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**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MONTEREY**

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Highway 68 Coalition; Landwatch Monterey County Petitioners, vs. County of Monterey; Monterey County Board of Supervisors Respondents,	Case No. M130660 [consolidated with M130670] Intended Statement of Decision
Domain Corporation, Ferrini Oaks, LLC, Islandia 29, a Delaware Limited Partnership Real Parties in Interest.	

This matter came on for court trial on September 6, 2016, December 5, 2016, February 21, 2017, and March 8, 2017. All sides were represented through their respective attorneys. At the court's request, the parties submitted additional briefing on May 24, 2017. The matter was argued and taken under submission.

This intended decision resolves factual and legal disputes, and shall suffice as a statement of decision as to all matters contained herein. (Cal. Rules of Court, rule 3.1590(c)(1).)

Background

On or about April 2005, the applicant proposed the Ferrini Ranch Project as a 212-parcel development on 870 acres south of Highway 68 between River Road and San Benancio Road in Monterey County. As ultimately approved, the vesting tentative map calls for the creation of 185 lots comprised of 168 market rate single family and 17 lots of moderate income inclusionary

housing units; the creation of three open space parcels totaling 700 acres; and the construction of a new four-way signalized intersection on Highway 68 and widening of Highway 68 from two lanes to four lanes for 1.2 miles.

CEQA review included a 2012 draft EIR (DEIR), a 2014 recirculated draft EIR (RDEIR),¹ and a 2014 final EIR (FEIR) (collectively, the EIR.). The Project developed into a variant of Alternative 5, developed after the FEIR was complete and after three Planning Commission hearings held on October 8, October 29, and November 12, 2014. On December 16, 2014, the County Board of Supervisors (the Board) voted 3-2 to adopt Resolution No. 14-370, certify the EIR and adopt a Statement of Overriding Considerations. The Board also adopted Resolution No. 14-371, approving the Combined Development Permit consisting of a Vesting Tentative Map, two use permits, and a mitigation monitoring and reporting plan.

Petitioners Highway 68 Coalition and Landwatch Monterey County filed separate petitions challenging various aspects of the Board’s approvals related to, inter alia, the EIR’s water supply analysis, traffic impact analysis, and aesthetics impact analysis. On April 14, 2015, the court ordered the petitions consolidated.

Additional factual discussion accompanies each substantive area of analysis.

Administrative Record

The court admitted the approximately 30,000-page administrative record into evidence.

Requests for Judicial Notice

Highway 68 requests judicial notice of: 1) “Board of Supervisors June 8, 1999 Approval of Monterey County 21st Century Work Program and Authorize Approval of Contracts Not to Exceed \$660,000 and Transfer Funds to Information Technology and Environmental Resource

¹ The DEIR was recirculated only as to its Air Quality, Biological Resources, Greenhouse Gas Emissions, and Alternatives sections. (See AR 2493.)

Policy and Exhibit 1 (Monterey County 21st Century)”; 2) “Board of Supervisors September 21, 1999 Approval of Monterey County 21st Century Public Participation Plan, Staff Recommendation, Roster of Focus Groups, and Executive Summary”; 3) MCC sections 16.70.10-16.70.030 and 19.050.070; 4) Monterey County Board of Supervisors Resolution No. 13-291, dated August 27, 2013; 5) a document entitled “Staking and Flagging Criteria” which Highway 68 claims the Board adopted in 1994; 6) Planning Commission Resolution No. 09023, dated April 8, 2009; 7) “Draft Findings of the Monterey County LCP Periodic Review, Chapter 7: Scenic Resources,” prepared by the California Coastal Commission; and 8) Board Resolution No. 08-338.

The court takes judicial notice of the code sections, as it must, under Evidence Code section 451, subd. (a). Further, the court takes judicial notice of Board Resolutions 08-338 and 13-291 and Planning Commission Resolution No. 09023 as official acts of a government agency under Evidence Code section 452, subd. (c). However, the court declines to take judicial notice of the remainder of the items because Highway 68 has not met its burden to show that they are relevant. (See *ITT Telecom Prods. Corp. v. Dooley* (1989) 214 Cal. App. 3d 307, 313, fn. 4.)

Landwatch requests judicial notice of portions of the 2010 Monterey County General Plan Draft EIR . The court takes judicial notice of the existence of these documents as official acts of government entities – but not of the truth of their contents – under Evidence Code section 452, subdivision (c). (See *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1750; *Herrera v. Deutsche Bank Nat. Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

Standard of Review

Public Resources Code section 21168.5 provides the standard for actions “to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the

grounds of noncompliance with [CEQA].” Under that section, this court must determine “whether there was a prejudicial abuse of discretion. An abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.” (Pub. Resources Code, § 21168.5.) “Judicial review of these two types of error differs significantly: While we determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements, we accord greater deference to the agency’s substantive factual conclusions.” (*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1045.)

An agency’s factual determinations are reviewed for substantial evidence. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571.) For purposes of CEQA, substantial evidence “means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (Cal. Code of Regs., tit. 14, § 15384, subd. (a) (the Guidelines).) “Argument, speculation, unsubstantiated opinion or narrative, [or] evidence which is clearly erroneous or inaccurate . . . does not constitute substantial evidence.” (*Ibid.*)

By contrast, questions concerning the proper interpretation or application of CEQA’s requirements are matters of law. (See *Save our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 118.) “CEQA requires that an EIR include detailed information concerning, among other things, the significant environmental effects of the project under consideration. (Pub. Resources Code §§ 21100, 21100.1.) When an EIR does not satisfy CEQA’s informational requirements, the agency fails to proceed in a manner required by law and abuses its discretion.” (*Save Our Peninsula, supra*, 87 Cal.App.4th at pp. 117–118.) “The EIR is

the heart of CEQA' and the integrity of the process is dependent on the adequacy of the EIR. [Citations.]” (*Ibid.*)

In reviewing an agency’s action, the court must recognize that “the Legislature intended the act ‘to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.’” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390 [*Laurel Heights I*].) “The EIR is the primary means of achieving the Legislature’s considered declaration that it is the policy of this state to ‘take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.’ [Citation.] . . . An EIR is an ‘environmental “alarm bell” whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.’ [Citations.] The EIR is also intended ‘to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.’ [Citations.] Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. [Citations.] The EIR process protects not only the environment but also informed self-government.” (*Id.* at p. 392.)

Indeed, “[t]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA.’ [Citation.] The error is prejudicial ‘if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.’

[Citation.]” (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721–722.)

Nevertheless, “[i]n reviewing the sufficiency of an EIR, the rule of reason applies.” (*Local & Regional Monitor v. City of Los Angeles* (1993) 12 Cal.App.4th 1773, 1793, 16 Cal.Rptr.2d 358.) “CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive The absence of information in an EIR, or the failure to reflect disagreement among the experts, does not per se constitute a prejudicial abuse of discretion. [Citation.]” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.) A petitioner must demonstrate the absent information “is both required by CEQA and necessary to informed discussion. [Citations.]” (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 986, 99 Cal.Rptr.3d 572.)

Finally, the EIR is presumed legally adequate (*Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 740; Pub. Resources Code, § 21167.3), and the agency’s certification of the EIR is presumed correct (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 530.) Those challenging an EIR therefore bear the burden of proving both that it is legally inadequate and that the agency abused its discretion in certifying it. (*Ibid*; *Al Larson Boat Shop, Inc., supra*, 18 Cal.App.4th at p. 740.)

Discussion

Petitioners challenge the adequacy of the EIR’s water supply, traffic, and aesthetic impacts analyses, as well as procedural steps taken by the County subsequent to EIR certification in these substantive areas and as to parkland mitigation. Petitioners also challenge the EIR’s alternatives analysis, responses to comments, cumulative biological impact analysis, and discussion of the Project’s consistency with general plan policies. Finally, Petitioners raise non-

CEQA challenges under the Subdivision Map Act regarding the Project's conformity with the County's 1982 General Plan. The court will address each substantive area in turn.

1. Water Supply

1.1 Factual Background

The Project would require the use of 91.13 acre-feet per year (afy) of water. (AR 20391.)² Cal Water's Salinas District will supply water to meet project demand through wells in the Spreckels area of the 180/400-Foot Aquifer Subbasin (also referred to as the "Pressure Subarea").³ The 180/400-Foot Aquifer is one of the eight subbasins making up the Salinas Valley Groundwater Basin ("Basin"). (AR 452.) The 180/400-Foot Aquifer Subbasin includes the lower reaches and mouth of the Salinas River. It has an estimated total storage capacity of 7,240,000 acre-feet of groundwater, with the two main water-bearing units being the 180-Foot Aquifer and the 400-Foot Aquifer (named for the average depth at which they occur). (AR 459.)

Seawater intrusion is the migration of seawater inland into fresh water aquifers. The condition is caused by overdraft, i.e. water being pumped from the Basin faster than the aquifers can be recharged resulting in a lowering of groundwater elevations. Seawater intrusion in the Basin was first documented in the 1930s. (AR 465.) As of 2009, 27,791 acres of land were underlain by seawater intrusion in the 180-Foot Aquifer and 12,097 acres were underlain by seawater intrusion in the 400-Foot Aquifer. (AR 467.)

To combat seawater intrusion, the Monterey County Water Resources Agency (MCWRA) devised a three-part strategy: (i) developing a surface water source to replace groundwater, (ii) stopping pumping along the coast, and (iii) moving surface water to the northern portions of the

² "An acre-foot is 43,560 cubic feet" or "the quantity of water required to cover an acre of land to a depth of one foot." (*Brydon v. East Bay Mun. Utility Dist.* (1994) 24 Cal.App.4th 178, 182, fn. 1.)

³ The Department of Water Resources has stated that the boundaries of the "180/400 Foot Aquifer Subbasin" generally coincide with those of MCWRA's "Pressure Subarea." (AR 21962.)

Salinas Valley to reduce groundwater pumping. MCWRA implemented the strategy by creating a “Project Suite.” To develop a surface water source, MCWRA constructed the Nacimiento and San Antonio Reservoirs, which store water from Salinas River tributaries of the same names. Nacimiento Reservoir has a maximum capacity of 377,900 acre-feet and a maximum elevation of 800 feet. San Antonio Reservoir has a maximum capacity of 335,000 acre-feet and a maximum surface elevation of 800 feet. (AR 25271.) An engineer contracted by MCWRA estimates that the reservoirs have increased groundwater storage by 30,000 afy and reduced seawater intrusion by 7,000 afy due to the increases in groundwater storage and recharge. (AR 16370.)

To help stop pumping along the coast, MCWRA implemented the Monterey County Water Recycling Project, which includes the Salinas Valley Reclamation Project and the Castroville Seawater Intrusion Project (CSIP). (AR 16437.) The Project provides recycled water for irrigation in the Castroville area to conserve coastal groundwater. (AR 18420.) These projects consist of a 19,500 afy tertiary treatment plant and distribution system that provides about 13,000 afy of recycled water to 12,000 acres of Castroville area farms. (AR 468, 18420.) MCWRA implemented the project in 1998; by 2002, the annual average rate of seawater intrusion declined from 15,600 afy to approximately 9,000 afy. (AR 26057.)

To move surface water to the northern portions of the Salinas Valley, MCWRA implemented the Salinas Valley Water Project (SVWP). The SVWP “provides for the long-term management and protection of groundwater resources in the basin by meeting the following objectives: stopping seawater intrusion and providing adequate water supplies and flexibility to meet current and future (year 2030) needs. Through the construction of a variety of improvement projects at the San Antonio and Nacimiento Reservoirs and along the Salinas River, the

SVWP provides the surface water supply necessary to attain a hydrologically balanced groundwater basin in the Salinas Valley.” (AR 466.)

In June 2002, MCWRA certified a final EIR for the SVWP. (AR 16351.) Through use of the Salinas Valley Integrated Ground and Surface Water Model (SVIGSM), the SVWP EIR evaluated the effectiveness of the SVWP, in combination with the CSIP, at halting seawater intrusion. (AR 26063-26064.) SVWP EIR modeling assumed the Ferrini Ranch Project’s water demands as part of its analysis. (AR 4113.) The SVWP modeling concluded that without the SVWP, 10,500 afy of intrusion would occur. Based on 1995 water demands, the modeling showed that the SVWP, in conjunction with the CSIP, would halt seawater intrusion. (AR 25281.) For the year 2030, the modeling indicated that seawater intrusion might be at 2,200 afy. (AR 5185, 25281.) However, the SVWP modeling concluded that without the SVWP, 10,500 afy of intrusion would occur. (AR 26110.) The SVWP EIR explained that the SVWP could halt seawater intrusion completely, but given the uncertainties inherent in long-term water modeling, it was not possible to draw such a conclusion at the time of EIR preparation. (AR 25281.)

Funding for the SVWP, including funding for operation and maintenance of the Nacimiento and San Antonio Reservoirs, is provided by the payment of assessment fees by projects located within a special assessment zone, MCWRA’s Zone 2C. (AR 467, 16341.) The Ferrini Ranch project site is located within Zone 2C and thus the property owner contributes financially towards the SVWP. (AR 490, 4113.) Land uses that require relatively small amounts of water, such as grazing, are assessed at a much lower rate than more water intensive uses, such as irrigated agriculture and residential uses. (AR 16383.) Accordingly, the assessment imposed on the Ferrini Ranch property would increase were it to become subject to residential uses.

1.1.1 The EIR

The DEIR examined whether the Project's groundwater pumping requirements would result in a significant direct impact on groundwater resources. The DEIR concluded "[s]ince the project site is located within Zone 2C, the property owner contributes financially towards the SVWP. For these reasons, the proposed project is considered to have a long-term sustainable groundwater supply, and this would be considered a **less than significant impact.**" (AR 490)

Similarly, the DEIR cited the Project's location in Zone 2C in support of its conclusion that "the cumulative effect of the project and water demand is considered **less than significant**" noting that "[t]he project applicant contributes financially to the SVWP and its groundwater management strategies. The project's impact on the groundwater basin is therefore mitigated by this contribution." (AR 492.) The DEIR explained:

"Since the SVWP went into operation in 2010, the entire basin appears to be becoming more hydrologically balanced, as a noticeable change in depth to groundwater levels has been observed in most subbasins. [¶] Although the SVWP will not deliver potable water to the project site, it was developed to meet projected water demands based on development and population forecasts. Development forecasts for the project site previously assumed a maximum allowable buildout of 447 units. The proposed project now includes only 212 residential lots and has been deemed consistent with AMBAG's 2008 population forecasts. The higher density (and associated water consumption) was accounted for in the SVWP." (*Id.*)

Finally, the DEIR again cited the Project's location within Zone 2C in support of its conclusion that the project "would have a **less than significant impact** on nearby wells." (AR 491.) The DEIR elaborated:

"According to the CWSC [California Water Service Company], the wells in the Spreckels area of the Salinas District have a design capacity of producing approximately 4,260 gallons per minute (GPM). Currently, CWSC are serving approximately 2,216 connections with an average demand of 1,464.72 AFY (approximately 908 GPM) (He 2007). The project's estimated water use of 95 AFY represents a 6 percent increase over existing demand from these wells. However, the wells in this area are operating at only 34 percent of their capacity.

The project's water demand, relative to the size of the groundwater basin and capacity of the existing water delivery system, is not significant with respect to neighboring wells and stabilizing groundwater levels in the basin as a whole."
(*Id.*)

Landwatch and other commentators raised a number of concerns regarding water supply including concerns about the acceleration of seawater intrusion and overdraft of the Basin, water supply, and the viability of the SVWP. The FEIR addressed many of these concerns in its "Master Response 2 - Water Supply and Related Issues":

"PROJECT WATER SOURCE

The water will be provided by Cal Water which has prepared an Urban Water Management Plan (UWMP.) Cal Water does not anticipate ever having the demand for the amount of water that they have the capacity to provide. The projected water use identified in the UWMP has been anticipated in the projections for the [SVWP] and so impacts associated with seawater intrusion and declining ground water levels have been addressed on a cumulative basis through the set of projects associated with the SVWP.

"The Cal Water Urban Water Management Plan (UWMP, 2010) notes that existing supply to this municipal system is considered the amount that Cal Water can pump. Cal Water currently has the design capacity to pump 50,000 acre feet per year; however, projections of customer use through year 2040 are 25,572 acre feet per year

"EXISTING CONDITIONS FOR WATER ANALYSIS

Comments are correct that the Notice of Preparation for the project was issued in 2005. Existing conditions for the water analysis were the conditions of the Salinas Valley Groundwater Basin as known in 2005 based on various previously prepared reports, including 2004 aquifer storage data from DWR [the Department of Water Resources] (DEIR page 3.6-9). Section 3.6 of the DEIR is the resulting synthesis of several sources of information available over time,

including reports by Kleinfelder, Fugro, Geosyntec, CWSC (Cal Water) and information provided by the Monterey County Water Resources Agency (WRA). The County WRA assisted with the review and organization of all data sources to present a current and accurate section of the EIR. Several references to the ‘baseline year’ used for the SVWP EIR are noted.

“RELATIONSHIP TO THE SVWP

The water analysis for the proposed project does not rely solely on the SVWP and SVWP EIR for the adequacy of water supply. The DEIR uses a combination of factors when evaluating the impacts to water associated with this project. First as noted above, the proposed project will receive water from Cal Water (CWSC) for which a UWMP has been prepared. The UWMP for CWSC identifies that CWSC has more than sufficient water supply capacity to serve the proposed project. The CWSC’s UWMP identifies the source of this water as the Salinas Valley Ground Water Basin. The impacts associated with the CWSC UWMP is [sic] included within the pumping demand assumed by SVWP on the basin.

“The subject property was included within the original Zone 2a. Zone 2 was the benefit zone originally defined for the Nacimiento Reservoir, which was built in 1957. Zone 2A was the benefit zone defined for the San Antonio Reservoir, which was built in 1967. In Zone 2/2A was expanded to include Fort Ord and Marina in the 1990s. Zone 2B is the benefit area for the Castroville Seawater Intrusion Project (CSIP) project near Castroville. Zone 2C is the benefit zone defined for the [SVWP] and new reservoir operations. These regional improvements were developed to better manage groundwater resources within the Salinas Valley Groundwater Basin. The project site is within Zone 2C, and the property owner pays Zone 2C assessments. Accordingly the owner is making a fair share contribution toward these groundwater management projects, which include the two reservoirs, CSIP, and the SVWP. As previously

mentioned, the proposed project would not directly rely on water produced through the SVWP or other projects, but relies on the overall benefits provided from the suite of projects mentioned previously.

“A comment asked whether the baseline for the SVWP EIR included the Ferrini property. The growth projections from AMBAG that were used for the SVWP EIR are conservative and did contemplate development at a level which would have included this property. Thus the SVWP EIR assumed development of this property in its analysis.

“The WRA continues to monitor groundwater levels within the basin in order to assess the long term effect of current management efforts and projects over wet and dry years, including the SVWP. The most recent WRA groundwater data (2013) demonstrates near-term benefits of these management efforts, with an understanding that monitoring will be ongoing. Although the proposed project will cause an increase the demand on the Salinas Valley Groundwater Basin, it would not be to a level that wasn’t already analyzed and disclosed through preparation of the UWMP or the SVWP EIR.

“GROUNDWATER SOURCE AND PROJECT IMPACTS

As identified [in the] DEIR, the project water source, the 180/400-Foot Aquifer, a subbasin of the SVGB has an estimated total storage capacity of approximately 7,240,000 acre-feet of groundwater. As identified in the DEIR . . . and its supporting reference documents, the Salinas Valley Groundwater Basin as an entire unit is in an overdraft condition; however, some subbasins have better groundwater yields than others. The 180/400 Foot Aquifer Subbasin is recognized as a subbasin that has historically experienced overdraft conditions and, as a result, saltwater intrusion has progressed (DEIR 3.6-15).

