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

12 LANDWATCH MONTEREY COUNTY, a
13 non-profit California Corporation, and
14 RANCHO SAN JUAN OPPOSITION
15 COALITION, an unincorporated association;

16 Plaintiffs and Petitioners,

17 vs.

18 COUNTY OF MONTEREY;

19 Defendant and Respondent

20 H-Y-H CORPORATION, a Delaware
21 Corporation; and DOES I through XXV,
22 inclusive;

23 Defendants and Real Parties
24 In Interest

Case No.:

**PETITION FOR WRIT OF MANDATE;
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF; COMPLAINT
FOR VALIDATION**

(Code Civ. Proc. §§ 1085, 1094.5, 863;
California Environmental Quality Act, Pub.
Res. Code § 21000 *et seq.*; State Planning and
Zoning Law, Gov't Code § 65000 *et seq.*;
Monterey County Code.)

1 **INTRODUCTION**

2 1. This Petition and Complaint challenges the December 14, 2004 actions of Respondent
3 COUNTY OF MONTEREY (“County”) approving general plan and area plan amendments, a specific
4 plan, zoning changes, amendments to the County subdivision ordinance, a vesting tentative subdivision
5 map, a development agreement, a development permit and other use permits, and certifying an
6 Environmental Impact Report (“EIR”) pursuant to the California Environmental Quality Act (“CEQA”),
7 Public Resources Code section 21000 *et seq.*, for the Rancho San Juan Specific Plan/Butterfly Village
8 Project (“Project”), a 2,581-acre mixed-use residential, commercial, industrial, and recreational project
9 to be developed by real party in interest H-Y-H CORPORATION (“H-Y-H”). Petitioners and plaintiffs
10 LANDWATCH MONTEREY COUNTY and RANCHO SAN JUAN OPPOSITION COALITION
11 (collectively “Petitioners”) allege that the County approved the Project in violation of applicable
12 provisions of: (1) CEQA; (2) the State Planning and Zoning Law, Government Code section 65000 *et*
13 *seq.*; and (3) applicable provisions of the Monterey County Code. Petitioners also allege that the County
14 improperly entered into a development agreement and granted other entitlements to H-Y-H after H-Y-
15 H’s corporate powers, rights, and privileges had been suspended by the Secretary of State, and it was
16 unauthorized to transact business in California.

17 2. Petitioners seek a peremptory writ of mandate under Code of Civil Procedure section 1094.5
18 commanding the County to set aside its certification of the Environmental Impact Report and its
19 corresponding permits and/or approvals for the Project. Petitioners also seek a writ of mandate under
20 Code of Civil Procedure section 1085 commanding the County to bring its General Plan and zoning
21 ordinance into compliance with the requirements of the Planning and Zoning Law within 120 days, and
22 to set aside the Project-related General Plan amendment, zoning changes, subdivision ordinance
23 amendments, development agreement, and specific plan. Petitioners also seek a preliminary and
24 permanent injunction barring the County and H-Y-H from undertaking any activity that could
25 potentially alter the physical environment unless and until the County has taken all actions necessary to
26 bring its actions into conformance with CEQA, the State Planning and Zoning Law, and the Monterey
27 County Code. Petitioners further seek an order declaring the development agreement invalid, and other
28 entitlements null and void, due to H-Y-H Corporation’s forfeiture of its corporate powers, rights, and

1 privileges. Finally, Petitioners seek a stay of the effect of the County’s approval of the Project during
2 the pendency of these proceedings.

3 **PARTIES**

4 **LandWatch Monterey County**

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

13 4. LandWatch’s members, directors, and staff include residents, taxpayers, and electors in
14 Monterey County who currently enjoy the multitude of aesthetic, recreational, and health benefits
15 stemming from the current undeveloped state of the Project area. These include: clean air, preserved
16 natural resources, agricultural productivity, unobstructed views of the natural landscape, hiking trails,
17 and traffic levels significantly less than those they will experience if the Project proceeds.

18 5. LandWatch’s members, directors, and staff have a clear and present right to, and beneficial
19 interest in, the County’s performance of its duties to comply with CEQA, the State Planning and Zoning
20 Law, and the Monterey County Code. As citizens, homeowners, taxpayers, and electors, LandWatch’s
21 members, directors, and staff are within the class of persons to whom the County owes such duties.

22 6. LandWatch’s members, directors, and staff will also suffer direct injury as a result of the
23 Project’s adverse environmental, public health, aesthetic, and land use impacts. These include: the
24 permanent loss of vast quantities of currently undeveloped open space and agricultural lands, blighting
25 of the area’s landscape, air pollution associated with increased vehicle traffic from construction and
26 operation of the Project, permanent loss of habitat for plant and animal species including species
27 protected under state and federal law, loss of recreational opportunities, increased traffic congestion in
28

1 the area, impacts to local water supply and water quality from poorly planned and inefficient land
2 development, and an overall decrease in quality of life.

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

7 8. LandWatch presented oral and written comments in opposition to the Project, including
8 comments on the Draft EIR, to the County prior to and during the public hearings culminating in the
9 County's December 14, 2004 approvals.

10 **Rancho San Juan Opposition Coalition**

11 9. Petitioner RANCHO SAN JUAN OPPOSITION COALITION ("the Coalition") is an
12 unincorporated association of citizens, residents, property owners, and taxpayers in Monterey County.
13 The Coalition's members currently enjoy the multitude of aesthetic, recreational, and health benefits
14 stemming from the current undeveloped state of the Project area. These include: clean air, preserved
15 natural resources, agricultural productivity, unobstructed views of the natural landscape, hiking trails,
16 and traffic levels significantly less than those they will experience if the Project proceeds.

17 10. The Coalition's members have a clear and present right to, and beneficial interest in, the
18 County's performance of its duties to comply with CEQA, the State Planning and Zoning Law, and the
19 Monterey County Code. As citizens, homeowners, taxpayers, and electors, the Coalition's members are
20 within the class of persons to whom the County owes such duties.

21 11. The Coalition's members will also suffer direct injury as a result of the Project's adverse
22 environmental, public health, aesthetic, and land use impacts. These include: the permanent loss of vast
23 quantities of currently undeveloped open space and agricultural lands, blighting of the area's landscape,
24 air pollution associated with increased vehicle traffic from construction and operation of the Project,
25 permanent loss of habitat for plant and animal species including species protected under state and
26 federal law, loss of recreational opportunities, increased traffic congestion in the area, impacts to local
27 water supply and water quality from poorly planned and inefficient land development, and an overall
28 decrease in quality of life.

1 12. By this action, the Coalition seeks to protect the interests of its members and to enforce a
2 public duty owed to them by the County. Because the claims asserted and the relief sought in this
3 petition are broad-based and of a public as opposed to a purely private or pecuniary nature, direct
4 participation in this litigation by the Coalition's individual members is not necessary.

5 13. The Coalition presented oral and written comments in opposition to the Project, including
6 comments on the Draft EIR, to the County prior to and during the public hearings culminating in the
7 County's December 14, 2004 approvals.

8 **County of Monterey**

9 14. Defendant COUNTY OF MONTEREY ("County") is a political subdivision of the State of
10 California. On December 14, 2004, the County, through its Board of Supervisors, approved general plan
11 and area plan amendments, a specific plan, zoning changes, subdivision ordinance changes, a vesting
12 tentative subdivision map, a development agreement, a development permit and other use permits, and
13 certified an EIR under CEQA for the Project. The County is the "Lead Agency" responsible under
14 CEQA for evaluating the environmental impacts of this Project. The County is also the entity
15 responsible under the State Planning and Zoning Law and the Monterey County Code for evaluating and
16 approving the Project with respect to its compliance with all applicable local planning, zoning, and land
17 use ordinances.

18 **H-Y-H Corporation**

19 15. Real Party In Interest H-Y-H CORPORATION ("H-Y-H") is a Delaware Corporation
20 maintaining a California address at 655 Redwood Highway, Suite 332, Mill Valley. H-Y-H is the
21 applicant for and recipient of the land use entitlements and permits issued by the County for the Project
22 on December 14, 2004, and challenged herein.

23 16. The Secretary of State has certified that H-Y-H's corporate powers, rights and privileges
24 were forfeited in the state of California pursuant to Revenue and Taxation Code section 23302 as of
25 March 1, 2004, and remain forfeited as of January 11, 2005.

26 **Does**
27
28

1 17. Petitioners currently do not know the true names of DOES I through XXV inclusive, and
2 therefore name them by such fictitious names. Petitioners will seek leave from the court to amend this
3 petition to reflect the true names and capacities of DOES I through XXV inclusive once ascertained.

4 **JURISDICTION AND VENUE**

5 18. This action is brought pursuant to Public Resources Code sections 21167 and 21168,
6 Government Code sections 65751 and 65860, and Code of Civil Procedure sections 1085,1094.5, and
7 863. Venue is proper in the County of Monterey under Code of Civil Procedure section 395.

8 **PROCEDURAL HISTORY AND AGENCY ACTION**

9 19. The Project area consists of 2,581 acres and is located in northern portion of Monterey
10 County in a region known as the Greater Salinas Area. It is located just north of and adjacent to the City
11 of Salinas within a general area bounded by the historic Bolsa de Escarpines Rancho boundary to the
12 north, Crazy Horse Canyon Road and San Juan Grade Road to the east, Russell Road to the south, and
13 Highway 101 to the west.

14 20. Land uses in the Project area are governed by the goals, policies, and objectives of the
15 Monterey County General Plan and the Greater Salinas Area Plan. The land use, traffic and circulation,
16 conservation, safety, and noise elements of the General Plan were last updated in 1982. The housing
17 and open space elements were last updated in 1992. The Greater Salinas Area Plan was adopted in
18 1985, and last updated in 1996.

19 21. On or about September 27, 2002, H-Y-H applied to the County for various land use
20 entitlements to develop the Project. The application sought amendments to the Monterey County
21 General Plan and the Greater Salinas Area Plan, changes to the Monterey County Zoning Ordinance and
22 Subdivision Ordinance, and approvals of a specific plan, development permit, development agreement,
23 vesting tentative map, and various other approvals. The County deemed the application complete on
24 February 3, 2003.

25 22. The Project includes: 4,000 residential units, 373,000 square feet of retail/community space,
26 2.4 million square feet of light industrial/business park use, 243,000 square feet of office development,
27 an 18-hole golf course and clubhouse, a small hotel, parks, and open space. It is the largest single
28 development ever proposed in Monterey County.

1 23. On or about July 21, 2003, the County released a draft Rancho San Juan Specific Plan. The
2 County later revised the Specific Plan on or about March 15, 2004.

3 24. On or about May 18, 2004, the County filed a Notice of Availability and circulated a Draft
4 EIR for the Project. The public review period was from May 19, 2004 to July 12, 2004.

5 25. Several interested agencies, private individuals, and organizations, including Petitioners,
6 provided written comments on the Draft EIR during the public comment period. State and local
7 agencies with jurisdiction over resources impacted by the Project also submitted comments.

8 26. In their comments, Petitioners and others challenged the scope and adequacy of the Draft
9 EIR's analysis of Project-related environmental impacts, its conclusions regarding the significance of
10 such impacts; and its recommendations for mitigating them. Petitioners and others also challenged the
11 Project's consistency with the General Plan and applicable regional plans.

12 27. On or about November 8, 2004, the County released a Final EIR for the Project.

13 28. On December 2, 2004, the County's Planning Commission held a public hearing on the
14 Project. Following the hearing, the Planning Commission adopted a resolution recommending that the
15 County Board of Supervisors: (a) not certify the Final EIR for the Project; (b) not adopt the proposed
16 general plan and area plan amendments; (c) not adopt the proposed Rancho San Juan Specific Plan; (d)
17 not approve the proposed zoning changes; (e) deny the development permit; and (f) not approve the
18 proposed Development Agreement between H-Y-H and the County.

19 29. On December 14, 2004, the County Board of Supervisors conducted a hearing on the Project,
20 at which Petitioners and others presented oral comments opposing the Project. Following the hearing,
21 the Board voted to reject the Planning Commission's recommendations, and to adopt resolutions and
22 ordinances approving entitlements and permits for the Project, and certifying the Final EIR.

23 30. Included in the County's recitals approving the General Plan and Area Plan amendments
24 were findings that the amendments were compatible and internally consistent with the County General
25 Plan and the Greater Salinas Area Plan.

26 31. Included in the County's recitals approving the Rancho San Juan Specific Plan were findings
27 that the Specific Plan was consistent with the County General Plan and Greater Salinas Area Plan, and
28 would implement the goals and objectives of those plans in the Project area.

1 32. Included in the County’s findings approving the Butterfly Village development permit were
2 findings that the Project was consistent with the proposed Rancho San Juan Specific Plan, the Monterey
3 County General Plan, as proposed to be amended, and the Greater Salinas Area Plan, as proposed to be
4 amended. Also included were findings that the Project was in compliance with all rules and regulations
5 pertaining to zoning uses, subdivisions and any other applicable provisions of Title 21 of the Monterey
6 County Code (Zoning), as proposed to be amended.

7 33. Included in the County’s findings certifying the EIR for the Project were findings that: (a) the
8 EIR evaluated all potentially significant environmental impacts that could result from the approval of the
9 Project, alternatives to the Project, and measures designed to mitigate or avoid the potentially significant
10 impacts of the Project; (b) the Project would cause certain significant environmental impacts that were
11 either less-than-significant, or that would be reduced to a less-than-significant level as a result of
12 implementing feasible mitigation measures; (c) the Project would cause certain other significant adverse
13 environmental impacts that are unavoidable even after mitigation, and that no additional feasible
14 mitigation measures are available to reduce these impacts to less-than-significant levels; and (d) that
15 alternatives to the Project or the Project location that would reduce or avoid potentially significant
16 impacts, including a “No Project” alternative, as evaluated in the EIR, were infeasible or “less desirable”
17 due to economic, social, or other considerations.

18 34. The Board’s findings also included a finding that no facts, reasonable assumptions predicated
19 on facts, testimony supported by adequate factual foundation, or expert opinion supported by facts, had
20 been submitted that refute the conclusions reached by the studies, data, reports and analysis contained in
21 the Final EIR.

22 35. In adopting a statement of overriding considerations pursuant to Section 21080 of the Public
23 Resources Code, the Board found that economic, legal, social, technological, or other benefits of the
24 Specific Plan and HYH Project outweighed their unavoidable adverse environmental effects so that the
25 adverse environmental effects may be considered “acceptable.”

26 36. The Board’s findings certifying the EIR also included a finding that recirculation of a revised
27 Draft EIR was not required because “amplifications and clarifications made to the Draft EIR in the Final
28 EIR do not collectively or individually constitute significant new information within the meaning of

1 Public Resources Code Section 21092.1 and CEQA Guidelines Section 15088.5, and because the Final
2 EIR does not contain significant new information, as defined in CEQA Guidelines Section 15088.5,
3 which would require re-circulation of the modified sections or entire document.”

4 37. On December 16, 2004 the County filed and posted a “Notice of Determination” in
5 compliance with Public Resources Code section 21152.

6 38. On January 13, 2005, Petitioners served the County by mail with notice of commencement of
7 this action.

8 **FIRST CLAIM FOR RELIEF**

9 **(Violation of CEQA)**

10 39. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

11 40. 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 section 21067.

13 41. A Lead Agency may not approve a development project without performing the
14 environmental review required by CEQA.

15 42. Under CEQA, the County was required to prepare an EIR that included an accurate, stable,
16 and finite project description, and a detailed statement setting forth all of the following: (a) all
17 significant effects on the environment of the proposed project; (b) any significant effect on the
18 environment that cannot be avoided if the project is implemented; (c) any significant effect on the
19 environment that would be irreversible if the project is implemented; (d) mitigation measures proposed
20 to minimize significant effects on the environment; (e) alternatives to the proposed project, including
21 alternative locations; (f) the growth-inducing impact of the proposed project.

22 43. Under Public Resources Code section 21110, the EIR was also required to contain a
23 statement briefly indicating the reasons for determining that various effects on the environment of the
24 Project were not significant and consequently were not discussed in detail in the EIR.

25 44. Under Public Resources Code section 21100(b)(2)(A), when preparing an environmental
26 impact report a Lead Agency must identify all significant effects on the environment caused by a
27 proposed project that cannot be avoided.
28

1 45. Under Public Resources Code section 21100(b)(3), when preparing an environmental impact
2 report a Lead Agency must identify mitigation measures to minimize significant impacts on the
3 environment. A lead agency may not improperly defer the formulation of mitigation measures until a
4 future time.

5 46. Under Public Resources Code section 21081(a), a Lead Agency may not approve a project
6 for which an EIR identifies a significant environmental impact unless the impact has been mitigated or
7 avoided by changes in the project or unless the agency specifically finds that overriding benefits
8 outweigh the significant effects on the environment.

9 **Count One – Inadequate Project Description**

10 47. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

11 48. Under CEQA, an EIR must include a finite, stable, accurate and meaningful project
12 description. (14 C.C.R. § 15124.)

13 49. The EIR for this Project fails to include a complete, accurate, stable, finite, and meaningful
14 description of the Project as required by CEQA. The EIR’s project description omits key project
15 features that have the potential to cause significant impacts, including meaningful descriptions of the
16 landscape alternation and grading that will be required to construct the Project; the proposed uses of the
17 Project; the layout and nature of the Project’s improvements, lots, buildings, and infrastructure; and the
18 construction activities required to build the Project.

19 50. 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 **Count Two – Inadequate Description Of Environmental Setting**

23 51. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

24 52. Under CEQA, an EIR must include a description of the physical environmental conditions in
25 the vicinity of the project as they existed at the time the notice of preparation is published, with
26 particular focus on the regional setting. (14 C.C.R. § 15125.)

27 53. An EIR must also discuss any inconsistencies between the proposed project and applicable
28 general plans and regional plans. (14 C.C.R. § 15125(c).)

1 54. The EIR fails to include an accurate description of the Project’s physical and environmental
2 setting, and fails to identify or discuss numerous inconsistencies between the Project and the Monterey
3 General Plan, the Greater Salinas Area Plan, and applicable regional plans, including the Monterey
4 County Water Resources Agency Ordinance No. 3539, the Monterey County Groundwater Ordinance
5 No. 4037, the Monterey Bay Unified Air Pollution Control District’s 2004 Air Quality Management
6 Plan, the Central Coast Regional Water Quality Control Board’s Water Quality Management Plan, the
7 Boronda Memorandum of Understanding, the City of Salinas General Plan, and the 2002 Monterey
8 County Regional Transportation Plan.

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

12 **Count Two - Failure To Evaluate Adequately All Significant Project Impacts**

13 56. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

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

21 58. The EIR for this Project fails to evaluate all the Project’s significant direct, indirect, and
22 cumulative impacts, including impacts on: aesthetics, agricultural resources, air quality, biological
23 resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water
24 quality, land use and planning, mineral resources, noise, population and housing, public services,
25 recreation, transportation and traffic, and utilities.

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

1 **Count Three – Failure To Evaluate Adequately All Feasible Mitigation Measures**

2 60. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

3 61. An EIR must describe and evaluate feasible measures for minimizing or avoiding a project’s
4 direct, indirect, and cumulative impacts on the environment. (14 C.C.R. § 15126.4.)

5 62. The EIR for this Project fails to describe and evaluate all reasonable, feasible mitigation
6 measures for the Project’s direct, indirect, and cumulative impacts, including impacts on aesthetics,
7 agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards
8 and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise,
9 population and housing, public services, recreation, transportation and traffic, and utilities.

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

13 **Count Four – Improper Deferral Of Mitigation**

14 64. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

15 65. The EIR improperly defers to a future date evaluation of mitigation measures for Project
16 impacts, including those on aesthetics, agricultural resources, air quality, biological resources, cultural
17 resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use
18 and planning, mineral resources, noise, population and housing, public services, recreation,
19 transportation and traffic, and utilities.

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

23 **Count Five - Inadequate Analysis of Project Alternatives**

24 67. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

25 68. An EIR must describe a range of reasonable alternatives to the project, or to the location of
26 the project, which would feasibly attain most of the basic objectives of the project but would avoid or
27 substantially lessen any of the significant effects of the project, and evaluate the comparative merits of
28

1 the alternatives. (14 C.C.R. § 15126.6.) An EIR must include sufficient information about each
2 alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. (*Id.*)

3 69. The EIR fails to identify and evaluate a reasonable range of alternatives to the Project,
4 including alternative site designs, layouts, facilities placements, and configurations that would avoid or
5 minimize significant impacts.

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 **Count Six – Unsupported Statement Of Overriding Considerations**

10 71. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

11 72. Under Public Resources Code section 21081(b), an agency may not approve a project with
12 significant unavoidable impacts unless it finds, based on substantial evidence, that specific overriding
13 economic, legal, social, technological, or other benefits of the project outweigh the significant effects on
14 the environment.

15 73. The EIR identifies several impacts as unavoidably significant, but the County found these
16 impacts acceptable due to overriding economic, legal, social, technological, and other benefits of the
17 Project.

18 74. There is no substantial evidence in the record to support this finding. There is substantial
19 evidence in the record that disproves this finding.

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

23 **Count Seven – Failure To Recirculate Revised Draft EIR**

24 76. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

25 77. Under Public Resources Code section 21092.1, a lead agency must recirculate an EIR when
26 significant new information is added to the EIR following public review, but before certification. New
27 information is significant if the EIR is changed in a way that deprives the public of a meaningful
28 opportunity to comment upon a substantial adverse environmental effect of the Project.

1 78. In certifying the Final EIR, the County adopted findings that recirculation of the EIR was not
2 required because “amplifications and clarifications” made to the Draft EIR in the Final EIR do not
3 constitute new information within the meaning of Public Resources Code section 21092.1.

4 79. The Final EIR certified by the County contains significant new information within the
5 meaning of Public Resources Code section 21092.1 that deprives the public of a meaningful opportunity
6 to comment upon a substantial adverse environmental effect of the Project.

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

10 **SECOND CLAIM FOR RELIEF**

11 **(Violation of State Planning and Zoning Law)**

12 81. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

13 82. Under the Planning and Zoning Law, Government Code section 65000 *et seq.*, a local public
14 agency may entitle a proposed land use only if the land use is consistent with the goals, policies, and
15 objectives contained in a valid, current, internally consistent General Plan, and with all applicable duly
16 adopted zoning ordinances.

17 83. Government Code section 65300.5 requires that a general plan and elements and parts thereof
18 comprise an integrated, internally consistent and compatible statement of policies for the adopting
19 agency.

20 84. Government Code section 65302(b) provides that the circulation element of a general plan
21 shall be correlated with the land use element.

22 85. Government Code section 65103(a) requires a local planning agency, including the County,
23 to periodically review, and revise, as necessary, its general plan.

24 86. Government Code section 65751 provides that a writ of mandate under Code of Civil
25 Procedure section 1085 may be obtained to challenge a general plan or element thereof on the grounds
26 that such a plan or element does not comply with the requirements for general plans set forth at
27 Government Code section 65300 *et seq.*

1 87. Government Code section 65754 requires that where a court finds that a general plan or
2 element thereof does not comply with requirements for general plans set forth at Government Code
3 section 65300 *et seq.*, the County shall bring its general plan into compliance within 120 days.

4 88. Government Code section 65755 provides that the court may also order relief including
5 suspension of authority to issue permits, to grant zoning changes, and to grant subdivision map
6 approvals.

7 89. Code of Civil Procedure section 1094.5 provides that a court shall issue a writ of
8 administrative mandamus where a public agency, in a proceeding in which by law a hearing is required
9 to be given, has committed a prejudicial abuse of discretion. Abuse of discretion is established if the
10 agency has not proceeded in the manner required by law, the order or decision is not supported by the
11 findings, or the findings are not supported by the evidence.

12 **Count Eight – Invalid General Plan**

13 90. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

14 91. The Monterey County General Plan is incomplete, internally inconsistent, out-of-date, and
15 fails to comply with all applicable statutory criteria under the State Planning and Zoning Law.

16 92. The Monterey County General Plan therefore fails to comply with the requirements for
17 general plans set forth at Government Code section 65300, *et seq.*

18 **Count Nine – Project Not Consistent With Valid, Current General Plan**

19 93. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

20 94. At the time of the County's approvals of the Project and related General Plan and Area Plan
21 amendments challenged herein, the Monterey County General Plan was incomplete, internally
22 inconsistent, out-of-date, and failed to comply with all applicable statutory criteria under the Planning
23 and Zoning Law.

24 95. The Project is therefore not consistent with a valid, current, internally consistent General
25 Plan.

26 96. The Project further directly implicates the inadequacies of the General Plan.

27 97. The County's action approving the Project was therefore arbitrary and capricious and/or
28 constituted a prejudicial abuse of discretion, in that the County failed to proceed in the manner required

1 by the State Planning and Zoning Law, and adopted findings of General Plan consistency that are not
2 supported by the evidence.

3 **Count Ten – Amendments Render General Plan Inadequate And Internally Inconsistent**

4 98. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

5 99. The Planning and Zoning law requires General Plans to be internally consistent and that the
6 circulation element be correlated with the land use element.

7 100. At the time of the County’s approvals of the Project and related General Plan and Area Plan
8 amendments challenged herein, the Monterey County General Plan was incomplete, internally
9 inconsistent, out-of-date, and failed to comply with all applicable statutory criteria under the Planning
10 and Zoning Law.

11 101. In approving the Project, the County amended the County General Plan.

12 102. As a direct result of these amendments, the County General Plan’s circulation element is not
13 correlated with its land use element, and the General Plan is otherwise inadequate and internally
14 inconsistent.

15 103. The amendments to the General Plan further directly implicate the pre-existing inadequacies
16 of the County General Plan.

17 104. The County’s action in adopting General Plan amendments was therefore arbitrary and
18 capricious and/or constituted a prejudicial abuse of discretion, in that the County failed to proceed in the
19 manner required by the Planning and Zoning Law and adopted findings of General Plan consistency that
20 are not supported by the evidence.

21 **Count Eleven – Area Plan Amendments Render General Plan Inadequate And Internally
22 Inconsistent**

23 105. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

24 106. The Planning and Zoning law requires General Plans to be internally consistent and that the
25 circulation element be correlated with the land use element.

26 107. In approving the Project, the County amended the Greater Salinas Area Plan, which is part of
27 the County General Plan.

28 108. At the time of the County’s approvals of the Project and related General Plan and Area Plan
amendments challenged herein, the Monterey County General Plan was incomplete, internally

1 inconsistent, out-of-date, and failed to comply with all applicable statutory criteria under the Planning
2 and Zoning Law.

3 109. The amendments to the Greater Salinas Area Plans are inconsistent with the goals, policies,
4 and implementation plans in the County General Plan, including those concerning land use,
5 transportation, open space, conservation, and safety.

6 110. The amendments to the Greater Salinas Area Plan further directly implicate the inadequacies
7 of the County General Plan.

8 111. As a direct result of the amendments to the Greater Salinas Area Plan, the County General
9 Plan's circulation element is not correlated with its land use element, and the General Plan is otherwise
10 inadequate and internally inconsistent.

11 112. The County's action amending the Greater Salinas Area Plan was therefore arbitrary and
12 capricious and/or constituted a prejudicial abuse of discretion, in that the County failed to proceed in the
13 manner required by the Planning and Zoning Law and adopted findings of General Plan consistency that
14 are not supported by the evidence.

15 **Count Twelve – Zone Changes Not Consistent With Adequate General Plan**

16 113. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

17 114. The Planning and Zoning Law requires that zoning ordinances be consistent with a valid,
18 current, internally consistent General Plan.

19 115. At the time of the County's approvals of the Project and related General Plan and Area Plan
20 amendments challenged herein, the Monterey County General Plan was incomplete, internally
21 inconsistent, out-of-date, and failed to comply with all applicable statutory criteria under the Planning
22 and Zoning Law.

23 116. In approving the Project, the County adopted changes to the Monterey County zoning
24 ordinances that implement land use changes specified in the unlawfully adopted General Plan
25 amendments.

26 117. These zoning changes are inconsistent with the goals, policies, and implementation plans in
27 the County General Plan, including those concerning land use, transportation, open space, conservation,
28 and safety.

1 118. The zoning changes further directly implicate the inadequacies of the County General Plan.

2 119. The County's action in adopting these zoning changes was therefore arbitrary and capricious
3 and/or constituted a prejudicial abuse of discretion, in that the County failed to proceed in the manner
4 required by the Planning and Zoning Law and adopted findings of General Plan consistency that are not
5 supported by the evidence.

6 **Count Thirteen – Subdivision Ordinance Changes Not Consistent With Adequate General Plan**

7 120. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

8 121. The Planning and Zoning Law requires that a local subdivision ordinance be consistent with
9 a valid, current, internally consistent General Plan.

10 122. At the time of the County's approvals of the Project and related General Plan and Area Plan
11 amendments challenged herein, the Monterey County General Plan was incomplete, internally
12 inconsistent, out-of-date, and failed to comply with all applicable statutory criteria under the Planning
13 and Zoning Law.

14 123. In approving the Project, the County adopted changes to the Monterey County Subdivision
15 Ordinance pertaining to water supply that are inconsistent with the goals, policies, and implementation
16 plans in the County General Plan.

17 124. The changes to the Monterey County Subdivision Ordinance further directly implicate the
18 inadequacies of the County General Plan.

19 125. The County's action adopting changes to the Subdivision Ordinance was therefore arbitrary
20 and capricious and/or constituted a prejudicial abuse of discretion, in that the County failed to proceed in
21 the manner required by the Planning and Zoning Law and adopted findings of General Plan consistency
22 that are not supported by the evidence.

23 **Count Fourteen – Specific Plan Not Consistent With Adequate General Plan**

24 126. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

25 127. The Planning and Zoning Law requires that a specific plan be consistent with a valid, current,
26 internally consistent General Plan.

27 128. At the time of the County's approvals of the Project and related General Plan and Area Plan
28 amendments challenged herein, the Monterey County General Plan was incomplete, internally

1 inconsistent, out-of-date, and failed to comply with all applicable statutory criteria under the State
2 Planning and Zoning Law.

3 129. In approving the Project, the County adopted the Rancho San Juan Specific Plan.

4 130. The Rancho San Juan Specific Plan is inconsistent with the goals, policies, and
5 implementation plans in the County General Plan, including those concerning land use, transportation,
6 open space, conservation, and safety.

7 131. The County's adoption of the Ranchos San Juan Specific Plan further directly implicates the
8 inadequacies of the County General Plan.

9 132. The County's action in adopting the Rancho San Juan Specific Plan was therefore arbitrary
10 and capricious and/or constituted a prejudicial abuse of discretion, in that the County failed to proceed in
11 the manner required by the Planning and Zoning Law and adopted findings of General Plan consistency
12 that are not supported by the evidence.

13 **Count Fifteen – Development Agreement Not Consistent With Adequate General Plan**

14 133. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

15 134. The Planning and Zoning Law requires that a development agreement be consistent with a
16 valid, current, internally consistent General Plan.

17 135. At the time of the County's approvals of the Project and related General Plan and Area Plan
18 amendments challenged herein, the Monterey County General Plan was incomplete, internally
19 inconsistent, out-of-date, and failed to comply with all applicable statutory criteria under the Planning
20 and Zoning Law.

21 136. In approving the Project, the County adopted a development agreement with H-Y-H
22 specifying certain terms and conditions under which the Project would be constructed and operated.

23 137. The development agreement is inconsistent with the goals, policies, and implementation
24 plans in the County General Plan, including those concerning land use, transportation, open space,
25 conservation, and safety.

26 138. The County's adoption of the development agreement further directly implicates the
27 inadequacies of the County General Plan.
28

1 139. The County's action in adopting the development agreement was therefore arbitrary and
2 capricious and/or constituted a prejudicial abuse of discretion, in that the County failed to proceed in the
3 manner required by the Planning and Zoning Law and adopted findings of General Plan consistency that
4 are not supported by the evidence.

5 **Count Sixteen – Vesting Subdivision Map Not Consistent With Adequate General Plan**

6 140. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

7 141. The Planning and Zoning Law requires that a vesting tentative subdivision map be consistent
8 with a valid, current, internally consistent General Plan.

9 142. At the time of the County's approvals of the Project and related General Plan and Area Plan
10 amendments challenged herein, the Monterey County General Plan was incomplete, internally
11 inconsistent, out-of-date, and failed to comply with all applicable statutory criteria under the State
12 Planning and Zoning Law.

13 143. In approving the Project, the County approved a vesting tentative subdivision map for the
14 Project that is consistent with the goals, policies, and implementation plans in the County General Plan,
15 including those concerning land use, transportation, open space, conservation, and safety.

16 144. The County's approval of the vesting tentative subdivision map further directly implicates
17 the inadequacies of the County General Plan.

18 145. The County's action in approving the vesting tentative subdivision map was therefore
19 arbitrary and capricious and/or constituted a prejudicial abuse of discretion, in that the County failed to
20 proceed in the manner required by the Planning and Zoning Law and adopted findings of General Plan
21 consistency that are not supported by the evidence.

22 **THIRD CLAIM FOR RELIEF**

23 **(Approvals Invalid Due To H-Y-H's Forfeiture Of Corporate Powers)**

24 146. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

25 147. Revenue and Taxation Code section 23301 provides that the exercise of the corporate
26 powers, rights and privileges of a foreign corporation in this state may be forfeited if any tax, penalty, or
27 interest that is due and payable under that Code is not paid by the due-dates stated in that section.
28

1 148. Revenue and Taxation Code section 23302 provides that the Franchise Tax Board shall
2 transmit the names of taxpayers to the Secretary of State as to which the suspension or forfeiture
3 provisions of Section 23301 are or become applicable, and the suspension or forfeiture therein provided
4 for shall thereupon become effective. The certificate of the Secretary of State shall be prima facie
5 evidence of the suspension or forfeiture.

6 149. The Franchise Tax Board transmitted the name of H-Y-H to the Secretary of State on March
7 1, 2004. The Secretary of State provided an executed certificate of forfeiture by H-Y-H to Petitioners on
8 January 11, 2005.

9 **Count Seventeen – Invalidation Of Development Agreement Under C.C.P. § 863**

10 150. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

11 151. Code of Civil Procedure section 863 provides that any interested person may bring an action
12 within the time and in the court specified by Section 860 to determine the validity of contracts entered
13 into by a public agency.

14 152. The County's development agreement with H-Y-H was illegal and improper because
15 H-Y-H's corporate powers, rights, and privileges had been forfeited pursuant to an order by the
16 Secretary of State on March 1, 2004, and H-Y-H was accordingly prohibited from transacting intrastate
17 business at that time, including applying for, receiving, holding, transferring, or acting in reliance on any
18 rights purportedly bestowed by the development agreement.

19 153. Petitioners are therefore entitled to an order declaring the development agreement illegal,
20 void, and of no effect.

21 **Count Eighteen – Other Entitlements Null and Void**

22 154. Petitioners here incorporate by reference the preceding paragraphs in their entirety.

23 155. At the time of the County's December 14, 2004 action approving the General Plan and Area
24 Plan amendments, zone changes, development permit, vesting tentative map, and other entitlements
25 challenged herein, H-Y-H's corporate powers, rights, and privileges had been forfeited in California.

26 156. H-Y-H therefore lacks capacity to conduct business in California, and may not receive, hold,
27 transfer, or act in reliance upon any of such approvals and entitlements.
28

1 **ATTORNEYS' FEES**

2 164. Petitioners are entitled to recover attorneys' fees as provided in Government Code section
3 800 if they prevail in this action and the Court finds the County's action was the result of arbitrary and
4 capricious action. Petitioners are further entitled to recover attorneys' fees as provided in Code of Civil
5 Procedure section 1021.5 if they prevail in this action and the Court finds that a significant benefit has
6 been conferred on the general public or a large class of persons, and that the necessity and burden of
7 private enforcement is such as to make an award of fees appropriate.

8 **PRAYER**

9 WHEREFORE, Petitioners pray for entry of judgment as follows:

- 10 1. For a peremptory writ of mandate directing the County:
- 11 (a) to set aside its December 14, 2004 action certifying an EIR for the Project;
- 12 (b) to set aside its December 14, 2004 action approving Project-related amendments to the
13 County General Plan and Greater Salinas Area Plan;
- 14 (c) to set aside its December 14, 2004 action approving the Rancho San Juan Specific Plan,
15 zoning changes, subdivision ordinance changes, development permit, vesting tentative map, and a
16 development agreement for the Project;
- 17 (d) to refrain from granting any additional permits, entitlements, or other approvals related to
18 the Project to H-Y-H until the County has taken action necessary to bring its approval into compliance
19 with CEQA, the Planning and Zoning Law, and the County Code;
- 20 (e) to comply with CEQA in any subsequent action or actions taken to approve the Project.
- 21 (f) to bring its General Plan into compliance with all applicable provisions of Government
22 Code section 65300, *et seq.* within 120 days.
- 23 2. For an order determining that the County's action entering into a development agreement
24 with H-Y-H be determined to be illegal, null and void, and of no effect.
- 25 3. For an order declaring that H-Y-H is ineligible to receive, hold, transfer, or act in reliance
26 on the permits and entitlements granted by the County on December 14, 2004 and challenged herein,
27 and that such permits and entitlements are therefore null and void and of no effect.
- 28

1 4. For an order staying the effect of the County's actions pending the outcome of this
2 proceeding.

3 5. For a preliminary and permanent injunction directing the County and H-Y-H to cease and
4 refrain from engaging in any action related to the Project that could result in any change or alteration in
5 the physical environment until the County takes any necessary action to bring its action into compliance
6 with CEQA, the Planning and Zoning Law, and the County Code.

7 6. For their costs of suit.

8 7. For an award of attorneys' fees.

9 8. For other legal or equitable relief that the Court deems just and proper.

10
11 Dated: January ___, 2005

Respectfully submitted,

M. R. WOLFE AND ASSOCIATES

12
13
14
15 By: _____

Mark R. Wolfe
John H. Farrow

16
17 Attorneys for Plaintiffs and Petitioners
18 LANDWATCH MONTEREY COUNTY,
19 and RANCHO SAN JUAN OPPOSITION
20 COALITON
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VERIFICATION

I, Gary A. Patton, 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; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; COMPLAINT FOR CONTRACT VALIDATION 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: January ____, 2004

Gary A. Patton