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Attorney for Petitioners  
Grassroots Coalition  
Ballona Ecosystem Education Project (BEEP)

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES**

GRASSROOTS COALITION, a California  
non-profit organization; BALLONA  
ECOSYSTEM EDUCATION PROJECT, an  
unincorporated community organization

Petitioners

vs.

CALIFORNIA DEPARTMENT OF FISH  
AND WILDLIFE, a State Agency; and DOES  
1 THROUGH 10, inclusive

Respondents

Case No.: 21STCV03657

**PETITION FOR WRIT OF MANDAMUS  
UNDER THE CALIFORNIA  
ENVIRONMENTAL QUALITY ACT**

**INTRODUCTION**

1. Petitioners GRASSROOTS COALITION and BALLONA ECOSYSTEM EDUCATION PROJECT (BEEP) seek to challenge California Department of Fish and Wildlife’s (CDFW) certification of the Environmental Impact Report (EIR) and approval of the project euphemistically named the “Ballona Wetlands Restoration Project” (the Project) (State Clearinghouse Number 2012071090.)

1           2.     The Ballona Wetlands is an approximately 600 acre remnant of what totals 1700 acres of  
2 marshy land when the surrounding area was first farmed by European Settlers in the late 1800's. The  
3 marshes had historically received clean water from the 127 square mile watershed's surrounding hills,  
4 natural springs and the Los Angeles River. Natural sand dunes along the shoreline at the west end of  
5 Ballona maintained a closed, predominantly freshwater wetland system that was only breached during  
6 extreme storms, when breaches in the dunes opened the area to the Santa Monica Bay and then silted  
7 back, blocking saltwater intrusion into the marshes for most of the year. When the Los Angeles River  
8 made its final shift, outletting at Long Beach, fewer breaches occurred, enhancing the predominance of  
9 freshwater at Ballona.

10           3.     Proponents of the Project have proclaimed that the Ballona Wetlands was historically a  
11 70% saltwater marsh. This claim is directly contradicted by the US EPA (See, Ballona Wetlands  
12 TMDLs for Sediment and Invasive Exotic Vegetation, pg. 41, US EPA 2012 (“...analysis of the  
13 historical ecology of Ballona Creek Watershed suggest these habitats are dynamic and freshwater  
14 marsh may have shifted into areas identified as vegetated wetland [/salt marsh].”) Thus, the Ballona  
15 Wetlands was a mixture of habitats, not a 70% saltwater mono-culture. Since a saltmarsh must be at or  
16 below sea level, while a freshwater marsh can be at any elevation as long as it is below its water source,  
17 to choose a plan that includes constant full-tidal salt marsh means massive disturbance of soil far below  
18 its elevations, while a balanced fresh and saltwater alternative could be restored with minimal land  
19 modification.

20           4.     Water quality and habitat will be impacted by both polluted bay water and urban run-off  
21 from the Ballona Channel. Before European colonization and subsequent urbanization of much of the  
22 land surrounding the Ballona Wetlands, the freshwater in Ballona Channel was clean and suitable for  
23 agriculture and drinking water replenishment. Today, flows in the Ballona Channel violate Federal  
24 health standards. Thus, the plan at issue here, which will remove the existing levees and flood the  
25 wetlands with channel water and bay water, would pollute the wetlands in violation of the Federal  
26 Clean Water Act. At the time of Project consideration, Project opponents identified three sources of  
27 clean freshwater that are near and/or upstream of the Ballona Wetlands. CDFW quickly dismissed such  
28 suggestions. The Project at issue would bulldoze and destroy the Ballona Wetlands Ecological Reserve

1 creating a saltwater, FULL TIDAL wetlands on a historically diverse wetland, predominantly closed  
2 from the ocean, and now very rare coastal seasonal freshwater/brackish water marsh ecosystem.

3 5. While some environmental groups supported the Project, the vast majority of community  
4 members, environmentalists, biologists, and restoration scientists who are intimately familiar with the  
5 Ballona Wetlands were opposed to the Project and sent detailed comments identifying the impacts,  
6 questioning the Project description, and decrying the artificially narrow range of alternatives.

7 6. Numerous individuals and groups strongly supported evaluating an alternative to restore  
8 and remediate the Ballona Wetlands as a mixed and predominantly seasonal freshwater marsh system,  
9 consistent with the historical and natural topography of the Ballona Wetlands, but such alternative was  
10 ignored by CDFW without further analysis. CDFW refusal was particularly perplexing considering  
11 public bond funds approved for studies to provide for a full range of alternatives that would “restore”  
12 the Ballona Wetlands with the least amount of environmental damage.

13 7. Despite Project opponents identifying significant unmitigatable impacts, CDFW failed to  
14 adopt a statement of overriding considerations. It is impossible to mitigate the impacts of excavating,  
15 removing and grading 2.5 million cubic yards of sensitive wetland habitat. CDFW’s findings and  
16 decision were arbitrary and capricious, and constitute an abuse of discretion.

17 8. A peremptory writ of mandate should issue ordering CDFW to rescind its certification of  
18 the EIR, adoption of the mitigation monitoring and reporting plan, and rescind all approvals for the  
19 Project.

20 9. In addition, injunctive relief should issue prohibiting CDFW from making any changes to  
21 the physical environment until it fully complies with CEQA.

22  
23 **PARTIES**

24 10. GRASSROOTS COALITION is a non-profit, 501(c)(3) tax-exempt environmental  
25 organization registered with the State of California. Its members have been seeking to protect the  
26 Ballona Wetlands for over 20 years. Grassroots Coalition and its members provided detailed  
27 comments, photographs, maps and other materials to CDFW on the Project and EIR.

28 11. BALLONA ECOSYSTEM EDUCATION PROJECT (BEEP) is an unincorporated non-

1 profit community organization that has been seeking to protect the Ballona Wetlands for over 20 years.  
2 It was formed by activists who would stand adjacent to the Ballona Wetlands with signs asking drivers  
3 to honk their horns to save the wetlands. BEEP and its members submitted detailed comments to  
4 DFW on the Project and EIR.

5 12. CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE is a State Agency which  
6 manages the Ballona Wetlands Ecological Reserve. It was the proponent and lead agency for the  
7 Project. As the lead agency, it was required to comply with all the procedural and substantive  
8 requirements of CEQA.

9 13. DOES 1-10 are other government agencies, Project proponents or interested parties. The  
10 names and capacities of such parties are unknown to Petitioners. However, pursuant to Code of Civil  
11 Procedure section 389(c) and Public Resources Code section 21167.6.5 that such DOES parties are not  
12 necessary or indispensable to the action. Petitioners will substitute the true names of DOES 1-10 when  
13 their names and capacities are determined and Petitioners determine such substitution is necessary to  
14 afford complete relief.

#### 15 16 **JURISDICTION AND VENUE**

17 14. Petitioners bring this matter to the court under both Code of Civil Procedure § 1085 and  
18 1094.5, and both Public Resources Code §§ 21168 and 21168.5. CDFW acted in a quasi-judicial  
19 manner in approving the Project, but failed to hold a final hearing on the Project before approval.  
20 Regardless of whether this Project is challenged under a traditional or administrative mandamus,  
21 CDFW abused its discretion, and its decision and findings were not supported by substantial evidence.

22 15. Venue is proper in the County of Los Angeles, in that the challenged Project is located in  
23 the County of Los Angeles. Venue is proper in the Los Angeles Superior Court, Central District, in the  
24 Los Angeles Superior Court Rules, Rule 3.232(b) requires all cases brought under CEQA to be filed in  
25 the Central District.

#### 26 27 **PRELIMINARY ALLEGATIONS**

28 16. Petitioners re-allege and reincorporate all previous paragraphs as if fully alleged herein.

1           17.     Petitioners participated in the administrative process for the approval challenged herein,  
2 and submitted written comments setting forth the concerns raised in this action. The issues presented in  
3 this action were brought to the attention of Respondents during the administrative review process by  
4 Petitioners, other members of the public, or internally, during the EIR process by litigation,  
5 administrative actions, permits and other means.

6           18.     Petitioners have exhausted administrative remedies in compliance with Public  
7 Resources Code section 21177.

8           19.     The Notice of Determination for the Project was filed by CDFW on December 30,  
9 2020, with the Office of Planning and Research. This action is being brought within 30 days of such  
10 filing in compliance with Public Resources Code section 21167.

11           20.     Petitioners have performed all conditions precedent to filing this action in compliance  
12 with the requirements of Public Resources Code section 21167.5 by providing Respondents with  
13 notice of this action prior to filing the lawsuit, and by filing a proof of service with the court at the time  
14 of filing this action.

15           21.     In conjunction with the filing of this lawsuit, Petitioners have filed a request for  
16 Respondents to prepare the administrative record, which shall be served personally within 10 days of  
17 filing of the lawsuit. Petitioners reserve the right to request to prepare the record themselves.

18           22.     Within 10 days of filing, Petitioners will provide the California Attorney General with  
19 notice of this action, and request that the Attorney General intervene in this action because of the  
20 importance of this case to the citizens of Los Angeles and the State of California.

21           23.     Petitioners are entitled to attorneys' fees pursuant to Code of Civil Procedure section  
22 1021.5 in that:

23           a.     The successful prosecution of this lawsuit will result in the enforcement of  
24 important rights affecting the public interest and will confer significant benefits upon  
25 the public or a large class of persons. Petitioner seeks to enforce provisions of  
26 important state environmental laws for the benefit of the public and to rectify certain  
27 procedural improprieties which will benefit all future participants in the decision  
28 making process employed by Respondents;

          b.     the necessity and financial burden of private enforcement are such as to make

1 the award appropriate; and,

2 c. Such fees will not be paid out of any recovery.

3 24. The action of Respondents herein complained of were arbitrary and capricious and  
4 Petitioners are entitled to recover attorney's fees pursuant to Government Code § 800.

5  
6 **FIRST CAUSE OF ACTION**  
**VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

7 25. Petitioners re-allege all previous paragraphs as if fully set forth herein.

8 26. Petitioners allege that the EIR and the approval process violate CEQA.

9 27. The Project Description is misleading, inaccurate and deficient under CEQA. Among  
10 other things, it claims to be a restoration project when it proposes to remove existing freshwater  
11 wetlands and replace it with non-naturally occurring, full tidal estuarine environment.

12 28. The EIR failed to identify a preferred alternative, and instead identified a range of  
13 alternatives that may be carried out, in violation of the mandates of CEQA for a stable project  
14 description.

15 29. The EIR failed to evaluate a reasonable range of alternatives, including a freshwater/  
16 brackish water marsh alternative that fits within the definition of restoration.

17 30. Many of the studies relied upon by the EIR were prepared prior to 2012, more than 10  
18 years prior to the approval and do not reflect the current baseline.

19 31. The EIR failed to properly study and describe the baseline current conditions, including,  
20 but not limited to, preparing a proper hydrological study of the entire wetlands, identifying the current  
21 extent that the wetlands and underlying aquifers were being drained by related development, such as the  
22 adjacent Playa Vista Development, and it failed to adequately define the three underlying aquifers that  
23 would be negatively impacted by the CDFW plan for full tidal inundation.

24 32. The EIR failed to evaluate the changed circumstances caused by capping the drains that  
25 CDFW was required to cap and seal as a result of a lawsuit by Grassroots Coalition. (Grassroots  
26 Coalition v. Cal. Dept. of Fish & Wildlife, LASC Case No. BC61944 (2016).) Such lawsuit and the  
27 subsequent improvement in wetland habitat surrounding the drains should have been identified and  
28 accounted for in the EIR. Failure to do so rendered the EIR and baseline inaccurate.

1           33.     Petitioners allege that the EIR failed to properly evaluate the impacts to the existing and  
2 historical gas and oil infrastructure caused by the Project, including impacts to pipes, wells, and other  
3 infrastructure that would be adversely impacted by saltwater corrosion due to the increased salinity of  
4 the conversion to a full tidal bay.

5           34.     The EIR failed to properly evaluate the impacts to the aquifers underlying the Ballona  
6 Wetlands that would potentially suffer impacts due to increased salinity. Such aquifers are potential  
7 sources of drinking water as identified by the Los Angeles Regional Water Quality Control Board and  
8 have been used as sources of drinking water in the past.

9           35.     The EIR failed to properly describe, evaluate and/or mitigate impacts to endangered,  
10 protected and special status wildlife species, including, but not limited to impacts to the Belding's  
11 Savannah Sparrow, El Segundo Blue Butterfly, California Least Tern, Coastal California Gnatcatcher,  
12 Least Bell's Vireo, White-Tailed Kites as well as Silvery Legless Lizard and San Bernardino Ringed-  
13 neck Snake. Such impacts are not only direct impacts, but indirect and cumulative impacts caused by  
14 irrevocable habitat loss and habitat fragmentation.

15           36.     The EIR failed to properly identify, evaluate and mitigate impacts to endangered,  
16 protected and special status plant species including, but not limited to, the Lewis' Evening Primrose  
17 and Woolly Seablite.

18           37.     The EIR failed to describe its inconsistency with the Coastal Act, most notably, Coastal  
19 Act section 30240, which does not permit filling of wetlands or massive berms and excavation of  
20 wetlands for the purposes of flood control.

21           38.     The EIR failed to describe, evaluate, and mitigate the impacts to climate change and  
22 came to the illogical conclusion that the release of massive amounts of CO2 and other climate gases  
23 related to the removal of 2.5 million cubic yards of soil and associated vegetation will not have a  
24 significant unmitigatable impact on the climate and climate goals. There is a lack of consideration and  
25 study of CO2 sequestration by the existing wetlands soil and plant species, as well as upland soils and  
26 plant species. The loss of soils, biology and function due to removal of soils across the Project to be  
27  
28

1 used for fill as berms or transported off site was not adequately analyzed, and the EIR failed to provide  
2 a logical rationale to support that such impacts will be mitigated.

3 39. CDFW failed to reasonably respond to comments in a logical and intelligent way, and  
4 failed to fully discuss disputes between experts, including, but not limited to State and Federal agency  
5 comments.

6 40. CDFW's response to comments materially changed the EIR to such an extent that re-  
7 circulation of the EIR is required to provide the ability of the public to comment on the proposed  
8 changes.

9 41. CDFW failed to consult or properly consult with Native American tribes prior to  
10 approving the EIR. Unaddressed by CDFW in a meaningful way is the fact that the site is a registered  
11 Sacred Site, inclusive of its lands and water. The cultural resources management plan is inadequate to  
12 mitigate the impacts of excavation and/or burying and submerging important cultural sites and human  
13 remains.  
14

15 42. The EIR failed to disclose the depth of the alleged fill that was deposited on the  
16 wetlands, the methodology for determining the depth of the fill, and the locations of the alleged fill that  
17 was deposited at the Ballona Wetlands.

18 43. The EIR is a mass of errors, inaccuracies and deficiencies such that it fails to serve its  
19 purpose for informed public participation and decision-making.

20 44. The EIR improperly segments future portions of the Project and related projects that  
21 would be necessitated by the approval of the Project.

22 45. The EIR failed to recognize or disclose the extremely rare regional habitat that coastal  
23 freshwater and brackish marshes represent.

24 46. CDFW failed to disclose, analyze and properly mitigate the aesthetic impacts caused by  
25 the creation of massive berms blocking significant coastal and wetland views.

26 47. CDFW failed to properly study, analyze and improperly deferred study and mitigation for  
27 impacts to habitat and wildlife caused by the proposed public access plan.  
28



1           48.    CDFW abused its discretion when it failed and refused to re-circulate the EIR when  
2 substantial new information was submitted by Petitioners, other members of the public, scientists, other  
3 State and Federal agencies and trustee agencies.

4           49.    CDFW's findings were not supported by substantial evidence, and such findings do not  
5 bridge the analytic gap between the raw data and the ultimate findings. In particular, CDFW found that  
6 none of the impacts identified by the EIR, other State and Federal agencies, scientists, stakeholders, and  
7 other members of the public were significant unmitigatable impacts. CDFW failed to make the  
8 findings required by Public Resources Code section 21081, support such findings by substantial  
9 evidence, and failed to adopt a statement of overriding considerations.

10 **WHEREFORE, Petitioners pray for the following:**

- 11           1. For a peremptory writ of mandate ordering CDFW to rescind certification of the EIR;
- 12           2. For a peremptory writ of mandate ordering CDFW to vacate all approvals in support of
- 13           the Project;
- 14           3. For an injunction prohibiting CDFW from making any alterations to the environment in
- 15           support of the Project until it certifies an EIR that complies with CEQA;
- 16           4. For the court to order CDFW to file a return to writ evidencing compliance with the
- 17           court's order within 120 days;
- 18           5. For attorney's fees pursuant to CCP 1021.5;
- 19           6. For costs of suit herein, and;
- 20           7. For such additional and further relief as the court may grant in the interest of justice.
- 21
- 22

23 January 28, 2021

LAW OFFICE OF TODD T. CARDIFF

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25 

26 TODD T. CARDIFF, Esq.  
27 Attorney for Petitioners  
28 Grassroots Coalition  
Ballona Ecosystem Education Project

**VERIFICATION**

I, Patricia McPherson, declare:

I am the President of Grassroots Coalition. I have read the above Petition for Writ of Mandamus and know the contents thereof. The same is true of my own knowledge, except for facts stated on information and belief, and as to such facts I believe them to be true. I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct. Executed this 28th day of January, 2021 in the County of Los Angeles.

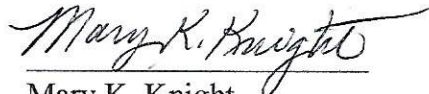


Patricia McPherson

## VERIFICATION

I, Mary K. Knight, declare:

I am a board member of the Ballona Wetlands Ecosystem Education Project (BEEP) and authorized to make this declaration on behalf of BEEP. I have read the above Petition for Writ of Mandamus and know the contents thereof. The same is true of my own knowledge, except for facts stated on information and belief, and as to such facts I believe them to be true. I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct. Executed this 28th day of January, 2021 in the County of Los Angeles.

  
Mary K. Knight