRANK ALBERT, GARY
KRULA AND BRIAN LUJAN,

Petitioners and Plaintiffs,

vs.

CITY OF SACRAMENTO, a municipal
corporation; CITY COUNCIL OF
SACRAMENTO; and DOES 1 through 10,
inclusive,

Respondents and Defendants.

M & H REALTY PARTNERS, LP; MERLONE
GEIER PARTNERS, LP; and DOES 11 through
20, inclusive,

Real Parties In Interest.

Case No.:

NOTICE TO ATTORNEY GENERAL

(California Environmental Quality Act,
Pub. Resources Code, § 21000 et seq.;
Code Civ. Proc., §§ 1085, 1094.5.)

TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA:

PLEASE TAKE NOTICE, under Public Resources Code section 21167.7 and Code of Civil
Procedure section 388, that on February 13, 2009, Stone Lakes National Wildlife Refuge

NOTICE TO ATTORNEY GENERAL
2280-011d

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1 Association, Freeport Preservation Coalition, Coalition for Responsible Development, Tracy Oto,
2 Frank Albert, Gary Krula and Brian Lujan filed a Petition for writ of mandate against the City of
3 Sacramento and the Sacramento City Council (collectively, "City") in the County of Sacramento
4 Superior Court.

5 The Petition alleges that the City violated the California Environmental Quality Act
6 ("CEQA") (Pub. Resources Code, § 21000 et seq.), when it approved the Delta Shores project
7 (SCH No. 2007042070) on January 13, 2009. The project is located on the southwest corner of the
8 City of Sacramento on what is currently 800 acres of productive farmland and other open space.
9 The project proposes conversion of up to 5,222 units of residential development and approximately
10 1.4 million square feet of retail/commercial uses.

11 The Petition alleges that the Environmental Impact Report certified for the project is legally
12 defective due to its failure to adequately identify, evaluate and mitigate numerous potentially
13 significant impacts, including public health impacts from toxic air contaminants, global warming
14 impacts from greenhouse gas emissions, stormwater runoff impacts, biological resource impacts,
15 visual and aesthetic impacts and impacts to historical resources.

16 A copy of the Petition is attached to this notice.

17 Dated: 2/13/09

18 ADAMS BROADWELL JOSEPH & CARDOZO

19
20 By: Thomas A. Enslow
21 THOMAS A. ENSLOW
22 Attorney for Petitioners and Plaintiffs
23 STONE LAKES NATIONAL WILDLIFE
24 REFUGE ASSOCIATION, FREEPORT
25 PRESERVATION COALITION, COALITION
26 FOR RESPONSIBLE DEVELOPMENT,
27 TRACY OTO, FRANK ALBERT, GARY
28 KRULA AND BRIAN LUJAN

Proof of Service

I am employed in the County of Sacramento, California. I am over the age of 18 and not a party to this action. My business address is 520 Capitol Mall, Suite 350, Sacramento, California, 95814.

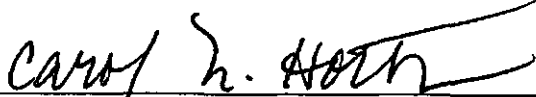
On February 13, 2009, I served the foregoing document described as

NOTICE TO ATTORNEY GENERAL

on the party listed below by placing a true and correct copy thereof in a sealed envelope and by causing the envelope to be sent, with postage fully prepaid via First Class United States Mail addressed to:

Hon. Edmund G. Brown Jr.
Attorney General's Office
California Department of Justice
Attn: Public Inquiry Unit
P.O. Box 944255
Sacramento, CA 94244-2550

I declare under penalty of perjury of the laws of the California that the foregoing is true and correct and that this was executed on February 13, 2009 in Sacramento, California.



Carol N. Horton

1 DANIEL L. CARDOZO (CSB No. 111382)
2 THOMAS A. ENSLOW (CSB No. 181755)
3 ADAMS BROADWELL JOSEPH & CARDOZO
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11 PRESERVATION COALITION, COALITION FOR RESPONSIBLE DEVELOPMENT, TRACY
12 OTO, FRANK ALBERT, GARY KRULA AND BRIAN LUJAN
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

11 STONE LAKES NATIONAL WILDLIFE
12 REFUGE ASSOCIATION, FREEPORT
13 PRESERVATION COALITION, COALITION
14 FOR RESPONSIBLE DEVELOPMENT,
15 TRACY OTO, FRANK ALBERT, GARY
16 KRULA AND BRIAN LUJAN,

17 Petitioners and Plaintiffs,

18 vs.

19 CITY OF SACRAMENTO, a municipal
20 corporation; CITY COUNCIL OF
21 SACRAMENTO; and DOES 1 through 10,
22 inclusive,

23 Respondents and Defendants.

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INTRODUCTION

1. On January 13, 2009, the City of Sacramento ("City") and the City Council of Sacramento (collectively "the CITY" or "Respondents"), the respondents in this action, approved the Delta Shores Project ("Project") and certified the Environmental Impact Report ("EIR") prepared for the Project.

2. The Delta Shores Project is one of the single largest development projects in the history of Sacramento, proposing to convert 800 acres of productive farmland and other open space to residential subdivisions, strip malls and big-box stores. The Project development would occur within a 100 and 200-year floodplain in the southwest section of the City and would entirely surround the historic community of Freeport on the Sacramento River.

3. The Project site contains numerous wetlands and important habitat for special status species, including Swainson's hawks, greater sandhill cranes, vernal pool crustaceans and burrowing owls. The Project is also located upstream and adjacent to the approved refuge boundary for the Stone Lakes National Wildlife Refuge, which is considered one of the six most threatened National Wildlife Refuges in the nation due to degradation of its ecosystem from surrounding urban development and urban pollutants entering the Refuge watershed.

4. A development of this scale on a sensitive greenfield site presents unique challenges and requires careful assessment and mitigation of impacts. Unfortunately, due to a hurried and fundamentally flawed environmental review process, this kind of careful assessment and mitigation of impacts did not take place. As a result, Project design changes and mitigation measures were not required and a number of significant impacts of the Project remain.

5. These unresolved Project impacts include significant, unmitigated greenhouse gas ("GHG") emissions; a substantial increase in cancer risk and other public health impacts due to high density residential development adjacent to a heavily congested and polluted highway; stormwater and other drainage carrying contaminated soils and urban pollutants into the Stone Lakes Refuge watershed; destruction of the unique community identity and historic character of the

1 Town of Freeport; and irreversibly eliminating the scenic qualities of a designated California State
2 Scenic Highway.

3 6. The EIR's deficiencies appear, in part, to result from the CITY's rush to approve the
4 Project without allowing sufficient time to address in a meaningful fashion the serious unresolved
5 environmental, public health and community impacts of the Project. The City Planning
6 Commission was not provided sufficient time to review and recommend improvements to the
7 document, and the City Council was told that unless it took action immediately, an important
8 highway overpass project to be funded by this development would be delayed by a year.

9 7. Because the changes required to produce a legally adequate and meaningful EIR
10 would have required recirculation of a revised EIR and additional delay, the planning staff
11 attempted to address the EIR's inadequacies through piecemeal revisions and additions of text.
12 The EIR also failed to make required findings of significance and improperly relied on
13 unenforceable "voluntary" and undefined future mitigation measures to address Project impacts.
14 As demonstrated by the written and oral comments presented to the CITY by Petitioners, as well as
15 other substantial evidence in the record, the EIR certified by the CITY is profoundly inadequate
16 and fails to meet the minimum requirements of the California Environmental Quality Act
17 ("CEQA"), Pub. Resources Code section 21000 et seq., and the CEQA Guidelines, 14 California
18 Code of Regulations sections 15000 et seq.

19 8. Due to these errors and deficiencies, Respondents' actions in certifying the EIR,
20 adopting findings of significance and approving Project entitlements constitute a prejudicial abuse
21 of discretion in that Respondent failed to proceed in the manner required by law and Respondents'
22 findings and actions were not supported by substantial evidence.

23 **PARTIES**

24 9. The Stone Lakes National Wildlife Refuge Association, the Freeport Preservation
25 Coalition, the Coalition for Responsible Development and the following individuals, Tracy Oto,
26 Frank Albert, Gary Krula and Brian Lujan (hereafter referred to collectively as "Delta Shores
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Coalition” or “Petitioners”), have joined together to file this Petition as a coalition of individuals and groups concerned about the potential environmental impacts of the Delta Shores Project.

Stone Lakes National Wildlife Refuge Association

10. The Stone Lakes National Wildlife Refuge Association is a non-profit volunteer public benefit corporation whose members include residents and owners of property in the City and in the County of Sacramento who appreciate the region’s environmental qualities and who use areas adversely affected by the Project for recreation, wildlife viewing, scientific and educational purposes. These members’ personal, aesthetic and property interests will be directly, adversely and irreparably affected if the Project is developed without proper disclosure, analysis and mitigation of its environmental impacts in accordance with CEQA requirements.

11. The Stone Lakes National Wildlife Refuge Association’s mission is to conserve, protect and support the Stone Lakes National Wildlife Refuge and to promote its use for educational, recreational and research opportunities. Stone Lakes National Wildlife Refuge is the 505th refuge in the National Wildlife Refuge System and one of the few urban wildlife refuges in the nation. The Refuge is the single largest complex of natural wetlands, lakes and riparian areas remaining in the Sacramento-San Joaquin Delta, and provides critical habitat for waterfowl and other migratory birds of international concern, as well as a number of endangered plant and animal species.

12. The Refuge Association has specifically identified stormwater runoff, water quality, and loss of surrounding habitat as significant challenges for the overall health of Stone Lakes National Wildlife Refuge. The Stone Lakes National Wildlife Refuge is the ultimate destination of stormwater and other drainage from the Project. The Project will create substantial stormwater runoff that may carry urban pollutants into the Refuge water system via Morrison Creek. The Project will also destroy important habitat for special status species that nest and live in the Wildlife Refuge. The Refuge Association is also concerned about the Project’s contribution to global warming and the potential impact of global warming on the Refuge. The Refuge

1 Association seeks to ensure that such Project impacts are analyzed and mitigated in accordance
2 with CEQA requirements.

3 **The Freeport Preservation Coalition and**
4 **Individual Petitioner Tracy Oto**

5 13. The Freeport Preservation Coalition is an unincorporated association of residents
6 and property owners in the Town of Freeport and the surrounding area interested in maintaining the
7 cultural integrity, environmental quality and historic character of this unique community along the
8 Sacramento River. The Town is bordered by the River on the west, and is currently surrounded by
9 natural open space areas and farmland on the north, east and south. Freeport is also located within
10 the Scenic Highway portion of Highway 160. The proposed Project will result in incompatible
11 urban development that will completely envelop the Town of Freeport, threatening its unique
12 community identity and historic character, and causing adverse visual and aesthetic impacts on the
13 Town and Scenic Highway 160. Respondents' violations of CEQA, including the failure to
14 analyze, disclose and mitigate the significant impacts of the Project, or consider alternatives that
15 would lessen the Project's impacts on the Freeport community, directly and irreparably harm both
16 the organizational interests of the Freeport Preservation Coalition and the personal, aesthetic and
17 property interests of its members in preserving the cultural, environmental and historic qualities of
18 the Freeport community. The Freeport Preservation Coalition and its members will be directly,
19 adversely and irreparably affected by Respondents' actions until and unless the Court grants the
20 relief requested in this Petition.

21 14. Petitioner and Plaintiff Tracy Oto is a member of the Freeport Preservation
22 Coalition and an owner and operator of a business in the Town of Freeport. Mr. Oto is concerned
23 that the Project's proposed development of farmland, open space and special status species habitat
24 that currently surrounds the Town of Freeport is incompatible with maintaining the cultural,
25 environmental and historic character of the Town, and will also cause significant aesthetic and
26 visual impacts on Freeport and on Scenic Highway 160. Mr. Oto is further concerned about the
27 Project's contribution to global warming and the potential impact of global warming and climate
28 change on his riverfront community. Mr. Oto's personal, aesthetic and property interests in

1 preserving the cultural, environmental and historic qualities of the Freeport community will be
2 directly, adversely and irreparably affected by Respondents' violations of CEQA until and unless
3 the Court grants the relief requested in this Petition.

4 **Coalition for Responsible Development and**
5 **Individual Petitioners Frank Albert, Gary Krula and Brian Lujan**

6 15. The Coalition for Responsible Development is comprised of Plumbers and
7 Pipefitters Union, Local 447, International Brotherhood of Electrical Workers Union, Local 340
8 and Sheet Metal Workers Union, Local 162 and their members and their families and other
9 individuals who live and work in the City and County of Sacramento. Petitioner Brian Lujan is a
10 member of the Coalition for Responsible Development who lives in the City of Sacramento
11 approximately 2 miles east of the Project site. Petitioner Gary Krula is a member of the Coalition
12 for Responsible Development who lives in the City of Sacramento approximately one mile east of
13 the Project site. Petitioner Frank Albert is a member of the Coalition for Responsible Development
14 who lives in the City of Sacramento approximately one mile north of the Project site.

15 16. The Coalition for Responsible Development was formed to advocate for responsible
16 and sustainable development that will help to ensure the long-term health of the regional
17 construction industry and the economy in general, while at the same time protecting the
18 environment where the coalition members and their families live and work. Its members reside and
19 work in the City and County of Sacramento and are likely to be working on the Project itself and
20 may be among the future residents of the Project. Coalition members include residents of the City
21 of Sacramento, including Mr. Lujan, Mr. Krula and Mr. Albert who appreciate the region's
22 environmental qualities and whose personal, aesthetic and property interests will be adversely
23 affected if the Project is developed without proper analysis and mitigation of its environmental
24 impacts.

25 17. Members of the Coalition for Responsible Development, including individual
26 Petitioners Mr. Lujan, Mr. Krula and Mr. Albert, will suffer health and safety impacts from the
27 Project as residents and workers exposed to toxic air contaminants, contaminated soils, flooding
28 impacts and global warming impacts. The members and their families, including individual

1 Petitioners Mr. Lujan, Mr. Krula and Mr. Albert, are also concerned about the loss of prime
2 farmland and special status species habitat on and near the Project site, as well as cumulative
3 impacts to Stone Lakes National Wildlife Refuge caused by polluted stormwater runoff from the
4 Project and other cumulative development in the area.

5 18. The Coalition for Responsible Development and its members are also concerned
6 that poorly planned and environmentally detrimental projects may jeopardize future construction
7 jobs by making it more difficult and more expensive for business and industry to expand in the
8 region, and by making it less desirable for businesses to locate and for people to live here.
9 Continued degradation can, and has, caused construction moratoria and other restrictions on growth
10 in California. This, in turn, reduces future employment opportunities in the construction industry.

11 19. The interests of the Coalition for Responsible Development and its members in
12 lawful, consistent and environmentally sound land use planning and development approvals in the
13 City of Sacramento, will be directly, adversely and irreparably affected unless this Court provides
14 the relief requested in this Petition.

15 **Respondents City of Sacramento and City Council of Sacramento**

16 20. Respondent and Defendant CITY OF SACRAMENTO is a municipal corporation
17 organized under the laws of the State of California. The City of Sacramento is the lead agency
18 responsible for preparation of an environmental document that describes the proposed Project,
19 evaluates its impacts, and if necessary, evaluates mitigation measures and/or alternatives to lessen
20 or avoid any significant environmental impacts under CEQA.

21 21. Respondent and Defendant CITY COUNCIL OF CITY OF SACRAMENTO ("City
22 Council") is the duly elected legislative and quasi-judicial body of Respondent City. As the final
23 decision-making body for the Project pursuant to its authority to grant legislative approvals and
24 hear and decide appeals, the City Council was responsible for, *inter alia*, lead-agency decision-
25 making with respect to the Project under CEQA, and assuring that the Project complies with all
26 other applicable provisions of federal, state and local laws.

Real Parties in Interest

22. Delta Shores Coalition is informed and believes, and thereon alleges, that Real Party in Interest M & H REALTY PARTNERS, LP is a California limited partnership. Delta Shores Coalition is informed and believes, and thereon alleges, that M & H Realty Partners, LP is a Project applicant and/or owner of the Project property.

23. Delta Shores Coalition is informed and believes, and thereon alleges, that Real Party in Interest MERLONE GEIER PARTNERS, LP is a California limited partnership. Delta Shores Coalition is informed and believes, and thereon alleges, that Merlone Geier Partners, LP is a Project applicant and/or owner of the Project property.

Does 1 through 10

24. Delta Shores Coalition is unaware of the true names and capacities of Respondents and Defendants DOES 1 through 10, and therefore names such Respondents and Defendants by fictitious names. Delta Shores Coalition is informed and believes, and based on such information and belief, alleges that the fictitiously named Respondents and Defendants are also responsible for the actions described in this Petition. When the true identities and capacities of Does 1 through 10 have been determined, Delta Shores Coalition will seek leave from the Court to amend this Petition to insert such identities and capacities.

Does 11 through 20

25. Delta Shores Coalition is unaware of the true names and capacities of Real Parties in Interest DOES 11 through 20, and therefore names such Real Parties in Interest by fictitious names. Delta Shores Coalition is informed and believes, and based on such information and belief, alleges that the fictitiously named Real Parties in Interest are also responsible for the actions described in this Petition. When the true identities and capacities of Does 11 through 20 have been determined, Delta Shores Coalition will seek leave from the Court to amend this Petition to insert such identities and capacities.

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27. Venue is proper in the County of Sacramento under Code of Civil Procedure section 394, because Delta Shores Coalition brings this action against Respondent and Defendant CITY in the county in which Respondent and Defendant CITY is situated.

29. Delta Shores Coalition has complied with the provisions of Public Resources Code section 21167.6 and Code of Civil Procedure section 388 by mailing a copy of this Petition to the State Attorney General. A true and correct copy of Delta Shores Coalition's Notice to the Attorney General of the State of California, with proof of service thereof, is attached hereto as Exhibit "A".

30. Delta Shores Coalition has complied with Public Resources Code section 21167.5 by mailing a written notice of commencement of this action to the City prior to filing this Petition. A true and correct copy of the notice provided pursuant thereto, with proof of service thereof, is attached hereto as Exhibit "B".

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32. The Delta Shores Coalition, other agencies, interested groups and individuals made oral and written comments on the Draft EIR and Final EIR and raised each of the legal deficiencies asserted in this Petition.

33. The CITY has taken final agency action with respect to the subject Project approvals.

34. The CITY has a mandatory duty to comply with CEQA prior to undertaking the discretionary approvals at issue in this lawsuit.

35. Delta Shores Coalition possesses no other remedy to challenge the CITY's abuse of discretion of the claims raised herein other than by means of this lawsuit.

IRREPARABLE HARM

36. Delta Shores Coalition has no plain, speedy or adequate remedy in the ordinary course of law. If the City's decisions regarding the Project are implemented, then the Delta Shores Coalition will be irreparably harmed. No money damages could adequately compensate Delta Shores Coalition for that harm.

37. Petitioners are informed and believe that Respondents and Real Parties in Interest are threatening to proceed with construction of the project in the near future. Construction of the Project will irreparably harm the environment in that important grazing habitat for Swainson's hawk will be destroyed, stormwater and other drainage carrying contaminated soils and urban pollutants will pollute and damage sensitive downstream habitats, significant emissions of greenhouse gases will occur unmitigated, scenic views and historic resources will be irreversibly eliminated, and Project residences will be exposed to increased cancer and other health risks. A temporary restraining order and preliminary and permanent injunctions should issue restraining Respondents and Real Parties in Interest from proceeding with the project.

PUBLIC BENEFIT

38. Delta Shores Coalition also files this action in the public interest. Delta Shores Coalition seeks to enforce important public duties and rights under CEQA. Other members of the public who will be adversely affected by the Project's impacts would find it financially, practically, and/or procedurally difficult to protect their rights in the complex administrative and judicial processes for reviewing the Project and enforcing compliance with State and local laws. Thus, this action involves enforcement of an important right affecting the public interest. Delta Shores Coalition will confer a substantial benefit to the citizens of the County, the City, and the region in which the County and City are located, as well as on citizens of the State of California generally.

1 Therefore, Delta Shores Coalition brings this action to vindicate their own legal rights, as well as to
2 enforce important public rights significantly affecting the public interest as a private attorney
3 general under Code of Civil Procedure section 1021.5, and all applicable law.

4 **STATEMENT OF FACTS**

5 **The Delta Shores Project**

6 39. The Delta Shores Project consists of entitlements to develop approximately 800
7 acres of undeveloped farmland and open space. The Project will include up to 5,222 residential
8 units, approximately 1.4 million square feet of strip malls and big-box development along the
9 freeway, and approximately 161,000 square feet of commercial and office space in a
10 residential/mixed-use area. The Project is located in the City of Sacramento, bordering the Town
11 of Freeport and Scenic Highway 160 on the west and the buffer lands of the Sacramento Regional
12 County Sanitation District on the south and east. The Project is bisected by Interstate 5 and the
13 proposed Cosumnes River Boulevard Interchange.

14 **The City's CEQA Process**

15 40. On September 9, 2008, the City of Sacramento circulated a Draft EIR for the
16 Project. The public comment period for the Draft EIR ended on October 23, 2008.

17 41. During the public comment period, the Delta Shores Coalition submitted written
18 comments (including as attachments, expert comments, reports, studies and other supporting
19 substantial evidence) detailing the numerous errors, omissions and deficiencies contained in the
20 Draft EIR.

21 42. In addition to the comments submitted by the Delta Shores Coalition, numerous
22 other agencies and organizations also submitted comments raising concerns regarding the adequacy
23 of the Draft EIR and the proposed Project. The other agencies and organizations identifying
24 deficiencies in the EIR included: the California Department of Fish and Game, the California
25 Department of Transportation, the Delta Protection Commission, Sacramento Regional County
26 Sanitation District, the Sacramento Metropolitan Air Quality Management District, Sacramento
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1 County Planning Director, the Sacramento County Farm Bureau, Friends of the Swainson's Hawk
2 and the South Pocket Homeowners Association.

3 43. Despite the significant number and scope of comments submitted on the Draft EIR,
4 the City released a Final EIR just 43 days later on December 5, 2008. The Final EIR made a
5 number of changes intended to address the shortcomings identified in the Draft EIR comment
6 letters submitted by the Delta Shores Coalition and others, but numerous significant impacts of the
7 Project remained undisclosed, improperly evaluated or inadequately mitigated.

8 44. On December 11, 2008, the City Planning Commission held a hearing to make a
9 recommendation to the City Council on approval of the Project entitlements and certification of the
10 EIR. Members of the Delta Shores Coalition, Friends of the Swainson's Hawk and numerous other
11 speakers testified at the hearing regarding the continued deficiencies of the EIR.

12 45. The Planning Commission expressed concern over the deficiencies in the EIR, and
13 several members of the Commission stated that they had not been given sufficient time to review
14 the EIR and other relevant documents.

15 46. City planning department staff and the attorney for the Project applicant warned
16 against continuing the hearing to allow further review claiming that any continuance could delay
17 the Project by a year. Staff testified that the Project needed to be approved by the City Council at
18 its January 13, 2009 meeting in order to avoid such a delay.

19 47. A motion to continue the Planning Commission hearing on the Project was made,
20 but defeated. The Commission then passed a motion to send this matter to the City Council with
21 "no recommendation" and to provide the City Council with a list of the Commission's concerns
22 regarding the EIR.

23 48. Prior to the City Council hearing, the City released several errata to the Final Project
24 EIR, including an errata released on January 9, 2009 that contained substantive changes to the
25 Project's proposed Swainson's hawk mitigation.

1 49. On January 13, 2009, the Delta Shores Coalition submitted comments, expert
2 testimony and supporting substantial evidence to the CITY delineating the continued inadequacies
3 of the Final EIR, including the issues raised by this Petition.

4 50. The CITY also received written comments on the inadequacies of the Final EIR
5 from numerous other agencies, organizations and individuals, including Friends of the Swainson's
6 Hawk, Defenders of Wildlife, the California Department of Fish and Game, the United States Fish
7 and Wildlife Service and the Sacramento City Planning Commission.

8 51. At the January 13, 2009 City Council meeting, members of the Delta Shores
9 Coalition and numerous other organizations and individuals testified in opposition to certification
10 of the Project EIR on the grounds that the EIR failed to adequately address numerous significant
11 impacts of the Project in violation of the requirements of CEQA. The attorney for the Project
12 applicant again asserted that any delay in approval of the Project would delay the Project by at least
13 a year. The City Council voted 8 to 1 to approve the Project entitlements and to certify the Project
14 EIR.

15 52. Petitioner is informed and believes, and thereon alleges, that on January 16, 2009,
16 the CITY filed a Notice of Determination ("NOD") for the Project.

17 **Toxic Air Contaminants**

18 53. The Project includes entitlements to construct high density residential development
19 119 feet from a heavily congested portion of Interstate 5.

20 54. The record contains uncontroverted evidence that the proposed development
21 adjacent to Interstate 5 may result in an increased cancer risk to future residents of approximately 1
22 in 4000 due to the proximity of heavy diesel and non-diesel vehicle traffic. The administrative
23 record contains guidance documents by both the California Office of Environmental Health Hazard
24 Assessment ("OEHHA") and the Sacramento Metropolitan Air Quality Management District
25 ("SMAQMD") stating that the general threshold of significance for cancer risk from toxic air
26 contaminants is 1-in-1 million.

55. The EIR, arbitrarily and without the support of any substantial evidence, sets a threshold of significance for toxic air contaminants at an increased cancer risk of *1-in-2200*. As a result, the CITY found that the Project would not have any significant toxic air contaminant impacts and no mitigation was imposed to protect future inhabitants.

56. The record also contains uncontroverted evidence that living near major roadways is associated with other non-cancer health risks, including acute and chronic respiratory disease, reduced lung function and increased asthma hospitalizations and heart attacks as well as premature death in elderly individuals with heart disease. Studies included in the record show that non-cancer health risks from ultrafine particles from gasoline and diesel-powered vehicles have been found to pose a significant health concern particularly to residents within 500 feet of a major roadway. Even though the EIR acknowledges these studies, it fails to include any evaluation of the potential non-cancer health risks from constructing residences within 500 feet of Interstate 5.

Greenhouse Gas Emissions

57. The EIR acknowledges that there is a general scientific consensus that worldwide climate change is occurring, caused in whole or in part by increased emissions of greenhouse gases that keep the Earth's surface warm by trapping heat in the Earth's atmosphere. The record contains uncontroverted evidence that global warming could have serious consequences in California, including changing weather patterns, substantial loss of snow-pack in the Sierra and consequent water shortages, coastal erosion, saltwater intrusion into the Delta, a significant increase in wildfires and a substantial loss of agricultural productivity.

58. In 2006, Governor Schwarzenegger signed California Assembly Bill 32 (“AB 32”), a landmark law to control and reduce the emission of global warming gases in California. AB 32 requires both reporting of greenhouse gas emissions and their reduction on an ambitious time line, including a reduction of greenhouse gas emissions to 1990 levels by 2020 and to 80 percent below 1990 levels by 2050.

59. The record includes findings by the California Air Resources Board that any effort to reduce greenhouse gas emissions must address residential and commercial development.

1 Collectively, energy use and related activities by buildings are the second largest contributor to
2 California's greenhouse gas emissions. Almost one-quarter of California's greenhouse gas
3 emissions can be attributed to buildings.

4 60. The EIR estimates that the Project will result in the release of approximately 82,401
5 tons of GHG emissions during construction and more than 268,832 tons per year of operational
6 GHG emissions at buildout.

7 61. The record includes an analysis of seven feasible threshold measures for
8 determining the significance of a project's greenhouse gas emissions that was published in January
9 2008 by the California Air Pollution Control Officers Association ("CAPCOA"). These thresholds
10 include a zero emission threshold, a 50 residential unit or 900 greenhouse gas tons/year threshold, a
11 1,400 residential unit or 25,000 greenhouse gas tons/year threshold and, as the largest threshold, a
12 2,600 residential unit or 50,000 greenhouse gas tons/year threshold. The 50,000 greenhouse gas
13 tons/year threshold would capture far less than half of new residential or commercial development
14 and CAPCOA states that it would be insufficient to meet the requirements of AB 32. The Delta
15 Shores Project easily meets even the 50,000 greenhouse gas tons/year threshold.

16 62. The EIR declines to make a finding of significance of the Project's GHG emissions
17 on the grounds that such a finding would be speculative.

18 **Stormwater Runoff Impacts on the Stone Lakes National Wildlife Refuge**

19 63. Stone Lakes National Wildlife Refuge is the single largest remaining complex of
20 natural wetlands, lakes and riparian areas remaining in the Sacramento-San Joaquin Delta, and
21 provides critical habitat for waterfowl and other migratory birds of international concern, as well as
22 a number of endangered plant and animal species. The Stone Lakes National Wildlife Refuge
23 Comprehensive Conservation Plan warns that upstream urban development poses significant risks
24 to the ecological integrity of the Refuge.

25 64. The EIR acknowledges that the Project will result in increased stormwater runoff
26 due to placement of impervious surfaces over the Project site. Such runoff may be contaminated
27 with urban pollutants such as sediment, nutrients, trash, metals, bacteria, oil and grease and
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1 organics. The EIR finds that such runoff will not result in a significant impact because the Project
2 will comply with National Pollutant Discharge Elimination System ("NPDES") permit
3 requirements and other regulatory requirements.

4 65. The administrative record contains uncontroverted evidence that urban
5 development and indirect water quality impacts threaten resources in the Stone Lakes National
6 Wildlife Refuge despite compliance with NPDES municipal permit requirements. The
7 administrative record also contains uncontroverted evidence that stormwater detention basins
8 constructed in conjunction with urban development pursuant to NPDES permits only reduce
9 pollutants by 30 to 90 percent, and that the pollutants not detained will likely enter the Refuge and
10 potentially affect fish and wildlife.

11 66. The EIR identifies a "preferred" wetland biofiltration drainage system that would
12 provide superior reduction of the pollutants entering the Stone Lakes National Wildlife Refuge
13 from Project stormwater runoff. However, the City does not require the Project to install the
14 "preferred" wetland biofiltration drainage system to mitigate stormwater impacts. The Project's
15 final approval allows Project developers the option of merely installing a conventional system
16 involving only detention basins.

17 67. The Project's Phase I Environmental Site Assessment report specifically identifies
18 pesticide, petroleum and lead and other metal residues as potential contaminants of the Project
19 soils. The record contains expert testimony that the Project's extensive grading activities create a
20 potential for mobilization of pesticides in stormwater and sheet flow that could affect sensitive
21 downstream resources.

22 **The Town of Freeport and Scenic Highway 160**

23 68. The Town of Freeport is an historic Sacramento-San Joaquin Delta community
24 established as a riverport in 1862 by the Sacramento Valley Railroad in order to avoid port taxes
25 levied by the City of Sacramento.

26 69. The record contains substantial, uncontroverted evidence that the County of
27 Sacramento has designated the Town of Freeport as a "Neighborhood Preservation Area," and has
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1 determined that the Town is historically unique in Sacramento County. The record further contains
2 substantial evidence that the Town of Freeport is characterized by its Delta rivertown atmosphere
3 and its rural characteristics and that the approach of urban development in the City of Sacramento
4 threatens the character of the Town.

5 70. The Project proposes developing high density residential housing of up to 15 units
6 per acre immediately adjacent to the Town of Freeport, converting the entire surrounding rural
7 landscape into continuous tract housing. The record contains testimony that, without a buffer or
8 other meaningful mitigation, this development will swallow up and obliterate Freeport as a distinct
9 and historically unique Delta riverfront town.

10 71. Highway 160 is designated a Scenic Highway through the Town of Freeport and
11 along the western edge of the Project site. The record contains uncontroverted evidence that the
12 scenic view from Highway 160 that led to its designation as a scenic highway expressly included
13 its rural farmland landscape. The Project proposes to eliminate entirely the rural landscape views
14 of Highway 160 where it runs adjacent to the Project and replace it with continuous tract housing.

15 **Flooding**

16 72. The EIR acknowledges that some parts of the Project designated for urban
17 development currently lie within the 100-year flood plain and will not be provided 100-year flood
18 protection until levee improvements are completed sometime in future. The Project approval
19 allows development within the 100-year flood plain even if levee improvements are not completed
20 and without any protection from 100-year flood impacts.

21 73. The EIR acknowledges that more than 80 levees have sustained critical erosion
22 damage over the years in the Sacramento Valley. However, the Project approval allows
23 development within areas potentially at risk from these damaged levees prior to repair of such
24 damage.

25 74. The administrative record contains substantial evidence that both federal and
26 California agencies and the California Legislature now state that the 200-year flood protection is
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1 necessary to reduce the risk of flooding in urban areas to a level of insignificance. In approving the
2 Project, the CITY failed to require 200-year flood protection for the development.

3 **Swainson's Hawk**

4 75. The record contains uncontroverted evidence that the Project site contains important
5 Swainson's hawk foraging habitat, and the EIR acknowledges that Swainson's hawks have been
6 observed on the Project site. The Project site is adjacent to nesting habitat along the Sacramento
7 River, which supports the highest density of nesting hawks in the region.

8 76. The record contains substantial evidence that loss of foraging habitat in the
9 immediate vicinity of Sacramento could result in higher energetic costs for Swainson's hawks as
10 they need to travel further to forage and this may translate into lower reproductive success. The
11 record also contains uncontroverted evidence that preservation of Swainson's hawk habitat through
12 conservation easements or other measures will be insufficient to mitigate impacts on the species if
13 the preserved habitat is more than 10 miles away from the affected Swainson's hawk nests, or if the
14 preferred habitat is not suitable for foraging by Swainson's hawks.

15 **Prime and Important Farmland**

16 77. According to the EIR, approximately 764 acres of prime and important farmland
17 will be converted to urban uses under the Project. In comments included in the administrative
18 record, the Department of Conservation, the agency responsible for promoting proper management
19 of the State's agricultural land, determined that the Project's conversion of agricultural land is an
20 impact of at least regional significance.

21 **FIRST CAUSE OF ACTION**

22 **(Violations of CEQA,**

23 **Pub. Resources Code § 21000 et seq.;**

24 **Code of Civil Procedure §1094.5 or in the alternative §1085.)**

25 78. Petitioners reallege and incorporate by reference all prior paragraphs of this Petition
26 as if fully set forth below.

27 79. The EIR certified by the CITY is legally defective due to its failure to adequately
28 identify, evaluate and mitigate potentially significant impacts and its failure to adequately respond
to comments. As a result of these continued errors and omissions, the CITY's CEQA findings

1 were not supported by substantial evidence. The certified EIR fails to comply with the
2 requirements of CEQA and was improperly used as the basis for approving the Project. It fails to
3 perform its function as an informational document that is meant "to provide public agencies and
4 the public in general with detailed information about the effect which a proposed project is likely to
5 have on the environment" and "to list ways in which the significant effects of such a project might
6 be minimized." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988)
7 47 Cal.3d 376, 391.) In addition, the changes that were made in the Final EIR were sufficient in
8 content and scope to require recirculation for further public review. The failure to recirculate the
9 EIR is a violation of CEQA.

10 **A. CEQA Requirements**

11 80. Like all public agencies in California, the CITY was at all times under a mandatory
12 duty to comply with all requirements of CEQA and the CEQA Guidelines.

13 81. Pursuant to CEQA, the purpose of an EIR is "to identify the significant effects on
14 the environment of a project, to identify alternatives to the project, and to indicate the manner in
15 which those significant effects can be mitigated or avoided." (Pub. Resources Code §§ 21002.1;
16 21100.)

17 82. To fulfill this function, the discussion of impacts in an EIR must be detailed,
18 complete, and "reflect a good faith effort at full disclosure." (CEQA Guidelines § 15151.) CEQA
19 requires an EIR to disclose all potentially significant direct and indirect environmental impacts of a
20 project. (Pub. Resources Code § 21100, subd. (b)(1); CEQA Guidelines § 15126.2, subd. (a).)

21 83. A legally adequate EIR "must contain sufficient detail to help ensure the integrity of
22 the process of decision-making by precluding stubborn problems or serious criticism from being
23 swept under the rug." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692,
24 733.) Mere conclusory pronouncements are not sufficient. An adequate EIR must contain facts
25 and analysis that provide a road map to how an agency has reached its conclusions. (*Citizens of*
26 *Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.)

1 84. CEQA also imposes an affirmative obligation on agencies to avoid or reduce
2 environmental harm by adopting feasible project alternatives or mitigation measures. If an EIR
3 identifies potentially significant impacts, it must then propose and evaluate mitigation measures
4 and alternatives sufficient to minimize these impacts. (Pub. Resources Code §§ 21002.1, subd. (a),
5 21100, subd. (b)(3).)

6 85. Mitigation measures must be specific and enforceable. (CEQA Guidelines
7 § 15126.4, subd. (a)(2).) Mitigation measures that are vague or so undefined that it is impossible to
8 evaluate their effectiveness are legally inadequate. (*San Franciscans for Reasonable Growth v.*
9 *City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79.) Deferring formulation of
10 mitigation measures to post-approval studies is impermissible unless specific performance criteria
11 are articulated. (Pub. Resources Code § 21061.)

12 86. CEQA requires the Court to establish whether an agency abused its discretion by
13 determining whether an agency failed to proceed in the manner required by law, and/or whether the
14 agency's decision is not supported by substantial evidence. (Pub. Resources Code § 21168.)

15 87. Based on these legal standards, the City abused its discretion, exceeded its
16 jurisdiction and proceeded in a manner contrary to law without the support of substantial evidence
17 in the record by committing the following violations:

18 **B. The Findings Regarding the Significance of Health Risks from the**
19 **Project's Proposed Development of High Density Residential Units**
20 **Adjacent to Interstate 5 Are Not Supported by Substantial**
 Evidence and Fail to Comply with the Requirements of CEQA

21 88. Petitioners reallege and incorporate by reference all prior paragraphs of this Petition
22 as if fully set forth below.

23 89. The CITY's finding that the Project's proposed development of high density
24 residential units adjacent to Interstate 5 will not result in significant health risks to future
25 inhabitants relies upon an arbitrary and improperly derived threshold of significance and is not
26 supported by substantial evidence.

1 90. The EIR applies a threshold of significance for toxic air contaminants of 1-in-2200.
2 The EIR states that this threshold is based on the evaluation criterion for preparing health risk
3 assessments ("HRAs") adopted by SMAQMD in the *Recommended Protocol for Evaluating the*
4 *Location of Sensitive Land Uses Adjacent to Major Roadways* (the "Protocol").

5 91. The *Protocol* evaluation criterion lacks any foundation for determining a threshold
6 of significance for cancer or other health risks. The *Protocol* evaluation criterion is based on a
7 comparison of regional traffic levels and is not based upon an assessment of the significance of
8 health risks. SMAQMD expressly states in the *Protocol* that the evaluation criterion **does not**
9 **provide an acceptable cancer risk level or a regulatory threshold.** By applying a threshold of
10 significance that is not based upon an assessment of the significance of an impact's health risks, the
11 CITY's finding that the Project will not result in significant toxic air contaminant impacts is not
12 supported by substantial evidence.

13 92. The CITY violates CEQA by selecting this threshold on the grounds that the overall
14 benefits of the Project outweigh using a more health protective threshold. CEQA does not permit a
15 finding of significance to be based upon the balancing of a project's overall benefits. A lead
16 agency may weigh a Project's impacts against the Project's benefits to determine whether to adopt
17 a statement of overriding considerations only after a finding of significance has been made.
18 (CEQA Guidelines §§ 15091, 15093.) By improperly and prematurely weighing the overall
19 benefits of the Project in lieu of making a determination of significance, the CITY violated the
20 requirements of CEQA and failed to make findings supported by substantial evidence.

21 93. The EIR's analysis of potential traffic-related air quality impacts also lacks
22 foundation because it improperly restricts its analysis to cancer risks resulting from exposure to
23 diesel particulate matter emissions from truck traffic. The EIR fails to evaluate at all either the
24 cancer risk from non-diesel vehicular exhaust, or the non-cancer health risks that result from
25 exposure to such exhaust emissions. The record contains uncontroverted evidence that such
26 impacts may be significant. Because the CITY failed to evaluate these impacts, its determination
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1 that the Project would not result in toxic air contaminant risks is not supported by substantial
2 evidence.

3 94. The EIR's assessment of toxic air contaminants is further flawed because it relies
4 upon current traffic data and not upon traffic estimates for when the Project and the Cosumnes
5 River Interchange are built. As a result, the CITY's determination that the Project would not result
6 in significant toxic air contaminant impacts is based upon inaccurate modeling data and is not
7 supported by substantial evidence.

8 **C. The Findings Regarding the Significance of the Project's**
9 **Greenhouse Gas Emissions Are Not Supported by Substantial**
10 **Evidence and Fail to Comply with the Requirements of CEQA**

11 95. Petitioners reallege and incorporate by reference all prior paragraphs of this Petition
12 as if fully set forth below.

13 96. The CITY acknowledges that the Project may result in "potentially cumulatively
14 considerable" GHG emissions, but nevertheless fails to make a finding that such emissions are
15 significant on the grounds that such a finding would be speculative. As a result, the City fails to
16 proceed in a manner required by law.

17 97. The EIR claims that it would be speculative to make a finding of significance
18 because no finding of significance of the Project's GHG emissions can be scientifically made.
19 This claim is not supported by substantial evidence.

20 98. Specific requirements for GHG emission reductions in California necessary to
21 prevent global warming have been statutorily established pursuant to AB 32. Petitioners provided
22 expert comments that the Project's GHG emissions would adversely impact the City's ability to
23 meet its fair share of the AB 32 GHG reduction goals. The EIR, however, arbitrarily fails to
24 evaluate the Project's potential impact on the CITY's ability to meet its fair share of the AB 32
25 GHG reduction goals. As a result, the CITY's determination that the significance of the Project's
26 GHG emissions is speculative is not supported by substantial evidence. The CITY also violates
27 CEQA by failing to adequately respond to Petitioners' comments on this issue.
28

1 99. The EIR also arbitrarily fails to evaluate the most current available guidance on
2 GHG CEQA thresholds developed by the California Air Pollution Control Officers Association
3 (“the CAPCOA guidance”), which was provided to the City by Petitioners during the public
4 comment period on the Draft EIR. A lead agency may formulate standards of significance for use
5 in an EIR as long as a reasonable basis exists for using those standards. (CEQA Guidelines
6 § 15064, subd. (b).) The CAPCOA guidance provides an analysis of seven feasible threshold
7 measures for determining the significance of a project’s GHG emissions and provides a rational
8 basis for using each of the seven identified thresholds. The Delta Shores Project easily meets even
9 the most generous of thresholds evaluated by CAPCOA.

10 100. The EIR rejects the CAPCOA standards on the grounds that the CITY is not
11 *required* to use any of these standards. The EIR fails, however, to provide any analysis to explain
12 why none of these standards would be *appropriate* for use by the CITY. Without such an analysis,
13 the EIR’s rejection of these standards and refusal to make a finding of significance violates the
14 requirements of CEQA and is not supported by substantial evidence. The CITY also violates
15 CEQA by failing to adequately respond to Petitioners’ comments on this issue.

16 101. The EIR identifies a number of measures *voluntarily* adopted by the Project
17 applicant to address GHG emissions, but admits that GHG emissions from the Project “would
18 remain potentially cumulatively considerable” even with these measures. In addition, most of the
19 measures voluntarily adopted are legally inadequate on their face. Over half of the proposed
20 voluntary measures are either already existing regulatory requirements or are vague, uncertain,
21 optional, improperly deferred or otherwise unenforceable. Moreover, without a finding of
22 significance, none of these measures are legally enforceable under CEQA. Accordingly, these
23 measures do not relieve the CITY from its obligation under CEQA to make a finding of
24 significance on the issue of GHG emissions.

25 102. Numerous other specific, enforceable and feasible mitigation measures to reduce
26 Project GHG emissions were presented to the CITY in the public comments submitted on the EIR,
27
28

1 but were not required by the CITY in the final Project approval. The CITY's failure to adopt
2 feasible measures to mitigate this significant impact violates the requirements of CEQA.

3 **D. The Findings Regarding the Significance of Impacts on the Stone**
4 **Lakes National Wildlife Refuge and Beach-Stone Lakes Basin**
5 **from Project Stormwater Runoff Are Not Supported by**
6 **Substantial Evidence and Fail to Comply with the Requirements**
7 **of CEQA**

8 103. Petitioners reallege and incorporate by reference all prior paragraphs of this Petition
9 as if fully set forth below.

10 104. The EIR acknowledges that urban stormwater runoff from the Project will flow into
11 the Stone Lakes National Wildlife Refuge and the Beach-Stone Lakes Basin.

12 105. The administrative record contains substantial evidence that upstream urban
13 development poses significant risks to the ecological integrity of the Stone Lakes National Wildlife
14 Refuge and the Beach-Stone Lakes Basin.

15 106. The EIR fails to evaluate the potential for increased urban runoff pollutants to harm
16 downstream biological resources in the Refuge and the Beach-Stone Lakes Basin. The EIR instead
17 simply states without any analysis that compliance with National Pollutant Discharge Elimination
18 System ("NPDES") permits and other regulations will result in no significant impact.

19 107. CEQA requires conclusions in an EIR to be supported by substantial evidence.
20 (Pub. Resources Code § 21081.5; CEQA Guidelines § 15091, subd. (b).) Furthermore, an EIR
21 must provide the reader with the analytic bridge between its ultimate findings and the facts in the
22 record. (*Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d
23 506.)

24 108. The CITY's reliance on compliance with NPDES permits and other regulation lacks
25 foundation because it fails to disclose and evaluate how compliance with these permits and
26 regulations will result in mitigation of the Project's stormwater runoff impacts to a level below
27 significance. By failing to disclose the analytic bridge between the assumption that the Project will
28 comply with permit requirements and the finding that the Project will not result in any significant

1 stormwater runoff impacts, the CITY violates the requirements of CEQA and the finding is not
2 supported by substantial evidence.

3 109. The EIR also violates CEQA by improperly deferring formulation of specific
4 mitigation measures for cleanup of contaminated soil and failing to address potential contamination
5 of stormwater and impacts on the Stone Lakes National Wildlife Refuge and other downstream
6 sensitive resources. The EIR does not provide objective performance standards to ensure that the
7 deferred mitigation measures will provide adequate protection of the watershed from construction
8 runoff of contaminated soils. The performance standard set forth in the EIR, "managed to the
9 satisfaction of the City and the Sacramento County Environmental Management Department," is
10 vague, unenforceable and deprives the public of the opportunity to meaningfully review and
11 comment on its sufficiency. Accordingly, the EIR's finding that impacts from contaminated soil
12 runoff will be mitigated to a level of insignificance is not supported by substantial evidence.

13 **E. The Findings Regarding the Significance of the Project's**
14 **Aesthetic, Visual or Historic Resource Impacts on the Town of**
15 **Freeport and Scenic Highway 160 Are Not Supported by**
16 **Substantial Evidence and Fail to Comply with the Requirements**
of CEQA

17 110. Petitioners reallege and incorporate by reference all prior paragraphs of this Petition
18 as if fully set forth below.

19 111. The EIR fails to evaluate evidence of the Project's negative aesthetic, visual and
20 historic resource impacts on the Town of Freeport and Scenic Highway 160. As a result, the
21 CITY's determination that the Project will not have any significant impact on the Town of Freeport
22 and Scenic Highway 160 is not supported by substantial evidence.

23 112. The EIR attempts to justify its determination that the Project will not have
24 significant impacts on the Town of Freeport by claiming that the Town of Freeport has not been
25 designated by California as a rural historic landscape or listed on the National Register. However,
26 CEQA does not require such formal designation for impacts to an historic resource to be
27 considered significant. (Pub. Resources Code § 21084.1; CEQA Guidelines § 15064.5, subd. (a).)
28

1 In addition, CEQA does not permit a lead agency to disregard evidence that an affected resource
2 may be historically significant based solely on the lack of formal designation or listing by a state or
3 federal entity. The EIR acknowledges that, other than checking for state or federal historic listings,
4 it did not evaluate the Town of Freeport for eligibility as an historic district. Accordingly, the
5 CITY's failure to evaluate other evidence of the historic significance of the Town of Freeport
6 violated the requirements of CEQA.

7 113. The CITY also violates CEQA by failing to consider the County of Sacramento's
8 designation of the Town of Freeport as a Neighborhood Preservation Area and the numerous
9 County and City planning documents recognizing the important historic significance of the Town
10 of Freeport. A local designation of a resource as historically significant creates a presumption of
11 significance under CEQA. (Pub. Resources Code § 21084.1; CEQA Guidelines § 15064.5, subd.
12 (a).) Accordingly, the CITY's determination that the Town of Freeport is not an important historic
13 district and its finding that the Project will not have significant aesthetic, visual and historic
14 resource impacts on the Town of Freeport are not supported by substantial evidence.

15 114. The EIR's determination that the Project will not result in any significant visual
16 impact on Scenic Highway 160 is also not supported by substantial evidence. The EIR's finding
17 that the Project would not result in a "major intrusion" under Caltrans *Scenic Highway Guidelines*
18 lacks foundation and ignores the plain language of these guidelines. The Caltrans *Scenic Highway*
19 *Guidelines* defines a "major intrusion" as including "Dense and continuous development" or
20 buildings that "degrade or obstruct scenic view." The Project will not just degrade or obstruct the
21 scenic view of rural landscape from Highway 160 as it passes along the Project site, it will
22 eliminate this scenic view altogether. The EIR's finding that the Project will not have a significant
23 impact on Scenic Highway 160 is not supported by substantial evidence.

24 **F. The Findings Regarding the Project's Potential Flooding Impacts**
25 **Are Not Supported by Substantial Evidence and Fail to Comply**
26 **with the Requirements of CEQA**

27 115. Petitioners reallege and incorporate by reference all prior paragraphs of this Petition
28 as if fully set forth below.

1 116. The EIR's determination that the Project does not pose any significant flood risks to
2 future inhabitants lacks foundation because it fails to require Project areas to be protected from
3 100-year flood prior to construction. Without such a restriction, the EIR's finding that Project
4 flooding impacts will be insignificant is not supported by substantial evidence. The CITY also
5 violates CEQA by failing to respond adequately to Petitioners' comments on this issue.

6 117. The EIR's determination that the Project does not pose any significant flood risks to
7 future inhabitants is also not supported by substantial evidence since it fails to evaluate the risk of
8 flooding due to damaged levees. In response to Petitioners' comments on this issue, the EIR states
9 that various state and federal levee improvement programs have been and are improving the levees
10 that provide flood protection to the Project site. However, the EIR fails to disclose or evaluate the
11 current status of these levees. The EIR also fails to require completion of critical repairs prior to
12 construction of the Project. Without such a restriction or a meaningful evaluation of the current
13 risk of flooding from damaged levees, the CITY's finding that Project flooding impacts will be
14 insignificant is not supported by substantial evidence. Moreover, the CITY violates CEQA by
15 failing to respond adequately to Petitioner's comments on this issue.

16 118. The City's determination that the Project does not pose any significant flood risks to
17 future inhabitants further violates CEQA because the EIR fails to respond to or evaluate the
18 evidence provided in Petitioners' comments on the Draft EIR that the Project's flooding impacts
19 will not be reduced to a level of insignificance without providing 200-year flood protection (either
20 by levees or building design). As a result, the CITY's finding that the Project will not have
21 significant flooding impacts is not supported by substantial evidence. The CITY's refusal to
22 evaluate the potential significance of impacts on the Project from a 200-year flood also violates
23 CEQA's requirement to evaluate all potentially significant impacts and violates CEQA's
24 requirement to respond to comments.

25 **G. The Findings Regarding the Significance of the Project's Impacts**
26 **on Swainson's Hawks Are Not Supported by Substantial Evidence**
27 **and Fail to Comply with the Requirements of CEQA**

28 119. Petitioners reallege and incorporate by reference all prior paragraphs of this Petition
as if fully set forth below.

1 120. The CITY's finding that the mitigation imposed for Project impacts on Swainson's
2 hawks will reduce such impacts to a level of insignificance is not supported by substantial
3 evidence.

4 121. The EIR imposes mitigation to preserve Swainson's hawk habitat either by:
5 (1) purchase of credits at a California Department of Fish and Game ("CDFG") approved
6 mitigation bank that has the Project "within its service area" (which is not defined); or (2) purchase
7 of conservation easements with suitable foraging habitat within ten miles of the Project site.

8 122. This measure is impermissibly vague as to whether the use of a mitigation bank will
9 be allowed if the mitigation bank does not provide protection to suitable foraging habitat within ten
10 miles of the Project site. The EIR's assumption that the use of a mitigation bank which has the
11 Project in its service area would be sufficient to reduce impacts to a level of insignificance is not
12 supported by substantial evidence.

13 123. The EIR's reliance upon preservation of suitable foraging habitat to reduce the
14 impact from loss of Swainson's hawk habitat to a level of insignificance also lacks foundation
15 because it relies upon an impermissibly vague definition of "suitable foraging habitat" that includes
16 fallow fields that may be idle for more than one consecutive growing season and contain
17 continuous weed canopy unsuitable for foraging use by Swainson's hawks. Without an
18 enforceable definition that fallow fields under the mitigation measure's definition of "suitable
19 foraging habitat" do not include "idled" or otherwise unsuitable fields, there is no substantial
20 evidence to support the finding that preservation of such fields will mitigate the Project's impacts
21 on Swainson's hawk to a level of insignificance.

22 124. The finding that the adopted mitigation measure will reduce impacts to less than
23 significant is also not supported by substantial evidence because the mitigation measure fails to
24 require a monetary endowment for management, monitoring, and enforcement to ensure that the
25 replacement habitat is maintained as suitable Swainson's hawk habitat in perpetuity. Numerous
26 expert comments in the record set forth the importance of providing for a management endowment
27 to ensure appropriate management of preservation lands and monitoring and enforcement of the
28

1 mitigation requirements for impacts on Swainson's hawk, and recommend, at a minimum,
2 application of CDFG guidelines for calculating an appropriate amount for the endowment.

3 125. The EIR and findings improperly defer the formulation of a mitigation plan for
4 management of mitigation land in perpetuity for the benefit of Swainson's hawk foraging. For
5 example, the adopted mitigation measure fails to identify the entity or establish any standards for
6 selection of an entity to monitor and enforce the management of the mitigation land for the benefit
7 of Swainson's hawk; there is no provision for management, monitoring, or enforcement of
8 mitigation measures; and no information as to whether all of the required mitigation land for the
9 entire project shall be acquired before issuance of grading permits for any part of the Project site,
10 or whether mitigation land would be acquired piecemeal to correlate with issuance of grading
11 permits for each phase of the Project. As a result of this deferral of formulation of mitigation
12 measures, the findings that impacts upon Swainson's hawk will be reduced to a level of
13 insignificance are not supported by substantial evidence and fail to comply with the requirements
14 of CEQA.

15 **H. The Findings Regarding the Significance of the Project's**
16 **Conversion of Farmland are Not Supported By Substantial**
17 **Evidence and Fail to Comply with the Requirements of CEQA**

18 126. Petitioners reallege and incorporate by reference all prior paragraphs of this Petition
19 as if fully set forth below.

20 127. The EIR's determination that the Project's conversion of 764 acres of prime and
21 important farmland to non-agricultural use will not result in a significant impact is not supported
22 by substantial evidence and violates CEQA's requirement that the impacts of the Project be
23 measured against the real conditions on the ground.

24 128. The EIR's finding that the Project's conversion of farmland will not be a significant
25 impact is based solely on the location of the Project within the City limits and the designation of
26 the Project site in the CITY's General Plan for future development. No other substantial evidence
27 in the record supports this finding.

28 129. CEQA requires that the impacts of the Project be measured against the "real
conditions on the ground" not just against consistency with planning documents. The EIR's

1 assumption that a project's potential impacts are automatically considered less than significant if
2 the project development is consistent with planned or permitted uses is contrary to the requirements
3 of CEQA and is not supported by substantial evidence. By failing to evaluate the actual loss of
4 prime and important farmland, the CITY violated CEQA and lacks substantial evidence to support
5 its findings.

6 **I. The City's Failure to Recirculate the EIR for Further Public**
7 **Comment Violates the Requirements of CEQA and Was an Abuse**
8 **of Discretion**

9 130. Petitioners reallege and incorporate by reference all prior paragraphs of this Petition
10 as if fully set forth below.

11 131. CEQA requires a lead agency to recirculate an EIR when significant, new
12 information is added to the EIR following public review, but before certification. (Pub. Resources
13 Code § 21092.1.)

14 132. The Project will have numerous impacts that are different and more severe than
15 those described in the Draft EIR, including impacts related to special status species, water quality,
16 air quality, global warming, flooding, farmland, and cultural and historical aesthetics. The Final
17 EIR also contained substantial changes and addition of significant information that would trigger
18 the requirement for recirculation. For example, the Final EIR discloses for the first time that the
19 Project will require significant off-site sewage and stormwater improvements. Accordingly, the
20 CITY's failure to revise and recirculate the EIR was an abuse of discretion and was not supported
21 by substantial evidence.

22 133. Recirculation of the EIR is also required because the measures to mitigate for
23 impacts on Swainson's hawk were revised just four days prior to the final January 13, 2009 City
24 Council hearing. These last minute changes to the mitigation: (1) allowed the Purchase of
25 mitigation credits at an unidentified CDFG-approved mitigation bank which has the Project within
26 its "service area" (not defined in the mitigation measure); and (2) designated "fallow land" (not
27 defined in the mitigation measure) as suitable for mitigation land. These revisions result in
28 mitigation measures that will not guarantee that the Project's impacts to Swainson's hawk will be

1 reduced to a level of significance. The EIR must be recirculated so that the public has sufficient
2 time to review and comment on the revised mitigation measures.

3 134. The EIR must also be recirculated because the Draft EIR improperly concealed all
4 discussion of soil contamination and mitigation in the initial study attached as an appendix to the
5 Draft EIR. The Draft EIR failed to disclose, reference or summarize the Project's potential soil
6 contamination impacts and the proposed mitigation measures. "Whatever is required to be
7 considered in an EIR must be in the report itself," not just in the appendices. (*San Joaquin*
8 *Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 727.) The
9 failure of the Draft EIR to disclose or summarize soil contamination impacts and the proposed
10 measures to mitigate these impacts deprived the public of a meaningful opportunity to comment
11 upon a substantial adverse environmental effect of the Project.

12 135. The CITY's failure to recirculate the EIR to remedy the aforementioned defects
13 violated the requirements of CEQA and was an abuse of discretion.

14 WHEREFORE, Petitioner prays for judgment as hereinafter set forth:

15 **PRAYER FOR RELIEF**

16 1. That the Court issue an alternative and/or peremptory writ of mandate directing the
17 CITY to:

- 18 a) Vacate and set aside its approval of the EIR for the Project;
 - 19 b) Vacate and set aside any actions approving permits for the Project;
 - 20 c) Stay the CITY's decisions approving the EIR and all other discretionary
21 approvals for the Project pending determination of this Petition;
 - 22 d) Issue a temporary restraining order and a preliminary and permanent
23 injunction enjoining the CITY from authorizing any further permits,
24 entitlements, or construction-related activities for the Project until the CITY
25 has prepared and certified a legally adequate environmental impact report for
26 the Project and filed a return on the writ demonstrating compliance
27 therewith;
- 28

- 1 e) Refrain from approving any further permits or entitlements for the Project
2 until the City has prepared and certified a legally adequate EIR and complied
3 with all other applicable requirements of CEQA, as directed by this Court
4 pursuant to Public Resources Code section 21168.9; and
5 f) Comply with all other applicable requirements of CEQA, as directed by this
6 Court pursuant to Public Resources Code section 21168.9;

7 2. That the Court issue a temporary restraining order and a preliminary and permanent
8 injunction barring Respondents, Real Parties in Interest, and all other persons working on their
9 behalf, from proceeding with any activity that may result in any physical change in the
10 environment on the Project site until the CITY takes all necessary steps to bring its actions in
11 compliance with CEQA and the writ is discharged;

12 3. That Delta Shores Coalition be awarded costs of this proceeding;

13 4. That Delta Shores Coalition be awarded reasonable attorneys fees for this action
14 pursuant to Code of Civil Procedure section 1021.5, and any other applicable provisions of law;
15 and

16 5. That Delta Shores Coalition be awarded such other and further relief as the Court
17 deems just and proper.

18 Dated: 2/13/09

19 ADAMS BROADWELL JOSEPH & CARDOZO

20
21 By: Thomas A. Enslow
22 THOMAS A. ENSLOW
23 Attorney for Petitioners and Plaintiffs
24 STONE LAKES NATIONAL WILDLIFE
25 REFUGE ASSOCIATION, FREEPORT
26 PRESERVATION COALITION, COALITION
27 FOR RESPONSIBLE DEVELOPMENT, TRACY
28 OTO, FRANK ALBERT, GARY KRULA AND
BRIAN LUJAN

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VERIFICATION

CASE TITLE: *Stone Lakes National Wildlife Refuge Association, the Freeport Preservation Coalition, Coalition for Responsible Development, Tracy Oto, Frank Albert, Gary Krula and Brian Lujan vs. City of Sacramento, a municipal corporation; City Council of Sacramento; and Does 1 through 10, inclusive*

I, Tracy Oto, declare:

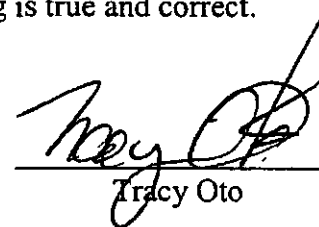
I am a Petitioner/Plaintiff in the above-entitled matter.

I have read the foregoing **Petition for Writ of Mandate** and know the contents thereof.

The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

Executed on FEB. 13, 2009, at City of Sacramento, County of Sacramento, California.

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



Tracy Oto

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

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February 12, 2009

**VIA CERTIFIED U.S. MAIL, RETURN RECEIPT REQUESTED
AND FACSIMILE**

City of Sacramento
Attn: City Clerk, Shirley Concolino
Historic City Hall
915 I Street
Sacramento, CA 95814
Fax: (916) 808-7672

**RE: Notice of Commencement of Lawsuit Against the City of
Sacramento and Sacramento City Council for Violations of
CEQA for Certifying a Final Environmental Impact Report for
the Delta Shores Project, State Clearinghouse No. 2007042070**

Dear Ms. Concolino:

PLEASE TAKE NOTICE, pursuant to Public Resources Code section 21167.5, that Stone Lakes National Wildlife Refuge Association, Freeport Preservation Coalition, Coalition for Responsible Development, Tracy Oto, Frank Albert, Gary Krula and Brian Lujan ("Petitioners") intend to file a lawsuit under the provisions of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, *et seq.*, against City of Sacramento and City of Sacramento City Council (collectively, "City") challenging the approval of the Final Environmental Impact Report for the Delta Shores project, State Clearinghouse No. 2007042070. The City Council approved the project on January 13, 2009. The City filed a notice of determination pursuant to CEQA on January 16, 2009. The project will develop approximately 800 acres within the Delta Shores Planned Unit Development located in the southwest section of the City of Sacramento.

The lawsuit will be based on several violations of CEQA, as discussed more fully in the comments the Petitioners and all other commentators provided to the City

2280-008d

Shirley Concolino
City Clerk
City of Sacramento
February 12, 2009
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during the administrative process. The exact nature of the allegations and relief sought can be ascertained by reading a copy of the complaint that Petitioners plan to file this week.

Date: February 12, 2009

ADAMS BROADWELL JOSEPH & CARDOZO

A handwritten signature in black ink, appearing to read "Thomas A. Enslow", with a long horizontal flourish extending to the right.

Thomas A. Enslow
Attorneys for Petitioners

TAE:cnh

PROOF OF SERVICE

I am employed in the County of Sacramento, California. I am over the age of 18 and not a party to this action. My business address is 520 Capitol Mall, Suite 350, Sacramento, CA 95814.

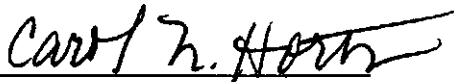
On February 12, 2009, I served the foregoing document described as

Notice of Commencement of Lawsuit

on the parties listed below by placing a true and correct copy thereof in a sealed envelope and by causing the envelope to be sent, by facsimile and U.S. Mail addressed to:

City of Sacramento
Attn: City Clerk, Shirley Concolino
Historic City Hall
915 I Street
Sacramento, CA 95814

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this was executed on February 12, 2009 in Sacramento, California.


Carol N. Horton