

1 PERKINS COIE LLP
2 Marc R. Bruner (SBN 212344)
3 Tyler Welti (SBN 257993)
4 Four Embarcadero Center, Suite 2400
5 San Francisco, CA 94111-4131
6 Telephone: 415-344-7000
7 Facsimile: 414-344-7050
8 Email: mbruner@perkinscoie.com
9 twelti@perkinscoie.com

10 Attorneys for Petitioners and Plaintiffs
11 CITIZENS FOR A BETTER WAY, STAND UP
12 FOR CALIFORNIA!, and GRASS VALLEY
13 NEIGHBORS

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF SACRAMENTO

16 CITIZENS FOR A BETTER WAY, a
17 California non-profit public benefit
18 corporation; STAND UP FOR
19 CALIFORNIA!, a California non-profit
20 public benefit corporation; and GRASS
21 VALLEY NEIGHBORS, a community
22 environmental organization,

23 Petitioners and Plaintiffs,

24 v.

25 EDMUND G. BROWN JR., in his official
26 capacity as Governor of the State of
27 California; and DOES 1 through 50,
28 inclusive,

Respondents and
Defendants.

YUBA COUNTY ENTERTAINMENT,
LLC, a Delaware limited liability
Company; DEPARTMENT OF THE
INTERIOR; KENNETH SALAZAR, in his
official capacity as Secretary of the
Interior; ENTERPRISE RANCHERIA OF
MAIDU INDIANS OF CALIFORNIA,

Real Parties in Interest

Case No. 34-2013-80001419

FIRST AMENDED PETITION FOR WRIT OF
MANDATE AND COMPLAINT

[Assigned to the Honorable Eugene L. Balonon
for All Purposes]

Date Action Filed: February 25, 2013
Department: 14

1 **INTRODUCTION**

2 1. This action challenges the August 30, 2012, decision of Respondent and Defendant
3 Edmund G. Brown Jr., Governor of the State of California (“Governor”), to concur, without
4 constitutional or legislative authority, in a finding made by the Secretary of the U.S. Department
5 of the Interior regarding the proposal of a group of individuals who identify themselves as the
6 Enterprise Rancheria of Maidu Indians of California (“Enterprise”) to have land removed from
7 the jurisdiction of the State of California and placed in federal trust for the purpose of developing
8 a large off-reservation casino and hotel resort complex on a currently undeveloped 40-acre site in
9 unincorporated Yuba County (the “Yuba Site”). This action also challenges the Governor’s
10 failure to comply with the requirements of the California Environmental Quality Act (“CEQA”),
11 California Public Resources Code §§ 21000 et seq., in rendering that concurrence.

12 2. The Governor has powers derived both from the California State Constitution and
13 from statutes enacted by the California Legislature. The Governor can exercise only such powers
14 as are expressly or by implication conferred by the Constitution and laws of this State. The
15 separation of powers doctrine is expressly provided by the California Constitution, which vests
16 “legislative, executive, and judicial” power separately and provides that “[p]ersons charged with
17 the exercise of one power may not exercise either of the others except as permitted by this
18 Constitution.” Cal. Const., art. III, § 3. “The legislative power of this State is vested in the
19 California Legislature which consists of the Senate and Assembly . . . ,” *id.*, art. IV, § 1, while
20 “[t]he supreme executive power of this State is vested in the Governor.” *Id.*, art. V, § 1. “The
21 Governor shall see that the law is faithfully executed.” *Id.* Nothing in the California Constitution
22 nor any law of the State authorizes the Governor unilaterally to concur in a federal determination,
23 the consequence of which concurrence is the removal of land from the jurisdiction of the State
24 and the authorization of gaming that is otherwise in violation of law.

25 3. CEQA is the California law designed to ensure that state and local governmental
26 officials identify, disclose, evaluate and mitigate the environmental impacts of proposed projects
27 before approving them. By requiring governmental officials to conduct a full and fair
28 environmental analysis of a project that is proposed for state or local approval, CEQA enables the

1 decision-maker and the public to weigh the project's adverse effects with its purported benefits,
2 thereby fulfilling the Legislature's goal of promoting informed decision-making and public
3 participation. CEQA's goal has been fully thwarted in this case, as the Governor failed to
4 conduct the required environmental review before issuing his approval.

5 4. Petitioners and Plaintiffs Citizens for a Better Way ("Citizens"), Stand up for
6 California! ("Stand Up"), and Grass Valley Neighbors ("Grass Valley") bring this action to
7 require the Governor to set aside his concurrence, to seek preliminary and permanent injunctive
8 relief to halt implementation of Enterprise's casino and hotel resort project and any and all state
9 and local actions taken in furtherance of that project, and to compel full compliance with CEQA.

10 **PARTIES**

11 5. Petitioner and Plaintiff Citizens for a Better Way is registered with the California
12 Secretary of State as a non-profit public benefit corporation. Citizens was formed in 2002, after a
13 July 2, 2002, Yuba County Board of Supervisors hearing, during which Enterprise proposed to
14 build a casino at the Yuba Site. Citizens is composed of farmers, ranchers, local residents,
15 business proprietors, pastors, school board members and elected officials at the local and state
16 level, who recognize the profoundly negative impacts that development of Enterprise's casino and
17 hotel resort complex would have on their quality of life and the environment of Yuba County.

18 6. Petitioner and Plaintiff Stand Up For California! is registered with the California
19 Secretary of State as a non-profit public benefit corporation. Stand Up is a statewide community
20 watchdog group that focuses on gambling issues affecting California, including tribal gaming,
21 card clubs, horse racing, satellite wagering, charitable gaming and the state lottery. Stand Up has
22 supporters throughout California and in the community near the Yuba Site. If the Yuba Site is
23 acquired in trust and developed for gaming, Stand Up and its supporters will suffer environmental
24 and other harms caused by increased traffic and air pollution, degradation of water resources, and
25 increased urbanization degrading the region's quality of life. Stand Up has a strong and direct
26 interest in minimizing the negative consequences from increased gaming developments, including
27 adverse impacts on the environment and on local communities.

28

1 7. Petitioner and Plaintiff Grass Valley Neighbors is an environmental group located
2 just “up the hill” from Yuba County in Grass Valley, California. Director Steve Enos formed the
3 group, which consists of Grass Valley area residents who share a common interest in issues of
4 land use, development and the environment that have the potential to impact residents of Grass
5 Valley, Nevada County and the region. Grass Valley is especially concerned about air quality
6 impacts. Grass Valley is designated “non-attainment” for ozone and most of Grass Valley’s
7 ozone is “transported” from the northern Sacramento valley. In addition to ozone, particulate
8 matter and other toxic air pollutants are transported from the Sacramento valley area. Ozone has
9 many negative health impacts, including reducing lung elasticity, causing breathing problems,
10 burning eyes, sore throats and headaches. Because nearly half of California’s ozone is from car
11 and truck exhaust, increases in traffic that will result from development of Enterprise’s casino and
12 hotel resort complex will harm Grass Valley and its members.

13 8. Respondent and Defendant Edmund G. Brown Jr. is Governor of the State of
14 California. He is sued in his official capacity only.

15 9. Real Party in Interest Yuba County Entertainment, LLC (“YCE”) is a Delaware
16 Limited Liability Company and is the current owner of the property for the proposed casino and
17 hotel resort complex, which property has been approved for placement into the federal trust for
18 Enterprise. Real party in Interest YCE and Enterprise have entered into a Gaming Development
19 and Management Agreement in furtherance of the proposed casino and hotel resort complex.

20 10. Real Party in Interest Kenneth Salazar is the Secretary of the Interior. He is
21 included as a real party in interest in his official capacity only. The Bureau of Indian Affairs,
22 under the Secretary’s direction, requested that the Governor issue the concurrence that is the
23 subject of this proceeding.

24 11. Real Party in Interest Enterprise is headquartered in Oroville, California.
25 Enterprise could be impacted by the relief this action seeks.

26 12. By alleging that the foregoing parties are Real Parties in Interest, Plaintiffs and
27 Petitioners do not concede that any of them are necessary and indispensable parties.

28

1 24. The Yuba Site is within the State of California and is under the State’s and Yuba
2 County’s jurisdiction. The proposed development has not been authorized under state law and the
3 proposed use – Las Vegas-style gaming – is illegal under state and local law.

4 **The Federal Approval Process**

5 25. Under federal law, an Indian tribe seeking to have the federal government place
6 land into trust for the tribe for the purpose of developing a casino must comply with the
7 requirements imposed by the Indian Reorganization Act (“IRA”), 25 U.S.C. § 465, and its
8 implementing regulations at 25 C.F.R. Part 151, as well as the requirements imposed by the
9 Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. §§ 2701 *et seq.*

10 26. The IRA authorizes the Secretary of the Interior to acquire and hold lands in trust
11 for Indian tribes in the name of the United States.

12 27. The IGRA provides a statutory basis for the operation of gaming facilities by
13 Indian tribes. Under Section 20 of the IGRA, 25 U.S.C. § 2179, tribes are prohibited from
14 engaging in any gaming activities on land acquired after October 17, 1988, unless the land
15 qualifies under an exception. A casino complex at the Yuba Site can proceed under federal law
16 only if it satisfies what is commonly referred as the “two-part determination,” which requires the
17 Secretary of the Interior, before taking the land into trust for the Indian tribe, to determine (1) that
18 it would be in the best interest of the tribe to establish gaming on such land, and (2) that the
19 establishment of gaming on such land would not be detrimental to the surrounding community.
20 25 U.S.C. § 2719(b)(1)(A).

21 28. In addition to requiring a favorable two-part determination by the Secretary of the
22 Interior, Section 20 of the IGRA also requires that the Governor of the state in which the land is
23 located “concur” with the Secretary’s determination. If the Governor fails to concur, gaming is
24 not permissible and, if the application also involves a trust request, the land will not be acquired
25 by the Secretary in trust.

26 29. Nothing in the IGRA grants the Governor any authority beyond what the
27 California Constitution and laws authorize. Accordingly, the Governor may only grant a
28 concurrence if the California Constitution or statutes authorize him to do so.

1 30. Nothing in federal or California law authorizes the Governor, when issuing a
2 concurrence under the IGRA, to avoid, ignore, or otherwise abdicate the applicable state law
3 procedural and substantive requirements.

4 31. Pursuant to the requirements of federal law, the Department of the Interior
5 prepared an Environmental Impact Statement (“EIS”) evaluating the casino and hotel resort
6 complex under the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.* The
7 Department of Interior issued the Draft EIS on March 21, 2008 and the Final EIS on August 6,
8 2010.

9 **The Governor’s Approval Process**

10 32. By letter dated September 1, 2011, Larry Echo Hawk, Assistant Secretary for
11 Indian Affairs, informed the Governor that he had made a favorable two-part determination under
12 the IGRA on behalf of the Secretary of the Interior, and requested the Governor to approve, by
13 the Governor’s concurrence, the siting and development of the proposed casino and hotel resort
14 complex at the Yuba Site.

15 33. By letter dated September 23, 2011, Senator Diane Feinstein wrote to the
16 Governor to urge him to reject the proposal. The letter noted the adverse environmental and other
17 detrimental effects of casinos on local communities. The letter also explained that of the 21 local
18 officials polled by the Department of Interior on the proposal to build a casino and hotel resort
19 complex on the Yuba Site, only one official had supported the project. The letter further
20 explained the opposition of local voters, which had voted in 2005 to oppose the development of a
21 casino by a 52%-48% vote.

22 34. Additional letters of opposition were submitted with respect to the proposal,
23 including one that directly asked the Governor what environmental document meeting state
24 standards under CEQA would be used to make a final decision on whether to concur with the
25 favorable federal determination on the proposal.

26 35. On August 30, 2012, a year after the Department of the Interior made its favorable
27 two-part determination under the IGRA, the Governor issued a one-page letter to the Secretary of
28 the Interior concurring in that determination.

1 40. While the Governor’s powers are circumscribed, the California legislature has
2 plenary authority. “The legislative power of this State is vested in the California Legislature
3 which consists of the Senate and Assembly . . . ” Cal. Const., art. IV, § 1. The Legislature is
4 charged with “mak[ing] law . . . by statute.” *Id.*, art. IV, § 8(b). It is the Legislature’s role to
5 weigh competing interests and determine social policy, including making decisions regarding
6 how tribal gaming will be operated in the State. The core functions of the legislative branch
7 include passing laws, levying taxes, making appropriations, and determining and formulating
8 legislative policy. The Legislature also controls the establishment and operation of political
9 subdivisions, the declaration of public purposes and ways and means for the accomplishment
10 thereof, the granting of state lands, and the examination, licensing, and regulation of businesses
11 and professions, among other things.

12 41. The California Constitution vests “legislative, executive, and judicial” power
13 separately and prohibits the Governor from usurping or improperly interfering with the essential
14 operations of either the Legislature or the judiciary. “Persons charged with the exercise of one
15 power may not exercise either of the others except as permitted by this Constitution.” Cal.
16 Const., art. III, § 3.

17 42. This separation of powers doctrine prohibits the Governor from exercising
18 legislative powers except as provided by the Constitution. The doctrine also prohibits the
19 Governor from taking an action that is not within his or her constitutional or statutory authority.
20 If the Governor attempts to exercise powers not given by the constitution or by statute, or to
21 exercise them in a different mode, his or her act is wholly ineffective and void for any purpose.

22 43. The separation of powers doctrine includes an implied private right of action and
23 individuals are able to rely upon and enforce the doctrine in otherwise justiciable cases.

24 44. While the IGRA makes gaming under the two-part determination contingent on
25 gubernatorial concurrence, it does not itself create statutory or constitutional authority for the
26 Governor to issue a concurrence decision allowing land to be stripped from California’s
27 jurisdiction and approving class III gaming. 25 U.S.C. § 2719(b)(1)(A).
28

1 long ago declared that CEQA must be interpreted so as to afford “the fullest possible protection to
2 the environment within the reasonable scope of the statutory language.” The Supreme Court has
3 further declared that CEQA’s purpose is to “compel government at all levels to make decisions
4 with environmental consequences in mind.”

5 51. CEQA applies when there is an “approval” of a “project” that may affect the
6 physical environment. The CEQA Guidelines define “approval” as a “decision by a public
7 agency which commits the agency to a definite course of action in regard to a project intended to
8 be carried out by any person.” CEQA Guidelines § 15352(a). The Governor’s determination
9 here is an “approval” under CEQA because it officially commits the State government to a
10 definite course of action - i.e., it allows the federal government to take the Yuba Site into trust,
11 such that the State loses its control over that land, for the purpose of developing Enterprise’s
12 proposed casino and hotel resort complex on the site.

13 52. CEQA defines “project” as “an activity which may cause either a direct physical
14 change in the environment or a reasonably foreseeable indirect physical change in the
15 environment.” Pub. Res. Code § 21065. The CEQA Guidelines further explain that “project”
16 means “the whole of the action,” and “refers to the activity that is being approved and that may be
17 subject to several discretionary approvals by governmental agencies.” CEQA Guidelines
18 §§ 15378(a), (c). Here, the siting and development a large casino and hotel resort complex is
19 clearly a “project” that, if allowed to proceed, would have direct and indirect impacts on the
20 environment, including impacts to traffic and transportation, air quality, and water quality.

21 53. CEQA’s broad reach covers the Governor’s determination in this case. Until the
22 Governor complies with CEQA, his determination allowing development of the casino and hotel
23 resort complex on the Yuba Site is void.

24 54. In addition, any further actions by the Governor, or by any other state or local
25 governmental officials, to permit, approve or otherwise authorize the siting, construction or
26 operation of Enterprise’s proposed casino and hotel resort complex, or of any improvements,
27 infrastructure or utilities related to it, without first complying with CEQA, are likewise void for
28 violating state law.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Petitioners pray for relief as follows:

3 1. That this Court enter a declaration that the Governor's concurrence decision was
4 ultra vires and in violation of the separation of powers doctrine and thus void for all purposes.

5 2. That this Court issue a writ of mandate ordering the Governor to set aside his
6 August 30, 2012 concurrence and mandating that the Governor comply with CEQA before
7 making any further decisions regarding Enterprise's proposed casino and hotel resort complex at
8 the Yuba Site.

9 3. That the Court issue a temporary and permanent injunction prohibiting future
10 approvals or actions by the Governor authorizing any activities relating to the siting, construction,
11 or operation of Enterprise's proposed casino and hotel resort complex at Yuba County, or taking
12 actions in support of such activities, until CEQA compliance has been fully achieved.

13 4. That the Court grant Petitioners their costs of suit and reasonable attorneys' fees,
14 including out-of-pocket disbursements.

15 5. That the Court grant such other and further relief as it deems just and proper.

16
17 DATED: February 28, 2013

PERKINS COIE LLP

18
19 By: 
20 Marc R. Bruner
mbruner@perkinscoie.com

21 Attorneys for Petitioners and Plaintiffs
22 CITIZENS FOR A BETTER WAY, STAND
23 UP FOR CALIFORNIA!, and GRASS
24 VALLEY NEIGHBORS
25
26
27
28

EXHIBIT A

1 PERKINS COIE LLP
2 Marc R. Bruner, State Bar No. 212344
3 Tyler Welti, State Bar No. 257993
4 Four Embarcadero Center, Suite 2400
5 San Francisco, CA 94111-4131
6 Telephone: 415-344-7000
7 Facsimile: 414-344-7050
8 Email: mbruner@perkinscoie.com
9 twelti@perkinscoie.com

10 Attorneys for Petitioners and Plaintiffs
11 CITIZENS FOR A BETTER WAY, STAND UP
12 FOR CALIFORNIA!, GRASS VALLEY
13 NEIGHBORS, JAMES M. GALLAGHER, ANDY
14 VASQUEZ, DAN LOGUE, and ROBERTO'S
15 RESTAURANT

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF SACRAMENTO

18 CITIZENS FOR A BETTER WAY, a
19 California non-profit public benefit
20 corporation; STAND UP FOR
21 CALIFORNIA!, a California non-profit
22 public benefit corporation; GRASS
23 VALLEY NEIGHBORS, a community
24 environmental organization; ROBERTO'S
25 RESTAURANT, a business located in
26 Wheatland, California; and JAMES M.
27 GALLAGHER, ANDY VASQUEZ, DAN
28 LOGUE, all residents of Yuba County;

Petitioners and
Plaintiffs,

v.

EDMUND G. BROWN JR., in his official
capacity as Governor of the State of
California; and DOES 1 through 50,
inclusive,

Respondents and
Defendants.

YUBA COUNTY ENTERTAINMENT,
LLC, a Delaware limited liability
company

Real Party
in Interest

Case No. _____

NOTICE OF COMMENCEMENT OF
PROCEEDING UNDER THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT

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TO: THE GOVERNOR OF THE STATE OF CALIFORNIA

PLEASE TAKE NOTICE, under Public Resources Code Section 21167.5, that Petitioners and Plaintiffs, CITIZENS FOR A BETTER WAY, STAND UP FOR CALIFORNIA!, GRASS VALLEY NEIGHBORS, JAMES M. GALLAGHER, ANDY VASQUEZ, DAN LOGUE, and ROBERTO'S RESTAURANT, intend to file a Petition for Writ of Mandate, under the provisions of the California Environmental Quality Act, against the Governor of the State of California. The petition will allege that the Governor violated CEQA by issuing his official concurrence approving the proposal to take a currently undeveloped 40-acre site in rural, unincorporated Yuba County into trust for a group of individuals who identify themselves as the Enterprise Rancheria of Maidu Indians of California to develop a large off-reservation casino and hotel resort, without conducting any environmental review of the proposal.

DATED: February 22, 2013

PERKINS COIE LLP

By: Marc R. Bruner
Marc R. Bruner
mbruner@perkinscoie.com

Attorneys for Petitioners and Plaintiffs
CITIZENS FOR A BETTER WAY, STAND
UP FOR CALIFORNIA!, GRASS VALLEY
NEIGHBORS, JAMES M. GALLAGHER,
ANDY VASQUEZ, DAN LOGUE, and
ROBERTO'S RESTAURANT

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2 Marc R. Bruner, State Bar No. 212344
3 Tyler Welti, State Bar No. 257993
4 Four Embarcadero Center, Suite 2400
5 San Francisco, CA 94111-4131
6 Telephone: 415-344-7000
7 Facsimile: 414-344-7050
8 Email: mbruner@perkinscoie.com
9 twelti@perkinscoie.com

6 Attorneys for Petitioners and Plaintiffs
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20 v.

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27 company

27 Real Party
28 in Interest

Case No. _____

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Four Embarcadero Center, Suite 2400

San Francisco, CA 94111-4131

PHONE: 415-344-7000

FAX: 415-344-7050

www.perkinscoie.com

Date: February 22, 2013

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Recipient:	Company:	Telephone:	Facsimile:
<i>Edmund G. Brown, Jr., Governor</i>	<i>State of California</i>		<i>(916) 558-3160</i>

Re: Citizens for a Better Way, et al. v. Edmund G. Brown Jr., et al.

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RETURN TO: (NAME) Sherrye S. Andrews (EXT.) 7116 (ROOM No.) 129B

Sender:	Telephone:	Facsimile:
Marc R. Bruner	(415) 344-7171	(415) 344-7371

Recipient:	Company:	Telephone:	Facsimile:
Edmund G. Brown, Jr., Governor	State of California		(916) 558-3160

Re: Citizens for a Better Way, et al. v. Edmund G. Brown Jr., et al.

EXHIBIT B

1 PERKINS COIE LLP
Marc R. Bruner (SBN 212344)
2 Tyler Welti (SBN 257993)
Four Embarcadero Center, Suite 2400
3 San Francisco, CA 94111-4131
Telephone: 415-344-7000
4 Facsimile: 414-344-7050
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24 Interior; ENTERPRISE RANCHERIA OF
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NOTICE TO ATTORNEY GENERAL OF
PROCEEDING UNDER THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT, Public
Resources Code §§ 21000 et seq.

27
28

1 PLEASE TAKE NOTICE, under Public Resources Code Section 21167.7 and Code of
2 Civil Procedure Section 388, that on February 25, 2013, Petitioners and Plaintiffs, CITIZENS
3 FOR A BETTER WAY, STAND UP FOR CALIFORNIA!, and GRASS VALLEY
4 NEIGHBORS, filed a Petition for Writ of Mandate and Complaint in Sacramento County
5 Superior Court against the Governor of the State of California. The Petition and Complaint
6 alleges that the Governor violated the California Environmental Quality Act, among other
7 California legal requirements, by issuing his official concurrence approving the proposal to take a
8 currently undeveloped 40-acre site in rural, unincorporated Yuba County into trust for a group of
9 individuals who identify themselves as the Enterprise Rancheria of Maidu Indians of California to
10 develop a large off-reservation casino and hotel resort complex. A copy of the Petition and
11 Complaint is attached to this Notice.

12 DATED: February 25, 2013

PERKINS COIE LLP

13
14 By: Marc R. Bruner
15 Marc R. Bruner
mbruner@perkinscoie.com

16 Attorneys for Petitioners and Plaintiffs
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EXHIBIT C

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ENTERPRISE RANCHERIA OF MAIDU
INDIANS OF CALIFORNIA,

Real Parties
in Interest

FILED
Superior Court Of California,
Sacramento
02/25/2013
emuniz
By _____, Deputy
Case Number:
34-2013-80001419

Case No. _____

REQUEST FOR PREPARATION OF
RECORD OF PROCEEDINGS UNDER THE
CALIFORNIA ENVIRONMENTAL
QUALITY ACT, Public Resources Code
§§ 21000 et seq.

BY FAX

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Under Public Resources Code Section 21167.6, Petitioners and Plaintiffs, CITIZENS FOR A BETTER WAY, STAND UP FOR CALIFORNIA!, and GRASS VALLEY NEIGHBORS request that the Governor of the State of California prepare the record of proceedings in this action.

DATED: February 25, 2013

PERKINS COIE LLP

By: Marc R. Bruner
Marc R. Bruner
mbruner@perkinscoie.com

Attorneys for Petitioners and Plaintiffs
CITIZENS FOR A BETTER WAY, STAND
UP FOR CALIFORNIA!, and GRASS
VALLEY NEIGHBORS