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Friends, Artists and Neighbors of Elkhorn Slough  
12 and LandWatch Monterey County

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF MONTEREY**

16 FRIENDS, ARTISTS AND NEIGHBORS  
OF ELKHORN SLOUGH and  
17 LANDWATCH MONTEREY COUNTY,

Case No.

18 Petitioners,

**PETITION FOR WRIT OF MANDAMUS**

19 v.

20 CALIFORNIA COASTAL COMMISSION,  
COUNTY OF MONTEREY, BOARD OF  
21 SUPERVISORS OF THE COUNTY OF  
MONTEREY, and DOES 1-50,

[CEQA CASE]

22 Respondents.

23 \_\_\_\_\_/

24 HERITAGE/WESTERN COMMUNITIES  
LTD, HERITAGE DEVELOPMENT  
25 CORPORATION, and DOES 51-100,

26 Real Parties in Interest.

27 \_\_\_\_\_/

28

1 I.

2 SUMMARY AND BACKGROUND

3 1. This petition is brought pursuant to the California Environmental Quality Act  
4 (CEQA; Pub. Resources Code, § 21000 et seq.), Code of Civil Procedure sections 1085 and  
5 1094.5; California Planning and Zoning Law (Gov. Code, § 65000 et seq.), and the California  
6 Coastal Act (Pub. Resources Code, § 30000 et seq.).

7 2. Friends, Artists and Neighbors of Elkhorn Slough and LandWatch Monterey  
8 County (collectively “Petitioners”) challenge the actions of the California Coastal Commission  
9 (“Commission”) on November 8, 2017 to approve a subdivision resulting in 57 lots plus a  
10 “remainder parcel,” and construction of 54 residential units, called “Rancho Los Robles” at 100  
11 Sill Road in north Monterey County (“Project”). The Project is proposed to receive its potable  
12 water supply from wells extracting groundwater from the overdrafted and unsustainably pumped  
13 Pajaro Valley Groundwater Basin. The Project would place residential land use, which is a non-  
14 resource dependent use, in an oak woodland which is an environmentally sensitive habitat area  
15 (“ESHA”) in violation of the California Coastal Act. The project would also convert  
16 agricultural land to residential uses in violation of the California Coastal Act. The acts  
17 involving the approval of the project are inconsistent with, and repugnant to, the law and the  
18 Commission’s actions over the years.

19 3. The North County Land Use Plan (LUP) only allows development that can be  
20 supported by water sources that do not result in extractions that would exceed the safe yield of  
21 the underlying groundwater basin. Consistent with the California Coastal Act, the LUP does not  
22 allow the Commission to approve non-resource dependent uses in ESHA and the Commission is  
23 not permitted to interpret policies to allow non-resource dependent uses in ESHA. From  
24 November 2016 to March 2017 alone, the Commission considered three other residential  
25 subdivisions in north Monterey County, and each time the Commission unanimously adopted  
26 the staff recommendation and unanimously denied the subdivision applicant’s request due to the  
27 overdrafted groundwater basin and the LUP policies protecting water supplies and ESHA, along  
28 with other issues.



1 Project benefits would not outweigh the Project’s significant environment effect. The Project  
2 was appealed to the County Board of Supervisors.

3 10. In December 2008, Respondent County Board of Supervisors voted 3 to 2 to  
4 certify the EIR, adopt findings of overriding considerations, and approve the Project. The  
5 Project approved by Respondent County Board of Supervisors was for 76 lots, including:

- 6 • 72 residential lots composed of 68 single family lots and 4 duplex lots, plus four  
7 rental units on the commercial parcel, for a total of 80 residential units.
- 8 • A “1.76-acre mixed use parcel” that would include commercial or quasi-public  
9 development plus four apartment units.
- 10 • “9.7 acres of common area parcel including 2.5-acre community recreation area  
11 with a small parking lot and two 0.5-acre mini-parks.”
- 12 • Dedication of at least five easements: a conservation easement over the onsite  
13 wetlands plus a 50-foot setback; a conservation easement over the willow  
14 riparian area plus a 10-foot setback; a public recreation trail easement for the  
15 public riding and equestrian trail shown in the North County Trails Plan (but not  
16 shown in the North County LUP); “at least one publicly accessible pedestrian and  
17 bicycle access easement” to Sill Road; and scenic and conservation easements  
18 over “the entire open space area” for which the homeowners’ association “shall  
19 be responsible for maintenance.”

20 11. The certified EIR found significant and unmitigated impacts to the north  
21 Monterey County water supply. The EIR concluded “at this time there is not an assured  
22 long-term water supply available in north Monterey County.” The EIR stated “withdrawals of  
23 groundwater for the proposed project would continue to exceed groundwater recharge.” With  
24 regard to the Local Coastal Program (LCP) policy “to protect groundwater supplies for coastal  
25 priority agricultural uses with emphasis on agricultural lands located in areas designated in the  
26 plan for exclusive agricultural use,” the EIR stated “because the aquifer from which the project  
27 would draw groundwater is also used for agricultural irrigation, this policy is relevant to the  
28 project’s water use. The north Monterey County hydrogeologic area is in a state of overdraft  
and additional groundwater pumping could further jeopardize coastal groundwater supplies that  
serve agricultural uses.”

12. In February 2009, Respondent County filed the operative Final Local Action  
Notice. FANS and two Coastal Commissioners filed timely appeals of the County approvals to

1 the Commission. FANS, the County, and the Project applicant executed a tolling agreement that  
2 extended the period in which FANS could challenge the County approvals until 30 days after  
3 the Commission takes final action on the Project.

4 13. Over the years, the water supply in north Monterey County did not improve, and  
5 additional supply did not materialize as hoped. Saltwater intrusion continued along the coast.  
6 Monterey County does not have new projects intended to provide new and additional water to  
7 the north County coastal area. The water supply problems affect both coastal north County and  
8 inland north County. The County denied at least two noncoastal subdivisions in north Monterey  
9 County due to the lack of adequate water supply: the Spanish Congregation residential  
10 subdivision and the Heritage Oaks residential subdivision. The Heritage Oaks project applicant  
11 proposed a “water balance” scheme which claimed to recharge the aquifer by capturing storm  
12 water at the site; the County rejected the proposal due to concerns including uncertainty about  
13 rainfall and lack of reliable operation in a residential subdivision. In October 2010, the County  
14 adopted a new General Plan that prohibited all residential subdivision in north Monterey County  
15 inland area due to the lack of a sustainable water supply and due to water quality issues. The  
16 coastal area is more impacted than the inland area by overpumping the aquifer, because seawater  
17 intrusion harms the Coastal Zone first. Seawater intrusion has made large parts of the coastal  
18 aquifer unusable.

19 14. In 2014, the Pajaro Valley Water Management Agency updated its 2002 Basin  
20 Management Plan (Basin Plan). The revised Basin Plan calculated Basin overdraft at 12,100  
21 acre-feet per year, and identifies conservation (and not imported water via new pipelines from  
22 the Federal Central Valley Project, as was relied upon in the 2002 Basin Plan) as a primary tool  
23 to abate this overdraft condition and to bring the Basin into its safe yield state. In 2014, the  
24 California Department of Water Resources designated the Pajaro Valley Groundwater Basin as  
25 being “critically overdrafted” as the law defines that term under the 2014 Sustainable  
26 Groundwater Management Act. In 2015, the County approved, and the Commission certified,  
27 an LCP amendment that prohibited the previously allowed “senior citizens’ units” and  
28 “caretakers’ units,” and prohibited all accessory dwelling units within the entire north Monterey

1 County Coastal Zone. The LCP amendment was approved due to water supply inadequacies  
2 and the need to restrict development in such water scarce areas. The amendment demonstrated  
3 the County and Commission acknowledgment that even a single accessory dwelling unit on a  
4 parcel was prohibited due to potentially significant individual and cumulative effects.

5 15. By the end of 2015, five different north Monterey County residential subdivision  
6 projects were pending before the Commission, all of which raised important issues of protecting  
7 the groundwater supply and promoting water quality. In 2016, one appeal was resolved when  
8 the subdivision application was withdrawn by the property owners. The Commission then took  
9 action on the remaining subdivision projects.

10 16. In November 2016, the Commission acted on the 10-lot Sunridge project  
11 (A-3-MCO-04-054-E3) and unanimously denied a request for a further extension on compliance  
12 with the water conditions imposed in 2006 by the Commission because the project was shown  
13 not to be able to comply with the conditions and there were changed circumstances with regard  
14 to the water supply in the groundwater basin. The Commission unanimously denied the  
15 Sunridge project, finding as follows:

- 16 • “Specifically, the LUP includes policies that require all new development to be  
17 served by an identifiable, available, and long-term water supply (LUP Policy  
18 2.5.1), including by only authorizing development at an amount that can be  
served while still maintaining the safe-yield level of the underlying groundwater  
basin (LUP Policies 2.5.2.3 and 2.5.3.A.2).”
- 19 • “Consistent with the above-discussed policies, the LCP also requires  
20 development to be phased so that water supplies are not committed beyond their  
21 safe yield and, if the safe yield is already exceeded, only allows additional  
22 development to proceed once additional water supplies are secured that will bring  
23 the basin back into LCP-required safe yield state (LUP Policy 2.5.2.3). The LUP  
24 further requires that where there is limited water supply to support development,  
25 coastal-dependent uses (such as coastal-dependent agriculture, recreation,  
26 commercial, and industrial uses) shall have priority over residential and other  
27 non-coastal-dependent uses (LUP Policy 4.3.5.4). Finally, LUP Policy 4.3.5.7  
28 requires new subdivisions and development dependent upon groundwater to be  
limited and phased over time until an adequate supply of water to meet long-term  
needs can be assured. Should the resource information show that the underlying  
groundwater basin is being extracted in a manner exceeding its safe, long-term  
yield, then the LCP affirmatively requires denial of a proposed project,  
particularly low-LCP priority residential subdivisions (as non-Coastal dependent  
uses), unless and until additional water supplies are secured and the safe yield  
level is reached (IP Sections 20.144.070.E.11 and 20.144.140.A.1, and LUP  
Policy 2.5.2.3).”

- 1 • “In sum, these policies and standards only authorize a level of development that  
2 can be supported by the safe yield extraction level of the underlying groundwater  
3 basin, and do not allow noncoastal dependent uses, particularly residential  
subdivisions, when such uses cannot be served by water within the safe yield  
level.”

4 17. In January 2017, the Commission unanimously found the appeals of the 27-lot  
5 Rancho-Roberto subdivision (No. A-3-MCO-05-027) raised a substantial issue and denied the  
6 project based on the same LCP policy interpretations as in the Sunridge project, as well as  
7 ESHA impacts. In March 2017, the Commission unanimously found the appeal of the 2-unit  
8 Mayr subdivision (No. A-3-MCO-06-044) raised a substantial issue and denied the project  
9 based on the same LCP policy interpretations as in the Sunridge project and the Rancho Roberto  
10 project, and ESHA issues.

11 18. On July 14, 2017, the Commission held a public hearing on the Project  
12 challenged in this Petition to determine whether the appeals presented a substantial issue. The  
13 grounds for such appeals are “limited to an allegation that the development does not conform to  
14 the standards set forth in the certified local coastal program or the public access policies set  
15 forth in this division.” (Pub. Resources Code, § 30603, subd. (b)(1) [referring to div. 20, the  
16 Coastal Act].) The basis of the appeals of the Project were based on the development’s lack of  
17 conformity to the standards of the certified LCP.

18 19. On July 14, 2017, the Commission unanimously found that the appeals presented  
19 a substantial issue with regard to the lack of conformity with the Monterey County LCP. The  
20 Commission’s action was consistent with the staff recommendation and with the Commission’s  
21 unanimous actions on the other appeals of residential subdivisions. The hearing on the appeal  
22 was also schedule to occur at the July 14, 2017 hearing, but that day the Real Parties requested a  
23 continuance on the hearing on the merits of the appeal.

24 20. The Project was scheduled for the November 8, 2017 Commission meeting. On  
25 October 20, 2017, the Commission staff report recommending denial of the Project was released  
26 to the public. On October 27, 2017 the applicant submitted a revised Project description to the  
27 Commission. On November 7, 2017, the Commission staff prepared and posted on the  
28 Commission’s website an Addendum to the Staff Report responding to a new letter from the

1 Real Parties in Interest. The letter from the Real Parties appeared to change the Project  
2 description but did not make it clear what the new Project description was and how it was  
3 changed from the previous versions. A “site plan” was included in the Real Parties’ exhibits but  
4 it did not indicate whether anything had changed from previous site plans. The changing Project  
5 description was not fixed, not stable, and not finite. The applicant’s materials made new claims  
6 with regard to a “water balance.” The applicant’s materials admitted “The silty sands on-site are  
7 subject to erosion” and “The Implementation Plan identifies the site as a “critical” erosion area.”  
8 The applicant claimed for the first time that the applicant’s current agricultural use of the site is  
9 illegal. The applicant newly claimed he had started strawberry farming in 2006. The claim is  
10 inconsistent with the County records that document the strawberry farming starting in the late  
11 1990s.

12 21. On November 8, 2017, the Commission held a public hearing on the Project. As  
13 part of the Commission staff presentation, the staff reminded the Commission of its  
14 interpretations of the applicable LCP policies. With regard to the Project description and  
15 Project features, the staff informed the Commission, “It is very unclear to us just exactly what is  
16 proposed” in regard to the claimed features such as recreational facilities on the remainder  
17 parcel and a library on another parcel. Commission staff stated the applicant proposed merely  
18 “a process” for possible future features, but no specific proposal as to what the uses would be,  
19 the source of funding for the unknown facilities, and “what is actually proposed, and what  
20 would eventually be built, if anything.”

21 22. During the public comment portion of the hearing, Petitioners and others  
22 opposed the Project on the basis of inconsistencies with the LCP, including the unsustainable  
23 water supply. Petitioner FANS commented that the applicant’s vague claim of a water recharge  
24 scheme was uncertain and unenforceable. Despite the Real Parties’ claim of providing a parcel  
25 for a local park, Petitioners pointed out that the County already owns eight parcels of land in Las  
26 Lomas that could be a public park, and a centrally located Las Lomas church had expressed  
27 interest in converting its flat vacant property into a community soccer field, adjacent to the  
28 existing parking lot. Petitioners urged the Commission to focus on the LCP policies and

1 protections, and not to be distracted by vague unenforceable claims about future “amenities.”

2 The Commission voted seven to five to approve the Project and grant a permit.

3 23. Petitioners are informed and believe, and on that basis allege, that the Project  
4 approved by the Commission appears to include:

- 5 • 57 lots, including 48 market-rate single family residential lots.
- 6 • Two duplex lots containing four units as affordable rental units.
- 7 • Deletion of the mixed use parcel containing rental residential units.
- 8 • Deletion of the “common area parcel” to be owned by the homeowners’  
9 association.

10 24. The Project also appears to include new features not approved by the County,  
11 including:

- 12 • A “17-acre remainder parcel comprised of: 11.1-acres of Community Open  
13 Space Recreation Area; 3.65-acres of land designated Coastal General  
14 Commercial (CGC-CZ); a 0.2-acre Willow Riparian Area; and a 2.7-acre  
15 Wetlands Area.” The 17-acre remainder parcel “shall be dedicated in perpetuity  
16 to a Community Services District (CSD), Community Facilities District (CFD) or  
17 another entity approved by Monterey County with legal authorization to collect  
18 fees.” The so-called “Receiving Entity” is to be solely responsible for any future  
19 permitting, development, operation, and maintenance for any future uses or  
20 improvements that the Receiving Entity “may determine to propose” on the  
21 remainder Parcel. In other words, the subdivision applicant will have no  
22 responsibility whatsoever for future uses or improvements, if any, on the  
23 remainder parcel. The County has not approved such a “receiving entity” or the  
24 proposed recreational uses and “community facility” uses at the site.
- 19 • A 0.6-acre parcel that “will be donated in perpetuity to” a CSD, CFD or other  
20 entity “for community facility purposes.” The applicant claimed the site *could* be  
21 used for a library. However, the applicant would not propose, permit, build or  
22 fund a library in any way, or ensure it would be used as a library or otherwise.
- 22 • Instead of two mini-parks totaling 1.0 acre to be developed, owned, and  
23 maintained by the developer and homeowners, there would be three mini parks  
24 totaling 0.98 acres which “shall be dedicated to the County of Monterey” and the  
25 County presumably would be responsible for maintenance. The largest of the  
26 three mini-parks is located in an area that is *outside* of the Project development  
27 footprint approved by Respondent County Board of Supervisors.
- 25 • Instead of the developer and homeowners owning and maintaining the 2.5-acre  
26 “community recreation” parcel, the developer would transfer ownership of the  
27 2.5-acre parcel to the County.

27 The newly proposed nonresidential uses would require separate discretionary coastal  
28 development permits and further environmental review.

1           25.     The Commission’s action was a reversal and repudiation of the Commission’s  
2 longstanding interpretations, and the action was inconsistent with the staff recommendation and  
3 the LCP policies. The Commission did not adopt written findings to support its decision to  
4 approve the Project on November 8, 2017, and the prevailing commissioners did not state the  
5 basis for their action in sufficient detail to support approval because the staff report and findings  
6 were premised on a Project denial.

7           26.     To the extent that the Commission may have adopted conditions of approval for  
8 the Project, it is unclear what conditions were adopted, if any.

9           27.     The Commission majority appeared to assume that the Project would include  
10 amenities including three mini-parks, a public open space park and a library, but there was no  
11 such condition of approval, and the Project applicant did not appear to obligate itself to ensuring  
12 these public uses. The Commission cannot guarantee or require the County or any other public  
13 agency to accept or operate the mini-parks, the “2.5-acre community recreation parcel” or the  
14 “17-acre remainder parcel.” Respondent County Board of Supervisors did not approve of these  
15 parcels as part of its approval under the Subdivision Map Act. The County or other third party  
16 entity may not accept one or more of the six parcels of land or may not have the resources to  
17 plan, permit, develop, staff, operate, and maintain parks, open space, and library, either now or  
18 for many years or ever. The County has not planned for or funded a park or library in Las  
19 Lomas to date. The County has for years owned eight parcels designated as “open space” in Las  
20 Lomas, totaling more than two acres, and has made no efforts to make the eight parcels  
21 available for community use.

22           28.     The Commission’s action is inconsistent with, or simply is not authorized by, the  
23 California Coastal Act or the LCP. The Commission impliedly acted to require the receipt of  
24 one parcel of land by the County, and to require another parcel of land to be received by an  
25 unnamed community services district or other unidentified entity, and to require the design,  
26 approval, development, operation and maintenance of recreational space by such independent  
27 local entities over which the Commission has no control. And, in a communication in  
28 November 2017, the Local Formation Commission of Monterey County (LAFCo) informed the

1 Commission that LAFCo likely would not recommend formation of a community services  
2 district for the sole purpose referenced by the applicant.

3  
4  
5 **II.**

6 **PARTIES**

7 Friends, Artists and Neighbors of Elkhorn Slough

8 29. Petitioners hereby incorporate by reference paragraphs 1 through 28 herein as if  
9 fully set forth herein.

10 30. Petitioner Friends, Artists and Neighbors of Elkhorn Slough (FANS) is an  
11 unincorporated association under California law. FANS and its members have been active in  
12 north Monterey County issues since 1999. The mission statement of Friends, Artists and  
13 Neighbors of Elkhorn Slough is as follows:

14 Friends, Artists and Neighbors of Elkhorn Slough [FANS] is an  
15 association of citizens committed to preserving and enhancing the  
16 Elkhorn Slough and its watershed through public education,  
17 citizen activism and advocacy. We are dedicated to maintaining a  
18 management plan that will protect the environmental, cultural and  
19 agricultural integrity of the Slough and its surrounding watershed,  
20 while restoring, and preserving Elkhorn Slough as a legacy for  
21 future generations.

22 31. FANS is a unique voice in the ongoing effort to protect the area. FANS and its  
23 members are beneficially interested in the enforcement and application of environmental laws  
24 and laws assuring public disclosure and responsible decision making by local governments.  
25 FANS and its members are beneficially interested in the way and manner that land use decisions  
26 are made and in the environmental consequences of development in North Monterey County,  
27 including the impacts of the Project. FANS' members include those who live and work in the  
28 Elkhorn Slough area and in North Monterey coastal and inland areas, and others who live and  
work elsewhere in the County of Monterey. FANS' members frequently hike, paint,  
photograph, bird-watch, and recreate in other ways at the Elkhorn Slough area. Many FANS  
members are residents and business owners in north Monterey County who get their potable

1 water from the same unsustainable water supply that would be further and additionally pumped  
2 to supply the demand of the Project. The water supply of those members of FANS would be  
3 placed at risk by the further pumping for the Project. FANS members regularly drive the streets  
4 and highways that would be impacted by the Project, they would bear the impacts of the  
5 increased noise from the Project, the loss of enjoyment due to the Project's development and  
6 destruction of the natural environment, including protected species and habitats, and the reduced  
7 air quality as a result of the loss of trees and increased traffic.

8 32. FANS representatives participated in the administrative process before the  
9 Commission and the County of Monterey for the review of the Project application by, inter alia,  
10 attending and speaking at public meetings including the County Planning Commission,  
11 Respondent County Board of Supervisors, and Respondent Commission meetings at which  
12 those bodies made their decisions on the Project, and commenting on the draft and revised draft  
13 EIRs. Friends, Artists and Neighbors of Elkhorn Slough files this action in the public interest  
14 and on behalf of the public. FANS has standing to pursue this action.

15 LandWatch Monterey County

16 33. Petitioner LANDWATCH MONTEREY COUNTY (LandWatch) is a California  
17 non-profit public benefit corporation exempt from federal income taxation under section  
18 501(c)(3) of the U.S. Internal Revenue Code. Its principal place of business is Salinas,  
19 California. LandWatch's organizational purpose is to promote sound land use planning and  
20 legislation at the city, County, and regional levels, to combat urban sprawl, and to promote  
21 livability in the region's cities and towns, through public policy development, advocacy, and  
22 education. LandWatch is dedicated to preserving economic vitality, high agricultural  
23 productivity, and environmental health in Monterey County by encouraging effective public  
24 participation in the land use planning process.

25 34. LandWatch's members, directors, and staff include residents, taxpayers, and  
26 electors in Monterey County who currently enjoy the multitude of residential, vocational,  
27 aesthetic, recreational, and health benefits stemming from the current state of the area of the  
28 Project. These include preserved natural resources, unobstructed views of the natural landscape,

1 water supply, and water quality that will be significantly and negatively impacted if the Project  
2 proceeds.

3 35. LandWatch’s members, directors, and staff have a clear and present right to, and  
4 beneficial interest in, the Commission’s performance of its duties to comply with CEQA, the  
5 State Planning and Zoning law, the Local Coastal Plan and California Coastal Act. As citizens,  
6 homeowners, taxpayers, and electors, LandWatch’s members, directors, and staff are within the  
7 class of persons to whom the Commission owes such duties. By this action, LandWatch seeks  
8 to protect the interests of its members, directors, and staff, and to enforce a public duty owed to  
9 them by the Commission. Because the claims asserted and the relief sought in this petition are  
10 broad-based and of a public as opposed to a purely private or pecuniary nature, direct  
11 participation in this litigation by LandWatch’s individual members is not necessary.

12 36. LandWatch presented oral and written comments opposing the Project to the  
13 Commission prior to and during the public hearings culminating in the Commission’s action on  
14 November 8, 2017 to approve the Project.

15 California Coastal Commission

16 37. Respondent CALIFORNIA COASTAL COMMISSION is a state agency charged  
17 to implement the California Coastal Act. The Commission oversees development and use in an  
18 area designated in the California Coastal Zone. The Commission delegates authority to issue  
19 Coastal Development Permits (CDPs) after it certifies a Local Coastal Program (LCP) that is  
20 drafted by a local agency. However, after certification of an LCP the Commission retains  
21 appellate jurisdiction over many local agency decisions. The County has been delegated  
22 authority to issue CDPs pursuant to its certified LCP. The Project is within the California  
23 Coastal Zone and subject to the Commission’s appellate jurisdiction. Pursuant to an appeal, on  
24 November 8, 2017, the Commission approved the Project on an oral roll call vote. The  
25 Commission asserts that the approval is the final decision on this matter, as shown in various  
26 ways, including by the statement on the Commission’s website that the Project was “Approved  
27 with Conditions” (<https://www.coastal.ca.gov/meetings/agenda/#/2017/11>).

1                   County of Monterey and Board of Supervisors of the County of Monterey

2           38.     Respondent COUNTY OF MONTEREY, through Respondent BOARD OF  
3 SUPERVISORS OF THE COUNTY OF MONTEREY, is a political subdivision of the State of  
4 California, and has certified a Final EIR for the Project and approved the Project. On December  
5 9, 2008, Respondent Board of Supervisors adopted a Resolution in which it certified the Final  
6 EIR, and approved a Combined Development Permit and Coastal Development Permit for the  
7 Project.

8           39.     Petitioners are informed and believes and on that basis allege that each of the  
9 fictitiously named respondents DOES 1-50 has jurisdiction by law over one or more aspects of  
10 the Project that is the subject of this proceeding or is responsible for the actions described  
11 herein. Petitioners do not know their true names and therefore names them by such fictitious  
12 names. Petitioners will seek leave from the Court to amend this petition to reflect the true  
13 names and capacities of DOES 1-50 once they are ascertained.

14           40.     Petitioners are informed and believe and thereon allege that at all times material  
15 to the petition, each of the respondents and each of the respondents fictitiously named in this  
16 petition, in addition to acting for himself/herself/itself, and on his/her/its behalf individually, is  
17 and was acting as the agent, servant, employee, and representative of, and with the knowledge,  
18 consent, and permission of, and in concert with, each and all of the respondents and within the  
19 course, scope, and authority of that agency, service, employment, representation, and  
20 conspiracy. Petitioners further allege on information and belief that the acts of each of the  
21 respondents were fully ratified by each and all of the respondents. Specifically, and without  
22 limitation, Petitioners allege on information and belief that the actions, failures to act, breaches,  
23 and misrepresentations alleged herein and attributed to one or more of the specific respondents  
24 were approved, ratified and done with the cooperation and knowledge of each and all of the  
25 respondents.

26                   Real Parties in Interest

27           41.     Petitioners are informed and believe and on that basis allege that Real Party in  
28 Interest “HERITAGE/WESTERN COMMUNITIES LTD” doing business as “HERITAGE

1 WESTERN COMMUNITIES, LTD.” is a recipient of the approvals at issue in this action. The  
2 Commission’s documents show that name for the applicant, as do the applicant’s submittals to  
3 the Commission. Petitioners are informed and believe and on that basis allege that real party in  
4 interest HERITAGE/WESTERN COMMUNITIES LTD is named in the County assessor’s  
5 records as the property owner of APN 412-073-015-000 and APN 412-073-002-000, the two  
6 parcels that received approvals from the County and the Commission in their respective  
7 proceedings for the Project. Petitioners are informed and believe and on that basis allege  
8 HERITAGE/WESTERN COMMUNITIES LTD is or was a limited partnership or other entity  
9 which filed a “Certificate of Limited Partnership” on or around August 14, 1984 with the  
10 California Secretary of State. Petitioners are informed and believe and on that basis allege that  
11 at the time of the Commission’s action in November 2017 the entity known as  
12 HERITAGE/WESTERN COMMUNITIES LTD did not have an active or legal registration with  
13 the California Secretary of State, had not complied with the required formalities, and/or for  
14 other reasons did not have the legal capacity to receive approval(s).

15 42. The County’s Notice of Determination filed on or around December 10, 2008 for  
16 Rancho Los Robles, PLN970159, did not name a “project applicant.” The January 2009 Tolling  
17 Agreement between the County, FANS and the applicant stated that the applicant was “Heritage  
18 Western Communities, LTD”; the signature block stated “HERITAGE WESTERN  
19 COMMUNITIES, LTD”. The County’s operative Final Local Action Notice dated February 2,  
20 2009 stated that the “project applicant” was “Heritage Western Communities LTD.” The  
21 applicant’s November 3, 2017 letter stated the applicant was “Heritage Western Communities,  
22 Ltd.” Petitioners are informed and believe and on that basis allege that “Heritage Western  
23 Communities, Ltd.,” “Heritage Western Communities, LTD.” and “Heritage Western  
24 Communities LTD.” are dbas, typographical or administrative errors, and/or alter egos for  
25 HERITAGE/WESTERN COMMUNITIES LTD.

26 43. Petitioners are informed and believe and on that basis allege that Real Party in  
27 Interest “HERITAGE DEVELOPMENT CORPORATION” may be a recipient of the approvals  
28 at issue in this action or may claim an ownership interest in the Project or may claim some other

1 cognizable interest in the Project such that it may be a real party in interest. HERITAGE  
2 DEVELOPMENT CORPORATION is named as the general partner of  
3 HERITAGE/WESTERN COMMUNITIES LTD in a certificate submitted by  
4 HERITAGE/WESTERN COMMUNITIES LTD to the California Secretary of State and  
5 stamped as “filed” August 14, 1984. Petitioners are informed and believe and on that basis  
6 allege that HERITAGE DEVELOPMENT CORPORATION did not have an active or legal  
7 registration with the California Secretary of State, had not complied with the required  
8 formalities and/or for other reasons did not have the legal capacity to receive land use  
9 approval(s) when the approvals were made.

10 44. Petitioners are informed and believe and on that basis allege that each of the  
11 fictitiously named real parties in interest DOES 51 through 100 either claims an ownership  
12 interest in the Project or has some other cognizable interest in the Project such that they may be  
13 real parties in interest. Petitioners do not know their true names and therefore names them by  
14 such fictitious names. Petitioners will seek leave from the Court to amend this petition to reflect  
15 the true names and capacities of DOES 51 through 100 once they are ascertained.

16 45. Petitioners are informed and believe and thereon allege that at all times material  
17 to the petition, each of the real parties in interest and each of the real parties in interest  
18 fictitiously named in this petition, in addition to acting for himself/herself/itself, and on  
19 his/her/its behalf individually, is and was acting as the agent, servant, employee, and  
20 representative of, and with the knowledge, consent, and permission of, and in concert with, each  
21 and all of the real parties in interest and within the course, scope, and authority of that agency,  
22 service, employment, representation, and conspiracy. Petitioners further allege on information  
23 and belief that the acts of each of the real parties were fully ratified by each and all of the real  
24 parties. Specifically, and without limitation, Petitioners allege on information and belief that the  
25 actions, failures to act, breaches, and misrepresentations alleged herein and attributed to one or  
26 more of the specific real parties in interest were approved, ratified and done with the  
27 cooperation and knowledge of each and all of the real parties in interest.

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**III.**  
**STANDING**

46. Petitioners hereby incorporates by reference paragraphs 1 through 45 herein as if fully set forth herein.

47. Approval of the Project will adversely affect the interests of Petitioners and their members. Said Petitioners are dedicated to protection of the environment through the protection of groundwater resources, ESHA, and farmland, including coastal farmland, in Monterey County. Approval of the Project will adversely affect the interests of Petitioners and Petitioners’ members. Members and representatives of Petitioners, on behalf thereof, have submitted numerous comments on and objections to the Project and have participated at a public hearing before the Commission. Accordingly, Petitioners are “aggrieved persons” within the meaning of Public Resources Code §§ 21177 and 30801. Under the California Coastal Act, “Any person may maintain an action to enforce the duties specifically imposed upon the commission, any governmental agency, any special district, or any local government by this division.” (Pub. Resources Code, § 30804.) The claims asserted and relief requested are broad-based, so that participation in the litigation by individual members is not required.

**IV.**  
**JURISDICTION**

48. Petitioners hereby incorporate by reference paragraphs 1 through 47 herein as if fully set forth herein.

49. This action is brought pursuant to Public Resources Code §§ 21167, 21168, 21168.5, 30801, 30803, and 30804, and Code of Civil Procedure §§ 1085 and 1094.5. Jurisdiction of this court is invoked pursuant to California Code of Civil Procedure §§ 1085 and 1094.5, Public Resources Code § 21000 et seq., Public Resources Code § 30000 et seq., the Constitution of the State of California, and other applicable law.

1 **V.**

2 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

3 50. Petitioners hereby incorporate by reference paragraphs 1 through 49 herein as if  
4 fully set forth herein.

5 51. Petitioners have performed all conditions precedent to the filing of this Petition  
6 by themselves or others raising each and every issue known to them before the Respondents, in  
7 compliance with Public Resources Code § 21177, Code of Civil Procedure §§ 1085 and 1094.5,  
8 and other applicable law.

9 52. Notice of the filing of this action as required by Public Resources Code § 21167.5  
10 was mailed to the Respondents on December 7, 2017. (See letters and Proofs of Service  
11 attached hereto as Exhibit “A”).

12  
13 **VI.**

14 **[FIRST CAUSE OF ACTION]**

15 **Violation of the California Coastal Act**

16 (By Petitioners against Respondent Commission)

17 53. Petitioners hereby incorporate by reference paragraphs 1 through 52 herein as if  
18 fully set forth herein.

19 54. The Commission failed to proceed in the manner required by the California  
20 Coastal Act when it approved the Project. The Project does not comply with the Local Coastal  
21 Program or the California Coastal Act with respect to, inter alia, groundwater resources,  
22 development in ESHA, and conversion of agricultural land. The approval is a reversal of  
23 longstanding practices and if allowed to stand will radically alter the nature of the entire north  
24 Monterey County coastal area because numerous other subdivision project applications in the  
25 area have been denied primarily because of impacts to a dwindling and unsustainable water  
26 supply, ESHA, and farmland conversion..

27 55. The Commission’s approval also violates the California Coastal Act and  
28 procedural due process as the Commission was uncertain of the Project description before it as

1 the Real Parties had changed the Project description, and the alterations to the Project require  
2 further review and approval by Respondent County Board of Supervisors since the Subdivision  
3 Map, and the amenities provided therein, have to be approved under, and conform to, the  
4 Subdivision Map Act and the County's subdivision ordinance. The approval, while vague and  
5 uncertain, appears to include approval of a remainder parcel which was never considered by the  
6 Board of Supervisors. A remainder parcel is "that portion [of the subdivision] which is not  
7 divided for the purpose of sale, lease, or financing." Gov. Code, § 66424.6. The term "sale" in  
8 this context has been established under the law to include donation deeds because the ultimate  
9 purpose is revealed by the form of ownership transferred and the intent of the conveyors, a form  
10 selected to maximize the market value and marketability of the land conveyed." (*Pescosolido v.*  
11 *Smith* (1983) 142 Cal.App.3d 964, 972, emphasis added.) There is no further process for  
12 Respondent County Board of Supervisors to review the new subdivision map under the  
13 Subdivision Map Act since the Commission only approves Coastal Development Permits, not  
14 approvals under the Subdivision Map Act. The County Board of Supervisors must conduct  
15 further proceedings under the Subdivision Map Act. Because it is uncertain what Project  
16 description was actually approved by the Commission, the Petitioners and the public were  
17 deprived of procedural due process.

18           56.     The Commission's failure to adopt findings in support of its approval was an  
19 abuse of discretion. The Commission's failure to adopt findings, and to clearly articulate the  
20 basis of the approval as compliant with the LCP and the California Coastal Act, is a failure to  
21 proceed in a manner required by law.

22           57.     The Commission's November 8, 2017 approval of the Project was a prejudicial  
23 abuse of discretion.

1 VII.

2 [SECOND CAUSE OF ACTION]

3 **Violations of the California Environmental Quality Act.**

4 (by FANS against Respondents County of Monterey and County Board of Supervisors,  
5 and by Petitioners against the Respondent Commission)

6 58. Petitioners hereby incorporate by reference paragraphs 1 through 57 herein as if  
7 fully set forth herein.

8 59. Under CEQA, public agencies must prepare an EIR on any project the agency  
9 proposes to “carry out or approve” if that project may have significant environmental effects  
10 (Pub. Resources Code, §§ 21100, subd. (a), 21151, subd. (a).) The EIR must describe the  
11 proposed project and its environmental setting, state the objectives sought to be achieved,  
12 identify and analyze the significant effects on the environment, state how those impacts can be  
13 mitigated or avoided, and identify and analyze alternatives to the project. (Pub. Resources  
14 Code, §§ 21100, subd. (b), 21151; CEQA Guidelines, §§ 15124, 15125, 15126.6.) The  
15 California Supreme Court has emphasized the significance of an EIR:

16 The preparation and circulation of an EIR is more than a set of  
17 technical hurdles for agencies and developers to overcome. The  
18 EIR’s function is to ensure that government officials who decide  
19 to build or approve a project do so with a full understanding of the  
20 environmental consequences and, equally important, that the  
21 public is assured those consequences have been taken into  
22 account. For the EIR to serve these goals it must present  
23 information in such a manner that the foreseeable impacts of  
24 pursuing the project can actually be understood and weighed, and  
25 the public must be given an adequate opportunity to comment on  
26 that presentation before the decision to go forward is made.

27 (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th  
28 412, 449-450, internal citation omitted.)

29 60. The Sixth District Court of Appeal summarized key CEQA principles in *Save*  
30 *Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99:

31 . . . [T]he overriding purpose of CEQA is to ensure that agencies  
32 regulating activities that may affect the quality of the environment  
33 give primary consideration to preventing environmental damage.  
34 CEQA is the Legislature’s declaration of policy that all necessary  
35 action be taken to protect, rehabilitate, and enhance the

1 environmental quality of the state. The EIR is the heart of CEQA  
2 and the integrity of the process is dependent on the adequacy of  
3 the EIR. The ultimate decision of whether to approve a project,  
4 be that decision right or wrong, is a nullity if based upon an EIR  
5 that does not provide the decisionmakers, and the public, with the  
6 information about the project that is required by CEQA. The error  
7 is prejudicial if the failure to include relevant information  
8 precludes informed decision making and informed public  
9 participation, thereby thwarting the statutory goals of the EIR  
10 process. When the informational requirements of CEQA are not  
11 complied with, an agency has failed to proceed in a manner  
12 required by law and has therefore abused its discretion.

13 In sum, although the agency's factual determinations are subject  
14 to deferential review, questions of interpretation or application of  
15 the requirements of CEQA are matters of law. While we may not  
16 substitute our judgment for that of the decision makers, we must  
17 ensure strict compliance with the procedures and mandates of the  
18 statute.

19 (87 Cal.App.4th 99 at 117-118, internal citations and quotation marks omitted.)

20 61. The flaws and inadequacies of the Project's EIR include inadequate investigation  
21 and discussion of the Project's inconsistency with the zoning ordinance, the adopted land use  
22 plan, and the General Plan. Many of the conditions and mitigations adopted by Respondent  
23 County do not have adequate metrics or performance standards or are measured from an  
24 inaccurate baseline. Many of the conditions and mitigations adopted by Respondent County are  
25 unfunded and unlikely to be implemented. The environmental analysis is based on flawed  
26 assumptions, assumptions that are inadequately explained, or assumptions that have influence or  
27 effects that are inadequately investigated or discussed. The environmental document failed to  
28 adequately address alternatives within the range of activities contemplated by the commitment  
to the Project. The environmental document did not adequately respond to comments under  
CEQA. Respondent failed to adopt legally adequate findings as required by law. Respondent  
failed to adopt a legally adequate statement of overriding considerations. Respondent's EIR  
failed to comply with CEQA requirements for consideration and evaluation of information. The  
EIR failed as an informational document. There are unanalyzed potentially significant impacts.

62. The EIR's analysis of potential impacts of the Project was based on inaccurate,  
unexplained, and inappropriate assumptions. Those assumptions led to incorrect conclusions  
about potential impacts, including underestimations of the potentially significant impacts. The

1 EIR's underestimations of the impacts meant that the true impacts were not disclosed,  
2 adequately analyzed or mitigated. Maps used in the EIR were inaccurate. Cumulative impacts  
3 were not adequately disclosed or mitigated. The EIR relied on out-of-date and inaccurate  
4 information and assumptions. The EIR omissions violate informational mandates. "[F]ailure to  
5 comply with the law subverts the purposes of CEQA if it omits material necessary to informed  
6 decision making and informed public participation. Case law is clear that, in such cases, the  
7 error is prejudicial." (*Sunnyvale West Neighborhood Association v. City of Sunnyvale City*  
8 *Council* (2010) 190 Cal.App.4th 1351, 1392.)

9 63. For the foregoing reasons, Respondents County and County Board of Supervisors  
10 abused their discretion in certifying the EIR.

11 64. Petitioners also allege the Commission abused its discretion when it did not  
12 strictly comply with its certified regulatory program. The Commission abused its discretion  
13 when it approved the Project in reliance on an environmental document that recommended  
14 denial of the Project due to significant or potentially significant effects on the environment, and  
15 alternatives. The Commission failed to adopt mitigation measures to avoid or reduce significant  
16 effects on the environment. (Cal. Code Regs., tit. 14, § 15252, subd. (b)(2).) The Commission  
17 majority did not follow the analysis in its staff recommendation and the Commission action is  
18 not supported by the analysis and the evidence in the environmental document.

19 65. Petitioners allege the Commission did not comply with the requirements of  
20 CEQA. The Commission is subject to certain provisions of CEQA, such as the policy of  
21 avoiding significant adverse effects on the environment where feasible. (Cal. Code Regs., tit.  
22 14, §§ 15250, 15251; see Pub. Resources Code, § 21080.5; *Mountain Lion Foundation v. Fish*  
23 *& Game Com.* (1997) 16 Cal.4th 105, 114.) In this regard, the Commission is required, among  
24 other things, to disapprove of a project if alternatives or feasible environmental mitigation  
25 measures are available (Pub. Resources Code, § 21080.5, subd. (d)(2)(A)).

26 66. Respondents' actions, and each of them, as described above and as shown in the  
27 record of proceedings herein, without adequate compliance with the provisions of CEQA,  
28 constitute a prejudicial abuse of discretion. Respondents failed to proceed in the manner

1 required by law, did not apply or satisfy the procedural and substantive safeguards and  
2 requirements of CEQA, did not engage in a legally sufficient fact-finding endeavor, and did not  
3 adequately identify and mitigate impacts. The flaws and inadequacies of the environmental  
4 review include, inter alia, a prejudicially incomplete and changing Project description, a  
5 materially inaccurate discussion of the environmental setting and the impacts of the Project, the  
6 failure to adequately investigate the baseline conditions including the water supply, the failure to  
7 adequately investigate and disclose the impacts of the Project, the inadequate responses to  
8 comments, the piecemealing of the environmental review so as to exclude the Project features  
9 that the applicant claimed would be built by others and on which the Commission relied, the  
10 inadequate analysis of cumulative impacts of the Project in combination with the alleged park,  
11 the improper tiering of the environmental impact analysis, the failure to make a reasonable and  
12 supported statement of overriding considerations, the failure to recirculate the environmental  
13 documents based on significant new information, the inadequate consideration of mitigations  
14 and alternatives, the improper deferral of formulation of mitigation, and the lack of necessary  
15 specificity and criteria and performance standards in the mitigations, and the abandonment of  
16 conditions and mitigations.

17         67. Respondents' actions, and each of them, as described above and as shown in the  
18 record of proceedings herein, including but not limited to failure to prepare an adequate EIR or  
19 environmental review pursuant to a certified regulatory program in compliance with the  
20 provisions of the CEQA, constitute a prejudicial abuse of discretion in that Respondents failed  
21 to proceed in the manner required by law, did not satisfy the procedural and substantive  
22 requirements of CEQA, did not engage in a legally sufficient fact-finding endeavor, did not  
23 meet the informational requirements of CEQA and did not adequately identify and mitigate  
24 impacts.

25         68. The flaws and inadequacies of the environmental review use an incomplete and  
26 inadequate discussion of environmental setting, an inadequate and incomplete Project  
27 description, an inaccurate baseline, and an inadequate and incomplete investigation, discussion  
28 or analysis of potentially adverse impacts to, of, and/or on water supply and availability, water







1           3. Other relief that prevents Respondent Commission’s approval of November 8, 2017  
2 regarding the Project from taking effect, or relief that requires or results in Respondent  
3 reconsidering, withdrawing or invalidating its decision of November 8, 2017 referenced above  
4 or any portion thereof, or adopting written findings.  
5

6           4. For an order staying and enjoining the Real Parties in Interest from engaging in any  
7 activity pursuant to the Project approval, until the Project and Respondents comply with  
8 California regulations and statutes, including but not limited to the requirements of CEQA, the  
9 California Coastal Act and California planning and zoning laws;  
10

11           5. For reasonable attorneys’ fees pursuant to section 1021.5 of the California Code of  
12 Civil Procedure and any other provisions of law;

13           6. For costs of suit; and,

14           7. For such other and further relief as the Court deems just and proper.  
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16

17 Dated: December 7, 2017

WITTWER PARKIN LLP

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21 By: William P. Parkin  
22 Attorneys for Petitioners  
23 Friends, Artists and Neighbors of Elkhorn Slough  
24 and LandWatch Monterey County  
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