

Assigned For All Purposes
To Judge
Including Trial

JEFFREY B. JONES

FILED

JUN 05 2009

SUPERIOR COURT
IMPERIAL COUNTY CA.
JOSE G. GUILLEN, CLERK
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DINA DE LA ROSA

1 JOHN G. McCLENDON (State Bar No. 145077)
Alisha M. Winterswyk (State Bar No. 240969)
2 LEIBOLD McCLENDON & MANN
A Professional Corporation
3 23422 Mill Creek Drive
Suite 105
4 Laguna Hills, California 92653
Telephone: (949) 457-6300
5 Facsimile: (949) 457-6305

6 Attorneys for Petitioner
COALITION FOR HONESTY AND INTEGRITY IN CALEXICO

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF IMPERIAL

11 COALITION FOR HONESTY AND
INTEGRITY IN CALEXICO,

12 Petitioner,

13 v.

14 CITY OF CALEXICO, CITY COUNCIL
15 OF THE CITY OF CALEXICO,

16 Respondents,

17 HALLWOOD CALEXICO
18 INVESTMENTS, LLC, and
19 DOES 1 THROUGH 25, inclusive,

20 Real Parties in Interest.

Case No. ECU05244

**PETITION FOR WRIT OF
MANDATE**

[Public Resources Code § 21168;
Code of Civil Procedure §§ 1085
and/or 1094.5]

NOTICE TO COURT CLERK:
**THIS PETITION INCLUDES A
CALIFORNIA ENVIRONMENT
QUALITY ACT ("CEQA") CAUSE
OF ACTION TO BE ASSIGNED
TO A JUDGE DESIGNATED IN
ACCORDANCE WITH PUBLIC
RESOURCES CODE § 21167.1(b)
TO DEVELOP EXPERTISE IN
CEQA**

LEIBOLD McCLENDON & MANN
A PROFESSIONAL CORPORATION

1 Petitioner COALITION FOR HONESTY AND INTEGRITY IN CALEXICO (“CHIC” or
2 “Petitioner”) alleges as follows:

3 GENERAL AND INTRODUCTORY ALLEGATIONS

4 1. This case is about two things. First, it is about the California Legislature enacting
5 extraordinary laws over the past three decades to compel cities and counties to make ample land
6 available for the development of critically needed affordable housing. Second, it is about one
7 California city’s flagrant violation of those extraordinary laws in its quest to illegally convert
8 hundreds of acres of land it previously designated and zoned for residential development to
9 commercial uses. That city is the City of Calexico (“City”).

10 2. In this action Petitioner challenges the decision of respondent City Council of the
11 City of Calexico (“Council”), as the elected legislative body for respondent City, to violate
12 numerous provisions of the California Planning and Zoning Law (Government Code § 65000
13 *et seq.*: “PZL”) pertaining to housing and particularly affordable housing. (The Council and the
14 City are hereinafter collectively referred to as “Respondent.”) Petitioner contends that
15 Respondent has twice submitted a General Plan Housing Element to the California Department
16 of Housing and Community Development (“HCD”) that is a sham in its concealment from HCD
17 of hundreds of acres of land within the City that are designated and zoned for medium- and high-
18 density affordable housing. Determined to convert those lands to commercial uses, Respondent
19 used a classic “bait-and-switch” ploy to assure HCD that the City can satisfy its obligation to
20 provide sufficient land for housing by annexing into the City prime farmland outside the City.
21 Yet the Legislature decries doing this, annexation of the farmland into the City is unlikely for
22 economic reasons, and the City’s own planning documents show there will be no infrastructure
23 in place to develop this farmland for residential purposes for the foreseeable future.

24 3. Petitioner also challenges the Council’s decision to approve the application
25 submitted by real party in interest Hallwood Calexico Investments, LLC (“Hallwood” or “RPI”),
26 to develop “111 Calexico Place,” a gigantic commercial project, including a tribal gaming
27 facility (the “Project”), on 232 acres located within the City at the southwest corner of Jasper
28 Road and State Route 111 (the “Property”). In connection with approving the Project,

1 Respondent concurrently approved a second sham Housing Element (“2009 Housing Element”)
2 to amend its 2008 Housing Element Amendment which HCD found failed to comply with the
3 PZL. Petitioner also contends that the City’s preparation of the environmental impact report
4 (“EIR”) [State Clearinghouse No. 2007031092] for the Project, and the Council’s certification
5 of it, violated specific provisions of the California Environmental Quality Act (Public Resources
6 Code section 21000 *et seq.*: “CEQA”) and the Guidelines for Implementation of CEQA
7 (Title 14, California Code of Regulations, section 15000 *et seq.*: the “CEQA Guidelines”), a
8 statutory and regulatory framework often referred to as the “Holy Grail” of California’s
9 environmental laws.

10 4. Petitioner is challenging the Project because (among other things) it is a project
11 that results in significant impacts on the environment that have not been adequately assessed or
12 mitigated in accordance with CEQA. Respondent ignored substantial evidence that significant
13 unmitigated impacts would result from the development of the Project upon the Property.

14 5. In refusing to prepare and certify a legally adequate EIR that fully disclosed and
15 honestly analyzed all of the potential impacts that will result from the Project, refusing to
16 consider a number of feasible and environmentally superior alternatives to the Project, and
17 failing to make all mitigation measures fully enforceable, Respondent has disregarded or treated
18 as a mere formality the specific and substantive requirements of CEQA and the CEQA
19 Guidelines.

20 6. Petitioner requests that this Court vacate and set aside the 2009 Housing Element
21 Amendment, the Project approvals and the EIR’s certification by issuing a writ of mandate under
22 Code of Civil Procedure sections 1085 and/or 1094.5, directing the City to vacate and set aside
23 its approval of the 2009 Housing Element Amendment, the Project and certification of the EIR
24 for the Project. These claims are based on the following allegations:

25 JURISDICTION AND VENUE

26 7. This Court has jurisdiction over this action pursuant to sections 1085, 1094.5, and
27 187 of the Code of Civil Procedure, sections 65589.5(m) and 65750 *et seq.*, of the Government
28 Code, and sections 21168 and/or 21168.5 of the Public Resources Code.

1 8. Venue for this action properly lies in the Imperial County Superior Court because
2 Respondent and the Property are located in Imperial County.

3 PARTIES AND BENEFICIAL INTEREST

4 9. Petitioner, the COALITION FOR ENVIRONMENTAL INTEGRITY IN CALEXICO, is an
5 unincorporated umbrella association composed of and supported by individuals residing in the
6 City and surrounding communities as well as groups such as Citizens for Responsible Equitable
7 Environmental Development ("CREED"), a California non-profit public benefit corporation
8 organized and incorporated in January, 2003, for the specific purpose of advocating for
9 responsible and equitable environmental development. On behalf of these and other individuals
10 and groups, Petitioner challenges the Project's approval.

11 10. Petitioner is a party beneficially interested in the issuance of the requested writ of
12 mandate ordering Respondent's compliance with the PZL, CEQA and the CEQA Guidelines.
13 These interests are directly and adversely affected by Respondent's approval of the Project,
14 which violates the provisions of law as set forth herein and will cause substantial and irreversible
15 harm to Petitioner. Moreover, under the unique circumstances of this action, Respondent failed
16 to adequately mitigate (among other things) the Project's global environmental impacts. Unless
17 this Court grants the requested writ of mandate, the impacts resulting from the City's decision
18 to approve the Project will extend to areas in which numerous citizens represented by Petitioner
19 live and will directly and adversely affect their health and living environment. Consequently,
20 Petitioner is directly and beneficially interested in the issuance of the requested writ of mandate.

21 11. Petitioner has standing as a beneficially interested party to bring this action
22 (i) because in accordance with Public Resources Code section 21177(c), Petitioner is an
23 organization formed after the approval of the Project to maintain an action against the City under
24 CEQA, and (ii) because the Project's record of proceedings shows that representatives of
25 Petitioner's members complied with subdivisions (a) and (b) of Public Resources Code section
26 21177 and exhausted their administrative remedies by timely commenting on and objecting to
27 the contents and adequacy of the EIR.

28

1 12. Respondent CITY OF CALEXICO is a general law city organized and existing under
2 and by virtue of the laws of the State of California, and is situated in the County of Imperial.
3 The City of Calexico is responsible for regulating and controlling land use in all areas within the
4 City, including (but not limited to) implementing and complying with the provisions of CEQA
5 and the CEQA Guidelines.

6 13. Respondent CITY COUNCIL OF THE CITY OF CALEXICO is the duly constituted
7 legislative body of the City of Calexico. The City Council is responsible for the formulation and
8 implementation of land use plans in the City and, in some cases, areas within the City's sphere
9 of influence, including the preparation and certification of EIRs.

10 14. Petitioner is informed and believes and on that basis alleges that real party in
11 interest HALLWOOD CALEXICO INVESTMENTS, LLC ("Hallwood" or "RPI"), is a Delaware
12 limited liability company. The City's Project documents identified Hallwood as the applicant
13 for the Project entitlements for the Property upon which the Project is to be developed.
14 Therefore, based upon the City's representations, Petitioner believes it has complied with
15 subdivision (a) of Public Resources Code section 21167.6.5.

16 15. Petitioner is ignorant of the true names and capacities of the real parties in interest
17 and respondents named herein as DOES 1 through 25, inclusive, and therefore sues those real
18 parties in interest and respondents by such fictitious names. Petitioner will amend this petition
19 to allege the true names and capacities of those Doe parties when ascertained. Petitioner is
20 informed and believes, and on that basis alleges, that each of the parties designated herein as a
21 Doe is responsible in some manner for the events and actions referred to herein.

22 16. Petitioner is informed and believes, and on that basis alleges, that at all relevant
23 times the City of Calexico, the City Council of the City of Calexico, RPI, and the Doe real
24 parties in interest and respondents were and are the agents of each other, authorized to do the
25 acts herein alleged, each of which was ratified by the others.

26 17. The true names and capacities, whether individual, corporate, or otherwise of Does
27 1 through 25 are unknown to Petitioner who therefore sues Does 1 through 25 by such fictitious
28 names. Petitioner will amend this petition to allege the true names and capacities of the Doe

1 respondents when the same becomes known to it. Reference to "City" or "Respondent" herein
2 shall mean the named respondents and Does 1 through 25.

3 18. Petitioner is informed and believes and on that basis alleges that Respondent and
4 each of the Does proximately caused the acts, omissions to act, and/or injuries herein alleged.

5 19. Respondent is, and at all times relevant herein has been, charged by law with the
6 performance of all duties arising under CEQA and the CEQA Guidelines, including (but not
7 limited to) the preparation and certification of a legally adequate environmental impact report
8 ("EIR") for the Project.

9 20. Petitioner has exhausted all legally available administrative remedies against
10 Respondent's decision to approve the Project EIR as being in compliance with CEQA. The
11 decision of Respondent to approve the Project EIR is a final determination. If the Court does
12 not grant the relief prayed for herein, Petitioner will suffer irreparable injury for which it has no
13 adequate remedy at law, there will be a waste, and the failure to enjoin further conduct may tend
14 to render the judgment in this action ineffectual.

15 21. Petitioner has complied with the requirements of Public Resources Code
16 section 21167.5 by sending, via United States Mail, written notice of this action to Respondent.
17 A copy of the written notice provided to Respondent is attached hereto as Exhibit A and
18 incorporated herein by this reference.

19 22. Petitioner has complied with the requirements of Public Resources Code
20 section 21167.7 and the Code of Civil Procedure section 388 by furnishing a copy of this petition
21 to the Attorney General of California. A copy of the letter transmitting this petition to the
22 Attorney General is attached hereto as Exhibit B and incorporated herein by this reference.

23 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

24 23. In early 2008, the City submitted its draft "fourth revision" General Plan Housing
25 Element to HCD for approval. By letter dated May 23, 2008, HCD's Deputy Director informed
26 the City that the draft did not comply with State housing element law.

27 24. July, 2009, the Council approved its final "fourth revision" General Plan Housing
28 Element ("2008 Housing Element").

1 25. By letter dated October 22, 2008, Petitioner's counsel provided the notice pursuant
2 to subdivision (d) of Government Code section 65009, specifying deficiencies in the City's
3 General Plan Housing Element. The notice explained that the 2008 Housing Element was a
4 sham that did not comply with State housing element law on account of it failing to acknowledge
5 hundreds of acres of vacant land within the City designated and zoned for residential
6 development. The notice further explained that City staff was perpetrating a fraud on HCD by
7 attempting to skirt Government Code section 65863 in anticipation of two huge commercial
8 projects proposed to be developed on that land.

9 26. Referencing Petitioner's counsel's October 22nd letter, by letter dated October 24,
10 2008, HCD's Deputy Director informed the City's manager that the 2008 Housing Element
11 failed to comply with State Housing element law.

12 27. On November 14, 2008, two Council members sent a memo the City's manager
13 asking to "provide [the Council] a detailed explanation as to why the city would submit an
14 application severely defective" to HCD. The Council members attached to their memo a copy
15 of both Petitioner's counsel's October 22nd letter and HCD's October 24th letter. A copy of the
16 memo and its two attachments are attached hereto as Exhibit C and incorporated herein by this
17 reference.

18 28. On November 20, 2008, the *Imperial Valley Press* reported that the City's
19 Development Director was defending his decision not to disclose the hundreds of acres of vacant
20 residentially-designated land in the 2008 Housing Element on account of his belief that the
21 Council would soon rezone that acreage to commercial and so it would have been disingenuous
22 to include it in a long-term housing plan. The *Imperial Valley Press* reported that he said, "How
23 can I represent to the state that I have residential (parcels) when I'm planning to change them?"

24 29. Thereafter, City staff prepared the 2009 Housing Element as an amendment to the
25 General Plan Housing Element. The City agendized the 2009 Housing Element, the Project, and
26 its EIR for public hearing on May 5, 2009.

27 30. By letter dated May 4, 2009 and addressed to the Council, Petitioner's counsel
28 informed the Counsel that City staff had failed to comply with subdivision (c) of Government

1 Code section 65585 in preparing the 2009 Housing Element, that the 2009 Housing Element was
2 still a sham being perpetrated on HCD and the community, and that the EIR prepared for the
3 Project failed to comply with State law and regulations.

4 31. On May 5, 2009, the Council approved the 2009 Housing Element, the Project, and
5 the EIR.

6 32. Thereafter, the City filed Notices of Determination for the Project on May 6, 7, and
7 28, 2009.

8 FIRST CAUSE OF ACTION

9 [Against Respondent for issuance of a writ of mandate pursuant to Govt. Code § 65750 *et seq.*]

10 (VIOLATION OF THE PZL'S GENERAL PLAN LAW)

11 33. Petitioners reallege paragraphs 1 through 32.

12 34. The City's General Plan is its basic land use planning document.

13 35. State law requires a city's general plan to include a comprehensive long-term plan
14 for the physical development of that city as well as any land outside its boundaries that the city
15 determines relates to its land use planning.

16 36. Government Code section 65302 mandates that every general plan contain and
17 address seven mandatory elements: land use, circulation, housing, conservation, open space,
18 noise, and safety.

19 37. The Legislature intends that every general plan and elements and parts thereof
20 comprise an integrated, internally consistent and compatible statement of policies.

21 38. State law requires cities to periodically review and revise, as necessary their
22 general plans. However, Government Code section 65588(b) expressly requires the housing
23 element of a general plan to be reviewed and revised not less than every five years.

24 39. The City lies within the regional jurisdiction of the Southern California
25 Association of Governments ("SCAG").

26 40. Subdivision (e)(1) of section Government Code section 65588 requires all local
27 governments within SCAG's regional jurisdiction to revise their general plan housing elements
28 by June 30, 2006. However, on September 22, 2004, the Governor signed Assembly Bill 2158

1 (Lowenthal), adding Government Code section 65584.02, which (among other things) permitted
2 SCAG to request that the June 30, 2006, deadline for those local governments within its
3 jurisdiction to adopt and submit their housing element updates to the California Department of
4 Housing and Community Development (“HCD”) be extended. Thereafter, Mark Pisano,
5 SCAG’s Executive Director, sent a letter to HCD requesting that the deadline for those local
6 governments within its jurisdiction to adopt and submit their housing element updates to HCD
7 be extended to July 1, 2008.

8 41. By letter dated July 6, 2005, HCD’s Deputy Director, Cathy E. Creswell wrote
9 Mr. Pisano to announce that HCD had agreed to extend to July 1, 2008, the deadline for local
10 governments within SCAG’s jurisdiction to adopt and submit their housing element updates.

11 42. On July 12, 2007, SCAG adopted its Final Regional Housing Need Allocation
12 (“RHNA”) Plan for the “fourth revision” housing element period referred to in Government
13 Code section 65584. SCAG’s Final RHNA Plan allocates to the City the “RHNA” requirement
14 that its “fourth revision” Housing Element provide for the development of 2,498 new residential
15 dwelling units between January 1, 2006, and June 30, 2014, including 615 units for “very low-
16 income households” (e.g., 50% of area median income) and 405 units for “low-income
17 households” (e.g., 80% of area median income).

18 43. By letter dated September 7, 2007, Ms. Creswell informed Mr. Pisano that HCD
19 had reviewed SCAG’s Final RHNA Plan pursuant to Government Code section 65584.05(h) for
20 consistency with statutory requirements and found it to be consistent. Ms. Creswell also
21 reiterated that the final due date for local governments within SCAG’s jurisdiction to complete
22 and submit their housing element updates was June 30, 2008.

23 44. City refuses to prepare and present to HCD a draft “fourth revision” Housing
24 Element that complies with State housing element law.

25 45. Prior to bringing this cause of action, Petitioner complied with the notice
26 requirements of Government Code section 65009(d). Respondent has failed to take final action
27 with regard to that notice by preparing and adopting a legally adequate Housing Element update
28 to its General Plan, and more than 60 days has expired since the date Petitioner’s counsel

1 submitted that notice. Despite the mandate of Government Code section 65585(c), Respondent
2 rushed through the approval of a Housing Element without first presenting it in draft form to to
3 HCD for statutory review.

4 SECOND CAUSE OF ACTION

5 [Against Respondents]

6 (VIOLATION OF PLANNING AND ZONING LAW—GOVERNMENT CODE § 65589.5.)

7 46. Petitioners reallege paragraphs 1 through 45.

8 47. In approving the 2009 Housing Element, Respondent violated the requirements
9 of Government Code section 65589.5, a statute the Legislature has aptly dubbed the Housing
10 Accountability Act (Govt. Code § 65589.5(o): the “HAA”).

11 48. Government Code section 65589.5(b) states that, “It is the policy of the state that
12 a local government not reject or make infeasible housing developments that contribute to
13 meeting the housing need determined pursuant to this article *without a thorough analysis of the*
14 *economic, social, and environmental effects of the action*”

15 49. In approving the 2009 Housing Element and Project, Respondent failed to make
16 any analysis of the economic, social, or environmental effect of those actions.

17 50. The Property constitutes prime agricultural land.

18 51. Government Code section 65589.5(c) states that, “*The Legislature also recognizes*
19 *that premature and unnecessary development of agricultural lands for urban uses continues to*
20 *have adverse effects on the availability of those lands for food and fiber production and on the*
21 *economy of the state. Furthermore, it is the policy of the state that development should be guided*
22 *away from prime agricultural lands; therefore, in implementing this section, local jurisdictions*
23 *should encourage, to the maximum extent practicable, in filling existing urban areas.*”

24 52. In approving the 2009 Housing Element and Project, Respondent violated the
25 Legislature’s express policy to guide development away from prime agricultural lands and
26 towards existing urban areas.

27 53. When a court finds a violation of the HAA, it *must* issue an order compelling
28 compliance with the HAA, award reasonable attorney’s fees to the petitioner/plaintiff, and may

1 even “impose fines upon the local agency that the local agency shall be required to deposit into
2 a housing trust fund.” (Government Code §65589.5(k)-(m).)

3 THIRD CAUSE OF ACTION

4 [Against Respondents]

5 (VIOLATION OF PLANNING AND ZONING LAW–GOVERNMENT CODE § 65863.)

6 54. Petitioners reallege paragraphs 1 through 53.

7 55. In 2002, the Legislature added section 65863 to the Planning and Zoning Law; it
8 has since become known as the “No-Net-Loss in Density Law.” (Govt. Code § 65582.1(i).)

9 56. Government Code section 65863(a) commands every city and county to “ensure
10 that its inventory or programs of adequate sites pursuant to paragraph (3) of subdivision (a) of
11 Government Code section 65583 and paragraph (1) of subdivision (c) of Government Code
12 section 65583 can accommodate its share of the regional housing need pursuant to Section
13 65584, throughout the planning period.” Government Code section 65583(a)(3) requires housing
14 elements to contain “[a]n inventory of land suitable for residential development” that includes
15 (among other things) “[a] listing of properties by parcel number or other unique reference” [see
16 Government Code §65583.2(a) & (b)], and section 65583(c)(1) requires housing elements to
17 “[i]dentify actions that will be taken to make sights available during the planning period.”

18 57. In turn, Government Code section 65863(b) required the City to “make[] written
19 findings supported by substantial evidence” that “[t]he remaining sites identified in the housing
20 element are adequate to accommodate the jurisdiction’s share of the regional housing need
21 pursuant to Section 65584.”

22 58. By adding Government Code section 65863 to the Planning and Zoning Law, the
23 Legislature effectively imposed on all cities and counties a moratorium on reducing *any*
24 residential densities unless and until they complete their housing elements for the “fourth”
25 planning period.

26 59. Since the City did not have a legally adequate Housing Element for the “fourth”
27 planning period, Respondent could not approve the Project. Moreover, in approving the Project,
28 the Council failed to make written Government Code section 65863 findings based on the

1 housing element for its *fourth* planning period (e.g., its 2006-2012 Housing Element); thus its
2 approval of the Project violated Government Code section 65863.

3 FOURTH CAUSE OF ACTION

4 (AGAINST RESPONDENT – FAILURE TO COMPLY WITH CEQA.)

5 60. Petitioner realleges paragraphs 1 through 59.

6 61. In order for an EIR to be legally adequate, it must comport with certain
7 requirements set forth in CEQA and the CEQA Guidelines.

8 62. For example, CEQA and the CEQA Guidelines require that an EIR include a
9 description of the Project and a discussion of alternatives to the Project, including (but not
10 limited to) the “no project” alternative and alternative methods of accomplishing some, but
11 perhaps not all, of the proposed Project’s objectives. However, Respondent did not proceed in
12 the manner required by law in that it failed to provide an EIR that adequately discussed a
13 reasonable range of alternatives to the proposed Project, thereby eliminating a meaningful basis
14 for comparing the adverse environmental impacts of the proposed Project to environmentally
15 superior alternatives.

16 63. Respondent further did not proceed in the manner required by law in that it
17 produced an EIR that was biased in favor of the proposed Project’s approval and, therefore,
18 failed to constitute the full disclosure document intended to objectively inform decision-makers
19 and the public of the Project’s true impacts, mitigation measures, and alternatives.

20 64. Respondent’s certification that the EIR satisfied the requirements mandated by
21 CEQA and the CEQA Guidelines constitutes an abuse of discretion in that Respondent failed
22 to proceed in the manner required by law and its decision is not supported by substantial
23 evidence, as follows:

24 a. Respondent failed to prepare an adequate EIR by not imposing
25 adequate and fully enforceable mitigation requirements on the Project’s
26 greenhouse gas emissions and incremental effects on global climate change
27 despite being shown that it was both necessary and possible to provide meaningful
28 mitigation to lessen them;

1 d. Respondent failed to adequately examine the cumulative effects of
2 the Project in light of other ongoing and proposed actions and projects that have
3 or may have similar effects either directly or indirectly, in the surrounding City
4 and County environment;

5 e. Respondent failed to prepare an adequate EIR by not adequately
6 analyzing the extent to which the Project's effects will commit non-renewable
7 natural resources to a use that future generations will not likely be able to reverse;

8 f. Respondent failed to prepare an adequate EIR by not adequately
9 identifying and discussing the Project's cumulative impacts; and

10 g. Respondent failed to prepare an adequate EIR by failing to identify
11 or address potentially significant traffic impacts.

12 65. CEQA and the CEQA Guidelines require Respondent to address comments and
13 suggestions raised during the EIR review process and to prepare a good faith, reasoned analysis
14 in response to all significant issues raised. Respondent did not proceed in the manner required
15 by law in that it failed to adequately and accurately provide good faith, reasoned responses to
16 comments made during the CEQA public review process, including (but not limited to)
17 inadequate responses to comments raised concerning the Project's environmental impacts and
18 feasible mitigation measures and alternatives.

19 66. CEQA and the CEQA Guidelines require that the lead agency make certain written
20 findings and that the findings must be supported by substantial evidence in the record.
21 Respondent did not proceed in the manner required by law in that it failed to adopt findings that
22 are supported by substantial evidence.

23 67. Respondent did not proceed in the manner required by law in that it failed to adopt
24 findings that adequately discussed all significant Project impacts, failed to make adequate
25 specific findings with regard to the feasibility of each mitigation measure and each alternative
26 identified in the EIR, failed to adopt all feasible mitigation measures and the feasible and
27 environmentally superior alternatives identified in the EIR, and failed to adequately identify
28

1 considerations which would make infeasible or override those mitigation measures and
2 alternatives.

3 68. CEQA and the CEQA Guidelines require that Respondent adopt feasible
4 mitigation measures to avoid significant environmental impacts. Respondent did not proceed
5 in the manner required by law in that it failed to prepare an adequate EIR by not examining and
6 discussing potential mitigation measures that would substantially lessen the Project's reasonably
7 foreseeable adverse impacts on the surrounding community.

8 69. CEQA and the CEQA Guidelines require that Respondent analyze a reasonable
9 range of alternatives to avoid significant environmental impacts. Respondent failed to prepare
10 an adequate EIR by not analyzing a reasonable range of alternatives to the Project, including
11 feasible alternatives that are environmentally superior and, unlike the Project, would have been
12 consistent with the City's General Plan and its Housing Element.

13 70. The EIR's analysis, mitigation measures and response to comments of the Project
14 are wholly inadequate and in violation of CEQA and the State CEQA Guidelines.

15 71. Pursuant to California Code of Civil Procedure Section 1095, Petitioner is entitled
16 to recover its damages and costs incurred as a result of Respondent's unlawful actions.
17 Petitioner has made or will make claim for repayment of these damages from Respondent, and
18 will seek leave to amend this Petition to seek such damages, if the claim for damages is rejected
19 by Respondent.

20 72. Petitioner is entitled to recover its attorneys' fees and costs pursuant to California
21 Code of Civil Procedure Section 1021.5.

22 FIFTH CAUSE OF ACTION

23 (AGAINST RESPONDENT – PETITION FOR WRIT OF MANDATE

24 PURSUANT TO CODE OF CIVIL PROCEDURE

25 § 1085 ET SEQ., AND/OR § 1094.5 ET SEQ.)

26 73. Petitioner realleges paragraphs 1 through 72.

27 74. Respondent has the legal duty in making their determinations to comply with the
28 applicable law governing such legislative acts. In particular, Respondent has the legal and

1 nondiscretionary duty to act in accordance with the requirements of the PZL, CEQA, the State
2 CEQA Guidelines, and other applicable law.

3 75. Respondent acted arbitrarily, capriciously, irrationally, and unreasonably, and
4 without any or an adequate evidentiary basis in failing or refusing to comply with the
5 requirements of the PZL, CEQA, the State CEQA Guidelines, and other applicable law. At all
6 times material hereto, Respondent had, and continues to have, the ability to comply with its legal
7 duties. Notwithstanding the efforts of Petitioner and others to inform Respondent of its legal
8 duties, and to induce Respondent to comply with its legal duties, Respondent has failed and
9 refused to perform these duties as described herein.

10 76. The decision of Respondent to approve the Project constitutes a final decision as
11 contemplated in Section 1094.5 of the Code of Civil Procedure.

12 77. Petitioner has exhausted all available administrative remedies. There is no
13 provision known to Petitioner for any further administrative remedial action from the decision
14 of Respondent to approve the Project.

15 78. Respondent has prejudicially abused its discretion by approving the Project
16 permitting the acts and omissions described herein to occur.

17 79. In acting and failing to act in the manner described above, Respondent has acted
18 in an arbitrary, capricious, and irrational manner lacking any reasonable basis, in violation of
19 Code of Civil Procedure Sections 1085 *et seq.*

20 80. Petitioner is beneficially interested in issuance of the writ of mandate as prayed
21 for hereafter. Petitioner will be seriously harmed if Respondent proceeds with the Project.

22 81. At all times material hereto, Respondent has been able to perform its duties and
23 obligations as demanded by Petitioner. Respondent has, however, failed and refused to
24 undertake its obligations. Respondent has failed and refused to require or to perform any of the
25 above, notwithstanding the substantial evidence presented to Petitioner and others that such
26 failures and refusals are contrary to law and will have adverse consequences on Petitioner.

27 82. Petitioner has no plain, speedy, or adequate remedy at law other than the relief
28 sought in this petition. In acting and failing to act in the manner described above, Respondent

1 has prejudicially abused their discretion in approving the Project, in violation of Code of Civil
2 Procedures Section 1094.5 *et seq.*

3 PRAYER

4 WHEREFORE, Petitioner prays as follows:

- 5 1. On the first cause of action, for an order granting, pursuant to Government Code section
6 65757, as temporary relief, the relief provided in Government Code section 65755; and/or for
7 a judgment granting a peremptory writ of mandate that includes the relief provided in
8 Government Code sections 65754 and 65755, unless and until such time as Respondent fully
9 complies with Articles 5, 6, 8, and 10.6 of the State Planning and Zoning Law.
- 10 2. On the second cause of action, for an order granting the relief provided in subdivisions
11 (k) and (l) of Government Code section 65589.5.
- 12 3. On the third cause of action, for a writ of mandate commanding Respondent to set aside
13 and rescind its approval of the Project unless and until it (A) prepares and approves a Housing
14 Element that complies with State law, and (B) it is able to make the written findings mandated
15 by subdivision (b) of Government Code section 65863.
- 16 4. On the fourth cause of action, for a temporary restraining order and preliminary and
17 permanent injunctions setting aside and rescinding Respondent's approval of the Project and
18 further prohibiting Respondent and RPI from implementing the Project; or, alternatively, for a
19 judgment granting a peremptory writ of mandate commanding Respondent to set aside its
20 approval of the Project, and ordering Respondent to take no further steps toward implementing
21 the Project;
- 22 5. On the fifth cause of action, for a writ of mandate pursuant to the Code of Civil Procedure
23 section 1085 *et seq.* and/or section 1094.5 *et seq.*, commanding Respondent to set aside and
24 rescind its approval of the Project and to command that Respondent take no further steps toward
25 implementing the Project;
- 26 6. For reasonable attorneys' fees in addition to any other relief granted;
- 27 7. For cost of suit incurred herein and for reasonable litigation expenses; and
- 28 8. For such other and further relief as the Court may deem just, equitable, or proper.

1 Dated: June 5, 2009

LEIBOLD McCLENDON & MANN, P.C.

2

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By:



John G. McClendon
Attorneys for Petitioner
COALITION FOR HONESTY
AND INTEGRITY IN CALEXICO

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LEIBOLD McCLENDON & MANN
A PROFESSIONAL CORPORATION

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VERIFICATION

State of California, County of Orange

John G. McClendon hereby declares:

I am one of the attorneys for COALITION FOR HONESTY AND INTEGRITY IN CALEXICO, the petitioner in this action. Such party is absent from the county of aforesaid where such attorneys have their office, and I make this verification for and on behalf of such party for that reason. I have read the foregoing *Petition for Writ of Mandate* and know its contents. The facts alleged in the *Petition* are within my own knowledge and I know them to be true; moreover, because of my familiarity with the relevant facts pertaining to the respondents' proceedings regarding the approvals challenged in this action, and my personal involvement in those proceedings, I verify this *Petition*.

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

Executed this 5th day of June, 2009.


John G. McClendon

EXHIBIT A

LEIBOLD McCLENDON & MANN
A PROFESSIONAL CORPORATION

23422 MILL CREEK DRIVE, SUITE 105
LAGUNA HILLS, CALIFORNIA 92653
(949) 457-6300
FAX: (949) 457-6305

JOHN G. McCLENDON
john@CEQA.com

June 4, 2009

Via United States Postal Service
City Clerk of the City of Calexico
CITY OF CALEXICO CITY HALL
608 Heber Avenue
Calexico, California 92231

Re: Notice of Commencement of Action – Public Resources Code Section 21167.5
General Plan Housing Element Amendment No. 2009-01;
Uniform Application No. 2006-14 for 111 Calexico Place Specific Plan
and Environmental Impact Report [SCH No. 2007031092] for Same

Please take notice that the Coalition for Honesty and Integrity in Calexico intends to commence an action against the City of Calexico to set aside its City Council's recent approval of the City of Calexico General Plan Housing Element Amendment No. 2009-01, and Uniform Application No 2006-14 of Hallwood Calexico Investments, LLC, to develop "111 Calexico Place" (the "Project"). The litigation will challenge (among other things) the City Council's approval of the Environmental Impact Report ("EIR") prepared for the Project and will allege (among other things) the City's violation of the California Environmental Quality Act (Public Resources Codes section 21000 *et seq.*) and the State Guidelines for Implementing CEQA (Title 14, California Code of Regulations, section 15000, *et seq.*). The grounds for these allegations were previously provided to the City's appointed and elected decision-making bodies by this office and others during the administrative processing and review of the Project.

This notice is provided pursuant to Public Resources Code section 21167.5.

Very truly yours,

LEIBOLD McCLENDON & MANN, P.C.



By: John G. McClendon

PROOF OF SERVICE

I declare that I am over the age of 18 and not a party to the within action. I am employed in the County of Orange, State of California, and my business address is 23422 Mill Creek Drive, Suite 105, Laguna Hills, California 92653.

On June 4, 2009, I served the foregoing document entitled "*Notice of Commencement of Action – Public Resources Code Section 21167.5*" on the City of Calexico by placing a true copy of such document(s) in a sealed envelope addressed as followings:

City Clerk of the City of Calexico
CITY OF CALEXICO CITY HALL
608 Heber Avenue
Calexico, California 92231

- BY MAIL: I am "readily familiar" with this firm's practice for collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on the same day this declaration was executed with postage thereon fully prepaid at Laguna Hills, California, in the ordinary course of business. Following ordinary business practice, I caused such envelope with postage thereon fully prepaid to be placed for collection in the United States Mail at Laguna Hills, California.
- BY OVERNIGHT COURIER: I caused such envelope to be deposited in a box or other facility regularly maintained by OVERNITE EXPRESS; FEDERAL EXPRESS; [specify name of service] with delivery fees fully provided for, or I delivered the envelope to a courier or driver of such service.
- BY FACSIMILE: I served a copy of said document(s) on the parties in this action. The facsimile transmission was reported as complete and without error, and a copy of the transmission report issued by the facsimile machine is attached hereto.
- [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- [Federal] I declare under penalty of perjury that the foregoing is true and correct and that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 4, 2009, at Laguna Hills, California.



John G. McClendon

EXHIBIT B

LEIBOLD McCLENDON & MANN

A PROFESSIONAL CORPORATION

23422 MILL CREEK DRIVE, SUITE 105
LAGUNA HILLS, CALIFORNIA 92653
(949) 457-6300

FAX: (949) 457-6305

JOHN G. McCLENDON
john@CEQA.com

June 5, 2009

Honorable Edmund G. Brown, Jr., Attorney General
Ronald Reagan Building
300 South Spring Street, Suite 5212
Los Angeles, California 90013

Re: Citizens for Honesty and Integrity in Calexico v. City of Calexico, et al.

Dear Mr. Brown:

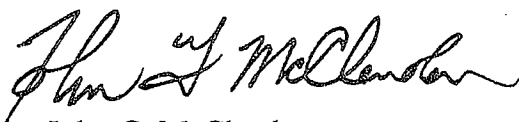
Enclosed please find a copy of the *Petition for Writ of Mandate* in the above-captioned action. This copy is provided to you in compliance with Public Resources Code section 21167.7, and Code of Civil Procedure section 388.

The litigation involves the City of Calexico's approval of an application to develop a gigantic 232-acre commercial project – including a tribal gaming facility (the "Project"). Among other things, **despite the EIR disclosing the Project's greenhouse gas emissions and incremental effect on global climate change, the City failed to impose fully enforceable measures to mitigate those impacts and instead simply concluded that they were "significant and unmitigable."** Moreover, the Project violates the State Planning and Zoning Law by converting to a commercial use land that had been designated and zoned for medium- and high-density residential development.

Please acknowledge receipt of the enclosed document. Unless you request otherwise, we will not serve on your office any documents other than this initial pleading and any amended or supplemental initial pleadings. Thank you for your attention to this matter, and please do not hesitate to call me if you would like to discuss this matter further.

Very truly yours,

LEIBOLD McCLENDON & MANN, P.C.



By: John G. McClendon

Enclosure

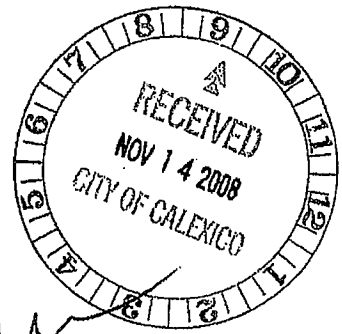
EXHIBIT C

MEMO

November 14, 2008

To: Mr. Ralph Velez, Calexico City Manager

From: Mr. John Moreno, City Council Member
Mr. Daniel Romero, City Council Member



RE: Adopted Housing Element Update

Attached please find two letters. One dated October 24, 2008 from the State of California Department of Housing and Community Development and the other from Leibold McClendon & Mann, a Professional Corporation, dated October 22, 2008.

The first letter from the State of California outlines several flaws in our housing element update. The letter also emphasizes that we are out of compliance on a number of issues.

The second letter is a bit more disturbing. It refers to our housing element as a "sham" and accuses us of "fraud" with regard to the California Department of Housing and Community Development.

We are requesting this item be placed on the agenda of the November 18 City Council Meeting. Please provide our board members a detailed explanation as to why the city would submit an application severely defective. We are also requesting staff provide us with a plan to remedy this situation.

Please note that submittal of fraudulent documents to the State of California puts our city at risk of losing Housing monies and court litigation that could put severe strains on city resources.

Please provide each Councilmember a copy of these two letters and this memorandum. Your attention to this matter is greatly appreciated.

STATE OF CALIFORNIA, BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT

ARNO OLD SCHWARZENEGGER, Governor

1600 Third Street, Suite 430
P.O. Box 952053
Sacramento, CA 94252-2053
(916) 323-3177
FAX (916) 327-2643



October 24, 2008

Mr. Ralph Velez
City Manager
City of Calexico
608 Heber Avenue
Calexico, CA 92231

Dear Mr. Velez:

RE: Review of the Calexico's Adopted Housing Element

Thank you for submitting the City of Calexico's housing element adopted July 15, 2008 and received for review on July 29, 2008 along with draft revisions sent by e-mail September 24, 2008. Pursuant to Government Code Section 65585(h), the Department is required to review adopted housing elements and report the findings to the jurisdiction. In addition, the Department considered third party comments submitted by Mr. John G. McClendon. Conversations with Mr. Eric Veerkamp, the City's consultant, facilitated the review.

The adopted element and draft revisions address some of the statutory requirements described in the May 23, 2008 review. However, further revisions are still needed for the element to comply with State housing element law (Article 10.6 of the Government Code). In particular, the element must still include a completed land inventory, analysis of governmental constraints and programmatic commitments to address identified needs. The enclosed Appendix describes these and other revisions needed to comply with State housing element law.

For your information, Government Code Section 65589.7 requires water and sewer providers to establish specific procedures and grant priority water and sewer service to developments with units affordable to lower-income households. This statute also requires local governments to immediately deliver the housing element to water and sewer providers. The Department recommends including a cover memo describing the City's housing element, including its housing needs and share of the regional housing need.

Mr. Ralph Velez
Page 2

The Department would be happy to arrange a meeting in either Calexico or Sacramento to provide any assistance needed to facilitate your efforts to bring the element into compliance. If you have any questions or would like assistance, please contact Mario Angel, of our staff, at (916) 445-3485.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cathy E. Creswell".

Cathy E. Creswell
Deputy Director

Enclosure

APPENDIX CITY OF CALEXICO

The following changes would bring the Calexico's housing element into compliance with Article 10.6 of the Government Code. The pertinent Government Code is cited for each recommended change.

Housing element technical assistance information is available on the Department's website at www.hcd.ca.gov. Refer to the Division of Housing Policy Development and the section pertaining to State Housing Planning. Among other resources, please refer to the Department's latest technical assistance tool *Building Blocks for Effective Housing Elements (Building Blocks)* http://www.hcd.ca.gov/hpd/housing_element2/index.php, the Department's publication, *Housing Element Questions and Answers (Qs & As)*, and the Government Code addressing State housing element law.

A. Housing Needs, Resources, and Constraints

1. *Include an inventory of land suitable for residential development, including vacant sites and sites having the potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites (Section 655133(a)(3)). The inventory of land suitable for residential development shall be used to identify sites that can be developed for housing within the planning period (Section 65583.2).*

Sites Inventory and Analysis

The element was not revised to fully address the findings in the previous review (see finding A-3 [enclosed]). As a result, the following revisions are still required:

Sphere of influence: While the element was revised to include some information on vacant sites in the City's sphere of influence (page 71-73), it does not provide an adequate analysis demonstrating the appropriateness of these sites to accommodate a portion of the City's remaining regional need. For example, the element continues to lack a description of density, development standards and design requirements for sites in the sphere of influence. The element should include a schedule of annexations commensurate with Calexico's remaining need within the planning period and describe the proposed and existing annexation process, including, at least:

- consistency with Imperial County LAFOC policies, including the City of Calexico Service Area Plan- Section 2- Phasing-Projects planning report;
- actions to pre-zoning prior to annexation;
- the anticipated housing capacity allowed by each site; and
- a timeline to complete annexation.

In addition, the element must contain programs committing the City to initiate annexations for residential development to occur within the planning period and/or where annexations are occurring, the element should include a description of timing and capacity.

Realistic Capacity: The element now indicates (page 72) capacity is based on the lowest allowable density within the General Plan and allowed units per net acre of land. However, the element must still provide an adequate analysis demonstrating the realistic capacity based on the existing zoning and development standards. The element must include a description of the methodology used to estimate the realistic capacity indicating the cumulative impact of land-use controls and site improvement requirements. To fully address this requirement, please see the findings in the previous review (see finding A-3). Additional information and sample analyses are available in the *Building Blocks* section on Analysis of Sites and Zoning at http://www.hcd.ca.gov/hpd/housing_element2/SIA_zoning.php.

Sites with Zoning for a Variety of Housing Types

Emergency Shelters: The element was revised to indicate emergency shelters are currently treated as group homes and are allowed in all residential zones but are not limited to six or fewer beds (page 45). The element should clarify how zoning for group homes specifically address emergency shelters given the very different nature of these types of housing or facilities. The City should revise the zoning ordinance to explicitly define emergency shelters. In addition, to comply with SB 2, the element should identify the zone (pursuant to Program 4.O.e-4) where emergency shelters will be allowed without a conditional use permit (CUP) and evaluate and describe the adequacy of the zone to provide sufficient capacity for at least one new emergency shelter in the planning period. In addition, the element must demonstrate that proposed permit processing, development, and management standards encourage and facilitate the development of, or conversion to, emergency shelters. For additional information and assistance in addressing these requirements, refer to the Department's SB 2 memo at http://www.hcd.ca.gov/hpd/sb2_memo050708.pdf.

2. *Analyze potential and actual governmental constraints upon the maintenance, improvement, and development of housing for all income levels, including land-use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures (Section 65583(a)(5)).*

Land-Use Controls: The element was revised to include additional information on the RA zone (page 67); however, it does not fully address the finding in the previous review (see finding A-4). For example, the element should clarify the conditions and standards required to increase densities and evaluate these standards including the CUP requirement as a potential constraint. The element should include a description and analysis of the design review requirements (page 67) and implemented by Program 4.O.b. - 5 (page 109).

The element continues to require revision to address the following:

Density Bonus: The element was not revised to include an evaluation of compliance with statutory requirements of density bonus law (page 67). The element indicates density bonuses can only be applied to projects exceeding 20 units per acre up to a maximum of 30 units per acre. The City should be aware that it cannot limit where density bonus can be applied (Government Code Section 65915(g)).

Height limits: The element was revised to indicate height limits are two stories or 35 feet in all residential zones (page 68). However, the element does not include an analysis of the impact of these limitations on the ability to achieve maximum densities especially in culmination with other development controls in the RA and RC zones.

Parking standards: The element was revised to describe parking requirements for the City's residential zones (page 90) and now indicates multifamily dwellings in the RA zone require half of the spaces to be garaged. The element should evaluate the effect of this requirement on the ability to achieve maximum permitted densities and the cost and supply of housing.

Processing and Permit Procedures: The element was not revised to include a description and analysis of the typical review processes for both single- and multi-family units and analyze their impacts on the cost and supply of housing. In addition, the element was revised to include Program 4.D.b. - 5 to implement architectural design review processes for projects exceeding 20 units per acre up to 30 units per acre (page 109). The element must include a description of the City's design review standards, the role of design review within the City's development approval process, indicate whether objective written standards and guidelines exist to allow an applicant for a residential development permit to determine what is required, and analyze its impact upon housing affordability. Based on the outcomes of this analysis, the element may need to add programs to address the guidelines as a constraint.

Constraints on Housing for Persons with Disabilities: The element was revised to note the City allows reasonable accommodations through a procedure that streamlines the required permits and approvals (page 91). However, the element must provide a description of this process.

3. *An analysis of opportunities for energy conservation with respect to residential development (Section 65583(a)(8)).*

The element was not revised to indicate what the City will do to promote energy conservation or efficiency in residential development and planning (page 95-98). The element revised Program 4.D.d-2 (page 114) indicating the City will encourage developers to use a revised subdivision ordinance to employ energy conservation measures. However, the program does not describe how the revised ordinance will encourage energy conservation and includes no timeline on implementation. In addition, the City should consider programs and policies to address energy conservation in existing single-family and multi-family units. Additional information on potential policies and programs to address energy conservation objectives are available in the Green Building and Sustainability Resources bibliography at http://www.hcd.ca.gov/hpd/green_build.pdf and on the *Building Blocks'* website at http://www.hcd.ca.gov/hpd/housing_element2/SIA_conservation.ppt.

B. Housing Programs

1. *include a program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land-use and development controls, provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available. The program shall include an identification of the agencies and officials responsible for the implementation of the various actions (Section 65583(c)).*

As mentioned in the Department's previous review, the programs requiring a specific action for implementation should specify a specific date. Programs to be revised include, but are not limited to the following:

Program 4.0.b - 1, 4, 14, Program 4.0.c - 1, 3, 4, 5, 6, Program 4.0.d - 1, 2, 3, Program 4.0.e - 1, 2, 4, 4, Program 4.0.g - 1, 2, 5, 6: The program should include a specific timeline committing the City to specific actions early enough in the planning period to implement the program actions.

Farmworkers: The element indicates Calexico has a need to address the needs of farmworkers (page 42). The element notes it will amend its zoning code to comply with Health and Safety (H&S) Code Section 17021.5 relating to employee housing of six or fewer persons. The element also states the City zoning code complies with H&S Code Section 17021.6 allowing farmworker housing as a permitted use within the agricultural zone. However, the element does not include program actions to address the specific housing needs of farmworkers. The element could include programs to encourage and facilitate the development of housing for farmworkers by applying for or assist in the application of funds from the Joe Serna, Jr. Farmworker Housing Grant (JSJFWHG) Program. For program information, please refer to the Department's website at <http://www.hcd.ca.gov/fa/fwhg> and the Loan and Grant Program Directory at http://www.hcd.ca.gov/fa/LG_program_directory.pdf.

2. *Identify adequate sites which will be made available through appropriate zoning and development standards and with public services and facilities needed to facilitate and encourage the development of a variety of types of housing for all income levels, including rental housing, factory-built housing, mobilehomes, and emergency shelters and transitional housing. Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low- and low-income households (Section 65583(c)(1)).*

As noted in finding A1, the element continues to lack a complete sites inventory or analysis and therefore the adequacy of sites and zoning has not been established and the element still requires revision.

The element does not demonstrate how the City will accommodate the shortfall of capacity (page 73). Specifically, programs must be included in the element to make sites available in accordance with subdivision (h) of 65583.2 for 10% percent of the remaining lower-income housing need, with sites zoned to permit owner-occupied and rental multifamily uses by-right during the planning period, including permitting at least 16 units per site, at a minimum density of 20 units per acre and accommodating at least 50 percent of the remaining need for lower-income households on sites designated for only residential uses. These programs also must commit to a specific amount of land to be available with appropriate land-use designations and zoning by a date certain early in the planning period.

Program 4.0.b. - 10 (Page 110): The element was not revised to include a timeline to complete annexation. The program must include a specific timeline committing the City to specific actions early enough in the planning period such that annexation and development could occur (see finding A1).

Program 4.0.e. - 6 (Page 116): A program was added indicating the zoning code will be revised in accordance with SB 2. The element indicates emergency shelters are considered group homes and allowed by-right in residential zones. The revised ordinance should explicitly define emergency shelters and clarify how they are allowed, including any specific development or management standards. The City may refer to the SB 2 technical assistance paper (page 11) for information on management standards. The program should identify at least one zone where emergency shelters are permit by-right to comply with statutory changes and should be revised to complete this action within one year of adoption of the housing element (Section 65583(a)(4)). For additional information and assistance in addressing these requirements, please refer to the Department's SB 2 memo at http://www.hcd.ca.gov/hpd/sb2_memo050708.pdf.

3. *The housing element shall contain programs which "address, and where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing" (Section 65583(c)(3)).*

As noted in finding A2, the element requires a more detailed analysis of potential governmental constraints. Depending upon the results of that analysis, the City may need to strengthen or add programs and address and remove or mitigate any identified constraints.

Program 4.0.e-3 (page 115): The program notes the City will amend the reasonable accommodation ordinance to specify the level of review and approval required by type of request. The City currently has a procedure that streamlines the required permits and approvals (page 91) to provide reasonable accommodation in zoning and land-use; however, a reasonable accommodation procedure is a unique exception process to zoning and land-use regulation, separate from a variance or conditional use process. As a result, the program should clarify the City will establish a reasonable accommodation procedure separate from the variance process. For a sample ordinance and program, please see the *Building Blocks'* website at http://www.hcd.ca.gov/hpd/housing_element2/CON_disabilities.php.

C. Public Participation

Local governments shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the element shall describe this effort (Section 65583(c)(6)(B)).

The element was revised to describe the City conducted public hearings to solicit input on housing needs and includes Appendix B listing the organizations contacted for input (page 4). However, the element continues to require revision to demonstrate how the City made a diligent effort to encourage the public participation of lower- and moderate-income households in the development of the housing element. In addition, the element does not describe the effectiveness of the City's participation efforts. The element should also generally describe types of comments received and how they were incorporated into the housing element, including policies and programs. For additional information, refer to the *Building Blocks*' website at http://www.hcd.ca.gov/hpd/housing_element2/G5_publicparticipation.php.

LEIBOLD McCLENDON & MANN

A PROFESSIONAL CORPORATION

23422 MILL CREEK DRIVE, SUITE 105

LAGUNA HILLS, CALIFORNIA 92653

(949) 457-6300

FAX: (949) 457-6305

October 22, 2008

JOHN G. McCLENDON

john@CEQA.com

VIA OVERNITE EXPRESS

CITY OF CALEXICO

% Calexico City Clerk's Office

CITY OF CALEXICO CITY HALL

608 Heber Avenue

Calexico, California 92231

Re: *City of Calexico General Plan Housing Element Update, 2008-2014*

TO: The City of Calexico and its Duly Constituted Legislative Body:

I am writing on behalf of persons in the City of Calexico ("City") who have asked me to call your attention to a serious problem. **Please consider the following to be notice pursuant to subdivision (d) of Government Code section 65009, specifying deficiencies in the General Plan for the City.** As explained below, the final "fourth revision" Housing Element to the City's General Plan is a sham that in no way complies with State housing element law (Article 10.6 of the Government Code).

In accordance with Government Code section 65585(b), by letter dated May 23, 2008, Cathy E. Creswell, the Deputy Director of the California Department of Housing and Community Development ("HCD") informed the City Manager that the City's Draft Housing Element Update did not comply with State housing element law. (Tab 1.) The letter's Appendix adroitly zeroed in on the most peculiar aspect of the City's draft Housing Element:

"Calexico has a total regional housing need of 2,498 housing units, of which 1,020 units are for lower-income households. To address this need, the element relies on vacant sites within the City in Table 2.2-15 and vacant sites in the City's sphere of influence (Table 2.2-16). The element only identifies a potential for 55 units in the R-1 zone and 70 units in the higher density zones within the City. The remainder of the capacity is identified within the sphere of influence. To demonstrate the adequacy of sites within the City and within the sphere of influence to accommodate the City's share of the regional housing need, the element must be revised to include more detailed analyses particularly to demonstrate the appropriateness of sites within the sphere of influence." (Emphasis in original.)

The month after the City Manager received Director Creswell's letter, staff produced and released a "Final Draft" Housing Element. On July 15, 2008, the City Council adopted the Final Housing Element upon the City Manager's recommendation; thereafter, on July 29, 2008, it was submitted to HCD for review and findings thereon.

**1. The Housing Element Ignores Hundreds of Acres
of Residentially-Zoned Vacant Land Within the City**

In response to HCD's comments on the Draft Housing Element, City staff made *no* changes to Table 2.2-15 that lists the 125 units that could be built within the City, but merely added, as Appendix H, a map depicting the vacant parcels that could accommodate the 125 units. However, what the Final Housing Element studiously avoids disclosing is the fact that the Land Use Element of the City's General Plan currently designates the two largest vacant parcels within the City for medium and high density residential development. (Tab 2.) Figure LU-4 of the General Plan depicts the 232-acre Calexico International Center ("CIC") property and the 150-acre Scaroni property as numbers 4 and 5, respectively. (*Id.*, at p. 2-14.) As shown on Figure LU-1 and the 2007 General Plan Land Use Map, approximately one-third of the CIC property is designated MDR-Medium Density Residential (5.1-12 units/acre) and HDR-High Density Residential (12-20 units/acre), and all but a small corner of the Scaroni property is designated MDR-Medium Density Residential. (*Id.*, at p. 2-9; Tab 3.)

This disconnect between the City's Land Use Element and Housing Element violates a fundamental requirement of general plans: *internal consistency*. "In construing the provisions of [Article 5 of the PZL], the Legislature intends that the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency." (Government Code § 65300.5.) Discussing this legislative intent, the Governor's Office of Planning and Research (OPR) cautions in its *State of California General Plan Guidelines (2003)*¹ that,

"The concept of internal consistency holds that no policy conflicts can exist, either textual or diagrammatic, between the components of an otherwise complete and adequate general plan. . . . The internal consistency requirement has five dimensions. . . .

* * *

Without consistency in all five of these areas, the general plan cannot effectively serve as a clear guide to future development. . . . findings of

¹ (http://www.opr.ca.gov/planning/publications/General_Plan_Guidelines_2003.pdf)

consistency of subordinate land use decisions such as rezonings and subdivisions will be difficult to make . . . inconsistencies in the general plan can expose the jurisdiction to expensive and lengthy litigation.”

(*Id.*, at pp. 12-13.) Given that the City’s General Plan is little more than a year old,² why would City staff want to completely omit from both Table 2.2-15 and Appendix H of the Housing Element any reference to the City’s two largest repositories of vacant land available to meet the City’s current Regional Housing Needs Allocation (RHNA) for 2006-2014? Why would the new Housing Element completely overlook two residential parcels totaling almost 400 acres that, between them, could accommodate virtually all of the City’s RHNA within City limits?

The answer can be found within the pages of two Draft Environmental Impact Reports (EIRs). On March 24, 2008, the City released the Draft EIR [State Clearinghouse No. 2007031043] for a project called “Calexico Mega Park.” (Tab 4.) This EIR describes a proposal to develop a commercial and retail use complex on the 150-acre Scaroni property over a ten-year period. (*Id.*, Executive Summary.) As proposed, the Calexico Mega Park would amend the General Plan to eliminate the development of *any* housing on the Scaroni property.³

Similarly, on September 23, 2008, the City released the Draft EIR [State Clearinghouse No. 2007031092] for a project called “111 Calexico Place Specific Plan.” (Tab 5.) This EIR describes a proposal for the 232-acre CIC property,

“to develop a 459,621 square foot casino facility complex, including a 93,880 square foot casino, 400 hotel rooms, 389,000 square feet of retail space, 131,500 square feet of restaurant space, 395,000 square feet of office space, 340,000 square feet of office tech space and a 20,800 square foot police/fire station in five phases over a period of eleven years.”

(*Id.*, Executive Summary.) This project too would amend the General Plan to eliminate the development of any Medium and High Density housing throughout the property.

² The City’s new General Plan was adopted by the City Council by Resolution 07-83 on May 1, 2007.

³ Ironically, the “Existing General Plan Alternative” in Section 5 of the Calexico Mega Park Draft EIR actually considers, and summarily dismisses, the development of hundreds of multi-family residential units on the Scaroni property!

2. City Staff Is Attempting to Skirt Government Code § 65863

To those familiar with State housing law, it is obvious *why* City staff would avoid any reference to the two largest repositories of vacant land designated for medium and high density residential development within the City. Staff is attempting to “prewire” the City’s new Housing Element to eliminate a potentially fatal issue for the Calexico Mega Park and 111 Calexico Place once those projects come before the City’s decision-makers. In 2002, the Legislature added Government Code section 65863 to the State Planning and Zoning Law; it has since become known as the “No-Net-Loss In Density Law.” (Govt. Code § 65582.1(i).) Subdivision (a) of section 65863 commands every city and county to “ensure that its inventory or programs of adequate sites pursuant to [specific provisions of the Housing Element law] can accommodate its share of the regional housing need pursuant to Section 65584, throughout the planning period.” In turn, subdivision (b) of section 65863 requires cities and counties to “make [] written findings supported by substantial evidence” that (1) “the reduction is consistent with the adopted general plan, including the housing element,” and (2) that “[t]he remaining sites identified in the housing element are adequate to accommodate the jurisdiction’s share of the regional housing need pursuant to Section 65584” of the Housing Element law.

Consequently, by eliminating any reference to the Scaroni and CIC properties in the Housing Element – and pushing all but 125 housing units outside the City’s jurisdictional boundaries – the Housing Element will be “prewired” for making the above two mandatory findings, despite the fact that the approval of the two proposed massive commercial developments will require amending the General Plan to eliminate hundreds of acres of MDR and HDR land.

3. The Housing Element Perpetrates a Fraud on HCD

However, without question the biggest problem inherent in the new Housing Element is its brazen attempt to perpetrate a fraud on HCD. In her letter commenting on the Draft Housing Element [Tab 1], HCD’s Creswell noted that,

“[v]irtually all of the City’s housing need is proposed to be accommodated on sites outside the current City boundary but within the sphere of influence. However, the element does not commit the City to any specific action to annex the necessary land and make it available for development.”

Consequently, she made two entirely reasonable requests. First, that the Housing Element “be revised to include more detailed analyses particularly to demonstrate the appropriateness of

sites within the sphere of influence.” Second, to include within the Housing Element “a schedule of annexations commensurate with Calexico’s need within the planning period and describe the proposed and existing planning process.” (*Id.*)

In what can only be described as outright dishonesty, City staff responded to Director Creswell’s comment by adding the following statements at pages 70-71 of the Final Housing Element:

“Proposed projects within the Sphere of Influence are all suitable for development, are unencumbered by constraints, and are of the same topography as the remainder of the City, (i.e., flat and level). The City has negotiated with each project proponent for annexation to the City in a rational fashion, based on a combination of factors, including the developers’ readiness to proceed, the payment of funds to the City for necessary services, and the City’s priorities. Annexations are anticipated to occur generally in the order in which they were received by the City; however, scheduling of annexations (and subsequent construction activity) is subject to many factors that are out of the City’s control.

Project annexation and subsequent development will be monitored by the City so that phasing of projects coincides with the City’s installation of public infrastructure, including water and wastewater utilities, ensuring that adequate public facilities are in place prior to development, in compliance with infrastructure phasing as per the Calexico Service Area Plan-Section 2.”

Obviously, the person(s) inserting the foregoing hoped that HCD would not actually *look* at Section 2 of the City’s May 31, 2006 *Service Area Plan*. (Tab 6.) Because if HCD does, it will be in for a shock: the *Service Area Plan* identifies only the 153-acre, 535 single family homes “El Portal” project as being likely to develop by 2011. (*Id.*, at p. 2-2.) Three projects are estimated to build out by 2016; however, the largest of those, the 703-acre, 1,904 single and multi-family home CM Ranch project, has since withdrawn its annexation application in a dispute with the City, and the other two projects comprise only 250 single-family and 352 condominium units. (*Id.*; Tab 7.) The 500-acre, 1,200 single family and 936 town home “Los Lagos” project is projected not to be built out until 2021; more important, it is currently in financial straits, and its LAFCO application has lapsed with no indication it will be renewed.

Virtually all of the supposed remaining vacant sites outside City boundaries that the Housing Element identifies as viable for satisfying the City's current RHNA lie along the so-called "Jasper [Road] Corridor." However, due to the fact there is no water and wastewater infrastructure within miles of those properties, the *Service Area Plan* projects that the infrastructure needed to serve those properties will not be available until "Phase III, Within 20 Years," and consequently build out of those properties will not occur until 2026. (Tab 7, pp. 2-2; 10-5 -10-6; 11-7 - 11-8.)

About this time last year the City was attempting to jump-start development of the infrastructure needed to serve projects along the Jasper Corridor by forming a Benefit Assessment District [Tab 8], and earlier this year it was being reported that the court-appointed receiver for the large Rancho Diamante project had agreed to participate in the formation of that District. (Tab 9.) Presently, however, that is no longer the case. What with the other vacant parcels along the Jasper Corridor being foreclosed upon, the formation of such a District is no longer tenable, and the City's credit rating is acknowledged to be in jeopardy. (Tab 10.)

4. The City Needs to Involve All Its Citizens in This Process

Finally, there was simply no excuse for City staff to ignore the admonishment of Government Code section 65351 that, "[d]uring the preparation or amendment of the general plan, the planning agency shall provide opportunities for the involvement of citizens . . . through public hearings and any other means the planning agency deems appropriate." Census data shows that the City is 95.3% Hispanic or Latino, with over half its residents foreign born and with 94.1 percent of its residents speaking a language other than English at home. (Tab 11.) Nevertheless, when it came time to notice the public hearing on the new Housing Element, City staff provided that notice only in English [Tab 12] – despite the fact that staff provided similar public notices both before and after the public hearing on the Housing Element in both English and Spanish. (Tab 13.)

I would urge you to contact HCD and apologize for City's staff's attempt to deceive HCD. Assure HCD that the City intends to revise its Housing Element and will direct City staff to prepare and release for review, by all of the citizens of Calexico, a fourth revision Housing Element that accurately and honestly reflects the City's May 1, 2007, General Plan Land Use element and 2006 *Service Area Plan*, the complete lack of water and wastewater capacity and infrastructure to serve vacant lands outside the City's jurisdictional boundaries, and the fact that such infrastructure has simply no chance of being developed in time to allow any of those properties to accommodate the City's 2,498-unit RHNA for 2008-2014.

Government Code Section 65009(d) Notice to the City of Calexico
City of Calexico General Plan Housing Element Update, 2008-2014
October 22, 2008
Page 7

I look forward with hope that the City will act in good faith to comply with its important obligations under the State Housing Element law.

Very truly yours,

LEIBOLD McCLENDON & MANN, P.C.

A handwritten signature in black ink, appearing to read "John G. McClendon". The signature is written in a cursive style with a large initial "J" and "M".

By: John G. McClendon

cc: Cathy E. Creswell, HCD Deputy Director
% Mario Angel (w/ attachments)