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1 Mark R. Wolfe, CSB No. 176753  
John H. Farrow, CSB No. 209221  
2 M. R. WOLFE & ASSOCIATES, P.C.  
1 Sutter Street, Suite 300  
3 San Francisco, CA 94104  
4 Telephone: (415) 369-9400  
5 Fax: (415) 369-9405  
jffarrow@mrwolfeassociates.com

CASE PROGRESS CONFERENCE  
DATE: 8-04-2015  
TIME: 9:00 AM  
COURTROOM: 14.

6 Attorneys for Petitioner  
7

8 THE SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF MONTEREY  
10 MONTEREY COURTHOUSE  
11

12 LANDWATCH MONTEREY COUNTY,

Case No.: **M131893**

13 Petitioner,

14 vs.

**PETITION FOR WRIT OF MANDATE  
AND COMPLAINT**

15 COUNTY OF MONTEREY;

16 Respondent.

(Code Civ. Proc., §§ 1085, 1094.5; California  
Environmental Quality Act, Pub. Res. Code,  
§§ 21000 et seq.; State Planning and Zoning  
Law, Gov't Code, §§ 65000 et seq.;  
Subdivision Map Act, Gov't Code, §§ 66410  
et seq.)

17  
18 HARPER CANYON REALTY LLC; and  
19 DOES 1 through 25, inclusive;

20 Real Parties In Interest.  
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FILED BY FACSIMILE

1 **INTRODUCTION**

2 This Petition challenges the April 7, 2015 actions of Respondent COUNTY OF  
3 MONTEREY (“County”) approving a Vesting Tentative Map to create 17 residential lots, a Use  
4 Permit for the removal of 79 trees, a Use Permit to allow development on slopes in excess of 30  
5 percent, a Use Permit for creation of a public water system with stand-alone treatment facility, and  
6 grading for net cut and fill of approximately 2,000 cubic yards, for the Harper Canyon Subdivision  
7 project (the “Project”), and certifying an Environmental Impact Report (“EIR”) and adopting a  
8 statement of overriding considerations pursuant to the California Environmental Quality Act  
9 (“CEQA”), Public Resources Code §§ 21000 et seq. Petitioner LANDWATCH MONTEREY  
10 COUNTY (“LandWatch”) alleges that the County’s actions violate applicable provisions of: (1)  
11 CEQA; (2) the State Planning and Zoning law, Government Code §§ 65000 et seq.; and (3) the  
12 Subdivision Map Act Government Code §§ 66410 et seq.

13 LandWatch seeks a writ of mandate under Code of Civil Procedure §§ 1085 and/or 1094.5  
14 commanding the County to set aside its certification of the EIR and its approval of the Project  
15 entitlements. LandWatch also seeks an order granting temporary injunctive relief and/or a stay of  
16 the effect of the County’s approvals during the pendency of these proceedings, including an order  
17 suspending the County’s authority to issue further permits and approvals for the Project and an  
18 order enjoining action by the County and Real Parties that could result in changes to the physical  
19 environment. Finally, LandWatch seeks an award of costs and attorney’s fees under Code of Civil  
20 Procedure section 1021.5, together with any other relief the Court deems necessary and proper.

21 In support whereof, LandWatch alleges:

22 **PARTIES**

23 **LandWatch Monterey County**

24 1. Petitioner LANDWATCH MONTEREY COUNTY is a California non-profit public  
25 benefit corporation exempt from federal income taxation under section 501(c)(3) of the U.S.  
26 Internal Revenue Code. Its principal place of business is Salinas, California. LandWatch’s  
27 organizational purpose is to promote sound land use planning and legislation at the city, county, and  
28 regional levels, to combat urban sprawl, and to promote livability in the region’s cities and towns,

1 through public policy development, advocacy, and education. LandWatch is dedicated to  
2 preserving economic vitality, high agricultural productivity, and environmental health in Monterey  
3 County by encouraging effective public participation in the land use planning process.

4         2. LandWatch’s members, directors, and staff include residents, taxpayers, and electors  
5 in Monterey County who currently enjoy the multitude of residential, vocational, aesthetic,  
6 recreational, and health benefits stemming from the current state of Monterey County and the area  
7 of the Project. These include: relatively preserved natural resources; unobstructed views of the  
8 natural landscape; recreational access to and use of hiking and equestrian trails, open space, and  
9 parks; and water supply, water quality, carbon sequestration, and traffic conditions significantly  
10 better than those they will experience if the Project proceeds.

11         3. LandWatch’s members, directors, and staff have a clear and present right to, and  
12 beneficial interest in, the County’s performance of its duties to comply with CEQA, the State  
13 Planning and Zoning law, and the Subdivision Map Act. As citizens, homeowners, taxpayers, and  
14 electors, LandWatch’s members, directors, and staff are within the class of persons to whom the  
15 County owes such duties.

16         4. LandWatch’s members, directors, and staff will also suffer direct injury as a result of  
17 the adverse environmental, aesthetic, and land use impacts caused by the Project. These include:  
18 the permanent loss of currently undeveloped open space, blighting of the area’s landscape, air  
19 pollution associated with increased vehicle traffic, permanent loss of habitat for plant and animal  
20 species including species protected under state and federal law, loss of recreational opportunities,  
21 increased traffic congestion in the area, impacts to local water supply and water quality from poorly  
22 planned and inefficient land development, reduced carbon sequestration, and an overall decrease in  
23 quality of life.

24         5. By this action, LandWatch seeks to protect the interests of its members, directors,  
25 and staff, and to enforce a public duty owed to them by the County. Because the claims asserted  
26 and the relief sought in this petition are broad-based and of a public as opposed to a purely private  
27 or pecuniary nature, direct participation in this litigation by LandWatch’s individual members is not  
28 necessary.



1           **BACKGROUND FACTS, PROCEDURAL HISTORY, AND AGENCY ACTION**

2           14.     The 344-acre Project site is located in unincorporated Monterey County in the Encina  
3 Hills area of the *Toro Area Plan* planning area, approximately 2,000 feet southeast off State Route 68 and  
4 east of San Benancio Road. The site is currently unimproved except for dirt roads and trails. The site  
5 is currently used for grazing.

6           15.     Development entitlements for the Project include Vesting Tentative Map to create 17  
7 residential lots, a Use Permit for the removal of 79 trees, a Use Permit to allow development on  
8 slopes in excess of 30 percent, a Use Permit for creation of a public water system with stand-alone  
9 treatment facility, and grading for net cut and fill of approximately 2,000 cubic yards.

10          16.     LandWatch is informed and believes that on August 16, 2001 HCR LLC filed an  
11 application for a Combined Development Permit for a Vesting Tentative Map for the Project,  
12 which was deemed complete on November 22, 2002.

13          17.     In October, 2008, the County released a Draft EIR for the Project for public  
14 comment. Various agencies, organizations, and individuals, including LandWatch, submitted oral  
15 and written comments on the Draft EIR prior to the close of the public comment period. These  
16 comments stated, *inter alia*, that the Draft EIR fails to adequately identify, evaluate, and mitigate,  
17 either through proposed mitigation measures or alternatives, all potentially significant impacts on  
18 the environment, including impacts to traffic, water supply and water quality, visual resources, air  
19 quality, and biological resources.

20          18.     In December, 2009, the County released a Revised Draft EIR that revised and  
21 replaced the original Draft EIR section related to traffic and circulation. Various agencies,  
22 organizations, and individuals, including LandWatch, submitted oral and written comments on the  
23 Revised Draft EIR prior to the close of the public comment period. These comments stated, *inter*  
24 *alia*, that the Revised Draft EIR fails to adequately identify, evaluate, and mitigate, either through  
25 proposed mitigation measures or alternatives, all potentially significant traffic impacts.

26          19.     In December, 2013, the County released a Final EIR for the Project purporting to  
27 respond to public comments on the Draft EIR and Revised Draft EIR.

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1           20.     The Final EIR also included an entirely revised Chapter 3.6, Groundwater Resources  
2 and Hydrogeology.

3           21.     On January 8, 2014, the County Planning Commission held a public hearing on the  
4 Project. On February 12, 2014, the Planning Commission adopted a resolution denying the Project  
5 based on findings that it was inconsistent with the 1982 County General Plan Goal 53, Objective  
6 53.1, and Policies 53.1.3 and 26.1.4.3, which bar new development in areas without sustained  
7 adequate water supplies.

8           22.     The Planning Commission also denied the Project as inconsistent with the 1982  
9 General Plan water provisions pursuant to its authority and responsibility under Government Code  
10 § 66464 and Monterey County Code § 19.05.055B.

11          23.     On February 24, 2015, the Project applicant appealed the action by the Planning  
12 Commission to the County Board of Supervisors.

13          24.     After a continuance requested by the applicant, the Board of Supervisors held a  
14 hearing to consider the appeal on May 13, 2014. LandWatch, other organizations, and members of  
15 the public provided oral and written comments at or prior to the public hearing. These comments  
16 stated, *inter alia*, that the EIR fails to adequately identify, evaluate, and mitigate, either through  
17 proposed mitigation measures or alternatives, all potentially significant impacts on the environment,  
18 including impacts to traffic, water supply, and water quality. Commenters also objected that the  
19 Project conflicts with the 1982 Monterey County General Plan policies related to water supply and  
20 traffic.

21          25.     At its May 13, 2014 hearing, the Board of Supervisors directed staff to return on  
22 August 26, 2014 with findings and evidence to deny the appeal and the Project application. The  
23 Board also advised the applicant it could provide additional well testing data.

24          26.     At the August 26, 2014 hearing, the applicant had not provided well testing  
25 information. Staff presented findings and evidence to deny the appeal and the Project application.  
26 However, the applicant again requested a continuance in order to provide well testing information.  
27 The Board continued the hearing to December 2, 2014.

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1 imposition of feasible mitigation measures or the analysis and selection of feasible alternatives.  
2 Public Resources Code, § 21002.

3 35. An EIR must include a description of the physical environmental conditions in the  
4 vicinity of the project as they existed at the time the notice of preparation is published, with  
5 particular focus on the regional setting EIR and any inconsistencies between the proposed project  
6 and applicable general plans and regional plans. 14 C.C.R., § 15125. This “baseline” information  
7 must be provided early in the environmental review process and must be sufficient to support  
8 analysis of impacts.

9 36. An EIR must identify and evaluate the direct, indirect, and cumulative environmental  
10 impacts of all phases of a project. 14 C.C.R., § 15126. The discussion must include relevant  
11 specifics of the area, the resources involved, physical changes, alterations to ecological systems, and  
12 changes induced in population distribution, population concentration, the human use of the land  
13 (including commercial and residential development), health and safety problems caused by the  
14 physical changes, and other aspects of the resource base such as water, historical resources, scenic  
15 quality, and public services. 14 C.C.R., § 15126.2.

16 37. An EIR must evaluate cumulative impacts of the project and other past, present and  
17 foreseeable future projects. 14 C.C.R., § 15130. If there is a significant cumulative impact, an EIR  
18 must determine if the project makes a considerable contribution to that cumulative impact. *Id.* An  
19 EIR must identify the geographic scope of the cumulative impact analysis and justify limits on that  
20 scope. *Id.* An EIR must propose reasonable, feasible options for mitigating or avoiding the  
21 project's contribution to any significant cumulative effects. *Id.*

22 38. For projects that require water, an EIR must provide sufficient information to  
23 evaluate the pros and cons and environmental impacts of supplying a long term water supply.  
24 *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4<sup>th</sup> 412. The  
25 identified supply may not be speculative. *Id.* Where a long term water supply is not certain, an EIR  
26 must disclose that fact and discuss the likely impacts of providing an adequate supply from  
27 alternative sources. *Id.*

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1           39.     A lead agency must describe and evaluate feasible measures for minimizing or  
2 avoiding a project’s direct, indirect, and cumulative impacts on the environment. Public Resources  
3 Code, § 21100(b)(3); 14 C.C.R., § 15126.4.

4           40.     Mitigation measures must be enforceable and feasible. CEQA Guidelines, §  
5 15126.4(a)(1), (2). Payment of impact fees is sufficient mitigation only if the fees are part of an  
6 enforceable, committed, timely, and adequately funded program of improvements that will actually  
7 mitigate the project’s impacts. *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173;  
8 *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099.

9           41.     A lead agency must identify all significant effects on the environment caused by a  
10 proposed project that cannot be avoided. Public Resources Code, § 21100(b)(2)(A).

11           42.     An EIR must contain a statement briefly indicating the reasons for determining that  
12 various effects on the environment were not significant and consequently were not discussed in  
13 detail in the EIR. Public Resources Code, § 21100(c).

14           43.     A lead agency must provide good faith, reasoned analysis in response to comments  
15 on a Draft EIR. 14 C.C.R., § 15088(c). A Final EIR must address recommendations and objections  
16 raised in comments in detail, giving reasons why they were not accepted. *Id.* Specific responses are  
17 required to comments raising specific questions about significant issues.

18           44.     A lead agency must recirculate an EIR for public comment and response if significant  
19 new information is added to the EIR or to the record after public notice is given of the availability  
20 of the draft EIR for public review but before certification of the EIR. 14 C.C.R., § 15088.5.  
21 Information is significant if it demonstrates that the public was deprived of a meaningful  
22 opportunity to comment upon a substantial adverse environmental effect of the project or a feasible  
23 way to mitigate or avoid such an effect (including a feasible project alternative) that the project's  
24 proponents have declined to implement, or if it discloses that the draft EIR was so fundamentally  
25 and basically inadequate and conclusory in nature that meaningful public review and comment were  
26 precluded. *Id.*

27           45.     CEQA requires a lead agency to establish and make findings that either: (1) changes  
28 or alterations have been required in, or incorporated into, the project which mitigate or avoid the

1 significant effects on the environment, (2) those changes or alterations are within the responsibility  
2 and jurisdiction of another public agency and have been, or can and should be, adopted by that  
3 other agency, or (3) specific economic, legal, social, technological, or other considerations make  
4 infeasible the mitigation measures or alternatives identified in the environmental impact report.  
5 Public Resources Code, § 21081; 14 C.C.R., §§ 15091, 15092, 15093.

6 46. An agency may not approve a project with significant unavoidable impacts unless it  
7 finds, based on substantial evidence, that specific overriding economic, legal, social, technological,  
8 or other benefits of the project outweigh the significant effects on the environment. Public  
9 Resources Code, § 21081.

10 47. All findings under Public Resources Code § 21081(a) must be supported by  
11 substantial evidence in the record. 14 C.C.R., § 15384(b). Moreover, the findings must explicitly  
12 cite the substantial evidence in the record upon which they rely. *Environmental Prot. & Info. Center v.*  
13 *Cal. Dept. of Forestry & Fire Prot.* (“EPIC”) (2008) 44 Cal.4th 459, 515-516; *see generally Mountain Lion*  
14 *Foundation v. Fish & Game Comm’n* (1997) 16 Cal.4th 105; *Topanga Assoc. for a Scenic Community v. County*  
15 *of Los Angeles* (1974) 11 Cal.3d 506.

16 48. Thus, under CEQA, the County here was required to prepare an EIR that included  
17 an accurate description of the environmental setting and Project, and a detailed statement setting  
18 forth all of the following: (a) all significant effects on the environment of the proposed Project; (b)  
19 any significant effect on the environment that cannot be avoided if the Project is implemented; (c)  
20 feasible mitigation measures proposed to minimize significant effects on the environment; and (d)  
21 alternatives to the proposed Project.

22 **Inadequate And Untimely Description of Environmental Setting (Baseline Conditions)**

23 49. The EIR for the Project fails to provide an adequate and timely description of the  
24 environmental setting. For example, the EIR fails to provide adequate and timely baseline  
25 information related to water supply and demand, including cumulative water supply and demand for  
26 the aquifers affecting, and affected by, the Project water supply.

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1           50.     The Final EIR presents a fundamentally different description than the Draft EIR of  
2 the geographic scope and characteristics of the aquifers affecting, and affected by, the Project’s  
3 proposed groundwater pumping; and therefore the description is untimely.

4           51.     The Final EIR presents a fundamentally different description of whether the aquifer  
5 from which the Project would draw its water supply is in overdraft or surplus; and therefore the  
6 description is untimely.

7           52.     The Final EIR also alters the Draft EIR’s description of the efficacy of past  
8 groundwater management efforts; and therefore the description is untimely.

9           53.     The EIR also fails to describe conflicts with applicable general plans and regulations,  
10 including, for example, conflicts with policies related to traffic and water supply.

11          54.     The County therefore prejudicially abused its discretion in certifying the EIR by  
12 failing to proceed in the manner required by CEQA, and by adopting findings that are not  
13 supported by the evidence.

#### 14 **Inadequate Disclosure and Analysis of Environmental Impacts**

15          55.     The EIR for this Project fails to evaluate and disclose adequately all of the Project’s  
16 direct, indirect, and cumulative impacts, including impacts to traffic, water supply and water quality,  
17 visual resources, air quality, and biological resources.

18          56.     For example, the EIR fails to disclose information related to water demand and  
19 supply that is required by CEQA, including cumulative water supply and demand for the relevant  
20 aquifers.

21          57.     The EIR fails to provide a consistent geographic scope of analysis in its discussion of  
22 cumulative water supply impacts. The EIR fails to provide a justification for the geographic scope  
23 of its analysis of cumulative water supply.

24          58.     The EIR fails to provide an adequate assessment of whether there is a significant  
25 cumulative impact to identified groundwater resources from the Project in combination with past,  
26 present and foreseeable future projects.

27          59.     The EIR fails to provide an adequate assessment of whether the Project would make  
28 a considerable contribution to a significant cumulative impact.

1           60.     The Final EIR presents a substantially revised analysis of water supply impacts that  
2 purports to show changes from the Draft EIR through strikeout and underlining, but numerous  
3 changes are not so indicated.

4           61.     To assess long-term cumulative impacts to a much larger geographic area than 1,000  
5 feet from the Project, the County improperly relied on well test results that were intended to assess  
6 short-term impacts to wells located within 1,000 feet.

7           62.     The EIR fails to provide adequate explanation or evidence for its claim that the  
8 Salinas Valley Water Project would mitigate Project impacts to the aquifer from which the project  
9 would pump groundwater.

10          63.     Although the EIR relies on the efficacy of the Salinas Valley Water Project, the EIR  
11 fails to identify or discuss evidence that the Salinas Valley Water Project is not expected to restore  
12 groundwater levels or halt saltwater intrusion.

13          64.     The EIR does not present substantial evidence that the Project has a long term water  
14 supply or that overdrafting impacts can and will be avoided.

15          65.     The County improperly relied on information that was not included in the EIR in  
16 determining whether the Project would cause or contribute considerably to a significant water  
17 supply impact.

18          66.     Substantial evidence in the record demonstrates that the EIR's conclusions regarding  
19 the sufficiency of water supplies is based on out-of-date analyses, the assumptions for which have  
20 materially changed, and which the EIR misinterprets.

21          67.     The EIR fails to disclose the uncertainty of the long-term water supply, the need for  
22 additional water supply projects, the environmental impacts associated with those water supply  
23 projects, or the environmental impacts associated with continued groundwater pumping without  
24 new water supply projects.

25          68.     The County therefore prejudicially abused its discretion in certifying the EIR by  
26 failing to proceed in the manner required by CEQA, and by adopting findings that are not  
27 supported by the evidence.

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1 **Inadequate Mitigation**

2 69. The EIR and the findings improperly rely upon mitigation of traffic and water supply  
3 impacts through payment of impact fees. The reliance is improper because, for example, needed  
4 traffic and water supply improvements are not fully funded, will not be provided timely, or are not  
5 included in any program, and because there is no actual commitment to construct all of the needed  
6 improvements.

7 70. The County therefore prejudicially abused its discretion in certifying the EIR by  
8 failing to proceed in the manner required by CEQA, and by adopting findings that are not  
9 supported by the evidence.

10 **Failure to Provide Adequate Comment Responses**

11 71. The EIR fails to provide good faith, reasoned analysis in response to public  
12 comments on the Draft EIR and Recirculated Draft EIR.

13 72. For example, the EIR fails to provide adequate responses to requests for information  
14 related to water supply and traffic impacts

15 73. The County therefore prejudicially abused its discretion in certifying the EIR by  
16 failing to proceed in the manner required by CEQA, and by adopting findings that are not  
17 supported by the evidence.

18 **Failure to Disclose All Significant Unavoidable Impacts**

19 74. The EIR and the findings fail to identify each unavoidable significant impact,  
20 including, for example, each unavoidably significant traffic impact to intersections and roadway  
21 segments.

22 75. The findings are inconsistent with the EIR with respect to the identification of the  
23 intersections and roadway segments that would suffer an unavoidably significant impact.

24 76. The County therefore prejudicially abused its discretion in certifying the EIR by  
25 failing to proceed in the manner required by CEQA, and by adopting findings that are not  
26 supported by the evidence.

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1 **Failure to Recirculate Revised Draft EIR**

2 77. The County failed to recirculate an adequate draft EIR for public comment.  
3 Recirculation was required because, subsequent to the availability of the Draft EIR, significant new  
4 information was added to the EIR and to the record that demonstrates that the public was deprived  
5 of a meaningful opportunity to comment upon a substantial adverse environmental effect of the  
6 Project and that discloses that the Draft EIR was so fundamentally and basically inadequate and  
7 conclusory in nature that meaningful public review and comment were precluded.

8 78. For example, significant new information was added to the EIR because the Final  
9 EIR made changes to the description of the environmental setting, including the geographic scope  
10 and characteristics of the aquifers affecting and affected by the Project's proposed groundwater  
11 pumping.

12 79. Significant new information was added to the EIR because the Final EIR provided a  
13 fundamentally different description of whether the aquifer from which the Project would draw its  
14 water supply is in overdraft or surplus.

15 80. Significant new information was added to the EIR because the Final EIR provided a  
16 fundamentally different description as to whether past groundwater management efforts have been  
17 effective.

18 81. Significant new information was added to the record because the County changed the  
19 basis of its determination of the significance of water supply impacts.

20 82. Significant new information was added to the record because comments and analyses  
21 and admissions by County staff and agencies post-dating the Draft EIR disclosed that the EIR's  
22 assumptions about the efficacy of past and current groundwater management efforts are incorrect  
23 and not supported by facts and analysis.

24 83. Significant new information was added to the record because County staff and the  
25 findings identified significant unmitigated impacts to intersections and segments due to the Project  
26 under Background plus Project conditions that were not identified in the Revised Draft EIR or the  
27 Final EIR.

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1           84.     The County therefore prejudicially abused its discretion in certifying the EIR by  
2 failing to proceed in the manner required by CEQA, and by adopting findings that are not  
3 supported by the evidence.

4     **Inadequate Findings**

5           85.     The County’s CEQA findings failed to clarify whether the County found that there  
6 would not be any significant cumulative water supply-related impact from the Project in  
7 combination with other past, present, and foreseeable future projects; whether there would be a  
8 significant cumulative impact but that it would be mitigated by payment of impact fees; or whether  
9 there would be a significant cumulative impact but that it would be less than considerable for some  
10 other reason. Findings related to the Project’s purported consistency with the 1982 General Plan  
11 water supply provisions do not provide substantial evidence to support any of these conclusions.

12           86.     The finding that traffic impacts under Cumulative conditions would be less than  
13 significant and/or that the Project would not make a considerable contribution to cumulatively  
14 significant traffic impacts was not supported by substantial evidence because it relied upon  
15 uncertain mitigation.

16           87.     The finding that traffic impacts to all study segments and intersections under  
17 Background plus Project conditions would be unavoidably significant was not supported by  
18 substantial evidence because it is inconsistent with the analysis in the Revised Draft EIR and Final  
19 EIR.

20           88.     The County therefore prejudicially abused its discretion in certifying the EIR by  
21 failing to proceed in the manner required by CEQA, and by adopting findings that are not  
22 supported by the evidence.

23                             **SECOND CLAIM FOR RELIEF**

24                             **(Violations of State Planning & Zoning Law)**

25           89.     LandWatch here incorporates by reference all preceding paragraphs in their entirety.

26           90.     Under the State Planning and Zoning law, Government Code §§ 65000 *et seq.*, a local  
27 public agency may entitle a proposed land use only if the land use is consistent with the goals,  
28 policies, and objectives contained in a valid, current, internally consistent General Plan.

1 91. The 2010 Monterey County General Plan provides that applications for subdivision  
2 maps deemed complete before October 16, 2007 shall be governed by the plans, policies, and  
3 ordinances that were in effect at the time the application was deemed complete.

4 92. LandWatch is informed and believes that the Project application was deemed  
5 complete before October 16, 2007, and that it was governed by the 1982 Monterey County General  
6 Plan.

7 93. The Project is inconsistent and incompatible with applicable goals, policies and  
8 objectives of the 1982 Monterey County General Plan related to water supply and traffic, including,  
9 for example, Goal 53, Objective 53.1, Policies 53.1.3, 26.1.4.3, 37.2.1, 39.1.4, 39.1.2, and 26.1.4.

10 94. However, the County failed to find that the Project is inconsistent with applicable  
11 goals, policies and objectives of the 1982 Monterey County General Plan, including, for example,  
12 Goal 53, Objective 53.1, Policies 53.1.3, 26.1.4.3, 37.2.1, 39.1.4, 39.1.2, and 26.1.4.

13 95. The County failed even to make findings regarding consistency with 1982 General  
14 Plan Policies related to traffic impacts.

15 96. In addition, because the 1982 General Plan is out of date and internally inconsistent  
16 with respect to the requirement to correlate land use and circulation, the County could not make a  
17 valid finding of consistency with policies related to traffic and circulation.

18 97. The County therefore prejudicially abused its discretion under the State Planning and  
19 Zoning law by adopting findings of General Plan consistency for the Project that are not supported  
20 by the evidence.

21 **THIRD CLAIM FOR RELIEF**

22 **(Violations of Subdivision Map Act)**

23 98. LandWatch here incorporates by reference all preceding paragraphs in their entirety.

24 99. An agency may not approve a tentative map that is inconsistent with its general plan.  
25 Government Code, § 66473.5.

26 100. The Project is inconsistent and incompatible with applicable goals, policies and  
27 objectives of the 1982 Monterey County General Plan, including, for example, Goal 53, Objective  
28 53.1, Policies 53.1.3, 26.1.4.3, 37.2.1, 39.1.4, 39.1.2, and 26.1.4.



1           101.    However, the County failed to find that the Project is inconsistent with applicable  
2 goals, policies and objectives of the 1982 Monterey County General Plan, including, for example,  
3 Goal 53, Objective 53.1, Policies 53.1.3, 26.1.4.3, 37.2.1, 39.1.4, 39.1.2, and 26.1.4.

4           102.    The County failed even to make findings of consistency with 1982 General Plan  
5 Policies related to traffic impacts.

6           103.    In addition, because the 1982 General Plan is out of date and internally inconsistent  
7 with respect to the requirement to correlate land use and circulation, the County could not make a  
8 valid finding of consistency with policies related to traffic and circulation.

9           104.    The County therefore prejudicially abused its discretion under the Subdivision Map  
10 Act by adopting findings for the Project that are not supported by the evidence.

11                           **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

12           105.    This action is brought consistent with the requirements of Public Resources Code §  
13 21177 and Code of Civil Procedure §§ 1085 and/or 1094.5. LandWatch objected to the County’s  
14 approval of the Project orally and in writing prior to the close of the public hearing on the Project  
15 before the issuance of the Notice of Determination. LandWatch and/or other agencies,  
16 organizations, and/or individuals raised the legal deficiencies asserted in this petition orally or in  
17 writing prior to the close of the public hearing on the Project before the issuance of the Notice of  
18 Determination.

19           106.    Petitioner has performed all conditions precedent to filing this action by complying  
20 with the requirements of Public Resources Code § 21167.5 in serving notice of the commencement  
21 of this action May 1, 2015.

22                           **INADEQUATE REMEDY AT LAW**

23           107.    LandWatch declares that it has no plain, speedy, and adequate remedy in the ordinary  
24 course of law for the improper action of the County.

25                           **NECESSITY FOR TEMPORARY RELIEF**

26           108.    If Project development is allowed to commence prior to the Court’s final judgment  
27 on the merits, LandWatch and the environment will be greatly, permanently and irreparably injured  
28 from the resulting unmitigated environmental, aesthetic, recreational, and land use impacts.

1           109. Under Code of Civil Procedure § 1094.5(g), this Court may issue a stay order during  
2 the pendency of the proceedings unless it is satisfied that a stay would be against the public interest.  
3 Imposition of a stay would not be against the public interest in that the public will derive no benefit  
4 from the Project prior to the Court's final judgment.

5           110. Under Code of Civil Procedure § 526, this Court may issue a restraining order or  
6 preliminary injunction during the pendency of the proceedings. This temporary relief is warranted  
7 because LandWatch is likely to prevail on the merits and because commencement of physical  
8 development activities will cause great and irreparable injury.

9   **ATTORNEYS' FEES**

10           111. LandWatch is entitled to recover attorneys' fees as provided in Code of Civil  
11 Procedure § 1021.5 if it prevails in this action and the Court finds that a significant benefit has been  
12 conferred on the general public or a large class of persons, and that the necessity and burden of  
13 private enforcement is such as to make an award of fees appropriate.

14   **PRAYER**

15           WHEREFORE, LandWatch prays for entry of judgment as follows:

- 16           1. For a peremptory writ of mandate directing the County:
  - 17           (a) to set aside its April 7, 2015 action certifying an EIR for the Project and adopting a  
18 statement of overriding considerations;
  - 19           (b) to set aside its April 7, 2015 action approving the Combined Development Permit for  
20 the Project;
  - 21           (c) to refrain from issuing permits or granting subdivision map approvals until the  
22 County has taken action necessary to bring its approval of Project into compliance with  
23 CEQA, the Planning and Zoning law, and the Subdivision Map Act;
  - 24           (d) to comply with CEQA in any subsequent action or actions taken to approve the  
25 Project;
- 26           2. For an order granting temporary relief, including a prohibition of permits and  
27 subdivision map approvals, pending the outcome of this proceeding.  
28

1           3.       For a preliminary and permanent injunction directing the County and Real Parties to  
2 cease and refrain from engaging in any action purporting to be authorized by the Project  
3 entitlements that could result in any change or alteration in the physical environment until the  
4 County takes any necessary action to bring its action into compliance with CEQA, the Planning and  
5 Zoning law, and the Subdivision Map Act.

- 6           4.       For its costs of suit.
- 7           5.       For an award of attorneys' fees.
- 8           6.       For other legal or equitable relief that the Court deems just and proper.

9  
10 Dated: May 1, 2015

Respectfully submitted,  
M. R. WOLFE AND ASSOCIATES, P.C.



11  
12  
13  
14  
15 By: \_\_\_\_\_  
16       Mark R. Wolfe  
17       John H. Farrow  
18       Attorneys for Petitioner

1 VERIFICATION

2 I, Amy White, declare:

3 I am the Executive Director of LandWatch Monterey County, the Petitioner in the above-  
4 captioned action. I have read the foregoing PETITION FOR WRIT OF MANDATE and know  
5 the contents thereof. The same is true of my own knowledge, except as to those matters which are  
6 therein alleged on information and belief, and as to those matters, I believe them to be true.

7 I am signing this document at Gonzales, California, and affirm, under penalty of perjury, that  
8 the foregoing is true and correct.

9  
10 Dated: April 28, 2015

  
Amy White