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9 THE CALIFORNIA CHAPARRAL INSTITUTE

10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

12 THE CALIFORNIA CHAPARRAL INSTITUTE,)	Case No.
13 a California corporation,)	PETITION FOR WRIT OF MANDATE
14 Petitioner,)	[EXTRAORDINARY WRIT
15 v.)	UNDER LOCAL RULE 2.4.8]
16 COUNTY OF SAN DIEGO, a California)	
17 governmental entity,)	
18 Respondent.)	Date Action Filed:
19)	INDEPENDENT CALENDAR JUDGE:

20 **FIRST CAUSE OF ACTION**
21 (For Violations of the California Environmental Quality Act (CEQA)
22 Against Respondent COUNTY OF SAN DIEGO)

23 Petitioner THE CALIFORNIA CHAPARRAL INSTITUTE alleges:

- 24 1. Petitioner THE CALIFORNIA CHAPARRAL INSTITUTE (petitioner) is, and at all
25 times alleged herein has been, a California non-profit corporation, based in Escondido, County of San
26 Diego, California.
- 27 2. Petitioner is informed and believes and thereon alleges that at all times alleged herein,
28 respondent COUNTY OF SAN DIEGO (respondent) has been a California governmental entity, of exact
form unknown, with its principal place of business at 1600 Pacific Highway, San Diego, California
92101.
3. Petitioner has standing to bringing this petition for writ of mandate. Petitioner is, and at

1
2 all times alleged herein has been, an association of scientists, wildland firefighters, naturalists, and
3 educators residing in the County of San Diego and throughout California who value chaparral as both a
4 valuable resource and a place to enjoy the wilderness. Petitioner's purpose is to promote an
5 understanding and respect for the chaparral and the Mediterranean climate in which most Californians
6 live in order to encourage an active interest in learning about the chaparral, the organisms living there,
7 its evolutionary development, and the fragile relationship it has with fire; facilitate better communication
8 between the scientific and firefighting communities; foster a reconnection to the natural environment;
9 develop land management policies that will lower the risk of fire crossing over the wildland/urban
10 interface without compromising wildland values; help clarify fire clearance regulations to eliminate bias
11 against native shrubland plant communities; and permanently secure the value of protecting chaparral as
12 an important natural resource in public policy for the benefit of future generations. Petitioner brings this
13 petition for writ of mandate on its own behalf and on behalf of its members.

14 4. The project consists of respondent's acceptance of \$7 million in Federal grant funds and
15 the implementation of a "comprehensive vegetation management program" to be conducted "over
16 multiple years . . . (from 2009) through Fiscal Year 2012 - 2013" to clear vegetation from remote areas
17 of respondent's rural backcountry using "strategic fuels treatment" (the project). "Strategic fuels
18 treatment" is the "reduction of plant biomass by either prescribed fire, mechanical or biochemical fuel
19 treatments." Petitioner is informed and believes and thereon alleges that respondent intends to use the
20 Federal grant funds to clear vegetation from San Diego County's rural backcountry near Palomar
21 Mountain, County of San Diego.

22 5. Respondent is the lead agency responsible under the California Environmental Quality
23 Act, Public Resources Code § 21000, *et seq.* (CEQA), for evaluating the environmental impacts of the
24 project.

25 6. This paragraph summarizes the procedural history of the project. Petitioner is informed
26 and believes and thereon alleges that on or about November 20, 2008, and on or about December 2,
27 2008, respondent conducted two workshops on the project; petitioner and experts attended the
28 workshops and expressed opinions that the project may cause significant environmental impacts;

1 respondent then prepared a final "Vegetation Management Report" (report) on the project which
2 admitted "(t)here is a limited knowledge base on the efficiency, environmental costs, or consequences of
3 large-scale vegetation management actions" and admitted that at the two workshops, experts raised
4 concerns that the project may cause significant environmental impacts; respondent then scheduled
5 a hearing for March 25, 2009, before respondent's Board of Supervisors on a proposal to receive the
6 report; on or before March 24, 2009, petitioner and several experts submitted comment letters to
7 respondent's Board of Supervisors objecting to the project and setting forth uncontradicted expert
8 opinion that the project will cause significant environmental impacts; petitioner appeared at the March
9 25, 2009, hearing and objected to the project; respondent's Board of Supervisors adopted a resolution at
10 the March 25, 2009, hearing, receiving the report and directing respondent's staff to fully comply with
11 CEQA; however, on or about April 30, 2009, respondent's staff prepared a draft notice of exemption
12 form claiming the project was exempt from CEQA under the emergency exemption of 14 Cal. Code
13 Reg. (CEQA Guideline) § 15269(c); respondent then scheduled a hearing before respondent's Board of
14 Supervisors for May 13, 2009, on the project, to accept the \$7 million in grant funds and to find the
15 project exempt from CEQA; on and before May 12, 2009, petitioner and experts submitted comment
16 letters to respondent's Board of Supervisors objecting to the project, specifically objecting to the
17 proposed notice of exemption, claiming the project was not exempt from CEQA, and requesting that an
18 Environmental Impact Report (EIR) be prepared on the project; petitioner, experts, interested groups and
19 individuals appeared at the May 13, 2009, hearing and objected to the project and the proposed notice of
20 exemption, claimed the project was not exempt from CEQA, and requested that an EIR be prepared on
21 the project; on May 13, 2009, respondent's Board of Supervisors adopted the proposal to accept the \$7
22 million in grant funds and find the project exempt from CEQA under the emergency exemption of
23 CEQA Guideline § 15269(c); and respondent thereafter caused the May 13, 2009, Notice of Exemption
24 to be recorded in the Official Records of San Diego County.

25 7. Petitioner, experts, interested groups and individuals made oral and written comments on
26 the project and raised each of the legal deficiencies asserted in this petition.

27 8. Petitioner performed all conditions precedent to filing this action. On May 29, 2009,
28 petitioner faxed respondent's Board of Supervisors and County Counsel a written request to meet,

1 pursuant to *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 577, to discuss settling the matter
2 short of litigation. Petitioner's Board of Supervisors and County Counsel did not respond. On June 8,
3 2009, petitioner served respondent's Board of Supervisors and County Counsel with a written Notice of
4 Intent To File CEQA Petition pursuant to CEQA, Public Resources Code § 21167.5.

5 9. The action of respondent's Board of Supervisors adopting the resolution approving the
6 project and finding the project exempt from CEQA constitutes a prejudicial abuse of discretion in that
7 respondent failed to proceed in manner required by law.

8 10. The action of respondent's Board of Supervisors adopting the resolution approving the
9 project and finding the project exempt from CEQA further constitutes a prejudicial abuse of discretion
10 in that substantial evidence -- consisting of facts, reasonable inferences from facts, and expert opinion --
11 does not exist in the administrative record to establish each of the elements of the emergency exemption
12 of CEQA Guideline § 15269(c):

13 * The project is a "long-term project" to be conducted "over multiple years . . .
14 (from 2009) through Fiscal Year 2012 - 2013" as that term is used in CEQA Guideline § 15269(c).

15 * A major fire has a "low probability of occurrence in the short term" as of May 13,
16 2009 as those terms are used in CEQA Guideline § 15269(c). The record does not disclose any major
17 fires in San Diego County's backcountry at any time during the period of May through June of any year.

18 * There was no "emergency," as of May 13, 2009, that is, a "sudden, unexpected
19 occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate
20 loss of, or damage to, life, health, property, or essential public services" as those terms are used in
21 CEQA, Public Resources Code § 21060.3.

22 * Case law construing the emergency exemption of CEQA Guideline § 15269(c)
23 does not support respondent's finding the project is exempt from CEQA. (*Los Osos Valley Associates v.*
24 *City of San Luis Obispo* (1994) 30 Cal.App.4th 1670, 1681-1682' *Western Mun. Water Dist. v. Superior*
25 *Court* (1986) 187 Cal.App.3d 1104, 1111-1113.)

26 11. Respondent's threatening to proceed with the project in the near future will irreparably
27 harm the environment. Using prescribed fire, mechanical methods and biochemical fuel treatments to
28 clear vegetation from San Diego County's rural backcountry will cause significant environmental

1 impacts to erosion control, water quality, hydrology, slope stability and ecosystem persistence, structure
2 (soil structure, species composition and potential spread of invasive species, species age, size and
3 structure), and function (soil development, nutrient cycling, species succession). A temporary
4 restraining order and preliminary and permanent injunctions should issue restraining respondent from
5 proceeding with the project until an EIR is prepared and respondent's Board of Supervisors and the
6 public have considered the environmental consequences of the project before it is implemented.

7 12. Respondent therefore violated its duties under CEQA and CEQA Guidelines to prepare
8 and consider an EIR on a project that will cause significant environmental impacts. Accordingly, the
9 May 13, 2009, resolution of respondent's Board of Supervisors, approving the project and finding the
10 project exempt from CEQA, must be set aside.

11 PRAYER FOR RELIEF

12 WHEREFORE, petitioner demands entry of judgment as follows:

13 1. For a temporary restraining order and preliminary injunction restraining respondent from
14 taking any action to carry out the project pending the hearing on the merits;

15 2. For a peremptory writ of mandate directing:

16 (a) Respondent to vacate and set aside its May 13, 2009, resolution approving the
17 project and finding the project exempt from CEQA;

18 (b) Respondent to suspend all activity under the project approval that could result in
19 any change or alteration in the physical environment until respondent has taken all actions necessary to
20 bring the approval into compliance with CEQA; and

21 (c) Respondent to prepare, circulate and consider a legally adequate EIR and
22 otherwise to comply with CEQA in any subsequent action taken to approve the project;

23 3. For statutory costs of suit;

24 4. For an award of attorneys' fees under Code of Civil Procedure § 1021.5; and

25 5. For such other and further relief as the Court deems just and proper.

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1 DATED: June 9, 2009

COAST LAW GROUP LLP

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Rory R. Wicks

4 Attorneys for Petitioner

5 THE CALIFORNIA CHAPARRAL INSTITUTE

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VERIFICATION

I, Richard W. Halsey, declare:

1. I am the Executive Director, and an officer and director, of petitioner THE CALIFORNIA CHAPARRAL INSTITUTE (petitioner) and am authorized to make this verification on its behalf. I have read the foregoing petition and am familiar with its contents. The facts recited in the petition are true of my personal knowledge, except as to those facts alleged on information and belief, which I believe to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 9, 2009, at Escondido, California.

Richard W. Halsey

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