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

13 LANDWATCH MONTEREY COUNTY,

14 Petitioner,

15 vs.

16 COUNTY OF MONTEREY;

17 Respondent.

18 BOLLENBACHER & KELTON, INC.;
19 DOMAIN CORPORATION; ISLANDIA 29;
20 and DOES 1 through 25, inclusive;

21 Real Parties In Interest.

Case No.:

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT**

(Code Civ. Proc., §§ 1085, 1094.5; California
Environmental Quality Act, Pub. Res. Code,
§§ 21000 et seq.; State Planning and Zoning
Law, Gov't Code, §§ 65000 et seq.;
Subdivision Map Act, Gov't Code, §§ 66410
et seq.)

1 **INTRODUCTION**

2 This Petition challenges the December 16, 2014 actions of Respondent COUNTY OF
3 MONTEREY (“County”) approving a Combined Development Permit consisting of a Vesting
4 Tentative Map to create 185 residential lots, a Use Permit for the removal of 921 trees, and a Use
5 Permit to allow development on slopes in excess of 30 percent, for the Ferrini Ranch project (the
6 “Project”), and certifying an Environmental Impact Report (“EIR”) and adopting a statement of
7 overriding considerations pursuant to the California Environmental Quality Act (“CEQA”), Public
8 Resources Code §§ 21000 et seq. Petitioner LANDWATCH MONTEREY COUNTY
9 (“LandWatch”) alleges that the County’s actions violate applicable provisions of: (1) CEQA; (2) the
10 State Planning and Zoning law, Government Code §§ 65000 et seq.; and (3) the Subdivision Map
11 Act Government Code §§ 66410 et seq.

12 LandWatch seeks a writ of mandate under Code of Civil Procedure §§ 1085 and/or 1094.5
13 commanding the County to set aside its certification of the EIR and its approval of the Project
14 entitlements. LandWatch also seeks an order granting temporary injunctive relief and/or a stay of
15 the effect of the County’s approvals during the pendency of these proceedings, including an order
16 suspending the County’s authority to issue further permits and approvals for the Project and an
17 order enjoining action by the County and Real Parties that could result in changes to the physical
18 environment. Finally, LandWatch seeks an award of costs and attorney’s fees under Code of Civil
19 Procedure section 1021.5, together with any other relief the Court deems necessary and proper.

20 In support whereof, LandWatch alleges:

21 **PARTIES**

22 **LandWatch Monterey County**

23 1. Petitioner LANDWATCH MONTEREY COUNTY is a California non-profit public
24 benefit corporation exempt from federal income taxation under section 501(c)(3) of the U.S.
25 Internal Revenue Code. Its principal place of business is Salinas, California. LandWatch’s
26 organizational purpose is to promote sound land use planning and legislation at the city, county, and
27 regional levels, to combat urban sprawl, and to promote livability in the region’s cities and towns,
28 through public policy development, advocacy, and education. LandWatch is dedicated to

1 preserving economic vitality, high agricultural productivity, and environmental health in Monterey
2 County by encouraging effective public participation in the land use planning process.

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

10 3. LandWatch’s members, directors, and staff have a clear and present right to, and
11 beneficial interest in, the County’s performance of its duties to comply with CEQA, the State
12 Planning and Zoning law, and the Subdivision Map Act. As citizens, homeowners, taxpayers, and
13 electors, LandWatch’s members, directors, and staff are within the class of persons to whom the
14 County owes such duties.

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

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

28 6. LandWatch presented oral and written comments opposing the Project to the County

1 prior to and during the public hearings culminating in the County’s December 16, 2014 approvals.

2 **County of Monterey**

3 7. Defendant COUNTY OF MONTEREY (“County”) is a political subdivision of the
4 State of California. On December 16, 2014, the County, through its Board of Supervisors, certified
5 the EIR and approved the Project. The County is the “Lead Agency” responsible under CEQA for
6 evaluating the environmental impacts of the Project. The County is the entity responsible under the
7 State Planning and Zoning law and the Subdivision map Act for evaluating and approving the
8 Project with respect to compliance with all applicable statutory requirements.

9 **Bollenbacher & Kelton, Inc.**

10 8. LandWatch is informed and believes that that Real Party BOLLENBACHER &
11 KELTON, INC. (“BKI”) was a corporation established under the laws of the State of California in
12 1950 that has maintained its principal place of business in Santa Monica, California.

13 9. The Notice of Determination for the Project approvals lists “Bollenbacher & Kelton,
14 Inc. (Ferrini Ranch)” as the “Project Title.”

15 10. The Notice of Determination for the Project approvals does not identify a real party
16 in interest or the owner of the project site or the recipient of the Project entitlements.

17 11. LandWatch is informed and believes that BKI was the applicant for the land use
18 entitlements for the Project.

19 12. LandWatch is informed and believes that Bollenbacher & Kelton, Inc. is a dissolved
20 corporation.

21 **Domain Corporation**

22 13. LandWatch is informed and believes that that Real Party DOMAIN
23 CORPORATION (“Domain”) is a corporation established under the laws of the State of California
24 that maintains its principal place of business in Santa Monica, California.

25 14. LandWatch is informed and believes that Domain is an owner of the Project site and
26 a recipient of the land use entitlements challenged herein.

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2 **Islandia 29**

3 15. LandWatch is informed and believes that that Real Party ISLANDIA 29 (“Islandia”)
4 is a Delaware Limited Partnership that maintains its principal places of business in Dover, Delaware
5 and Santa Monica, California.

6 16. LandWatch is informed and believes that Islandia is an owner of the Project site and
7 a recipient of the land use entitlements challenged herein.

8 **Does**

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

13 **JURISDICTION AND VENUE**

14 18. This action is brought pursuant to Public Resources Code §§ 21167, 21168, and
15 21168.5 and Code of Civil Procedure §§ 1085 and 1094.5. Venue is proper in the County of
16 Monterey under Code of Civil Procedure §§ 393 and 395.

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

18 19. The 870-acre Project site is located in unincorporated Monterey County on parcels
19 between River Road and Toro Park (eastern portion) and between Toro Park and San Benancio
20 Road (western portion). The site is currently unimproved except for two uninhabited residences
21 and outbuildings, dirt ranch roads, and trails. Approximately 45 percent of the site is sloped in
22 excess of 30 percent.

23 20. More than half of the Project site contains sensitive habitat, including coast live oak
24 woodlands and savanna, riparian areas, wetlands and other waters, seasonal ponds and seep
25 wetlands, ephemeral drainages, and perennial water habitats. Other portions of the site contain
26 annual grassland and coast scrub. The site contains rare plant species including Congdon’s tarplant
27 and Pacific Grove clover. The site contains sensitive animal species, including the federally and
28 state-listed California tiger salamander.

1 21. While currently used for cattle grazing, the site provides a critical wildlife corridor
2 connecting wild lands in the former Fort Ord, including the Fort Ord National Monument, to wild
3 lands of the Sierra de Salinas and Santa Lucia ranges. The undeveloped pastoral quality of the
4 Project site also provides an important visual amenity to hikers and other users of the Toro Park
5 and Fort Ord National Monument and to motorists using State Route 68, a California Scenic
6 Highway.

7 22. As originally proposed, the Project included 212 residential units, consisting of 146
8 market-rate residential lots, 23 market-rate clustered housing units, and 43 inclusionary housing
9 units; 600 acres of open space, 35 acres of agricultural/industrial land uses; and 43 acres of
10 roadways. As later modified and ultimately approved, the Project includes 185 residential units,
11 consisting of 168 market-rate lots and 17 below market rate units and 11.8 acres of winery-related
12 uses including a visitor center.

13 23. Development entitlements for the Project include a Combined Development Permit,
14 consisting of a Vesting Tentative Map to create 185 residential lots, three open space parcels
15 totaling approximately 700 acres, and a parcel for future development of a visitor center; a Use
16 Permit for the removal of 921 protected oak trees, and a Use Permit to allow development on
17 slopes in excess of 30 percent.

18 24. LandWatch is informed and believes that in March, 2005, BKI filed an application for
19 a Combined Development Permit, including a Standard Subdivision Vesting Tentative map for the
20 Project, which was deemed complete in April 2005.

21 25. On or about September 2, 2005, the County released a Notice of Preparation of an
22 Environmental Impact Report for the Project. Various agencies submitted comments on the
23 Notice of Preparation requesting, *inter alia*, analysis and mitigation of traffic and water supply
24 impacts.

25 26. On or about August 27, 2012, the County released a Draft EIR for the Project for
26 public comment. Various agencies, organizations, and individuals, including LandWatch, submitted
27 oral and written comments on the Draft EIR prior to the close of the public comment period.
28 These comments stated, *inter alia*, that the Draft EIR fails to adequately identify, evaluate, and

1 mitigate, either through proposed mitigation measures or alternatives, all potentially significant
2 impacts on the environment, including impacts to traffic, water supply and water quality, visual
3 resources, air quality, greenhouse gas, wildlife, sensitive habitats, and rare plants.

4 27. On or about July 1, 2014, the County released a Revised Draft EIR that revised and
5 replaced the original Draft EIR sections related to air quality, biological resources, greenhouse gas
6 emissions and climate change, and Project alternatives. Various agencies, organizations, and
7 individuals, including LandWatch, submitted oral and written comments on the Revised Draft EIR
8 prior to the close of the public comment period. These comments stated, *inter alia*, that the Revised
9 Draft EIR fails to adequately identify, evaluate, and mitigate, either through proposed mitigation
10 measures or alternatives, all potentially significant impacts on the environment, including impacts to
11 traffic, visual resources, air quality, noise, greenhouse gas, wildlife, sensitive habitats, and rare plants.

12 28. On or about October 1, 2014, the County released a Final EIR for the Project
13 purporting to respond to public comments on the Draft EIR and Revised Draft EIR.

14 29. On October 27, 2014, the Toro Area Land Use Advisory Committee held a public
15 hearing on the Project. LandWatch and other members of the public made oral comments at this
16 hearing objecting to the Project.

17 30. On October 8, October 29, and November 12, 2014, the County Planning
18 Commission held public hearings on the Project. LandWatch made oral and written comments at
19 these hearings objecting to the Project. Other members of the public made oral and written
20 objections at or prior to the Planning Commission hearings.

21 31. Despite these objections, on November 12, 2014, the County Planning Commission
22 recommended that the Board of Supervisors certify the EIR and approve the Combined
23 Development Permit for the Project.

24 32. On December 2, December 9, and December 16, 2014 the Board of Supervisors held
25 a public hearing to consider the Project. LandWatch, other organizations, and members of the
26 public provided oral and written comments at or prior to the public hearing. These comments
27 stated, *inter alia*, that the EIR fails to adequately identify, evaluate, and mitigate, either through
28 proposed mitigation measures or alternatives, all potentially significant impacts on the environment,

1 including impacts to traffic, water supply and water quality, visual resources, air quality, noise,
2 greenhouse gas, wildlife, sensitive habitats, and rare plants. LandWatch and other Commenters also
3 objected that the EIR fails to provide an adequate analysis of alternatives and fails to provide a
4 stable, timely, and consistent description of the Project and the environmental setting. Commenters
5 also objected that the Project conflicts with the 1982 Monterey County General Plan policies related
6 to water supply and traffic.

7 33. Despite these objections, on December 2, 2014, the Board of Supervisors adopted a
8 Resolution of Intention to certify the EIR and approve the Project entitlements, and on December
9 16, 2014, adopted resolutions certifying the Final EIR and approving the Combined Development
10 Permit and adopting the Mitigation Monitoring and Reporting Plan.

11 34. On December 18, 2014, the County filed and posted a “Notice of Determination”
12 purportedly in accordance with Public Resources Code § 21152.

13 **FIRST CLAIM FOR RELIEF**

14 **(Violations of CEQA)**

15 35. LandWatch here incorporates by reference all preceding paragraphs in their entirety.

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

18 37. CEQA requires public agencies to first identify the environmental effects of its
19 project or program, and then to mitigate those adverse environmental effects through the
20 imposition of feasible mitigation measures or the analysis and selection of feasible alternatives.
21 Public Resources Code, § 21002.

22 38. An EIR must include a description of the physical environmental conditions in the
23 vicinity of the project as they existed at the time the notice of preparation is published, with
24 particular focus on the regional setting EIR and any inconsistencies between the proposed project
25 and applicable general plans and regional plans. 14 C.C.R., § 15125. This “baseline” information
26 must be provided early in the environmental review process and must be sufficient to support
27 analysis of impacts.
28

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

3 40. An EIR must identify and evaluate the direct, indirect, and cumulative environmental
4 impacts of all phases of a project. 14 C.C.R., § 15126. The discussion must include relevant
5 specifics of the area, the resources involved, physical changes, alterations to ecological systems, and
6 changes induced in population distribution, population concentration, the human use of the land
7 (including commercial and residential development), health and safety problems caused by the
8 physical changes, and other aspects of the resource base such as water, historical resources, scenic
9 quality, and public services. 14 C.C.R., § 15126.2.

10 41. An EIR must evaluate cumulative impacts of the project and other past, present and
11 foreseeable future projects. 14 C.C.R., § 15130. If there is a significant cumulative impact, an EIR
12 must determine if the project makes a considerable contribution to that cumulative impact. *Id.* An
13 EIR must identify the geographic scope of the cumulative impact analysis and justify limits on that
14 scope. *Id.* An EIR must propose reasonable, feasible options for mitigating or avoiding the
15 project's contribution to any significant cumulative effects. *Id.*

16 42. For projects that require water, an EIR must provide sufficient information to
17 evaluate the pros and cons and environmental impacts of supplying a long term water supply.
18 *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412. The
19 identified supply may not be speculative. *Id.* Where a long term water supply is not certain, an EIR
20 must disclose that fact and discuss the likely impacts of providing an adequate supply from
21 alternative sources. *Id.*

22 43. A lead agency must describe and evaluate feasible measures for minimizing or
23 avoiding a project's direct, indirect, and cumulative impacts on the environment. Public Resources
24 Code, § 21100(b)(3); 14 C.C.R., § 15126.4.

25 44. A lead agency may not improperly defer the formulation of mitigation measures until
26 a future time. 14 C.C.R., § 15126.4.

27 45. Mitigation measures must be enforceable and feasible. CEQA Guidelines, §
28 15126.4(a)(1), (2). Payment of impact fees is sufficient mitigation only if the fees are part of an

1 enforceable, committed, timely, and adequately funded program of improvements that will actually
2 mitigate the project's impacts. *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173;
3 *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099.

4 46. CEQA bars an agency from approving a project if there are feasible mitigation
5 measures available that would substantially lessen the project's significant environmental effects.
6 Public Resources Code, §§ 21001(d), 21081(a).

7 47. If an agency approves a project based on a finding that one or more mitigation
8 measures are infeasible, the agency must describe the specific reasons for rejecting the mitigation
9 measures, based on substantial evidence in the record. 14 C.C.R., §§ 15091, 15131(c).

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

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

15 50. CEQA bars an agency from approving a project if there are feasible alternatives
16 available that would substantially lessen the project's significant environmental effects. Public
17 Resources Code, §§ 21001(d), 21081(a).

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

24 52. If an agency approves a project based on a finding that one or more alternatives are
25 infeasible, the agency must describe the specific reasons for rejecting the alternatives, based on
26 substantial evidence in the record. 14 C.C.R., §§ 15091, 15131(c).

27 53. A lead agency must provide good faith, reasoned analysis in response to comments
28 on a Draft EIR. 14 C.C.R., § 15088(c). A Final EIR must address recommendations and objections

1 raised in comments in detail, giving reasons why they were not accepted. *Id.* Specific responses are
2 required to comments raising specific questions about significant issues.

3 54. An EIR must respond to each facially feasible proposal for mitigation offered by the
4 public, either by proposing that mitigation or by demonstrating that it is infeasible. *Los Angeles*
5 *Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019; *Village Laguna of Laguna Beach, Inc.*
6 *v. Board of Supervisors* (1982) 134 Cal.App.3d 1022.

7 55. A lead agency must recirculate an EIR for public comment and response if significant
8 new information is added to the EIR or to the record after public notice is given of the availability
9 of the draft EIR for public review under Section 15087 but before certification of the EIR. 14
10 C.C.R., § 15088.5. Information is significant if it demonstrates that the public was deprived of a
11 meaningful opportunity to comment upon a substantial adverse environmental effect of the project
12 or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the
13 project's proponents have declined to implement, or if it discloses that the draft EIR was so
14 fundamentally and basically inadequate and conclusory in nature that meaningful public review and
15 comment were precluded. *Id.*

16 56. CEQA requires a lead agency to establish and make findings that either: (1) changes
17 or alterations have been required in, or incorporated into, the project which mitigate or avoid the
18 significant effects on the environment, (2) those changes or alterations are within the responsibility
19 and jurisdiction of another public agency and have been, or can and should be, adopted by that
20 other agency, or (3) specific economic, legal, social, technological, or other considerations make
21 infeasible the mitigation measures or alternatives identified in the environmental impact report.
22 Public Resources Code, § 21081; 14 C.C.R., §§ 15091, 15092, 15093.

23 57. A lead agency must circulate a draft EIR and make findings that reflect its
24 independent judgment. Public Resources Code, § 21082.1; 14 C.C.R., § 15090(a)(3).

25 58. An agency may not approve a project with significant unavoidable impacts unless it
26 finds, based on substantial evidence, that specific overriding economic, legal, social, technological,
27 or other benefits of the project outweigh the significant effects on the environment. Public
28 Resources Code, § 21081.

1 59. All findings under Public Resources Code § 21081(a) must be supported by
2 substantial evidence in the record. 14 C.C.R., § 15384(b). Moreover, the findings must explicitly
3 cite the substantial evidence in the record upon which they rely. *Environmental Prot. & Info. Center v.*
4 *Cal. Dept. of Forestry & Fire Prot.* (“EPIC”) (2008) 44 Cal.4th 459, 515-516; *see generally Mountain Lion*
5 *Foundation v. Fish & Game Comm’n* (1997) 16 Cal.4th 105; *Topanga Assoc. for a Scenic Community v. County*
6 *of Los Angeles* (1974) 11 Cal.3d 506.

7 60. CEQA requires an agency to issue a Notice of Determination that identifies the
8 persons to which an entitlement is issued for a project. Public Resources Code, § 21152(a).

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

15 **Inadequate Description of Setting**

16 62. The EIR for the Project fails to provide an adequate and timely description of the
17 environmental setting. For example, the EIR fails to provide adequate and timely baseline
18 information related to water supply and demand, including cumulative water supply and demand.

19 63. The EIR also fails to provide adequate and timely information related to visual
20 impact baseline conditions including, for example, an accurate map of areas of critical viewshed and
21 visual sensitivity and a legally correct statement of General Plan policies related to visual impacts.

22 64. The EIR also fails to describe conflicts with applicable general plans and regulations,
23 including, for example, conflicts with policies related to visual impacts, traffic, and water supply.

24 65. The EIR also fails to provide an adequate description of regulations, policies, and
25 plans that permit or require vegetation removal to prevent wildfires (“fuel management”).

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

1 **Inadequate Description of Project**

2 67. The EIR for the Project fails to provide an adequate and stable description of the
3 Project, including, for example, the location and layout of lots, the location of building pads,
4 flagging and staking information, and the specification of berms.

5 68. Lot locations continued to be changed subsequent to the completion of the EIR and
6 even after the Planning Commission review. Indeed, conditions of approval provide for changes to
7 lot locations subsequent to approval.

8 69. The EIR relied on inaccurate and inconsistent descriptions of the Project with
9 respect to its visual impacts, including, for example, inaccurate maps of lots with respect to areas of
10 critical viewshed and visual sensitivity and inaccurate and inconsistent photo simulations of visual
11 impacts.

12 70. The EIR failed to describe or to evaluate as part of the Project all relevant aspects of
13 the Project, including, for example, a new intersection, roadway widening, and zoning changes
14 relied on as mitigation or visual impacts.

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

18 **Inadequate Disclosure and Analysis of Environmental Impacts**

19 72. The EIR for this Project fails to evaluate adequately all of the Project's direct,
20 indirect, and cumulative impacts, including impacts to traffic, air quality, greenhouse gas, recreation,
21 wildlife, sensitive habitats, rare plants, water quality, aesthetics and glare, land use and planning,
22 health and safety, noise, and water supply.

23 73. For example, the EIR fails to disclose information related to water demand and
24 supply that is required by CEQA. The EIR does not present substantial evidence that the Project
25 has a long term water supply or that acknowledged continuing basin overdrafting and salt water
26 intrusion impacts can and will be avoided. Substantial evidence in the record demonstrates that the
27 EIR's conclusions regarding the sufficiency of water supplies is based on a misinterpretation of an
28 out-of-date analysis, the assumptions for which have materially changed. The EIR fails to disclose

1 the uncertainty of the long-term water supply, the need for additional water supply projects, the
2 environmental impacts associated with those water supply projects, or the environmental impacts
3 associated with continued groundwater pumping without new water supply projects.

4 74. The EIR's analysis of impacts to visual resources is inadequate in part because it fails
5 to provide a stable and accurate project description and to disclose environmental setting
6 information that is required by CEQA to support analysis of impacts. The EIR presents and relies
7 on an inaccurate, incomplete, and shifting description of the existing setting with respect to areas of
8 visual sensitivity and critical viewshed. The EIR presents and relies on incomplete and shifting
9 descriptions of the Project with respect to lot layouts, building locations, and building masses. The
10 EIR also fails to provide visual analysis of key Project features including, for example, on-site and
11 off-site roadway facilities. The EIR presents and relies on applicant-supplied post-mitigation visual
12 simulations that are inconsistent with the pre-mitigation simulations. The EIR fails to provide
13 adequate analysis of visual impacts of Project alternatives, including the alternative that was
14 adopted. The EIR does not present substantial evidence that impacts to visual resources will be less
15 than significant, and substantial evidence in the record demonstrates that impacts will remain
16 significant and that the Project will make a considerable contribution to significant cumulative
17 impacts

18 75. The EIR also fails to disclose information related to impacts to biological resources,
19 noise, and traffic that is required by CEQA. The EIR fails to provide adequate analyses of
20 cumulative impacts to biological resources, noise, and traffic. The EIR does not present substantial
21 evidence that impacts to biological resources, noise, traffic, and recreational resources will be less
22 than significant after mitigation and substantial evidence in the record demonstrates that impacts
23 will remain significant and that the Project will make a considerable contribution to significant
24 cumulative impacts.

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

28 /

1 **Inadequate Mitigation**

2 77. The EIR fails to describe and evaluate all reasonable, feasible mitigation measures for
3 the Project’s direct, indirect, and cumulative impacts, including, for example, impacts to traffic, air
4 quality, greenhouse gas, recreation, wildlife, sensitive habitats, rare plants, water quality, aesthetics
5 and glare, land use and planning, health and safety, noise, and water supply.

6 78. The EIR improperly defers formulation of mitigation measures, including, for
7 example, deferring mitigation for impacts to biological and visual resources that is not known to be
8 feasible and deferring mitigation without performance standards.

9 79. The EIR and the findings improperly rely upon mitigation of traffic impacts through
10 impact fees. The reliance is improper because, for example, needed traffic improvements are not
11 fully funded, will not be provided timely, or are not included in any program, and because there is
12 no actual commitment to construct all of the needed improvements.

13 80. The EIR and the County failed to consider and respond to each facially feasible
14 mitigation proposal made in public comments, including, for example, impacts related to visual
15 resources, traffic, greenhouse gasses, noise, and biological resources.

16 81. The County also improperly rejected mitigation measures as infeasible without
17 substantial evidence, including, for example, impacts related to visual resources, traffic, greenhouse
18 gasses, noise, and biological resources.

19 82. The EIR fails to propose, and the County failed to adopt, feasible mitigation to
20 address impacts that remained significant, including, for example, impacts related to traffic, noise,
21 visual resources, and greenhouse gasses.

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

25 **Failure to Exercise Independent Judgment**

26 84. The County circulated a draft EIR and made findings that failed to reflect the
27 County’s independent judgment, including, for example, analysis and findings related to visual
28 impacts.

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

4 **Failure to Provide Adequate Comment Responses**

5 86. The EIR fails to provide good faith, reasoned analysis in response to public
6 comments on the draft EIR and recirculated draft EIR.

7 87. For example, the EIR fails to provide adequate responses to requests for information
8 and to mitigation proposals related to water supply and demand, traffic impacts, foreseeable fuel
9 modification activities, noise, greenhouse gas mitigation, visual impacts, biological resource impacts,
10 the Project description (e.g., lot layouts, building pad locations), and the Project alternatives.

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

14 **Failure to Disclose All Significant Unavoidable Impacts**

15 89. The EIR and the findings fail to identify each unavoidable significant impact,
16 including, for example, each unavoidably significant traffic impact to intersections and roadway
17 segments.

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

21 **Inadequate Alternatives Analysis**

22 91. The County and the EIR failed to describe a reasonable range of feasible alternatives.

23 92. For example, only one alternative considered by the EIR is legally feasible because all
24 other alternatives (and the proposed Project itself) violate the County's slope density requirements,
25 a fact that was not disclosed until after the EIR was completed.

26 93. The EIR fails to evaluate alternatives proposed by the public that would have avoided
27 or lessened significant impacts.

1 94. The EIR fails to provide adequate analysis and description of proposed alternatives.
2 For example, the EIR fails to provide adequate analysis and description of impacts to visual and
3 biological resources, the EIR fails to provide a stable and complete description of each alternative
4 (e.g., lot layouts), and the EIR fails to explain the relation of the alternatives and the proposed
5 mitigation (e.g., to explain whether the alternatives obviate or replace the mitigation).

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

9 **Failure to Recirculate Revised Draft EIR**

10 96. The County failed to recirculate an adequate draft EIR for public comment.
11 Recirculation was required because, subsequent to the availability of the draft EIR, significant new
12 information was added to the EIR and to the record that demonstrates that the public was deprived
13 of a meaningful opportunity to comment upon a substantial adverse environmental effect of the
14 Project and a feasible way to mitigate or avoid such an effect (including, for example, a feasible
15 Project alternative) that the Project's proponents have declined to implement, and that discloses
16 that the draft EIR was so fundamentally and basically inadequate and conclusory in nature that
17 meaningful public review and comment were precluded.

18 97. For example, the significant new information was added to the EIR or to the record
19 because the County made changes to the Project description including changes to lot layouts and
20 Project access; the County changed or eliminated proposed mitigation for impacts to traffic, parks
21 and recreation, visual, and biological impacts; the County received new information from the
22 Monterey County Water Resources Agency and members of the public regarding the insufficiency
23 of the Salinas Valley Water Project to balance the basin's water supply and demand and the need for
24 additional water supply projects; and the County received new information regarding visual impacts,
25 noise, greenhouse gasses mitigation, and biological resources.

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

1 **Inadequate Findings**

2 99. The County found that the Project’s impacts to biological resources, most traffic
3 facilities, parks, visual resources, noise, and water supply would be less than significant and/or that
4 its contribution to significant cumulative impacts to these resources would be less than
5 considerable. These findings were not supported by substantial evidence in the record and the
6 findings failed to cite substantial evidence on which they relied.

7 100. The County found that proposed Project alternatives were infeasible. These findings
8 were not supported by substantial evidence in the record and the findings failed to cite substantial
9 evidence on which they relied.

10 101. The EIR and findings for the Project identify impacts to greenhouses gasses as
11 unavoidably significant. The findings fail to identify evidence in the record that each mitigation
12 measure proposed by the public for greenhouse gas impacts is not feasible, and there is no
13 substantial evidence in the record that each proposed measure is not feasible.

14 102. The County found unavoidably significant impacts to traffic facilities and greenhouse
15 gasses acceptable and adopted a statement of overriding considerations. There is no substantial
16 evidence in the record to support the statement of overriding considerations, and the statement
17 itself is inadequately supported by findings. There is substantial evidence in the record that
18 disproves the statement.

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

22 **Defective Notice of Determination**

23 104. The Notice of Determination for the Project was legally inadequate because it failed
24 to identify the persons who received the Project entitlements.

25 105. The County therefore prejudicially failed to proceed in the manner required by
26 CEQA.

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1 **SECOND CLAIM FOR RELIEF**

2 **(Violations of State Planning & Zoning Law)**

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

4 107. Under the State Planning and Zoning law, Government Code §§ 65000 *et seq.*, a local
5 public agency may entitle a proposed land use only if the land use is consistent with the goals,
6 policies, and objectives contained in a valid, current, internally consistent General Plan.

7 108. The 2010 Monterey County General Plan provides that applications for subdivision
8 maps deemed complete before October 16, 2007 shall be governed by the plans, policies, and
9 ordinances that were in effect at the time the application was deemed complete.

10 109. LandWatch is informed and believes that the Project application was deemed
11 complete before October 16, 2007, and that it was governed by the 1982 Monterey County General
12 Plan.

13 110. The Project is inconsistent and incompatible with applicable goals, policies and
14 objectives of the 1982 Monterey County General Plan, including, for example, Policies 37.2.1,
15 39.1.4, 39.1.2, 26.1.4, 26.1.4.3, 53.1.3.

16 111. However, the County failed to find that the Project is inconsistent with applicable
17 goals, policies and objectives of the 1982 Monterey County General Plan, including, for example,
18 Policies 37.2.1, 39.1.4, 39.1.2, 26.1.4, 26.1.4.3, 53.1.3.

19 112. The County failed even to make findings regarding consistency with 1982 General
20 Plan Policies related to traffic impacts.

21 113. The County therefore prejudicially abused its discretion under the State Planning and
22 Zoning law by adopting findings of General Plan consistency for the Project that are not supported
23 by the evidence.

24 **THIRD CLAIM FOR RELIEF**

25 **(Violations of Subdivision Map Act)**

26 114. LandWatch here incorporates by reference all preceding paragraphs in their entirety.

27 115. An agency may not approve a tentative map that is inconsistent with its general plan.
28 Government Code, § 66473.5.

1 116. The Project is inconsistent and incompatible with applicable goals, policies and
2 objectives of the 1982 Monterey County General Plan, including, for example, Policies 37.2.1,
3 39.1.4, 39.1.2, 26.1.4, 26.1.4.3, 53.1.3.

4 117. However, the County failed to find that the Project is inconsistent with applicable
5 goals, policies and objectives of the 1982 Monterey County General Plan, including, for example,
6 Policies 37.2.1, 39.1.4, 39.1.2, 26.1.4, 26.1.4.3, 53.1.3.

7 118. The County failed even to make findings of consistency with 1982 General Plan
8 Policies related to traffic impacts.

9 119. An agency may not approve a subdivision that is likely to cause substantial
10 environmental damage or substantially and unavoidably injure fish, wildlife, or their habitats, or
11 cause serious public health problems. Government Code, § 66474.

12 120. The County failed to find that the Project is likely to cause substantial environmental
13 damage or substantially and unavoidably injure fish, wildlife, or their habitats.

14 121. The County therefore prejudicially abused its discretion under the Subdivision Map
15 Act by adopting findings for the Project that are not supported by the evidence.

16 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

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

24 123. Petitioner has performed all conditions precedent to filing this action by complying
25 with the requirements of Public Resources Code § 21167.5 in serving notice of the commencement
26 of this action January 16, 2015.

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1 **INADEQUATE REMEDY AT LAW**

2 124. LandWatch declares that it has no plain, speedy, and adequate remedy in the ordinary
3 course of law for the improper action of the County.

4 **NECESSITY FOR TEMPORARY RELIEF**

5 125. If Project development is allowed to commence prior to the Court's final judgment
6 on the merits, LandWatch and the environment will be greatly, permanently and irreparably injured
7 from the resulting unmitigated environmental, aesthetic, recreational, and land use impacts.

8 126. Under Code of Civil Procedure § 1094.5(g), this Court may issue a stay order during
9 the pendency of the proceedings unless it is satisfied that a stay would be against the public interest.
10 Imposition of a stay would not be against the public interest in that the public will derive no benefit
11 from the Project prior to the Court's final judgment.

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

16 **ATTORNEYS' FEES**

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

21 **PRAYER**

22 WHEREFORE, LandWatch prays for entry of judgment as follows:

- 23 1. For a peremptory writ of mandate directing the County:
24 (a) to set aside its December 16, 2014 action certifying an EIR for the Project and
25 adopting a statement of overriding considerations;
26 (b) to set aside its December 16, 2014 action approving the Combined Development
27 Permit for the Project;
28

1 (c) to refrain from issuing permits or granting subdivision map approvals until the
2 County has taken action necessary to bring its approval of Project into compliance with
3 CEQA, the Planning and Zoning law, and the Subdivision Map Act;

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

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

8 3. For a preliminary and permanent injunction directing the County and Real Parties to
9 cease and refrain from engaging in any action purporting to be authorized by the Project
10 entitlements that could result in any change or alteration in the physical environment until the
11 County takes any necessary action to bring its action into compliance with CEQA, the Planning and
12 Zoning law, and the Subdivision Map Act.

13 4. For their costs of suit.

14 5. For an award of attorneys' fees.

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

16
17 Dated: January 16, 2015

Respectfully submitted,

18 M. R. WOLFE AND ASSOCIATES, P.C.

19
20
21 

22 By: _____

23 Mark R. Wolfe
24 John H. Farrow
25 Attorneys for Petitioner
26
27
28

VERIFICATION

I, Amy White, declare:

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

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

Dated: January ____, 2015

Amy White