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

12 LANDWATCH MONTEREY COUNTY,

13 Petitioner,

14 vs.

15 COUNTY OF MONTEREY;

16 Respondent.

17 REDEVELOPMENT AGENCY OF THE
18 COUNTY OF MONTEREY, MONTEREY-
19 SALINAS TRANSIT DISTRICT, and DOES 1
20 through 25, inclusive;

21 Real Parties In Interest.

Case No.:

M113552

PETITION FOR WRIT OF MANDATE

(Code Civ. Proc., §§ 1085, 1094.5; California
Environmental Quality Act, Pub. Res. Code, §§
21000 *et seq.*; Fort Ord Reuse Authority Act,
Government Code §§ 67650 *et seq.*; State
Planning and Zoning Law, Gov't Code, §§
65000 *et seq.*; SB 610, Water Code, §§ 10910
et seq.)

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1 **INTRODUCTION**

2 1. This Petition challenges the July 12, 2011 actions of Respondent COUNTY OF MONTEREY
3 (“County”) approving development entitlements for the Monterey-Salinas Transit Bus Maintenance and
4 Operations Facility and Whispering Oaks Business Park project (the “Project”), including certifying an
5 Environmental Impact Report (“EIR”) and adopting a statement of overriding considerations pursuant to
6 the California Environmental Quality Act (“CEQA”), Public Resources Code §§ 21000 *et seq.*, and
7 adopting a zoning ordinance and a Combined Development Permit. Petitioner LANDWATCH
8 MONTEREY COUNTY alleges that the County’s actions in approving the Project violate applicable
9 provisions of: (1) CEQA; (2) Senate Bill 610, Water Code §§ 10910 *et seq.*; (3) the State Planning and
10 Zoning Law, Government Code §§ 65000 *et seq.*; (4) the Monterey County Code §§ 21.64.260 and
11 16.60.040 and Monterey County Ordinances Nos. 5171 and 5172; (5) the 2010 Monterey County General
12 Plan, and (6) the Fort Ord Reuse Authority Act, Government Code §§ 67650 *et seq.*

13 2. Petitioners seek 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. Petitioners also seek an order granting temporary relief during the pendency of this action,
16 including an order suspending the County’s authority to issue permits and approvals for the Project and
17 an order enjoining action by the County and Real Parties that could result in changes to the physical
18 environment.

19 **PARTIES**

20 **LandWatch Monterey County**

21 3. Petitioner LANDWATCH MONTEREY COUNTY (“LandWatch”) is a California non-profit
22 public benefit corporation exempt from federal income taxation under section 501(c)(3) of the U.S.
23 Internal Revenue Code. Its principal place of business is Salinas, California. LandWatch’s
24 organizational purpose is to promote sound land use planning and legislation at the city, county, and
25 regional levels, to combat urban sprawl, and to promote livability in the region’s cities and towns,
26 through public policy development, advocacy, and education. LandWatch is dedicated to preserving
27 economic vitality, high agricultural productivity, and environmental health in Monterey County by
28 encouraging effective public participation in the land use planning process.

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

8 5. LandWatch’s members, directors, and staff have a clear and present right to, and beneficial
9 interest in, the County’s performance of its duties to comply with CEQA, the State Planning and Zoning
10 Law, Senate Bill 610, the Monterey County Zoning Code, the 2010 Monterey County General Plan, and
11 the Fort Ord Reuse Authority Act. As citizens, homeowners, taxpayers, and electors, LandWatch’s
12 members, directors, and staff are within the class of persons to whom the County owes such duties.

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

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

24 8. LandWatch presented oral and written comments in opposition to the Project to the County
25 prior to and during the public hearings culminating in the County’s July 12, 2011 approvals.

26 **County of Monterey**

27 9. Defendant COUNTY OF MONTEREY (“County”) is a political subdivision of the State of
28 California. On July 12, 2011, the County, through its Board of Supervisors, certified the EIR and

1 approved the Project. The County is the “Lead Agency” responsible under CEQA for evaluating the
2 environmental impacts of the Project. The County is the entity responsible under the State Planning and
3 Zoning Law and Senate Bill 610 for evaluating and approving the 2010 General Plan with respect to
4 compliance with all applicable statutory requirements. The County is a local agency and member agency
5 responsible to comply with the requirements of the Fort Ord Reuse Authority Act in granting
6 development approvals.

7 **Redevelopment Agency of the County of Monterey**

8 10. LandWatch is informed and believes that that Real Party REDEVELOPMENT AGENCY OF
9 THE COUNTY OF MONTEREY (“RDA”) was established in 1972 and operates pursuant to the
10 Community Redevelopment Law of the State of California, Health and Safety Code §§ 33000 *et seq.*
11 maintaining its principal place of business in Salinas, California.

12 11. LandWatch is informed and believes that, together with Real Party MONTEREY-SALINAS
13 TRANSIT DISTRICT, RDA is the sponsor and developer of the Project, and was the applicant for and
14 recipient of the land use entitlements challenged herein.

15 **Monterey-Salinas Transit District**

16 12. LandWatch is informed and believes that Real Party MONTEREY-SALINAS TRANSIT
17 DISTRICT (“MST”) was created by state law AB644 and formed July 1, 2010, succeeding Monterey-
18 Salinas Transit Joint Powers Agency formed in 1981 when the City of Salinas joined the Monterey
19 Peninsula Transit Joint Powers Agency which was formed in 1972.

20 13. LandWatch is informed and believes that MST maintains its principal place of business in
21 Monterey, California.

22 14. LandWatch is informed and believes that, together with Real Party RDA, MST is the sponsor
23 and developer of the Project, and was the applicant for and recipient of the land use entitlements
24 challenged herein.

25 **Does**

26 15. LandWatch currently does not know the true names of DOES I through XXV inclusive, and
27 therefore name them by such fictitious names. LandWatch will seek leave from the court to amend this
28 petition to reflect the true names and capacities of DOES I through XXV inclusive once ascertained.

1 **JURISDICTION AND VENUE**

2 16. This action is brought pursuant to Public Resources Code §§ 21167, 21168, and 21168.5 and
3 Code of Civil Procedure §§ 1085 and 1094.5. Venue is proper in the County of Monterey under Code of
4 Civil Procedure §§ 393 and 395.

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

6 17. The Project site is located in unincorporated Monterey County on parcels on the former Fort
7 Ord military base (“Fort Ord”) north of Inter-Garrison Road, east of Seventh Avenue, and east of the city
8 limits of the City of Marina.

9 18. The Project site is currently undeveloped and predominately covered with coast live oak
10 woodland, with some areas of central maritime chaparral and annual grassland.

11 19. The Project site is currently used for passive recreational uses, including hiking and equestrian
12 uses.

13 20. A hiking and equestrian trail through the Project site links the Marina Equestrian Center to the
14 open space trails within Fort Ord. This trail and greenway is an irreplaceable link in a trail network
15 connecting the Monterey Coastal Bike Trail, the Marina Equestrian Center, the Jerry Smith Access
16 Corridor, and 82 miles of trails in the Fort Ord interior.

17 21. The Project includes rezoning approximately 58 acres of the site from Public Quasi Public to
18 Heavy Commercial; rezoning an additional approximately 58 acres from Public Quasi Public to Heavy
19 Commercial to Open Space; approval of a Combined Development Permit; adoption of a Mitigation
20 Monitoring and Reporting Plan; and adoption of a resolution allocating 92.7 acre feet of water per year to
21 the Combined Development Permit.

22 22. As described in the July 12, 2011 Staff Report to the Board of Supervisors, the Combined
23 Development Permit for the Project includes of a Standard Subdivision Phased Vesting Tentative Map
24 creating a 24.4 acre buildable lot to be used for the MST Bus Maintenance and Operations Facility, 15
25 smaller buildable lots to be used for Whispering Oaks Business Park, a roadway parcel, a drainage parcel,
26 and two Open Space parcels of approximately 49 acres and 8.7 acres.

27 23. As described in the July 12, 2011 Staff Report to the Board of Supervisors, the Combined
28 Development Permit for the Project includes a General Development Plan for the Whispering Oaks

1 Business Park, a General Development Plan and Use Permit for the MST Bus Maintenance and
2 Operations Facility, Use Permits to allow removal of approximately 3,400 Coast Live Oak trees on the
3 buildable lots and for infrastructure improvements, and an Administrative Permit and Design Approval
4 for development within the Site Plan Review zoning district.

5 24. Development of the Project site is subject to the requirements of the Fort Ord Reuse Authority
6 Act, Government Code §§ 67650 *et. seq.*

7 25. Pursuant to the Fort Ord Reuse Authority Act, the Fort Ord Reuse Authority (“FORA”)
8 adopted the Fort Ord Reuse Plan (“FORP”) in June, 1997.

9 26. The Project is located in Polygon 8a of the Fort Ord Reuse Plan, also referred to as the Former
10 LandFill Site.

11 27. The Fort Ord Reuse Plan designates most of the Former Landfill Site as Habitat Management.
12 The Habitat Management land use designation permits only habitat management, ecological restoration,
13 environmental education, and passive recreation, such as hiking, nature study, horse and bike riding.

14 28. The Fort Ord Reuse Plan designates portions of the Former Landfill Site as Planned
15 Development Mixed Use. Uses permitted by the Fort Ord Reuse Plan in the area designated Planned
16 Development Mixed Use include a variety of retail, office, entertainment, commercial recreational, light
17 industrial, and business park uses.

18 29. The Project site includes portions of the Former LandFill Site that are designated by the Fort
19 Ord Reuse Plan as Planned Development Mixed Use or Habitat Management.

20 30. In 2010, the County adopted the 2010 Monterey County General Plan, one element of which
21 is the Fort Ord Master Plan (“FOMP”) applicable to the County portion of the former Fort Ord, including
22 the Project site.

23 31. The Fort Ord Reuse Authority Act requires the County’s Fort Ord Master Plan to be
24 consistent with the FOR A’s Fort Ord Reuse Plan.

25 32. The Fort Ord Master Plan designates the Project site as Planned Development Mixed Use or
26 Habitat Management.

27 33. As part of the Fort Ord Reuse Plan, MST was given two parcels near the intersection of 7th
28 Avenue and Gigling Road for the purpose of developing its Bus Maintenance and Operations Facility.

1 The 7th Avenue and Gigling Road site is close to the Project site; it is previously developed, blighted land
2 that does not contain oak woodlands. Despite the availability of this site, the Project proponents
3 proposed to develop the MST Bus Maintenance and Operations Facility at the undeveloped Project site.

4 34. On or about December 16, 2009, the County issued a Notice of Preparation of a Draft
5 Environmental Impact Report (“NOP”) for the Project.

6 35. Comments on the NOP expressed concern about adverse environmental effects and
7 insufficient information, including the loss of oak woodlands and carbon sequestration; insufficient
8 information about the size, allowable uses, and conservation easement arrangements for proposed open
9 space; and inconsistency of proposed Heavy Commercial Zoning with applicable land use plans.

10 36. On or about July 7, 2010, the County released a Draft EIR for the Project for public comment.

11 37. Various agencies, organizations, and individuals, including LandWatch, submitted oral and
12 written comments on the Draft EIR prior to the close of the public comment period. These comments
13 stated, *inter alia*, that the Draft EIR fails to adequately identify, evaluate, and mitigate all potentially
14 significant impacts on the environment, including impacts to oak woodlands, traffic, air quality, green
15 house gas, wildlife, sensitive habitats, rare plants, water quality, aesthetics and glare, land use and
16 planning, and water supply.

17 38. On February 10, 2011, the County’s Minor Subdivision Committee held a public hearing for
18 the Project. LandWatch made oral comments at that hearing objecting to the Project.

19 39. After the February 10, 2011 public hearing, the Minor Subdivision Committee adopted a
20 resolution recommending that the Planning Commission approve the combined Development Permit for
21 the Project.

22 40. On or about February 23, 2011, the County released a Final EIR for the Project purporting to
23 respond to public comments on the Draft EIR.

24 41. On March 9, 2011 and April 13, 2011, the County Planning Commission held public hearings
25 on the Project. LandWatch made oral comments at these hearings objecting to the Project. Other
26 members of the public made oral and written objections at or prior to the April 13, 2011 hearing.

1 42. On April 13, 2011, pursuant to a motion of intent adopted on March 9, 2011, the County
2 Planning Commission unanimously resolved to deny the Combined Development Permit for the Project
3 and recommended that the Board of Supervisors deny the Zoning Amendment for the Project.

4 43. The bases for the Planning Commission action to deny the Combined Development Permit
5 and to recommend that the Board of Supervisors deny the Zoning Amendment include the Planning
6 Commissions findings that the Project conflicts with the 2010 Monterey County General Plan policies
7 and goals related to tree preservation, conflicts with the County Zoning Ordinance related to tree
8 removals, and conflicts with the City of Marina Land General Plan land use designation.

9 44. The Planning Commission found that the number of trees to be removed for the Project is too
10 high, that tree removal has not been minimized to the maximum intent feasible, and that alternative sites
11 may exist near the multi-modal corridor that need to be redeveloped and that would be environmentally
12 superior locations. The Planning Commission also found that the Project site is not physically suitable
13 for the Project due to the loss of oak woodlands and ecosystem at the site and that the Project would
14 involve a risk of adverse environmental impacts.

15 45. On or about April 22, 2011, Project applicants appealed the Planning Commission actions to
16 the Board of Supervisors.

17 46. On or about June 14, 2011, the Board of Supervisors held a public hearing to consider the
18 appeal.

19 47. LandWatch, the City of Marina, other organizations, and members of the public provided oral
20 and written comments at or prior to the public hearing on the appeal. These comments stated, *inter alia*,
21 that the Draft and Final EIR fail to adequately identify, evaluate, and mitigate all potentially significant
22 impacts on the environment, including impacts to oak woodlands, green house gas, water supply,
23 aesthetics and glare, traffic, recreation, health and safety, and land use and planning. Comments also
24 objected that the Draft and Final EIR fail to provide an adequate analysis of alternatives and failed to
25 comply with the disclosure and analysis requirements of SB 610, Water Code §§ 10910 et. seq.
26 Comments also objected that the Project conflicts with the County's requirements for a use permit for
27 tree removals, the County's requirements for review of project consistency with the 2010 Monterey
28 County General Plan, the Fort Ord Reuse Plan, and the Fort Ord Reuse Authority Act.

1 48. Despite these comments, on June 14, 2011, the Board of Supervisors adopted a Resolution of
2 Intention to certify the EIR and approve the Project entitlements. On July 12, 2011, the Board of
3 Supervisors adopted resolutions certifying the Final EIR, granting the appeal, approving the Combined
4 Development Permit, adopting the Mitigation Monitoring and Reporting Plan, and allocating water
5 supply. The Board of Supervisors also adopted an ordinance rezoning the Project site.

6 49. On July 12, 2010, the County filed and posted a “Notice of Determination” in accordance with
7 Public Resources Code § 21152.

8 **FIRST CLAIM FOR RELIEF**

9 **(Violations of CEQA)**

10 50. LandWatch here incorporates by reference all preceding paragraphs in their entirety.

11 51. At all times relevant to this action the County was the “Lead Agency” responsible for the
12 review and approval of the Project under Public Resources Code § 21067.

13 52. CEQA requires public agencies to first identify the environmental effects of its project or
14 program, and then to mitigate those adverse environmental effects through the imposition of feasible
15 mitigation measures or the analysis and selection of feasible alternatives. Public Resources Code, §
16 21002.

17 53. An EIR must include a description of the physical environmental conditions in the vicinity of
18 the project as they existed at the time the notice of preparation is published, with particular focus on the
19 regional setting EIR and any inconsistencies between the proposed project and applicable general plans
20 and regional plans. 14 C.C.R., § 15125.

21 54. An EIR must include a finite, stable, and accurate project description that is adequate for
22 review and evaluation of environmental impacts. 14 C.C.R., § 15124.

23 55. An EIR must identify and evaluate the direct, indirect, and cumulative environmental impacts
24 of all phases of a project. 14 C.C.R., § 15126. The discussion must include relevant specifics of the
25 area, the resources involved, physical changes, alterations to ecological systems, and changes induced in
26 population distribution, population concentration, the human use of the land (including commercial and
27 residential development), health and safety problems caused by the physical changes, and other aspects of
28

1 the resource base such as water, historical resources, scenic quality, and public services. 14 C.C.R., §
2 15126.2.

3 56. A lead agency must describe and evaluate feasible measures for minimizing or avoiding a
4 project's direct, indirect, and cumulative impacts on the environment. Public Resources Code, §
5 21100(b)(3); 14 C.C.R., § 15126.4. A lead agency may not improperly defer the formulation of
6 mitigation measures until a future time. 14 C.C.R., § 15126.4. Mitigation measures must be enforceable
7 and feasible. CEQA Guidelines, § 15126.4(a)(1), (2

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

10 58. A lead agency must provide information in the record to justify rejecting alternatives or
11 mitigation measures as infeasible based on economic, social, or housing reasons. 14 C.C.R., § 15131(c).

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

15 60. An EIR must describe a range of reasonable alternatives to the project, or to the location of
16 the project, that would feasibly attain most of the basic objectives of the project but would avoid or
17 substantially lessen any of the significant effects of the project, and must evaluate the comparative merits
18 of the alternatives. 14 C.C.R., § 15126.6. An EIR must include sufficient information about each
19 alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. *Id.*

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

24 62. CEQA requires a lead agency to establish that either: (1) changes or alterations have been
25 required in, or incorporated into, the project which mitigate or avoid the significant effects on the
26 environment, (2) those changes or alterations are within the responsibility and jurisdiction of another
27 public agency and have been, or can and should be, adopted by that other agency, or (3) specific
28 economic, legal, social, technological, or other considerations make infeasible the mitigation measures or

1 alternatives identified in the environmental impact report. Public Resources Code, § 21081; 14 C.C.R.,
2 §§ 15091, 15092, 15093.

3 63. All findings under Public Resources Code § 21081(a) must be supported by substantial
4 evidence in the record. 14 C.C.R., § 15384(b). Moreover, the findings must explicitly cite the
5 substantial evidence in the record upon which they rely. *Environmental Prot. & Info. Center v. Cal.*
6 *Dept. of Forestry & Fire Prot.* (“EPIC”) (2008) 44 Cal.4th 459, 515-516; *see generally Topanga Assoc.*
7 *for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506.

8 64. Thus, under CEQA, the County here was required to prepare an EIR that included an accurate
9 description of the environmental setting and project, and a detailed statement setting forth all of the
10 following: (a) all significant effects on the environment of the proposed project; (b) any significant effect
11 on the environment that cannot be avoided if the project is implemented; (c) feasible mitigation measures
12 proposed to minimize significant effects on the environment; and (d) alternatives to the proposed Project.

13 **Inadequate Description of Setting**

14 65. The EIR for the Project fails to provide an adequate description of the environmental setting.
15 For example, it fails adequately to describe the oak woodlands at the Project site and at proposed
16 mitigation sites and it fails to describe conflicts with applicable general plans and regional plans.

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

20 **Inadequate Description of Project**

21 67. The EIR for the Project fails to provide an adequate and stable description of the Project,
22 including, for example, the plans for and extent of the proposed Whispering Oaks Business Park, the
23 location and extent of the Project’s elimination of oak woodlands, the proposed conservation easements
24 and open space preservation, and plans for drainage facilities.

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

28 /

1 **Inadequate Analysis of Significant Impacts**

2 69. The EIR for this Project fails to evaluate adequately all of the Project’s significant direct,
3 indirect, and cumulative impacts, including, for example, impacts to oak woodlands, traffic, air quality,
4 green house gas, recreation, wildlife, sensitive habitats, rare plants, water quality, aesthetics and glare,
5 land use and planning, health and safety, and water supply.

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

9 **Failure To Require All Feasible Mitigation Measures**

10 71. EQA bars an agency from approving a project if there are feasible mitigation measures
11 available that would substantially lessen the project’s significant environmental effects. Public
12 Resources Code, §§ 21001(d), 21081(a). If an agency approves a project based on a finding that one or
13 more mitigation measures are infeasible, the agency must describe the specific reasons for rejecting the
14 mitigation measures, based on substantial evidence. 14 C.C.R., § 15091.

15 72. An EIR must describe, evaluate, and require feasible measures for minimizing or avoiding a
16 project’s direct, indirect, and cumulative impacts on the environment. 14 C.C.R. § 15126.4.

17 73. The EIR for this Project fails to describe, evaluate, and require all reasonable, feasible
18 mitigation measures for the Project’s direct, indirect, and cumulative impacts, including, for example,
19 impacts to oak woodlands, traffic, air quality, green house gas, recreation, wildlife, sensitive habitats, rare
20 plants, water quality, aesthetics and glare, land use and planning, health and safety, and water supply.
21 The EIR also improperly defers formulation of mitigation measures.

22 74. The County rejected mitigation measures as infeasible without substantial evidence.

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

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1 **Violation of The Oak Woodlands Conservation Act**

2 76. The Oak Woodlands Conservation Act, Public Resources Code § 21083.4, requires that a
3 project mitigate impacts to oak woodlands through specific alternatives. For example, no more than half
4 of a project’s mitigation of impacts to oak woodlands may consist of tree planting.

5 77. The Project’s mitigation for impacts to oak woodlands fails to comply with the Oak
6 Woodlands Conservation Act.

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

10 **Violation of SB 610**

11 79. Under the provisions of Senate Bill 610 (“SB 610”), a lead agency is required to prepare or
12 obtain a water supply assessment (“WSA”) for large projects and to include this assessment in the CEQA
13 document prepared for the project. Public Resources Code, § 21151.9; Water Code, §§ 10911(b),
14 10912(a).

15 80. The water supply assessment and any plans for additional supplies must be included in the
16 EIR. Water Code, § 10911(b).

17 81. The Project’s Water Supply Assessment fails to meet the requirements of SB 610 because it is
18 inaccurate and/or lacks mandated information. For example, the Water Supply Assessment fails to
19 describe accurately the project’s water supply entitlements or to provide information about groundwater
20 pumping.

21 82. Because the EIR fails to present essential information that is statutorily required under SB
22 610, there is no substantial evidence to support a determination that there is an adequate water supply for
23 the Project.

24 83. The EIR does not present substantial evidence that acknowledged basin overdrafting and salt
25 water intrusion impacts can be avoided. Substantial evidence in the record demonstrates that the EIR’s
26 conclusions regarding the sufficiency of water supplies is based on an out of date analysis, the
27 assumptions for which have materially changed.

1 84. The County therefore prejudicially abused its discretion in certifying the EIR by failing to
2 proceed in the manner required by CEQA and SB 610, and by adopting findings that are not supported by
3 the evidence

4 **Inadequate Analysis and Findings Regarding Alternatives**

5 85. CEQA bars an agency from approving a project if there are feasible alternatives available that
6 would substantially lessen the project’s significant environmental effects. Public Resources Code, §§
7 21001(d), 21081(a). An EIR must describe a range of reasonable alternatives to the project, or to the
8 location of the project, that would feasibly attain most of the basic objectives of the project and would
9 avoid or substantially lessen any of the significant effects of the project, and must evaluate the
10 comparative merits of the alternatives. 14 C.C.R., § 15126.6. CEQA defines “feasible” as: “capable of
11 being accomplished in a successful manner within a reasonable period of time, taking into account
12 economic, environmental, social, and technological factors.” Public Resources Code, § 21061.1. If an
13 agency approves a project based on a finding that one or more alternatives are infeasible, the agency must
14 describe the specific reasons for rejecting the alternatives, based on substantial evidence. 14 C.C.R., §
15 15091.

16 86. The EIR fails to identify a reasonable range of alternatives. For example, the alternatives
17 evaluated in the EIR fail to meet most of the basic Project objectives and to avoid or substantially lessen
18 significant impacts.

19 87. The County failed to make findings of infeasibility for each alternative and its findings are not
20 supported by substantial evidence.

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

24 **Failure to Provide Adequate Comment Responses**

25 89. A final EIR must provide good faith, reasoned analysis in response to comments on a Draft
26 EIR. 14 C.C.R., § 15088.

27 90. The Final EIR failed to provide good faith, reasoned analysis in response to DEIR comments
28 made by LandWatch and others.

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

4 **Failure to Identify All Unavoidably Significant Impacts And Unsupported Statement Of**
5 **Overriding Considerations**

6 92. A lead agency must identify significant unavoidable impacts. 14 C.C.R., § 15126.

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

11 94. The EIR fails to identify consistently impacts to aesthetics and glare as significant and
12 unavoidable, characterizing these impacts as significant and unavoidable in one section and as less than
13 significant in another section.

14 95. The EIR and Findings for the Project identify some impacts as unavoidably significant, but
15 the County found these impacts acceptable and adopted a statement of overriding considerations.

16 96. There is no substantial evidence in the record to support the statement of overriding
17 considerations, and the statement itself is inadequately supported by findings. There is substantial
18 evidence in the record that disproves the statement.

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

22 **SECOND CLAIM FOR RELIEF**

23 **(Violations of State Planning And Zoning Law)**

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

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

1 100. At the time the County approved the Project, the 2010 Monterey County General Plan, which
2 includes the Fort Ord Master Plan, was the County's general plan for purposes of the consistency
3 requirements of the State Planning and Zoning Law.

4 101. The Project is inconsistent and incompatible with applicable goals, policies and objectives of
5 the 2010 Monterey County General Plan, including, for example, Policy OS 5.23 (oak woodlands
6 mitigation).

7 102. The Project is inconsistent with Fort Ord Master Plan Objectives, Policies and Programs,
8 including, but not limited to the following: Recreation/Open Space Land Use Policy E-1 and its
9 implementing programs (uses in Polygon 8a); Biological Resources Policy B-2 (coordination of oak
10 woodland conservation area connecting open space uses in and through Polygon 8a); Biological
11 Resources Policy C-2 (oak woodlands preservation); Biological Resources Policy C-3 (lighting impacts
12 to undeveloped lands); Recreation Policy E-2 and its implementing programs (recreation within Polygon
13 8a); Recreation Policy E-3 (equestrian center/trail access point); Recreation Policy F-2 and its
14 implementing programs (comprehensive trails).

15 103. The Project and the Heavy Commercial zoning designation are inconsistent with the Planned
16 Development Mixed Use land use designation in the Fort Ord Master Plan because, *inter alia*, the Project
17 is not intended to create pedestrian oriented communities.

18 104. The Project and the Heavy Commercial zoning designation are inconsistent with maximum
19 density provisions regulating development in the Fort Ord Master Plan.

20 105. The Fort Ord Management Plan is internally inconsistent and inconsistent with the Fort Ord
21 Reuse Plan, with which it is intended and required to be consistent, and the Project implicates these
22 inconsistencies. For example, Fort Ord Master Plan Recreation/Open Space Land Use Policy E-1 and its
23 implementing programs (uses in Polygon 8a) and Fort Ord Master Plan Recreation Policy E-2 and its
24 implementing programs (recreation within Polygon 8a) are inconsistent with the Fort Ord Reuse Plan.

25 106. The County therefore abused its discretion by failing to proceed in the manner required by the
26 State Planning and Zoning Law by adopting findings of General Plan consistency for the Project that are
27 not supported by the evidence.

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1 **THIRD CLAIM FOR RELIEF**

2 **(Violations of Monterey County Code)**

3 107. LandWatch here incorporates by reference all preceding paragraphs in their entirety.

4 **Violation of Tree Preservation Ordinances**

5 108. Monterey County Code §§ 21.64.260 and 16.60.040 require a use permit for projects that
6 remove more than 3 trees, based on a Forest Management Plan and on specific findings made after
7 CEQA review.

8 109. Issuance of a tree removal use permit as part of the Combined Development Permit The
9 Project violates Monterey County Code §§ 21.64.260 and 16.60.040 because, *inter alia*, no Forest
10 Management Plan was prepared for the Whispering Oaks Business Park portion of the Project, the
11 removal of trees is not the minimum required under the circumstances of the case, and the removal will
12 cause adverse environmental impacts.

13 110. The County therefore abused its discretion by failing to proceed in the manner required by the
14 Monterey County Code in approving the Project.

15 **Violation of Ordinances No. 5171 and 5172**

16 111. Monterey County Ordinances No. 5171 and 5172 require staff to make a determination of
17 project consistency with the 2010 Monterey County General Plan.

18 112. No consistency determination was prepared for inclusion in the EIR or in staff reports to the
19 Subdivision Committee or the Planning Commission. The belated consistency determination prepared
20 prior to the Board of Supervisors hearing of the appeal is inadequate.

21 113. The County therefore abused its discretion by failing to proceed in the manner required by the
22 Monterey County Code in approving the Project.

23 **FOURTH CLAIM FOR RELIEF**

24 **(Violations of the Fort Ord Reuse Authority Act)**

25 114. The Fort Ord Reuse Authority Act provides that local land use agency shall have development
26 review authority within Fort Ord only if that agency has a General Plan certified by FOR A as consistent
27 with the Fort Ord Reuse Plan. Government Code §§ 67675.6(a); 67675.8(b)(2); Fort Ord Reuse
28 Authority Master Resolution § 8.01.030(a).

1 115. Although the County adopted the 2010 Monterey County General Plan in October 2010, the
2 County has not submitted, and FORA has not certified, the Monterey County 2010 General Plan, which
3 includes the County's Fort Ord Master Plan, as is required by Government Code §§ 67675.2 and
4 67675.7.

5 116. LandWatch is informed and believes that the County has not submitted, and FORA has not
6 certified, the predecessor general plan, i.e., the County's 1982 General Plan, which, in any event, does
7 not even purport to conform to, or to provide for implementation of, the Fort Ord Base Reuse Plan as is
8 required by Government Code §§ 67675.2 and 67675.3 and FORA Master Resolution Article 8.02.

9 117. Because it does not have a FORA-certified General Plan, the County lacks authority to
10 approve any development entitlements in Fort Ord.

11 118. The County therefore abused its discretion by failing to proceed in the manner required by the
12 Fort Ord Reuse Authority Act in approving the Project.

13 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

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

20 120. Petitioner has performed all conditions precedent to filing this action by complying with the
21 requirements of Public Resources Code § 21167.5 in serving notice of the commencement of this action
22 August 5, 2011.

23 **INADEQUATE REMEDY AT LAW**

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

26 **NECESSITY FOR TEMPORARY RELIEF**

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

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

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

12 **ATTORNEYS’ FEES**

13 125. LandWatch is entitled to recover attorneys’ fees as provided in Code of Civil Procedure §
14 1021.5 if they prevail in this action and the Court finds that a significant benefit has been conferred on
15 the general public or a large class of persons, and that the necessity and burden of private enforcement is
16 such as to make an award of fees appropriate.

17 **PRAYER**

18 WHEREFORE, LandWatch pray for entry of judgment as follows:

19 1. For a peremptory writ of mandate directing the County:

20 (a) to set aside its July 12, 2011 action certifying an EIR for the Project;

21 (b) to set aside its July 12, 2011 action approving the Combined Development Permit and a
22 Mitigation Monitoring and Reporting Program and its action adopting a zoning amendment for the
23 Project;

24 (c) to refrain from issuing permits or granting subdivision map approvals until the County
25 has taken action necessary to bring its approval of Project into compliance with CEQA, the Planning and
26 Zoning Law, the Fort Ord Reuse Authority Act, County ordinances, and SB 610;

27 (d) to comply with CEQA in any subsequent action or actions taken to approve the Project;
28

1 2. For an order granting temporary relief, including a prohibition of permits and subdivision
2 map approvals, pending the outcome of this proceeding.

3 3. For a preliminary and permanent injunction directing the County and Real Parties to
4 cease and refrain from engaging in any action purporting to be authorized by the Project entitlements
5 that could result in any change or alteration in the physical environment until the County takes any
6 necessary action to bring its action into compliance with CEQA, the Planning and Zoning Law, the Fort
7 Ord Reuse Authority Act, County ordinances, and SB 610.

8 4. For their costs of suit.

9 5. For an award of attorneys' fees.

10 6. For other legal or equitable relief that the Court deems just and proper.

11 Dated: August 5, 2011

M. R. WOLFE & ASSOCIATES, P.C.

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16 Mark R. Wolfe
17 John H. Farrow
18 Attorneys for Plaintiff and Petitioner
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VERIFICATION

I, Amy White, declare:

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

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

Dated: August 3, 2011



Amy White