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## **Petition and Justification for Environmental Groups' Right to Appeal**

November 6, 2015

On behalf of the Cleveland National Forest Foundation, Save Our Forest and Ranchlands, and the Coastal Environmental Rights Foundation (collectively, "Petitioners"), please accept this Petition for Right to Appeal the County of San Diego's October 27, 2015 issuance of a Stipulated Administrative Enforcement Order ("SAEO") to Covert Canyon LLC.

Petitioners object in whole to the determination that government military and law enforcement training are allowable interim uses absent environmental review and a public hearing on the merits of a Major Use Permit application. If granted the right to appeal, Petitioners will forthwith provide legal arguments and evidentiary support for their claims.

### **I. Petitioners**

Petitioner Cleveland National Forest Foundation ("CNFF") is a membership based nonprofit corporation dedicated to preserving the plants, animals and other natural resources of Southern California mountains – particularly those in the Cleveland National Forest -- by protecting the land and water they need to survive. CNFF is committed to sustainable regional land use planning in San Diego County in order to stem the tide of urban encroachment on wildlands. Members of CNFF are residents and taxpayers of San Diego County who believe that action must be taken to protect the remaining undeveloped lands within the forest, as well as those lands whose future may impact the integrity of the wilderness.

CNFF and its members have a direct and beneficial interest in Covert Canyon's compliance with County and State laws, particularly as they relate to the environment and surrounding Cleveland National Forest lands. These interests will be directly and adversely affected by the SAEO by virtue of the fact that the Covert Canyon property is almost entirely surrounded by designated forest land (and access to the property is taken directly through forest land), and the activities allowed pursuant to the SAEO will directly and negatively impact the resources CNFF is formed to protect.

Petitioner Save Our Forest and Ranchlands ("SOFAR") is a membership based nonprofit corporation committed to defending the San Diego backcountry against urban sprawl and protecting San Diego County's rural, agricultural, and forest lands. Members of SOFAR are residents and taxpayers of San Diego County who will be adversely affected by the SAEO's environmental impacts. SOFAR and its members have a direct and beneficial interest in the County's compliance with its own laws and regulations, as well as the California Environmental Quality Act and its guidelines. For more than two decades SOFAR has been active in land use and planning in San Diego County's backcountry, including but not limited to efforts regarding the Forest Conservation Initiative, various General Plan Amendments and Updates, and countless individual development projects and permits.

Petitioner Coastal Environmental Rights Foundation ("CERF") is a membership based nonprofit corporation founded by surfers in North San Diego County and active throughout California's coastal regions. CERF was established to aggressively advocate for the protection and

enhancement of coastal natural resources and the quality of life for coastal residents. One of CERF's primary areas of advocacy is water quality protection and enhancements, including at the headwaters of watersheds that drain to the San Diego coastline. Water resources will be negatively affected by the SAEO and therefore CERF and its members have a direct and beneficial interest in the County's and Covert Canyon's compliance with County codes and regulations, the State and Federal Clean Water Acts, and the California Environmental Quality Act. CERF's members are residents and taxpayers of San Diego County.

## II. Eligibility to File Appeal

San Diego County Zoning Ordinance (SDCZO) section 7201(a)(3) qualifies a person eligible to file an administrative appeal as:

**A person not having an interest in property located within 300 feet from the exterior boundaries of the subject property, who after written petition request to the Planning Commission, filed within 10 days of the date on which the decision being appealed was rendered, receives permission to file an appeal.<sup>1</sup>**

Nowhere in the SDCZO is there guidance regarding what factual considerations or legal standard of review will be applied by the Planning Commission to a "petition request" for right to appeal. Further, requests to staff for guidance did not result in a response within a reasonable period of time to inform the substance of this petition. Hence, it is appropriate for the Planning Commission to consider this petition under state law guidance for standing in legal proceedings before a court of law.

An association has standing to challenge a government action on behalf of its members if the interests the organization seeks to protect are germane to the organization's purpose and neither does the claim asserted nor the relief requested require the members to participate in the lawsuit. See *Brotherhood of Teamsters v. Unemployment Ins. Appeals Bd.* (1987) 190 Cal.App.3d 1515,

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<sup>1</sup> Please note, should the Planning Commission fail to grant Petitioners' request for right to appeal, Petitioners will be free to file legal challenges with no further requirements to exhaust administrative remedies. Under such circumstances, challenges would be brought without the opportunity to create an administrative record and without the County being afforded an opportunity to respond to Petitioners' substantive claims and evidence. Petitioners encourage the Planning Commission to seriously consider the prudence of proceeding to inevitable litigation absent such processes typical in land use proceedings. Approval of the SAEO was unquestionably a discretionary action subject to the California Environmental Quality Act, yet no effort to comply appears to have been made. See e.g. *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116,128 for the proposition that CEQA applies to the first approval of any development project. The interim approvals contained in the SAEO qualify as a definite course of action (regardless of the interim nature of the approval and conditions contained therein) and the first approval of the Covert Canyon military and law enforcement training activities. See also, CEQA Guidelines section 15352(a). Further, pursuant to SDCZO section 7206 and SDCCRO section 86.402, the determination of whether a project is subject to CEQA is appealable to the County Board of Supervisors notwithstanding the purported finality of Planning Commission decision on this petition for right to appeal reflected in SDCZO section 7201(a)(3).

1522; *Citizens Against Forced Annexation v. County of Santa Clara* (1984) 153 Cal.App.3d 89. As noted above, Petitioners and their members are beneficially interested in the impacts to the Cleveland National Forest and associated environmental resources that will be impacted by the SAEO. Because the subject of the SAEO is germane to the missions of each of these organizations, they have standing under applicable state law and should be granted a right to appeal in this instance.

### **III. Issues of Appeal**

As noted above, this petition for request to file appeal does not include the substance of Petitioners' claims or evidence in support. Nonetheless, the following is a summary of some of the issues of concern to Petitioners and their members. Evidence will be presented in detail when the right to appeal is granted.

A. Project History/Fire Safety: Since at least 2007, Covert Canyon has engaged in illegal commercial activity without obtaining the requisite Major Use Permit required by SDCZO sections 2725(b) and 1350. Covert Canyon has continually operated an outdoor shooting range without a Major Use Permit in violation of SDCZO sections 2725(c) and 1505(b), and has violated San Diego County Code of Regulatory Ordinances ("SDCCRO") by operating a shooting range without first having obtained a license issued by the Sheriff's Department. In 2010, the County's Fire Appeals Board considered Covert Canyon's Major Use Permit ("MUP") and found it inconsistent with the State Responsibility Area Fire Safe Regulations in California Code of Regulations, title 14, section 1270 et seq. and the County Consolidated Fire Code. The Department of Planning and Land Use reviewed the MUP application and found Covert Canyon's request for an exception to maximum dead-end road lengths unsupportable. On May 28, 2010 the Planning Commission indicated a lack of support for the proposed MUP based upon non-compliance with the County's General Plan, the Alpine Community Plan, the Consolidated Fire Code, County road standards, and Board of Supervisors Policy I-84.

No public hearing on Covert Canyon's proposed use has occurred since the 2010 Planning Commission hearing. No justification has been offered by staff or the Covert Canyon as to why the SAEO is suddenly appropriate despite years of contrary representation by County staff. In light of the history of the property, the applicant's intransigence, and the lack of changed circumstances, an appeal is warranted and within the interests of Petitioners.

B. Applicant History: Covert Canyon has proven itself unworthy of interim relief while a Site Plan permit or MUP is pursued. Simply put, Covert Canyon has thumbed its nose at County enforcement staff for 8 years despite numerous notices and reprimands to cease commercial activity. Covert Canyon illegally graded onsite wetlands to create the berms for its shooting ranges. Further, its largest range was originally constructed beyond Covert Canyon's property boundary and the United States Forest Service issued an official notice to cease and desist trespass, shooting, and vegetation clearing on Cleveland National Forest Land. When required to create and implement a re-vegetation plan, Covert Canyon failed to monitor, report, or complete, the required plan. Covert Canyon has operated illegal training of students pursuant to a community college high threat protection services class at Mira Costa College. Covert Canyon believes it can redefine its legal requirements as it sees fit, and the remote location of the property

makes it impractical and infeasible for code enforcement staff to monitor and enforce any requirements whatsoever. The Applicant has shown no respect for the environment thus far, and a full Environmental Impact Report is required before any interim or final approval can be granted.

C. Williamson Act Considerations: The Covert Canyon property is within the Japatul Agricultural Preserve No. 36, and has been under Williams Act Land Conservation Contract (No. 74-29) since 1974. The preserve designation and Williamson Act contract absolutely limit activities to those consistent with express authorized uses, none of which include those permitted by the SAEO. (See Exhibit B of Japatul Agricultural Preserve No. 36, indicating “**only** the following uses are permitted”; emphasis added). Before the Williamson Act contract can be canceled or the Ag Preserve designation changed, a public hearing must be had and express findings made by the County. This has not occurred, and therefore the SAEO cannot stand.

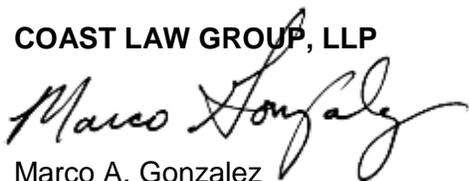
D. Wetland Considerations: The Covert Canyon property historically contained wetland habitat that qualifies as “Waters of the State” and possibly “Waters of the U.S.”. Evidence will show that Covert Canyon’s employees have systematically dredged and filled portions of these wetlands without compliance with the Porter-Cologne Water Quality Control Act and Federal Water Pollution Control Act. The dredging of these habitats also violate the County’s Resource Protection Ordinance and Biological Mitigation Ordinance. These impacts must be mitigated, and their review in an Environmental Impact Report is critical to any determination of appropriate use at the property.

E. Access Issues: The SAEO is predicated upon substantial future improvements to the access road through the Cleveland National Forest. These improvements have not been reviewed and approved by the U.S. Forest Service through an appropriate process pursuant to the National Environmental Policy Act. The clearing of brush and significant grading required by the SAEO will result in water quality impacts from sedimentation and increased erosion, and the loss of sensitive habitat. These issues must be analyzed and mitigated pursuant to a valid CEQA process prior to issuance of any interim approval.

In light of the foregoing, we respectfully request that you authorize the submission of evidence and claims to support an appeal by CNFF, SOFAR, and CERF.

Sincerely,

**COAST LAW GROUP, LLP**



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