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10 UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN OF CALIFORNIA

12 CALIFORNIA NATIVE PLANT SOCIETY,
 13 DEFENDERS OF WILDLIFE, and BUTTE
 ENVIRONMENTAL COUNCIL,

14 Plaintiffs,

15 v.

16 UNITED STATES ENVIRONMENTAL
 PROTECTION AGENCY, UNITED STATES
 17 FISH AND WILDLIFE SERVICE, and
 UNITED STATES ARMY CORPS OF
 18 ENGINEERS,

19 Defendants.

20 _____
 21 SUNRIDGE-ANATOLIA, LLC, et al.,
 22 Defendant-Intervenors.
 23 _____

Case No. C 06-03604 PJH

Hon. Phyllis J. Hamilton

**STIPULATION AND [PROPOSED]
 ORDER TO DISSOLVE PRELIMINARY
 INJUNCTION, DISMISS WITH
 PREJUDICE UNDER FED. R. CIV. P
 41(a)(1)(A)(ii), EXTEND FILING
 DEADLINE ON FEE APPLICATION,
 AND SET BRIEFING SCHEDULE FOR
 PLAINTIFFS' APPLICATION FOR
 ATTORNEY FEES AND COSTS UNDER
 THE EQUAL ACCESS TO JUSTICE ACT**

24 Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Local Rules 7-1 & 7-12,
 25 all parties stipulate and respectfully request that the Court dissolve the July 10, 2007
 26 preliminary injunction, as modified, in all respects, extend the deadline for filing a fee
 27 application and set a briefing schedule, and dismiss this matter with prejudice.
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RECITALS

WHEREAS, the U.S. Army Corps of Engineers (Corps), pursuant to the Clean Water Act Section 404(b), has issued Permit No. SPK-1994-00365 to ARI 208 LLC, Permit No. SPK-2004-00458 to Arista Del Sol, L.P., Permit No. SPK-1994-00210 to Sunridge-Anatolia LLC, Permit No. SPK-1997-00006 to Comerica Bank, Permit No. SPK-2002-00568 to Douglas 105, and Permit No. SPK-2001-00230 to Cresleigh Homes (hereafter the “Permits”), and, pursuant to the National Environmental Policy Act, completed the Sunridge Environmental Impact Statement in 2010, issued a Record of Decision in 2011, and completed site-specific Supplemental Environmental Assessments in September 2011 and January and February 2013.

STIPULATION

(1) Intervenor-Defendants Arista Del Sol, L.P., Sunridge-Anatolia LLC, Comerica Bank, Douglas 105, ARI 208 LLC and Cresleigh Homes (or successors in interest) agree to waive their rights to administratively appeal or file a lawsuit challenging the Permits.

(2) Provided the projects, as approved by the Permits, are not modified or changed with respect to project configuration and mitigation requirements, Plaintiffs agree not to challenge the Permits or any work done in compliance with the Permits and acknowledge that the Sunridge Environmental Impact Statement and site-specific Supplemental Environmental Assessments referenced above are sufficient for these projects.

(3) Plaintiffs agree to dismiss all claims asserted in this action with prejudice as to all Defendants and Intervenor-Defendants; notwithstanding this dismissal, however, nothing precludes Plaintiffs from bringing a new lawsuit against any project, as approved by the Permits, that is modified or changed with respect to project configuration or mitigation requirements based on any agency approval document, agency action, and any legal theory. Any such challenge shall be limited to the project that is modified or changed. Nothing in this stipulation precludes Defendants and Intervenor-Defendants from raising any legal defense to a claim that Plaintiffs may assert in a separate legal action.

(4) Plaintiffs and Federal Defendants respectfully request that the Court retain jurisdiction to resolve Plaintiffs’ claim for attorney fees and costs under the Equal Access to

1 Justice Act (EAJA), 28 U.S.C. § 2412. Intervenor-Defendants do not oppose the Court
2 retaining jurisdiction for this purpose.

3 (5) Plaintiffs request that the Court extend the deadline for filing motions for attorney
4 fees and costs set forth in Local Rules 54-1 and 54-5 until no later than 30 days after the Court
5 issues an Order dismissing this case. Plaintiffs and Federal Defendants met in person with
6 Magistrate Judge Corley on March 22, 2013, after exchanging settlement conference
7 statements, to attempt to resolve Plaintiffs' EAJA claim. No settlement was reached. If
8 Plaintiffs and Federal Defendants are unable to resolve Plaintiffs' claim for attorney fees and
9 costs within 30 days of dismissal, Plaintiffs will file an Application for fees and costs, pursuant
10 to EAJA. To allow time for settlement discussions to resume if appropriate, Plaintiffs and
11 Federal Defendants stipulate to the following proposed briefing schedule:

12

13	Plaintiffs' opening brief:	June 21, 2013
14	Federal Defendants' opposition brief:	August 23, 2013
15	Plaintiffs' reply brief:	September 20, 2013
16	Hearing date:	at the Court's convenience in October or thereafter

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18 Accordingly, the parties request that the Court enter an order approving this Stipulation,
19 dissolving the July 10, 2007 injunction, as amended, extending the deadline for Plaintiffs' fee
20 application and setting the proposed briefing schedule, and dismissing this case with prejudice.

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22 Respectfully submitted,

23 Dated: April 3, 2013

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ENVIRONMENTAL LAW CLINIC
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/s/ Leah Russin
Leah Russin
Attorneys for Plaintiffs

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UNITED STATES DEPARTMENT OF JUSTICE

/s/ Carol Draper
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/s/ Arthur Coon
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Attorneys for Defendant Intervenor
ARI 208, LLC

1 **E-filing Attestation**

2 Pursuant to ECF General Order 45(X), I attest that Robert Uram, Arthur Coon, Andrew Sabey
3 Carol Draper, and Larry Larsen have concurred in the filing of this document.

4 /s/ Leah Russin
5 Leah Russin

6 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

7
8 Dated: 4/8/13

9 Hon. Phyllis J. Hamilton
10 United States District Court

