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COUNTY OF MONTEREY

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF MONTEREY

14 H-Y-H CORPORATION, a Delaware  
corporation,

15 Petitioner and Plaintiff,

16 vs.

17 COUNTY OF MONTEREY, and DOES I  
through XX, INCLUSIVE,

18 Respondent and Defendant.

19 COUNTY OF MONTEREY,

20 Cross-complainant,

21 vs.

22 LANDWATCH MONTEREY COUNTY,  
a nonprofit corporation, RANCHO SAN  
23 JUAN OPPOSITION COALITION, and  
ROES I through XX, INCLUSIVE,

24 Cross-defendants.

25 H-Y-H CORPORATION, a Delaware  
corporation,

26 Real Party in Interest.

**Exempt from filing fee  
(Gov't Code § 6103)**

**FILED IN COURT**

**FEB 17 2006**

ON \_\_\_\_\_  
LISA M. GALDOS, CLERK OF THE SUPERIOR COURT

BY ERIKA D. DUNN DEPUTY

Case No. M 46616

**CROSS-COMPLAINT FOR  
DECLARATORY RELIEF**

Date Action Filed: November 10, 1999

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## INTRODUCTION

1. The power of initiative and referendum is one of the fundamental powers reserved to the electorate under the California Constitution. This Cross-Complaint does not challenge the initiative or referendum power, nor does it attack a specific initiative or referendum. Rather, the Cross-Complaint respectfully requests this Court's declaration of the legal rights and duties of the parties and guidance under the extraordinary circumstances of this case.

2. Cross-Complainant County of Monterey faces a dilemma, warranting declaratory relief: On February 27, 2001, Judge Richard M. Silver of this Court issued a Judgment in this action (HYH vs. County of Monterey, Action No. M46616) (hereinafter referred to as "Judgment") ordering the County to "complete . . . the adoption of [the] Specific Plan, and zoning within a reasonable time period" for Real Party in Interest H-Y-H's property in the Rancho San Juan Area (the "Property"). A true and correct copy of the Court's Judgment is attached as Exhibit A. In compliance with the Judgment, the County adopted a Specific Plan for development of the Property in December 2004; however, Cross-Defendants LandWatch Monterey County and Rancho San Juan Opposition Coalition sponsored a referendum of related general plan amendments to effectively repeal that Specific Plan. The referendum passed overwhelmingly on November 8, 2005. In response to that referendum and in a further attempt to comply with this Court's Judgment, in November 2005, the County rescinded its December 2004 General Plan amendments and adopted a significantly scaled down Revised Specific Plan for the Property. Cross-defendants have proposed a second referendum and have further proposed a General Plan initiative which they contend will, among other things, effectively repeal the Revised Specific Plan. Both the initiative and referendum – Cross-defendants contend the adoption of either will effectively repeal the approval of the revised General Plan amendments and thus the Revised Specific Plan – will be placed on the June 2006 ballot ("Second Referendum and Initiative").



1 from the Court to amend this Cross-Complaint if and when the true names of such parties  
2 are ascertained.

### 3 JURISDICTION AND VENUE

4 10. Under California Code of Civil Procedure section 1060, this Court has  
5 jurisdiction to issue a declaratory judgment resolving a dispute between the County and  
6 Cross-Defendants regarding the obligation of the County to comply with this Court's  
7 Judgment if the Second Referendum and/or Initiative are adopted.

8 11. Venue is proper in this Court because all parties to this litigation are  
9 situated in Monterey County and because the controversy alleged in this Complaint arose  
10 and is ongoing in Monterey County.

### 11 STATEMENT OF FACTS

12 12. Since 1982 the Monterey County General Plan has designated the 2,150-  
13 acre Rancho San Juan area as an Area of Development Concentration ("ADC"). Between  
14 1982 and the adoption of the Greater Salinas Area Plan ("GSAP") in 1986, the Rancho  
15 San Juan ADC was a "study area." In 1986, with the adoption of the GSAP, both the  
16 General Plan and the GSAP designated the Rancho San Juan Area as an ADC. The GSAP  
17 requires that a specific plan be prepared as a precondition to approving any discretionary  
18 projects in the Rancho San Juan ADC.

19 13. H-Y-H's Property consists of approximately 670 acres within the Rancho  
20 San Juan ADC.

21 14. On November 10, 1999, H-Y-H filed a Petition for Writ of Mandate and  
22 Complaint for Declaratory Relief, Constitutional Violations, Inverse Condemnation and  
23 Estoppel based on the County's failure to adopt a specific plan in the Rancho San Juan  
24 ADC to allow development of the Property. H-Y-H sought to compel the County to  
25 expeditiously prepare, process, and adopt a specific plan and to certify an environmental  
26 impact report ("EIR") for the Property. H-Y-H further sought damages allegedly caused  
27 by the County's delay in processing the specific plan and EIR.

1           15.    On July 26, 2000, the Court held trial on the first through fourth causes of  
2 action for writs of mandate, and the fifth, sixth, and thirteenth causes of action for  
3 declaratory relief. By stipulation of the parties, the Court bifurcated the seventh through  
4 twelfth causes of actions and the damages portion of the thirteenth cause of action. (At  
5 the last trial setting conference on these bifurcated claims, January 12, 2006, the Court  
6 continued the trial setting conference to March 30, 2006.)

7           16.    On February 26, 2001, the Court entered Judgment in favor of H-Y-H. The  
8 Judgment states, at page 1-2:

9                   A peremptory writ of mandate shall issue from the Court  
10                   commanding respondent to continue to process the EIR, the  
11                   Specific Plan and zoning for the Rancho San Juan Area of  
12                   Development Concentration forthwith, consistent with statutory  
13                   requirements for public notice, and *to diligently complete the*  
14                   certification of said EIR, *the adoption of said Specific Plan*, and  
15                   zoning for the ADC within a reasonable time period in  
16                   accordance with the law. Nothing in this writ shall limit or  
17                   control the discretion legally vested in respondent, shall compel  
18                   any particular result, nor prevent respondent from specifically  
19                   finding that the General Plan is inadequate and/or taking  
20                   appropriate action under Government Code Section 65858.

21 (Emphasis added.)

22           17.    Under the Judgment, the County was under a legal obligation to adopt a  
23 Specific Plan. While the County retained discretion as to how to formulate the Specific  
24 Plan, the County did not have discretion to reject a Plan or fail to adopt a Plan.

25           18.    On March 1, 2001, this Court issued a Statement of Decision, which sets  
26 forth its findings regarding the length of time the County has delayed processing the  
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1 specific plan and EIR for development of the Property. The Statement of Decision  
2 concludes that:

3           The delay here is not "short term." It has been over 14 years.  
4           Only a very small part of that delay was attributable to  
5           Petitioners. COUNTY's excuse has generally been lack of  
6           money and/or staff. Although these factors may certainly be  
7           considered, they do not end the inquiry where there is a  
8           mandatory duty to act. No other plan has been delayed for this  
9           extended period of time. . . . This length of time becomes even  
10          more critical where all development is precluded until the  
11          action is completed, no definite time for completion of the  
12          General Plan update is contemplated, and the projected time  
13          period is in the range of multiple years not months.

14 Statement of Decision, p. 6 (emphasis in original). A true and correct copy of the  
15 Statement of Decision is attached as Exhibit B.

16           19. To avoid liability for damages based on the Court's finding of unreasonable  
17 delay, the County engaged in a mediation with H-Y-H presided over by the Honorable  
18 Nat A. Agliano, Presiding Justice of the Court of Appeal (ret.). On September 9, 2002,  
19 Justice Agliano issued a Report of Mediator to Presiding Judge, a true and correct copy of  
20 which is attached as Exhibit C. Attached to the Report is the Stipulation Following  
21 Report of Mediator to Presiding Judge ("the Stipulation").

22           20. Under the Stipulation, and to avoid a potentially large damage judgment,  
23 the County agreed to continue to expeditiously process the Rancho San Juan Specific  
24 Plan and EIR. The County also agreed to concurrently process for approval a  
25 development project on the Property in accordance with the August 21, 2002  
26 "Conceptual Plan" prepared by the County's consultant for the H-Y-H Property. The  
27 County and H-Y-H agreed that the Conceptual Plan, if finally adopted, would meet  
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1 H-Y-H's minimum land use and density requirements for the development of the  
2 Property, and that it would be the preferred alternative of the EIR for the H-Y-H  
3 Property. H-Y-H agreed to refrain from requesting resetting of the trial on the damage  
4 claims so long as the County exercised its good faith best efforts to expeditiously process  
5 the completion of the Specific Plan, EIR, and development applications under this  
6 Court's judgment and in accordance with the terms of the Stipulation.

7 21. In compliance with the Court's Judgment and in an effort to implement the  
8 terms of the Stipulation, on December 14, 2004, the County adopted the Rancho San Juan  
9 Specific Plan, General Plan amendments, and zoning amendments, and certified a  
10 programmatic EIR for the Specific Plan. The Specific Plan provided for development of  
11 a 2,581-acre area, 671 acres of which constitute the H-Y-H Property.

12 22. Following the December 14, 2004 approvals, Cross-Defendants LandWatch  
13 and RSJOC sponsored a referendum to repeal the General Plan amendments adopted on  
14 December 14, 2004.

15 23. In response to public and agency criticism of the December 2004 Plan  
16 which the Board of Supervisors received during the hearings on the Plan and in  
17 anticipation of approval of the referendum, on November 7, 2005, the County adopted the  
18 Revised Rancho San Juan Specific Plan, Revised General Plan amendments, and zoning  
19 amendments, and certified an addendum to the EIR. The Revised Rancho San Juan  
20 Specific Plan is substantially scaled down from the Plan adopted on December 14, 2004.  
21 For example, the Revised Specific Plan provides for development of H-Y-H's Property  
22 only, a 671-acre area equal to one-fourth the size of the Plan adopted on December 14,  
23 2004. The County's adoption of the Revised Plan complied with the Judgment and the  
24 terms of the Stipulation. On November 8, 2005, the voters of Monterey County approved  
25 the referendum by a vote of 75.8 percent to 24.2 percent, thus repealing the General Plan  
26 amendments necessary for the previously adopted December 2004 Rancho San Juan  
27 Specific Plan.





1           28.    The Court's Judgment requires the County to "complete . . . the adoption of  
2 [the] Specific Plan" for the Rancho San Juan ADC. The County Board of Supervisors  
3 has twice adopted a Rancho San Juan Specific Plan in compliance with the Judgment.  
4 The County rescinded the first Specific Plan in favor of a revised, smaller plan on  
5 November 7, 2005 in anticipation of the adoption of the referendum to effectively repeal  
6 the first Specific Plan. On November 8, 2005, the referendum in fact passed, effectively  
7 rescinding the first Specific Plan. The Second Referendum, which Cross-Defendants  
8 contend would effectively repeal a scaled down Revised Specific Plan, is scheduled for  
9 an election on June 6, 2006. The County anticipates that the Initiative, which, among  
10 other things, would similarly effectively repeal the Revised Specific Plan, will be set for  
11 an election on June 6, 2006.

12           29.    On the other hand, the power of initiative and referendum is reserved to the  
13 voters of Monterey County under the California Constitution,

14           30.    The County is informed and believes that if the voters approve the Second  
15 Referendum or Initiative rejecting the General Plan amendments for the Revised Rancho  
16 San Juan Specific Plan, the proponents of the Second Referendum and the Initiative will  
17 assert that the Revised Specific Plan is effectively repealed. If Cross-Defendants are  
18 correct, the County will immediately be in violation of the Judgment, exposing the  
19 County to enforcement of the Judgment and potential liability for enormous money  
20 damages in this action. Moreover, in view of the history of the County's previous  
21 approvals of Specific Plans for Rancho San Juan in 2004 and 2005 and the voters' repeal  
22 of those actions, any further attempt to adopt a third revised Rancho San Juan Specific  
23 Plan, the County is informed and believes, would also be erased by referenda or  
24 initiative, and hence further efforts by the County to comply with the Judgment would be  
25 futile.

26           31.    An actual controversy has arisen and now exists among the parties  
27 concerning their respective rights and duties under the Judgment requiring the County to  
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1 process and adopt a Rancho San Juan Specific Plan, and the Second Referendum and  
2 Initiative seeking to undo the County's adoption of that Specific Plan.

3 32. In view of the urgency of a judicial determination of the parties' legal rights  
4 and duties at this time, the Court's exercise of discretion to decide a matter of public  
5 interest and examine the merits of the controversy is warranted. If the Court finds that  
6 the Second Referendum and the Initiative do not prevail over the Court's Judgment, a  
7 timely declaration has the potential to save the parties to the Second Referendum and  
8 Initiative substantial campaign spending as well as permitting the County to comply with  
9 the Court's Judgment.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Respondent, Defendant, and Cross-Complainant County of  
12 Monterey prays for judgment as follows:

- 13 1. A declaration as to whether the Second Referendum and Initiative, if  
14 passed, will relieve the County of its obligation under this Court's Judgment to adopt a  
15 Specific Plan, or whether the Judgment takes precedence over the Second Referendum  
16 and that part of the Initiative purporting to repeal the Revised Specific Plan, such that the  
17 Referendum and Initiative cannot prevail over the Judgment of this Court;
- 18 2. For costs of the suit;
- 19 3. For such other and future relief as the Court deems just and proper.

20  
21 Dated: February 2, 2006

SHUTE, MIHALY & WEINBERGER LLP

22  
23 By:   
24 ANDREW W. SCHWARTZ

25 Attorneys for Respondent, Defendant and  
26 Cross-Complainant  
27 COUNTY OF MONTEREY

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